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“Trade union rights are human rights”

A regular newsletter produced by the ILO Bureau for Workers' Activities (ACTRAV)

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ILO - the World Parliament of Labour

Several Heads of State and Government, trade union leaders and employer representatives from the 178 ILO Member States will meet in Geneva from 31 May to 16 June 2006 at the 95th session of the International Labour Conference. On the agenda will be changing patterns in the world of work, child labour, safety and health at work, the employment relationship, labour inspection and technical cooperation.

Delegates will review the application of international labour standards by Member States. The situation in Burma, notably the persistence of forced labour, will give rise to a discussion on new measures to ensure that the military junta complies with the ILO's recommendations.

The situation of workers in the occupied Arab territories is also on the agenda.

The Director-General will present to the Conference a special report on changing patterns in the world of work. This will give a global perspective on the main transformations taking place on the labour market and the challenges they pose for the ILO objective of promoting decent work for all.

Two guests of honour will address some 3,000 government, worker and employer delegates. The President of Liberia, Ms Ellen Johnson-Sirleaf, will give her address on 7 June and the President of Costa Rica, Mr Oscar Arias Sanchez, will speak on 8 June.

Burma: Conference to examine a battery of new measures

Conference delegates will weigh up a series of unprecedented new measures aimed at ending forced labour in Burma (Myanmar).

Bringing the case to the UN Security Council and to the International Court of Justice, setting up a special ILO tribunal and a special committee of the International Labour Conference ... nothing has been excluded from the options that the International Labour Office will put to Conference delegates in order to make Burma comply with the recommendations of the ILO Commission of Inquiry. In 1998, the Commission of Inquiry concluded that the junta had systematic recourse to forced labour. At that time, trade union sources estimated that almost one million Burmese were the victims of this scourge. Some of the measures in the document to be submitted to the Conference are reminiscent of the procedures put in place in 1964 against the apartheid regime in South Africa, and the ILO does not rule out the scenario of Myanmar's withdrawal from the Organisation.

A resolution proposed by the workers' group and adopted by the ILO Governing Body in March is behind this Conference discussion on new forms of action. The workers' group had expressed concern over the sentences passed in Burma on people who denounce forced labour practices.

The options put forward by the ILO will be discussed on 3 June at a special session on Burma to be held by the Committee on the Application of Standards.

Repression hardened in 2004

Following a Resolution from the International Labour Conference in the year 2000, the ILO took a series of initiatives and established with the Burmese authorities a dialogue which seemed to have the potential for delivering results on the eradication of forced labour. An agreement in 2001 gave rise to a visit by a high-level team, which was able to move about the country with full independence. This mission led, in May 2002, to the appointment of an ILO liaison officer based in Rangoon, the capital, and the drafting of an action plan to combat forced labour in Burma. However, recourse to forced labour subsequently showed no signs of diminishing, and from 2004 onwards, the government's previous apparent willingness to cooperate with the ILO was transformed into confrontation. That year, three people were charged with high treason and sentenced to death because they had had contacts with the ILO. At the end of 2004, three of the ILO's interlocutors within the government, including the Prime Minister, were removed from office and repression against Aung San Suu Kyi's National League for Democracy intensified. In 2005, a high-level ILO mission had to be curtailed, death threats were made against the liaison officer and the authorities adopted a systematic policy of prosecuting and sentencing those who denounced forced labour. In 2004, the ILO liaison officer received no less than 80 complaints. The possibility of lodging complaints with the ILO liaison officer has had to be suspended, due to the threats now hanging over complainants.

Unprecedented measures

This is the context within which the Conference will have to examine measures to oblige Burma to end forced labour and stop prosecuting and threatening those whom it accuses of "false allegations".

Among the main options put forward by the ILO – which are not mutually exclusive – are: obtaining a binding ruling by the International Court of Justice (the case could be brought by one ILO Member State or a group of Member States and the ILO could submit information; enforcing the judgement would be a matter for the UN Security Council); a decision by an independent

tribunal established by the ILO under article 37(2) of its constitution (in which case, the tribunal's decisions would have to be enforced through ILO procedures); and the ILO's obtaining an advisory opinion from the International Court of Justice (this opinion would be non-binding but would carry considerable juridical weight).

