

INTERNATIONAL LABOUR ORGANIZATION
Sectoral Activities Programme

Report of the discussion

**Workshop to Promote Ratification of the Private
Employment Agencies Convention, 1997 (No. 181)**

Geneva, 20–21 October 2009



INTERNATIONAL LABOUR OFFICE GENEVA

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Introduction

1. The Workshop to Promote Ratification of the Private Employment Agencies Convention, 1997 (No. 181), was held at the International Labour Office in Geneva from 20 to 21 October 2009. The Governing Body of the ILO had decided at its 301st and 305th Sessions (March 2008 and June 2009) that the two-day tripartite Workshop would be held in Geneva, 20–21 October 2009; be composed of eight Worker and eight Employer participants, selected after consultations with the respective groups of the Governing Body; and be open to representatives of all interested governments. Its purpose was to promote ratification of the Convention by countries where the private employment agency market was developing and by major sending and receiving countries of migrant workers. Governments potentially ratifying the Convention were encouraged to attend, for example those having ratified the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), or having requested technical assistance on Convention No. 181. The Workshop could aim to develop and then adopt Recommendations that could provide suggestions for subsequent action by the ILO and its constituents. The Office had prepared an Issues paper¹ to serve as a basis for the Workshop's discussions, which had been sent to participants prior to the meeting.
2. The Chairperson of the Workshop was Mr Hans Leo J. Cacdac, Deputy Administrator, Philippine Overseas Employment Administration. The spokesperson for the Employers' group was Mr Olav Magnussen, from Norway and the spokesperson for the Workers' group was Ms Margriet Kraamwinkel, from the Netherlands. The Secretary-General of the Workshop was Ms Tinoco, the Executive Secretary was Mr Myers and the Clerk was Mr Sendanyoye, all from the Sectoral Activities Department.
3. The Workshop was attended by 108 participants, including 28 Government representatives and 18 advisers, one representative of the European Commission, as well as 26 Worker and 34 Employer representatives and one representative of an international non-governmental organization – the World Association of Public Employment Services (WAPES). Government representatives came from Algeria, Angola, Cambodia, Cameroon, Chad, Chile, China, Cyprus, Ecuador, Egypt, France, Greece, Islamic Republic of Iran, Israel, Kenya, Kuwait, Malaysia, Mozambique, Philippines, Poland, Sao Tome and Principe, Singapore, Spain, Switzerland, Thailand, Tunisia and the Bolivarian Republic of Venezuela. International Employer representatives came from the International Organisation of Employers (IOE) and the International Confederation of Private Employment Agencies (CIETT), and representatives of Global Union federations came from the International Trade Union Confederation (ITUC), UNI Global Union, the International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM), the International Metalworkers' Federation (IMF), Public Services International (PSI) and the Organization of African Trade Union Unity (OATUU).

¹ *Private employment agencies, temporary agency workers and their contribution to the labour market*, WPEAC/2009, ix+59 pp.

Opening statements

4. Ms Elizabeth Tinoco, Director of the Sectoral Activities Department, welcomed participants on behalf of the Director-General of the ILO. She noted that the meeting was linked to the ILO General Survey of 2009 concerning employment standards,² and to other initiatives regarding the social impact of the financial and economic crisis. She stressed the relevance of Convention No. 181 and of private employment agencies during the crisis. She announced that future activities with other ILO departments would be based on the points of consensus that were to be discussed during the Workshop, including research on temporary workers in private services sectors and a Global Dialogue Forum that should be held in October 2011 on the role of private employment agencies in promoting decent work and improving the functioning of labour markets. She introduced Mr Hans Cacdac from the Philippines, who had been selected as Chairperson of the Workshop.
5. Mr Cacdac announced that the Workshop would be more flexible than traditional tripartite sectoral meetings and the Recommendations would reflect only the points of consensus, to encourage more active contributions from participants. He stressed that the discussion would need to stay focused on the substantive topics, namely: contribution of temporary agency workers and private employment agencies to labour markets; cooperation between public and private employment agencies; regulation, monitoring and controls concerning agencies; agency workers' rights and working conditions; the economic crisis and private employment agencies; and how to support further ratifications. A set of points of consensus would be reviewed for adoption at the final session, so it was very important to conclude discussions on time. Those points would be presented to the 306th Session of the Governing Body (November 2009), while a more detailed report of the discussion would be submitted to the 307th Session.
6. The Employer spokesperson welcomed the opportunity for the ILO's tripartite sectoral constituents to contribute to the discussion on this topic, and the innovative workshop format was a good example of the ILO becoming more flexible. The Private Employment Agencies Convention, 1997 (No. 181), and its accompanying Recommendation No. 188 provided a framework for improved functioning of private employment agencies and better protection of agency workers' rights, while including practical and effective guidance for governments, workers and employers. Convention No. 181 was important and must be promoted and defended. Not all governments had repudiated Convention No. 96. Employers needed to balance flexibility and permanence, two pillars that support each other for a successful labour market that functions well and provides employment. Convention No. 181 was a good example of tripartism, in contrast to Convention No. 96. Fruitful cooperation was needed between governments and employers, which should be complementary and not exclusive alternatives. Although Convention No. 181 predated the concept of decent work, it was consistent with it. He suggested that the Workshop's points of consensus should be based on the Decent Work Agenda and the ILO Declaration on Fundamental Principles and Rights at Work (1998). The crisis brought little new to countries whose unemployment rates were already high, but emphasized the need for full employment as the primary objective; private employment agencies could contribute to that goal by providing labour market services such as outplacement, executive search, permanent recruitment and matching supply and demand for temporary agency work to fulfil the needs of enterprises and workers.

