International Labour Organization

Promoting employment and decent work in a changing landscape

International Labour Conference
109th Session, 2020

International labour conference, 109th Session, 2020

Promoting employment and decent work in a changing landscape

The Employment Policy Convention, 1964 (No. 122), the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), the Home Work Convention, 1996 (No. 177), the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168), the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), the Home Work Recommendation, 1996 (No. 184), the Employment Relationship Recommendation, 2006 (No. 198), and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)

Third item on the agenda: Information and reports on the application of Conventions and Recommendations

Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)
Report III (Part B)

International Labour Office • Geneva

ISBN 978-92-2-132386-0 (print)
ISBN 978-92-2-132387-7 (Web pdf)
ISSN 0074-6681

First edition 2020

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Produced by the Publications Production Unit (PRODOC) of the ILO.

Graphic and typographic design, manuscript preparation, copy-editing, layout and composition, proofreading, printing, electronic publishing and distribution.

The ILO endeavours to use paper sourced from forests managed in an environmentally sustainable and socially responsible manner.

Code: DTP/WEI/ICA

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Executive summary

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) is pleased to publish this new General Survey, which addresses a crucial subject that is one of the principal concerns of policies and programmes at the international, national and regional levels: namely employment and decent work. Employment is a matter of enduring interest for everyone: women and men, young and old. This is particularly true now, in view of the deep-rooted changes that are occurring in the world of work. Globalization, climate and environmental change, as well as technological innovation, are giving rise to new and emerging forms of work, and to changes in the structure and organization of work. The varied and, in many cases, contradictory predictions as to the impact of these changes on the creation or destruction of employment have contributed to uncertainty with respect to the sustainable realization of decent work.

Employment, which realizes in practice the fundamental right to work, is one of the primary means through which individuals can be integrated into society and contribute to its development. It is the principal means available to workers and society in general to combat poverty with dignity. This General Survey covers instruments of varying nature and different objectives which, nevertheless, come together around a single unifying theme: the promotion of full, productive and freely chosen employment through the adoption of a comprehensive and inclusive national policy on employment and decent work that takes into account all segments of society and the profound changes taking place in the world of work.

In following this unifying theme, the present General Survey addresses various legal aspects of employment. In particular, it examines the importance of the formulation and adoption of a national employment policy as a unifying element, coordinated with other social and economic policies in the country to promote the creation of decent jobs for all and the sustainable development of enterprises in an enabling environment. The formulation of this policy in turn requires the clear definition of concepts, rules and responsibilities in terms of the active participation of the tripartite constituents and the specific groups concerned (for example, workers with disabilities, home workers, workers in the informal economy, migrant workers, young persons, older workers, among others). In this respect, an adequate definition of the employment relationship and its elements is essential, as well as of the parties thereto, and the rights and obligations arising from the relationship. This is particularly important in the context of new forms of work and new contractual arrangements that tend in some cases to shift employment-related responsibilities onto the shoulders of workers, blurring of the lines between dependent work and self-employment. The lack of clarity in such cases may encourage informality. The General Survey also addresses employment from the viewpoint of individuals and their specific situations, including those in the most vulnerable situations. Labour policies should be designed in an inclusive manner and provide for equality of opportunity and treatment without discrimination. To ensure this, it is necessary to have a clear understanding of the specific circumstances of all workers and adapt measures and programmes to address those circumstances, particularly for those who are most likely to be excluded from the formal labour market. The General Survey therefore examines two specific categories of workers in greater detail: homeworkers and workers with disabilities, within the framework of the Home Work Convention, 1996 (No. 177), and the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).

The present General Survey is intended for all those who participate, in one way or another, in the adoption and implementation of employment policies and programmes. The Committee hopes that the General Survey will be useful to both Governments and the social partners, including the representatives of specific groups of persons and other interest groups or international organizations. The General Survey is also intended for professionals and academics, as well as for the general public. The Committee hopes that it will serve as a guide for the adoption of inclusive policies and programmes, taking account of the needs of individuals and enterprises (the latter being the engines to create decent work in a rapidly changing world of work. This guidance will contribute to the achievement of the ILO's Decent Work Agenda and the Agenda 2030 Sustainable Development Goals.

Adopting a comprehensive and inclusive national employment policy

Employment as an essential strategic objective. The Employment Policy Convention, 1964 (No. 122), together with the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), provides substantive guidance for the formulation of national employment policies and programmes that focus on employment promotion, poverty reduction and the improvement of living standards for everyone. In this respect, the national employment policy should reflect a coordinated and coherent vision of national objectives as they relate to employment and develop specific means of achieving these in a coordinated and participatory manner.

Full, productive and freely chosen employment. Despite the rapid changes in the world of work, and their consequences, full, productive and freely chosen employment continues to be an achievable goal. It is also necessary to develop clear institutional and legal frameworks in order to be able to create productive and lasting employment that affords adequate protection to workers, and that also takes into account the requirements of the enterprises. In turn, increased productivity and economic growth should not result in or encourage environmental degradation. Moreover, the links between productivity and poverty reduction must be examined in a context of increasing inequality and persistent informality. In this regard, the Committee welcomes the focus of the ILO Centenary Declaration for the Future of Work, 2019, which seeks to redirect the economy towards human-centred growth and development, while providing the opportunity to create sustainable decent work opportunities, facilitate the formalization of those in informal jobs, bring an end to poverty and improve living standards for all.

Vocational training and skills development and lifelong learning are essential for entering, adjusting to and remaining in a changing labour market. Training and skills policies are closely related to increasing productivity and facilitating the free choice of employment. Moreover, in view of the rapid technological changes that are constantly occurring, workers need to be able to continually learn new skills, improve their qualifications and adapt at the professional level. National employment policies should therefore provide support for workers during the inevitable processes of transition that they will experience throughout their working lives. In this respect, the General Survey emphasizes, as the Committee has done over the years, the need for the coordination of vocational training and skills policies with employment policies.

National employment policies should be comprehensive. National employment policy should be designed, adopted and implemented in coordination with other social and economic policies. Employment and decent work should be key macroeconomic objectives of national policy. It is therefore crucial to ensure the coherence and coordination of employment policy with policies for the promotion of trade, investment and industry. A comprehensive and coherent set of integrated policy interventions will improve the quality and quantity of employment. In this respect the General Survey submits that the national employment policy should be the cornerstone for other policies addressed in the Survey, including the national policy for the review of regulations concerning the employment relationship, the policies on the transition to formality, as well as policies on home work and policies to promote employment for workers with disabilities on the open market, and other employment policies and programmes for disadvantaged groups of workers. These policies should take the gender dimension of employment into account.

A process of adoption, control and follow-up which is effective and flexible. Convention No. 122 is a flexible instrument which leaves governments free to decide upon the measures and programmes to be adopted and the methods to be used for the formulation and application of the national policy. This does not imply ignoring the fact that a well-articulated policy with clear priorities and specific goals, supported by an adequate budgetary allocation and a realistic implementation framework, is more likely to be effective. In order to promote

the ownership and commitment of all actors concerned, it is vital that clear political will be expressed at the highest level. Appropriate institutions and control mechanisms also contribute to ensuring the effectiveness and the ongoing review of the measures adopted. This enables all the parties involved to identify successes and challenges in the achievement of policy objectives and to make recommendations for the future as a basis for updating the policy. The existence of adequate data and statistics facilitates the adoption of relevant and informed measures.

Policies must be the outcome of constructive social dialogue. The fundamental importance of social dialogue and tripartism needs to be emphasized in the formulation, application and follow up of employment policies. The policy should also include a broad dissemination programme.

Enterprises are the primary drivers of employment creation. The national employment policy should include demand-related measures through macroeconomic and sectoral policies targeted at employment creation. These measures must contribute to the development of an enabling conducive environment for enterprise initiatives and the development of sustainable enterprises. Microenterprises and small and medium-sized enterprises (MSMEs), including cooperatives, play a fundamental productive role within the framework of a global economy that is increasingly integrated into local, regional and global supply chains. MSMEs, together with cooperatives and other social and solidarity economic units, are an important vehicle to facilitate the labour market inclusion of the most disadvantaged workers. At the same time, the Committee recalls that more decent work deficits are found in MSMEs than in larger enterprises, and often operate in the informal economy. Multinational enterprises are the primary motors of most national and regional economies and also act as agents of change in the application of fundamental labour rights and improvements in working conditions. In turn, they have a direct effect on MSMEs, with which they interact in supply chains.

The national employment policy must be prepared to take advantage of the opportunities created by technological change and attenuate its negative effects. Technological innovations bring new opportunities and are moving the frontiers of human capacity further than had previously been thought possible. However, new challenges have emerged and technology has given rise to new forms of work including its organization. Although the full impact of innovation in the world of work is not yet known, certain aspects are being examined at national level to determine whether the current standards framework continues to be fit for purpose. In this regard, the General Survey examines the guidance provided by Recommendation No. 169, which encourages technological innovation, while emphasizing that technology should contribute to improving working conditions, reducing working time and avoiding job losses.

An employment policy that takes climate change into account. The General Survey also addresses the urgent challenges raised by climate and environmental change and the need to adopt measures for a just transition. Workers and enterprises have a fundamental role to play in this transition, through green jobs, innovation, the adoption of new technologies and production methods, investment and standards action.

Developing a clear definition of the employment relationship

The employment relationship, in all its evolving forms, is the foundation of labour protection. In this regard, the Committee notes that the Centenary Declaration reaffirms "the continued relevance of the employment relationship as a means of providing certainty and legal protection to workers". The employment relationship gives rise to rights and mutual obligations for the employer and the worker under the terms of national legislation. However, rapid changes in the labour market, particularly due to factors such as globalization, digitalization and other technological innovations, are leading to new forms of work which do not necessarily fit the traditional concept of the employment relationship. In response to the challenges faced by enterprises and workers' need for flexibility, the concept of the employment relationship has

developed over time and has taken diverse forms, giving rise to situations which differ from traditional full-time employment.

A national policy should be adopted to periodically review the regulation of the employment relationship. The Employment Relationship Recommendation, 2006 (No. 198), encourages governments to adopt a policy to review national legislation at appropriate intervals with a view to clarifying and adapting the regulations governing the employment relationship and guaranteeing that workers continue to be provided with adequate protection, while ensuring that regulation takes into account the realities of a changing world of work. Each State is responsible for identifying the appropriate methods for adapting to developments in the national labour market, for identifying situations in which workers are no longer protected and for designing the most appropriate means of dealing with these situations.

The national policy should provide guidance and address the various forms of employment relationship and hidden or ambiguous employment relationships. The national policy should provide those concerned, and particularly employers and workers, with guidance on how to determine the existence of an employment relationship and distinguish between employed and genuinely self-employed workers. This guidance should enable workers to identify their employer, their rights and those responsible for guaranteeing them. The policy should also address situations in which the employment relationship is hidden or unclear, with the consequence that dependent workers are excluded from the rights and benefits to which they are entitled, and should provide for the removal of any incentive to promote such hidden or disguised employment relationships. Nevertheless, the employment relationship may be objectively ambiguous, for example, when the principal factors that characterize the employment relationship are not clearly visible. In this context, new forms of work and changes in the organization of work should also be addressed by the policy. Social dialogue is crucial to guaranteeing appropriate regulation of the employment relationship and new contractual arrangements, such as platform work.

The policy should also ensure effective protection to workers who may be particularly affected by uncertainty with regard to the employment relationship and should recognize that women, alongside certain groups in vulnerable situations, are most affected by ambiguous forms of work and contractual arrangements that differ from the traditional employment relationship.

Recommendation No. 198 sets out elements for the identification of the employment relationship. At the outset, the Recommendation sets out the principle, already established by case law at the national level, of the primacy of the facts, under which the facts relating to the relationship are the determining factor. The Recommendation proposes a series of elements to determine whether or not an employment relationship exists. These include the scope of the means that may be used to determine the existence of an employment relationship, such as the possibility of establishing a legal presumption of an employment relationship when one or more indicators established by law are present. Legislation may also determine that specific types of relationships characterized by ambiguity be classified as employment relationships. Subordination and dependency are given as examples of possible conditions demonstrating the existence of an employment relationship along with the performance of work and the remuneration of the worker and a series of indicators which contribute to demonstrating the existence of such conditions. These are non-exhaustive enumerations which should be adapted to the circumstances of each case and to national conditions. In turn, developments in the world of work may make some of these conditions and indicators obsolete and lead to the emergence of new elements.

The binary categorization of employed and self-employed workers may not be adequate to accommodate the evolving circumstances of the labour market. The General Survey provides a description of the traditional parties to the employment relationship, namely the employer (who may be an individual or multiple entities) and employed workers. It also addresses employment relationships in which there are multiple parties. In turn, it addresses

a trend that has arisen principally in some Member States of the European Union which endeavours to depart from the binary categorization of employed and self-employed workers. This approach seeks to improve the situation of the many workers who are in an intermediary status between the labour relationship of employed workers and self-employed workers and who accordingly do not benefit from adequate protection. At the same time, this intermediate category may, in practice, have a negative effect on the employment relationship and on workers' rights.

The employment relationship may take multiple forms. Recommendation No. 198 does not refer to any specific arrangements for the employment relationship, with the exception of multiparty employment relationships. Nevertheless, the employment relationship may take various forms, ranging from the most traditional type of full-time, indefinite and permanent or ongoing employment with a single employer, to part-time, fixed-term, intermittent, occasional, multiparty and remote relationships, or a combination thereof. These are the various other arrangements covered by the different conceptions of the employment relationship. In practice, in many cases these various forms of relationship involve differences of treatment that amount to unacceptable and even flagrant cases of discrimination. The General Survey examines various arrangements, such as fixed-term or temporary work, part-time work, work for temporary employment agencies, and the related challenges that arise for workers. It also examines arrangements such as on-call work and zero-hours contracts. Moreover, the General Survey briefly examines the elements common to the various arrangements for platform work, their impact on the labour market, and the manner in which they have been addressed by laws and regulations and case law at the national level.

It is necessary to follow labour market developments closely. For this reason, the Recommendation proposes to establish monitoring and review mechanisms based on social dialogue to provide guidance on the adoption and implementation of measures relating to the employment relationship and suggests adaptations to regulations where necessary.

Adopting a comprehensive policy for the transition to formality

Informality exists in all countries. The Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), does not provide a definition of informality, but rather describes the various aspects of the informal economy. Some 2 billion workers, or 61.2 per cent of the active population at the global level, are in informal work, and eight out of every ten enterprises are in the informal economy. Although this is more common in developing countries, there is also a considerable proportion of hidden self-employment in high-income economies. The high incidence of informality is a significant obstacle to workers' rights. Workers and economic units are increasingly subject to flexible working arrangements, including subcontracting and outsourcing, at the periphery of the enterprise or at lower levels in the production chain Many of the new forms of work that have arisen are not adequately regulated. This phenomenon has resulted in a reduction in workers' protection and a lack of clarity concerning the status of workers who, as a consequence, are often pushed into informality.

