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**Policy Development Section**  
*Employment and Social Protection Segment*

**POL**

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### THIRD ITEM ON THE AGENDA

## Conclusions of the Meeting of Experts on Non-Standard Forms of Employment

#### Purpose of the document

The document provides information on the Meeting of Experts on Non-Standard Forms of Employment that took place in Geneva from the 16 to 19 February 2015. It contains the final report and the conclusions of the meeting in the appendix.

The Governing Body is invited to take note of the final report of the Meeting and to authorize the Director-General to publish the conclusions; to request the Director-General to bear in mind, when drawing up proposals for future work of the Office, the wishes expressed in the conclusions for follow-up action by the ILO; to recommend that the final report and the conclusions of the Meeting be taken into consideration within the context of the recurrent item discussion on social protection (labour protection) to be held at the 104th Session of the International Labour Conference (see draft decision in paragraph 5).

**Relevant strategic objective:** All.

**Policy implications:** Subject to approval by the Governing Body, the report and conclusions of the Meeting will provide guidance for future office work on non-standard forms of employment and will inform the recurrent item discussion on social protection (labour protection) to be held at the 104th Session of the International Labour Conference.

**Legal implications:** None.

**Financial implications:** None.

**Follow-up action required:** See the draft decision in paragraph 5.

**Author unit:** Conditions of Work and Equality Department (WORKQUALITY).

**Related documents:** GB.321/INS/10/2.



1. At its 321st Session in June 2014, the ILO Governing Body decided to convene a Tripartite Meeting of Experts on Non-Standard Forms of Employment.<sup>1</sup> The decision was taken following the Conference recurrent discussion on fundamental principles and rights at work, which took place in June 2012, and which called the Office to “organize a meeting of experts, undertake research and support national studies on the possible positive and negative impacts of non-standard forms of employment on fundamental principles and rights at work and identify and share best practices on their regulation”.<sup>2</sup> The meeting was expected to contribute to preparations for the recurrent item on social protection (labour protection), to be held at the 104th Session of the Conference in 2015.
2. The Tripartite Meeting of Experts on Non-Standard Forms of Employment took place in Geneva from 16 to 19 February 2015. It was composed of eight experts nominated by Governments, eight experts nominated by the Employers’ group, and eight experts nominated by the Workers’ group.<sup>3</sup> The Meeting was chaired by an independent Chairperson, Mr José Vieira da Silva (Portugal). The Vice-Chairpersons were Mr Paul Mackay (Employer expert from New Zealand) and Ms Catelene Passchier (Worker expert from the Netherlands). There were also Government observers from eight member States, three Employers’ observers, five Workers’ observers, and representatives from the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC). In addition, representatives of intergovernmental and non-governmental international organizations attended the meeting as observers. In order to facilitate the work of the Meeting, the Office prepared a background report, which is available on the website of the ILO.<sup>4</sup>
3. In line with the agenda approved by the Governing Body, the meeting discussed the trends and driving forces with regard to non-standard forms of employment and their impact on workers, firms and the labour market; the experience of countries, including regulatory responses, to address potential vulnerabilities associated with non-standard forms of employment; the challenges for realizing the fundamental principles and rights at work and other rights for workers in non-standard forms of employment; how to better use existing international labour standards to address non-standard forms of employment and the existence of possible gaps in this domain; and priorities for ILO action. A summary of the Meeting’s discussions is provided in the final report of the Meeting presented in the appendix.
4. The Meeting unanimously adopted conclusions, which propose measures to be taken by Governments, Employers and Workers to address potential decent work deficits with respect to non-standard forms of employment and includes recommendations for future action by the Office. These conclusions are provided in the appendix, as part of the report of the Meeting.

<sup>1</sup> GB.321/INS/10/2.

<sup>2</sup> ILO: *Provisional Record* No. 15, International Labour Conference, 101st Session, Geneva, 2012. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meeting\\_document/wcms\\_182951.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meeting_document/wcms_182951.pdf).

<sup>3</sup> The list of participants is available in section II of the report of the meeting, provided in the appendix.

<sup>4</sup> ILO: *Non-Standard forms of employment*, Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment, Geneva, 16–19 February 2015. The report is available at: [http://www.ilo.org/global/topics/employment-security/non-standard-employment/whatsnew/WCMS\\_336934/lang--en/index.htm](http://www.ilo.org/global/topics/employment-security/non-standard-employment/whatsnew/WCMS_336934/lang--en/index.htm).

**Draft decision**

**5. The Governing Body:**

- (a) takes note of the final report of the Meeting of Experts on Non-Standard Forms of Employment and authorizes the Director-General to publish the conclusions of the meeting;*
- (b) recommends to take into consideration the final report and the conclusions of the Meeting within the context of the recurrent discussion on social protection (labour protection) to be held at the 104th Session of the International Labour Conference; and*
- (c) requests the Director-General to bear in mind, when drawing up proposals for future work of the Office, the wishes expressed in the conclusions for follow-up action by the ILO.*

## Appendix

### Report of the Tripartite Meeting of Experts on Non-Standard Forms of Employment (Geneva, 16–19 February 2015)

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## I. Introduction

1. In the conclusions of the recurrent discussion on fundamental principles and rights at work, which took place in June 2014, the International Labour Conference (ILC) called on the International Labour Office to “organize a meeting of experts, undertake research and support national studies on the possible positive and negative impacts of non-standard forms of employment on fundamental principles and rights at work and identify and share best practices on their regulation”.<sup>1</sup> Further to the call of the ILC, the ILO Governing Body, at its 321st Session in June 2014, decided to convene a tripartite meeting of experts on non-standard forms of employment in February 2015. The conclusions of the meeting were expected to contribute to the recurrent discussion on labour protection to be held at the 104th Session of the Conference in June 2015.
2. In order to facilitate the discussion of the Meeting, the Office prepared a background report entitled “Report for discussion at the Tripartite Meeting of Experts on non-standard forms of employment” (hereinafter the report). This report is divided into four parts. Part I contains a brief introduction defining non-standard forms of employment. Part II reviews the incidence and trends in non-standard forms of employment. Part III examines the effects of non-standard forms of employment on workers, firms and labour market performance including on wage inequalities and productivity. Part IV analyses the regulation of non-standard forms of employment namely ILO standards that address or concern non-standard forms of employment, regional and national regulation of non-standard forms of employment as well as regulatory responses to non-standard forms of employment.

## II. Composition of the Meeting of Experts

3. The meeting was led by an independent Chairperson and was composed of eight experts nominated by Governments, eight experts nominated by the Employers’ group and eight experts nominated by the Workers’ group as well as representatives from the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC). Observers from Governments, Employers’ group, Workers’ group as well as intergovernmental organizations and non-governmental international organizations also attended the meeting. A full list of participants is included in the annex to this report.

## III. Opening statements

4. The Secretary-General of the Meeting, Ms Manuela Tomei, Director of the Conditions of Work and Equality Department, expressed how non-standard forms of employment (NSFE), and the multiplicity of employment situations they covered, had become important features in labour markets across the globe. NSFE could help enterprises adjust labour inputs to volatile labour markets and could also permit workers to better combine their participation in the labour market with family and personal needs. However, NSFE were also a matter of contention as stated in the Director-General’s 2013 Report to the ILC. The background report before this meeting provided a glimpse of the important statutory reforms in respect of NSFE and measures that had been introduced through

<sup>1</sup> ILO: “Conclusions concerning the recurrent discussion on Fundamental Principles and Rights at Work”, *Provisional Record* No. 15, ILC, 101st Session, Geneva, 2012, para. 13(b).

collective bargaining in the past years with the aim of accommodating enterprises needs for flexibility, while at the same time providing decent employment to workers.

5. In addition, the Secretary-General underlined how the current meeting brought together a number of important debates in the ILO over many years and formed part of the reflection on the future world of work. She underscored the work completed by the International Labour Organization since the 1990s on specific forms of work namely, the Part-Time Work Convention, 1994 (No. 175); the Private Employment Agencies Convention, 1997 (No. 181); the Home Work Convention, 1996 (No. 177); and the Employment Relationship Recommendation, 2006 (No. 198). Within this context, the mandate for this expert meeting on NSFEE arose from the 2012 conclusions of the Recurrent Discussion on Fundamental Principles and Rights at Work, as well as the request of the Officers of the Governing Body in June 2014. The insights from this tripartite expert meeting were expected to contribute to the Recurrent Discussion on Labour Protection to be held at the International Labour Conference in June 2015.
6. Mr José Vieira da Silva of Portugal, who was appointed by the Director-General as the independent Chairperson of the Meeting, noted that issues surrounding NSFEE had been the subject of difficult debate as well as regulatory reform. The current meeting arose from previous discussions at the ILO which had led to calls for a greater understanding of the potentials and risks of NSFEE. He expected to learn from the experts about the prevalence and trends in NSFEE and their effects on the labour market, firms and workers. This included workers' ability to realize their fundamental rights at work. Reiterating the difficult nature of the subject under discussion, he asserted the importance of the ILO's role in these discussions in order to maintain its relevance in today's world. He concluded by stressing the importance of learning from each other and expressed confidence that through open and sincere dialogue, points of agreements and of consensus would be found which would prove useful to the ILO.
7. Ms Janine Berg, senior economist within the Inclusive Labour Markets, Labour Relations and Working Conditions Branch, Conditions of Work and Equality Department of the ILO, gave an introductory presentation highlighting some key points of the background report prepared for the Meeting. She provided an overview of the incidence and trends with respect to some of forms of NSFEE across different countries of the world. She also discussed the potential effects of NSFEE on workers and enterprises. Analysing the impact on workers, Ms Berg noted the stepping stone hypothesis was confirmed for some countries and occupations with stronger effects for youth and minorities. However, to the extent that temporary work was the prevalent employment, these jobs were more likely to become a trap. Workers in NSFEE were also often subject to a wage penalty and less opportunities for training. The use of NSFEE had also affected management practices, with shifts in human resource strategies away from training and career development to identifying a set of skills in the labour market. The report also reviewed some international labour standards that related to NSFEE. There were not many countries that applied legal restrictions to freedom of association and collective bargaining. The most common challenge was inability to exercise rights in practice due to fragmentation of the bargaining unit when there were multiple labour providers and workers fearing their contract would not be renewed if they joined trade unions, particularly if they were on temporary contracts. Countries had attempted to regulate NSFEE in various ways such as limiting the duration of temporary agency work. Similarly, many countries had passed legal remedies to tackle the issue of misclassified self-employment and provide more protection for dependent self-employed. Regulatory measures for part-time work included non-discrimination and equality of treatment as well as establishing a minimum or a maximum number of hours for part-time workers. Ms Berg concluded by drawing participants' attention to the points for discussion defined in the report and pointed to the importance of the meeting discussion to guide future ILO work in the area of NSFEE.



8. The Worker Vice-Chairperson, speaking on behalf of the experts nominated by the Workers' group, noted the recent increase of work being performed outside of what some considered the traditional and standard employment relationship. These non-standard relationships resulted in situations in which workers were unable to realize their fundamental rights at work and to enjoy essential social rights. Therefore, it was appropriate to examine laws and regulations, practices and realities, of these forms of employment to determine if there were decent work deficits that had to be addressed. Noting that "NSFE" was a neutral term, she recalled that the trade union movement was strongly concerned about the increase of precarious work, meanwhile employers tended to focus on flexibility. She suggested that the meeting should avoid reducing the discussion to terms and definitions. The concept of standard employment meant that work was properly regulated, with workers enjoying full legal protection, sufficient hours of work, proper income, adequate health and safety conditions, and possibility to freely associate and bargain collectively. Recently, for some groups, NSFE were becoming the dominant form of employment.
9. Flexibility and free choice were concepts with positive connotation. Whether they were positive in practice, depended on whose needs for flexibility were served best and whose choices prevailed, who carried the burden of risks, and to what extent such burden was shared. She questioned to what extent there was a fair balance between the interest of companies to make a profit and adapt the ways of employing workers, and the interest of citizens and societies in social stability and social justice, in which the needs of workers were recognized in law and in practice. The question was not to be in favour or against flexibility, but to address the challenge of how to ensure a balanced outcome. Labour market regulations and institutions were developed to protect workers against exploitive labour practices and employers against unfair competition. The discussion could provide the necessary advice and guidance for labour market regulations serving all. Governments had an important role in enforcing such regulations.
10. The Worker Vice-Chairperson proposed to have an open and pragmatic discussion focusing on undisputable major problems and solutions, where serious decent work deficits and gaps existed, and how those problems could be addressed in law and in practice. Although there was a grey area between the formal and informal economy she suggested not touching upon the informal economy as this issue would be addressed at the forthcoming ILC.
11. She stated how the Office report provided evidence about a number of key problems. Temporary and fixed-term work were of concern because workers lacked protection against unfair dismissal, while many young workers faced "scarring effects" or risked cycling between temporary employment and unemployment. Under investment in training could lead to underutilization of skill potentials for societies, and hence their potential for productivity growth and wealth creation. Wage penalties, lower or absent employment-based social security benefits were of concern. While there could be appropriate reasons for the use of fixed-term contracts, such as replacements during maternity leave or seasonal work, they could not be used to deprive workers from basic labour protection. Part-time work, becoming the standard form of employment for mainly female workers, could in some cases be beneficial and in others exploitative. Examples of the Netherlands and Scandinavia suggested that such form of work was highly regulated, stable, and protected. But even in those countries, new developments such as zero-hour contracts, could render work insecure and unpredictable.
12. She stated how triangular employment, including employment agencies, agency work, and other forms of outsourcing and subcontracting, posed a challenge to freedom of association and collective bargaining, especially in cases where workers working together at one workplace were de jure separated and could not bargain collectively about their working

conditions. Although this concern was recognized in the Private Employment Agencies Convention, 1997 (No. 181), measures to prevent this were not addressed. The report provided mixed evidence on the stepping-stone role of agency work, and showed how labour market institutions had a role to play to ensure that agency work did not create dual labour markets. She emphasized that ambiguous employment relationships, especially in professions that used to be done by waged workers, posed one of the biggest challenges, as potentially undermining existing systems and levels of labour regulations. In some countries, collective representation and protection of dependent non-standard workers was ensured by extending protection to all workers, regardless of their employment status. Moreover, new forms of technology did not create a “natural need” for NSFE, as the opposite situation could also take place.

- 13.** She further noted that as shown in the Office report, discrimination of workers in NSFE was not inevitable. In some countries, regulations offered comprehensive and innovative solutions. In seeking solutions, it was important to look at the needs of the enterprises and societies as a whole, as those would not necessarily coincide, and short-term gains for enterprises could be costly for societies at large. International labour standards had to remain relevant for all workers and regulatory gaps had to be closed in order to avoid a race to the bottom.
- 14.** The Employer Vice-Chairperson, speaking on behalf of the experts nominated by the Employers’ group, underscored the importance of defining the standard forms of employment, through its main elements of being full-time permanent employment with fixed-hours, often including a defined benefit pension at the end of a secure career path with a single employer. While other forms were increasingly labelled negatively, permanent full-time work could no longer be viewed as the only effective approach to the economic reality. The changing world of work was not paralleled by changes in regulations and institutions to support it, with protections and benefits of employment tied to the idea of the standard contractual relationship.
- 15.** He highlighted that the context in which work was organized, distributed and performed had changed irrevocably, and that the return to previous standard, static and insufficiently responsive, contracts of employment, was not possible. Technological innovation, shorter product cycles, and faster changing customer needs were more powerful than the institutions that had been created.
- 16.** He further explained how employment relationships were strongly linked to economic models, recalling that during the 19th century when agriculture and craft dominated, self-employment was the norm. The industrial revolution brought about tenured employment, while the technology and service oriented 21st century demanded a wide range of employment responses. Failing to adapt historical models could lead to more informal options including in terms of employment and prolonged spells of unemployment. Changes to the employment relationship warranted adapting the protection of employees, providing them with decent livelihoods, security and social mobility irrespective of the form of contract of employment used. He recalled the ILO Director-General’s Report to the 2012 ILC that noted that the standard was becoming the “exception”. He underscored the need to recognize this. Having a choice of different forms of employment had positive aspects including: (i) being an indispensable tool for adaptability and sustainability of enterprises, and hence a precondition for employment creation; (ii) allowing workers, especially vulnerable ones, to access and integrate into the labour market; (iii) creating a diverse workforce with further positive repercussions for the economy; and (iv) allowing for a better work–life balance.

