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International Labour Organization Amnesty International's concerns relevant to the 92nd International Labour Conference, 1 to17June 2004

1. Migrant workers

The principles of equality before the law and of non-discrimination are pivotal principles on which "the whole legal structure of national and international public order rests".[1] While such principles may permit for distinctions to be made between certain groups, these exceptional distinctions must serve a legitimate objective and must be proportional to the achievement of that objective.[2] Crucially, they must not interfere with the right of the individual to respect for his or her fundamental human rights.[3] Thus the starting point for a discussion on the rights of migrant workers must necessarily be firmly grounded in principles of equality and of non-discrimination.

Article 11 of International Labour Organization (ILO) Convention No. 143 on Migrant Workers (Supplementary Provisions) (1975) defines a "migrant worker" as "a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker." The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ("Migrant Workers Convention"), which came into force on 1 July 2003, has adopted a more comprehensive definition of "migrant worker" to

[1] See Inter-American Court of Human Rights, Advisory Opinion OC-18/03 of September 17, 2003, Requested by the United Mexican States, Legal Status and Rights of Undocumented Migrants, page 101.

[2] See Committee on the Elimination of Racial Discrimination, General Comment XIV and Human Rights Committee, General Comment No. 18. See also Joan Fitzpatrick, 'The Human Rights of Migrants', in Aleinikoff, T. A. and Chetail, V., eds., *Migration and International Legal Norms* (T.M.C. Asser Press: the Hague, 2003), pp. 169 – 184.

[3] See on this point Article 2(1) of the 1965 Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, which states that "Nothing in this Declaration shall be interpreted…as restricting the right of any State to promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay or to establish differences between nationals and aliens. However, such laws and regulations shall not be incompatible with the international legal obligations of that State, including those in the field of human rights." Advisory Opinion OC-18/03 of the Inter-American Court of Human Rights (see above) further elaborates on this point, noting that "the general obligation to respect and guarantee human rights binds States, regardless of any circumstance or consideration, including the migratory status of a person."

refer to "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national" (Article 2).[4] It is estimated by the ILO that up to 86 million people are economically active outside their country of origin or citizenship. Migrant workers are not only persons that have moved voluntarily in search of economic opportunity, but also comprise asylum-seekers and refugees who are engaged in remunerated activity in their host countries, as well as persons trafficked for the purposes of labour exploitation.

All migrant workers are entitled to respect for their inherent dignity as human beings and as such to respect for their fundamental human rights. Yet many of the individuals who work in countries other than their own are, often because they are systemically marginalized by their state of employment, exposed to human rights abuses. Such abuses take place in a variety of circumstances; as a result – directly and indirectly – of restrictive migration control measures, the denial of fundamental human rights in the host country as a consequence, for example, of racism and xenophobia or exploitative labour practices, or human rights abuses committed in the course of removing a migrant from the territory of the host state. Accordingly, discrimination, racism, xenophobia, arbitrary detention, exploitation and arbitrary expulsion are today amongst the most common human rights concerns affecting these groups of individuals.

Key international standards that protect the human rights of migrant workers include ILO Conventions No. 97 on Migration for Employment (Revised) (1949), and No. 143[5] referred to above, as well as the Migrant Workers Convention. Article 1 of ILO Convention No. 143 provides for all states parties to "respect the basic human rights of *all* migrant workers [emphasis added]". The two ILO Conventions also delineate further rights applicable to migrants lawfully present within the territory of a state, including the principle of non-discrimination and equality of opportunity and treatment in such areas as remuneration, membership of trade unions and access to social services. The Migrant Workers Convention is considered one of seven principal international human rights treaties, and provides more extensive and specific protection to all migrant workers and members of their families, regardless of their migratory status. In order that all migrant workers, whether documented or undocumented, are able to receive and benefit from comprehensive protection, Amnesty International calls on all states to ratify each of these Conventions, and to implement fully and effectively their provisions.[6]

[4] The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the United Nations General Assembly in 1990. See www.amnesty.org/pages/refugees-index-eng. Further information about the seven principal international human rights treaties is available at www.amnesty.org/treatybodies.

[5] In addition to these two Conventions, the ILO has also adopted Recommendation No. 86 on Migration for Employment (Revised) (1949), and the Migrant Workers Recommendation, No. 151 (1975).

[6] As of April 2004, there were 42 states parties to ILO Convention No. 97 and 18 states parties to ILO Convention No. 143. Twenty five member states of the United Nations had ratified or acceded to the Migrant Workers Convention.

Undocumented migrant workers

Often, the individuals that are most at risk of human rights abuses whether on their way to, or once inside, the territory of their country of employment are those who are compelled to work despite the absence of a secure legal status. Since they lack legal protection, workers who are undocumented or in an irregular situation are particularly vulnerable to exploitative labour practices, arbitrary detention, sexual abuse and other serious abuses of their rights. Undocumented migrant workers, many of whom are additionally vulnerable on grounds such as their gender or age, are also less likely to bring these abuses to the attention of the state authorities in order to seek remedies.[7] Undocumented migrants are also particularly vulnerable to arbitrary expulsion from the territory of the country of employment.

In April 2002, Amnesty International found that undocumented migrants, including children, in **Spain** were especially vulnerable to race-related human rights abuses. The organization asserted that "in Spain… if you are a migrant without identity documents, you are more likely than a Spanish citizen to be detained and assaulted by police or Civil Guards…Foreign nationals have been ill-treated by guards and staff in holding facilities or detention centres."[8] Amnesty International's research further found that undocumented women migrants were particularly vulnerable to torture in the form of rape or sexual assault while in custody.

Migrant workers as "temporary service providers"

In recent years there has been heightened interest in the issue of remittances, and the benefits to the (mostly developing) countries of origin brought by the flow of capital sent back by migrant workers.[9] Many developing countries conduct bilateral agreements with receiving states to export workers in order to earn foreign exchange through remittances. However, if adequate attention is not paid to the individual human rights of the workers being sent to work abroad, there is a danger of these individuals being treated as commodities shuttled around the

[7] In her report to the 60th Session of the United Nations Commission on Human Rights, which focuses on the human rights of migrant domestic workers, the Special Rapporteur on the Human Rights of Migrants notes that she "has observed that migrant domestic workers rarely report their employers and seek protection. There are various reasons for the absence of complaints: a fear of being arrested and deported for illegal residence; the fact that their situation depends entirely on the employment relationship with their employers; the lack of identity documents; the lack of access to protection mechanisms; ignorance of the language; and debts in their countries of origin." E/CN.4/2004/76, 12 January 2004.

[8] Amnesty International, *Spain: Race-related ill treatment – Appeal cases,* AI Index: EUR 41/003/2002. See also Amnesty International, *Spain: Crisis of identity- Race related torture and ill treatment by State Agents,* AI Index: EUR 41/001/2002.

[9] In 2002 alone, migrant workers sent home at least US$88 billion through formal remittance channels, making remittances the second largest source of external finance for developing countries, next to foreign direct investment (FDI). Migrants Rights International, Written Statement submitted to the 60th Session of the United Nations Commission on Human Rights, 2004.

world as units of labour or purely economic entities, and denied access to such basic rights as the right to family unity or to secure working conditions and legal status.[10]

In February 2000, Amnesty International documented the plight of migrant workers in **Saudi Arabia**, where migrant workers from countries such as Indonesia, Sri Lanka and Bangladesh represent over 50 percent of the workforce.[11] The organization noted that "people without access to resources like money and influence, such as foreign migrant workers in low income jobs, are particularly vulnerable to human rights violations in Saudi Arabia under the secret and summary nature of the criminal justice system. Foreign women, particularly those working as domestic workers, are especially vulnerable because of the restrictions many have to work under. These include restrictions on their freedom of movement." [12]

"Migration management"

One of the themes of the International Labour Conference (ILC) general discussion on migrants is "policies and structures for more orderly migration for employment". As noted above, migrants who live and work in an undocumented or otherwise irregular situation in their country of employment are often vulnerable to human rights abuses. The Migrant Workers Convention, while protecting the fundamental rights of undocumented migrants, also seeks to put an end to irregular migration.[13] However, it must be recognized that until states develop and implement credible, rights-respecting and accessible frameworks for legal migration, many migrants will effectively have no choice but to access irregular channels to enter and work in countries of employment. Migrant workers feel impelled by a variety of motivations to seek employment in countries other than their own. A recent fact sheet of the ILO notes in this context that "many are not looking simply for better work. Propelled by poverty and insecurity, they are looking for *any* work".[14] If any regime of "migration management" is to be effective, not only must it be credible to states, but it must also be credible to migrants. To do so, it must respect the fundamental human rights of the people

[10] ILO Convention No. 143 reaffirms the principle that "labour is not a commodity" in its preamble. Resolution 2004/49 on 'Violence against Women Migrant Workers', adopted by the 60th session of the United Nations Commission on Human Rights in April 2004, further acknowledges in this context "the duty of sending States to work for conditions that provide employment and security for their citizens."

[11] Amnesty International, *Saudi Arabia: A woman migrant worker sentenced to death*, AI Index: MDE 23/013/2000, February 2000. See also International Federation of Human Rights League (FIDH), *Migrant workers in Saudi Arabia*, Report presented to the 62nd Session of the Committee on the Elimination of Racial Discrimination, March 2003.

[12] Amnesty International, *Saudi Arabia: A woman migrant worker sentenced to death*, AI Index MDE 23/013/2000, February 2000.

[13] See Article 68(1) which asserts "States Parties, including states of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements or employment of migrant workers in an irregular situation". ILO Convention No. 143 also addresses the issue of irregular migration, noting in Article 3 that States Parties shall adopt all necessary and appropriate measures "against the organizers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions".

[14] ILO, Facts on Migrant Labour, March 2004.

who are moving to and working in countries of which they are not nationals. States must therefore ensure that their "migration management" policies and practices do not in any way further victimize migrants, whether documented or not, and in particular must not make them even more vulnerable to abuse. States must in particular ensure that especially vulnerable migrant workers, such as undocumented women and children, refugees and victims of trafficking, are provided appropriate protection.