² For which reports had been submitted for the November–December 2009 ILO Committee of Experts on the Application of Conventions and Recommendations concerning six employment instruments, including Convention No. 181, to be discussed at the 99th Session of the International Labour Conference.

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7. The Worker spokesperson welcomed this opportunity to discuss the issue with representatives of Governments and Employers and was happy with the more flexible workshop format. Convention No. 181 should be promoted and defended, as it could contribute to the Decent Work Agenda for temporary workers. Her group wished to raise four issues: (a) temporary work was important due to the challenges it raised, and trade unions had discovered many cases of abuse, including human trafficking; (b) many temporary agency workers did not have freedom of association or the right to collective bargaining; (c) in many cases, permanent workers had been replaced by temporary staff, and the crisis had been used as a pretext to justify this shift. The crisis also facilitated discrimination against temporary workers, who did not receive equal pay or treatment, full social protection benefits, or health and safety protection. They may have fewer legal rights and even less knowledge about their legal rights. Temporary workers were also used as strike breakers in some cases; and (d) overuse of subcontracting leaves workers with little information about who their employer is and what their rights are. Some countries have regulations to protect workers' rights, but these must be implemented and monitored to uphold workers' collective bargaining rights. She stressed the importance of compliance with, and enforcement of, regulations and of the fight against abuse of temporary agency workers. The Workers' group would provide more information about good practices in the course of the meeting. The Workers' group disagreed with the Employers' statement that only employers and governments should cooperate to improve the situation. Actions should be tripartite.
8. The Executive Secretary introduced the Office's Issues paper, which provided a background to earlier labour standards on employment agencies, examined the Convention's main provisions, looked at trends in the private employment agency market and temporary agency work, presented a preliminary review of the impact of the economic crisis on the industry, drew together international policy statements highlighting issues relating to employment agencies and temporary work, notably the June 2009 Global Jobs Pact, and discussed social dialogue in the temporary agency work sector. The Issues paper also presented some challenges to ratification and possible solutions, and how the ILO could assist countries on developing the policy framework for private employment agencies. The Executive Secretary also explained the basis for the suggested points for discussion and the corresponding chapters in the Issues paper. The points for discussion had been simplified to aim at greater facilitation of the Workshop's proceedings. The timetable had been amended to omit discussion of sectoral aspects of temporary agency work.
9. The Workshop endorsed the following suggested points for discussion:
- (1) Private employment agencies' contribution to labour markets.
 - (2) Private employment agencies – Regulation, monitoring and controls.
 - (3) Agency workers' rights and working conditions.
 - (4) The economic crisis and private employment agencies.
 - (5) How to support further ratifications of Convention No. 181.
 - (6) Points of consensus and suggestions for future ILO action.

Point 1 – Private employment agencies’ contribution to labour markets

10. On point 1, Worker, Employer and Government representatives reported on their experience of temporary work agencies, their impact on labour market flexibility and the job opportunities that had been created. Standards on employment and working conditions, including pay and working time, had to be respected, key issues examined and examples of good practices shared. The general parameters needed to be set in order to promote cooperation between national labour authorities and private employment agencies.
11. The Worker spokesperson had several main concerns. Agency work should not replace direct and permanent employment. Migrant and cross-border workers deserved equal treatment to national agency workers in terms of working time, pay, training opportunities, and health and safety considerations. Agency workers also needed access to freedom of association and to collective bargaining. There was also a need to create new jobs, and agencies could help to identify these. Private employment agencies should: provide agency workers with vocational training; promote a shift from temporary agency contracts to fixed-term or open-ended contracts; offer flexible working time arrangements such as part-time work and flexible working hours; help fight undeclared work; ensure decent conditions for cross-border temporary agency work; and promote cooperation with the public employment service.
12. Worker members described how health workers and others from their respective countries had migrated to other countries through agency contracts, but Worker organizations had no means to verify how many workers had migrated; measures were required to monitor their migration and assist in preserving their rights in the destination countries. They noted that many unions were in favour of regulation and monitoring of temporary agency work, while recognizing the economic contribution of agencies and the jobs created. The agencies had a big role to play, especially for first-time jobseekers, and contributed to “up-skilling” of workers who were between jobs. However, in promoting flexibility, there was a tendency to place temporary workers in what should be considered permanent employment positions. This could reduce the chances of workers securing permanent posts.
13. The Employer spokesperson recognized the key contribution of private employment agencies to the labour market. Public employment services did not perform sufficiently well in the labour market, hence the need for additional actors and resources.
14. Employer members noted that although a “young” industry, private employment agencies had more than doubled in the past ten years. Some 10 million agency workers were employed on a daily basis in full-time equivalents, thus actively contributing to the labour market. The industry was cyclical, and there had been a decrease in penetration rate over the past year due to the crisis. Japan, the United Kingdom and the United States were the largest employers of agency workers, but on the whole Europe accounted for 45 per cent of global sales revenues. Private employment agencies were the most regulated form of flexible employment, thanks to a mix of international frameworks – including Convention No. 181 – EU frameworks, collective agreements, as well as industry self-regulation. Within the EU, a full set of conditions, such as licensing requirements and working time limitations were implemented. The most important contribution of these agencies was job creation; seasonal fluctuations in demand that could not be covered by permanent jobs were thus met, and although the number of agency workers had decreased in the crisis, millions of people were still employed by the agencies. Agencies also facilitated the transition from unemployment to work, creating stepping stones for new entrants to the labour force and promoting a more inclusive labour market for vulnerable workers, including for youth without previous work experience and for the long-term unemployed. They fostered the creation of decent employment and the reduction of undeclared labour, thus helping governments to increase public income and job opportunities. When regulated

