

International Labour Organization

Amnesty International's concerns relevant to the 91st session of the International Labour Conference, 3 to 19 June 2003

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“All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic, security and equal opportunity”

Article 2(a), The Declaration of Philadelphia, 1944¹

1. Introduction

The right to enjoy human rights without discrimination is one of the most fundamental principles underlying international human rights law, appearing in virtually every major human rights instrument. Equality of opportunity and treatment occupies an important position in the International Labour Organization's (ILO) policies and activities. In 1919, the drafters of the ILO's Constitution established the

¹ The Declaration of Philadelphia concerns the aims and purposes of the ILO, and is annexed to the Constitution.

principle of ensuring opportunities for development and equitable economic treatment for all. This was later reflected in the Declaration of Philadelphia and in the formulation of international labour standards. The elimination of discrimination forms the basis of two of the eight fundamental ILO Conventions and one of the principles of the ILO Declaration on Fundamental Principles and Rights at Work (the Declaration).²

Each year, the ILO publishes a “Global Report,” providing a dynamic overview of the progress made in the preceding four-year period in relation to one of the fundamental principles enshrined in the Declaration. *Discrimination* will be the theme of the report which will be presented to the forthcoming 91st session of International Labour Conference (ILC), from 3 to 19 June 2003. The two ILO Conventions considered fundamental in the area of dealing with discrimination are No.100 Equal Remuneration Convention (1951), which calls for equal pay for men and women for work of equal value, and No.111 Discrimination (Employment and Occupation) Convention (1958) which calls for a national policy to eliminate discrimination in access to employment, training and working conditions, on grounds of race, colour, sex, religion, political opinion, national extraction or social origins, and to promote equality of opportunity and treatment for all. As of 1 April 2003, 160 of the 175 member states of the ILO had ratified Convention No. 100, while 158 states had ratified Convention No.111.³

2. Discrimination at work: the case for ratification of core Conventions

The elaboration of international standards has remained a primary objective of the ILO since its creation in 1919. ILO Conventions and Recommendations are drafted and agreed by governments, employers’ and workers’ organizations, to form a global standard of rights and responsibilities in the workplace. ILO standards are universal in character, and are drafted with the intention that all member states can and will ratify and implement them, regardless of a state’s economic situation.⁴

Many states claim to have laws and policies in place which prohibit discrimination, yet anti-discrimination legislation does not necessarily prohibit discrimination in

² The other principles and rights contained in the Declaration are: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; and the effective abolition of child labour.

³ See <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>

⁴ The principle embedded in the ILO Constitution is that within 12 or 18 months of the adoption of Conventions and Recommendations, they be submitted by member states to their competent national authorities.

employment. Concepts of discrimination can vary enormously, and in any event, evolve. Gender is an area where many states have focused attention in their reports to the ILO, but there are other characteristics which can lead to discrimination such as being disabled, an HIV/AIDS carrier, migrants or older workers. Ratification of ILO Conventions provides the common standard for all member states to reflect in law and practice. It has the further advantage of requiring states to submit to a supervisory system on measures taken to implement the Convention.

Ratification is not an end in itself, though. Legislation needs to be enforced and applied, including through mechanisms and institutions to assist those who are discriminated against and to measure the impact of policies and programmes. Nevertheless, ratification is an important step towards improving social and working conditions. In the context of discrimination, Amnesty International is calling on those member states which have not done so to ratify ILO Conventions No.100 and No.111 so as to provide a basic framework for the protection of labour rights and an enabling rights-based environment for equality and development. In particular, the organization calls on three member states, which are also permanent members of the Governing Body, to ratify these treaties: China, Japan and the USA.⁵ China and Japan have both ratified Convention No.100 but not Convention No.111; the USA has initiated a ratification process around Convention No. 111 but has not ratified Convention No.100. A list of other states which have not ratified these Conventions is annexed to this paper.

3. Country concerns

The Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts) has stated that "...equality in employment can be fully achieved only within a general context of equality".⁶ That general context is reflected by states ratifying and implementing the seven international human rights treaties, all of which prohibit discrimination: the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)⁷, the Convention on the Elimination of

⁵ The Governing Body consists of 56 representatives (28 from governments, 14 employers and 14 workers). The Governing Body is the executive body of the ILO, deciding on policy, budgets, the appointment of the Director-General, and the agenda for the ILC. The permanent members are those ten states of "chief industrial importance": Brazil, China, France, Germany, India, Italy, Japan, Russian Federation, UK and USA.

⁶ "Equality in employment and occupation", Report of the Committee of Experts on the Application of Conventions and Recommendations, 1996

⁷ Whilst the Convention against Torture does not prohibit discrimination, Article 1 prohibits severe

All Forms of Discrimination against Women (Women's Convention), the Convention on the Rights of the Child (CRC) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC), which will enter into force on 1 July 2003. Information about the status of ratification by member states of these treaties is included in this document to highlight existing deficiencies at the national level in those five countries which Amnesty International is bringing to the attention of the 91st session of the ILC: **Colombia, Iran, Israel and the Occupied Territories, Mauritania and Sudan.** As Amnesty International's concerns relate to forced and child labour, information is also included about ratification of the two optional protocols to the CRC.⁸ Five of the international treaties also provide for freedom of association, a further concern highlighted in this document.

3.a. Freedom of Association in Colombia

Colombia has ratified the following ILO Conventions:

Freedom of Association: C87 and C98
Discrimination: C100 and C111

Forced Labour: C29 and C105
Minimum age: C138

It has not ratified C182 on the worst forms of child labour.

It has ratified all seven international human rights treaties but has signed, and not ratified, the two optional protocols to the CRC.

The situation in Colombia continues to feature prominently on the ILO's agenda. At the ILC held in June 2002, the Committee on the Application of Standards⁹ asked that a complaint lodged under Article 26 of the ILO Constitution in June 1998 be re-examined by the Governing Body, with a view to contributing to the full respect of Convention No. 87 in law and practice.¹⁰ The Committee on the Application of

pain or suffering intentionally inflicted on a person for such purposes as obtaining information or a confession, to punish, intimidate or coerce, or for any reason based on discrimination of any kind.

⁸ The optional protocols concern the involvement of children in armed conflict and the sale of children, child prostitution and child pornography.

⁹ The Committee on the Application of Standards meets during the ILC, is composed of government, worker and employer delegates, and considers reports submitted by the Committee of Experts on the Application of Conventions and Recommendations. Member states are called before the Committee on the Application of Standards to explain non-compliance.

¹⁰ A complaint under Article 26 of the ILO Constitution can be made against a member state that has not satisfactorily secured the effective application of an ILO Convention to which it is a party. Under

Standards went on to state that it “would be obliged to consider stronger possibilities” if the government did not fully avail itself of an ILO technical co-operation programme in pursuing this goal.¹¹ Although the government had resisted technical co-operation, implementation of three components of the programme is now under way.¹²

In December 2002 and following consideration of a report submitted by the Colombian Government, the Committee of Experts issued an observation which “again notes with grave concern the climate of violence in the country”, as well as the conclusions of the Committee on Freedom of Association that “despite various bodies that have been established and the investigations conducted by those bodies, and even in some cases the arrests of suspects, the government has not thus far reported any actual convictions of individuals for the murders of trade unionists”.¹³

Developments since last ILC

There have been few advances in judicial investigations into cases of violations against trade unionists. Fewer individuals still have been brought to justice for these crimes. The majority of attacks against trade unionists have been carried out by paramilitary groups, often acting with the active or tacit support of the Colombian armed forces.

The *Central Unitaria de Trabajadores de Colombia*, (CUT), Colombian Trade Union Congress, estimates that at least 172 affiliated trade unionists were victims of extrajudicial executions in Colombia during 2002, while 164 received death threats, 26 were victims of kidnapping, 17 were victims of an attempted kidnapping, seven

this procedure, the Governing Body may establish a commission of inquiry. The procedure has been used rarely.

¹¹ ILO Committee on the Application of Standards, June 2002. See Provisional Records: “Observations and information concerning particular countries”, document reference 28/part two.

¹² See “Special Technical Cooperation Programme for Colombia”, document reference GB 286/7, presented to the Governing Body in March 2003. The three components of the programme are: human rights at work and suitable protection of life (including the temporary departure from Colombia of threatened trade unionists); freedom of association and promotion of the right to organize; and the promotion of social dialogue.

¹³“ Report of the Committee of Experts on the Application of Conventions and Recommendations, observation, 2002/73rd session” available at www.ilo.org. The case considered by the Committee on Freedom of Association (CFA) is Case No. 1787 (see 329th report of Committee on Freedom of Association). The CFA have made some detailed recommendations and stressed “...that impunity, whether it is perpetrated or condoned by governments or others in relation to extreme or widespread violations of fundamental rights of freedom of association, is a clear threat to essential trade union rights and the very basis of democracy itself”.

were forcibly displaced, 132 were arbitrarily detained and around 80 sought asylum abroad. According to the CUT, these violations are a direct consequence of trade union activity. Of the 172 trade unionists killed, 49 were trade union leaders. Trade union leaders also received the majority of death threats.