17. He underlined that the Employers group aspired to find ways to adapt social protection to NSFEE and to render all forms of formal employment decent. He insisted that Employers did not support discrimination of workers based on their employment or citizenship status; with key elements of non-discrimination being access to occupational safety and health, training opportunities, freedom of association; but encouraged equal opportunities and fair treatment by respecting Fundamental Principles and Rights at Work and Freedom of Association. He called on the ILO to support the notion of a diversity of readily available jobs rather than a secure single job for life. Finally he underscored the importance to focus on identifying the circumstances in which different forms of employment were appropriate, and ensuring the means by which any form of employment could reinforce the employability of the worker.
18. The Government expert nominated from the United States agreed that there was a growing trend toward NSFEEs and that the vulnerabilities associated with it had implications for workers, businesses, governments, and the ability to achieve decent work. She explained how there were instances where workers were misclassified under a non-standard work arrangement to avoid paying taxes, benefits, and social protection contributions. This would translate into a lack of fundamental worker rights, foregone revenue, and unlevelled playing field for employers. At the same time, NSFEEs, when legitimately used, could be beneficial for both Workers and Employers. Instead of discussing positive and negative characteristics of the NSFEEs, or debating whether NSFEEs should exist, she underscored the importance to address the vulnerabilities associated with NSFEEs so that they would not be used illegitimately.
19. The Government expert from South Africa noted the importance of accepting the ongoing changes in the world of work, and the existence of heterogeneous mix of employment situations that would necessarily provoke divergent views. He stated that it was important to establish facts about decent work deficits, and look for creative solutions on how those situations could be improved for workers, but also for enterprises, to allow them grow and develop. In view of the upcoming Tripartite Meeting of Experts on the Right to Strike, he underscored the importance of adopting conclusions for this meeting.
20. The Government expert from the Philippines highlighted the importance and timeliness of the meeting. She explained that the Philippines was striving to strike a balance between ensuring decent work for workers and competitiveness for enterprises. Quality jobs were the best social protection. The Philippines had been pursuing a combination of approaches to triangular work arrangements, through clear and implementable regulations, strengthened labour standards enforcement, creation of a comprehensive employment assistance programme, and strengthening the right to self-organization. A series of reform proposals were about to be debated in their Congress.
21. The Government expert from Norway noted that NSFEE was not a major issue in her country although some small groups had difficulties of getting into standard employment. The labour market situation in Norway was good, with unemployment rate of only 3 per cent. However, she acknowledged the importance of the issue in other countries, including the sometimes unpredictable conditions associated with NSFEE. She agreed with the Employer spokesperson and the Worker spokesperson to not focus on definitions, but rather discuss trends, regulations, and possible ILO action.
22. An observer from the European Union presented the ongoing work in the EU social dialogue committees on NSFEE, and the EU legislation in this field. He explained how several EU-level social dialogue committees were addressing NSFEE but problems differed between sectors. While in the case of industrial cleaning the issue was to reduce the number of “small jobs”, agriculture was more concerned about seasonal work, undeclared work, and precarious cross-border labour mobility. Other problems were addressed by

social dialogue committees of the audio-visual and the civil aviation sectors where there was a growing concern of bogus self-employment and fixed-term contracts. He further explained the work of the EU-level sectoral social dialogue committee on temporary agency workers, which worked on the contribution of the sector to achieve the Europe 2020 employment target.

23. Turning to legislation, he evoked the EU directive on temporary agency work that aimed at reaching a fair balance between improving equal treatment and protection of temporary agency workers and supporting the positive role agency work could play by providing sufficient flexibility in the labour market. The Directive on fixed-term work contained a provision obliging Member States to adopt measures to prevent abuse arising from the use of successive fixed-term employment contracts. The prohibition of discrimination against part-time workers was a key provision of the Directive on part-time work. The working time Directive, applicable to all workers including zero-hours workers, contained several important rights concerning limits to working time and adequate rest periods, as well as the right to minimum paid annual leave, providing an important protection of workers' health and safety, applicable to all forms of employment.

## IV. Discussion

**Point 1. “What have been the trends and driving forces with regard to non-standard forms of employment in recent decades? What is the impact for workers, firms, and labour market performance of the various types of non-standard forms of employment?”**

24. The Employers' Vice-Chairperson, speaking on behalf of the experts nominated by the Employers' group, noted that the discussion was related with coping with change in the economy. He identified two main phases connected to the spread of NSFES namely the process of globalization taking place since the 1990s and the economic and financial crisis that started in the late 2000s and related policy responses. The fundamental shift related to NSFES occurred as a consequence of globalization, which opened business options in a number of countries much broader than in the past, as well as of competitive pressures. The financial crisis and the related austerity measures did not have such a big impact on NSFES compared to globalization. Drivers of NSFES were thus not tied to specific countries' circumstances but they were linked to the worldwide process of globalization and could be mainly identified in the need of advancing competitiveness; the need to carefully manage risks and costs, in a rather risk-adverse fashion; and the fact that NSFES started being a more visible option for employers than in the past. He stressed the need to avoid over-regulation as well as the necessity to assess the quality of enforcement of existing regulations. The approach to follow had to be varied and open to flexibility as well as aware of the need of ensuring dignity to those involved.
25. The Workers' Vice Chairperson, speaking on behalf of the experts nominated by the Workers' group, stressed that consensus could be seen on the existence of problems that needed to be addressed by policy makers and employers' and workers' organizations. Existing issues, to which the rise of insufficiently protected NSFES contributed, included growing inequality; lack of alignment of wage growth with productivity growth; wage dispersion; the growth of old-age poverty as many workers were no longer covered by social security systems; and insufficient investment in skills development. She stated that NSFES limited or eliminated access to employment rights and protection, in particular protection against arbitrary behaviour on the part of employers, and that the increase in the

use of NSFE appeared not to be driven by a need to match contracts with actual needs, but rather to drive down costs and, in some cases, to limit the exercise of workers' rights. NSFE became a problem in highly-industrialized countries in recent decades, where well-paying full-time work had been replaced by NSFE, which impacted women and youth at rates far higher than adult men. NSFE was common in both the service and manufacturing sectors.

26. She underscored the importance of regulation as considerable variation existed across jurisdictions. In some countries, the use of “temporary” or “fixed-term” contracts was unregulated, whereas other countries imposed some limits to fixed-term contracts. In some countries, a related employment form, casual workers, had been recognized, with these workers being essentially highly precarious day labourers that did not enjoy even the limited protections usually afforded to fixed-term contract workers. In some countries, “triangular” employment arrangements could be used for almost any reason, where in others varied limitations existed. However, even in countries where the legal framework had improved, labour inspection had failed to adequately combat precarious work even when illegal under domestic law. In many countries, litigation to enforce workplace rights was too costly and/or lengthy to provide effective redress for affected workers and, in some cases, employers had ignored the law and court judgments with impunity, as it was the case in the Cambodia garment sector or in the Republic of Korea in the matter of illegal dispatching. Generally, the penalties on employers who broke the law were far too low to be dissuasive.
27. The Government expert from Japan stressed how practices concerning NSFEs varied across countries. Japan had three categories of employment, namely, regular employment, NSFE and diversified regular workers. Regular employment was open-ended, full-time and with the direct employer. Workers' treatment was based on seniority and did not have a limitation on job content and work location. NSFEs included temporary work, temporary agency work and part-time work. Workers in NSFE suffered from unstable employment, wage gaps, insufficient social protection and difficulties in developing careers. Another category, between standard and NSFE, embraced “diversified regular workers”, namely workers who, had limits on changes in work location and working hours and were expected to improve their vocational abilities and to develop careers as regular workers. Japan was thus engaging in a two-pronged approach to support the process of non-standard workers becoming standard workers based on their wishes and abilities, and to promote equal treatment between non-standard and standard workers. NSFEs had grown in Japan in the 1990s and 2000s and now represented more than one third of the workforce. Currently, the rate of non-voluntary non-standard work was about 20 per cent among all non-standard workers, with a high percentage of voluntary NSFE.
28. The Government expert from the United States stated that anecdotal evidence pointed to a fundamental change in the nature of work in the United States, and that NSFE had followed a cyclical pattern resulting from the Great Recession. She explained that although there was no data on temporary employment, the vast majority of workers in the United States were covered by the “employment at will” principle, which allowed employers to dismiss an employee without providing justifications, within certain limits. Temporary agency work had seen only a slight increase since 1990, which now was at a level of 2 per cent of total employment. There was evidence that the rate was increasing in certain industries, with a high proportion of workers coming from disadvantaged communities. Part-time work, remained stable over the last decades, and represented 19 per cent of total employment. This included an increase in involuntary part-time. The rate of involuntary part-time work peaked in 2009 at 6.4 per cent, and had since fallen to its current rate of 4.9 per cent, which was still higher than the pre-crisis rate. She then highlighted the issue of ambiguous employment relationships, which had increased dramatically in recent years. This was due to companies subcontracting activities and making it more difficult to

identify the employer. The employment relationship was becoming increasingly “fissured”. Moreover, employers sometimes intentionally misclassified workers as self-employed in an effort to reduce wages and payroll taxes. As a result, employees were not protected, did not benefit from unemployment insurance, workers’ compensation or fringe benefits. She drew attention to the negative impact of this practice on Workers, Employers, and Government. Finally, she warned that the prevalence of NSFE could drive down wages, which is illustrated by a fall in median wage growth among part-time workers, as compared to full-time workers, between 2011 and 2013.

- 29.** The Government expert from Chile noted that it had been about 25 years since the return to democracy, but that only in recent years had the country been able to enact legislative changes with respect to employment. He explained how Chile’s economy was largely based on mining of raw materials, and outsourcing had become very widespread in these industries, representing approximately 25 per cent of the labour force; but it had also spread to other industries as well. While efforts had been made to curb this trend through legislation, the problem persisted. As a result, outsourced workers continued to receive lower wages, enjoyed less social protection, including social security, and had less access to collective bargaining rights, as compared to those workers in more traditional forms of employment. Young people and women were particularly affected by these trends. Turning to other sectors, he noted that NSFE also prevailed in construction, where workers previously enjoyed effective protections.
- 30.** The Government expert from South Africa highlighted that political instability and strife constitute important drivers of NSFE, as they produced economic migrants who would accept any form of work. He added that these NSFE enabled some employers to avoid regulatory frameworks, shying away from rules to which they should conform. The impact was visible in the IT and manufacturing sectors, best illustrated by the “cut, make, trim” industry, in which each piece of the process was outsourced to different entities as a means to reduce costs. He summarized that labour was being displaced, from full-time, standard jobs to precarious work, entailing a gap in wage inequality and with serious consequences for collective bargaining. The engagement of social partners was therefore of vital importance.
- 31.** The Government expert of Norway noted that the report covered the global dimensions of NSFE very thoroughly. With respect to Norway, there had been no growth in NSFE. The rate of fixed-term contracts had reduced from 10 to 8 per cent of total employment since the 1990s, and temporary agency work remained stable. Norway had not suffered from the financial and economic crisis, which was a driving force of NSFE. Vulnerable workers were the first to be dismissed during such times of crisis, and that new jobs created would be nonstandard. The reference to the Oslo declaration “Restoring confidence in jobs and growth”, adopted at the 9th European regional meeting in April 2013 was very relevant. Countries had to invest in social protection systems, and employment friendly macroeconomic policies, including taxation systems and fair distribution policies. In Norway, 8.3 per cent of total employment was temporary, and 1.5 per cent consisted of temporary agency workers. Such statistics were the result of restrictive regulations and the flexibility in terminating open-ended contracts. With respect to women, the labour force participation rate was very high, at 76 per cent, and 40 per cent worked part-time. She concluded that part-time work was not necessarily negative, as long as it was voluntary.
- 32.** The Government expert of the Philippines noted how changing business practices among multi and transnational corporations in the global supply chain had driven growth in NSFE in her country. Such forms of employment were not adequately captured by national regulations, nor by international labour standards. As relevant provisions on NSFE were scattered across different international labour standards, there was a lack of guidance on how to enforce decent work in such situations. NSFE could be found in the Philippines in

temporary, agency, project-based, and subcontracted work. Subcontracted work had expanded to sectors such as manufacturing and services. Moreover, seasonal work was now a year-round phenomenon, which also spread from the agricultural to the manufacturing and services sectors. This had an impact on both Workers and Employers, as the workplace was the best training ground in the Philippines, thus more irregular work exacerbated the problem of “skills mismatch”.

- 33.** A Worker expert from Switzerland pointed out the massive growth in the use of NSFE across the 14 sectors covered by her global union federation, IndustriALL, which represented the manufacturing, extractive, and processing industries. In those industries, the use of NSFE was nearly universal, and mostly without justification. Legal regulations proved insufficient to protect workers. The massive growth was not properly reflected in statistics, as NSFE were frequently shifting and hard to discern. She cited as an example that agency work was only one aspect of triangular employment relationships, and that subcontracting was a far more pervasive form of disguising an employment relationship and limiting collective bargaining. Furthermore, she pointed to illustrative examples from several countries and concluded by summarizing that the examples she shared referred to permanent, consistent work, now being carried out by workers on temporary contracts, and emphasized that the two drivers of these practices were cost reduction, and restriction of freedom of association.
- 34.** A Worker expert from Switzerland representing the International Union of Food Workers gave the example of a fatal accident in a medium-size company in the sugar industry in the United States. The United States federal Government OHS administration had concluded on the case that the company had failed to comply with the relevant legal regulations. Work at this company was outsourced and all workers were non-regular workers. Legal regulations in place placed barriers to trade union organizing and to the establishment of OSH committees. The case showed the importance of the form of contract to the OSH situation and regulations at the workplace and the link between deteriorating OSH and temporary employment. In the United States, it was increasingly common to find that an entire workforce had been ‘leased.’ The National Labor Relations board doctrine of ‘dual employer responsibility’ effectively meant that such workers would never establish trade union representation. A United States study on workplace amputation showed that 50 per cent of workers subjected to such accidents were temporary agency workers, calling the situation a public health emergency. He also presented a positive example from a multinational food company at one of its tea manufacturing facilities in Pakistan, which in a period of 10–15 years had transformed its permanent workforce (800 regular workers) to temporary workers with only 22 regular workers with the effect of denying the workforce fundamental rights at work. This was just one example which demonstrated the trend for precarious jobs to replace permanent positions – the work itself had not changed. The IUF took up the case and helped the local trade union reach a collective agreement with the company to make these workers permanent. The CEO of company stated that there was no justification for precarization of work and wherever there was permanent work there should not be non-regular employment, and on this basis significant progress was being achieved in reducing precarious employment throughout the company’s global operations.
- 35.** A Worker expert from the United Kingdom representing the International Arts and Entertainment Alliance addressed the issue of dependent self-employed and bogus self-employment in the entertainment sector. He pointed to the traditional collective bargaining that had taken place in the sector as sophisticated instruments that set labour rights and minimum terms and conditions and at the same time partially transferred the performers’ or writers’ intellectual property rights. These agreements had been challenged in the last years from the imposition of competition law. This had been the case of the collective agreement conducted by the Irish Actors Equity and the Institute of Advertising Practitioners in Ireland; and a Dutch case on a collective agreement giving rights to self-

employed musicians, , whose case was brought to the European Court of Justice (ECJ). The ECJ ruled that it must be established by the national court whether the “self-employed” are not in fact “false self-employed” service providers, in which case the collective agreement could be upheld. The court listed a number of factors to establish whether the relation is one of “bogus self-employment”. The Court also established that Workers had to go through their national courts in order to ensure that they enjoy the protection of a collective agreement.