In addition to these proposals, the ILO could, the conference document says, provide more precise indications of the measures that Member States should take under the resolution adopted in 2000, pointing out the sectors and types of enterprise in which forced labour is used and which could be subjected to economic measures. Foreign enterprises could be invited to take steps to ensure that forced labour is not used in their operations in Burma (the ICFTU has published a list of multinationals that have a presence there). The Conference could also relaunch the appeal that it made to international organizations. And the document recalls that any member of the United Nations can refer to the Security Council any situation which might lead to international friction.

Finally, the ILO proposals include the possibility of establishing a special committee of the Conference, which would discuss developments each year and make recommendations for action. A committee of this kind was set up in 1964, as part of the ILO programme of action against apartheid in South Africa. That committee operated until 1993.

Door still open for dialogue

“The approach adopted by the ILO has been consistently to offer dialogue and cooperation,” the Conference document notes. Indeed, “it is only through cooperation with the authorities that progress on the elimination of forced labour can be achieved”. But if the door is still open for dialogue, the ILO also has a duty to draw the appropriate conclusions from the authorities' non-cooperation and ensure that the military junta does not benefit from such an attitude. So unless the Burmese authorities alter their stance – by putting a moratorium on current prosecutions of those accused of making false allegations, by withdrawing the charges against them, and by freeing those in prison – delegates to the International Labour Conference will no doubt have to take unprecedented steps against Burma's ruling military junta.

- **Application of Conventions and Recommendations:** At the Conference, the Committee on the Application of Standards will make a direct call to certain governments to answer a whole series of questions on labour rights and respect for ratified Conventions. The workers' group will press the governments of countries in which abuses are reported to provide answers and make commitments.
- **Annual report:** Meanwhile, on 7 June the International Confederation of Free Trade Unions (ICFTU) will be publishing its annual report on worldwide violations of trade union rights. Citing violations in 137 countries, the report will be launched simultaneously in Brussels and Geneva. Its Geneva debut on 7 June will be during a workers' group meeting in Room XIX at the Palais des Nations. The launch will feature a video clip.

The employment relationship: a vital issue for workers

A Recommendation up for adoption by the Conference will be the first step towards a standard-setting approach to this issue.

The employment relationship is the legal basis for protecting workers and their rights. But according to a discussion document for the International Labour Conference, “the profound changes occurring in the world of work, and particularly in the labour market, have given rise to new

forms of relationship which do not always fit within the parameters of the employment relationship. While this has increased flexibility in the labour market, it has also led to a growing number of workers whose employment status is unclear and who are consequently outside the scope of the protection normally associated with an employment relationship". For the workers' group, this development means that "workers whose employment relationship with the enterprise or person for whom they work is not recognized are, de facto, prevented from exercising their basic rights, such as freedom of association or the right to collective bargaining; their level of protection and security will be lowered and they will have great difficulty in accessing social security systems".

Bogus self-employment – some examples

Union concerns are well illustrated in the report, which cites some telling examples. In France, for instance, the Supreme Court (*Cour de Cassation*) examined the case of a person who drove a taxi under a monthly contract which was automatically renewable, called a "contract for the lease of a vehicle equipped as a taxi", and paid a sum described in the contract as "rent". The Court held that this contract concealed a contract of employment, since the taxi driver was bound by numerous strict obligations concerning the use and maintenance of the vehicle and was in a situation of subordination. In Ireland, a woman had signed a contract of employment as a shop demonstrator for food products. She went from shop to shop, was paid at a daily rate and received a mileage allowance, but her contract stipulated that she was not eligible for the pension scheme, nor to join a trade union. It also said that, as she was self-employed, she was responsible for her own tax affairs. She gave about 50 demonstrations a week. When she took the case to court, the ruling, based on the particular facts of the case and the general principles developed by the courts, was that she was an employee, bound as such by a contract of service, as she had performed services on behalf for another person and not for herself.

