



Fourth item on the agenda: HIV/AIDS and the world of work

Report of the Committee on HIV/AIDS

1. The Committee on HIV/AIDS met for its first sitting on 3 June 2009. Initially, it consisted of 148 members (79 Government members, 27 Employer members and 42 Worker members). To achieve equality of voting strength, each Government member was allotted 378 votes, each Employer member 1,106 votes and each Worker member 711 votes. The composition of the Committee was modified seven times during the session, and the number of votes attributed to each member was adjusted accordingly.¹

2. The Committee elected its Officers as follows:

Chairperson: Ms T. Nene-Shezi (Government member, South Africa)

Vice-Chairpersons: Mr P. Obath (Employer member, Kenya) and
Mr J. Sithole (Worker member, Swaziland)

¹ The modifications were as follows:

- (a) 4 June: 163 members (88 Government members with 329 votes each, 28 Employer members with 1,034 votes each and 47 Worker members with 616 votes each);
- (b) 5 June: 160 members (94 Government members with 1,073 votes each, 29 Employer members with 3,478 votes each and 37 Worker members with 2,726 votes each);
- (c) 6 June: 161 members (97 Government members with 1,015 votes each, 29 Employer members with 3,395 votes each and 35 Worker members with 2,813 votes each);
- (d) 8 June (morning): 152 members (97 Government members with 754 votes each, 29 Employer members with 2,522 votes each and 26 Worker members with 2,813 votes each);
- (e) 8 June (evening): 155 members (99 Government members with 87 votes each, 29 Employer members with 297 votes each and 27 Worker members with 319 votes each);
- (f) 9 June: 149 members (101 Government members with 140 votes each, 28 Employer members with 505 votes each and 20 Worker members with 707 votes each);
- (g) 11 June: 150 members (102 Government members with 70 votes each, 28 Employer members with 255 votes each and 20 Worker members with 357 votes each);
- (h) 12 June: 148 members (102 Government members with 171 votes each, 27 Employer members with 646 votes each and 19 Worker members with 918 votes each).

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3. At its eighth sitting, the Committee elected Ms S. Singh (Government member, Trinidad and Tobago), who had been nominated by the Government member of Brazil, as Reporter; and, at the proposal of the Government member of France, on behalf of Government members of the group of Industrialized Market Economy Countries (IMEC),² appointed Mr R. Hassan (Government member, United Kingdom) to assist her in her duties.
 4. At its 14th sitting, the Committee appointed a Drafting Committee composed of the following members:

Government member: Mr M. Boisnel (France), assisted by Ms M. Alencar D'Assunção (Brazil)

Employer member: Ms S. Stepanoff (France), assisted by Mr K. Coon (Canada)

Worker member: Ms E. Lynch (Ireland), assisted by Mr J. Dereymaeker (International Trade Union Confederation)
 5. The Committee had before it Reports IV(1) and IV(2), entitled *HIV/AIDS and the world of work*, prepared by the Office for a first discussion of the fourth item on the agenda of the Conference: "Elaboration of an autonomous Recommendation on HIV/AIDS in the world of work (*standard-setting, double discussion*)". The proposed Conclusions submitted by the Office were contained in Report IV(2).
 6. The Committee held 23 sittings.

Introduction

7. The representative of the Secretary-General, Dr Sophia Kisting, Director of the ILO Programme on HIV/AIDS and the world of work, welcomed the delegates. She recalled that the item for discussion had been chosen by the Governing Body in March 2007.
8. Upon her election, the Chairperson thanked the Committee for the trust that it had placed in her. She called on all groups to take a proactive role in ensuring that the Committee would arrive at Conclusions by consensus, based on an open and free exchange of views and experiences. She thanked the Secretariat for the reports prepared, which provided a useful basis for discussion.

General discussion

9. The representative of the Secretary-General presented the context for the discussion, which was taking place at a crucial moment in the ILO's history. The ILO was celebrating its 90 years of existence and at the same time it was mobilizing responses to the global economic crisis with an emphasis on protecting jobs and defending social justice. The financial crisis was causing reductions in health budgets, development assistance and treatment programmes, as well as impacting on individual incomes. A standard-setting discussion on HIV/AIDS presented a unique opportunity to influence and reduce health-related uncertainties in the world of work and to upscale the response to HIV/AIDS. The

² Australia, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.

representative gave an overview of the HIV epidemic, with current statistics, and noted the growth of tuberculosis (TB) and HIV as a dual epidemic in many countries. Achieving effective long-term responses would depend on addressing human rights, gender inequality, stigma and discrimination. She pointed out that the ILO was a co-sponsor of the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the lead agency for the world of work and private sector mobilization. It works closely with the UN Cares HIV/AIDS programme for UN staff and with UN Plus, the support group for HIV-positive UN staff.

10. The aims of the proposed new instrument were: to establish the basis for an institutional tripartite presence within national AIDS programmes; to strengthen the workplace contribution to universal access to HIV prevention, treatment, care and support, and to the protection of rights; to improve the coordination of action on HIV/AIDS in the world of work and harmonize the application of the ILO code of practice on HIV/AIDS and the world of work; and to improve monitoring and reporting on workplace action. The instrument would build on the ILO code of practice, which had been adopted in June 2001 and whose key principles had been applied in laws and policies in over 70 countries. Once adopted, the instrument would be submitted to competent national authorities for the enactment of legislation or other action.
11. The representative of the Secretary-General stressed the critical importance of the support from the ILO's constituents and expressed her appreciation for the number of responses to the questionnaire circulated in Report IV(1). The development of the instrument should be situated within the framework of the ILO Declaration on Social Justice for a Fair Globalization and its Strategic Policy Framework. It was important to promote strategies for the world of work in national AIDS plans and to integrate HIV/AIDS into Decent Work Country Programmes.
12. A new instrument would provide opportunities to strengthen social dialogue and tripartism; safeguard the rights of workers and protect jobs; mainstream gender in HIV/AIDS workplace policies and programmes; strengthen prevention efforts; and support care and treatment. Above all, it offered the means to respond in a more collective manner to the challenges of an epidemic which thrived along the fault lines of society. The commitment of the ILO's constituents would lead to Conclusions that could make a real difference to global efforts to stem the tide of the epidemic.
13. The Employer Vice-Chairperson recalled recent UNAIDS statistics which indicated that 33 million people were living with HIV in 2007, that there were 7,400 new infections each day, 96 per cent of which occurred in low- to middle-income countries, and 45 per cent of which occurred in people aged 15–49 years, which was the primary working-age population. He thanked the United States President's Emergency Plan for AIDS Relief (PEPFAR) and the Global Fund to Fight AIDS, Tuberculosis and Malaria (the Global Fund) for making treatment available to many who needed it. The Governing Body decision in March 2007 gave a clear mandate for this Committee. The Employers' group supported the ILO code of practice on HIV/AIDS and the world of work as a consensus document developed by tripartite constituents and a framework for global workplace action. By adopting this document, employers demonstrated their commitment and political will to address the pandemic.
14. The Employers' group, he pointed out, opposed the adoption of a binding instrument. The outcome of the Committee's deliberations could be an autonomous Recommendation which would build on the ILO code of practice and promote united action and collaboration between the ILO and other UN agencies; suggest measures to build the capacity of ILO constituents to respond to the challenges of HIV/AIDS; and promote the integration of workplace responses to HIV/AIDS into national programmes. The

Recommendation should also avoid overburdening enterprises, particularly at a time when many were collapsing due to the economic crisis. The scope of the instrument should include small and medium-sized enterprises (SMEs), as well as multinational companies. An autonomous Recommendation would give the flexibility of making the outcomes applicable widely in small to large enterprises, small to large economies, developing to developed countries, small to large workers' organizations and countries with low and high incidence and prevalence of HIV and AIDS.

- 15.** The Worker Vice-Chairperson stated that the HIV/AIDS pandemic was a formidable enemy which had no cure and killed more people than all the wars and genocides combined. He emphasized that this Committee had an opportunity to come up with an instrument that could combat HIV/AIDS through collective tripartite action, involving persons living with HIV and relevant United Nations (UN) agencies. The ILO code of practice was a good basis for the discussions, as it set out ten clear principles fully supported by the Workers' group. It had resulted in encouraging people to undertake voluntary counselling and testing (VCT), setting up institutions to administer VCT, and building the capacity of labour inspectors and magistrates to deal with HIV/AIDS. Despite all the strengths of the code, it also had some limitations. The new instrument should deal with these deficits, and he particularly welcomed in this regard the broadening of the definition of the workplace to include the armed forces and the informal economy.
- 16.** The Workers' group view was that the new instrument should take the form of a Convention. It would be irresponsible to declare HIV/AIDS an enemy of mankind but to adopt an instrument that did not have a supervisory mechanism. He noted that some Governments, particularly in developing countries, had supported the idea of a Convention in their response to the questionnaire. Moreover, it was clear from the report that mandatory testing for HIV continued in many countries, in contradiction to the ILO code of practice on HIV/AIDS and the 1997 ILO code of practice on the protection of workers' personal data. Such a problem could not be solved with yet another non-compelling instrument. Testing could not be required from workers or job applicants, and they could not be required to disclose information about their HIV status to employers, recruitment agencies or clients. This principle should be applicable to all workers, including subcontractors, temporary workers, self-employed persons, job applicants and informal workers. The principal employer should be responsible for the social protection of workers where subcontracting and outsourcing took place.
- 17.** The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union³ and Norway, noted the important role of the workplace in addressing HIV/AIDS and the contribution of the ILO code of practice on HIV/AIDS in the world of work. In spite of progress in many areas, the HIV epidemic remained a major challenge calling for continued political attention and sustained responses. The European Union and Norway were fully committed to contributing to the coordinated efforts of the ILO's constituents and others to achieve universal access to prevention, treatment, care and support through workplace action.
- 18.** The HIV epidemic was not only a medical issue, but had implications for occupational safety and health, as well as for employment and anti-discrimination policies, social security systems and economic development. Stigma and discrimination were drivers of HIV/AIDS and impeded an effective response. The same applied to gender inequality; in

³ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

sub-Saharan Africa, 61 per cent of adults living with HIV were women, and the proportion in Eastern Europe and Central Asia was increasing. The role of men as gatekeepers in enhancing gender equality also needed to be recognized. The European Union and Norway opposed all HIV-related discrimination against or stigmatization of workers or job applicants. HIV testing should not be required except in very specific cases defined by law, but workers should be encouraged to know their HIV status through voluntary counselling and testing. Access to such information should be governed by rules of confidentiality consistent with the 1997 ILO code of practice on the protection of workers' personal data and its subsequent revisions.

- 19.** The European Union and Norway reaffirmed their focus on prevention, which should form the cornerstone of HIV/AIDS workplace policy, supported by evidence-informed and gender-sensitive interventions tailored to local situations, including occupational risk where relevant. Workplace programmes should be part of integrated national responses, involving not only the social partners but also the relevant governmental and non-governmental bodies, especially associations of people living with HIV. The European Union and Norway, drawing on their strong record of action on HIV/AIDS, urged the Committee to develop an instrument that was workable, flexible, enduring, coherent with the actions of other multilateral institutions and focused on areas that made the best use of the ILO's tripartite structure.
- 20.** The Government member of India, noting the profound impact of HIV/AIDS on workers and their families, enterprises and national economies, said that it was the right time to elaborate an international instrument to stem the spread of the epidemic and limit its adverse effects on labour market efficiency, health and labour costs, and human rights, with particular reference to the needs of women and workers in the informal economy. India supported the adoption of an autonomous Recommendation, which would help guide national responses, increase the attention devoted to the subject, promote united action and strengthen the impact of the ILO code of practice. Some flexibility in the instrument with regard to categories of workers, including migrant workers, and interventions outside the workplace would encourage compliance. HIV screening should not be required of workers or job applicants. A national policy on HIV/AIDS and the world of work would help governments develop appropriate interventions and promote the participation of employers' and workers' organizations. India had developed such a policy, in consultation with employers' and workers' organizations, which would be launched shortly. In outlining the goals of the policy, the Government member of India stressed the need for a comprehensive response that reached out to diverse populations and respected human rights. He reiterated India's commitment to the ILO's efforts to develop effective strategic responses.
- 21.** The Government representative of Namibia said that HIV/AIDS remained a critical health issue with serious economic and social implications, including the rising number of orphans and the burden on the social sector. The HIV/AIDS response was multisectoral and an essential part of the Government's poverty reduction strategy and development planning. The Government had adopted a national code on HIV/AIDS in 1998, following tripartite consultations, aimed at preventing discrimination in employment. Workers with HIV were encouraged to remain at work and be productive for as long as possible. The national AIDS coordination programme conducted surveillance every two years, provided antiretroviral (ARV) drugs to all health districts and promoted voluntary testing. A recent "know your status" campaign had received a positive response. Noting that Namibia had been selected to host the 2009 meeting of PEPFAR implementers, he said that his Government would welcome technical support from the ILO to help it tackle the problem of HIV/AIDS more effectively. Namibia supported the development of a new labour instrument on HIV/AIDS.

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22. The Government member of Nigeria expressed appreciation for the ILO's initiative to develop an autonomous Recommendation on HIV/AIDS, which was long overdue. Despite efforts all over the world to fight HIV/AIDS, the number of people living with it and its prevalence in the world of work continued to rise. His Government believed that the proposed Recommendation would help fill the gaps in efforts to stem the scourge. The Recommendation and the ILO code of practice would complement each other in giving detailed guidance and setting out good practice options, bearing in mind the pertinent role played by the tripartite partners. The Nigerian Government had taken steps to implement the ILO code of practice in consultation with the tripartite partners. For example, information on the code of practice had been widely disseminated, in particular in the informal sector where the majority of the workforce was engaged, and it had been translated into the three major local languages. A national workplace policy on HIV/AIDS had been approved in 2005, in consultation with the tripartite partners, which had helped the Government to be more effective in its fight against HIV/AIDS in the workplace. A bill on discrimination and stigmatization was currently before the National Assembly.
23. The Government member of the United Republic of Tanzania noted that his country had undertaken several efforts, in particular the development of a national policy on HIV/AIDS; a multisectoral national strategy; relevant national legislation; the establishment of the Tanzania Commission for AIDS (TACAIDS); a national version of the ILO code of practice on HIV/AIDS; implementation of UN joint programme 3, which covered HIV/AIDS, as well as the incorporation of HIV/AIDS inspection as part of labour inspection. He agreed that while the development of the ILO code of practice was a good effort, more needed to be undertaken, as the code of practice was voluntary and included no provision for monitoring. Many entities dealing with AIDS did not involve all stakeholders, and it was therefore important that the development of the Recommendation would allow the social partners' responsibilities to be clearly defined. He pointed out that reports on the use of the Recommendation could be requested by the Office under article 19 of the Constitution. His country supported developing a new Recommendation, with the ILO code of practice as a starting point, and incorporating new elements such as national legislation, UN efforts and civil society interventions.
24. The Government member of the Islamic Republic of Iran stated that an integrated approach at the international level to combat HIV/AIDS was necessary, with the ILO working with other agencies such as the World Health Organization (WHO) and the World Bank. His country had undertaken several efforts to combat the threat of HIV/AIDS, including a national programme on the prevention and control of HIV/AIDS. His country also produced medicine for those infected, in conformity with WHO standards, at the lowest price possible, and maintained a counselling programme for schools, workplaces and society on HIV/AIDS. He reiterated his support for the ILO report and the development of a Recommendation.
25. The Government member of Trinidad and Tobago echoed the concerns of other Governments on the threat posed by HIV/AIDS, especially to the working population, and welcomed the agenda item addressing the HIV epidemic. Her Government encouraged a multisectoral and multi-level approach, integrating HIV/AIDS into its national development plan and had introduced a National Workplace Policy on HIV/AIDS in 2008. This policy set minimum standards, outlined the rights and responsibilities of the tripartite partners, addressed gender issues, and promoted confidentiality and reasonable accommodation. The Policy was supported by the national Constitution, informed by various ILO Conventions and the code of practice on HIV/AIDS, and consistent with relevant regional instruments as well as the Millennium Development Goals (MDGs). It was complemented by other policies being developed, such as for public sector employees, by a range of capacity-building initiatives, including for the labour inspection, occupational safety and health, human resources and other departments, and by a campaign

against stigma and discrimination. A major achievement was to include HIV/AIDS in a 2007 collective agreement between the National Union of Government and Federated Workers and the Hi-Lo Food Stores. She concluded by pointing to the linkages between HIV/AIDS, poverty and gender inequality, illustrating this with reference to falling productivity and slowing growth on the one hand and disproportionately high HIV prevalence among young women aged between 15 and 19 on the other. She expressed the hope that a two-way flow of information would be possible between the Committee on HIV/AIDS and those on crisis responses and gender equality. HIV/AIDS was a cross-cutting issue; a multisectoral approach was needed to deal with the problem. She also appealed for special provision to be made to deal with AIDS orphans, and with grandparents who were forced to assume the role of parents.

- 26.** The Government member of Australia voiced his country's strong support for the development of a Recommendation on HIV/AIDS and the world of work. The instrument should serve as a model strategic framework for implementing the ILO code of practice, be consistent with other relevant standards and complement the activities of UNAIDS. The draft Conclusions took account of the range of challenges to the implementation of workplace HIV/AIDS programmes and these should be retained in the instrument. The focus in Australia was mainly on the protection of health workers, but other countries faced a variety of challenges which the Committee should address. Factors critical to the success of national responses were social dialogue, which should include people living with HIV, inter-agency cooperation within and between governments, and the harmonization of HIV/AIDS policies for the workplace with public health strategies. While its focus was the world of work, the Committee had the opportunity to make a significant contribution to the achievement of the MDGs and universal access to HIV prevention, treatment, care and support.
- 27.** The Government member of Canada stressed the impact of HIV/AIDS on the world of work and her Government's commitment to minimizing its adverse effects. Combating HIV/AIDS would need a global response, including all stakeholders and sectors of society. In developing and implementing national strategies, collaboration between government, employers' and workers' organizations was essential, as was collaboration with other agencies dealing with HIV/AIDS as well as associations representing people living with HIV. She highlighted the value of the ILO code of practice and noted that it provided a sound basis for the Committee to develop clear and efficient guidance in the proposed Recommendation. An instrument in the form of a Recommendation would also allow for the necessary flexibility to adapt to different legal and social contexts. Her Government believed that the proposed instrument should retain focus on the workplace and take into account the unique contribution of the ILO's tripartite character to the work of UNAIDS. It should also be clear and concise, providing relevant and practical guidance to workers and their families. In addition, it should aid in the development of strategies to fight discrimination and raise awareness of HIV/AIDS prevention strategies in the workplace.
- 28.** The Government member of Japan supported the adoption of a new instrument but suggested that, in view of different legislation in member States, it should not be excessively detailed or make compliance difficult. It would be necessary to revise the draft Conclusions that the Office had prepared to ensure that public health issues were not dealt with in the workplace and that employers were not obliged to take measures outside the workplace.
- 29.** The Government member of the Dominican Republic said that her Government had adopted several laws that authorized relevant national and non-governmental bodies to implement policies and actions in the fight against the epidemic. With due regard to national legislation, the objectives of the MDGs, the Global Compact of the United Nations and the ILO code of practice on HIV/AIDS, the Government of the Dominican

Republic, with the participation of trade unions and employers' associations, had established a specialized unit within the Labour Ministry (*Unidad Técnico Laboral de Atención Integral*) whose mission was to provide services, advice and legal assistance to workers and employers on all matters relating to HIV/AIDS in the world of work. With support from the Global Fund, the unit had strengthened the capacity of the Government as well as trade unions and employers' associations to implement workplace policies, raised awareness among workers and employers, and empowered workers by educating them about their rights. She stressed the need to find new and alternative solutions to obtain even greater commitment and full involvement of the tripartite constituents. She welcomed discussion of the new instrument which should take into account a variety of cross-cutting issues, including prevention, care, treatment and respect for human rights. The instrument should also include indicators and other means through which progress could be evaluated on a regular basis.

- 30.** The Government member of Algeria took note of the advances made by the UN, the WHO and the ILO in the fight against HIV/AIDS which, since its first appearance in the 1980s, had caused tremendous grief and widespread stigmatization and discrimination against people living with HIV/AIDS. The situation was still very difficult today, especially for developing countries, where social and health systems were increasingly overstretched. The problem was aggravated by the advent of the global economic crisis, which had a serious impact on social protection systems and the productivity of enterprises, but which must not be allowed to undermine the goal of protecting workers with HIV against discrimination or their right to decent work. Since the economic crisis and the pandemic had a negative impact on society and enterprises, the solution should be found in collaboration with the social partners and relevant international organizations. Listing the different actions that had been taken to combat HIV/AIDS in Algeria, she highlighted the usefulness of the following initiatives that had been implemented together with UNAIDS, the ILO and the social partners: the creation of a national AIDS committee; training of social partners on HIV/AIDS in the world of work; awareness-raising campaigns with trade unions, government institutions, and in schools and universities; free care and treatment in hospitals; establishment of confidential testing centres; and legal protection of the confidentiality of medical records.
- 31.** The Government member of Brazil outlined her country's joint multisectoral and multi-partner approach to HIV. The delegation to the Committee, for example, included representatives of the ministries of labour, health, foreign affairs and the national network of people living with HIV. The impact of HIV on workers and their families, and on formal and informal enterprises, meant that Brazil welcomed the agenda item and the Office's reports. Responses in the world of work should be closely linked to the National Agenda for Decent Work, which promoted equal opportunities and combated discrimination. The national response to HIV was built on three pillars: prevention; care, treatment and support; and human rights. Barriers to universal access included structural issues such as poverty, gender inequality, racism, homophobia and other forms of discrimination. For people with HIV, these vulnerabilities were compounded by stigmatization and social exclusion.
- 32.** The Government of Brazil's strategies included the production and distribution of condoms, universal access to antiretroviral therapy and policies to promote the health and social inclusion of stigmatized populations such as people living with HIV, sex workers, sexual minorities and drug users. The positive prevention approach confronted the stigma and mystification surrounding HIV; including by supporting income-generating activities for people living with HIV. The National Corporate Council for HIV/AIDS Prevention supported enterprise initiatives in a range of economic sectors. The National STD/HIV/AIDS Commission included employers and workers with other partners, and a database had been established to register human rights violations related to HIV status,

including in employment. The Ministry of Labour had relevant instruments, such as occupational health legislation, and over 3,000 labour inspectors had been trained to support the reintegration into employment of workers who had been dismissed on grounds of HIV status. HIV status should never be a cause for refusal or termination of employment. The ILO code of practice had given visibility to HIV/AIDS as a workplace issue and the ILO had a special role to play in promoting collaborative action to mitigate the impact of HIV/AIDS in the world of work. The speaker reiterated her Government's commitment to an inclusive and rights-based approach to the epidemic, guaranteeing decent work for all people living with HIV. She ended by quoting the words of the representative from the Brazilian National Network of People Living with HIV/AIDS, who stood at that point: "We used to hide ourselves to die. Now we show ourselves to live."

- 33.** The Government member of Bangladesh noted that there had been 1,495 cases reported in his country as of 31 December 2008. The inherent social, cultural and religious beliefs and values of the people of Bangladesh were one of the main factors contributing to this low prevalence. Nevertheless, risky behaviour among high-risk groups and the high prevalence of HIV in some neighbouring countries meant that the threat of an epidemic remained high and the world of work remained particularly vulnerable. In response to the HIV/AIDS threat, Bangladesh had adopted specific HIV legislation and had approved a national strategic plan for 2005–10 based on sound analysis and the identification of key objectives for interventions. Bangladesh reaffirmed its support for the Recommendation under consideration, stressing that it should strengthen the ILO code of practice. While there was a need for a follow-up mechanism for implementing the new instrument, caution had to be exercised in imposing further reporting obligations on countries, many of which were considerably burdened with reporting. To ensure effective follow-up on HIV/AIDS in the workplace, coordination would be required both in government and non-governmental sectors, which would be difficult without resources and technical assistance from the ILO. With regards to the proposed Conclusions, the speaker hoped that the important issue of migrant workers would be more adequately developed to provide protection for this high-risk group.
- 34.** The Government member of China noted that in his country the infection rate was not high, with a prevalence rate estimated at 0.05 per cent, or about 700,000 people living with HIV. Nonetheless, the issue of HIV was still very important in China. He maintained that sexual transmission remained the most common mode of transmission in the country and that HIV was spreading. The Government had demonstrated its commitment to addressing HIV through the development of policies and legislation, including regulations on prevention (2006); the formulation of China's HIV action plan 2006–10; the enactment of the Employment Contracts Law in 2007 which addressed discrimination against people living with HIV; action undertaken in the workplace to address the vulnerability of migrant workers; integration of HIV into training programmes for migrant workers; and the integration of HIV prevention into social security schemes, as well as into skills training programmes. China reaffirmed its support for the proposed Recommendation because it was significant and could strengthen prevention efforts through workplace action. The proposed Conclusions had included the ten principles of the ILO code of practice and had made some improvements, notably with regard to making treatment a priority and strengthening prevention through the world of work. It was necessary to include HIV in social security schemes and to make better use of the labour inspectorates in countries. In conclusion, he stressed that the Recommendation should not replace the ILO code of practice, and that it should emphasize prevention and discourage mandatory testing. The instrument should also provide flexibility in adopting the various principles through the framing of national laws and policies.

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- 35.** The Government member of Senegal reminded the Committee of the significance of the adoption of the ILO code of practice in 2001 and the inspiration it provided to countries to establish their national programmes and policies. Senegal had adopted a multisectoral approach which allowed the social partners to participate actively in HIV programmes at the national level. To this effect, it had created a national tripartite committee on the fight against AIDS, which had resulted in a triennial action plan to fight AIDS at work. The ILO code of practice had also been promoted through a business charter on the fight against AIDS. A law on HIV/AIDS would soon be promulgated which would specifically target discrimination and stigmatization of workers. His delegation supported the adoption of a Recommendation.
- 36.** The Government member of Morocco stated that the world of work was directly affected by HIV/AIDS, as the most economically active part of the population, namely those aged between 15 and 49, were the ones infected. Hence a workplace prevention policy would allow the mitigation of the adverse effects of HIV/AIDS on social and economic development. Even in Morocco, where the prevalence rate was low, it was the most economically active population who were affected. With this in mind, his Government had adopted a strategic national plan (2007 to 2011) and, in conformity with ILO guidelines, was developing a plan to combat HIV/AIDS at the workplace to be integrated in the national strategy. A study conducted in collaboration with UNAIDS helped develop this plan to combat AIDS at the workplace and the study would be discussed shortly at a tripartite seminar.
- 37.** The Deputy Executive-Director of UNAIDS stated that his organization considered a new standard an important instrument to ensure universal access to HIV prevention, treatment, care and support in the world of work. As the majority of the estimated 33.2 million people in the world currently living with HIV were in their most productive years, the new standard was particularly relevant. If the new standard called for a tripartite national HIV/AIDS workplace policy to be integrated into each national HIV/AIDS programme and strategy, it would also strengthen such national strategies and plans, as well as coordination among key actors, including the social partners. It was also important to strive for a standard on HIV/AIDS whose effects were measurable.
- 38.** The speaker noted that the UNAIDS co-sponsors had recently agreed to a new Outcome Framework for 2009–11, which highlighted eight priority areas for UN action. Seven of these were relevant to the world of work: prevention for mothers and for the transmission of HIV to babies; access via the workplace for treatment; integration of TB-related activities in the workplace; strengthening of efforts to counter workplace stigma and discrimination; mainstreaming efforts on gender, including violence against women, at the workplace; using the workplace to ensure youth employment and information needs; strengthening social protection related to HIV, and using the ILO's tripartite partners to adopt, implement and monitor HIV-related activities suited to their respective contexts. The new standards would also contribute to achieving the sixth MDG, which addressed HIV/AIDS. Finally, combating HIV was also a political opportunity to address other difficult social issues such as sex education, homophobia and human rights, including the position of women in society and the rights of workers. He closed by congratulating the ILO's programme on HIV/AIDS and the world of work for its accomplishments.
- 39.** The Director of the HIV/AIDS Programme of the WHO referred to the weighty issues currently preoccupying countries across the world, especially the economic crisis, and said that although it might appear that the HIV/AIDS crisis was over, this was not the case. Estimates by the WHO and UNAIDS based on sound methodology put the numbers of people living with HIV at the end of 2007 at just over 33 million. The same year saw 2.7 million new infections and 2 million deaths; updated estimates would be published at the end of 2009. The HIV epidemic was the leading infectious disease challenge in global

health, but was very heterogeneous in its form and characteristics. Two-thirds of infections were in sub-Saharan Africa, one-third in the eight countries of Southern Africa, which also had half the world's cases of HIV-related tuberculosis. The global response needed to focus on prevention, treatment and the support of those affected, and the world of work had a very important role to play in all countries. Three million people were currently on ARV treatment, but about twice as many more were in need – this was both a success story and an enormous challenge. Another challenge was to ensure that all women who needed it had access to services for the prevention of mother-to-child transmission (PMTCT). At present, this was the case for only one-third of these women. The speaker reminded participants that only 20 per cent of people living with HIV knew their status. The world of work could help greatly in building trust and helping people feel safe in accessing voluntary testing services. He echoed the representative of UNAIDS in stressing the need for the values of social justice and equity to be at the heart of the response. The ILO, with its rights-based approach, was well placed to promote access to HIV prevention and treatment, and to health services generally. Public health meant assuring the conditions for people to be healthy.

40. The Government member of the United States echoed the assertion that AIDS was not over. The United States Centers for Disease Control and Prevention (CDC) had announced a new campaign to refocus public attention on HIV/AIDS as well as targeting communities that were disproportionately affected. At the same time, the United States continued its strong support for treatment and prevention internationally. The response to HIV/AIDS involved many actors, governmental and non-governmental. The United States was fully committed to the ILO's contribution to these coordinated efforts. There was a special role for the ILO and its constituents in promoting measures to reduce the risk of occupational exposure for health-care workers and others. The ILO and social partners were also well placed to lead the fight against workplace discrimination, to encourage voluntary confidential testing and help make the workplace an important entry point for prevention education. The speaker recalled the wish of the Worker Vice-Chairperson for tripartite action and that of the Employer Vice-Chairperson for flexibility, as well as the diverse responses from different governments. He ended by quoting the European Union colleagues who said that the Committee had the opportunity to develop a Recommendation that was “workable, flexible, enduring and coherent with the aims and actions of other multilateral institutions, focusing on those areas which would make the most effective use of the ILO's unique tripartite structure”.
41. The Government member of Zimbabwe highlighted the impact of HIV/AIDS on the world of work in developing countries, with Southern Africa, including Zimbabwe, being at the centre of the epidemic's impact. Due to prevention and mitigation programmes, prevalence had decreased significantly in Zimbabwe, from 33.7 per cent in 2002 to 15 per cent in 2007. This progress was now under threat due to economic pressures, but the Government was still implementing an HIV/AIDS programme. The tripartite Zimbabwe Occupational Health and Safety Council included HIV/AIDS in its work. Legislation, in conformity with the ILO and the Southern African Development Community (SADC) codes of practice on HIV/AIDS, covered a range of issues relating to HIV/AIDS at the workplace, including discrimination, testing and education for employees. The diversity and cross-cutting nature of HIV/AIDS had also led to different sectors, such as transport, agriculture, mining and SMEs developing their own HIV/AIDS policies through the employment councils which establish conditions of service. A number of challenges persisted, such as the lack of OSH legislation including HIV, poor coordination of HIV/AIDS programmes, and the lack of resources and technical expertise. He concluded by supporting the development of a Recommendation or Convention dealing with HIV/AIDS and the workplace.

