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319th Session, Geneva, 16–31 October 2013

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Institutional Section

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FOURTEENTH ITEM ON THE AGENDA

### Report of the Director-General

#### Sixth Supplementary Report: Report of the Tripartite Meeting of Experts on Facilitating Transitions from the Informal Economy to the Formal Economy

(Geneva, 16–20 September 2013)

##### Purpose of the document

This document contains the report of the Tripartite Meeting of Experts on Facilitating Transitions from the Informal Economy to the Formal Economy, which took place in Geneva from 16 to 20 September 2013.

The Governing Body is invited to request the Director-General to draw the attention of the ILO constituents to the report of the Tripartite Meeting of Experts, by transmitting it: (a) to the governments of all member States and, through them, to national employers' and workers' organizations; (b) to the international organizations concerned, including international non-governmental organizations with consultative status (see the draft decision in paragraph 7).

**Relevant strategic objective:** All.

**Policy implications:** Part of the preparatory work for the first discussion that will be held at the 103rd Session (2014) of the Conference on facilitating transitions from the informal to the formal economy (standard-setting double discussion).

**Legal implications:** None.

**Financial implications:** None.

**Follow-up action required:** See the draft decision in paragraph 7.

**Author unit:** Employment Policy Department (EMPLOYMENT) and International Labour Standards Department (NORMES).

**Related documents:** Conclusions concerning the recurrent discussion on fundamental principles and rights at work, *Provisional Record No. 15*, International Labour Conference, 101st Session, Geneva, 2012; GB.317/INS/2(Rev.); GB.317/PV; GB.317/INS/13/3; ILO: *Transitioning from the informal to the formal economy*, Report V(1), International Labour Conference, 103rd Session, Geneva, 2014.

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## Introduction

1. At its 317th Session in March 2013, the Governing Body decided to place a standard-setting item on the agenda of the 103rd Session (June 2014) of the International Labour Conference on facilitating transitions from the informal to the formal economy (standard-setting double discussion). In accordance with article 39(5) of the Standing Orders of the Conference, it approved a programme of reduced intervals for the preparatory stages of the discussion.<sup>1</sup>
2. The Governing Body also decided to convene a Tripartite Meeting of Experts on Facilitating Transitions from the Informal Economy to the Formal Economy from 16 to 20 September 2013 in Geneva, with the objective to provide guidance on the nature and content of the proposed instrument, in particular, concerning innovative solutions and up-to-date experience (legal, policy, institutional, governance and other interventions) which have proved successful in supporting the transition from informality to formality.<sup>2</sup>
3. The Tripartite Meeting of Experts was composed of 11 Government experts, 11 Employer experts and 11 Worker experts. The meeting elected Dr Mario Luis Fuentes Alcalá (Mexico) as the Chairperson. There were also Government observers from 18 member States, one Worker observer, and representatives from the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC). In addition, representatives of intergovernmental and international non-governmental organizations attended the meeting as observers.
4. In accordance with article 39(1) of the Standing Orders of the Conference, the Office had prepared “a preliminary report setting out the law and practice in the different countries ... together with a questionnaire”. The meeting considered the law and practice report<sup>3</sup> and in particular the questionnaire, which had been drawn up as part of the preparatory work for the discussion and consideration of a standard-setting text by the Conference concerning the facilitation of transitions from the informal to the formal economy.
5. The report of the meeting<sup>4</sup> will certainly be useful to the ILO tripartite constituents when responding to the questionnaire. Governments are requested to send their replies to the questionnaire so that they reach the Office no later than 31 December 2013. In this respect, the Office draws attention to article 39(1) of the Standing Orders of the Conference, under which governments are asked to consult the most representative organizations of employers and workers before finalizing their replies, which should reflect the results of that consultation, and to indicate which organizations have been consulted. In addition, in view of the broad scope of the subject, it would be advisable for ministries of labour to consult other relevant national ministries and institutions which deal with the informal economy when preparing their replies to the questionnaire. It might also be desirable to consult other relevant organizations, including organizations representing people in the informal economy.

<sup>1</sup> GB.317/INS/2(Rev.) and GB.317/PV, para. 25.

<sup>2</sup> GB.317/PV, paras 234, 283 and 284.

<sup>3</sup> ILO: *Transitioning from the informal to the formal economy*, Report V(1), International Labour Conference, 103rd Session, Geneva, 2014. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_218128.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_218128.pdf).

<sup>4</sup> TMEFE/2013/6.

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6. The report of the meeting will be attached to the final preparatory report for the first Conference discussion of the proposed text, which the Office will prepare on the basis of the replies to the questionnaire and communicate to governments no later than March 2014.

***Draft decision***

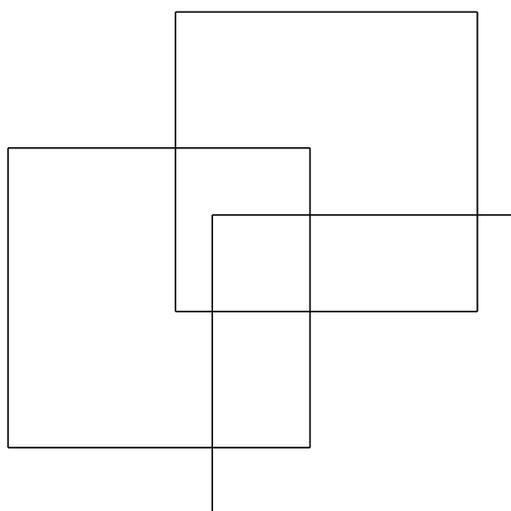
7. *The Governing Body may wish to request the Director-General to draw the attention of ILO constituents to the report of the Tripartite Meeting of Experts on Facilitating Transitions from the Informal Economy to the Formal Economy, by transmitting it:*

- (a) to the governments of all member States and, through them, to national employers' and workers' organizations; and*
- (b) to the international organizations concerned, including international non-governmental organizations with consultative status.*



## Final report

**Tripartite Meeting of Experts on Facilitating Transitions  
from the Informal Economy to the Formal Economy**  
(Geneva, 16–20 September 2013)



**TMEFE/2013/6**

INTERNATIONAL LABOUR ORGANIZATION

**Employment Policy Department  
International Labour Standards Department**

## **Final report**

**Tripartite Meeting of Experts on Facilitating Transitions  
from the Informal Economy to the Formal Economy**  
(Geneva, 16–20 September 2013)

Geneva, 2013

INTERNATIONAL LABOUR OFFICE, GENEVA

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## A. Introduction

1. Following the recurrent discussion on fundamental principles and rights at work, which took place in June 2012, the International Labour Conference called on the International Labour Office to “organize a meeting of experts, undertake research and support national studies on advancing fundamental principles and rights at work in the informal economy”.<sup>1</sup> At its 317th Session in March 2013, the ILO Governing Body decided to place a standard-setting item on the agenda of the 103rd Session (June 2014) of the International Labour Conference on facilitating transitions from the informal to the formal economy with a view to the elaboration of a Recommendation. It also decided to convene a Tripartite Meeting of Experts on Facilitating Transitions from the Informal Economy to the Formal Economy (Geneva, 16–20 September 2013), with the objective to provide guidance on the nature and content of the proposed instrument,<sup>2</sup> in particular, concerning innovative solutions and up-to-date experience (legal, policy, institutional, governance and other interventions) which have proved successful in supporting the transition from informality to formality.
2. In accordance with article 39(1) of the Standing Orders of the Conference, the Office had prepared “a preliminary report setting out the law and practice in the different countries ... together with a questionnaire”. The meeting of experts considered that law and practice report<sup>3</sup> (Report V(1)) and in particular the questionnaire contained in this report.

## B. Composition of the tripartite meeting of experts

3. The meeting was composed of 11 Government experts, 11 Employer experts and 11 Worker experts. The meeting elected Dr Mario Luis Fuentes Alcalá (Mexico) as the Chairperson. The Employer experts identified Dr Tow Hui Chiam (Employer expert from Malaysia) as their spokesperson during the meeting. The Worker experts identified Mr Plamen Dimitrov (Worker expert from Bulgaria) as their spokesperson during the meeting. The Government experts identified Dr Anoop Kumar Satpathy (Government expert from India) and Ms Soledad Villafañe (Government expert from Argentina) to speak on their behalf during the meeting. There were also Government observers from 18 member States (Algeria, Australia, Colombia, Costa Rica, Cuba, Germany, Greece, Iraq, Islamic Republic of Iran, Japan, Republic of Korea, Lithuania, Malaysia, Panama, Peru, Spain, United States and Bolivarian Republic of Venezuela), one Worker observer, and representatives from the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC). In addition, representatives of intergovernmental and international non-governmental organizations attended the meeting as observers. The list of participants is attached to the end of this report.

<sup>1</sup> ILO: “Conclusions concerning the recurrent discussion on fundamental principles and rights at work”, *Provisional Record* No. 15, International Labour Conference, 101st Session, Geneva, 2012, para. 13(c).

<sup>2</sup> GB.317/INS/2(Rev.) and Record of decisions, 25 Mar. 2013.

<sup>3</sup> ILO: *Transitioning from the informal to the formal economy*, Report V(1), International Labour Conference, 103rd Session, Geneva, 2014. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_218128.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_218128.pdf).

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## C. Opening statements

4. Ms Azita Berar Awad, Secretary-General of the meeting and Director of the Employment Policy Department, recalled the decision taken by the ILO Governing Body in March 2013 to place a standard-setting item on the agenda of the June 2014 session of the International Labour Conference on facilitating transitions from the informal economy to the formal economy, with a view to elaborating a Recommendation (double discussion). The Governing Body also agreed to hold a tripartite meeting of experts with the aim of generating input that could inform the standard-setting discussion. The last time the International Labour Conference had discussed the informal economy was in 2002 and the conclusions concerning decent work and the informal economy (the “2002 Conclusions”) adopted at that time constituted a benchmark in this area. These conclusions were followed by a tripartite symposium in 2007 that reviewed good practices and innovative approaches from different countries that had adopted policies and taken actions to formalize the informal economy. However, this standard-setting exercise marked the first time that the informal economy, as a whole, was the focus of a general standard-setting item.
5. She added that the informal economy has shown extreme resilience. The ILO coined the term “informal sector” in the 1970s and more than 40 years later the topic remained an issue of extreme importance for the world of work. The informal economy represented 50–70 per cent of the labour force in developing countries and could reach 10–15 per cent in developed economies. The relationship between growth, development and informality was multilayered and complex, and informality has persisted in countries that experienced steady growth. At the same time, the global economic crisis increased the informality. The informal economy attracted most vulnerable population groups including youth, older people, migrants, ethnic minorities and women, and was also characterized by important decent work deficits including low productivity, low income and lack of or limited social protection. A global consensus has been emerging at the international and national levels on high socio-economic costs associated with informality. Transition to formality was gaining ground as a central concern in policy agendas. Innovative practices and approaches promoting the transition to formality had emerged in recent years. Based on country analysis, the ILO had identified seven policy areas that mattered for transitioning from the informal to the formal economy. These policy areas included: growth strategies and quality employment generation; regulatory environment, including enforcement of international labour standards and core rights; organization, representation and social dialogue; promotion of equality; entrepreneurship, skills, finance, management and access to markets; extension of social protection; and local (urban and rural) development strategies. Finally, she noted that policy integration and coherence across these policy interventions were key in making the transition to formality.
6. Ms Cleopatra Doumbia-Henry, Secretary-General of the meeting and Director of the International Labour Standards Department, highlighted key procedural aspects of the meeting. This process was an innovative element in the ILO standard-setting process. Governments had to send their responses to the questionnaire contained in Report V(1) by the end of December 2013. This meeting was a unique opportunity for the tripartite experts to show that this process could effectively work by providing inputs prior to the forthcoming session of the International Labour Conference in June 2014 and contribute to the content of the possible new instrument. It also allowed ILO tripartite constituents to gain ownership of the standard-setting process. She recalled that no specific outcome was expected per se from this meeting and, therefore, the agenda only referred to a possible outcome. However, all inputs would be given due consideration and the discussion would greatly contribute to articulate elements for the next report that the Office has to prepare which would contain proposed conclusions on facilitating transitions from the informal to the formal economy.

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7. The spokesperson for the Employer experts described the various strategies to help transitioning from the informal to the formal economy. He pointed out that too many regulations and policies hindered transitioning from the informal to the formal economy and indicated that the barriers hindering such transitions had to be removed. Furthermore, the legal, economic and institutional reforms had to be structural and promote gender balance. Policies had to be business-friendly and focus on entrepreneurship and job creation as well as on education and skills development so as to match the industry needs. With regard to entrepreneurship, he stressed the need to promote an enabling environment for sustainable enterprises and the role of governments in promoting business development services such as marketing, access to loans and financing, insurance, technology, basic management skills, labour market policies as well as the need for adequate infrastructure. He underscored the need for a stable economy and the importance that regulations were not too imposing on small and medium-sized enterprises (SMEs). In Asian countries there existed a number of family businesses that were very important and entrepreneurial. In this context, the Employer spokesperson referred to a research paper by Hernando de Soto on property rights which he believed to be very encouraging and proposed solutions for informality. He expressed the view that there was nothing wrong with the informal economy competing with the formal economy. In many instances the informal economy even complemented the formal economy especially in the Asian region. He observed that political instability had also pushed people to informality and hence asserted the importance of good governance. Lastly, referring to Report V(1), the Employer spokesperson argued that informality could also be the result of people's choices and preferences for further flexibility and fewer regulations.
  8. The spokesperson for the Worker experts recalled the 2002 Conclusions and underscored that any new international labour standard on informality had to build on the recommendations already issued in this area. Informality was a governance issue and any standard-setting document had to be elaborated with a view to guiding governments in moving from informality to formality in full consultation with tripartite partners. A lack of consultation and poor institutional practices resulted in poorly implemented policies. According to the guidelines endorsed by the 17th International Conference of Labour Statisticians (ICLS) in 2003, informality is defined as "all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements". This definition included self-employed workers who also deserved full rights and social protection. The rights of workers were often denied in both formal and informal economies where the law did not cover all types of employment. Any new international labour standard should also look closely at women's rights who proportionally represented a large number of workers in the informal economy. He also recalled the importance of adequate wages and in particular of the minimum wage. He reminded the experts of the Promotion of Cooperatives Recommendation, 2002 (No. 193), that underscored the important role of cooperatives in transforming activities in the informal economy into legally protected work, fully integrated into mainstream economic life. Lastly, he referred to page 13 of Report V(1) which provided seven key avenues of action for facilitating transitions from the informal to the formal economy and called upon social partners to provide concrete actions to achieve these seven avenues.
  9. The Government expert from India reported that 92 per cent of India's workforce in the agricultural and non-agricultural sectors taken together operated in the informal economy and the informal economy contributed around 50 per cent to the GDP. In the last decade, his Government had dramatically improved the quality of data collected on informal economy workers which led to improvements in policy-making. The quality of employment had improved in recent years given the increase in non-agricultural workforce and regular jobs, especially among women working in the informal economy. He did not agree that informality was primarily a governance issue and also referred to other issues such as low level of education and skills among informal workers, huge dependence on family driven agricultural activities for livelihoods, preponderance of small enterprises,

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large number of own-account and unpaid family workers. He indicated that the seven components of the ILO's integrated approach towards formalization (as contained in Report V(1)) were being implemented in India for quite a long time. In this regard, he referred to the creation of decent and quality employment as part of the National Five-Year Plan, the main objective of which was to promote faster and inclusive growth, and to innovative programmes backed by legislation such as the Mahatma Gandhi Rural Employment Guarantee Scheme. He also indicated that coverage under social security schemes was on the rise and the Government was committed to skill 500 million people by 2022 as per the National Skill Development Policy of 2009. Lastly, he stressed that social dialogue and tripartism were the main pillars of labour and social policy-making in India and issues of informal workers and enterprises were continuously debated and discussed in the tripartite forums including in the 2013 Indian Labour Conference.