In **Thailand**, Amnesty International found that many undocumented migrant workers were vulnerable to abuses of their fundamental human rights.[15] This vulnerability stems largely from their status as foreign nationals in Thailand which makes them extremely dependent on their employers.[16] Registered workers are theoretically exempt from arrest and deportation by the Thai authorities but those found without a registration card are vulnerable to arrest. In practice employers often retain the workers' registration cards and provide them with a copy, which does not always prevent them from being arrested. Moreover, police in areas of large concentrations of migrants from Myanmar often arrest both registered and unregistered workers, demanding a bribe before releasing them.

Freedom of association and migrants

Article 26 of the Migrant Workers Convention establishes the right of all migrant workers and members of their families, whether documented or undocumented, to freedom of association. Article 2 of ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize (1948) further establishes that "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organisations of their own choosing without previous authorization." For migrant workers in an undocumented or otherwise irregular situation, the right to freedom of association is an important step in moving towards the regularization of their status in the country of employment. This in turn will enable migrant workers collectively to expose human rights abuses perpetrated against them, and to seek redress for such abuses. As such the right to freedom of association is an essential component in ensuring that individuals who work in countries of which they are not nationals are able to assert and enjoy effective access to their fundamental human rights.

Freedom of association is the theme of the Director-General's Global Report which will be presented at the forthcoming ILC. The ILO Declaration Expert-Advisers recently described freedom of association as "the gateway to the other principles and rights, which in turn

[15] Amnesty International, *Thailand: Grave developments – Killings and other abuses*, AI Index: ASA 39/008/2003, November 2003 and Amnesty International, *Myanmar: Lack of security in counter-insurgency areas* AI Index: ASA 16/007/2002, July 2002.

[16] Under the current Royal Thai Government registration system for migrant workers, if a registered worker leaves her/his employment she/he only has seven days to obtain a new job before becoming subject to deportation.

reinforce it; it also helps to promote other labour and social rights."17 The following section of this report provides examples of states in which violations of the right to freedom of association regularly occur.

2. Freedom of association

"I organized the picket because it was the only remaining option to publicly protest, I wanted to express my opinion and I don't consider myself guilty of a crime for doing this."

Alyaksandr Bukhvostov, Chair of the Belarusian Automobile and Agricultural Machinery Workers' Union, speaking to an Amnesty International representative, January 2004

On 30 October 2003, Alyaksandr Bukhvostov was detained by police in central Minsk for staging a peaceful protest action against the government's alleged interference in the trade union's internal affairs. The Minsk authorities had refused Alyaksandr Bukhvostov permission to stage a picket in the city centre, only allowing a protest action to take place on the outskirts of the city. Surrounded by supporters, journalists and members of the security services, Alyaksandr Bukhvostov unfurled a placard which read: "We protest against violations of workers' rights!" before being detained with another trade unionist, Igor Komlik. They were taken to Tsentralny Ministry of Internal Affairs in Minsk. Although Igor Komlik was released soon afterwards without being charged, later the same day Tsentralny District Court convicted Alyaksandr Bukhvostov in a closed hearing under Article 167 (1) of the Code for Administrative Infringements for staging an unsanctioned demonstration. He was sentenced to 10 days' imprisonment and held at the Okrestina detention centre in Minsk.[18]

The independent trade union movement in **Belarus** leads a precarious existence. Freedom of association is severely curtailed by the deliberate harassment and intimidation of trade unionists, and by the imposition of laws, regulations and administrative practices designed to undermine their efforts to realize this basic right. Belarus is party to both ILO Convention No. 87 on Freedom of Association and the Protection of the Right to Organize (1948) and Convention No. 98 on the Right to Organize and Collective Bargaining (1949). These two treaties are among eight "core" Conventions that are deemed fundamental to workers' rights.[19] There are 142 states parties to Convention No. 87 and 154 states parties to

[17] ILO Declaration Expert-Advisers, *Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Introduction by the ILO Declaration Expert-Advisers to the compilation of annual reports*, GB. 289/4 (& Corr 1 and 2), March 2004.
[18] Amnesty International *Belarus: Stifling the promotion of human rights*, AI Index: EUR 49/004/2004, March 2004.
[19] The eight "core" ILO Conventions are: No. 87 and No. 98 on freedom of association and the effective right to collective bargaining; No. 100 and No. 111 on discrimination; No. 29 and No. 105 on forced labour; and No. 138 and No. 182 on child labour.

Convention No. 98.[20] Yet, Amnesty International continues to document violations of freedom of association in all regions of the world, including in states which are party to these treaties, of which the **Dominican Republic** is another example.

The last year in the Dominican Republic has been marked by serious human rights violations perpetrated by security forces in the context of escalating public protests against government economic policy. Violations have included alleged unlawful killings of demonstrators by law enforcement officials; reported excessive use of force; alleged arbitrary arrest of activists and protest organizers; and unlawful curbs on freedom of expression in the context of the country's economic crisis. On 6 August 2003, police raided the office of a local trade union, the *Central Nacional de Transportistas Unificados (CNTU)*, National Union of Unified Transport Workers, and opened fire on those inside in order to prevent them from carrying out a protest scheduled for later that afternoon in Santo Domingo. At least three trade unionists were said to have been injured, and up to six others arbitrarily detained by police, during the raid. One trade unionist, Ramón Pérez Figuereo, was treated in hospital for multiple shotgun pellet wounds in the hips and legs, as well as trauma in the chest and abdomen, reportedly after having been beaten by police as he tried to flee.

A 24-hour strike on 11 November 2003 was held in towns across the country, and resulted in seven deaths and over 30 wounded. In the run-up to the strike, several hundred activists were reported to have been arrested. President Hipólito Mejía had warned in an interview broadcast on state television several days before the strike, "there is a firm decision to act without leniency against those who disturb public order and social peace. In that I am intransigent."[21] Strike action continued on 28 and 29 January 2004, when trade unions and other groups reportedly clashed with police in a number of areas around the country. The National Police reported 258 arrests, 165 people wounded and at least six deaths. The dead reportedly included José Vásquez Castro, a strike organizer.[22]

States which have *not* ratified either Convention No. 87 or No. 98 are also obliged to respect, to promote and to realize the principles concerning freedom of association by virtue of the fact that freedom of association is a fundamental right enshrined in the 1998 Declaration on Fundamental Principles and Rights at Work. According to the ILO Expert-Advisers: *"Respect is about the political will to achieve the principles, not mere lip-service. Promotion is advocacy, backed by action and programmes toward positive change. Realization means*

[20] Although the overwhelming majority of the 177 ILO member states have ratified these treaties, it should be noted that several states in which a significant number of the world's population live and work have not yet done so. See Appendix for a list of states which are not party to these Conventions.
[21] EFE, "Presidente advierte actuara sin contemplaciones en huelga general," 10 November 2003.
[22] Amnesty International *Dominican Republic - Human rights violations in the context of the economic crisis*", AI Index: AMR 27/001/2004, March 2004; *Dominican Republic - Strikers' deaths must be investigated*, AI Index: AMR 27/006/2003, November 2003; *Dominican Republic - Police fire on trade unionists*, AI Index: AMR 27/005/2003, August 2003.

achieving improvements in the daily lives of individual women and men, their families, workplaces and communities…"[23]

Iran is not party to either of the two core Conventions relevant to freedom of association.[24] Many labour activists in Iran believe that their freedom of association is limited by an unwarranted and unnecessary level of political interference into labour-related affairs on the part of officials who are not accountable to the labour movement itself, or to the wider public, through election. This is represented, above all, by the provisions set out in Article 138 of the 1990 Labour Code, which accords to the Supreme Leader the right to appoint a delegate to any of the bodies outlined in the text of the Labour Code.

In addition, Amnesty International continues to receive reports that Iranian citizens who are either members of religious minorities or those who do not identify themselves as engaged *Isna 'Ashari*, or *Twelver*[25], Shia' Muslims reportedly find it difficult to join "union" bodies. Article 6 of the Procedure Code26 states that access to union-like membership is applicable only to Muslims. It states that: "Any worker [who is a] Muslim, active in fulfilling [both] religious and creed-based requirements (*farayez-e dini va mazhabi*) has the right of membership in the relevant unit's council and members of the founding committee are obliged to register the applicant's name with the council." This implies that those who do not fulfil this criteria cannot be members of the unit's council or founding committee. Articles 6 and 10 of the Procedure Code prohibit union membership and leadership to all non-Twelver Shi'a citizens, including citizens who are adherents to the Sunni, Hanafi, Shafi'i, Maliki, Hanbali, and Zaydi schools; and to Zoroastrian, Jewish, and Christian Iranians, who are, according to Article 13 of the constitution, the only recognized religious minorities. As a result, religious and ethnic minorities' access to union membership is compromised. For example, Amnesty International has received information concerning an unsuccessful attempt by an Armenian to join a teachers' union at the University of Tehran in the course of the 2002/2003 academic year. The provisions of the Procedure Code, along with constitutional provisions recognizing only specified creeds as "official" minorities, mean also that all adherents to the Baha'i and Mandaean[27] creeds, for example, are prohibited from all forms of union membership.

[23] See footnote 17.

[24] Iran is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Article 8 of the ICESCR and Articles 21 and 22 of the ICCPR provide for the right to freedom of association.

[25] Iran's constitution states that Iran's official religion is " *Islam and the Twelver Ja'fari school [in usual al-Din and fiqh], and this principle will remain eternally immutable*" (translation as given by http://www.netiran.com/laws.html). It adds that "*Other Islamic schools, including the Hanafi, Shafi'i, Maliki, Hanbali, and Zaydi, are to be accorded full respect, and their followers are free to act in accordance with their own jurisprudence in performing their religious rites…*".

[26] The 2001 Procedure Code [on the] Manner of Establishment, Limits of Duties, Powers and Manner of Operation of Islamic Workers' Councils is the code envisioned in Article 130 (2) of the 1990 Labour Code. Further information is provided in the section of this report concerning discrimination in Iran.

[27] Also called Sabaean. This community lives mainly in the Iranian province of Khuzestan, where they experience widespread discrimination; as a non-recognised minority, they are accorded no legal protection.