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42. The Government member of Turkey said he appreciated the efforts of the ILO for the adoption of a new international instrument on HIV/AIDS as part of the global response to HIV/AIDS. Turkey was among the low-prevalence countries, but it was nevertheless strengthening its response to the epidemic. Surveillance was managed in a way that protected confidentiality, legislation protected the rights of people living with HIV and the Government provided prevention and treatment services with free ARVs. The Turkish Labour Act included provisions prohibiting discrimination and stigmatization of people living with HIV/AIDS. The National AIDS Commission brought together a number of partners, and established national targets and strategies on prevention, diagnosis and treatment, targeting both the general population and vulnerable groups, with a strong emphasis on voluntary testing. Turkey's HIV/AIDS Prevention and Support Programme was supported by the Global Fund. Specific projects included training programmes for teachers, students, police officers, soldiers, prisoners and workers in large enterprises. The Government of Turkey supported the adoption of a Recommendation on HIV/AIDS and the world of work to provide concrete and practical guidelines for member States.
43. The Government member of Argentina welcomed the efforts of the ILO to draft an instrument that would help mitigate the impact on HIV/AIDS in the world of work. The Republic of Argentina had developed and implemented programmes to fight HIV/AIDS since the beginning of the 1990s. Without wishing to list all the initiatives taken, the speaker referred to a national plan of action on health complying with international guidelines on HIV prevention, diagnosis and treatment. Subsequently, with the involvement of a range of social actors, the Government had moved from a focus on treatment to broader programmes of support to improve the quality of life for persons living with HIV. In this regard, he was convinced that the world of work, where individual and society were integrated in the context of development, was an essential forum for action against HIV/AIDS. Argentina was developing further multisectoral initiatives in line with the recommendations of the UN, UNAIDS, the WHO and the ILO. In this regard, the Government of Argentina fully supported the proposal to develop an instrument to reinforce the code of practice, encourage the involvement of all sectors of the economy and take account of the evolving epidemic.
44. The Government member of Sudan gave a brief overview of the situation in Southern Sudan, including background information on the population and recent peace agreement. She presented the national AIDS strategy for 2008–13, and noted that a National AIDS Commission had been put in place during the war in view of the high priority given to the issue. Legislation would be put in place to protect the rights of vulnerable groups including women, youth, people living with HIV, refugees and internally displaced persons (IDPs). The Government was committed to working with religious and community leaders and to educating them in HIV prevention. The Vice-President had taken a public HIV test to encourage people to do the same. Quoting from the recent activity report of the HIV/AIDS/STI Directorate, the speaker informed the Committee of the numbers of voluntary testing centres and treatment clinics which had been set up with assistance from the WHO, as well as PMTCT sites which provided routine testing of pregnant mothers with regular counselling and testing. Regular radio programmes provided communities with information and the opportunity to discuss HIV/AIDS openly. The Government of Sudan was committed to act upon the Conclusions agreed by the Committee and other relevant international instruments.
45. The Government member of the Republic of Korea said that his Government had actively cooperated with UNAIDS to prevent HIV/AIDS, and had integrated policies and programmes relevant to HIV/AIDS into national law and social security systems. HIV/AIDS was a major health problem, and its impact on workers, enterprises and society could not be overlooked. The prevalence of HIV/AIDS was relatively low in the Republic of Korea, where it was estimated that 6,000 people were infected out of a total population

of 48 million. Nonetheless, the Republic of Korea had established a specific HIV/AIDS law which focused on the elimination of stigma and discrimination, and it continued to develop legal and social structures to provide people living with HIV with access to prevention, treatment, care and social support. The Government also recognized the seriousness of HIV/AIDS in the world of work, and on workers, enterprises and society. HIV/AIDS was also an emerging issue in occupational safety and health. He stressed the importance of prevention for workers at risk and the removal of the stigma associated with HIV through better education efforts. Health-care workers were the most vulnerable group and more attention needed to be paid to prevention for this group. Lastly, he emphasized the importance of collective agreements and social dialogue for HIV prevention, and in making policies and programmes operate effectively.

46. The Government member of Iraq underlined that HIV/AIDS was a scourge that affected the economy, the world of work and vulnerable people, including the most productive members of society. It was crucial to adopt a Recommendation that would slow the effects of HIV/AIDS and take into account workers in the informal economy, including young people and women. Iraq had adopted significant measures to reduce the number of people affected. It had launched a national programme on HIV/AIDS and transmissible diseases, and had also established a research centre and a number of diagnostic and treatment centres. She stressed the importance of follow-up and monitoring, as well as care and training for health-care staff. The Government in Iraq had provided awareness raising for health-care staff and was also following up on second-generation ARV therapy. Iraq was also stepping up diagnostic capacity, including increasing steps to decrease transmission to children, and it was tackling syphilis and other sexually transmitted diseases. She expressed her Government's support for the adoption of a Recommendation in this area.
47. The Government member of Fiji stated that his Government recognized HIV/AIDS as a very serious public health issue that had significant socio-economic, employment and human rights implications. HIV/AIDS could affect every workplace and could impact productivity, employee benefits, occupational safety and health, production costs and workplace morale. The implementation of workplace HIV/AIDS programmes was one of the most effective ways to reduce and manage the impact of HIV/AIDS in relation to the world of work. Addressing HIV/AIDS in the workplace would enable governments, employers, workers and relevant stakeholders to contribute actively to local, national and international efforts to prevent and control the spread of the disease. Fiji took HIV/AIDS seriously as a threat to its workforce of 298,000 members. Fiji had adopted a National Code of Practice for HIV/AIDS in the workplace in 2008, which would be reflected in a new promulgation of the Employment Relations Law. The National Code was based on the ILO code of practice and was developed in consultation with tripartite social partners and other stakeholders. It had also involved local, regional and international advisers and, in this respect, the speaker thanked Australia for its assistance. Fiji's National Code was designed to advise employers and workers of acceptable preventative action to avert occupational deaths, injuries and HIV/AIDS-related diseases in the workplace, while respecting fundamental principles and rights at work. The expectation of the Fiji Ministry of Labour, Industrial Relations and Employment was that all workplaces would adopt the Code. This would increase uniformity in the regulation of occupational safety and health, and contribute to enhancing the efficiency of the Fijian economy through more productive workplaces. The key components of the Code were: prevention; risk management; education and training; care and support of workers infected by HIV/AIDS; elimination of stigma and discrimination; and instruments to assist workplaces to respond effectively to workplace incidents. The HIV/AIDS epidemic impacted the workplace and individuals at different levels and required a holistic approach that took into account all of the above factors. The speaker expressed his support for the efforts of the ILO and this Committee to recognize HIV/AIDS as a problem that should be addressed in the workplace, especially as the majority of those living with HIV/AIDS were in the prime of their working lives.

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- 48.** The Government member of Papua New Guinea provided background on the situation in her country. According to the UNDP, Papua New Guinea had the highest incidence of HIV in the Pacific Region. The mode of transmission was predominantly among heterosexuals with multiple partners, but also included bisexual and transgendered people and sex workers. There were also low rates of condom use and high rates of sexually transmitted diseases. Approximately an equal number of men and women were affected, with young women and older men being disproportionately affected. There were significant prevalence rates in large urban areas and rural pockets around high-risk settings. HIV/AIDS and related deaths had been reported in all provinces. According to an AusAID-commissioned report, if interventions were not scaled up, by 2025 over 500,000 people would be living with HIV/AIDS, the GDP would be 1.3 per cent less than predicted and the workforce would decline by 12.5 per cent. The initiatives taken by the Government to prevent the spread of HIV/AIDS included: the establishment of the National AIDS Council Secretariat; the development of HIV/AIDS legislation; the establishment of a national parliamentary committee on HIV/AIDS; the development of a national strategic plan 2006–07; the creation of HIV/AIDS committees in various levels of government; and awareness and education programmes. Papua New Guinea had also implemented numerous aid-funded projects, including: the Papua New Guinea/Australia HIV/AIDS programme “Stand Together”; a national HIV/AIDS support project; the Business Coalition Against HIV and AIDS, which was an employers’ initiative; the Friends Foundation; and Anglicare, which provided voluntary testing, support and shelter. In recognition of the threat posed by HIV, prevention and education was being incorporated into all public sector reform programmes, as well as all projects with donor partners. The Government had strong partnerships with the private and public sector, and international HIV/AIDS partners. Papua New Guinea had performed extremely well in terms of its legislation, mainstreaming of HIV/AIDS activities and partnerships, but even with these efforts, the impact of HIV/AIDS did not seem to be reduced. The Government would continue to fight the spread of HIV/AIDS and expected that the effect of interventions taken now would only be seen in years to come.
- 49.** The Government member of France, on behalf of Government members of IMEC, said that the preference of IMEC was for an autonomous Recommendation, which would provide renewed political force to the 2001 code of practice, as well as the flexibility in application required by diverse national contexts. He suggested that the Committee should work towards Conclusions which would be sufficiently flexible and broad-based to gain wide-ranging support and be viable for all countries. Four issues would be crucial to the success of the Committee’s work: prevention as the focus of workplace HIV/AIDS programmes; elimination of stigma and discrimination in the workplace, in due respect of national legislation; the need to address the disproportionate impact of the HIV epidemic on women and girls; and the need to address the informal economy.
- 50.** The Government member of the Bolivarian Republic of Venezuela reported that her country guaranteed universal access to treatment for all people living with HIV, free of charge and with nutritional supplements when needed. This was achieved without support from the Global Fund; other medication, such as antibiotics for persons with tuberculosis, were produced nationally. She expressed the view that pharmaceutical companies were responsible for increasing the costs of medication and appealed to employers to contribute some of their profits through their social responsibility programmes to save the lives of people with HIV. In 2008, no child was born in Venezuela with HIV due to comprehensive programmes which address mother-to-child transmission. The health sector had been effective in preventing the spread of HIV, especially among health-care workers. Other programmes focused on the prevention of sexual transmission through education, in school and community programmes, a number of them tailored to women. Almost 29,000 trainers had been trained, including in outreach to the informal economy, and over 78,000 occupational safety and health focal points promoted prevention in workplaces. Tools to

counter stigma and discrimination included specific legislation. In conclusion, she appealed to the delegates in this tripartite gathering to put men and women before profits and prejudices, and to help build a culture of respect, solidarity and inclusion.

- 51.** The representative of the International Transport Workers Federation (ITF) summarized the work of the ITF on HIV/AIDS, emphasizing that truck drivers should be seen as partners in the solution and not as the problem. Working conditions in the road transport sector which heightened HIV vulnerability should be addressed. He referred to programmes in cooperation with employers and others which included rest centres for drivers along transport corridors where they received medical checks and HIV information, and mentioned the production of a joint toolkit with ILO support. A similar programme was being started in the maritime sector with the same partners plus the International Organization for Migration (IOM). A major concern of the ITF at present was the impact of the global economic crisis on transport workers, as on workers in other sectors, the resulting job losses and the urgent need to extend social protection coverage. A particular issue in the crisis was the danger of interrupting life-saving treatment for people living with HIV. Health systems strengthening was a vital goal, but the exceptional nature of HIV/AIDS needed to be addressed through specific measures. The ITF was an active member of the Global Union AIDS Programme, which brought together ten global unions and the International Trade Union Confederation (ITUC). A long-standing concern was the absence of workers and employers from national AIDS committees and Country Coordinating Mechanisms. In conclusion, the speaker urged Governments, Employers and Workers to work together on behalf of millions of HIV-positive workers to achieve the adoption of a new labour standard which would have the strongest impact on the HIV epidemic, and address the linkages between HIV/AIDS, gender equality and poverty reduction.
- 52.** The Employer Vice-Chairperson thanked the Committee for the views shared. He commented that the management of HIV/AIDS had come a long way, especially since the development of the ILO code of practice in 2001. Many voluntary programmes initiated by governments and by employers' and workers' organizations had been implemented, with many going beyond the requirements of the code of practice. The fact that this work was done on a voluntary basis showed the commitment to the issue of HIV/AIDS on the part of many actors.
- 53.** Behavioural change was key to managing HIV/AIDS and this was the key to building on the code of practice. He urged the Committee to make sure that a new instrument would provide sufficient flexibility to respond to the epidemic according to the ability of each Member. For example, he noted that requirements for enterprises would have to apply to large global enterprises and small family businesses. The instrument would also have to be flexible in response to an epidemic which evolved over time, as seen in the change of populations affected by HIV/AIDS. With this in mind, he urged the Committee to consider how to craft as effective an instrument as possible to combat HIV/AIDS.
- 54.** The Worker Vice-Chairperson pointed to the fact that the positions expressed in the preceding statements had converged more than they had diverged. Areas of convergence included the danger posed by HIV/AIDS and the need to develop an instrument to contain and mitigate its impact, as well as the need to retain the strengths of the code of practice while addressing its deficits. Many practical achievements were possible if joint action was taken, including preventing mother-to-child transmission, promoting prevention generally, especially through VCT, treatment for those with HIV and support for those affected, and a strong stand against stigma.

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55. This raised a fundamental question for governments across the world: if they were prepared to regulate the financial sector and provide stimulus packages, why were they not equally ready to regulate in order to prevent the loss of human capital? Similarly, if employers were concerned at the loss of trained and skilled human resources, why would they refuse to set a standard to mitigate that loss? Many employers already carried out excellent programmes and a standard would enhance these. Since HIV had emerged, there was no possibility of conducting “business as usual”. The epidemic was a disaster and the response should be commensurate with a crisis response such as developed in the Committee of the Whole. The focus must be on solutions, not procedures. He concluded by requesting a round of applause for the Government of Brazil for including in its delegation a member living with HIV.

Examination of the proposed Conclusions

Point 1

56. The Worker Vice-Chairperson introduced an amendment proposing the insertion after the word “establishing” of the words “an international labour standard and”. He explained that it was important to establish the nature of the instrument and clarify that it would be a labour standard.
57. The Employer Vice-Chairperson said that the Employer members were not keen to adopt the amendment and would prefer to defer discussion of this amendment until the form of the instrument was established in point 2.
58. The Government member of the Czech Republic, on behalf of Government members of IMEC and Government members of Member States of the European Union, agreed that it would be useful to clarify the form of the instrument before considering this amendment, a view supported by the Government of India.
59. The Committee then discussed point 2. After concluding discussion of point 2, it returned to point 1. The Employer Vice-Chairperson reaffirmed his group’s support for the original text in the proposed Conclusions.
60. The Worker Vice-Chairperson said that his group preferred the text with the proposed amendment and asked for the amendment to be debated by the Committee.
61. The Government member of the Bolivarian Republic of Venezuela supported the amendment, in view of the clarification provided by the Legal Adviser of the Conference during the discussion of point 2 (below), believing that “labour standard” sounded stronger than “instrument”. The Government members of Argentina and the Dominican Republic supported this position.
62. The Government member of the Czech Republic, on behalf of Government members of IMEC and Government members of Member States of the European Union saw the amended text as a duplication of point 2 and preferred the original text. The Government member of Zimbabwe expressed the same view.
63. The Worker Vice-Chairperson urged the Committee not to waste time on this discussion, as the amendment was in line with the mandate given to the Committee by the Governing Body of the ILO. The Government member of Egypt recalled the difference between a Convention and a Recommendation. The Employer Vice-Chairperson was concerned that the words “international labour standard” could only refer to a Convention or a

Recommendation. The Office text provided more flexibility. The Worker Vice-Chairperson reminded the Committee that it had already agreed to a Recommendation, so the use of the word “standard” should not present a problem in practice. The Employer Vice-Chairperson announced that the Employers’ group had wanted to keep the original wording of point 1, but in the interest of compromise could accept the amendment proposed by the Workers’ group with the following subamendment: after the words “international labour standards” delete “and” and insert “as a”. The Worker Vice-Chairperson concurred with the subamendment proposed by the Employer Vice-Chairperson.

64. The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union, Canada and the United States, accepted the amendment as subamended.
65. The Government member of Benin, on behalf of African group Government members of the Committee,⁴ also accepted the amendment as subamended. The Government member of Brazil supported the subamendment, as it retained the concept of an international labour standard. The Government member of Sudan said she supported the original amendment submitted by the Workers’ group, as it was important to look to the future and the need to work towards adopting an international labour standard.
66. The amendment was adopted as amended.

Point 2

67. The Worker Vice-Chairperson then requested deferral of the point. He felt it would be premature to decide on the form of the instrument before its contents were agreed and might delay discussion of other issues. The main imperative was to develop an instrument stronger than the code of practice which would strengthen the response to the epidemic.
68. The Employer Vice-Chairperson stated that without clarity as to the form of the instrument, it would be difficult to discuss the contents. It would in fact save time to establish this point now and then move on to other issues. The Government of the Czech Republic, on behalf of Government members of IMEC and Government members of Member States of the European Union, expressed the view that the form of the instrument would have a direct impact on the contents. The issue of HIV/AIDS was complex, so clarity was needed here. The Governments she spoke for preferred a Recommendation, and did not wish to defer discussion of point 2. The Government member of Nigeria, on behalf of African group Government members of the Committee, and the Government member of Trinidad and Tobago, agreed that discussion of the form of the instrument should not be deferred. The Government member of the Bolivarian Republic of Venezuela supported the deferral of the amendment to point 2. The Government member of Algeria asked for a legal opinion on whether the word “standard” was applicable only to a Convention or if it could also be used to describe a Recommendation. The Government member of Brazil said that she was a labour inspector and that, for her, the most important outcome of this

⁴ Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Democratic Republic of the Congo, Côte d’Ivoire, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, São Tomé and Príncipe, Senegal, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, United Republic of Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe.

Committee was to see a good instrument, whether a Convention or a Recommendation. The follow-up and implementation of the instrument was what mattered. The Government member of Egypt discussed the difference between a Convention and a Recommendation, and said that his Government preferred a Recommendation which could in the future evolve into a Convention.

- 69.** The Legal Adviser then responded to the question from the Government member of Algeria. He clarified that the word “standard” included both Conventions and Recommendations. He went on to explain that both kinds of instrument carried identical obligations of submission to the competent national authorities after adoption, and that Conventions created binding legal obligations on countries once ratified. Article 19 of the Constitution would allow the Governing Body to request reports from governments on unratified Conventions and on Recommendations. He outlined some of the other options before the Conference, including the adoption of a resolution, which would not be a standard. The Chairperson ruled that the amendment be discussed, as there had not been sufficient support for its deferral. She asked the sponsor to introduce the amendment.
- 70.** The Worker Vice-Chairperson introduced an amendment to replace the word “Recommendation” by the word “Convention”. This amendment was intended to achieve the binding instrument wanted by the Workers’ group. The pandemic needed serious attention and the best instruments to mitigate its impact. Workers had leverage only with a Convention, as it created obligations when ratified, made States accountable and gave recourse to workers. The code of practice had been well used for eight years but had been interpreted and applied in different ways. An instrument was needed now that would guarantee implementation and ensure the participation of workers in the process. A Recommendation had reporting procedures but could not give the protection that workers needed. The Governing Body had felt that there were deficits in the code of practice and that it should be upgraded. They needed an instrument that could be enforced. In the face of such a threat to humanity, only the strongest of instruments was adequate: a Convention.
- 71.** The Employer Vice-Chairperson pointed to the changes which had taken place since the code of practice was adopted in 2001. Its form had given countries the flexibility to adapt to the changing epidemic and response, which a Convention would not have. The Employers’ group supported a Recommendation because it would allow different countries to respond appropriately as the epidemic evolved. Like the code of practice, it would provide a flexible means for all three of the ILO’s constituents to respond together.
- 72.** The Government member of France, on behalf of Government members of IMEC and Government members of Member States of the European Union, underscored the seriousness of the HIV/AIDS pandemic and agreed on the need to go beyond the code of practice. He felt, however, that it was necessary to adopt an instrument which was flexible, viable and consistent with other ILO instruments, and was therefore in favour of a Recommendation.
- 73.** The Government member of Australia supported the statement from the Government member of France. He said that the current form of the proposed Conclusions, with their level of detail, was more suited to a Recommendation than a Convention. He feared that if the Committee were to propose a Convention, the text would require radical amendments which would be unproductive. Concluding, he emphasized the need for the Recommendation to be linked to an appropriate and effective follow-up mechanism.
- 74.** The Government member of Trinidad and Tobago agreed, and added that a binding instrument should be decided at the national level. Countries should be encouraged to take action guided by a Recommendation. The Government member of Nigeria, on behalf of African group Government members of the Committee, said he appreciated the sentiments

expressed by both the Employers' and Workers' groups on the need to tackle the pandemic. A flexible instrument would make it possible to take action more speedily and effectively, and so they supported a Recommendation. The Government member of China agreed that the instrument should be a Recommendation, adding that a Convention might be weakened if there were few ratifications.

75. The Worker Vice-Chairperson thanked those who had spoken and stated his appreciation of the strong statement by the Employer Vice-Chairperson to the effect that responding to HIV/AIDS was not an option but an obligation. He also noted the expressions of commitment from Governments to implementation and follow-up, though he regretted they were not able to commit to a Convention. He trusted that the statements of intent would be carried through at country level. The Worker Vice-Chairperson withdrew the amendment expressing the hope that all parties would deliver on the commitments they had made to implement the Recommendation.

Point 3(a)

76. The Employer Vice-Chairperson introduced an amendment to point 3(a) which would replace clause (a) by "that HIV/AIDS has a serious impact on society and economies, the world of work, workers and enterprises;". He explained that the Employers' group preferred to start from the large concept of society and move towards particular entities that were affected. The Employers' group understood that families were included in the term "society".
77. The Workers' group introduced three subamendments to the amendment proposed by the Employers' group. First, they wished to insert, after the word "workers", the words "and their families". They then proposed to insert after the word "families" the words ", their organizations". Finally, they proposed to insert the words "public and private" before "enterprises".
78. The Government of Nigeria, on behalf of African group Government members of the Committee, agreed with the proposed subamendments.
79. The Employer Vice-Chairperson agreed with the proposed changes by the Workers' group, except for the reference to workers and their organizations. Employers also had associations, but he felt that these would be covered by the wording related to society at large. He failed to understand why it was essential to enter into such detail in point 3(a). The Worker Vice-Chairperson said that he would have no issue if the intention of the Employers' group were to include a reference to employers' associations in point 3(a). The Employer Vice-Chairperson said that this was not necessary and agreed to the changes without reference to workers' organizations.
80. The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union, could not accept the reference to workers and their organizations. She introduced a further sub-subamendment to the Workers' group's subamendment to replace the word "families" by "dependants". The word dependants would more broadly define different forms of families, as the understanding of what a family is could be different in different societies.
81. The Worker Vice-Chairperson did not have a problem with the proposal by the Government members of Member States of the European Union concerning the use of the word "dependants" instead of "families". But he did want to maintain the reference to workers and their organizations because Worker members were in the Committee representing organizations and were a tripartite constituent in the ILO.

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- 82.** The Employer Vice-Chairperson said that he supported the views of Government members of Member States of the European Union and would still like to see the reference to workers and their organizations removed.
- 83.** The Worker Vice-Chairperson replied that workers and their organizations were in this Committee and discussing the issues of HIV/AIDS in the world of work because they were affected by the pandemic. Hence the reference to workers and their organizations was more a statement of fact than anything else. The adoption of the proposed amendment as subamended would not have any impact on the form or substance of point 3(a).
- 84.** The Government member of the Bolivarian Republic of Venezuela said that the list of people included was acceptable, but she was not sure about including only “families”. She suggested a sub-subamendment to change the text to “workers, their families and people dependant on them”, as different levels of people were affected. Workers’ organizations often included people who were directly or indirectly affected because they were the dependants of someone affected. The Worker Vice-Chairperson thought that the proposed text added value, as the definition of families and dependants were not the same – such as caregivers, for example – but all were affected. The Government member of the Dominican Republic seconded the sub-subamendment proposed by the Bolivarian Republic of Venezuela. Being directly dependant on a worker did not necessarily mean that one had to be a family member. It was good to make reference to families and those economically dependent on a worker.
- 85.** The Government member of the Bolivarian Republic of Venezuela thought that for clarity they should reintegrate the term “workers’ organizations”, otherwise the wording could be understood to signify dependants’ organizations. The Government members of Brazil and Trinidad and Tobago supported this suggestion.
- 86.** The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union, did not support the text proposed by the Government member of the Bolivarian Republic of Venezuela. The role of organizations was discussed under draft point 3(h) and did not need to be covered under point 3(a). The Worker Vice-Chairperson emphasized that the text should not be removed simply because it was mentioned elsewhere. He supported the text as proposed.
- 87.** The Government member of France asked for additional explanation from the Workers’ group as to why it was necessary to include workers’ organizations. He thought that this was already covered twice under 3(a) by “workers” and “society”. He asked how workers’ organizations were specifically more affected than workers or society at large. The Worker Vice-Chairperson explained that they were affected as workers, as members of society and as members of workers’ organizations. The intention was to identify clearly the groups affected by the epidemic. A person could be in society, but could be unemployed, for instance. They were seeking to include all groups affected. The Government member of Nigeria, on behalf of African group Government members of the Committee, asked what was meant by the words “world of work”. If it encompassed workers, and workers’ and employers’ organizations, then there was no need to re-emphasize them.
- 88.** The Government member of Iraq supported the statements made by the Government members of France and Nigeria. She thought that mentioning “society” was enough, as it covered everything, including workers and families.
- 89.** The Government member of Brazil reminded the Committee that in dealing with HIV in the world of work they were referring to a specific population and that the virus did not discriminate between workers and employers. It was important to recognize the role of workers’ and employers’ organizations and to use them as partners. There were many

cases in Brazil where prevention and early treatment had occurred because of these organizations.

90. The Worker Vice-Chairperson felt that it was important to include both employers' and workers' organizations, as they were key players in the world of work and had specific roles. He stressed the importance of keeping these references, as the text would be meaningless without them. The Employer Vice-Chairperson pointed out that this was only the Preamble and that brevity was important.
91. To break the impasse, the Worker Vice-Chairperson suggested that "social partners" be used instead of "organizations". The Employer Vice-Chairperson found this acceptable, but asked that the Committee Drafting Committee work out the details of the wording. The Government member of Côte d'Ivoire, on behalf of African group Government members of the Committee, supported the idea of the Committee Drafting Committee working out the terminology, including the term "world of work". The Government member of Brazil stated she was pleased that the notion of "partners" had been introduced into the amendment, as the social partners were indeed critical partners in the fight against HIV/AIDS. The amendment was adopted as amended.

Point 3(b)

92. The Employer Vice-Chairperson introduced an amendment which sought to replace point 3(b) with the following: "that HIV/AIDS, if not well managed, may undermine the attainment of decent work and sustainable enterprises and development, and may increase poverty, thus making people more vulnerable to HIV;". He argued that the original statement demonstrated cause and effect in only one direction, adding that HIV/AIDS, if well managed, might not necessarily increase poverty.
93. The Worker Vice-Chairperson did not support the amendment. The Government member of the Bolivarian Republic of Venezuela did not support the amendment.
94. The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union, did not support the amendment because the word "may" appeared weak. The Government member of Argentina stated that the amendment appeared ambiguous in relation to the link between HIV/AIDS and decent work. The Government member of Nigeria, on behalf of African group Government members of the Committee, stated that he was uncomfortable with the occurrence of the word "may" twice in the text of the amendment and did not support it. The Government member of the United States did not support the amendment, as it appeared too conditional. The Employer Vice-Chairperson withdrew the amendment, as it appeared that members of the Committee were convinced that HIV/AIDS inevitably led to poverty.
95. The Government member of Argentina, also on behalf of the Government member of Brazil, introduced an amendment to point 3(b) which sought to replace the words "increases poverty" by the words "increases and intensifies poverty". He explained that poverty was a very complex issue and there was the need to include a term which would capture the qualitative aspect of poverty and not just the quantitative. The Employer Vice-Chairperson did not see the added value of introducing the word "intensifies" and did not support the amendment. The Worker Vice-Chairperson supported the amendment. The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union, supported the amendment, as did the Government member of Trinidad and Tobago. The Government member of Côte d'Ivoire, on behalf of African group Government members of the Committee, supported the amendment on the

condition that it be referred to the Committee Drafting Committee, as it appeared that the wording needed some improvement. The amendment was adopted.

96. The Worker Vice-Chairperson introduced an amendment which sought to insert the words “, and vice versa” after the word “poverty” in order to better demonstrate the relationship between HIV and poverty, as well as poverty and HIV. The Employer Vice-Chairperson supported the amendment.
97. The Government member of the United States supported the amendment, as did the Government member of the Czech Republic, on behalf of Government members of Member States of the European Union. The Government member of Argentina supported the amendment and suggested that the Committee Drafting Committee should pay attention to the wording. The Government member of Brazil also supported the amendment, which was subsequently adopted and referred to the Committee Drafting Committee.
98. The Government member of Benin, on behalf of African group Government members of the Committee, introduced an amendment to point 3(b) to replace the words “in turn” by the word “thus”. He explained that this had no impact in the French version of the text, but made the point much clearer in English and Spanish. Both the Employer and Worker Vice-Chairpersons supported the amendment. It was adopted.
99. The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union, introduced an amendment to point 3(b) which sought to replace the word “making” by the words “creating conditions that make”. She explained that this amendment would make the Committee’s aims clearer. The Government member of Benin, on behalf of African group Government members of the Committee, and the Employer and Worker Vice-Chairpersons, supported the amendment. It was adopted.

Point 3(c)

100. The Chairperson explained to the Committee that the next two amendments would be taken together, one submitted by the Workers’ group and the other submitted by the Employers’ group.
101. The Employer Vice-Chairperson introduced an amendment which sought to replace point 3(c) by the following text: “that stigma and discrimination related to HIV/AIDS are barriers to knowing one’s HIV status and can therefore increase vulnerability to HIV;”.
102. He explained that this phrasing would make it clear that HIV/AIDS infection could lead to a loss of life and jobs, and an increased number of orphans, not necessarily the stigma and discrimination associated with HIV.
103. The Worker Vice-Chairperson introduced an amendment and amended it while presenting. Its purpose was to replace 3(c) by two clauses, namely:

that in rural and other areas with high levels of poverty, the risk of HIV transmission and lack of adherence to treatment is increasing, as are mortality levels, the number of orphans, the number of people engaged in informal work and the lack of information and awareness;

and

that stigma and discrimination and the threat of job loss suffered by persons affected by HIV/AIDS increase the vulnerability of workers and undermines the right to social benefits.

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- 104.** The rationale behind this amendment and subsequent subamendment was to distinguish between stigma and discrimination, and the link to poverty and its impact on HIV/AIDS.
- 105.** The Employer Vice-Chairperson expressed his concern with the amendment of the Workers' group, noting that it stigmatized rural areas as areas of high poverty and HIV/AIDS. He acknowledged that rural areas had their specific problems, but was not convinced that all rural areas were poor. The amendment, submitted by the Employer members, and the second paragraph of the amendment, submitted by the Worker members, were taken together first, as both concerned stigma and discrimination. The Employer Vice-Chairperson found the Worker members' amendment acceptable and suggested as a subamendment to merge the amendments related to the first paragraph. The Worker Vice-Chairperson agreed.
- 106.** The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union; the Government member of Nigeria, on behalf of African group Government members of the Committee; the Government member of the United States; and the Government member of Brazil expressed support for the clause as subamended. The Government member of Nigeria proposed deleting the word "and" after the word "stigma" and moving the reference to loss of jobs to follow "discrimination". The Worker Vice-Chairperson proposed deleting the word "therefore" after the words "HIV status and". The Employer and Worker Vice-Chairpersons concurred with the amendment as subamended and the text was adopted, as follows: "that stigma, discrimination and the threat of job loss suffered by persons affected by HIV/AIDS are barriers to knowing one's HIV and AIDS status, increase the vulnerability of the workers and undermine the right to social benefits;".

Point 3(c), second clause

- 107.** Regarding the first part of the Worker group's amendment, the Worker Vice-Chairperson introduced a subamendment to remove the words "rural and other", as he agreed with earlier statements that this could be stigmatizing. The Employer Vice-Chairperson accepted the subamendment.
- 108.** The Government member of Trinidad and Tobago proposed a subamendment to change the order of the points in this clause and to replace "orphans" with "children who have lost one or both parents", as the definition of the word "orphans" varied in different countries. The proposed text was: "that in areas with high levels of poverty, lack of adherence to treatment and lack of information and awareness, the risk of HIV transmission is increasing, as are mortality levels, the numbers of children who have lost one or both parents, and the number of people engaged in informal and formal work;". The Government member of Suriname seconded the subamendment proposed by the Government member of Trinidad and Tobago. The Employer and Worker Vice-Chairpersons accepted the subamendment.
- 109.** The Government of France asked for a linguistic clarification, as the original text seemed to indicate that treatment was available but not adhered to, but he noted that the subamendment proposed by the Government member of Trinidad and Tobago was helpful in this regard.
- 110.** The Government member of Cote d'Ivoire, on behalf of African group Government members of the Committee, introduced a subamendment proposing to remove the words "and formal" after the word "engaged". The Government member of Canada supported the subamendment proposed by the African group. The Employer and Worker Vice-Chairpersons accepted the subamendment.