Security measures and their impact on human rights

The *Estado de Conmoción Interior*, State of Internal Commotion, declared on 11 August 2002, gives significant powers to the authorities, including the right to restrict freedom of movement and residence, prevent radio and television from transmitting “sensitive” information, restrict meetings and demonstrations, intercept communications subject to judicial authorization, and carry out preventive detentions. During the State of Internal Commotion the administration has issued several decrees, including Decree 2002, on 9 September 2002. Under Decree 2002 the authorities could, in some cases without previous judicial authorization, carry out detentions as well as inspections or searches on people’s homes to look for evidence or prevent a crime. Although the Constitutional Court ruled, on 25 November 2002, that the right of the military to carry out house searches without a judicial warrant was unconstitutional, these are reportedly still continuing. Searches and arrests are also being conducted in the course of security force operations. Although representatives of the Office of the Attorney General have been present, these agents often sign arrest and search warrants *in situ*, on the basis of the suspicions of the security forces or security force informers accompanying these operations, and not on the basis of prior legal investigations.

The government is likely to seek to reintroduce judicial police powers for the armed forces. However, given the widely acknowledged responsibility of the security forces for human rights violations, often in conjunction with the paramilitaries, the power to detain and search without judicial authority will increase the risk of human rights violations. Amnesty International fears that the authorities are using the state of emergency to threaten and harass trade unionists and other members of civil society. Given that the security and armed forces and their paramilitary allies have often accused trade unionists of being “guerrilla sympathizers”, as a result of which, trade unionists have frequently been harassed, tortured and killed, Amnesty International is concerned that the accusations of subversive activity against trade unionists and the raids on their homes and offices will help to delegitimize trade union activity and expose trade unionists to further paramilitary attacks.

Raids and arbitrary detentions

According to reports from Colombian non-governmental human rights organizations,

between 15 December 2002 and the middle of February 2003, 18 trade union activists and/or trade union leaders were arbitrarily detained while the offices or homes of several trade unions/unionists were raided.

On 10 January 2003 the offices of the CUT in Cali were raided by members of the *Departamento Administrativo de Seguridad*, DAS, Civilian Intelligence Service and the Attorney General's office, reportedly without a search warrant. They were allegedly looking for documentation that would allow them to link the leadership of the CUT with "guerrilla" groups.

On 12, 17 and 19 November 2002 the home of the President of the *Asociación Nacional de Trabajadores y Empleados de Hospitales, Clínicas, Consultorios y Entidades Dedicadas a Procurar la Salud de la Comunidad*, (ANTHOC), Health Workers trade union, in Arauca, and member of the Junta de Acción Comunal del Barrio José Vicente – I, Barrio José Vicente – I Community Action Group member, Jorge Prieto was reportedly searched by members of the army, together with representatives of the Office of the Attorney General, without a judicial warrant. At the time his house was searched, one of the directors and four other ANTHOC union members were detained. In the days before his house was searched, Jorge Prieto had reportedly denounced the ransacking of the centre of the Community Action Group [*allanada de forma violenta*]. The headquarters of ANTHOC-Arauca have also, reportedly been searched without a warrant.

On 15 January 2003, the Human Rights Unit of the Attorney General's office issued an arrest warrant against Hernando Hernandez, International Relations Secretary and former president of the *Unión Sindical Obrera*, (USO), Oil Worker's Union. He has reportedly been detained, accused of rebellion.

On 22 February 2003, Robinson Beltrán Herrera, President of the *Sindicato de Trabajadores de la Corporación Regional Autónoma de la Costa Atlántica Otrora Corelca*, (SINTRAELECOL CORELCA), Electricity Workers trade union, was detained, reportedly for the crimes of rebellion and terrorism.

On 5 March 2003, the home of Tereza Baez Rodríguez, President of the *Sindicato de Trabajadores de Clínicas y Hospitales* (SINTRACLÍNICAS) – Bucaramanga, Bucaramanga Health Clinic trade union, was reportedly searched. She was subsequently detained by the Office of the Attorney General accused of the crime of rebellion. Last year, Tereza suffered a kidnapping attempt as she left the SINTRACLÍNICAS offices; she has reportedly also received frequent death threats.

Raids and arrest warrants against members of these organizations have frequently coincided with paramilitary death threats and attacks raising concerns that these raids and arrests are part of a coordinated military-paramilitary strategy to undermine organizations which have denounced human rights violations and campaigned for socio-economic rights.

On 12 November 2002 military and police units detained 2,000 people and forced them into the Jacinto Jérez municipal stadium in Saravena Municipality, Arauca Department. Once identified, the civilians were stamped on the arm with an indelible

ink mark. At the same time 70 homes and places of work were raided and 85 people detained, including trade union, civic, youth and popular leaders. They were reportedly filmed and paraded before the press as members of the *Ejército de Liberación Nacional*, National Liberation Army, (ELN) and the *Fuerzas Armadas Revolucionarias de Colombia*, Revolutionary Armed Forces of Colombia (FARC) and were prevented from seeing their lawyers until the next day. Forty-two members of this group of 85 were released the next day. Amongst those detained were members of departmental trade union organizations including the CUT, the Asociación de Educadores de Arauca (ASEDAR), Teachers Association of Arauca, ANTHOC and the peasant farmer organization ADUC. These arrests followed paramilitary death threats against trade union and other activists in the department in preceding months.

During a mission to Arauca in March 2003, Amnesty International was informed that these threats are continuing. In meetings with security force officers, the legitimacy of human rights organizations was constantly questioned and, according to information received, they were accused of being infiltrated by the "guerrilla".

These cases heighten Amnesty International's concern that trade unionists are increasingly being subject to arbitrary criminal investigations coordinated by the security forces which threatens to tarnish them and their organizations as subversive and thereby expose them to greater risk of violent attack by paramilitary groups, or to arbitrary detention.

Trade unions targeted

Amongst trade unionists particularly targeted are public sector unions, trade union confederations including the CUT and unions representing workers in strategic sectors of the country's economy including oil, mining and energy.

In March 2003, reports of an alleged attempt to abduct the daughter of Domingo Tovar Arrieta, the Director of the Human Rights Department of the CUT, heightened Amnesty International's concerns for the safety of the members of the CUT.

At around 6.20 am on 21 March 2003, as Ana Paulina Tovar González was walking to the Barranquilla Hospital in Atlántico department, where she is working on a university placement, she was reportedly stopped by two unidentified men. One of the men allegedly grabbed her and pushed her into a waiting car. She was reportedly punched several times in the car before she was able to climb out and get away.

This is the second attempted abduction of Ana Paulina Tovar González this year. On 17 January 2003 she and her sister were reportedly followed by a group of men who tried to force Ana Paulina Tovar González into their car. A passer-by came to the girls' aid and Ana Paulina Tovar González was able to escape.

At the beginning of March 2003, Domingo Tovar Arrieta gave information to the authorities about a paramilitary plan to kill several national trade union leaders, including Domingo Tovar Arrieta himself. On 28 March 2003, he reportedly received a

threatening call on his radio telephone, which had been provided by government human rights officials for his protection after previous threats and fears for his safety. The telephone call was from an unidentified woman who said, "ya estas sintiendo y vas a sentir más" ("you are already feeling it and you're going to feel it more").

Electricity workers belonging to the *Sindicato de la Electricidad de Colombia*, SINTRAELECOL, Colombian Electricity Worker's Trade Union, were amongst trade unionists to be declared "military objectives" by the army-backed paramilitary group Autodefensas Unidas de Colombia, (AUC), United Self-Defence Forces of Colombia in a death threat received by electricity workers in Arauca on 11 September 2002. The paramilitaries accused them of links to "subversive groups" and declared them to be "military objectives of our units". ("Existen algunas personas, sindicalistas, directores, comprometidos con grupos subversivos, estos líderes son declarados objetivo militar de nuestras unidades").

Other trade union sectors under threat by paramilitaries have been opposing governmental privatization plans. The *Sindicato de Trabajadores de las Empresas Municipales de Cali*, Cali Municipal Service Workers Trade Union, SINTRAEMCALI has been campaigning against the privatization of Cali's electricity, water, sewage and telecommunications utilities.

Martha Cecilia Gómez Reyes, SINTRAEMCALI delegate and wife of Luis Enrique Imbachi, current vice-president of the trade union, has been the target of several threatening phone calls. On 22 February 2003 she received a call on her mobile phone in which a man with a mocking laugh threatened her saying "You are going to die." On 3 March 2003 a further call was made to her office. On this occasion, the man also said, "You are going to die".

Impunity prevails

The Colombian government has taken some steps to guarantee the security of trade unionists particularly through its *Programa de Protección a Testigos y Personas Amenazadas*, Protection Program for Witnesses and Threatened Persons, which is administered by the Ministry of the Interior. Through this programme DAS bodyguards have been provided to some threatened trade unionists and others have been assisted to leave the country. The failure to adequately resource the protection program, to take all measures necessary to guarantee the security of trade unionists, to ensure that full and impartial investigations into human rights violations against trade unionists are carried out and that those responsible are brought to justice has led to a cycle of increased attacks against trade unionists and to a climate of impunity.