China is another member state yet to ratify these two core Conventions.[28] Amnesty International was concerned to learn in December 2003 that medical parole was denied to two men who were detained in March 2002 for their role in organizing peaceful demonstrations against the laying off of thousands of working men and women by state-owned companies in Liaoyang city. Xiao Yunliang and Yao Fuxin were tried on 15 January 2003 on charges of "subversion" and "organizing illegal demonstrations", and in May 2003, they were sentenced to four and seven years' imprisonment respectively. The health of both men deteriorated rapidly since they were transferred in October from Jinzhou Prison to Lingyuan Prison, where conditions are believed to be harsh. Xiao Yunliang has reportedly been diagnosed by prison doctors to be suffering from severe pleurisy, high blood pressure, heart disease, and is virtually blind in both eyes. Yao Fuxin had reportedly been admitted to hospital at Jinzhou Prison, having suffered repeatedly from heart failures over several months. He is also said to be suffering from severe hypertension, as well as a hearing impediment due to a lesion in his eardrum, and is experiencing difficulty walking due to a skin graft on one of his feet which has severely atrophied. Their families – who have to travel 12 hours by road to visit them – requested medical parole, which is a right guaranteed under Chinese law, and which was denied. Amnesty International considers both men to be prisoners of conscience.[29]

The ILO has developed a sophisticated machinery for supervising the application of standards and principles relating to freedom of association in states which are, as well as those which are not, party to Conventions Nos. 87 and 98. This includes the Committee on Freedom of Association, which has considered over 2,000 cases since it was first established in 1951;[30] the Fact-Finding and Conciliation Commission, which considers cases referred to it by the Governing Body;[31] *ad hoc* Commissions of Inquiry, which are established following a complaint under Article 26 of the Constitution;[32] the Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts);[33] and the Conference

[28] China is a party to the ICESCR and has signed the ICCPR. See footnote 24.
[29] Amnesty International *People's Republic of China: Detained and imprisoned labour rights activists*, AI Index: ASA 17/014/2002, April 2002; *Labour unrest and the suppression of the rights to freedom of association and expression*, AI Index: ASA 17/015/2002, April 2002; *Ill-health of Xiao Yunliang and Yao Fuxin, prisoners of conscience*, AI Index: ASA 17/038/2003, November 2003.
[30] This is a nine-member, tripartite Committee of the Governing Body, which meets three times a year. It receives allegations of infringement of the right to freedom of association by member states from employers' and workers' organizations, regardless of whether or not the state in question has ratified the Conventions concerned. It can also review a case with a view to referring it to the Fact-Finding and Conciliation Commission. Further information is available from the ILO website: http://www.ilo.org
[31] This is a nine-member, independent body, which can also consider cases referred to it by ECOSOC in respect of states which are not members of the ILO.
[32] Recently, for example, a Commission of Inquiry has been established to consider violations of freedom of association in Belarus.
[33] This is a body comprising 20 independent members which considers reports submitted by states parties to the various Conventions of the ILO.

Committee on the Application of Conventions and Recommendations (Committee on the Application of Standards).[34]

The report of the Committee of Experts, and the second Global Report of the Director-General on freedom of association, are among those to be considered at the forthcoming ILC.[35] The ILC will thus have the opportunity to review and respond accordingly to concerns about violations of freedom of association in member states, including a number of particularly serious situations where trade unionists are killed, tortured, threatened and arbitrarily detained for exercising their right to freedom of association. The following part of this document highlights two such situations: **Colombia** and **Zimbabwe**. In view of the Special Sitting which will be held on the **Occupied Territories**, this report also contains information about the impact of the wall/fence on the right to work. Following on from the discussions in the Committee on the Application of Standards in 2003, information is also provided about discrimination in **Iran** and about forced labour in **Myanmar**.

3. Country situations

3.i. Freedom of association in Colombia

At the 91st session of the ILC and subsequent meeting of the Governing Body in June 2003, the ILO failed to establish a Commission of Inquiry into Colombia or, indeed, to take up concerns about on-going violations in a "special paragraph".[36] Amnesty International supported the call for a Commission of Inquiry, considering the situation for trade unionists in Colombia to be so grave as to warrant this action by the ILO. Since the ILC, some measures to increase the security of trade unionists have been adopted. However, Amnesty International remains concerned for the safety of trade unionists in Colombia and considers that there has been no substantive improvement in their security situation.
Under the government of President Álvaro Uribe Vélez, human rights defenders, including trade unionists and other social activists, continue to be killed, "disappeared", threatened, tortured and harassed, and there has been a significant increase in arbitrary detentions. Government, security forces and other state officials frequently treat human rights defenders

[34] This is a tripartite body, comprising over 150 members from governments, employers' and workers' representatives, which meets during the ILC and examines the report of the Committee of Experts.
[35] The Global Report is one of two elements of the follow-up mechanism to the Declaration on Fundamental Rights and Principles at Work. The other element is the submission of an annual report by states which have not ratified the core Conventions.
[36] 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. For details of the review of Colombia, see *Provisional Record, 91st session, Geneva, 2003, Observations and information concerning particular countries, Observations and Information concerning reports on ratified conventions (Article 22 of the Constitution)*, 24/Part Two.

and social activists as subversives, labelling them as such in public statements and targeting them during intelligence and counter-insurgency operations.
In 2003 at least 80 trade unionists were killed or "disappeared".[37] The vast majority of human rights abuses against trade unionists were attributed to the security forces and paramilitary allies, although guerrilla forces were also held responsible for many abuses. Although less than the total number of trade unionists killed in 2002, it is important to underline that over the last decade the figures have dropped and risen on a yearly basis. Reductions do not necessarily herald a sustained decrease in killings in subsequent years. In fact since 1991, figures show that troughs in the figures of killings of trade unionists in one year have been followed by significant increases in following years.

The "intolerable situation of impunity"[38]

To achieve a sustained reduction in the number of killings, the government must end the impunity which protects those who commit human rights violations against trade unionists. Instead the government is pursuing policies which threaten to further consolidate impunity in cases of human rights violations, in particular by reforming the 1991 Constitution to provide the security forces with judicial police powers. These powers may not only facilitate the covering up of human rights violations committed by the security forces and their paramilitary allies, but also the initiation of arbitrary legal proceedings against trade unionists and other activists.
The government is also promoting a bill which, if approved, could guarantee *de facto* amnesties for combatants responsible for human rights abuses or violations, and which could go further than Decree 128 of January 2003 which grants amnesties to combatants who have not been sentenced or who are not under investigation for human rights violations or abuses. The bill, if approved, could release "on licence" incarcerated combatants associated with armed groups involved in a peace process with the state, even if they have been found responsible for serious human rights abuses**,** including war crimes and crimes against humanity. Combatants from these same groups who surrender to the authorities could also benefit from significantly reduced prison sentences or even alternative sentences that do not involve time in prison. The proposed bill would extend these benefits to individual members of armed groups not involved in peace negotiations who voluntarily lay down their weapons.

[37] In its most recent report, the Committee on Freedom of Association deplored "the extreme gravity" of the situation in Colombia, having received 59 allegations of murders of trade union officials and members in addition to 11 cases previously submitted, thus having received a total of 70 cases of murder in 2003. The Committee reiterated that "freedom of association can only be exercised in conditions in which fundamental human rights and, in particular, those relating to human life and personal safety, are fully respected and guaranteed". For the full report, see *333rd report of the Committee on Freedom of Association*, GB 289/9 (Part 1), March 2004.
[38] The Committee of Experts has called on the Colombian government to strengthen the relevant institutions to put an end to the intolerable situation of impunity, which constitutes a serious obstacle to the free exercise of trade union rights. See *Application of International Labour Standards 2004 (1), Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1 A). See also *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, prepared for the 60th session of the Commission on Human Rights, E/CN.4/2004/13, February 2004.

The main beneficiaries of this legislation would be paramilitary groups who are in talks with the government on initiating a negotiated peace agreement with the state. As such this bill sends a dangerous message to the security forces and their paramilitary allies that they can continue to perpetrate human rights violations without fear of being held fully accountable for such acts. [39]

Moreover, the Office of the Attorney General has made little if no progress in judicial investigations into human rights violations against trade unionists, and there continues to be virtually complete impunity in cases of extrajudicial execution or "disappearance" of trade unionists. Indeed, scores of detentions and raids on the homes and offices of activists have been carried out by the armed forces who have relied on the participation of agents of the Offices of the Attorney General and Procurator General to "legalize" arguably suspect raids and captures. As they frequently coincide with paramilitary attacks and threats against trade unionists, they raise concerns that trade unionists are increasingly facing a co-ordinated military-paramilitary strategy aimed at tarnishing and undermining them and their organizations through criminal proceedings based on often spurious accusations.

Killings and threats

Amnesty International continues to document killings and threats against trade unionists, and their relatives, in public sector unions, trade union confederations and unions representing workers in strategic sectors of the economy including oil, mining and energy. Over 70% of killings and threats against trade unionists occur within the context of labour disputes. In 2003 death threats against trade unionists almost doubled.

On 30 October 2003, Domingo Tovar Arrieta, Director of the Human Rights Department of the *Central Unitaria de Trabajadores* (CUT), Trade Union Confederation, reportedly received an anonymous call to his mobile phone. The caller allegedly said, *"Pagará con su vida la pérdida del referendo"*,("You will pay with your life for the loss of the referendum"). The threat apparently referred to the recent defeat by the government in a national referendum it had been promoting to secure popular support for a series of reforms. The CUT, and particularly Domingo Tovar Arrieta, had supported a campaign in favour of abstaining in the referendum.

In the course of labour disputes

Amnesty International has received and documented numerous attacks and threats against the *Sindicato Nacional de Trabajadores de la Industria de Alimentos*, (SINALTRAINAL), National Union of Food Industry Workers in recent years. In August 2003 an attempt was made on the life of Juan Carlos Galvis, vice-president of the Barrancabermeja section of

[39] See *Amnesty International's briefing to the United Nations Committee against Torture on the Republic of Colombia*, November 2003, AMR 23/066/2003 for information on the issue of the provision of judicial police powers to the security forces, Decree 128 and the bill which may guarantee *de facto* amnesties to combatants responsible for human rights abuses or violations. The concluding observations of the Committee against Torture are contained in document CAT/C/CR/31/1, available at the Office of the High Commissioner for Human Rights' website at www.unhchr.ch.

SINALTRAINAL, and a leader of the Barrancabermeja section of the CUT, during on-going labour disputes between the local bottling plant in Barrancabermeja – which was reportedly taken over by Femsa-Coca Cola on 24 December 2002 – and SINALTRAINAL.