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- 111.** The Government member of Brazil was of the opinion that it was important to keep the words “formal and informal” because the formal sector provided good opportunities for HIV programming. The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union, supported the subamendment tabled by the African group, as did the Government member of Zimbabwe.
- 112.** The second clause of the amended second paragraph of point 3(c) was adopted, as follows: “that in areas with high levels of poverty, lack of adherence to treatment and lack of information and awareness, the risk of HIV transmission is increasing, as are mortality levels, the number of children who have lost one or both parents and the number of people engaged in informal work;”. It was confirmed that this clause would be inserted before point 3(c), as it followed on well from the previous clause (b) on poverty.
- 113.** The Government member of Canada withdrew an amendment proposed by the Government members of IMEC, which would have inserted, after point 3(c), a new clause reading: “that persons living with HIV/AIDS are vulnerable to discrimination and stigma in the workplace, which in turn affects their economic well-being and social integration;”. She explained that her group felt that points 3(b) and 3(c) had focused on broader social issues and not sufficiently on how stigma and discrimination had a devastating impact on the individual. Her group would return with further amendments to address this issue at a later point.
- 114.** Moving on to point 3(d), the Employer Vice-Chairperson introduced an amendment which would replace point 3(d) by the following: “that HIV/AIDS has a more severe impact on vulnerable groups such as women, youth and migrant workers;”. He explained that the Employer members did not want to focus on one vulnerable group, because vulnerability to HIV/AIDS varied considerably over time. The Employer members had attempted to draft text that would better capture a generic focus on vulnerable groups, which currently included women, youth and migrant workers. A focus on vulnerable groups rather than singling out women would allow the proposed instrument to remain valid after some years, even if new vulnerable groups were to emerge.
- 115.** The Worker Vice-Chairperson proposed a subamendment to insert the Employer members’ amendment before point 3(d) as a new clause, while retaining the original proposed point 3(d) as well. He said that it was important to retain a strong focus on women, as they were at greater risk of HIV/AIDS infection and more adversely affected by the HIV epidemic than men. In the new point, he proposed that the word “children” be inserted after “women”, and that “migrant workers” be changed to “migrants”.
- 116.** The Employer Vice-Chairperson reiterated that the intention of the Employer members was to replace the original text of point 3(d) with their amendment because they did not want to highlight any one group as particularly vulnerable. The Employer members did not want to suggest that women were especially vulnerable or portray them as victims. The proposed amendment would refer more broadly to vulnerable groups, including but not restricted to women, and not place women at the core of the issue of HIV/AIDS. A broader focus on vulnerable groups would give the proposed instrument greater longevity.
- 117.** The Worker Vice-Chairperson responded by saying that the Committee had a duty to be sensitive to the gender dimension and to statistics that showed that women were more vulnerable to HIV. If the amendment were accepted, it should appear above the current point 3(d) and the current version of (d) should remain in the text.
- 118.** The Government member of France asked if the amendment of the Workers’ group was based on specific epidemiological data that showed a serious problem related to children. The Employer Vice-Chairperson said that in the interest of speed, he could accept the

proposed subamendment by the Workers' group, as long as the text could be cleaned up by the Committee Drafting Committee. The Government member of Brazil agreed with the proposed amendment, as subamended by the Workers' group. She also proposed to insert "and persons with disabilities", as people living with HIV were becoming disabled because of the disease and due to medication that they took to treat it. Epidemiological data showed that the disabled were a high-risk group, as they were an excluded segment of the population. The Government members of the Bolivarian Republic of Venezuela, and Trinidad and Tobago supported this subamendment. The Government member of Argentina agreed with Brazil, stating that other groups were at risk and gender differences should be covered.

- 119.** The Government member of the Dominican Republic supported the amendment, as subamended by the Government member of Brazil and the Workers' group. She proposed adding the words "among others" after the word "migrants" to indicate that this point could also cover other groups. She pointed out that the situation regarding vulnerability was different in each country and in some cases included men who had sex with men, intravenous drug users and others. The Government member of Namibia agreed with the proposals so far. However, she was concerned that if they listed all vulnerable groups, they would never finish. She suggested listing "women, young adults and other vulnerable groups". The Government member of Trinidad and Tobago proposed a subamendment to replace point 3(d) by "the gender dimension of HIV/AIDS and that vulnerable groups, including women, migrants and disabled persons, are at greater risk and are more adversely affected by the HIV epidemic than men". The Government member of Brazil supported this subamendment. The Government member of the Dominican Republic proposed to add "amongst others" to include those categories not mentioned. The Government member of the Bolivarian Republic of Venezuela seconded this proposal.
- 120.** The Employer Vice-Chairperson, in respect to the subamendment proposed by the Government member of Trinidad and Tobago, suggested to remove the words "than men" and keep the reference to vulnerable groups. They could add the additional groups that had been discussed to make the point more complete.
- 121.** With respect to the subamendment by the Government member of Trinidad and Tobago, the Worker Vice-Chairperson noted that the new formulation would exclude children. Moreover, his group preferred the original Employer members' amendment, as subamended by the Worker members, and he wished to retain the Office text for point 3(d) for further discussion. The Employer Vice-Chairperson agreed with this proposal.
- 122.** The Government member of the United Kingdom, on behalf of Government members of Member States of the European Union, also did not agree with the formulation proposed by the Government member of Trinidad and Tobago. He explained that gender dimension and vulnerability were separate issues and these should be dealt with separately.
- 123.** The Government member of Benin, on behalf of African group Government members of the Committee, also did not agree with the proposal of the Government member of Trinidad and Tobago. She explained that vulnerable groups differed from country to country, and that the list presented may be different for each country. She preferred the proposal by the Employer and Worker members to retain the Office text for point 3(d) for further discussion.
- 124.** The Government member of the Bolivarian Republic of Venezuela concurred with the Government members of Benin and the United Kingdom. Gender and vulnerability were two distinct issues especially when talking about the risk of infection. She questioned the formulation presented by the Government member of Trinidad and Tobago, as it mixed the two notions of vulnerability and gender. The Government member of the United States

also voiced his support for the proposal put forward by the Employer and Worker members.

- 125.** In view of this emerging compromise, the Government member of Brazil repeated that disabled persons should be included. The Government member of the Dominican Republic repeated her suggestion to add the words “amongst others” at the end of the amendment so as to allow flexibility and to cover vulnerable groups not listed. The Government member of Canada, in agreement with the Government member of the Bolivarian Republic of Venezuela, suggested the words “including but not limited to” be placed before the word “women” in the Employer members’ amendment. This was agreed by the Government member of the Bolivarian Republic of Venezuela, and the Government member of Benin, on behalf of African group Government members of the Committee.
- 126.** The Committee then adopted the Employer members’ amendment, as subamended, which inserted before point 3(d) a new point which read: “that HIV/AIDS has a more severe impact on vulnerable groups, including but not limited to women, children, youth, migrants and persons with disabilities;”. The original point 3(d) would be retained as the basis for further discussion.

Point 3(d)

- 127.** The Worker Vice-Chairperson informed the Committee that his group would like to change an amended version of an amendment submitted earlier to clause (d) of point 3 which would integrate a number of other amendments related to vulnerable populations. The proposed text read: “that HIV affects men and women equally, however women and girls are at a greater risk and more vulnerable to HIV infection and are more disproportionately affected by the HIV epidemic than men as a result of gender inequality, and that women’s empowerment is therefore a key factor in the global fight against HIV/AIDS;”.
- 128.** The Government member of Argentina supported the amended proposal from the Workers’ group and withdrew the amendment he had proposed on the same point with the agreement of the Government member of Brazil. The Government member of the United Kingdom supported the amendment, suggesting the replacement of “vulnerable of” with “vulnerable to” and the removal of the word “more” before the word “disproportionately”. The Government member of the United States agreed to the amendment, as did the Government member of Trinidad and Tobago, who withdrew a similar amendment; the Government member of Benin, on behalf of African group Government members of the Committee, with a request that the Committee Drafting Committee review the wording to make it more concise; the Government member of the Czech Republic, on behalf of Government members of Member States of the European Union; and the Employer Vice-Chairperson. The amendment proposed by the Workers’ group was adopted as amended.

Point 3(d)bis

- 129.** The Government member of the United States introduced an amendment submitted with the Government member of Switzerland proposing the insertion of a new clause after point 3(d) as follows: “the importance of safeguarding health-care workers through comprehensive occupational safety and health programmes that also prioritize patient safety;”. She amended the text as she introduced it, for the sake of simplification, so that it read: “the importance of safeguarding workers through comprehensive occupational safety and health programmes;”. She pointed out that although health-care workers were often at risk, so were others who came into contact with body fluids, as described in the code of

practice. She said that the ILO had a major leadership role to play in promoting occupational safety and health and, with the WHO, had developed excellent guidelines on OSH in the health sector, including guidance on post-exposure prophylaxis (PEP).

- 130.** The Government member of Australia voiced his support for the amended version of the amendment, noting that effective occupational safety and health was critical to successful HIV prevention and so should be recognized in the Preamble. Support was also given by the Government member of the Czech Republic, on behalf of Government members of Member States of the European Union; the Government member of Benin, on behalf of African group Government members of the Committee; the Government member of Norway; and the Government member of Brazil. In expressing his agreement, the Employer Vice-Chairperson said that occupational safety and health was especially important in the context of HIV/AIDS and that it was relevant not only to health-care workers but to all workers who administered first aid. The Worker Vice-Chairperson also expressed support for the proposal. The amended version of the amendment was adopted.

Point 3(e)

- 131.** The Worker Vice-Chairperson proposed an amended version of the amendment submitted by the Worker members, which took into account an amendment submitted by the Employer members related to the role of the ILO. The proposed text read as follows: “the importance of the International Labour Organization’s role in addressing HIV/AIDS in the world of work and the need for the Organization to strengthen its efforts to achieve social and economic justice and to combat discrimination and stigmatization with regard to HIV/AIDS in all aspects of its work;”. He explained that agreement had been reached between the social partners on the text, except with regard to the inclusion of the reference to economic justice, which was still open to debate.
- 132.** The Employer Vice-Chairperson asked the Workers’ group to explain why they wished to include the word “economic” and what was meant by “economic justice”. The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union, also requested clarification in this respect, but expressed support for the text otherwise. The Worker Vice-Chairperson explained that the term “economic justice” was intended to refer to a number of different concepts, including the fair distribution of wealth and equity. The Employer Vice-Chairperson said that in light of the explanation, his group could not support the inclusion of the word “economic”. The Government member of the Czech Republic endorsed the statement by the Employers’ group. The Government member of Benin, on behalf of African group Government members of the Committee, said that he could support the amended text without the inclusion of the word “economic” and without the reference to “stigmatization and discrimination”, to which adequate reference had been made in previous clauses.
- 133.** The Worker Vice-Chairperson said that he would be prepared to withdraw the proposal to include the word “economic”, but that he would like to keep the reference to stigmatization.
- 134.** The Government member of Australia supported the exclusion of “economic”, but said that he was strongly in favour of retaining the references to discrimination and stigma. In his view, the references served a very different purpose from other mentions of the term and it was important to link work on discrimination to the ILO’s role.
- 135.** The Government member of the Czech Republic drew attention to an amendment submitted by Government members of IMEC proposing to replace the words “in all aspects of its work” by the words “across all areas of its mandate”, and proposed that this

text should be taken as a subamendment to the amendment proposed by the Workers' group. The Government member of the Bolivarian Republic of Venezuela supported the proposal of the Workers' group and asked for clarification of "the ILO's mandate". She suggested that it might be clearer to refer to all aspects of its work. The Government member of France, on behalf of Governments members of IMEC, explained that the group supported a comprehensive approach and believed this was captured by referring to the ILO's mandate, which covered employment, social protection and social dialogue. The Worker Vice-Chairperson preferred the original wording with respect to "all aspects of its work". The Employer Vice-Chairperson supported the IMEC proposal, as the word "mandate" offered a wider scope for action as well as providing more formal recognition of the ILO's role. The Government member of the Bolivarian Republic of Venezuela explained that she preferred reference to the ILO's work, as this was clearer than its mandate, which might also include competencies. The Worker Vice-Chairperson felt that the word "work" was as inclusive as the words "mandate", but was prepared to accept the amendments proposed by IMEC and supported by the Employers' group. The Government member of Brazil asked if the ILO had a clear and agreed mandate. If it did, she suggested combining both elements to read "across all areas of its work and mandate". The Worker Vice-Chairperson reiterated that the purpose of the amendment was to ensure a comprehensive approach to HIV/AIDS throughout the ILO. He supported Brazil's proposal to combine the two formulations. The Employer Vice-Chairperson shared the concerns of the Worker Vice-Chairperson to promote the mainstreaming of HIV/AIDS in the four ILO strategic objectives of the Decent Work Agenda. The aim was to have the strongest and most inclusive formulation. The Government member of France, on behalf of Government members of IMEC, shared the views of the Employers' and Workers' groups and stressed the importance of HIV/AIDS being integrated in each of the four pillars of the ILO.

- 136.** The Worker Vice-Chairperson further subamended the amendment proposed by the Government members of IMEC as follows: "the importance of the International Labour Organization's role in addressing HIV/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/AIDS in all aspects of its work and across all areas of its mandate;". The amendment was adopted as amended.

Point 3(f)

- 137.** The Government member of Benin, on behalf of African group Government members of the Committee, introduced an amendment submitted by his group to add the word "high" before the words "value of the ILO code of practice" in recognition of the widely accepted effectiveness of the ILO code of practice on HIV/AIDS and the world of work as a tool in guiding the development of policies and legislation. The proposed amendment was widely supported by the Government members and by the Employers' and Workers' groups, and was adopted.
- 138.** The Worker Vice-Chairperson introduced an amendment submitted by the Workers' group to add the words "and the need to strengthen its implementation" at the end of point 3(f). He explained that while the importance of the code of practice was well recognized and accepted, there were still gaps in its implementation. The Employer Vice-Chairperson said that he could not see the relevance of the amendment, given that the process of working towards a Recommendation was intended to strengthen the code and it did not need restating in this way. The Government member of Benin, on behalf of African group Government members of the Committee, agreed with the Employer Vice-Chairperson that the amendment could be seen as a duplication, but felt that this would serve to emphasize the point. The Government member of Australia supported the amendment, as it helped to

explain the rationale for the development of a new labour instrument. The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union; and the Government members of Brazil, Canada and the United States supported the amendment, which was adopted.

- 139.** The Worker Vice-Chairperson introduced an amendment submitted by the Workers' group proposing the insertion of a new clause after 3(f) to read: "that there are important limits and gaps in the implementation of the code of practice, including discrepancies in national legislation concerning testing and disclosure of data, as well as other practices;". He referred to the reports prepared by the Office which illustrated the progress and efforts made by governments and the social partners, but also revealed gaps and limitations in the application of the code. The Employer Vice-Chairperson concurred with the sentiment expressed, but suggested not including examples, so he proposed a subamendment which would end the clause at "code of practice", deleting the references to national legislation and policies. The Worker Vice-Chairperson agreed to the proposed subamendment. The Government member of the United States, and the Government member of Benin, on behalf of African group Government members of the Committee, expressed their support. The Government member of the Bolivarian Republic of Venezuela agreed, but reminded the Committee that the points brought up in the original amendment proposed by the Workers should not be forgotten and should be tackled later in the discussions. The amendment submitted by the Worker members as subamended by the Employer members was adopted, as follows: "that there are important limits and gaps in the implementation of the code of practice;".
- 140.** The Worker Vice-Chairperson introduced an amendment on behalf of the Workers' group which proposed inserting a new clause before point 3(g) to read: "the need to set an international standard in order to define the specific roles and responsibilities of governments and the social partners in matters of prevention, treatment, care and support;". The purpose was to encourage the ILO's constituents to be actively involved in the fight against HIV/AIDS and to guide their involvement. The Employer Vice-Chairperson expressed some reservations, which could be addressed by ending the clause at "social partners" and deleting the specific reference to prevention, treatment, care and support. The Worker Vice-Chairperson accepted the subamendment proposed by the Employers' group.
- 141.** The Government member of France, on behalf of Government members of IMEC, sought clarification as to how the new standard would be able to provide such definition. The Government member of Benin, on behalf of African group Government members of the Committee, queried whether it was useful to specify these roles, in view of the need to retain flexibility in the instrument. The Worker Vice-Chairperson insisted that it was important to mention the roles of the social partners, as in the code of practice, because the instrument needed to guide processes as well as provide content. The Government member of Canada argued that the roles of different partners varied from country to country. She therefore introduced a subamendment to the original proposal, which read: "the need for the competent authority, in collaboration with the social partners, organizations representing people living with HIV and AIDS and other relevant groups, to define in accordance with national circumstances their roles and responsibilities in matters relating to prevention, treatment, care and support in the world of work;". The Government member of Australia supported the proposal from Canada, arguing that as the proposed Conclusions were quite detailed on roles and responsibilities, this clause made it clear that implementation must be flexible and collaborative, and take account of national circumstances. The Government member of the Bolivarian Republic of Venezuela disagreed, arguing that it was for the proposed Recommendation to provide guidance and facilitate the work of the constituents by specifying their roles and not to leave everything to the State. The Government member of the Philippines cautioned that the role of social

partners should be clearly defined in order to minimize duplication and maximize efficiency. The Employer Vice-Chairperson pointed out that point 3(j) of the draft Conclusions included groups for partnerships, so that the clause could be expanded if necessary. He was also concerned about introducing the concept of “competent authority” which was not defined in the draft Conclusions though used elsewhere.

- 142.** The Worker Vice-Chairperson agreed with the points raised by the Employers’ group and proposed amending the text of the amendment as originally submitted to read: “the need to set an international standard in order to guide governments and social partners to define their specific roles and responsibilities at all levels;”. The Employer Vice-Chairperson supported the proposal. The Government member of France thought it would be wise to omit the word “responsibilities” which related to internal matters decided by States. The Worker Vice-Chairperson reminded delegates that there was agreement on working towards a strong instrument after the idea of a Convention had been rejected, and this should include clarity on roles and responsibilities. The Government member of Trinidad and Tobago supported the Workers’ group, arguing that clarity on roles and responsibilities provided the framework for collaboration. The Government member of Brazil agreed. The Government member of France said that if the Workers’ group insisted on including the word “responsibilities”, it would be necessary to include reference to competent authorities, as responsibilities may have legal implications which needed to be managed by national governments and a range of other authorities.
- 143.** The Worker Vice-Chairperson stressed that the instrument would be flexible and was intended only to offer guidance. He was of the view that the revised amendment proposed by the Workers’ group, subamended and supported by the Employers’ group, and supported by some Government members had commanded sufficient support for the Committee to be able to move forward. The Government member of Benin did not agree with the proposal, as it failed to take into account national differences and internal responsibilities, and the Government member of France, on behalf of Government members of IMEC, expressed some dissatisfaction with the way procedures were being applied to the discussion. The Chairperson ruled that the amendment as amended by the Employers’ group was adopted, as follows: “the need to set an international standard in order to define the specific roles and responsibilities of governments and the social partners;”.
- 144.** The Worker Vice-Chairperson referred to the amendment submitted by his group proposing the insertion of additional text to point 3(g) so that it read: “the promotion of the international labour Conventions and Recommendations and other international instruments to achieve effective compliance in national contexts that are relevant to HIV/AIDS and the world of work;”. The intention was to make the wording more proactive. The Employer Vice-Chairperson supported the spirit of the amendment, but said that the Employer members had a problem with the words “to achieve effective compliance in national contexts” in addition to the word “promotion”. He then proposed to subamend the text so that it would read: “the promotion of the international labour Conventions and Recommendations and other international instruments that are relevant to HIV/AIDS and the world of work;”. The Worker Vice-Chairperson responded by saying that standards were measured by their implementation as well as their contents and mention should be made in the instrument of the need to have them applied.
- 145.** The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union, said that they supported the amendment submitted by the Workers’ group as subamended by the Employer members. The Government member of Canada agreed, as did the Government member of Australia, who proposed replacing the words “the promotion of” with “the need to promote”.

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- 146.** The Government member of the Dominican Republic supported the text, but also proposed a subamendment to highlight the fact that it was critical to establish clear indicators in order to monitor the effectiveness of compliance in national contexts. The proposal was not seconded. The Government member of Benin, on behalf of African group Government members of the Committee, agreed with the text as amended and subamended, and withdrew its own amendment.
- 147.** The Worker Vice-Chairperson said he would support the subamendment proposed by the Employer members, but that he was concerned about the tendency to remove every reference to compliance. He hoped that this did not mean that compliance with the instrument itself, once adopted, would be equally difficult. The Employer and Worker Vice-Chairpersons indicated their support for the amendment, as subamended by the Government member of Australia. The Government member of the Philippines agreed, noting that education would enhance responsibility and that compliance would follow. The amendment was adopted as amended.

Point 3(h)

- 148.** The Employer Vice-Chairperson introduced an amendment submitted by the Employer members to replace the word “unique” by the word “specific”. He said that the intention of the change in emphasis was to ensure that the clause did not exclude the important role of governments in supporting employers’ and workers’ organizations in national efforts on HIV/AIDS in and through the world of work. The Worker Vice-Chairperson supported the amendment, as did the Government member of Argentina; the Government member of Benin, on behalf of African group Government members of the Committee; and the Government member of the Czech Republic, on behalf of Government members of Member States of the European Union. The amendment was adopted.
- 149.** The Government member of the Czech Republic on behalf of Government members of Member States of the European Union and Government members of IMEC, introduced an amendment submitted by the Government members of IMEC proposing the insertion of the words “and international” after the word “national” in clause (h). The aim was to reflect the important role the social partners could play in international as well as in national responses to HIV/AIDS. The amendment was supported by the Employer and Worker Vice-Chairpersons, the Government member of the Dominican Republic and the Government member of Benin, on behalf of African group Government members of the Committee. The amendment was adopted.
- 150.** The Worker Vice-Chairperson introduced an amendment submitted by his group to add a new clause after clause (h) to read: “the critical role of the workplace as regards information about, and access to, prevention, treatment, care and support in the national response to HIV/AIDS;”. The Employer Vice-Chairperson expressed his support for the amendment, but proposed changing the word “critical” to “important”, as the word “critical” was too exclusive. The Worker Vice-Chairperson accepted the subamendment. The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union; the Government member of Benin, on behalf of African group Government members of the Committee; and the Government members of Argentina, Brazil and the United States supported the amendment as subamended. The amendment was adopted as amended.

Point 3(i)

151. The Government member of France, on behalf of Government members of IMEC, introduced an amendment submitted by his group to insert the words “through the multilateral system” after the words “international cooperation” in point 3(i). He said that the aim was to clarify that many organizations were working in the multilateral system to combat HIV/AIDS and to stress, before any specific example was given, the general aspect of the whole of the multilateral system. The Worker Vice-Chairperson said that he would prefer to retain the text as it stood because specific reference to the multilateral system would exclude the important role played by civil society, the social partners and the tripartite system overall. The Government member of the Bolivarian Republic of Venezuela supported the Worker members’ position. The Employer Vice-Chairperson agreed on the need to be open to all forms of cooperation – bilateral, multilateral and other – and found the words “international cooperation” broader and more inclusive than “multilateral system”. The Government member of Brazil did not agree with the proposed amendment and endorsed the statements made by the Employer and Worker Vice-Chairpersons. The Government member of France, on behalf of Government members of IMEC, explained that the aim of the amendment was not to be restrictive but rather to be open to other forms of cooperation, including bilateral cooperation. He noted that UNAIDS was in fact part of the multilateral system. However, given that the amendment did not seem to have broad support, he withdrew it.

Point 3(j)

152. The Government member of Benin introduced an amendment submitted by the African group Government members of the Committee to replace the word “cooperation” in point 3(j) by the word “collaboration”. He said that making reference to “cooperation” between organizations did not reflect the need to increase collaboration between national and international organizations. The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union, supported the amendment. The Government members of Australia and Canada, as well as the Employer and Worker Vice-Chairpersons, supported the amendment. The amendment was adopted.

153. The Employer Vice-Chairperson introduced an amendment which would insert the words “the relevant structures from the health sector, and” after the words “cooperation with”. He explained that there was an important constituent missing from point 3(j), namely, the technical experts in the health sector. The Worker Vice-Chairperson supported the amendment, as did the Government member of the Czech Republic, on behalf of Government members of Member States of the European Union, and the Government member of Benin, on behalf of African group Government members of the Committee. The amendment was adopted.

154. The Government member of the Czech Republic, on behalf of Government members of IMEC, argued that it was important to ensure consistency between the language used in the Conclusions and the language used in other documents. She therefore introduced an amendment which would, after the words “especially organizations”, replace the word “of” by the word “representing”. The Employer and Worker Vice-Chairpersons supported the amendment, which was adopted.

155. The Government member of Trinidad and Tobago introduced an amendment which would insert “, regional” after the word “national”. She explained that it was important not to leave out regional groups from the scope of the instrument. The amendment was supported by the Government members of Argentina, Australia, Brazil, Dominican Republic and the Bolivarian Republic of Venezuela, and the Government member of Benin, on behalf of

African group Government members of the Committee. The amendment was also supported by the Employer and Worker Vice-Chairpersons and subsequently adopted.

Point 4

- 156.** Before moving to a discussion of point 4, the representative of the Secretary-General provided some general observations about the use of definitions in international labour standards and the methods for deciding on these definitions. She clarified that the Office would make available a brochure that contained the terminology used by UNAIDS and its members. The brochure contained the preferred terminology of its co-sponsors, which changed from year to year. For that reason it could not be included in the text, where the definitions section also had to be kept as short as possible. The Office had held discussions with the WHO and other UNAIDS co-sponsors, but it became apparent that international definitions were not useful in all situations. WHO definitions tended to be more medical and biological, as befitting the mandate of the agency, but not necessarily suited to what the ILO and its constituents were trying to achieve. The list proposed in the draft Conclusions had been shared with other partners and it was found that the terms were more or less in line with accepted international definitions. The draft Conclusions sought to find definitions that would be useful for advancing the implementation of the ILO code of practice.
- 157.** A representative of the Secretariat explained that it was usual for international labour standards to include definitions at the beginning of the text. There was usually a very precise list of definitions that concerned the issue in question and the purpose was to identify the specific meaning of terms where they differed from their usual meaning or where a new term was being introduced. The list was normally included in the beginning of the text and the wording would be precise.
- 158.** An Employer member asked if there were exceptions to the practice of placing definitions in international labour standards at the beginning and why some terms had been chosen for definition and not others. The Government member of France observed that the Committee had to decide if it wanted to place the list of proposed definitions in the body of the text with a clear limitation of their application or whether these were to be indicative definitions that could be placed in an annex. Before discussing whether the list of definitions was appropriate, the Committee needed to know for what purpose the definitions would be used.
- 159.** Responding to these observations, a representative of the Secretariat confirmed that a section with definitions in the proposed instrument would be constructed for and limited to the purpose of the instrument in question. It would make it clear that the definitions adopted were the decision of the International Labour Conference (ILC). Since definitions could change over time, it would be clearer to keep them at the beginning of the text. The representative of the Secretary-General further clarified that the replies submitted by the constituents to the questionnaire had been the catalyst for drafting the proposed list of definitions. She gave the definition of HIV as an example, since it had changed over time. In 2001, when the code of practice was adopted, it was understood that HIV would invariably lead to AIDS, but new research had shown that with the right treatment this was not always the case and, as a result, the definition had slightly changed. The definition of HIV used by different international organizations could be very long and may not be appropriate for the proposed instrument. The replies to the questionnaire communicated by the constituents and the definitions used in the ILO code of practice on HIV/AIDS had inspired the proposed list of definitions but, because of the nature of the proposed instrument, the list could not be a long one.

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- 160.** The Employer Vice-Chairperson introduced an amendment that would move the text under the section “II. DEFINITIONS” to a new appendix, which would contain a glossary of the terms used. He explained that there were so many elements in the proposed instrument that needed to be further and more clearly defined, such as the words “stigmatization” and “vulnerability”. More definitions might be necessary as the instrument was discussed further. He therefore proposed that the list of definitions be moved to another place in the instrument, where a longer list of terms could be defined. He also noted how HIV/AIDS was a changing epidemic and by placing definitions in an appendix they could be updated over time. A working group could be established to come up with a list of definitions that could be placed in the appendix.
- 161.** The Worker Vice-Chairperson said that according to general practice legal instruments should include definitions early in the body of the text in order to clarify the scope and purpose. He however noted that there were two different categories of definitions: those related to the scientific aspects of HIV/AIDS and those that were more related to the social aspects of the disease, such as the word “discrimination”. In light of this, he felt it would be wise to add a clause to the section in question to indicate that the definitions were subject to change over time.
- 162.** The Government member of France, on behalf of Government members of IMEC, did not support the Employer members’ amendment. As a legal instrument, a Recommendation needed a limited list of definitions in the text to define the scope of its application. It was possible, nonetheless, to categorize the definitions into two groups, one scientific and the second with social definitions.
- 163.** The Government member of the Bolivarian Republic of Venezuela could not support the amendment by the Employers’ group. The definitions that pertained to the field of science or social science were very relevant and necessary if the text was to be understood clearly.
- 164.** The Employer Vice-Chairperson withdrew the amendment, but reserved the right to adopt further definitions to be included in this section if during the discussion of the instrument it became apparent that additional ones were needed.
- 165.** A representative of the Secretariat pointed out that, as this was a double discussion, it would be possible to submit further amendments regarding definitions next year. The Employer Vice-Chairperson said that he would add references to needed definitions in his comments after the ILC. In response to a question posed by another Employer member, another representative of the Secretariat clarified that any definition included in an instrument adopted by the ILC could be changed through the amendment process specified in the ILO Constitution. This process was not easy however, and required careful reflection before being undertaken. The representative of the Secretary-General acknowledged the difficulty of the terms used in the context of HIV/AIDS and the world of work. The term “universal access”, for example, meant something different in the ILO’s context of social protection than in the context of HIV treatment. She reminded the Committee that these issues would be reflected in the reports submitted for next year’s discussion, where they could be addressed again.
- 166.** The Worker Vice-Chairperson stated that, notwithstanding the withdrawal of the Employer members’ amendment, a working group could be established to look at the scientific definitions. The Employer Vice-Chairperson supported the proposal to have a working group look at the definitions, so that there could be a clear understanding and scientific statement. It would defeat the purpose if further definitions created another discussion. It was better to recognize this now and develop proper definitions in consultation with other organizations as required, to ensure consistency.

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- 167.** The Government member of Argentina agreed that it was necessary to update definitions, a task that could be followed up through technical consultations. The Government member of the Philippines also supported such technical consultations.
- 168.** The Worker Vice-Chairperson clarified that these technical consultations should only examine scientific definitions, but should not require recourse to only the WHO. He was suggesting that such consultations could examine definitions in light of workplace issues and develop definitions that derived from workplace practices.
- 169.** The Government member of France, on behalf of Government members of IMEC, introduced an amendment to add, after the word “definitions”, the words “, which are consistent with the World Health Organization descriptions.” He stressed that the WHO had the main responsibility for scientific definition in relation to HIV/AIDS. He was not averse to holding technical consultations, but these should not meet during the Committee sittings. There needed to be convergence between WHO and ILO definitions. Technical consultations should be based on precise terms of reference and not deal with questions that were outside of the ILO’s mandate. Regarding the question of an Employer member on the legal consequences of the proposal by the Government members of IMEC, he stated that a legal text could refer to external sources. He welcomed the proposal, but hoped it would not unleash a discussion that would prevent the Committee from completing its work.
- 170.** The Government member of the United Kingdom strongly agreed with the Government member of France. It would be easier to know what needed to be defined once the text was established. Before the text was defined, the number of items requiring definition was indefinite. He recommended to suspend the discussion until next year or that consultations on the definitions be held between the current session and next year’s.
- 171.** Following consultations with the Officers, the representative of the Secretary-General explained that there were two issues that needed to be resolved. First, when dealing with scientific and medical definitions, such as those presented in clauses (a) and (b) of point 4, it would be necessary to consult technical experts including colleagues from the WHO. They could then be presented in the blue report which would be available to the constituents by the end of 2010. Second, definitions dealing with social issues could be discussed by members of the Committee during the present session.
- 172.** The Government member of the United Kingdom agreed with the proposal from the representative of the Secretary-General, but queried if the definitions could be discussed at the end of deliberations, as at present it was not possible to know if further terms would need to be defined.
- 173.** The Government member of Brazil agreed that definitions dealing with science and medicine could be dealt with through technical consultations, which should also include occupational health experts from the ILO, and that definitions dealing with social aspects should be discussed by the Committee.
- 174.** The Worker Vice-Chairperson reiterated his group’s stance that all definitions dealing with science and medicine, namely, clauses (a) and (b), should be deferred to technical consultations, but social definitions should be adopted within the Committee.
- 175.** The Employer Vice-Chairperson agreed with his Worker counterpart, but supported the idea suggested by the Government member of the United Kingdom to include under definitions terms that needed to be defined as the discussion progressed. The Government member of France, on behalf of Government members of IMEC, concurred. He explained that his group’s position was for all science and medical definitions to be referred to

technical consultations, while it was the duty of the Committee to formulate social definitions, as it was the mandate of the ILO to define social terminology. The Worker Vice-Chairperson concurred with the suggestion of the Employers' group.