appropriately, agency work promoted decent work, economic growth and inclusive labour markets. Convention No. 181 provided the right framework for this.

15. Employers expressed the need to increase this collaboration between private employment agencies and public employment services, in particular to bridge the gap between supply and demand. Cooperation between private and public employment services was fully anchored by the provisions of Convention No. 181 and Recommendation No. 188. The EU also welcomed this cooperation, especially to handle increased worker mobility and growing numbers of jobseekers. There was a need to adopt an increasingly collaborative approach, to know each other better, clarify respective roles, share information and agree on performance indicators. Ways should be found of developing such cooperation and stimulating the desired transition in the labour markets – important in the flexicurity approach, in which private employment agencies play a key role, promoting higher participation in the labour market by focusing on more flexible arrangements, life-long learning, active labour market policies and social security systems, a position fully supported by EuroCIETT and UNI-Europa in their 2007 joint declaration on flexicurity. The private sector had added value in fields such as understanding the different trends and characteristics of the labour market.
16. Employers also spoke about cooperation between the public employment service and private employment agencies in Belgium, saying that there had initially been fears following ratification of Convention No. 181 that private employment agencies would take over from the public employment service, but the latter had benefited from competition and cooperation between public and private partners. For example: the public employment service was contracting out services to commercial and non-commercial agencies; 150,000 referrals were made in Flanders by the public employment service to private employment agencies; a very sophisticated IT system had been developed to facilitate cooperation on vacancies; a large proportion of vacancies in the public employment service came from private agencies; and the labour market had become more transparent.
17. Several governments stressed the importance of the Workshop for promoting and increasing knowledge on the Convention and learning good practices from other countries in implementing various aspects of the Convention, and related their experience with private employment agencies or their efforts to develop a tripartite approach to opening the labour market to their operations. The scale of the contribution of private employment agencies to total employment varied widely, but was of growing importance in spite of the impact of the economic crisis.
18. Among governments, there was recognition that private employment agencies played an important complementary role to the public employment service on job placement, management of human resources, creation of new jobs and fulfilment of difficult vacancies. It was important to share information between the agencies and public employment services, to organize joint events and collaborate on their web sites. Some governments differentiated between job placement agencies and temporary contract agencies providing services for user enterprises, and there were differences also as regards the scope of operations of agencies – sectoral and other restrictions, or stipulations about their legal status. The role of private employment agencies in organizing overseas or cross-border was highlighted, as was their contribution to enterprises' competitiveness, flexible employment arrangements, job placement and creating new jobs.

Point 2 – Private employment agencies – Regulation, monitoring and controls

19. The Worker spokesperson stated that temporary agency work was regulated in some countries, and not in others. Government and social partners needed to work together to

develop regulation based on principles, rights and responsibilities outlined in Convention No. 181, such as: not charging fees to jobseekers for temporary assignments or permanent placements organized by private employment agencies; equal treatment for agency workers with regard to working and employment conditions, wages and benefits; freedom of association, the right to collective bargaining and social dialogue; and prohibiting use of temporary agency workers as strike-breakers. There was an important role for tripartite cooperation, to create official, protected and declared work. Governments could play a role in this process through the use of their labour inspectors. Next she discussed the stepping stone theory, temporary agency work and the transition from employment agencies to full time or permanent work. The education level of the workers concerned was a key factor. The better educated the workers, the more effective temporary agencies can be. The Workers' group would welcome more ILO research on this topic. Vulnerable workers are over-represented in temporary agency work. This could be interpreted as a good sign that temporary agency work was available to all workers, but vulnerable workers could be stuck in temporary agency work, possibly because many of them are less educated. Workers needed more social protection in their transition between temporary and permanent work. There was a need to enforce existing regulations and to seek proper tripartite mechanisms for enforcement, not only monitoring. International framework agreements (IFAs) and other forms of international voluntary agreements could be a useful means to regulate multinational private employment agencies and protect fixed-term or precarious workers from exploitation.