- 10.** The Government expert from Ghana indicated that the informal economy affected 80 per cent of the active population in her country. This had led to the adoption of a new National Employment Policy in September 2013 which promoted a transition from the informal to the formal economy and included indicators for decent work.
- 11.** The Government expert from Senegal indicated that the informal economy affected 80 per cent of the active population in his country. In 1997 his Government adopted a new law that included provisions related to the informal economy and social protection. Senegal was currently working with the ILO to reinforce social protection and labour inspection in the informal economy. The Government expert expressed support for a Recommendation dealing with transition from the informal to the formal economy, but highlighted that this transition had to be progressive and take into account the specificities of the informal economy.
- 12.** The Government expert from Argentina stated that formalization was a major policy objective of her Government. She underscored that all policies, including macroeconomic and social policies, had to promote employment of good quality as employment was the main source of income, social protection and citizenship. There was a need to recognize the heterogeneity of informality and the importance of implementing policies that would take into account these specificities. She stressed the importance of a tripartite approach given that formalization had implications for all workers, trade unions and employers. Finally, the Government expert stressed the necessity to elaborate formalization strategies in a way that would not imply any limitations of the labour standards applicable in the formal economy or create a situation of double standards with differentiated rights.
- 13.** The Government expert from Thailand stated that his Government wanted to extend universal social protection coverage to the informal economy in order to reduce poverty, including health coverage of the poor population and people living with HIV/AIDS. The Thailand Village Fund provided social protection for 1 million people living in villages in remote areas and a business fund provided loans and grants for the population living in these areas. Thailand introduced a minimum wage in 2012 which was extended to informal economy workers and issued governmental loans for informal economy workers and micro-entrepreneurs with low interest rates of 0.3 per cent.
- 14.** The Government expert from China indicated that his country had adopted a national employment policy and that all workers were protected by the labour legislation. In China, however, some small and micro-sized enterprises sometimes were beyond the reach of labour inspection, which was a real problem. The Government expert emphasized that a large informal economy was not only a problem of governance but also a problem of development and poverty.
- 15.** The Government expert from Morocco indicated that the formal economy had first to be properly defined in order to see how the transition could be facilitated. In Morocco,

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according to a 2007 study by the High Commissioner for Planning, 40,000 informal entities were being created every year, 72 per cent of which in urban areas. The informal economy contributed to 37 per cent of non-agricultural employment and to 14.3 per cent of gross domestic product which showed that the informal economy also had a very important social and economic role to play. He believed that the objective of the discussion was to share good practices and innovative approaches to improve working conditions of informal economy workers. Innovative approaches had been adopted in Morocco, such as the National Human Development Initiative Project, the microcredit policy and the 2004 Labour Code that aimed to facilitate the transition to the formal economy in particular for small enterprises, domestic workers and traditional sectors in relation to which the Labour Code contained specific provisions.

- 16.** The Employer expert from the United States noted that many countries had succeeded in implementing policies to minimize informality. This was true not just for the United States and other developed countries but for many countries around the world. Minimizing informality had to be done by making the transition to formality easier and more attractive. In his view, the term “informal economy” was much larger than informal employment, as it included entrepreneurs, for example. In Report V(1), entrepreneurs were referred to as self-employed or own-account workers. This group made up the largest share of the informal economy. The primary driver for formalization had to be economic and not regulations, labour relations or international labour standards. Moreover, he suggested that not everyone in the informal economy was poor as there was also substantive wealth. There was a need to find a way to unleash that capital. The scope of the discussion had to go beyond informal employment and capture the needs of entrepreneurs and enterprises.
- 17.** The Worker expert from India provided some clarity regarding workers in the informal economy. The 2002 Conclusions distinguished three types. The first type was the “wage worker” and she disagreed with the Employer expert from the United States as she believed wage workers were dominating the informal economy, and not entrepreneurs. The second type was the “own-account or self-employed worker”, namely the worker that only employed members of his or her family. The third type was the “economic unit” which employed people. It was important to distinguish between those different types as they needed different sorts of protection and laws. Many wage workers were working in exploitive conditions, which was unacceptable. The discussion should not focus on the informal and formal economy as two separate economies but on all workers.
- 18.** A Government observer from the Bolivarian Republic of Venezuela highlighted that his intervention as observer did not replace the answers his Government would provide to the questionnaire. The Organic Labour Law of 2012 recognized the labour rights and guarantees of domestic workers and workers in the informal economy. The Government observer indicated that footnote 88 of Report V(1) did not take into consideration the coverage of the Organic Law and requested a correction to be made to Report V(1).
- 19.** A Government observer from Colombia stated that formalization was a priority and a challenge that had to be tackled in a sequential manner. Formalization was a means and not an end in itself. The aim was to increase productivity and the overall welfare of the population. Informality was a multifaceted issue and Colombia made substantive efforts to characterize informality in different sectors and in rural and urban areas. Regarding transition to formality, the Ministry of Labour promoted formal employment around five priorities: decent work; extension of social protection; building bridges between companies and workers; the quality of work to improve the quality of the enterprise in a virtuous cycle; and regulation and ability to adapt to new forms of work. The Government observer indicated that her expectation for the meeting included a specific approach towards the agricultural sector, discussing indicators of formalization comparable for all countries and developing a compendium of good practices related to formalization.

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20. The discussion was then structured around the questionnaire and the theme included in each question.

## D. Discussion

### I. Preliminary questions

*Question 1: Please indicate any legislation, measures or practice, including case law, of your country that are relevant to facilitate transitions from the informal to the formal economy.*

*Question 2: Please indicate programmes and policies of your country that are relevant to the subject of facilitating transitions from the informal to the formal economy.*

21. The Employer and Worker spokespersons highlighted that as the questions were relevant to the national level and in the realm of the government's responsibility they should be addressed by governments.
22. The Government expert from India, on behalf of the Government experts, stated that all governments had relevant legislation, policies and programmes to facilitate transitions from the informal to the formal economy. In India, legislation was adopted either at the level of the central Government or at a state level. Concerning the legislation enacted by the central Government, while some laws were applicable to all workers, others were only applicable to determined groups of workers, for example if enterprises had more than ten or 20 workers. He indicated that discussions were currently ongoing within tripartite forums regarding the extension of specific legislation to all informal economy workers by reducing threshold employment size and other criteria. Policy measures had also been adopted to target workers in the informal economy such as the National Skills Development Policy and the National Policy on Safety, Health and Environment at Work Place. Recalling that most of the workers in the informal economy were illiterate or had low education skills and worked in poor working conditions, it was thus crucial to provide them training and better work environment to ensure their transition to the formal economy. Finally, larger policy programmes were adopted in favour of micro-, small and medium-sized enterprises, mainly to facilitate their access to finance and new technologies, as well as in favour of workers' rights at work, particularly concerning child labour, forced labour and social protection. The Government expert indicated that all relevant information would be submitted to the Office.
23. In this regard, the Director of the International Labour Standards Department encouraged all governments to include all the extremely important and useful information on national regulatory frameworks, legislation and policies in their responses to the questionnaire.
24. The Employer expert from the United States stressed that governments may not only have policies designed to facilitate transition from the informal to the formal economy but also policies that minimize informality. He indicated that it might be relevant to also ask governments if there were policies which helped to maintain enterprises in the formal economy.
25. The Worker spokesperson disagreed with the proposal of the previous speaker and added that the Worker experts preferred to remain with the original formulation for the preliminary questions.

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## II. Preamble

*Question 3: Should the Preamble of the proposed instrument recall international labour standards and the United Nations instruments that are pertinent to the informal economy?*

26. The Director of the Employment Policy Department indicated that suggested pertinent instruments were listed in Chapter 2 of Report V(1).
27. The Worker spokesperson agreed with the fact that reference should be made in the Preamble of the proposed instrument to pertinent international labour standards and United Nations instruments. To this end, he expressly referred to: the 2002 Conclusions concerning decent work and the informal economy; the eight core ILO Conventions; the Social Protection Floors Recommendation, 2012 (No. 202); the Social Security (Minimum Standards) Convention, 1952 (No. 102); the Employment Policy Convention, 1964 (No. 122); the Employment Relationship Recommendation, 2006 (No. 198); the Home Work Convention, 1996 (No. 177); the Domestic Workers Convention, 2011 (No. 189); the Minimum Wage Fixing Convention, 1970 (No. 131), and its accompanying Minimum Wage Fixing Recommendation, 1970 (No. 135); Recommendation No. 193; the Labour Inspection Convention, 1947 (No. 81); and the Labour Inspection (Agriculture) Convention, 1969 (No. 129).
28. The Employer spokesperson asked for a clear reference to sustainable enterprises in the Preamble.
29. The Employer expert from the United States added that the Preamble should also mention the Universal Declaration on Human Rights particularly as it referred to property rights. The Worker spokesperson agreed with the suggestion.
30. The Government expert from India, on behalf of the Government experts, stated that the most pertinent international labour standards must be recalled along with UN instruments such as the UN Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
31. The Director of the International Labour Standards Department made a general comment regarding the drafting of the Preamble highlighting that while many other instruments may be relevant it was important not to have a long list in the Preamble. She took note of the consensus among the experts to keep the preambular paragraphs short with references only to the most relevant standards. Concerning the reference to sustainable enterprises, she suggested that it could be referred to as a principle in an additional paragraph within the Preamble.
32. The Chairperson took note of the consensus expressed on question 3 by the tripartite experts.

*Question 4: Should the Preamble of the proposed instrument recall that:*

(a) *most people enter the informal economy not by choice but as a consequence of a lack of opportunities in the formal economy and have no other means of livelihood?*

33. The Employer spokesperson indicated that sometimes people chose to remain in informality only because of a lack of opportunities in the formal economy due to the lack of flexibility of national laws and regulations. National legislative frameworks had to be more flexible.

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- 34.** The Worker spokesperson agreed with the proposal which reflected paragraph 6 of the 2002 Conclusions already agreed by the tripartite constituents. However, a distinction should be made between wage earners and own-account workers. He concluded by saying that a lack of opportunities in the formal economy was not the only reason why workers might enter into the informal economy. Sometimes workers were forced into informality because they were not declared or not registered.
- 35.** The Government expert from Argentina agreed with this proposal and indicated that a survey on the informal economy in Argentina had found that most of the workers who were in an informal situation indicated that they did not have a choice and that they were not voluntarily in this situation.
- 36.** The Government expert from India stated that most people entered the informal economy not by choice but due to economic compulsion to earn a livelihood. Due to a low level of education and skills and poverty, a vast majority of workers were not in a position to take advantage of employment opportunities which existed in the formal economy.
- 37.** The Employer expert from the United States added that the current formulation of question 4(a) did not capture the fact that there were, actually, structural barriers to entering into the formal economy such as legal barriers which prevented them from registering, or the length and difficulty of the process. In this regard, the Employer expert from India also referred to barriers related to skills, education and access to information.
- 38.** The Worker spokesperson noted that the next question dealt with the issue of obstacles. He did not consider that workers entered the informal economy by choice as evidence showed that for a vast majority of workers it was due to the need to survive.
- 39.** The Director of the International Labour Standards Department suggested that it may be possible to link questions 4(a) and (b) together and proposed to discuss question 4(b) and then to look again at them together.
- (b) workers and economic units in the informal economy can have a large entrepreneurial potential and their creativity, dynamism, skills and innovation could flourish if obstacles to transition to the formal economy could be removed?*
- 40.** The Worker spokesperson noted that the formulation was complicated and suggested modifying the question by using positive language. This paragraph should use the notion of an “enabling environment” rather than referring to “obstacles”. He referred to an integrated strategy which would take into account incentive and protection perspectives as well as education. While the question referred to “entrepreneurial potential”, he pointed out that not all workers could be entrepreneurs and hence it would not be advisable to stress too much this point.
- 41.** The Employer spokesperson suggested that question 4(b) should be maintained and that changes should be made to question 4(a) as it did not give the correct picture regarding the skills of workers who were in the informal economy.
- 42.** The Government expert from Argentina agreed with the Worker spokesperson’s suggestion to use positive language.
- 43.** The Worker expert from India agreed with the suggestions on the use of positive language. She considered that the Employer spokesperson’s proposal to drop question 4(a) was not acceptable.

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44. The Government expert from Morocco suggested that question 4(b) should refer to “opportunities”, as was the case in question 4(a), and thus the word “obstacle” should be replaced by positive wording.
  45. The Government expert from India also agreed that the word “obstacle” could be replaced by a positive formulation. He pointed out that most own-account workers were working independently doing various types of jobs and should be treated as workers in their own right. They usually did not employ other workers.
  46. The Employer expert from the United States highlighted that there were barriers to be removed and incentives to be created. Both were relevant issues. He also stressed that the questionnaire and the discussions needed to be clear concerning the actors they referred to. While the question referred to workers and economic units, the term “economic units” was not clear and there was a need to refer to entrepreneurs and enterprises rather than to “economic units”.
  47. The Chairperson referred to the description of “worker” contained in paragraph 4 of the 2002 Conclusions which stated that workers in the informal economy included both wage workers and own-account workers.
  48. The Director of the Employment Policy Department recalled paragraph 7 of the 2002 Conclusions which referred to “workers and economic units” in the informal economy.
  49. Recalling that paragraph 3 of the 2002 Conclusions referred to workers, enterprises and entrepreneurs, the Employer expert from the United States argued that if the language used failed to reflect the reality of the world then it would be confusing.
  50. The Worker expert from India requested not to reopen the issues that had been discussed and on which there had been agreement in the 2002 Conclusions. Those conclusions referred to the terms “workers”, which included not only wage workers but also own-account workers, and “economic units”. She also pointed out that in the informal economy there were very few actual entrepreneurs.
  51. The Employer spokesperson disagreed with the statement made by the Worker expert from India and stressed that entrepreneurs were the backbone of many of the economies in the Asian countries where those entrepreneurs employed their own family members.
  52. The Employer expert from Nigeria also stressed that in the same way that workers were clearly identified, it was also important to identify “entrepreneurs and enterprises” as actors rather than “economic units”. He pleaded for more inclusiveness and noted that those terms did not contradict the 2002 Conclusions.
  53. The Government expert from Argentina and the Worker spokesperson considered that the term “economic units” covered entrepreneurs.
  54. The Employer expert from Argentina stressed that question 4(b) should refer to entrepreneurs, as most governments had adopted policy specifically addressing their needs. Entrepreneurs were not covered by the term “economic units”. She also encouraged the experts to try to look at the statement in the question in positive terms.
  55. The Employer spokesperson pointed out that a self-employed person could be a worker and an entrepreneur. Noting that there were terms which were not agreed upon, he considered that there was a need to provide some definitions, for example, for: the self-employed; the informal and formal economy; economic units; and entrepreneurs.