Juan Carlos Galvis and other members of the branch have faced repeated army-backed paramilitary death threats and attempts on their lives in recent years. Threats and attacks have coincided with numerous killings and threats against SINALTRAINAL members at the national level. In March 2003 a paramilitary group calling itself a *Muerte a Sindicalistas*, (MASIN), Death to Trade Unionists, issued a communiqué in which it declared that it would kill trade union activists and leaders in Barrancabermeja.

On 22 August 2003, Juan Carlos Galvis was travelling in a bullet-proof vehicle through the neighbourhood of Buenos Aires, in the city of Barrancabermeja, Santander Department, when an unidentified man shot at his vehicle twice. Juan Carlos' bodyguards, who at that time were with him in the vehicle, returned fire. The gunman was able to escape on a motorbike. On 25 August, a local councillor received a telephoned death threat in which he was reportedly told of Juan Carlos Galvis: *"se salvó la próxima no se escapa"*, "he escaped but next time he won't". On 4 September 2003, after recently moving house, Juan Carlos Galvis received four telephoned death threats. In one of the calls, which was answered by his wife, the caller stated: *"Jugar a la guerra cuesta"*, "Playing war games will cost you".

The attempt on Juan Carlos Galvis' life and subsequent death threats came just as the company was informing several workers in September 2003 that they were being made redundant.

On 15 March 2004, SINALTRAINAL members working for Coca Cola began a national hunger strike as part of on-going labour disputes with the company. Subsequently SINALTRAINAL union leaders reportedly received death threats. The hunger strike was suspended on 27 March.

Trade unions in the public sector

Trade unions campaigning against working conditions or the privatization of public sector industries and services continue to be threatened and killed by army-backed paramilitaries.

On 9 December 2003, Orlando Frías Parada, a worker from the state telecommunications company, TELECOM, and leader of the Yopal Branch of the *Unión Sindical de Trabajadores de las Comunicaciones de Colombia*, (USTC), Colombian Trade Union of Telecommunications Workers, in Casanare Department, was reportedly shot dead by four unidentified gunmen. The killing coincided with a USTC campaign against the privatization of the telecoms industry.

On 6 February 2004, an explosive device was reportedly placed outside the headquarters of the *Sindicato de Trabajadores de Empresas Municipales de Cali*, (SINTRAEMCALI), Union of Municipal Works in Cali, department of Valle del Cauca. This followed the killing of

SINTRAEMCALI activist Ricardo Varragán on 16 January 2004, reportedly by two gunmen on a motorcycle in Cali. One of the gunmen was reportedly later detained by the police as he made his escape but was subsequently released without charge.

On 16 November 2003, Mario Sierra Anaya, a leader of the *Sindicato de Trabajadores del INCORA* (SINTRADIN), INCORA Workers' Union, was reportedly killed by unidentified gunmen in Saravena, Arauca Department. On 14 December 2003 Severo Bastos, a former leader of the Arauca Branch of SINTRADIN, was reportedly killed in Norte de Santander Department by unidentified gunmen who abducted him from his home in Villa del Rosario.

On 3 December 2003, José de Jesús Rojas Castañeda, a trade unionist affiliated to the Santander Teachers' Union (ASEM) was reportedly killed by paramilitaries in Barrancabermeja.

Trade unions in strategic sectors of the Colombian economy

On 26 November 2003, the *Unión Sindical Obrera* (USO), Oil Worker's Union, received a written paramilitary death threat addressed to the *Sindicato de Trabajadores Universitarios de Colombia* (SINTRAUNICOL), Colombian Union of University Workers. The death threat was dated 11 November 2003 and threatened 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, the USO, the Bank Worker's Union (UNEB), and trade unions in the education and training sector:

"… les anunciamos que nuestras próximas acciones militares tendrán como objetivo especiales a algunas agrupaciones comunistas guerrilleras como lo son ANTHOC, USO, UNEB, SINDESENA, SINTRAUNICOL y FECODE","… we announce that our next military actions will especially target some of the guerrilla communist groupings such as ANTHOC, USO, UNEB, SINDESENA, SINTRAUNICOL and FECODE".

Raids and arbitrary detentions

Threats and killings of trade unionists frequently coincide with the arbitrary detention and the initiation of legal proceedings against them, often based on spurious evidence.[40]

On 21 August 2003, 42 social activists and human rights defenders in Saravena were detained by members of the XVIII Brigade and agents of the Office of the Attorney General. Among those arrested were José Murillo Tobo, president of the *Comité Regional de Derechos*

[40] The Office of the United Nations High Commissioner for Human Rights notes that "The situation of human rights defenders, including trade unionists...continued to be critical…The dynamics of the armed conflict evidenced a change in the modus operandi of the armed groups, particularly the paramilitaries, that makes use of more subtle strategies…the policies of mass arrest and large-scale raids that include the offices of civil society organizations and trade unions….caused the defenders to be more restrained in their work, to be more reserved when expressing opinions and led them to limit their activities". See *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, E/CN.4/2004/13, February 2004.

Humanos "Joel Sierra" Regional Human Rights Committee, and Alonso Campiño Bedoya, leader of the regional branch of the CUT Trade Union Congress and member of the Regional Human Rights Committee. All the human rights defenders and social activists detained that day are reportedly still in prison facing guerrilla-related charges. The houses of Samuel Morales, president of the regional CUT, Alberto Paez, another trade union leader, and Ismael Pabón Mora of the Regional Human Rights Committee were also searched during the raids, but they were not arrested because they were not at home.

The arrest of José Murillo and Alonso Campiño came after the Committee had denounced the presence of paramilitaries operating in collusion with the security forces in Saravena, and a spate of human rights violations in the department committed by paramilitaries operating with the security forces and directly by the military, often presenting themselves as paramilitaries. The arrests also follow a spate of accusations against the Committee made by the security forces in recent months that they were subversive collaborators, and paramilitary attacks and threats against the Committee. The Regional Human Rights Committee is one of the regional organizations which has denounced these violations at the international level. According to information received, two hooded informers participated in the arrests raising concerns that evidence is based on military intelligence and information provided by paid informers.[41]

On 17 January 2003, the Office of the Attorney General ordered the house arrest of the former president of the USO, Hernando Hernández, charged with belonging to the *Ejército de Liberación Nacional* (ELN), National Liberation Army armed opposition group. On 29 March 2004, he was cleared of these charges.

On 28 January 2004, a key prosecution witness who had presented testimony against Hernando Hernández, denounced the pressures, threats and attempts to bribe her made by the Office of the Attorney General to force her to present testimony against the union leader. In her statement she stated that the investigating attorney had told her that if she did not declare against Hernando Hernández *"le podía pasar algo a mis hijas ... incluso llegó a ofrecer dinero"*, "that something could happen to my daughters … she even offered me money". The witness also stated that the prosecutor had told her that she could ask for the court proceedings to be held in Acacias, department of Meta, *"porque allá había mucho paraco y Hernando no podía ir allá y así yo podía decir lo que me había dicho que dijera"*, "since there are many paramilitaries there and Hernando will not be able to go there and so I could say what I had been told to say". The witness said that she had been called to a meeting in the army's V Brigade headquarters in Bucaramanga, department of Santander, on 15 January 2004 by the prosecutor where she was offered money to declare against Hernando Hernández. The witness refused. In her retraction the witness stated: *"Quiero ratificar que todo lo que figuraba firmado por mí en contra de Hernando Hernández fue bajo amenaza y no me consta nada contra él"*, "I wish to state that everything signed by me against Hernando Hernández was done under threat and I have no testimony to give against him".

[41] Amnesty International *Colombia - A laboratory of war: repression and violence in Arauca*, AI Index: AMR 23/004/2004, April 2004.

Reports received indicate that the *Cuerpo Técnico de Investigaciones* (CTI), Technical Investigations Unit of the Office of the Attorney General and the *Departamento Administrativo de Seguridad* (DAS), Civilian Security Department (civilian intelligence service), pressured two witnesses into giving testimony against Hernando Hernández and offered large sums of money to do so. According to reports, when one of the witnesses denounced the pressure to which he had been submitted to the *Defensoría del Pueblo* the Human Rights Ombudsman, he was abducted and reportedly tortured in the main offices of the Office of the Attorney General in Bogotá. The other witness who refused to co-operate with the DAS and CTI reportedly received death threats.

Prosecuting the perpetrators

On 19 December 2003, Juan Evangelista Basto Bernal and former army captain Jorge Ernesto Rojas were sentenced to 18 years in prison, and former army corporal Jhon Fredy Peña was sentenced to three and a half years in prison, for their part in the attempted killing of trade union leader Wilson Borja in December 2000. At the time Wilson Borja was a leader of the *Federación de Trabajadores al Servicio del Estado* (FENALTRASE), Federation of State Sector Workers.

In December 2003, army major César Alonso Maldonado Vidales, an officer of the *Batallón de Policía Militar No. 13*, Military Police Battalion No. 13, was sentenced to 28 years in prison for his part in the attempt on Wilson Borja's life. Cell phone records linked the major, assigned to army intelligence at Bogotá's XIII Brigade, to one of the gunmen.

His sentence was secured despite the dismissal of and paramilitary threats against the prosecutor investigating the case. The Attorney General had abruptly fired the prosecutor, Luis Augusto Sepúlveda, reportedly just before charges against the officer had to be filed. The prosecutor was amongst seven investigating attorneys of the Human Rights Unit of the Office of the Attorney General and a CTI agent who had been threatened in April 2002 by paramilitaries apparently as a result of their investigations into high-profile cases of human rights violations. The apparent failure of the Office of the Attorney General to guarantee the safety of those threatened led them, the same month, to request the Inter-American Commission on Human Rights (IACHR) of the Organization of American States to issue Precautionary Measures. On 25 April 2002, the IACHR called on the Colombian Government of then President Andrés Pastrana to guarantee their safety and that of their families.