36. The Worker expert of Argentina emphasized the serious impact that NSFE had had on particular groups of workers such as women and young people. These groups were less represented in unions and were more exposed to exclusion from occupational safety and health measures. He argued that the loss of the culture of decent work was at stake. NSFE represented a new paradigm in the world of work with new types of employment with lower standards and fewer rights. One survey also showed a stable job was one of the main factors driving unionization.
37. The Employer expert of the Netherlands highlighted a common point of agreement with Workers: that lifetime employment under a single employer no longer existed. However, she stated that questions surrounding the sources of security represented the point of divergence with Workers. While a need existed to protect workers against arbitrary behaviour of any kind, it was also important to address the quality of all employment contracts: standard and non-standard alike. This required looking beyond the legal framework in place, since the existence of legally accepted contracts alone did not guarantee decent work and/or access to social security. A discussion was therefore required concerning the elements that contributed to the quality of employment and identification of deficits. An examination of the ILO instruments and standards already in place and which could be promoted more broadly, would also prove important as would a solid discussion on the need for compliance and enforcement.

**Point 2. “What country experiences and innovative practices, including regulatory changes, case law and social and labour market policies, can provide useful guidance for addressing potential vulnerabilities associated with NSFE?”**

38. The Worker Vice-Chairperson, speaking on behalf of the experts nominated by the Workers’ group, emphasized the importance of regulatory measures implemented by different governments to regulate NSFE. However, there were limits in governments capacity to regulate and enforce. To this end, governments complemented and/or combined statutory minimum standards – such as minimum wages or social security – with an enabling environment for collective bargaining. At the same time, a commitment to enforcement and compliance was also important. For these reasons, good examples identified in the report, alongside the evidence brought to this meeting by the experts, were essential.
39. The Employer Vice-Chairperson, speaking on behalf of the experts nominated by the Employers’ group, asserted the importance of looking at positive examples in order to understand the underlying factors driving the outcomes. In this regard, examples that addressed deficits in quality of work, such as exclusion from particular rights or benefits (that is, training), or examples which ensured that NSFE served as stepping stones rather than traps, would be welcomed. Other causal aspects of these positive examples should additionally be considered such as their relationship to or association with the ratification of particular ILO instruments relevant to NSFE. While the importance of defining



acceptable standards was emphasized, context was equally important. Characterizing the context and identifying contextual guidance would be particularly important in order to assess whether a positive example in one country could be replicated in another.

40. The Government expert from Japan explained Japan's dual approach to NSFE: the first approach promoted transitions from NSFE to standard jobs; the second approach equalized treatment of workers in NSFE with those in standard jobs. Within the first approach, the "accelerating transition to regular work project", included the provision of employment subsidies for accomplished transitions and supporting transitions to regular work. This approach also included promoting skills development policies through a documentation system which recorded experience and skill attainment of workers in NSFE; this made their skills and experience more visible to potential employers and helped workers identify skills that needed improvement. Within the second approach, new legislation, which would enter into force in the near future, would equalize treatment of part-time workers with regular workers. A second piece of legislation would extend social security coverage to part-time workers who worked more than 20 hours per week and more than 31 days. The combination of these two approaches required a focal point which the employment security offices played.
41. The Government expert from France insisted that a good standard of social dialogue was required to ensure that both parties could express their views on NSFE. She explained how a sufficient degree of trust from Employers and Workers, as well as possibilities for legal redress in cases of abuse was essential. It was in the Workers' best interest to have prosperous enterprises able to provide employment. Governmental vigilance was also important to ensure that agreements reached through social dialogue were properly translated into law. At the same time, once translated into law, legislation needed both stability and adaptability to evolve with changes over time. ILO instruments provided a useful starting point but should be used carefully and with their potential loopholes and omissions identified.
42. The Government expert from the United States explained that while labor law generally protected workers in NSFE, many of those laws were based on the traditional employer-employee relationship which by definition excluded certain categories of workers, such as independent contractors. The United States Department of Labor's strategy to address ambiguous relationships, such as misclassification of independent contractors, included strong enforcement, media coverage, education and outreach, and stakeholder engagement. To improve compliance, the Department of Labor recently increased directed investigations, instead of solely reacting to complaints; these investigations targeted industries with high violations and where vulnerable workers were less likely to report complaints. The challenge lay in maximizing the impact of limited resources by making evidence-based, data-driven decisions to increase compliance with labor laws. In terms of enforcement, the Department of Labor used tools such as penalties, liquidated damages, and debarments. It also published the results of significant cases to encourage compliance. Education and outreach also informed Workers about their rights and Employers about their responsibilities.
43. The Government expert from South Africa stressed the importance of dispelling the myth surrounding the reasons for the growth of atypical employment; whether it resulted from poor law enforcement or from cost-saving strategies used by the enterprises, the policy response would differ. He explained how in South Africa, the number of labour brokers increased alongside the erosion of principles of decent work and the need for innovative and dynamic policy responses. Some responses to these conditions included: social security provisions for specific sectors; strengthening the notion of "not less favourable"; premiums added to minimum wages in the hotel and restaurant sector during the spikes of economic activity to accommodate employers' need for flexibility; a legally limited

duration for temporary contracts; a review of the earning thresholds for contributions; and strengthened joint liability between user–broker–worker ties so that workers could hold both users and brokers responsible for back pay.

44. The Government expert from Chile stated that various efforts were made to limit problems engendered by NSFE, many of which were similar to those encountered in South Africa. One of the biggest reforms in the recent years concerned changes in the judicial system that allowed labour cases to be resolved in a much more timely manner, just a few months. There had been many cases involving issues related to NSFE such as the length of contract. With the judicial reform, Employers faced a greater likelihood of having to uphold their responsibilities, resulting in improved positions for Workers.
45. The Government expert from the Philippines, explained the combination of approaches undertaken to address vulnerabilities. The main approach included the creation of clear regulations for triangular arrangements. In addition, three complementary measures were adopted. The first measure concerned new forms of enforcement, which combined a facilitative approach with compliance. This involved creating a certification process for companies, under which a subcontracting company would be certified as compliant only once a tripartite consultation with all of its users was completed. The second measure employed various employment assistance programmes to enable workers to move to regular employment. The last measure focused on empowering industries to establish their own tripartite councils in order to promote their own regulations and agreements on the number of workers to be outsourced under industrial framework agreements.
46. The Employer expert from the Netherlands echoed the Government expert from Japan's arguments that NSFE contributed to well-functioning labour markets; for these markets to work properly a variety of forms of contracts were needed, for example, to foster labour market transitions as in the case of apprenticeships. She explained how in the Netherlands, as well as in other European countries, governments subsidized some forms of non-standard employment contracts since they provided Workers with opportunities to enter or re-enter labour markets. Some NSFE also included tax rebates as a means to contribute to a better functioning of the labour market. Active labour market policies (ALMP) also supported some of the most vulnerable Workers' transit to more secure jobs and therefore NSFEs were necessary when implementing ALMPs.
47. The Worker expert from South Africa, highlighted how new regulation mentioned by the Government expert from South Africa, which restricted the use of fixed-term contracts and labour brokerage, recently came into force in January 2015. She explained how South Africa had entered a period of transition and would require labour inspection authorities' full support. Several actions at the sectoral level were initiated through collective bargaining with regard to NSFE workers; however, these remained limited and would have been improbable if the aforementioned regulatory changes had not occurred. In the metal sector, measures introduced restricted labour brokerage and equalized conditions of NSFE workers. They also introduced measures in the contract cleaning sector within a two-year framework through the Decent Work Country Programme. The Government had also recognised the need to address some issues in the public sector connected to the risk of compromised service of outsourced security employees working in the public health sector. It was considering converting these functions to use employees with a direct employment relationship to ensure their understanding of their role within the health industry.
48. The Worker expert from Switzerland, also stressed the importance of collective bargaining in dealing with NSFEs and referred to many examples now collected in a specific publication on this topic, produced by her federation, IndustriALL. Sectoral collective bargaining combined with extensions of the collective agreements could be useful in

addressing NSFE by providing tools to overcome the workforce's fragmented structure. It could also secure equal treatment for workers in NSFE in terms of wages. In this regard, a collective agreement reached with a company in the auto-manufacturing sector limited recourse to temporary work. In addition, an agreement signed with an energy operator expressed preference for standard employment relationships. She concluded that satisfactory solutions for both management and labour could be reached via social dialogue and called for the ILO to promote collective bargaining to address issues connected with NSFEs.

49. The Worker expert from the Philippines, noted that the country's Constitution recognized the principle of security of labour and that the 1974 Labour Code provided guidance on NSFE, for instance in regulating subcontracting, providing definitions of regular, temporary, learners' and casual work, and affording flexibility by providing for the possibility of dismissals and retrenchments. From the early 1990s through 2011 department orders from the Department of Labour and Employment provided details based on the regulation established by the Labour Code. He explained that while the state of regulation was good, problems with implementation existed; as many as 40 per cent of cases presented before the Supreme Court were labour cases. An amendment of the Labour Code which better addressed issues arising from NSFEs would be desirable as would strongly worded language from the ILO in order to convince national lawmakers to take action accordingly.
50. The Worker Vice-Chairperson, reported that the Netherlands was often perceived as a best practice example with regard to one particular form of NSFE: part-time work. She presented the "recipe" for success as strong investments in the quality of work available since the 1990s alongside regulatory provisions. Legislation provided for full equal treatment in wages and working conditions and universal social security coverage without a minimum hours worked threshold to qualify for coverage. These measures also accompanied rights to increase or reduce working hours and to reverse such decisions. However, despite these measures, equality of treatment for some groups of part-time employees proved insufficient. Some employers have resorted to zero-hours contracts (ZHCs), whereby employers opt out of the obligation to provide work while contracts stipulate obligations of workers to be available for work. A recent national tripartite agreement addressed the issue of ZHCs and provided legal restrictions on their use (in particular, giving access to ZHCs only via collective bargaining and when an objective reason existed). This was needed because workers generally had not chosen to have a ZHC. She reiterated that certain forms of employment remained unacceptable, particularly when no balance existed between the obligations for the worker and the employer.
51. The Employer Vice-Chairperson emphasized that no single form of employment should be considered as the only appropriate form, but rather multiple forms equally had their place. However, reality proved that not all forms of employment afforded the same protections. To redress this, Employers' aspired for the co-existence and appropriate use of all forms of employment and contracts in an equivalent way. In this regard, the "stepping stone" approach presented one useful concept, but which needed further qualification: the "end point" of the transitional stepping stone from NSFE should not necessarily be a regular job, but rather a step to another protected form of employment without danger.
52. While the Employer Vice-Chairperson pointed to the limited availability of statistics and their poor quality and imperfect collection, he noted these as recurrent issues. The International Conference of Labour Statisticians of 2008 had already called for coordinated action in this area and suggested that the current meeting should serve as a reminder that the issue had already been on the agenda. While current statistics suggested that up to 80 per cent of workers with NSFE desired permanent positions, this raised questions concerning the underlying reasons. Were permanent jobs desired because of their

permanent nature or precisely because they were the only types of jobs which ensured labour rights and protections? To this end, the ILO should not take things at face value and needed a more holistic approach which ensured comprehensiveness, cohesiveness, and better use of its existing tools. Moreover, a fast growing economy was a precondition for job creation, which required labour market flexibility. In this regard, there should be no limits to types and use of NSFEs, as any job was better than no job.

53. The Worker Vice-Chairperson disagreed with the view that any job was better than no job, and stated that a growing number of poor quality jobs had deteriorated bargaining conditions of Workers, with poor outcomes for both Workers and Employers. She insisted that Workers needed quality jobs. As mentioned by the Employers' Group it was important to identify deficits in decent work which resulted from the proliferation of NSFEs, as not all forms contained deficits. However, some forms of NSFEs were illegitimate, such as ZHCs, where the contractual arrangement between Workers and Employers proved so unbalanced that it could never be considered decent. At the same time, it was important to investigate the conditions under which NSFEs could be seen as decent.
54. In contrast to the Employers' group's definition of permanent work, the Worker Vice-Chairperson suggested they perceived permanent employment as that which offered protection against unjustified or abusive dismissal, rather than life-time employment with the same employer. With respect to standard work, it did not necessarily require full-time status, since part-time work could be fully appropriate, acceptable, and decent in so far as rights related to working hours, collective bargaining, pensions and continuity of the contract were respected. She also agreed with the Employers' group and various Government experts on the need for rigorous enforcement and compliance with labour standards. However, further understanding and guidance was needed regarding how to apply enforcement and compliance for NSFEs, especially involving triangular employment relationships.
55. In agreement with the Employers' group, she relayed that the stepping stone concept in some cases seemed appropriate, but cautioned that the "step" should not be downwards, towards a worse job. It was important to identify conditions under which NSFEs led to better outcomes. Moreover, even if NSFEs sometimes served as stepping stones, it was insufficient to use this as justification of differential treatment to workers in the process of "stepping" towards better jobs. Recent examples from France and the Netherlands, where it was allowed to keep young workers longer than other workers in fixed-term jobs during the economic crisis on the assumption that this would improve their chances on the labour market proved to be unjustified, as they were kept in those jobs significantly longer than they otherwise would have been, actually deteriorating rather than improving their chances to get a standard job. Statistical data were also needed, as suggested by the Employers' group, but not only on quantity, but also on the quality of jobs and on the scope of rights afforded to them. For example, rights associated with fixed-term varied across countries; it was important to account for those differences to ensure data comparability.

**Point 3. "What should the main priorities for ILO action be in order to ensure the full realization of fundamental principles and rights at work and other rights for workers in non-standard forms of employment?"**

56. The Worker Vice-Chairperson, speaking on behalf of the experts nominated by the Workers' group, recalled that the main priority of the ILO should be to ensure realization of its constitutional mandate – social justice and protection of workers – in a changing environment. This should be completed with both international labour standards and

technical assistance guided by those very standards. Freedom of association and collective bargaining were essential to the realization of workers' rights. Case law from the ILO supervisory bodies affirmed that workers in NSFE should be entitled to such rights. Examples from agency workers in the Republic of Korea (Case No. 2602) and in Colombia (Case No. 2556) showed that those rights were not respected and that proliferation of NSFE led to the erosion of their right to organize and bargain collectively.

- 57.** The Worker Vice-Chairperson also outlined their priorities for the ILO: (i) promotion of the effective exercise of freedom of association rights, which included the development and implementation of the special mechanisms for which the Committee on Freedom of Association (CFA) had called; (ii) comprehensive advice to governments and technical assistance which would build a regulatory environment that ensured those rights were effective; (iii) the use of case law from the CFA which would provide advice to governments on how to further develop their legislation to ensure effective exercise of these rights; and (iv) policy guidance which would ensure a progressive increase in the number of workers covered by collective bargaining. Anchored by the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154), these instruments called for governments to guarantee and actively promote these rights for all Employers and all groups of Workers. Moreover, collective bargaining systems which allowed and promoted coordinated bargaining beyond the enterprise level delivered far better results in terms of equality and inclusion of workers.
- 58.** Concerning the enforcement of rights, the Worker Vice-Chairperson also suggested that helping governments, including through ILO technical assistance, to build effective labour inspections should be seen as a priority. There was also a need to investigate examples of arrangements like ZHCs that were used to circumvent existing regulations, including the Part-Time Work Convention, 1994 (No. 175). Ways to eliminate discriminatory practices concerning equal pay for work of equal value, social security benefits, training, working conditions, and health and safety provisions, should represent another priority for ILO technical advice. Support for capacity building of trade unions was vital. It was also important to develop statistical indicators, and assist governments to collect more comprehensive and disaggregated data on the diverse realities of NSFE.
- 59.** The Employer Vice-Chairperson, speaking on behalf of the Employers' group, agreed with the Workers' group about the need for the ILO to fulfil its overall mandate. He further underscored the importance of the application of existing instruments. While the Workers' group emphasized the importance of collective bargaining and freedom of association, the Employers affirmed that collective bargaining and the right to organize were important but only in so far as they were chosen by the parties. Moreover, these two rights should not constitute the only possible mechanisms to address NSFE. The use of NSFE also depended on the particular context. For this reason, issues related to freedom of association and collective bargaining would have more value in some contexts than in others. Moreover, collective bargaining's coverage was variable and highly differentiated in the public and private sectors and such differences were not easy to overcome. Aspirational as collective bargaining was, it remained a distant reality. In the interim, what could be done in the immediate future based on existing work should not be delayed.
- 60.** As to the use of existing instruments, the Employer Vice-Chairperson noted that many were already in place, which, collectively, contained the majority of protections required. As mentioned by the Workers' group, active promotion of these instruments was desirable, alongside improved enforcement. In particular, better, more widespread and more targeted, use of labour inspections would be welcomed. For example, in New Zealand, labour inspectors were limited and spread too thinly across such a large workforce. Randomized inspections also lacked depth of information in order to prioritize and strategize

enforcement. To remedy this, the Government saturated particular areas with its limited number of labour inspectors and specifically focused on sectors where the most vulnerable workers, in particular migrant workers, worked. This strategy not only led to the identification of many abuses, but of a data driven strategy which improved overall enforcement. Since many countries have limited labour inspection capacity, it would be useful for the ILO to concentrate on best practice regimes where countries made efficient use of existing resources. He then reiterated that no one solution existed for everything and multiple issues could not be addressed with one response.