176. The Government member of Argentina noted that even some definitions dealing with science and medicine had a social context. Technical consultations would benefit from the advice of medical professionals from Latin America, who had much experience with this issue. He supported the proposals from the Government members of Brazil and the United Kingdom.
177. The Chairperson confirmed that it would be possible for further definitions to be added to the definition section through subamendments to later amendments. The Chairperson summarized the Committee's decision to refer scientific definitions to technical consultations and to address social definitions that may arise in the deliberations within the Committee. The Government member of Nigeria, on behalf of African group Government members of the Committee, supported this outcome.
178. In view of this decision, the Government member of France, on behalf of Government members of IMEC, withdrew his amendment. Also, as a result of the decision to refer these points for technical consultation, it was decided that the amendments to point 4, clauses (a) and (b), would not be considered at this session of the Conference.
179. The Government member of Canada, on behalf of Government members of IMEC, introduced an amendment to point 4(c) to replace the term "HIV" by the term "HIV/AIDS". She explained that this would be important, as there was a difference between those living with HIV, as compared to those living with AIDS. Life and work circumstances were different and both should be taken into account.
180. The Government member of Benin, on behalf of African group Government members of the Committee, concurred with this proposed amendment. The Government member of Brazil supported the amendment. The Employer and Worker Vice-Chairpersons agreed and the amendment was adopted.
181. The Government member of France, on behalf of Government members of IMEC, withdrew an amendment which proposed to create a new point out of point 4(d), to make a distinction between scientific and social definitions in the text, a matter which had already been addressed by the Committee.
182. The Government member of Argentina introduced an amendment submitted by the Government members of Argentina, Brazil, the Dominican Republic, Trinidad and Tobago and the Bolivarian Republic of Venezuela. The proposal was to add a new clause at the end of point 4 as follows: "'vulnerability' means the social, cultural, programmatic and political factors that lead to unequal opportunities and social exclusion which make a person more susceptible to infection and to the disease".
183. The Worker Vice-Chairperson agreed that it was important to include a definition of vulnerability and suggested a subamendment to add the word "economic" after "programmatic"; to add "and denial of rights" after "factors"; and to add "and unemployment" after "social exclusion." The Government member of Argentina, on behalf of the sponsors of the amendment, replied that the inclusion of so many elements of vulnerability complicated the sentence and suggested that perhaps "unemployment" could be put in brackets. He felt that most of the issues of concern to the Worker members were already covered in the text. The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union, did not support the amendment or subamendment. She preferred to use the definition of vulnerability set out in

the code of practice. The Employer Vice-Chairperson agreed, as did the Government member of the United States. The Government member of the Bolivarian Republic of Venezuela argued that the definition of vulnerability in the ILO code of practice referred even to child labour. It was extremely important to have a definition for vulnerability, since the word appeared many times in the draft Conclusions. The Government member of Brazil supported the statement, arguing that it was necessary to include the amendment and add some of the issues raised by the Workers' group, such as, for example, the reference to unemployment. The Government member of Benin, on behalf of African group Government members of the Committee, proposed that in view of the complexity of the word vulnerability, it should be referred to technical consultations on definitions of social terms. The Government member of Argentina reiterated the value of the amendment as proposed.

- 184.** The Chairperson reminded the Committee that the decision had been taken earlier to refer only scientific definitions to technical consultations. The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union, pointed out that there was no alternative proposal for the definition of vulnerability. It might be useful to include it in the discussions for next year. The Worker Vice-Chairperson stressed the strong support of the Workers' group for the subamendment they had proposed, adding that the wording could be refined to improve the text. He stated that the subamendment was based on wording in the ILO code of practice and therefore should be generally acceptable. The Government member of Brazil insisted on the need to keep the definition of vulnerability in the document, and that issues of importance should not be deferred to the next discussion while people were dying from the epidemic. She requested permission for a Brazilian delegate from the Brazilian National Network of People Living with HIV/AIDS, who was living with HIV, to address the Committee on the issue of vulnerability. The delegate stressed the importance of including clear references to issues of fundamental significance to the response to HIV/AIDS in the world of work. He wondered how many lives would be lost among workers as the Committee postponed discussion of the definition and significance of vulnerability. He appealed to the Committee to think beyond the statistics and acknowledge the individual human lives at stake. The Government member of France, on behalf of Government members of IMEC, remarked that vulnerability was defined both in the body of the ILO code of practice and in its Appendix I. The definition in the draft Conclusions seemed to draw on the appendix and not on the short definition in the body of the code.
- 185.** The Employer Vice-Chairperson reminded the Committee that the Employer members were uncomfortable with the amendment, as subamended, and therefore wished to propose their own subamendment, which would read: “‘vulnerability’ means the violation of socio-economic, cultural and political rights that make a person more susceptible to infection and to the disease.” The Worker Vice-Chairperson said that his group preferred the original amendment, as subamended by the Worker members.
- 186.** The Government member of the United Kingdom, on behalf of Government members of IMEC, proposed a further subamendment, which would read: “‘vulnerability’ means the social, cultural, political and economic factors that lead to unequal opportunities, social exclusion, unemployment or precarious employment which make a person more susceptible to infection and to the disease.”

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- 187.** The Government member of Argentina, on behalf of Latin American and Caribbean States (GRULAC) Government members of the Committee,⁵ supported this proposal, as did the Government member of Benin, on behalf of African group Government members of the Committee, and the Employer and Worker Vice-Chairpersons. The amendment was adopted as amended.
- 188.** The Government member of Brazil, on behalf of GRULAC Government members of the Committee, read a proposed amendment which sought to add a new clause before point 4(d): “‘stigma’ means the social mark that, once known, usually presents an obstacle to the full enjoyment of social life by persons infected or affected by HIV;”. She argued that it was important to include “stigma” in the definitions of the instrument because the concept appeared several times in the text of the draft Conclusions. In her country, the Government had launched a campaign entitled “You Must Know”, which was based on the principle that all persons should know their HIV status, but that this status should not be linked to stigma or a denial of that person’s status and rights in society.
- 189.** The Government member of France, on behalf of Government members of IMEC, supported the amendment. The Government member of Benin, on behalf of African group Government members of the Committee, also supported the amendment.
- 190.** The Employer Vice-Chairperson supported the amendment, but indicated that they would seek to improve the language next year. The Worker Vice-Chairperson stated that he was not opposed to the amendment but wished it were broader. The definition appeared narrow and might not cover certain groups that were at increased risk, such as men who have sex with men.
- 191.** The Government member of the United Kingdom introduced a subamendment which read: “‘stigma’ means the social mark that, when associated with a person, usually presents an obstacle to the full enjoyment of the social life by the person infected or affected by HIV;”. The Worker Vice-Chairperson supported this subamendment, as he felt it addressed his group’s concerns. The Employer Vice-Chairperson; the Government member of Argentina, on behalf of GRULAC Government members of the Committee; the Government member of France; and the Government member of Lebanon also supported the subamendment as proposed by the United Kingdom.
- 192.** The amendment was adopted as amended.
- 193.** The Government member of the Bolivarian Republic of Venezuela withdrew an amendment that had been tabled by the GRULAC Government members of the Committee, as it had been addressed by previous amendments.
- 194.** The Worker Vice-Chairperson introduced an amendment which proposed to add after clause (d), a new clause which would read: “‘affected persons’ means persons whose lives are changed in any way by HIV/AIDS due to the broader impact of the epidemic;”. The Employer Vice-Chairperson supported the amendment, as did the Government member of France, on behalf of Government members of IMEC; the Government member of Benin, on behalf of African group Government members of the Committee; and the Government member of Trinidad and Tobago, on behalf of GRULAC Government members of the Committee. The Worker Vice-Chairperson then suggested changing the word “epidemic”

⁵ Argentina, Barbados, Belize, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, Bolivarian Republic of Venezuela.

to “pandemic”. The Government member of France, on behalf of Government members of IMEC, asked if the Workers’ group could explain the reason for this proposal, since the ILO code of practice used “epidemic”. The Worker Vice-Chairperson argued that “pandemic” was much broader than “epidemic” and the term would make the document more coherent. The Government member of France, on behalf of Government members of IMEC, concurred, as did the Government member of the Philippines. The amendment, as reformulated by the Worker Vice-Chairperson, was adopted.

- 195.** The Worker Vice-Chairperson introduced an amendment to add after clause (d) a new clause which would read: “‘workplace’ means any place where workers perform, as referred to in the relevant ILO instruments such as the Occupational Safety and Health Convention, 1981 (No. 155), and the Employment Relationship Recommendation, 2006 (No. 198);”.
- 196.** The Employer Vice-Chairperson stated that the two instruments cited in the amendment did not contain the same definition of workplace. He thus introduced a subamendment which sought to put a full stop after the word “instruments”. The Worker Vice-Chairperson agreed, saying this subamendment would open up the definition to other ILO instruments as well. The amendment, as subamended by the Employer members, was supported by the Government member of Australia, on behalf of Government members of IMEC; the Government member of Trinidad and Tobago, on behalf of GRULAC Government members of the Committee; and the Government member of Benin, on behalf of African group Government members of the Committee. The amendment was adopted as amended.
- 197.** The Worker Vice-Chairperson introduced an amendment which, after clause (d), would add a new clause as follows: “‘workers’ means persons working under all forms or arrangements as referred to in the relevant ILO instruments;”. The Employer Vice-Chairperson agreed, as did the Government member of France, on behalf of Government members of IMEC; the Government member of Benin, on behalf of African group Government members of the Committee; and the Government member of Argentina, on behalf of GRULAC Government members of the Committee. The Committee adopted the amendment.
- 198.** The Worker Vice-Chairperson introduced an amendment which would, after clause (d), add a new clause as follows: “‘reasonable accommodation’ means any modification or adjustment to a job or to the workplace that is practicable and will enable a person living with HIV or AIDS to have access to, or participate or advance in, employment;”. He explained that this clause was derived from the ILO code of practice. The Employer Vice-Chairperson fully supported the amendment, which he thought was important, as much of the proposed text dealt with the workplace.
- 199.** The Government member of Australia, on behalf of Government members of IMEC, agreed that the definition of “reasonable accommodation” should be included. To achieve more complete consistency with the ILO code of practice, the word “reasonably” should be inserted before “practicable”. He pointed out that what was practicable was not always reasonable. The Government member of Benin, on behalf of African group Government members of the Committee, agreed with the insertion of “reasonably”. He also indicated some corrections in the French version of the text. The Worker Vice-Chairperson accepted the proposed subamendment, even if it appeared tautological. The Employer Vice-Chairperson supported the subamendment as well. The amendment was adopted as amended.
- 200.** Point 4 of the proposed Conclusions was thus adopted as amended. The Chairperson reminded everyone that clauses (a) and (b) of point 4 would be dealt with in the following year, as previously agreed by the Committee.

Point 5 – General principles

- 201.** The Employer Vice-Chairperson introduced an amendment to add, after the words “general principles”, the words “which are elaborated further in the text”. He explained that the aim of the amendment was to clarify that the general principles would be further elaborated in the body of the text.
- 202.** The Worker Vice-Chairperson was of the view that the amendment made the clause redundant. The Government member of France, on behalf of Government members of IMEC, endorsed the amendment. The Government member of Argentina said that he found the amendment redundant and could not see its purpose. The Government member of the United Kingdom clarified that the amendment appeared to underline that the general principles were not just elaborated in point 5, but could also be informed by the rest of the text. The Employer Vice-Chairperson, in view of the fact that the amendment appeared to generate confusion, withdrew the amendment.

Point 5(a)

- 203.** The Government member of Canada, on behalf of Government members of IMEC, introduced an amendment which sought to insert a new clause before clause (a) of point 5 as follows: “combating HIV and AIDS contributes to the realization of human rights and fundamental freedoms for all, including workers and their dependants, in the world of work;”, adding that she also wished to include the words “their families” after “workers”.
- 204.** The Government member of Brazil, on behalf of GRULAC Government members of the Committee, supported the subamendment, as did the Government member of Benin, on behalf of African group Government members of the Committee. The Employer and Worker Vice-Chairpersons also supported the subamendment.
- 205.** The Committee adopted the amendment, as subamended, which read as follows: “combating HIV and AIDS contributes to the realization of human rights and fundamental freedoms for all, including workers, their families and their dependants, in the world of work;”.
- 206.** The Employer Vice-Chairperson introduced an amendment which he revised orally as he presented it to replace point 5(a) with the following: “HIV and AIDS should be recognized and treated as an issue that also affects the world of work and be addressed as one of the essential elements of the national, regional and international responses to the pandemic;”.
- 207.** The Worker Vice-Chairperson agreed with the amendment and proposed a subamendment by introducing the words “with the full participation of employers’ and workers’ organizations in national AIDS structures” at the end. The Employer Vice-Chairperson supported this subamendment.
- 208.** The Government member of the United Kingdom, on behalf of Government members of IMEC; the African group Government members of the Committee; and the GRULAC Government members of the Committee, introduced a sub-subamendment to the Worker members’ proposal which sought to end the sentence after “employers’ and workers’ organizations”. The Employer and Worker Vice-Chairpersons accepted, and the amendment was adopted as amended. As a result, a number of tabled amendments to point 5(a) no longer needed to be considered.

Point 5(b)

- 209.** The Government member of Benin, on behalf of African group Government members of the Committee, introduced an amendment which sought to introduce the words “and job applicants” after the word “workers” in point 5(b). The amendment was supported by the Government member of France, on behalf of Government members of IMEC; the Government member of Argentina, on behalf of GRULAC Government members of the Committee; and the Employer and Worker Vice-Chairpersons. The amendment was adopted.
- 210.** The Government member of Argentina, on behalf of GRULAC Government members of the Committee, introduced an amendment to insert the words “or more vulnerable to” after the words “at greater risk”. The amendment sought to add the concept of vulnerability, as introduced in previous discussions. The Government member of France, on behalf of Government members of IMEC, and the Government member of Benin, on behalf of African group Government members of the Committee, supported the GRULAC amendment. The Employer and Worker Vice-Chairpersons did as well, and the amendment was adopted.
- 211.** The Worker Vice-Chairperson introduced an amendment to add to the end of the point the words “, as referred to in the Discrimination (Employment and Occupation) Convention and Recommendation, 1958 (No. 111); nevertheless, specific groups requiring particular or additional measures need to be targeted;”.
- 212.** The Employer Vice-Chairperson did not support the amendment because this clause covered stigmatization and discrimination, which were already fully defined. If a reference to Convention No. 111 were added, it would have to be added every time the term was used. References to Conventions and Recommendations should be placed in the body of the text where they could strengthen policy and programme elements.
- 213.** The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union and Government members of IMEC, did not support the amendment, as Convention No. 111 did not deal with health issues. Also, the sentence beginning with the word “nevertheless” dealt with a new issue.
- 214.** The Government member of Brazil stated that it would be useful to have the reference to Convention No. 111, particularly for labour inspectors. This instrument was used widely and promoted to employers’ and workers’ organizations. As a labour inspector, she thought that Convention No. 111 had everything to do with health. Health had a broader meaning and was not just the absence of disease. She wanted to keep Convention No. 111 in the amendment.
- 215.** The Government member of the United Kingdom clarified, on behalf of Government members of IMEC, that they were not opposed to referring to Convention No. 111, but thought that it was more appropriate to do so under point 11 and not under the general principles. The Government members of IMEC had submitted an amendment to this effect.
- 216.** The Worker Vice-Chairperson pointed out that Convention No. 111 was the only ILO instrument which addressed discrimination. As such, listing it would remind governments to do something about it, as had happened in Brazil. It was important to include it even if it looked like a tautology, as it would help keep the issue of HIV-positive status in mind.
- 217.** The Government member of France, on behalf of Government members of IMEC, recalled that the purpose of the point was to define a general principle and it was therefore preferable not to refer to a specific instrument, as this would be restrictive. Convention

No. 111 set forth a series of prohibited grounds for discrimination, but did not mention state of health. This was covered under point 1(b). If this principle was important, then perhaps Convention No. 111 should be revised to cover health-related discrimination.

- 218.** The Government member of the Dominican Republic supported the Worker members' amendment, as she considered discrimination to be any preference that altered equality of opportunity, including those based on health status. Reference to the instrument, even if it did not explicitly mention health-related grounds of discrimination, could be used to strengthen the general principles of the text.
- 219.** The Government member of Benin, on behalf of African group Government members of the Committee, did not support the amendment. Reference could be made to instruments in the more operational parts of the document. The second part of the sentence was already covered in the initial part and was redundant.
- 220.** The Government member of the United Kingdom, responding to the comments by the Government member of the Dominican Republic regarding the extension of Convention No. 111, said that this option would have to be treated as a separate issue. The solution would be to amend Convention No. 111, but any changes to the Convention would take place far in the future, and it would not be practicable to refer to a Convention in a form that did not exist. He pointed out that another amendment would be introduced later which would encourage governments, in consultation with the most representative employers' and workers' organizations, to consider affording protection equivalent to that available under Convention No. 111 to prevent discrimination based on real or perceived HIV status. This might be a more effective means of addressing the question at hand.
- 221.** The Employer Vice-Chairperson reiterated his group's opposition to the amendment. In light of the discussion, the Worker Vice-Chairperson withdrew the amendment.

Point 5(c)

- 222.** The Employer Vice-Chairperson introduced an amendment which would replace the words "benefit from" with "have access to". He explained that "benefit from" was a result, whereas "have access to" was an action that provided a wider opportunity to benefit.
- 223.** The Worker Vice-Chairperson agreed that access was important, but wanted to subamend the clause to read: "workers and their families and their dependants should benefit from and have access to prevention, treatment, care and support in relation to HIV and AIDS;".
- 224.** The Government member of France thought that the words "benefit from" and "have access to" had the same meaning and were redundant. The Government member of Benin, on behalf of African group Government members of the Committee, also could not agree with the subamendment, believing it was redundant.
- 225.** The Government member of Trinidad and Tobago voiced her support for the subamendment, but proposed placing the words "have access to and" before the word "benefit". The Government member of Argentina supported this suggestion.
- 226.** The Worker Vice-Chairperson voiced his support for the sub-subamendment. The Employer Vice-Chairperson said that he would support it with the removal of "and". The Government member of Nigeria could also support it with the removal of the word "their".
- 227.** The amendment was adopted as amended.

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- 228.** The Government member of Benin, on behalf of African group Government members of the Committee, introduced an amendment to replace the words “HIV and AIDS” by “HIV/AIDS”. He explained that this was proposed for consistency in the text, as well as to be consistent with international nomenclature. This amendment had the support of the Government member of the Czech Republic, on behalf of Government members of Member States of the European Union and Government members of IMEC, as well as the Worker Vice-Chairperson.
- 229.** The Employer Vice-Chairperson had concerns with the proposed amendment. He explained that a person could have HIV, but not have AIDS, whereas HIV was needed for a person to develop AIDS. Nonetheless, his group could tolerate the amendment. It was adopted.
- 230.** The Government member of the Czech Republic, on behalf of Government members of the Member States of the European Union and Government members of IMEC, introduced an amendment which sought to add at the end the following words: “and the workplace can play a role in facilitating access to these services;”. She explained that this addition would highlight the role of the workplace in being able to provide services dealing with prevention, treatment, care and support to persons living and working with HIV/AIDS.
- 231.** This amendment received support from the Government member of Benin, on behalf of African group Government members of the Committee; the Government member of Argentina, on behalf of GRULAC Government members of the Committee, as well as the Worker Vice-Chairperson. The Employer Vice-Chairperson said he had some reservations about the wording, but would support it for now. The amendment was adopted, and two amendments to the same point were withdrawn.
- 232.** The Government member of the United Kingdom, on behalf of Government members of Member States of the European Union and Government members of IMEC, introduced an amendment, which he orally amended, which would add a new clause after point 5(c) that would read: “workers should benefit from programmes to prevent specific risks from occupational transmission of HIV and other transmissible diseases;”. He explained that this modification to the amendment was made after consultation with the Government member of Brazil, who explained that it was very rare for someone to contract HIV at work and thus to avoid creating exaggerated fear among the public, the concept of risk should be introduced. The Government member of Benin, on behalf of African group Government members of the Committee, supported this amendment, as did the Government member of Argentina, on behalf of GRULAC Government members of the Committee.
- 233.** The Worker Vice-Chairperson also voiced his support, though he submitted one subamendment which would add the word “related” before the word “transmissible”. The Government member of Finland, a medical doctor, agreed that this proposal was useful. The Employer Vice-Chairperson supported the amendment as amended, and it was adopted.

Point 5(d)

- 234.** The Worker Vice-Chairperson introduced an amendment to point 5(d), which he orally revised, to replace the text with the following: “workers, their families and dependants and job applicants should enjoy protection of their right to privacy, including confidentiality and anonymity related to HIV/AIDS and other related illnesses, in particular with regard to their own HIV status, in accordance with the ILO code of practice on the protection of workers’ personal data, 1997, and any subsequent revisions, as well as with other relevant

international data protection instruments;”. This would take account of several other amendments that had been submitted.

- 235.** The Employer Vice-Chairperson proposed deleting the words “and anonymity” and ending the sentence after the words “HIV status”. Anonymity was an aspect of confidentiality and therefore did not have to be mentioned. There was moreover no reason to refer to specific instruments in the part of the proposed instrument that dealt with general principles.
- 236.** The Government member of France, on behalf of Government members of IMEC, agreed with the Employer Vice-Chairperson. Regarding the reference to families and dependants, he inquired whether it was within the mandate of ILO instruments to issue guidance to governments concerning matters not directly within its mandate, such as private persons who were not connected to the workplace. The ILO code of practice on the protection of workers’ personal data referred to workers, former workers and job applicants, but not families and dependants. He asked if it was possible within the ILO Constitution to refer to groups other than those covered by social protection systems in ILO instruments.
- 237.** In response, a representative of the Secretariat pointed out that in the ILO code of practice on the protection of workers’ personal data (1997), the term “worker” included any current or former worker or applicant for employment. The scope of the code applied to: (a) the public and private sectors; and (b) the manual and automatic processing of all workers’ personal data. Moreover, “personal data” as defined in the ILO code of practice on the protection of workers’ personal data could be understood to include data about workers’ families, which brought it under the purview of the instrument discussed.
- 238.** The Worker Vice-Chairperson explained that he believed there was a difference between confidentiality and anonymity. Confidentiality meant that both the person testing the person and the person being tested had access to the test result but decided to keep it confidential. Anonymity on the other hand meant that there was no way for the person who was administering tests to have knowledge about a person’s HIV status. In such arrangements, the test results were seen only by the tested person, allowing them to come to terms with the result in his or her own time. The Worker members would prefer to see both terms being used in the text. The Government member of the United States pointed out that health systems in many countries were moving away from anonymous testing that did not allow the persons tested to know their status, as was the case in certain studies of HIV-affected populations. She asked if the Worker members meant that workers tested anonymously should not have access to the results of their tests. The Worker Vice-Chairperson responded that the persons tested anonymously should get to know their HIV status. Anonymity meant that the result was known only by them. The person doing the test knew the result but had no way of identifying the person who had been tested, for example, because numbers were used instead of names.
- 239.** The Employer Vice-Chairperson said that the Employer members had proposed their subamendment because they wanted to avoid a situation where an ILO instrument would be setting a global regime for how testing should be carried out by the health sector. This would not serve the purpose of the proposed instrument, where confidentiality and not the means of testing was the main concern. The Government member of Benin, on behalf of African group Government members of the Committee, supported the Employer members’ subamendment. The Government member of France proposed that the paragraphs be put into square brackets for the time being, until the time more detailed legal guidance could be provided by the Office regarding the mandate of the ILO in relation to families and dependants. With this reservation, he agreed to the subamendment proposed by the Employer members.

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240. The Worker Vice-Chairperson said that the ILO code of practice on the protection of workers' personal data was highly relevant to this point of the proposed instrument. The understanding of workers' right to privacy was based on the ILO code of practice and it should therefore be referred to in this point. Moreover, the amendment referred to other relevant international data protection instruments so as to include the *OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* (1980); the United Nations guidelines concerning computerized personal data files (1990); the EU Data Protection Directive (1995); Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications); as well as relevant WHO texts on patients' rights.
241. The Employer Vice-Chairperson pointed out that in point 26 of the proposed Conclusions, the code of practice on the protection of workers' personal data was already mentioned. It was not necessary to make specific reference to this instrument or any other instruments under the general principles. The Government member of France, on behalf of Government members of IMEC, reiterated his support for the subamendment by the Employer members. The Government member of Brazil said she supported the proposal made by the Worker members. The Government member of Trinidad and Tobago said that she could support the subamendment proposed by the Employer members. She recalled a similar discussion the Committee had earlier about a reference to ILO Convention No. 111 which, for the same reasons as the Employer Vice-Chairperson had given earlier, was taken out.
242. The Government member of Lebanon asked the Committee whether there were any situations in which it might be important for co-workers, families and dependants of persons living with HIV to be made aware of the HIV status of that person so that they could protect themselves. The Government member of Côte d'Ivoire, in reply, stated that in countries in his region, there had been leadership in combating HIV/AIDS in the world of work and that enterprises had taken measures to protect workers. This allowed the protection of the privacy of other workers, their families and dependants, as this protected them from discrimination.
243. The Worker Vice-Chairperson announced that the Workers' group had reached agreement with the Employers' group to defer discussions on the amendment which proposed introducing a reference to the ILO code of practice on the protection of workers' personal data until discussion of points 24 to 27 of the draft Conclusions concerning privacy and confidentiality. The Government member of France, on behalf of Government members of IMEC, and the Government member of Brazil supported the proposal. Discussion of the proposed amendment and subamendments was so deferred.

Point 5(e)

244. The Worker Vice-Chairperson proposed an amended version, on behalf of the Employers' and Workers' groups, of an amendment submitted by the Workers' group, which also consolidated the other amendments to point 5(e). The proposed text read: "measures to address HIV/AIDS in the world of work should be part of government policies together with national health and occupational safety and health strategies including maternity and chronic HIV related-illnesses and opportunistic infections such as tuberculosis;"
245. The Government member of France, on behalf of Government members of IMEC, applauded the idea of consolidation, but felt that the end result in this case was a collection of too many disparate points in one clause. The Government member of Trinidad and Tobago also felt that the text needed to be simplified. She proposed a subamendment as

follows: “measures to address HIV/AIDS in the world of work should be part of national development and resource allocation policies and programmes including those related to labour, education and health;”. This was seconded by the Government member of Argentina. The Worker Vice-Chairperson agreed to the proposal and withdrew his own amendment. The Government member of France, on behalf of Government members of IMEC, questioned the need to refer to the “allocation of resources”. In reply, the Government member of Trinidad and Tobago pointed out that policies which did not have resources allocated to them were unlikely to be implemented. The Government members of Brazil and the Dominican Republic supported this position. The Government member of France, on behalf of Government members of IMEC, said that he was not fully convinced and proposed a further sub-subamendment which sought to delete the words “resource allocation” from the text. The Government member of Trinidad and Tobago agreed to the change, which was also supported by the Government members of the Philippines and the Bolivarian Republic of Venezuela, and the Employer and Worker Vice-Chairpersons.

- 246.** The Government member of Nigeria questioned the inclusion of the reference to “education”, wondering if it was out of place in this context. The Government member of Argentina argued that education should be included, because it was essential to development and should be part of the broad framework for action. The Government member of the Philippines argued that education should be included because, if people were educated, compliance would be improved. The amendment was adopted as amended, as follows: “measures to address HIV/AIDS in the world of work should be part of national development policies and programmes including those related to labour, education and health;”.
- 247.** The Government member of Benin introduced an amendment submitted by African group Government members of the Committee to add a new clause after point 5(e) to read: “no worker or job applicant should be coerced to undertake an HIV/AIDS test or disclose his or her HIV status;”. He explained that this was an important general principle, as in many countries enterprise owners continued to impose compulsory testing and it was important to take a stand against the practice. The Employer Vice-Chairperson, while agreeing with the point, said that provisions to this effect were operational rather than general principles and should be covered under points 24 and 25. The Worker Vice-Chairperson voiced his strong support for the amendment and believed it was well-placed within the general principles. The Government member of France, on behalf of Government members of IMEC, was also sympathetic to the intention of the amendment but believed it was covered adequately in points 24 to 26. The Government member of the Bolivarian Republic of Venezuela argued that the point was indeed important but adequately covered in general principles, points 5(b) and 5(d) and in points 24 to 27 on privacy and confidentiality, though it might have an impact on the deferred point 5(d). The Government member of Brazil gave her full support to the amendment, as it addressed what remained a serious problem in Brazil. She had come across HIV testing for job applicants in a number of enterprises, though this was the result of poor information, not malice. It would therefore be useful to establish the general principle that testing should be voluntary. The Government member of China agreed that it was an important general principle and he supported its inclusion as a stand-alone clause.
- 248.** The Government member of Benin argued that it was a principle which would make a great difference in practice to workers and jobseekers, protect their rights and promote decent work. The Government member of Belgium suggested a compromise, which would consist of adding a reference to screening and testing in the deferred point 5(d) on privacy and confidentiality, rather than having it as a separate point. The Employer Vice-Chairperson agreed with the proposal, as did the Worker Vice-Chairperson, who suggested, however, that the relevant section of the code of practice, point 4.6, could be used instead, as follows: “HIV/AIDS screening should not be required of job applicants or

persons in employment”. He continued to voice his strong support for this to be included in the general principles. The Government member of Benin preferred to keep the point as a separate clause of the general principles. The Employer Vice-Chairperson proposed a subamendment which would replace the word “coerced” with the word “required”. He pointed out that this was in line with the code of practice and with points 24 to 27 of the draft Conclusions. If it was accepted, the Employers’ group was willing to accept the amendment as a separate clause of point 5 on general principles. The Worker Vice-Chairperson and the Government member of Brazil agreed with the proposal, although the Government member of the Bolivarian Republic of Venezuela maintained that the point should be discussed together with point 5(d). The Government member of France, on behalf of Government members of IMEC, acknowledged the growing consensus around the Employers’ group proposal and gave his group’s agreement. The amendment as subamended was adopted as new point 5(f) as follows: “no worker or job applicant should be required to undertake an HIV/AIDS test or disclose his or her HIV status”.

