



FOURTEENTH ITEM ON THE AGENDA

Report of the Director-General

Eighth Supplementary Report:

Report of the Committee set up to examine the representation alleging non-observance by the Government of Mexico of the Labour Administration Convention, 1978 (No. 150), the Occupational Safety and Health Convention, 1981 (No. 155), and the Chemicals Convention, 1990 (No. 170), made under article 24 of the ILO Constitution by the National Union of Federal Roads and Bridges Access and Related Services of Mexico, the Trade Union of Telephone Operators of the Republic of Mexico, the National Union of Metlife Workers, the Trade Union Association of Airline Pilots of Mexico, the United Trade Union of Workers in the Nuclear Industry, the Independent Union of Workers in the Automotive Industry, similar and related "Volkswagen of Mexico", the Union of Workers of the National Autonomous University of Mexico, and the United National and Democratic Union of Workers of the National Bank for Foreign Trade

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List of abbreviations

Advisory Forum	Scientific Technological Consultative Forum AC
COCOESHT	State advisory OSH committee
COCONASHT	National Advisory Committee on Occupational Safety and Health
IMMSA	Industrial Minera México SA
IMSS	Mexican Social Security Institute
JFCA	Federal Conciliation and Arbitration Board
LFT	Federal Labour Act
NOM	Official Mexican Standards
PROFEDET	Office of the Federal Attorney for the Defence of Labour
SGM	Mexican Geological Service
SNTCPF	National Union of Federal Roads and Bridges Access and Related Services of Mexico
STPS	Ministry of Labour and Social Security

I. Introduction

1. By a communication dated 2 March 2006, the National Union of Federal Roads and Bridges Access and Related Services of Mexico (SNTCPF), made a representation under article 24 of the Constitution of the International Labour Organization alleging non-observance by the Government of Mexico of the Labour Inspection Convention, 1947 (No. 81), the Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85), the Labour Administration Convention, 1978 (No. 150), the Occupational Safety and Health Convention, 1981 (No. 155), the Chemicals Convention, 1990 (No. 170), the Prevention of Major Industrial Accidents Convention, 1993 (No. 174), and the Safety and Health in Mines Convention, 1995 (No. 176).
2. In a communication dated 25 April 2006, the SNTCPF supplemented their previous communication with new elements relating to the alleged non-observance by the Government of Mexico of Conventions Nos 150, 155 and 170.
3. The Government of Mexico ratified Convention No. 150 on 10 February 1982, Convention No. 155 on 1 February 1984, and Convention No. 170 on 17 September 1992 and these Conventions are still in force in Mexico. Conventions Nos 81, 85, 174 and 176 have not been ratified by Mexico.
4. The provisions of the ILO Constitution concerning the submission of representations read as follows:

Article 24

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

5. The procedure to be followed in the case of representations is governed by the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, as revised by the Governing Body at its 291st Session (November 2004).¹
6. In accordance with article 1 and article 2, paragraph 1, of these Standing Orders, the Director-General acknowledged receipt of the communications, informed the Government thereof on 14 November 2006 and brought the communications before the Officers of the Governing Body.
7. At its 298th Session (March 2007), the Governing Body decided, based on the recommendation of its Officers, that the representation by the SNTCPF was receivable only in so far as the alleged non-observance by the Government of Mexico of Conventions Nos 150, 155 and 170 was concerned, and set up a Committee to examine it consisting of Mr B. del Pico (Government member, Chile), Mr G. Ricci Muadi (Employer member,

¹ Adopted by the Governing Body at its 57th Session (8 April 1932), modified at its 82nd Session (5 February 1938), 212th Session (7 March 1980), and 291st Session (18 November 2004).

Guatemala) and Mr G. Martinez (Worker member, Argentina). Subsequently, and due to changes in the membership of the Governing Body, Mr M. Castro Grande (Government member, El Salvador) replaced Mr B. del Pico and Mr A. Echavarría Saldarriaga (Employer member, Colombia) replaced Mr G. Ricci Muadi. The Office informed the parties accordingly by communication of 23 May 2007, and invited the Government to send its observations on the representation.

8. On 27 June 2007, the following workers' organizations submitted communications, each indicating that it wished to associate itself with the abovementioned representation relying on the same legal and factual allegations as invoked by the SNTCPF:
 - Trade Union of Telephone Operators of the Republic of Mexico;
 - National Union of Metlife Workers;
 - Trade Union Association of Airline Pilots of Mexico;
 - United Trade Union of Workers in the Nuclear Industry;
 - Independent Union of Workers in the Automotive Industry, similar and related "Volkswagen of Mexico";
 - Union of Workers of the National Autonomous University of Mexico;
 - United National and Democratic Union of Workers of the National Bank for Foreign Trade.
9. Having consulted with the Officers of the Governing Body during its 300th Session (November 2007), the abovementioned seven workers' organizations were each considered to have joined in the representation by the SNTCPF declared receivable by the Governing Body in March 2007. The Office informed the Government accordingly by a communication of 20 November 2007. The SNTCPF and these seven workers' organizations are hereinafter referred to as the "Complainants".
10. In communications dated 16 July, 31 October, 1 and 16 November 2007 and 4 March 2008, the Government submitted further detailed observations concerning its alleged non-compliance of Conventions Nos 150, 155 and 170.
11. The Committee held two meetings on 16 and 19 March 2009 and adopted the present report at its second meeting.

II. Examination of the representation

A. Allegations of the Complainants

12. The Complainants state that at around 2 a.m. on 19 February 2006 there was an explosion (the Accident) in the coalmine Unit 8 in Pasta de Conchos, in the State of Coahuila, in the municipality of Sabinas in Mexico (the Mine). At the time, 78 miners were working in the Mine. Of these, 13 escaped or could be rescued, while 65 miners remained trapped. Due to high levels of methane gas, rescue teams could not enter the Mine. On 25 February 2006, the rescue operations were called off as the quality of air throughout the Mine remained so poor that there was no chance that any of the 65 trapped miners could have survived.
13. The Complainants allege that due to serious shortcomings in the manner in which the Government has monitored compliance with safety and health measures, working

conditions and preventative measures, inter alia, through the national inspection services, it has caused the loss of human lives and serious damage to the health and physical well-being of the workers employed in underground coalmines in Mexico, in particular in the Mine. The Complainants allege that the Government has breached its obligations pursuant to Articles 9 and 10 of Convention No. 150, Articles 4, 7, 9, 11, 13, 14, 16, 18 of Convention No. 155 and Articles 12 and 13 of Convention No. 170.

14. The Complainants explain that the Mine is one of several coalmines owned and managed by Industrial Minera Mexico SA (IMMSA). IMMSA is a subsidiary of Grupo Mexico, Mexico's largest mining and metallurgical refining group and mineral producer. In 2005, IMMSA was ranked as number 84 of the 500 most important companies in Mexico, with sales revenues in 2004 of 15,489.9 million Mexican pesos.² Between 2004 and 2005, the international market prices for coal increased due to demand from China and a weak US dollar. Faced with a falling production due to exhaustion of existing coal seams being worked, IMMSA invested in 2004 in a programme to increase the output, inter alia, at the Mine, resulting in a doubling of the production of coking coal.
15. According to the Complainants, the hazardous nature of coalmining in the State of Coahuila is demonstrated by public records. Accordingly, over 1,500 miners have been killed in coalmines in the State of Coahuila in the period 1889–2000, most of them as a result of explosions involving methane or other light hydrocarbons and oxygen.

1. **Supervision of working conditions in coalmines**

16. The Complainants state that supervision of the working conditions in the Mine is carried out by the Federal Labour Delegation in the State of Coahuila. With reference to public records for 2006,³ the Complainants allege that at the time of the Accident, the responsibility for the supervision of over 129 coal-extracting slope mines, vertical shaft mines and pits employing a total workforce of 6,970 workers in the State of Coahuila was entrusted to two labour inspectors. The Complainants contend that this was an insufficient number of inspectors due to the hazardous nature of the coalmining industry and the scope of the coalmining activities in the State of Coahuila.

2. **Inspections of the Mine**

17. According to the Complainants, the last ordinary inspection of the Mine prior to the Accident took place on 12 July 2004 in the morning pursuant to an order of 8 July 2004 by the Head of the Federal Labour Office in the State of Coahuila (the Ordinary Inspection).⁴ This Ordinary Inspection was initiated as scheduled at 9 a.m. on 12 July 2004 but was interrupted three hours later at 12 p.m. the same day. Some areas of the Mine were left uninspected and the inspectors did not inspect certain documents that should have been presented by IMMSA. The Ordinary Inspection was never resumed and completed. According to the inspection record of 12 July 2004⁵ (hereinafter referred to as the "Inspection Record"), the result of the Ordinary Inspection was that 48 deficiencies were noted.

² The Complainants refer to information published in the journal *Expansion* Number 918, June 2005, p. 192.

³ Not available to the Committee.

⁴ Order No. 125/000829.

⁵ No. 125/000829/2004.

18. The Complainants allege that the Government failed to ensure a timely and appropriate follow-up to this Ordinary Inspection. The resulting Safety and Health Measures Order to IMMSA (the Order),⁶ was signed by the Director of the Federal Labour Delegation in the State of Coahuila on 8 July 2005 or approximately a year after the Ordinary Inspection. According to the Complainants, IMMSA was ordered to comply with 34 of the 48 deficiencies noted in the Inspection Record, six of which had to be complied with “immediately” so as to ensure that the lives of the workers were not placed at risk. IMMSA was, however, notified of the Order only on 12 September 2005 i.e. two months later. A compliance inspection was carried out on 7 February 2006 (the Compliance Inspection) i.e. seven months after the Order.
19. The Complainants allege that the Ordinary and the Compliance Inspections were substantially deficient with reference to information presented by the Complainant in the form of a table which is reproduced below (the Table).⁷

Complaints by workers, family members and rescue workers	Technical information	Ordinary inspection report (12/07/04). Analysis of the inspection in the mine
Ventilation*		
<p>“There was a high incidence of gas in the mine” “before the explosion, the workers had set a time period for suspending work or they would walk out because the level of gas was very high”; “there were many ventilation problems.”</p>	<p>(1) To carry out open face mining and tunnelling at the same time, it was necessary to increase the capacity of the ventilation circuit of the mine, which only had a capacity of 160,000 CFM (75m³/sec). According to the ventilation record for 15 February, the volume of air extracted from shafts is on average 10m³/sec with a concentration of methane of 1.2 per cent. The total leakage in the ventilation circuit of the mine is 50 per cent, while the maximum acceptable level is 25 per cent. To ensure that the teams could operate properly, it would have been necessary to provide double the volume of air that they had. To overcome this problem, a ventilation duct of 4m in diameter and a depth of 152m had been commenced, which would have been used for extraction and both the slope shaft and the duct that was in operation would have permitted the entry of clean air. At the time of the explosion, the construction of the duct had not been completed.¹</p> <p>(2) The auxiliary ventilators available had a capacity of 15,000 CFM with ducts of 20”, when it is recommended to have ventilators with a minimum of double that capacity and with ducts of 36”, particularly as the concentration of gas in the seam is 8.5 m³/tonne.²</p> <p>(3) It was proposed to IMMSA that</p>	<p>(1) In paragraph (h), the enterprise is requested, inter alia, to submit “programmes for the revision, testing, and maintenance of the ventilation system”.</p> <p>Result: The enterprise did not present the requested document. The STPS did not set a deadline for compliance and at the Compliance Inspection it was not required.</p>

⁶ No. 125/ET/0042/2005.

⁷ The documents and testimonies referred to in the Table have not been available to the Committee.