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- 56.** The Employer expert from the United States referred to footnote 13 on page 7 of Report V(1), where own-account workers were defined as self-employed and were therefore entrepreneurs. To redefine an entrepreneur as a worker was thus not correct.
- 57.** The Worker spokesperson indicated that this was not the right place to discuss the issue and that it should be dealt with when question 7 was addressed. He referred to the Annex on Guidelines concerning a statistical definition of informal employment endorsed by the 17th ICLS in 2003. Paragraph 3, point 2, provided a precise definition of types of jobs included in informal employment which included own-account workers.
- 58.** The Chairperson suggested returning to question 4(b) when question 7 was addressed.
- 59.** The Employer spokesperson agreed to return, at a later stage, to question 4(b) but recalled that he had a problem with question 4(a) and not 4(b).
- (c) *decent work deficits are most pronounced in the informal economy?*
- 60.** The Worker spokesperson noted that this was agreed text from the 2002 Conclusions and that decent work should apply to all workers. He also made reference to paragraph 9 of those conclusions which states that: “The decent work deficits are most pronounced in the informal economy.”
- 61.** The Employer spokesperson asked for clarifications on the definition of “decent work deficits” and asked if it was an assumption or a fact that most deficits were in the informal economy.
- 62.** The Director of the Employment Policy Department indicated that decent work deficits in the informal economy were factually established. Data and information showed that all areas of decent work deficits were most pronounced in the informal economy.
- 63.** The Director of the International Labour Standards Department further clarified that the term “decent work deficits” was established ILO terminology and referred to deficits with respect to the four pillars (employment, social protection, fundamental principles and rights at work, and social dialogue).
- 64.** The Worker expert from Ghana indicated that all four pillars of decent work were not respected in the informal economy. Labour law implementation and enforcement was limited to the formal economy. He reaffirmed that decent work deficits were more pronounced in the informal economy.
- 65.** The Worker expert from Argentina suggested that using the term “pronounced” was overstating the issue.
- 66.** The Government expert from India pointed out that various statistical indicators showed that decent working conditions were lacking in the informal economy. Once this had been acknowledged then policies could be put in place to address the issue. Acceptance of this fact was the first step to moving forward towards an instrument.
- 67.** The Government expert from Morocco noted that, as a labour inspector he had often noticed that fundamental rights were infringed more in the informal economy than in the formal economy. Therefore, more work needed to be done to improve the unacceptable working conditions in the informal economy.
- 68.** The Employer spokesperson noted that it seemed an issue of terminology and suggested that it could be rephrased.

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69. The Worker spokesperson indicated that his understanding was that the issue regarding possible rephrasing of the questionnaire was a closed issue. He reminded the experts that question 4(c) had been taken word for word from the agreed 2002 Conclusions.

70. The Director of the International Labour Standards Department suggested that if there was no consensus then the issue could be taken up later.

(d) *informality is principally a governance issue?*

71. The Worker spokesperson replied positively to the question and referred to paragraph 14 of the 2002 Conclusions which states that “informality is principally a governance issue”. There was thus already agreement on this point. The issue of governance was not about placing the blame on governments, but the key problem was rather that the law was not being applied or not enforced. Moreover, reducing informality and the transition to the formal economy would depend on issues related to macroeconomic policies in general and should be discussed in consultation with social partners. The lack of high and sustainable growth made it difficult for governments to facilitate the transition from the informal to the formal economy through the creation of more jobs in the mainstream economy.

72. The Employer spokesperson concurred with the Worker spokesperson.

73. The Government expert from Argentina, on behalf of the Government experts, emphasized that she agreed with the question, if the term “governance” was related to more general macroeconomic policy. However, the Office had referred to governance as more related to regulatory, legislative and fiscal issues. She would thus propose to mention “governance and macroeconomic policy” in the Preamble. In addition, integrated development policies should be mentioned.

74. The Government expert from Brazil observed that while the fallout of a global financial crisis, for example, would not be a governance issue, it would increase informality. As such, he expressed his doubts about the use of the word “principally”.

75. The Government expert from China asked whether the question was referring to a cause or whether it was providing a description of informal economy. If the question was referring to a cause, he would agree with the previous speaker and suggest adding a reference to development issues.

76. The Government expert from Morocco commented that informality was indeed “principally” a question of governance. The use of the word “principally” was relevant. Good governance, characterized by the fundamental principles of responsibility, transparency and participation, was the main leverage to facilitate the transition from the informal economy to the formal economy, as long as these principles are respected at the international, national, regional and local levels. Furthermore, the wording used did not imply that there were no other relevant issues.

77. The Director of the International Labour Standards Department stated that the question was not referring to a “cause and effect” situation or to an exclusive issue. She referred to paragraph 14 of the 2002 Conclusions and reminded the experts that the Preamble permitted contextualization and that the instrument in question was a proposed Recommendation.

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**Question 5:** *Should the Preamble of the proposed instrument recognize the high incidence of informality and the urgency of measures to enable gradual transitions of workers and economic units from the informal economy to the formal economy?*

- 78.** The Worker spokesperson endorsed the urgency issue raised in the question. Informality was on the rise in all countries and in all sectors, but not just because of the crisis. This rise of informality was contributing to increased insecurity in terms of contract relations but also income insecurity.
- 79.** The Employer spokesperson agreed with the Worker spokesperson.
- 80.** The Government expert from India suggested linking question 5 with question 4(c) concerning decent work deficits in the informal economy. As such, there was urgency for measures to address these issues across all countries. In India, both the number of workers in the informal economy and the incidence of informality were high and therefore both should be taken into account. India had an array of legislation, policies and programmes and was currently in the process of strengthening and proposing new measures to address the issue.
- 81.** The Employer expert from Argentina stressed the importance of tripartite consultations with regard to situations requiring urgent measures.
- 82.** The Employer expert from Nigeria claimed that it was imperative to state what those urgent measures would be and wondered whether that should be done in the Preamble.
- 83.** The Chairperson recalled that the Preamble was providing the context and the background.
- 84.** The Director of the International Labour Standards Department clarified that the proposals made during the meeting would be included in the report of the meeting as an input in the preparatory process, but that the questionnaire was set and could not be modified.
- 85.** The Worker expert from Ghana noted that the question should be limited as it was part of the Preamble and that the measures should be elaborated on in other sections.
- 86.** The Chairperson noted the agreement of the experts on question 5.

**Question 6:** *Should the Preamble of the proposed instrument recognize the incidence of informal employment in formal establishments and the need to address it?*

- 87.** The Worker spokesperson underlined the importance of the issue raised under this question. In numerous countries, informal employment in formal establishments was growing. Report V(1) clearly described that there were needs in this regard that should be addressed. Those situations of informal employment were often precarious situations.
- 88.** The Worker expert from Australia emphasized that the answer to this question should be in the affirmative, and noted that it is entirely consistent with the 2002 Conclusions and the 2003 ICLS guidelines. She emphasized that informality in formal establishments can arise in two main ways. First, when enterprises engage workers through arrangements that are not formally covered by labour laws: as was often the case for “out-workers” and workers engaged in triangular types of relationships. Second, when formal establishments failed to comply in practice with labour laws that applied to them or failed to pay mandatory social insurance contributions. These are issues faced in both developing and developed countries. In many developed countries, including Australia, informal employment in formal enterprises was a significant issue, including through the use of arrangements such

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as atypical employment, sham contracting, outsourcing and subcontracting. These types of arrangements often had the effect of compelling vulnerable workers to work outside the protections afforded through regulatory frameworks, and imposed significant costs on workers, as well as undermining the competitiveness of formal enterprises who operated fully in the formal economy. Any instrument should recognize the existence of informal employment in formal establishments. Failure to do so would significantly limit the universal relevance and potential impact of the instrument.

89. The Employer spokesperson indicated that the answer from the Employer experts to the question was negative.
90. The Employer expert from Argentina argued that given the importance of analysing the different forms of informal employment, there was a risk that the discussion would not be able to focus on how to facilitate the transition to the formal economy. The current section should thus not analyse the types of employment.
91. The Employer expert from Nigeria noted that the focus should be on the informal economy rather than the issue raised in question 6.
92. The Government expert from Argentina recognized the need to design specific measures to address the situation of informal workers in the formal economy who represented an important proportion of the overall number of informal workers.

### III. Scope

*Question 7: Should the proposed instrument describe the informal economy according to the resolution concerning decent work and the informal economy adopted by the International Labour Conference at its 90th Session in 2002 which states that:*

*The term “informal economy” refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that – although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs? <sup>4</sup>*

93. Following a request for clarifications on the expected outcomes of this meeting from the Worker spokesperson, the Director of the International Labour Standards Department recalled that the tripartite meeting had been convened with a view to collect inputs from tripartite partners for the standard-setting item on the agendas of the International Labour Conference for 2014 and 2015. The meeting was part of the preparatory process towards the 2014 International Labour Conference. The Committee set up by the International Labour Conference to discuss the standard-setting item would have the real mandate to negotiate a text for the instrument. The Office would prepare for the 2014 International Labour Conference discussion a report containing the responses to the questionnaire and a text of proposed conclusions. The report of the tripartite meeting would be appended to this submission. She pointed out that while the tripartite meeting was not expected to produce a negotiated text as an outcome, the contributions of the experts would be taken

<sup>4</sup> ILO: *Resolution concerning decent work and the informal economy*, International Labour Conference, 90th Session, Geneva, 2002, para. 3.

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into account by the Office in drafting the report and in the formulation of the proposed conclusions.

- 94.** The Worker spokesperson highlighted the importance of defining the scope. While the 2002 Conclusions should be the basis for the proposed instrument, it was crucial to also take into account developments on the topic since 2002, such as the definition of “informal economy” contained in the guidelines concerning a statistical definition of informal employment adopted by the ICLS in 2003. The latter had provided a clear definition on informal employment which could be used as a basis for the proposed instrument. The description of the informal economy contained in paragraph 3 of the 2002 Conclusions concerning decent work and the informal economy was good, but insufficient. The Worker spokesperson proposed to delete the second sentence of the proposed description and to replace it by the following (from paragraph 12 of Report V(1)):

Paragraph 3 of the ICLS Guidelines defines “informal employment” as the total number of informal jobs, whether carried out in formal sector enterprises, informal sector enterprises or households, during a given reference period. These comprise: own-account workers and employers employed in their own informal sector enterprises; ... employees holding informal jobs, whether employed by formal sector enterprises, informal sector enterprises or as domestic workers employed by households; members of informal producers’ cooperatives; and own-account workers engaged in the production of goods exclusively for own final use by their household.

- 95.** The Employer spokesperson disagreed with this proposal, as the informal economy was broader than simply informal employment. The Employer experts were of the view that the scope of the proposed definition was inadequate and should be broader, to address the sustainability of enterprises transitioning from the informal to the formal economy. There should be incentives for transitioning and that transitions should be done in a gradual manner. The Employer spokesperson observed that the reference to statistical concepts could be used to inform the standard-setting exercise, while adding that statistical concepts may not be made or prepared for the specific purpose of standard setting.
- 96.** The Employer expert from Nigeria considered that it was appropriate within the scope to enumerate the different main actors in the informal economy. While noting that the Decent Work Agenda was a central issue, he felt that it applied to the formal sector. There was a need for building and ensuring sustainable enterprises and encouraging the transition from the informal to the formal economy.
- 97.** The Employer expert from India noted that the concept of informal economy was still evolving and that conditions had changed since the 2002 Conclusions. There was a need for considering the various actors and not categorizing enterprises.
- 98.** The Employer expert from the United States noted that the scope of the standard-setting exercise was on transitioning from the informal to the formal economy and went beyond the issue of informal employment. A key issue was the transition of entrepreneurs from the informal to the formal economy, as entrepreneurs made up the largest share of the informal economy. Therefore, the scope had to relate to the actors that made up the informal economy and not to informal employment.
- 99.** The Government expert from India considered that while the description adopted in the 2002 Conclusions was sound, the proposal made by the Worker experts included employers in informal employment and included the issue of how to ensure the sustainability of enterprise during the transition to the formal economy. He agreed with the proposed definition, noting that the discussion had broadened the scope of coverage to include all types of workers in the informal economy, sustainable enterprises and all forms of informality. India had developed a definition in line with the ICLS guidelines and had

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been collecting data on the informal economy since 1999. This had helped the country to develop various policies and programmes to promote decent work and sustainability of enterprises thereby facilitating transition from the informal to the formal economy.

- 100.** The Government expert from Argentina supported the broad definition proposed by the Worker experts which covered the various actors.
- 101.** The Employer spokesperson considered that the proposed definition was not sufficiently broad. He requested clarification on the reasons underlying the Worker experts' reticence to include entrepreneurs in the scope of the definition of the informal economy.
- 102.** The Worker spokesperson disagreed with the statement that entrepreneurs made up the largest share of the informal economy as there was no evidence to prove that. He was of the view that the opposite was true. He also disagreed with the suggestion that the Decent Work Agenda was aimed only at the formal economy or formal enterprises, noting that the objective of the discussion was to extend and secure decent jobs for those in the informal economy.
- 103.** The Employer expert from the United States reaffirmed the view that entrepreneurs made up the largest share of the informal economy and referred to paragraph 18 of Report V(1) which stated that: "In all developing regions, self-employment constitutes a greater share of informal employment (non-agriculture) than wage employment." This finding was supported by numerous studies, including World Bank and Organisation for Economic Co-operation and Development studies. The largest share of those working in the informal economy worked for themselves. Workers who were self-employed were entrepreneurs, although they were also referred to as "own-account" workers. However, this usage could lead to confusion and for this reason the Employer experts opposed the reference to "own-account" workers in the proposed definition. With regard to decent work, he considered that it was by definition "formal work". He noted that the purpose of the discussion was not to formalize informality but to ensure transition from the informal to the formal economy.
- 104.** The Employer expert from Nigeria indicated that defining the scope of the proposed instrument was a core issue. There were not many differences between the experts' views as it seemed that they had reached an agreement on the principle of identifying the actors. However, further discussion would be needed on the definition depending on how far they wanted to go in the identification of the different economic actors. It was a myth that the majority of persons in the informal economy were workers as, in fact, they were business owners, as was the case in his country where informality was a major phenomenon.
- 105.** The Government expert from Morocco agreed with the original definition suggested in question 7 as it was based on very general and open wording which could cover very diverse realities. It also covered informal employment in the formal economy. He disagreed with the new definition based on the 2003 ICLS guidelines proposed by the Worker experts because it responded to particular statistical concerns.
- 106.** The Government expert from India considered that while informal activities were not illegal, regulations needed to be extended to cover them. The objective was therefore to bring informal activities under the sphere of regulations. Concerning the definition of the informal economy and the differing viewpoints of Worker and Employer experts, he conceded that it was sometimes difficult to identify to which category a worker belonged. Indeed, a significant proportion of the self-employed were also contributing family workers, most of them women working in the informal economy. Furthermore, sometimes own-account workers also worked as wage earners having multiple occupations and therefore all own-account workers could not be considered as entrepreneurs per se. He therefore did not agree to a defined identification or classification, except perhaps for

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countries which already had adopted clear definitions and were collecting data on those issues. He also called upon the ILO to conduct research to find out to what extent self-employed in the informal economy were own-account workers and contributing family workers, on the one hand, and entrepreneurs and employers, on the other hand. He indicated that various kinds of work and workers existed in the informal economy and, as a result, various policies were being implemented by governments to address these, such as, for example, street vendors or construction workers in his country.