Informality is a multifaceted phenomenon that affects workers and enterprises differently. The informal economy is heterogeneous and may take many distinct forms based on the characteristics, circumstances and needs of the workers and economic units involved, which need to be addressed through varied and specific policies and measures. A legal and institutional framework that creates obstacles to the transition to formality, the lack of appropriate macroeconomic and labour policies, the absence of effective institutions, persistent discrimination and the absence of representation and voice are some of the underlying causes of informality, and are also indicators of governance deficits.

Informality must be addressed without delay and through clear objectives. The Recommendation proposes to address informality on the basis of three objectives: facilitating transitions to formality; promoting enterprises in the formal economy, decent jobs and policy coherence; and preventing informalization. The transition to formality is a process that takes time and requires sustained economic and social development as a result of comprehensive and coordinated measures and policies. It is necessary to take into account that the transaction costs and real costs of formalization are relatively lower than those of informality; that the benefits of formality are greater than those of informality for all those involved; and that formal institutions, systems and procedures are credible, transparent and efficient. Following the practice adopted in many countries, the General Survey proposes the adoption of a step-by-step procedure to facilitate the transition to formality, based on agreement with the social partners.

The need for a coherent and integrated policy and programme framework. The Recommendation enumerates a broad range of coordinated policies that are important for transition, but which should be adapted to each specific case, based on consultations with the social partners as well as representatives of workers and economic units operating in the informal economy. The integration of this policy framework with the national employment policy is necessary to achieve coherence. It is necessary to promote the progressive extension of rights to informal workers and economic units, especially access to social security, including maternity protection, occupational safety and health and minimum wage protections. Local development strategies in urban and rural areas, including agriculture, are also necessary. Human rights and fundamental principles and rights at work, as well as the creation of a favourable environment for growth, employment and enterprise development, are basic elements of this integrated framework that should be implemented at all levels of supply chains. An appropriate legislative and standards framework is also required. Moreover, given the high concentration of women in the informal economy, it is important that the principle of gender equality be reflected in the integrated policy framework.

The integrated framework must also include specific measures for the formalization of micro and small economic units. Micro and small enterprises encounter numerous obstacles to their growth and effective development. The General Survey addresses the variety of measures adopted by governments to facilitate the transition to formality of micro and small enterprises, including regulatory simplification, the reduction of costs, access to public procurement and financial services, entrepreneurship training and social security coverage. These measures are often adopted in the framework of a coherent national employment policy developed in conformity with Convention No. 122.

Ensuring equality of terms and conditions of work for homeworkers

Home work is the main source of income for a large number of workers throughout the world. Home work is work performed outside the employer's premises. It may take many forms, ranging from work requiring intensive labour, such as skilled craftwork (for example, traditional embroidery) and industrial work, to telework and other information technology services. Changes in the organization of work, promoted by significant innovations in technology and communications, together with increases in outsourcing and subcontracting, have led to forms of home work taking on renewed importance, especially in the context of supply chains and platform work. In this respect, the Convention addresses the role of the "intermediary", as a person, natural or legal, who acts as a link between the supply and demand for home work. The existence of intermediaries is a characteristic of home work in many countries, but give rise to concerns and ambiguities in relation to the distribution of responsibilities. Homeworkers are often in a particularly vulnerable situation in the labour market, due to unstable labour demand, an unclear employment situation in which they often lack sufficient legal protection, a weak negotiating position, isolation and consequent invisibility. Convention No. 177 and the Home Work Recommendation, 1996 (No. 184), therefore call for the development of a national policy on home work which improves the conditions of these workers and promotes equality of treatment.

Home work has a significant gender dimension. The large majority of homeworkers are women. Many have not been able to gain access to a regular job due to their family responsibilities or lack of skills, or have chosen to work from home in light of cultural and social norms. Home work is concentrated in the informal economy, in which women are also prevalent.

The national policy must promote equal treatment between homeworkers and other employed workers, to the extent possible. This involves in particular the right to organize, protection against discrimination in employment and occupation, as well as protection in relation to safety and health, remuneration, social security, access to training, the minimum age for admission to employment and maternity protection.

Remuneration on a piecework basis is often a source of inequality. The fact that homeworkers are paid on a piecework basis, combined with unclear rules relating to hours of work, means that they are often required to work long hours, including at night and on the weekends, in order to be able to earn a basic income. In many cases, they are also forced to cover certain costs, such as social contributions, as well as costs related to the workplace, including electricity, water, tools and materials, which has the effect of reducing their overall income.

The importance of keeping records of workers and providing adequate information. The instruments require the keeping of records containing information on homeworkers, their remuneration, delivery times and other conditions under which the work is performed, as well as addressing the existence of intermediaries and the determination of responsibilities. These practices facilitate monitoring and result in increased transparency with regard to the homeworkers' true conditions of work.

In some cases, telework and platform work may be more modern forms of home work. The Convention considers that permanent, but not occasional telework, constitutes home work. Telework can occur in various economic sectors with different skill requirements. Work through digital platforms that involve home work (crowd work) also has many similarities with home work, such as payment on a piece-work basis, the existence of an intermediary (in this case, the platform) and the lack of clarity concerning the employment status of the workers concerned. To the extent that digital platform work and crowd-work on digital platforms is undertaken at home or on premises other than those used regularly by the employer, and in exchange for remuneration, the Committee considers that such work could fulfil the conditions to be considered as a form of regular home work, and as such could be covered by the provisions of the Convention.

Promoting the access of workers with disabilities to the open labour market

Approximately 15 per cent of the global population, or around 1,000 million adults and children, live with some form of disability, of whom between 2 and 4 per cent have considerable functional difficulties. Moreover, it is forecast that the growing global population living beyond 60 years of age, combined with the rise in chronic illnesses, will result in the number of persons with disabilities continuing to increase.

Persons with disabilities encounter greater challenges to accessing the open labour market. Persons with disabilities have considerably higher poverty rates in all regions of the world. They are faced with discrimination, marginalization and exclusion in many areas, including employment. Moreover, when they succeed in entering the labour market, they confront additional costs, such as transport, which result in lower earnings. Access to rehabilitation services for persons with disabilities is essential to help them escape the cycle of poverty. It is also necessary to create an inclusive and accessible environment, both in public spaces and the workplace. Women with disabilities endure the dual prejudice of discrimination based on their sex and on their disability.

Disability is a human rights issue. Perceptions of disability have changed considerably over the past 50 years, due in large part to the movement lead by organizations of persons with disabilities. Disability has come to be considered a human rights issue and it is recognized that persons suffer disabilities arising not only out of functional difficulties, but also external factors deriving from historically negative perceptions and attitudes towards disability. The adoption in 2006 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities strengthens the international framework for the protection of the rights of persons with disabilities.

Workers with disabilities must be taken into account in the framework of an inclusive national employment policy. Convention No. 159 and the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168), reflect a commitment to social justice and the achievement of decent work and full, productive and freely chosen employment for all through the promotion of equality for this specific group of workers. Workers with disabilities are entitled to full participation and equality of opportunity and treatment in all areas of life, including social and economic life. They are entitled to access vocational education and training to guarantee equality of opportunity and treatment.

Employment enables persons with disabilities to achieve independence and integration or reintegration into society. The Convention seeks to enable persons with disabilities to secure, retain and advance in employment on the open labour market. It is therefore necessary to protect the full rights of persons with disabilities and to eliminate humiliating and persistent stereotypes, stigma and prejudices that impair their exercise of these rights.

Persons with disabilities are as skilled and productive as workers without disabilities. The negative attitudes of educators, employers and co-workers in relation to the aptitudes and potential of persons with disabilities create barriers to their full participation in education and employment. It is essential to adopt public information measures to overcome prejudices, misinformation and unfavourable attitudes. Quotas and employment incentives have been adopted in many countries for persons with disabilities in both the public and private sectors. In most countries, persons with disabilities have access to the employment services available to other members of the public. Such services must also be accessible for all workers with disabilities, including those living in rural areas and remote communities. The Convention also provides for programmes intended specifically to address the needs of persons with disabilities who are not able to compete to obtain employment on the open labour market.

Guaranteeing accessibility and reasonable adaptations are also forms of equality. Accessibility, which is advocated through the application of universal design principles or assistance measures, seeks to ensure the access of all persons without taking into account the needs of specific individuals. Reasonable adaptations are changes and adaptations that are necessary and adequate, but which do not involve a disproportionate or undue burden, to guarantee that persons with disabilities can enjoy and exercise all human rights and fundamental freedoms, under equal conditions. The adoption of reasonable adaptations, where necessary, including in vocational rehabilitation, is fundamental to promoting diversity and inclusion in the workplace.

Access to technology offers greater opportunities for labour market integration. Digitalization can considerably improve the living and working standards of persons with disabilities. In turn, technology increases accessibility for persons with disabilities. Many people with disabilities also prefer digital work, which offers them a flexible and accessible work environment. Work on digital platforms is attracting an increasing number of persons with disabilities for whom these atypical work arrangements can mean the difference between being unemployed and earning a living. However, in many cases, these working arrangements offer lower remuneration, few or no social benefits and involve greater income insecurity.

Promoting inclusive employment policies

After examining the basic elements of the instruments, the General Survey addresses the principle of equality of opportunity and treatment. This fundamental principle concerns all of the instruments under examination. The overall objective is to develop and implement a national employment policy that is inclusive and guarantees equality of opportunity and treatment in the labour market for everyone.

Measures should be taken to ensure that productivity increases are equitably redistributed. While technological progress has given rise to productivity growth in recent decades, this has not generally resulted in shared prosperity. Everyone must be able to contribute to the development of society in conditions of dignity. When equality of opportunity and treatment is effectively implemented, all members of society can compete on an equal footing. The national employment policy must therefore seek to ensure that every worker has the opportunity to choose their employment freely, obtain the necessary training and enjoy the benefits of such employment on a non-discriminatory basis.

The informal economy undermines equality of opportunity. A coherent formalization strategy must take into account the diversity of characteristics, circumstances and needs of workers, including dependent employees, self-employed workers and economic units in the informal economy, by adopting measures to ensure inclusive development.

The national employment policy should respond to the specific needs of all workers. The national policy should contribute to the inclusion in the paid labour market of all unemployed persons, particularly the long-term unemployed, and those belonging to categories that encounter the greatest difficulties in finding lasting and decent work. In turn, it is necessary to take into account the profound demographic changes taking place in the world. A heterogeneous group of young people are endeavouring without success to enter the world of work, while the proportion of older persons of working age who are unemployed has increased in almost all regions of the world. Migrant workers, domestic workers, indigenous workers, workers in rural areas, and those in the subsistence economy all encounter, in one way or another, obstacles to entering the labour market, which may in some cases constitute discriminatory or unfavourable treatment. These obstacles need to be taken into account to ensure a comprehensive and coherent national employment policy. The national employment policy should also provide for the necessary inclusive measures, such as reasonable accommodation, so that persons with disabilities are able to contribute to building the society in which they live. Moreover, the policy should address, as a priority, the various dimensions of gender equality in the world of work, to eliminate the disadvantages that many women face in the workplace.

A clearly determined employment relationship is key to ensuring equality. A lack of clarity or ambiguity with regard to the existence of employment relationships can deprive workers of the protections to which they are entitled. Some workers are more vulnerable than others in these circumstances, as they create a situation of inequality which in turn pushes them into informality.

Promoting equality of treatment and providing adequate protection. Fundamental principles and rights at work apply to all workers without discrimination, irrespective of their employment status. At the same time, equality involves ensuring that all workers benefit from adequate working conditions and social and labour protection in relation to the realities of the work that they are performing. In turn, it is necessary to take into account that certain contractual arrangements may be used in an inappropriate manner, unrelated to the true nature of the work performed and the remuneration received by the worker, thereby placing the workers concerned in an unfair situation, in many cases excluding them from the protections to which they are entitled.

Monitoring, compliance and enforcement

The General Survey dedicates a chapter to the crucial issue of monitoring and compliance. Poor enforcement and lack of compliance with the law are significant factors in cases where workers lack protection. Strong political commitment is needed to ensure compliance with the law and provide the necessary support to law enforcement mechanisms, with the involvement of the social partners, where appropriate.

Sound labour administration and inspection systems are crucial for good labour market governance, and particularly the enforcement of labour regulation, both for the protection of workers at the national level and in the context of globalization. Such systems have a specific role to play in addressing the difficulties arising out of new contractual arrangements, the multiple forms of the employment relationship and the particular challenge of informality, with the overall aim of protecting all workers, especially those most vulnerable to exclusion. The Survey examines how governments ensure access to efficient and accessible complaint and appeal procedures including for workers in the informal economy. Furthermore, a broad range of measures have been adopted at the public and private levels for the development of policies and regulatory frameworks to achieve a fairer globalization within coherent and coordinated frameworks.

Looking to the future

The present General Survey provides an opportunity to examine the close links and common objectives of eight instruments related to employment. The Committee has examined the consequences, in all countries and regions, of the profound changes in the world of work in respect of the new and emerging forms of employment relationships and contractual arrangements. These impacts have given rise to deep reflection, including on the meaning of work and its importance for personal development and for the development of society. This takes on even more relevance in light of constant technological innovations, as well as climate and environmental changes, which will require a paradigm shift for everyone. The Committee considers that all the instruments under examination offer useful guidance for overcoming future of work changes in a productive and inclusive manner.

It is necessary to address this issue within the framework of constructive social dialogue and broad consultation which addresses the impact of change on all sectors of the population and the measures that will need to be taken to ensure decent work for all. At the same time, it is necessary to identify and thoroughly examine mechanisms to ensure that productivity increases are translated into more equitable benefits for everyone.

The essential role of lifelong learning in this context is clear, to allow all workers to actively participate in the labour market and successfully adapt to future transitions.

Enterprises are necessary participants in the inclusion of all workers. The various policies, and particularly employment policy, must contribute to the creation of an enabling environment for their development and sustainability in a context of increasingly integrated markets. Enterprises, large and small, can be a vector for decent work within the framework of local and global supply chains. They are also active participants in the pathway to a just transition to formality.

The ILO has experience and skills in many areas that can contribute through technical cooperation to the work that countries are undertaking at the national level for the effective application of the Conventions and Recommendations under examination. The Committee therefore invites governments to continue to seek support from the Office on the various subjects addressed by the instruments, in accordance with the specific requirements of each case.

The Committee recalls the call for action made in the Centenary Declaration, which stresses that: “It is imperative to act with urgency to seize the opportunities and address the challenges to shape a fair, inclusive and secure future of work with full, productive and freely chosen employment and decent work for all.”

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Kyoto Printing Factory woman employee. Printing the Asahi Shimbun Newspaper evening edition. Kyoto, Japan. © ILO

Introduction

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I. Preliminary remarks

1. In accordance with article 19 of the Constitution of the International Labour Organisation, at its 331st Session,[1] the ILO Governing Body determined that the General Survey to be prepared by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in 2019 and submitted to the International Labour Conference (ILC) in 2020 would examine the following eight instruments:

- the Employment Policy Convention, 1964 (No. 122);
- the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159);
- the Home Work Convention, 1996 (No. 177);
- the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168);
- the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169);
- the Home Work Recommendation, 1996 (No. 184);
- the Employment Relationship Recommendation, 2006 (No. 198); and
- the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).

