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# **Non-standard workers: Good practices of social dialogue and collective bargaining**

**Minawa Ebisui**

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Industrial  
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DIALOGUE

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## Foreword

This paper provides a comparative synthesis analysis of a series of national studies on non-standard work, collective bargaining and social dialogue in selected countries (Argentina, Colombia, India, Indonesia, Hungary, Japan and South Africa), which the Industrial and Employment Relations Department (DIALOGUE) of the ILO has conducted as a pilot project under the ILO's Global Product on "Supporting collective bargaining and sound industrial relations". The national studies aimed at identifying current and emerging non-standard forms of work arrangements within which workers are in need of protection; examining good practices in which people in non-standard forms of work are organized; analysing the role that collective bargaining and other forms of social dialogue play in improving the terms and conditions as well as the status of non-standard workers; and identifying good practices in this regard.

Based on the practical examples obtained from the national studies as well as secondary sources, the paper examines the factors which have resulted in a limited capacity to exercise collective bargaining in addressing the needs and interests of non-standard workers. The paper also identifies a variety of approaches and strategies whereby collective bargaining and tripartite social dialogue have been addressing those needs and interests, and improving non-standard workers' terms and conditions of work and their status.

The bargaining approaches and frameworks examined in the paper include collective bargaining outside workplaces, multi-employer bargaining, and extension of collective agreements, while regulatory strategies range from promoting regularization and employment, equal pay for work of equal value, limiting the period of temporary contracts, and addressing specific interests and needs of non-standard workers, to regulating economically dependent self-employment. The paper also briefly refers to other trade union responses that support social dialogue and collective bargaining.

The author concludes that promoting more inclusive social dialogue and collective bargaining for non-standard workers requires multi-faceted action at all levels, going hand in hand with measures clarifying the scope of the employment relationship.

DIALOGUE working papers are intended to encourage an exchange of ideas and are not final documents. The views expressed are the responsibility of the author and do not necessarily represent those of the ILO. I am grateful to Minawa Ebisui for undertaking the study, and commend it to all interested readers.

Moussa Oumarou  
Director,  
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## Contents

Foreword.....	iii
Acknowledgements.....	vi
Introduction.....	1
1. Scope of the research .....	2
Non-standard work.....	2
Social dialogue and collective bargaining.....	3
2. Obstacles to effective social dialogue and collective bargaining for non-standard workers .....	4
3. Non-standard work and collective bargaining practices .....	6
3.1 Collective bargaining approaches and frameworks .....	7
Collective bargaining outside workplaces .....	7
Multi-employer bargaining: Involving “principal employers” holding power in negotiation .....	8
Extending negotiated outcomes to non-negotiating parties .....	10
3.2 Regulatory strategies through collective bargaining (issues negotiated).....	13
Regularization and employment security.....	13
Guaranteeing equal pay for equal value of work: Adoption of non-discriminatory principles .....	13
Negotiating limits on the period during which a worker may be temporarily employed .....	16
Addressing specific interests and needs of non-standard workers: Tailored bargaining.....	17
Regulating economically dependent self-employment.....	18
4. Non-standard work and national social dialogue practices.....	19
Various ways of addressing issues surrounding non-standard workers.....	20
Social dialogue structures: Reflecting voices of non-standard workers .....	21
5. Other trade union responses to strengthen social dialogue and collective bargaining for non-standard workers .....	22
Organizing efforts .....	23
Political lobbying.....	24
Coalition and network building with other social movements .....	24
Conclusion .....	25
References.....	29

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<sup>1</sup> The national studies on India, Japan and South Africa are available as working papers: <http://www.ilo.org/ifpdial/information-resources/publications/lang--en/index.htm>

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## Introduction

Globalization has intensified inter-firm competition and the need for enterprise flexibility, bringing about changes in the global production system, with more emphasis on supply chains and multi-tiered contracting. Technological changes and new work processes made it possible for companies to externalize services and parts of production. Such economic and technological changes have led to profound changes in the world of work, particularly in the labour market, giving rise to an increasing variety of non-standard forms of work arrangements and practices. The expanding use by businesses of both existing and emerging non-standard work forms has led to changes to labour market regulation, while fiercer global competition equally has driven many countries toward labour market deregulation that allows more flexible non-standard forms of work.

These structural changes in work organization have on the one hand created greater choice, freedom, and opportunities to work, with both workers and employers benefiting from a variety of forms of non-standard work arrangements, some of which have facilitated mutually agreed ways of working flexibly. On the other hand, however, the increasing use of non-standard forms of work arrangements which allow greater flexibility has led to more uncertainty and precariousness among the growing number of workers who involuntarily engage in them. The global financial crisis of 2008 has further worsened the work and life prospects of precarious groups in most countries, in particular workers in small and medium-sized enterprises (SMEs), contract and temporary workers, migrant workers, women, young workers and the poor.<sup>2</sup> The crisis is widely thought to have had a particularly severe impact on workers engaged in non-standard forms of work arrangements.

One major challenge that many of these non-standard work forms pose to industrial relations systems and practices is that they do not fit within the traditional model of “standard” work associated with full-time, permanent, direct employment, on which legal regulation as well as industrial and employment relations institutions and practices have long focused. A wider use of non-standard forms of work arrangement has therefore posed challenges for the application of regulatory regimes and effective functioning of industrial relations systems in practice. Such structural and technological changes in turn pose challenges to the traditional methods of representation and negotiation for both workers and employers (ILO, 2008). This paper<sup>3</sup> provides a comparative analytical synthesis on non-standard work, collective bargaining and social dialogue in selected countries, based on the practical examples obtained from the national studies as well as secondary sources. It draws on a number of national studies, which aimed at identifying current and emerging non-standard forms of work arrangements within which workers are in need of protection; examining good practices in which people in non-standard forms of work are organized; analysing the role that collective bargaining and other forms of social dialogue play in improving the terms and conditions as well as the status of non-standard workers, and identifying good practices in this regard.<sup>4</sup> The paper first sets the scope of the research by defining key terms used, including “non-standard work”, “social dialogue”, and “collective bargaining”. It then examines the factors which have resulted in the limited capacity to exercise collective bargaining in addressing the needs and interests of non-standard

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<sup>2</sup> ILO, 2011a.

<sup>3</sup> The responsibility for opinions expressed in this working paper rests solely with its author and this publication is not endorsed by the ILO.

<sup>4</sup> The practices highlighted are mainly drawn from the national studies which were carried out as a pilot project by the ILO and are far from exhaustive in terms of coverage and scope. The national studies on India, Japan, and South Africa are available as working papers: <http://www.ilo.org/ifpdial/information-resources/publications/lang--en/index.htm>

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workers, followed by an analysis of different approaches and strategies whereby collective bargaining and tripartite social dialogue have been addressing those needs and interests, and improving non-standard workers' terms and conditions of work and their status. The paper also briefly refers to other trade union responses that support social dialogue and collective bargaining.

## 1. Scope of the research

### Non-standard work

The scope of the research is broadly set, and defines non-standard work arrangements as those associated with formal employment relationships (part-time work, temp agency work, fixed-term work, etc.) and outside such relationships (e.g. informal work, commercial contract holders such as those in contracted/subcontracted work, or economically dependent self-employment), including where relationships are either disguised or unclear. In other words, the term “non-standard” is used to distinguish such work from the regular or standard model of full-time, permanent and direct employment, recognizing that the latter is no longer “standard” in many countries and in some cases includes those in need of more appropriate protection.

Except for this so-called standard term, there is no single and universally accepted terminology describing such existing and emerging forms of work. Depending on the country, region, and political or socio-economic background or labour market, a variety of terms have been used. “Standard” work is also variously referred to as “typical” or “regular” work, depending on the national context, while in addition to “non-standard”, terms such as “atypical”, “non-regular”, or “contingent” work are also used.<sup>5</sup> However, the purpose of the present research is not to identify key elements of a possible definition on the basis of which a universally accepted terminology could be established.

A combination of a number of elements stemming from the nature of the contract as well as the characteristics of non-standard work forms, together with the preferences of those who engage in non-standard work, determine precariousness and vulnerability. As compared with standard workers, non-standard workers are thought to face the following conditions which make them more insecure, vulnerable, and precarious:<sup>6</sup>

- Low employment security/poor employment protection: non-standard jobs can be terminated more easily or with little or no prior notice by the employer

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<sup>5</sup> There are many variations in how standard and non-standard work are conceptualized and defined in the literature. For example, Tucker (2002) discussed how the concept of non-standard worker and non-standard work varied between countries, institutions, and labour experts. Some countries define non-standard work based on its defining features (e.g. full-time and permanent work, standard working hours, employers' premises) while other countries refer to the consequences of the defining features (e.g. benefits, social security, promotion, training). Referring to the definitions of standard employment in previous literature, Tucker argues that non-standard work includes all jobs that fall outside the definition of standard employment, if they are in any of the following categories: part-time; casual; irregular hours or on-call work; seasonal, temporary or fixed-term contracts; self-employment; undertaken as “homework”; undertaken in the “black” economy; and any combination of the above.

<sup>6</sup> The concept of “precarious work” is strongly interrelated with that of non-standard work. For example, Fudge and Owens (2006) identify “precarious work” as “work that departs from the normative model of the standard employment relationship (which is a full-time and year-round employment relationship for an indefinite duration with a single employer) and is poorly paid and incapable of sustaining a household”. The ILO (2010b) notes that ‘the definitions of “precarious” and “atypical” overlap, but are not synonymous and that “precarious” work refers to “atypical” work that is involuntary – the temporary worker without any employment security, the part-time worker without any employment security, the part-time worker without any pro-rated benefits of a full-time job, etc.’.