20. Employers were working hard with the governments and trade unions in many countries to examine current restrictions on the operations of agencies and to develop clear policies, effective and flexible legislation, appropriate regulatory frameworks (governmental, co-regulation or self-regulation) and licensing along the lines of Convention No. 181. They strongly supported prohibition of child labour, forced labour and human trafficking. There was a need for enforcement of regulations by the public authorities, for example labour inspectorates and bipartite or tripartite compliance mechanisms, and for clarity about benefits such as pay, health insurance, pensions and training.
21. Governments noted that adequate resources should be provided to the competent authorities which regulate private employment agencies, including improving the capacity of inspectors. The labour inspectorate had an important role in monitoring private employment agencies in order to enhance their benefits, ensure the integrity and dignity of workers, promote equal treatment and prevent abuse of temporary workers. Examples were given of legislation to prohibit private employment agencies and user enterprises from retrenching agency workers during industrial action, to prevent agency workers from performing dangerous and unhealthy work and to discourage enterprises from laying off agency workers. Attention was drawn to the fact that flexibility combined with stability in employment was insufficient: quality of work and the Decent Work Agenda should also be considered as regards temporary agency employment. Given the contribution of agencies to the market, and given existing problems such as abuse, the regulatory framework should recognize triangular relationships and specify the roles. Self-regulatory and co-regulation frameworks were important and should be promoted. Noting that Convention No. 181 did not cover issues relating to web-based recruitment, the ILO was requested to study how member States have addressed this gap, and questions relating to legal jurisdiction of agencies in other countries. Unlicensed private employment agencies could be prevented from advertising through the mass media.
22. A representative of the European Commission presented an overview on the EU Directive on temporary agency work, which was presented to member States and adopted by the European Parliament in November 2008. EU Member States were required to transpose the Directive into national regulations by 2011. The principles of Convention No. 181 were fully integrated in the new Directive. The main elements of the Directive included equal

treatment; including equal pay, holidays and other conditions/entitlements for temporary agency workers as compared to regular employees.

Point 3 – Agency workers’ rights and working conditions

23. The Workers’ spokesperson noted that agency workers needed access to collective bargaining and trade unions for the enhancement of equal treatment, with special attention to certain groups of workers, such as cross-border workers, and she stressed the importance of social protection, occupational safety and health, and decent working and employment conditions. Efforts should be made to ensure that private employment agencies did not impair temporary agency workers’ rights and working conditions. It was important to promote equal treatment for temporary agency workers, and to prevent potential abuses. Worker members suggested that the right to organize agency workers should permit them to join the trade union that is organizing within the user enterprise or among the agency workers. There should not be two classes of workers within one industry – all workers should be able to join the union.
24. The Employer spokesperson considered it useful to examine new ways to protect workers, including eligibility for pension entitlements, seniority, the portability of rights and benefits, and protection of workers as they change jobs. Quality standards within private employment agencies should be upheld and measures taken to tackle unfair competition by fraudulent agencies, to combat abuses and illegal practices, and to fight human trafficking. The respective roles, obligations and rights of the user enterprise, the agency worker and the agency in an employment relationship should be made clearer. Access to training for temporary workers was a positive contribution to employability made by private employment agencies.
25. UNI Global Union presented some figures showing 60,000 private employment agencies around the world, 1 million staff employed in such agencies, and low unionization rates. The key challenges for agency workers were: unclear legal status; lack of national legislation; low coverage by collective agreements; occupational safety and health issues; few possibilities for training; claims for redundancy pay and unfair dismissal; the need to balance work and family/personal life; wage levels; working hours/schedules; and benefits (pensions, access to loans/mortgages, seniority). Without good regulation of agency work such workers faced problems such as exploitation, abuse and replacement by low-cost alternatives.
26. Worker representatives stated that bilateral agreements between sending and receiving countries could protect temporary migrants’ rights and interests. During the economic crisis many employers were attempting to replace permanent with temporary workers. The law sometimes forbade migrant workers from joining trade unions. Migrant workers often had worse working conditions and were often left unpaid. They called for transparency, information disclosure and consultations when dealing with agency work, and highlighted cases where agency workers were transferred on short notice to another agency, without giving the workers any reason. The user company should inform agency workers of their rights and obligations. Trade unions could be helpful in this information process, as they are constantly monitoring the agencies.
27. Employer representatives noted that the law in Brazil, Mexico and Colombia did not distinguish between permanent and agency workers but covered all workers. They emphasized the importance of joint action by the social partners and noted that transferability and portability of rights were in use in many European countries, as were sectoral training funds, managed by the social partners, to improve working conditions for agency workers.

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28. The Chairperson highlighted the often more vulnerable situation of migrant workers. Matters on equal treatment, triangular relationship and transparency of the legal status of the employer were also raised. He added that the discussion also touched some points that are not included in Convention No. 181, such as portability of rights – security and protection of workers as they move from one job to another, the importance of education and access to training as another positive contribution to employment made by temporary agencies and the need for skills upgrading.