2. Following this decision, the Governing Body requested the Office to prepare a draft report form for the General Survey concerning the above-mentioned instruments. At its 332nd (February 2018) and 332nd bis (May 2018) Sessions, the Governing Body adopted the report form to be used by member States for their reports under article 19 of the Constitution of the ILO for the preparation of the General Survey.

3. In light of the discussions in the Governing Body in November 2017 and March 2018, the Committee has examined the eight instruments chosen in the framework of the overarching principle of promoting full, productive and freely chosen employment through the development, implementation, monitoring and review of inclusive national employment policies and programmes. In this respect, the Committee notes that the realization of the fundamental right to work through full, productive and freely chosen employment for all is a central priority for ILO Members, particularly in the aftermath of the global economic, financial and jobs crisis.

4. The Committee notes that the 2008 Declaration on Social Justice for a Fair Globalization (Social Justice Declaration) which, together with the 1998 Declaration on Fundamental Principles and Rights at Work, constitutes the ILO's response to the challenges of globalization, underscores the critical importance of promoting the application of the principles embodied in Convention No. 122, identified as one of the four priority Conventions essential for good governance. Promoting sustainable economic growth through inclusive employment policies developed through participatory social dialogue will contribute to support the ILO's human-centred approach and ensuring that no one is left behind on the path to global economic recovery.

5. The Committee has also taken into account the outcome of the Centenary discussion on the Future of Work, as well as the Centenary Declaration for the Future of Work (Centenary Declaration), adopted in June 2019, and the outcome of the Centenary discussion on Women at Work. In addition, the Committee has taken into consideration the ongoing work of the Tripartite Working Group of the Standards Review Mechanism of the ILO Governing Body. The United Nations Sustainable Development Goals (SDGs) are also referenced, as appropriate, throughout the General Survey, with particular attention paid to SDG Goal 8 on the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

[1] GB.331/LILS/3, 3 Nov. 2017.

6. Given the rapid transformations in the structure and organization of work taking place in all ILO member States and across all economic sectors, due to digitalization, technological innovations, globalization and other relevant developments, the General Survey has focused on new and emerging forms of working arrangements, highlighting the different aspects of such arrangements. The General Survey also identifies best practices being developed and applied in various member States to address such new and emerging working arrangements in a manner that ensures that workers enjoy the rights to which they are entitled, while creating the necessary incentives to support enterprises as drivers of job creation. The General Survey thus describes the many positive initiatives taken in some countries, as well as obstacles or challenges encountered.

7. As envisaged in the Governing Body discussions, the Committee has addressed the importance of promoting inclusive employment and decent work for everyone, taking the gender dimension of employment into account. The Centenary discussions on Women at Work recalled that, when the ILO was founded in 1919, the Conference adopted the first Conventions on women and work. The discussions highlighted that, at the close of the ILO's first century, women have advanced exponentially in the world of work in many respects. Nevertheless, women are still more likely to be employed in occupations that are considered to be low-skilled, with more precarious and lower working conditions compared to men (as of 2019, the gender wage gap stood at an average of 20 per cent worldwide). Women still perform the lion's share of unpaid care work in comparison with men. Moreover, they remain under-represented in managerial and leadership positions. In addressing issues concerning the future of work in the context of the eight instruments that are the focus of this General Survey, the Committee has paid particular attention to the application of the fundamental principle of gender equality. It considers that achieving gender equality at work in the future is possible, but that this will require the design, development, implementation and regular monitoring of inclusive employment policies, programmes, strategies and incentives that put gender equality at their core, and are closely coordinated with other socio-economic policies, including policies on education, vocational guidance, training and lifelong learning.[2]

8. Moreover, this General Survey pays particular attention to the impact of changes in the structure and organization of work on persons from disadvantaged groups. These may vary from country to country, depending upon national circumstances, but concern groups such as young persons, older workers, persons with disabilities, persons living with HIV or AIDS, homeworkers, domestic workers, migrant workers, racial and ethnic minorities, indigenous and tribal peoples, rural workers and workers in the informal economy. The Committee has also taken into consideration the situation of those persons vulnerable to multiple grounds of discrimination.

9. In this respect, the Committee recalls that the Centenary Declaration provides that, "in discharging its constitutional mandate, taking into account the profound transformations in the world of work, and further developing its human-centred approach to the future of work", the ILO must direct its efforts to, inter alia, "develop effective policies aimed at generating full, productive and freely chosen employment and decent work opportunities for all", including for young people and older workers, persons with disabilities and those in vulnerable situations. The Declaration contemplates the achievement of gender equality at work and "ensuring that diverse forms of work arrangements, production and business models, including in domestic and global supply chains, leverage opportunities for social and economic progress, provide for decent work and are conducive to full, productive and freely chosen employment".[3]

[2] ILO: *A Quantum leap for gender equality: For a better future of work for all*, 2019.
[3] ILO Centenary Declaration for the Future of Work, International Labour Conference, 108th Session, Geneva, June 2019, Part II.A(iv), (v), (vii), (viii) and (xii).

10. The Committee also recalls that, in the Centenary Declaration, the Conference recognized the need to support the role of the private sector as a primary source of economic growth and job creation by promoting an enabling environment for entrepreneurship and sustainable enterprises, particularly for micro-, small and medium-sized enterprises, as well as for cooperatives and the social and solidarity economy, to generate decent work, productive employment and improved living standards for all. The Conference also recognized the need to support the role of the public sector as a significant employer and service provider.[4]

11. The Committee recalls that, in adopting the Centenary Declaration, the Conference also called upon all Members to work individually and collectively, on the basis of tripartism and social dialogue, and with the support of the ILO, to further develop a human-centred approach to the future of work by, among other things, reaffirming the continued relevance of the employment relationship as a means of providing certainty and legal protection to workers, while recognizing the extent of informality and the need to ensure effective action to achieve transition to formality. The Conference noted that all workers should enjoy adequate protection in accordance with the ILO's Decent Work Agenda, taking into account respect for their fundamental rights; an adequate minimum wage, statutory or negotiated; maximum limits on working time; and safety and health at work.[5]

12. The General Survey highlights the critical role of tripartism and social dialogue in developing policies, programmes, strategies and incentives that promote sustained, inclusive and sustainable economic growth, full, productive and freely chosen employment and decent work for all, create and support sustainable enterprises, including micro, small and medium-sized enterprises, and ensure the effective realization of the Decent Work Agenda. All the chapters of this General Survey address different aspects of social dialogue. The Committee recalls the conclusions of the Meeting of Experts on cross-border social dialogue, which affirmed that "social dialogue … has a crucial role to play in designing policies that promote social justice. The conclusions also highlight that social dialogue is a means to achieve social and economic progress and is essential for democracy and good governance".[6]

13. The General Survey also highlights the importance of compiling, disseminating and publishing comprehensive, reliable and updated labour statistics on employment trends. The Committee considers that it is essential that national employment policies and programmes, strategies and incentives be evidence-informed, based on reliable, up-to-date statistics, to ensure that their design and development are well-founded, as well as to optimize their effectiveness and impact and monitor their continued relevance.

14. Finally, the Committee recalls that, in its 2016 resolution on Advancing Social Justice through Decent Work, the Conference called on the Office to "ensure that there are appropriate and effective linkages between the recurrent discussions and the outcomes of the Standards Initiative, including … making better use of article 19, paragraphs 5(e) and 6(d), of the ILO Constitution, without increasing the reporting obligations of member States".[7] This includes ensuring the contribution of General Surveys and the related discussion by the Committee on the Application of Standards to recurrent discussions.[8] The Committee expresses the hope that this General Survey will contribute to the future recurrent item discussion on the strategic objective of employment planned for 2020 and support the work of the Tripartite Working Group of the Standards Review Mechanism of the ILO Governing Body.

[4] ibid., Part II.A(ix).
[5] ibid., Part III.B(i)–(iv).
[6] ILO: Conclusions of the Tripartite Meeting of Experts on Cross-border Social Dialogue (12–15 February 2019), Geneva.
[7] ILO: *Resolution on Advancing Social Justice through Decent Work*, ILC, 105th Session, Geneva, June 2016, para. 15.1.
[8] ibid., para. 15.2(b).

1. Reports received by region

15. The Committee notes that 114 governments provided reports on the position of national law and practice in respect of matters dealt with in the instruments examined in the General Survey: 27 reports from Africa, 23 from the Americas, five from the Arab States, 22 from Asia and the Pacific and 37 from Europe and Central Asia. Full indications on the reports due and received are contained in Appendix II. According to its usual practice, the Committee has also taken into account the observations submitted by nine employers' and 30 workers' organizations, and one national labour council representing both workers and employers, the list of which is contained in Appendix III.

16. This General Survey is based on the reports communicated under article 19 of the Constitution by countries on the measures taken to give effect to the provisions of the Conventions and Recommendation under consideration. The Committee has also taken into account available information on relevant law and practice, and its main observations on the application of ratified ILO Conventions Nos 122, 159 and 177.

17. The present Survey builds on the information contained in previous General Surveys concerning the employment policy and vocational rehabilitation of workers with disabilities and other relevant publications.

2. Ratifications

18. Convention No. 122 came into force on 15 July 1966. It has been ratified by 113 member States. The Committee notes that 12 ratifications (*Chad*, *Fiji*, *Mali*, *Namibia*, *Niger*, *Rwanda*, *Saint Vincent and the Grenadines*, *Sri Lanka*, *Switzerland*, *Togo*, *Trinidad and Tobago* and *Viet Nam*) have been registered in the last nine years, the last being Namibia which ratified the Convention on 20 September 2018.

19. Out of the 84 member States that have ratified Convention No. 159 (which entered into force on 20 June 1985), 21[9] have done so since the latest General Survey in 1998.[10] Lastly, Convention No. 177, which entered into force on 22 April 2000, has been ratified by ten countries, the latest being Belgium on 2 October 2012.

20. The list of States which are currently bound by the terms of these instruments is given in Appendix I.

[9] *Afghanistan, Belgium, Côte d'Ivoire, Fiji, Italy, Jordan, Republic of Korea, Lebanon, Luxembourg, Mauritius, Mexico, Montenegro, Nigeria, Poland, Portugal, Serbia, Thailand, Trinidad and Tobago, Turkey, Ukraine and Viet Nam.*

[10] ILO: *Vocational Rehabilitation and Employment of Disabled Persons*, General Survey on the reports on the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), 1983, Report III (Part IB) ILC, 86th Session, Geneva, 1998.

II. Context

21. The instruments that are the subject of this General Survey were selected by the Governing Body with the aim of aligning the Survey with the recurrent item discussion to be held in 2020 on the strategic objective of employment. The General Survey will allow the examination of this objective from different perspectives given the instruments chosen. This is the first time that the instruments related to the employment relationship (Recommendation No. 198), homework (Convention No. 177 and Recommendation No. 184) and the informal economy (Recommendation No. 204) are the subject of a General Survey.

22. The Committee expresses the hope that this General Survey will help to illustrate the tremendous diversity in today's forms of employment relationships, the manner in which they are addressed at national level and the possible decent work deficits and regulatory gaps that may develop. The prevalence of persons in situations of vulnerability in new and emerging forms of work will be examined, as well as the need to ensure that all workers enjoy the protection they are entitled to. This is crucial in the promotion of policies and programmes for inclusive economic growth, employment and job creation. In order to achieve this, it is important first to determine the nature and scope of the existing relations at work and how to ensure that the protections derived from work are granted to all those who work. Informality also impacts on workers' rights and working conditions. It also affects decent jobs creation and growth. The General Survey examines processes and policies aimed at facilitating transition to formality.

23. While recognizing the diverse nature and scope of the instruments under consideration, the Committee considers that there is an underlying theme which links all these instruments: the need to develop a coherent and inclusive employment policy that promotes access to full, productive, freely chosen and sustainable employment and decent work in a framework of inclusion and equality of opportunity and treatment for all. The General Survey is built on the notion of a robust system of governance in which processes, procedures and concepts are clear, responsibilities have been clearly determined, with effective control and compliance mechanisms.

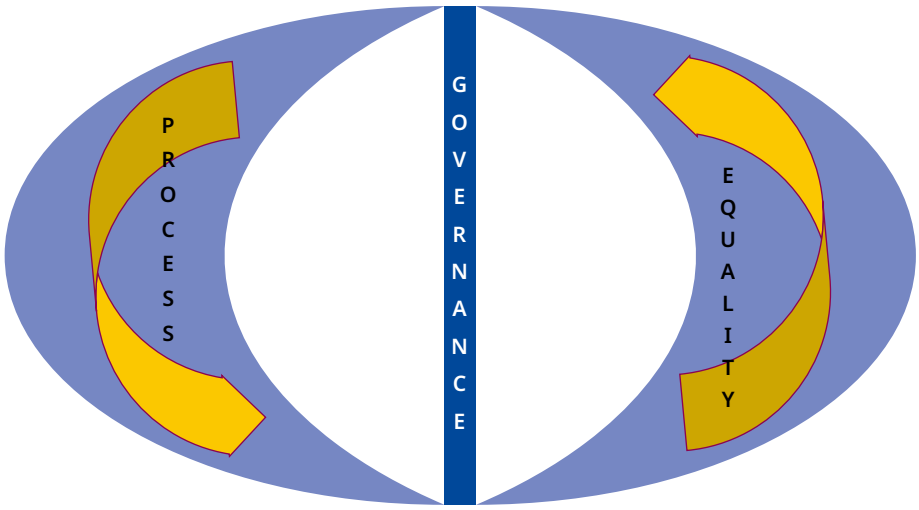
24. The first chapter of the General Survey starts with an overview of the Employment Policy instruments, namely Convention No. 122 and Recommendation No. 169, which have already been the subject of previous general surveys carried out in 2004 and 2010. This chapter focuses on the process of adopting a national employment policy and the challenges that may exist with respect to the promotion of full, productive and freely chosen employment that is inclusive. The Committee highlights that the instruments do not establish a specific process to be followed; rather, this is determined at the national level. The Committee considers, however, that it may be helpful for many countries to take advantage of the vast experience accumulated concerning the adoption and implementation of employment policies.

25. Chapter II focuses on Recommendation No. 198 as well as the adoption of a national policy for the revision of the relevant laws and regulations to ensure that they provide workers with adequate protection. This is done in the framework of an evolving labour market where traditional criteria and indicators that used to help determine the existence of an employment relationship may (no) longer be fit-for-purpose. The chapter examines the various aspects of the employment relationship and the emergence of new contractual arrangements that require close monitoring. As the chapter will show, both the employment relationship in its different forms and new contracting arrangements present challenges for the effective protection of workers.