In particular, the Colombian government has failed to take decisive action to dismantle the army-backed paramilitary groups responsible for the majority of human rights violations against trade unionists and to ensure that those responsible for human rights violations are brought to justice. According to the CUT, there has been total impunity for nearly all of the more than 3,800 crimes against trade unionists over the past 16 years.

Recommendation to the ILO:

- Amnesty International maintains its call upon all constituents of the ILO to establish an investigating commission for the purpose of examining widespread and systematic attacks against trade unionists and devising strategies aimed at preventing violations of international law.

3.b. Iran and discrimination

Iran has ratified the following fundamental Conventions:

Discrimination: C100 and C111	Forced labour: C29 and C105
Child Labour: C182	

It has not ratified the fundamental Conventions relevant to Freedom of Association, C87 and C98, or C138 on child labour.

Iran is a state party to the ICESCR, ICCPR, CERD and CRC, but it has *not* ratified the following international human rights treaties: the Women's Convention, CAT and MWC or either of the optional protocols to the CRC.

In 2002, the Committee of Experts considered a report submitted by the government on implementation of Convention No. 111¹⁴ and then issued an observation, which welcomed the signing of a Memorandum of Understanding between the Iranian government and the ILO providing for technical assistance during 2002 to 2003. The technical assistance programme covers a range of areas, including the review of labour laws and their compatibility with international labour standards and the provision of legal drafting assistance. The Committee of Experts noted “the statement of the Government that it is committed to continuing to enact reforms, strengthen institutions, fight corruption and discrimination, respect human rights and the rule of

¹⁴ More details are provided in the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), 2003.

law, and spend more money on development of sound policies that provide opportunities to all, and most notably women, without exclusion.”¹⁵ It also urged the government to take action that will result in the elimination of all existing divergences between Convention No.111 and the national situation.

Amnesty International has continued to document on-going concerns about curtailment of the rights to freedom of expression and association in Iran, and discriminatory laws, including those relating to women.¹⁶ In the context of discrimination, this paper highlights a process called “*gozinesh*”, or “selection”. In law and practice, the *gozinesh* process impairs - *on grounds of political opinion, previous political affiliation or support or religious affiliation* - equality of opportunity or treatment in employment or occupation for all those who seek employment in the public and parastatal sector and, reportedly in some instances, in parts of the private sector. It contravenes Article 23 of Iran’s constitution, which states that “*The investigation of individuals’ beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief*” as well as international human rights treaties to which Iran is a state party.

The *gozinesh*, which is currently overseen by the *Heyat-e Âli-ye Gozinesh*, or Supreme Selection Council, specifically accords to itself the role of investigation of a given job applicant’s beliefs; and to the Ministry of Intelligence the role of investigating the individual’s previous political opinion, affiliation or his/her “repentance (*towbeh*)” with respect to his/her former affiliation or opinion. The *gozinesh* has, therefore, the effect of according to secret officials and unaccountable bodies effective control over access to employment.

Background: the Cultural Revolution and the Supreme Council of the Cultural Revolution

Following the February 1979 revolution in Iran, the new authorities undertook initiatives aimed at ensuring that all members of society adhered to the tenets and practices of the dominant ideological orientation. These initiatives came to be called the Cultural Revolution, which lasted from 1979 to 1983. Its objectives are today broadly guided by the Supreme Council of the Cultural Revolution (SCCR).

In 1980, Ayatollah Khomeini issued a decree creating the seven-person *Setad-e Enghelab-e Eslami*, or Bureau of the Cultural Revolution, whose tasks included “[determining] the cultural policy of the universities in future on the basis of Islamic

¹⁵ Ibid.

¹⁶ See Amnesty International publication “Iran: A legal system that fails to protect freedom of expression and association”, AI Index: MDE 13/045/2001, December 2001

culture and through selection of efficient, committed and vigilant professors and for other issues relevant to the Islamic academic revolution”.¹⁷ It was given the power to pass legislation independently of parliament and the Guardian Council, the highest legislative assembly whose function is to approve laws. The creation of the Bureau of the Cultural Revolution was outside the framework of the constitution¹⁸.

Although focused on the education sector, the influence and functions of the Bureau of the Cultural Revolution were also applied to the labour market, where “ideological-political bureaux”¹⁹ instituted overall ideological and moral suitability tests to determine whether applicants for posts in the state/parastatal sector merited the post in question.

In 1984, the Bureau of the Cultural Revolution was succeeded by the seventeen-person²⁰ *Shoura-ye ‘Ali-ye Enghelab-e Farhangi*, or the SCCR. It was created by a decree issued by Ayatollah Khomeini and, like the Bureau of the Cultural Revolution, was beyond the purview of the constitution, and all legislative bodies. In 1987, at the request of the (then) president, Sayed ‘Ali Khamenei, Ayatollah Khomeini conferred upon the SCCR the right to formulate guidelines and rules independently of parliament.²¹

At the end of the period associated with the Cultural Revolution, the aspect of ideological investigation/examination inherent in the functions of the Bureau of the Cultural Revolution were also contained in a law governing employment in state offices.

The 1981 Law for the Renewal of Manpower Resources in Ministries and Government Offices

The enforcement of ideological-political and social conformity, in terms of the labour market for state jobs, was facilitated by the 1981 Law for the Renewal of Manpower Resources in Ministries and Government Offices. It resulted in the creation of “Manpower Renewal Committees” which were charged with undertaking a *gozinesh*, called by the author Shaul Bakhash an “ideological and moral suitability test” of all employees, new and old. The committee leading the *gozinesh*, called by Shaul

¹⁷ See <http://www.netiran.com/clippings.html>; the article by Saeed Moradi was entitled *Student Movement and Supreme Cultural Revolution Council* and was published in the monthly *Andisheh Jame-e*, February 2001

¹⁸ See Schirazi, Asghar: *The Constitution of Iran*, translated by John O’Kane, 1997, page 65

¹⁹ Bakhash, Shaul: *The Reign of the Ayatollahs*, 1985; page 226. The term is used in reference to those bureaux established first in the armed forces and later the national police and gendarmerie. Such offices were eventually established in all state offices including state-owned and parastatal firms.

²⁰ It was expanded to 36 in 1999

²¹ See Schirazi, page 65

Bakhash a “loyalty test,”²² reportedly usurped the power over employment from ministers and departmental chiefs and, in and around 1981, led to the expulsion of countless individuals from the civil service. According to Shaul Bakhash,²³ “thousands of teachers were among those who were dismissed” as, he notes:

“Placement committees’ (*komiteh-ha-ye gozinesh*) were created in government departments, state-owned enterprises and eventually parastatal firms. They assumed responsibility for checking on the ideological credentials of job applicants, examined applicants on arcane points of Islamic faith, impugned the reputation of employees with “revelations,” quizzed wives of employees on private life and religious conduct of their husbands, and expelled civil servants from jobs.”

In 1982, a decree issued by Ayatollah Khomeini, resulted in the termination of the initial “placement committees” and the creation of more “reliable”²⁴ committees. The function of ideological investigation inherent in the earlier structure was, however, left intact. This decree is the basis of the legal legitimacy of the current *gozinesh* laws.

The scope, criteria and some regulations of the *gozinesh* process

According to information obtained by Amnesty International, there are three laws currently governing the *gozinesh* process. They are: (1) the 1995 *Law on The Selection [gozinesh] of Teachers and Employees in Education and Development*²⁵; (2) the 1996 *The Continuation [of the] Law of the Law on The Selection [gozinesh] of Teachers and Employees in Education and Development*²⁶; and (3) the 1998 *Procedure Code for the Implementation of the State Selection Law*²⁷. Amnesty International acknowledges that there may have been amendments to these laws about which the organization has no further information.

Today, the *gozinesh* is executed to differing degrees, depending on the job in question and the nature of the organization or field in which the post is found. There appears to be no standard, accepted procedure for carrying out the *gozinesh*, and different public sector employers appear to use different approaches.

The scope of those subject to the *gozinesh* process is set out in *The Continuation [of the] Law of the Law on The Selection [gozinesh] of Teachers and Employees in*

²² See, for example, Bakhash, Shaul: *The Reign of the Ayatollahs*, 1985, page 226

²³ *Ibid.*

²⁴ *Ibid.*; page 228

²⁵ *Qanoun-e Gozinesh-e Mo'aleman va Karkonan-e Amouzesheh va Parvaresh*, ratified 1374 according to the Iranian calendar

²⁶ *Qanoun-e Tasri-e Qanoun-e Gozinesh-e Mo'aleman va Karkonan-e Amouzesheh va Parvaresh*, ratified 1375 according to the Iranian calendar

²⁷ *Ayin Name-e Ejra'ye Qanoun-e Gozinesh-e Keshvar*, ratified 1377 according to the Iranian calendar

Education and Development. It states in Article 1 that the law is applicable to: "...the totality of ministries, state organizations, firms and companies; the national companies for oil and gas and petrochemicals; the Organization for the Propagation and Rebuilding of Industry; the Red Crescent Society; municipalities; the social security organization; [...] firms and companies for which all or a portion of their budget is secured by public [state] funds..." and others.