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- Lower quality of work than standard work (lower wages, irregular or uncertain income, limited occupational safety and health protection, fluctuations in hours of work or volume of work)
  - Little or no access to “standard” non-wage welfare benefits
  - Limited social security coverage
  - Limited mobility toward better-quality jobs (e.g. regular/permanent job)
  - Limited opportunities for promotion
  - Limited access to training opportunities
  - Low or no trade union representation or collective bargaining coverage
  - Low bargaining power
  - Reluctance/unwillingness to engage in non-standard work
  - Lack of labour market alternatives
  - Low labour law coverage, in particular for those who hold commercial contracts

In the recent International Workers’ Symposium on Policies and Regulations to Combat Precarious Employment, two categories of contractual arrangements were indeed identified as encompassing the majority of the workers most adversely affected by precarious conditions characterized by low wage, poor protection from termination of employment, lack of access to social protection and benefits usually associated with full-time standard employment, and lack of or limited access for workers to the possibility of exercising their rights at work. The first group comprises those associated with limited duration of contract (fixed-term, short-term, temporary, seasonal, day-labour and casual labour), and the second is related to the nature of the employment relationship (triangular and disguised employment relationships, bogus self-employment, subcontracting and agency contracts).<sup>7</sup> The symposium’s background report notes that regarding the definition of the term precarious work, “complicating matters is the fact that the state of precarity takes somewhat different forms depending on the country, region, and the economic and social structure of the political systems and labour market... and thus a variety of terms have emerged from particular national contexts, such as contingent, atypical or non-standard work”.<sup>8</sup>

The categories of non-standard workers in need of protection differ depending on the national context. By setting the scope rather broadly, therefore, this paper attempts to capture a wide variety of good strategies and approaches that have been taken by the social partners, in particular trade unions, to improve terms and conditions of work for and status of non-standard workers and bridge the gap between standard workers and those in non-standard work forms.<sup>9</sup>

## **Social dialogue and collective bargaining**

The term “collective bargaining” used in this paper follows the ILO definition, which extends to all negotiations which take place between an employer, a group of employers or one or more employers’ organizations, on the one hand, and one or more workers’ organizations, on the other, for: (a) determining working conditions and terms of employment; (b) regulating relations between employers and workers; and/or

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<sup>7</sup> ILO, 2011b.

<sup>8</sup> Ibid.

<sup>9</sup> ILO, 2010a. Some such initiatives were demonstrated at the ILO’s High-level Tripartite Meeting on Collective Bargaining, Geneva, 19-20 November 2009. See the ILO web site:

<http://www.ilo.org/public/english/dialogue/ifpdial/events/tripartitemeeting.htm>

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(c) regulating relations between employers or their organizations and a workers' organization or workers' organizations (ILO Convention No. 154).

Social dialogue in the ILO definition includes all types of negotiation, consultation or information sharing either among the bipartite parties in the workplace or industrial sector, or by tripartite partners at the national level, on issues of common interest.<sup>10</sup> Collective bargaining is an important form of social dialogue. For clarification purposes, however, this paper limits the scope of social dialogue to national-level tripartite social dialogue in order to distinguish the different roles that tripartite social dialogue and collective bargaining play with a view to addressing the issues concerning non-standard work.

The paper also limits its scope to country-level social dialogue and collective bargaining developments and practices, including those at national, sectoral, enterprise, and local/community levels. The examination of global responses such as social dialogue at the international level (e.g. International Framework Agreements) is left for a future research agenda.

## **2. Obstacles to effective social dialogue and collective bargaining for non-standard workers**

Freedom of association and collective bargaining are fundamental to the ILO, which has been acknowledged as a means for improving and regulating terms and conditions of work and advancing social justice since its very foundation in 1919.<sup>11</sup> The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), are recognized as fundamental rights and principles in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. The 1998 Declaration recalls that all member States, from the very fact of their membership in the Organization, have an obligation to respect, promote and realize the principles concerning fundamental rights, whether or not they have ratified the relevant Conventions. These two fundamental rights are inseparable and mutually reinforcing. The realization of freedom of association is an essential precondition for the effective realization of the right to collective bargaining. The ILO Declaration on Social Justice for a Fair Globalization (2008) also underscores the significance of fundamental principles of freedom of association and the right to collective bargaining as both rights and enabling conditions for attaining the ILO's strategic objectives – employment, social protection, social dialogue, and rights at work. These fundamental rights apply to all workers – in theory – with the exception of members of the armed forces and the police and public servants engaged in the administration of the State, irrespective of their work arrangements or employment status.<sup>12</sup> Growing non-standard forms of work, however, pose a number of challenges to the effective functioning of traditional industrial relations systems and collective bargaining processes.

One profound challenge in promoting collective bargaining for non-standard workers is their limited attachment to single workplaces/employers as compared with standard workers.<sup>13</sup> When workers are directly employed for a long period by a single employer, their interests are easier to be collectively represented. However, non-standard workers are either (a) directly employed by employers, but with non-stable and temporary employment, and thereby association with the single employer is limited (e.g. part-time, fixed-term

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<sup>10</sup> ILO, 2011c.

<sup>11</sup> Ibid.

<sup>12</sup> The ILO supervisory bodies have affirmed that these fundamental rights apply to all workers. For more details, *see* Rubiano, 2011.

<sup>13</sup> Wills, 2009: 443-444.

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workers); or (b) not directly employed by the “principal” or “real” employer for which or where they actually work (e.g. temp agency workers, contract workers). In cases where workers move beyond sectors from one job to another, sectoral representation and solidarity become difficult.<sup>14</sup> Moreover, growing numbers of workers nowadays engage in work not as employees but through individual commercial service contracts, including independent contractors, informal workers, and freelance workers. In developing countries, the magnitude of the informal economy is such that workers often work without any relation to formal contractual relationships (e.g. street vendors).

Such erosion of the traditional direct employment relationship has also resulted in a decline in trade union membership as well as the fragmentation of collective bargaining.<sup>15</sup> Some categories of these workers are not covered by existing labour law or collective bargaining arrangements, because they are not “employees” covered by the law, while the rights of others – who *are* covered by labour law – to organize and bargain collectively are guaranteed in theory, but it is difficult for them to effectively exercise those rights. The latter group is often excluded from trade unions or the bargaining unit of standard workers, whose attachment to single employers is strong, creating difficulties in forming an effective bargaining unit.<sup>16</sup>

Non-standard workers themselves can also be reluctant to exercise rights to organize and bargain collectively because of fear of job losses, even when they can do so in practice or in theory.<sup>17</sup> Moreover, a fragmented workforce implies that there are different segments of workers in the same workplaces with diverse interests and different contractual status, which can trigger and intensify conflicts among the workers themselves instead of labour-management conflict, thereby hindering solidarity among workers. The trade union members in standard employment may regard unorganized workers in non-standard employment as a threat.<sup>18</sup>

There are also cases where actual contractual employers are not necessarily the appropriate and influential negotiating parties with the ultimate decision-making power in negotiating terms and conditions of work.<sup>19</sup> For example, contracting/sub-contracting firms or temporary work agencies are often small and medium-sized enterprises (SMEs) facing fierce competition and coming under pressure from those with the real power over the contracting process. In such cases, negotiating better terms and conditions of work with contractual employers might end up in job losses due to loss of competition with other SMEs. Meaningful collective bargaining, which brings about tangible outcomes, may not take place unless negotiation involves “principal” employers in power.

Finally, non-standard work arrangements often challenge the traditional parameters for the organization of work, giving rise to uncertainty about workers’ employment status. This happens when non-standard work arrangements expose ambiguities and uncertainties in legal frameworks that are intended to offer certain protections to those who are in a legally constituted employment relationship. In other cases, workers in non-standard arrangements are simply beyond the scope of application of labour laws. Thus, legal frameworks are often unable to provide an effective enabling environment for workers in non-standard arrangements to exercise collective rights.<sup>20</sup>

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<sup>14</sup> Bosh, 2010: 337-356; Nissen, 2001:172.

<sup>15</sup> ILO, 2011b.

<sup>16</sup> Ibid.

<sup>17</sup> Anwar; Supriyanto, 2011.

<sup>18</sup> Theron, 2011.

<sup>19</sup> Wills, 2009 : 441.

<sup>20</sup> Casale, 2011: 1-33; ILO, 2006. A particular problem which commonly arises is that the legal structure of the working arrangement does not clearly correspond with the legal definition of an employment relationship. In some cases, however, the difficulties stem from deliberate manipulation of the legal structure of the work arrangement, or from the

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In sum, difficulties that non-standard workers face in exercising their rights to organize and bargain collectively stem from: (1) the casual nature (limited duration) of the contract, which is often accompanied by fear of job losses; (2) limited attachment to single workplaces/employers, resulting in difficulties in identifying and involving “principal employers” in power as meaningful negotiating parties; (3) exclusion of non-standard workers from the trade union and bargaining arrangements of standard workers; and (4) legal uncertainty and ambiguity about labour law coverage for certain categories of non-standard workers. How, then, have collective bargaining and national tripartite social dialogue practices been overcoming these obstacles and difficulties?

### **3. Non-standard work and collective bargaining practices**

Promoting collective bargaining for non-standard workers requires action on a number of fronts. Country experiences have demonstrated that the social partners have indeed explored various initiatives to overcome obstacles to exercising collective bargaining, and to address a variety of issues in face of the growth of non-standard work, albeit limited so far in terms of the numbers of workers covered and the impact achieved. While different approaches and frameworks have been used in strengthening the functioning of collective bargaining for non-standard workers, a variety of regulatory strategies have been adopted through collective bargaining.

In Section 3.1, the paper examines the most common bargaining approaches and frameworks together with some good examples:

- i. Collective bargaining outside workplaces (examples from the Republic of Korea, Japan and Indonesia)
- ii. Multi-employer bargaining (Argentina, India, Indonesia and the United States)
- iii. Extension of collective agreements (Hungary, Luxembourg, the Netherlands, South Africa and Japan)

In Section 3.2, the paper identifies a variety of regulatory strategies through collective bargaining (issues negotiated) together with some country cases for improving the terms and conditions for and the status of non-standard workers:

- i. Regularization and employment (Colombia, Japan, India and South Africa)
- ii. Equal pay for work of equal value (France, Japan and Australia)
- iii. Limits on the period of temporary contracts (South Africa, Sweden, Belgium and France)
- iv. Addressing specific interests and needs of non-standard workers (Italy, Indonesia and the United Kingdom)
- v. Regulating economically dependent self-employment (Germany and Italy)

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employer treating an individual as other than an employee, in a way that hides their true legal status as an employee. That is, particular problems arise from efforts to disguise employment relationships.

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### 3.1 Collective bargaining approaches and frameworks

In order to overcome particular challenges to representing voices of non-standard workers and advancing collective bargaining for them, functioning of bargaining has been strengthened through various approaches and frameworks.