26. Chapter III examines Recommendation No. 204 on the transition from the informal to the formal economy. It is the most recent of the instruments that form the subject of this General Survey. The Committee addresses the diversity of situations, actors and impacts that make up the extreme diversity found in the informal economy. In particular, the Committee looks at a range of situations where the blurring of lines between well-defined employment relationships and other contractual arrangements are giving rise to an increase in informal work.

27. The General Survey then turns to the particular situations of homeworkers (chapter IV) and workers with disabilities (chapter V) as clear examples of disadvantaged groups of workers. The needs of such workers should be taken into account in developing inclusive national employment policies that ensure their access to quality vocational education and training, as well as their fundamental labour rights, including equality of opportunity and treatment, so that they may access full, productive and freely chosen employment and decent work. The intersection between transnational digital work and new forms of contractual arrangements, as well as the opportunities and challenges that these present, are also examined.

28. Chapter VI looks at the types of measures that constituents may take with the aim of ensuring the development and implementation of an inclusive national employment policy. The first section of the chapter addresses the particular situation of those categories of workers specifically mentioned in the instruments under examination who are vulnerable to decent work deficits and who are often concentrated in the most precarious and informal jobs. The chapter also sets out specific measures adopted at national level that contribute to equalizing the different types of employment relationship. The level of remuneration, working time, occupational safety and health and social protection vary according to employment status, which may place individuals in precarious situations or leave them without the protections that arise from the employment relationship. Chapter VII highlights the importance of accessible monitoring and compliance procedures and mechanisms to ensure efficient and strong governance systems. Lastly, chapter VIII focuses on prospects and challenges for the ratification and implementation of the instruments under examination.



III. Scope of application

29. The instruments examined in the General Survey provide for different scopes of application, some narrower and others broader. For example, Convention No. 122 and Recommendation No. 169 apply to all workers, whether they are dependent or self-employed. In addition, Recommendation No. 169 extends this coverage to informal economy workers. Recommendation No. 204 applies to all workers in the informal economy, regardless of whether they are self-employed or in employment relationships (including in unrecognized and unregulated employment relationships), as well as to those persons working in economic units in the informal economy. Recommendation No. 198 seeks to help employers and workers determine whether a worker is in a dependent employment relationship or if the worker is in fact independent. Convention No. 177 and Recommendation No. 184 apply to all homeworkers who are not self-employed, regardless of the type of relationship that binds them to their employer, even if they are working in the informal economy. Convention No. 159 and Recommendation No. 168 apply to all workers with disabilities.

IV. Structure and format

30. This General Survey has thus two main axes. Chapters I to V focus on concepts and processes in the framework of an inclusive and comprehensive national employment policy, while chapters VI and VII are focused on equality and inclusion as well as monitoring and compliance. Chapter VIII explores means of achieving the potential of the instruments and addresses challenges that may exist.

31. Given the variety of issues addressed by each of the eight instruments under consideration, the Committee has addressed only certain issues in depth. The other topics will be addressed in less detail and to the extent that they relate to the underlying concept of this General Survey.

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Workers of PT Toshiba Consumer Products Ind.
Assembling and manufacturing of electronic goods,
such as television sets. Cikarang, Bekasi. Indonesia. © ILO

1

The crucial importance of an inclusive employment policy

32. When the ILO was established in 1919, following the end of the First World War, employment issues were an urgent priority. The Preamble to the 1919 Constitution emphasizes the urgent need to ensure the prevention of unemployment. Indeed, one of the instruments adopted by the first International Labour Conference (ILC), the Unemployment Convention, 1919 (No. 2), calls on countries to take measures to prevent unemployment and develop a free public employment service. Subsequently, in 1944, the Declaration of Philadelphia reaffirmed the fundamental principles on which the ILO is based, emphasizing that "poverty anywhere constitutes a danger to prosperity everywhere" (Part I(c)). Part III of the Declaration of Philadelphia recognizes, inter alia, "the solemn obligation of the International Labour Organisation to further among the nations of the world: (a) full employment and the raising of standards of living", and notably "(b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being". As the Organization embarks on its second century, employment policy remains at the core of its mandate to promote the attainment of decent work and safeguard the well-being of all workers. In Part I(B) of the ILO Centenary Declaration for the Future of Work, 2019, the ILC declared that it is "imperative to act with urgency to … shape a fair, inclusive and secure future of work with full, productive and freely chosen employment and decent work for all."

33. Taking into account the breadth of the present General Survey and the variety of instruments covered, the Committee only addresses certain aspects of employment policy in depth, and will examine others only tangentially or from the perspective of coordination and coherence. This selection is based on the questionnaire approved by the Governing Body for the Survey. Certain aspects, such as the transition to formality and measures to foster the employment of specific groups, are addressed in other chapters. Nevertheless, the Committee wishes to reiterate that national employment policies should be comprehensive, as employment is not a target that can be achieved and sustained through a single policy measure. It is necessary to adopt a diversified array of complementary instruments in different areas, as highlighted in the 2014 ILC Conclusions. …[11] Employment policies should also be inclusive so that the objective of full, productive and freely chosen employment translates into specific opportunities for all workers, without distinction whatsoever.

34. In this chapter, the Committee focuses on: the history and content of Convention No. 122 and Recommendation No. 169; a general description of the process followed by many countries in adopting a national employment policy; measures for job creation and inclusive, sustainable economic growth; fostering the green and blue economy; and the impact of new technologies on employment.

[11] ILO: "Employment policy implementation mechanisms across countries", Employment Research brief, Geneva, 2017.

I. Background

35. Convention No. 122, accompanied by the Employment Policy Recommendation, 1964 (No. 122), and Recommendation No. 169, adopted two decades later, provide a sound and comprehensive framework for ILO member States to promote employment and address specific decent work deficits, including those encountered by disadvantaged groups. The instruments provide substantive guidance for the development of national employment policies and programmes focused on the promotion of employment, job creation and income generation, as well as on the prevention of unemployment, poverty reduction and improved standards of living.

36. The Committee recalls that after the adoption of Convention No. 122, at its 51st Session in 1967, the World Employment Programme was adopted as the ILO's contribution to the International Development Strategy for the United Nations Development Decade, and sought to introduce a new employment-oriented approach to poverty alleviation and development through a continuing interaction between research, policy analysis and operational activities.

37. In 1976, the World Conference on Employment adopted a Declaration of Principles and Programme of Action which reaffirmed the need to meet the challenge of creating sufficient jobs in developing countries to achieve full employment. The Conference took the further step of recognizing, as one of the primary objectives of national development efforts and international economic relations, the achievement of full employment and the satisfaction of the basic needs of people. In 1979, the ILC renewed its endorsement of the Declaration of Principles and Programme of Action and, in so doing, adopted a resolution concerning follow-up to the World Conference on Employment, which included a request to the Governing Body to place the question of the revision of employment policy instruments on the agenda of the earliest possible session of the ILC.[12]

38. The Committee of Experts has already prepared General Surveys on Convention No. 122 and Recommendations No.122 in 1969 and in 1972.[13] In 2004, it examined the application of Convention No. 122 and Recommendations Nos 122 and 169.[14] In 2010, the Committee reviewed Convention No. 122 and the related employment instruments in light of the Social Justice Declaration, 2008.

[12] *General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B), ILC, 99th Session, 2010, (hereinafter the "General Survey of 2010"), paras 5 to 8.
[13] ILO: *General Survey on the reports relating to the Employment Policy Convention and Recommendation, 1964*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 57th Session, Geneva, 1972 (hereinafter the "General Survey of 1972").
[14] ILO: *Promoting employment: Policies, skills, enterprises*, General Survey concerning the Employment Policy Convention, 1964 (No. 122), and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), and aspects relating to the promotion of full, productive and freely chosen employment of the Human Resources Development Convention, 1975 (No. 142), and the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), Report III (Part 1B), ILC, 92nd Session, Geneva, 2004 (hereinafter the "General Survey of 2004").

II. Employment policy and the right to work

39. Convention No. 122, in Article 1, calls on member States to "declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment". The objective of the policy is to stimulate economic growth and development, raise standards of living, meet requirements for skilled workers and overcome both unemployment and underemployment.

40. The human rights dimension of employment is reflected in the Preamble to Convention No. 122, which cites the affirmation by the Universal Declaration of Human Rights, 1948, that "everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment".

41. The core principles of Convention No. 122 are reflected in Recommendation No. 169, which also makes explicit reference to the right to work, indicating that "[t]he promotion of full, productive and freely chosen employment … should be regarded as the means of achieving in practice the realisation of the right to work", which "should be a priority in … economic and social policies of Members and, where appropriate, their plans for the satisfaction of the basic needs of the population" (Paragraphs 1 and 3).

42. ***The Committee recalls that, in order to deliver on the right to work in a meaningful and sustainable manner, efforts to implement the Convention should be underpinned by a respect for all human rights, as enshrined in the 1966 United Nations Covenants on Economic and Social Rights and on Civil and Political Rights which have been ratified by almost all States that are members of the United Nations.***[15] The Covenants, adopted two years after Convention No. 122, also affirm the right to work.

43. Many national Constitutions recognize the right to work and provide that it is the duty of the State to promote conditions in which the right to work of all citizens can be effectively realized.

> Of the 12 countries that have ratified the Convention since the General Survey of 2010, nine have Constitutions that include provisions establishing the right to work: *Chad* (article 32), *Fiji* (article 33), *Mali* (article 17), *Niger* (article 33), *Rwanda* (article 37), *Switzerland* (article 41), *Sri Lanka* (article 28), *Togo* (article 37) and *Viet Nam* (article 35).[16]

[15] General Survey of 2010, para. 17.
[16] *Namibia, Saint Vincent and the Grenadines* and *Trinidad and Tobago* have also ratified the Convention in this period.

III. Content of the instruments

1. Declaring and pursuing an active national policy

44. Article 1(1) of Convention No. 122 requires member States to make an explicit formal pronouncement of their national employment policy. The political commitment to full, productive and freely chosen employment may be reflected in national legislation or key declarations of intent, such as a national plan or a similar overall policy framework.

45. ***The national employment policy should reflect a concerted and coherent vision of the country's employment objectives and set out specific means of achieving them. Programmes and actions should be linked by a common vision with continuity over time and which can ensure coherent economic, social and labour policies independently of changes of government.***

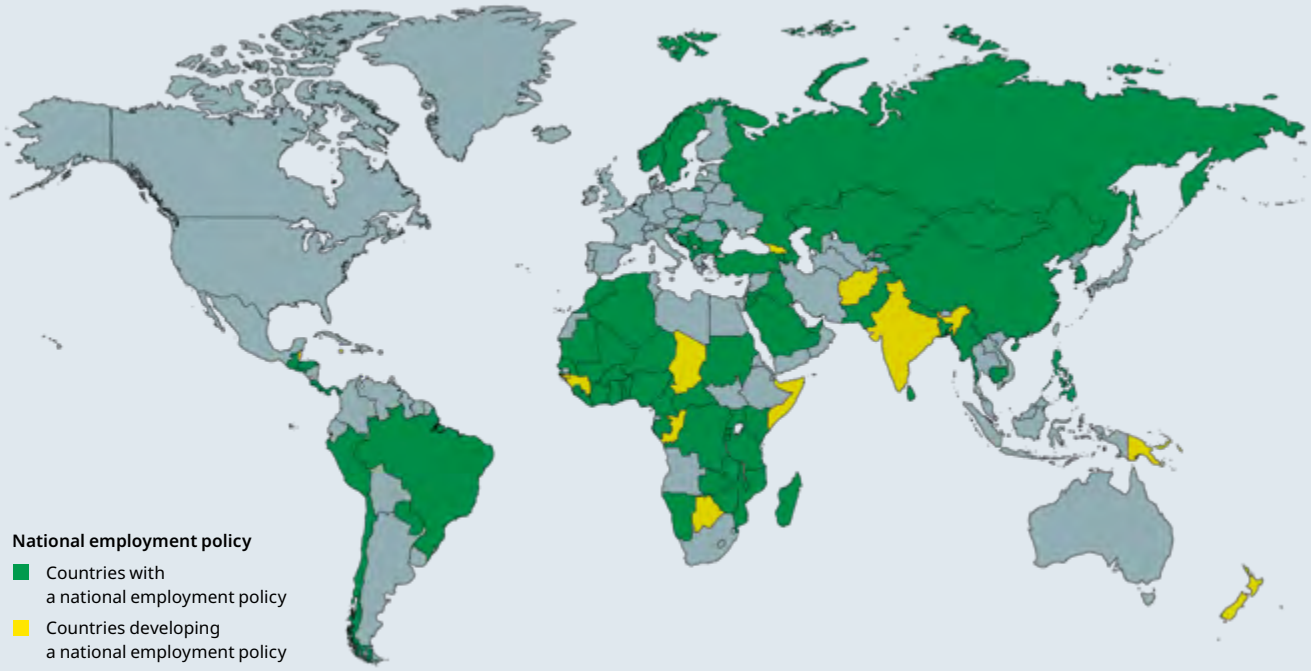
46. ***The Convention does not prescribe a specific form for the national employment policy. Some countries may decide to adopt a fully fledged and stand-alone employment policy, while others may advance progressively, giving priority to some dimensions over others, or targeting certain groups, and developing the remaining dimensions at a later stage.***[17] ***Regardless of its form, it is crucial for the employment policy to be positioned as a major goal within the national agenda and macroeconomic policies.***[18]

47. The majority of States have adopted some form of national employment policy. The Committee notes in this regard that the following countries have adopted stand-alone national employment policies: *Albania, Algeria, Armenia, Azerbaijan, Bangladesh, Barbados, Benin, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cabo Verde, Central African Republic, Chile, China, Comoros, Democratic Republic of the Congo, Costa Rica, El Salvador, Ethiopia, Fiji, Gabon, Ghana, Guatemala, Honduras, Iraq, Côte d'Ivoire, Jordan, Kazakhstan, Kenya, Republic of Korea, Kyrgyzstan, Liberia, North Macedonia, Madagascar, Malawi, Mali, Malta, Mauritania, Mauritius, Republic of Moldova, Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nepal, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Russian Federation, Rwanda, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Sri Lanka, Sudan, Sweden, United Republic of Tanzania, Timor-Leste, Togo, Turkey, Uganda, United Arab Emirates, Zambia* and *Zimbabwe*. Some of these policies have been drafted with ILO technical cooperation.[19] Some other countries are in the process of adopting a national employment policy.[20] Some are currently revising their policy.[21]

[17] General Survey of 2010, para. 514. For example, in *Ecuador*, *Egypt*, *Paraguay* and the *Marshall Islands*, there is a strategy for youth employment.
[18] ibid., para. 27.
[19] For example, since 2010, the ILO has contributed with the elaboration of the national employment policies in the following countries: *Albania, Armenia, Azerbaijan, Burkina Faso, Cambodia, Cameroon, China, Comoros, Costa Rica, Côte d'Ivoire, Ethiopia, Ghana, Guatemala, Iraq, Jordan, Kyrgyzstan, North Macedonia, Malawi, Mali, Morocco, Mozambique; Namibia, Panama, Peru, Philippines, Russian Federation, Samoa, Sao Tomé and Principe, Senegal, Serbia, Seychelles, Sri Lanka, Togo* and *Zambia.*
[20] For example, *Afghanistan, Bangladesh, Belize, Botswana, Chad, Congo, Georgia, Guinea, Guinea-Bissau, India, Jamaica, Mauritius, New Zealand, Palau, Papua New Guinea, Somalia* and *Trinidad and Tobago.*
[21] For example, *Albania, Armenia, Benin, Burkina Faso, Côte d'Ivoire, North Macedonia, Niger, Peru, Rwanda, Saudi Arabia* and *Republic of Tanzania.*

Figure 1.1

Countries that have adopted a stand-alone national employment policy



Source: ILO.