- 249.** The Worker Vice-Chairperson explained the rationale for an amendment submitted by his group to insert a new clause after point 5(e) as follows: “resources for HIV/AIDS should be maintained or increased where necessary to match the need for HIV/AIDS services, especially treatment”. This was an important point, because it focused on the resources that were needed to cope with the pandemic and its increasingly severe impact. The Employer Vice-Chairperson pointed out that the issue of resource allocation had already been discussed and deleted from point 5(e), as the Committee had felt the reference to national policies and programmes was sufficient. The Government member of France, on behalf of Government members of IMEC, could not support the amendment for the same reasons. The Worker Vice-Chairperson argued that any commitment to action should be linked to the allocation of resources commensurate to the need. The Government member of the Dominican Republic, also speaking for the Government member of Brazil, agreed with the importance of adequate resources to deal with HIV/AIDS, but suggested that the proposed text be included elsewhere in the draft Conclusions and not as a general principle. She also proposed a subamendment to delete “where necessary” and “especially” and to include “in particular for prevention and” before “treatment”. This was supported by the Government member of Trinidad and Tobago. However, the amendment did not receive sufficient support for adoption. The Worker Vice-Chairperson expressed his intention to resubmit an amendment on this point later among operational provisions.
- 250.** The Worker Vice-Chairperson introduced an amendment intended to ensure the participation of the social partners in HIV/AIDS responses, in order to emphasize the principle of tripartism as promoted by the Decent Work Agenda. The text read: “measures to address HIV/AIDS and the world of work should be developed and implemented in consultation with the most representative organizations of employers and workers, as well as with organizations of people living with HIV.” The Employer Vice-Chairperson pointed out that this duplicated point 9 of the proposed Conclusions, and found the point would be more appropriate there than in general principles. The Government member of France, on behalf of Government members of IMEC, and the Government member of Benin, on behalf of African group Government members of the Committee, agreed. The Worker Vice-Chairperson withdrew the amendment.
- 251.** Introducing an amendment to add a new clause to point 5, that “there should be no discrimination between national and migrant workers with regard to HIV/AIDS in the world of work”, the Worker Vice-Chairperson pointed to the urgent need to protect the rights of migrant workers. The Employer Vice-Chairperson thought that the rights and needs of migrant workers were already well integrated in the document, for example in points 3(a) and 5(b), and could not support the amendment. The Worker Vice-Chairperson replied that this was about the principle of discrimination on the basis of nationality, not HIV status, as in point 5(b). The Government member of the Bolivarian Republic of

Venezuela agreed that this was an important distinction, so she supported the amendment. The Government member of France, on behalf of Government members of IMEC, understood the intention of the amendment but could not support it. By addressing certain categories of workers separately, there was a danger of weakening the universality of the non-discrimination principle established in point 5(b). The Government member of the United Kingdom supported the views of the Government member of France and urged the Committee to avoid having a Preamble and introductory sections longer than the substantive text of the draft Conclusions. The Government member of the Dominican Republic agreed. The Worker Vice-Chairperson withdrew the amendment.

252. The Worker Vice-Chairperson introduced an amendment submitted by his group proposing to add a new clause following point 5(e) to draw attention to the continuing and urgent need for prevention programmes, as follows: “prevention of all means of HIV transmission should be a fundamental priority.” The Employer Vice-Chairperson said that the amended point 5(a) emphasized the importance of all aspects of HIV/AIDS programmes, and referred to the fact that the same wording as that proposed appeared in point 16. He did not support the amendment. The Government member of France, on behalf of Government members of IMEC, understood the arguments of the Employers’ group but supported the amendment because the promotion of prevention was of such capital importance. The Government member of Benin, on behalf of African group Government members of the Committee, and the Government member of Trinidad and Tobago could not support the amendment, as the point was made in identical language in point 16. The Government member of the Dominican Republic, also speaking for the Government member of Brazil, supported the amendment and suggested removing the first sentence of point 16 and inserting it under general principles between points 5(b) and 5(c). The Worker Vice-Chairperson accepted the proposal, as did the Government members of IMEC. The Employer Vice-Chairperson had a concern that focusing on prevention as a priority might date the document as the HIV pandemic evolved, but in the interest of time he agreed to the amendment, which was adopted.

253. The Worker Vice-Chairperson introduced an amendment which sought to introduce a new clause after point 5(e) as follows: “measures to address HIV/AIDS and the world of work should be developed in accordance with the provisions of the Occupational Safety and Health Convention (No. 155) and Recommendation (No. 164), 1981, the Promotional Framework for Occupational Safety and Health Convention (No. 187) and Recommendation (No. 197), 2006, WHO/ILO Guidelines for HIV/AIDS for Health Service Workers, and other relevant international documents”. He stressed the importance of integrating HIV/AIDS into occupational safety and health as a general principle. The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union and Government members of IMEC, reminded the Committee that point 3 already covered occupational safety and health, and she did not support the proposed amendment. The Employer Vice-Chairperson said he preferred not to list instruments in the general principles, and felt that the reference to labour and health policies in point 5(e) and points 28 and 29 covered occupational safety and health adequately. The Worker Vice-Chairperson withdrew the amendment.

254. The Worker Vice-Chairperson introduced an amendment submitted by the Worker members which sought to add a new clause after point 5(e) as follows: “the protection of workers in professions particularly exposed to the risk of HIV transmission”. The Worker Vice-Chairperson explained that the need to protect workers who were exposed to the risk of HIV through their work should be established as a general principle. The Employer Vice-Chairperson saw such protection less as a principle and more as an operational consideration that would also be covered under point 28 of the proposed instrument. The Government member of France, on behalf of Government members of IMEC, shared the Worker members’ view that protecting workers from occupational exposure to HIV was a

matter of principle but suggested replacing the word “professions” by the word “occupations”, in line with ILO terminology. The Worker Vice-Chairperson accepted the subamendment. The Government member of Benin, on behalf of African group Government members of the Committee, expressed concern that so many provisions were being included in the general principles rather than as substantive points of the proposed instrument. He did not back the amendment proposed by the Worker members or the subamendment proposed by the Government member of France, on behalf of Government members of IMEC. The Government member of the Bolivarian Republic of Venezuela thought that the amendment introduced an important principle and hence supported it, as did the Government member of Brazil. The Employer Vice-Chairperson agreed in a spirit of flexibility. The amendment was adopted as amended.

255. The Chairperson reminded the Committee that it had been agreed to consider an amendment submitted by the Worker members following discussion of point 5 of the proposed Conclusions.

256. The Worker Vice-Chairperson amended the version originally submitted, proposing that it be placed in a new section III entitled “SCOPE” to follow “DEFINITIONS”. He felt it was important that the proposed Conclusions include a section that clearly defined all the workers and workplaces that it covered. The amendment would also include and replace the text of points 7(a) and 7(b) of the proposed Conclusions, and would read:

The proposed instrument should cover:

- (i) all workers at all workplaces, as defined under Section II;
- (ii) job applicants and unemployed;
- (iii) all sectors of economic activity: private and public sectors, formal and informal economy, armed forces and uniformed services.

257. The Employer Vice-Chairperson said that he liked the proposed amendment on the whole, but suggested the additional inclusion of the text at point 10(c) of the draft Conclusions relating to the public sector. The Worker Vice-Chairperson agreed. The Government member of the United Kingdom urged fellow Committee members to keep to a minimum the number of amendments submitted to the remaining draft Conclusions, but said he could accept the amendment as subamended. The Government member of Brazil expressed her support and welcomed the inclusion of the armed forces who were particularly vulnerable to the risk of HIV. The Government member of Trinidad and Tobago supported the proposed text, as did the Government member of China, who suggested also including those in vocational training. This was a very important group to include in prevention strategies. The Government member of the Bolivarian Republic of Venezuela seconded the proposal of the Government member of China, and this was supported by the Government members of Brazil and the Dominican Republic. The Government member of Nigeria, on behalf of African group Government members of the Committee, also supported the new text. Mobilizing uniformed personnel in the battle against HIV/AIDS was of key importance.

258. The Employer Vice-Chairperson asked what motivated the inclusion of the unemployed in the proposed amendment. The Worker Vice-Chairperson explained that the unemployed still needed care, especially if they had been laid off or made redundant, as increasing numbers were at present. The Employer Vice-Chairperson preferred not to include reference to unemployed persons, and said that redundant workers would be covered by national programmes anyway. The Government member of France requested the Office to provide a legal clarification with reference to the informal economy and asked if it was normal practice for ILO instruments to cover this unregulated sector. The Worker Vice-Chairperson said he could agree to delete the word “unemployed” but would like to

propose the words “laid off” in its place, as such workers still continued to have an employment relationship. The Government member of the United Kingdom said that he did not believe the words “laid off” constituted a legal category of workers and proposed the insertion of “casual workers” instead. The Government member of Nigeria said casual workers were often unemployed, and he preferred a direct reference to the “unemployed”.

259. The representative of the ILO Legal Adviser, in response to the query raised by the Government member of France, said that the informal economy was mentioned in one Convention and four Recommendations at least.

260. The Worker Vice-Chairperson indicated his support for the words “casual workers” to replace “unemployed”, but the Employer Vice-Chairperson argued that casual workers were covered by the phrase “all workers and all workplaces”, as they were in recognized employment relationships. The Worker Vice-Chairperson pointed out that in practice casual workers often lacked the same rights and access to services as other workers, and therefore needed special protection, but he agreed to drop the term “casual” in order to reintroduce reference to laid-off workers, since he was very concerned that this group might not be covered if they lost their jobs on a temporary basis, even if they retained some degree of employment relationship. The Employer Vice-Chairperson said that his group was prepared to agree with this and the text, as subamended, was adopted as a new section “III. SCOPE”, as follows:

The proposed instrument should cover:

- (a) persons in vocational training;
- (b) all workers at all workplaces as defined under section II;
- (c) job applicants and laid-off workers;
- (d) all sectors of economic activity: private and public sectors, the formal and informal economy, armed forces and uniformed services.

Point 6

261. The Employer Vice-Chairperson introduced an amendment on behalf of his group which combined other amendments submitted on the same point. He made some oral revisions in proposing the text, to take into account changes which had already been agreed by the Committee. The proposed amendment read:

Member States should:

- (a) adopt national policies and programmes on HIV and AIDS and the world of work. They should ensure that they are part of the country’s HIV/AIDS policies and programmes and national occupational safety and health policy, where one exists;
- (b) integrate their policy and programme on HIV/AIDS and the world of work in development plans and poverty reduction strategies.

262. He explained that the intention in presenting the point in two parts was to introduce text from point 10(b) which seemed to fit well here. The Government member of the United Kingdom, on behalf of Government members of Member States of the European Union and Government members of IMEC, said that they could agree to the proposal of the Employers’ group and withdrew their own amendment as long as the words “where appropriate” could be added after “strategies”. The Worker Vice-Chairperson expressed support for the consolidated amendment, but wished to propose two further subamendments. The words “where one exists”, following reference to OSH policy, should be deleted since this could give the impression that OSH policies were optional. He also

proposed insertion of the words “allocate adequate resources to that end” after the words “poverty reduction strategies”.

263. The Government member of Benin, on behalf of African group Government members of the Committee, disagreed with both of the Worker members’ proposed subamendments. Inclusion of the words “where one exists” after “OSH policy” simply recognized differences which existed at the national level. He felt that it was not necessary to add reference to resource allocation, as it was obvious that member States needed to provide resources to implement programmes. The Government member of the Czech Republic, on behalf of Government members of IMEC and Government members of Member States of the European Union, supported the position of the African group, as did the Government member of the United Kingdom, on the grounds that resource allocation was a matter of fiscal policy and outside the remit of the ILO. The Government member of Brazil, however, argued for the first subamendment proposed by the Worker members, on the grounds that removing the words “where one exists” would signal that countries had to implement an OSH policy. The Government member of the Bolivarian Republic of Venezuela supported the second subamendment of the Workers’ group on the grounds that resource allocation was properly a matter for social dialogue and resource issues should be included either here or in the section on implementation.

264. The Employer Vice-Chairperson maintained that removing the words “where one exists” implied that all countries had adopted the relevant ILO instruments on occupational safety and health. The Worker Vice-Chairperson was not convinced by this reasoning, as he felt that responses to an issue such as HIV/AIDS required rapid action driven by policies and could not depend on the ratification of Conventions. The purpose of removing “where one exists” was to encourage countries to develop national policies that effectively addressed HIV/AIDS. The Government member of France thought that retaining the phrase would not weaken the thrust of the point, as countries may address HIV/AIDS through a number of policies rather than a comprehensive strategy. The Employer Vice-Chairperson suggested a possible compromise, involving placing the reference to OSH policies in the first sentence of the point. He accepted that the wording could be improved later but thought it gave the right emphasis to OSH. The proposed text would read:

Member States should:

- (a) adopt national policies and programmes on HIV and AIDS and the world of work and a national occupational safety and health policy. They should ensure that they are part of the country’s HIV/AIDS policies and programmes;
- (b) integrate their policy and programme on HIV/AIDS and the world of work in the development plans and poverty reduction strategies and allocate resources to that end, where appropriate.

265. The Worker Vice-Chairperson supported the proposal, but requested changing “where appropriate” to “as appropriate” in clause (b). This was accepted by the Employer members.

266. The Government member of France, on behalf of Government members of IMEC, welcomed the consensus developing but still opposed the reference to resources. The Government member of Argentina agreed, as did African group Government members of the Committee, who reminded the meeting of an earlier agreement to remove references to resource allocation. The Worker Vice-Chairperson said that he recalled a decision to hold over discussion of resource allocation to a later stage but not to drop all references to the matter. In a spirit of compromise, however, he was prepared to drop the phrase in this point and discuss the issue again later. The amendment was adopted as amended. Clause (b) now read: “integrate their policy and programme on HIV/AIDS and the world of work in the development plans and poverty reduction strategies, as appropriate”.

Point 7

267. The Chairperson reminded the Committee that the text at point 7 of the draft Conclusions had been taken into the new section, SCOPE.

Point 8

268. The Employer Vice-Chairperson introduced an amendment, to which he made some oral changes in the course of presentation to reflect points already agreed by the Committee, so that it read as follows: "In developing the national policies and programmes, member States should take into account the ILO code of practice on HIV/AIDS and the world of work, and other relevant instruments." He proposed changing "competent authority" to "member States", as this was less ambiguous, and removing reference to implementation, as this would be covered in a later section. The Worker Vice-Chairperson could agree with the changes, but wished to clarify the point by changing the final words to "and other relevant ILO instruments and any subsequent revisions". The Government member of France, on behalf of Government members of IMEC, agreed with the spirit of the amendment but suggested two further clarifications. For Government members, the term "member States" was too vague, and he wanted to capture the idea of a range of authorities working at different levels by inserting the words "competent authorities of" before the words "member States". Secondly, he felt it to be illogical, and possibly even illegal, to refer to possible revised instruments which did not yet exist. The Government member of Benin, on behalf of African group Government members of the Committee, agreed with the Government member of France. He also cautioned the Committee against referring only to ILO instruments, as instruments were used from other agencies such as the WHO and UNAIDS in the development of HIV/AIDS policies. The Worker Vice-Chairperson said that the issue of revision applied solely to the code of practice. Taking into account the comments of the Government member of Benin, he proposed to insert the words "and other relevant documents" after the reference to relevant ILO instruments. The Government member of France, on behalf of Government members of IMEC, could agree with this new formulation. The Employer Vice-Chairperson suggested that the phrase "and other relevant instruments" was neater and clearer. The Worker Vice-Chairperson maintained his proposal to add a reference to other documents and the Employer Vice-Chairperson accepted this. The amendment was adopted as follows: "In developing the national policies and programmes, competent authorities of member States should take into account the ILO code of practice on HIV/AIDS and the world of work and any subsequent revisions, and other relevant ILO instruments and other relevant documents."

Point 9

269. Introducing the amendment submitted by his group, the Employer Vice-Chairperson explained that the amendment included the remaining clause (c) of point 10 of the draft Conclusions, as it fitted well here. He repeated his views on postponing references to implementation and orally proposed some minor changes to be consistent with previous decisions. The text would read: "National policies and programmes should be developed in consultation with the most representative organizations of employers and workers, the health sector, as well as organizations representing persons living with HIV. In developing national policies and programmes, the competent authorities of member States 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 the local communities." The Worker Vice-Chairperson was keen to distinguish between the special role of the social partners and the contribution of other bodies, and therefore proposed replacing the word "consultation" with "agreement", then adding "in consultation with"

before “the health sector”. The Employer Vice-Chairperson thought that the problem was not the word “consultation”, which was central to tripartism, but rather how to capture that consultation with the social partners should come first. The Government member of the Czech Republic, on behalf of Government members of IMEC and Government members of Member States of the European Union, supported the Employer members but could not agree to the use of the word “agreement”, which was not appropriate and did not reflect normal practice. The Government member of Benin, on behalf of African group Government members of the Committee, agreed with the amendment proposed by the Employer members, but requested changing “persons living with HIV” to “persons living with HIV/AIDS”. The Government member of the Philippines emphasized the importance of education and training in policies and programmes on HIV/AIDS.

- 270.** The Government member of Canada suggested that it would be useful to clarify who would develop the policies and programmes, and proposed the insertion of “by competent authorities of member States” after “the national policies and programmes should be developed”. The Worker Vice-Chairperson withdrew the proposal to replace “consultation” with the social partners by “agreement” and proposed instead the insertion of “informed by” before “health sector” in order to capture the two-stage process outlined by the Employer Vice-Chairperson. The Government member of the Bolivarian Republic of Venezuela suggested that “participation of” could be used instead of “consultation with” the social partners, as this went a bit further. This proposal was not seconded. The amendment, as amended by the proposer and subamended in discussion, was adopted as follows: “The national policies and programmes should be developed by the competent authorities of member States, in consultation with the most representative organizations of employers and workers, and informed by the health sector, as well as organizations representing persons living with HIV/AIDS. In developing national policies and programmes, the competent authorities of member States 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 the local communities.”

Point 10

- 271.** The Worker Vice-Chairperson presented an amendment to point 10 which would become a separate point if adopted. In introducing it, the Worker Vice-Chairperson explained that it was important to ensure access to HIV/AIDS information. The text read: “Members should take every opportunity to disseminate information about their policies and programmes on HIV/AIDS and the world of work through workers’ and employers’ organizations, AIDS committees and public information channels.” The Employer Vice-Chairperson suggested taking the point to the section on prevention, as it was more about implementation than policy. He agreed that information was important but it should be captured in a different place. The Government member of France, on behalf of Government members of IMEC, supported the Worker members’ amendment. The Government member of Argentina asked for clarification of the term “AIDS committees”. The Worker Vice-Chairperson explained that AIDS committees were one of the structures of national AIDS programmes and had an important role at country level. The Government member of Argentina believed that the earlier references to competent national authorities encompassed these structures, which did not need to be named separately. The Government member of France, on behalf of Government members of IMEC, proposed replacing “AIDS committees” with “other relevant structures”. The Worker Vice-Chairperson accepted this and the amendment, as proposed by the Worker members and subamended by Government members of IMEC, was adopted as the new point 10.

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272. The Worker Vice-Chairperson proposed an amendment merged with two others to the same effect, that the subheading “*Discrimination*” should be placed immediately above point 11. This was adopted with a request that the Committee Drafting Committee ensure its proper placement.

Point 11

273. The Government member of France, on behalf of Government members of IMEC, introduced an amendment submitted by his group proposing the following text in place of point 11: “Governments, in consultation with the most representative employers’ and workers’ organizations, should consider affording protection equivalent to that available under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), to prevent discrimination based on real or perceived HIV status.” The reason for the amendment was to express the commitment of Government members to take firm action against discrimination and to ensure that this action had a sound legal basis. He feared that too narrow a focus on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) might undermine anti-discrimination measures, as health was not one of the prohibited grounds specified in the Convention. His group believed that the concept of equivalence with the Convention had greater applicability than the concept of extending an application which did not exist. The IMEC position was supported by the Government member of Benin, on behalf of African group Government members of the Committee, and by the Employers’ group. The Worker Vice-Chairperson requested an explanation of the difference between the two formulations from the Office. A representative of the Secretariat read out Article 1, paragraph 1(b), of Convention No. 111, which provided that member States were at liberty to determine that any other “distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation” could be included as additional prohibited grounds in the definition of the term “discrimination” for the purpose of the Convention.
274. In light of this clarification, the Worker Vice-Chairperson stated that his group still preferred the original text of point 11 in the draft Conclusions. The Government member of France, on behalf of Government members of IMEC, said that they were aware of this Article in Convention No. 111, but felt nevertheless that this Convention was not the most appropriate instrument to deal with HIV-related discrimination. The point as drafted might have the opposite effect to that intended if the language was not completely clear. In support of the amendment, the Employer Vice-Chairperson added that another reason for preferring it was the way it encouraged governments, with the social partners, to provide protection as an ongoing process, rather than the once-off act of determining whether the protection afforded by Convention No. 111 extended to HIV status. The Government member of the United Kingdom said that another compelling reason to adopt the amendment was that a number of countries addressed HIV/AIDS through disability legislation, where Convention No. 111 was less relevant. Also supporting the amendment, the Government member of Australia pointed out that the original text appeared to assume that all countries had ratified Convention No. 111, which was not the case. The amendment was useful because it was applicable to States which had ratified and those which had not. The Worker Vice-Chairperson said that he was not convinced by the arguments, but conceded that a majority of the Government members did not support the Worker members’ position. The amendment was adopted.

Point 12

275. The Employer Vice-Chairperson introduced an amendment which would replace the words “do not allow” by the words “are inadequate”. He argued that this amendment would make

the text read better and that they felt the words “do not allow” were weak. The Worker Vice-Chairperson; the Government member of France, on behalf of Government members of IMEC; the Government member of Benin, on behalf of African group Government members of the Committee; and the Government member of Argentina, on behalf of GRULAC Government members of the Committee, supported the amendment, which was adopted.

- 276.** The Employer Vice-Chairperson introduced an amendment, which he revised upon presentation, which would replace the text after “HIV/AIDS,” by “member States should adopt existing remedies or put new ones in place, and provide for their effective implementation.” The amendment, as presented, was supported by the Worker Vice-Chairperson; the Government member of the Czech Republic, on behalf of Government members of the Member States of the European Union; the Government member of Benin, on behalf of African group Government members of the Committee; and the Government member of Argentina, on behalf of GRULAC Government members of the Committee. It was adopted.
- 277.** The Worker Vice-Chairperson introduced an amendment which would insert, after the words “their effective”, the words “and transparent”. Support for this amendment was voiced by the Employer Vice-Chairperson; the Government member of France, on behalf of Government members of IMEC; the Government member of Benin, on behalf of African group Government members of the Committee; and the Government member of Argentina, on behalf of GRULAC Government members of the Committee. The Committee adopted the amendment.
- 278.** The Government member of Argentina, on behalf of GRULAC Government members of the Committee, introduced an amendment which would, after point 12, add a new point as follows: “A person’s real or perceived HIV status shall not be cause to prevent his or her appointment or continued employment.” He noted that it was important for jobseekers to be protected, as had already been discussed. The Government member of France, on behalf of Government members of IMEC, supported the amendment but asked that it be reviewed by the Committee Drafting Committee. The Employer and Worker Vice-Chairpersons also supported the amendment and it was adopted.

Point 13

- 279.** The Government member of Argentina, on behalf of GRULAC Government members of the Committee, introduced an amendment to insert the words “A person’s real or perceived” before the word “HIV”. He explained that based on earlier discussions, this would add clarity to the point. The amendment was supported by the Government member of France, on behalf of Government members of IMEC; the Government member of Benin, on behalf of African group Government members of the Committee; and the Employer and Worker members. It was adopted.
- 280.** The Government member of Canada, on behalf of Government members of IMEC, introduced the amendment which would insert the words “or care-giving duties” after the words “because of illness”. She explained that this amendment would cover those workers who had to leave work in order to look after family members or dependants who had HIV. The Government member of Benin, on behalf of African group Government members of the Committee, agreed, as did the Government member of Trinidad and Tobago, on behalf of GRULAC Government members of the Committee. The Employer Vice-Chairperson noted that the proposed amendment caused difficulties because the Committee had already decided to add the words “a person’s real or perceived” at the beginning of the clause. He proposed a subamendment by putting a full stop after the word “employment” and to

delete the word “, and”. On behalf of Government members of IMEC, the Government member of Canada agreed. The Worker Vice-Chairperson also accepted the subamendment. The amendment was adopted as amended.

- 281.** Point 13 was adopted as amended, to read: “A person’s real or perceived HIV status should not be the cause for termination of employment. Temporary absences from work because of illness or care-giving duties related to HIV and AIDS should be treated in the same way as absences for other health reasons, taking into account the Termination of Employment Convention, 1982 (No. 158).” Other proposed amendments to the same point were withdrawn.

Point 14

- 282.** The Government member of Argentina, on behalf of GRULAC Government members of the Committee, introduced an amendment which would replace the Office text by: “Persons with HIV-related illnesses shall be allowed to work for as long as they are medically fit to do so, in work adapted to their abilities. When this is not possible, such workers shall be given access to suitable training, so that they can be assigned to other work. When they are seeking other work, suitable training shall be made available to them for this purpose.” He explained that this would make the point more direct and remove the concept of “reasonability”. The Government member of France, on behalf of Government members of IMEC, explained that his group’s later amendment covered this issue and was broader. The Government member of Argentina, on behalf of GRULAC Government members of the Committee, agreed to withdraw the amendment.
- 283.** The Employer Vice-Chairperson introduced an amendment which sought to replace the words “in work reasonably adapted to their abilities” by “under the reasonable accommodation principle”. He explained that this terminology came directly from the ILO code of practice and it allowed greater flexibility. The Worker Vice-Chairperson could accept this, but noted that he would later seek a broader amendment which would accommodate training and other issues as well. The Government member of France, on behalf of Government members of IMEC, explained that the Worker members’ concerns would also be covered by an amendment his group would introduce later. The Government member of Benin, on behalf of African group Government members of the Committee, could not agree with the Employers’ amendment, as the concept of “reasonable accommodation” did not take into account care once a person was ill. The Government members of Brazil and France concurred with the African group’s position. The Employer Vice-Chairperson withdrew the amendment.
- 284.** The Government member of Canada, on behalf of Government members of IMEC, introduced an amendment, which she revised upon presentation, to replace the second sentence of point 14 by: “Measures to find other work through training or facilitate return to work should be encouraged in appropriate circumstances and when the person is able to do so.” She explained that this took into account the previous amendments and comments from the Committee. The Employer and Worker Vice-Chairpersons supported the amendment, which was adopted.
- 285.** The Worker Vice-Chairperson introduced an amendment to insert a new sentence at the end of point 14, which would read: “When it is necessary for such workers to take up appropriate work, suitable training should be made available to them for this purpose in accordance with the requirements under the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), and the UN Convention on the Rights of Persons with Disabilities.” The Employer Vice-Chairperson proposed a subamendment that would instead insert the words “taking into consideration the requirements under the

Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), and the UN Convention on the Rights of Persons with Disabilities” after “person is able to do so”.

286. The Government member of Brazil noted the importance of Convention No. 159, as was demonstrated by a pilot project in Brazil that allowed people with HIV to receive training and support through programmes for people with disabilities. But she was concerned about making the link between people living with HIV/AIDS and disability. While there might be debilitating side effects associated with HIV medications, it was not the case that all people living with HIV/AIDS had disabilities. The Government member of the Czech Republic, on behalf of Government members of IMEC, accepted the amendment and introduced a subamendment to replace the reference to the specific ILO Convention and UN instrument with “relevant ILO and UN instruments”. This would be more consistent and reflect the concerns voiced by the Government member of Brazil. The Employer and Worker Vice-Chairpersons accepted the subamendment, and the amendment was adopted as amended.

Point 15

287. The Employer Vice-Chairperson introduced an amendment that sought to delete point 15 and add, as a new clause in point 16, the following text: “Measures should be taken in and through the workplace to reduce the transmission of HIV and alleviate its impact by promoting gender equality, the empowerment of women and the active participation of men in response to HIV/AIDS.” He explained that point 15 would fit better in section V on preventive and protective measures rather than section IV, which dealt with national policy and programmes. The Worker Vice-Chairperson did not support this, arguing that the point was placed in the appropriate section. The Government member of the United Kingdom had some sympathy for the Employer members’ proposal, but also had concerns about the final format of the point, as it already had several clauses and additions. If the Committee adopted the text proposed by the Employer members, it would be difficult to introduce further amendments. The Government members of IMEC had submitted an amendment on sexual and reproductive health that should not be lost. While he supported moving the text to section V, he thought the format for the clause structure should remain the same. The Committee decided to examine amendments to point 15 first and then return if necessary to the question of whether or not to move the point into another section.

288. The Government member of Canada, on behalf of Government members of IMEC, read out an amendment which would, at the beginning of the introductory sentence, after the words “Measures should be taken in”, replace “and” by “or”. Upon acceptance by the Employer and Worker Vice-Chairpersons, the amendment was adopted.

289. The Government member of Argentina, on behalf of GRULAC Government members of the Committee, introduced an amendment which would, before clause (a), add the following new clause: “respect for human rights;”. The reason was simply that human rights was an important concern. The amendment was supported by the Government members of IMEC, and the Employer and Worker Vice-Chairpersons, and was adopted.

Point 15(b)

290. The Government member of Argentina, on behalf of GRULAC Government members of the Committee, introduced an amendment which would add “and other vulnerable groups” after the word “women”. The Employer and Worker Vice-Chairpersons agreed and the amendment was adopted.

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- 291.** The Government member of Canada, on behalf of Government members of IMEC, introduced an amendment to insert, after the words “empowerment of women”, the words “and measures to prohibit violence or harassment against them in the workplace”. She explained that this would point to a concrete example of measures that could be taken to ensure that women would be empowered. The Government member of Benin, on behalf of African group Government members of the Committee, supported the amendment and proposed to replace “them” with “women and men”, because men were also victims of harassment.
- 292.** The Government member of the Dominican Republic proposed a further subamendment to replace the word “prohibit” by “avoid” and to insert the word “sexual” before the word “harassment”. The first change was necessary because “prohibit” was a very strong word. The second proposal would clarify the kind of harassment that was meant. She did not agree with the inclusion of the words “against women and men”, since the reference to the workplace automatically included an implicit reference to both women and men. The Worker Vice-Chairperson supported the subamendment. The Government member of Brazil proposed replacing the word “sexual” with “moral”, because moral harassment was a broader term and included other forms of harassment as well as sexual harassment. The Government member of Trinidad and Tobago supported this subamendment.
- 293.** The Government member of the United Kingdom found the reference to “avoid” extremely weak; the word “prohibit” was in his view the stronger and preferred form. The Government member of France agreed. The Government member of the Dominican Republic, in view of these remarks, then proposed to use the word “prevent” instead of either “avoid” or “prohibit”. The Government member of Argentina said that the word “prevent” was a good alternative and more proactive term than “avoid”. The word “prohibit” was very strong. He hoped it would be possible to find a term that everyone could agree to. The Government member of Australia proposed to retain the term “prohibit”, observing that it implied the making and enforcement of laws. With regard to the issue of harassment, in the Australian experience the term already covered a wide range of different kinds of harassment, including sexual and moral harassment. He preferred retaining only the word “harassment”. Finally, with regard to the debate concerning the words “against women and men”, he proposed including the word “both” before the words “women and men”. The Government member of France said he supported the position of the Government member of Australia. As with other points discussed by the Committee, he suggested that the Committee Drafting Committee be asked to review point 15(b) when adopted.
- 294.** The Worker Vice-Chairperson said that the word “prohibit” was the preferred choice of the Worker members. But they would also like to see the word “prevent” included and he therefore proposed a further subamendment to insert the words “prevent and” before the word “prohibit”. He then proposed to delete the words “against them” since he felt that both women and men were already implicitly covered by the reference to “the workplace”. With regard to the use of the word moral harassment, he would like to understand better what that term meant before he could agree with it. The Government member of Australia supported the subamendment proposed by the Worker members, as did the Employer Vice-Chairperson. The amendment was adopted as amended.

Point 15(c)

- 295.** The Government member of Benin, on behalf of African group Government members of the Committee, introduced an amendment concerning point 15(c) which would replace the word “men” by the words “both men and women”. While he understood why the clause focused on men, who were often considered responsible for spreading the virus, the fight

against HIV also involved changing the behaviours of women. The Government member of the United Kingdom accepted the reasoning behind the proposed amendment and proposed a subamendment to insert “and the role of men as gatekeepers in tackling the pandemic” after the words “HIV/AIDS”. The Government member of the Bolivarian Republic of Venezuela supported this subamendment. Men had a very important role to play with regard to prevention of HIV/AIDS but, in many countries, all prevention efforts were imposed on women. The Government member of France supported the subamendment, as did the Employer and Worker Vice-Chairpersons. The amendment was adopted as amended.