In the United States, a major electronics firm recruited "temporary agency employees" and "freelancers". The "freelancers" had agreed in writing that they would not enjoy certain employee benefits. However, the court held that both the "agency workers" and the "freelancers" were common-law employees of the enterprise. After several years of negotiation, the ruling led to a compromise under which the company agreed to pay some US\$97 million in compensation to the workers concerned.

Different situations, same result

The ILO report notes the proliferation of situations in which the employment relationship is ambiguous (i.e. the characteristic elements of a relationship are not clearly apparent), disguised (meaning that there is a deliberate attempt to hide the employment relationship with the intention of sidestepping the law, notably in the case of false self-employment) or triangular (implying that workers are recruited by one firm – the provider, but carry out work for another – the user; this applies particularly to private employment agencies or subcontractors).

Flexibility at issue

Adopting a Recommendation, which should help governments to adopt national policies and so improve worker protection, will mark an important step forward in tackling the issue of employment relationships. But worker delegates have already been making clear that the ILO should also be building awareness among other actors, such as the International Financial Institutions, to ensure that the policies they advocate do not threaten the levels of protection provided to workers within employment relationships. So more broadly, this important discussion will be about the issue of flexibility.

First victory on child labour

For the first time, the global report shows a decrease in the number of children at work. But it also points to new challenges.

On 9 June, the plenary session of the International Labour Conference will be devoted to a discussion of the global report on child labour. The new report, entitled *The end of child labour: Within Reach*, notes for the first time that child labour, particularly its worst forms, is decreasing right across the planet. The ILO adds that at the present rate of reduction, if the worldwide enthusiasm for eradicating child labour is maintained, the worst forms of child labour could be eliminated in the next ten years.

According to the report, the number of children at work globally fell by 11 per cent between 2000 and 2004, from 246 million to 218 million. Moreover, the number of children and young people, aged 5-17, obliged to do hazardous work declined by 26 per cent, to 126 million in 2004 as against 171 million in the previous estimation. This drop is even more marked among younger children. For the group aged 5-14, the report says the reduction was 33 per cent.

Despite the considerable progress achieved in the fight against child labour, the report points out that much remains to be done, particularly in agriculture where seven out of ten children work. Other challenges include tackling the impact of AIDS on the child labour problem and making a close analysis of the links between child labour and youth employment.

- 12 June is the World Day Against Child Labour, launched by the International Labour Organization in 2002. Its aim is to raise the profile of the world movement for the elimination of child labour, particularly in its worst forms. The world action day serves as a catalyst for developing a rapidly growing world movement against child labour, as is shown by the new global report and the constantly growing number of ratifications of Convention 182 on the worst forms of child labour (currently 160 ratifications, as against 122 in 2002) and Convention 138 on minimum age (144 ratifications compared with 117 in 2002).

New instrument to promote workplace safety and health

The effectiveness of a new Convention will depend on its content. Prevention is better than cure.

“Our group is looking forward to next year’s discussion. This year, we have partially succeeded in improving the structure of this instrument ... Next year, we must strengthen its content so that it can become really useful.” So said the workers’ group spokeswoman last year at the end of a first discussion on the promotional framework for occupational health and safety. In 2005, delegates to the International Labour Conference declared their support for the elaboration of a Convention and Recommendation establishing a promotional framework in the field of safety and health. Its main aim will be to ensure that health and safety at work become a national priority. Another aim of the new instruments will be to increase the impact of the existing ILO standards in this field. A lot is at stake, as more than two million workers die each year due to work-related accidents or illnesses. Respecting the ILO standards and instruments would lead to a big drop in the number of these tragedies.