Point 4 – The economic crisis and private employment agencies

29. Worker representatives considered that several lessons could already be drawn from experience in responding to the crisis in different countries. The economic crisis had hit temporary workers hard, and the most vulnerable groups within temporary workers had been impacted even harder. In some cases the crisis had been used as a pretext to replace permanent workers with temporary workers, and research on that would be useful. It was important to promote decent work for temporary workers through legislation and social dialogue. One means to be used was the ILO Global Jobs Pact, adopted in June 2009, which has clear guidelines on employment issues, active labour market policies, international labour standards, social protection and workers' rights. Some speakers explained their countries' perspectives, such as a recently negotiated collective bargaining agreement in Italy that included solidarity contracts to maintain employment in private employment agencies through reduced working hours. There were calls to improve protection of workers who were between job assignments or on shorter hours.
30. Employer representatives observed that the ILO Issues paper's chapter on the crisis highlighted the need for more knowledge. There was currently little information about the labour market for the types of workers employed by agencies, partly because data was collected on the basis of occupations, sectors and workplaces that did not capture the temporary workforce in specific sectors; who and what types of workers have been impacted. They called on the ILO to assess the gaps in information on private employment agency workers, and to collect more data on the size of the industry and the numbers and characteristics of workers in the sector: it was important to know how long such workers stayed unemployed, and this crisis could be used to obtain more information to develop better policy in the future. The number of employees had decreased significantly in the crisis in many countries, because providing flexible labour was a business depending on fluctuations in GDP. By using temporary agency work, companies can remain more competitive and therefore help workers with permanent jobs keep them. In times of crisis, temporary agency workers are "FIFO" – they are the first in and first out while the crisis lasts; but they are also often "FOFI" – first out, and first in – temporary workers can be the ones who are hired first when the recovery comes. Their main interest was in getting such workers back into employment as soon as possible, so they had been working with governments to make sure that short-time work schemes made available to permanent workers in countries such as Austria, Belgium, France and Germany were extended to temporary workers too. They also negotiated on access to unemployment benefits for temporary workers, who typically had less access. The crisis hit the industry hard, but agencies still created jobs and employed many people who would otherwise be unemployed. The expertise of temporary employment agencies had been crucial during the downturn, when agencies had provided guidance and support to those who had not had to look for work for several years.
31. Governments gave examples of innovations such as: rewards in the form of tax reductions to companies that extended employment; additional allocation of unemployment benefit for workers who had exceeded their time limits; elimination of the waiting period for benefits; providing returnee migrant workers with livelihood assistance and legal

assistance to cover loans; and creating a government re-employment programme. There should be an exchange of good practices on measures to mitigate the crisis, to protect employment, to provide extra benefits in the crisis and to assist returning migrant workers.

Point 5 – How to support further ratifications of Convention No. 181

32. Mr Natan Elkin from the ILO's International Labour Standards Department presented information on the ILO General Survey of 2009 on employment, for which reports had been submitted for 2009 under article 19 of the ILO Constitution concerning six employment instruments, including Convention No. 181. Surveys were sent out to Government members to provide information on legislation and regulations, both enacted and under consideration. Convention No. 181 was selected as one of most important for this first assessment. The high response rate provided significant information on all six standards, which would be the basis for a report on the application of Conventions and Recommendations to be submitted to the ILO Conference in June 2010. The survey results were being processed and would soon be distributed. They provided significant current information on Convention No. 181. In preliminary responses, countries had identified some challenges, and most had some form of regulation or legislation on private employment agencies. The ILO Committee of Experts should clarify issues concerning ratification that would ensure that those countries with any doubt about application of the Convention would have sufficient information.
33. An Employer member asked whether the general and detailed results of the General Survey would be made available to the public, because the factual data were lacking in many member States on the regulation, monitoring and control of private employment agencies, excluding those in the European Union. He also asked if people would be able to examine, in the information provided in the General Survey, the reasons why some member States did not ratify Convention No. 181.
34. The ILO responded that all the results of the General Survey on employment would be made available to the public through the discussion at the 99th Session of the International Labour Conference in June 2010, and subsequently on the ILOLEX trilingual database of ILO Conventions and Recommendations, ratification information, comments of the Committee of Experts and the Committee on Freedom of Association, representations, complaints, interpretations, General Surveys, and related documents. The General Survey asked member States why they did not ratify Convention No. 181. When member States discussed technical matters hindering ratification, they were requested to elaborate specifically why and how they were hindrances. The Office also stated that under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the social partners must be consulted on the reporting of the General Survey. The Conference in June 2010 would discuss how member States having ratified the Convention would benefit from ratification. The General Survey would also provide other information, inter alia, on how the member States have adopted national laws and regulations in line with Convention No. 181, and how government and the social partners worked to reach a consensus in the process of ratification.
35. Employer representatives noted that ratification of the Convention had sometimes been a result of patience and compromise among the tripartite constituents, of awareness drives on private employment agencies and of economic circumstances that encouraged use of temporary work. Some clauses of Convention No. 181 were ambiguous; the resulting confusion in interpreting the Convention could be a barrier to ratification. It was suggested that the Office amend and update the ILO Guide to private employment agencies (2007) to include more case studies from member States which had ratified Convention No. 181, to expand on clause 11 of the Convention in order to elaborate how workers' rights are

protected under the Convention, and explain whether some specific categories of occupations could be prohibited under the Convention as well as any other restrictions or exceptions possible under it.

36. Participants suggested that ratification and implementation of Convention No. 181 could be promoted through: highlighting the benefits of ratification and implementation of the Convention for ILO constituents; using the existing supervisory mechanism to monitor implementation of Convention No. 181; analysing the General Survey results on Convention No. 181; providing ILO technical support on the Convention, including through capacity building, to member States and social partners; encouraging cooperation between the public employment service and private employment agencies; exchanging experiences on ratification and implementation of Convention No. 181; identifying and reviewing obstacles for private employment agencies to operate and, where appropriate, removing them; and reviewing the need for licensing and inspection systems to develop industry standards.
37. The Chairperson noted that the participants had heard of the positive benefits of having ratified the Private Employment Agencies Convention, 1997 (No. 181). Some countries that had not ratified the Convention had information and statistical concerns and would like to learn more about private employment agencies. Those countries that have ratified the Convention should seek to maximize the positive benefits for rights at work and social protection. Emphasis was placed on the importance of compliance, to which several activities could contribute; tripartite standard setting, self-regulation and co-regulation, collective agreements and government labour inspection. Some countries not having ratified the Convention informed the Workshop that their national laws protect workers of private employment agencies. The ILO's task would be to provide technical assistance and tools facilitating ratification and compliance.