Complaints by workers, family members and rescue workers	Technical information	Ordinary inspection report (12/07/04). Analysis of the inspection in the mine
	<p>it should install a methane testing post. It was not taken into account. ³</p> <p>(4) In view of all the above, it had been recommended to carry out studies of methane emissions to determine the need to install a degassing system. ⁴</p>	
Dust*		
<p>"The mine was not dusted." Even with the collapses, if it had been dusted, the stone dust would have been seen.</p>	<p>(1) The mine should be "dusted" with stone dust (which is white like talcum powder) and has the effect of lowering the combustion level of the coal dust.</p> <p>(2) "Dusting" has to be systematic and records therefore have to be kept of compliance with this elementary security measure.</p> <p>(3) The families, NGOs and the population requested the enterprise, in addition to the records, to release the laboratory analyses of combustibility of the mine. The enterprise did not want to respond to this request.</p>	<p>Paragraph (14) Dust the roof, floor and each side of the slope shaft with stone dust.</p> <p>Result: The STPS did not set a deadline for compliance and at the Compliance Inspection it was not required.</p> <p>Paragraph (23) Systematically dust the roof, floor and each side of the coal shaft with stone dust as continuous face No. 1 progresses. This measure was required in paragraph (16).</p> <p>Result: According to the Inspection Report, implementation of this measure was not verified.</p>
Electricity*		
<p>"The electrical equipment that exists in the mine is of the brand Service Machine and its controls are open."</p> <p>"The 'open' transformers were not earthed and lacked an adequate cooling system."</p> <p>The rescuers were faced, in addition to the problems noted above, with "connections with burnt wire and exposed cables". ⁵</p>	<p>(1) The electrical equipment should be approved for use in coalmines, as the equipment used is considered to be of the open type, and only in the tunnelling area is authorized equipment used from the ventilated area up to the face. ⁶</p> <p>(2) As broad-faces were being developed and two IBS continuous miners were in the process of being purchased, with shuttle cars for this equipment, as well as the electrical equipment, it was necessary to carry out an overall analysis of the requirement to request an increase in the CFE supply, as the increased energy requirement was 3,500 kW. A substation also had to be built for the broad-face equipment. ⁷</p>	<p>Paragraph (k) Annual record of the resistance value of the earth network and the continuity of earth points.</p> <p>Result: The STPS did not set a deadline for compliance and at the Compliance Inspection it was not required.</p> <p>Paragraph (l) Analysis of potential risks relating to welding and cutting activities carried out at the workplace in accordance with the provisions of Chapter 7 of NOM-027-STPS-2000 and to serve as a basis for establishing preventive measures for the protection of workers, third parties and workplace installations.</p> <p>Result: The STPS did not set a deadline for compliance by the enterprise and at the Compliance Inspection it was not required.</p> <p>Paragraph (1) Activate the emergency stop devices along the conveyors in the mine.</p> <p>This measure was required in paragraph (1).</p> <p>Result: According to the Compliance Inspection Report, this measure was implemented.</p> <p>Paragraph (2) Restore to good working order the lamps in the lighting system in the area of the</p>

Complaints by workers, family members and rescue workers	Technical information	Ordinary inspection report (12/07/04). Analysis of the inspection in the mine
		<p>slope shaft. This measure was required in paragraph (2). Result: According to the Compliance Inspection Report, this measure was implemented.</p> <p>Paragraph (5) Replace the faulty protection covers of the lighting system in diagonal 2. This measure was required in paragraph (4): Replace the faulty protection covers of the lighting system in diagonal 3 of the slope shaft (the number of the diagonal is not correct).</p> <p>Paragraph (7) Install a safety device (metal protection) to the pump connection of the 4th crossing of the slope shaft. This measure was required in paragraph (6). Result: According to the Inspection Report, this measure was implemented.</p> <p>Paragraph (8) Install a wood platform assembled without nails covered by a non-conducting rubber covering on the floor and at the foot of the electrical switches that control the pump located on the 4th diagonal of the slope shaft. Result: The STPS did not set a deadline for compliance by the enterprise and at the Compliance Inspection it was not required.</p> <p>Paragraph (11) Replace the missing screw attachments on the electrical switches located in the mine. Result: The STPS did not set a deadline for compliance by the enterprise and at the Compliance Inspection it was not required.</p> <p>Paragraph (15) Remove inactive material in the area of the electrical boxes located in the entrance of the general eastern gallery. Result: The STPS did not set a deadline for compliance by the enterprise and at the Compliance Inspection it was not required.</p> <p>Paragraph (16) Place signs indicating the equipment and machines powered by the electrical boxes in the mine. This measure was required in paragraph (12).</p>

Complaints by workers, family members and rescue workers	Technical information	Ordinary inspection report (12/07/04). Analysis of the inspection in the mine
		<p>Result: According to the Inspection Report, this measure was implemented.</p> <p>Paragraph (17) Move the welding machinery located in the mine outside the mine. Result: The STPS did not set a deadline for compliance by the enterprise and at the Compliance Inspection it was not required.</p> <p>Paragraph (18) Replace the damaged electrical connection box and place metal protection on the connection of the pump on the 13th diagonal of the auxiliary conveyor. This measure was required in paragraph (13). Result: According to the Inspection Report this was not verified.</p> <p>Paragraph (19) Relocate the electrical box that powers the pump located between the 12th and 13th diagonals of the auxiliary conveyor. This measure was required in paragraph (14). Result: According to the Inspection Report this was not verified.</p> <p>Paragraph (20) Place protective barriers on the accesses to the electrical boxes on the 1st crossing of the first secondary gallery to prevent access to this area by unauthorized personnel. Result: The STPS did not set a deadline for compliance and at the Compliance Inspection it was not required.</p> <p>Paragraph (21) Replace the missing screw attachments on the connection box for the auxiliary fan. Result: The STPS did not set a deadline for compliance and at the Compliance Inspection it was not required.</p> <p>Paragraph (22) Immediately activate continuous emergency power stop No. 1 to prevent risks to workers. This measure was required in paragraph (15). Result: According to the Inspection Report this was not verified.</p> <p>Paragraph (24) Install a safety device (metal protection) on the connection of the chain drive for</p>

Complaints by workers, family members and rescue workers	Technical information	Ordinary inspection report (12/07/04). Analysis of the inspection in the mine
		main conveyor in gallery 3 east "A". This measure was required in paragraph (17). Result: According to the Inspection Report this was not verified. ⁸
Structure*		
"There were neither separators nor grilles". "There were many grave faults in the structure of the mine."	<p>(1) The lining of the galleries is constructed of girders and stakes with a separation of approximately 1.00 m, but separators and grilles are not used to guarantee that they are sound. ⁹</p> <p>(2) The Trial Information and Analysis Seminar, dated 26 February, pp. 11–12, can be consulted, in which the claims are illustrated with photographs taken by the rescuers after the explosion. IMMSA was recommended to install a pumping system prior to commencing the broad-face operation, as the operation of the broad-face would increase the volume of water used. ¹⁰</p>	<p>Paragraph (h) Programmes for the checking, testing and maintenance of structural and ventilation systems, installations, equipment for prevention, protection against fires and cave-ins, pneumatic, lighting and personal protection equipment to protect hearing. Result: The STPS did not set a deadline for compliance and at the Compliance Inspection it was not required.</p> <p>Paragraph (m) Hydrological studies to assess the risk of flooding, including control procedures, approved and signed by the employer and the occupational safety and health prevention services. Result: The STPS did not set a deadline for compliance and at the Compliance Inspection it was not required.</p> <p>Paragraph (o) Safety procedures for the installation of lining, periodicity and record of the checks carried out, and identification of geological flaws, effects of changes in the soil or rock and possible risks of flaws. Result: The STPS did not set a deadline for compliance and at the Compliance Inspection it was not required.</p> <p>Paragraph (q) The safety and health procedures covering, at least: machinery; excavation and backfilling material, excavations that can be connected to a source of water or saturated materials in continuous extraction systems: specific lining, roof shoring equipment, knocking down and transporting material, verifying land pressure, the strain on the lining from the land and reinforcement of the lining, and the installation and dismantling of equipment and strengthening measures. Result: The STPS did not set a deadline for compliance and at the Compliance Inspection it was not verified.</p>

Complaints by workers, family members and rescue workers	Technical information	Ordinary inspection report (12/07/04). Analysis of the inspection in the mine
		<p>Paragraph (4) Reinforce the shoring system for the roof of the slope shaft 6 m before the crossing. This measure was required in paragraph (3). Result: According to the Compliance Inspection report, this measure was implemented.</p> <p>Paragraph (9) Remove the damaged girders located between the 4th and 5th diagonals of the slope shaft. This measure was required in paragraph (7). Result: According to the Compliance Inspection report, this measure was implemented.</p> <p>Paragraph (10) Repair the damaged steps between the 4th and 5th diagonals of the slope shaft. This measure was required in paragraph (8). Result: According to the Compliance Inspection report, this measure was implemented.</p> <p>Paragraph (25) Place a passageway in the area of the head of the conveyor of gallery 3 east "A". This measure was required in paragraph (18). Result: According to the Inspection Report this was not verified.</p>
<p>¹ Document prepared by specialists at the request of IMMSA and in the possession of the Working Group on the Pasta de Conchos Coal Mine of the Chamber of Deputies of the Congress of the Nation. ² <i>ibid.</i> ³ <i>ibid.</i> The explanation of this decision can be requested from IMMSA. ⁴ <i>ibid.</i> Information on the effect given to this proposal can be requested from IMMSA. ⁵ Weekly Information and Analysis Magazine (PROCESO), 26 February 2006, pp. 11–12. ⁶ Document of the Working Group, <i>op. cit.</i> ⁷ <i>ibid.</i> The analysis of the total energy requirement can be requested from IMMSA and the application for increased electricity supply from the CFE. ⁸ Of the 26 measures that should have been taken in the mine, 15 have their origin in the deterioration of electrical equipment due to lack of maintenance and replacement. ⁹ Document of the Working Group, <i>op. cit.</i> ¹⁰ <i>ibid.</i></p> <p>* Subheadings added for purposes of presentation.</p>		

3. *Specific substantive allegations*

20. The Complainants specifically contend that, at the time of the Compliance Inspection, compliance was established as regards the seven deficiencies referred to in paragraphs Nos 1, 2, 4, 7, 9, 10 and 16 in the Table. According to the Complainants, although compliance was required pursuant to the Order of 8 July 2005, the Compliance Inspection did not include a verification of the conditions inside the Mine, and that, as a result, compliance by IMMSA with the four measures indicated in paragraphs Nos 18, 19, 22 and 24 in the Table was not verified.
21. With reference to the information provided under “Dust” in the Table above, the Complainants allege that the labour inspectorate did not ensure that the Mine was systematically dusted with inert dust to lower the combustibility of the coal dust, although this deficiency was noted in the Inspection Record and remedy required in the Order.

According to the Complainants, the Mine was in fact not dusted and if it had been, this would have been visible after the Accident. The Complainants further contend that after the Accident IMMSA was requested to present registers of any dustings carried out, but it was unable to do so.

22. According to the Complainants, other deficiencies included deficiencies related to the ventilation system in the Mine, which was inappropriate and/or malfunctioning. They refer to the Inspection Report, according to which IMMSA had been solicited to present, “programs for the revision, tests, and maintenance of the ventilation system”.⁸ The Complainants contend that IMMSA did not present the requested document, the STPS did not set a deadline for compliance with this requirement and compliance was not called for at the Compliance Inspection. The Complainants further allege that the ventilation circuit of the Mine had a too limited capacity. The capacity of the ventilation circuit was 160,000 CFM (75m³/sec) and of the auxiliary ventilators 15,000 CFM. As the concentration of gas in the seam was 8.5m³/tonne, it would have been necessary to double the extraction capacity of the ventilation system. According to the Complainants, there was a high incidence of gas in the Mine at the time of the Accident. The ventilation record for 15 February,⁹ indicated that the volume of air extracted from shafts, on average, was 10m³/sec with a concentration of methane of 1.2 per cent. The total leakage in the ventilation circuit of the mine was 50 per cent, while the maximum acceptable level is 25 per cent. Before the Accident, the workers had fixed a time for suspending work because of the high level of gas. The Complainants contend that it had been proposed to IMMSA to install a methane testing post so that it could be determined if there was a need to set up a methane removal system, but that this proposal had not been taken into account.
23. The Complainants also refer to deficiencies related to the electrical equipment in the Mine. According to the Complainants, the type of equipment used was of a brand with “open” controls, which had not been approved for use inside the Mine other than in the tunnelling area from the ventilated area up to the face. The “open” transformers were not earthed and lacked an adequate cooling system. During the rescue operations after the Accident, the rescuers found connections with burnt wires and exposed cables. According to the Complainants, most of the deficiencies noted at the Ordinary Inspection related to the deterioration of electrical equipment due to lack of maintenance and replacement and ten different electrical deficiencies in the Mine noted in the Inspection Record were not, but should have been, included in the Order and remedied by IMMSA.¹⁰
24. According to the Complainants, the Mine also suffered from structural problems. For example, IMMSA had not set up grilles or separators to guarantee that the lining of the galleries was sound. Measures required to remedy structural deficiencies in the Mine, noted in the Inspection Record were not, but should have been, included in the Order and remedied by IMMSA.¹¹
25. The Complainants also contend that after the Accident, the Director of Inspection Policies and Assessment of the Federal General Directorate of Labour Inspection ordered an extraordinary inspection of the general safety and health conditions in the Mine (the Extraordinary Inspection) that was held on 3 March 2006.¹² According to the Complainants, IMMSA was requested to provide documentation attesting to actions taken

⁸ See para. (h) in the Table above.