- 296.** The Worker Vice-Chairperson introduced an amendment which would, after the word “men”, insert “, regardless of their sexual orientation”. This was important because studies had shown that there were groups in the workplace that needed to be targeted in HIV/AIDS prevention programmes as a priority if the pandemic were to be addressed. These included sex workers. Their inclusion was not a question of whether sex work was legal or not, but simply a reflection of the fact that sex workers existed and that this group contributed to the life cycle of the pandemic. Another group included men who had sex with men, who were also part of the world of work and required specific attention. These groups were also mentioned in the report produced by the Office, in which it became clear that targeted programmes were more successful than HIV/AIDS programmes for the general population. The Government member of France noted that a reference to both women and men had already been inserted, which logically covered all women and men, regardless of their sexual orientation. The Employer Vice-Chairperson stated that since this section involved the active participation of workers, a reference to sexual orientation implied that this should be known to employers, posing a threat to confidentiality. He sympathized with the Worker members’ decision to include text on sexual orientation, but suggested it would be better to include it elsewhere where issues around vulnerability were being discussed. The Worker Vice-Chairperson pointed out that even though the notion of vulnerability was in the text, the specific groups were never defined. He insisted that within the world of work there were specific groups that needed to be actively engaged in the response to the pandemic.
- 297.** The Government member of Brazil, on behalf of GRULAC Government members of the Committee, supported the position taken by the Workers’ group and felt that a reference to sexual orientation should be included in the text. She argued that in Brazil there were many cases of dismissal and harassment of workers on the basis of their sexual orientation, which often became apparent even when the person concerned did not announce it. Such groups were very vulnerable and it was necessary to make specific reference to them. The Worker Vice-Chairperson stated that his group felt very strongly about the need to make reference to sexual orientation. If it was not appropriate to introduce sexual orientation in this point, it should be introduced elsewhere in the document. The Employer Vice-Chairperson suggested the rewriting of the clause to include men, women and vulnerable groups, stressing that “vulnerable groups” could be used to cover persons of all sexual orientations. He recalled that this section focused on active participation of workers. The Worker Vice-Chairperson responded by stating that the inclusion of “vulnerable groups” did not necessarily mean certain sexual orientation had been addressed. The Government member of Australia suggested that the Workers’ group provide a subamendment which referred to sexual orientation in a separate clause. The Worker Vice-Chairperson agreed and the Committee decided to return to the question at a later point.
- 298.** After the debate on point 15 had examined all further amendments, the Committee returned to this amendment and the Worker Vice-Chairperson proposed to insert, as a new clause after point 15(c): “the involvement of all workers, regardless of their sexual orientation”. This proposal was supported by the Employer Vice-Chairperson, the Government member of the Bolivarian Republic of Venezuela, on behalf of GRULAC

Government members of the Committee, and the Government members of Australia, Canada and France. The amendment was adopted as amended.

Point 15(d)

- 299.** The Worker Vice-Chairperson withdrew an amendment which sought to replace clause (d) with “the rights of women and men to sexual and reproductive health”.
- 300.** The Government member of Australia, on behalf of Government members of IMEC, introduced an amendment, which he revised orally, which would, after clause (d), add a new clause as follows: “effective prevention policies for reducing high risk behaviours among most at risk groups”. This subamendment was introduced because prevention policies should address both risk behaviours and risk groups. The Government member of Benin, on behalf of African group Government members of the Committee, supported the amendment. The Employer Vice-Chairperson was very keen to include a reference to behaviour change as this was useful for all groups and not just high-risk groups. He proposed a subamendment as follows: “effective prevention policies for reducing high risk behaviours for all workers, including most at risk groups”. The Government member of Australia supported the subamendment, as did the Employer and Worker Vice-Chairpersons. The Government member of Brazil was unhappy with the use of the term “risk behaviour” which, in her opinion, appeared to blame the worker. She was more comfortable with the use of “vulnerable” and proposed a subamendment as follows: “effective prevention policies for all vulnerable groups”. The Chairperson reminded the Government member of Brazil that the amendment, as subamended by the Employers’ group, had already attracted significant support. The amendment was adopted as amended.
- 301.** The Government member of France, on behalf of Government members of IMEC, introduced an amendment which would add, after clause (d), a new clause as follows: “effective confidentiality of personal data”. The Employer and Worker Vice-Chairpersons supported the amendment and it was adopted.
- 302.** The Government member of Benin, on behalf of African group Government members of the Committee, introduced an amendment which would, after clause (d), add a new clause which read “behaviour change”. He explained that behaviour change was fundamental to any HIV/AIDS programme and it was impossible to achieve good programmatic outcomes without it. The Worker Vice-Chairperson stated that the Workers’ group had no issues with the inclusion of a reference to behaviour change, but felt it was adequately captured by the previous amendment. The Government member of Benin, on behalf of African group Government members of the Committee, explained that the proposed amendment dealt with personal behaviour change, which was different from promoting policies to reduce high-risk behaviour, which was the focus of the previous amendment. The Government member of Trinidad and Tobago also felt that the issue of behaviour change had been captured in the previous amendment. The Employer Vice-Chairperson argued that reducing risky behaviour was an element of behaviour change, hence previous amendments had adequately captured the issues around behaviour change. He urged the African group to reconsider the amendment. The Government member of Benin, on behalf of African group Government members of the Committee, reiterated that the purpose of the proposed amendment was to draw attention to a vital strategy in HIV prevention. The Government member of France, on behalf of Government members of IMEC, supported the idea with a subamendment to establish the objective as follows: “behaviour change in order to reduce the incidence of the pandemic”. This was accepted by the Government member of Benin, on behalf of African group Government members of the Committee, and the amendment was adopted as amended.

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- 303.** The Worker Vice-Chairperson proposed an amendment which would add a new clause as follows: “policies and measures that ensure decent jobs and decent wages so that women and men are not obliged to work involuntarily as sex workers”. He argued that the absence of decent work or the presence of underpaid work encouraged the adoption of high-risk behaviours by workers as a way to supplement their incomes. He believed that decent work should be mainstreamed as a means of reducing conditions which encouraged high-risk behaviour. The Employer Vice-Chairperson argued that the issues of decent work and decent wages were broad issues and it was not necessary to bring them into this discussion. Also, the link with men and women as sex workers was not appropriate. The Employers’ group did not support this amendment, neither did the Government member of Brazil, who felt that the linkage to sex workers was inappropriate. She explained that in Brazil sex workers were actively involved in combating HIV/AIDS and available statistics indicated that their HIV/AIDS prevalence rates had stabilized. The Government member of Australia supported the view of the Employers’ group and did not support the amendment. The Worker Vice-Chairperson withdrew the amendment.
- 304.** The Worker Vice-Chairperson introduced an amendment which would add a new clause to read: “policies that condemn rape and sexual harassment, homophobia, human trafficking and forced sex work”. The Employer Vice-Chairperson said that this amendment covered issues that were not in the ambit of the world of work. The Government member of Benin, on behalf of African group Government members of the Committee, agreed and stated that the issues were similar to those addressed through a previous amendment. The position of the African group was supported by the Government member of the Czech Republic, on behalf of Government member of IMEC. The Worker Vice-Chairperson consequently withdrew the amendment.
- 305.** In light of the previous remarks by the Government member of Brazil on the role of sex workers in the fight against HIV, the Worker Vice-Chairperson withdrew an amendment that sought to add a new clause on the active participation of legal and illegal sex workers in the response to HIV/AIDS.
- 306.** The Worker Vice-Chairperson introduced an amendment which proposed to insert a new clause as follows: “labour rights such as the right to compensation in the event of workplace accidents and access to universal precautions and first aid to workers exposed to human blood and other body fluids”. The Employer Vice-Chairperson agreed with the principle but could not agree with the wording. The Government member of the Bolivarian Republic of Venezuela, on behalf of GRULAC Government members of the Committee, supported the amendment but agreed that it should be reworded. The Government member of the Czech Republic, on behalf of Government members of IMEC, explained that the substance of this amendment would be better placed in points 22, 28 and 29. The Government member of Benin, on behalf of African group Government members of the Committee, did not support the amendment. The issue of labour rights should be covered in one place of the text and protection in relation to body fluids in another. The Employer Vice-Chairperson explained that this amendment addressed labour rights issues that were outside the mandate of the Committee. The specific occupational safety and health matters would be covered in points 22, 28 and 29. He could not support the amendment. The Worker Vice-Chairperson withdrew the amendment, saying he would introduce it again in conjunction with later points. In response to a question from the Government member of the United Kingdom, a representative of the ILO Legal Adviser explained that the Conclusions would be reviewed by the Committee Drafting Committee for internal consistency and coherence, then adopted by the Committee and finally submitted to the Conference for adoption. Once adopted, they would serve as the basis of the proposed Recommendation which would be circulated in the “brown” report, which would be communicated to governments two months after the closing of the session of the Conference, asking them to make comments or suggest amendments, in consultation with

employers' and workers' organizations, within three months. On the basis of the replies received, the Office would draw up the "blue" report, which would be communicated to governments in time to arrive three months before the 2010 session of the Conference and contain the revised text of the proposed instrument.

Subheading V

307. The Employer Vice-Chairperson said that the purpose of his group's proposed amendment to the subheading was simply to make the components of the section clearer, as follows: "Measures for prevention, treatment, care and support". The Worker Vice-Chairperson wished to add the word "privacy". The Employer Vice-Chairperson did not object. The Government member of Benin, on behalf of African group Government members of the Committee, said that he thought the word "protection" included the concepts of privacy and confidentiality. The Government member of France, on behalf of Government members of IMEC, agreed with the African group, although he also acknowledged that consensus was building to add "privacy". The Government member of Argentina, on behalf of GRULAC Government members of the Committee, suggested adding the word "measures" after "privacy". There was general agreement and the amendment was adopted as amended.

Point 16

308. The Chairperson recalled that the first sentence of the text as originally drafted had now been inserted in the general principles, point 5. The Employer and Worker members withdrew the amendments they had submitted on the same point.

309. The Government member of Argentina, on behalf of GRULAC Government members of the Committee, introduced an amendment with the intention of identifying more clearly the issues to be taken into account in the development of prevention measures. It would replace the words "both gender and culture" by "gender, age, race, ethnicity, disability, and cultural, economic and social background, among other things". The Government member of France, on behalf of Government members of IMEC, agreed with the need to be inclusive, but felt that a more concise phrase, "and cultural issues," could encompass the ideas expressed by the Government member of Argentina. The danger of lists was that they could inadvertently limit the field of action. The Government member of Benin, on behalf of African group Government members of the Committee, expressed support for the IMEC amendment. The Employer Vice-Chairperson suggested that the insertion of "and social" after "cultural" would encompass most of the factors spelled out by GRULAC. The Government member of Argentina said that he could agree as long as "and economic" was added as well, in which case his group would withdraw their proposed amendment. The Employer and Worker Vice-Chairpersons agreed, with the small correction that the word "both" should be removed. The amendment was adopted, as follows: "Prevention strategies should be adapted to national conditions and the type of workplace concerned, and should take into account gender and cultural, social and economic issues."

Point 17(a)

310. In presenting his group's proposed amendment, the Worker Vice-Chairperson amended it orally, as follows, to take account of a similar amendment submitted by GRULAC Government members of the Committee: "Prevention programmes should ensure: that accurate and relevant information is made available in a format and in language that are culturally sensitive, ensuring, through the different channels of communication available,

that this information is available to all;”. The Employer Vice-Chairperson thought that it would be advisable to delete the words “ensuring” and “available to all”, given that one could lead a horse to water but not make it drink, that is, one could provide information but not ensure it was taken up. The proposal as subamended read: “that accurate and relevant information is made available in a format and in language that are culturally sensitive through the different channels of communication available;”. The Government member of Brazil urged the Committee to consider the special needs of persons with disabilities and for this reason preferred to keep the word “all”. She mentioned that the Government of Brazil made great efforts to adapt information to the needs of the deaf and the blind, among others. The Worker Vice-Chairperson suggested that it might be generally acceptable to place the words “to all” after “is made available”. This was accepted by the Government member of France, on behalf of Government members of IMEC; the Government member of Brazil; the Government member of Benin, on behalf of African group Government members of the Committee; and the Employer Vice-Chairperson. The amendment was adopted as follows: “that accurate and relevant information is made available to all in a format and in language that are culturally sensitive through the different channels of communication available;”.

- 311.** The Worker Vice-Chairperson introduced an amendment which would replace point 17(b) with the text:

comprehensive education programmes to help men and women understand and reduce the risk of transmission and understand the importance of behavioural change. Special attention should be given to:

- (i) prevention of mother-to-child transmission;
- (ii) understanding and reducing the risk of men to men transmission;
- (iii) transmission through the use of drugs injections; and
- (iv) wife inheritance and polygamous practices.

- 312.** The reason for this expanded text was to ensure that specific groups and behaviours were highlighted in order to signal the need for tailored responses. The Employer Vice-Chairperson welcomed the introduction of the phrase “behavioural change”, but proposed ending the sentence after this phrase and omitting reference to specific groups. He argued that too much detail could lock member States into responses that might become less relevant over time, while a broader formulation would make it possible to adapt to evolving needs. The Worker Vice-Chairperson said that the list was not intended to be exhaustive but would encourage the development of focused and targeted interventions. The Government member of the Czech Republic, on behalf of Government members of IMEC and Government members of Member States of the European Union, supported the view of the Employers’ group. She argued that the ILO might be going beyond its mandate by proposing a list of interventions which strayed into the public health domain. The Government member of Trinidad and Tobago supported the Employer group’s shorter version and proposed the insertion of “HIV/AIDS” before the word “transmission”, which was seconded by the Government members of Brazil and the Dominican Republic.

- 313.** The Worker Vice-Chairperson was prepared to accept the deletion of the list of groups requiring special attention, but said he wished to insert the words “including prevention of mother-to-child transmission” after “reduce the risk of HIV/AIDS transmission”. The Employer Vice-Chairperson maintained that it would be a mistake to mention a specific group, which might not be a priority in the future. The Government member of Canada pointed out that it was correct to speak of the transmission of HIV rather than of HIV/AIDS; this was accepted by the Government member of Trinidad and Tobago. While the Government member of the Czech Republic, on behalf of Government members of IMEC and Government members of Member States of the European Union, reiterated the

point that PMTCT was understood as being part of prevention programmes generally and did not need special mention. The Government member of Benin, on behalf of African group Government members of the Committee; and the Government members of Argentina, Brazil and the Bolivarian Republic of Venezuela, agreed with the Worker Vice-Chairperson when he stressed the urgency of the need to sensitize people about PMTCT.

- 314.** While the Government member of Benin, on behalf of African group Government members of the Committee, urged caution in addressing issues that lay outside the workplace, the Government member of the Bolivarian Republic of Venezuela reminded the Committee that the point under discussion was about education, and the workplace was an ideal forum to provide information and education on all means of prevention. The Government member of Argentina said that the workplace was also well placed to provide linkages and referrals to relevant programmes, and the Government member of Brazil pointed out that this was vital information for women workers, who could be mothers too. The Government member of Trinidad and Tobago expressed strong support for the inclusion of PMTCT, but pointed out that the word “prevention” needed to be omitted so that the sentence made sense in the light of the heading to this point. The Government member of the Czech Republic, on behalf of Government members of IMEC and Government members of Member States of the European Union, agreed, as did the Employer and Worker Vice-Chairpersons. The amendment was adopted as amended to read: “comprehensive education programmes to help men and women understand and reduce the risk of HIV transmission, including mother-to-child transmission, and understand the importance of behavioural change”.

Point 17(b)

- 315.** The Government member of France, on behalf of Government members of IMEC, introduced an amendment which proposed the insertion of a new clause after point 17(b) to read: “effective occupational safety and health measures;”. He acknowledged that there was a later section on occupational safety and health, but felt it was important to draw attention to occupational risk in the section on prevention, even if such risks were not high. The Government member of Argentina, on behalf of GRULAC Government members of the Committee, and the Employer and Worker Vice-Chairpersons supported the amendment, which was then adopted.
- 316.** The Government member of Benin, on behalf of African group Government members of the Committee, presented an amendment which also proposed to insert a new clause after point 17(b), as follows: “measures to encourage workers to know their own HIV status through voluntary testing and counselling;”. He explained that knowing one’s status, be it positive or negative, was essential for prevention as well as for accessing treatment and should be encouraged. The Government member of France, on behalf of Government members of IMEC, agreed with the point but wondered where it was best placed, given that it was mentioned again in point 25. The Government member of Benin, on behalf of African group Government members of the Committee, stressed that knowing one’s status should be linked to prevention, as it was a vital first step. The Government member of the Bolivarian Republic of Venezuela, on behalf of GRULAC Government members of the Committee, agreed with the African group and pointed out that, if this were adopted, the first sentence in point 25 could be deleted in order to avoid repetition. The Government member of Brazil also agreed, stressing that tests must be voluntary and away from the workplace. The Government member of France, on behalf of Government members of IMEC, after hearing the explanations, agreed that it was appropriate in point 17. The Employer and Worker Vice-Chairpersons expressed strong agreement and the amendment was adopted. A similar amendment was withdrawn by the African group.

Point 17(c)

317. The Employer Vice-Chairperson introduced an amendment which proposed to replace the text in point 17(c) with a new clause that read: “access to means of prevention, such as condom availability”, adding the word “all” before the word “means” as he presented it. The Government member of Argentina, on behalf of GRULAC Government members of the Committee, noted that this was similar to an amendment from his group, to emphasize the need for availability of prevention supplies. The Government member of Benin, on behalf of African group Government members of the Committee, agreed but proposed adding the words “and also access to post-exposure prophylaxis”, which was already standard in a number of occupational settings. The Employer Vice-Chairperson agreed. The Government member of Canada, on behalf of Government members of IMEC, also agreed but wished to expand the reference to supplies to read as follows: “and ensuring the availability of necessary supplies, such as male and female condoms, and information about their use, where appropriate; harm reduction programmes;”. The Employer and Worker Vice-Chairpersons agreed and withdrew similar amendments. The amendment was adopted as amended, to read: “access to all means of prevention, such as ensuring the availability of necessary supplies, such as male and female condoms, and information about their use, where appropriate; harm reduction programmes; and also post-exposure prophylaxis”.

Point 18

318. The Worker Vice-Chairperson introduced an amendment, which he revised orally, that would replace the text of point 18 by the following: “All workers, including those living with HIV and their dependants, should be entitled to health services. These services should include the provision of free or affordable access to antiretroviral treatment and adherence education, proper nutrition, treatment for opportunistic infections and sexually-transmitted infections, and other HIV-related illnesses as well as support and prevention programmes for HIV-positive persons.” The Employer Vice-Chairperson proposed to replace the words “should include the provision of free or affordable access ” with “should include access to free or affordable voluntary counselling and testing”. The Worker Vice-Chairperson agreed.

319. The Government member of France noted that the amendment now appeared to provide prevention programmes only to HIV-positive workers. He asked if the scope should not target all workers. He also asked for clarification on the reference to “proper nutrition”, as this could mean advice to workers on nutrition or the actual provision of nutritious meals through workplace health services. The Worker Vice-Chairperson explained that prevention programmes targeted at HIV-positive workers were very important to avoid spreading the virus. Such programmes could also help convince them that they could be supported and still live for many years. With regard to nutrition, some employers were providing nutritional supplements to HIV-positive workers to help boost their immune system. This was also very important, since it helped HIV-positive persons to proactively respond to HIV/AIDS. The Government member of France subsequently asked the Worker members whether they would see any objection in replacing “prevention programmes” with “accompanying programmes for HIV-positive persons” in order to make the meaning clearer. The Worker Vice-Chairperson responded that Worker members thought the text was already quite clear and this was exactly what the proposed text meant. The Government member of Côte d’Ivoire said he supported the text, but stressed the importance of supplementary examinations for persons with HIV. He wondered if such examinations were covered in this provision. The Government member of Argentina agreed that prevention programmes should be targeted at persons in the HIV-positive stage. The Committee adopted the amendment, as subamended by the Employers’ group.

Point 19

- 320.** The Government member of the Czech Republic, on behalf of Government members of IMEC, withdrew an amendment to delete the point.
- 321.** The Government member of Argentina, on behalf of GRULAC Government members of the Committee, introduced an amendment which would, after the words “is provided under”, insert the words “social security systems or”. The Government member of Benin, on behalf of African group Government members of the Committee, said he supported it, as did the Employer and Worker Vice-Chairpersons. The amendment was adopted.
- 322.** The Employer Vice-Chairperson introduced an amendment which would, after the words “their dependants”, replace the words “benefit from” by the word “have”. He explained that it was essential to ensure that workers living with HIV and their dependants had access to health care. It was not always possible to ensure that they would benefit from it. The Worker Vice-Chairperson said he could not support the amendment. He believed “benefit” was the right word. Seeing that the Government members remained silent on the amendment, the Employer Vice-Chairperson withdrew the amendment.
- 323.** The Worker Vice-Chairperson introduced an amendment, which he revised upon presentation, seeking to replace the words “public or private insurance schemes” by “public provisions or private insurance schemes. Members should also ensure the education and awareness raising of workers to facilitate their access to such schemes.” The Government member of Benin, on behalf of African group members of the Committee, asked the Worker Vice-Chairperson to clarify what was meant by the words “public provisions”. The Worker Vice-Chairperson explained that some countries did not have public insurance systems but had instead developed other tax-based systems. The amendment was adopted.
- 324.** The Worker Vice-Chairperson introduced an amendment which would add after point 19 a new clause as follows: “Workplace health services should be established in consultation with workers and their representatives and linked to national health services. They should offer the broadest range of health services possible to guard against stigmatization and discrimination, and to prevent and manage HIV/AIDS.” The Employer Vice-Chairperson said that he had a problem with this amendment. Public health was the domain of the State and not enterprises. Employers were responsible for occupational safety and health, but not for introducing health measures that were the responsibility of the public health system. However, recognizing that joint efforts at the workplace could be effective, he proposed a new clause that would read: “Workplace interventions should be determined in consultation with workers and their representatives and linked to national health services. They should offer the broadest range of interventions possible to prevent and manage HIV/AIDS.” The Worker Vice-Chairperson agreed to the formulation. The Government member of France, on behalf of Government members of IMEC, felt that the proposed subamendment was not clear and asked who would be responsible for the interventions. The Employer Vice-Chairperson suggested inserting the word “health” before “interventions”. The Government member of France, on behalf of Government members of IMEC, expressed appreciation for the Employer members’ efforts to be flexible. He also thought it would be more appropriate to speak of “public” rather than “national” health services. The Employer and Worker Vice-Chairpersons agreed to the proposed changes and the amendment was adopted as follows: “Members should ensure that workplace health interventions should be determined in consultation with workers and their representatives and linked to public health services. They should offer the broadest range of interventions possible to prevent and manage HIV/AIDS.”

Point 20

- 325.** The Employer Vice-Chairperson introduced an amendment which would replace the words “living with HIV or their dependants” by “or their dependants based on real or perceived HIV/AIDS status”. The Worker Vice-Chairperson supported the amendment, as did the Government member of Benin, on behalf of African group Government members of the Committee, and the amendment was adopted.
- 326.** The Government member of Argentina, on behalf of GRULAC Government members of the Committee, introduced an amendment which proposed to delete the word “statutory” before the words “social security programmes”. The Government member of France, on behalf of Government members of IMEC, supported this, as did the Employer and Worker Vice-Chairpersons. The amendment was adopted.
- 327.** The Worker Vice-Chairperson introduced an amendment which proposed to insert a reference to death benefits so that the last line of point 20 would read: “in relation to benefits, including health care, disability and death, and survivors’ benefits”. The Employer Vice-Chairperson supported the amendment, as did the Government member of France, on behalf of Government members of IMEC; the Government member of Argentina, on behalf of GRULAC Government members of the Committee; and the Government member of Benin, on behalf of African group Government members of the Committee. The amendment was adopted, and other amendments on the same point were withdrawn.

Point 21

- 328.** The Government member of Japan, on behalf of Government members of IMEC, introduced an amendment which would add, at the end of point 21, “in light of national conditions”. The Government member of Benin, on behalf of African group Government members of the Committee, supported the amendment, as did the Employer and Worker Vice-Chairpersons, and the amendment was adopted.
- 329.** The Worker Vice-Chairperson introduced an amendment which proposed to add at the end of point 21, after the word “illnesses”, the words “, as well as provide additional maternity leave to allow workers to receive antenatal HIV/AIDS-related care”. He argued that this was necessary because pregnant women who were HIV-positive might need additional leave to deal with the consequences of HIV linked to pregnancy, including the possibility of the baby being born with the virus. The Employer Vice-Chairperson reminded the Committee that point 13 already covered the issue of absence because of illness, a broader formulation which offered more scope for action. The Worker Vice-Chairperson replied that pregnancy was not an illness but that pregnant women had specific needs and should have protection. The Government member of France, on behalf of Government members of IMEC, argued that the issue was covered elsewhere in the document and that point 21 should focus on the workplace and not on leave. The Worker Vice-Chairperson insisted that mothers who needed ARV therapy and who gave birth needed extra time to recover. The baby might also need special attention and these issues were not addressed by point 13.
- 330.** The Employer Vice-Chairperson reminded the Committee that the Maternity Protection Convention, 2000 (No. 183) provided the guidance needed. The Government member of Benin, on behalf of African group Government members of the Committee, agreed that Convention No. 183 afforded appropriate protection and could not support the Worker members’ proposal. The Government member of the Bolivarian Republic of Venezuela felt that as PMTCT was addressed elsewhere in the document, this point was relevant and

linked to it. She suggested that it could be a separate point and not linked to reasonable accommodation. The Government member of Benin, on behalf of African group Government members of the Committee, reminded the meeting that mothers with HIV did not necessarily transmit the virus to their babies. His group was still unable to support the amendment. The Government member of France, on behalf of Government members of IMEC, argued that accepting this amendment would mean that member States would have to identify HIV-positive women and this might lead to discrimination. The Worker Vice-Chairperson acknowledged that his group's position was not shared, but said that it was incorrect to imply that all member States had ratified Convention No. 183, hence the need for a policy to give guidance on the special conditions related to the pregnancy of an HIV-positive mother. He withdrew the proposed amendment, but orally submitted a new amendment proposing a new point after 21, as follows: "Additional maternity leave should be provided to allow workers to receive antenatal HIV/AIDS-related care." The Employer Vice-Chairperson and the Government member of Benin, on behalf of African group Government members of the Committee, held to the positions already expressed on the matter of maternity leave, and the Worker Vice-Chairperson withdrew the proposed text, noting that he might bring up the issue again during the second discussion of the proposed instrument.

Point 22

- 331.** The Government member of Germany, on behalf of Government members of IMEC, introduced an amendment that proposed to replace point 22 by the following text: "Where a direct link can be established between the occupation concerned and the risk of infection, HIV/AIDS should be recognized as an occupational disease or accident, in accordance with national procedures and definitions, and with reference to the ILO List of Occupational Diseases Recommendation, 2002 (No. 194)." He said that the text had been drafted by the physicians in the group and pointed out that AIDS was included in the national occupational diseases lists of many countries. He was surprised that the draft Conclusions did not make reference to Recommendation No. 194. The Worker Vice-Chairperson proposed the insertion of text submitted in another amendment on the same point, namely "as well as with any relevant ILO Conventions and standards" at the end of the point. The Government member of France, on behalf of Government members of IMEC, accepted the Worker members' proposal to include reference to ILO standards. He explained that the main point of the amendment was to ensure protection for workers in the case of occupational exposure. The Government member of Benin, on behalf of African group Government members of the Committee; and the Government member of Argentina, on behalf of GRULAC Government members of the Committee, supported the amendment.
- 332.** The Employer Vice-Chairperson said that his group had a number of questions on this issue and asked why HIV/AIDS needed to be recognized as "an occupational disease or accident", rather than just mentioning one or the other. The Employer members saw it more as an occupational accident, but would like to hear the views of the medical experts. The Government member of Belgium explained that in many cases it was impossible to identify the exact moment when HIV was contracted, so the formulation proposed covered all eventualities. The Government member of Germany agreed, noting that HIV could be contracted as a result of an accident and eventually lead to AIDS, which was then considered to be an occupational disease. The Government member of Benin, speaking as a physician, said that the difference between accidents and illnesses was not always clearly defined, and cause and effect could not always be established, so he strongly supported the proposal by the Government members of IMEC to cover both. The Government member of France said that the principle was quite simple and, if workers were infected as a result

of their professional activities, they were entitled to compensation. Both “accident” and “disease” were used because different countries used different terms.

- 333.** The Employer Vice-Chairperson said that the matter still seemed very complex and asked whether a definitive decision had been reached by the ILO or other relevant international body as to whether HIV should be considered an occupational disease or accident. He wondered, for example, how to deal with a case where a worker might have contracted HIV outside work but claimed that it was due to an occupational injury. The Government member of Argentina sympathized with the question and said that an epidemiological approach was needed to assess occupational risk. He agreed with the Government member of France that the situation depended very much on the standards in each country. The Government member of Germany said that the text was aimed at people working in professions where they were at greater risk of exposure, such as health practitioners and medical laboratory technicians. The text did not introduce any new concepts but reflected current practice, as set out in many national lists of occupational diseases and the principles contained in Convention No. 121 and Recommendation No. 194. The Government member of France said that countries had regulations establishing criteria for dealing with claims. The Employer Vice-Chairperson said it was clear that there were different views on how to handle the issue and suggested that the text should be deleted until text could be drafted by medical experts. He was committed to occupational safety and health, but was concerned about the implications of a text that would open up rights to compensation. The Worker Vice-Chairperson said that he felt there had been consensus and coherence in the views expressed by various Government members and he opposed deleting the text. The Government member of Brazil said that, as an occupational health physician, she agreed with the opinion of other Committee members, but wished to add that it was not only medical staff who were exposed to risk of HIV at work, but others such as cleaners, ward attendants and paramedics. Protection for everyone should be based on universal precautions. The amendment was adopted as submitted.

Point 23

- 334.** The Employer Vice-Chairperson introduced his group’s amendment, which proposed replacing point 23 with the following text, including a change made orally: “Member States should, where necessary, promote income-generating opportunities for persons living with or affected by HIV/AIDS.” The Worker Vice-Chairperson suggested that this amendment be discussed at the same time as the amendment submitted by GRULAC Government members of the Committee on the same point. The Employer Vice-Chairperson agreed to try to merge the two and so proposed adding at the end of the text submitted the words “and promote the recruitment and retention in work of persons living with HIV/AIDS”. The Government member of Argentina, on behalf of GRULAC Government members of the Committee, agreed and expressed appreciation at the efforts being made to retain his group’s amendment. The Worker Vice-Chairperson agreed with the content, but proposed to reverse the order of the two points, as the most desirable option was to place or keep people in work. The text would read as follows: “Member States should promote the retention in work and recruitment of persons living with HIV/AIDS and, where necessary, promote income-generating opportunities for persons living with or affected by HIV/AIDS.” Agreeing with the basic ideas, the Government member of China expressed his view that the text should refer more clearly to employment promotion. The Employer Vice-Chairperson thought that the idea of recruitment and retention in work covered this. The Worker Vice-Chairperson said that the objective was the same in both cases. The amendment was adopted as amended.

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335. The Chairperson reminded the Committee that the next section, from points 24 and 27, dealt with privacy and confidentiality, and that it had been agreed to defer discussion of an amendment related to privacy from point 5(d), in particular whether or not to include reference to the ILO code of practice on the protection of workers' personal data, 1997. Consideration of a proposed amendment concerning the allocation of resources had also been deferred.

Point 24

336. Two amendments to this point had been withdrawn and referred to the Committee Drafting Committee. The point was adopted without further discussion.

Point 25

337. The Government member of Benin, on behalf of African group Government members of the Committee, introduced an amendment which proposed replacing point 25 with new text as follows: "HIV testing of workers should not endanger job security and confidentiality, and access to treatment should be made available if it becomes necessary." He stressed how important it was to make sure testing remained confidential and did not result in dismissal. The new text would also serve as an encouragement for voluntary testing. The Employer Vice-Chairperson voiced his support for the proposal, but also suggested merging it with the amendment proposed to this point by the Workers' group as they had common issues. The Worker Vice-Chairperson explained that his group's amendment included the ideas of the African group text, if they found it acceptable. The Government member of Canada, on behalf of Government members of IMEC, noted that the first part of point 25 had already been moved to point 17 and that the reference to access to treatment was covered under point 18. In order to focus on confidentiality and job security, and make the text smoother, she proposed the following subamendment: "The results of HIV testing should be confidential and should not endanger job security or opportunities for advancement." The African group and the Worker Vice-Chairperson agreed. The Employer Vice-Chairperson suggested making the text more complete by the insertion of the words "access to jobs" after the word "endanger". The Worker Vice-Chairperson and the African group supported this, as well as the Government member of France, on behalf of Government members of IMEC. The amendment was adopted as follows: "The results of HIV testing should be confidential and should not endanger access to jobs, job security or opportunities for advancement."