Point 6 – Points of consensus and suggestions for future ILO action

38. The Chairperson noted that the agenda item point drew together the discussions over the two days; the main elements should comprise the building blocks of the Workshop's points of consensus drafted by the secretariat for consideration at the final plenary sitting. Based on the active contribution of various participants, some consensus had been developed to include the following essential elements: (1) recognition of private employment agencies' contribution to increased labour efficiency; (2) the need for regulation, monitoring and effective control of private employment agencies; (3) the importance of balancing agency workers' fundamental rights and adequate working conditions within a framework which encourages the development of the private employment agency industry; and (4) in the context of the ongoing economic and financial crisis, the need to collect reliable statistical data to help determine the real size of the industry, the profiles and numbers of agency workers, the most important user sectors, the types of workers most affected by the crisis, how long people remained unemployed, and good practices from around the world in responding to the crisis. The consensus points should also include recommendations on priority action, at both the national and global levels, by the ILO, governments and social partners to promote and support ratification of Convention No. 181.
39. The Worker spokesperson stressed the importance of the Convention's ratification, the relevance to promoting decent work for temporary agency workers, expressed her concern about the replacement of temporary agency workers and hoped that the ILO Workshop could attenuate her worries. The ILO should promote further ratification and implementation of Convention No. 181 and highlight the benefits of consensus. Specific mechanisms should be established including collection of data for a survey of employment, monitoring the use of agency workers and the regulation of employment agencies, and

highlighting experience of Convention No. 181, with follow-up and research on specific issues with an impact on agency work. The ILO and the social partners should collect best practices on vocational training, on social protection for agency workers, and on other arrangements on flexible hours and childcare, and encourage cooperation by the social partners in such areas; and should promote sectoral social dialogue as the appropriate platform to negotiate the employment and working conditions of agency workers and the use of temporary agency work.

40. The Employer spokesperson supported the work to promote further ratification of Convention No. 181. He welcomed the consensus agreement reached with the workers on basic points, such as work to ensure further ratifications of the Convention, the promotion of international instruments and actions to eliminate human trafficking (for example the promotion of ratification and effective implementation of relevant ILO Conventions), and following up on the impact of the private employment agency sector on the labour market in terms of participation in job creation, the potential substitution effect on permanent contracts, facilitating of transitions, the reduction of unemployment, the inclusion in the labour market (especially for vulnerable groups), increasing enterprises' competitiveness, and fighting against undeclared work. He stressed that the ILO should use a questionnaire to gain a comprehensive picture of the agency industry and assess the results of Convention No. 181, and should continue promoting cooperation between private and public agencies.
41. Participants proposed that the ILO should collect data on best practices, monitor and analyse trends in employment in the private employment agency sector, and publish findings on its web site. This research should be linked to work on the economic crisis and the Global Jobs Pact and the organization of a global sectoral dialogue forum on private employment agencies in 2011. Participants suggested the following ideas: publishing and disseminating the Workshop's discussions and points of consensus, as well as research papers; updating the ILO's *Guide to private employment agencies*, taking account of relevant legislation in ratifying countries; and continuing to research the private employment agency industry and to examine further the realities and the perceptions of both workers and employers as regards job creation, precarious work, occupational health and safety, the profile of agency workers, etc. The ILO's activities on temporary agency work could be based on the Global Jobs Pact, aimed at assisting member States to strengthen the public employment service and private employment agencies, thereby enhancing support to the unemployed, providing quality services and promoting rights at work.
42. The Chairperson reiterated the importance of further worker protection, the promotion of social dialogue, ensuring its monitoring and implementation and the need for surveys, specific monitoring mechanisms and cooperation with WAPES.

Consideration and adoption of the points of consensus

43. Following these discussions on points 1 to 5 and drawing together the various elements that had been developed, the Workshop unanimously adopted a set of points of consensus at the end of the second day.

Points of consensus³

Preamble

Government, Employer and Worker representatives attended the Workshop to Promote Ratification of the Private Employment Agencies Convention, 1997 (No. 181), held at the ILO, Geneva, 20–21 October 2009. The Workshop was called to raise awareness of the Convention, exchange views on its benefits, present good practices on its implementation and encourage further ratifications. The Workshop developed consensus on the following:

Introduction

1. The Private Employment Agencies Convention, 1997 (No. 181), and its accompanying Recommendation No. 188 provide a framework that allows for improved functioning of private employment agencies and protection of agency workers.
2. Private employment agencies can provide a range of labour market services that address the need for flexibility, like temporary agency work,⁴ permanent recruitment, executive search, outplacement, training or payroll management.
3. As a specific service provided by private employment agencies, if regulated appropriately, temporary agency work contributes to improved functioning of labour markets, fulfils specific needs for both enterprises and workers, and aims at complementing other forms of employment.
4. The Workshop wishes to base its points of consensus on the Decent Work Agenda and the ILO Declaration on Fundamental Principles and Rights at Work (1998), and on the importance of compliance with, and enforcement of, regulations, and to fight abuse of temporary agency workers.