⁹ Presumably 15 February 2006.

¹⁰ See paras (k), (l), 4, 5, 8, 11, 15, 17, 20 and 21 in the Table above.

¹¹ See paras (h), (m), (o) and (q) in the Table above.

¹² Order No. 210/000003/2006, of 1 March 2006.

with respect to a series of safety and health requirements. As the record of the Extraordinary Inspection demonstrates, it was unable to demonstrate compliance with the following safety and health requirements:

1. Document certifying the composition of the safety and health committee.
2. Permanent plans of the underground mining and coal operations drawn up in Spanish, updated, approved and signed by the employer, as well as by the personnel of the occupational safety and health prevention services and available for consultation by workers subject to occupational exposure (the document is presented, but is not approved or signed by the employer or by the personnel of the occupational safety and health prevention services in the Mine).
3. Records of the composition of the fire, search and rescue, evacuation and first-aid services, including the name of the coordinator responsible.
4. Records for two years of the results of the (quarterly) emergency practice exercises, including, as a minimum, for fires, flooding, cave-ins and the presence of firedamp for the members of the fire, search and rescue, evacuation and first-aid services.
5. Non-availability of the services of a doctor in the mine (for more than 100 workers).
6. Failure to display notices of accidents occurring in the mine within the time limit (no later than the 72-hour limit following the occurrence).
7. Documents setting out the procedures for the recording, investigation, monitoring and control of occupational accidents and diseases.
8. The employer did not approve the safety and health skills and training programme for members of the safety and health committee.
9. The document demonstrating that the employer informed the workers of the safety and health programme.
10. Written safety and health procedures drawn up in Spanish, authorized and signed by the employer and by the occupational safety and health prevention services, containing instructions to prevent exposure to agents that can cause occupational accidents and diseases (the document is presented, but is not approved and signed by the employer or the personnel of the occupational safety and health prevention services of the Mine).
11. The analysis of potential risks, updated, drawn up in writing, approved and signed by the employer and by the occupational safety and health prevention services (the document is presented, but is not approved and signed by the employer or the personnel of the occupational safety and health prevention services of the mine).
12. Written notification to all workers of the risks to which they are exposed at the beginning of their employment and at least once a year thereafter.
13. The safety and health requirements for the handling, transport and storage of materials in general and of hazardous chemical substances (the document is presented, although it is not demonstrated that the employer drew it up before it came to the knowledge of the workers).
14. The safety data sheet for the materials and hazardous chemical substances used in the workplace (there are no safety data sheets for lubricating oil and grease).
15. The safety and health programme for the transport of materials, hazardous chemical substances, in equipment and installations, setting out prevention, maintenance and repair activities, as well as decontamination and cleaning.
16. The provisional authorization of pressure vessels and/or the number and location or characteristics of the boiler and form N-020 or, as appropriate, the last inspection carried out of the equipment (there is no continuously valid authorization for such equipment).
17. Written documentation notified to the personnel on the hazards that can be caused by glare or deficient lighting in the mine.
18. Records of labour skills of the members of the fire, search and rescue, evacuation and first-aid services.

19. Indication of the skills for safety and health procedures for workers involved in the inspection and maintenance of firefighting systems and equipment, as well as those of workers who monitor the sound condition of the self rescue respirators, in accordance with the respective mine programme.
20. Indication of the labour skills of workers involved, in accordance with their activities, in the safety conditions set out in the permanent plans of mining operations and explorations in open cast, underground and coalmines.
21. Indication of the labour skills of workers involved and the safety conditions of geological studies, soil and rock mechanics, to locate geological faults and to establish procedures for the excavation and strengthening of the mine.
22. Indication of the labour skills for the safety and health procedures for workers where the mine is equipped with ventilation.
23. Indication of the labour skills in relation to safety and health procedures for personnel engaged in the transport of materials.
24. Indication of the labour skills in accordance with the maintenance programme for stairs in the mine which are in a safe condition for use.
25. Indication of the labour skills of personnel for the application of safety and health procedures containing instructions for the prevention of exposure to agents that can cause accidents and occupational diseases in the mine.
26. Indication of the labour skills of personnel engaged in welding and cutting operations, taking into consideration the skill requirements and procedures of the specific mine safety and health programme.
27. The document setting out the safety procedures for establishing the necessary precautions in locations where the plans and studies indicate the existence of geologic faults or defects such as plugs, petrified trunks or excessive humidity (the document was presented but is not signed by a representative of the employer or of the safety and health committee which approves it).
28. The safety and health procedures and necessary methods to maintain the safety of workers in the event of a stoppage of ventilation for over ten minutes in locations where the materials can generate toxic or inflammatory gas or explosions in underground and coalmines (the document is presented but is not signed by a representative of the employer or of the safety and health committee which approves it).
29. [Omitted in the original text].
30. Safety and health procedures for the monitoring of the sound condition of self rescue respirators in accordance with the monitoring programme for underground and coalmines (the document is presented but is not signed by a representative of the employer or of the safety and health committee which approves it).
31. The document of the safety and health procedures covering, at least: machinery, excavation and backfilling equipment that can be connected to a source of water or saturated materials in continuous extraction; specific casing, roof shoring equipment, knocking down and transporting material, verifying land pressure, the strain on the casing from the land and the installation and dismantling of shoring equipment in underground and coalmines (the document is presented but is not signed by a representative of the employer or of the safety and health committee which approves it).
32. Indication of the labour skills of personnel involved in activities relating to safety procedures, design criteria, the selection of casing and materials to be used in the coalmine.
33. Indication of the labour skills of personnel involved in safety procedures for the installation of casing and records of monitoring and the identification of geological faults, defects and changes in the rock floor in the coalmine.
34. Indication of the labour skills of workers involved in safety procedures for the establishment of the necessary precautions in locations where the plans and studies show the presence of geological faults or defects such as plugs, petrified trunks or excessive humidity in the coalmine.

35. **(The content of this paragraph is the same as in No. 31 above.)**
 36. Indication of the labour skills for safety and health procedures for workers who have to transfer personnel in vehicles, chair lifts, cages or winches in the coalmine.
 37. Indication of the labour skills of personnel engaged in maintenance, monitoring and testing (winches, shafts, headgear, cables, cages, carriages, cars, chains, connections, cable supports, hoisting skips, motors, brakes, drum or clutch pulleys, safety clutches) in the coalmine.
26. As concerns the assistance provided to the families of the miners who lost their lives, the Complainants indicate that immediately after the Accident, IMMSA offered each of the families 750,000 pesos in compensation (the equivalent of ten years' wages); the payment of wages plus benefits until receipt of the corresponding statutory compensation; air-conditioned mobile homes and toilets in order to ensure the comfort of the relatives at the mine; and two daily information sessions for relatives, during which the engineers involved in the ongoing efforts would listen to the questions and suggestions of the families. Furthermore, the Government of the State of Coahuila had offered other support services, such as accommodation for those families without homes, grants for education and a monthly allowance. Subsequently, however, the 65 agreements drawn up by IMMSA were amended with the participation of the Office of the Federal Attorney for the Defence of Labour (PROFEDET). The result was that the other employment benefits that were to be paid were now included in the sum of 750,000 pesos offered to each family. The Complainants also allege that the compensation offered was not based on a proper review of essential data, such as length of service, wages plus benefits, among others.
27. The Complainants conclude that this awful tragedy brought to light the Government's failure to ensure compliance with safety and health measures, working conditions and measures designed to prevent such incidents, a failure which seriously affects workers in mines across the country. They request that the Government be invited to correct, as a matter of urgency, the failings that have seriously affected the rights of workers in the country's coalmines.

B. Observations of the Government

28. The Government has submitted detailed observations concerning the Complainants' allegations that it was in breach of its obligations under Conventions Nos 150, 155 and 170. The Government states that the Accident in the Mine was an isolated incident, which does not reflect the general situation in mines across Mexico, particularly in the light of the high rate of workplace accidents in the mining industry globally. It refers to information regarding the Labour Inspectorate in the State of Coahuila and the inspections carried out at the Mine prior to the Accident; the national legal framework for OSH and labour inspection; the follow-up to the Accident; and measures taken at the national level since the Accident.
29. In the context of the follow-up to the Accident, the Government has submitted two expert reports: (i) report of 5 October 2007 entitled *Prevailing Safety and Health Conditions in the Pasta de Conchos Unit Mine No. 8* carried out by a permanent advisory body to the Government – the Scientific Technological Consultative Forum AC (the Advisory Forum Report); and (ii) report of October 2007 entitled *Survey on the possible causes of the Pasta de Conchos Accident and proposals for the revision of the Standard 023-STPS-2003* carried out by the Mexican Geological Service (SGM) based on an agreement with the Ministry of the Economy and the Ministry of Labour and Social Welfare (the SGM Survey).

1. **Legal and policy considerations**

30. As regards the alleged breaches of Conventions Nos 150 and 155 based on the functioning of the labour inspectorates including of the Labour Inspectorate in the State of Coahuila, the Government refers to: the existing national legal framework in the areas of OSH and labour inspection; its decision to review existing OSH laws and regulations concerning the training of and equipment for inspectors, to ensure that the latter can do their work effectively; measures to implement nationwide training programmes for labour inspectors; and the special attention given to improving the implementation of OSH requirements in the coalmining industry including developing a capacity to prevent accidents in this industry.
31. As concerns the alleged breaches of *Articles 4, 7, 11 and 16 of Convention No. 155*, the Government refers to the existing legislation in the areas of OSH and labour inspection, the revival of the National Advisory Committee on Occupational Safety and Health (COCONASHT) and the decision of the Minister of the STPS to draw up a national policy on OSH; and the ongoing emphasis on prevention of accidents through training programmes. As regards *Articles 13, 14 and 18 of Convention No. 155*, the Government *first* argues that the Complainants have not substantiated their claim and *secondly* it refers to the existing legislation in the areas of OSH and labour inspection.
32. Further, with respect to the alleged breaches of *Articles 12 and 13 of Convention No. 170*, the Government's main argument is that this Convention is not applicable in the present case. If the Committee were to find to the contrary, the Government contends that the Complainants have not substantiated the alleged breaches by the Government of its obligations under these Articles of the Convention and *also* rejects the allegations with reference to the existing national legal framework in the areas of OSH and labour inspection.
33. The Government relies on the following elements in substantiating its position.

2. **National legal framework in the area of OSH**

34. The Government submits that, in compliance with all relevant obligations pursuant to the Conventions, it has adopted and implemented national legislation in the areas of OSH and labour inspection. The Government provides information on relevant legislation that was in force on or about the time of the Accident.¹³ The Government explains that an effective implementation of OSH Regulations is the joint responsibility of the Government, workers and employers. The STPS is responsible for monitoring compliance with the Federal Labour Act (LFT) and its Regulations; for examining and adopting industrial safety and health measures to protect workers; and for monitoring compliance therewith.¹⁴ Employers are responsible for maintaining sound safety and health conditions at

¹³ The Government refers to the Constitution, the Federal Labour Act of 1 April 1970; the Federal Regulations for Occupational Safety, Health and the Working Environment (DO. 21 January 1997) (OSH Regulations); relevant Official Mexican Standards (NOM:s) including in particular NOM-23-STPS-2003 on work in mines – occupational safety and health conditions (NOM-023); NOM-028-STPS-2004 on Organization of Work – Safety in Processes involving Chemicals (NOM-028), and the Federal Regulations for the Inspection and Application of Sanctions for Violations of Labour Legislation (DO. 6 July 1998) (Labour Inspection Regulations). Relevant legislation is available at www.diputados.gob.mx/LeyesBiblio/pdf/125.pdf.