Point 26

338. The Government member of the United Kingdom, on behalf of Government members of IMEC, introduced an amendment to insert, after the words "themselves or others", the words "except in very specific cases defined by national legislation". He explained that this amendment under no circumstances meant that IMEC was in favour of mandatory testing. Confidentiality was an essential basis for measures taken to address HIV/AIDS. Rather, it sought to allow for disclosure of HIV status in very specific situations provided by law, such as medical personnel involved in exposure-prone medical procedures. This was intended to safeguard patients' right to safe medical care. The Worker Vice-Chairperson introduced a subamendment to add "and exceptional" after the word "specific"; to add "established in consultation with workers' and employers' organizations" after "national legislation"; and then a sub-subamendment to add "determined by reasons of occupational safety" after "very exceptional and specific cases"; and to add "established" after "legislation". The Government member of Argentina was

unclear about the role of consultation with regard to exceptional cases. The term suggested that these would be defined by national legislation, which was correct. He was not sure about how consultation was possible if it was not foreseen within the framework of national legislation.

- 339.** The Worker Vice-Chairperson pointed out that according to Article 4 of Convention No. 155, there should be consultation with the most representative employers' and workers' organizations on policy regarding occupational safety and health. A reference to consultation was necessary in order to be consistent. The Government member of the Bolivarian Republic of Venezuela supported the idea of consultation, but noted that in the legislation of many countries declaration of contagious disease was obligatory. This was a matter of public health, not only of occupational safety and health. As a result, consultation that was limited to the social partners was not appropriate in these circumstances. The point should define exceptional cases. The addition of consultations to the question made the text unclear. The Employer Vice-Chairperson had no major concerns with the amendment and subamendments. The Government member of the United Kingdom said that he understood the position of the Government members of Argentina and the Bolivarian Republic of Venezuela. Nonetheless, if the Workers' group felt strongly about including consultation, his delegation could accept the subamendment. The Worker Vice-Chairperson affirmed his desire to include the reference to consultation. The Employer Vice-Chairperson reiterated his support for the amendment as amended, and it was adopted.
- 340.** The Employer Vice-Chairperson introduced an amendment which would delete at the end of the point "and any subsequent revisions". He explained that it was important to refer to existing texts and not speculate about future ones. The Government member of France, on behalf of Government members of IMEC, supported the amendment. The Worker Vice-Chairperson accepted the amendment and it was adopted.
- 341.** The Worker Vice-Chairperson introduced an amendment which would, at the end of the point, add "and other relevant international data protection standards". The amendment was supported by the Employers' group and the Government member of France, on behalf of Government members of IMEC, and was adopted. As a consequence, a similar amendment that had been tabled by the Workers' group to point 5(d), which remained pending, was withdrawn.

Point 27

- 342.** The Government member of Canada introduced an amendment to delete the words "are not subject to compulsory HIV testing, and" after the word "employment", which would ensure that point 27 focused on the important principle that migrant workers should not be excluded from migration on the basis of their real or perceived HIV status. The Government member of the Republic of Korea; the Government member of Benin, on behalf of African group Government members of the Committee; and the Employer Vice-Chairperson expressed their support for the amendment. The Worker Vice-Chairperson said that his group opposed the amendment, since it did not explicitly discourage mandatory testing of migrants. The text should protect all workers. The Government member of Australia said that while he understood the Workers' concerns, the proposed amendment was intended to remove duplication in the text. Point 24 had been clearly drafted to cover all workers, including migrants. Point 27 should focus on the principle that when HIV testing did occur, migrant workers should not be excluded from migration on the basis of their real or perceived HIV status. The amendment had received sufficient support from the Committee. The amendment was adopted.

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343. The Government member of the Dominican Republic withdrew an amendment which sought to add a new point after point 27 to read “Members should reach agreement with the countries of origin of migrants on legal aspects relating to migration and HIV/AIDS, for the benefit of workers.” A representative of the Secretariat informed the Committee that the amendment had been wrongly presented as replacing point 27, and apologized for the error.

Point 28

344. The Government member of the Bolivarian Republic of Venezuela introduced an amendment to add a new point before point 28 to read: “HIV is not transmitted by casual physical contact and a person living with HIV should not be considered a workplace hazard. In order to promote harmonious relations in the workplace, it is necessary to raise awareness in this regard and guarantee that prevention, safety and health measures are taken in accordance with the relevant standards, when there is a real possibility of exposure at work.” The new point was intended to remove prejudices linked to the idea that HIV was transmitted by casual physical contact and to emphasize that people living with HIV/AIDS should not be considered a workplace hazard. Awareness raising in the workplace was particularly important, and safety and health measures should be taken in line with the relevant standards. Such an addition to the text would directly address the stigmatization and discrimination of workers living with HIV/AIDS. The Government member of Australia, on behalf of Government members of IMEC, supported the amendment, but wished to insert the words “the presence of” between “and” and “a person” in the first sentence and replace “harmonious” by “good” in the second sentence. The Government member of the Bolivarian Republic of Venezuela agreed with the proposed subamendments. The Worker Vice-Chairperson said that while his group supported the amendment, he wondered whether the new point would be better placed with other points on discrimination. The Government member of Argentina said that the amendment was intended to reduce discrimination and would be best placed between points 27 and 28. The Employer Vice-Chairperson said that his group supported the amendment, as subamended, and considered that it constituted a good introduction and should therefore remain between points 27 and 28, and should serve as a chapeau to point 28. The Government member of France supported the suggestion made by the Employer members. The amendment was adopted as amended.
345. The Government member of Japan, on behalf of Government members of IMEC, introduced an amendment to replace the word “provisions” by “principles”, since any provisions of ILO instruments should be mentioned specifically. While only States parties to ILO Conventions were bound by their provisions, all States must respect the principles of ILO standards. The term “principles” was therefore more inclusive than “provisions”. Responding to a question posed by the Government member of Benin, on behalf of African group Government members of the Committee, regarding the difference between “provisions” and “principles”, a representative of the Legal Adviser explained that “provisions” referred to articles and paragraphs of ILO Conventions and Recommendations, respectively, whereas “principles” referred to broader concepts in such instruments. The Government member of Benin, on behalf of African group Government members of the Committee, supported the amendment. The Worker Vice-Chairperson proposed to use the words “provisions and principles” in order to cater to member States which had ratified the Convention and those which had not. The Government member of France, on behalf of Government members of IMEC, proposed the words “provisions or principles”. The Worker Vice-Chairperson agreed and the amendment was adopted as amended.

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- 346.** The Government member of Japan, on behalf of Government members of IMEC, introduced an amendment which would, at the end, add “, including joint ILO/WHO guidance documents”. He argued that this was necessary because it was useful to make reference to specific ILO documents. The Government member of Benin, on behalf of African group Government members of the Committee, did not agree that the text should be limited only to ILO/WHO guidance documents when there were other relevant documents from other organizations. The Government member of France, on behalf of Government members of IMEC, reassured the Government member of Benin that the amendment proposed by IMEC would not constitute a restriction, but would only highlight a specific category of documents. The Government member of the Bolivarian Republic of Venezuela introduced a subamendment which would, at the end, replace “including” with “such as”. This was supported by the Government member of the Czech Republic; the Government member of Benin, on behalf of African group Government members of the Committee; and the Employer and Worker Vice-Chairpersons. The amendment was adopted as amended.
- 347.** The Worker Vice-Chairperson introduced an amendment, with further changes as he presented it, which would read as follows: “Workers’ right to health and safety at work should include standard precautions, post-exposure prophylaxis and other safety measures to minimize the risk of contracting the HIV virus by certain occupations, such as health sector workers.” The Employer Vice-Chairperson supported the amendment. The Government member of France, on behalf of Government members of IMEC, expressed some doubts about the proposed text. First, he stated that post-exposure prophylaxis was not a measure to prevent contracting HIV, but a means to deal with it after exposure. Second, the mention of workers’ rights at the beginning of the text brought difficult and broad issues into the point which diluted its focus. In response to the first statement, the Government member of Argentina explained that post-exposure prophylaxis did not imply a diagnosis of HIV, but was an important prevention measure in case of exposure, whether or not a person actually contracted HIV. To ensure greater consensus, the Worker Vice-Chairperson proposed revising the amendment to read: “HIV-related health and safety measures at work should include standard precautions, post-exposure prophylaxis and other safety measures to minimize the risk of contracting the HIV virus by certain occupations, such as health sector workers.” The Government member of France, on behalf of Government members of IMEC, while acknowledging the explanation made by the Government member of Argentina, supported the text. The amendment was adopted as amended.
- 348.** At this point in the discussion, the Committee returned to an amendment to point 15 whose examination had been deferred to the discussion of point 28. The Worker Vice-Chairperson introduced a revised version of an amendment which would introduce a new point after point 28 as follows: “In case of occupational disease or accident, workers should be entitled to compensation in accordance with Recommendation No. 194 and Convention No. 18, including the cost of highly active antiretroviral therapy and the treatment of HIV-related illnesses.” The Employer Vice-Chairperson recalled that the Committee had already agreed, following a lengthy discussion, to replace point 22 by a text proposed by the Government members of IMEC on occupational accidents and illnesses. That point covered the issue of compensation and he therefore urged the Worker members to withdraw the amendment. The Government member of the Czech Republic, on behalf of Government members of IMEC and Government members of Member States of the European Union, said that she agreed with the Employer members’ position. The Worker Vice-Chairperson withdrew the amendment.

Point 29

349. The Worker Vice-Chairperson introduced an amendment to insert “joint WHO/ILO guidelines on HIV/AIDS for health services” after the reference to the Occupational Health Services Recommendation, 1985 (No. 171) in order to complete the references. The Employer Vice-Chairperson thanked the Worker members for bringing this important document to his attention and he said that he supported the amendment, as did the Government member of France, on behalf of Government members of IMEC, and the Government member of Benin, on behalf of African group Government members of the Committee. The amendment was adopted. Other amendments to the same point were withdrawn.

Point 30

350. The Government member of Argentina, on behalf of GRULAC Government members of the Committee, introduced an amendment to replace the words “the risk of child labourers contracting HIV” by “the vulnerability of children to HIV”. He explained that the intention was simply to have a broader formulation which covered impact on children as well as exposure to risk of transmission. The Government member of Benin, on behalf of African group Government members of the Committee, expressed his group’s support. The Government member of France, on behalf of Government members of IMEC, preferred to retain the original text, since it provided for specific protection measures. The Worker Vice-Chairperson supported the amendment, as did the Employer Vice-Chairperson who feared that the original wording might appear to condone child labour. The amendment was adopted.

Point 31

351. The Employer Vice-Chairperson introduced an amendment which proposed replacing the first four words of the point “Measures should be taken” by “Member States should take measures”, with the intention of assigning responsibility and encouraging action. The Worker Vice-Chairperson expressed his support, while the Government member of France, on behalf of Government members of IMEC, expressed a neutral position, requesting the Committee Drafting Committee to ensure that wherever the term “Member States” was used it was made clear who this covered. The amendment was adopted.
352. The Worker Vice-Chairperson introduced an amendment from his group which he orally revised, proposing that the measures taken to protect young persons against HIV should include “sex education without prejudice, in particular”. The Employer Vice-Chairperson questioned the use of the term “without prejudice” and the Government member of the United Kingdom suggested using the word “objective” instead. The Employer and Worker Vice-Chairpersons agreed, and the amendment was adopted as follows: “These should include objective sex education, in particular.” A representative of the Secretariat apologized for the fact that this amendment had been wrongly attributed in an earlier version.
353. The Worker Vice-Chairperson introduced an amendment which sought to add, at the end of the point, the sentence: “Special measures should be taken to protect children and young persons against sexual abuse and sex work.” The Employer Vice-Chairperson and the Government member of France, on behalf of Government members of IMEC, both indicated their support, but requested the Committee Drafting Committee to review the exact wording. The Government member of Benin, on behalf of African group

Government members of the Committee, expressed his support. The amendment was adopted.

354. The Chairperson said that the discussion on child labour was particularly pertinent that day, since it was the World Day against Child Labour.

Point 32(a)

355. The Worker Vice-Chairperson introduced an amendment to delete the words “one or a combination of” from point 32(a) on the means to give effect to the national policies and programmes. The Employer Vice-Chairperson did not support the amendment because he thought that States and enterprises should have the right to choose the most appropriate means to use in implementing the policies and programmes. The Worker Vice-Chairperson said that, in the interests of progress, he would withdraw the amendment, but hoped it might receive more support in the future.

Point 32(a)(ii)

356. The Employer Vice-Chairperson introduced an amendment which proposed replacing the words “collective agreements” by “bipartite and tripartite agreements”. The aim was to broaden the text and provide more options for the social partners to make agreements at different levels, sometimes including government, and with varying degrees of formality and legal application. The Worker Vice-Chairperson thought it was important to use standard ILO language, but was prepared to add a reference to tripartite agreements. The Employer Vice-Chairperson said that he could not agree to leave the word “collective”. The Government member of France, on behalf of Government members of IMEC, said that he was surprised that the notion of collective bargaining, which was so familiar to the ILO, had become contentious. His group was in favour of retaining the original text. The Government member of Benin, on behalf of African group Government members of the Committee, said that the term “collective agreement” was widely used in most countries at various levels, including the workplace and the sectoral level. He felt it should be retained. The Worker Vice-Chairperson said that the Worker members wished to remain consistent with ILO language and instruments; in light of the discussions, he would be prepared to withdraw the subamendment. The Employer Vice-Chairperson acknowledged that the amendment had not received support, but requested the record to show the Employer members’ strong opposition to the wording retained and preference for the language in the amendment submitted by his group.

Point 32(b)

357. The Worker Vice-Chairperson introduced an amendment to add a new clause after point 32(b) which would read: “provide for an easily accessible complaint mechanism for breaches of workers’ right to privacy and confidentiality and other protection under this instrument;”. The Employer Vice-Chairperson supported the idea of a complaints mechanism but suggested some changes to the language, as follows: “provide for measures to address breaches of privacy and confidentiality and other protection afforded under this instrument;”. The Government member of Australia, on behalf of Government members of IMEC, accepted the idea but thought that both amendments proposed by the Workers’ group on complaints procedures and sanctions should be merged. He also found it necessary to insert the words “in accordance with national laws and regulations” in order to recognize that many countries already had rules or mechanisms in place that covered such issues or could be adapted to do so.

358. The Employer Vice-Chairperson noted that his group's subamendment had sought to integrate concepts from another amendment submitted by Worker members. The Worker Vice-Chairperson wanted to make sure that the point addressed countries that did not have any such mechanism as well as those that did. The Government member of Australia, on behalf of Government members of IMEC, suggested adding "where they exist" in order to make it clear that not all countries had adequate measures in place. The Worker Vice-Chairperson felt that this suggested no obligations on Members to take action. The Government member of France suggested moving the phrase on national labour laws to later in the clause so as to give more emphasis to the need for States to take measures. The Worker Vice-Chairperson proposed the following formulation: "provide measures in national laws and regulations to address breaches of privacy and confidentiality and other protection afforded under this instrument;". The Employer Vice-Chairperson agreed, as did the Government member of Australia, on behalf of Government members of IMEC. The amendment was adopted as amended. Other amendments to this clause were withdrawn.

Point 32(d)

359. The Worker Vice-Chairperson introduced an amendment which would replace point 32(d) by the following text: "encourage national and international enterprises to implement the national policy and programme with the participation of employers' and workers' organizations, including enterprises operating in export processing zones, as well as small and medium-sized enterprises, and through their supply chains and distribution networks, by the use of incentives when appropriate;". The Employer Vice-Chairperson had no strong objection to the substance though he felt the text was rather long and that "all enterprises" might have been sufficient. The Government member of the United Kingdom, on behalf of Government members of IMEC, agreed that the text was unnecessarily long and also objected to the use of the word "incentives" used in relation to international enterprises, which had possible implications for trade. He introduced a subamendment to read: "encourage all enterprises to implement the national policies and programmes with the participation of employers' and workers' organizations, including enterprises operating in export processing zones, and through their supply chains and distribution networks;". This was supported by the Government member of Benin, on behalf of African group Government members of the Committee; the Government member of Argentina, on behalf of GRULAC Government members of the Committee; and the Employer Vice-Chairperson. The Worker Vice-Chairperson agreed with the proposed subamendment and the amendment was adopted as amended.

Point 32(f)

360. The Worker Vice-Chairperson introduced an amendment which would replace point 32(f) by the following text: "be formulated, implemented and regularly reviewed and updated, taking into account gender mainstreaming and the most recent scientific and social developments;". The Employer Vice-Chairperson wondered if it was useful to specify gender mainstreaming at this point given that gender had been established earlier in the text as a key priority, including in the general principles. He did not object, however, to the amendment. The Worker Vice-Chairperson explained that his group felt it necessary to keep mentioning gender, especially in the context of possible revisions to the policies and programmes. The amendment was supported by the Employer Vice-Chairperson; the Government member of Benin, on behalf of African group Government members of the Committee; and the Government member of France, on behalf of Government members of IMEC, who noted that his group would have preferred a direct link between "revised and updated" and "taking account of the most recent scientific and social developments;". The

Worker Vice-Chairperson suggested that this aspect of the text be referred to the Committee Drafting Committee and the amendment was adopted.

Point 32(g)

- 361.** The Employer Vice-Chairperson introduced an amendment which sought to broaden the scope of and opportunities for multisectoral coordination, as follows: “be coordinated with, and not limited to, national labour, social security, and health systems”. This was supported by the Worker Vice-Chairperson; the Government member of Argentina, on behalf of GRULAC Government members of the Committee; and the Government member of Benin, on behalf of African group Government members of the Committee. The amendment was adopted.
- 362.** The Worker Vice-Chairperson introduced the amendment which would add a new clause after point 32(g), as follows: “ensure that Members allocate reasonable budgetary resources for implementation, taking into account national conditions;”. The Employer Vice-Chairperson asked to hear the views of Government members as they had the responsibility for allocating resources. The Government member of the Czech Republic, on behalf of Government members of IMEC and Government members of Member States of the European Union, did not support the amendment for the reasons stated in earlier discussions, in particular that the issue of resource allocation was outside the mandate of the ILO. The Government member of Benin, on behalf of African group Government members of the Committee, did not support the amendment, since he felt the issue had already been dealt with and excluded from the draft Conclusions. The Employer Vice-Chairperson did not support the amendment. The Worker Vice-Chairperson commented that any mention of money caused excessive concerns among governments. The Worker members were not asking governments to do anything that was not part of their normal business, which was deciding on where to allocate resources. The words “taking into account national conditions” allowed flexibility to governments, and he failed to understand why any Member that supported the proposed instrument could object to a mention of the budgetary implications of implementation. He reminded the Committee that without resources, it would be impossible to implement the recommendations being made. If the proposed amendment was not able to gain the necessary support, he would withdraw it, but requested the record to show the deep concern of the Workers’ group that there might be inadequate commitment to the concrete implementation of the instrument, once adopted.
- 363.** The Government member of the United Kingdom said that it was unheard of that international instruments should make budgetary recommendations and the Committee should not create a precedent. At the same time, he understood how strongly the Workers’ group felt about the need for commitment to implementation, so he proposed a compromise wording which would replace the words “allocate reasonable budgetary resources” by the words “make reasonable provisions”. If this was accepted, the United Kingdom could support the amendment. This subamendment was seconded by the Government member of Switzerland. The Worker Vice-Chairperson agreed that this was an improvement but wanted to remove the word “reasonable”. The Government member of Benin, on behalf of African group Government members of the Committee, proposed an alternative subamendment which would replace “allocate reasonable budgetary resources” by the words “take adequate measures”. The Government member of Brazil said that her country was allocating resources to HIV/AIDS programmes, even in the face of the economic crisis, and that her Government would feel encouraged by the inclusion of a direct reference to the allocation of resources. She compared the fight against HIV/AIDS to a war, and argued that it was essential to allocate the resources needed to win.

364. The Government member of France thought that the Committee should focus on the subamendment proposed by the Government member of the United Kingdom, which had his support. Indeed, the Government member of France did not have a problem with the original amendment, especially in view of the substantial resources his Government committed to HIV/AIDS, but he could understand the feelings of other member States. He endorsed the Government member of the United Kingdom's proposal, as this reconciled the wishes of the Worker members with the legal constraints affecting governments. The Government member of Australia voiced his support for these comments and for the subamendment proposed by the Government member of the United Kingdom. The Government of the United Kingdom mentioned his own Government's substantial commitments to tackling HIV/AIDS, but stated that his Government would not discuss its budgetary sovereignty in this form. The Employer Vice-Chairperson acknowledged the fact that all Government members of the Committee, as well as many enterprises, had no doubt allocated resources to HIV/AIDS and demonstrated their commitment to the issue by their presence in the Committee. He supported the proposal by the Government member of the United Kingdom. The Government member of Senegal challenged the view that ILO instruments did not mention the allocation of resources, pointing to some occupational safety and health instruments with which he was familiar as a labour inspector. He reminded the Committee that the instrument under discussion would only provide guidance and would not be binding. The Worker Vice-Chairperson expressed his appreciation for the commitment shown by Committee members in continuing to discuss the matter of resources and accepted the subamendment proposed by the Government member of the United Kingdom. The amendment was adopted as amended, to read: "ensure that Members make adequate provisions for implementation, taking into account national conditions;"

365. The Worker Vice-Chairperson introduced an amendment to point 32(g) to insert a new clause that would read: "include distribution policy measures in order to enable the improvement of the socio-economic circumstances of workers, and their dependants, affected by HIV/AIDS". The aim of the amendment was to recognize the close link between the unequal distribution of wealth and poor health outcomes. The Government member of France, on behalf of Government members of IMEC, said that although they shared the concerns of the Worker members, the most that it was possible to do within the terms of the proposed instrument had already been covered in an earlier provision encouraging measures to promote income-generating opportunities. Going beyond that to refer to a redistribution policy was entering the realm of state fiscal policies, which was not something that could be addressed in an ILO text. The Employer Vice-Chairperson said that he did not support the amendment in its current form. The Worker Vice-Chairperson said that there were many ILO texts that made reference to distribution and fairness, so she was surprised to hear the view that it was impossible to include such a reference here. The issue of fairness in distribution policy was being discussed in the Committee of the Whole on Crisis Responses, and a resolution and statements were going to be adopted on the issue. She would like to hear the views of other Governments as to whether it was impossible to discuss fairness in connection with HIV/AIDS policy. The Government member of France, on behalf of Government members of IMEC, stressed that although the Government members of IMEC had their own redistribution policies, it was necessary to make a distinction among ILO products. As a group, IMEC had often supported proposals of that kind, but only in connection with declarations or similar documents, such as the 2008 ILO Declaration on Social Justice for a Fair Globalization. The current task before the Committee was to draft an international labour standard and it was not appropriate to use the same language as that used in a declaration. The Worker Vice-Chairperson expressed her disappointment at the lack of support for the amendment and withdrew it.

Point 33

- 366.** The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union and Government members of IMEC, introduced an amendment to add, in the heading above point 33, after the word “training”, the words “information and consultation”. The aim of the amendment was to provide a more precise description of what was contained in that section. The Government member of Argentina, on behalf of GRULAC Government members of the Committee, supported the amendment. The Employer Vice-Chairperson also supported it. The Worker Vice-Chairperson said that she supported the amendment and proposed the inclusion of the word “education” after the word “training”. The sponsor of the amendment agreed with the subamendment and the Employer Vice-Chairperson supported it as well noting, however, that “education” did not appear in the text. The amendment was adopted as amended.
- 367.** The Government member of Japan withdrew an amendment which had been motivated by uncertainty about the word “training”, which when translated into Japanese had a more legal meaning. He requested the views of the Office with regard to the meaning of the word “training” in the context of the draft Conclusions.
- 368.** The Worker Vice-Chairperson introduced an amendment to insert, after the words “including migrant workers”, the words “, young workers and apprentices”. The aim was to include two groups of workers who often fell outside the scope of definitions of workers. The Employer Vice-Chairperson said that he would welcome further clarification as to the motivation behind the amendment. Reference was already made in the text to newly engaged or inexperienced workers; he asked whether that was not sufficient. The Worker Vice-Chairperson explained that apprentices learning a specific craft were regularly excluded from the definition of workers and also from the definition of unemployed persons. Young workers on training schemes were also a special category. It was important to refer to those groups in the draft Conclusions. The Government member of Brazil said that she strongly supported the amendment. She made reference to a programme in her country to promote apprenticeships for young people aged between 14 and 24. The Government member of Benin, on behalf of African group Government members of the Committee, also supported the amendment. The Employers’ group at this point expressed support for the amendment, which was then adopted.
- 369.** The Worker Vice-Chairperson introduced an amendment to insert before the words “gender-sensitive” the words “culturally-sensitive and”. She explained that training programmes very often failed because they were not adapted to a learner’s culture. The Government member of France, on behalf of Government members of IMEC, suggested that the words “culturally and gender sensitive” could be used, in line with the language used in other parts of the text. The Workers’ group agreed with the subamendment. The Government member of Benin, on behalf of African group Government members of the Committee, supported the proposal, as did the Employer Vice-Chairperson. The amendment was adopted as amended.
- 370.** The Government member of the United Kingdom, on behalf of Government members of IMEC, introduced an amendment to replace the words “of the working environment” by the words “for the workforce”. The aim was to broaden the scope of the text. It was felt that a workplace could be static, but the word “workforce” applied to all workers, wherever they were. The Employer and Worker Vice-Chairpersons agreed with the amendment, and it was adopted and referred to the Committee Drafting Committee for review.

Point 34

- 371.** The Government member of Austria, on behalf of Government members of IMEC, introduced an amendment to replace point 34 by the following text: “Up to date scientific and socio-economic information and, where appropriate, training on HIV/AIDS should be available to employers, to managers and to workers’ representatives, in order to assist them in taking appropriate measures in the workplace.” She said that the text intended to separate the concepts of training and information. It would be relatively easy for many countries to provide information using the Internet, television and other channels of communication; however, more effort would be required to provide training to all employers, managers and workers’ representatives, and that might be particularly difficult for small firms. The Employer Vice-Chairperson said that it was not clear who would be responsible for taking the necessary action. He therefore proposed to add the words “member States” at the beginning of the sentence, suggesting that this would make governments responsible for providing the necessary information or training.
- 372.** The Worker Vice-Chairperson said that member States were not the only ones responsible for providing information and training. The Occupational Safety and Health Convention, 1981 (No. 155), which had been ratified by 54 member States, and its accompanying Recommendation (No. 164), placed specific responsibilities on employers with regard to providing information to workers’ representatives. It might be inappropriate to refer to member States in the current context, as this might be in contradiction with provisions of other instruments. After the word “training”, the Worker members sought to insert the word “education”. The Government member of France, on behalf of Government members of IMEC, said that he shared the views of the Worker members. The beginning of the sentence had been intentionally left vague so that it did not place responsibility only on member States. He suggested that the original wording of the amendment be retained. The Employer Vice-Chairperson withdrew his group’s subamendment.
- 373.** The Government member of the Dominican Republic suggested that the words “Member States and national HIV/AIDS programmes” could be used at the beginning of the sentence. This proposal was not supported by any other member of the Committee. The amendment, as subamended by the Workers’ group, was adopted and referred to the Committee Drafting Committee for finalization.
- 374.** The Government member of Finland, on behalf of Government members of Member States of the European Union and Government members of IMEC, introduced an amendment that would, after point 34, add a new point as follows: “All workers should receive training in infection control procedures in the context of workplace accidents and first aid. Workers who come into contact with human blood, blood products and other body fluids should receive additional training in prevention, reporting procedures and post-exposure prophylaxis.” He explained that the amendment more specifically addressed occupational risks and training. Training was an important way to combat occupational injuries, including HIV-related ones. The Government member of Benin, on behalf of African group Government members of the Committee, could agree on the amendment, but with a subamendment to remove “reporting procedures”, as they implied additional reporting requirements. The Government member of France reassured the Committee that this term did not refer to an additional bureaucratic procedure, but to national procedures for reporting accidents and illnesses at work. Such reporting was essential in developing adequate responses to problems. The Government member of Belgium stressed the importance of reporting procedures, which involved listing incidents and accidents, as these were critical for processing workers’ compensation. Without this list, good prevention policies could not be established. Workers also needed to know what to do in case of accidents. To respond to the concerns expressed by the Government members of the African group, the Government member of France suggested replacing “reporting

procedures” by “registration”. This was supported by the Government member of Argentina, who stressed the importance of registering accidents to improve prevention. The Employer Vice-Chairperson also supported the amendment as subamended. The Worker Vice-Chairperson suggested replacing “registration” by “registration procedures”. This proposal was accepted and the amendment was adopted as amended.

Point 35

- 375.** The Government member of the United Kingdom, on behalf of Government members of IMEC, introduced an amendment to replace the text of point 35 by: “Workers should have the right to be informed and consulted on measures taken to implement policies and programmes related to HIV/AIDS and to participate in workplace inspections in accordance with national practice.” He explained that the main point of the amendment was to insert “related to HIV/AIDS” and to delete “to receive appropriate training”, as this was already addressed in the previous point. The Worker Vice-Chairperson introduced a subamendment to add “and their representatives” after “workers”. The Government member of the United Kingdom, on behalf of Government members of IMEC, agreed to the subamendment. The Government member of Trinidad and Tobago, on behalf of GRULAC Government members of the Committee and the Employer and Worker Vice-Chairpersons agreed. The amendment was adopted as amended.

Point 37

- 376.** The Worker Vice-Chairperson proposed an amendment to replace the words “where appropriate, in order” by “in order to meet joint ILO/WHO guidelines on HIV/AIDS for health services;”. She stated that the amendment was to make the text consistent with previous amendments. The Employer Vice-Chairperson supported the amendment. The Government member of France, on behalf of Government members of IMEC, pointed out that this phrase appeared to reduce the scope of action under point 37 to the joint ILO/WHO guidelines. The Government member of Trinidad and Tobago, on behalf of GRULAC Government members of the Committee, supported the amendment, as it added measures and standards and therefore made the clause stronger. The Government member of France, on behalf of Government members of IMEC, suggested replacing “in order to meet” with “in meeting” so as to not reduce the scope of application. The Government member of Benin, on behalf of African group Government members of the Committee, supported the suggestion, noting that there were many other guidelines from other organizations and the text should not limit itself to one. Following further refinements suggested by the Government member of the United Kingdom, the Worker Vice-Chairperson agreed to a formulation as follows: “Public health systems should be strengthened, and follow joint ILO/WHO guidelines on HIV/AIDS for health services, in order to ensure greater access to prevention, treatment, care and support, and to reduce the additional strain on public services, particularly on health workers, caused by HIV/AIDS.” The amendment was adopted as amended.

Point 38

- 377.** An amendment to add the words “at the workplace” at the end of the point was introduced by the Employer Vice-Chairperson and supported by the Worker Vice-Chairperson; the Government member of Trinidad and Tobago, on behalf of GRULAC Government members of the Committee; and the Government member of Benin, on behalf of African group Government members of the Committee. The amendment was adopted.

Point 39

378. The Worker Vice-Chairperson introduced an amendment to add at the end of the point the following sentence: “This should be gender sensitive and sensitive to all other targeted groups.” She also proposed to add “and therefore should include specific information on the risk of transmission by men to men, use of drug injections, wife inheritance and polygamous practices.” It was necessary to list these groups so that they would be provided with specific information that was relevant to them. The Employer Vice-Chairperson pointed out that his group had consistently opposed identification of specific groups in the document. It was unclear how some of these groups fit into the social dialogue heading of this section, and how such groups could be targeted without asking them to identify themselves. If they were going to do that, it should be done in the definitions and would therefore be part of the whole document. He supported, however, the original amendment proposed by the Worker members.
379. The Government member of the Czech Republic, on behalf of Government members of Member States of the European Union and Government members of IMEC, also supported the original amendment but not the additional text proposed. Employers’ and workers’ organizations were not necessarily the relevant partners for consultation concerning these groups, as they had nothing to do with the workplace. The Government member of Argentina, on behalf of GRULAC Government members of the Committee, and the Government member of Benin, on behalf of African group Government members of the Committee, also agreed with the original amendment but not the oral revision. The Worker Vice-Chairperson withdrew her revision of the amendment. She noted that there had been agreement on the importance of reaching these groups and she particularly acknowledged the Employer members’ suggestion to add such groups to the definitions. She would address target groups next year. The original amendment was adopted.