The Office of the UN High Commissioner for Human Rights (OHCHR) concluded that the response of the Office of the Attorney General to the situation faced by officials investigating human rights violation cases implicating paramilitaries or State officials indicated: "a refusal at the highest level to prioritize these investigations or to support the officials involved in them". The OHCHR further stated that the "coverage of the Attorney General's Office protection programme for victims, witnesses and others involved in criminal proceedings, and

for Attorney General's Office staff is still inadequate to protect officials from threats, and this could lead them to exercise excessive caution or self-censorship in their investigations".[42]

Shortly after the attempt on Wilson Borja's life, paramilitary leader, Carlos Castaño, claimed responsibility for the attack. Despite this statement and the fact that criminal investigations implicated high-ranking officers in the attack, those responsible for masterminding the attack have not been brought to justice. One witness and former soldier testified that several senior ranking officers approved the attack.

Although there has been some progress in the case of the attempt on the life of Wilson Borja, there continue to be few advances in judicial investigations into cases of violations against trade unionists, despite the Colombian Government assurances to the Committee of Experts to the effect that it was strengthening the special committee to do so. Fewer individuals still have been brought to justice for these crimes.[43]

According to the Committee of Experts, the Colombian Government had informed it that on 15 January 2003, it had adopted the Work Plan of the inter-Institutional Committee for the Prevention and Protection of the Human Rights of Workers "to promote, encourage and adopt all such measures as may strengthen freedom of expression".[44] Efforts by the Ministry of the Interior to administer several programs established for the purpose of protecting human rights defenders, trade unionists and journalists have been only partially beneficial, largely due to operational, administrative and bureaucratic problems.

3.ii Discrimination in Iran

The Committee on the Application of Standards, meeting in 2003 to review the application of Convention No. 111 on Discrimination (Employment and Occupation) (1958) in Iran, requested the government to provide detailed information on measures taken to end discrimination in law and practice.[45] Of particular interest to Amnesty International was a request from the Workers' Representatives that the Committee of Experts review the practice known as "gozinesh". 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.

[42] *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, E/CN.4/2002/17, February 2002.
[43] See footnote 38.
[44] Ibid.
[45] *Provisional Record, 91st session, Geneva, 2003, Observations and information concerning particular countries, Observations and Information concerning reports on ratified conventions (Article 22 of the Constitution)*, 24/Part Two.

Although the Committee of Experts' report notes the very full and detailed information provided by the government since the last ILC, there is no mention of *gozinesh*. Amnesty International continues to be concerned about this practice, including as it relates to access to the labour market and membership and leadership of unions. Recently, the *gozinesh* was put to use by the Council of Guardians in the rejection of reportedly hundreds of applications of those wishing to present themselves as candidates for Iran's 2004 parliamentary elections.[46]

"Gozinesh" - background

Currently overseen by the *Heyat-e Âli-ye Gozinesh*, or Supreme Selection Council, the *gozinesh* 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 unaccountable officials and bodies effective control over access to employment. Amnesty International provided more detailed background information about the *gozinesh* in its report for the ILC in 2003,[47] part of which is reproduced below.

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 Bakhash a "loyalty test,"48 reportedly usurped the power over employment from ministers and departmental chiefs and, in and around 1981, lead to the expulsion of countless individuals from the civil service. According to Shaul Bakhash,49 "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

[46] Scores of potential candidates were rejected apparently without reason, or in connection with unspecified failures regarding the applicant's imputed views of Iran's leadership.

[47] *International Labour Organization: Amnesty International's concerns relevant to the 91st session of the International Labour Conference, 3 to 19 June 2003*, AI Index: IOR 42/003/2003, 11 April 2003, which can be viewed at: http://web.amnesty.org/library/Index/ENGIOR420032003?open&of=ENG-IRN

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

[49] Ibid.

"placement committees" and the creation of more "reliable"[50] 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

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*;[51] (2) the 1996 *The Continuation [of the] Law of the Law on The Selection [gozinesh] of Teachers and Employees in Education and Development*;[52] and (3) the 1998 *Procedure Code for the Implementation of the State Selection Law*.[53] Amnesty International acknowledges that there may have been amendments to these laws about which the organization has no further information.

Today, the *gozines*h 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 Education and Development*. It states in Article 1 that the law is applicable, among others, 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...".

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*.

The "Gozinesh" and Islamic Councils

Amnesty International has previously stated that 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. This is

[50] Ibid.; page 228.
[51] Qanoun-e Gozinesh-e Mo'aleman va Karkonan-e Amouzesh va Parvaresh, ratified 1374 according to the Iranian calendar.
[52] Qanoun-e Tasri-e Qanoun-e Gozinesh-e Mo'aleman va Karkonan-e Amouzesh va Parvaresh, ratified 1375 according to the Iranian calendar.
[53] Ayin Name-e Ejra'ye Qanoun-e Gozinesh-e Keshvar, ratified 1377 according to the Iranian calendar

the case with respect to membership of Islamic Councils, which are a form of collective organization provided for under the 2001 Procedure Code [on the] Manner of Establishment, Limits of Duties, Powers and Manner of Operation of Islamic Workers' Councils (the Procedure Code).[54] The Procedure Code sets out how workers in productive (*tolidi*); industrial (*sana'ti*), agricultural (*keshavarzi*), service (*khedmati*) and guild (*senfi*) units of in excess of 50 individuals may establish Islamic Councils.

The functions of the Islamic Councils are set out by Article 2 of the Procedure Code, which details the limits on their duties and powers. These include, for example, to endeavour to enrich the times of rest [leisure] for the workers and their families (2.12); and to cooperate in the recognition and support of the benevolence (*este'dad*) between workers and their families and the augmentation (*faraham avordan*) of facilities for its growth and flourishing (2.13). Yet, according to Article 1 of the Procedure Code, they are formed to "propagate and spread Islamic culture and [to] defend the achievements of the Islamic Revolution", and are thus oriented towards the furtherance of a religious and ideological program rather than one which is designed to protect and support workers' rights *per se.*

Article 2 of the Procedure Code further states that the duties and powers of the Islamic Councils are to: Cooperate [in the] setting up of Friday prayers [a collective, religious event], pay tribute [(ta'zim) to religious slogans, establish meetings [for] sermons, religious discourse and lectures, on various occasions (2.1); Encourage workers to visit (or: be present) at sites of devotion or piety and to defend the achievements of the Islamic Revolution (2.2); Establish classes [relating to religious] belief and culture and to encourage that workers attend these (2.3); Establish libraries or centres for research; the distribution of books and publications between workers of the unit (2.4); Print pamphlets, articles and publications [covering] religious themes (*zamineh-ha*), adhering to the distribution regulation of the Ministry of Culture and Islamic Guidance (2.5); Encourage workers in efforts [towards a] spirit of independence, the fulfilment by themselves of religious duties (*khod kafa'i*) innovations, originality and invention (2.7).

Article 10 of the Procedure Code contains *gozinesh* criteria imposing discriminatory restrictions on who is eligible to be a member of the central committee of a given Islamic Council. While Article 10c requires that the applicant have a "good reputation and the disposition required for growth relating to the council; and a year's experience in the work of the council (Article 10d), these criteria also require that the individual is to: have practical engagement (*eltezam-e 'amali*) towards Islam, the principle of *Velayat-e Faqih* [or Leadership by a religious jurisprudent] and the Constitution (Article 10a) and have a record of being present and active in various fields of the Islamic Revolution (Article 10b).

[54] The Procedure Code is that envisioned by Article 130(2) of the 1990 Labour Code, the *Ayin Name-e Chegounegi-ye Taskhil, Hodoud-e Vazayef, Ekhtiyarat va Chegounegi-ye 'Amalkard-e Anjoman-ha-ye Eslami-ye Kargari*, as found in issue number 1380/3/2-16377 of the *Rouzname Resmi*, or Official Gazette, also reference h21865t/695, dated 22 *Ordibehesht* [Iranian month] 1380, or May 2001.

By mid-April 2004, a parliamentary attempt to reform *gozinesh* laws (or at least one *gozinesh* law) had not been approved by the Council of Guardians. Many commentators believe the amended draft legislation will not be enacted prior to the inauguration of the next parliamentary session, expected in May 2004, when the draft will lapse.

3.iii The impact on the right to work of the construction of the fence/wall inside the Occupied Territories

The situation of workers in the Occupied Territories will be discussed again at the forthcoming ILC in a Special Sitting, for which Amnesty International highlights its concerns about the impact of the construction by Israel of the fence/wall inside the Occupied Territories.[55] Altogether it is estimated that close to one million Palestinians in the West Bank will be negatively affected and will be subjected to violations of their fundamental rights, including their right to work, by the fence/wall. The gravity of the impact on the lives of hundreds of thousands of Palestinians, including in relation to the right to work, is already being felt in the areas where the fence/wall has been built.

Construction of the fence/wall

In April 2002 the Israeli government approved the plan to construct a fence/wall[56] through parts of the West Bank and in June 2002 it approved the construction of the first phase of the project.[57] The Israeli army is proceeding with the construction of a fence/wall which runs from the north to the south of the West Bank and around Jerusalem. According to the Israeli authorities the fence/wall is "*a defensive measure, designed to block the passage of terrorists, weapons and explosives into the State of Israel...*".[58]

However, the fence/wall is not being built on the Green Line[59] *between* Israel and the Occupied Territories but mostly *inside* the West Bank. Close to 90% of the route of the fence/wall is on Palestinian land inside the West Bank, encircling Palestinian towns and villages and cutting off communities and families from each other, separating farmers from their land and Palestinians from their places of work, education and health care facilities and

[55] See Amnesty International *Israel and the Occupied Territories: the place of the fence/wall in international law*, AI Index: MDE 15/016/2004, 19 February 2004. For further information about the right to work in the Occupied Territories see Amnesty International *Israel and the Occupied Territories: surviving under siege: the impact of movement restrictions on the right to work*, AI Index: MDE 15/001/2003 September 2003

[56] The Israeli authorities have usually referred to this fence/wall as a "separation barrier" or "security fence", but as of the end of 2003 they also started to refer to it as the "anti-terror fence".

[57] The fence/wall is being built in five stages/sections. Construction of the first stage began in the second half of 2002 in the northern part of the West Bank, which has almost been completed, and on the section around Jerusalem. The remaining three stages are under construction.

[58] Israeli Ministry of Defence on 31 July 2003. News briefs on: https://www.seamzone.mod.gov.il/Pages/ENG.news.htm

[59] The Green Line is the 1949 Armistice Line between Israel and the West Bank.

other essential services.[60] The total route of the fence/wall runs for some 650 kilometres, [61] more than double the length of the Green Line, and has an average width of 60 to 80 meters, including barbed wire, ditches, large trace paths and tank patrol lanes on each sides of the fence/wall, as well as additional buffer zones/no-go areas of varying depths.