- 61.** The Government expert from the United States pointed out three possible priority areas for the ILO. First, as it was apparent that strong and effective labour inspectorates were fundamental in limiting the misuse of NSFES, she called for the ILO to provide technical assistance to member States' labour inspectorates as countries' might have strong regulations in place but problems enforcing them. The ILO should also provide guidance to member States on how to effectively and strategically use limited funds available for labour inspectorates as well as encouraging states to increase funding. Secondly, as many countries did not collect data on NSFES, or collected it intermittently, the ILO should encourage states' regular collection. Data could influence policy making as was the case in the United States Department of Labor which changed its strategy from reacting to labor violations complaints to proactively investigating low-wage industries. Lastly, the ILO could disseminate good practices and provide guidance to member States regarding how to address vulnerabilities arising within NSFES, as the use of these forms of work could at times negatively impact the achievement of decent work and fundamental principles and rights at work.
- 62.** The Government expert from Norway underscored the overarching nature of this point for discussion and the difficulty to limit it to workers in NSFES. Norway followed a rights-based approach and ILO member States and constituents had to promote fundamental principles and rights at work, democracy and the rule of law, as there was a gap between the commitments states had made and the respect shown for the full realization of fundamental principles and rights at work (and other rights) in practice. Basic human rights were increasingly under threat in many parts of the world and failure to respect these rights impeded social development. She noted that it was for the ILO to pursue a coherent policy for the full realization of fundamental principles and rights at work, where efforts to promote and protect them were integrated into the work at global, regional and bilateral levels. She expressed her appreciation for ILO efforts to ensure that the decent work agenda and the fundamental principles and rights at work were integrated into the new UN sustainable development goals.
- 63.** She then stated that the main priorities for ILO action in the field of NSFES included ensuring access to decent work; securing the shortest possible transitions from non-standard to standard forms of employment; encouraging employment-friendly policies and promoting freedom of association and collective bargaining for all forms of employment. Freedom of association and collective bargaining were major tools for democratization processes and an important component of negotiated responses to crises in many countries. There was the need to scrutinize the interdisciplinary value of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), as they were a precondition for social dialogue and played a crucial role for a successful implementation of the other core conventions. She also underscored that gender equality and non-discrimination had been mainstreamed into the ILOs strategic and programming framework and there was a need to do the same for 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).

64. The Government expert from Japan agreed with the previous speakers on the importance of data as a key ingredient in designing the right policies. For example, the labour force survey in Japan captured the spread of NSFE. Secondly, while the rights-based approach was important, it was insufficient to ensure transitions from NSFE to standard forms of employment. Such policies needed to be complemented with employment and labour market policies and the ILO had a role to play in disseminating good practices in this direction. He also emphasized the importance of avoiding uniform policy guidelines as policy issues in different countries also differed. For example, in developing countries' a main challenge was the informal economy. ILO technical assistance to countries needed to consider this.
65. The Government expert from South Africa agreed with the importance of labour regulation enforcement but called for a more nuanced discussion especially in light of debates such as transitioning from the informal to formal economy. Rather than asking governments for more resources, efforts should be devoted to effectively using existing labour inspectorates to manage NSFE. Collective bargaining also played a protective role in extending protection to NSFE. Extending protection to workers in NSFE through collective bargaining in sectors that experienced significant growth in NSFE, such as security services, was very important. However, this also required a nuanced debate as it was difficult to exercise the extension of this protection in practice. While accepting that permanent work might not be possible for all workers, it was important to ensure that they nevertheless were all entitled to labour protection.
66. The Government expert from Chile pointed to the importance of the ratification of ILO instruments relevant to NSFE and to the improvement of enforcement and labour inspections. The ILO technical assistance was also vital. He expressed his appreciation for ILO technical assistance in undertaking the most recent and important reforms of collective bargaining. Chile worked closely with the ILO for many months on a document which developed key points on collective bargaining. Such reforms, which were undertaken in democratic consultation with social partners, outlined a new and stronger role for collective bargaining both in extending protection to all workers, but also in ensuring that economic gains were shared with workers.
67. The Government expert from France expressed her agreement on the importance of international labour standards, effective enforcement and implementation, as well as solid statistical data. However, one issue that had yet to be raised was the effectiveness of the defence of workers and their access to the court system. While there was a right to work, there were also labour rights. As a response to the crisis, some employers had questioned labour rights in France. While the rights of enterprises were recognized, the rights of workers should have been recognized too. There was also a contradiction in the position of Employers who on the one hand argued that short- and fixed-term contracts with protection were the way forward and yet also viewed these contracts as a stepping stone towards an open-ended contract. In relation to this, instruments such as the Termination of Employment Convention, 1982 (No. 158), could serve as a sort of anchor; short-term contracts could be used as a stepping stone provided that they were for the shortest time possible. While Article 2 of the Termination of Employment Convention, 1982 (No. 158), provided for a probationary period of reasonable duration, it should be discussed in specific context. Moreover, it was important to use existing instruments through social dialogue to advance discussions on decent work deficits related to NSFE.
68. The Government expert from the Philippines stated the importance of international labour standards. However, this raised questions about the relevance of these instruments for the challenges of NSFE. In this regard, a guiding document which reviewed ILO instruments relevant for ILO member States which were reviewing their regulatory frameworks to address NSFE would be helpful. Recalling discussions with workers' groups in the

Philippines, she argued that while a number of legal instruments existed, problems remained. The Philippines benefited from ILO's and USDOL's technical assistance to strengthen the enforcement system. Sharing the example of such assistance in combination with other country best practices on NSFE would be helpful for countries seeking to improve and adopt regulations. Finally, she encouraged the ILO to undertake research on the extent to which NSFE could act as an entry point into the labour market and could provide an opportunity to address issues related to skill mismatch.

- 69.** The Employer expert from the Netherlands, speaking on behalf of the Employers' group, stated that employers called for full respect of the fundamental principles and rights at work, in particular, the core conventions on freedom of association and collective bargaining namely the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Office and its constituents should promote these conventions by increasing the number of ratifications as well as through their implementation at the national level. In response to previous statements which referred to NSFE as a challenge or even attack on collective bargaining rights, she replied that such allegations did not reflect the reality on the ground. NSFE were a new reality in the world of work, to which unions and employers had to accept and respond by developing new bargaining models. She drew attention to good practices, in which workers in NSFE were able to organize, join unions, and were covered by collective agreements. She also highlighted the usefulness of several sources, such as the ILO working paper on collective bargaining in NSFE, the report from the European Foundation for the Improvement of Living and Working Conditions on Temporary agency work and collective bargaining in the EU, and the brochure of IndustriALL on negotiating security.
- 70.** The Employer expert from the Netherlands added that collective bargaining agreements covered most agency workers in Europe and in countries with strong social dialogue. In nine countries, over 90 per cent of agency workers were covered through mechanisms such as extension of collective bargaining agreements. The issues related to collective bargaining for workers on fixed-term contracts were not new. It had been addressed in the Netherlands in the 1970s, in France in the 1980s, and in Germany at the turn of the millennium. She further developed the example of Germany which illustrated a new model that included multiple unions and multiple employers from agencies and users, and Sweden, where employers negotiated with 33 consecutive unions. In France and Denmark, over 80 per cent of agency workers were covered by collective labour agreements as stated in a publication by Eurociett and UNI Europa of 2013 entitled "The Role of Temporary Agency Work and Labour Market Transitions in Europe: Institutional frameworks, empirical evidence, good practice and the impact of social dialogue". Freedom of association and collective bargaining, however, were not an obligation and depended on national contexts and practices. Collective bargaining could take place at several levels, notably at enterprise, end user, work unit, agency, sectoral, cross-sectoral, and national levels. A combination of levels was possible. She called upon the ILO to support the capacity building of employers' organizations in improving collective bargaining in NSFE.
- 71.** Regarding international labour standards, the Employer expert from the Netherlands focused on an example of the Private Employment Agencies Convention, 1997 (No. 181), which recognized freedom of association and collective bargaining, and which was ratified by 28 countries. She called upon the Office to further promote the convention and requested to include this point in the conclusions of the meeting. Regarding NSFE and agency work, while NSFE imposed new challenges, these should not imply a total ban or severe restriction on such forms on employment. She recalled recent jurisprudence from Namibia, specifically Supreme Court decision SA 51/2008, from which she quoted: "The shift away from standard employment relationships is an undeniable reality. These changes and developments in the workplace and in the employment market cannot be arrested just



to preserve the most favoured model for union organization. Unions will need to move on from their traditional organizing model and reach out to recruit workers in an era characterized by changed employment patterns.” On this basis, there was need for capacity building of both workers and employers to organize NSFE and referred to the conclusions in the OECD guidelines, where the National Contact Point in Germany said in the *Deutsche Post/DHL v. UNI Global* case: “The deployment of agency workers does not represent a direct violation of the OECD guidelines or other internationally applicable standards”.

72. She added that there was no international agreement or legislation limiting the use of agency workers, including the Private Employment Agencies Convention, 1997 (No. 181). The ECJ would soon publish a report on agency work which would provide a further step in jurisprudence. In conclusion, a new agreement was needed that underscored that NSFE were not just stepping stones, but a response to a need, a complementary form of employment, and not a threat to freedom of association and collective bargaining. She called for a decoupling of the legal contract from access to social protection, no matter the form of the contract, and for ensuring that workers in NSFE had access to social protection floors.
73. The Worker Vice-Chairperson, speaking on behalf of the experts nominated by the Workers’ group, reflected on the importance of the discussion. She remarked that diversity was undeniably part of today’s world of work, but that it always had been, and that such diversity could not serve as an argument for less favourable treatment. Turning to collective bargaining and freedom of association, these had been fundamental tools over the last 150 years to improve societies and economies, and pointed to history as a key starting point; prohibition from forming associations was lifted in the nineteenth century. Freedom of association was what allowed workers to assemble and decry indecent working conditions. She also recognized governments and employers that supported these rights, from which collective bargaining arose, and illustrated the joint benefit of sitting together to improve working conditions and labour market practices.
74. Reflecting on this history, the Worker Vice-Chairperson reiterated the undeniable place of freedom of association and collective bargaining at the heart of the ILO. These were drivers which allowed Workers and Employers to change the world of work and provided people the opportunity to rise out of poverty. Looking at legal frameworks was essential to verify whether they were supportive and also to identify and address barriers. Referring to the Namibia case raised by the Employers’ group, she agreed that no union would deny that we were living in the twenty-first century, dealing with twenty-first century challenges. However, Employers had created additional hurdles through certain practices and seemed to be asking workers to jump over them because they were part of the new world of work. Returning to the Namibia case, she added that amendments were made to the labour code following the case specifically to ensure that a direct employment relationship would be assumed after a certain period of time. In this case, the onus of adapting to the twenty-first century did not fall on the shoulders of unions alone, government regulations also needed to adapt.
75. The Worker Vice-Chairperson also called upon the ILO to make further ties with the ILO Declaration on Social Justice for a Fair Globalization (2008), which included references to enabling rights and their importance in realizing decent work. She agreed with the Employers’ group that reflecting on existing conditions and innovations in collective bargaining might be necessary. Statements made by governments noted the massive erosion of collective bargaining in general; this presented even worse implications for workers in NSFE. There was a need to identify not only good practices, but also bad ones that sought to eliminate or avoid standards. While good practices in the agency sector did exist, it would be interesting to document why they represented good practices and

understand the context and conditions in which they functioned; however, even in these cases, problems could persist. Moreover, although good practices existed, they could not trump the fact that bad ones also existed. For these reasons there was a need to investigate conditions under which certain practices could lead to positive or negative outcomes.

76. The Government expert from South Africa responded to the Employers' statement regarding the absence of attacks on collective bargaining. The Office report as well as other Government experts' interventions provided ample evidence of the existence of such attacks as well as their enormous impact. Furthermore, workers in NSFE were often not allowed to join unions which represented an attack on collective bargaining.
77. The Employer expert from South Africa, welcomed the comments received from the Worker and Government experts. She drew the discussion back to the need for innovation as a means of embracing freedom of association and collective bargaining, referring in particular to the efforts of employers in South Africa, who made attempts to support workers in NSFE to participate in the activities of organized labour, including collective bargaining. She also pointed to attempts at collective bargaining with multiple employers in triangular employment relationships, but with no success so far. On this basis, she called upon the social partners to work together to find innovative solutions, and to remove barriers such that solutions worked for all parties.

**Point 4. "How can existing international labour standards be better used to address non-standard forms of employment and what, if any, are the existing gaps in this area?"**

78. The Worker Vice-Chairperson, speaking on behalf of the experts nominated by the Workers' group, concurred with the Employers on the need to promote the ratification and implementation of existing international labour standards. She referred to the Office's document, which cites an important number of relevant conventions and recommendations that should be fully promoted. Referring to the report, the discussion so far and earlier debates within the ILO, she drew attention to Labour Inspection Convention, 1947 (No. 81), Labour Clauses (Public Contracts) Convention, 1949 (No. 94), Social Security (Minimum Standards) Convention, 1952 (No. 102), Minimum Wage Fixing Convention, 1970 (No. 131), Occupational Safety and Health Convention, 1981 (No. 155), and sectoral instruments, such as the Safety and Health in Agriculture Convention, 2001 (No. 184), the Termination of Employment Convention, 1982 (No. 158), and its language on reasons for fixed-term contracts, the Private Employment Agencies Convention, 1997 (No. 181), the Part-Time Work Convention, 1994 (No. 175), the Maternity Protection Convention, 2000 (No. 183), the Employment Policy Convention, 1964 (No. 122), and the Employment Relationship Recommendation, 2006 (No. 198), and the Social Protection Floors Recommendation, 2012 (No. 202), among others that needed to be promoted. Promotion meant several things, including the publication of clear and easy fact sheets highlighting key provisions of relevant ILO instruments and how they were relevant for workers in NSFE; rapid assessment tools to identify regulatory changes required in a country to achieve compliance in law and practice with the most relevant labour standards in relation to NSFE; helping countries that wish to ratify a particular standard take the necessary steps towards ratification; documenting good practices in addressing NSFE, for example, relating to labour inspections, which could be shared through national dialogue fora to agree on roadmaps for ratification and implementation of relevant international labour standards.
79. In addition to these proposals, she noted that there were some gaps in existing international labour standards that had been identified and needed to be addressed. First, regarding the

principle of equality of treatment for workers in NSFE and the protection against discrimination in employment based on employment status, she noted the need to address fixed-term contracts not only through the Termination of Employment Convention, 1982 (No. 158), but also directly to improve protection. Second, the scope of regulation of the triangular employment relationship had to be broadened beyond agency work. The Private Employment Agencies Convention, 1997 (No. 181), was therefore insufficient. Third, there was a need for further regulation of the use of temporary work. Fourth, collective bargaining rights had to be clarified and strengthened to ensure that bargaining could take place with the employer(s) that actually determined the conditions of work in the case of triangular employment relationships. Finally, there was a need to address forms of contractual arrangements that deprived workers of all their rights, like zero-hour contracts.