The *Law on The Selection [gozinesh] of Teachers and Employees in Education and Development* states, in Article 2, that "the general guidelines for the moral, belief and political selection [gozinesh]" of [applicants] is according to the following criteria:

1. Belief in Islam or one of the official religions set out in the Constitution of the Islamic Republic of Iran;
2. Practical engagement²⁸ in the laws of Islam;
3. Belief and engagement in the *Velayat-e Faqih* [or Leadership by a religious jurisprudent]; the state order (*nezam*) of the Islamic Republic and the constitution;
4. Absence of a reputation of moral corruption and a tendency towards sin;
5. Absence of a record of an organizational membership or support of parties, organizations and groups declared illegal by the competent authorities; or the expression of repentance of this;
6. Absence of a current criminal conviction;
7. Absence of addiction to narcotic substances.

Note 1: In respect to paragraph 2: religious minorities set out in the constitution shall be [considered] in accordance to their respective beliefs, practices; adherence to the relevant laws and decrees and in the event that they not have a tendency towards the violation of the laws of Islam.

Note 2: Those who have given of themselves (i.e. to the needs and development of the state; *isar geran*) will be accorded primacy in selection [gozinesh] and in instances where limited availability or high demand; the criteria for priority of applicants [being] from an impoverished area, participation in revolutionary structures, participation in Friday Prayers and assemblies; the wearing of the chador - for women.

Note 3: Determination of paragraph 5 of the general guidelines is the responsibility of the Ministry of Intelligence; the other areas are under the purview of the *Heyat-e Âli-ye Gozinesh*, or Supreme Selection Council.

²⁸ Or commitment

There are a range of regulations governing the implementation of the *gozinesh* process that are set out in the three laws mentioned above. These include details on the two-step appeals process and who is entitled to take part in them; membership of the Selection Units (*Hasteh-ha-ye Gozinesh*) and Selection Councils (*Heyat-ha-ya Gozinesh*); and the functions and responsibilities in the process of these and individuals such as the president. These regulations, however much they intend to make the process transparent, do not mitigate the inherently discriminatory nature of the *gozinesh*.

Double discrimination: *gozinesh* in education and in the workplace

The important role of acceptance on an educational programme is key to understanding the overall impact of the *gozinesh* criteria in the workplace. The *gozinesh* criteria are reportedly most vigorously applied to prospective university students. For example, one report stated that:

Fault can be found with most selection processes. The Iranian one, called *gozinesh*, is peculiar to itself. Would-be students (or would-be school or university teachers) are rigorously quizzed to make sure that they, and their families, respect Islamic values. About 40% of higher-education places go to "preferred" candidates, such as the children of "martyrs" killed in the war with Iraq; a scattering of places also goes to ambassadors and ministers, and officials wanting to better themselves with a degree.²⁹

In short, an individual may have to endure a *gozinesh* to gain acceptance onto a university programme, then be required to face another one when embarking upon a career.

***Gozinesh* conditions embedded in other laws**

The logic, approach and process set out in the *gozinesh* laws are found embedded in a wide range of other laws and regulations specific to a given profession, trade or occupation, even though the *gozinesh* name may be absent.

For example, the requirements for becoming a lawyer³⁰ also contain limits to freedom of expression and association that contravene international standards: Article 2 of the 1997 Law on the Requirements for Obtaining a Lawyer's License contains the following embedded *gozinesh* elements:

²⁹ Taken from Survey of Iran - The Mullah's Balance Sheet, The Economist, 18 January 1997; this can be viewed at: <http://www.geocities.com/CapitolHill/Lobby/3163/Articles.html>

³⁰ Supra note 14.

"Permission to work as a trainee lawyer shall be issued to individuals who, in addition to having a BA degree in law or a higher degree; or basic Islamic Law or its equivalent from religious seminaries and universities, possess the following conditions:

- A. Belief in and practical devotion to Islam and its precepts;
- B. Belief in the Islamic Republic, *Velayat-e Faqih* [Leadership by a religious jurispudent] and loyalty to the Constitution. [...]
- D. Not having had membership or activity in atheist groups, misleading denominations and groups opposed to Islam as well as groups whose manifesto is based on negating divine religions;
- E. Not having the record of being an associate of the defunct Pahlavi regime or strengthening the foundations of the former regime;
- F. Not having membership in or supporting outlawed groups opposed to the Islamic Republic of Iran."

These limitations are also applied to applicants for training places with a Bar Association, and candidates for the Management Board of the Bar Associations. They undermine the independence of lawyers and of the Bar Association as they limit the personal freedom and professional security of the applicant; limit lawyers from providing effective defence of their clients and undermine the professional integrity, security and independence required by lawyers.

In the area of organized labour itself, it is reported that officials from the Ministry of Labour and/or the Ministry of Intelligence are entitled to intervene in the selection and determination of sector or trade-specific union representation or their boards and possibly even in the approval of the candidates to the board of the *Khane-ye Kargar*, or Workers' House, the body representing organized labour's interests.

Nonetheless, those seeking a state sector job in the administration of the province of Khorasan are able, however, to see where – administratively – the *gozinesh* office is located and the criteria required of them.³¹ Applicants to positions in Khorasan see that they are subject to a written test and "investigation" and that their applications will be referred to the Ministry of the Interior's own *gozinesh* committee, so as to ensure that the applicant adheres to the overall policies of the *gozinesh* as it applies to human resources.

Case studies of the *gozinesh* process

Examples of those who have been refused a job on the basis of a decision of a

³¹ See <http://www.khorasan.ir/chart/gozinesh.htm>

gozinesh, or selection panel, are difficult to obtain: individuals known to Amnesty International have refused to permit the details of their cases to be repeated out of fear that it may compromise their current position and prospects for future employment in Iran.

However, Amnesty International has received over many years credible reports concerning the implementation of the *gozinesh*: for decades, members of the Baha'i community are legally unable – as long as they are known as adherents to that creed – to obtain public sector employment due to their religious affiliation.

In 1995, UP (name withheld on request) was an advanced student in medicine. He was denied a moderately paid internship in a hospital. The rejection letter, citing the and rules (*zavabet va qava'ed*) set out by Joint Commissions 1 and 2 of the SCCR in July 1987³² – an earlier form of the *gozinesh* process – noted only that he failed to have an “*absence of hostility with respect to the regime of the Islamic Republic of Iran.*” UP, noting his inability to get a job because of political opinions he was alleged to have previously held, later successfully sought asylum in a northern European country.

In 1998, a prospective judge in Susangerd was reportedly told by a *gozinesh* panel that he, as an Arab (a minority in Iran) did not have enough devotion to the Islamic Republic of Iran. Around the same time, an applicant for a post at the municipality of the same city, Susangerd, was told that as he did not have a moustache, it was clear that his devotion to Islam was insufficient to be employed. Other members of the Arab minority have reportedly been told that they are members of “Arab organizations”, though they have never been questioned by police or judicial authorities let alone faced charges.

In 2000, MM (name withheld on request) had been accepted to join the Foreign Ministry following rigorous written examinations. In the course of the *gozinesh* interview, he was reportedly asked about his links to and information about cousins

³² This earlier law contained the following criteria: (1) Belief in Islam or one of the other Heavenly religions; (2) Absence of engagement [concerning] not carrying out (literally: the non-existence) of the practice of the laws of Islam (fulfilling religious requirements and abstaining from that which is religiously prohibited); Note 1 – Proof of current status of applicant at the time of being employed; Note 2 – Religious minorities (official religions) contained in the Constitution are exempt from this article on condition that he does not publicly violate the tenets of Islam; (3) Absence of hostility (no complaint) with respect to the regime of the Islamic Republic of Iran; Note – In the event that the applicant has previously shown hostility to the regime of the Islamic Republic of Iran, he must have changed his opinion (*taghiyeir-e nazar-e ou bayad ehraz shaved*); (4) No previous membership in SAVAK [the intelligence agency prior to the 1979 revolution], Freemasonry or its offshoots; (5) Absence of moral corruption; (6) Absence of reputation of having carried out acts against professional, educational dignity in the period of education or employment, where he was previously professionally employed.

who were allegedly formerly members and supporters of the banned Peoples' Mojahedin of Iran. He replied that he did not know them well and, in any case, did not agree with their political opinions. He later learned that despite his excellent written examination, he was rejected. Through friends close to members of the panel, he learned that his rejection was linked to the alleged support by remote family members of the banned political organization.

In a publicly available account³³, one writer seeking a position teaching English in the army has described the process he was required to go through, without success:

"First, one has to get a specific office in a government entity to say they need that person. Then, your file gets passed on to the deputy minister of that division. Depending on the relationship of the person who requested you and the deputy, chances improve or fall. Then, if the request is granted, that deputy writes another deputy who is in charge of "Draftees Affairs" and the process goes on. After a string of similar events, the Ministry finally sends an official request to the Commander-in-Chief's Office. But that is just the tip of the iceberg. The hardest part is getting the approval of that office. I cannot tell you what it took to do this. No, really, I can't. Just keep in mind that some of the ministries require a 2-3 year commitment to work there after your national service is done.