- 107.** The Worker expert from India stated that the suggested description adopted by the 2002 International Labour Conference could not be considered as a definition as it was only a description. Moving to a standard-setting discussion required a clear definition of the actors. In disagreement with the Employer experts' view, she stated that a large number of own-account workers or the self-employed were not entrepreneurs. A large number of workers in the agricultural sector, such as small farmers who sold the food they produced, were in the informal economy and were own-account workers and could not be considered as entrepreneurs. Given that entrepreneurs only represented a small part of the informal economy, the definition should maintain the categories of own-account workers and self-employed. Finally, she indicated that her country had already accepted the definition adopted by the 2003 ICLS not only as a statistical definition but also as a policy definition, used by the National Commission for Enterprises in the Unorganized Sector.
- 108.** The Worker spokesperson recalled point 4 of the agreed 2002 Conclusions according to which workers in the informal economy included both wage workers and own-account workers and concluded that debate on this point should not be reopened.
- 109.** The Employer expert from Montenegro indicated that in order to define the informal economy it was necessary to define its main actors. She highlighted the importance of agreeing on a definition of "economic unit", as a worker could also be considered as an "economic unit". In this regard, she drew the attention to footnote 13 of paragraph 18 of Report V(1) stating that: "Employers are those workers who, working on their own account or with one or a few partners, hold the type of job defined as a 'self-employment job'."
- 110.** The Employer spokesperson, referring to the fact that the "Asian Tiger" economies were in the majority composed of self-employed, requested the inclusion of a reference to entrepreneurs in the definition and scope of the proposed instrument.
- 111.** The Government expert from Argentina indicated that it was necessary to think about specific legal frameworks needed for the informal economy. Focus should be on identifying the most vulnerable categories of workers for policies to target. She thus argued in favour of a very broad definition that would encompass as many categories of workers as possible and take into account the diversity of situations in various countries.

#### **IV. Objectives and principles**

*Question 8: Should the proposed instrument provide that Members should promote the creation of decent jobs in the formal economy and strengthen coherence of macroeconomic, employment, social protection and other social policies?*

- 112.** The Employer spokesperson considered that the answer was neither positive nor negative. The question seemed to imply that it should be made conditional for enterprises to create jobs. Sustainable enterprises and a conducive formal business environment could also create jobs. Creating the right infrastructure, improved communication and transportation,

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skills and training were also necessary. The role of governments and other parties in creating a conducive environment was also important.

- 113.** The Employer expert from Nigeria added that the question raised two important issues. The first issue was whether the proposed instrument should promote the creation of decent jobs in the formal economy. That was indeed an important issue by itself. However, the issue did not have its place in the discussion on the transition from the informal economy to the formal economy. The second issue was on how to create an enabling environment. That aspect was very important and an appropriate subject to discuss.
- 114.** The Employer expert from the United States concurred that it was important to consider the creation of a conducive business environment which made it easy to become formal and to remain formal. The Office could identify the elements to create such an environment as had been done in the 2007 resolution and Conclusions concerning the promotion of sustainable enterprises. This topic touched on issues beyond macroeconomic policies and social protection and went beyond the mandate of the ILO.
- 115.** The Worker spokesperson indicated that the questions examined in this section raised the issue of determining the appropriate policy mix to ensure smooth transition from the informal to the formal economy. Governance was a key issue and macroeconomic policies should favour the creation of formal employment and decent jobs. Paragraph 26 of the 2002 Conclusions stated that: “Governments must provide the conducive macroeconomic, social, legal and political frameworks for the large-scale creation of sustainable, decent jobs and business opportunities.” There had been a change in thinking, not only in the ILO, concerning macroeconomic policies as a precondition for decent work and decent jobs. These policies, which should be formulated and agreed with the social partners, permitted countries to create the necessary fiscal space to be able to develop good social protection and other policies. Providing the example of Bulgaria, he highlighted the crucial role of coherent macroeconomic policies in the development and creation of decent jobs.
- 116.** The Worker expert from Australia considered that a discussion of the transition of workers from the informal to the formal economy must also recognize the importance of maintaining and creating decent jobs in the formal economy. In many cases, workers were obliged to take up jobs in the informal economy due to an insufficient number of jobs in the formal economy or where they had lost their jobs in the formal economy. There was thus a need for governments to take action to prioritize the creation of decent jobs in the formal economy, including through the adoption of sectoral policies and strategies that support areas of the economy that are productive and have the potential to impact significantly on employment and decent work. While creating a conducive business environment was important, it was not sufficient on its own to create decent employment and ensure sustainable equitable growth.
- 117.** The Government expert from India recalled that there had been prior agreement on the fact that decent working conditions were lacking in the informal economy. The question focused on promoting decent work. Sustainable enterprises were needed to ensure decent work for workers and therefore both aspects should be promoted. In addition, employment was a cross-cutting issue which required synergies with macroeconomic, social protection and other policies. Such synergies were needed at the national, provincial and local levels, as well as across sectors.
- 118.** The Government expert from Morocco argued that formalization should be defined, as the transition from informality to formality was not easily identifiable. It was important to create decent jobs and that the transition to the formal economy be done within the context of a coherent and global vision.

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- 119.** The Government expert from Argentina agreed that without creating decent jobs in the formal economy it would be difficult to facilitate transition from the informal to the formal economy. Moreover, for an enabling environment, coherent macroeconomic policies were needed as mass deregulation and globalization could have very negative effects. Describing the Argentinean experience, she noted that coherence of macroeconomic, employment and social protection policies was essential as they were central pillars to ensure a conducive environment for enterprises to generate employment, both in terms of quantity and quality.
- 120.** The Employer expert from Argentina pointed out that with respect to an “enabling environment” the Employer experts were referring to a vast range of aspects and not solely to the option of reducing taxes.
- 121.** The Employer expert from Madagascar reiterated the need to create enterprises, through an enabling and conducive environment, in order to create decent jobs. It was necessary to focus on more than just macroeconomic policies. In Madagascar, there were many legal and fiscal constraints which were making it difficult to create businesses. In this context a conducive environment to ensure the survival of enterprises was necessary for the creation of decent jobs.
- 122.** The Employer expert from Mexico emphasized that all policies had to be coherent, feasible, applicable and implemented in order to create an enabling business environment.
- 123.** The Employer expert from Nigeria, while recognizing the importance of providing decent working conditions in both formal and informal economies, noted that it was easier to achieve for enterprises in the formal economy. Therefore, priority should be on ensuring transition from the informal to the formal economy and creating an enabling environment for business. For informal workers to have the same benefits and social protection as formal workers, employment policies needed to have a focus on poverty reduction.
- 124.** The Employer expert from Argentina suggested rephrasing question 8 as follows: “Should the proposed instrument provide that Members should promote an enabling environment for the creation of sustainable enterprises and decent jobs in the formal economy and strengthen coherence of macroeconomic, employment, social protection and other social policies?”
- 125.** The Director of the Employment Policy Department reminded the experts of the tripartite agreement reflected in the 2007 Conclusions concerning the promotion of sustainable enterprises, where the terms “enabling environment” was described and defined.
- 126.** The Worker expert from Argentina recalled that the Worker experts were against removing references to informality in formal establishments in the questions. He mentioned the need to improve and strengthen enterprises so that they could create decent jobs, but stressed that it was not sufficient and there was a need to also ensure protection of workers in the informal economy. The informal economy had a different set of characteristics which needed different solutions as it was not feasible to create enough jobs in the existing enterprises. While a first important step had been achieved by the 2002 Conclusions, the proposed instrument should provide solutions to put it into action.
- 127.** In concluding the discussion on question 8, the Chairperson stated that there had been consensus to broaden the question to include other policies. He also noted that the concept of decent jobs included the promotion of sustainable enterprises.

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*Question 9: Should the proposed instrument provide that it is necessary to promote transitions of workers and economic units from the informal economy to the formal economy while ensuring that opportunities for livelihood and entrepreneurship are not destroyed?*

- 128.** The Worker spokesperson stressed that the livelihood especially of workers in the informal economy who were the most vulnerable should not be destroyed. In this context, ILO standards and national legislation had a crucial role to play. He referred to the first two sentences of paragraph 26 of Report V(1) to make the point that any transition to the formal economy needed to be accompanied by appropriate protection measures to ensure that the fundamental rights of informal economy workers were not undermined or violated. No policies harming workers' rights or decent work should be implemented. He recalled unsuccessful examples to regulate informal economy workers and referred to a case of regulating domestic workers in Hungary. The legislation required domestic workers to be formally registered but did not provide them with social security rights.
- 129.** The Employer spokesperson stressed that it was one of the most significant questions for the Employer experts and that they supported it. He applauded the reference to entrepreneurship and hoped that the constructive spirit would be repeated in other parts of the questionnaire.
- 130.** The Government expert from India, on behalf of the Government experts, noted that the Government experts had indicated their agreement on this point. Livelihoods and entrepreneurship opportunities had to be protected while ensuring the transition from the informal economy to the formal economy. India had developed policies and programmes to promote livelihoods and entrepreneurship development in rural and urban settings and success stories from India could help other countries to formulate their policies and programmes.
- 131.** A Government observer from Peru recalled earlier discussions concerning whether multinationals could pose an obstacle, or whether they could play a role in transitioning from the informal to the formal economy.

*Question 10: Should the proposed instrument provide that interventions to facilitate transitions from the informal to the formal economy should recognize the diversity of circumstances of workers and economic units in the informal economy and the need to address such diversity by tailored approaches?*

- 132.** The Employer spokesperson agreed that given the diversity of circumstances in the informal economy, tailored approaches were needed to facilitate transition to formality. There was a need to clarify if the term "economic units" also covered enterprises.
- 133.** The Worker spokesperson also underscored the diversity in the informal economy. The instrument had to be relevant to all workers but not at the expense of their rights. Minimum standards of ILO Conventions and Recommendations had to be applied to all workers. While diversity had to be respected, tailored approaches nevertheless had to take account of, and not impair, rights under international labour standards.
- 134.** The Government expert from India, on behalf of the Government experts, noted that there was agreement among the Government experts about the heterogeneity and diversity of the informal economy. He appreciated the positions taken by both Employer and Worker experts, noting that the diversity of workers in the informal economy called for a tailored approach. Policies and programmes had to be country-specific and tailor-made while respecting fundamental principles and rights at work for all workers.

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135. The Government expert from Ghana also noted that diversity should be respected but that universal rights should be recognized.

*Question 11: Should the proposed instrument provide that there are multiple paths to transition from the informal to the formal economy according to specific country context and preference?*

136. The Worker spokesperson agreed that there were multiple paths to transition as part of an integrated approach. He underscored the importance of a common understanding and a common approach, and proposed developing national action plans based on an integrated approach while adopting specific actions for specific groups.
137. The Employer spokesperson underscored that the proposed instrument had to provide for multiple paths to transition in order to take into account cultural and economic differences between countries.
138. The Employer expert from the United States observed that the examples of what countries had done showed that legal frameworks and structures could be used to facilitate transition from the informal to the formal economy, such as regulations pertaining to property or licensing of enterprises.
139. The Government expert from India also noted that approaches should be adapted to diverse circumstances and should be sector-, country-, and worker-specific.

## **V. Legal and policy framework**

### ***Legislative framework***

*Question 12: Should the proposed instrument provide that national laws and regulations or other measures ensure appropriate coverage of all categories of workers and economic units?*

140. The Employer spokesperson agreed with this question, noting that national laws had to include employment and business laws and that these had to be flexible. He emphasized that enforcement of these laws should be fair and transparent and not drive people back into informality.
141. The Worker spokesperson noted the importance of legal and policy frameworks. National laws had to comply with ILO standards. The issue of implementation of laws was crucial, and labour and fiscal inspection had to be an integral element of the legal framework. Rights were applicable to all workers regardless of their employment relationship. Raising workers' awareness of their rights was key. The proposed instrument had to invite governments and the social partners to regularly review their legislation to clarify the existence of employment relationships and ensure social protection coverage. Governments should seek to extend protection to additional groups of workers so that all workers could enjoy their fundamental rights.
142. The Worker expert from India stressed that, when reference was made to legal frameworks in the informal economy it was necessary to review the national legal framework more broadly to take all the circumstances into account. Labour laws and social protection legislation could safeguard workers, but other legislation could harm their interests. In India, for example, street vendors were covered under municipal laws, but these laws did not give space to street vendors making it difficult for them to obtain licenses. As a result, they ended up prosecuted rather than protected. Therefore, the Government of India had

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adopted a Street Vendors' Protection Act which required urban areas to provide a minimum space for vendors and provided for their participation in municipal committees. In the same way, livelihoods of waste pickers were not protected under municipal laws.

- 143.** The Worker expert from Australia indicated that the definition and scope of the employment relationship was a key issue as it was through this concept that labour laws in many countries conferred rights and protections on workers. She referred to Recommendation No. 198, which provided valuable guidance for countries in determining the existence and scope of the employment relationship. National laws and regulations should be clarified and expanded where necessary in order to ensure that workers did not fall outside of these laws and regulations. There were examples from Australia and other countries of ways in which laws can be effectively clarified or extended to provide protection to vulnerable workers. Furthermore, national laws and regulations should be reviewed to ensure that specific groups of workers or economic units are not inappropriately excluded from protections. This includes categories of workers, such as workers employed in enterprises of a particular size or operating in a specific sector, and groups of workers such as home workers, domestic workers, or workers in the agricultural sector.
- 144.** The Government expert from Argentina, on behalf of the Government experts, replied positively to this question and underscored several issues. There was a need to ensure not only appropriate coverage but also appropriate access by ensuring that such protection could be effectively provided to all categories of workers and economic units. Furthermore, the financial capacity to bear the costs implied by any extension of the coverage had to be assessed. She highlighted that such a strategy had to be implemented gradually depending on national situations. While perhaps some countries had adopted legal frameworks for large categories of workers and economic units, others had not. Political circumstances had to be taken into account and some countries may need more time to have such legislation in place, particularly if they were facing budgetary restrictions. Access to basic rights had to be ensured for all categories of workers, with particular attention to migrant workers. Legislation had to provide incentives for registration of businesses as well as for different levels of taxation, with specific measures for micro-, small and medium-sized enterprises. Extension of national laws and regulations to all categories of workers and economic units had to be progressive, gradual and sustainable.
- 145.** The Government expert from Morocco referred to the labour legislation in his country which provided that the conditions of work and employment of certain categories of workers, including home workers and workers in sectors of traditional activities, were dealt with in a special law. Among recent measures adopted to facilitate transition to formality, he underscored the reduction of the capital required to start an enterprise and the facilitation of the recourse to fixed-term contracts for newly created enterprises and for companies implementing a new activity.
- 146.** The Employer spokesperson drew the attention of the experts to the fact that question 12 referred to all kind of laws, such as business and employment laws, not only to labour law. No discussion on social protection floors had to take place at that moment as this issue would be discussed under question 19.
- 147.** The Employer expert from Madagascar highlighted that the question not only referred to laws and regulations but also to measures. In many cases legislation existed but was not implemented. Therefore, the question had also to refer to “promoting” appropriate coverage as appropriate coverage depended on the circumstances that prevailed in different countries.

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- 148.** The Employer expert from Nigeria indicated that the responsibility of governments to balance the interests of the different economic actors was paramount and public interest had to be taken into account.
- 149.** The Employer expert from the United States noted that this question referred to all national laws, and not only to labour law or to whether international standards had been ratified or not.
- 150.** The Worker spokesperson pointed out the responsibility of governments to provide enabling frameworks that ensured representational rights.
- 151.** The Government expert from Brazil emphasized the case of migrant workers already mentioned by the Government expert from Argentina, as it was very important that countries ensure the same rights for migrant workers.
- 152.** The Government expert from India mentioned various initiatives taken by his Government towards the gradual extension of existing labour legislation to the maximum number of workers and economic units. The country had also enacted rights-based statutory social protection programmes (including the right to education and the right to food). Efforts were also being made to simplify and rationalize compliance mechanisms to make them less burdensome for enterprises.
- 153.** The Government expert from China agreed with the observations made by the Employer spokesperson concerning the fact that all kinds of laws should be taken into account and that social protection floors had to be discussed under question 19. He indicated that, in his country, the labour legislation had ensured universal coverage of workers. However, it was crucial to seek ways to ensure that existing laws and new legislation cover workers who are in the informal economy. As an example, he referred to article 93 of the Chinese Labour Contract Law, under which workers in unregistered employing units were covered and thus enjoyed the protection offered by the Law and labour inspection.