- 80.** In conclusion, there was broad consensus that such gaps existed, and some issues required further research. She proposed to hold a meeting of experts that could help to find solutions on how to close such gaps, particularly to address the regulation of temporary and fixed-term contracts and discrimination of workers in NSFE.
- 81.** The Employer Vice Chairperson concurred with the views expressed by the Worker Vice-Chairperson. Furthermore, the Social Security (Minimum Standards) Convention, 1952 (No. 102), had to be added to the list of relevant standards. There was a lack in the comprehensiveness of international labour standards and it was important to fill the gaps. Mechanisms deployed during social dialogue, such as the one in commercial relations, were new and required new attention.
- 82.** The Employer expert from the Netherlands underscored the need to update the Private Employment Agencies Convention, 1997 (No. 181).
- 83.** The Government expert from South Africa highlighted that regional and national tripartite forums could benefit more from ILO support. Furthermore, having all relevant ILO standards in one single publication would be a useful tool of reference.
- 84.** The Government expert from the United States noted that the ILO standards identified in the report showed no obvious gap, but that there was a need to raise awareness among the member States as well as provide technical assistance. If a gap was to be identified, it would be important to clearly specify what a new standard would add to the existing ones as well as its scope and coverage.
- 85.** The Government expert from Norway was not convinced that there were gaps in various ILO standards listed in the report. The main obstacle was rather existing gaps in national legislation to adequately regulate NSFE, as well as the inability to exercise these rights in practice. There was an important need to take into account the work of the supervisory bodies. Tasks for the ILO could include inquiring into why some member States did not ratify existing standards, assisting member States in ratification and application of the standards and creating a practical guide for use and application of already existing instruments on NSFE. This exercise could help reveal possible gaps.
- 86.** In conclusion, the Employer Vice-Chairperson underlined that gaps were not numerous and that social dialogue would be one of the many ways to address many of them.
- 87.** The Worker Vice-Chairperson added that ambiguous employment relationships such as bogus self-employment were used to circumvent labour law, and posed particular problems for defining whether a person was a worker or not, and thus whether the person had rights or not. The right to freedom of association was for everybody and she underscored the importance of 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). It was wrongful to deny such rights to specific individuals or professions, solely under the pretext of commercial or competition law. The gaps regarding these specific groups had to be addressed.

**Point 5. “Which aspects of non-standard forms of employment warrant further research, analysis and other actions by the ILO?”**

- 88.** The Employer Vice-Chairperson, speaking on behalf of the experts nominated by the Employers’ group, clarified that when stating “any job is better than no job” during the previous sitting, a reference was made to a context in which all forms of work should enjoy an adequate level of protection. In that particular scenario “any job” was better than “no jobs”. He also referred to the importance of developing priorities for future action and the need for more and better information on a variety of issues.
- 89.** Regarding collective bargaining, there was a lack of knowledge about the views of Employers and Workers on its different forms. In New Zealand, enterprise-level collective bargaining was the norm and national bargaining hardly existed. Social partners in the country were satisfied but maybe this would not be the case in other countries. It was necessary to look at different economic scenarios to understand what was “standard” in different economies. In some countries it could be that open-ended, full-time employment was not standard. The shift from one model of employment to another over time had also to be understood in order to foresee what the future of work would look like and to comprehend what the past could teach about the future. Data collection on different forms of employment was in need of improvement. The ILO Department of Statistics was working on this topic and the work had to continue. It was also necessary to understand the degree to which workers in NSFE could access social protection and the conditions under which access to such protection was possible. Furthermore, application of restrictions on NSFE in different countries and the related outcomes had also to be understood. In some cases, regulatory outcomes diverted from the original regulatory intention and had unintended consequences. In addition, there was the need to settle terminology. “Ambiguous” for example was not a clear term and “disguised” or other similar words should be used. It had to be borne in mind that there was a great variety within each particular form of employment. For instance, open-ended, full-time work was vastly different in New Zealand in comparison with the United States. In New Zealand this form of employment was highly protected, whilst in the United States it was not, because of the “employment at will” doctrine. There was also a great variety of fixed-term contracts.
- 90.** He concluded by underscoring the importance of having effective enforcement mechanisms. It was easy to say that more resources were needed for labour inspections but the question was also about the appropriateness of the regulatory framework, as these frameworks had to be shaped in a way that ensured their effective use. Finally, open-ended conclusions were not desirable: indications on prioritization and on actions with regard to the identified priorities were needed.
- 91.** The Worker Vice-Chairperson expressed her appreciation for the Employers’ group clarification regarding the statement that “any job” was better than “no job”. She was concerned however, that stopping at ensuring some minimal level of protection could lead to a situation in which the statutory minimum protection afforded by the law became the norm. A rich variety of schemes had been developed through the years to improve on those minimum standards including collectively bargaining for higher wages and more and better training. These schemes had been seriously affected by unfair competition.

92. She recognized, on the one hand, the existence of substantial knowledge gaps concerning the diversity of NSFE and their impact on workers' rights, and on the other, the existence of considerable research on the topic. An annotated bibliography and a depository of all relevant, available research by the different departments of the ILO and academic literature would be useful.
93. She also noted some level of consensus on the need to better understand the limited labour protection enjoyed by workers in NSFE even if they would formally be covered by international labour standards. There were considerable research gaps in the area of regulation of the use of temporary and fixed-term employment and adequate protection of workers in these forms of employment. Issues where further research was needed included existing practices and innovative concepts of regulation to avoid the use of these NSFE to circumvent protective labour regulations; and good practices and innovative concepts of regulatory systems that avoided unfair competition and the externalization of employment costs through NSFE. Similarly, research on the question of equality of treatment and possible discrimination based on employment status was important particularly in terms of legislative provisions and policies which provided protection against discrimination and applied the principle of equal treatment of workers regardless of the employment status.
94. A number of other research areas included the microeconomic and macroeconomic impact of the growing proliferation of different forms of NSFE; issues of the representation gap for workers in NSFE, the impact of NSFE on collective bargaining and potential measures to close this representation gap; best practice and innovative mechanisms to extend coverage of collective agreements to workers in NSFE, including triangular relationships, and legal regulations that permitted workers in NSFE to join the union of their choosing and identify the relevant employers for collective bargaining purposes; development of better statistical indicators and provide assistance to governments to collect more comprehensive data which capture the diversity of NSFE; analysis of trends on ambiguous self-employment that deprived workers of protection and rights; the development of a toolkit to promote International Labour Standards relevant at national level; and research on employment terms and conditions, professional rights and social dialogue mechanisms, including collective bargaining and collegial governance in tertiary education, with a focus on young teachers, academic staff, researchers and education support personnel. Finally, in relation to the discussion on the future of work and the increasing participation of women in the labour market, it was important to identify problems and solutions with a view of understanding better under which conditions employment of women could be beneficial for both workers and employers. It was important to look at alternative approaches which combined the need for internal flexibility of employers with the need for the worker for flexible arrangements to balance work and family life for both men and women.
95. The Government expert of Norway identified the following areas for further research, analysis and action: better supervision of applications of the ratifying countries; and research regarding development, changes in the use of different types of NSFE and forces driving such changes. She also emphasized the importance of taking account of ongoing work in developing evidence-based knowledge.
96. The Government expert of Chile noted the complexities involved in NSFE. He presented the example of his own country to address the issue of ambiguous self-employment – a sector which has been difficult to organize – by providing them a social protection mechanism. These workers, often professionals, had many employers and lacked a set schedule of working hours. This resulted in discrimination with respect to pension and the scheme had sought to reverse these trends. The social protection system established was contribution based, but these workers had the tendency to lessen their contribution and keep more of their income for immediate use. From this perspective, it would have been

interesting to have more research in terms of positive experiences on the topic from other countries.

97. The Government expert of United States agreed with the need to conduct further research on the prevalence and trends in NSFE. The issue of overrepresentation of particular groups of workers such as women and youth among workers in NSFE and possible policy and regulatory measures to address these workers' needs merited specific attention. For example, it would be interesting to analyse to what extent could subsidized childcare, improved supply of quality childcare services, paid parental leave and flexible work arrangements help part-time workers move to full-time employment. Another important area of research was the impact and effects that NSFE would have on wage gaps and other aspect of job quality, including workplace safety and health.
98. The Government expert from South Africa emphasized that it would be beneficial to focus on developing countries, since the current report had mainly covered developed countries, and therefore did not provide a global picture. The Office should make a special effort to collect information on developing countries.
99. The Government expert from Japan emphasized the importance of conducting research on transitions from NSFE to regular employment, including through labour market, employment and skills development policies. However, research should always take into account the context of each country's labour market, employment policies, human resources and labour relations. He further proposed an effective means of conducting such research by cooperating with relevant research institutes in member States. The ILO Research Department's cooperation with the Japan Institute for Labour Policy and Training on new forms of employment presented one such example. In addition, research should not only address labour relations, but also labour market and employment policies as avenues for addressing NSFE.
100. The Government expert from France agreed on the need to deepen research and clarify terminology. Research should be conducted by way of various disciplines, which included history, law and others, in addition to economics. It would be unthinkable to discuss the future of work without looking back to the wisdom of the past in an effort to reflect on previous events, correct perceptions and recognize that not everything was brand new. Historians, lawyers and economists had already deeply reflected on these questions and the Office should build on those efforts.
101. The Worker Vice-Chairperson stated that she would not add to the long list of requests to the Office and remarked on the challenge of selecting priorities. In this regard, she noted that the priorities of the workers had been sufficiently clear and that other items proposed also seemed useful.

## **V. Discussion on the form of the conclusions**

102. The Chairperson opened the discussion on the form of the conclusions of the meeting and gave the floor to the Worker Vice-Chairperson.
103. The Worker Vice-Chairperson requested clarification on the question under discussion and its objective.
104. The Chairperson explained that the discussion concerned the development of concrete proposals on the organization and priorities of the conclusions.

105. The Deputy to the Secretary-General further clarified that the question concerned whether the conclusions should include elements such as policy statements, a detailed work plan, or simply general principles.
106. The Worker Vice-Chairperson, speaking on behalf of the experts nominated by the Workers' group, proposed concise conclusions that started with general trends that had emerged from the debate, several of which had already been mentioned during the discussion. Common ground regarding the problems considered should also be included. For example, points could be included on the question of whether all NSFES were considered precarious, the conditions under which they were considered to be so, and the actions that could be taken. Such principles would set the scene for activities envisaged, including both those that would be of primary concern and those of less immediate concern. The conclusions could then include a plan of action for the Office. Finally, she advised she would consult with her group, would listen carefully to the Employers, and reserved the possibility of amending her inputs thereafter.
107. The Employer Vice-Chairperson summarized the priorities of the Employers. The conclusions should be: short, simple, and acceptable to everybody. While acknowledging the challenges this could present, he expressed agreement with the approach as proposed by the Workers. There was a need to capture the complexity and diversity of situations; that it was not as simple as identifying four or nine categories of NSFES. There should be some acknowledgement of different circumstances under which certain contractual forms would be acceptable versus other situations in which these would be considered inappropriate; these should also be considered in light of different contexts. The broad streams of the Office's work for the future would also be identified. He also reminded participants that these conclusions would feed into other discussions at the International Labour Conference and in other ILO forums.
108. The Government expert from the Philippines asked whether the document would need to have a particular form in order to be considered in the International Labour Conference recurrent item discussion on social protection (labour protection).
109. The Secretary-General replied that no specific format was required for it to be considered in other ILO discussions; however, she pointed out that the highlights of the discussion as well as the outcome would be submitted to the Governing Body at its 323rd Session where it would be decided if the conclusions reached were appropriate for dissemination. In short, irrespective of the format, it would be important to obtain the Governing Body's endorsement.
110. The Government expert from the Philippines requested a short break for Government experts to consult among themselves on the form of the conclusions and the proposals of the social partners.
111. The Chairperson called for a two minute break for consultations.
112. The Government expert from South Africa expressed that there were elements that informed possible areas of future work which would be important to capture in the conclusions to ensure the Governing Body's recognition. With this in mind, he declared support for the social partners' request for a concise and operational outcome document.
113. The Chairperson made his concluding remarks and confirmed that the Secretariat would draft conclusions that would be available the following morning and discussed during the plenary session. With these words, he closed the session.

## VI. Discussion of the draft conclusions

- 114.** The Employer Vice-Chairperson, speaking on behalf of the experts nominated by the Employers' group, congratulated the Office for the draft conclusions, which captured the essence of the discussion and provided a balanced recording of the debate. He agreed with the substance and his suggestions would focus on improving the clarity and simplicity of messages, rather than propose major substance changes.
- 115.** The Worker Vice-Chairperson, speaking on behalf of the experts nominated by the Workers' group, acknowledged the good debate but expressed her disappointment on the draft conclusions. The document did not properly reflect the position of the Workers nor the concerns and evidence presented by the Governments. The document was a step backwards when compared to the background report and was less balanced. For example, the issue of triangular employment relationship going beyond agency work was not addressed; the notion of "serious work deficits" acknowledged during the debate did not appear, instead, the draft conclusions only referred to "vulnerabilities" associated with the NSFE; the paragraph on safety and health did not present a reasonable approach when mentioning obligations of the member States, workers, and enterprises; the "stepping stone" versus "dead end" concepts were not tackled in a balanced way and only positive "stepping stone" outcomes were mentioned and the idea of "security of employment" was omitted. Conclusions avoiding sensitive points would not be helpful. Serious and legitimate concerns had to be recognized in order to be properly addressed.
- 116.** The Government expert from South Africa speaking on behalf of all Government experts stated that the draft conclusions reflected the discussions. It was a concise document on which the experts could work on and address some issues in relation to its shape, flow and ideas.

### Addition of new paragraph at the beginning

- 117.** The Worker Vice-Chairperson suggested adding a new paragraph before paragraph 1 presenting the broader context and framework. The text was taken from the Global Employment Agenda adopted by the Governing Body in 2003.
- 118.** The Employer Vice-Chairperson agreed with the paragraph but questioned the use of the term "freely chosen". The Government expert of the United States also supported the new paragraph and requested a clarification on the term "adequate income".
- 119.** The Worker Vice-Chairperson noted that all notions in the proposed paragraph had been drawn from adopted ILO instruments. The term "freely chosen" was included in the Employment Policy Convention, 1964 (No. 122), and "adequate income" had been drawn from the text of the Global Employment Agenda.
- 120.** The new paragraph was adopted.

### Paragraph 2

- 121.** The Worker Vice-Chairperson noted that the world of work always seemed new and complex, and it was arrogant to portray it as more complex today and proposed to amend the first sentence of the paragraph accordingly. Furthermore, certain NSFE had always existed, and could serve specific purposes such as for seasonal industries, to replace temporary absence from work, and facilitating work-life balance. The paragraph had to reflect some of the positive aspects of the use of NSFE. However, in the last decades, the



use of NSFE had grown beyond the purposes she had referred to. Workers in NSFE frequently lack protection and the paragraph had to reflect this.

122. Finally, she proposed new text to acknowledge that NSFE included temporary work, temporary agency work, and other triangular relationships and contractual arrangements with multiple parties, ambiguous relationships, and part-time work. Furthermore, triangular relations went beyond agency work and had to be addressed.
123. The Employer Vice-Chairperson noted that labour markets were also evolving in terms of competitiveness. Furthermore, purposes for NSFE also included enhancing business sustainability, promoting job creation and enabling work–life balance. As to the reference to “past decades”, it was important to note that it was globalization that had driven changes in the labour markets and trends in the use of NSFE had then to be attributed to broader forces. Mentioning “ambiguous” and “triangular” relationships, as proposed by the Worker experts, could cause confusion. The term “multiple” already embraced “ambiguous” and “triangular”.
124. The Worker Vice-Chairperson remarked that it was difficult to accept that all NSFE contributed to sustainability: it was preferable to state that, in some cases, NSFE helped increase labour market participation. Workers accepted to insert a reference to the impact of globalization on the use of NSFE. To avoid confusion, it was preferred to replace the words “temporary work” with “fixed-term contracts”. It was also preferred not to refer to “independent contractors”, according to the amendment proposed by Employers. The Office background report did not concern all forms of self-employment, but rather “ambiguous employment relationships”. In this respect, she proposed to use the original text proposed by the Office which explicitly mentioned “misclassified self-employment” and “dependent self-employment”.
125. The Government expert of South Africa referred to the Office background report which stated that no official definition of NSFE existed. He proposed to reflect this in the last sentence of paragraph 2: the word “include” had to be rephrased as “include among others” to clarify that the list of NSFE adopted in the conclusion was not exhaustive. This proposal was adopted.
126. A debate arose concerning the definition of temporary versus fixed-term employment. The Executive Secretary and Deputy to the Secretary-General clarified that the term “temporary work” was used not only to embrace fixed-term contracts but also, with particular regard to developing countries, seasonal, short-term and casual work that often were not the object of a formal contractual relationship. The Office warned that the word “contract” might therefore be limiting.
127. In response, the Worker Vice-Chairperson suggested a need for words encompassing situations in both developed and developing countries; the point would be to provide a clear reflection of possible situations of non-standard work such as triangular relationships or non-triangular relationships with limited duration or hours in order to identify an employment relationship. She proposed another alternative to the word “temporary work”: “fixed-term contracts and other forms of temporary work”.
128. The Government experts from South Africa and the Philippines questioned whether fixed-term contracts were legitimately considered atypical. The Government expert from France explained that while the rights attached to fixed-term contracts could differ across countries, the “normal” form of engagement was still considered as one with an “open-ended” duration, and that not including fixed-term work into the definition of temporary work would then question what “temporary” actually encompassed. The Employer and Worker Vice-Chairperson aligned with this stance. The Chairperson proposed to include

the term “fixed-term contracts and other forms of temporary work”, which was accepted. The Government expert from the Philippines also asked for the inclusion of “triangular relationships”.