¹⁴ Section 123(A) (XXXI) of the Constitution (final paragraph), and section 40 of the Organic Act concerning the Federal Public Administration of 29 December 1976.

workplaces, for accidents at work and for instances of occupational illness suffered by workers as a result of or in the course of the exercise of their occupation or work.¹⁵

- 35.** The Government further explains that the establishment, organization and functioning of joint safety and health committees at workplaces is legally prescribed,¹⁶ and that the employer's responsibilities are shared with the workers by virtue of their participation in these joint committees, in which trade union representatives also play a predominant role.¹⁷ Workers are required to appoint representatives, through their unions, to the joint committees; to participate as members of a committee when appointed to do so; to act on the recommendations made by the joint committee concerning preventive safety and health measures; and to attend courses, workshops, or other safety and health training events.¹⁸ The responsibility for ensuring compliance with national laws and regulations is within the Government's exclusive competence.¹⁹
- 36.** The Government also indicates that COCONASHT is responsible for examining and proposing preventive measures in order to reduce risks at the workplace.²⁰ COCONASHT includes representatives of the Federal Executive and members nominated by national employers' and workers' organizations invited to do so by the head of the STPS, who chairs COCONASHT.²¹ The mandate of COCONASHT includes: (i) expressing opinions on preliminary drafts of new standards, proposing new standards when asked to do so by the STPS, and modifying or repealing current standards; (ii) carrying out studies on occupational safety and health and the working environment for submission to the Ministry; (iii) proposing to the STPS revised and additional regulations; (iv) coordinating, evaluating and presenting to the STPS proposals on new standards drawn up by the advisory OSH committees in the federal states; and (v) examining and proposing risk prevention measures and helping to publicize them. Furthermore, each of Mexico's 31 states and the federal district have a state advisory OSH committee (COCOESHT) to examine and propose the adoption of any preventive measures required to reduce risks at workplaces within their jurisdiction.²² The State Governor heads each of these committees, and its members include representatives of the federal executive and others nominated by national organizations of workers and employers invited to participate by the STPS and the State Governor.
- 37.** The Government also explains that, as regards the prevention of accidents in mines, mining managers are required to carry out studies with a view to assessing potential hazards to which workers may be exposed before mining operations may begin. Such studies must be

¹⁵ Section 123(A) (XIV) and (XV) of the Constitution and sections 132(XVI), (XVII), 504(V) of the LFT.

¹⁶ Para. 4 of NOM-019-STPS-2004 on the constitution, organization, and operation of the commissions on safety and health in the workplace (January 2005) (NOM-019).

¹⁷ See sections 134(II) and (XII) of the LFT and para. 5 of NOM-019.

¹⁸ Para. 5 of NOM-019.

¹⁹ Section 540 ff. of the LFT.

²⁰ Section 512-A-F of the LFT.

²¹ The Government indicates that through the ILO Regional Office for Cuba and Mexico, the ILO participated in 2007 in the work of COCONASHT subcommittees including the work of the Subcommittees on the National System of Information on Occupational Risks; Training of OSH Technicians and Specialists; and Improving Monitoring of Compliance with Obligations.

²² Section 512-B of the LFT.

carried out annually and whenever there is any change in the production process.²³ The requirements specifically prescribed for OSH in mines to prevent risks for miners and damage to mine installations, apply to all workplaces dedicated to exploration, exploitation and processing of minerals located in lodes, strata or deposits underground or at the surface, irrespective of the type and size of the workplace; specify the employers' and workers' obligations and provide for the analysis of potential hazards, emergency plans, safety and health procedures, plans for processing, accidents and illnesses, procedures for assessing compliance, monitoring, and observance of international standards.²⁴

3. Labour inspection

(i) The federal framework

- 38.** As regards labour inspection, the Government indicates that the Federal Labour Inspectorate is required to monitor compliance with labour and OSH standards, especially with regard to risk prevention,²⁵ and to carry out regular, periodic or verification inspections. Inspectors carrying out scheduled visits are required to give due notice to the site concerned at least 24 hours before the date on which the visits are to be carried out, indicating the name of the employer, the address of the premises to be inspected, the day and time of the inspection, type of inspection, number and date of the relevant inspection order, as well as a list of documents which the employer is required to provide, the aspects to be reviewed and the legal basis of the inspection. The labour authorities may also order unscheduled inspection visits at any time.²⁶
- 39.** The Government further indicates that employers are required, within a time limit to be fixed, to implement any changes ordered by the labour authorities in order to bring their establishments, installations or equipment in line with the LFT and its implementing regulations and with any orders issued by the authorities.²⁷ If an employer fails to implement the changes within the fixed time limit, the STPS is required to apply appropriate penalties against the offending employer, and to issue a warning that more severe penalties may be imposed should the order not be complied with within the new deadline. Should the employer continue to fail to comply fully even after sanctions have been applied, the STPS, taking into consideration the nature of the modifications ordered and the level of risk, may partially or completely shut down the premises concerned pursuant to specific procedures²⁸ until the respective obligations have been met, in consultation with the competent joint safety and health committee. The STPS may also itself adopt appropriate measures to ensure that the employer complies with these obligations. joint safety and health committees are composed of representatives of the employer and of the workers in equal numbers and are responsible for investigating the causes of accidents and diseases, proposing preventive measures to combat such problems and monitoring compliance with these measures.
- 40.** The Government further explains that technical compliance orders to private individuals include safety and health recommendations based on recommendations of the federal

²³ Section 16 of the OSH Regulations.

²⁴ NOM-023.

²⁵ Sections 540 and 541 of the LFT.

²⁶ Sections 13, 14 and 17 of the Labour Inspection Regulations.

²⁷ Section 512-D of the LFT.

²⁸ Sections 30–31 of the Labour Inspection Regulations.

labour inspector in an inspection report. Technical compliance orders include a fixed deadline for compliance and are followed by a compliance inspection. In cases of non-compliance, administrative sanctions are requested. Rulings that impose sanctions for violations of labour legislation must include a warning regarding possible sanctions for failure to comply with the provisions in question.²⁹ If financial sanctions are to be imposed, the labour authorities determine the amounts involved. In addition, other penalties may be imposed.

(ii) Inspection services in the State of Coahuila

41. With reference to the specific situation in the State of Coahuila, the Government states that there are some 60 worksites which are related to coalmining, 30 of which are subject to inspection by the labour authority through the Federal Labour Delegation in Saltillo, the Federal Labour Sub-Delegation in Torreón, and the Federal Labour Office in the municipality of Sabinas. According to the Government, until 19 February 2006, these offices employed a total of 11 federal labour inspectors, five of whom – all graduate-level coalmining engineers – were assigned to the office in Sabinas. Mining enterprises are visited throughout the year under an inspection programme which gives priority to premises deemed to be at greatest risk of accidents. According to the Government, all inspectors are provided with the necessary technical, monitoring and personal protective equipment to enable them to carry out their duties.

(iii) Inspections prior to the Accident

42. As regards the inspections carried out in the Mine before the Accident, the Government confirms that a periodic, regular inspection of the OSH conditions in the Mine was carried out on 12 July 2004. According to the Inspection Report, this inspection resulted in 48 safety and health recommendations. The Inspection Report was referred from the Federal Labour Office to the Federal Labour Delegation in the State of Coahuila on 15 July 2004 who received it the next day. According to the Government, the Inspection Report was transmitted to the relevant administrative unit on 26 July 2004. The Government also states that IMMSA presented evidence of compliance with 16 of the 48 recommendations and that it was ordered on 8 July 2005 to comply with the “remaining 34 [sic] recommendations”. Of these, seven remarks had to be addressed “immediately” i.e. within five days. The Government states that IMMSA was notified of the Order on 15 September 2005.

43. The Government also states that a Compliance Inspection was carried out at the Mine on 7 February 2006 and that, at that time, it was established that IMMSA had complied with 28 of the 34 recommendations in the Order of 8 July 2005, but that compliance with the remaining six recommendations could not be established because the relevant section of the Mine was already closed and the equipment was out of service.

44. The Government also indicates that as a follow-up to the Ordinary Inspection on 12 July 2004, the Federal Labour Delegation in Coahuila issued a resolution on 20 December 2006 imposing a fine of 185,705.10 pesos on IMMSA in respect of 17 deficiencies noted during this inspection.

(iv) Follow-up to the Accident

45. Following the Accident, the Government indicates that the former Minister of STPS coordinated and supervised the rescue operations together with the Governor of the State of Coahuila. The efforts to recover the bodies of the miners were pursued as far as was humanly and technically possible at the time without endangering the lives and safety of

²⁹ Sections 36–37 of the Labour Inspection Regulations.

the recovery team members. Based on reports from two independent experts, on 4 April 2007, IMMISA declared that the rescue operations had to be called off as the conditions in the Mine remained unsafe.

46. In response to insistent requests from the relatives to pursue the efforts to recover the bodies of the miners, the Government mandated on 25 June 2007 a renewed study on the safety and health conditions in the Mine from a permanent advisory body to the Government – the Scientific Technological Consultative Forum AC (the Advisory Forum). In its Report of 5 October 2007 the Advisory Forum made the following statements:

COMMENTS ON OFFICIAL MEXICAN STANDARD NOM-23 ON WORK IN MINES – OCCUPATIONAL SAFETY AND HEALTH CONDITIONS

Analysis of the roof support in terms of the above Standard:

NOM-023-STPS-2003. The support system used in the mine is based on years of experience and common practice which has been applied widely in the region. The support system is capable of withstanding vertical loads, but the events of 19 February 2006 have shown that it is unable to withstand horizontal loads generated by a shock wave.

NOM-023-STPS-2003 provides broad guidance but does not clearly define the responsibilities of the operator and government inspector in the design, review and approval of roof support systems and monitoring arrangements.

NOM-023-STPS-2003 defines underpinning and roof support in mines in sections 4.2 and 4.20. Appendix C, Safety Conditions, section C.1.3, provides broad guidance on the criteria for the design and selection of roof supports and the materials to be used according to the mining plan.

Analysis of ventilation in terms of the above Standard:

The mine ventilation system apparently meets the requirements of NOM-023.

Standards relating to the recording of accidents:

The information on safety in Mexico's underground coalmining industry should be available to the public, as this would strengthen the commitment of those responsible for improving safety in mines. The justification for and consequences of decisions taken on safety issues should also be investigated.

RESCUE AND RECOVERY OPERATIONS

In the hypothetical case of an accident in which some miners could have survived inside the mine, it would be critical for rescue teams to be sent in as soon as possible. Whenever there is an accident, rescue teams have to exercise caution in order to protect their members. However, this tends to be a slow process and considerably reduces the chances of rescuing miners alive.

If, after an explosion, it is concluded that there is still a chance that miners are alive, it is vital that the precise location of the trapped miners is determined as soon as possible. Seismic monitoring equipment capable of detecting the miners' reply to a predetermined signal should always be available near the mine.

There is always a time factor involved in taking action to rescue miners who could still be alive, but time is also needed to make sure that the right decisions are taken so as to protect the members of rescue teams and thus avoid a second tragedy or even a major disaster.

Whatever decisions are taken during rescue operations, the protection of the members of the rescue team should always be taken into account. A painful reminder of the need to do so is the tragedy and eventually the disaster in Utah when three rescuers died in an unsuccessful attempt to rescue six miners trapped inside a mine.

If the rescue teams have access to reliable information early enough to define their rescue strategy, such as up to date digital plans of the mine, a network of gas sensors and communication and a system of signals for tracking the miners, the chances of rescuing miners are greater and the risk for the rescuers less acute.

None of these conditions were present in mine No. 8 of the Pasta de Conchos Unit.

It is therefore urgent that lessons are learned from this terrible tragedy and that appropriate action – primarily preventive but also remedial – is taken as soon as possible. In the same way, this report concentrates on identifying what can be done to design better mining laws and standards in terms of safety, training, engineering and technology for mines in Mexico.

FINDINGS

Given that during the first visit entry to the mine was not possible owing to the poor safety conditions inside, the group of experts proposed using cameras to film the inside of the mine; these were inserted from the surface into 15 boreholes linking the surface to the inside of the mine. Figure 1 shows the location of these boreholes. The boreholes filmed were chosen by the miners' representatives and accepted by all members of the Panel of Experts (PE).

The findings and comments which follow are the outcome of the two visits that were made to the mine, based on the video images recorded through the boreholes and the discussions which took place between the members of the PE and the Ministry of Labour, the Advisory Forum and the miners.