It was scary being in a government office and talking to officials, even petty ones. I kept making mistakes in Persian and saying the wrong thing to the wrong person. The next step is to get the approval of *gozinesh*. The word sounded as unfamiliar to me as it does to most of you. Trained by the Egyptian system, I had learned never to leave any papers on someone's desk. It was so easy to get lost, and this being my tale, I got lost in the "herasat" wing (much later I learned that means security or the boys who enforce Islamic codes).

Anyway, I asked a young bearded chap where this *gozinesh* room is and, in typical Iranian fashion, he started asking me curious questions. Before long, he took my entire file and read it and we had a nice conversation about returning from abroad. He seemed to like my insanity and simply could not believe I returned to Iran when my parents were not even there. Now that we were such good friends, I asked him what in the world this *gozinesh* thing is anyway. I was horrified to learn that that is the selection board, as in ideological selection! My new friend told me not to worry, he has an old college buddy there and he will hook me up. I did not chance it and studied for ten days before the set test. But surely enough I was asked very simple questions and the guy said it should not be a problem. Two weeks before my draft date, after everything had gone through, I learned that I had failed the ideology test! What a mess that was! But, with luck that could have been heaven sent, I went in and talked my way around it."

³³ See Siamak Namazi: *Finding peace in the Iranian army*, published in the internet magazine, The Iranian, February 1997. It can be viewed at: <http://www.iranian.com/Feb97/Travelers/Army/Army.shtml>

Amnesty International calls on the Iranian government:

- To fully implement Convention No.111, clarify those aspects of *gozinesh* which are discriminatory and eliminate them from the selection process;
- To provide detailed information about the practice of *gozinesh* in its reports to the Committee of Experts;
- To fulfil its reporting obligations under the international human rights treaties to which it is also a state party and which also prohibit discrimination. In particular, the government has overdue reports to the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, one dating back to 1994.

3.c. Israel and the Occupied Territories and discrimination

Israel has ratified the following fundamental Conventions:

Discrimination: C100 and C111

Forced labour: C29 and C105

Child labour: C138

Freedom of Association: C87 and C98

C182 on the worst forms of child labour.

Israel is a state party to six international human rights treaties It has signed, but not ratified, the optional protocols to the CRC. It has not ratified the MWC.

In keeping with past practice, two ILO missions were sent to the Occupied Territories in 2002 to assess the employment conditions of workers. On the basis of these, the Director-General submitted a report to the ILC which concluded: “A gradual lifting of the closures would go a long way towards alleviating the dire situation of Palestinian workers and families. Likewise, measures to resume employment of Palestinian workers in Israel would serve to reduce the dramatically high level of unemployment”.³⁴ Subsequently, a proposal for an expanded programme of technical assistance, built around the notion of decent work, addressing rights at work, employment, social protection and social dialogue, was endorsed by the Governing

³⁴ Report of the Director-General, Appendix, 2002, document ref CONFREP/2002-05-0364-EN.Doc. See also “Enhanced programme of technical cooperation for the occupied Arab territories”, document reference GB.286/8, March 2003.

Body.³⁵

The Committee of Experts requested the Israeli government to present reports this year on implementation of ILO Conventions Nos. 100 and 111, as well as Conventions Nos. 87 and 98. At its session in March 2003, the Governing Body of the ILO decided to call for a special sitting at the forthcoming session of the ILC on the situation of workers of the occupied Arab territories.³⁶

The impact of closures, curfews and other restrictions on movement on the right to work for Palestinians

The increasing restrictions imposed by Israel on the movement of Palestinians in the Occupied Territories have had a devastating impact on the lives of most Palestinians. The closures, blockades and curfews, which most of the time prevent the Palestinian population of the West Bank and Gaza Strip from leaving their homes or immediate surrounding areas, have caused the virtual collapse of the Palestinian economy. Unemployment has soared to about 50% and some 60% of the population is living below the poverty line, with an increasing number suffering from malnutrition and health problems.

Restrictions on Palestinians' movement, imposed to varying degrees by Israel since its occupation of the West Bank and Gaza in 1967, increased in the past decade and have reached an unprecedented level in the past two and half years, since the beginning of the Palestinian uprising against Israeli occupation (known as *al-Aqsa intifada*, or *intifada*), on 29 September 2000.

Since then the level of violence has spiralled. Some 2,000 Palestinians, including some 350 children, have been killed by the Israeli army and some 700 Israelis, most of them civilians and including some 90 children, have been killed by Palestinian armed groups. Tens of thousands others have been injured, many maimed for life. In addition the Israeli army has destroyed some 3,000 Palestinian homes and vast areas of agricultural land in the West Bank and Gaza, uprooting tens of thousands of olive and fruit trees and orchards, and demolished hundreds of workshops, factories and public buildings.

³⁵ The technical assistance programme for the Occupied Territories comprises four elements: the creation of the Palestinian Fund for Employment and Social Protection; design of a social protection system; capacity building for the social partners; and creating a platform for social dialogue between Palestinians and Israelis.

³⁶ Special sittings on the situation in the occupied territories have been held between 1990 and 1995, and in 1998, 1999 and 2001.

Several of these elements, notably the destruction of Palestinian land and property, have contributed to the severe worsening of the economic situation of the Palestinians in the Occupied Territories in the past two and half years. However, those who have been monitoring and assessing developments in the Palestinian economy over several years, including the ILO, the UN, the World Bank and other international organizations, all agree that the stringent restrictions imposed by Israel on the movement of Palestinians have been the main cause of the unprecedented severe depression of the Palestinian economy which has had a devastating impact on the lives of Palestinians living in the Occupied Territories.³⁷

Closures, curfews and restrictions on the movement of Palestinians inside the Occupied Territories are most stringent in the vicinity of Israeli settlements and along roads which connect these settlements to each other and to Israel. The measures, which according to Israel are taken to protect the security of some 380,000 Israeli settlers,³⁸ whose presence in the Occupied Territories contravenes international law, result in the imposition of sweeping collective punishment on some three and a half million Palestinians.

The raft of restrictions imposed by Israel has continued to increase, Palestinians find themselves enmeshed in a matrix of different restrictions – curfews, closures, roadblocks, and closed military areas. None is immune from their impact.

When curfews are not in place, Palestinians can leave their home but most of the time cannot move from one area of the Occupied Territories to another and are often confined to what is tantamount to a form of town/village arrest. They are prohibited from driving on main roads connecting one part of the West Bank to another unless they obtain a permit from the Israeli army. Such permits are virtually impossible to obtain for most Palestinians and are of no use when curfews are imposed or to get through roads which have been blocked or destroyed by the Israeli army - both widespread and frequent practices. Most West Bank towns and many villages are surrounded by roadblocks, cement blocks, ditches, earth barriers and gates. When at

³⁷ According to the World Bank “The proximate cause of the Palestinian economic crisis is closure”. See: “Two Years of *Intifada*, Closures and Palestinian Economic Crisis – An Assessment; report by the World Bank, 5 March 2003. In its report covering the period up to 30 June 2001, The Office of the UN Special Coordinator in the Occupied Territories (UNSCO) stressed that: “... movement restrictions have exerted the most direct impact on the economy...”. (UNSCO Report “Impact on the Palestinian Economy of Confrontation, Border Closures and Mobility Restrictions”; 1 October 2000 to 30 June 2001. Chapter 1.2: Further Effects of Confrontation and Closure, page 6).

³⁸ More than 170 Israeli civilians have been killed in the Occupied Territories, out of a total of more than 470 Israeli civilians killed in the past two and half years.

all possible, journeys of a few kilometres between villages take hours, as Palestinians are forced to make long detours to avoid areas prohibited to them, checkpoints and roadblocks. For Palestinians ordinary everyday activities such as going to work, to school, seeking medical care or visiting relatives have become time-consuming, costly and risky, as in order to enforce curfews and closures Israeli soldiers frequently resort to measures such as shooting live ammunition, throwing tear gas or sound bombs, beatings, arrest and confiscating or damaging vehicles.

As a result many limit their activities outside the home to what is absolutely necessary. Thus, confinement to the home or immediate surroundings has become the norm for Palestinians.

Freedom of movement for people and goods is an essential requirement for any functional economy, and even more so for a new economy which is trying to develop and establish itself.³⁹ The draconian extent and duration of the restrictions on movement imposed by the Israeli army in the past two and half years have all but destroyed the Palestinian economy.