To date, less than half of the route has been completed, mostly in the northern regions of the West Bank and around Jerusalem. Large areas of fertile Palestinian farmland have been destroyed or seized by the Israeli army to make way for the fence/wall and other larger areas have been cut off from the rest of the West Bank.

When completed, the fence/wall will cut off more than 15% of the West Bank land from the rest of the West Bank and some 270,000 Palestinians living in these areas will be trapped in closed military areas between the fence/wall and the Green Line or in enclaves encircled by the fence/wall. More than 200,000 Palestinian residents of East Jerusalem will also be cut off from the West Bank and hundreds of thousands of other Palestinians living in towns and villages to the east of the fence/wall will also be affected as they need access to the areas on the other side of the fence/wall to reach their land and their workplaces, schools and health care facilities and other services, and to visit their relatives.

Israel has the right to take reasonable, necessary and proportionate measures to protect the security of its citizens and its borders. These include measures to prevent the entry into Israel of Palestinians and others who are reasonably suspected of intending to carry out suicide bombings or other attacks. Therefore, it is not unlawful for Israel to establish fences or other structures on its own territory to control access to its territory. However, the fact that for the most part the fence/wall runs and is planned to run deep *inside* the West Bank, and not *between* Israel and the Occupied Territories, indicates that it is not, as claimed by the Israeli authorities, designed only *"...to block the passage of terrorists, weapons and explosives into the State of Israel"*.[62]
Further, any measure Israel undertakes in the Occupied Territories in the name of security must comply with its obligations under international law. The construction of the fence/wall *inside* the Occupied Territories violates both international humanitarian and human rights law.[63]

[60] For maps and further details about the consequences of the fence/wall see, amongst other sources: Special Report on the West Bank Barrier by United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) – www.un.org/unrwa/emergency/barrier); Analysis of impact by the United Nations Office for the Coordinator of Humanitarian Affairs (OCHA) – www.reliefweb.int/hic-opt/docs/UN/OCHA/English_update_15dec03.pdf; the Separation Barrier by the Israeli human rights organization B'Tselem (www.btselem.org)
[61] In February 2004, on the eve of the International Court of Justice's hearing on the legality of the location of the fence/wall inside the West Bank, changes were made to some 15 km of the already built fence/wall in the West Bank and Israeli officials announced that further changes were being considered to the planned route in areas where the fence/wall has not yet been built. At the time of writing no confirmed information was available concerning possible changes.
[62] See footnote 58.
[63] See footnote 55. Detailed information is provided in the report *Israel and the Occupied Territories: the place of the fence/wall in international law*, AI Index: MDE 15/016/2003.

Restrictions on movement

Thousands of Palestinians whose homes and land have been trapped between the fence/wall and Israel must now request special permits from the Israeli army to be allowed to continue living in their homes, to gain access to their farmland and to perform other basic functions of everyday life, such as going to work, attending school, getting medical care or visiting their families and friends.[64]

Those who work in these areas but reside elsewhere need special permits to reach their workplace. Applying for such permits involves a very complicated, lengthy and costly process, and applications are frequently rejected by the Israeli army on unspecified "security grounds".[65]

For those who succeed in obtaining the necessary permits, movement in and out of these enclaves encircled by the fence/wall remains limited. Permits are for fixed periods, ranging from one day to several months. Some permits are only valid for certain days or at fixed times, while for the rest passage depends on the opening hours of the checkpoints. Checkpoints are closed at night and are generally supposed to be open from morning to early evening. However, they frequently open late or close early. In addition, closures[66] of an area without prior notice, sometimes lasting for a whole day or even several days, are frequent.[67] Such sudden closures, which are routinely justified by the Israeli army and authorities as necessary for unspecified "security reasons", leave Palestinians stranded away from home, unable to get to work, to school or to hospital, or confined to their homes or to their immediate surroundings - depending on where they are at the time when a closure is imposed.

Destruction and seizure of land

In order to build the fence/wall large areas of cultivated Palestinian land have been destroyed. The Palestinian land on which the fence/wall is being built is requisitioned by the Israeli authorities for "military needs" and the seizure orders are generally "temporary", until the end of 2005, but can be renewed indefinitely.

Since Israel's occupation of the West Bank and Gaza Strip, Palestinian land "temporarily" seized by Israel has been used to build structures which are permanent in nature, including settlements and roads for settlers, and has not been returned to its owners. In their response to

[64] See for example the report New Orders in Barrier Enclaves: 11,400 Palestinians need permits to live in their homes, by B'Tselem (http://www.btselem.org)

[65] Many applicants cannot provide the required documents, such as proof of ownership, residence or employment. Land is often in the name of the head of the family and is only informally divided between family members; some people who have been living in the areas may not have been registered as residents by the Israeli army; workers in the agricultural sector often do not have formal employment contracts, especially if their work is casual, like day labourers or those who help relatives on their farms.

[66] A "closure" is when the Israeli army prohibits all movement in and out of a place.

[67] See for example the reports and cases studies by the UNRWA on: https://www.un.org/unrwa/emergency/barrier/index.html.

a case before the Israeli High Court, the Israeli authorities have recognized that temporary seizure orders have been and may be used to establish permanent structures.[68]

Most Palestinian agricultural land which has been seized by the army is used to build new roads for Israeli settlers or to expand the perimeter of Israeli settlements. Once trees have been uprooted and crops destroyed and a road has been paved in their place, it would be impossible or very difficult to restore the land to its previous use. The large scale and high cost of this project would make it even more difficult to reverse. In any event, to date Israel has not dismantled any settlements, roads or similar structures built on land "temporarily" seized by the Israeli army in the West Bank and Gaza Strip. On the contrary, the practice of "temporary" seizure of more Palestinian land by the Israeli army for building permanent structures continues throughout the Occupied Territories.

Economic and social consequences of the fence/wall

In the areas where the fence/wall has been completed, notably in the north of the West Bank, it is already having very grave economic and social consequences for hundreds of thousands of Palestinians in adjacent towns and villages. The land in these areas is among the most fertile in the West Bank and agriculture in the region constitutes a key source of income for the Palestinian population. Reliance on the agriculture sector has sharply increased in recent years because most Palestinians are no longer allowed to work in Israel, and the restrictions imposed by the Israeli army on the movement of Palestinians have caused a dramatic increase in unemployment in the Occupied Territories and the virtual collapse of the Palestinian economy. The stringent restrictions imposed on the movement of residents and farmers in the areas inside the West Bank near the fence/wall has made it extremely difficult and often impossible for farmers to tend to their land and animals and to get whatever produce they manage to harvest to the markets.

The winding route/trajectory of the fence/wall has blocked off many roads between towns and villages, forcing long detours on alternative roads. The journey time to towns and villages which are encircled by the fence/wall has been multiplied, making the cost of travelling to nearby locations increasingly unaffordable for local residents. A ten-minute journey to a village a few kilometres away now takes several hours as people are forced to travel around the enclaves or to reach and wait at one of the gates in the fence/wall. In addition to the increased time and cost of such journeys, the possibility that the gate may not be opened discourages many people from going anywhere unless it is absolutely essential. People are becoming increasingly isolated. An increasing number of people are neglecting their health and only try to seek medical care for urgent matters. Child labour has reportedly increased because in some families school children, due to the location of their school, are the only ones allowed access to the family land in the enclaves, while their parents and older siblings are denied passage.

Residents of Qalqilya and other towns and villages, which were amongst the most prosperous of the West Bank because of the rich agriculture and vibrant trade, fear that eventually they

[68] *The Separation Barrier*, B'Tselem (www.btselemn.org)

will be forced to leave their homes and their land because the fence/wall has cut them off their land and destroyed their trade prospects.[69]

Although restrictions on movement have most affected Palestinians, international humanitarian and human rights workers have been frequently prevented from carrying out their duties because of restrictions imposed on their movements by the Israeli authorities.[70]

The seizure, destruction and encirclement of large areas of Palestinian land resulting from the construction of the fence/wall have caused widespread violations of rights enshrined in international treaties to which Israel is party. The consequence of the fence/wall and other measures taken by Israel to hinder or prevent the movement of Palestinians inside the Occupied Territories is the creation of large-scale unemployment. The right to work is instrumental to the realization of other rights, including the right to an adequate standard of living. Under international law, states must refrain from impeding access to the resources needed for the realization of this right, including income-generating activities that allow individuals to maintain an adequate standard of living.[71]

Hundreds of thousands of Palestinians have lost their income as a result of these restrictions and are now forced to rely on aid and charity for survival.[72] Some two thirds of the Palestinian population now live under the poverty line and malnutrition and other health problems are becoming increasingly widespread.

3. iv Forced labour in Myanmar

A joint Plan of Action for the Elimination of Forced Labour Practices between the ILO and the Government of Myanmar providing for, amongst other things, an independent Facilitator to assist victims of forced labour to obtain redress, was expected to be signed during the 91st ILC in 2003. However, immediately prior to the meeting, the human rights situation deteriorated sharply following the attack on the National League for Democracy (NLD) on 30 May 2003, when NLD leaders and supports were attacked, and some killed. The General

[69] The town of Qalqilya, home to more than 40,000 Palestinians and until a few years ago a centre of trade, is now completely encircled by the fence/wall from all sides with a singe checkpoint in and out of the city. Many residents of Qalqilya own land in surrounding areas which have also been encircled by the fence/wall in separate enclaves.

[70] In March 2004 United Nations agencies in the Occupied Territories protested the increased restrictions on their movements and activities and in April 2004 the UNRWA was forced to stop distribution of emergency food aid to some 600,000 Palestinians in the Gaza Strip for two weeks due to restrictions introduced by Israeli authorities at the sole commercial crossing through which UNRWA can bring in humanitarian assistance. See http://www.un.org/unrwa

[71] See Committee on Economic, Social and Cultural Rights, General Comment No. 12

[72] UNRWA: Emergency appeal of 12 December 2003 and Special Report on the West Bank Barrier www.un.org/unrwa/emergency/barrier; and United Nations OCHA Consolidate Appeals Process (CAP: Humanitarian Appeal 2004 for occupied Palestinian territory of 18 November 2003.