A total of 15 boreholes were analysed: DG-5, DG-7, M-7, C-5, C-6, C-23, C-15, M-8, DG-10, DG-11, C-24, C-26, C-11, C-20 and T-3. Five boreholes collapsed: C-6, C-23, DG-10, C-26 and T-3. In only one of the ten holes in which the camera could reach the bottom and the upper part of the roof, the roof support was found to be still standing; this was C-20, which was also the borehole with the least debris. In the other holes there was more collapsed material and more severe damage to the support system. In two holes, C-15 and C-11, the water level is rising and accumulating in the southern area of the mine.

All the images captured on video show varying degrees of damage to the support system. In most cases, the damage is severe, pointing to the instability of the ground. This shows clearly that the support system is capable of withstanding vertical loads but not horizontal loads.

Most of the video footage in the holes suggests that the main roof is composed of inferior quality conglomerate, which explains why there are major roof falls at the intersections. Once the support system at the intersections collapses, the main roof composed of lutite, mudstone and siltstone will also collapse. It can be assumed that the same conditions prevail in the area and intersections beyond cross-cut 17. Reopening the area so as to clean it and restore the roof supports would be very difficult and risky. The safety of the miner must be the first concern.

Borehole C-15 in the long wall panel area shows that the water is approximately 145 m deep. Hole C-11 located in the end gallery also indicates that the water is approximately 145 m deep and clearly reveals the presence of gas (most likely methane). The water levels in the two holes suggest that boreholes C-11 and C-15 must communicate and that there are no temporary blockages between them.

The water level will continue to rise and fill the roof falls inside the mine. It is important that the water level is monitored continuously and that early warning is given of any changes in conditions. Variations in the water level in adjacent holes may indicate the presence of an underground water trap or a blockage caused by debris. Such blockages would hold back the water and any sudden release could be a major cause for concern.

The record of accidents during the recovery operations shows that they were quite frequent, and this too should be a source of concern. The record clearly indicates that the accidents stem from the handling of materials and the lifting of heavy weights and are directly linked to the reconstruction of the support systems and the clearing of debris. It should be noted that during this reconditioning process the miners were exposed to a roof that was not reinforced.

Judging from the video images, which were reviewed firstly in the field and later in detail, conditions underground can only be described as unstable. The document available at the information meetings and the photograph sessions clearly demonstrated the difficulty and danger involved in the efforts to clear the area and restore the roof supports.

The presence of gas and the restoration of the ventilation system may be a major cause for concern, as the size of the opening cannot be kept constant. Their impact on the safety of the miners could become a serious problem.

[...]

RECOMMENDATION

It is recommended that the various sectors involved consider the following points:

1. the mining sector should improve its methods of engineering, safety and maintenance;
2. the Government should improve the protocols for the design and updating of its standards, and follow up on and enforce safety standards;
3. the state and federal governments should adopt legislation to encourage the degasification of coalmines;
4. there should be rapid notification of and response to emergencies in mines;
5. communication systems inside and outside the mine and tracking systems should be established;
6. new technologies and safety equipment should be adopted in Mexican mines;
7. regulations should be drawn up to form state rescue teams for the region's mines, as a back-up for existing systems and teams;
8. safety training for miners should be on a continuous basis and should be followed up;
9. emergency shelters should be designed for underground coalmines, such as those existing in more developed countries;
10. computerized rescue plans for mines should be updated regularly;
11. mine rescue equipment should be on hand near the mines;
12. the process through which the federal government approves mining standards should be carefully reviewed.

In addition, action should be taken immediately to remedy a significant number of systematic shortcomings which probably contributed to the tragic loss of 65 lives in Pasta de Conchos Unit mine No. 8, possibly through comprehensive, forward-looking state and/or federal legislation to be approved in the near future.

47. The Advisory Forum concluded its investigation in the following terms:

The safety and health conditions prevailing inside the Pasta de Conchos Unit mine No. 8, particularly in the southern part, are unstable and unsafe because of the nature and condition of the roof supports, the concentration of gases and the presence of accumulated groundwater as well as rock fragments and other debris. Entering the mine in the present circumstances would pose a significant threat to safety and health, and even to life, and is strongly discouraged.

The information concerning the current safety and health conditions should not on any account be disregarded, and it is therefore advised that no one be allowed to enter the mine. In the present circumstances, the risk is at least five times greater than normal in coalmining; moreover, judging from what is known of the state of collapse of the disaster area, the danger could be even greater than foreseen.

Furthermore, even if the necessary work were carried out to reverse substantially the conditions described in this opinion, it would still be necessary to make a new assessment of the safety and health conditions in the Pasta de Conchos Unit to determine whether it is safe to enter the mine.

48. The Government informs that, as a result of the Advisory Forum Report and following additional inspections on 6 October and 21 November 2007, the General Directorate of Mines of the Ministry of the Economy notified the concessionary enterprise IMMSA of the definitive suspension of construction or mining work in any part of the Mine as of 30 November 2007.

49. The Government also indicates that it pursued its efforts to seek to establish the causes of the Accident and that, based on an agreement between the SGM, the Ministry of the

Economy and the STPS, the SGM carried out an investigation to seek to establish the causes of the Accident. In the SGM Survey submitted by the Government and dated October 2007, the SGM drew the following conclusions based on written and verbal information on the operation of the Mine during the three months preceding the Accident collected from IMMSA:

[...]

3. Possible causes

In the light of the foregoing and in order to determine which points of Standard 023-STPS-2003 need to be revised, the following hypotheses were considered:

3.1. *Continuous mining*

The mine may have been operating on a continuous basis at a higher capacity than recommended, with the result that carbon methane emissions reached explosive levels.

3.2. *Explosion caused by coal dust:*

- 3.2.1. in suspension at the conveyor-belt transfer points throughout the galleries;
- 3.2.2. accumulated along the conveyor belts and pulleys;
- 3.2.3. accumulated in continuous-mining areas;
- 3.2.4. owing to the absence of dust traps at conveyor belt transfer points;
- 3.2.5. owing to the presence of a heat source due to:
 - damaged pulley bearings;
 - friction between the belt and the drive pulley;
 - the use of welding or cutting equipment.

3.3. *Other hypotheses*

- 3.3.1. Sudden gas emissions, which are frequent in mining operations.
- 3.3.2. Collapse in a secondary or general ventilation shaft.
- 3.3.3. Short circuit in the ventilation system.

3.4. **[not in the original]**

3.5. *Assessment of the hypotheses*

The hypotheses should be assessed when it is safe to enter the mine, at which point it is recommended:

- 3.5.1. that a detailed map be drawn up showing:
 - the location of the teams and equipment at the time of the accident;
 - the location of bridging material;
 - the plan of the timbering in the galleries;
 - areas where there might be coke and soot deposits;
 - the location of bodies and the area where the people should have been working.
- 3.5.2. that the suitability of the electrical equipment be verified by specialized laboratories;
- 3.5.3. that the conveyor belts be checked for possible fire damage, especially at the transfer points;
- 3.5.4. that an autopsy be carried out on any bodies recovered.

This latter phase of the survey was suspended because of possible safety hazards for members of any rescue team. The Ministry of Labour and Social Security decided to request an opinion from the Scientific and Technological Advisory Forum as to prevailing conditions in the mine so as to determine the level of safety for the rescue work.

50. The Government also indicates that, on 14 February 2008, the Ministry of the Public Service had concluded its investigation into the responsibility for the Accident in the Mine. The legal director, the head of office and two federal inspectors at the Federal Labour Delegation in the State of Coahuila were found to have failed in their administrative responsibility by not carrying out safety inspections properly and failing to follow up on the findings of those inspections. As a result of the investigation, these public officials were disqualified and suspended from their office.
51. Concerning the assistance offered to the families, the Government indicates that, directly after the Accident, it supervised and organized the assistance offered to the families of the miners both at the interministerial level and through PROFEDET who offered legal advice and guidance on how to draw up and implement agreements for compensation payments for each of the families concerned. As of 2007, the continued assistance provided by the Government was coordinated by a special committee set up on 19 January 2007 in consultation with the Government of the State of Coahuila, the Federal Conciliation and Arbitration Board (JFCA) and the National Human Rights Commission. According to the Government, as of 19 February 2008, 51 awards for monetary compensation to the families of the deceased miners had been made by the JFCA in which all the benefits claimed on behalf of the families of the deceased miners were granted. The effect of these awards was, inter alia, that the pensions to be granted by the Mexican Social Security Institute (IMSS) were calculated on the basis of a wage of 300 pesos a day rather than the 110 pesos which IMMSA had declared to the IMSS in respect of these workers. Following these awards, and in accordance with article 490 of the LFT, the JFCA ordered IMMSA, because of what JFCA called “their inexcusable behaviour”, to pay the beneficiaries an additional 25 per cent of the compensation legally due. However, IMMSA successfully appealed against the awards by the JFCA and obtained suspension of their execution. The STPS therefore sought and reached an agreement with IMMSA according to which IMMSA, without prejudice to the pursuit of legal action, undertook to pay the beneficiaries of the families of the deceased miners a total amount of 5,250,000 pesos corresponding to the benefits due. This amount was deposited with the JFCA on 18 February 2008, to be distributed among the beneficiaries according to their individual entitlement. PROFEDET would make the necessary arrangements for the corresponding payments to be made immediately. The Government also indicated that the JFCA awards concerned solely the legal proceedings undertaken by PROFEDET, but that an agreement was reached that the benefits mentioned would be extended to all the 65 families who had lost a loved one in the Accident, irrespective of their legal representation.

(v) Improvements since the Accident

52. The Government refers to a series of improvements in the national system of occupational safety and health and labour inspection that have been initiated or implemented since the Accident, in the light, inter alia, of the recommendations in the abovementioned reports of the Advisory Forum and the SGM.
53. At the institutional level, the Government indicates that the COCONASHT, which was formally set up quite some time ago, was rendered operational and was called to assist in the reform work. A review of existing OSH laws and regulations applicable to the mining industry, in particular the coalmining industry, was undertaken and at the first extraordinary meeting of the COCONASHT on 6 February 2007, it was decided to set up a subcommittee to prepare a draft of a new regulation on safety in coalmines regulating the following issues: hazards and emergencies plan; operating and safety and health procedures, accidents at work; coal dust and inert dust; safety measures; roofing and flooring; ventilation; effective earthing (grounding); and mining systems, plan and studies. At a subsequent second extraordinary session of COCONASHT on 18 October 2007, a draft new Official Mexican Safety Standard for Underground Coalmines was presented which according to the COCONASHT addressed the “shortcomings prevailing at the time of the Accident”. According to information provided by the Government in March 2008,

the draft had been submitted to the competent authorities for formal approval expected in the near future.

54. The Government indicates that, at its first ordinary meeting on 27 April 2007, the COCONASHT discussed, inter alia, a proposed new national policy on OSH. The proposed policy was to be composed of the following “pillars”: (1) adequate coordination among the various departments and institutions with mandates in this area; (2) modernization of laws and regulations; (3) measures to boost self-management programmes; (4) generation of adequate and timely information; (5) full use of consultation and prevention mechanisms; (6) identification of suitable forms of funding; and (7) training of technicians and specialists.
55. The Government also indicates that, in order to improve the labour inspection services in the country, it decided to authorize some 100 new posts for the labour inspectorates nationally. Seven of these posts were assigned to the State of Coahuila as of 16 June 2007, in addition to the existing 11 inspectors. The Government further indicates that between 22 April and 24 July 2007, in cooperation with the Directorate of the Federal Labour Inspectorate of the STPS and the Federal Labour Office in Sabinas, the STPS carried out a “Programme to improve the federal inspection of occupational safety and health in the coalmining region”. During this programme, 56 enterprises and 26 worksites were visited, including 11 underground mines, seven opencast mines, five coal washing plants, two coking plants and a transportation unit. A total of 1,678 recommendations concerning specific safety and health measures were made and 596 direct contraventions relating to safety and health were recorded. In July 2007, a series of compliance visits were carried out. The initial findings were that 85 per cent of the technical measures recommended had been introduced. However, 70 requests for sanctions were sent to the General Directorate for Legal Affairs of the STPS. IMMSA was one of the sanctioned enterprises and was fined over US\$1.5 million.
56. The Government has also referred to other programmes by the STPS to improve the federal labour inspection activities as regards OSH in the mining sector and to ensure compliance with OSH standards and issues related to the training and equipment for inspectors, to ensure that the latter can do their work effectively. The General Directorate of Federal Labour Inspection of the STPS has also set up a permanent inspection programme for the country’s coalmines including a specific OSH inspection training programme for “high-risk” industries with focus on prevention in cooperation with the ILO. This programme would initially be addressed to the 100 inspectors who were being hired and would be further developed in the context of another technical assistance programme with the ILO entitled *Safety and health in mining for the STPS in the context of its OSH activities*, to be initiated in 2007.