Following a serious recession in the mid-1990s, the Palestinian economy experienced an upward trend which lasted from 1998 through the third quarter of 2000.⁴⁰ The improvements in this period were directly linked to the easing of movement restrictions.⁴¹

Israel controls all the entry/exit points into the Occupied Territories and all persons (Palestinians and foreigners) and goods leaving or entering the Occupied Territories must pass through Israel or through areas under Israel's control (the border between Egypt and the Gaza Strip and the border between Jordan and the West Bank). Closures and curfews have resulted in shortages of goods in the Occupied Territories, increased costs as Palestinians must pay high storage fees for imported merchandise

³⁹ Much of the Palestinian economy developed since the mid-1990s with the establishment of the Palestinian autonomous (or self-rule) areas in parts of the West Bank and Gaza. Following the signing of the Oslo Agreements (the Israeli-Palestinian Declaration of Principles on the Interim Self-Government Arrangements signed on 13 September 1993, the Israeli Palestinian Agreement on the Gaza Strip and Jerico Area signed in Cairo on 5 May 1994, and the Israeli Palestinian Interim Agreement on the West Bank and Gaza Strip, signed in Washington DC (US) on 28 September 1995).

⁴⁰ In 1998 and 1999 the GDP increased by 7% and 6%, respectively, and the GNP by 8% and 7%, and in the same period the registration of new Palestinian companies increased by 40%. The World Bank put the decline in real GNP in the year 2000 at almost 9% compared to 1999; the last quarter of 2000, when strict movement restrictions were imposed by Israel, accounts for this decline.

⁴¹ Closures were imposed for some 121 days in 1996 and 57 days in 1997, and were eased in 1998 (26 days) and 1999 (7 days).

kept waiting at Israeli ports during closures, and loss of export markets for goods from the West Bank and Gaza.

Closures and curfews have severely disrupted the transport of goods and raw materials, which often are simply unavailable or cannot reach production plants. Transporting goods within the Occupied Territories, even at short distances, has been made increasingly difficult as Palestinian trucks cannot drive from one area to another or enter certain areas. Goods have to be moved in or out of a town/area by being transferred, under the supervision of Israeli soldiers, from a truck on one side of the checkpoint, to a truck on the other side of the checkpoint. This procedure is known as the "back-to-back" system. When checkpoints are open, drivers often have to wait for hours until it is their turn. In addition to the extra cost of using several trucks, unloading and reloading the goods from one truck to another takes time and often drivers have to hire extra people to help them. In the process the merchandise, especially perishable goods such as fruit, vegetables, dairy products and flowers, get spoiled or damaged, making them unmarketable or reducing their value. In addition to the dramatic increase in the cost and time involved in transporting goods within the Occupied Territories the closures often create a lack or shortage of particular goods in some areas, while products which cannot be moved out of certain areas cannot be absorbed by the local market. In the case of agricultural produce this means they are wasted.

A consequence of these restrictions has been unemployment, which has soared from about 10% in 2000 to some 50% in early 2003. Loss of income from work has in turn caused a steep rise in poverty. The dramatic decline in the standard of living among Palestinians in the Occupied Territories has in turn led to increased malnutrition and a worsening of health conditions, as more people develop illnesses and/or do not receive adequate medical treatment. In addition to health, other key areas of life, including education, have been negatively affected by the restrictions on movements imposed on Palestinians. In the current academic year, since September 2002, children and students, from kindergarten to university level, have been prevented from attending classes in most areas for about half of the total school days due to closures and curfews. Some universities have been closed altogether by the Israeli army. The current reduction in access to education will have long-term effects on the educational development of those affected.

Israeli officials have acknowledged that closures and curfews have had a severe impact on the Palestinian economy and living conditions, but some stated that Palestinians "are not starving" because they are receiving assistance from international organizations, such as the UN Relief and Works Agency for Palestine

Refugees in the Near East (UNRWA) and the International Committee of the Red Cross (ICRC).⁴² Indeed, even though the work of humanitarian and aid organizations has frequently been hindered by the Israeli army,⁴³ at present the survival of a significant percentage of the Palestinian population of the Occupied Territories is to a large extent dependent on international aid. However, charity and humanitarian assistance do not absolve Israel from its obligation to guarantee Palestinians' right to work under international law, so that they can feed themselves, rather than be fed. As Palestinians have increasingly been forced to rely on handouts to meet their basic needs, feelings of hopelessness and alienation have grown, damaging the texture of society and fuelling resentment and violence.

The ICESCR, ratified by Israel in 1998, requires states parties to secure the realization of certain basic rights, including the right to work, health and education, and the right to an adequate standard of living. The right to work is an intrinsic aspect of human dignity and fulfilment and is instrumental to the realization of other rights, such as an adequate standard of living. It includes wage employment, self-employment and other activities that are productive or generate income, whether paid in money or in kind.

The right to work, like any other human right, imposes three types of obligations on states parties: the obligations to respect, to protect and to fulfil. The obligation to respect requires states parties not to take any measures or impose any obstacles that prevent access to work. The obligation to protect requires measures to ensure that non-state institutions and individuals do not deprive individuals of access to work. The obligation to fulfil requires state parties to engage proactively in activities intended to strengthen individuals' access to work.

High unemployment and poverty rates amongst Palestinians living in the Occupied Territories are a direct consequence of the restrictions imposed by the Israeli authorities on Palestinians' movement. Through these policies Israel has disempowered hundreds of thousands of Palestinians, depriving them of their potential to work with dignity and support themselves and their families.

⁴² In an interview with Israel Radio on 13 October 2002, Colonel Shimshon Arbel, Head of Information and Coordination for the Office of the Coordinator of Government Activities in the Territories stated: "No one is starving in the Gaza Strip and the West Bank. International organizations including UNRWA and the Red Cross operate extensively in the territories."

⁴³ Organizations which provide humanitarian assistance to the Palestinian population in the Occupied Territories have repeatedly complained about movement restrictions which have impeded their activities and curtailed their ability to carry out their tasks efficiently. See for example the report of Ms. Catherine Bertini, Personal Humanitarian Envoy of the UN Secretary-General 11-19 August 2002, paras. 70 – 81.

Israel's conduct contravenes its obligations under international human rights and humanitarian law to guarantee the right to freedom of movement, the right to work and the right to an adequate standard of living.⁴⁴ It also contravenes its obligations under international humanitarian law to ensure that protected persons living in an occupied territory are allowed to live as normal a life as possible and are not subjected to collective punishment.

Amnesty International calls on the Israeli authorities:

- To put an immediate end to the regime of closures and curfews as currently imposed;
- to refrain in all circumstances from imposing closures, curfews and other restrictions on movement which constitute collective punishment;
- to ensure at all times that restrictions on the movement of Palestinian are only imposed when absolutely necessary, and that such measures are proportionate to a specific threat;
- to ratify and implement the two optional protocols to the CRC and ILO Convention N. 182 on the elimination of the worst forms of child labour.

3.d. Mauritania, slavery and slavery-like practices

Mauritania has ratified the following fundamental Conventions:

Discrimination: C100 and C111

Forced labour: C29 and C105

Child labour: C138 and C182

Freedom of Association: C87 and C98

It has ratified the CERD, CRC and Women's Convention. It has not ratified the following international human rights treaties : ICCPR, ICESCR, CAT, MWC or either of the optional protocols to the CRC.

In a statement to the Committee on the Application of Standards in 2002, the Mauritanian government argued that it “did not acknowledge the existence of forced labour practices in the country, even as isolated occurrences”. In December 2002, the Committee of Experts considered a report of the Mauritanian government on implementation of Convention No.29, and noted that an ILO technical mission had

⁴⁴ Including the ICCPR, the Fourth Geneva Convention and the Regulations annexed to the Fourth Hague Convention Respecting the Laws and Customs of War on Land.

been unable to travel to the country to examine the situation of forced and child labour. The Committee of Experts requested further information from the government on legislative developments relevant to Article 25 of the ILO Constitution (which insists on laws imposing legal sanctions).

Freedom from slavery and servitude is a fundamental human right, which may not be violated in any circumstances. Slavery and slavery-like practices result in composite and cumulative abuses of other fundamental human rights established in international law, including the right to be free from discrimination. Amnesty International believes that extensive human rights abuses connected to slavery are committed with impunity in Mauritania and that those formerly held in slavery suffer continuing discrimination.⁴⁵ Among those who acknowledge that slavery still persists in Mauritania, there are many shades of opinion. Often people deny that their own community practices slavery or discrimination, but believe that these problems exist in other communities. It is clear from interviews with activists and analysts inside and outside Mauritania that the relationship between the enslaved person and the person who enslaves another varies enormously between ethnic groups and between individuals. Given that the status of being enslaved has been part of the social structure among Moors and the different black ethnic groups for generations, extreme violence is not required to preserve it. Within the black ethnic groups, those known as “slaves” usually live in their own homes and so have increased independence but, nevertheless, their civil and political rights remain curtailed and their status involves a loss of human dignity. Within the Moorish community, some of those in slavery remain with those who have enslaved them or their ancestors and have been punished for trying to leave, while others have sought freedom which has been granted, usually in exchange for money or goods given by the enslaved person to compensate for the fact that they intend to leave and/or work for themselves. Others have been allowed or even encouraged to leave in times of economic hardship, but the family which has enslaved the person has still been able to demand services of the person who was enslaved at a later date when necessary or to appropriate their goods when they die.