Point 40

380. No amendments were discussed, and the point was adopted.

Point 41

381. No amendments were submitted, and the point was adopted.

Point 42

382. No amendments were discussed, and the point was adopted.

Point 43

383. The Worker Vice-Chairperson withdrew an amendment which sought to replace the point by the following text: “Members should regularly and periodically review and update, at the national level, the actions taken to implement the policy and programme.” She referred the matter to the Committee Drafting Committee.
384. The Employer Vice-Chairperson introduced an amendment which would, at the end of the point, add a new sentence as follows: “A competent authority should be responsible for this regular and periodic review.” He referred to earlier discussions in the Committee where the words “Members” or “Member States” had been replaced with the words “The

competent authority of the member States”. It was not the State itself that would be responsible for regular and period reviews, but the competent authority of the State. The Government member of Trinidad and Tobago, on behalf of GRULAC Government members of the Committee, supported the amendment and asked that it be referred to the Committee Drafting Committee. The Worker Vice-Chairperson said that she was surprised to hear that some Government members supported the subamendment proposed by the Employer members, since it was the Members that were responsible for implementing the provisions of the proposed instrument and not a “competent authority”. The Employer Vice-Chairperson responded by proposing to revise the beginning of his group’s amendment to read: “A competent authority of the member State should be responsible.” The Worker Vice-Chairperson suggested replacing “A competent authority” with “The competent authority”. A discussion ensued about the possibility of adding further proposed amendments tabled for point 44 to the text of point 43. Since no agreement was reached on this question, the Employer Vice-Chairperson withdrew the amendment, so as to allow for discussion of point 44.

Point 44

- 385.** The Employer Vice-Chairperson withdrew an amendment which proposed to delete the entire point.
- 386.** The Government member of Switzerland, on behalf of Government members of IMEC, introduced an amendment, which he revised during his intervention, to replace point 44 by: “A regular review of action taken on the basis of the instrument should be given consideration and could be included in national reports to UNAIDS and other relevant international reporting instruments.” He said that the rationale was to ensure that information stemming from the proposed instrument would be better reflected in other international frameworks and indicators for reporting on HIV/AIDS, which could be improved by including information from ILO reports concerning the world of work. The Government member of Brazil, on behalf of GRULAC Government members of the Committee, said she strongly supported the amendment.
- 387.** The Government member of Benin, on behalf of African group Government members of the Committee, asked whether Government members would be reporting to the ILO or to UNAIDS, or to another body. The Government member of France reassured the Committee that the follow-up to the proposed Recommendation on HIV/AIDS and the world of work would be consistent with established ILO reporting procedures. It simply sought to integrate reporting under the instrument into the reporting that States were required to do with UNAIDS and the United Nations General Assembly Special Session Declaration of Commitment on HIV/AIDS, 2001 (UNGASS). This would make better use of the information already gathered on implementation of the new Recommendation. The Government member of Benin, on behalf of African group Government members of the Committee, said that further refinements in the text might be necessary to reflect this idea, but in principle he would support it. The Worker Vice-Chairperson said that Worker members could not support the amendment or proposed subamendment. While there should be collaboration and coordination of efforts among multilateral organizations, reporting on ILO Recommendations should only be for and to the ILO, as this was an ILO instrument. The Employer Vice-Chairperson had some sympathy with the proposed amendment but proposed it be further subamended by adding the words “a competent authority of the member State”.
- 388.** The Government member of Australia clarified that as the proposed instrument most likely would be an ILO Recommendation, it would fall under the normal supervisory mechanism of the ILO. A reporting mechanism was already in place under article 19 of the ILO

Constitution. What Government members of IMEC were seeking to do was to add value to a sentence in the draft Conclusions that was rather vague. UNAIDS was a United Nations organization of which the ILO was a co-sponsor. It would be entirely appropriate that an ILO instrument should reflect the option that information gathered through ILO reports could be submitted to and used by UNAIDS. It would add value to the work of the ILO and its constituents if information about HIV/AIDS and the world of work were included in the reporting frameworks of UNAIDS and other international reporting instruments.

- 389.** The Government member of France added that a Recommendation was subject to specific regular reporting mechanisms as stipulated in the ILO Constitution; indeed these mechanisms were part of what defined an international labour standard. The amendment proposed by the Government members of IMEC would take nothing away from ILO constituents but would add value to other multilateral reporting frameworks by submitting information from the ILO concerning HIV/AIDS and the world of work. He found it bewildering that the Worker members, who had consistently tried to broaden the focus of the proposed instrument throughout the discussions in the Committee, would now seek to limit its value added. The Worker Vice-Chairperson responded that UNAIDS was not tripartite and requested clarification on the Office's reporting duties towards UNAIDS.
- 390.** The representative of the Secretary-General described the ILO's mandate in the field of HIV/AIDS, which was the world of work and private sector mobilization. She explained that the world of work, as well as the ILO's role, were not adequately reflected in other international frameworks. For example, States regularly provided information under the 2001 UNGASS Declaration of Commitment on HIV/AIDS, but most of the time this information did not reflect the entire response in the world of work, mainly due to the fact that information was often sourced from ministries of health. Moreover, the UNGASS indicators did not adequately reflect the world of work. The ILO did regularly report to UNAIDS on projects and areas of ILO concern.
- 391.** The Government member of Benin, on behalf of African group Government members of the Committee, wanted to revise the proposal from the Government members of IMEC with a specific reference to ILO reporting procedures. The Government member of France, on behalf of Government members of IMEC, underlined that the proposed amendment would not replace the normal reporting duties under article 19 of the ILO's Constitution, but would broaden the scope to include other reporting mechanisms that could be included. He explained that this would allow the ILO's work on dealing with HIV/AIDS and the world of work to be recognized in a more global way. The Employer Vice-Chairperson supported the amendment and proposed a subamendment to add at the beginning of the text "In addition to existing regular reporting mechanisms". The Worker Vice-Chairperson supported this proposal and suggested using the words "In addition to reporting under article 19 of the Constitution". The Government member of Argentina, on behalf of GRULAC Government members of the Committee, supported this proposal. The amendment was adopted as amended.
- 392.** The Committee then examined three amendments submitted by the Workers' group.
- 393.** The first amendment proposed to add a new point after 44 as follows: "The International Labour Conference should call for the addition of real or perceived HIV status as a prohibited discrimination ground under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)."
- 394.** The second amendment proposed to add a new point after 44 as follows: "The issue of HIV/AIDS should be mainstreamed in discussions of the International Labour Conference on the follow up to the ILO Declaration on Social Justice for a Fair Globalization, as the

consequences of the pandemic are linked to the fundamental rights of the world of work, employment, social protection and social dialogue.”

- 395.** The third proposed amendment was to add a new point after 44 as follows: “The ILO should monitor and evaluate the incorporation of the principles in this Recommendation into national legislation and policies. The Governing Body should prepare for the transformation of this Recommendation into a Convention before 2015 if substantial parts of the population remain excluded from the principles and rights contained in this Recommendation.”
- 396.** The Legal Adviser of the ILO took the floor to explain that the language contained in these three amendments proposed by the Workers’ group was not usual for international labour standards, but could be used in a resolution accompanying the instrument which might be adopted next year. Such resolutions were not binding on member States, but gave instructions to the Organization and the Office with respect to the instrument adopted. The Worker Vice-Chairperson noted that the three proposed amendments would not be discussed, but asked for them to be reflected in the Committee’s report as the basis for a future resolution.
- 397.** The Worker Vice-Chairperson then proposed to add at the beginning of point 44 the sentence: “The ILO should monitor and evaluate the incorporation of the principles in this Recommendation into national legislation and policies.” The Employer Vice-Chairperson stated that the Worker members’ proposal was already covered in article 19 of the Constitution of the ILO. The Worker Vice-Chairperson explained that there was value added to this proposal, as there were other means of monitoring and evaluating the implementation of the Recommendation outside of Constitutional procedures, such as workshops and research. The Government members of Australia, the Czech Republic and the United Kingdom saw no value added by this proposal and supported the Employer members’ view. The amendment was not adopted.

Adoption of the report

- 398.** The Reporter presented the Committee’s draft report, noting with thanks the assistance provided by the Government member of the United Kingdom in her duties. She noted that the success of the Committee’s work was due to a number of factors which included the high attendance at Committee sittings; the wide level of informal consultation between members; the constructive and collaborative approach to discussions by Committee members; the Committee Drafting Committee’s meticulous and tireless efforts to address all issues referred to it; and the Chairperson’s regular consultations with members. She concluded by reminding the Committee that even though significant improvements had been made to the draft Conclusions, this document was only a starting point for further discussions next year. The Committee adopted the report with minor modifications.

Adoption of the proposed Conclusions

- 399.** The Government member of Brazil said she would like to register the concern of the Brazilian Government with regard to point 29 concerning the protection of workers’ personal data and disclosure of HIV-related information. While she acknowledged that the Committee had agreed on the point, she wished to say that her Government would reconsider it closely to make sure that medical ethics and the protection of workers’ personal data were fully respected and integrated in the point. The Worker Vice-Chairperson asked the Office to advise on the legal implications of point 29 and possible contradictions with other ILO instruments. As the ILO was the custodian of social justice,

it could not adopt an instrument that could undermine fundamental human rights and the protection of workers' privacy. He was particularly concerned about the sentence regarding exceptions to the protection of workers' personal data, especially as this was linked to a reference to definitions in national legislation. He pointed out that national laws could be at variance with each other and with ILO principles, so the draft instrument should provide guidance. He suggested that the technical consultations which would take place on scientific and medical definitions could also look at the ethical implications of point 29.

- 400.** The Government member of the United Kingdom said that his Government had submitted the amendment in its original form, with support from the Government members of IMEC, with the intention of balancing the need for confidentiality with public confidence in national health systems. The final text reflected the pressure of time the Committee was under and could be improved. He believed that consultations between all concerned parties would result in mutually acceptable text in time for the Committee meeting next year. The Worker Vice-Chairperson welcomed the consensus on reviewing this important point. He requested that the text in point 29 be placed in square brackets pending consideration by the experts relating to coherence with the ILO, WHO and other international instruments covering the right to confidentiality.
- 401.** The Government member of France, on behalf of Government members of IMEC, agreed that point 29 needed further elaboration in order to ensure agreement on clear and appropriate language. He pointed out that because labour standards have legal implications, it was important to make sure that the text provided legal security both for workers and for the authorities responsible for implementation. As many States had existing provisions on the protection of medical data, confidentiality and related matters, a new instrument on HIV/AIDS should not contradict or undermine national provisions regarding health matters more generally. IMEC was willing to take part in discussion of these issues at the next session of the International Labour Conference and in any informal consultations which took place beforehand. He pointed out that the technical consultations were intended to adjust certain definitions to ensure that they were scientifically and medically accurate, as well as taking into account the operational requirements of States. The issues raised in point 29 were of a political and legal nature, and should be resolved by the Committee.
- 402.** The representative of the Secretary-General noted that the language used in point 29 could be seen as contradicting the principles established in the ILO code of practice on HIV/AIDS with regard to privacy and confidentiality, and that its possible human rights implications needed further examination. Text could be included in the brown report for consideration and feedback. The Deputy Legal Adviser said that the Committee could decide to place in square brackets the text in question, with the understanding that the bracketed wording was not agreed and would be the subject of further deliberations during the second discussion next year. The Committee decided to place the first sentence of point 29 in square brackets.
- 403.** The Government member of the United Kingdom, noting his satisfaction with this decision, pointed out that placing the text in brackets was not equivalent to removing it. The issue was an important one, relating to public health issues and patients' rights, and still had to be discussed. He added that governments could be more flexible in drafting if the pressure was lifted to move for a Convention rather than a Recommendation. The Government member of France, on behalf of Government members of IMEC, suggested that it would be useful to record that the brackets around points 4 (a) and (b) did not have the same significance as those in point 29. The Government member of the Bolivarian Republic of Venezuela agreed with bracketing the text because it gave rise to possible conflict with existing ILO instruments or other standards to protect rights at work. The

Employer Vice-Chairperson, noting that the main concern of enterprises was with the health of their workforce, said that it was important to find a balance between the protection of patients and the protection of personal data. The draft Conclusions were adopted.

Closing remarks

- 404.** The Government member of France, on behalf of Government members of IMEC, noted that the discussions had been long and complex, reflecting the enormous breadth of the topic and the many different perspectives. Despite their diverse views, they shared a common aim to use the workplace in the struggle against HIV/AIDS. Before next year's discussions, the Government members of IMEC looked forward to governments, social partners and the Office taking steps to harmonize the Conclusions, continue consultations to reinforce the consensus achieved, and formulate consistent terminology. The Government members of IMEC believed that the Recommendation should be as focused as possible and concentrate on measures that were practical for governments and social partners. The measures should address prevention; occupational safety and health; the particular risks faced by women and vulnerable groups; the need to combat stigmatization and discrimination; and the vital role of confidentiality. He was confident that such an outcome could be achieved, based on the excellent spirit of cooperation and compromise developed by the Committee. The Government member of Argentina, on behalf of GRULAC Government members of the Committee, praised everyone's dedication, noting the high quality of the discussion. The Government member of Benin, on behalf of African group Government members of the Committee, was proud to have taken part in the last two weeks' discussions. This pride was commensurate with the challenge awaiting the members of his group with regard to fighting the pandemic. He hoped that the second discussion would go better and would lead to a document without problems related to ethical or legal issues. The Government member of Lebanon thanked the Committee members for the incredible efforts that had produced the proposed Conclusions, which she looked forward to reading in Arabic.
- 405.** The Employer Vice-Chairperson noted that there was a lot of passion for eradicating the scourge of HIV/AIDS. He pointed out that he had been part of a process involving many organizations trying to eradicate HIV/AIDS in Kenya. The process had respected confidentiality and allowed organizations to learn how well they were doing at managing HIV/AIDS. Because the process had been inclusive, they had been able to reduce the incidence of HIV/AIDS from 4 per cent to just under 0.5 per cent of the population in under three years. This captured the fact that HIV/AIDS was complex and needed a wide range of interventions, creativity and trust. This had been reflected in the Committee, though they had all had different expectations. In the end, they needed a simple, effective way to manage the scourge. He hoped that at the end of the second discussion they would have a simple, effective instrument that allowed for creativity, trust and implementation of programmes. He stressed that the issue of confidentiality was an opportunity not a threat.
- 406.** The Worker Vice-Chairperson said that his group had come to the Committee with high hopes for a strong instrument and regretted that there had not been support for moving towards a Convention. The pandemic was taking an unprecedented toll of human lives and needed the strongest possible response. He was not convinced by the arguments against a Convention and would keep advocating for a stronger standard. The discussion had been constructive and the Worker members were pleased with strong statements on human rights, on the links between AIDS and poverty, taking into account many aspects of vulnerability, on the inclusion of armed forces, and on the integration of HIV in occupational safety and health. Some elements, however, were missing which could hopefully be put right at the following discussion. These included what he saw as lack of

commitment to aspects of implementation and the omission of specific groups such as sex workers, men who have sex with men, and women adversely affected by current law and practice, who required targeted responses. The proposed Conclusions could have been stronger on maternity protection, the responsibilities of receiving as well as sending countries for the protection of migrant workers' rights and on the education sector. The following year provided the opportunity to improve language, remove contradictions and knock down the walls we have erected that separate us from the needs of people in the real world. The Committee had not failed this year but the job was only half done. At the next discussion it would be able to take united action to protect working people and their rights in the face of HIV/AIDS. He expressed his appreciation to the Chairperson, Employer Vice-Chairperson, Government members and the Secretariat.

- 407.** The representative of the Secretary-General expressed her appreciation for the work of all the Committee members, the shared vision they had demonstrated and the commitment to strengthen workplace responses to the HIV epidemic which has claimed so many businesses, jobs and lives. The proposed Conclusions were a triumph of tripartism and an endorsement of the ILO's rights-based approach. They laid a solid foundation for strong workplace policies and programmes, even before their finalization the following year. In spite of the huge resources invested, the epidemic was marching on relentlessly. In the time the Committee had been sitting, tens of thousands of people had contracted HIV and about 10 thousand have died from HIV-related illnesses. While the economic crisis was a threat to the maintenance of a number of HIV programmes and the continuation of treatment, it also offered opportunities to respond in more creative and imaginative ways. The convergence of views on the importance of workplace responses was a source of enormous encouragement and many lessons could be learned from the diverse responses of governments and the social partners. She explained the next steps in the standard-setting process and urged all delegates to make the most of the opportunity to shape the proposed Conclusions that would be discussed in 2010. She ended by thanking the Officers of the Committee, the Secretariat and all those who had contributed to proceedings and their constructive outcome.
- 408.** The Chairperson thanked the members and especially the Vice-Chairpersons for the prevailing spirit of cooperation in the Committee. She also expressed appreciation to the member of the Brazilian delegation who was living with HIV, and thanked him for his contributions to the Committee's work. She also thanked the Secretariat. The Committee had built a solid foundation for next year.
- 409.** The report of the Committee, the proposed Conclusions and the resolution to place on the agenda of the next ordinary session of the Conference an item entitled "HIV/AIDS and the world of work" are submitted for consideration.

Geneva, 15 June 2009

(Signed) T. Nene-Shezi
Chairperson

S. Singh
Reporter

Proposed Conclusions

A. Form of the instrument

1. The International Labour Conference should adopt an instrument establishing an international labour standard as a framework for action on HIV/AIDS and the world of work.
2. The instrument should take the form of a Recommendation.

B. Content of the instrument

I. Preamble

3. The Preamble should note:
 - (a) that HIV/AIDS has a serious impact on society and economies, the world of work, workers, their families and dependants, the social partners and public and private enterprises;
 - (b) that HIV/AIDS increases and intensifies poverty and that poverty increases and intensifies HIV/AIDS; these undermine the attainment of decent work and sustainable development, thus creating conditions that make people more vulnerable to HIV;
 - (c) that in areas with high levels of poverty, lack of information and awareness and lack of adherence to treatment, there is an increase in 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;
 - (d) that stigma, discrimination and the threat of job loss suffered by persons affected by HIV/AIDS are barriers to knowing one's HIV status; these increase the vulnerability of workers and undermine the right to social benefits;
 - (e) that HIV/AIDS has a more severe impact on vulnerable groups, including among others, women, children, youth, migrants and persons with disabilities;
 - (f) that HIV affects men and women equally; however, women and girls are at greater risk and are more vulnerable to HIV infection and 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 fight against HIV/AIDS;
 - (g) the importance of safeguarding workers through comprehensive occupational safety and health programmes;
 - (h) the importance of the International Labour Organization's role in addressing HIV/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/AIDS in all aspects of its work and mandate;

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- (i) the high value of the ILO code of practice on HIV/AIDS and the world of work, 2001 (Code of Practice) and the need to strengthen its implementation given that there are important limits and gaps in its implementation;
 - (j) the need to promote the international labour Conventions and Recommendations, and other international instruments that are relevant to HIV/AIDS and the world of work;
 - (k) the need to set an international standard in order to guide governments and the social partners to define their roles and responsibilities at all levels;
 - (l) the specific role of employers' and workers' organizations in promoting and supporting national and international efforts on HIV/AIDS in and through the world of work;
 - (m) the important role of the workplace as regards information about, and access to, prevention, treatment, care and support in the national response to HIV/AIDS;
 - (n) the need to continue and increase international cooperation, in particular, in the context of the Joint United Nations Programme on HIV/AIDS (UNAIDS) to support efforts to give effect to the proposed instrument; and
 - (o) the value of collaboration with the relevant structures in the health sector, and other relevant organizations, especially those representing persons living with HIV, at the national, regional and international levels.

II. Definitions

4. The proposed instrument should contain the following definitions for the purposes of the proposed instrument:

- (a) "HIV" means the Human Immunodeficiency Virus, a virus that weakens the body's immune system and, if not properly treated, ultimately causes AIDS in most cases;
- (b) "AIDS" means the Acquired Immune Deficiency Syndrome, caused by HIV, which is a set of medical conditions including opportunistic infections and cancers for which there are treatments, although there is no cure for the HIV infection to date; *
- (c) "persons living with HIV/AIDS" means persons infected with HIV;
- (d) "stigma" means the social mark that, when associated with a person, usually 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 (No. 111) and Recommendation (No. 111), 1958;
- (f) "affected persons" means persons whose lives are changed in any way by HIV/AIDS due to the broader impact of the pandemic;

* This text has been bracketed to indicate that it will be subject to further technical consultations.

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- (g) “workers” means persons working under all forms or arrangements, within the meaning of the relevant ILO instruments;
 - (h) “workplace” means any place where workers perform, within the meaning of the relevant ILO instruments;
 - (i) “reasonable accommodation” means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to, or participate or advance in, employment; and
 - (j) “vulnerability” means the social, cultural, political and economic factors that lead to unequal opportunities, social exclusion, unemployment or precarious employment, which make a person more susceptible to infection and to the disease.

III. Scope

5. The proposed instrument should cover:

- (a) persons in vocational training;
- (b) all workers at all workplaces as defined under section II;
- (c) job applicants and laid-off workers; and
- (d) all sectors of economic activity, including the private and public sectors and the formal and informal economy; and
- (e) armed forces and uniformed services.

IV. General principles

6. The instrument should affirm the following general principles:

- (a) combating HIV and AIDS contributes to the realization of human rights and fundamental freedoms for all, including workers, their families and their dependants, in the world of work;
- (b) HIV/AIDS should be recognized and treated as an issue that also affects the workplace and addressed as one of the essential elements of the national, regional and international response to the pandemic with full participation of workers’ and employers’ organizations;
- (c) there should be no discrimination or stigmatization against workers and job applicants on the basis of either real or perceived HIV status, or on the ground that they belong to 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 and their families and dependants should have access to and benefit from prevention, treatment, care and support in relation to HIV/AIDS; the workplace can play a role in facilitating access to these services;
- (f) workers should benefit from programmes to prevent specific risks from occupational transmission of HIV and other related transmissible diseases;

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- (g) workers should enjoy protection of their privacy, including confidentiality related to HIV/AIDS, in particular with regard to their own HIV status;
 - (h) no worker or job applicant should be required to undertake an HIV test or disclose his or her HIV status;
 - (i) measures to address HIV/AIDS in the world of work should be part of national development policies and programmes including those related to labour, education and health; and
 - (j) the protection of workers in occupations that are particularly exposed to the risk of HIV transmission.

V. National policies and programmes

7. Member States should:

- (a) adopt national policies and programmes on HIV/AIDS and the world of work and a national occupational safety and health policy. Member States should ensure that they are part of their HIV/AIDS policies and programmes; and
- (b) integrate their policies and programmes on HIV/AIDS and the world of work in development plans and poverty reduction strategies, as appropriate.

8. In developing their national policies and programmes, the competent authorities of member States should take into account the Code of Practice and any subsequent revisions, and the other relevant ILO instruments, as well as other relevant documents.

9. The national policies and programmes should be developed by the competent authorities of member States, in consultation with the most representative organizations of employers and workers, and informed by the health sector, as well as organizations representing persons living with HIV/AIDS.

10. In developing the national policies and programmes, the competent authorities of member States 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 the local communities.

11. Member States should take every opportunity to disseminate information about their policies and programmes on HIV/AIDS and the world of work through workers' and employers' organizations, other relevant HIV/AIDS structures and public information channels.

Discrimination

12. Governments, in consultation with the most representative employers' and workers' organizations, should consider affording protection equivalent to that available under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), to prevent discrimination based on real or perceived HIV status.

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

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14. A person's real or perceived HIV status should not be cause to prevent his or her recruitment or continued employment.
 15. A person's real or perceived HIV status should not be a cause for termination of employment. Temporary absences from work because of illness or caregiving 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 (No. 158).
 16. Persons with HIV-related illnesses should be allowed to work for as long as they are medically fit, in work reasonably adapted to their abilities. Measures to find other work through training or to facilitate return to work should be encouraged in appropriate circumstances and when the person is able to do so, taking into consideration the requirements of the relevant ILO and United Nations instruments.
 17. Measures should be taken in or through the workplace to reduce the transmission of HIV and alleviate its impact by promoting:
 - (a) respect for human rights;
 - (b) gender equality;
 - (c) the empowerment of women and other vulnerable groups and measures to prevent and prohibit violence and harassment in the workplace;
 - (d) the active participation of both women and men in the response to HIV/AIDS, and the role of men as "gatekeepers" in tackling the pandemic;
 - (e) the involvement of all workers regardless of their sexual orientation;
 - (f) the protection of sexual and reproductive health and sexual and reproductive rights of women and men;
 - (g) effective prevention policies for reducing high-risk behaviours for all workers, including most-at-risk groups;
 - (h) effective confidentiality of personal data; and
 - (i) behaviour change, with a view to reducing the incidence of the pandemic.

VI. Measures for prevention, treatment, care and support, and privacy

Prevention

18. Prevention strategies should be adapted to national conditions and the type of workplace concerned, and should take into account gender and cultural, social and economic issues.
19. Prevention programmes should ensure:
 - (a) accurate and relevant information that is made available 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 HIV transmission, including mother-to-child transmission, and understand the importance of behaviour change;

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- (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, such as guaranteeing the availability of necessary supplies, in particular, male and female condoms and information about their use, where appropriate; harm reduction programmes; as well as, post-exposure prophylaxis.

Treatment and care

- 20.** All workers, including workers living with HIV/AIDS and their families and dependants, should be entitled to health services. These services should include access to free or affordable voluntary counselling and testing, antiretroviral treatment and adherence education, proper nutrition, treatment for opportunistic infections and sexually transmitted infections, and any other HIV-related illnesses, as well as support and prevention programmes for HIV-positive persons.
- 21.** Members should ensure that workers living with HIV/AIDS and their dependants benefit from full access to health care, whether this is provided under social security systems or public provisions or private insurance schemes. Members should also ensure the education and awareness raising of workers to facilitate their access to such schemes.
- 22.** Members should ensure that workplace health interventions are determined in consultation with the workers and their representatives and are linked to public health services. They should offer the broadest range of interventions possible to prevent and manage HIV/AIDS.
- 23.** There should be no discrimination against workers or their dependants based on real or perceived HIV status in access to social security programmes and occupational insurance schemes, or in relation to benefits, including health care, disability, and death and survivors' benefits.

Support

- 24.** Programmes of care and support should include measures of reasonable accommodation in the workplace for workers with HIV-related illnesses with due regard to national conditions.
- 25.** Where a direct link can be established between the occupation concerned and the risk of infection, HIV/AIDS should be recognized as an occupational disease or accident, in accordance with national procedures and definitions, and with reference to the ILO List of Occupational Diseases Recommendation, 2002 (No. 194), as well as other relevant ILO standards.
- 26.** Member States should promote the retention in work and recruitment of persons living with HIV/AIDS and, where necessary, promote income-generating opportunities for persons living with or affected by HIV/AIDS.

Privacy and confidentiality

- 27.** HIV testing or other forms of screening for HIV should not be required of workers or job applicants.

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28. The results of HIV testing should be confidential and not endanger access to jobs, job security or opportunities for advancement.
 29. [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 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 the protection of workers' personal data, 1997, and other relevant international data protection standards.
 30. Members should ensure that migrant workers, or those seeking to migrate for employment, are not excluded from migration on the basis of their HIV status, whether real or perceived.

Occupational safety and health

31. HIV is not transmitted by casual physical contact and the presence of a person living with HIV should not be considered a workplace hazard. In order to promote good relations in the workplace, it is necessary to raise awareness in this regard and guarantee that prevention, safety and health measures are taken in accordance with the relevant standards, when there is a real possibility of exposure at work.
32. The working environment should be healthy and safe, in order to prevent transmission of HIV in the workplace, taking into account the principles or provisions of the Occupational Safety and Health Convention (No. 155) and Recommendation (No. 164), 1981, the Promotional Framework for Occupational Safety and Health Convention (No. 187) and Recommendation (No. 197), 2006, and other relevant international instruments, such as the joint ILO/WHO guidance documents.
33. Health and safety measures at work should include universal precautions, post-exposure prophylaxis and other safety measures to minimize the risk of contracting the HIV virus in certain occupations, such as health-sector workers.
34. Occupational health services and workplace mechanisms related to occupational safety and health should address HIV/AIDS issues, taking into account the Occupational Health Services Convention (No. 161) and Recommendation (No. 171), 1985, Joint ILO/WHO guidelines on health services and HIV/AIDS, 2005, and other relevant international instruments.

Children and young persons

35. Members should take measures to combat child labour that may result from the death or illness of family members due to AIDS and to reduce the vulnerability of children to HIV, consistent with the ILO Declaration on Fundamental Principles and Rights at Work, 1998, and taking into account the Minimum Age Convention (No. 138) and Recommendation (No. 146), 1973, and the Worst Forms of Child Labour Convention (No. 182) and Recommendation (No. 190), 1999.
36. Member States should take measures to protect young workers against HIV infection, and to include the special needs of children and young persons in response to HIV/AIDS in the national policies and programmes. These should include objective sex education, in particular the dissemination of information on HIV/AIDS through vocational training and in youth employment programmes and services. Special measures should be taken to protect children and young persons against sexual abuse and sex work.

VII. Implementation

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

- (a) be given effect, in consultation with the most representative employers' and workers' organizations and other parties concerned, by one or a combination of the following means:
 - (i) in national laws and regulations;
 - (ii) collective agreements;
 - (iii) in national and workplace policies and programmes of action; and
 - (iv) in sectoral strategies with particular attention to sectors in which workers are most at risk;
- (b) involve the labour justice and labour administration authorities in 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 the proposed instrument;
- (d) ensure collaboration and coordination among the public authorities and services concerned;
- (e) encourage all enterprises, including those operating in export processing zones, to implement through their supply chains and distribution networks the national policies and programmes, with the participation of employers' and workers' organizations;
- (f) promote social dialogue, consultation, negotiation and other forms of cooperation among government authorities, public and private employers and workers and their representatives, informed by occupational health personnel, specialists in HIV/AIDS, and other parties such as organizations representing persons living with HIV;
- (g) be formulated, implemented, regularly reviewed and updated, taking into account gender mainstreaming and the most recent scientific and social developments;
- (h) be coordinated with, among others, national labour, social security and health systems; and
- (i) ensure that Members make reasonable provision for implementation, with due regard national conditions.

Education, training, information and consultation

38. All training, safety instructions and any necessary guidance in the workplace related to HIV/AIDS should be provided in a clear and accessible form to all women and men workers and, in particular, to newly engaged or inexperienced workers, including migrant workers, young workers and apprentices; this should be culturally- and gender-sensitive and should be adapted to the characteristics of the workforce, taking into account the risk factors for the workforce.

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39. Up to date scientific and socio-economic information, and, where appropriate, and education and training on HIV/AIDS should be available to employers, managers, and workers' representatives, in order to assist them in taking appropriate measures in the workplace.
 40. All workers should receive training in HIV infection control procedures in the context of workplace accidents and first aid. Workers who come into contact with human blood, blood products and other body fluids should receive additional training in prevention, registration procedures and post-exposure prophylaxis.
 41. Workers and their representatives should have the right to be informed and consulted on measures taken to implement policies and programmes related to HIV/AIDS and to participate in workplace inspections in accordance with national practice.

Public services

42. The roles of the labour administration services, including the labour inspectorate, and of the labour justice system in the response to HIV/AIDS should be reviewed and, if necessary, strengthened.
43. Public health systems should be strengthened, and follow the Joint ILO/WHO guidelines on health services and HIV/AIDS, 2005, in order to ensure greater access to prevention, treatment, care and support, and to reduce the additional strain on public services, particularly on health workers, caused by HIV/AIDS.

Social dialogue

44. Implementation of the HIV/AIDS policies and programmes 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.
45. Employers' and workers' organizations should promote awareness of HIV/AIDS, including prevention and non-discrimination, through the provision of education and information to their members. These should be gender-sensitive and sensitive to all targeted groups.

International cooperation

46. Members should cooperate, through bilateral or multilateral agreements, or other effective means, for the purpose of giving effect to the provisions of the proposed instrument.
47. Measures to ensure access to HIV prevention, treatment, care and support services for migrant workers should be taken by countries of origin and of destination, and agreements should be concluded among the countries concerned whenever appropriate.
48. International cooperation should be encouraged between and among Members and relevant international organizations and should include the systematic exchange of information on all measures taken to respond to the HIV pandemic.

VIII. Follow-up

49. Member States should ensure regular and periodic review at the national level of the actions taken to implement the policies and programmes.

50. In addition to the reporting under article 19 of the Constitution of the International Labour Organisation, a regular review of action taken on the basis of the proposed instrument should be given consideration and could be included in national reports to UNAIDS and reports under relevant international instruments.

Resolution to place on the agenda of the next ordinary session of the Conference an item entitled “HIV/AIDS and the world of work”

The General Conference of the International Labour Organization,

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

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

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

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