48. Other countries have embedded the national employment policy within a broader national development plan or national action plan.[22]

> *Bahrain* – The Government has adopted a plan of action and decrees issued by the Council of Ministers containing guidelines on the promotion of employment and protection of national employment.

> CEACR – In its comments concerning *Comoros*, the Committee noted with interest that the National Employment Policy Act (PNE) had been adopted through Framework Act No. 14-020/AU of 21 May 2014 issuing the national employment policy. The Act aims to provide a common and coherent vision of the strategic approaches for national action on employment by increasing opportunities for low-income population groups to access decent work and a stable and sustainable income.[23]

49. Member States have developed a diverse range of policies and measures to address specific aspects of employment promotion. Some countries are currently implementing policies and programmes that prioritize issues of concern, such as informality or skills mismatches, or that promote employment for specific groups, including young people, migrants and persons with disabilities.

[22] For example, *Bahrain, Plurinational State of Bolivia, Canada, Ecuador, Egypt, Germany, Indonesia, Ireland, Latvia, Lithuania, South Africa* and *Switzerland.*
[23] CEACR – *Comoros*, C.122, observation, 2017. See also CEACR – *Barbados*, C.122, direct request, 2016.

50. ILO member States which are Members of the European Union (EU) have adopted a diverse range of policies to promote full employment in line with the *Europe 2020 employment strategy*.

In 2010, the Lisbon Strategy was succeeded by Europe 2020: A European strategy for smart, sustainable and inclusive growth (2010–20), which sets employment objectives and targets at the level of the European Union (EU). These are translated into national targets by Member States, which report regularly on their implementation. One of the key elements of the Europe 2020 strategy are the National Reform Programmes (NRPs), which are action plans drawn up by national governments establishing how their countries will implement the Europe 2020 strategy targets and objectives, and particularly the employment targets.

51. Other regional unions and groups of countries have also adopted similar initiatives to foster employment.

The African Union has adopted the Agenda 2063 which seeks to attain inclusive growth and sustainable development through, inter alia, job creation, productivity improvement and increased competitiveness.

The Smaller Island States (SIS) of the Pacific Islands Forum (Cook Islands, Micronesia, Kiribati, Nauru, Niue, Palau, Marshall Islands and Tuvalu) seek to ensure sustainable development for their people through working together to address issues of specific relevance and importance to the group. To this end, they have adopted the Smaller Island States Regional Strategy 2016–2020.

The Inter-American Council of Integral Development of the Organization of American States, has adopted a plan of action of Bridgetown 2017 which aims at advancing towards social justice, decent work and sustainable development in the Americas.

The Strategic Plan for the Caribbean Community (CARICOM) 2015–2019 aims at realizing the human potential of the people of the islands through full employment, poverty reduction, good governance and technological innovation, inter alia.

52. ***In addition to declaring a national employment policy, the Committee considers that there should be a strong commitment to implementation through active policies and programmes which take into account national conditions and levels of national, regional and local development.***

2. Objective of the employment policy

53. The objective of Convention No. 122 is threefold: to promote full, productive and freely chosen employment.[24]

(a) Full employment

54. In accordance with Article 1(2) of the Convention, full employment means that "there is work for all who are available for and seeking work". This goal goes hand-in-hand with the fundamental right to work. It refers to creating employment opportunities for all those available for and seeking work, without implying that everyone must be in employment at all times. Some degree of frictional unemployment (involving persons transitioning between jobs) is considered inevitable in flexible labour markets, as even well-functioning labour markets cannot match workers to available jobs instantaneously.[25] Thus, at any given time, it is likely that a small percentage (2–3 per cent) of the labour force will be unemployed while normal labour market adjustments are made. However, frictional unemployment is short-term in nature and should be distinguished from more serious forms of unemployment, such as long-term unemployment or mass unemployment caused by economic crises. The prevention of these latter forms of unemployment is the main challenge to be addressed by employment policies directed at maintaining full employment.

55. The Committee recalls the 1996 ILC Conclusions concerning employment policies in a global context and considers that certain aspects of these Conclusions remain particularly topical in the context of the current changes in the world of work, especially the development of new technologies and the risks of job displacement due to automation. ***The Committee emphasizes that "the definition of full employment as a level of employment where all those available, able and actively seeking work can obtain it" remains fundamentally valid. In that context, changes in the structure of employment in terms of what constitutes full, productive and freely chosen employment need to be taken into account. Full employment remains an achievable goal despite anxieties over the possible job-destroying effects of rapid technological change and intensified international competition. The Committee considers that the objective of full employment is valid for all countries, allowing different interpretations for developing countries.***[26] ***At the same time, full employment should be harmonized with the objectives of economic progress and sustainable growth, which may involve structural changes and the transition of workers from highly polluting sectors to the green and blue economies.***

Statistical concepts

In this section, the Committee refers to certain international standard statistical concepts recognized by the International Conference of Labour Statisticians (ICLS), which are used to analyse and contextualize levels of employment, including: the labour force, unemployment, labour underutilization (underemployment), time-related unemployment and the potential labour force.[27]

The labour force refers to the current supply of labour for the production of goods and services in exchange for pay or profit. The sum of persons in employment and in unemployment equals the labour force.

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[24] ILO: *Guide for the formulation of national employment policies*, Geneva, 2012, p. 17.
[25] General Survey of 1972, para. 28.
[26] General Survey of 2004 and ILC Conclusions concerning employment policies in a global context, ILC, 83rd Session, Geneva, 1996.
[27] ILO: *Resolution concerning statistics of work, employment and labour underutilization*, adopted by the 19th ICLS, Geneva, 2013. See also ILO: *Resolution concerning statistics on work relationships*, adopted by the 20th ICLS, Geneva, 10–19 October 2018.

Persons in unemployment are defined as all those of working age who were not in employment, carried out activities to seek employment during a specified period and were available to take up employment. All three criteria must be met for a person to be considered as unemployed. *Not being in employment* is assessed with respect to the reference period for measuring employment. *Seeking employment* refers to any activity when carried out, during a specified recent period comprising the last four weeks or one month, for the purpose of finding a job or setting up a business or agricultural undertaking. This includes also part-time, informal, temporary, seasonal or casual employment, within the national territory or abroad. In the case of persons setting up a business, the point when the enterprise starts to exist should be used to distinguish between search activities aimed at setting up a business and the work activity itself. The notion of *currently available* serves as a test of readiness to start a job, assessed with respect to a short reference period comprising that used to measure employment.

Although the problem of unemployment is omnipresent in public discourse, labour underutilization can take on additional forms that are not captured by the headline unemployment rate and can be used to complement this indicator. In this regard, the Committee notes that additional measures of labour underutilization are defined by resolution 1 of the 19th ICLS, 2013. Unemployment is now integrated as one of the measures of labour underutilization, which also include "time-related underemployment" and the "potential labour force".

Time-related underemployment refers to situations when the working time of employed persons is insufficient in relation to alternative employment situations in which they are willing and available to engage. Specifically, persons in time-related underemployment are employed persons who, during a short reference period wanted to work more hours, whose working time in all jobs was less than a specified hours threshold, and who were available to work additional hours given the opportunity.

The *potential labour force* comprises people of working age who, during a given short reference period, were neither employed nor unemployed and either: (1) looked for a job and were not available to work, but would become available within a short period (i.e. unavailable jobseekers); or (2) did not look for a job, but wanted employment and were available for work (i.e. available potential jobseekers). The second group includes *discouraged jobseekers*, made up of those who did not look for a job for labour market-related reasons. The potential labour force is not part of the current labour force but could be integrated into it if some conditions were to change, implying that such persons are only marginally detached from the labour market.[28]

The Committee notes the importance of these new measures, which will enable better statistical measurement of the participation of all persons in all forms of work and in all sectors of the economy, including of labour underutilization, and of interactions between different forms of work. The 2013 resolution, together with other resolutions concerning status in employment adopted in 2018, are relevant to evaluations of the quantity and quality of work at the national level.[29]

[28] ILO: *World Employment Social Outlook: Trends 2019*, Geneva, 2019, p. 23.
[29] This is also relevant to chapter II on the employment relationship.

(b) Productive employment

56. Article 1(2)(b) of the Convention provides that the national employment policy should seek to ensure that "work is as productive as possible". *Productive employment* which is defined as employment yielding a sufficient level of income (above the poverty line) requires the efficient organization of resources,[30] and should be assessed in light of national circumstances. Labour productivity is therefore a key measure of economic performance and national development. Value increases when labour works smarter or with better skills, but it also increases with the use of more or better machinery, reduced waste of input materials or the introduction of technological innovations.

57. If workers are to be able then to contribute to the full extent of their capacity to economic growth and other social purposes, it is essential to increase their abilities and opportunities. Policies to improve labour productivity include: macroeconomic policies that favour employment (through investment in infrastructure, tax and welfare reforms, the quality of education and training, business investment, tax incentives or the removal of unnecessary barriers to efficiency), supplemented by fair wage and labour market policies and institutions that make labour markets more effective, inclusive and equitable, including wage-setting institutions, minimum wage systems, mandatory social benefits, unemployment insurance, employment protection legislation and proper enforcement mechanisms.[31]

> The International Organisation of Employers (IOE) indicated in its observations concerning the implementation of Convention No. 122 that sustained productivity growth is the main driver of the development process, including employment and decent work creation, and the transition to the formal economy. Sustained productivity growth translates into better financial performance, which enables enterprises to hire and retain more workers, as well as to invest in machinery and equipment, research and development. Such growth also permits enterprises to invest in skills development for their workers, improve working conditions and expand the production of goods and services. At the same time, increased productivity enables enterprises to be competitive, obtain access to financing and reap the benefits of international trade. Productivity is the engine of sustainable growth and a key factor in improving standards of living over the longer term.

(i) Sustained growth, environmental sustainability, inclusivity and equality

58. An understanding of the driving forces behind productivity, in particular the accumulated impact of machinery and equipment, improvements in organization and in physical and institutional infrastructure, improved health and skills of workers ("human capital") and the generation of new technology, is important for the formulation of policies to support economic growth.[32] The Committee notes that three factors in particular should be taken into consideration when examining productivity: sustained growth; environmental sustainability; and equality. Lasting productive employment is required to ensure sustained growth.

[30] See in this regard, for example, M. Mwamadzingo and P. Chnguwo: *Productivity improvement and the role of trade unions*, ILO, 2015.
[31] ILO: "National employment policies", SDG Note, The ILO DW for SDGs Notes Series, Geneva, 2018.
[32] ILO: *Key Indicators of the Labour Market, Ninth edition*, Geneva, 2016, p. 18.

59. The 2030 Sustainable Development Goals (SDGs), adopted in 2015, call on countries to take measures to promote decent work, productive and sustainable employment.[33] In particular, SDG 8, on "sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all", sets targets that include sustaining growth and achieving higher levels of economic productivity through diversification, technological upgrading and innovation, including through a focus on high value added and labour-intensive sectors.

60. When examining employment programmes that promote the use of very short-term contracts or other forms of fixed-term and temporary employment contracts, the Committee has requested governments to provide information on the impact of these programmes on opportunities for *lasting employment*.

The CGT-FO of *France* refers to the increase in precarious employment (according to DARES, the share of new hires on fixed-term contracts has increased significantly in 25 years, particularly since the 2000s, from 76 per cent in 1993 to 87 per cent in 2017), stemming from changes in social legislation and the deregulation of the labour market. This has led to an explosion of short-term contracts. The worker organization considers that the fight against job insecurity must become a priority and it is therefore not a question of adapting the French social model to these changes without calling them into question.

The UGT of *Spain* refers to the priority given to quantity over quality of employment.

CEACR – In its comments concerning the application of Convention No. 122 in *Spain*, the Committee noted that the CCOO indicated that most of the employment created is concentrated in low productivity sectors and continues to be precarious and of poor quality. In this context, the CCOO maintains that the contracts that are signed continue to be primarily temporary contracts. It adds that, in 2017, 95 per cent of employment contracts were temporary or part-time contracts. The CCOO further maintains that the average duration of temporary contracts continues to decrease, and that the number of short and very short temporary contracts continues to increase, as does turnover. In its response, the Government indicates that, while the number of signed contracts are primarily temporary in nature, in 2017, for the first time since the beginning of the economic recovery, the net creation of indefinite term contracts (263,900) exceeded the number of temporary contracts (222,900).[34]

[33] ILO: *Decent work and the Sustainable Development Goals: A guidebook on SDG labour market indicators*, Geneva, 2018.
[34] CEACR – *Spain*, C.122, observation, 2019.

The German Confederation of Trade Unions (DGB) of *Germany* indicates that many measures, such as agency work or limited-duration contracts that were conceived as exceptions or to bridge a gap, are now being used as normal instruments of the labour market. A similar pattern can be seen in all forms of precarious work: low income, low social protection and fewer rights to co-determination than employees. The largest group of people in precarious work are those with mini-jobs. In 2018, 7.5 million employees were in mini-jobs. Of those, 4.7 million were in only marginal employment, 2.7 million of them in the traditional working-age bracket between 25 and 64. With an upper limit of €450 per month, mini-jobs are dead-end jobs with few prospects, low income and often poor working conditions. Of the 3.1 million workers in marginal employment in the group relevant to the labour market (25–64 years-old) around 80 per cent have a vocational or academic diploma.

The FNV and CNV of the *Netherlands* refer to the increase of flexible employment and the predominance of self-employment, including false self-employment. According to the unions, these forms of flexible organization of work are unlikely to lead to significant productivity gains and employment growth as self-employed workers do not have access to training and they have poor access to social security in case of sickness and disability. They consider that the recent introduction of the Labour Market Balance Act will not help to address the issue of flexibility.

The Venezuelan Confederation of Workers (CTV) indicates that there is no active national policy aimed at promoting full, productive and freely chosen employment, nor are there coordinated social programmes or policies. This has resulted in the informalization of the labour force and the deindustrialization of the country, with its consequent loss of productive employment. Moreover, there are no public policies aimed at addressing the unequal participation of women at work, or promoting the inclusion of young persons or workers with disabilities in the labour market.