The first round of discussions led to the adoption of the principle of having a Convention and Recommendation, an idea that the employers had opposed as they preferred a more supple

instrument, more particularly a declaration. This year, the discussion will be on the content of the standards to be submitted for adoption by the Conference. Three points will be decisive for the workers: the link between the text and the workplace, so as to encourage not only measures to protect workers' safety and health, but also preventive measures, notably taking account of workers' rights and duties as well as employers' obligations regarding safety and health at work; a link with the principles contained in the existing ILO instruments on health and safety, particularly Convention 155 on occupational safety and health; and provisions to promote the ratification and implementation of the core ILO Conventions on health and safety. "Our aim is not to create new obligations for Member States, but to safeguard the basic protection provided by other ILO instruments on occupational safety and health," the workers insisted from the outset. The negotiations will be tight. The deciding factor may be the importance that governments attach to the adoption of an effective instrument. After all, quite apart from their human cost, workplace accidents and occupational diseases are also a heavy burden on social budgets. The ILO puts the cost of work-related injuries, diseases and deaths – through absences, medical treatment, and invalidity and survivors' benefits – at about 4 per cent of world GDP.

The state of labour inspection worldwide

Vital to achieving decent work, labour inspection in many countries is desperately short of resources.

"The labour inspection system has the potential to play an even greater role than it has hitherto, in ensuring the protection of both men and women workers in all sectors and at all levels; in ensuring compliance at national level with national labour laws; and, ultimately, in assisting and strengthening the international supervisory system." So concludes a general survey of labour inspection, to be submitted to the International Labour Conference in June 2006. While there is no doubting that labour inspection is a vital link in the promotion of decent work for all, it is all too often left short of resources, the study says. "In many developing countries, as well as certain industrialized countries, it is clear that the resources allocated to labour inspection are insufficient to enable inspection functions to be discharged properly."

Recognized as a priority Convention – just like its agricultural counterpart Convention 129 adopted in 1969 – Convention 81 on labour inspection has one of the highest ratification rates (135 countries). But the Committee of Experts which prepared the general survey for the 2006 Conference does quite rightly insist on the need to campaign for the ratification of these two Conventions - with priority going to No. 129, which covers a particularly dangerous sector and has so far garnered only 43 ratifications. The survey should help to clarify the stipulations in the two instruments and, the experts hope, this should enable many countries to clear away the perceived obstacles to ratifying Convention 129.

While it is important to provide inspectorates with the necessary resources, care should also be taken to avoid overloading them with missions that are not compatible with the provisions in the Conventions. This is because another way of weakening labour inspection is to assign it tasks that are outside its mandate. For instance, the survey notes that in certain countries, labour inspectorates may be obliged, on government orders, to engage in surveillance of trade unions instead of protecting workers. In other countries, inspectorates are given the mission of detecting migrant workers who are in an irregular situation. On this, the experts' committee made a point of recalling that the "essential labour inspection function" is "protecting all workers without distinction" and not "enforcing immigration law".

“An effective system of labour inspection at the national level, carried out by professionally trained and adequately resourced inspectors, who are suitably qualified and independent of improper external influence, benefits both employers and workers,” the Committee of Experts notes. “A strong and effective labour inspectorate provides not only better protection, but also better prevention and productivity at work, to the benefit of everyone.”

- The ILO Bureau for Workers’ Activities devoted an issue of its review *Labour Education* to the topic of labour inspection. The publication recalled that in Brazil, in January 2004, three inspectors and a driver from the Ministry of Labour were murdered, on the orders of a big landowner, while they were checking out an agricultural enterprise. A few months later, in September 2004, two labour inspectors were killed in cold blood by a farmer in France. In that issue of *Labour Education*, labour inspectors and ILO experts map out possible paths to more effective labour inspection. How can it face up to changing patterns in the world of work? How can it adapt to new challenges? How can its energies be better channelled, so as to achieve maximum impact? Avoiding compartmentalization of the various inspection services, preventing the dissipation of resources, ensuring that information circulates better and faster, improving coordination between the different ministries responsible for labour inspection, making better use of social dialogue to improve the legislation and its implementation – these are just some of the suggestions feeding into the concept of an “integrated labour inspection system”, as advocated by the ILO. In his editorial on labour inspection, ACTRAV’s Director Jim Baker notes: “By demanding that it be properly resourced and that it adapt to a constantly changing world, trade unions will strengthen their own ability to defend workers’ interests. But there is one condition. Labour inspection must remain true to its initial mandate – enforcing labour standards, protecting workers and constantly improving labour law.”