C. The Committee’s conclusions

57. The Committee has based its conclusions on a review of the Complainants’ allegations, the observations transmitted by the Government in the present procedure, including the technical reports on the investigations carried out after the Accident provided by the Government and the information previously communicated by the Government in the framework of its reports on the application of the ratified Conventions in question, submitted under article 22 of the ILO Constitution.

1. The facts

58. Based on the information submitted by both parties and information provided by the Complainants and not contested by the Government, the Committee notes the relevant facts prior and up to the Accident. At around 2 a.m. on 19 February 2006, an explosion

occurred in one of the coalmines owned and managed by IMMSA, a subsidiary of Grupo Mexico, Mexico's largest mining and metallurgical refining group and mineral producer. The explosion took place in Unit 8, in Pasta de Conchos, in the State of Coahuila, in the municipality of Sabinas. As a result of the explosion, 65 of the 78 miners remained trapped in the Mine. Thirteen miners managed to escape or were rescued.

59. The information provided also indicates that the following inspections were conducted at the Mine by the Federal Labour Delegation in the State of Coahuila prior to the Accident. An ordinary inspection had taken place on 12 July 2004 pursuant to an Order of 8 July 2004 by the Head of the Federal Labour Office in the State of Coahuila. That inspection was initiated at 9 a.m. but interrupted at 12 p.m. that day without completing the inspection. As a result of this inspection, 48 deficiencies were noted in the Inspection Record. The Inspection Report was referred to the Federal Labour Delegation in the State of Coahuila on 15 July 2004 and transmitted to the relevant administrative unit on 26 July 2004. On 8 July 2005, a Safety and Health Measures Order was signed by the Director of the Federal Labour Office in the State of Coahuila ordering IMMSA to comply with 34 of the 48 deficiencies noted in the Inspection Record, some of which had to be complied with immediately.³⁰ The Order was notified to IMMSA in the middle of September 2005.³¹ A Compliance Inspection was carried out on 7 February 2006 which, according to the Government, established that 28 out of the 34 deficiencies had been complied with, while the Complainants allege that the inspector carrying out the Compliance Inspection did not actually carry out a physical verification of compliance. The parties agree, however, that compliance with six deficiencies was not verified and the Government contends that this was due to the fact that relevant sections of the Mine had been closed or that the equipment was out of service.
60. The facts are disputed concerning the number of coalmines and inspectors in the Federal Labour Delegation in the State of Coahuila. According to the Complainants, public records for 2006 showed that at the time of the Accident, there were 129 coalmines employing 6,970 workers to which were assigned two labour inspectors. The Government states that there were some 60 worksites related to coalmining, 30 of which were subject to the labour authority in the municipality with 11 federal labour inspectors, five of whom were assigned to the office in Sabinas.

2. *Scope of application of the representation*

61. The Committee notes that the Complainants' allegations concern non-compliance with the provisions of Articles 9 and 10 of Convention No. 150; Articles 4, 7, 9, 11, 13, 14, 16 and 18 of Convention No. 155; and Articles 12 and 13 of Convention No. 170. These provisions read as follows:

The Labour Administration Convention, 1978 (No. 150)

[...]

Article 9

With a view to the proper co-ordination of the functions and responsibilities of the system of labour administration, in a manner determined by national laws or regulations, or national practice, a ministry of labour or another comparable body shall have the means to ascertain whether any parastatal agencies which may be responsible for particular labour administration activities, and any regional or local agencies to which particular labour

³⁰ Immediate compliance was required as regards six deficiencies according to the Complainants and seven according to the Government.

³¹ IMMSA was notified on 12 September 2005, according to the Complainants, and 15 September 2005 according to the Government.

administration activities may have been delegated, are operating in accordance with national laws and regulations and are adhering to the objectives assigned to them.

Article 10

1. The staff of the labour administration system shall be composed of persons who are suitably qualified for the activities to which they are assigned, who have access to training necessary for such activities and who are independent of improper external influences.
 2. Such staff shall have the status, the material means and the financial resources necessary for the effective performance of their duties.
- [...]

The Occupational Safety and Health Convention, 1981 (No. 155)

[...]

Article 4

1. Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.
 2. The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.
- [...]

Article 7

The situation regarding occupational safety and health and the working environment shall be reviewed at appropriate intervals, either over-all or in respect of particular areas, with a view to identifying major problems, evolving effective methods for dealing with them and priorities of action, and evaluating results.

[...]

Article 9

1. The enforcement of laws and regulations concerning occupational safety and health and the working environment shall be secured by an adequate and appropriate system of inspection.
 2. The enforcement system shall provide for adequate penalties for violations of the laws and regulations.
- [...]

Article 11

To give effect to the policy referred to in Article 4 of this Convention, the competent authority or authorities shall ensure that the following functions are progressively carried out:

- (a) the determination, where the nature and degree of hazards so require, of conditions governing the design, construction and layout of undertakings, the commencement of their operations, major alterations affecting them and changes in their purposes, the safety of technical equipment used at work, as well as the application of procedures defined by the competent authorities;
- (b) the determination of work processes and of substances and agents the exposure to which is to be prohibited, limited or made subject to authorisation or control by the competent authority or authorities; health hazards due to the simultaneous exposure to several substances or agents shall be taken into consideration;
- (c) the establishment and application of procedures for the notification of occupational accidents and diseases, by employers and, when appropriate, insurance institutions and others directly concerned, and the production of annual statistics on occupational accidents and diseases;

- (d) the holding of inquiries, where cases of occupational accidents, occupational diseases or any other injuries to health which arise in the course of or in connection with work appear to reflect situations which are serious;
- (e) the publication, annually, of information on measures taken in pursuance of the policy referred to in Article 4 of this Convention and on occupational accidents, occupational diseases and other injuries to health which arise in the course of or in connection with work;
- (f) the introduction or extension of systems, taking into account national conditions and possibilities, to examine chemical, physical and biological agents in respect of the risk to the health of workers.

[...]

Article 13

A worker who has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health shall be protected from undue consequences in accordance with national conditions and practice.

Article 14

Measures shall be taken with a view to promoting in a manner appropriate to national conditions and practice, the inclusion of questions of occupational safety and health and the working environment at all levels of education and training, including higher technical, medical and professional education, in a manner meeting the training needs of all workers.

Article 15

1. With a view to ensuring the coherence of the policy referred to in Article 4 of this Convention and of measures for its application, each Member shall, after consultation at the earliest possible stage with the most representative organisations of employers and workers, and with other bodies as appropriate, make arrangements appropriate to national conditions and practice to ensure the necessary co-ordination between various authorities and bodies called upon to give effect to Parts II and III of this Convention.
2. Whenever circumstances so require and national conditions and practice permit, these arrangements shall include the establishment of a central body.

PART IV. ACTION AT THE LEVEL OF THE UNDERTAKING

Article 16

1. Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health.
2. Employers shall be required to ensure that, so far as is reasonably practicable, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.
3. Employers shall be required to provide, where necessary, adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health.

[...]

Article 18

Employers shall be required to provide, where necessary, for measures to deal with emergencies and accidents, including adequate first-aid arrangements.

The Chemicals Convention, 1990 (No. 170)

[...]

Article 12

EXPOSURE

Employers shall:

- (a) ensure that workers are not exposed to chemicals to an extent which exceeds exposure limits or other exposure criteria for the evaluation and control of the working environment established by the competent authority, or by a body approved or recognised by the competent authority, in accordance with national or international standards;
- (b) assess the exposure of workers to hazardous chemicals;
- (c) monitor and record the exposure of workers to hazardous chemicals when this is necessary to safeguard their safety and health or as may be prescribed by the competent authority;
- (d) ensure that the records of the monitoring of the working environment and of the exposure of workers using hazardous chemicals are kept for a period prescribed by the competent authority and are accessible to the workers and their representatives.

Article 13

OPERATIONAL CONTROL

1. Employers shall make an assessment of the risks arising from the use of chemicals at work, and shall protect workers against such risks by appropriate means, such as:
 - (a) the choice of chemicals that eliminate or minimise the risk;
 - (b) the choice of technology that eliminates or minimises the risk;
 - (c) the use of adequate engineering control measures;
 - (d) the adoption of working systems and practices that eliminate or minimise the risk;
 - (e) the adoption of adequate occupational hygiene measures;
 - (f) where recourse to the above measures does not suffice, the provision and proper maintenance of personal protective equipment and clothing at no cost to the worker, and the implementation of measures to ensure their use.
2. Employers shall:
 - (a) limit exposure to hazardous chemicals so as to protect the safety and health of workers;
 - (b) provide first aid;
 - (c) make arrangements to deal with emergencies.

62. The Committee notes the preliminary objection by the Government to the applicability of Convention No. 170 in this case. The Government has argued, with reference to Articles 1 and 2(c) of Convention No. 170, that the subject matters raised in the present representation do not fall within the scope of Convention No. 170. These provisions read as follows:

Article 1

1. This Convention applies to all branches of economic activity in which chemicals are used.
[...]

Article 2

For the purposes of this Convention:

- (a) the term **chemicals** means chemical elements and compounds, and mixtures thereof, whether natural or synthetic;
[...]
- (c) the term **use of chemicals at work** means any work activity which may expose a worker to a chemical, including:
 - (i) the production of chemicals;
 - (ii) the handling of chemicals;

- (iii) the storage of chemicals;
- (iv) the transport of chemicals;
- (v) the disposal and treatment of waste chemicals;
- (vi) the release of chemicals resulting from work activities;
- (vii) the maintenance, repair and cleaning of equipment and containers for chemicals;
- [...]

63. Concerning the Government's contention that Convention No. 170 is not applicable in the present case, the Committee notes, based on information provided in this case that emissions of gas, mainly methane, were frequent in the Mine and that the workers in the Mine thus were regularly exposed to methane in the course of their work activities. Against this background and based on reading of the clear meaning of the terms of Article 1 together with Article 2(c)(vi) of Convention No. 170, the Committee finds that the work activities at issue in this context to be within the scope of Convention No. 170 and will thus examine the allegations relating thereto on its merits.

3. *Preliminary considerations*

64. The three Conventions at issue in this case each have a different focus. Convention No. 155 provides for the adoption of a coherent national occupational safety and health policy aimed at preventing accidents and injury to health arising out of, linked with or occurring in the course of work by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment, as well as action to be taken by governments and within enterprises to promote occupational safety and health and to improve working conditions. Convention No. 150 requires ratifying member States to ensure, in a manner appropriate to national conditions, the organization and effective operation in their territory of a system of labour administration, the functions and responsibilities of which are properly coordinated and that the labour administration staff shall have the status, the material means and the financial resources necessary for the effective performance of their duties. Convention No. 170 provides for the adoption and implementation of a coherent policy on safety in the use of chemicals at work and allocates specific responsibilities to employers and workers in this regard as well as to suppliers and exporting States.

65. The Committee will examine the extent to which the allegations made by the Complainants have been substantiated or have not been disputed by the Government as regards the obligations undertaken by the Government of Mexico under these three Conventions.

66. The Committee takes note of the extensive information provided by the Government concerning measures taken by it since the Accident. The Committee is however obliged to limit itself to examining whether at the time of the Accident, the Government had done all in its power by reference to its obligations under the three Conventions to prevent, as far as is reasonably practicable, the Accident. The Committee will examine contentions based on the hazardous nature of coalmining in the State of Coahuila; the level of diligence applied by inspection authorities to ensure the application of national laws and regulations aimed at preventing, as far as is reasonably practicable, the Accident in the Mine as well as the responsibility the Government may have incurred in relation thereto. The Committee is also called upon to determine whether the Accident should be seen as an isolated, tragic event or if the events are representative of a more generalized situation in Mexico.

4. *The hazardous nature of coalmining*

67. The Committee notes officially published information by the ILO on the hazardous nature of coalmining. In this regard it notes, in particular, the adoption by the ILO of the Safety

and Health in Mines Convention, 1995 (No. 176),³² and the 2006 code of practice on safety and health in underground coalmines.³³ The Committee notes that the Government has not disputed the data provided by the Complainants concerning the number of miners killed in coalmines in the State of Coahuila between 1889 and 2000.