61. The Committee will examine some of these contractual arrangements in chapters II and VI which, while these provide some form of income, may present challenges with respect to labour and social protections, as well as encourage high employment turnover, leading to precarious employment. ***The Committee recalls in this regard that clear institutional and legal frameworks are needed to create productive and lasting employment that ensures adequate protections while recognizing enterprise needs in terms of flexibility.***

62. SDG 8 calls on countries to increase efficiency in production while decoupling economic growth from environmental degradation.[35] The aim is to promote prosperity while protecting the planet. The goal of ending poverty must be aligned with strategies for economic growth that address both social needs and environmental concerns.

[35] SDG 8, targets 1–4. See section on green jobs below.

Ghana – Two of the four policy objectives of the National Employment Policy (2015) include a strategic action related to green jobs or the green economy:

1. "to promote and support initiatives for the creation of green jobs in energy and industrial efficiency, energy supply, transportation, biodiversity, conservation and ecosystem restoration, soil and land management, and waste management";
2. "to expand social protection mechanisms for workers exposed to external shocks (i.e. fire, flood, retrenchment, structural changes to green economy, etc.), and develop new learning strategies to help them cope with these socio-economic shocks before they are re-integrated into the labour market".

The cross-cutting reflection of environmental sustainability is also signalled by the inclusion of the Environmental Protection Agency Act 1999 (Act 490) in the policy and legal context, providing guidance for the regulation of employment, working conditions and labour relations. In addition, the National Environment Policy and the Ghana National Climate Change Policy are mentioned, among others, as referral policies that should be developed in synergy with the National Employment Policy.

63. The Committee recalls that productive employment and decent work are prerequisites for raising living standards and alleviating poverty. It recommends that the close links between productivity and poverty reduction should be re-examined in the framework of growing inequalities throughout the world and persistent informality. The Committee notes that wage growth has not kept pace with productivity growth and that the share of national income going to workers has declined.[36] The gap between the wealthy and other segments of the population continues to widen.

64. The Committee welcomes the human-centred approach adopted in the ILO Centenary Declaration for the Future of Work, 2019,[37] aimed at reorienting the economy towards human-centred growth and development, while providing opportunities to create decent work, facilitate the formalization of those in informal employment and end working poverty.[38] The Committee notes in this respect that several countries have provided information on the specific measures taken to address poverty within and in coherence with national employment policies.[39] These measures include: mechanisms for specific categories of workers (such as workers with disabilities, youth, certain categories of women, the long-term unemployed and rural workers), the transition to formality, the improved coherence of employment policies and social protection mechanisms, job creation, increasing the minimum wage, providing free care facilities to foster labour market participation, cash benefits and skills development.

Malta – The National Strategic Policy for Poverty Reduction and for Social Inclusion 2014–24 retains employment as one of the six dimensions of well-being that contribute towards the reduction of poverty and the promotion of social inclusion.

[36] According to the ILO report on *The Global Labour Income Share and Distribution*, Key findings of July 2019, the share of global income earned by workers has declined from 53.7 per cent in 2004 to 51.4 per cent in 2017. See also ILO: *Global Commission on the Future of Work: Work for a brighter future*, Geneva, 2019, p. 18.
[37] ILO: Centenary Declaration for the Future of Work, Geneva, 2019.
[38] ILO: *Global Commission on the Future of Work: Work for a brighter future*, op. cit. p. 24.
[39] For example, *Algeria, Armenia, Burkina Faso, Cabo Verde, Canada, Central African Republic, China, France, Mali, Malta, Montenegro, Nigeria, Portugal* and *Togo*.

Portugal – Over the past 20 years, *Portugal* has established and implemented the social integration income (RSI), which was initially a guaranteed minimum wage, as part of a poverty reduction strategy. This type of support is intended to protect persons living in extreme poverty and comprises a cash benefit designed to meet their minimum needs and an integration programme that includes a contract (a series of actions that reflect the characteristics and conditions of the recipient's household) with a view to their progressive integration into society, the labour market and the community.

65. The Committee also recalls that measures to increase labour productivity should be accompanied by measures to ensure equality of opportunity and treatment in all aspects of employment.

(ii) Unpaid work

66. Unpaid work takes many forms, ranging from care work to unpaid internships. Much unpaid work, and particularly unpaid care work, results in extremely valuable outcomes that contribute to the economy, as well as society (raising and caring for children, caring for elderly and ill persons, performing domestic work). This work is not yet adequately reflected in national accounts. The Committee notes in this regard that some countries have taken measures to start measuring the incidence of unpaid work in the national economy.[40] The Committee notes that the recently adopted ICLS resolution concerning statistics on work relationships suggests that each country should develop national statistics on work relationships in order to provide adequate information on the impact of government policies and regulation in relation to unpaid forms of work.[41]

67. These responsibilities are primarily assumed by women, who still perform three-quarters of all unpaid care work.[42] This has a bearing on productive employment. Time devoted to care work is diverted from paid work, or means that the workers concerned only have access to lower-paying jobs or jobs with lower career prospects. It is also important to take measures to limit hours of work, whether paid or unpaid, to ensure adequate leisure time and enhance quality of life for women and men. Measures that foster infrastructure development, access to care facilities as well as other relevant public services, economic growth and employment have an incidence on labour market participation and reduce unpaid work. ***While this situation is changing, the Committee considers that policies should promote the sharing of unpaid work in the home, with the aim of increasing equality of opportunity in the workplace. The Committee highlights the need to address unpaid work when examining productivity.***

(c) Freely chosen employment

68. In accordance with Article 1(2)(c) of Convention No. 122, the national employment policy shall aim to ensure that "there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he or she is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin".

69. The Committee notes in this respect that the objective of freely chosen employment consists of two elements. First, no person shall be compelled or forced to undertake work that has not been freely chosen or accepted or prevented from leaving work if he or she so

[40] For example, in its report, the Government of *Georgia* indicated its intention to carry out a "use of time survey" to measure the extent of unpaid domestic work. *Nigeria's* national employment policy refers to changes in demographics and the incidence in unpaid domestic work. Others like *Jamaica* indicated their intention to cover unpaid work in the national policy. The Governments of *Brazil* and *Canada* referred to the measures taken to address unpaid internships.

[41] ILO: *Resolution concerning statistics on work relationships*, 20th ICLS, Geneva, October 2018.

[42] ILO: *Care work and care jobs for the future of decent work*, Geneva, 2018, p. v.

wishes. Second, all persons should have the opportunity to acquire qualifications and to use their skills and endowments free from any discrimination.[43] Some countries explicitly mention "freely chosen employment" in their national employment policy goals.[44]

(i) Freedom from forced or compulsory labour

70. The prevention and prohibition of compulsory labour as a condition sine qua non of freedom of choice of employment is addressed by two fundamental ILO Conventions: the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105).[45]

(ii) Non-discrimination

71. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111), another of the eight fundamental ILO Conventions, prohibits discrimination in employment and occupation on seven grounds: race, colour, sex, religion, political opinion, national extraction or social origin. This prohibition encompasses discrimination in relation to recruitment, conditions of work, opportunities for training and advancement, termination, or any other employment-related conditions, including discrimination in choice of occupation. The Committee notes that the national employment policy should thus include measures to ensure equality of opportunity and treatment to enable all persons, without discrimination, to fully exercise their right to work, including the right to vocational guidance and training. ***The Committee emphasizes that equality of opportunity and treatment in employment and occupation is an essential element of any inclusive employment policy, and recalls that the policy should also include measures to prevent unemployment for specific groups of workers who are vulnerable to exclusion.***[46] Some countries explicitly mention equality of opportunities and freedom from discrimination as a national employment policy goal.[47]

> *Israel* – The Government indicates that there are a variety of programs run by different ministries, sometimes in partnership with the JDC-TEVET (a social incubator bringing sustainable and innovative employment solutions to the most disadvantaged populations). For example, there are programs for: Jewish women, for the promotion of employment of Arab women, for disadvantaged rural areas in the periphery, for the empowerment of poor families, for the promotion of the employment of workers with disabilities (Accessible Work) and for young adults, which supplies placement and employment support services for young adults with disabilities.

Gender equality

72. ***The Committee highlights the need to address persistent gender inequalities through employment policies that are coordinated with other national strategies and development plans. While women represent half of the world's population, they are still not adequately represented in the world of paid work.*** Discrimination and structural obstacles continue to hinder their access to, advancement and retention in employment.

> The Confederation of Labour of *Russia* (KTR) refers to a list of 456 occupations and 38 industrial sectors, in which women are prohibited from working.

[43] General Survey of 2010, para. 48.
[44] For example, *Namibia* and *Sri Lanka*.
[45] General Survey of 1972, para. 37, and General Survey of 2010, para. 50.
[46] A more in-depth analysis of equality of opportunity and treatment is contained in ch. VI.
[47] For example, *Armenia, Guatemala, North Macedonia, Morocco* and *Peru*.

Inclusive policies

73. Convention No. 122 and Recommendation No. 169 encourage countries to adopt policies and measures that promote the employment of particular categories of workers who encounter difficulties in finding lasting employment, such as certain categories of women, young people, older workers and workers with disabilities, as well as the long-term unemployed and migrant workers lawfully within their territory.[48] In this regard, one of the overall objectives of developing a national employment policy is the achievement of greater equality of opportunity in terms of access to employment, as well as equality of treatment concerning conditions of work and the protection of the various categories of workers.

CEACR – In its comments concerning *Barbados*, the Committee noted with interest the adoption in 2012 of the National Employment Policy targeting persons with disabilities, youth, women, workers in the informal economy, and migrants.[49]

(iii) Coordination of education and training policies with employment policies

74. Education and training policies are closely linked to increased productivity and facilitate the free choice of employment. Moreover, in light of ongoing technological changes, workers will need to continuously acquire new skills, reskill and upskill. The national employment policy should provide support to workers through the inevitable transitions that they will encounter during their working lives. Recommendation No. 169 indicates that education and training systems, including retraining schemes, should offer workers sufficient opportunities for adjusting to changed employment requirements resulting from technological change with a view to ensuring the best possible use of existing and future skills (Paragraph 22).

The TUC of the *United Kingdom* refers to the need to motivate and enable all workers to gain the skills for the economy of the future through the development of a universally accessible, high-quality information, advice and guidance system that effectively links skills progression and sustainable careers. Furthermore, it is necessary to help time-poor workers by providing an entitlement to time for learning, especially for workers with low skills or in increasingly vulnerable occupations.

75. The Committee has consistently highlighted the need to coordinate education and vocational training policies with employment policies. This is crucial to ensure that there is an adequate supply of skilled jobs, while offering workers a wider array of options on the labour market.[50] The Committee has also referred to the importance of consulting the social partners and other concerned stakeholders on the development of education and training programmes so as to ensure that they meet the needs of employers.[51] Many national employment policies include specific measures to improve education and training as a priority.[52]

[48] It should be born in mind that these groups are not homogeneous and that, while not all members of these groups may encounter difficulties, others do, particularly where multiple grounds of discrimination are present, so that a woman with disabilities who is also from an ethnic minority group would be likely to encounter significantly greater obstacles than a woman who does not have these characteristics.
[49] See, CEACR – *Barbados*, C.122, direct request, 2016.
[50] See, for example, CEACR – *Cameroon*, C.122, observation, 2017; *Fiji*, C.122, direct request, 2017; *Gabon*, C.122, direct request, 2017.
[51] See for example, CEACR – *Albania*, C.122, direct request, 2018; *Denmark*, C.122, direct request, 2017; *Fiji*, C.122, direct request, 2017; *Ireland*, C.122, observation, 2017.
[52] For example, *Armenia, Azerbaijan, Bosnia and Herzegovina* (Republika Srpska), *Denmark, El Salvador, Estonia, Ghana, Guatemala, Honduras, Kiribati, Malta, Morocco, Namibia, Nigeria, Republic of Moldova, Paraguay, Philippines, Serbia, Slovakia, Rwanda, Sri Lanka, United Republic of Tanzania, Turkey* and *Zimbabwe.*

The CGT-FO of *France* refers to the need to ensure the participation of social partners in building the vocational training system. Furthermore, skills development systems based on personal accounts creates the risk of cost increases in the training courses.

76. The majority of countries report on the education and vocational training measures taken to improve preparation for working life and to respond to labour market needs.[53] Many countries indicate that their systems are being restructured to adapt to changes and to improve the quality of vocational education and training curricula and programmes. While some countries report low employment rates of workers who lack basic education or training and existing skills mismatches in their labour markets,[54] others refer to barriers encountered by youth with high levels of education in seeking employment.[55]

El Salvador – The National Employment Policy (2017–30) establishes the specific objective of increasing the competencies and qualifications of the workforce through education and training with a view to meeting production needs.

Greece – The Labour Market Needs Identification Mechanism contributes decisively to improving the effectiveness of employment and training programmes by providing updated data on labour market needs to the bodies that design employment and vocational education and training policies and programmes.

United Republic of Tanzania – The National Employment Policy (2008–25) establishes the obligation for academic, training and research institutions to adjust their curricula to reflect labour market needs (point 4.3).

Uganda – The National Employment Policy includes a focus on education, skills development and training (section 6.5). The policy recognizes the importance of universal primary and secondary education as a precursor to skills development. It sets as a priority the promotion of skills development and training, especially for young persons already in wage employment. Similarly, the focus on training for the self-employed is on those young people who already have a good track record of small enterprise management.

77. In designing and formulating the national employment policy, a skills needs assessment should be carried out across major sectors of the economy by level of education, competencies and training. This assessment should also include an examination of formal and informal apprenticeships and other work-based learning programmes to assess their effectiveness. The assessment should also take into account changes in the market and identify potential growth sectors, skills gaps and mismatches, and the disadvantages faced by specific groups

[53] Education and training measures actually constitute a significant part of most national employment policies. Some national employment policies such as *Sri Lanka* are even titled "HR/skills and employment policies".
[54] For example, *Mali* and *Greece*.
[55] For example, *Cabo Verde* and *China*, as well as many European countries.

of workers. The Committee notes that some national policies explicitly focus on skills needs assessments to identify, inter alia, skills gaps, training and certification requirements for in-demand occupations and new or emerging occupations that will require new skills.[56]

> *Estonia* – The National Reform Programme 2020 provides for the implementation of a coordination system to monitor labour needs and develop skills to facilitate the planning of the structure, volume and content of formal education within the adult education system and in-service training, the development of curricula and career planning, and to help employers develop the skills of their employees.

78. It is vital for countries to continuously adapt and improve their vocational education and training systems and to promote lifelong learning in response to these new challenges, particularly in areas where sustainable employment opportunities are emerging.[57] From an individual perspective, such systems facilitate school-to-work transitions and assist persons already in employment to adapt and upgrade their skills throughout their working lives. From a societal perspective, lifelong learning is a powerful means of enhancing economic flexibility and productivity, and of ensuring international economic competitiveness, particularly for the many countries with an ageing workforce.[58]

79. The Committee notes that many countries include lifelong learning as a priority in their national policies,[59] or have adopted specific strategies to promote lifelong learning.[60]

> *The Republic of Moldova*– The National Employment Strategy (2007–15) prioritizes the development of human capital and promotes lifelong learning. Areas for action include: modernizing the education system and ensuring quality education for all; promoting enterprise-based training; and involving the social partners in realigning national vocational education and training systems.