#### Collective bargaining outside workplaces

Collective bargaining can be improved by not being limited to particular workplaces or enterprises. Attempts to promote collective bargaining outside workplaces have been made, where it takes place predominantly at workplace level in such a way that some categories of non-standard workers are excluded either in practice or due to their limited attachment to single workplaces. Evidence shows that high union density and bargaining coverage, and the centralization and co-ordination of wage bargaining, tend to go hand-in-hand with lower wage inequality.<sup>21</sup> Decentralization of bargaining could lead to a decline in collective bargaining coverage, and has tended to benefit and favour those with bargaining power, while offering little to those who are poorly organized. Moreover, for those whose association with a single workplace is weak, negotiations at workplace level do not often offer favourable and convenient outcomes.<sup>22</sup> A shift to higher-level negotiation or centralization, however, is not the only way to move forward.<sup>23</sup> Some commentators also suggest that occupations are useful sources for organizing workers, by which they can exercise collective rights across multiple employers.<sup>24</sup> There is no single solution, but it is certainly true that what workplace-level dialogue can achieve is limited in its scope and influence, and there is a growing need for improved responses at different levels.

In the **Republic of Korea**, bargaining takes place predominantly at enterprise level, and enterprise unions negotiate on behalf of their members who are largely regular workers. In face of a dramatic increase in the number of non-standard workers, there has been a momentum, albeit very limited in its effect, for promoting strengthened sectoral organization with a view to boosting solidarity among workers by restructuring and centralizing the trade union movement from predominantly enterprise level to sectoral level.<sup>25</sup>

In **Japan**, whose industrial relations are also characterized by enterprise unionism and in which companies normally confine their membership to regular workers in practice, thereby failing to cover large numbers of non-regular workers through enterprise-level representation, a unique form of negotiation has been explored at community level. Since unions represent and negotiate on behalf of all interests in all forms of work without distinction, they have demonstrated success in organizing non-standard workers as their members, by providing protection and advisory services, and negotiating and solving disputes on their behalf, since they are often excluded from enterprise-level bargaining (**Box 1**).<sup>26</sup>

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<sup>21</sup> OECD, 2006.

<sup>22</sup> Heery; Abbott, 2010: 167-168.

<sup>23</sup> OECD, 2006.

<sup>24</sup> Kalleberg, 2009; Damarin, 2006.

<sup>25</sup> Choi, 2006.

<sup>26</sup> Oh, 2010.

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**Box 1.**

**Japan: Community-based unions and their bargaining approach**

Although Japan's general unionism has a long history, it is only since the late 1980s – when so-called “community unions” appeared – that workers' organizations have begun operating as unions that are established outside individual enterprises. In addition to traditional general unions of the National Union of General Workers National Council (Zenkoku-Ippan), the Japanese Trade Union Confederation (RENGO) established regional unions in 1996 and the National Confederation of Trade Unions (Zenroren) established local unions in 2002, all of which resulted in strengthening community-based general unionism. Any individual workers can join these community-based unions, regardless of where/how they work and what forms of work they engage in, including unemployed workers. Community unions, located in a specific region, have absorbed those who work in non-unionized SMEs or non-standard workers, including independent contractors, dispatched (agency) workers, and migrants who are not able to obtain union membership in an enterprise union or elsewhere.

Their central role has recently been to provide labour consultation and advisory services as well as solve individual disputes through negotiating with individual enterprises on behalf of their members, regardless of which enterprise or sector they work in. Japan's Trade Union Law provides for an employer's duty to bargain collectively, and an employer's refusal to do so without proper reasons is an unfair labour practice. The rate at which disputes are resolved voluntarily by community unions through negotiation stood at 67.9 per cent in 2008. Nevertheless, there remains intensive debate about the way an agreement concluded between an employer and the union after such negotiation on behalf of a single worker will legally be interpreted in collective bargaining/representing processes.

There have been increasing numbers of cases in which these unions bargain on behalf of an independent contractor, and have refused to bargain collectively on the grounds that these are not “workers” in terms of Article 3 of the Trade Union Act. Since determining criteria are non-existent, there has been a discrepancy between the orders of Labour Relations Commissions and lower court judgements, thereby creating issues in terms of legal stability and predictability. The Ministry of Health, Labour and Welfare therefore set up a Study Group and released a report proposing criteria for determining the “worker relationship”. Administrative notice will be given to the Central and Local Labour Relations Commissions concerning use of the report as a reference, in order to give it wider publicity.

Source: Oh, 2010; Ministry of Health, Labour and Welfare (MHLW), 2011.

In **Indonesia**, KSPSI (Konfederasi Serikat Pekerja Seluruh Indonesia), one of the national trade unions, has been serving a similar bargaining and dispute resolution function on behalf of outsourced workers in the manufacturing industry. KSPSI opens up the opportunity for outsourced workers whose companies are not unionized to become direct members. When these workers face problems with their employer, they can request KSPSI to be their representative to settle the dispute.<sup>27</sup> The Federation of Indonesian Metal Workers' Union (FSPMI) and Lomenik (Federation of Metal, Machine and Electronics) have also been successful in organizing contract and outsourced workers in the Export Processing Zones in Batam in Kepulauan Riau Province. According to the FSPMI prediction, around 98 per cent of all workers in Batam's EPZs are hired through labour agencies. FSPMI and Lomenik set out strategies and make efforts to change the temporary status of contract workers to permanent, as well as negotiate collective agreements that contribute to a decrease in the number of contracted workers.<sup>28</sup>

**Multi-employer bargaining: Involving “principal employers” holding power in negotiation**

Involving principal employers that hold real power in negotiating and determining the terms and conditions of work has also been a key approach to promoting more inclusive dialogue associated with tangible outcomes.

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<sup>27</sup> Anwar; Supriyanto, 2011.

<sup>28</sup> Ibid.

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Multi-employer bargaining has been used as an approach in dealing with non-standard workers who are not directly employed by the “principal” or “real” employer in power for which they actually work. Unless their direct employers are influential negotiating parties, meaningful negotiation becomes difficult even when these workers are able to exercise the right to collective bargaining in theory.

In **Argentina**, for example, SIVARA (Argentine Street Vendors Trade Union: 17,000 members) represents street vending workers in different forms, in both the public and private sectors, including street sale of services and health care plans, delivery sale, and direct sales of products. SIVARA has developed a strategy to pressure employers and win enterprise collective agreements. So far, 25 agreements have been concluded for vendors who sell food on the streets, on trains, and in parks.<sup>29</sup>

In **India**, multiple-employer bargaining takes a variety of forms. First, an ad-hoc representative body of contract workers arising out of a spontaneous action negotiates either with the principal employer or the contractors, as in the case of Hero Honda. Second, a contract workers’ or regular workers’ union negotiates with the principal employer and reaches a collective agreement or memorandum of understanding, or draws up a letter of exchange to be implemented by the contractors (e.g. public sector units such as NLC and private sector units such as Sandvik, Reliance Energy, or Madras Atomic Power Station in Kalpakkam in Tamil Nadu). Sometimes, a regular workers’ union negotiates on behalf of contract workers with the principal employer, and the understanding is legalized in an agreement by the contract workers’ representatives and the contractors (e.g. Glaxo in Nabha, Thermax in Pune). There are also cases in which the contract workers’ union or the regular workers’ union negotiates directly with the contractors and reaches an agreement with the contractors’ association (TNPL in Tamil Nadu). The contract workers themselves sometimes form a co-operative service society, which supplies contract labourers to the principal employer and negotiates or plays an important role in determining their service conditions (e.g. NLC, Kalpakkam Atomic Energy and others, especially in Tamil Nadu).<sup>30</sup>

In **Indonesia**, collective bargaining architecture is decentralized at the enterprise level, and sectoral-, regional-, or national-level bargaining is rarely found. In 2011, however, a unique agreement was concluded in the form of the Freedom of Association (FOA) Protocol by trade unions and five companies in the sports apparel industry, which contributes to guaranteeing freedom of association and the right to bargain collectively for non-standard workers (**Box 2**).

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<sup>29</sup> Martínez-Chas, 2011.

<sup>30</sup> Sundar, 2011.

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**Box 2.**  
**Indonesia: Freedom of Association Protocol**

In June 2011, the Freedom of Association (FOA) Protocol was signed by five trade unions (Federation Garteks KSBSI, NES, KASBI, SP TSK, and GSBI) and five companies of brand holders and suppliers from the sports apparel industry, such as Adidas, Nike, Puma and Pentland). This agreement legally binds the signing parties, and its provisions include the following: (a) all holders of the company brand and/or services in the sports apparel industry supply chain in Indonesia must respect and implement the right to freedom of association; and (b) suppliers are required to disseminate the contents of this protocol and encourage its implementation by their subcontractors. The implementation of the FOA Protocol is implemented in all of the signing companies regardless of whether they already have a collective labour agreement or not. If the provisions of the existing agreement in the companies are less favourable than those in the FOA Protocol, the latter is required to be respected. The FOA Protocol does not set wages and working conditions, but it requires companies to conduct collective bargaining within six months after the enterprise union is established. The FOA Protocol obliges companies that are bound by the agreement, among other things: (a) to give workers the freedom to form unions in the workplace, (b) to recognize all unions in the company and not discriminate against any particular union, (c) not to interfere in trade union activities, (d) to provide time to members and officials of trade unions for conducting union activity, (e) not to carry out any form of intimidation, including demotion, transfer, reduction of wages, criminalization, giving tasks beyond the ability of workers, and suspending members/officials of a trade union who carry out union activity, (f) to provide adequate space for the union's secretariat, and (g) to refrain from intimidating the union's negotiating team in the making or renewing of collective labour agreements.

To monitor the implementation of freedom of association, in accordance with the provisions stipulated in the FOA Protocol, the Commission for Dispute Resolution was established at the enterprise level and at national level. At the enterprise level, the Commission is composed of union and company management, while at the national level the Commission consists of the supplier and producer companies, trade unions and NGOs at the national level. If there are deviations from this protocol, the solution will be discussed through bipartite negotiations, and if it does not work successfully it will be resolved in accordance with applicable employment regulations.

The FOA protocol applies to all companies irrespective of whether they have already established trade unions and collective agreements, and it can potentially improve the conditions of permanent workers as well as those of non-standard workers in the sports apparel industry in Indonesia.

Source: Anwar and Supriyanto, 2011.

In the United States, trade union attempts have been made to organize janitors across specific regional labour markets and collectively bargain their terms and conditions of work through multi-employer collective agreements (**Box 3**).

### **Extending negotiated outcomes to non-negotiating parties**

One of the traditional approaches to reaching out to non-trade union members is the extension of all or part of collective agreements concluded between single employers or their representative organizations and the representative organizations of workers, such as trade unions, to workers and employers who are not represented by the social partners signing the agreement. Through the adoption of such an approach, the negotiated outcomes become applicable to non-standard workers who are not organized, in cases where bargaining itself does not take place in an inclusive manner.