Secretary of the NLD, Daw Aung San Suu Kyi, together with the Vice Chairman, U Tin Oo, were arrested at the scene and eventually placed under *de facto* house arrest.[73] Consequently, when the application of Convention No. 29 on Forced Labour (1930) in Myanmar was considered during a special sitting of the Committee on the Application of Standards, the Committee concluded that "a climate of uncertainty and intimidation did not provide an environment in which the Plan of Action, and in particular the Facilitator mechanism, which it established, could be implemented in a credible manner".[74]
Since May 2003, Amnesty International believes that there has been an upsurge in the detention of those peacefully exercising their right to freedom of expression and association, as well as continued arrests, surveillance and intimidation of members of opposition political parties in the lead-up to the National Convention.[75]

Forced labour

Forced labour of civilians by the military continues in many parts of the country, particularly in counter-insurgency areas. It takes the form of work on infrastructure projects or at military installations and portering for the army. Common criminal prisoners are frequently taken out of prisons by the security forces to serve as porters carrying supplies in these areas, or to act as human mine-sweepers. Porters are also often subjected to various forms of ill-treatment, sometimes resulting in death. Among civilians, small-scale farmers and day labourers living in areas where armed opposition groups operate, are most at risk of forced labour. The security forces also confiscate land belonging to local farmers for their own use, which further compromises their ability to earn a living.

In March 2004, Amnesty International issued a report containing information about a High Treason case, where it has emerged that death sentences have been passed on individuals who had been in contact with ILO regarding forced labour. [76]

[73] *Situation of human rights in Myanmar, report submitted by the Special Rapporteur to the Commission on Human Rights*, E/CN.4/2004/33, January 2004
[74] See *Provisional Record, 91st session, Geneva, 2003, Special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29),* 24/Part Three. The Committee on the Application of Standards also considered the application of Convention No. 87 in Myanmar as part of its regular work. See *Provisional Record, 91st session, Geneva, 2003, Observations and information concerning particular countries, Observations and Information concerning reports on ratified conventions (Article 22 of the Constitution),* 24/Part Two.
[75] As part of the seven point "roadmap", the Prime Minister announced in August 2003 the reconvening of the National Convention, established in 1992, convened in 1993 and adjourned in 1996, in order to draft a new constitution. From 1992-1996, Amnesty International reported on the human rights situation in the context of the first National Convention process, which failed to protect the rights to freedom of expression and assembly. In its reports, Amnesty International also outlined in detail human rights provisions which should be included in the final constitution – see, for example, Amnesty International *Myanmar: No law at all*, AI Index: ASA 16/11/02, October 1992.
[76] Amnesty International *Myanmar*: *The administration of justice: grave and abiding concerns*, AI Index: ASA 16/001/2004, April 2004. See also Amnesty International *Myanmar: Justice on Trial*, AI Index: ASA 16/019/2003, July 2003.

Nine people sentenced to death for High Treason

On 28 November 2003 nine men were sentenced to death for High Treason under Article 122 (1) of the Penal Code. They are: Nai Yekha alias Nay Win; Shwe Mahn alias Zaya Oo; Zar Naing Tun alias Phyu Lay; Zaw Myo Htet alias Zaw Zaw; Myo Htway alias Chin Gakoung; Min Kyi alias Nai Min Kyi, a lawyer; Zaw Thet Htway alias Thet Zaw; Aung Lunn; and Aye Myint alias Myint Aye Maung, a lawyer. Thet Zaw, the Editor of a popular sports magazine entitled *First Eleven*, was arrested on 17 July 2003 during a raid on his offices in Yangon. The other eight men were also arrested in the second half of July.

On 26 July 2003 the State Peace and Development Council (SPDC) conducted a press conference in Yangon explaining *inter alia* why they were arrested, the details of which follow.[77] The group was accused of plotting to plant bombs in strategic locations on 19 July[78] and also planning to assassinate SPDC members, as instructed by various exile opposition groups in Thailand. According to the government spokesperson, this violence was planned in order to spark a mass uprising against the government. Nai Yekha, Myo Htway, Aung Lunn, and Shwe Mahn were reported to have been arrested in Yangon in possession of weapons and explosives. Zar Naing Tun and Zaw Myo Thet were arrested on 16 July.

Interrogation of these detainees resulted in the arrest of *"three more accomplices,"* Min Kyi, Aye Myint, and Thet Zaw, *First Eleven* editor. Min Kyi, Shwe Mahn, Aye Myint and Thet Zaw were not specifically accused in the press conference of anything other than having had contact with some Myanmar opposition groups in Thailand.[79]

Amnesty International is concerned that Aye Myint, Min Kyi, Shwe Mahn, and Thet Zaw, who were arrested and tried solely on the basis of their alleged contact with Myanmar exile opposition groups, may be prisoners of conscience, who may have been sentenced to death solely for peacefully exercising their rights to freedom of expression and association.

[77] A report of the press conference including photographs of the accused and of explosives, is available on the SPDC official website, www.Myanmar.com, 26 July 2003. The SPDC periodically holds press conferences after a series of political arrests, explaining the events which led up to the arrests and naming detained individuals who were reportedly involved in anti-government activities.

[78] 19 July is Martyrs Day in Myanmar, commemorating the date of the assassination of independence hero General Aung San and his colleagues in 1947.

[79] A fundamental principle of the right to fair trial is the right of every person charged with an offence to be presumed innocent until and unless proved guilty according to law after a fair trial. While the 26 July press conference did provide information to the public, it also made sweeping assertions in tendentious language about the guilt of the accused. The contents of the 26 July press conference did not uphold the right of the accused to the presumption of innocence. Further, political trials in Myanmar fall far short of international fair trial standards. Trials must always scrupulously observe all the international standards protecting the right to fair trial. All safeguards and due process guarantees set out in international standards applicable during pre-trial, trial and appellate stages must be fully respected. This is especially true in capital cases, in view of the irreversible nature of the death penalty.

Concerns about Aye Myint, Min Kyi, and Shwe Mann have been further heightened by a report submitted to the Governing Body meeting in March 2004.[80] According to this report, the ILO had become aware of an unofficial English translation of the court judgement, in which the nine death sentences were handed down for High Treason. Amnesty International has also obtained this unofficial translation, which cites alleged contact by Min Kyi, Aye Myint, and Shwe Mahn with the ILO about forced labour in Myanmar. The ILO wrote to the SPDC Minister for Labour on 12 March 2004, stating *inter alia*:

"*The sentence was passed, taking into account of evidence relating to information received from, or passed to, the ILO by some of the persons convicted…If the translation is an authentic one, it could affect the very basis of the ILO's presence in the country. It would indeed seem impossible to reconcile the commitment of your Government to eradicate forced labour in cooperation with the ILO with the notion that contacts with the ILO could constitute an act of high treason."* [81]

On 17 March 2004 the ILO Liaison Officer *ad interim* in Yangon met with the Minister of Labour and requested copies of the original trial documents and access to the *"relevant convicted persons"*. The report presented to the Governing Body states that: *"The Minister indicated that although the authorities considered that the translation of the court judgment was not fully accurate, they did not contest the general veracity of the document. The Minister stressed that it was certainly not the case that contacts with the ILO could be considered illegal (…).In his view, therefore, it was clear that the judge had made mistakes and the case would have to be reviewed."*

On 19 March 2004 the Liaison Officer *ad interim* was joined by the informal Facilitator to interview Aye Myint and Min Kyi at Insein Prison. The meetings took place individually and in private, during which the prisoners reported that although *"they had no major concerns regarding their current conditions of detention"*, immediately after their arrest they had been interrogated for several days, deprived of food, water, and sleep, and beaten. The ILO further stated that it *"considered that the case was not investigated or prosecuted in a systematic or credible way. It appeared the police or intelligence officers initially used methods of entrapment and that the subsequent procedures of investigation and prosecution were unsound, without any of the fundamental guarantees necessary to produce a credible outcome.* [The ILO] *believes in this context it is important for the authorities to make available, in addition to the original judgment, the full transcript of the trial proceedings."*

The ILO said that after interviewing the two prisoners it became clear that there was a *"significant ILO dimension"* to the case of Shwe Mann, also one of the nine sentenced to death. In the report's conclusion, the ILO stated that "*On the basis of all the information available, the only conclusion (…) was that the convictions of these three persons for high treason were unsound. They should be released pending a full review of the case."* Amnesty

[80] See *Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), Latest Developments*, GB. 289/8/2, March 2004.
[81] Ibid, Appendix I.

International supports this call for release of the three prisoners pending a review. In this regard the organization has urged the SPDC to review the totality of judicial procedures against all nine persons, and in particular against the three men with ILO contacts and of the journalist Thet Zaw. Such a review should include the validity and cognizance of the charges, the conduct of the trials and sentencing. All death sentences should be commuted.

On 25 March 2004 the Governing Body adopted its conclusions on Myanmar. The Governing Body expressed its concern about the ILO dimension to the three death sentences handed down to Aye Myint, Min Kyi, and Shwe Mahn. Furthermore, in the informal Facilitator's view, the three men should be released pending review of all trial proceedings. The Governing Body indicated that the Office would have to examine the implications for the Plan, in particular the Facilitator, taking into account the outcome of the Myanmar government's review. The Governing Body conclusions stated *inter alia* that:

"(...) there is general agreement on the potential usefulness of the Facilitator mechanism. The question which remains, however, is whether there can be sufficient confidence that the guarantees which are built into the mechanism offer the necessary protection to victims who want to make a complaint and whether the necessary conditions and safeguards were put into place to allow the Plan of Action to go ahead. The Office will have to examine this question more thoroughly in light of the results of the review of the recent cases and any further assurances provided by the Government. The results of this examination should then be submitted to the Officers of the Governing Body and should be found sufficiently convincing before proceeding to the implementation of the Plan of Action".