- 129.** The Worker Vice-Chairperson questioned the difference between “ambiguous” employment relationships and “dependent self-employment”. The Executive Secretary of the Office replied that the Employment Relationship Recommendation, 2006 (No. 198), was relevant to both disguised and ambiguous employment relationships, but that in the report to this Tripartite Expert Meeting, the Office decided to focus primarily on ambiguous relationships. She further elaborated that the Office nonetheless took into account examples from countries that were dealing with disguised employment relationships, primarily because it was difficult to distinguish between ambiguous and disguised employment relationships.
- 130.** The Employer Vice-Chairperson reflected that while the Employers could agree with the term “disguised”, they could not support the term “ambiguous”. He proposed that the text of the report be kept, or alternatively, that the wording of the Employment Relationship Recommendation, 2006 (No. 198), be used. In addition, the Employment Relationship Recommendation, 2006 (No. 198), specifically omitted the word “ambiguous” in favour of “disguised”.
- 131.** The Worker Vice-Chairperson expressed her disagreement with the Employer proposal to use the language of the Employment Relationship Recommendation, 2006 (No. 198), as that concerned legal employment relationships, whereas the relationship of those in ambiguous employment extended into a grey area. Ambiguous employment relationships referred to individuals who were perhaps not legally defined as an employee, but were nonetheless dependent in the way an employee would be. With this in mind, she proposed to either use the term “ambiguous” as a title, as the Office does, or refer to disguised employment relationships and workers in economic dependency not easily identified as employees, and who were in need of protection.
- 132.** The Worker Vice-Chairperson also recalled that they were not negotiating a legal instrument, and reiterated that work was not the same as a contract. The Employment Relationship Recommendation, 2006 (No. 198), was discussed and adopted to clarify the employment relationship, whereas the topic at hand was NSFEE.
- 133.** Given the disagreement regarding the use of the term “ambiguous”, experts decided to return to the discussion at a later stage of the proceedings.
- 134.** A discussion followed concerning the relative contribution of NSFEE to the sustainability of enterprises. The Government expert of South Africa expressed agreement with the principle that NSFEE provided flexibility which facilitated sustainability. However, the Worker Vice-Chairperson proposed that the text be reworded to express that NSFEE assisted businesses to adapt to fluctuations in demand. The Employer Vice-Chairperson agreed in principle, with the caveat that the exact wording would have to be considered. Regarding the term sustainability, he agreed that it was a buzz word with connotations; however, in this case the Employers chose it for its basic meaning, which was that businesses which were allowed to grow were those which engendered economic growth.
- 135.** The Chairperson summarized that the paragraph would not be adopted, and that two issues were reserved for later discussion.

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### Paragraph 3

- 136.** Concerns arose concerning the use of the term non-discrimination in combination with equitable, equal and equality. The Employer Vice-Chairperson proposed to replace the words “equal treatment” with the term “equitable”. Since NSFE vary, the question was not to make them equal, but their situation equitable, relative to workers with standard employment. However, the Worker Vice-Chairperson expressed doubts regarding the word equitable since the term equal treatment was currently used in ILO standards. She requested guidance from the Office on the proposal to use simply “non-discrimination”, and whether that would include the concept of equal treatment.
- 137.** The Secretary-General clarified that non-discrimination alone was insufficient to capture equal treatment and equality was usually coupled with non-discrimination. Moreover, equal treatment was not synonymous with “same” or sameness of treatment. Treatment would differ depending on circumstances; it would be comparable, not less favourable.
- 138.** The Government expert from France argued to use “equal treatment”, since it was a recognized concept, and “non-discrimination” as the terms were different. The Government expert from the United States also supported the use of these terms. In response, while the Worker Vice-Chairperson understood the concern of the Government expert from France, she called for using the language of the Office. The Employer Vice-Chairperson also accepted using the terms of the Office.
- 139.** The Government expert from the United States also took issue with the term “security of employment”. In the United States the principle of “employment at will” implied that workers could be dismissed without any justification.
- 140.** In response, the Worker Vice-Chairperson responded that “security of employment” meant that workers should not be arbitrarily dismissed. The Employer Vice-Chairperson stated that he had not understood the term “security of employment” to mean that work would guarantee security of employment. Rather, in this particular text, to which he agreed, he understood it to imply that NSFE should not be used to explicitly undermine it.
- 141.** The Government expert from the United States objected to the inclusion of “security of employment” as it was neither a labour right, nor a form of decent work. However, she was willing to agree to paragraph three overall, noting the Employer Vice-Chairperson’s explanation, but stated that the term was problematic, especially in the United States.
- 142.** The expert representative from South Africa also suggested that there was a difference between security of employment and security in employment. He felt that security in employment was more appropriate for this point of discussion. The Worker Vice-Chairperson agreed that she could see a difference in security of employment and security in employment. While both should in principle be included, she was satisfied to leave the text as proposed.
- 143.** The Government expert from South Africa also proposed to delete parts which referred to the “legitimate needs of workers and employers”. The sentence implicitly recognised the need for NSFE and the phrase “legitimate needs” made the sentence superfluous.
- 144.** The Worker Vice-Chairperson expressed her disagreement with the suggestion of the Government expert from South Africa to delete the phrase concerning “legitimate needs”. There were cases in which there were legitimate needs from both Employers and Workers and we had to recognize those needs whilst ensuring protection. What was important was the feeling of the majority in the meeting. NSFE should be used for the correct purposes. There were many instances when part-time work was used not to meet legitimate needs of

workers and firms but to replace full-time work, and many countries had created legislation to ensure that did not happen. Some non-standard contracts had a purpose and could be used, such as for seasonal work. However, businesses sometimes used seasonal contracts for work that was not seasonal in nature. The possibility should exist to question whether a seasonal contract, for example, was the appropriate contract for the task.

145. The Employer Vice-Chairperson agreed with the statement of the Workers' group that this was not a legal document. The responsibility of the meeting was to design a document which could support conversation at a later date. The phrase ensured recognition that not every form of NSFE was bad, but with two qualifications: there was a legitimate purpose and NSFE were not used to undermine workers' rights.
146. The Government expert from Norway agreed that the phrase "legitimate needs" should be retained in paragraph three. The Government expert from France also noted that the wording should include "legitimate needs" since it was not superfluous. She emphasized that Workers and Employers might need to use NSFE, but that these types of contracts should be used for legitimate needs. She noted that fixed-term contracts were sensible, but should be used in the proper circumstances.
147. The Government expert from South Africa expressed some concern about the discussion. Everyone in the meeting should have the opportunity to raise questions for clarification and they should be allowed to be fully engaged in the document. The first two paragraphs of the conclusions set the scene for what followed. Were all five paragraphs meant to take an operative or instructive approach? Was this correct in the drafting document?
148. The Secretary-General stated that paragraph two provided context and alluded to the problematic issue which arose from NSFE when it was not properly employed. The recent growth in NSFE had increased and with it the relevance of the issue. However, that also highlighted the challenges. Nonetheless, if appropriately addressed, they could prove beneficial for both Workers and Employers.
149. The Chairperson suggested to note in the record of the meeting the issues identified by expert representatives from the United States and South Africa. Without dissent, paragraph three was approved.

#### Paragraph 4

150. The Worker Vice-Chairperson proposed several changes which were accepted by the Employer Vice-Chairperson. The latter, however suggested to add the words "and regulated" after "well-designed", and the words "and adapt" before the words "to market demands". Finally, he asked to replace the word "used" with "misused" before the words "in order to circumvent" to better reflect the reality.
151. The Worker Vice-Chairperson agreed to almost all the changes proposed, but requested clarification on the intended meaning of "legal obligations", specifically whether this included collective agreements.
152. The Employer Vice-Chairperson recognized the concern and counter proposed to use the word "lawful" instead of "legal", which had broader meaning. The term was intended to be understood in a broad sense, including law, contracts, collective agreements, or any other form of obligation that was enforceable by law.

153. The Government experts from France and Norway supported the use of the term “legal”. The term included law as well as collective bargaining agreements and contractual agreements that had legal force.
154. The Worker Vice-Chairperson sought to clarify whether the term “legal obligation” would indeed include contractual, fiscal, collective agreements, and if there were specific legal obligations that the Employers were looking to exclude.
155. According to the Employer Vice-Chairperson the intention was to include obligations that were enforceable in a court and on the basis of which workers could make formal complaints and seek redress.
156. The Worker Vice-Chairperson requested guidance from the Office on whether or not the word “legal” limited the notion of obligations in any way.
157. The Secretary-General replied that in ILO standards, terms were chosen to reflect the law and practice in different countries. The terms used generally were “laws and regulations” that include obligations from collective bargaining agreements in countries where such agreements were legally binding. She cautioned that in some countries collective bargaining agreements might not be legally binding.
158. The Worker Vice-Chairperson remarked she would want to make sure that collective bargaining agreements were recognized even in those countries where they were not seen as law. The wording of the conclusions had to reflect this.
159. The Employer Vice-Chairperson reiterated that the Employers did not intend to refer to the law as such, but to legal obligations that were legally enforceable. Collective bargaining agreements were worthless if they could not be enforced.
160. The Worker Vice-Chairperson noted that in the United Kingdom, for example, collective bargaining agreements were not legally enforceable and that the intention was to ensure such cases were captured. To this end, she proposed the wording “legal and contractual obligations, and other responsibilities”.
161. The Employer Vice-Chairperson disagreed with the words “and other responsibilities”. The goal was to achieve a framework in which different forms of employment were not used to circumvent obligations that would otherwise be legally enforceable. Any other responsibilities were outside the scope of this discussion, if the authority could do nothing about it.
162. The Worker Vice-Chairperson mentioned that the key issue at stake was the detrimental effects of NSFE and whether those were used to avoid obligations. She pointed out that the term “legal” might be too restrictive, encompassing only obligations stemming from law.
163. The Employer Vice-Chairperson proposed to add “and undertakings”, but reiterated that “other responsibilities” was confusing as these did not necessarily contain legal attachments.
164. The Worker Vice-Chairperson insisted on inserting “legal and contractual obligations and other responsibilities” and noted that “undertakings” was a term with different legal meaning in different countries.
165. The Government expert from France questioned whether “other responsibilities” included unilateral commitments of enterprises.

- 166.** The Employer Vice-Chairperson suggested to amend the term to “legal and contractual obligations and other employment-related responsibilities”, which would encompass contractual or other legally enforceable responsibilities.
- 167.** The Government expert from South Africa reminded that the context was related to the abuse of non-standard forms of employment, and hence proposed to include the term “statutory obligations” as a more encompassing one, and not only limited to legislation but possibly also including case law.
- 168.** The Worker Vice-Chairperson stated that in the European context, “statutory” relations referred to law and was therefore limiting. She was ready to accept the formulation proposed by Employers, “legal and contractual obligations and other employment-related responsibilities”.
- 169.** The Government expert from the United States aligned with this view; but the Employer Vice-Chairperson postponed the amendment further to discussion with the Employers’ group.

## Paragraph 5

- 170.** The Worker Vice-Chairperson explained that the proposed amendments presented a more positive approach, and acknowledged the purposes served by NSFE whenever they were beneficial to both parties. The amendments also aimed at remedying contradictions between the report, the discussions, and the conclusions that did not properly reflect the issue of decent work deficits of “vulnerable groups”.
- 171.** The Employer Vice-Chairperson proposed an amended text which aimed at reordering the ideas proposed by the Workers and that was based on the report.
- 172.** According to the Worker Vice-Chairperson this amendment did not solve all the issues raised by the Workers. There was a need to reflect that NSFE could have beneficial effects under certain conditions but could also have negative ones and result in dead-end traps rather than stepping stones, as articulated in the report.
- 173.** The Government expert from Japan pointed out that, beyond women, migrant and young workers, elderly workers were also found in NSFE. These forms of work could also help aged workers to transition from employment to retirement and could thus be beneficial for these workers.
- 174.** The Government expert from the Philippines pointed out that the discussion had begun using the comprehensive term “NSFE” but the amendments proposed risked restricting the analysis only on particular NSFE such as fixed-term contracts. The discussion should focus on the broad concept of “NSFE” rather than on particular forms.
- 175.** The Worker Vice-Chairperson remarked that the controversy had arisen in light of the draft conclusions which seemed to suggest that NSFE could be beneficial and have stepping-stone effects. However, the Office background report and discussion had shown that they could have negative consequences as well, namely “downwards” rather than “upwards” stepping-stone effects.
- 176.** The Government expert from France observed that the draft of Conclusions referred to stepping-stone effects but argued that such effects had yet to be proven. The fact that vulnerable workers were found in NSFE was not evidence of the stepping-stone effect and stressed the need for further research.

177. The Worker Vice-Chairperson remarked that vulnerable workers were significantly found in NSFE, including aged workers. The latter could be involved in beneficial transitions from employment to retirement via NSFE. However, it could also be the case that aged workers found themselves bound to work well beyond the age of retirement to top up their insufficient income. The conclusions had to reflect possible risks and negative effects arising from NSFE. Sometime NSFE had positive stepping-stone effects but this was not always the case.
178. The Government expert from South Africa argued the important contribution of NSFE in terms of providing access to labour markets. However, the conditions under which these forms of employment operated raised concerns already emphasized by the Worker Vice-Chairperson.
179. The Employer Vice-Chairperson acknowledged the Workers' concerns. However, he suggested that such concerns would be better addressed in the next paragraph.
180. The Worker Vice-Chairperson maintained that paragraph 5 discussed the issue of access to the labour market and to decent work. She accepted that some forms of NSFE offered opportunities to access the labour market. In some cases NSFE could assist young people to gain work experience and find standard employment but in other cases these young workers ended up doing this work for a long time or forever.
181. The Employer Vice-Chairperson stated that there was no difficulty in acknowledging this and that the language in the report could have helped to address this in a balanced way.
182. The Secretary-General made a proposal with the aim of reconciling concerns. There was an agreement that young workers, women and migrants were overrepresented in NSFE. The fact that they were overrepresented could reflect an issue of discrimination. It was suggested to redraft the sentence as follows: "As women, youth and migrants are more prone to discrimination in the labour market, the high incidence of NSFE among these groups may raise concerns whether these forms of employment are a stepping stone towards regular and decent employment."
183. The Government expert from Japan noted that in his country, the overrepresentation of youth in NSFE was not due to discrimination, but lack of experience and questioned the appropriateness of the term for all contexts.
184. The Employer Vice-Chairperson found the Office proposal helpful. The report was also far more positive about NSFE than the draft conclusions and suggested a formulation along these lines: "While NSFE have been beneficial, the fact that these groups are overrepresented raises questions about whether they are genuine stepping stones."
185. The Worker Vice-Chairperson noted that the earlier paragraph already suggested that NSFE represented a useful mechanism for retaining and recruiting workers. Referring once again to these benefits would not help reach a balance. The proposal of the Office was helpful and if there was another term for "discrimination" the Workers' group could accept it.
186. The Government expert from France noted that the high incidence of NSFE among particular groups perhaps indicated the existence of forms of discrimination. However, there was a need to have more evidence and research on this.
187. The Employer Vice-Chairperson noted that paragraphs 41–45 of the report discussed the various demographics and the existence of discrimination among involuntary NSFE. The paragraphs also contained a discussion on the "stepping stone".