How negotiated outcomes are extended varies in terms of, for example, whether there are legal mechanisms for extension or that can be implemented by voluntary agreement of the signing parties; or whether it requires the demand of one or both negotiating parties, depending on the country. However, collective agreement extension seems to benefit certain categories of non-standard workers, particularly non-standard "employees" (e.g. fixed-term or part-time employees) associated with employment relationships who are excluded from collective bargaining coverage.

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**Box 3.**  
**The United States: Successful case of multi-employer bargaining**

The Service Employees International Union (SEIU) developed the Justice for Janitors campaigns and enabled the union to win recognition in several major cities, including Miami, Los Angeles, Boston and, most recently, Houston.<sup>31</sup> These campaigns are mainly targeted at low-paid precarious workers who are predominantly female. They use public attention, community pressure and political lobbying as strategies to pressure employers. The Houston victory in 2006 was won after janitors at five major cleaning contractors participated in a one-month strike including local, national and international demonstrations.<sup>32</sup> As a result the cleaning contractors entered into a collective bargaining agreement with the union covering about 5,300 janitors, mostly women of Latin American origin. The agreement raised wages from an average of \$5.30 per hour to \$7.75 per hour as of 1 January 2009 and offered individual and family health insurance cover starting in 2009 for \$20 and \$175 per month, respectively. In addition, the shift length of the janitors was extended to six hours by 2009 as a result of the agreement.<sup>33</sup> Because the agreement covers the five major building services contractors in the region, employers cannot simply change contractors in order to avoid the costs of improved working conditions for contracted workers. The agreement was renegotiated in 2010 and includes a wage increase from \$7.75 per hour to \$8.35 per hour in 2012 and offered a 32 per cent increase in contributions from their employers towards maintaining their individual health care coverage.<sup>34</sup>

As described above, there are countries where legal procedures for extending collective agreements exist – for example, EU member States (excluding Cyprus, Denmark, Italy, Malta, Sweden and the United Kingdom), South Africa, Japan, Mauritius and Namibia, though the degree and manner of extension differs in terms of whether an extension procedure is initiated only on the demand of one or both of the social partners who signed the collective agreement; or it can be done automatically by the competent government institution, whether there are minimum requirements, and how frequently they are used in practice.<sup>35</sup> The scope of non-standard workers to be covered in extended collective agreements differs depending on the nature of the extension mechanism or whether their right to bargain collectively is legally guaranteed.<sup>36</sup> If the extension has the effect that its terms cover “all workers” or all persons “engaged in an industry”, it certainly functions as a powerful tool to increase collective bargaining coverage for non-standard workers. However, if terms such as “employees” are used, it rules out non-standard workers who are not in employment relationships.

In **Hungary**, there are four sectoral collective agreements that have actually been negotiated and extended in the bakery, electricity, hospitality and building industries, among which only the one for the building industry is explicitly extended to all employees in the sector, including fixed-term, part-time and temp agency employees.<sup>37</sup> The agreement, which was originally agreed in November 2005, was extended to the entire sector in March 2006. It was renewed twice, in 2007 and 2009.<sup>38</sup> In **Luxembourg**, the extension of the terms of a collective agreement to “all employers and employees” in a sector is permitted through a Grand Ducal regulation.<sup>39</sup> In **the Netherlands**, sectoral collective agreements can be extended at the request of the social partners to “all employees” in the sector, by the

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<sup>31</sup> Osborn, 2006.

<sup>32</sup> Ibid.

<sup>33</sup> Russakoff, 2006.

<sup>34</sup> SEIU website: <http://www.seiu1.org/2010/06/28/janitors%E2%80%99-new-contract-improves-jobs-strengthens-houston%E2%80%99s-economy/>.

<sup>35</sup> Eurofound, 2011.

<sup>36</sup> EIROOnline: <http://www.eurofound.europa.eu/eiro/2002/12/study/tn0212102s.htm>

<sup>37</sup> Edelenyi, 2011

<sup>38</sup> Ibid.

<sup>39</sup> Eurofound, 2011.

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Ministry of Social Affairs and Employment.<sup>40</sup> In **South Africa**, the Labour Relations Act (LRA) provides a legislative framework for the establishment of bargaining councils, by one or more registered trade unions and employers' organizations for the purpose of collective bargaining. There are bargaining councils in both public and private sectors. In terms of the LRA, a collective agreement can be extended upon request by a bargaining council to non-negotiating parties which fall within its jurisdiction. Extension of bargaining council agreements has proved one of the most effective means of regulating certain forms of non-standard work, such as labour broking (agency work). In the metal and engineering industry, for example, labour brokers are required to register with the bargaining council, and comply with its provisions. Although the employees of labour brokers are not given a voice in the actual negotiation process of the agreement, the negotiated outcomes in the industry thus become applicable to them.<sup>41</sup>

Apart from such legal possibilities to extend collective agreements, there are also cases where agreements or provisions thereof are extended (*de facto* extension) by "soft factors" such as informal agreement, habit, custom or other voluntary practices.<sup>42</sup> Such examples represent good initiatives taken by the social partners. In **Japan**, for instance, a collective agreement applies only to workers who are members of the union that is party to the collective agreement, as a general rule. However, the Trade Union Law (TUL) provides for two exceptions to this principle and extends the coverage of the collective agreement: plant-level extension (Article 17) and regional extension (Article 18), under the majority principle. The TUL provides that "when three-fourths or more of the workers of the same kind regularly employed in a particular factory or other workplace come under application of a particular collective agreement, such agreement shall be regarded as also applying to the remaining workers of the same kind employed in the same factory or workplace". This provision and its interpretation have led to controversy in terms of a number of aspects. With regard to its applicability to non-standard workers, it is limited to "the remaining workers of the same kind employed" and rules out certain categories of non-regular workers.<sup>43</sup> In practice, however, some enterprise unions, which organize both regular and non-regular workers, negotiate better working conditions for them, and extend part of the negotiated outcomes to unorganized non-standard workers. For example in the 2008 *shunto*, in the middle of the economic recession, a trade union at Japan Post Holdings Co. Ltd. (JP), which was privatized in October 2007, decided to defer its demands for pay increases for regular workers and to prioritize the needs of non-regular employees. After long negotiations, the union obtained a 2,000 yen monthly wage increase for fixed-term employees working under a monthly salary system (there are also fixed-term employees under an hourly wage system). In the 2010 *shunto*, the union obtained a 2,000 yen increase in the basic monthly wages of fixed-term contract employees working under a monthly salary system and the commitment of the JP to regularize 2,000 fixed-term employees. The negotiated outcomes were *de facto* extended to non-unionized fixed-term contract workers under the monthly salary system, as a result of autonomous governance based on mutual trust among labour and management.<sup>44</sup>

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<sup>40</sup> Ibid.

<sup>41</sup> Theron, 2011.

<sup>42</sup> EIROOnline: <http://www.eurofound.europa.eu/eiro/2002/12/study/tn0212102s.htm>

<sup>43</sup> Trade Union Law:

<http://www.japaneselawtranslation.go.jp/law/detail/?re=01&dn=1&x=0&y=0&co=1&yo=&gn=&sy=&ht=&no=&bu=&ta=&ky=%E5%8A%B4%E5%83%8D%E7%B5%84%E5%90%88%E6%B3%95&page=2>

<sup>44</sup> Hamaguchi; Ogino, 2011.

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## 3.2 Regulatory strategies through collective bargaining (issues negotiated)

The social partners in many countries have been exploring a number of ways of regulating and improving terms and conditions of work for non-standard workers through collective bargaining. The issues bargained vary significantly between countries as well as depending on the forms of non-standard work and prevailing bargaining practices.

### Regularization and employment security

Regularizing non-standard workers (shifting to direct and permanent employment) has been used as one of the best models of “inclusion”, and successful cases have been documented.<sup>45</sup> There have been a number of individual company cases, in which regularization was achieved under certain conditions (**Box 4**). However, it is not easy to achieve this outcome through bargaining, and the social partners in various countries have therefore explored other ways of regulating and improving terms and conditions of work for non-standard workers.

### Guaranteeing equal pay for equal value of work: Adoption of non-discriminatory principles

Advancement of equal pay for equal value of work or non-discriminatory principles is one very common way of dealing with various non-standard work arrangements. It has been promoted as a result of collective bargaining developments in many countries, while action by the social partners to promote equal treatment for non-standard workers has interacted with and been supported by labour law developments. This approach has been especially relevant to promoting collective bargaining for part-time and fixed-term workers who are directly employed by the same employer, while general demands for wage increases are more common for other categories of non-standard workers (*see*, for example Box 4).

**The European Union (EU)** has been advanced in influencing non-standard work regulations in its member States, adopting the principle of non-discrimination, based on a comparison with a comparable standard, full-time worker who engages in the same or similar work in the same establishment. The Directives on part-time and fixed-term work<sup>46</sup> ensure the appropriate protection of these categories of workers through application of the principle of equal treatment relating to basic working and employment conditions, and address unnecessary restrictions and prohibitions constituting abuse of such contracts. In the absence of a clear comparable benchmark, “comparison shall be made by reference to the applicable collective agreement”. If there is no applicable collective agreement, comparison is made according to national laws, collective agreements or practices. The Directive on temporary agency work, adopted in 2008, also ensures that temporary agency workers should be entitled to “equal treatment” with regard to “basic working and employment conditions”, although it also allows for the possibility of derogation by collective agreements concluded by the social partners, while respecting the overall protection of temporary agency workers.<sup>47</sup> The Directives together with collective agreements thus form important means of regulating non-standard workers in many countries in the EU.

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<sup>45</sup> For example, *see* ILO, 2010a.

<sup>46</sup> Council Directive 1999/70/ EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP; Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC.