3.v. Freedom of association in Zimbabwe

At the 91st session of the ILC, as in 2002, the Committee on the Application of Standards decided to include its conclusions about freedom of association in Zimbabwe in a "special paragraph"[82]. The Committee noted that the government was willing to accept technical assistance and requested that it accept a direct contacts mission by the ILO to examine the whole situation *in situ*[83]. In its report for the forthcoming ILC, the Committee of Experts has noted that the government has not yet responded to the recommendation for a direct contacts mission. Having considered the adoption of the Labour Relations Amendment Act No. 17/2002 and the Statutory Instrument 131/2003, the Committee of Experts has found inconsistencies with this law and the state's obligations under Convention No. 98, and has thus repeated its request that the government amend particular sections of the Act. This has been reiterated by the Committee on Freedom of Association.[84]

[82] See footnote 36 for explanation.
[83] See *Provisional Record, 91st session, Geneva, 2003, Observations and information concerning particular countries, Observations and Information concerning reports on ratified conventions (Article 22 of the Constitution)*, 24/Part Two for review of Zimbabwe.
[84] See *333rd report of the Committee on Freedom of Association*, GB 289/9 (Part 1), March 2004.

The use of legislation to suppress freedom of expression, assembly and association

Historically, Zimbabwe has had a multi-tiered system of labour law with several pieces of legislation governing different categories of employees. Private sector workers were covered by the Labour Relations Act (1985). Public servants were covered by the Public Service Act (1995) and a series of public service regulations and directives, while employees working in Export Processing Zones fall under the Export Processing Zones Act (1994). As a result, the conditions of employment differed for workers depending on the legislation which governed them.

While the Labour Relations Act recognized the right of workers to form and join trade unions without prior authorization, public servants, such as teachers and nurses, were not permitted to form their own trade unions. They were able to join associations, but could not bargain collectively or strike. To address these disparities, the labour movement repeatedly called on the government to harmonize these laws and standardize the conditions of employment for all workers.

On 7 March 2003, the government enacted the Labour Relations Amendment Act which aimed at, among other things, harmonizing the Labour Relations Act and the Public Service Act. However, the Labour Relations Amendment Act contains provisions which tighten the restrictions on the ability of unions to organize strikes and demonstrations, effectively denying workers their right to strike. Further, the Labour Relations Amendment Act does not protect the right of workers to freedom of association. For example, it contains controversial provisions which curtail the right to engage in collective job action. Section 37 of the Labour Relations Amendment Act provides that collective job action requires: 14 days notice; needs the approval of the relevant union or employers' organization or a secret ballot; and that all measures laid down for internal resolution of disputes have been exhausted. Section 34 stipulates that collective job action is prohibited if the parties have agreed to go to arbitration, otherwise it is punishable by up to two years in prison.

According to Section 37 of the Labour Relations Amendment Act, only workers in non-essential services are permitted to strike. Those workers who are classified under the "essential services" category are not permitted to take part in any collective job action. Under Section 36, the definition of what constitutes "essential services" has been strategically broadened and now means services "the interruption of which endangers immediately the life, personal safety or health of the whole or any part of the public". The new Statutory Instrument 131/2003 gives powers to the minister concerned to declare a non-essential service an essential one if a strike in a sector, service industry or enterprise persists to the point that "the lives, personal safety or health of the whole or part of the population is endangered".[85]

[85] Statutory instrument 131/2003 also provides a list of services declared to be essential services.

According to Section 40 of the Labour Relations Amendment Act, employees or their representative bodies found guilty of any form of involvement in unlawful collective action will be punished by up to five years' imprisonment. Peaceful picketing is permitted under Section 38, but requires approval from an industrial agreement to be inside work premises and even then must not affect production.

The Sections of the Labour Relations Amendment Act which restrict the right to engage in collective job action contravene Section 21 of Zimbabwe's Constitution which expressly guarantees the right to "belong to political parties or trade unions". They also violate international treaties to which Zimbabwe is a party, including both ILO Conventions on freedom of association.[86]

The use of national legislation to silence dissent is a tactic employed by the government to suppress freedom of expression, assembly and association, of which the Labour Relations Amendment Act is one example.[87] Sections of both the Public Order and Security Act and the Miscellaneous Offences Act are consistently being used by the Zimbabwean authorities to impede freedom of expression, assembly and association, with labour activists among the main targets.

Public Order and Security Act

In January 2002, the Special Representative of the UN Secretary-General on Human Rights Defenders sent an urgent appeal to the Zimbabwean authorities regarding the passage through Parliament of the Public Order and Security Bill, in relation to concerns that the Bill would restrict the fundamental rights to freedom of expression, association and assembly.[88] Since its enactment in 2002, the Public Order and Security Act has been used by the authorities to target opposition supporters, independent media and human rights activists, including trade unionists, in order to restrict their rights to freely assembly, criticize the government and President, and engage in, advocate or organize acts of peaceful civil disobedience. The police have used the Act to arbitrarily arrest hundreds of Zimbabweans. Many have had the charges against them dropped or dismissed in court due to lack of evidence. However, the legislation has provided the police with a pretext to intimidate, harass and torture real or perceived supporters and members of the opposition.

Miscellaneous Offences Act

The Miscellaneous Offences Act, which dates back to the pre-independence period of repressive white rule in Zimbabwe, has been used extensively over the past few years to clamp down on freedom of expression, assembly and association. Most of those arrested are

[86] Zimbabwe ratified Convention No. 87 during 2003, and was the only member state to do so. Zimbabwe is also party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and to the African Charter on Human and Peoples' Rights, all of which provide for freedom of association.

[87] Amnesty International *Zimbabwe: Rights Under Siege*, AI Index: AFR 46/12/2003, May 2003.

[88] *Report of the United Nations Special Representative of the Secretary-General to the 59th Commission on Human Rights*, E/CN.4/2003/104/Add.1, February 2003

charged with violating Section 7(b) of the Act by "engaging in conduct likely to cause a breach of the peace". A disturbing feature of the use of the Miscellaneous Offences Act in recent years has been reports that police resort to this Act when they fail to find sufficient grounds to arrest or charge people under the Public Order and Security Act.

Intimidation, harassment and illegal detentions

Since the presidential elections in 2002, it has become increasingly difficult for workers in Zimbabwe to associate without police interference. This is largely due to the government's perception that labour activists from the Zimbabwe Congress of Trade Unions (ZCTU) and other unions, including teachers' and students' unions, have been working with the Movement for Democratic Change to overthrow it. In-house meetings of the ZCTU, such as general council meetings, have been monitored and sometimes disrupted by the police. ZCTU officials and members have been subject to arbitrary arrest.

On 8 October 2003 at least 200 trade union activists throughout the country were arrested to prevent them from staging protests against high taxes and inflation. While some were arrested under the Public Order and Security Act, most of the union activists were charged under the Miscellaneous Offences Act and made to pay fines. Those arrested included ZCTU President Lovemore Matombo, Secretary General Wellington Chibebe, as well as many other members of the ZCTU's national executive. Several of those arrested were allegedly assaulted by the police.

The Committee on Freedom of Association has stated that arrests, intimidation and threats against trade unionists have become a recurrent phenomenon in Zimbabwe.[89] A case involving threats made against Wellington Chibebe and his arrest, together with other ZCTU leaders in December 2002,[90] was one of three cases to which the Committee drew the special attention of the Governing Body because of the extreme seriousness and urgency of the matter. Meeting in November 2003, the Governing Body discussed these cases against a backdrop of new reports on 18 November which indicated that at least 350 trade union and human rights activists had been arrested throughout the country in order to prevent protests against the economic crisis and human rights abuses from taking place.[91] In the capital Harare approximately 50 activists were arrested; those detained again included Lovemore Matombo, Wellington Chibebe and two other ZCTU leaders, Lucia Matibenga and Elias Mlotswa. Most of the other protestors were arrested as they gathered on the street. As with the previous round of arrests, several people were assaulted by the police.

Those arrested in Harare remained in custody until 20 November, when they were taken to the Magistrate's court and charged under the Public Order and Security Act. However, on 19 November many of the detained protestors were reportedly told that the majority of them could be charged under the Miscellaneous Offences Act or the Road Traffic Act and could

[89] See *333rd report of the Committee on Freedom of Association*, GB 289/9 (Part 1), March 2004.
[90] Ibid. Case No. 2238.
[91] See United Nations press releases: *UN rights chief concerned by reports more than 100 demonstrators arrested*, New York, 20 November 2003.

pay 'admission of guilt' fines, which would secure their release. The detainees apparently refused to pay the fines, and consequently all remained in jail until their court appearance on the afternoon of 20 November, when they were all charged under the Public Order and Security Act. The Magistrate released the four ZCTU leaders on bail of Zim$20,000 while the rest of the protestors were released on free bail. All were told to report to court the following day to answer the charges under Public Order and Security Act. However, when they appeared in court on 21 November the State dropped the charges, reportedly for lack of evidence.

Those arrested in other parts of the country were reportedly held for between a few hours and three days, although one report suggested that protestors arrested in Gweru were held for a week or more. Both the Public Order and Security Act and Miscellaneous Offences Act were reportedly used to charge protestors in different parts of the country.

Despite the call by the Governing Body that the Zimbabwe Government institute thorough and independent investigations into the arrest and detention of trade unionists, and punish those responsible for the detentions, no such investigations are known to have been initiated into the events which took place on either 8 October or 18 November 2003.

States which have not ratified Conventions No. 87 and No. 98

From Reports of the Committee on Legal Issues and International Labour Standards, *GB.288/10/2, November 2003*

Explanation of symbols:

X Convention ratified

○ Formal ratification process already initiated; 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, etc

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

■ Divergences between the Convention and national legislation

♦ Ratification not considered/deferred

-- No reply, or a reply containing no information

Member states	Convention No. 87	Convention No. 98
Afghanistan	--	--
Armenia	○	X
Bahrain	●	●
Brazil	▲	X
China	♦	♦
El Salvador	■	■
Guinea-Bissau	♦	X
India	■	■
Iran	▲	▲
Iraq	●	X
Jordan	●	X
Kenya	▲	X
Korea (Republic of)	▲	▲
Lao People's Democratic Republic	●	●
Lebanon	▲	X
Mauritius	▲	X
Morocco	▲	X
New Zealand	▲	X
Oman	●	●
Qatar	●	●
Saudi Arabia	●	●
Solomon Islands	○	○
Somalia	--	--

Member states	Convention No. 87	Convention No. 98
Thailand	●	●
Timor-Leste	--	--
United Arab Emirates	♦	♦
United States	♦	♦
Uzbekistan	○	X
Vanuatu	--	--
Vietnam	♦	♦