5. *The functioning of the labour inspectorate*

68. The Committee notes that in the present context Articles 4 and 9 of Convention No. 150 are relevant. Article 4 reads as follows:

Each Member which ratifies this Convention shall, in a manner appropriate to national conditions, ensure the organisation and effective operation in its territory of a system of labour administration, the functions and responsibilities of which are properly co-ordinated.

69. Accordingly, when this Article is read in conjunction with Article 9 of Convention No. 150 cited earlier, the Government is required to ensure the organization and effective operation of a system of labour administration, including a proper coordination between relevant institutions and supervise that they are operating in accordance with national laws and regulations and are adhering to the objectives assigned to them. The Government is also specifically required, under Article 10, to ensure that the staff in its labour administration have the material means and financial resources necessary for the effective performance of their duties and are suitably qualified for their tasks.

70. The Committee notes the information provided by the Government, that the national legal framework concerning the functioning of the labour inspection system would have enabled the labour inspectors responsible for the supervision of the Mine to carry out inspection visits at a frequency required by the hazardous nature of the work activities in the Mine, to determine whether relevant laws and regulations were properly applied and, to the extent that deficiencies in this respect would have been noted, to ensure that these deficiencies would have been remedied within the time limits set for such cases.

71. As concerns the frequency of the labour inspections to be carried out, the national legislation provides that periodical inspections should be carried out within a 12-month interval; an interval that could be shorter or longer depending on an evaluation of the results of previous inspections taking into account the type of enterprise and the nature of the activities, the risk level, the number of workers employed and the geographical location of the enterprise.³⁴ The Committee has no information regarding the frequency of the inspections at the Mine before 12 July 2004, but notes that there was no inspection at the Mine for a period of 19 months after the Ordinary Inspection on 12 July 2004 which had identified 48 health and safety deficiencies. Considering the nature of the health and safety recommendations noted, the Committee finds that the inspections in the Mine had not been carried out with the periodicity required by the hazardous nature of the coalmining activities in question.

72. The subsequent issue is whether the frequency of the inspection visits was related to the alleged insufficient resources attributed to the labour inspectorate in Sabinas. The Committee notes that the Complainants have argued that these resources were insufficient at the Federal Labour Office in Sabinas. According to them, there were only two labour inspectors assigned to supervise the hazardous work activities in 129 coal-extracting slope

³² www.ilo.org/ilolex/english/convdisp1.htm.

³³ Code of practice on safety and health in underground coalmines, ILO, Geneva, 2006, www.ilo.org/public/english/dialogue/sector/techmeet/meshcm06/code.pdf (code of practice).

³⁴ Article 13(II) of the Labour Inspection Regulations.

mines (including the Mine), vertical shaft mines and pits employing a total workforce of 6,970 workers. The Government maintains that there were five labour inspectors assigned to this Office. The Committee notes that neither the Complainants nor the Government have documented their contentions in this respect, but finds that publicly available information³⁵ lends credence to the Government's contention that there were five labour inspectors assigned to the Federal Labour Office in Sabinas at the time of the Accident. As to the question of whether five labour inspectors were sufficient for the effective performance of their duties at the Federal Labour Office in Sabinas, the Committee finds that the Government's decision, after the Accident, to reinforce the labour inspectorate in Coahuila with seven new posts of which six were assigned to the Federal Labour Office in Sabinas raises doubts as to whether sufficient resources in the form of posts of labour inspectors had been assigned to this Office before the Accident.

73. As to the question of the manner in which the Federal Labour Office in Sabinas carried out its work, the Committee notes the following, based on the concordant allegations by the parties in this case: (1) the last ordinary labour inspection on 12 July 2004 was interrupted before all areas of the Mine had been inspected and was not taken up again and completed; (2) the Inspection Report was copied to IMMSA for information and action at some time before 26 July 2004, and 16 of the 48 deficiencies noted had been remedied; (3) it took almost 12 months – 8 July 2005 – before IMMSA was ordered to remedy 34 [sic] remaining deficiencies; and (4) it took a further two months before IMMSA was notified of this order on 15 September 2005 and an additional nine months– 7 February 2006 – before a Compliance Inspection was carried out.
74. Based on the foregoing and the fact that the national authorities have found that the Federal Labour Delegation in the State of Coahuila had failed in their administrative responsibility by not carrying out timely safety inspections and failing to follow up on the findings of those inspections, the Committee finds that the Government had failed in its obligations to control the proper functioning of the inspection system in respect of the Mine according to Articles 4 and 9 of Convention No. 150.

6. Enforcement of national laws and regulations and the principle of prevention

75. The Committee further notes that according to Article 9, paragraph 1, of Convention No. 155, the Government is required to ensure the enforcement of laws and regulations by an adequate and appropriate system of labour inspection which, according to Paragraph 5 of the Occupational Safety and Health Recommendation No. 164³⁶ should be guided, *inter alia*, by the provisions of the Labour Inspection Convention, 1947 (No. 81). The Committee takes due note that the latter instrument has not been ratified by the Government of Mexico.
76. While the Government has indicated that the application of national law relating to occupational safety and health depends on a collaboration between the Government on the one hand and the employers and workers on the other, the Committee notes that it follows from national legislation³⁷ as well as from Articles 4 of Convention No. 150 and 9, paragraph 1, of Convention No. 155 that the responsibility for securing the enforcement of

³⁵ See www.stps.gob.mx/DGIFT_STPS/PDF/Propuesta_100_Plazas.pdf.

³⁶ Para. 5 of Recommendation No. 164 reads as follows: “The system of inspection provided for in paragraph 1 of Article 9 of the Convention should be guided by the provisions of the Labour Inspection Convention, 1947, and the Labour Inspection (Agriculture) Convention, 1969, without prejudice to the obligations thereunder of Members which have ratified these instruments.”

³⁷ Section 540 ff. of the LFT.

laws and regulations is exclusively a governmental responsibility exercised, inter alia, through a regional and local labour inspection systems.

77. With reference to Articles 4 and 7 of Convention No. 155, the Committee notes that the Government states that, in compliance with its obligations under Article 4 of Convention No. 155, it has entrusted to COCONASHT the overall responsibility for “examining and proposing preventive measures in order to reduce risks in the workplace” and to carry out the periodical review of the situation regarding occupational safety and health and the working environment. Its mandate specifically includes examining and proposing risk prevention measures and helping to publicize them.³⁸ The Committee notes, however, that although the LFT was adopted in 1970, according to the Government the *first* ordinary meeting of COCONASHT was only held on 27 April 2007.
78. The Government further indicates that the Federal Labour Inspectorate is required to monitor compliance with labour and OSH standards, especially with regard to risk prevention. Against this background the Committee notes that, based on information provided by the Complainants, and not further commented on by the Government, in the context of the labour inspections carried out prior to the Accident, the labour inspectorate had not required IMMSA to prepare, develop and/or document the following matters:
- (i) a programme for the checking, testing and maintenance of structural and ventilation systems, installations, equipment for prevention, protection against fires and cave-ins, pneumatic, lighting and personal protection equipment to protect hearing;
 - (ii) hydrological studies to assess the risk of flooding, including control procedures, approved and signed by the employer and the occupational safety and health prevention services;
 - (iii) safety procedures for the installation of lining, periodicity and record of the checks carried out, and identification of geological flaws, effects of changes in the soil or rock and possible risks of flaws;³⁹
 - (iv) the analysis of potential risks, updated, drawn up in writing, approved and signed by the employer and by the occupational safety and health prevention services;⁴⁰
 - (v) safety procedures for establishing the necessary precautions in locations where the plans and studies indicate the existence of geologic faults or defects such as plugs, petrified trunks or excessive humidity.⁴¹
79. The Committee also notes the statement in the Advisory Forum Report that the “support system used in the Mine was based on years of experience and common practice, which has been applied widely in the region. It was capable of withstanding vertical loads, but the events of 19 February had shown that it was unable to withstand horizontal loads generated by a shock wave” and that “the main roof of the Mine was composed of inferior quality conglomerate, which explains why there are major roof falls at the intersections”.⁴² The Committee finds that the expert opinions expressed by the Advisory Forum would support a conclusion that had IMMSA been required to carry out the studies and analyses called for

³⁸ Section 512-A ff. of the LFT.

³⁹ See paras (h), (m) and (o) in the Table in para. 19, above.

⁴⁰ See para. 25, point 11, above.

⁴¹ See para. 25, point 27, above.

⁴² See para. 46 above.

by relevant legislation and requested by the labour inspectorate, the risks caused by the traditionally used support system in the Mine might have been adequately addressed limiting the damage caused by a possible explosion. On the other hand, the inferior quality of the main roof in the Mine – a problem which apparently had escaped notice by the labour inspectorate – most probably was a factor that contributed to the devastating effects of the explosion in the Mine.

- 80.** The Government has also indicated that mining managers are required to “carry out studies with a view to assessing potential hazards to which workers may be exposed before mining operations may begin; such studies must be carried out annually and whenever there is any change in the production process”.⁴³ According to undisputed information by the Complainants, IMMSA was in the process of expanding the activities in the Mine.⁴⁴ The Committee notes, however, the absence of any reference to a risk assessment either made or required by the labour inspectorate covering these expansion plans. The Committee finds this omission, which appears to be contrary to section 16 of the OSH Regulations, to be significant in light of the fact that one of the possible causes of the Accident was “continuous mining” or that the Mine was “operating on a continuous basis at a higher capacity than recommended with the result that carbon methane emissions reached explosive levels”.⁴⁵
- 81.** The Committee further notes that the Complainants have alleged that following the Ordinary Inspection of 12 July 2004, IMMSA was called upon systematically to dust the inside of the Mine as required in NOM-023,⁴⁶ but that no deadline for compliance with this measure was set by the labour inspectorate and compliance was not verified. Based on the undisputed information submitted by the Complainants, the Committee finds it established that at the time of the Accident, the Mine had not been dusted. Based on guidance contained in the ILO code of practice,⁴⁷ the Committee concludes that this omission would have contributed to making the atmosphere in the Mine more vulnerable to explosion.
- 82.** The Committee also notes that the Complainants have contended that it had been proposed to IMMSA to install a methane testing post so that it could be determined if there was a need to set up a system to remove methane, but that this proposal had not been taken into account. The Committee notes that the Government has not disputed this information. It therefore finds that contrary to national legislation,⁴⁸ a methane testing post had not been installed and that the required means to measure the methane level in the Mine appears not to have been put in place. As to the significance of this omission in terms of limiting the damage caused and the lives lost as a result of the Accident, the Committee refers to the views expressed by the Advisory Forum that “[i]f the rescue teams have access to reliable information early enough to define their rescue strategy, such as up to date digital plans of

⁴³ Section 16 of the OSH Regulations.

⁴⁴ Prompting, inter alia, the construction of new ventilation shafts. See para. 19 above under “Ventilation”, in the Table.

⁴⁵ SGM Report, para. 3.1., on para. 49, above.

⁴⁶ NOM-023, Appendix N, para. N 1.

⁴⁷ Paras 7.1–7.2.

⁴⁸ See para. N 3, of Appendix N, “Underground coalmines”, in NOM-023 (Mining). See also NOM-028 (Chemicals), which requires the employers to prevent exposure of workers to concentrations of chemicals higher than the permitted maximum exposure limits, and to assess the potential risks arising from the use of chemicals at work and protect workers from those risks by means of appropriate measures.

the mine, a network of gas sensors and communication and a system of signals for tracking the miners, the chances of rescuing miners are greater and the risk for the rescuers less acute. None of these conditions were present in the [Mine].”⁴⁹ The Committee can only conclude that based on these elements, IMMSA had clearly failed in its obligations as owner and operator of the Mine, leading to this tragic loss of life.