### ***Policy framework***

*Question 13: Should the proposed instrument provide that national development strategies include, where applicable, an integrated policy framework for the formalization of the informal economy?*

- 154.** The Worker spokesperson underscored the importance of an integrated policy framework and referred to the seven policy areas mentioned at the end of Chapter 1 of Report V(1). First of all, there was a need for a regulatory environment that enforced core rights, such as, for example, social protection. An integrated policy framework had to include tripartite representation and social dialogue. Economic growth was not enough to reduce informality as mentioned in paragraph 30 of Report V(1) which stated that: “A new consensus has emerged around the belief that if economic growth is not associated with formal job creation, a shift towards better employment opportunities in the formal economy and an improvement in the conditions of employment in informal activities, it will continue to generate inequality, poverty and vulnerability.” There was a need for an integrated approach that considered not only economic growth, but also economic development, job creation and an adequate level of wages and that focused on decent work, and governments had to consult social partners on this question.
- 155.** The Employer spokesperson agreed with the Worker spokesperson concerning the need for an approach that aimed at job creation and sustainable enterprises in order to eradicate poverty.

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- 156.** The Employer expert from the United States stressed that development was a broader issue than labour law. He referred to the Millennium Development Goals and Sustainable Development Goals and indicated that prioritization was needed. There was first a need for peace and security building and then a need for good governance. Development included a host of issues and could not be narrowed to labour issues.
- 157.** The Employer expert from Argentina supported the statement made by the Employer expert from the United States and indicated that integrated policy frameworks had to include broader policies and support creation of sustainable enterprises.
- 158.** The Government expert from Argentina, on behalf of the Government experts, underscored the importance of complementing legislation with an integrated policy framework that included economic and development policies, as well as with interventions to support the creation of sustainable enterprises. Economic incentives for the self-employed were different from those for informal economy workers and therefore it was necessary to develop distinct interventions for SMEs. Some countries have already implemented integrated policies such as, for example, in Brazil where incentives for formalization are provided to small enterprises which may lose fiscal advantages if they are repeatedly found by labour inspection to employ workers informally, or in Thailand where an initiative to promote registration of street vendors was taking place. In Argentina, a recent tripartite plan to promote transition to formality had been elaborated, taking into account these considerations, and an innovative experience, through various fiscal mechanisms, had been implemented with tripartite agreements (*Convenios de Corresponsabilidad Gremial*) aiming at the formalization of workers of the agricultural sector, which had a high rate of informal employment.

*Question 14: Should the proposed instrument provide guidance to formulate and implement integrated policy frameworks through national tripartite action to:*

- (a) *reduce the cost of transition to formality, including those relating to registration, taxation, compliance with laws and regulations?*

- 159.** As a general comment, the Government, Employer, and Worker experts noted that question 14 was dealing with various issues, and agreed that any national action on creating integrated policy frameworks had to be tripartite.
- 160.** The Employer spokesperson agreed with this question but indicated that the list made under this question should not be considered as exhaustive and that specific reference could be made to safety and data protection laws.
- 161.** The Employer expert from Argentina suggested that such laws and regulations could also relate to registration, power supply, border crossing and access to credit.
- 162.** The Worker spokesperson indicated that the Worker experts were in favour of reducing the costs of registration but could not agree if the discussion was about reducing the costs of compliance with laws and regulations. The Worker spokesperson did not understand why the issue of taxation was raised as the Bulgarian experience was a clear demonstration that reducing taxes would not lead to formalization of the informal economy. The level of taxation needed political and societal consensus. Reducing the costs of taxation was not the proper way of formalizing. Taxation was a key source of national revenue, and the issue at stake was complex.
- 163.** The Government expert from Argentina agreed with reducing the cost of transition to the formal economy including the costs of registration and taxation. Similar strategies had been tried, but in the framework of policies that did not foster economic growth or

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generate employment and therefore with no effect, for example in Argentina. Regarding taxes, issues related to budgetary sustainability had to be taken into account as future access to social security was a crucial issue. The case of micro-enterprises, where taxes could be quite costly, had to be considered.

- 164.** The Government expert from Brazil supported the inclusion of reducing the costs of transition to formality. He gave an example of how, in some cases, his Government has reduced the cost of employing a worker formally by using the enterprise's gross income as a basis to determine social contributions instead of using the workers payroll.
- 165.** The Employer expert from Montenegro expressed her disappointment about the reluctance of the Worker experts on the issue of reducing the cost of transition to formality, including those relating to registration, taxation, and compliance with laws and regulations. Enterprises sometimes faced enormous difficulties to comply with the law.
- 166.** The Worker expert from Italy underscored the importance of fair taxation and noted that the same tax policy had to apply for both informal and formal enterprises. He asked for caution when discussing policies to lower taxation to facilitate transition to formality. Taxation had to be relevant to all enterprises and all employers.
- (b) *increase the benefits of transition to formality, including with regard to access to business services, finance, infrastructure, markets, technology, skills programmes and property rights?*
- 167.** The Employer and Worker spokespersons agreed with this question. The Worker spokesperson added that increasing benefits was a good but complex solution.
- 168.** The Worker expert from India highlighted that for informal workers the creation of cooperatives or other forms of associations were important to access business services, finance, infrastructure, markets, technology, skills programmes and property rights. As such, the instrument could mention creation of cooperatives in a separate paragraph.
- 169.** The Government expert from Argentina, on behalf of the Government experts, underscored the need to increase the benefits of transition to formality.
- (c) *address informal employment in formal establishments?*
- 170.** The Employer spokesperson stressed that very divergent views were expressed by Employer experts on this question, mainly because it referred to the term "informal employment" and not to "informal economy".
- 171.** The Employer expert from the United States expressed his disagreement with this question and considered that the issue should not be included in the instrument as it was an issue of law enforcement and non-compliance with labour laws. It was therefore the State's responsibility to enforce law to ensure compliance.
- 172.** The Worker spokesperson stressed that informal employment in formal establishments was an existing issue that had to be addressed, particularly in global supply chains. He recalled the statistical definition of informal employment and asserted that he was in agreement with the wording.
- 173.** The Worker expert from the Dominican Republic stated that in her country such situations existed with respect to large corporations. She mentioned a case of subcontracting, where workers were left with no protection; it was a major issue which was swelling the numbers in the informal economy.

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- 174.** The Worker expert from India added that many garment workers in the informal economy could be traced to large multinational companies. Those workers were paid below the minimum wage and in some instances related cases of child labour have been identified. In India, constructive discussions were taking place on these issues with the multinational companies concerned.
- 175.** The Government expert from Argentina, on behalf of the Government experts, indicated that the Government experts agreed with this question, as specific policies were needed to address the challenges of contract workers, for example in the textile industry, where workers were placed in a formal company but without any social security or respect for basic rights. She emphasized the need to recognize the existence of informal jobs in formal enterprises. This was a relatively recent reality due to globalization and increased labour market flexibility. However, different countries had different contexts and there was a need to analyse the different realities.
- 176.** The Government expert from Thailand gave an example from his country where a large number of the population are own-account workers who are not covered by laws and regulations.
- 177.** The Government expert from China referred to recent amendments to the Chinese Labour Contract Law which provided more effective protection to dispatched workers, who, as some Chinese scholars suggested, were prone to falling into the category of informal workers in formal establishments.
- 178.** The Government expert from Senegal pointed out the important role of the private sector in Senegal in providing employment opportunities for young jobseekers.
- 179.** The Government expert from Morocco underscored the importance to promote measures which encourage transition from the informal economy. However, the incentives which were offered to businesses had to be time-limited in order to avoid abuse of such measures.
- 180.** The Employer expert from Nigeria encouraged experts to focus the discussion on promoting transition from the informal to the formal economy and not singling out the issue of informal workers in formal establishments. He also recalled Recommendation No. 198.
- 181.** The Worker expert from Australia noted that it was important to address informality and non-compliance with labour law wherever they existed, including in formal enterprises. She emphasized that addressing informal employment in formal establishments was critical to the task of formalizing the informal and promoting decent work: there was little point in encouraging and facilitating the transition of workers from the informal to formal economy if, once engaged in formal establishments, these workers continued to work in informal, poor quality jobs.
- 182.** The Government expert from Brazil agreed that informal employment in formal enterprises was a problem for governments. The issue also concerned the employment relationship and unfair competition. The recruitment of informal workers was an issue for both workers and employers.

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## VI. Rights at work

Question 15: *Should the proposed instrument provide that Members should:*

- (a) *extend to all workers in the informal economy the benefit of fundamental principles and rights at work, namely freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect to employment and occupation?*

- 183.** The Worker spokesperson expressed his disagreement with the wording of this question as fundamental principles and rights applied to all human beings. He recalled that there were only eight Conventions related to fundamental principles and rights at work and the rights expressed in those Conventions should be secured for all workers.
- 184.** As a general comment, the Employer spokesperson noted that the purpose of the meeting was to discuss transitions to formality. If all the benefits were extended to informal workers, no discussion would be needed. However, he recalled that the Employer experts supported fundamental principles and rights at work as well as the relevant ILO Conventions.
- 185.** The Employer expert from Montenegro added that question 15 could be considered as an encouragement for formal workers to enter into the informal economy.
- 186.** The Employer expert from Argentina agreed that all workers should enjoy the fundamental principles and rights at work. However, it was also very important to think about what type of policies could be put in place to promote the transition from the informal to the formal economy.
- 187.** The Employer expert from Nigeria underscored that the accessibility of these fundamental rights was a key issue.
- 188.** The Employer expert from the United States emphasised that the fundamental rights were applicable to everyone everywhere. Instead of extending these rights to informal economy workers without a legal package, it was better to bring the workers from the informal to the formal economy.
- 189.** The Government expert from Argentina, on behalf of the Government experts, indicated that the question had raised much discussion among the Government experts. Concerning question 15(a), they all acknowledged the importance of ensuring fundamental principles and rights at work to all workers. However, the reference to extending these rights raised some issues, one of the most important being the necessity to ensure that such extension had as its objective the transition to the formal economy and thereby avoid double standards.
- 190.** The Government expert from India noted that all the important components related to rights at work were sufficiently covered. He expanded on the situation of his country providing information on national legislation and policies addressing the fundamental principles and rights at work, and the extension of social security based on a rights-based approach.
- 191.** A Government observer from Peru indicated that in his country informal workers could create unions. The National Labour and Employment Promotion Council was the main social dialogue forum. The country had a national strategy for the eradication of child labour, a child-benefit programme providing subsidies through the Programa Juntos, a school feeding programme and programmes targeting migrant workers and the vulnerable.

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- 192.** A Government observer from the Bolivarian Republic of Venezuela indicated that in his country all workers benefitted from the fundamental principles and rights at work, and therefore the need for their extension did not arise.
- 193.** The Director of the International Labour Standards Department clarified that there might be an issue with the formulation of the question. However, the reality was that informal workers were not able to enjoy these rights.
- (b) *progressively extend to all workers in the informal economy, social security, safety and health, decent working hours and minimum wage, where such a protection exists?*
- 194.** The Worker spokesperson agreed that all workers should have access to social protection and suggested adding maternity benefits. Safety and health should be treated immediately instead of progressively, as the issue was one of life or death. He highlighted the need for securing paid maternity leave and maternity benefits for all female workers and the need for securing, as soon as possible, the coverage of occupational safety and health regulations for workers in the informal economy.
- 195.** The Employer spokesperson referred to his comments made under question 15(a) that the purpose of the meeting was to discuss transitions from the informal economy to the formal economy. It would be difficult to extend the benefits referred to in question 15(b) to workers who would not be registered or subject to regulation.
- 196.** The Government expert from Argentina, on behalf of the Government experts, indicated that all Government experts were in agreement that it was necessary and urgent to guarantee safety and health in the workplace immediately. She agreed with the necessity to progressively extend some of the social security benefits, taking into account the specificities of each country; coverage should be extended progressively, safeguarding the long-term financial sustainability of the systems.
- 197.** The Government expert from India recalled that his Government had supported Recommendation No. 202 and stressed the need for a gradual extension of social security to be based on country specificities. He also indicated that there were ongoing discussions at the highest level of Government to put in place a statutory national minimum wage.
- 198.** A Government observer from the Bolivarian Republic of Venezuela agreed with this question.
- (c) *give special attention to women and vulnerable categories of workers, including children, young people, migrant workers and older workers?*
- 199.** The Worker spokesperson did not agree with the wording of this question. The important issue was ensuring that women and vulnerable categories of workers could effectively enjoy their rights and protection. Implementation mechanisms directed at these workers had to be put in place.
- 200.** The Employer spokesperson agreed with this question.
- 201.** A Government observer from the Bolivarian Republic of Venezuela agreed with this question.

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## VII. Employment

*Question 16: Should the proposed instrument recall that the Employment Policy Convention, 1964 (No. 122), and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), contain provisions relating to the formulation and implementation of a national employment policy in order to increase productive employment creation in the formal economy through pro-employment macroeconomic and sectoral policies, sustainable enterprises, development of cooperatives, employability and skills development in both rural and urban areas?*

- 202.** The Employer spokesperson agreed that the formulation and implementation of employment policies to increase productive employment creation in the formal economy were essential. However, good governance, a sustainable and enabling environment for business, and tripartite consultation were also very important.
- 203.** The Worker spokesperson recalled the importance of job-centred macroeconomic policies and the need for industrial, fiscal and sectoral policies to be interlinked with a view to achieving the goals of decent work and formal employment in order to secure the rights of workers. While pro-employment policies should result in productive employment, industrial and sectoral policies were also key and governments needed to consider public work schemes that had the potential to create decent jobs. All of these would contribute to ensuring sustainable growth, which, in turn, would ensure that workers did not fall into informality.
- 204.** The Government expert from Argentina, on behalf of the Government experts, answered affirmatively to the question. It was crucial to ensure social dialogue on this issue as well as coordination and coherence among policies, in order to increase the level of employment, including by ensuring access through employment services to employment promotion programmes, as well as access to skills development programmes for persons in the informal economy.
- 205.** The Government expert from India noted that it was crucial for workers in the informal economy and persons seeking employment to be adequately skilled to be employable. In this respect, India had been mainstreaming employment and skills development in its policies and its five-year national plan, and had launched innovative programmes backed by legislation with a view to generating more productive and remunerative employment. Some results have already been achieved in this regard in his country.

## VIII. Working conditions and social protection

*Question 17: Should the proposed instrument recognize the necessity of progressively adopting preventive measures to address the unsafe and unhealthy working conditions that often characterize work in the informal economy?*

- 206.** The Worker spokesperson stressed that the section on working conditions and social protection was very important and agreed that the proposed instrument should address unsafe and unhealthy working conditions, as well as decent working hours and a safe and healthy environment, recognizing the diversity of workplaces in the informal economy. Preserving the lives of informal workers was crucial also with respect to realizing their human rights. The proposed instrument had to recognize the necessity for preventive measures and immediate actions had to be taken to protect the rights of workers and to maximize the role of labour inspection. The involvement of the social partners in this effort was necessary.