(d) The informal economy

80. A national employment policy with the objective of promoting full, productive and freely chosen employment also needs to include measures to facilitate the transition from the informal to the formal economy. Paragraph 29(1) of Recommendation No. 169 calls on member States to facilitate the progressive integration of the informal economy into the national economy, while taking measures to improve conditions of informal work. Similarly, Paragraph 14 of Recommendation No. 204 indicates that the national employment policy should include the objective of creating quality formal economy jobs. Recommendation No. 204 emphasizes the need to adopt a comprehensive employment policy framework for this purpose, developed through tripartite consultation.

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[56] For example, *Barbados, Estonia, Ethiopia, Ghana, Jordan, Kenya, Kiribati, Malta, Mauritius, Namibia, Nepal, Philippines, Slovakia, Sri Lanka, Sweden, United Republic of Tanzania, Timor-Leste, Turkey* and *Uganda*.
[57] See for example, CEACR – *Ireland*, C.122, observation, 2017.
[58] For example, *Australia, Belgium, Bosnia and Herzegovina, France, Georgia, Greece, Malta, Montenegro, Morocco, Philippines, Romania, Sweden, Switzerland, United Arab Emirates* and *United Kingdom*.
[59] General Survey of 2010, paras 580 and 581. For example, *Armenia, Comoros, Malta, Morocco, Mauritius, Republic of Moldova, Namibia, Philippines, Seychelles, Slovakia, Serbia, Tunisia* and *Turkey*.
[60] For example, *Estonia* (Estonian Lifelong Learning Strategy 2020), and CEACR – *Ireland*, C.122, observation, 2017.

3. Ensuring a comprehensive approach

81. Article 1(3) of the Convention provides that the national employment policy "shall take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives and shall be pursued by methods that are appropriate to national conditions and practices". Over the years, the Committee has repeatedly emphasized the interdependence of economic, social and employment objectives and regularly requests countries that have ratified Convention No. 122 to provide detailed information on the manner in which the national employment policy is coordinated with other economic and social policies.

82. The Committee notes that most of the national employment policies supported by the ILO and adopted over the last decade provide a comprehensive approach cutting across both macro and microeconomic dimensions and addressing both labour supply and demand as well as labour market governance policies.

> CEACR – In its comments concerning *Switzerland*, the Committee noted in 2016 the Government's indication that the country's performance in relation to labour market policy is based on several factors, namely: price stability; long-term average budget balance and the smooth operation of short-term economic stabilizers; a diversified economic structure; flexibility of the active population; focus on vocational training and the dual training system; the policy regarding foreign workers; and decentralized relations between employers and workers.[61]

83. A wide range of integrated policy interventions are needed to foster the quality and quantity of employment.[62] In the ILC Conclusions adopted in 2010 following the first recurrent discussion on employment, the Conference recognized the importance of promoting both the quality and quantity of employment through a combination of coherent macroeconomic, labour market and social policies.[63]

84. The Committee further notes that the 2014 ILC Conclusions concerning the second recurrent discussion on employment[64] provide strategic guidance on addressing current employment challenges. They refer to a set of guiding principles for rights-based, employment-centred sustainable economic recovery and development, reaffirming the principles established in Convention No. 122 and Recommendation No. 169. They also highlight the importance of adopting a comprehensive employment policy framework to promote full, decent, productive and freely chosen employment. They also emphasize that the policy should be developed through inclusive tripartite social dialogue and be accompanied by a high degree of coherence, collaboration and policy coordination at the global, regional and national levels.

85. The Conclusions call for the inclusion of specific elements in the national employment policy: (a) pro-employment macroeconomic policies; (b) trade, industrial, tax, infrastructure and sectoral policies; (c) enterprise policies, in particular an enabling environment for sustainable enterprises; (d) education policies that underpin lifelong learning and skills development policies that respond to the evolving needs of the labour market and to new technologies, and broaden options for employment, including systems for skills recognition; (e) labour market policies and institutions, such as: (i) wage policies, including minimum wages; (ii) collective bargaining; (iii) active labour market policies; (iv) strong employment services; (v) targeted measures to increase the labour market participation of women and under-represented groups; (vi) measures to help low-income households to escape poverty and access freely chosen employment;

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[61] CEACR – *Switzerland*, C.122, direct request, 2016.
[62] ILO: *National employment policies*, SDG Note, 2018, op. cit., p. 6. For other types of national coordinating systems, see: ILO: "Employment policy implementation mechanisms in Germany and the United Kingdom", Employment research brief, Geneva, 2017.
[63] ILO: Conclusions concerning the recurrent discussion on employment, ILC, 99th Session, Geneva, 2010.
[64] ILO: Conclusions concerning the second recurrent discussion on employment, ILC, 103rd Session, Geneva, 2014.

and (vii) unemployment benefits; (f) policies that address long-term unemployment; (g) labour migration policies that take into account labour market needs and ensure migrants have access to decent work; (h) tripartite processes to promote policy coherence across economic, environmental, employment and social policies; (i) effective inter-institutional coordination mechanisms; (j) strategies to facilitate young people's school-to-work transition; (k) policies to encourage the transition to formality; (l) policies to tackle the challenge of environmental sustainability, and ensure a just transition for all; (m) policies to tackle the employment and social protection implications of the new demographic context; (n) relevant and up-to-date labour market information systems; and (o) effective monitoring and evaluation systems of employment policies and programmes. Each member State will decide in consultation with national stakeholders at national level which are more relevant and necessary.

86. Following the adoption of the 2010 and 2014 ILC Conclusions, the ILO has promoted a comprehensive approach to employment policy, in which a national employment policy should articulate both a vision and a coherent framework linking all employment policy interventions, and involving all stakeholders: government, workers' and employers' organizations, development partners, financial institutions, non-governmental organizations and civil society groups. This should also take into account the important link existing between employment and social protection, the main object of which is to protect people from uncertainty and poverty by compensating for temporary or permanent shortfalls in income and redistributing risk. Such social protection depends for its financing, either directly or indirectly on workers' ability to work and earn an income.[65]

87. Figure 1.2 shows the different elements and connections that are formed when national employment policies are addressed using a comprehensive approach.[66]

88. The 2014 ILC Conclusions coincide with SDG 8 in proposing a set of coordinated policy actions aimed at promoting full, productive and freely chosen employment which are crucial to addressing the employment challenges of the future of work at the national and global levels. Such policies would also have a major impact on ending poverty in all its forms (SDG 1) by lifting millions of working poor out of poverty. They would also contribute to: SDG 4 on education through the provision of quality vocational and technical education; SDG 5 on gender equality by empowering women in the labour market; SDG 9 on infrastructure and sustainable industrialization by promoting labour-intensive and sustainable public works; SDG 10 on reducing inequality through fiscal and wage reforms and equal access to productive employment; SDG 11 on disaster-affected people by addressing the specificities of labour markets in fragile States; SDG 16 on peace, justice and strong institutions; and SDG 17 on partnership and policy coherence by encouraging inter-ministerial coordination for the formulation and implementation of employment policy measures and supporting the production and dissemination of timely and reliable labour market indicators to support and enhance policy decisions.[67]

89. The level of coordination varies from one country to the other. Some countries establish coordination structures involving a multiplicity of agencies within and outside the government, including the social partners and other stakeholders.[68] The range of government agencies includes ministries dealing with finance, economic affairs, production and trade. In this regard, the Committee has consistently requested information on the manner in which the employment policy is related to other economic and social objectives and how measures are kept under periodic review within the framework of a coordinated economic policy.[69]

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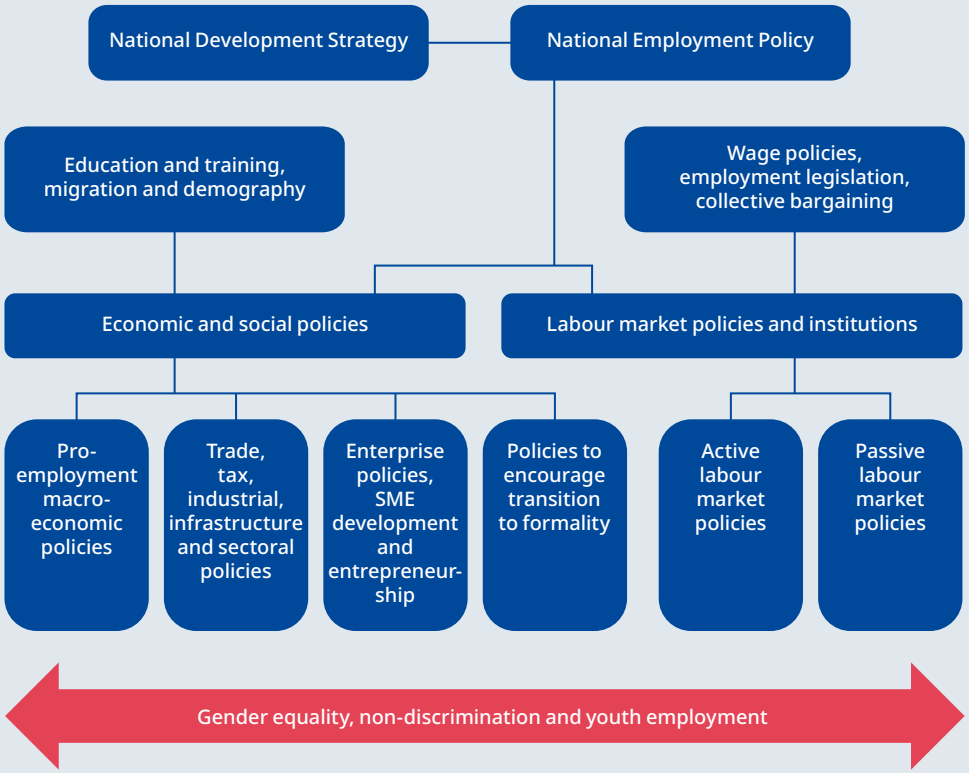
[65] See ILO, Social Protection: Building social protection floors and comprehensive social security systems: "Employment and Social Protection".
[66] See ILO: "Employment policy implementation mechanisms in Germany and the United Kingdom", 2017, op. cit.
[67] United Nations: *Transforming our world: The 2030 Agenda for Sustainable Development*, New York, 2015, A/RES/70/1.
[68] For a description and enumeration of coordination structures, see ILO: "Employment policy implementation mechanisms across countries", 2017, op. cit.
[69] CEACR – *Canada,* C.122, observation, 2018; *China*, C.122, observation, 2017; *Cyprus*, C.122, observation, 2018; *Ireland*, C.122, observation, 2017; and *Republic of Korea*, C.122, observation, 2017.

Figure 1.2

The comprehensive approach to national employment policies: A diversified array of complementary measures



Source: ILO: "National employment policies", SDG Note, 2018, op. cit., p. 6.

Indeed, inter-ministerial committees have been established in many countries.[70] Some trade unions argue however, that there is no effective mechanism for coordination and agreement of the national policy.[71]

> *Mali* – According to the Government, all policies and plans are developed with reference to the Strategic Framework for Economic Recovery and Sustainable Development in Mali (CREDD), which is a unifying framework for all economic and social development policies and strategies. CREDD considers employment, which is included in axis 2 (specific objective 22), as a key lever of the poverty reduction strategy. The sectoral reviews of the Planning and Statistics Unit feed into the CREDD review of the implementation of economic and social policies.[72]

[70] For example in *Burkina Faso, Cambodia, Cameroon, Chad, China, Comoros, Côte d'Ivoire, Ethiopia, Ghana, the Republic of Korea, Malawi, Mexico, the Republic of Moldova, Morocco, Mozambique, Namibia, Panama* and *Sierra Leone.*

[71] For example the Bulgarian Industrial Association (BIA) considers that there is no effective mechanism for coordination and agreement of the national strategy papers for relevant key policy areas and their expected effect on employment. Similarly the UGT from *Spain* and the NZCTU from *New Zealand*.

[72] In their reports, several Governments refer to the various ways in which they ensure that policies are revised in a coordinated manner. For example, *Argentina, Afghanistan, Australia, Austria, Bahrain, Belgium, Benin, Bosnia and Herzegovina, Brazil, Burkina Faso, Cambodia, Canada, Central African Republic, Chile, China, Democratic Republic of the Congo, Croatia, Cyprus, Denmark, Estonia, Finland, France, Gabon, Georgia, Germany, Ghana, Greece, Indonesia, Ireland, Japan, Republic of Korea, Latvia, Lithuania, Mali, Morocco, Myanmar, Namibia, Nepal, New Zealand, Nigeria, Norway, Oman, Pakistan, Philippines, Poland, Romania, Senegal, Seychelles, Slovakia, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Thailand, Togo, Turkey, United Arab Emirates, United Kingdom* and *Zimbabwe.*

CEACR – In its comments concerning *Croatia*, the Committee noted with interest the range of measures undertaken by the Government with a view to attaining the objectives of the Convention within the framework of a coordinated economic and social policy. The Government indicates that, as a member of the EU since July 2013, *Croatia* develops a National Reform Programme (NRP) each year within the broader process of economic policy coordination, referred to as the European Semester.[73]

CEACR – In its comments concerning *Fiji*, the Committee noted that the National Employment Policy (NEP) had been developed by the Technical Committee established by the National Employment Centre (NEC) to formulate Fiji's first NEP.[74]

90. ***The Committee recalls that the members of the coordination structure at the national level should include not only the relevant ministries***[75] ***and the social partners, but also local government when employment policies are rooted and implemented at the local level.*** In their reports, many countries have provided specific information on the recognition of local governments as stakeholders and their participation in the development, coordination and implementation of national employment policies.[76] The Committee also notes that regional and multilateral agreements may place obligations on governments that could in turn impose constraints on the development and implementation of their employment policy.

Tunisia – The Government of *Tunisia* indicated that following the restructuring of employment programmes in 2012, a partnership programme has been established with the regions to promote employment. The aim of this programme is to facilitate the integration of the various categories of jobseekers into employment by supporting regional or local initiatives of particular importance in terms of job creation and the establishment of new businesses. The various components of civil society in the regions are involved in the design, development, implementation and monitoring of the programme.

The Bulgarian Industrial Association referred in its report to the need to better coordinate all strategic policies including with budgetary objectives and establish clear responsibilities. It is also necessary to build up appropriate institutional mechanisms for the implementation of the policy.