<sup>47</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

**Box 4.**  
**Successful examples of shifting non-standard work  
to direct and/or permanent employment**

In **Colombia**, an important agreement was signed between the cement factory Argos and the trade unions Sutimac, Sintrargos and Sintraceargos. Argos wanted to merge the management of all its cement factories based in Colombia in order to better face the increasing levels of international competition. However, the company had problems in pursuing this task, since every factory had its own collective agreements with the local trade union and its own obligations with its workers. On the other side, the trade unions feared that the process of merger would reduce their overall influence in the company. Negotiations among the trade unions and Argos's management proceeded for a long time and academic experts as well as members of the National School of Trade Unions (Escuela Nacional Sindical) were invited to participate. At the end, in exchange for their consensus on the merger process, the unions obtained the direct employment of a significant number of workers that were previously employed through temporary agencies. Both the management of the company and the signatory trade unions later presented the Argos example as a successful case of bipartite negotiations.<sup>48</sup>

In **Japan**, Aeon, one of the major Japanese merchandising companies, reached an agreement with its union to unify the qualification system for regular employees and part-timers in 2004. There were 79,000 part-timers at Aeon, accounting for 80 per cent of its entire workforce. The wage system was also changed to be linked to qualifications, with the pay of highly competent part-timers approaching that of their regular employees, in order to narrow the wage gap between them. Under the new system, part-timers wishing to advance their positions are evaluated using the same appointment tests and promotion screenings used for regular employees, and are entitled to the same training opportunities previously limited to standard workers. As a result, a large number of part-timers were appointed to managerial positions at their respective stores, and about 150 of these part-timers were regularized.<sup>49</sup>

In **India**, the principal interest of the trade unions is to demand "regularization" of the services of contract workers, either through abolition of the contract labour system or otherwise. But when regularization is not possible, the unions have been pragmatic enough to modify their position and demand "continuity of employment" of the contract workers even when the contractors change, by obtaining an assurance from the "principal employers" or sometimes from the contractors themselves. The demand for regularization and continuity of employment can be justified on four grounds: (a) the workers are doing the work of regular workers and hence the core activity of the enterprise concerned; (b) the contract workers are working under the supervision and direct control of the principal employer and doing work of a permanent nature; (c) the contract labour system is a sham and in fact the contract workers are employees of the "principal employer"; and (d) years of service in the same enterprise are long. India's public sector employs a large number of contract workers. The Tamil Nadu Electricity Board, for example, employs 21,600 contract workers. Negotiations started in May 2005 towards regularizing these workers as permanent employees. An agreement was reached in 2007 for the immediate regularization of 6,000 workers and the gradual regularization of the remaining contract workers during 2009.<sup>50</sup>

In **South Africa**, the South African Transport and Allied Workers Union (SATAWU) succeeded in negotiating with the parastatal enterprise Metrorail to have workers on fixed-term contracts employed on a permanent basis in 2006. After long negotiations, in 2009 1,063 fixed-term workers were employed with a permanent contract. Some of these workers had been employed on a fixed-term basis for as long as ten years.<sup>51</sup>

In **France**, the temporary agency work employers' confederation (PRISME) and the five main union organizations signed on 6 July 2007 a diversity and non-discriminatory agreement (Accord pour la non-discrimination, l'égalité et la diversité dans le cadre des activités de mise à l'emploi des entreprises de travail temporaire). The agreement set guidelines that aim to guarantee equal treatment against every type of discrimination and apply to both the agency and the user company. Among the most important provisions, the agreement establishes that the user company should set clear and non-discriminatory recruitment standards and favour the diversity of its staff; that the temporary work agency is responsible for the equal treatment of its employees in the user company, and that both the agency and the user companies should promote equal training as a means for equality

<sup>48</sup> DaCosta-Herrera, 2011.

<sup>49</sup> Hamaguchi; Ogino, 2011.

<sup>50</sup> Sundar, 2011.

<sup>51</sup> Theron, 2011.

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of opportunities.<sup>52</sup> In **Germany**, the IG Metall trade union reached a collective bargaining agreement for the entire steel industry, including the responsibility of the primary employer to ensure equal pay for agency workers.<sup>53</sup>

As happens in some European countries, when wage levels are objectively determined by classification of jobs/occupations, equal pay for work of equal value could be easier to achieve by comparing pay levels between comparable standard and non-standard workers. However, where wage disparity is attributed mainly to the clear distinction between human resources management practices applied to those with long-term regular employment and those without it, non-discrimination principles are not easily implemented.

In **Japan**, for example, wages for regular employees are determined in the internal labour market, while non-regular workers are outside its scope, and terms and conditions of work are determined on the basis of external labour market conditions. Since employment management practices and how terms and conditions are determined are so different between regular employees with long-term employment security in the internal labour market and non-regular employees in the external labour market, it has been unrealistic to articulate common indicators in determining what is equal treatment. In order to remove this barrier and tackle such persistent wage disparity associated with labour market dualism, the social partners at sectoral and national levels have been seeking ways to identify wage levels by jobs/occupations. The Japanese Electrical, Electronic and Information Union, an affiliate of the IMF-JC, introduced an occupation-based wage demand formula in the 2007 *shunto* bargaining round in order to achieve equal pay for work of equal value in each occupation, while in the 2010 *shunto* the Japanese Trade Union Federation (RENGO) for the first time released wage data concerning a list of major representative jobs/occupations that the sectoral unions had submitted. RENGO intends to enhance this data in order to equalize pay levels for equal jobs/occupations, utilize the data as indicators for equal and balanced treatment among regular and non-regular workers, and ultimately pave the way for achieving equal pay for work of equal value.<sup>54</sup>

In contrast, in **Australia**, where under the standard job classifications and wage levels set in the awards, a certain level of parity is maintained in enterprise agreements, Fair Work Australia (FWA) – the national workplace relations tribunal – has responsibility for making and varying awards in the national workplace relations system. An award is an enforceable document containing minimum terms and conditions of employment in addition to any legislated minimum terms. In general, an award applies to employees in a particular industry or occupation, and is used as the benchmark for assessing enterprise collective agreements before approval. Awards cover a whole industry or occupation, and provide a safety net of minimum pay rates and employment conditions. Although enterprise agreements can be tailored to meet the needs of particular enterprises, they are not allowed to derogate from the dispositions established by the relevant sectoral awards. Each sectoral award presents a wage scale developed according to 14 job classifications, exclusively determined by the employees' skills and training. Minimum wages and wage differentials among job levels differ across industries. Fair Work Australia annually updates wage levels according to productivity increases and inflation rates. The wage scale (i.e. the ratio between wages of different classes of workers) is, however, fixed and cannot be regularly negotiated.<sup>55</sup>

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<sup>52</sup> Accord du 6 Juillet 2007 pour la non-discrimination, l'égalité et la diversité dans le cadre des activités de mise à l'emploi des entreprises de travail temporaire.

<sup>53</sup> ILO, 2011b.

<sup>54</sup> JILPT, 2010.

<sup>55</sup> <http://www.fwa.gov.au/index.cfm>

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## Negotiating limits on the period during which a worker may be temporarily employed

The Termination of Employment Convention, 1982 (No. 158), calls for adequate safeguards against recourse to contracts of employment for a specified period of time (Article 2).<sup>56</sup> The accompanying Recommendation No. 166 provides that such recourse should be limited to cases in which, either due to the nature of the work to be performed, or to the interests of the worker, the employment relationship cannot be of an indeterminate duration (Article 3).<sup>57</sup> The ILO has also pointed out that where contracts are concluded for a fixed term or for a specific task and then repeatedly renewed, the worker may not acquire certain rights, and may therefore not obtain the benefits provided for employees by labour legislation, or by collective bargaining.<sup>58</sup>

In countries where there is no limit in the legislation on the period during which a worker may be employed under fixed-term or temporary agency arrangements, collective bargaining often regulates a maximum limit so as to prevent abuse of such arrangements (e.g. repetitive renewal of short-term contracts for the purpose of avoiding regularization of short-term workers or abrupt termination of short-term contracts). Even when legislation does set a limit on the use of fixed-term employment, collective agreements are often used to modify it.<sup>59</sup> Such a limit is often discussed with a view to facilitate shifting temporary employment to permanent status, but the measures aimed at controlling and limiting the use of non-standard work have not always benefited such workers, and require well-balanced design to avoid situations in which they end up taking more insecure work, or are pushed into unemployment or the informal economy.<sup>60</sup>

In **South Africa**, for instance, where no limit is set in the legislation on the period during which a worker may be temporarily employed, the Road Freight Bargaining Council's agreement, adopted in 2006 and extended to non-parties in 2007, provided that a worker who was supplied "to one or more clients on a continuous basis for a period in excess of two months shall be deemed to be an ordinary employee".<sup>61</sup>

In **Sweden**, regulations for fixed-term employment in the 1982 Employment Protection Act may be derogated from by collective agreements, which are common, thereby confirming the wide scope for regulation by the social partners. Some collective agreements shorten the maximum period allowed for fixed-term employment set forth in the Act, and other collective agreements specify more generously, and sometimes also more restrictively.<sup>62</sup>

In **Belgium**, in the collective agreements for the chemical industry (2007) and the hairdressing and beauty care sector (2007), the social partners have agreed that if, after successive fixed-term contracts, a worker is finally employed under an open-ended contract, in the same position and with an interruption of less than four weeks, there is no need for a new trial period and the seniority already acquired under the fixed-term contract is maintained.<sup>63</sup>

In **France**, unions started protesting in 2010 about the improper and persistent use of fixed-term workers in the Ecole normale supérieure (ENS), part of the French network of top leading universities known as the "Grandes Ecoles". In May 2011 an agreement was signed between the ENS director (Monique Canto-Sperbe), the ENS workers' assembly

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<sup>56</sup> <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C158>

<sup>57</sup> <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R166>

<sup>58</sup> ILO, 2006: para. 48

<sup>59</sup> Rönmar, 2010; Nyström, 2009: 395.

<sup>60</sup> Gumbrell-McCormick, 2011.

<sup>61</sup> Theron, 2011.

<sup>62</sup> Nyström, 2009; Rönmar, 2011.

<sup>63</sup> EIRO, 2009.

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and the main union organizations present in the university. The agreement included terms which limit the duration of fixed-term contracts. They agreed that all fixed-term contracts will be turned into permanent contracts three years after their beginning, even if the legislation requires a six-year deadline for the conversion.<sup>64</sup>

**Addressing specific interests and needs of non-standard workers: Tailored bargaining**

The social partners also attempt to represent the specific and differentiated needs of non-standard workers, requiring differentiated treatment and tailored agreements responding to the specific needs of specific categories of non-standard workers. Employers are sometimes reluctant to invest in human resources development and training or social welfare for non-standard workers, whose attachment to a single employer is weak. Yet such workers need skills upgrading to remain competitive in the external labour market, and need appropriate social protection and security provision which are not offered by their employer or workplace. A diversified workforce also means there are conflicting interests among workers, for example balancing work and family. Some country cases demonstrate how the social partners capture the different interests and needs of non-standard workers and initiate tailored social dialogue and negotiation with employers (**Box 5**).