The formal abolition of slavery in 1981 has not led to a real and effective abolition for various reasons, including a lack of legislation to ensure its implementation and the inadequate response of the government to eradicate slavery and discrimination. Such an ingrained social, economic and political problem can only be eradicated by confronting all its aspects, including through the extensive retraining of the judiciary and initiating a human rights education and general public information program, especially in rural areas, and among the under-privileged, including those held in

⁴⁵ See Amnesty International publication: “Mauritania: A future free from slavery?”, AI Index: AFR 38/003/2002, November 2002.

slavery, those who used to be held in slavery, women and children.

Apart from the concerns expressed by the ILO, other international and regional human rights bodies and experts have called on the Mauritanian government to take concrete measures to end discrimination and forced labour. Most recently these have included the Committee on the Rights of the Child⁴⁶ and the Committee on the Elimination of Racial Discrimination⁴⁷.

The case of Saleck Vall ould Baba

Saleck Vall ould Baba belongs to an ethnic group which considers itself to be Haratine and which belongs to the same group (Z'Beirat) as the local chief of Aoueinat village in Guidimaka region, whose family used to hold Saleck Vall's family in slavery.⁴⁸ During national elections in 1996, the ruling *Parti républicain démocratique et social* (PRDS), Republican Social Democratic Party, split in two. The faction Saleck Vall ould Baba supported won, beating the rival faction which was supported by the local chief. After the elections, the local chief and his brother, who was Prefect of Boutilimit, reportedly issued an order banishing Saleck Vall. This terminated any working relations he had with local people and denied him access to water from the village well. The precise status of this banishment is not clear, but it seems to have been issued for political motives and law enforcement officials seemed unwilling or powerless to contradict it.

One person supported his defiance of the banishment. Zein ould Meyat, who is also considered a Haratine, agreed to help Saleck Vall harvest his crop of henna. Zein ould Meyat

⁴⁶ UN document reference CRC/C/15/Add.159, November 2001. The Committee called on the government to “Make concerted efforts at all levels to address discrimination...through a review and reorientation of policies, including increased budgetary allocations for programmes targeting the most vulnerable groups “, and “Ensure effective law enforcement, undertake studies and launch comprehensive public information campaigns to prevent and combat all forms of discrimination “ . Amnesty International believes that the sensitivity of the issue in Mauritania is such that this analysis would benefit from a full discussion of and prior agreement on which social and ethnic criteria would be used, in order to give people an adequate opportunity to determine their own identity rather than being classified by others.

⁴⁷ UN document reference CERD/C/304/Add.82, April 2001. “ The Committee recommends that the State party include information in its next report on legislative measures and practices introduced by the authorities to give effect to the provisions of article 5 of the Convention, especially with a view to promoting the struggle against discrimination affecting the most vulnerable groups of the population, in particular the black communities, and to eradicating vestiges of practices of slavery and involuntary servitude”.

⁴⁸ See SOS Esclaves Rapport 1997 sur l'esclavage en Mauritanie. The main communities in Mauritania are the two Moorish communities —the politically dominant white Moors and the black Moors, widely considered, including by themselves as former « slaves » and known as Haratines – and the black African communities from the south. The Haratines are almost exclusively of black origin, but are closely associated with the Moorish population in terms of language and culture. Their Moorish culture and their language are the result of generations of enslavement by the Moors.

was then attacked at night, allegedly by the chief's brother and at least two others. They beat him, tied him up and suspended him from a tree before delivering him to the Gendarmerie, alleging that he had been caught stealing. Zein ould Meyat was sentenced to two years' imprisonment on theft charges, although Saleck Vall ould Baba alleged that no mention was made of what he had stolen. He was released from prison in Selibaby after serving part of his sentence.

Saleck Vall moved away, obtained water from a more distant location and lodged a complaint with the Prefect, the civilian administrator, and the Gendarmerie Chief in Ould Yengé against the banishment. After four months, in February 1997, as there had been no reaction, he returned to live nearer to the well and his date palms in El Karmousse. In an open letter Saleck Vall wrote to the President of the Republic, he explained that the local chief told him he could not return so close to Aoueinat because his defiance of the banishment could incite people still held in slavery to transgress their boundaries and join him in his protest. However, Saleck Vall decided to ignore this. On 18 February 1997, he was summoned to appear before the Prefect and was taken into custody by seven gendarmes. He was held for three days and finally received a verbal warning from the Prefect that he had "no right to move without the permission of the administrative authorities." He was then forcibly taken by the gendarmes to Leklebia, five kilometres from his plantation. Since then there has been little or no progress in his case, despite his interventions with the Prefect and the Gendarmerie and the assistance of his local member of parliament.

Saleck Vall stated in his letter to the President of the Republic that he approached the *Cadi* who had said he could not do anything and that he feared getting involved.

In late October 1997 a new Prefect sought to mediate and asked each side to provide documentation about the land, in an apparent attempt to deal with the land issue which had only arisen as a result of the banishment. The village chief produced a document which the Prefect considered false and people apparently loyal to the chief started to threaten women and destroy young palm trees. Saleck Vall was attacked and some women who tried to prevent the attackers setting fire to their possessions, including their tents, were reportedly tied up and beaten with thorny branches. About eight people were reportedly seriously beaten and Saleck Vall was taken to a health centre for medical treatment. About 12 people were then taken to Selibaby for questioning in connection with this incident. Only one person remained held, apparently on charges of throwing a stone which hit the local chief, and of insulting his family in court.

The conflict was finally resolved after a magistrate and state prosecutor from Selibaby intervened, and the contested land remained with the Saleck Vall and his family. However, no-one has been charged with assaulting and harassing them.

Attacks on Zein ould Meyat, Saleck Vall and other people considered part of the Haratine group were committed with impunity. The person who had previously enslaved his family was able to punitively banish Saleck Vall, without recourse to the law, which Saleck Vall was unable to challenge because of the persistence of the power imbalance due to their former relationship. It is indicative of continuing discrimination against people who have been held in slavery in Mauritania. In a letter

to the President Taya, Saleck Vall wrote:

“They (the authorities) behave towards Haratines as if they are not human beings. They humiliate them all day long...Every day, Haratines are dispossessed of their goods and denied their rights by the actions of these authorities;; they are also the ones who spend time in prison, are beaten up and tortured, just to make them understand that they are nothing and always will be”.

Amnesty International calls on the Mauritanian government :

- To facilitate an on-site mission of the ILO to examine the issue of forced and child labour, and ensure that such a mission involves religious leaders, traditional leaders, law enforcement officers and judicial officers as well as members of civil society and non-governmental organizations working against slavery and discrimination;
- to openly confront the issue of slavery and acknowledge that slavery remains a problem. A full range of recommendations made in 1984 by an expert appointed by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities⁴⁹ have still to be implemented, taking into account relevant developments since their original publication. One priority for the government is the establishment of an independent and impartial enquiry into progress over the past 20 years to eradicate slavery, slavery-like practices and related abuses and discrimination. The enquiry must encompass civil society;
- to seek technical assistance from the ILO to review and adjust the judicial framework, practice and the law itself to ensure freedom from slavery, slavery-like practices and related abuses;
- to ratify international human rights treaties, particularly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

⁴⁹ Report by Marc Bossuyt, document reference E/CN.4/Sub.2/1984/23, 2 July 1984.

3.e. Sudan, forced labour and discrimination

Sudan has ratified the following fundamental Conventions:

Discrimination: C100 and C111
Child Labour: C138 and C182

Forced Labour: C29 and C105
Freedom of Association: C98

It has not ratified C87 on freedom of association.

Sudan is a state party to the international human rights treaties, but not the Women's Convention or the MWC.

The ILC has devoted five “special paragraphs” to the situation in Sudan, including in 2002.⁵⁰ The last special paragraph noted the refusal of the government to accept a mission by the ILO, the persistence of forced labour in Sudan and the inadequacy of measures taken by the government to combat the situation. It continued: “The Committee noted in particular the lack of penalties imposed on those responsible. It urged the government to take a stronger position in combating cases of forced labour resulting from abductions of women and children by clarifying its policy and giving it the necessary publicity. The Committee trusted that the government would take urgent, effective and relevant measures to establish and strengthen machinery for prevention, identification and punishment”.⁵¹

Background: abductions, forced labour and sexual slavery

The problem of abductions is closely linked to the increasing use by Sudanese governments during the 1980s of militias outside the regular army from northern nomadic groups such as the Baqqara and the Messiriya in Kordofan and Darfur. These armed groups were often known as the *Murahelin* ; they became notorious for raiding sedentary southern groups in the south, killing men, burning villages, and abducting women and children. In 1989 an act was passed which legalized a paramilitary defence force, the Popular Defense Force (PDF). Though this was partly seen as a means of legitimizing and controlling the militias, the PDF simply added another raiding element into the conflict; the Sudanese army, the PDF and the

⁵⁰ The Committee on the Application of Standards may cite a “special paragraph” in its report, a procedure reserved for consistent and serious violations of labour rights, including those enshrined in core labour standards.