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- 207.** The Worker expert from India emphasized that workplaces in the informal economy were very varied and were overseen by different authorities. She gave the examples of home workers, and waste collectors who worked as own-account workers under the authority of city authorities. There was a need for standards to ensure the safety of the workers. Such standards should not be the sole responsibility of the workers but also of the relevant authorities, and the measures taken should increase employment opportunities and not reduce them.
- 208.** The Employer spokesperson agreed with both questions 17 and 18, and acknowledged that safe and healthy working conditions were fundamental to both enterprises and workers. However, the key issue was the strategy for providing those conditions given that they would be difficult to implement in the context of informality. Thus, the way forward was through formalization which required multifaceted approaches beyond specific elements of labour and social protection. Formalization was the process which would provide legal identity to informal enterprises bringing them within the legal framework. It was crucial to ensure an enabling environment for sustainable enterprises in order to provide safe and healthy working conditions to workers.
- 209.** The Employer expert from the United States, referring to the notion of formalization, stated that legalization of enterprises was a central issue as it provided a legal identity to the enterprise. This status gave the enterprise the ability to work with other organizations permitting the creation of wealth. Even if there were perfect working conditions in informal enterprises, it was still necessary to require legalization and formalization. Social partners needed to ensure that economic actors had a legal identity and, without it, it was difficult to provide social security and healthy and safe working conditions.
- 210.** The Government expert from Argentina, on behalf of the Government experts, indicated that the Government experts were generally in agreement with this question. It was important to address unsafe and unhealthy conditions immediately and therefore the word “progressively” should be eliminated. If unsafe working conditions were detected, measures should be taken immediately to rectify the situation. The Government experts did not consider that questions 17 and 18 were addressing the same issues and therefore needed to be addressed separately. Social protection, referred to in question 18, included various other aspects which should be discussed separately and the issue of progressivity was relevant there. There was a need to focus on encouraging formalization and not on the terms “legal” or “illegal”.
- 211.** The Government expert from Morocco considered that the proposed instrument should recognize the need for member States to take immediate preventive measures to address unsafe and unhealthy working conditions that exist in the informal economy. It was unfair to increase the vulnerability of workers in the informal economy and therefore the term “progressively” was misplaced when physical integrity of the worker was at stake.
- 212.** The Government expert from India indicated that the Constitution of India set out the need to provide safe and healthy working conditions for workers. India had a national policy which recognized that it was a fundamental right to work in a safe and healthy work environment, and various legislation covering specific workers and sectors were also in place to ensure safe working conditions.
- 213.** The Government expert from Ghana also expressed concern regarding the use of the term “progressively”.
- 214.** The Government expert from China agreed with the need for immediately addressing unsafe and unhealthy working conditions. Legislation in this area existed in China but enterprises needed time to put the measures in place.

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**215.** The Government expert from Senegal highlighted the complexity of the issue concerning safety and health at work. Even in the formal economy, implementation of legislation posed problems. The implementation within the informal economy therefore needed to be accompanied by special measures.

**216.** The Government expert from Thailand provided some information with regards to the situation in his country, particularly with respect to agricultural workers and home-based workers.

*Question 18: Should the proposed instrument recognize that providing childcare and other affordable quality care services is a necessity for expanding women's employment opportunities and enabling them to transition from informal to formal work?*

**217.** The Employer spokesperson reiterated his comments made under question 17.

**218.** The Worker spokesperson noted that this question related not only to working conditions but also to wider social protection. It was necessary to provide childcare to enable transition from the informal to the formal economy. Childcare services should not only be funded by the family and employers. The State needed to fund good-quality care services and enable all working families, including the poorest, to benefit from it. If macroeconomic fiscal policy was well-designed, there should be enough fiscal space to fund childcare.

**219.** The Government expert from Argentina, on behalf of the Government experts, stated that the Government experts agreed with this question. Childcare should not only be linked to women as it was the responsibility of the whole family and this should be reflected in the question. Some women worked in the informal economy because it provided more flexibility to be able to cater to family care responsibilities. Not all governments could afford financially to provide childcare. Therefore, while it was important to have this as a policy objective, its financing needed to be ensured first.

**220.** The Government expert from China commented that, as it was difficult for enterprises to ensure childcare, his Government had been striving to facilitate the development of early childhood education for all families, as well as providing all children with nine-year compulsory education free of charge. China had a comprehensive policy which required government at various levels to offer basic public services to all people. However, the challenge was ensuring that specific groups, such as migrant workers, also had an equal access to these services.

**221.** The Government expert from Morocco noted that the great number of women with children in the informal economy and the proliferation of informal childcare facilities showed a real need for a service which the State should provide in order to ensure that women would enter the formal economy.

**222.** The Government expert from Thailand agreed with this question and highlighted its link to child labour.

**223.** The Government expert from Ghana indicated that her country had introduced free, basic and compulsory education programmes as well as school-feeding programmes which provided support to women who were working in the informal economy.

**224.** The Worker spokesperson stressed the need to pay careful attention to ensure that informal childcare arrangements complied with the minimum requirements concerning child health and care.

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*Question 19: Should the proposed instrument provide that, in building and maintaining their national social protection floors within the social security system, Members should pay particular attention to the needs and circumstances of workers in the informal economy and their families with a view to ensuring adequate social security coverage and fostering transitions to formality?*

- 225.** The Worker spokesperson indicated that questions 19 and 20 were interconnected and related to social protection and social security issues. He asked for clarifications from the Office on the meanings of “social security”, “social protection” and “social insurance” given that traditions and systems in place varied among countries and regions; it was therefore crucial that all experts had a common understanding of those terms. Recommendation No. 202 already provided a clear understanding regarding the “social protection floors” and all States should ensure as a priority that the minimum guarantees in Recommendation No. 202 were provided to all workers in the informal economy. These guarantees aimed at providing access to health care and income security for elder people, pregnant women, sick and disabled workers, and the unemployed. In the 2011 International Labour Conference Conclusions concerning the recurrent discussion on social protection (social security), it was agreed that: “The formalization of the economy is one of the crucial prerequisites for long-term growth and will increase the public revenue base necessary to finance higher levels of social security for contributors and taxpayers and non-contributory benefits to cover those without capacity to contribute.” Strategies adopted by States should include both the horizontal and the vertical dimensions to extend social security, thereby building comprehensive social security systems.
- 226.** The Employer spokesperson stressed that social security systems must be fiscally and financially sustainable. It was crucial to adopt a progressive approach concerning the extension of social security coverage to also include workers in the informal economy. To this end, governments should also ensure enabling environments for business creation and job creation.
- 227.** The Government expert from Argentina emphasized the need for a progressive approach concerning the extension of social security coverage to workers in the informal economy. Due consideration should also be given to specificities that existed at national level. In Argentina, universal access was guaranteed to free education and health, and family allowances were extended to the children of workers in the informal economy, as well as to the children of unemployed or non-active persons.
- 228.** The Government expert from India recalled his Government had supported Recommendation No. 202. Social protection floors should be nationally defined, progressively extended and based on availability of national resources, as indicated by the Government expert from Argentina. In India, the national health insurance scheme (the Rashtriya Swasthya Bima Yojana) was being gradually extended to all workers in the informal economy as a part of the recently enacted legislation on Unorganised Workers’ Social Security Act (2008). To extend maximum coverage, his Government had adopted a rights-based approach.
- 229.** The Government expert from China indicated that his country was striving to achieve universal coverage of social security. In this regard, three social security pilot programmes were successively launched in 2007, 2009 and 2011, aiming at providing basic old-age social insurance for rural and urban residents who were not formally employed and basic medical social insurance for all urban residents. With these schemes, workers in the informal economy would be appropriately covered by the basic social protection.
- 230.** The Government expert from Ghana indicated that her country had also taken steps to extend the coverage of the social security system to the informal economy.

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*Question 20: Should the proposed instrument provide that Members should progressively extend the coverage of social insurance to additional categories of workers (such as own-account workers, domestic workers, workers in rural areas and workers in small and micro-enterprises) and, if necessary, adapt administrative procedures, the scope of benefits and contributions taking into account their contributory capacity?*

- 231.** The Employer spokesperson indicated that emphasis should be put on formalization and transition from the informal to the formal economy and that it should not lead to the creation of a special status for informality.
- 232.** In response to a request for clarification raised by the Worker spokesperson, an expert from the Office explained that social insurance was an employment-based contributory social security mechanism. Access to social insurance systems was usually related to the employment situation. During the 2011 recurrent discussion on social protection (social security), ILO tripartite constituents had placed emphasis on the need to extend social insurance to categories of workers not covered as a major aspect of the formalization of employment as stated in paragraph 13 of the 2011 Conclusions. That was the reason why the Office had placed that statement in question 20. Although social insurance was the dominant form among social security schemes linked to employment there were other forms. Detailed social security terminology was presented in the report prepared by the Office for the International Labour Conference in 2011.
- 233.** The Worker spokesperson thanked the Office for the clarification, but indicated that his group did not understand why there was mix of categories of workers listed in the question. The list mentioned own-account workers, and then also domestic workers and workers in SMEs who have an employer. As complex employment relationships existed in the informal economy, there was a need for greater clarity on the different types of workers and whether questions 19 and 20 referred to contributory or non-contributory schemes. In any case, priority should be given to the extension of the coverage to all workers in the informal economy. The Worker experts agreed with both questions 19 and 20, while strongly calling for more clarity on the schemes, people covered by schemes and people who would pay contributions.
- 234.** The Worker expert from India, while strongly supporting question 19, indicated that the solution to social insurance and social protection had to take unconventional forms. Many workers in the informal economy had several employers; in other cases, due to a long chain of production, it was difficult to identify the employer and to collect corresponding contributions. A solution in India had been the “tripartite boards” where collection of contributions were levied either directly or through a tax.
- 235.** The Government expert from Brazil agreed with this question and made a distinction between three kinds of social protection schemes: social assistance schemes; social insurance schemes; and universal schemes which had coverage and financing. In Brazil, access to health care was universal and the social insurance scheme also covered the self-employed and own-account workers who paid contributions for themselves.
- 236.** The Government expert from Argentina agreed with this question and indicated that her country had rich experience on social security issues. In her country, some schemes covered additional categories of workers, such as: the “Monotributo” scheme which was a simplified mixed system for own-account workers; the scheme for workers in SMEs; and a special scheme for workers in rural areas. With respect to the social protection floor, her country was achieving this through a mix of contributory and non-contributory schemes.

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- 237.** The Government expert from Thailand indicated that his country adopted a progressive approach in order to gradually cover all workers in SMEs. Furthermore, self-employed workers had the possibility to voluntarily join the social security scheme.
- 238.** The Government expert from China said that his country was extending social security coverage to non-employment-related groups. Special attention was also being given to special categories of workers such as migrant workers, by making contributions and entitlements of old-age insurance portable, and to self-employed workers by providing for more flexible contribution arrangements.
- 239.** The Government expert from Morocco pointed out that the enumeration of categories of workers could create confusion. In Morocco, all enterprises, whatever their size, were subject to the legal provisions regarding social insurance. ILO member States should progressively extend social insurance to all workers and economic units.
- 240.** The Employer expert from Argentina observed that contributions for additional categories that were covered by social security would need to be proportional and take into account the livelihood of those contributing. Furthermore, contributions to the special schemes must ensure financial sustainability and did not disadvantage formal schemes.

*Question 21: Should the proposed instrument encourage Members to regularly review their social security systems with a view to ensuring that they operate in an effective and efficient manner, taking into account the importance of promoting the formalization of the informal economy?*

- 241.** The Worker spokesperson underscored the importance to regularly review existing social security systems. Besides ensuring that these systems operate efficiently and effectively, it was crucial to also assess progress regarding coverage. Given that about 80 per cent of the world's population was inadequately covered, extending coverage was of utmost importance.
- 242.** The Employer spokesperson agreed with the importance of reviewing existing social security systems and noted that such a process should encourage formalization.
- 243.** The Government expert from Argentina, on behalf of the Government experts, also supported the need to regularly review existing social security systems and the need to expand coverage. It was crucial to take into consideration the sustainability of the system from financial and budgetary perspectives.

## **IX. Compliance and enforcement**

*Question 22: Should the proposed instrument provide that:*

- (a) each Member should establish and develop appropriate mechanisms for compliance with laws and regulations covering workers and economic units in the informal economy with a view to ensuring transition to formality?*
- (b) the mechanisms should include an adequate and appropriate system of inspection?*
- (c) the mechanisms should include information, guidance and capacity building for relevant actors and compliance assistance?*

- 244.** The Employer spokesperson agreed with this question, but underscored that mechanisms for compliance with laws and regulations and enforcement should function in practical terms.

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- 245.** The Worker spokesperson agreed that both compliance and enforcement were important. These issues were linked with labour inspection and supervisory mechanisms. In many countries, the lack of enforcement of laws and regulations was due to weak labour administration and inspection. Therefore, there was a need to increase the number of inspectors, to ensure adequate training to enable them to better understand the informal economy, to carry out inspections in a tripartite manner, as well as to ensure independence of labour inspections, by combating, for example, corruption when it existed. Conventions Nos 81 and 129 could provide useful guidance in this respect. An appropriate mechanism for compliance had to include incentives. It was crucial to ensure a coordinated approach in this area and to regularly involve relevant tripartite stakeholders in any mechanism for compliance with laws and regulations. Information, guidance and capacity building for relevant actors and compliance assistance were crucial, and governments and social partners had a key role to play in this respect.
- 246.** The Government expert from Argentina, on behalf of the Government experts, stressed the need for supervisory mechanisms particularly in the informal economy, as well as the importance of counselling and incentives. Enforcement mechanisms had to consider the heterogeneity and geographical disparity of the informal economy. The informal economy had grown in some countries as a consequence of the economic crisis and if compliance mechanisms were very punitive they had the risk of destroying jobs. There were different types of inspections; some focused on providing guidance and others on sanctioning. Regarding sanctions, there was the need to adapt them and strong sanctions had to be adopted if the offence related to child labour or forced labour. In Peru, for example, about 90 per cent of the sanctions could be exonerated if there was immediate regularization. Furthermore, innovative practices related to labour inspection had been adopted for domestic workers, such as the household-awareness mechanism that Uruguay had put in place. In India, a number of experiments were conducted such as the introduction of self-certification and joint inspection by teams comprising of representatives of workers and employers. Finally, regarding the need to strengthen labour inspection, this was not only related to the quantity and capacity of labour inspectors but also to the use of technical tools. In Argentina and Brazil, for example, econometric analysis and scoring methodologies were being used to identify sectors and areas with high prevalence of informality.
- 247.** The Government expert from Morocco referred to a national plan that aimed at supporting enterprises that had challenges in implementing new provisions of the Labour Code. The plan was criticized by the unions as they considered that it questioned the independence of labour inspection as called for by ILO Conventions Nos 81 and 129. Employers in the formal economy also criticized the plan as they considered that labour inspectors were providing support to informal enterprises, instead of conducting inspections and imposing sanctions on them, which encouraged unfair competition. It was therefore necessary to create a consultative framework that would bring together employers' and workers' organizations, as well as associations in the informal economy. Furthermore, labour inspection should be reinforced and labour inspectors should benefit from appropriate training, taking into account the specificities of the informal economy.