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<sup>64</sup> CGT website

**Box 5.**  
**Examples of tailored collective agreements**

In **Italy**, an agreement was reached in 2007 between the main journalist employer confederations (FIEG) and the two main trade unions (FNSI and INPGI) under the supervision of the Italian Ministry of Labour in order to guarantee fair treatment to freelance journalists with the so-called co.co.co arrangement (*contratto di collaborazione coordinata e continuativa*).<sup>65</sup> The agreement contained provisions responding to external labour market needs, including: (a) those on employers' pension contributions, which should have gradually increased within four years to reduce the gap in social protection between co.co.co and standard workers; and (b) those for limiting the use of co.co.co contracts, by financial incentives committed by the Government for the transformation of co.co.co contracts into fixed-term dependent contracts with a minimum duration of 24 months.<sup>66</sup>

In **Indonesia**, KSPSI (Konfederasi Serikat Pekerja Seluruh Indonesia) formed the Building and Public Works Union (SPBPU) in the construction sector and the Indonesian Transport Workers Union (SPTI) in the transport sector, most of whose members are informal workers. The members of SPBPU automatically become members of SPBPU's cooperative and professional associations. As members of the cooperative, informal workers receive economic protection, and as members of the professional association they can receive occupational protection, such as training for professional certificates. Currently, KSPSI is cooperating with the Public Work Department of Indonesia in the certification programmes for one million construction workers. In order to grant economic protection, SPBPU's cooperative acts as a subcontractor to negotiate tariffs of work with the employers. By becoming a member of the cooperative, informal workers can get jobs directly from it and accordingly earn higher incomes than when they get jobs through foremen on construction sites. The common practice is that construction workers outside SPBPU get jobs through foremen who eventually cut their wages. KSPSI also organizes informal workers who work at the sea port. Because they become members, their trade union provides them with work security.<sup>67</sup>

In the **United Kingdom**, the bargaining policy of the media and entertainment unions on behalf of freelancers has been to secure relatively high rates of pay to compensate for periods without work. The Association of University Teachers (AUT) provides help for fixed-term contract workers to obtain discount mortgages. The Association of Teachers and Lecturers (ATL) provides its agency membership with public liability insurance (PLI) and the Broadcasting, Entertainment, Cinematograph and Theatre Union (BECTU) and other media unions provide a range of advisory and labour market services for freelancers. The Amalgamated Engineering and Electrical Union (AEEU) developed a special set of benefits for self-employed members.<sup>68</sup>

### **Regulating economically dependent self-employment**

As indicated in Chapter 2, non-standard work arrangements can expose ambiguity or uncertainty in the application of national laws and regulations that are intended to offer certain protections to those who are in a legally constituted employment relationship. In other cases, non-standard workers simply fall outside their scope of application. Without a defined and clear employment relationship being established, it becomes difficult for workers to engage in collective bargaining.

The Employment Relationship Recommendation, 2006 (No. 198) provides that national policy on the employment relationship should at least include measures to provide guidance to the parties on the establishment and identification of employment relationships, measures to combat disguised employment, and the general application of protective standards that make clear which party is responsible for labour protection obligations.<sup>69</sup> The Recommendation also provides that member States should apply a national policy to review, and where necessary to clarify and adapt the scope of, relevant laws and regulations, in order to guarantee effective protection for workers who perform

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<sup>65</sup> *Collaborazioni coordinate e continuative* (co.co.co) and *Contratti di collaborazione per programma* (co.co.pro) are work contracts covering so-called employer-coordinated freelance workers. They are legislatively considered autonomous employees but generally work within the production cycle of a firm and are subordinated to the needs of the employer.

<sup>66</sup> Italian Networks Website.

<sup>67</sup> Anwar; Supriyanto, 2011.

<sup>68</sup> Heery et al, 2004: 134.

<sup>69</sup> Recommendation No. 198, Art 4.

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work in the context of an employment relationship.<sup>70</sup> As part of the national policy, the Recommendation provides that member States should promote the role of collective bargaining and social dialogue as a means, among other things, of finding solutions to questions related to the scope of the employment relationship at the national level.<sup>71</sup> In order to promote its application, *the Annotated Guide to ILO Recommendation No. 198* was developed by DIALOGUE based on the results of the technical work carried out by a group of labour lawyers in various countries. The Guide provides useful and practical information about how countries are dealing with the issues surrounding the employment relationship.<sup>72</sup>

In some countries, special collective agreements have been concluded for economically dependent self-employed workers. **Box 6** provides examples of social partners conducting collective bargaining for workers associated with difficulty in establishing employment relationships, particularly economically dependent self-employed workers, reflecting legal developments in clarification of the scope of the employment relationship.

**Box 6.**  
**Examples of collective bargaining for economically dependent self-employed workers**

In **Germany**, self-employed freelance journalists, who are considered “employees” if at least 50 per cent of their salary comes from a single employer/client, are exempt from the antitrust regulation forbidding the conclusion of agreements on common fees and prices. This is based on a collective agreement signed in 2009 among the national Federation of German Newspaper Publishers (BDZV), a number of regional publisher associations and the two main trade unions of the sector (DJV and ver.di). The arrangement sets collectively agreed fees in detail for articles and pictures/images provided by self-employed freelance workers, in order to set common rules “towards legal certainty and transparency”. Self-employed freelance workers are required to demonstrate that their main occupation is journalism, so as to ensure that only economically dependent self-employed workers are covered by the agreements.<sup>73</sup>

In **Italy**, when the so-called Treu and Biagi reforms introduced forms of employment midway between dependent and autonomous, the legislative challenge was to ensure adequate union representation and social protection to autonomous, economically dependent workers. The Italian legislator decided to explicitly define the category of economically dependent workers (so-called *parasubordinati*) as those who perform a “continuous, coordinated and mainly personal” form of collaboration with the same employer (Art 409 N.3, *Codice di Procedura Civile*). For the *parasubordinati* the legislation provides levels of social protection similar to those guaranteed to dependent workers and they are also entitled to be represented by trade unions in collective bargaining. This last measure has favoured the successful development of trade union representation among economically dependent autonomous workers. In 1998, the main trade union organizations (CGIL, CISL and UIL) all created their own structures (respectively NIDIL CGIL, ALAI-CISL and CPO-UIL) for representing non-standard workers (including the *parasubordinati*) and a number of agreements have been signed since then.<sup>74</sup>

#### **4. Non-standard work and national social dialogue practices**

The role that national-level/inter-sectoral tripartite dialogue or inter-sectoral negotiation plays in influencing and crafting macro-socio-economic policy and labour market governance is equally significant in promoting more inclusive and democratic labour

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<sup>70</sup> Recommendation No. 198, Art 1.

<sup>71</sup> Recommendation N o. 198 Art. 18. For more details, see Casale, 2011: 1-33.

<sup>72</sup> For the full text, see: [http://www.ilo.org/ifpdial/areas-of-work/industrial-and-employment-relations/WCMS\\_172417/lang--en/index.htm](http://www.ilo.org/ifpdial/areas-of-work/industrial-and-employment-relations/WCMS_172417/lang--en/index.htm)

<sup>73</sup> <http://europe.ifj.org/assets/docs/065/140/8c5e541-197558c.pdf>

<sup>74</sup> Regalia, 2003.

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market governance, which can work in favour of non-standard workers. Given constrained collective bargaining coverage for non-standard workers, such top-down approaches for regulatory change are often required to fill the vacuum so that the voices and interests of non-standard workers are effectively reflected and secured. This Chapter demonstrates some examples of how tripartite social dialogue deals with issues concerning non-standard workers, as well as how national social dialogue is structured with a view to better reflecting the voices of these workers.

### **Various ways of addressing issues surrounding non-standard workers**

The ways in which social dialogue deals with issues regarding non-standard work are diverse. The outcomes can take different forms such as non-binding tripartite declarations, binding agreements, or guidelines. The content of the social dialogue outcomes also differs significantly.

In **Argentina**, the National Agreement for the Promotion of Social Dialogue in the Construction Industry was signed in December 2010 between the UOCRA (Construction Workers' Union of the Argentine Republic), the CAC (Argentine Construction Chamber) and the Ministry of Federal Planning, with participation by other employers' organizations in the value chain of the industry. The purpose of the Agreement is to mutually commit to social peace; to reach an outline of the consensus concerning prices and wages; to foster registered and decent employment; to set clear and predictable rules in regulations compliance and investment; and to promote the widespread construction of social housing for the low and middle income groups<sup>75</sup> In the agricultural sector, the National Agricultural Work Committee (CNTA) was created in 1980 as a tripartite social dialogue institution with participation of the Coninagro (Intercooperative Rural Confederation), FAA (Argentine Agrarian Federation), SRA (Argentine Rural Society), CRA (Argentine Rural Confederations) and UATRE (Argentine Association of Rural Workers and Dockers). In 2004 another tripartite institution (RENATRE) was created with the aim of promoting social dialogue in the Argentine agricultural sector. This forum deals with informal workers and employers, encouraging their legalization and incorporation into social security schemes. One core element is the granting of benefits through the Comprehensive Unemployment Benefits System. For that, a pocket job record book is issued to register every change of employer in the case of non-permanent workers so that the worker may be eligible for the unemployment system.<sup>76</sup>

In **Singapore**, tripartite cooperation and partnership based on social dialogue have been used as a way to address issues affecting the increasing number of contract and casual workers, largely related to the expansion in outsourcing services. The Tripartite Advisory on Responsible Outsourcing Practices<sup>77</sup> was issued in 2008 in order to encourage end-user companies awarding outsourcing contracts to demand that their service suppliers or contractors help raise employment terms and benefits as well as the CPF (Central Provident Fund) status of low-wage contract workers, as required by the law. More especially, companies are encouraged to consider the following: (a) making compliance with Singapore's employment laws a condition in service contracts with their suppliers; (b) encouraging written employment contracts between service suppliers and their contract workers; (c) conducting checks on the financial standing of service suppliers; (d) awarding performance-based contracts to service suppliers; (e) retaining experienced workers; and (f) helping workers qualify for employment benefits under the Employment Act. According to a survey in 2010, more than 50 per cent of companies that outsourced cleaning, security and landscaping services adopted three or more of the six responsible outsourcing practices listed in the 2008 Advisory. A few years of implementing the

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<sup>75</sup> Martínez-Chas, 2011.

<sup>76</sup> Ibid.