- 83.** The Committee notes that according to the SGM Survey regarding the cause of the Accident, an explosion caused by coal dust could have been triggered by the presence of a heat source due to the use of welding or cutting equipment.⁵⁰ It also notes the undisputed information that the Federal Labour Inspectorate had failed to ensure that numerous deficiencies related to electrical installations in the Mine were remedied and their maintenance undertaken.⁵¹ The Committee also finds it established that the Federal Labour Inspectorate had not ensured compliance with the need to move the welding machinery inside the Mine to the outside.⁵²
- 84.** As regards the ventilation system in the Mine and the extraction of gas, the Committee notes that according to the Complainants the ventilation system was malfunctioning⁵³ and there was a high incidence of gas in the Mine at the time of the Accident. The Complainants refer to a ventilation record for 15 February,⁵⁴ indicating that the volume of air extracted from shafts on average was 10m³/sec with a concentration of methane of 1.2 per cent. The Committee notes, however, that according to legislation in force the concentration of methane should not exceed 1.5 per cent⁵⁵ and that according to the Advisory Forum, “The [M]ine ventilation system apparently meets the requirements of NOM-023.”⁵⁶
- 85.** Taking into account the elements contained in paragraphs 81 and 82 above, the Committee considers that even if it discounted the elements relating to the ventilation system, the other elements corroborate the conclusion concerning the failure to follow up on compliance with the recommendation in the labour inspection report. In such a case, it can only arrive at the conclusion that the Government has failed in its obligation to control the proper functioning of the inspection system in accordance with Articles 4 and 9 of Convention No. 150. The Committee finds that the Government in this case has failed to secure the enforcement of its laws and regulations concerning occupational safety and health and the working environment by an adequate and appropriate system of inspection in accordance with Article 9, paragraph 1, of Convention No. 155.

7. Other allegations related to Convention No. 155

- 86.** In addition, the Complainants have alleged that the Government also breached Article 9, paragraph 2, and Articles 11, 13, 14 and 18 of Convention No. 155. Article 9, paragraph 2,

⁴⁹ See para. 46 under “Rescue and recovery operations”.

⁵⁰ See under para. 3.2.5, in para. 49, above.

⁵¹ Regulated in Appendix K “Electrical installations” of NOM-023.

⁵² Regulated in Appendix O “Cutting and welding in subterranean coalmines” of NOM-023.

⁵³ See para. N 9 in Appendix N “Underground coalmines” of NOM-023.

⁵⁴ Presumably 15 February 2006.

⁵⁵ See para. N 2, of Appendix N, “Underground coalmines”, of NOM-023.

⁵⁶ See para. 46, above.

provides that the enforcement system concerning occupational safety and health is to provide for adequate penalties for violation of the laws and regulations. The Committee notes the information provided by the Government concerning the provisions of the LFT dealing with penalties for non-compliance and the authority given to the STPS, which could include the partial or total shutting down of the enterprise that fails to comply. It also notes the information from the Government that on 20 December 2006 the Federal Labour Delegation imposed a fine of 185,705.10 pesos on IMMSA in respect of 17 deficiencies noted during the inspection of 12 July 2004. This decision was taken ten months after the Accident. The Committee concludes that there was insufficient compliance with Article 9, paragraph 2, of Convention No. 155 as there was not adequate follow-up by the labour inspectors to the compliance with the recommendations they had made in 2004 and that the fines were imposed on IMMSA only after the Accident.

- 87.** Concerning the allegations of non-compliance with Article 11, the Committee notes that the obligation imposed by this provision is for the competent authority to ensure that the functions set out “are progressively carried out”. These functions relate, inter alia, to: the determination of conditions relating to the design, construction and layout of undertakings, major alterations affecting them, the safety of technical equipment used at work; the determination of work processes and of substances and agents the exposure to which is to be prohibited, limited or made subject to authorization or control; the holding of inquiries where cases of occupational accidents reflect situations which are serious. The Committee notes the information from the Complainants that, according to the Extraordinary Inspection Report of 3 March 2006, ordered by the Director of Inspection Policies and Assessment of the Federal General Directorate of Labour Inspection, IMMSA was not able to provide information attesting to actions taken to demonstrate compliance with respect to a series of safety and health requirements. These related, inter alia, to the plans of the Mine, emergency procedures, notification of accidents, handling, transport and storage of hazardous chemical substances. The Committee also notes that the information from the Government provides abundant evidence of measures taken by it since the Accident, which support the presumption that these procedures and measures were not in place at the time of the Accident. The Committee notes, in particular, the reference by the Government to the OSH legislation and the relevant standards in existence at the time of the Accident and its indication of the shared responsibility of government, employers and workers in this regard. The Committee also notes the statement by the Government that the responsibility for ensuring compliance with national laws and regulations is within its exclusive competence. The Committee therefore concludes that while the Government did have laws and regulations in place at the time of the Accident, it did not ensure, in due time, proper compliance by IMMSA with their provisions.
- 88.** Concerning compliance with Article 18 of Convention No. 155, which deals with the obligation of employers to provide for measures to deal with emergencies and accidents, the Committee notes the information contained in the abovementioned Extraordinary Inspection Report which stated that IMMSA had failed to have available the services of a doctor at the Mine for more than 100 workers or to have records of the composition of the fire, search and rescue, evacuation and first-aid services. The Committee concludes that the Government had not ensured that IMMSA had complied with its obligations in this regard.
- 89.** Concerning the allegations of non-compliance with Article 13 of Convention No. 155, which requires protection of a worker from undue consequences where workers have removed themselves from a work situation presenting an imminent danger to life or health, the Committee notes that the circumstances of the Accident had immediate tragic results for 65 of the miners. It also notes that there is no evidence to demonstrate whether any actions of the 65 miners fell within the scope of this provision or whether any negative action was taken against the miners who survived the Accident.
- 90.** As regards Article 14 of Convention No. 155, which requires member States to take measures to promote, “in a manner appropriate to national conditions and practice”, the

inclusion of questions of OSH at all levels of education and training, the Committee considers that the Accident has no direct relationship to that obligation.

8. *The Government's responsibility for the Accident*

91. Finally, the Committee notes that the Complainants have also contended that the facts in this case would warrant a conclusion that the Government should be held responsible for a failure to prevent the Accident.
92. The Committee considers that Articles 8 and 9 of Convention No. 155 impose an obligation on member States that ratify this Convention to adopt laws and regulations or take other measures to give effect to Article 4 of the Convention and to secure their enforcement. This obligation does not make the Government liable for any and all occupational safety and health accidents and diseases. The Committee notes, in particular, that, for reasons set out in the expert report of October 2007 carried out by SGM, no definitive cause of the Accident can be established at this time. That report includes, however, information on the possible causes of the Accident and sets out a number of hypotheses. It has been established that at the time of the Accident, there were a number of deficiencies in the Mine that could have been identified through a proper risk assessment or that were identified but not remedied. While the question of whether these deficiencies, either in isolation or combined, did trigger the Accident cannot be conclusively answered, the Committee finds that based on the facts in this case the labour inspection services in Sabinas did not follow up on its own recommendations and did not ensure that they were properly complied with including by the imposition of effective and dissuasive sanctions. Given these circumstances, the Committee concludes that the Government of Mexico did not do all that was reasonably expected of it to avoid or minimize the effects of the Accident which had such devastating effects with the loss of life of as many as 65 miners.
93. Concerning the assistance and compensation due and paid to the families of the deceased miners, the Committee notes that there appears to be a significant discrepancy between the compensation allegedly offered by IMMSA immediately after the accident (750,000 pesos per family) and the compensation agreed upon between IMMSA and the STPS. The Government stated that a total amount of 5,250,000 pesos, corresponding to the benefits due, was deposited by IMMSA with the JFCA on 18 February 2008 to be distributed among the beneficiaries according to their individual entitlement and that PROFEDET would make the necessary arrangements for the corresponding payments to be made immediately. The Committee notes that, according to the Government, 51 families of the dead miners were to receive a total compensation of 5,250,000 pesos without prejudice to their pursuit of legal action. This amount was extended to include all 65 families. The Government did not, however, provide specific information concerning the basis for, or the elements taken into account in arriving at that sum. The Committee requests further information to be provided by the Government to the Committee of Experts on the Application of Standards on the modalities for determining the compensation provided to the 65 families of the deceased miners and expects the Government to ensure that all the 65 families receive adequate and effective compensation in accordance with national law.

9. *The Accident in the context of the general situation in relation to OSH in Mexico*

94. The final issue in this case is whether the actions [and omissions] by the Government in this case are representative of the manner in which national laws and regulations are applied in other parts of the coalmining industry in the State of Coahuila or indeed in other parts of Mexico as claimed by the Complainants or if this case should, as argued by the Government, be seen as an isolated and tragic event.

95. While the Committee disposes of virtually no information on the application of the relevant Conventions to any other industries in the State of Coahuila or in any other parts of Mexico, it notes that the Advisory Forum stated, inter alia, that the Government should take action “immediately to remedy a significant number of systematic shortcomings which probably contributed to the [Accident] in the [Mine] possibly through comprehensive, forward-looking state and/or federal legislation to be approved in the near future”.⁵⁷
96. The Committee also notes the recent initiatives undertaken by the Government in the area of OSH. These include not only a control of the application in practice of laws and regulations in numerous enterprises engaged in or related to the coalmining industry in the State of Coahuila and the development of new legislation regulating the OSH conditions in the coalmining industry, but also other nationwide actions including the proposed adoption of a national policy on OSH by COCONASHT. It also operationalized COCONASHT and allocated additional resources to the labour inspection system by recruiting, training and deploying 100 new labour inspectors.
97. The Committee finds that the reform programme that is being implemented by the Government constitutes an implicit recognition by it that the Accident caused it to realize that urgent and comprehensive action was required to improve the OSH conditions in the coalmining industry and the application of existing laws and regulations in the area of OSH at a nationwide level. This leads to the finding that, at the time of the Accident, Convention No. 155 was not fully applied in the Mine.
98. The Committee concludes by urging the Government to keep this tragic Accident and the memory of the 65 miners who perished as a stark reminder that continuous vigilance at all levels, a regular review of the national situation regarding OSH in the light of developing circumstances, needs in the country and scientific knowledge and expertise in how to prevent accidents and diseases in the workplace, in close consultation with the tripartite constituents, are the hallmarks of a well-functioning national system of OSH.

III. The Committee’s recommendations

99. *The Committee recommends to the Governing Body that it approve this report and, in the light of the conclusions contained in paragraphs 57–98 above, that it:*
- (a) invite the Director-General, when communicating the report to the Government of Mexico, to extend the Governing Body’s condolences to the members of the families of the 65 miners who lost their lives as a result of the Accident that occurred in Unit 8 of the Pasta de Conchos Mine in Coahuila in Mexico on 19 February 2006;*
 - (b) invite the Government, in consultation with the social partners, to continue to take the necessary measures in order to:*
 - (i) ensure full compliance with Convention No. 155, and, in particular, continue to review and periodically examine the situation as regards the safety and health of workers, in the manner provided for in Articles 4 and 7 of Convention No. 155, with particular attention given to hazardous work activities such as coalmining;*

⁵⁷ See para. 46 above.

- (ii) conclude and adopt the new regulatory framework for OSH in the coal mining industry, taking into account the Safety and Health in Mines Convention, 1995 (No. 176), and the ILO code of practice on safety and health in underground coalmines, 2006;*
- (iii) ensure, by all necessary means, the effective monitoring of the application in practice of laws and regulations on occupational safety and health and the working environment, through an adequate and appropriate system of labour inspection, in compliance with Article 9 of Convention No. 155, in order to reduce the risk that accidents such as the Accident in Pasta de Conchos occurs in the future;*
- (iv) monitor closely the organization and effective operation of its system of labour inspection taking due account of the Labour Administration Recommendation, 1978 (No. 158), including its Paragraph 26(1);*
- (c) invite the Government to ensure, considering the time that has lapsed since the Accident, that adequate and effective compensation is paid, without further delay, to all the 65 families concerned and that adequate sanctions are imposed on those responsible for this Accident;*
- (d) invite the Government, in consultation with the social partners, to review the potential that the Labour Inspection Convention, 1947 (No. 81), provides to support the measures the Government is taking in order to strengthen the application of its laws and regulations in the area of occupational safety and health in mines;*
- (e) entrust the Committee of Experts on the Application of Conventions and Recommendations with following up the questions raised in this report with respect to the application of the Labour Administration Convention, 1978 (No. 150), the Occupational Safety and Health Convention, 1981 (No. 155), and the Chemicals Convention, 1990 (No. 170); and*
- (f) make this report publicly available and close the procedure initiated by the representation of the Complainants alleging non-observance by Mexico of the Labour Administration Convention, 1978 (No. 150), the Occupational Safety and Health Convention, 1981 (No. 155), and the Chemicals Convention, 1990 (No. 170).*

Geneva, 19 March 2009.

(Signed) Mr M. Castro Grande
Chairperson

Mr A. Echavarría

Mr G. Martínez

Point for decision: Paragraph 99.