Point 1 – Private employment agencies' contribution to labour markets, and cooperation between public and private employment services

5. Private employment agencies that respect the principles of the Convention can contribute, through the services they provide, to:
 - Matching supply and demand in the labour market, including catering for the need for flexibility of enterprises.
 - Implementing active labour market policies and creating pathways from unemployment to employment by:
 - Helping jobseekers enter or re-enter the labour market.

³ These points of consensus were approved by the Governing Body of the ILO at its 306th Session (November 2009); see dec-GB.306/13 para. 2.5, at www.ilo.org/global/What_we_do/Officialmeetings/gb/lang--en/WCMS_117832/index.htm.

⁴ A specific employment relationship whereby a worker employed by an agency performs assignments at a user company under the latter's supervision.

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- Helping vulnerable people to enter the labour market.
 - Providing greater work opportunities for more people.
 - Facilitating the transition from education and work, by providing students and young workers with their first opportunity to gain work experience.
 - Easing the transition between assignments and jobs by providing agency workers with vocational training.
 - Promoting conversion between different types of work contracts, for example by assisting a shift from temporary agency contracts to fixed-term or open-ended contracts.
 - Improving life–work balance, for example by providing flexible working time arrangements such as part-time work and flexible working hours.
 - Helping fight undeclared work.
 - Contributing to decent conditions for cross-border labour migration.
 - Implementation of a national government policy on organizing the labour market through cooperation and complementarity between the public employment service and private employment agencies should be encouraged.

Point 2 – Private employment agencies – Regulation, monitoring and controls

6. Appropriate regulatory frameworks (governmental, co-regulation or self-regulation) on private employment agencies should include and promote principles, rights and obligations as outlined in Convention No. 181 on private employment agencies, notably:
 - A particular focus on the implementation of the no-fee charging rule for jobseekers (whether domestic or cross-border) for temporary assignments and permanent placement services provided by the private employment agency, a principle that is already applied in most countries where regulation on private employment agencies exists.
 - The principle of non-discrimination for agency workers with regard to their working and employment conditions (for instance equitable, objective and transparent principles for the calculation and payment of agency workers' wages and benefits).
 - Freedom of association and the right to collective bargaining as guaranteed by ILO Conventions Nos 87 and 98.
 - Sectoral social dialogue at national and enterprise level, for instance collective bargaining.
 - Prohibition of the replacement of striking workers by temporary agency workers, without prejudice to national law and practice.
 - Prohibition of the use of child labour and forced labour.
 - Enforcement of regulations by the public authorities, for example labour inspectorates, and in addition developing bipartite and tripartite compliance mechanisms.

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- Clarity (transparency and access to information) about benefits (i.e. salary, social insurance, pension, vocational training).

Point 3 – Agency workers' rights and working conditions

7. As regards the rights and working conditions of temporary agency workers, as laid down in Convention No. 181, it is important to:
 - Ensure that private employment agencies do not function to the detriment of workers' rights and working conditions.
 - Clarify the respective roles, obligations and rights of the private employment agency, the agency worker and the user enterprise when there is an employment relationship between a private employment agency and a worker.
 - Combine adequate social protection, decent working and employment conditions for agency workers – including occupational safety and health conditions – and proper conditions for the operation of private employment agencies in a well-functioning labour market.
 - Ensure the right of freedom of association and the right to collective bargaining, as guaranteed by Conventions Nos 87 and 98.
 - Ensure that regulation regarding temporary agency work is fair, non-discriminatory and objective; promotes decent forms of temporary agency work; and effectively prevents potential abuses, such as undermining workers' employment conditions and their right to organize and bargain collectively.
 - Promote quality standards within the private employment agency industry and prevent unfair competition by fraudulent agencies and/or user companies, combat abuses and illegal practices, and fight human trafficking.
 - Examine new ways to protect workers, including eligibility for pension entitlements, seniority, the portability of rights and benefits, and protection of workers as they move from one job to another.
 - Stress the importance of education, lifelong learning and access to training as another positive contribution to employment made by temporary employment agencies and the need for skills upgrading.

Point 4 – The economic crisis and private employment agencies

8. The economic crisis appears to have hit temporary agency workers hard. The ILO Global Jobs Pact provides a framework for implementing recovery plans that support decent work, help preserve employment and prioritize job growth, including measures relating to agency work. Decent work for temporary agency workers can be promoted through legislation and social dialogue. More data is needed on the size of the industry, on the profile and numbers of agency workers, the specific sectors concerned, what types of workers have been affected, job creation in the temporary agency sector, how long people remain unemployed, replacement of permanent workers by temporary agency workers and on good practices during the crisis such as tripartite measures to encourage enterprises to mitigate the crisis, incentives to protect employment, special benefits and assistance to

returning migrant workers, solidarity contracts, enhancing protection between job assignments for temporary agency workers and short-time working.