<sup>77</sup> For full text, see STF website: <http://www.tripartism.sg/page/Responsible-Outsourcing/>

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Advisory have fostered a better sense of which practices are the most effective. The tripartite partners are now gathering more feedback on the Advisory and intend to issue an updated version. They are also developing more resources for companies to tap into, such as handbooks to guide procurement managers.<sup>78</sup>

In **Japan**, owing to the increase in the number of non-regular workers, minimum wage levels fell below social assistance benefit levels in some prefectures. Tripartite agreements have been reached in terms of guideline increases to the regional minimum wages. In the Roundtable to Promote a Strategy to Enhance Growth Potential, comprising representatives of the Government and workers' and employers' organizations and set up during the LDP-Liberal-New Komeito Coalition Administration, agreement was reached in June 2008 to target a rise in the level of minimum wages over five years, taking into consideration consistency with public assistance standards and parity with the lowest starting pay of high-school graduates in small businesses. Thereafter, at a meeting in June 2010 of the Employment Strategy Dialogue newly established under the Democratic Party of Japan (DPJ) administration at the time, with participation by representatives of the Government and the social partners, consensus was reached that a guaranteed national average minimum wage floor of 800 yen should be implemented as soon as possible, with a subsequent target of 1,000 yen should the economic situation permit it.<sup>79</sup>

### **Social dialogue structures: Reflecting voices of non-standard workers**

In some countries, representative democracy through social dialogue has been challenged in a broader context of politics, involving a change of government or party leadership, which could change the context and environment for, or even lead to the collapse of, social dialogue. Such risks often coincide with reforms of macro-economic policy in terms of efforts at deregulation or privatization under the accelerating globalization process. Supporters often point out trade unions' declining relevance to and lack of representativeness for the growing non-standard workforce, as well as the accompanying ineffective functioning of tripartite social dialogue, as justifying grounds for such reforms.

However, social dialogue has a critical role to play in coordinating and facilitating the interests of all workers in a practical manner to design and implement policies agreed upon through mutual consensus. Public policy should therefore continue to support the sustainability, strength and quality of tripartite social dialogue, with the involvement of the social partners, so that the outcomes of tripartite dialogue bring about tangible results for the well-being of all workers. In pursuit of more inclusive social dialogue, public policy may provide an enabling environment for national tripartite dialogue to function so as to effectively reflect the interests of unorganized workers. In this regard, some countries have introduced tripartite-plus social dialogue to reflect the voices of non-standard workers in the overarching policy-making process for better labour market governance to the benefit of all workers.

In **South Africa**, for example, social dialogue regarding labour market policy, as well as social and economic policy in general, takes place at the National Economic Development and Labour Council (NEDLAC), which comprises the tripartite partners as well as a community constituency representing civil society.<sup>80</sup>

In **the Netherlands**, self-employed workers (nine per cent of the total workforce) gained representation in the Social and Economic Council, the governments' national permanent social dialogue advisory body, in March 2010. They are represented by the Chair of the Platform for Self-employed Workers, the largest Dutch organization of self-employed workers, with more than 20,000 affiliates. In September 2010 the Social and

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<sup>78</sup> Information obtained from the Ministry of Manpower (11 October, 2011).

<sup>79</sup> Hamaguchi; Ogino, 2011.

<sup>80</sup> Theron, 2011.

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Economic Council issued its first recommendations on self-employment. The main objective was to reduce the gap in labour market legislation between self-employed and dependent employees. The Social and Economic Council proposed that an agreement should be reached on minimum rates for self-employed workers. In principle, self-employed workers conduct their business at their own expense. The proposal aims at avoiding excessive risks for self-employed workers, given that their economic position is substantially different from that of employers. In particular, one of the provisions aims at relaxing the annual working hours regulation with which self-employed workers must comply for tax benefits. At present, self-employed workers must work at least 1,225 hours per year in order to be eligible for tax breaks. However, especially because of the economic downturn, many self-employed workers are unable to reach this benchmark. The recommendation of the Social and Economic Council is for the tax authorities to adopt a more lenient approach, for instance by counting also the number of hours spent on canvassing customers.<sup>81</sup>

## **5. Other trade union responses to strengthen social dialogue and collective bargaining for non-standard workers**

Trade unions in the past followed exclusive policies and are still doing so in some countries in which non-standard workers are excluded from unions' organizing and bargaining practices. Heery (2009) categorizes trade union responses to non-standard workers in four stages: (1) exclusion; (2) acceptance but in a subordinate position; (3) inclusion on the basis of equal treatment with permanent workers; and (4) engagement, characterized by union attempts to represent the specific and differentiated needs of non-standard workers.<sup>82</sup> Recently, movements in trade union policy from exclusion, through subordination to inclusion and engagement have been significant.<sup>83</sup>

Trade unions have gradually come to the view that the increase in non-standard forms of work will weaken their capacity unless they organize such workers. Many trade unions have already been quite active in addressing issues regarding non-standard forms of work, sometimes placing their central focus on these issues. The trade union movement has been revitalized, adopting a number of strategies other than social dialogue and collective bargaining, including holding campaigns at both international and national levels, building solidarity with non-standard workers among standard workers, establishing trade unions targeting particular categories of non-standard workers, and building international solidarity and alliances among trade unions as well as with other social movements.<sup>84</sup>

Among a number of initiatives that have been taken, this Chapter highlights some key initiatives that support and strengthen social dialogue and collective bargaining for non-standard workers:

- i. Organizing efforts
- ii. Political lobbying
- iii. Coalition and network building with other social movements

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<sup>81</sup> EIRO, 2010.

<sup>82</sup> Heery, 2009.

<sup>83</sup> Heery et al., 2004 : 129-135.

<sup>84</sup> ILO, 2011b.

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## Organizing efforts

Freedom of association is an essential precondition for the effective realization of the right to collective bargaining. The impact of collective bargaining is large where trade union coverage is high. Organizing non-standard workers therefore serves as a prerequisite for strengthening and promoting collective bargaining.

In some countries, organizing non-standard workers has become a top priority for trade unions and confederations. In **Japan**, for example, trade unions have been focusing intensively on organizing non-regular workers, since fewer and fewer enterprise unions are able to retain majority representation unless they organize such workers. Among non-regular workers, the proportion of part-time workers is the highest in the total workforce (this includes “part-timers” who work full-time under a fixed-term contract but are called “part-timers” – so-called full-time equivalent “quasi” part-time workers). The vast majority of part-time workers in Japan are women. Joint efforts at national, sectoral and enterprise levels toward organizing part-time workers have brought about a significant increase in their membership. The Japanese Trade Union Confederation (RENGO) in 2001 stated that organizing part-time workers and other employees would be targeted as a “top priority”. In 2006, RENGO inaugurated its Part-Timer United Front, placing a focus on industrial-based trade unions with large numbers of part-timers and other non-regular workers. At the time, 15 industrial unions joined forces and worked through *shunto* in a push to raise hourly wages. RENGO also opened the Non-regular-Worker Center at its headquarters in 2008, initiating a full-fledged programme aimed at improving the treatment of non-regular workers. Two sectoral unions, the Japanese Federation of Textile, Chemical, Food, Commercial, Service and General Workers’ Unions (UI Zensen), the nation’s largest private sector industrial union (membership of one million people), and the Japan Federation of Service and Distributive Workers Unions (JSD), a union federation made up of workers in supermarkets and other distribution businesses (200,000 members), played major roles in achieving this outcome. These two organizations account for more than 90 per cent of all part-timers unionized by RENGO. The share of part-time workers among all trade union members rose in Japan from 1.3 per cent (168,000 people) in 1994, to 3.2 per cent (331,000 people) in 2003, and to seven per cent (700,000) in 2009. As a result, in 2009 trade union density increased for the first time since 1975 (+0.4 per cent over 2008). The increase in the number of female union members has particularly contributed to the higher unionization rate.<sup>85</sup>

Separate trade unions have also been established to organize specific categories of non-standard workers, although such initiatives require careful consideration so that they do not lead to intensified inter-union rivalry which could hinder solidarity among workers. In **Argentina**, for example, different organizations have recently been created in almost every economic sector for the representation of semi-dependent or independent workers: the Construction Workers’ Union of the Argentine Republic (UOCRA); the Union of Support Staff at Private Homes (UPACP); the Trade Union of Newspapers and Magazines Sales Staff of the Federal District of Buenos Aires (SIVENDIA); the Argentine Single Trade Union of Freighters (SIUNFLETRA); the Federation of Taxi Drivers of the Argentine Republic; the Argentine Street Vendors Trade Union (SIVARA); the Trade Union of Home Garment Workers (STTAD); the Argentine Union of Rural Contract Workers of Vineyards and Fruits; the Trade Union of Garden and Park Workers, the Argentine Federation of Press Workers (FATPREN); the Trade Union of Workers for Hairdressing (SUTPEABA); the Association of Fashion and Image Workers in Advertising (AMA); the Single Trade Union of Public Entertainment Workers (SUTEP) and the Single Trade Union of Watchmakers, Jewellers and Related Workers (SURJA). Some of these organizations have succeeded in conducting collective bargaining and improved working

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<sup>85</sup> Hamaguchi; Ogino, 2011.

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conditions, both by incorporating workers into the social security schemes and securing respect for the basic regulations provided by the Argentine legislation.<sup>86</sup>

### **Political lobbying**

Trade unions also use lobbying to influence political parties toward labour law reforms favourable to non-standard workers. In **Argentina**, for example, SIVARA (Argentine Street Vendors Trade Union: 17,000 members) has been attempting to change the self-perception of direct sales workers, who have traditionally not been considered employees despite the fact that their work involves dependency. The union has repeatedly taken its case to the Labour Ministry, as well as meeting the relevant employer organization and trying to reach a collective agreement, and has proposed the creation of a National Committee of Direct Sales Workers. Since 2008 a legislative bill (still before the Senate) has been under consideration to provide such workers with a basic legal protection framework, enabling their representatives to negotiate agreements about their working conditions.<sup>87</sup> In **India**, the Self-Employed Women's Association (SEWA) has functioned as a trade union, cooperative and pressure group, although it was registered as a trade union. While organizing informal economy workers, it participated actively in the creation of international networks like Women in Informal Employment: Globalizing and Organizing (WIEGO), and also in developing networks such as StreetNet and the National Centre for Labour (NCL). SEWA initiated the National Alliance of Street Vendors of India (NASVI). Mainly as a result of the lobbying work of SEWA and NASVI aiming at influencing national social policy making, as well as pressure exerted by organizations of informal economy workers, the Government established the National Policy for Street Vendors.<sup>88</sup> In **Indonesia**, FSPMI and Lomenik actively engage in supporting parliamentary candidates that represent workers' interests. FSPMI is lobbying for a seat on the highly influential Export Processing Zone Council in Batam, which currently comprises only businesspeople and members of Parliament. FSPMI is pressing the EPZ Council for more regulation to ensure the observation of the ILO Convention within all industrial zones. Many such activities have been supported by the IMF (International Metalworkers' Federation) and Swedish affiliated unions IF Metall and SIF, through the EPZ Organizing Project that started in 2006.<sup>89</sup>

### **Coalition and network building with other social movements**

When workers only have contractual work relations or are excluded in practice from existing trade union organizations, other organizations sometimes represent their voices better. Trade unions have been establishing coalitions, new relationships and networks with a range of non-labour organizations, including community organizations and activist groups<sup>90</sup> and other social movements as a means of strengthening their organizing, negotiating power and political influence for better social dialogue outcomes. This approach has an impact in terms of gaining visibility by democratizing, popularizing and generalizing the issues. These attempts help not only re-craft trade unions as "social agents" to address broader social issues and labour market governance, but reach out to poorly organized workers. As Kalleberg (2009) points out, "models of fusion that tie labour movements and labour organizing to other social movements – such as immigrant groups and other community-based organizations – are likely to be more effective than those based solely on work".<sup>91</sup> For those whose attachment to particular workplaces is

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<sup>86</sup> Martínez-Chas, 2011.