Report reveals dramatic situation of workers in occupied Arab territories

The ILO Director-General’s report on the situation of workers in the occupied Arab territories says poverty and unemployment continue to worsen, despite an economic upturn last year.

While the economy pursued its upward trend in 2005, four out of every ten Palestinians in the territories were living in poverty on less than US\$2.10 a day, and the absolute number of the poor rose from 600,000 in 1999 to 1.6 million in 2005, says the report on the situation of workers in the occupied Arab territories which will be presented by the ILO Director-General to this year’s International Labour Conference.

Open unemployment, plus the large number of workers who have become discouraged from actively seeking work, amount to an estimated 40 per cent of the Palestinian labour force, the report says.

Unemployment is not the only concern, however, as the very low rates of labour force participation and employment have become an inherent characteristic of the labour market in the occupied territories. According to the report, half of men and only 11 per cent of women of working age are employed. The unemployment rate of young persons aged 15-24 years is 1.6 times the average unemployment rate.

The findings of the report are based on missions sent to the occupied Arab territories and Israel and to the Syrian Arab Republic earlier this year to assess the situation of workers of the occupied Arab territories, including the West Bank, the Gaza Strip and the Golan.

ACTRAV's team for the Conference

The Workers' Group is chaired by Leroy Trotman (Barbados) and the group's Secretary is Anna Biondi (wkgroup@ilo.org). Each committee on a particular topic will elect a spokesperson for the tripartite meetings. He or she will also report back to all of the worker delegates. Meetings of the whole Workers' Group will be held in Room XIX at the Palais des Nations from 9.00 to 10.00 a.m. on Thursday 1 June, Saturday 3 June, Monday 5 June, Wednesday 7 June, Friday 9 June, Monday 12 June and Thursday 15 June.

A team from the ILO Bureau for Workers' Activities (ACTRAV) takes care of liaison with worker delegates and provides them with technical assistance during the Conference. ACTRAV secretariat at the Palais: Palais phone no.77314 (from outside: +41 22 917 73 14)

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Safety and health in coalmines

ILO experts adopt a new Code of Practice on Safety and Health in Underground Coalmines.

Experts representing workers, employers and governments have adopted a new *Code of Practice on Safety and Health in Underground Coalmines*, designed to improve the safety and health of those who are involved in one of the world's highest-risk activities.

Coalmining is an important activity in almost 50 countries. It fuels the industrialization of economies and supports the production of energy and steel. The unprecedented rate of growth in the production and consumption of coal, notably in Asia, shows the importance of this sector. That major role has been reinforced by recent technological developments in the mining industry, such as liquefaction and gasification, and also by the advent of “clean” technologies which will help to stimulate increased, sustainable demand for coal.

Historically, underground coalmining is one of the highest-risk activities for workers' safety and health. Highlighting the seriousness of safety and health issues in underground coalmining, the tripartite experts observed a minute of silence in memory of the victims of an accident in China, which occurred during the course of the deliberations.

An existing code of practice, adopted in 1986, will be replaced by the new code, which sets out a national framework specifying the roles of the competent authorities, employers, workers and their organizations. It also comprises a methodology for identifying hazards and preventing and minimizing risks, as well as specific provisions for safe underground coalmining operations. These specific provisions address most of the currently identified hazards and risks associated with underground coalmining.

The recommendations in ILO codes of practice are intended for the use of all those, both in the public and private sectors, who have responsibility for ensuring workers' safety and health when faced with occupational hazards. They are not intended to replace national laws or regulations, nor currently applicable international standards.