- 188.** The Worker Vice-Chairperson argued that these paragraphs included clear language that NSFE could be a trap and that certain groups of workers were more likely to be found in these forms of employment. She suggested to stop the discussion and prepare a proper summary of those paragraphs.
- 189.** The Government expert from South Africa recalled an intervention previously made by the Employers that explained a logical order of the paragraphs in the conclusions, in which paragraph 4 would refer to the positive aspects of NSFE as stepping stones, and paragraph 5 would refer to the negative outcomes of these forms of employment. Following that logic, he proposed that an amendment be made to paragraph 4 which made reference to the positive role NSFE could play in giving access to labour markets. If this was deemed agreeable, he asked if the language as proposed by the Workers in paragraph 5 might be acceptable.
- 190.** The Worker Vice-Chairperson contested the notion that the paragraphs were supposed to be either positive or negative. The Workers viewed them as starting with positive and ending with negative aspects of NSFE. She reiterated the Workers' position that the new paragraph 5 should include language that balanced the positive with the negative outcomes, including how vulnerable groups were affected.
- 191.** The Employer Vice-Chairperson, taking into account an intervention previously made by the Government expert from Japan, proposed that young workers could be removed from the list of those facing greater disadvantages in the labour market, leaving only women and migrants. He further proposed an amendment to place a full stop after the word "concerns" and to delete the remaining text of the paragraph to avoid discussing whether the outcomes of NSFE were positive or negative.
- 192.** The Worker Vice-Chairperson noted that the report provided evidence that young workers had difficulties accessing the labour market. She recalled previous examples from countries where fixed-term contracts were used as a means to help young workers gain access to the labour market but which had a negative effect on their access to decent work. The text could not exclude young workers. "Lost generations" of young workers faced enormous problems with NSFE.
- 193.** The Government expert from France expressed support for including language that reflected the positive use of fixed-term contracts to help young people access labour markets, but references had to be included about the negative aspects of NSFE. In France, in recent years there had been an increased use of "interns" in enterprises. While the initial intention was good the result was that many young workers ended up with continuous internships while doing substantial work for the company. Ultimately, a law was adopted which obligated employers to compensate interns.
- 194.** The Worker Vice-Chairperson clarified that the Workers requested the Office to propose a new paragraph altogether to reword the sentence on vulnerable groups and stepping stones.
- 195.** The Government expert from South Africa pointed out that it was important to reflect the content of paragraph 44 of the report. The Worker Vice-Chairperson also requested the Office to elaborate on this.
- 196.** The Executive Secretary explained that the Office had conducted an extensive literature review, which found that there were problems with the idea that fixed-term contracts could act as stepping stones. While in some cases the literature found that fixed-term contracts worked as stepping stones, about two-thirds of the literature reported that they did not. Moreover, the research found that in countries where these forms of employment were more widespread, they did not act as stepping stones. In Norway, for instance, where there



were relatively few instances of fixed-term contracts, they seemed to be effective stepping stones. However, in Spain where approximately 30 per cent of contracts were fixed-term contracts, they were not found to be effective.

197. The Worker Vice-Chairperson asked the Office to prepare a new proposal on the paragraph that would reflect the views expressed, and which could be submitted to the social partners and Government experts for consideration.
198. On the basis of this new proposal, the Government expert from the Philippines suggested to rearrange the wording of paragraph 5, specifically, to move the phrase referring to “discrimination” to the beginning.
199. The social partners and experts agreed to this new proposal and the Chairperson declared it accepted.

## Paragraph 6

200. The Worker Vice-Chairperson explained the logic for the proposed amendments. The reasons for the rise in NSFE were not exclusively linked to a poor regulatory framework. Other reasons had to be acknowledged. The wording “greater difficulties” also needed more specificity and precision.
201. The Employer Vice-Chairperson stated that the purpose of the Employers amendments was to expand and clarify the issues. While some countries witnessed decent work deficits associated with non-standard work, others did not. Employers also proposed to go beyond the six dimensions of work, and include initial access to jobs, in addition to other transitions; as well as some other conditions of work. He also suggested replacing the word “segmentation” by “insecurity and inequality”.
202. Based on a new draft of paragraph 6 reached by a small drafting committee from Workers, Employers, and Governments, the Government expert from the United States proposed replacing “social security” with “social protection”. In the United States, social security was a component of social protection. The Worker Vice-Chairperson expressed that the term “social protection” could not replace “social security” because the latter was employment related. The Government expert from the United States then requested clarification from the Office on whether social security represented the same concept as social protection or the social protection floor in certain parts of the world.
203. In response, the Deputy to the Secretary-General explained that the definitions of social security and social protection varied considerably across countries. According the ILO’s Declaration on Social Justice for a Fair Globalization, social protection encompassed social security and labour protection. In the ILO, the term “social security” referred to income security and health care. The Social Protection Floors Recommendation, 2012 (No. 202), provides that social protection floors should comprise at least basic social security guarantees aiming to ensure that all in need have access to essential health care and basic income security, and that such floors should be considered as steps towards building comprehensive social security systems able to deliver over time the range and level of benefits outlined in the Social Security (Minimum Standards) Convention, 1952 (No. 102).
204. The Government expert of the United States accepted the reference to “social security”.
205. A debate also arose regarding whether NSFE concerned all, some, or many parts of the world. The Government expert from Norway suggested removing any qualifier and using

“in parts of the world”. The Worker Vice-Chairperson expressed her reservations since NSFEE exhibited a higher incidence of decent work deficits in all parts of the world. This was not to argue that standard employment never exhibited deficits, but that a reference to “some parts of the world” was incorrect. The Employer Vice-Chairperson pointed out that this was a matter of proportion. NSFEE existed in all parts of the world; however in some parts of the world the incidence of decent work deficits was higher than in others. It was proposed to return to this element later in the discussion.

- 206.** The Worker Vice-Chairperson requested the Office to clarify the definition of the term “labour market segmentation”. The Executive Secretary responded that it was a technical term that, in simple terms, meant labour markets were less efficient. The Government expert from Algeria suggested using the term “duality” instead of “labour market segmentation”. The Employer Vice-Chairperson proposed to remove the reference to “labour market segmentation”. The Worker Vice-Chairperson remarked that the reference should not be removed as the issue was important. It was proposed to return to this point later in the discussion.
- 207.** The Worker Vice-Chairperson asked for clarification regarding why the Employers’ group thought Employers might face barriers to addressing deficits in NSFEE. The Employer Vice-Chairperson explained that Employers too faced a number of barriers due to ineffective regulation or government practices which impacted their ability to redress these deficits.
- 208.** A discussion also arose concerning the rights of workers in NSFEE to bargain collectively with employers. The Employer Vice-Chairperson had suggested including “relevant employers” since it was first important to establish the relevant parties. The word “relevant” also ensured that employment agencies were held responsible. With regard to agency work, workers entered into a contract of service whilst a commercial contract for services existed between an agency and a user firm: this latter commercial contract also had to be taken into account.
- 209.** In response, the Worker Vice-Chairperson pointed out that, outside Europe, it was often unclear with whom, agencies or user firms, agency workers actually had a contractual relationship. For this reason, it was also relevant to have the right to bargain collectively with the Employer(s) who actually determined the conditions of work.
- 210.** With the exception of the outstanding items which would be returned to at a later stage of the proceedings, the text of the paragraph was adopted.

## **Paragraph 7**

- 211.** The Worker Vice-Chairperson presented the amendments agreed by the social partners.
- 212.** Regarding the title, she suggested to integrate words “and maintain”. In places where decent work was present, it should be maintained.
- 213.** Regarding the introductory paragraph, she suggested replacing “vulnerabilities” with “decent work deficits”, “six” by “seven” and referring to “social dialogue” in general, rather than only to tripartite social dialogue. The Governments agreed with that proposal.

## ***New point (a)***

- 214.** The Worker Vice-Chairperson explained that “working conditions” had to be reflected in the subsection of measures.

215. The Government expert from South Africa, speaking on behalf of the Government experts, suggested that they were not against the intent of the paragraph, but that Governments were also Employers, and as such, they should not be singled out in a separate (last) sentence; they proposed dropping it. They accepted their responsibilities as Governments but did not have to be singled out as Employers.
216. The Worker Vice-Chairperson explained that Governments were Employers, which meant they had a special responsibility to provide an appropriate example to other employers.
217. The Government expert from Norway suggested replacing “Governments” by “public employers”.
218. The Government expert from France suggested the words “all employers, whether public or private” and the Worker Vice-Chairperson suggested adding “... should provide workers with appropriate protection”.

### **Point (b)**

219. Amendments presented by the Worker Vice-Chairperson included dropping the first sentence. The notion of “life-long employment with a single employer” was obsolete. She also suggested adding “transition across jobs” and “creation of quality employment”. Employers agreed with that proposal.
220. The Government expert from the Philippines accepted all proposals, but suggested inserting “skills training”. The Employer Vice-Chairperson proposed to refer to “skills training and development”.
221. The Government expert from France questioned the term “transition to decent work”. Even in NSFE, work could be decent.
222. The Worker Vice-Chairperson agreed with the Government expert from France that all work, standard and non-standard, had to be decent. However, since not all non-standard forms of employment were decent, and since the point was about promoting transitions to better and decent jobs, the phrase was still meaningful.
223. The Government expert from France accepted that view, and suggested to amend the phrase with “continuous progress to decent jobs”.
224. The Employer Vice-Chairperson proposed “access to decent jobs”.
225. The Government expert from South Africa, in reference to the words “governments in consultation with social partners” suggested deleting the words “in consultation” and referring to “governments and social partners”. It was important to give leverage to Governments to create quality employment without consultation with social partners.
226. The Government expert from France disagreed. “In consultation” did not necessarily mean that Governments had to agree with social partners, but rather to hear them when needed. In France, there was an obligation for the government to consult social partners before making changes or taking measures.
227. The Worker Vice-Chairperson agreed with the Government expert from France, explaining that “in consultation” also meant involving social partners. She suggested adding “where appropriate”.

228. The Government expert from South Africa, explained that his proposal was to disentangle the obligation to “support quality employment” from “consultation” but agreed to accept the phrase.

**Point (c)**

229. The point was adopted without any further amendments.

**Point (d)**

230. The Government expert from Norway suggested softening the language of the second sentence and replacing “should design” with “should aim to design ...”.
231. The Government expert from the Philippines suggested deleting “contributory from social security systems” as some countries did not have contributory systems.
232. The Government expert from Algeria said she was unclear about the first sentence. In her country, a contribution for a minimum number of years was required to be eligible for entitlements.
233. The Worker Vice-Chairperson explained that the phrase concerned contributions based on working hours resulting from contractual arrangement and not time in employment. She agreed with the suggestion made by the Government expert from Norway.

**Point (e)**

234. The Government representative from the United States suggested adding “such as” as well as “where they exist” to reflect that in some countries no resources were available to afford safety equipment.
235. The Worker Vice-Chairperson argued that safety equipment was the responsibility of the employer and that irrespective of whether they existed, the employer had to ensure safety. Governments had the responsibility to ensure that standards and obligations were in place to enable employer compliance with safety, including the provision of safety equipment.
236. While the Government representative from South Africa agreed, this was not what the sentence on the screen suggested. It read that it was the responsibility of the Governments to provide safety equipment. He also added that the responsibility for safe and healthy workplaces also rested with workers.
237. The Government representative from France suggested the words: “Governments should take adequate measures to ensure that workers in NSFE ...”.

**Point (f)**

238. The Worker Vice-Chairperson underscored the importance of this point as it dealt with collective bargaining. The Employer Vice-Chairperson proposed changing “non-standard forms of employment pose challenges” with the text “non-standard forms of employment may pose challenges”.
239. The Government expert from France asked for clarification regarding the meaning of determining “the relevant employer” for the purpose of collective bargaining.

240. The Employer Vice-Chairperson suggested changing the text to “This should include promotion of effective bargaining system. Means of determining the relevant employer(s) for the purpose of collective bargaining also need to be identified.”
241. The Worker Vice-Chairperson observed that there was a need to determine the employers with whom to bargain rather than just the means of determining those employers and that this proposal was in line with the Private Employment Agencies Convention, 1997 (No. 181).
242. The Employer Vice-Chairperson proposed to introduce, at the end of the last sentence the words “in accordance with national laws and regulations”.
243. The Worker Vice-Chairperson observed that there were problems with current national regulations and the wording proposed by the Employers did not address the issue. She then proposed to introduce the words “in accordance with International Labour Standards” before “national laws and regulations”.
244. The Government expert from the United States proposed to substitute the words “Governments, Employers, Workers, should develop through social dialogue”, in point (f), with the words “Governments, Employers, Workers, could develop through social dialogue”. Some Governments, for instance the Government of the United States, did not interfere with collective bargaining or social dialogue. The Government expert from the United States withdrew her proposal after having received clarification from the Worker Vice-Chairperson. The text only implied a recommendation to develop forms of consultation with social partners and not an obligation of Governments to intervene in collective bargaining.
245. The Worker Vice-Chairperson requested clarification on what inserting the words “in accordance with International Labour Standards, national laws and regulations” actually implied.
246. The Employer Vice-Chairperson remarked that countries had different approaches to the limits of collective bargaining as statutory limits and other forms of limits differed from country to country.
247. The Worker Vice-Chairperson stated that problems existed regarding the extent to which current national regulations were sufficient to determine the “relevant employer(s)” with whom to bargain.
248. The Government expert from France argued that it was superfluous to add the words “in accordance with International Labour Standards, national laws and regulations”. There was no point in such a wording as nobody was against the need to promote collective bargaining or identify means to determine the relevant employer(s) for the purpose of collective bargaining.
249. The Employer Vice-Chairperson explained that the sentence confounded two ideas: development of approaches and initiatives, on which there was no reason to put any constraints for innovation; and, identification of the relevant employers, for which some countries had specific procedures and regulations.
250. The Worker Vice-Chairperson suggested that the words “in coherence” could replace the words “in accordance”, to remedy the confusion.

**Point (g)**

251. The Government expert from the United States noted that this point captured views she had expressed in previous interventions.

**Point (h)**

252. The Employer Vice-Chairperson suggested eliminating the second part of the last paragraph, which referred to income security.
253. The Worker Vice-Chairperson stated that there should be at least some income security provided to Workers, and could not accept deleting that part.
254. The Government expert from South Africa inquired about the value added of the concept.
255. The Government expert from France proposed to keep the sentence as it solely suggested the need for predictability of income. It was not necessarily referring to guaranteed income for life, but to something that workers needed to have. It was part of the workers' rights to reasonably expect basic income in return for their work.
256. The Employer Vice-Chairperson highlighted that adequate income security was included in the fundamental principles and rights at work as well as in the concept of decent work and he was unsure why "basic income security" was privileged as compared to the omitted aspects.
257. The Worker Vice-Chairperson inquired whether "basic income security" was part of the Decent Work Agenda. She insisted it was useful to have a more specific formulation, and possibly include concrete examples where "basic income security" was not guaranteed, such as ZHCs.
258. The Employer Vice-Chairperson responded that "basic income security" was part of decent work, and hence proposed to replace "basic income security" by "decent work", as a more encompassing term.
259. The Deputy Secretary-General explained that "basic income security" was part of decent work. With reference to Social Protection Floors Recommendation, 2012 (No. 202), Article 4: "The guarantees should ensure at a minimum that, over the life cycle, all in need have access to essential health care and to basic income security ...". "Basic income security" encompassed and was ensured through both labour income and transfers. When drafting the conclusions, the Office was concerned with the lack of predictability of incomes as well as the level of income. Given this, for some workers with very short working hours, it would be appropriate in some situations to supplement inadequate labour income with transfers to ensure a decent living. Paragraph 1 already contained the commitment to decent work, and the point could draw on that paragraph.
260. The Employer Vice Chairperson proposed to refer to the "Decent Work Agenda" rather than using "basic income security". The Government expert from France stated that the Decent Work Agenda included basic income security and the Decent Work Agenda was acknowledged by Employers and wondered about the difficulty of accepting "basic income security".
261. The Employer Vice-Chairperson proposed the phrase, "in accordance to the aims of the Decent Work Agenda". The Worker Vice-Chairperson stated that this was not clear and suggested "in accordance with the elements of the Decent Work Agenda".