<sup>87</sup> Ibid.

<sup>88</sup> Sundar, 2011.

<sup>89</sup> Anwar; Supriyanto, 2011.

<sup>90</sup> Wills, 2009: 445-449.

<sup>91</sup> Kalleberg, 2009.

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weak, community and local initiatives that are accessible for non-standard workers are critical in terms of strengthening the voices of the least represented, thereby avoiding social exclusion as well as providing an accessible safety net for such workers. In this regard, coalition building with other social movements contributes to not only better collective bargaining but also better functioning of social dialogue.

In **Japan**, the Anti-Poverty Network (APN), together with 20 concerned organizations, including mainstream labour organizations, citizen groups (NPOs) and individuals, as part of the Anti-Poverty Campaign, organized a Dispatch Workers' New Year tent village (*toshikoshi haken mura*) in 2009 in Tokyo for over 300 homeless workers, who had lost both their jobs and their homes as a result of the global financial crisis. While tents, subsistence goods, meals, and job and life counselling services were provided at the shelter, they also demanded revision of the Worker Dispatch Law. This collaborative movement between trade unions and citizen groups brought about success in shifting deregulation drives for temporary agency work toward tightening regulations. The amended Worker Dispatch Law which was submitted to the Diet in March 2011, but remains under deliberation. The amended Law aimed at strengthening protection of dispatched workers as well as banning in principle the use of: (a) worker dispatching in manufacturing industry; (b) worker dispatching for day labour; and (c) registration-type worker dispatching.<sup>92</sup> In **the United States**, the AFL-CIO established in 2006 a partnership with the National Day Laborer Organizing Network (NDLON), which works with day labour worker centres. Worker centres are community-based and community-led organizations that engage in a combination of service, advocacy and organizing to provide support to low-wage workers, who are predominantly immigrants.<sup>93</sup>

## Conclusion

Promoting more inclusive social dialogue and collective bargaining is a key means of ensuring an equal voice for all workers, regardless of their status, and advancing a fairer and more equitable society. The challenge ahead is how to bring together non-standard workers, whose union representation and collective bargaining coverage tend to be low, and move towards a more democratic and inclusive society in a collective and integrated manner. This requires raising the overall labour market status of non-standard workers, by enabling industrial relations institutions and practices to be more responsive to the need to bridge the existing gap between them and standard workers.

This paper has attempted to map a wide variety of social dialogue and collective bargaining practices for non-standard workers, together with other collective initiatives that can support their effective functioning, mainly based on the results of the national studies. Albeit limited in terms of numbers of workers covered and the impact achieved, it shows that multi-faceted strategies and approaches have been adopted to represent the interests of these workers. There is no single best approach to be suggested from the above. Some strategies are more relevant to some countries, while others opt for different approaches, depending on each country's industrial relations institutions and practices as well as its prevailing non-standard work arrangements. Nevertheless, some specific

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<sup>92</sup> Hamaguchi and Ogino, 2011; The amendment bill: [http://www.mhlw.go.jp/topics/bukyoku/soumu/houritu/dl/174\\_09d.pdf](http://www.mhlw.go.jp/topics/bukyoku/soumu/houritu/dl/174_09d.pdf) The present Law admits two types of workers dispatching: regular-employment-type worker dispatching in which a dispatched worker is hired on a permanent basis; and registration-type workers dispatching, which the agency has workers registered with it in advance and concludes an employment contract with the worker at the request of a user company. The amended bill, however, was significantly modified at the committee of the House of Representatives, which it cleared in March 2012. The bill was sent to the House of Councillors. The new, amended bill no longer included bans on the use of worker dispatching in manufacturing and registration-type worker dispatching, both of which were included in the original amendment.

<sup>93</sup> Fine, 2005.

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implications can also be drawn from a review of a variety of social dialogue and collective bargaining practices demonstrated in the paper.

- Some good practices appear to involve changes in prevailing collective bargaining settings and are approached in an attempt to address issues regarding those who are excluded from existing collective bargaining practices in each national context, as well as those who face difficulties in identifying effective negotiating parties. In countries where bargaining happens mainly at the enterprise level (with a tendency to exclude non-standard workers), collective bargaining outside workplaces seems to function as a complementary or alternative way of negotiating on their behalf. Bargaining beyond workplaces does not necessarily mean negotiation at higher levels (at the sectoral or national level), but includes regional-, local-, or community-level bargaining. The approach is also useful in negotiating on behalf of workers whose attachment to single workplaces/employers is limited, including those who tend to change jobs beyond sectors or move from one job to another. When workers are not in direct employment relationships but in indirect or triangular relationships, forming effective bargaining units is particularly difficult. Those who engage in work associated with supply chains and multi-tiered contracting also face difficulties in exercising meaningful bargaining, since their employers are often SMEs, whose decision-making power in negotiation can be weak. In these cases, multi-employer bargaining seems to serve as an effective tool for improving bargaining positions for these workers by involving in the negotiations the “principal employer” that has the real power.
- Extension of collective agreements can be used as an approach to reach out to unorganized non-standard workers, in countries where there is legal machinery for such arrangements. But how it can be effectively used to include non-standard workers requires further in-depth analysis from both legal and practical perspectives, as its effectiveness in terms of improving the situation of non-standard workers depends on who is covered by the extended agreements. Its effect in terms of extension to those who are outside the scope of application of labour law (e.g. commercial contract holders outside employment relationships) or those who work across different sectors is questionable. A collective agreement can also be *de facto* extended to non-bargaining parties as a result of mutual consensus between bipartite negotiating parties. The paper demonstrates how it can be voluntarily achieved.
- Issues that are the subject of bargaining to improve working conditions for, and the status of, non-standard workers vary significantly between countries, depending on the different interests and needs of non-standard workers, the legal settings dealing with different types of non-standard contracts, and collective bargaining developments. Regulatory strategies range from regularizing or shifting non-standard work to direct employment; promoting equal pay for work of equal value; limiting the period of temporary contracts; conducting tailored bargaining responding to specific interests and needs of non-standard workers; and regulating economically dependent self-employment. In some countries, collective bargaining good practices have primarily been demonstrated in relation to part-time and fixed-term workers, while in others – particularly in Europe – more and more collective agreements have begun to address issues regarding temporary agency workers (notably since Directive 2008/104/EC on temporary agency work)<sup>94</sup> or economically dependent self-employed workers. In developing economies, most good practices deal with issues concerning people engaged in contract labour or informal work, but their impact on actual terms or conditions of work do not appear to be as clear as those in developed economies. Generally, significant regulatory progress and tangible results seem to be achieved through collective bargaining and social dialogue for directly employed non-standard

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<sup>94</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

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workers (part-time workers and fixed-term workers). Regularization or progress towards equal pay for work of equal value seem to be common strategies for these categories for workers across different countries, although how and to what extent the social partners implement this principle depends again on the national, regional, socio-economic and political situations as well as legal settings. The definition and indicators that are used to meet this goal, as well as their impact, deserve further comparative analysis.

- Collective bargaining in some countries is also exploring innovative ways of responding to differentiated needs of different categories of non-standard workers, in terms of skills upgrading, social welfare, social protection and security, and work-family balance. While regularization and advancement of equal pay for equal value of work fill in the gap existing between standard and non-standard work, these tailored agreements can facilitate mutually agreed ways of working flexibly and enhance the labour market positions of non-standard workers.
- Although a number of countries introduce a limit in either legislation or collective agreements on the use of fixed-term employment with an aim to provide better protection, its impact requires further careful analysis, in terms of the extent to which such measures have benefited fixed-term workers through facilitating a shift to permanent status. Where chances of moving to permanent positions are scarce, such measures involve a risk of pushing them into more precarious and vulnerable situations.
- Generally, collective bargaining is still underdeveloped in dealing with economically dependent self-employment or work associated with commercial contracts, except in some European countries where unions have begun to organize and negotiate for them. In most countries, regulating such forms of work outside employment relationships seems to be left largely to national policy interventions based on tripartite social dialogue. As the paper shows, collective bargaining developments for these workers go hand in hand with legal developments clarifying the scope of the employment relationship. This suggests that deepened analysis is necessary in order to review how collective bargaining interacts with legal and judicial developments in respect of Employment Relationship Recommendation 2006 (No. 198).
- Tripartite social dialogue is equally important in promoting more inclusive labour market governance through policy measures providing adequate legal protection for non-standard workers, especially in countries where their collective bargaining coverage is low. In some countries, tripartite-plus social dialogue has been introduced to better reflect the voices of non-standard workers in the policy-making process. The paper underlines the importance of measures and actions targeting non-regular workers, which are supported by both policies and the social partners.
- Trade unions have been adopting a number of other strategies to strengthen social dialogue and collective bargaining for non-standard workers, including organizing efforts, which serve as a prerequisite for increasing collective bargaining coverage for such workers; political lobbying for policy changes in their favour; and building networks with other social movements which actively address issues regarding non-standard workers.
- In sum, promoting more inclusive social dialogue and collective bargaining for non-standard workers requires multi-faceted actions by a wide range of actors at all levels. The good practices demonstrated in this paper confirm the potential of social dialogue and collective bargaining as tools responsive to the needs and interests of non-standard workers. Whatever good approaches or strategies are taken, however, their effectiveness in improving situations surrounding these workers is also linked to external factors, such as relevant labour laws and other regulations, judicial developments, prevalent industrial institutions and practices, as well as economic and labour market conditions.



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