*Question 23: Should the proposed instrument provide that each Member should ensure that penalties (administrative, civil or penal) imposed by law are adequate and strictly enforced?*

- 248.** The Worker spokesperson noted that as pointed out in Report V(1) there were contradicting practices amongst member States. Report V(1) underscored practices related to mobilizing communities as monitoring partners, developing voluntary codes of conduct and establishing tripartite partnerships. Rather than relying solely on sanctions, approaches that were educational, persuasive, transparent and participatory had been particularly successful in reaching the informal economy. The Worker experts were not against

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sanctions as such, but finding a balance was necessary. Workers in the informal economy were often disproportionately affected by violations and it was important to strike a balance between enforcing regulations and respecting the rights of poor workers to earn a living. Counselling and education were often more effective than sanctions. This did not mean that international labour standards were negotiable and violations of core ILO Conventions had to be sanctioned.

- 249.** The Employer spokesperson agreed that sanctions were not the only way to enforce the law. Sometimes, violations were due to lack of knowledge and poor guidance. A repressive approach was not the best approach and government agencies had first to provide guidance, assistance, and manuals on laws and regulations.
- 250.** The Government expert from Argentina, on behalf of the Government experts, referred to implications of the word “strictly” and indicated that there was no doubt that the law was to be applied always in a just and fair manner. The Government experts questioned the repressive approach of the question and were in favour of gradual sanctions and incentives. However, laws had to be strictly applied regarding child labour or forced labour. In other situations, information and guidance could be provided to foster formalization.
- 251.** The Government expert from China noted that, during the financial crisis in 2008, an ILO team of experts assessed China’s labour inspection system. Due to the financial crisis, there had been a job crisis and it was estimated that if certain businesses would have closed down, approximately 20 million migrant workers would have lost their jobs. This generated a discussion among labour inspectors and the ILO experts about striking a right balance between maintaining jobs and ensuring that workers’ rights were respected. The law should be strictly enforced but in a gradual manner. Additional resources for labour inspection were needed to this end. An innovative “twin-network system” had been adopted in China in recent years, aiming at expanding labour inspection coverage to all employing units, especially small and micro-sized enterprises. Under this system, labour inspectors could regularly inspect employing units not only to enforce labour laws but also to provide training, education, information and other compliance assistance.
- 252.** The Worker expert from Argentina referred to his experience during the military regime in his country when informal employment was a criminal offence. Those that were imprisoned were the most vulnerable.
- 253.** The Government expert from Brazil explained that particular attention had to be paid to informal employment in formal enterprises by imposing different levels of penalty which were proportionate to the gravity of the infraction and to the capacity of payment from the employer. In Brazil, for example, the penalty is multiplied by the number of informal workers. He agreed with the fact that penalties imposed by law should be adequate and strictly enforced. National legislation should impose penalties which cannot depend upon the sole will of labour inspectors. It was important that employers have the certainty they would face penalties in case of informal employment, in order to encourage them to register all their workers. In Brazil, the penalty would be for the formal employer who would refuse to register workers not the workers concerned.
- 254.** The Employer expert from Montenegro disagreed with the proposal to limit the punishment to employers, as working informally could be the workers’ free choice.

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## **X. Role of employers' and workers' organizations**

*Question 24: Should the proposed instrument provide that workers and entrepreneurs in the informal economy should be able to join existing workers' and employers' organizations or to create their own?*

- 255.** The Employer spokesperson stressed that the right to freedom of association was a fundamental right. The proposal made under this question was a positive step forward towards formalization but distinction should be made between formal and informal organizations.
- 256.** The Worker spokesperson referred to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), according to which all workers should enjoy the right to freedom of association, to join an organization or create their own organization. This right to freely join an association or organization was not secured in many countries as underscored by Report V(1). The Committee of Experts on the Application of Conventions and Recommendations had stressed that certain categories of workers who were regularly denied the right to establish trade unions were covered by the principles of freedom of association, including domestic workers, workers in the informal economy and in export processing zones, self-employed workers, workers without employment contracts and agricultural workers. The right to join organizations should not be determined on the basis of the employment relationship. In many cases, obstacles in the law would prevent certain workers' organizations to be fully recognized as a trade union or would prevent their participation in tripartite bodies. Organizing informal workers in certain cases in cooperatives could be relevant if that would be what they wished to do. The Worker spokesperson proposed that the future instrument would recommend that member States ensure that all workers in the informal economy would have the right to freedom of association as well as to participate in tripartite bodies.
- 257.** The Government expert from Argentina, on behalf of the Government experts, underscored that the Government experts agreed that freedom of association was a fundamental right.
- 258.** The Government expert from India agreed with the proposal made under this question and recalled that the Constitution of India recognized the right to form free and independent associations. The number of organizations in India had increased and many organizations covered street vendors, domestic workers, migrant workers, home based workers, rural and construction workers, and other vulnerable categories of workers. Issues relating to working conditions and rights of workers in the informal economy prominently figured in the highest tripartite fora, such as the Indian Labour Conference and the Standing Labour Committee.
- 259.** The Government expert from Thailand indicated that in his country self-employed workers, own-account workers and entrepreneurs were entitled to form or join organizations.
- 260.** The Employer expert from India underlined that the organizations in the informal economy should be integrated to formal organizations as they would remain better protected within the formal organizations.
- 261.** The Employer expert from Nigeria recalled ILO Convention No. 87, which states that all parties should be allowed to join an existing organization or to create new one.
- 262.** The Worker spokesperson stressed that, even in cases where the workers in the informal economy were entitled to join an existing organization, their right to create a new one had to be supported.

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*Question 25: Should the proposed instrument provide that the employers' and workers' organizations, including organizations of workers and entrepreneurs in the informal economy, should be consulted while developing, implementing and evaluating policies and programmes of relevance to the informal economy, including its formalization?*

- 263.** The Worker spokesperson agreed with the question and pointed out that consultations had to be membership-based. In this regard, Article 19 of Recommendation No. 202 dealt with nationally defined mechanisms to monitor progress in implementing social protection floors. The Worker experts valued the tripartite nature of consultations and stressed the importance of having the representatives of the concerned workers on board.
- 264.** The Employer spokesperson also supported consultation and considered it was a positive step forward in order to bring the informal workers to the formal economy. However, he stressed that consultation may not necessarily mean consensus.
- 265.** The Employer expert from Madagascar was in favour of consultation with regard to policies and programmes. However, she expressed her reservation to having formal consultations because of existing rules related to tripartism and representation.
- 266.** The Government expert from Brazil referred to the link between consultations and financial issues particularly regarding taxation. While consultation had a tripartite nature, the involvement of the Ministry of Finance might be necessary.
- 267.** The Government expert from Argentina was in favour of consultation. In Argentina, recent consultations took place between the Government and various relevant actors in order to elaborate a comprehensive plan of action.
- 268.** The Government expert from India stressed that his Government consulted workers' and employers' organizations with regard to the formulation, implementation and evaluation of policies and programmes.
- 269.** The Employer expert from Argentina added that these consultations included the issue of registration. Employers' organizations in the formal economy had a great deal of experience concerning informality and the obstacles companies had to face. Therefore, employers' organizations had a key role to play in providing timely information and advice.
- 270.** The Worker spokesperson welcomed the consultation process that took place in Argentina and recalled the importance of such integrated action plans to promote formalization. Consultation among social partners and organizations in the informal economy around these plans was key.
- 271.** The Employer expert from Nigeria noted that governments had to decide which stakeholders would be consulted and encouraged them to consult all relevant ministries while fully ensuring tripartism.

*Question 26: Should the proposed instrument provide that employers' and workers' organizations should play a key role in facilitating transitions from the informal to the formal economy by extending membership and services to economic units and workers in the informal economy, and encouraging and supporting the creation and development of representative organizations?*

- 272.** The Employer spokesperson pointed out the difficulties he had in providing an answer to this question due to its unclear formulation. Indeed, this question could be divided into

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three parts. The first question would address whether the proposed instrument should provide that employers' and workers' organizations play a key role in facilitating transitions from the informal to the formal economy. He responded affirmatively. The second question would address whether membership and services should be extended to economic units and workers in the informal economy. With respect to that question he had reservations and replied yes in some ways in order to facilitate transition. The third question would address whether to encourage and support the creation and development of representative organizations, to which he answered negatively since he believed that they had to join the existing organizations.

- 273.** The Worker spokesperson agreed with this question and underlined the important role for governments to provide employers and workers with an enabling environment to organize, and for international labour standards to be integrated into national frameworks to encourage and guarantee effective collective bargaining. It was crucial for informal workers to organize themselves and to create organizations and to decide whether to join the already established organizations.
- 274.** The Government expert from Argentina, on behalf of the Government experts, agreed with this question and highlighted her country's experience regarding the important role of employers' and workers' organizations. She emphasized their engagement in facilitating the transition and the manner in which businesses could assist governments through corporate social responsibility. Big companies could support formalization through subcontracting as they could, for example, require their suppliers to provide a certificate indicating that all workers were formalized.

*Question 27: Should the proposed instrument provide for the need to strengthen the capacity of employers' and workers' organizations and representative organizations of the informal economy to organize and assist workers and economic units in the informal economy with a view to facilitating transition to formality?*

- 275.** The Worker spokesperson agreed with this question.
- 276.** The Employer spokesperson indicated that he was uncomfortable with the wording "representative organizations" and asked for clarification on whether the question was referring only to recognized and registered organizations.
- 277.** The Government expert from Argentina, on behalf of the Government experts, agreed with the question and emphasized the role Governments could play with respect to training and awareness raising for workers' organizations and employers in relation to the importance of the transition to the formal economy.
- 278.** The Government expert from Brazil emphasized that questions 24–27 were related to cooperatives and solidarity, and highlighted the Brazilian experience in this respect.
- 279.** The Government expert from India supported the need to strengthen employers' and workers' organizations. The Government, through its specialized training institutes, conducted capacity-building training programmes for rural and urban informal economy workers and for enterprises in the informal economy on an annual basis. The most representative organizations were those taking part in the legislative process and it was thus important to ensure capacity building of these organizations, both at the national and provincial levels.
- 280.** The Employer expert from Nigeria pointed out that at field level the entry points in providing capacity for informal organizations were the traditional partners. Employers' and

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workers' organizations were the most representative in either the formal or informal economy and had to be the traditional partners.

- 281.** The Employer expert from Argentina questioned whether those informal organizations in practice complied with the law with respect to, for example, social security and occupational safety and health requirements. In such cases it was not clear on what basis they could engage in dialogue with the government if they did not comply with laws. She pointed out the risk of creating a dual system of negotiation. The practical aspect was complex and raised the issue of unfair competition between those who complied with the law and those who did not.
- 282.** The Government expert from Morocco stated that in his country a number of associations from the informal economy existed (street vendors, taxi drivers, etc.) who joined federations and were recognized by public authorities for consultation. He added that associations of workers in the informal economy were supported by the most representative trade unions.
- 283.** The Chairperson mentioned that in Mexico there were organizations of workers in the informal economy, as was the case of solid waste collectors, which had a great political strength, including with representatives in local political bodies who have developed a capacity to interact with all public authorities.
- 284.** The Government expert from Argentina indicated that it was crucial to recognize the role of informal economy organizations in the consultation process to facilitate transition to formality.
- 285.** The Government expert from Senegal highlighted the importance of consulting the most representative organizations of the informal economy, particularly because it was an opportunity to have their views heard about the informal economy.
- 286.** The Worker expert from the Dominican Republic recalled that the informal economy, which was currently increasing, was made of informal workers and informal enterprises. Transition from the informal to the formal economy had to be facilitated by policies and programmes targeted at both employers and workers. In the Dominican Republic, the closing down of sugar-making companies 15 years ago had resulted in more than 95 per cent of the 40,000 workers who lost their jobs joining the informal economy. Trade unions played an important role in promoting social dialogue and supporting workers in the informal economy, as well as enhancing transition to formality.
- 287.** The Worker expert from Ghana underlined that if the experts did not support the informal economy associations, it would not be consistent to support transitions to formality which was the main theme of the meeting.

## **XI. Data collection and monitoring**

*Question 28: Should the proposed instrument provide that Members should:*

- (a) collect, analyse and disseminate consistent, sex-disaggregated statistics on the size and composition of the informal economy and measure its contribution to the national economy?*
- (b) regularly monitor progress towards formalization?*

**288.** The Employer spokesperson agreed with both points.

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- 289.** The Employer expert from the United States mentioned that more data was necessary. Member States had to: identify, locate and classify extra-legal assets, such as land, homes, businesses and assets; quantify the actual and potential value of assets; identify the extra-legal (informal) norms that governed extra-legal property; quantify the costs of extra-legality to the country; and quantify the requirements, including time and cost, of registering property, acquiring licences and so on.
- 290.** The Worker spokesperson highlighted that data collection on the informal economy needed to be strengthened because the type of sectors where workers in the informal economy were operating was important. The monitoring of progress towards formalization had to be tripartite and include informal economy workers.
- 291.** The Government expert from Argentina, on behalf of the Government experts, pointed out the necessity of exchanging information among countries. Governments had the responsibility to collect data and share them, while many countries would need technical support in order to harmonize their statistical systems. All institutions, including universities and research institutes, had to be included in the process.
- 292.** The Government expert from India recognized the need for data collection and monitoring progress towards formalization. Some countries would need technical assistance to ensure data collection. India had a long history in collecting data on the informal economy, including at sectoral level and had already adopted the guidelines issued by the 17th ICLS on data collection. He indicated that data was disaggregated by sex, level of education and skills, employment status, occupational characteristics, etc., and collected at intervals of five years.

## **XII. Implementation and follow-up**

*Question 29: Should the proposed instrument provide that each Member should implement the provisions of this instrument, in consultation with the most representative employers' and workers' organizations, through laws and regulations, collective agreements or other measures consistent with national practice?*

- 293.** The Worker spokesperson indicated that consultations had to include the most representative employers' and workers' organizations, as well as the most representative member-based organizations in the informal economy.
- 294.** The Employer spokesperson had no specific comment on this question.
- 295.** The Government expert from Argentina, on behalf of the Government experts, highlighted that national contexts needed to be taken into account. It was crucial to include workers in the informal economy in the consultation process.

*Question 30: Should the proposed instrument provide for regular follow-up and review, at the national level, of policies for gradual transitions to formality?*

- 296.** The Employer spokesperson had no specific comment on this question.
- 297.** The Worker spokesperson underscored the importance of encouraging the review of policies for gradual transitions to formality and national consultations. A mechanism was needed to monitor the progress made at national level.

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- 298.** The Government expert from Argentina, on behalf of the Government experts, agreed with the importance of the follow-up of policies for gradual transitions to formality, and the need to employ different assessment methods. That allowed member States to better identify possible areas for improvement and the proposed policies would also be evidence-based.
- 299.** The Government expert from China added that his Government had established a joint departmental conference system for the protection of migrant workers that consisted of officials from various ministries as well as representatives from trade unions and employers' organizations, ensuring that relevant policies take into account various opinions of all stakeholders.

### **XIII. Other questions**

*Question 31: Should the proposed instrument contain a list of relevant international labour standards to the informal economy as an annex?*

- 300.** The Worker spokesperson indicated that in addition to the instruments already listed in question 3, the proposed instrument had to contain a list referring to the international labour standards on migrant workers, such as, the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), as well as the HIV and AIDS Recommendation, 2010 (No. 200).
- 301.** The Employer spokesperson indicated that reference should also be made to the resolution on the promotion of sustainable enterprises adopted in 2007.
- 302.** The Employer expert from Argentina stressed that it was crucial that the resolution on sustainable enterprises was added in the main text of a possible standard rather than in an annex, in order to promote transitions from the informal economy to the formal economy.
- 303.** The Government expert from Argentina, on behalf of the Government experts, agreed with the fact that, in principle, the proposed instrument had to contain a list of international labour standards which are relevant to the informal economy as an annex. However, she noted that different opinions had been expressed by Government experts on the instruments that had to be referred to in the list.