In their recommendations for follow-up action, the experts stressed the need to disseminate and promote the code of practice. In addition, all experts showed their support for the ILO's work on occupational safety and health, an issue on the agenda of the International Labour Conference in June 2006, and called for issues related to small mines, the impact of coalmines on local communities and a systems-based approach to health and safety to be further investigated.

A decade for decent work in Latin America

The closing report of the regional meeting in Brasilia proposed that the meeting should mark the start of a decade for decent work in the Americas.

The Sixteenth American Regional Meeting of the ILO (see Human Rights @ Work 2/2006) concluded with the announcement by governments, employers and workers of the start of a Decade of promoting decent work in the Americas.

“The countries of the Region stress the importance of formulating and applying national public policies that incorporate social dialogue,” says the report. These policies should, it adds, “stimulate national and foreign investment, inclusive economic growth and the generation of

decent work with quality employment, social protection and the effective respect of labour rights”.

Delegates agreed on the importance of the Decent Work Country Programmes referred to in the “agenda for the hemisphere” report. These programmes adapt general policy recommendations to the specific circumstances and realities of each country, the view being that they can make an important contribution to promoting sustainable social and economic development. In order to develop these national programmes, it is vital to ensure “direct participation of the employers' and workers' organizations at national level”. The conclusions also call on the ILO to support tripartite mechanisms for following up the results of the meeting.

The Brasilia summit was attended by nearly 200 delegates from 23 countries in the Americas. It was chaired by the Brazilian Minister of Labour Luiz Marinho. The Employer Vice-Chairperson was Dagoberto Lima Godoy of Brazil, the Worker Vice-Chairperson Luiz Carlos Motta of Brazil, and the Government Vice-Chairperson Julio Faesler Carlisle of Mexico.

Pointers

Social clause for IFC loans: From now on, the International Finance Corporation will be making its loans to private firms conditional on respect for basic labour standards. This new rule, which covers the eight ILO core Conventions, came into force on 1 May. It is a major victory for the international trade union movement, which has been campaigning for a number of years now for a link between loans and respect for labour standards. In particular, the ICFTU had denounced several cases in which firms were systematically violating workers' rights, while those selfsame enterprises were being financed by the IFC. Headquartered in Washington, the IFC is a member of the World Bank Group. It is the biggest multilateral funder, financing private sector investments in the developing world. Its portfolio of worldwide commitments was worth US\$19.3 billion in the financial year 2005. The ICFTU has just published a guide to help trade union organizations use this new mechanism.

ILO/UNAIDS: “We must mobilize, mobilize and mobilize again,” insisted Juan Somavia, Director-General of the International Labour Office (ILO), at a meeting held jointly with UNAIDS in Brasilia on 6 May. About 2 million people are living with HIV/AIDS in Latin America and the Caribbean, and 600,000 have died of the disease over the past 20 years. It is estimated that 500 people contract the virus every day in the region, according to information provided to the meeting on AIDS and work in Latin America and the Caribbean. Action at the workplace is seen as essential to stepping up prevention through education and practical support measures for workers, while ensuring treatment and care.

Trade union research: The Global Union Research Network (GURN) held an international seminar in The Hague on 10-11 May. Researchers from international and national trade union discussed the globalization of production processes. They noted that production of goods and services was more and more dispersed and more and more coordinated by international producers, buyers and retailers. Trade unions are now confronted with sophisticated, often anti-union human resource management systems. The GURN network's aim is to give better access to research conducted by trade union organizations and establish contacts and exchanges of information between trade unions themselves and between unions and research institutes (<http://www.gurn.info/>). Research is also one of the components of a programme run by the

Bureau for Workers' Activities, aimed at building up trade union organizations' capacities. The Indian Labour Research Network, for example, met in Mumbai on 27-28 March. The aim of that seminar was to mobilize research efforts by trade unions and other institutions in India, and to envisage cooperation between them. The ACTRAV programme aims both to teach research disciplines to trade unionists and to enable trade union researchers to compare experiences. Here, the ACTRAV approach focuses on applied research which can help strengthen trade unions' capacity in collective bargaining with employers.