262. The Government expert from South Africa questioned the meaning of “avoiding” at the beginning of this point. If the word “avoidance” was used, then the next question was “who avoids”? The structure of the statement was confusing.
263. The Government expert from the Philippines proposed to only leave the word “eliminating” and delete the word “avoiding”.
264. The Worker Vice-Chairperson suggested the words “preventing and eliminating” to which the Employers agreed.

## **Paragraph 8. Recommendations for future action**

265. Point (a) was adopted.
266. The discussion passed to point (b) where the Employer Vice-Chairperson disagreed with the inclusion of a footnote which listed relevant conventions for NSFE. The Government expert from Norway preferred to keep the footnote. The Worker Vice-Chairperson also desired to retain the footnote. The point was noted for later discussion.
267. In point (c), the Government expert from Norway also questioned the proposal that the current experts’ meeting would lead to two more experts’ meetings. Norway was not in a position to support two more meetings of this nature. The Government expert from South Africa also supported Norway’s proposed approach.
268. The Worker Vice-Chairperson responded that while understanding that experts’ meetings were time consuming, though interesting, the issues mentioned in the text had no existing standards. An experts meeting or other activity was part of the standard-setting process. As a compromise, the Employer Vice-Chairperson suggested that “consideration be given” to the possibility of experts’ meetings so that said meetings were neither mandated nor precluded by the text.
269. Point (c) was adopted.
270. Point (d) was adopted.
271. Point (e) was adopted.
272. Point (f) was adopted.
273. Point (g) was adopted.
274. Some discussion followed concerning the mandate of the Tripartite Expert Meeting. The Worker Vice-Chairperson proposed supporting country activities “to identify and address decent work deficits in NSFE, including criteria for the use of fixed-term employment, zero-hours contracts and problems arising from dependent self-employment”. The Government experts from Norway and South Africa supported the Workers’ group proposal.
275. The Employer Vice-Chairperson emphasized that the suggestive text was too prescriptive. The Tripartite Meeting of Experts should not dictate policy programmes of individual countries; rather, the countries could choose to do so of their own free will. It was agreed to refer to certain types of NSFE as mentioned in the Office’s background report to the Tripartite Meeting of Experts.

- 276.** Point (h) was adopted.
- 277.** Point (i) was adopted.
- 278.** In point (j), the Government expert from Japan requested clarification on why “public services” were singled out. He withdrew his objections after the Worker Vice-Chairperson clarified that the private sector was included in the paragraph.
- 279.** Point (j) was adopted.
- 280.** The Worker Vice-Chairperson proposed that in point (k), “including research papers and reports” be added after “Create a repository of data, information, ...”.
- 281.** Point (k) was adopted.

## **VII. Revision of the outstanding points**

- 282.** In paragraph 2, there was a discussion regarding business sustainability and growth. The Employer Vice-Chairperson explained that NSFE created value for businesses and this had to be reflected in the conclusions. The Worker Vice-Chairperson observed that it was contentious whether NSFE had created general “growth”: in some cases growth had been created at the expense of workers in NSFE, in other cases it had been beneficial for all. It was agreed to substitute “business sustainability” with “business adaptability and growth”.
- 283.** The Employer Vice-Chairperson suggested that the term “disguised employment relationship” be used instead of “ambiguous employment relationship”, making reference to the Employment Relationship Recommendation, 2006 (No. 198), which adopted the use of that term.
- 284.** The Worker Vice-Chairperson replied that the word “ambiguous” was used as an umbrella term for “disguised employment relationships and dependent self-employment”. In accepting the Employers’ proposal, it would be necessary to additionally include “dependent self-employment”. The Employer Vice-Chairperson proposed to use “disguised employment relationships, dependent self-employment, and part-time work”.
- 285.** Paragraph 2 was adopted.
- 286.** Returning to paragraph 4, the Employer Vice-Chairperson insisted that the term “other employment-related responsibilities” was unnecessary since the preceding words “legal” and “contractual” already captured the components required to govern non-standard and standard forms of employment. However, he agreed to retain the term “other employment-related responsibilities”.
- 287.** Paragraph 4 was adopted.
- 288.** Returning to the discussion in paragraph 6, the Worker Vice-Chairperson accepted the proposal from the Government expert from Norway to use “in parts of the world”. She proposed to leave out “labour market segmentation”, but insisted on retaining “often”. The Employer Vice-Chairperson agreed with all proposals except having the word “often”. The Worker Vice-Chairperson offered to rephrase the proposal to “more often than other workers”.
- 289.** Paragraph 6 was adopted.



- 290.** Returning to the discussion of paragraph 7(h), the Worker Vice-Chairperson suggested listing the elements of the Decent Work Agenda in a footnote. She provided a quote from the Global Employment Agenda, enumerating the elements. She also affirmed interest in retaining a footnote with the relevant international standards.
- 291.** With reference to paragraph 8(b), the Employer Vice-Chairperson warned that while that might be helpful, it was important to stress that the list was not universally acceptable. He recalled that the Termination of Employment Convention, 1982 (No. 158), had itself been the subject of a Tripartite Meeting of Experts and was referred to by the Governing Body with caution. It had to be taken off the list. Issues also existed with regard to the Employment Relationship Recommendation, 2006 (No. 198).
- 292.** The Government expert from Norway disagreed with the Employers' concern, suggesting that, even if Employers were not in agreement with the instruments, they were still functioning instruments which had been adopted by all, including Employers.
- 293.** The Government expert from France explained that the Termination of Employment Convention, 1982 (No. 158), was a very important and pertinent instrument in France; it was unthinkable to omit the instrument from the footnote.
- 294.** The Worker Vice-Chairperson suggested stating "relevant instruments as suggested by the ILO background report" instead of providing a footnote.
- 295.** The Government expert from Norway proposed to have an exact reference to the ILO background report, with the title and number, in the draft conclusions.
- 296.** Paragraphs 7 and 8 were adopted.
- 297.** The conclusions were adopted and the Chairperson closed the session.

## Conclusions

1. Having met in Geneva on 16–19 February 2015, the Meeting of Experts on Non-Standard Forms of Employment<sup>1</sup> reaffirms the commitment of the International Labour Organization to implement its constitutional mandate, as reflected in the Decent Work Agenda, which applies to all workers, including those in non-standard forms of employment, and whereby full, productive and freely chosen employment is promoted simultaneously with fundamental rights at work, social dialogue, an adequate income from work and the security of social protection.
2. The world of work has seen continuous evolution, including the growth of diverse forms of employment and contractual arrangements in labour markets across the world. Non-standard forms of employment have always existed and may serve specific purposes such as for use in seasonal industries, to replace temporarily absent workers, or to offer options for balancing work and private life. Non-standard forms of employment have assisted business adaptability and growth, as well as increasing labour market participation. In the past decades, due to globalization and other factors, their use has grown. Workers in non-standard forms of employment more frequently than other workers lack protection in law or in practice. These non-standard forms of employment include, among others, fixed-term contracts and other forms of temporary work, temporary agency work and other contractual arrangements involving multiple parties, disguised employment relationships, dependent self-employment and part-time work.
3. Non-standard forms of employment should meet the legitimate needs of workers and employers and should not be used to undermine labour rights and decent work, including freedom of association and the right to collective bargaining, equality and non-discrimination, and security of employment. Adequate protection is achieved by having an appropriate regulatory framework, compliance with and strong enforcement of the law, and effective social dialogue.
4. Well-designed and regulated non-standard forms of employment can help enterprises by increasing their ability to respond and adapt to market demands. They can also be a useful mechanism for retaining and recruiting workers, as well as for more quickly harnessing the skills and expertise of certain workers on the labour market. Yet when non-standard forms of employment are misused by employers in order to circumvent their legal and contractual obligations and other employment-related responsibilities, this undercuts fair competition, with detrimental effects for responsible businesses, workers and society at large.
5. The wider array of contractual arrangements available can facilitate the engagement of workers in the labour market. This is particularly true of well-regulated, freely chosen employment, such as part-time work and other non-standard employment arrangements that may permit workers to better reconcile their work, life and family responsibilities. While in some instances non-standard forms of employment may also act as stepping stones to standard employment, in many other instances they do not, warranting serious attention. Women, youth and migrants, who are more prone to discrimination, are over-represented in non-standard forms of employment. This may be a reflection of the opportunities that some non-standard forms of employment provide for these workers to

<sup>1</sup> For the Meeting, the Office prepared a background report entitled: *Non-Standard forms of employment, Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment*, Geneva, 16–19 February 2015. The report is available at: [http://www.ilo.org/global/topics/employment-security/non-standard-employment/whatsnew/WCMS\\_336934/lang--en/index.htm](http://www.ilo.org/global/topics/employment-security/non-standard-employment/whatsnew/WCMS_336934/lang--en/index.htm).

enter the labour market, but it may also reflect their greater risk of involuntarily remaining in these forms of employment.

6. Non-standard forms of employment, in parts of the world, exhibit a higher incidence of decent work deficits. These are often not sufficiently addressed by regulatory frameworks, enforcement and labour inspections systems, active labour market policies or the judicial system, all of which should be effective and accessible. A significant number of member States have adopted adequate regulations and ratified the relevant Conventions, and are addressing the deficits and protecting workers. Workers in non-standard forms of employment may face barriers to collectively addressing decent work deficits. These workers are more often than other workers unable to exercise their fundamental rights, including the right to freedom of association and to bargain collectively with the relevant employer(s). As a result, workers in non-standard forms of employment risk facing decent work deficits along one or more of the following dimensions of work: (1) access to employment and labour market transitions to decent work; (2) wage differentials; (3) access to social security; (4) conditions of work; (5) training and career development; (6) occupational safety and health; and (7) freedom of association and collective bargaining. If left unchecked, these decent work deficits risk contributing to increased insecurity and greater inequality.

### **Measures to protect and maintain decent work for workers in non-standard forms of employment**

7. To ensure that all workers, irrespective of their contractual arrangements, are protected, measures should therefore be put in place, or strengthened, to address potential decent work deficits along these seven dimensions. While tailoring their strategies to their specific national context, governments, employers and workers may want to consider, through social dialogue, the following:
  - (a) *Decent jobs and working conditions:* Governments and social partners should pursue labour market and other policies with the goal of ensuring continuous progress towards decent jobs. All employers, whether public or private, using non-standard forms of employment should provide workers with appropriate protection.
  - (b) *Supporting labour market transitions:* As workers transition across jobs throughout their working lives, governments, in consultation with the social partners where appropriate, should support the creation of quality employment and invest in labour market policies that promote economic growth and development, lifelong learning, skills training and development, labour market matching and access to decent jobs.
  - (c) *Promoting equality and non-discrimination:* Action should be taken to promote equality and to ensure that all workers, regardless of their contractual arrangements, are protected against discrimination.
  - (d) *Ensuring adequate social security coverage for all:* Measures such as minimum hour or income thresholds for social security entitlements may result in employment practices excluding workers in non-standard forms of employment from social security coverage and other social benefits. Countries should aim to design and adapt their social security systems so as to provide workers in non-standard forms of employment with conditions equivalent to workers in standard employment.
  - (e) *Promoting safe and healthy workplaces:* Governments and employers should take adequate measures to ensure that workers in non-standard forms of employment have a safe and healthy work environment. Workers in non-standard forms of employment

should receive training and be provided with safety equipment, and they should be able to participate in workplace health and safety systems and processes.

- (f) *Ensuring access to freedom of association and collective bargaining:* As stated in the Declaration on Social Justice for a Fair Globalization, freedom of association and the effective recognition of the right to collective bargaining help support the attainment of decent work. Non-standard forms of employment may pose challenges when it comes to the effective realization of freedom of association and collective bargaining rights. Some triangular relationships pose particular challenges. Governments, employers and workers should use social dialogue to develop innovative approaches, including regulatory initiatives that enable workers in non-standard forms of employment to exercise these rights and enjoy the protection afforded to them under the applicable collective agreements. These initiatives should include promotion of effective bargaining systems and mechanisms to determine the relevant employer(s) for the purpose of collective bargaining, in coherence with international standards, national laws and regulations.
- (g) *Adopting a strategic approach to labour inspection:* Labour inspectorates should be adequately resourced and should harness their resources through various strategies, including targeting specific sectors and occupations, taking into account the expansion of non-standard forms of employment with a high incidence of non-compliance.
- (h) *Addressing highly insecure forms of employment and fundamental rights at work:* Special attention should also be given to preventing and eliminating forms of non-standard work that do not respect fundamental rights at work, and which are not in accordance with elements of the Decent Work Agenda.<sup>2</sup>

## Recommendations for future action by the Office

8. Supporting the abovementioned objectives requires a long-term effort from the Office across a broad range of activities. It should, in particular:
  - (a) Work with member States to improve and expand data collection and reporting with respect to the different forms of non-standard employment and the characteristics of these forms of employment. Account should also be taken of resolutions adopted by the International Conference of Labour Statisticians.
  - (b) Promote the ratification and better use of the relevant international labour standards mentioned in the background report to the Meeting of Experts on Non-Standard Forms of Employment. Provide technical assistance to member States so that they can adapt their national legislation and other policy measures in line with the provisions of those standards. Support these efforts with the development of a guide which brings together these standards as an integrated whole and with fact sheets that explain the relevance of each of the standards for non-standard forms of employment.
  - (c) Analyse whether there are gaps in international labour standards, or instruments that do not sufficiently reflect the reality of today's world of work, and identify barriers to ratification of standards. Consideration should be given to evaluating the need for additional international labour standards possibly through meetings of experts to

<sup>2</sup> "The Decent Work Agenda is one in which freely chosen productive employment is promoted simultaneously with fundamental rights at work, an adequate income from work and the security of social protection" (ILO, Global Employment Agenda, 2003, p. 2).

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address temporary contracts, including fixed-term contracts, and discrimination based on employment status.

- (d) Taking into account the future of work, examine and address possible barriers to freedom of association and collective bargaining, in law and in practice, in order to enhance the ability of workers in non-standard forms of employment to exercise these rights, including the possibility to negotiate with the relevant employer(s). Identify best practice, regulatory and other initiatives that are helping to close representational gaps, and use this knowledge to build the capacity of workers' and employers' organizations.
- (e) Research and disseminate information on practices and innovations in collective bargaining that contribute to decent working conditions for workers in non-standard forms of employment; investigate reactions and overall satisfaction of employers and workers with regard to different forms of collective bargaining and social dialogue in connection with non-standard forms of employment.
- (f) Research, document and disseminate information on innovative and best practice approaches to labour inspection. Support member States' efforts to improve labour inspection by encouraging provision of sufficient resources, and by providing guidance on how to more effectively use the funds and other resources available to target specific areas of concern with respect to non-standard forms of employment. Support efforts to ensure effective access of workers in non-standard forms of employment to courts and labour adjudication mechanisms.
- (g) Analyse, document and disseminate information on approaches to extend employment-based social security to workers in non-standard forms of employment, including the dependent self-employed, which can ensure appropriate levels of protection, including during transitions in the labour market, while preserving the sustainability and effectiveness of social security systems.
- (h) Support country activities to identify and address decent work deficits in non-standard employment, as referred to in the background report for the Meeting. Encourage countries to take the Meeting of Experts' discussion and conclusions into account in the Decent Work Country Programmes.
- (i) Taking into account current challenges and looking to the future of work, provide guidance for integrated and innovative approaches to address the needs of both men and women workers with family responsibilities, making full use of the relevant ILO Conventions.
- (j) Continue efforts begun with the preparation of the background report for the Meeting, to document trends as well as to analyse the effects of non-standard forms of employment on workers, firms, public services, the labour market and economic performance. Improve understanding of national regulatory practices and developments with respect to non-standard forms of employment. Gain a better understanding, including through historical analyses, of the interplay between the evolution of different forms of non-standard employment, development of new technologies and models of production, transport and public services, in order to discern the larger implications for equality, social inclusion and the future of work.
- (k) Create a repository of data, information and analysis, including research papers and reports, on non-standard forms of employment and innovative practices to best ensure protection of workers, sustainable enterprises and well-functioning labour markets. Make particular efforts to fill existing information gaps with respect to non-standard forms of employment in developing countries.



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