### **Final comments on the questionnaire**

- 304.** The Employer expert from the United States deplored that no reference was made in the questionnaire to issues regarding legal and financial reforms, business registration, land ownership and the creation of an enabling environment for sustainable enterprises. Although there were a lot of barriers to formalization, the questionnaire only focused on social and labour policies.
- 305.** The Employer expert from Nigeria made a general comment regarding the design of the questionnaire, and highlighted that almost 80 per cent of the issues it contained related to labour rights while the issue of transition from the informal to the formal economy went beyond labour and social issues. He urged the Office to take into account other mainstream economic issues which had not been identified yet and which were key to promote transition from the informal economy to the formal economy.
- 306.** The Worker spokesperson stressed that Worker experts also had difficulties with some questions and the way the questionnaire was constructed. Indeed, some questions were not

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so clear and some others were missing. However, he urged governments to send their responses to the questionnaire to the Office. He agreed that the issue of informal economy was a much broader issue than that of a labour issue and for this reason it went beyond the ILO's mandate. He asked the Office, if it was possible, to schedule a general discussion to ensure a coherent approach to this issue by the different United Nations agencies, in particular by the International Monetary Fund and the World Bank. In order to secure sustainable transitions from the informal to the formal economy it was necessary to take into account other policies which were already implemented in this area by other United Nations agencies.

**307.** The Government expert from Argentina, on behalf of the Government experts, recalled, as a general comment, that focus was needed on how to ensure transitions from the informal economy to the formal economy bearing in mind that the formal economy and formal jobs were key to achieving such a goal.

**308.** The Director of the International Labour Standards Department recalled that the responses by governments, including on those issues that were not explicitly included in the questionnaire, would serve as the basis for drafting the proposed conclusions. She indicated that the ILO tripartite constituents could, in their responses to the questionnaire, explicitly indicate the other issues that should be included. She underscored that this was a unique opportunity to provide guidance on what should be reflected in a possible instrument. It was the responsibility of the Office to take into account the responses together with the views expressed during this meeting and to reflect them in the proposed conclusions.

## **E. Summary of the discussions by the groups**

**309.** Speaking on behalf of the Government experts, the Government expert from Argentina indicated that the opinions voiced by the experts were their personal and professional views and were not the positions of the governments they represented. She summarized the Government experts' views as follows. With respect to section I, there was general agreement among Government experts regarding the questions, and countries would provide information about their programmes and policies which facilitate the transition from the informal to the formal economy. Concerning section II, the Government experts group: suggested formulating question 4(b) positively by replacing "obstacles" by "policies that enable the transition from the informal to the formal economy"; requested further statistical information and that the "opportunities" referred to be mentioned explicitly; and suggested that in question 4(d) the term "governance" also include general development policies as well as the international dimension. Regarding section III, they agreed with the reference to the 2002 Conclusions and suggested that more information should be provided on the different groups in the informal economy. Concerning section IV, there was general agreement. Policies needed to take into account the different governmental levels involved based on country specificities. Emphasis should be placed on the gradual and progressive nature of the policies and take into account country specificities. Regarding section V, there was general agreement: legislation needed to ensure effective coverage; strategies needed to provide for gradual extension taking into account country circumstances and fiscal sustainability; legislation should provide incentives for formalization taking into account different levels of taxation for micro-enterprises, cooperatives, etc.; legislation needed to be completed with comprehensive policies that facilitate compliance; and the process needed to be gradual. Concerning section VI, there was no agreement on question 15, which was not clear. While recognizing fundamental rights for all workers, some considered that the extension of these rights to all workers in the informal economy should be achieved through the transition

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from the informal to formal economy. However, there was agreement on the other questions in this section. All Government experts agreed to the need to guarantee safety at work urgently, and the importance of extending social security coverage, taking into account country specificities, the progressive and gradual nature of the extension, and financial sustainability. There was concern about any possible double standard regarding social protection benefits for workers in the informal economy. With respect to section VII, there was agreement regarding the need for employment policies. With respect to section VIII, there was agreement and few suggestions: in question 17, the word “progressively” should be replaced by “as soon as possible”; and in questions 18 and 19, it was necessary to emphasize the gradual nature with which these policies are carried forward taking into account country specificities. Regarding section IX, while there was general agreement, there was discussion on the way in which laws are complied with. It was stated that balance was necessary regarding the application of the laws to the various units. Centralization of labour inspection as well as sensitization, counselling and incentives were important aspects to consider. The application of sanctions should be gradual except if the offence related to child labour or forced labour. It was important to increase the number of labour inspectors and resources dedicated to labour inspection. Concerning section X, the importance of social dialogue was highlighted. Regarding section XI, there was agreement on the importance of collecting data, taking into account the heterogeneity among countries, and the need to involve other data collection and research centres in order to ensure quality. With respect to question 28(a), disaggregation of data should also include other characteristics such as age. ILO support was welcome in this area. There was agreement regarding section XII. Emphasis was placed on the need for impact evaluation. Finally, concerning section XIII, reference to some of the standards mentioned in the other sections should be included.

- 310.** The Employer spokesperson recalled the interest of the Employer experts regarding the issue of transitioning from the informal to the formal economy. He stressed that addressing informality means expanding the scope of formality and reducing the incentives to remain in the informal economy, while retaining its dynamic and entrepreneurial spirit. He noted that, while there may have been diverging views, much common ground had also been found. He felt that the formulation of questions overemphasized the role of labour. There was a need to focus much more on a wider range of issues, including economic rights, property rights, enterprise rights, and employers’ rights. Therefore, sustainable enterprises and an enabling and conducive business environment were essential for formalization. He thanked the Worker experts and Government experts for their views and highlighted the importance of taking into account the views of all the groups, in the Chairperson’s summary.
- 311.** The Worker expert from Ghana, on behalf of the Worker experts, expressed their full commitment for the proposed instrument. He acknowledged that the tripartite meeting had done much work which should contribute to produce consensually agreed conclusions which would provide input into the process of the proposed instrument. The Chairperson’s summary should reflect the consensus points reached at the meeting and not the positions of the groups. The latter would be reflected in the report of the meeting. He concluded by stressing that the Chairperson’s summary should facilitate consensus for the International Labour Conference discussion in 2014.
- 312.** The Employer expert from Argentina requested that the Chairperson’s summary include not only the points of consensus but also the views of the groups.
- 313.** The Chairperson, in concluding, remarked on the consensus reached regarding the importance of: placing informality at the centre of the discussions and the need to guarantee rights to all workers, taking into account the realities and situation of each country with regard to the process of transition; and of organizing such tripartite meetings to learn from different countries about the challenges, solutions and best practices.

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## F. Chairperson's summary and closing statements

- 314.** The Chairperson reported that he had two main observations to make in relation to the very interesting and thought-provoking week of discussion that the experts had had: first, there was a clear recognition of the importance of the topic of informality and, second, it was of crucial importance when addressing the issue of formalizing the informal economy to fully involve tripartite constituents. He shared his summary of the discussions with the meeting. The summary is contained in the appendix He highlighted that it was not an exhaustive summary, but that it should be considered as a framework based on his personal views. He concluded by thanking the experts for having given him the privilege of being the Chairperson of this meeting, as well as the Office for its assistance. He hoped that further developments on this issue will ensure sustainable development and decent work for all.
- 315.** The Employer spokesperson noted that successfully addressing informality was a prerequisite for promoting sustainable and inclusive growth and development, and this was the reason why his group proposed that this item be placed on the agenda of the International Labour Conference. Entrepreneurs and enterprises in the informal economy faced many constraints and needed appropriate tools. While labour rights were important, formalization of enterprises was the starting point. In order to develop appropriate solutions, it was necessary to focus on the causes of informality. Key issues had not been covered in Report V(1) and had to be addressed, such as: peace and political stability; good governance, rule of law and anti-corruption; creating an entrepreneurial culture; sound and stable macroeconomic policy and sound management of the economy; trade and sustainable economic integration; enabling a legal and regulatory environment; land ownership, secure property rights and titling; fair competition and market access; access to financial services; physical infrastructure; information and communications technology; education, training and lifelong learning; business registration and licensing; taxation policy and administration; judicial reform; creating incentives for formalization; and communicating the benefits of formality to informal enterprises. Entrepreneurs and enterprises in the informal economy struggled to do business in a situation of legal uncertainty and insecurity, and were faced with numerous economic constraints. They needed the tools to buy and sell their products legally, to own property and make commercial use of property, to enter into legal contracts, to establish a business identity, to raise capital, to sell shares, to legally export. In this regard, addressing informality only from the perspective of labour and social policies would miss the point and ignore the main causes of informality. He stated that employers completely agreed that labour rights were important. However, in order to guarantee the expression of these rights, formalization of the enterprise needed to be the starting point. The labour-focused approach of the report was therefore too limited and narrow. First, it was impossible to formalize workers in an informal enterprise, as the only logical approach was to formalize the enterprise. Second, upgrading workers' rights in the informal economy made informality attractive. Finally, the majority of people in the informal economy were individual land and homeowners, entrepreneurs, business owners and enterprises. Those that needed a business license were entrepreneurs. But there was a clear role for the ILO in addressing the informal economy, as promoting employment and sustainable enterprises was part of its core mission. Also, it was not possible to promote fundamental principles and rights at work without addressing informality. There was a need to focus on a wider range of issues including economic rights, enterprise rights, employers' rights and property rights.
- 316.** The Worker expert from Ghana, on behalf of the Worker experts, noted that the 2002 Conclusions were an important starting point on which to further build the discussion. However, since 2002 several countries had developed relevant initiatives and new international agreements had been adopted including: the 17th ICLS guidelines of 2003, Recommendation No. 202, Recommendation No. 198, Convention No. 189 and

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Recommendation No. 193. The Worker experts supported the integrated approach and the seven areas of guidance detailed in Report V(1). The proposed instrument had to further recognize the diversity of actors in the informal economy which included: economic units; the self-employed; and wage workers. It had to address informality in both formal and informal enterprises and, at the minimum, to achieve four objectives. First, it had to ensure that the rights of informal workers to organize and bargain collectively would be recognized. Second, the scope of labour laws had to be extended and/or the laws had to be amended to include categories of workers traditionally excluded, so as to cover the full range of existing relationships. Third, given the over-representation of women in the informal economy, paid maternity leave had to be provided and the issue of childcare had to be addressed. And finally, social protection coverage had to be extended to all workers in the informal economy. The proposed instrument had to address informality in global supply chains and provide guidance to ensure that subcontracted workers were not deprived of their rights. It also had to provide guidance to strengthen labour inspection, as well as to promote the solidarity-based economy in line with Recommendation No. 193. Tripartism was a key mechanism to facilitate the transition and it was important to ensure active participation and inclusion of representative membership-based organizations of workers in the informal economy. National plans had to be formulated, implemented and regularly assessed on a tripartite basis. National data collection systems had to be strengthened so that quality labour market information could adequately inform policy debates and assess the progress achieved.

- 317.** The Government expert from Argentina, on behalf of the Government experts, noted that the discussion had been very useful, in particular in terms of exchanging valuable experiences about country tools and strategies. She called on the Office to continue providing support for facilitating such useful exchanges.
- 318.** The Government expert from India referred to point 7 of the Chairperson's summary and noted that good governance was essential but often constrained by a lack of tripartite consensus as well as other structural factors. The proposed instrument had to take this into consideration. He also emphasized the need to carry out more evidence-based analysis, in particular on contentious issues and diverging positions relating to the definitions of informal economy and who were the major actors.
- 319.** The Government expert from China stressed the importance of facilitating informal economy transitions in a gradual and progressive manner so as to accommodate the diversities of member States. He noted that due consideration had been given in this regard in the 2002 Conclusions and the Chairperson's summary. He would take all the information to China to share and discuss further.
- 320.** The Director of the International Labour Standards Department noted that Report V(1), a second report summarizing all the answers and inputs to the questionnaire, and the report of this meeting would feed into the discussion at the International Labour Conference in 2014. A set of proposed conclusions would be drafted, and included in the second report. The discussion had greatly contributed to an improved understanding of key issues which would be reflected in the proposed conclusions.
- 321.** The Director of the Employment Policy Department noted that in 2002 and 2007 she had been part of tripartite discussions on the issue, and congratulated participants for the progress made. The standard-setting process on this topic was not easy, but the endorsement of the proposed framework of action included in Report V(1) was an important step forward.

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## Appendix

### Chairperson's summary

1. The experts actively and constructively participated in this tripartite meeting with a view to contributing, in a meaningful way, to the preparation of the standard-setting item concerning facilitating transitions from the informal economy to the formal economy as decided by the ILO Governing Body at its 317th Session (March 2013).
2. There was consensus that transition to formality is central to inclusive development and achieving the goal of decent work for all. This is not only because of the magnitude of the informal economy but also because formalization enables everyone to contribute better to society.
3. An international labour standard on the subject would provide valuable guidance to the tripartite constituents on measures to be taken to facilitate transitions from the informal to the formal economy.
4. The diversity of actors and heterogeneity of situations in the informal economy were recognized. Transitions to formality therefore can take multiple avenues and require tailor-made and gradual approaches that take into account national circumstances.
5. The International Labour Conference 2002 resolution concerning decent work and the informal economy is a sound basis on which this new standard should be built. Developments that have taken place since then, including innovative approaches and their implementation in a number of policy areas, should also be taken into account.
6. Transition to formality requires a broad range of policies which go beyond labour and social policies, and should be implemented in a coherent and integrated manner.
7. Good governance is essential for transition to formality.
8. Social dialogue and tripartism are fundamental means to ensure formalization in an inclusive, sustainable and equitable manner.
9. Employment-centred macroeconomic policies and an enabling environment for enterprises, in line with the 2007 International Labour Conference resolution concerning the promotion of sustainable enterprises, are key to fostering full, decent and productive employment, and facilitating transitions to formality.
10. National employment policies, formulated and implemented with tripartite consultation, provide an essential framework to promote job creation, enterprise development, employability and skills development.
11. Fundamental principles and rights at work apply to all workers including those in the informal economy. A possible Recommendation should provide guidance to member States on how to ensure that such fundamental principles and rights at work, and the Conventions to which they relate, are effective for all workers.
12. All workers have the right to a safe and healthy working environment. Immediate action is required to address unsafe and unhealthy working conditions in the informal economy.
13. Transition to formality requires the progressive extension of social protection in accordance with the Social Protection Floors Recommendation, 2012 (No. 202). It also requires that social security systems be financially sustainable, fair and equitable, and tailored to national circumstances.
14. Compliance and enforcement are critical for ensuring transition to formality. A balanced approach combining incentives, information, advice, capacity building and sanctions is needed.
15. Strategies and measures to formalize the informal economy must be undertaken in consultation with the representative organizations of workers and employers.
16. The formulation and monitoring of appropriate policies facilitating transitions to formality require the strengthening of data and information systems.

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17. The experts also identified areas that required clarification, as well as additional elements that could be included in the new instrument.
  18. As Chairperson of this meeting, I would like to encourage participants to continue discussions and exchanges within, and between, the groups, so as to ensure that the preparation of a possible instrument can benefit from wide and well-informed inputs that reflect the reality in the countries. I would like to call on the ILO to support these processes as much as possible.

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