Point 5 – How to support further ratifications of Convention No. 181

9. In order to further promote ratification and implementation of the Private Employment Agencies Convention, 1997 (No. 181), the following actions are suggested to be taken, in accordance with national legislation by governments and/or the social partners, as appropriate:

At national level:

- If a regulatory framework as defined under Point 2 of this document is in place, identify and review obstacles of a legal or administrative nature which may hamper the opportunities for private employment agencies to operate and, where appropriate, to remove them.
- Review the need for systems of licensing and inspection and, when relevant, promote the introduction of such systems (which can include financial guarantees), thereby contributing to development of good industry standards, provided that such systems are fair, non-discriminatory and objective and do not unduly hamper the development of private employment agencies.
- Provide adequate and continuous social protection for agency workers.
- Collect best practices and encourage bipartite cooperation and administration by the social partners on additional benefits, for example vocational training and childcare.
- Promote sectoral social dialogue as the appropriate platform to negotiate working conditions of agency workers, as well as the conditions of use of temporary agency work.
- Encourage and develop cooperation between the public employment service and private employment agencies to facilitate work mobility and transitions in the labour market.
- Work with the ILO in selected countries on fostering the process of ratifying Convention No. 181.

At the global level:

- Cooperate with the ILO to promote ratification and implementation of Convention No. 181.
 - Cooperate with the ILO, IOM and other organizations to promote international instruments and actions to eliminate human trafficking (for example the promotion of ratification and effective implementation of relevant ILO Conventions on forced labour and migrant workers).
10. For its part, to further promote ratification and implementation of Convention No. 181, the ILO should:
- Highlight the benefits resulting from ratification and full implementation of the Convention for workers, employers and governments.

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- Publish and disseminate the Workshop's conclusions as well as reports.
 - Update the *Guide to private employment agencies*, taking account of relevant legislation in ratifying countries.
 - Continue to research the private employment agency industry and further elaborate on perceptions and conditions for both workers and employers (for example on job creation, precarious work, occupational health and safety, profile of the agency workers, etc.).

Point 6 – Suggestions for future ILO action

11. The ILO should:

- Collect data on best practices, monitor and analyse trends in employment in the private employment agency sector, and include reference to these statistics in its employment report and the International Labour Conference in 2010. This research should be carried out in relation with issues relating to the economic crisis and the Global Jobs Pact.
- Analyse the replies received to the questionnaire for the General Survey on employment to gain a more detailed and comprehensive understanding of the industry as well as of the reservations made therein in relation to ratification of Convention No. 181.
- Provide technical support, including through capacity building, to member States and social partners.
- Encourage and develop cooperation between the public employment services and private employment agencies.
- Support the establishment of a global sectoral dialogue forum on private employment agencies.
- Strengthen, in cooperation with the sectoral social partners, the existing supervisory mechanism to monitor the implementation of Convention No. 181 to guarantee protection for temporary agency workers and the sound development of the private employment agency sector, as well as to follow up the impact of the private employment agency sector on the labour market in terms of participation in job creation, potential substitution effect on permanent contracts, facilitating transitions, and the reduction of unemployment, inclusion in the labour market (especially for vulnerable groups), increasing companies' competitiveness and the fight against undeclared work.
- Establish a platform for countries to exchange experiences and benefits with regard to the ratification and implementation of Convention No. 181.

12. Given that the Global Jobs Pact is an important and useful policy framework that can assist ILO member States in limiting the risk of long-term unemployment by strengthening the public employment service and private employment agencies so as to give adequate support to jobseekers, provide quality services and ensure respect for rights at work, it is important that the ILO orient its action on temporary agency work accordingly.

Evaluation questionnaire

Evaluation questionnaire

A questionnaire seeking participants' opinions on various aspects of the Workshop was distributed before its last sitting. The following is an analysis of their responses.

1. How do you rate the Workshop as regards the following?

	5	4	3	2	1	
	Excellent	Good	Satisfactory	Poor	Unsatisfactory	Average
The choice of agenda item (subject of meeting)	8	11				4.42
The points for discussion	6	11	1			4.28
The quality of the discussion	4	9	4	1		3.89
The meeting's benefits to the sector	6	7	5			4.06
The points of consensus	5	10	3			4.11
Opportunity for networking	2	8	5	2		4.18

2. How do you rate the quality of the *Issues paper* in terms of the following?

	5	4	3	2	1	
	Excellent	Good	Satisfactory	Poor	Unsatisfactory	Average
Quality of analysis	7	10	2			4.26
Objectivity	6	11	2			4.21
Comprehensiveness of coverage	8	6	4	1		4.63
Presentation and readability	6	9	4			4.11
Amount and relevance of information	7	6	5	1		4.00

3. How do you consider the time allotted for discussion?

	Too much	Enough	Too little
Discussion of the report	2	12	5
Presentations	1	13	4
Group meetings	4	9	6

4. How do you rate the practical and administrative arrangements (secretariat, document services, translation and interpretation)?

	5	4	3	2	1	
	Excellent	Good	Satisfactory	Poor	Unsatisfactory	Average
	4	10	4	1		3.89

5. Respondents to the questionnaire

Government	Employers	Workers	Total	Response rate (%)
9	4	6	19	17.59

6. Participants at the Workshop (including advisers)

Government	Employers	Workers	Observers	Total
46	34	26	2	108

7. Female participation

Government	Employers	Workers	Observers	Total	(%) Female
17	5	12	0	34	31.48

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Liste des participants
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