⁵¹ See Committee on the Application of Standards, document reference C.App/PV.10, 12 June 2002

Murahelin continued to act brutally against civilian villages, often in alliance. Some of the raiding and abductions took place around the departure from Wau of the military train during the dry season; the train was accompanied by militias who took the opportunity to raid villages along the railway line. Government officials and many tribal leaders denied any involvement in abductions, stating that they were elements not under their control; however, although some *Murahelin* may have acted independently, there is strong evidence that on some occasions government, PDF and *Murahelin* had acted in conjunction and the Sudanese government reportedly paid incentives to *Murahelin*.

During the late 1980s and the 1990s a debate focussed on whether the treatment of those abducted, mostly women and children, constituted slavery. Women and children abducted to the north were kept by their abductors' family, given away or sold and forced to work, normally in agricultural tasks or domestic work for nothing or for extremely low wages.

Recent developments

In 2002 an international "Eminent Persons Group", which included diplomats, social anthropologists and humanitarian aid workers, was set up as a result of pressure from the US Special Envoy for Peace in Sudan, Senator John Danforth. It was given facilities to travel freely around Sudan. In May 2002 it produced a report with a number of findings and 15 recommendations. As regards slavery, it concluded :

"We found a wide range of economic relationships between northerners and persons from the south who have either been displaced or have migrated to the north. Such relationships range from debt bondage to benign relations of sponsorship or adoption. The majority of these relations, while they may involve economic exploitation, do not fall under the rubric of slavery. However, we also found evidence of exploitative and abusive relationships that, in some cases, do meet the definition of slavery as contained in international conventions, which Sudan has signed".⁵²

Fighting, in breach of a cease-fire which was declared between the Government of Sudan and the Sudan People's Liberation Army (SPLA), broke out in January and February 2002 in Western Upper Nile Province. The fighting was investigated by a Civilian Monitoring Protection Team (CPMT), set up in October 2002 after the Sudan Government and the SPLA agreed in March that neither side would target civilians. The CPMT is composed of former US soldiers and some civilians and operating out of the US Embassy in Khartoum and from Rumbek in south Sudan. Their report on the fighting during January 2003 raised worrying questions about continuing

⁵² Finding 5, "Slavery, Abduction and Forced Servitude in Sudan", Report of the Eminent Persons Group, May 2002

abductions of southerners:

“Non-combatants have been abducted, including men/boys (for military service), while women and children, have been taken to GoS [Government of Sudan] controlled towns (probably Mankien, Mayom, and Bentiu) where the children are held captive and women forced to provide manual labor and sexual services (based on multiple interviews with escaped abductees, both male and female).” (Para 2, Principal Observations, (b)2)

In 1999, as a result of heavy pressure from international organizations as well as public opinion, the Sudanese government set up a Committee for the Eradication of Abductions of Women and Children (CEAWC) with a mandate which includes facilitating the return of those abducted, bringing to trial those who abduct them and recommending means to eradicate the problem. So far progress in resolving the problem by CEAWC has been slow and Amnesty International is concerned that the Sudanese government, which is ultimately responsible for abductions by soldiers and militias backed by the government, has not provided adequate funding to CEAWC to tackle the problem. This concern has been echoed by the UN Special Rapporteur on the Sudan in his latest report to the Commission on Human Rights.⁵³

Thousands of women and children abducted during the conflict remain unaccounted for. The estimated number of those abducted varies. CEAWC and the Dinka Chiefs Committee estimate those abducted at around 14,000; UNICEF and Save the Children’s estimate are from 10,000 to 17,000, while some other organizations have cited much higher numbers.

Article 163 of the Sudan Penal Code of 1991 prohibits the use of forced labour. It states: “Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment for a term not exceeding one year or with a fine or with both.” The policy of CEAWC is, however, not to prosecute people under this or other articles of the Penal Code (abduction is punishable by 10 years’ imprisonment under Article 162 of the Penal Code) in the interests of releasing the person abducted. This is in contravention of the government’s obligations under Convention No. 29, Article 25 which states: “The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation of any member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced”.

⁵³ See report of Special Rapporteur on the Sudan, document reference E/CN.4/2003/42, paragraph 51 which states “Funding remains a problem and is affecting seriously the impact of CEAWC”.

Discrimination against media workers as a result of restrictions on freedom of expression⁵⁴

In 2002, the Committee of Experts highlighted a fundamental flaw in the new Constitution, which prohibits discrimination on the grounds of race, sex and religion, but does not prohibit discrimination on the grounds of political opinion, national extraction, colour and social origin. The Committee of Experts called on the government to take the necessary steps to prohibit in law and practice discrimination in employment, occupation and training on all the grounds covered by Convention No.111.

Article 1 of Convention No. 111 defines discrimination as including “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”. As a state party to this treaty, Sudan is further obliged to declare and pursue national policy designed to promote equality of opportunity with a view to eliminating discrimination, including on the grounds of political opinion.

Amnesty International believes that Sudan is failing to abide by its obligations under Convention No. 111 by discriminating against those working in the media. Freedom of expression is one of the foundations upon which the ILO is built⁵⁵ yet restrictions on press freedom continue in Sudan with the result that those working in the media are unable to pursue their material well-being in conditions of freedom and dignity, of economic security and equal opportunity because they are excluded from work. This is also in contravention of Sudan’s obligations the International Covenant on Economic, Social and Cultural Rights, Article 6, by which states parties recognize “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts” and commit themselves to “take appropriate steps to safeguard this right”.

The national security force frequently takes action against the Sudanese press in ways which cannot be challenged and are often secret. In recent years Sudanese security forces have harassed and detained journalists and editors and confiscated, fined and arbitrarily suspended newspapers which have criticized actions of the government or otherwise exercised their right to freedom of expression.

⁵⁴ See press release issued by Amnesty International, AI Index: AFR 54/008/2003, “Sudan: restriction on freedom of expression must be lifted”, 11 March 2003.

⁵⁵ The Declaration of Philadelphia states that the ILO is based on four fundamental principles, including the following: “freedom of expression and of association are essential to sustained progress” (Article 1(b)).

The list of topics which have brought harsh government action covers a large number of facets of Sudanese politics: the conflict in the South, in border areas or elsewhere and criticism of government actions in relation to peace talks and the Machakos Protocol; human rights violations within the Sudan including detention of government critics; protest demonstrations; criticism of government policies; and articles concerning female circumcision in the Sudan. Newspapers have also been sanctioned for publishing news and comment about current events, such as the student riots in October and November 2002 and their repression. Those who break the “red lines” drawn by the security forces may suffer confiscation or fines against their newspapers, sometimes arrest and short-term detention and sometimes suspension of their newspapers.

On 28 December 2002 the Director of National Security suspended indefinitely *al-Watan* newspaper, which used to bring out a print run of 20-25,000 copies and employed 65 staff. *Al-Watan* had recently been publishing a series on corruption. The suspension was issued according to the State of Emergency Law. The newspaper’s editor, Sid Ahmad Khalifa, heard of the newspaper’s suspension through the media. The newspaper remains suspended. The Special Rapporteur on the Sudan has also expressed his concern about attacks on press freedom.⁵⁶

Amnesty International calls on the Sudanese government:

- to abide by Convention 29 and end abductions, forced labour and sexual slavery, and ensure that perpetrators of these violations are brought to justice;
- to facilitate a direct mission of the ILO to investigate the situation of forced labour;
- to fulfil its obligations under international human rights law by ending restrictions on press freedom which negatively impact on the right to work for media workers;
- to ratify and implement ILO Convention No. 87, as well as other international human rights treaties to which Sudan is not yet a state party, in particular the Women’s Convention.

⁵⁶ Supra note 50. See Annex 1. “All forms of direct and indirect censorship should be effectively lifted. Everyone should be free to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, through any media of his/her choice.”

Annex 1

STATES WHICH HAVE NOT RATIFIED CONVENTIONS NO. 100 OR NO. 111

Information taken from a document presented to the Governing Body in November 2002, GB.285/LILS/4, which reflects responses provided to the Director-General by member states.

Member State	Convention No. 100	Convention No. 111
Antigua and Barbuda	○	X
Bahrain	●	X
China	X	●
Comoros	X	○
Djibouti	X	○
Estonia	X	▲
Grenada	X	▲
Japan	X	●
Kiribati	●	●
Kuwait	○	X
Laos	●	●
Liberia	-	X
Malaysia	X	◇
Myanmar	◇	◇
Namibia	●	X
Oman	●	●
Qatar	●	X
Singapore	X	◇
Solomon Islands	●	●
Somalia	-	X
Suriname	◇	◇
Thailand	X	●
Uganda	■	■
United States	●	○

X Convention ratified.

○ Formal ratification process already initiated (with or without mention of time-frame); approval of ratification by the competent body, although the Director-General has not yet received the formal instrument of ratification or it is incomplete, or is a non-original copy; bill currently before the legislative body for approval.

▲ Ratification will be examined after amendment/adoption of a Constitution, Labour Code, legislation, etc.

● Convention currently being studied or examined; preliminary consultations with the social partners.

■ Divergences between the Convention and national legislation

◇ Ratification not considered/deferred.

- No reply, or a reply containing no information.