[73] CEACR – *Croatia*, C.122, direct request, 2017. See also CEACR – *Barbados*, C.122, direct request 2017, and *Madagascar*, C.122, observation, 2017.
[74] CEACR – *Fiji*, C.122, direct request, 2017.
[75] For example, in their reports, the Governments of *Argentina, Chile, France, Kiribati, Morocco* and *Tunisia* refer to the participation of different ministries, such as the ministries of finance or economy, in the elaboration of the employment policy.
[76] For example, *Australia, Bulgaria, Japan, Latvia, Nigeria, Philippines, Slovakia, Tunisia, United Arab Emirates* and *United States.*

IV. Implementation and review

91. Article 2(a) of Convention No. 122 requires countries to "decide on and keep under review, within the framework of a co-ordinated economic and social policy, the measures to be adopted for attaining the objectives" of full, productive and freely chosen employment. Accordingly, many countries that have decided to adopt and implement an active national employment policy have established procedures or mechanisms through which employment-related measures and programmes can be decided upon, implemented and periodically reviewed in a comprehensive and coordinated manner.[77]

92. The implementation of measures designed to pursue an active employment policy might involve a range of decisions in a wide variety of economic and social fields. In this regard, the Convention is a flexible instrument as it leaves member States free to decide on the methods and mechanisms which need to be instituted for the implementation of employment policy measures.[78]

93. The Committee, however, considers that one of the fundamental steps for the best implementation of the Convention is that member States build or strive to build the institutions that are necessary to ensure the realization of the full employment objectives. For example, this step could include the provision of: institutions ensuring fair access to, and free choice of, employment; mechanisms for consultations with the social partners and others affected by policy measures; basic labour market institutions, such as a network of public employment offices to facilitate the matching of the supply and demand for employment; public sector institutions and private agencies for the recruitment and placement of workers, including migrant workers; educational and training institutions that enable workers to acquire the skills required for productive employment; and regulatory and business institutions that ensure the growth of small and medium-sized enterprises, as well as cooperatives.[79]

94. Article 3 of the Convention calls for the measures and programmes to be adopted and implemented under the national employment policy through an inclusive process of consultation with the social partners and persons affected by the measures to be taken. Paragraph 5 of Recommendation No. 169 indicates that policies, plans and programmes adopted in the framework of the employment policy should be drawn up and implemented in consultation and cooperation with employers' and workers' organizations and other representatives of the persons concerned, particularly those in the rural sector. The Committee notes that, in the spirit of the instruments, national employment policies should be designed and implemented in consultation and cooperation with specific groups, such as women, older workers and young persons, those in the informal economy, persons with disabilities, indigenous and tribal peoples and other persons affected. The active participation of the concerned groups will in turn foster ownership and cooperation in the policy and the measures taken for its implementation.

95. The Committee recalls that it is the joint responsibility of the tripartite partners to ensure that representatives of the most marginalized and disadvantaged segments of the economically active population are consulted in the formulation and implementation of the measures of which they are the prime beneficiaries.[80] Indeed, many countries indicate in their reports that their national employment policies have been adopted with the participation of the social partners and other civil society groups.[81] Nevertheless, some workers' organizations report that they are not consulted, or that their viewpoints are not taken into account in the adoption, implementation and review of employment policies.[82]

[77] General Survey of 2010, para. 64.
[78] General Survey of 1972, para. 8.
[79] General Survey of 2010, para. 515.
[80] CEACR – *Papua New Guinea*, C.122, direct request, 2017.
[81] For example, *Algeria, Australia, Austria, Azerbaijan, Burkina Faso, Canada, Central African Republic, Croatia, Cyprus, Denmark, Dominican Republic, Egypt, Eritrea, Estonia, Gabon, Germany, Greece, India, Ireland, Jamaica, Latvia, Malta, Namibia, Nepal, New Zealand, Nigeria, Norway, Panama, Philippines, Poland, Senegal, Seychelles, Slovakia, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Togo, Turkey, United Arab Emirates, United Kingdom* and *Zimbabwe.*
[82] *Chile,* comments from the Single Central Organization of Workers (CUT), *Spain*, comments from the UGT and the Trade Union Confederation of Workers' Commissions (CCOO).

96. These tripartite consultative bodies are different from the inter-ministerial employment committees mentioned before. These are set up in the context of the process of the national employment policy to steer the formulation, implementation and monitoring of the policy. They include different stakeholders beyond traditional tripartite actors. Both inter-ministerial committees and consultative tripartite bodies can exist simultaneously in the process of the national employment policy. However, while the first one has a decision-making role and can extend social dialogue beyond traditional tripartite partners, the second is often an advisory committee.

Cabo Verde – Coordination involved the following stakeholders: the Government, employers, civil society, trade unions (two trade union federations), the Social Dialogue Council and the National Employment and Vocational Training Council.

Ghana – The National Employment Policy was launched in April 2015 following an extensive process of consultations involving the Ministry of Employment and Labour Relations, the National Development Planning Commission, several other ministries, the Ghana Employers' Association, trade unions, "think tanks" and civil society.

Turkey – the National Employment Strategy (NES) (2014–23) was prepared with the contribution of relevant ministries, public institutions and organizations, employer–employee confederations, the academy and other stakeholders.

Turkmenistan – Employment policies are developed, implemented and reviewed in consultation with, and with the direct participation of employers' and workers' representatives, namely the National Centre of Trade Unions of Turkmenistan and the Union of Industrialists and Entrepreneurs of Turkmenistan, and civil society organizations, such as the Turkmenistan Women's Union, the Turkmenistan Youth Union, the Turkmen Blind and Mute Society, the Voluntary Association of Persons with Disabilities and the Sports Club of Persons with Disabilities.

97. Consultation may be carried out through permanent consultative bodies or a variety of other means. Permanent bodies may have general competence for all social and economic matters,[83] or may be exclusively dedicated to employment coordination,[84] limited to certain

[83] For example: *Azerbaijan* (Tripartite Commission on Social and Economic Matters), *Colombia* (Standing Committee for Consultation on Wage and Labour Policies), *Honduras* (Economic and Social Council), *Hungary* (National Economic and Social Council – NESC), *Lithuania* (Tripartite Council of the Republic of Lithuania), *Philippines* (National Tripartite Industrial Peace Council) and *Portugal* (Economic and Social Council).

[84] For example: *Afghanistan* (High Council of Labour), *Australia* (Fair Work Commission and the National Workplace Relations Consultative Council – NWRCC), *Belgium* (Higher Employment Council), *Benin* (National Labour Council), *Canada* (Labour Management Review Committee – LMRC – and *Comité Consultatif du travail et de la main-d'oeuvre du Quebec), Cyprus* (Labour Advisory Board – LAB), *Central African Republic* (Comité Intersectoriel de l'Emploi and Commission Nationale Consultative de l'Emploi et de la Formation Professionnelle), *Mali* (Higher Labour Council), *Malta* (Employment Relations Board), *Morocco* (Higher Employment Council) and *Pakistan* (Federal Tripartite Consultative Committee – FTCC).

areas of social or economic policy[85] or to certain industries or occupations.[86] Consultations may also be carried out through ad hoc institutions created for the purpose of formulating the national employment policy. The Committee notes that the 2018 ILC Conclusions concerning the second recurrent discussion on social dialogue and tripartism highlights the importance of ensuring adequate social dialogue in policymaking and of strengthening mechanisms and institutions for social dialogue on policies regarding the changing world of work, including policies on technological change, the green economy, demographic shifts and globalization.[87] Efforts have been made at national level to improve social dialogue but further progress is required.

The General Labour Federation of Belgium (FGTB), the Confederation of Christian Trade Unions (CSC) and the General Confederation of Liberal Trade Unions of Belgium (CGSLB) refer to limitations to the consultation process at national level and indicate that the National Council for Labour (CNT) opinions are rarely taken into account.

The Finnish Trade Unions (SAK), the Confederation of Unions for Professional and Managerial Staff in Finland (AKAVA), the Finnish Confederation of Professionals (STTK) indicate that tripartite cooperation has been minimal and that legislation has been adopted without consultation. The unions further refer to difficulties in adopting adequate unemployment policies and that the activation model has been ineffective.

THE Italian Union of Labour (UIL), the Italian General Confederation of Labour (CGIL) and the Italian Confederation of Workers' Trade Unions (CISL) indicate that trade unions are involved in the development of employment policies, and to protect the fundamental rights of workers through consultation and collective bargaining, as well as through the National Council for Economics and Labour (CNEL), although there have been some governmental pressures for the abolition of this institution.

The Free Trade Union Confederation of Latvia (FTUCL), refers to the pilot project to develop sectoral collective bargaining to better accommodate the sectoral needs of all the social partners. As a result, agreements have already been signed in the construction and restaurant and hotel sectors.

Business New Zealand indicates that while they are consulted, they are not sure they are listened to.

[85] For example: *Australia* (Safe Work Australia), *Mauritius* (National Wage Consultative Council and National Remuneration Board) and *Morocco* (Occupational Medicine and Occupational Risk Prevention Board).
[86] For example, *Algeria* (Higher Council of the Public Service).
[87] ILO: Conclusions concerning the second recurrent discussion on social dialogue and tripartism, ILC, 107th Session, Geneva, 2018.

The General Confederation of Portuguese Workers and the Confederation of Portuguese Industry state that workers' and employers' representatives have been called upon to give their views through the Standing Committee for Social Dialogue.

CEACR – In its comments concerning *Ireland*, the Committee noted with interest the establishment of the Labour Employer Economic Forum (LEEF) as a new formal structure for dialogue between the social partners to discuss economic and social policies that affect employment and the workplace.[88]

Australia – The National Workplace Relations Consultative Council (NWRCC) provides a regular and organized means for senior representatives of the Australian Government, employers and employees to consult on workplace relations and labour market matters of national concern.

Malta – The Employment Relations Board is an active body through which representatives of the tripartite partners are consulted on all employment matters, including on amendments to all employment legislation. The Board meets regularly to discuss pertinent issues and develop solutions that are taken on board by the Government.

Morocco – In the context of the development of a National Employment Policy, a tripartite steering committee was established under the auspices of the Minister of Labour.[89]

98. Recommendation No. 169 also envisages consultations on: measures to encourage multinational enterprises to undertake and promote employment policies (Paragraph 12); measures for the employment of young persons and other disadvantaged groups (Paragraph 19); and the promotion of new technologies at work (Paragraph 23). Members are also called upon to encourage the social partners to engage in collective bargaining concerning the social consequences of the introduction of new technologies (Paragraph 25); and should also consult when developing measures for regional and local development (Paragraph 33).

Ghana – Goal 9 of the National Employment Policy envisages the promotion of forward and backward linkages between local small-scale enterprises and multinational businesses, through tripartite consultations with multinational businesses in the supply chain, to try to maximize the positive contribution that multinational businesses make to the local economy in terms of employment and training.

[88] CEACR – *Ireland*, C.122, observation 2017.
[89] ILO: "National employment policies", SDG Note, 2018, op. cit., p. 10.

1. Establishing appropriate mechanisms and procedures

99. Article 1(3) of Convention No. 122 provides that the policy shall take account of the stage and level of economic development and the links between employment, economic and social objectives, and "shall be pursued by methods that are appropriate to national conditions and practices". This flexible approach leaves countries free to establish the procedures they deem most appropriate to their circumstances. In this respect, the Committee considers it useful to describe the approaches taken by various countries as guidance for the development and implementation of an active employment policy.

100. The Committee recalls that the ILO has facilitated national processes for the development of comprehensive national employment policies by: conducting analyses of the employment and labour market situation; providing research and analysis to inform policy design, monitoring and evaluation; offering advice on incorporating employment goals into overarching policy frameworks; undertaking capacity-building for governments and the social partners; and facilitating tripartite policy dialogue. Demand from national constituents for ILO support in the formulation of national employment policies and implementation processes has grown steadily in recent years.[90] The following sections provide an overview of the process followed by several countries with ILO assistance.

(a) Diagnosis and assessment

101. As a first step, governments may put in place an organizational framework, working groups and technical teams, prepare timelines for the process and allocate budgets. The employment situation is examined and analysed,[91] and existing policies and legal frameworks are reviewed. The relevant stakeholders should be consulted in the process of identifying employment challenges and opportunities.[92] The design or revision of an employment policy benefits from accurate evidence-based information and detailed and accurate labour market statistics, disaggregated by sex, age and region, where possible.

> *Indonesia* – The Government indicates in its report that the labour aspect is the estuary of all policies, sao opportunities and challenges will keep emerging along with socio-economic development. The Government therefore conducts studies of changes and the development of labour force policies so that they stay relevant to current needs and are coordinated.

(b) Design and formulation

102. The tripartite constituents and other stakeholders proceed to prioritize the challenges and opportunities identified and define the objectives to be pursued by the national policy. On this basis, the concerned parties decide on policy interventions to achieve these objectives. The employment policy benefits from the inclusion of specific, measurable and time-bound goals and targets, action plans for their implementation, indicators to measure outcomes, the clear delineation of responsibilities and a monitoring and evaluation mechanism.[93]

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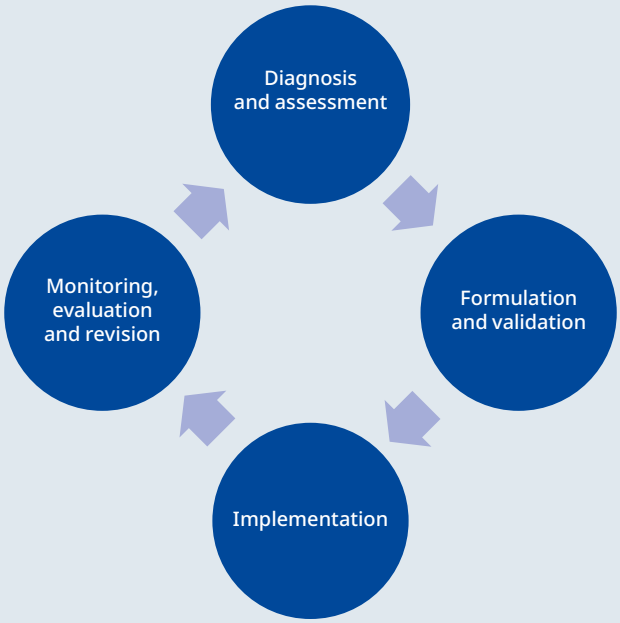
[90] ibid., p. 7.
[91] Paragraph 4 of Recommendation No. 122 indicates that the employment policy should be "based on analytical studies of the present and future size and distribution of the labour force, employment, unemployment and underemployment" and recommends that "adequate resources should be devoted to the collection of statistical data, to the preparation of analytical studies and to the distribution of the results".
[92] See for example: CEACR – *Cameroon*, C.122, observation, 2015; *Morocco*, C.122, direct request, 2017; *Nicaragua*, C.122, direct request, 2013; and *Uganda*, C.122, observation 2017.
[93] ILO: "Employment policy implementation mechanisms across countries", 2017, op. cit.

Figure 1.3

Main steps in the elaboration process



Source: ILO.

103. A well-articulated policy that sets out clear priorities and specific targets, sound budgetary allocation and realistic performance frameworks facilitates monitoring and evaluation.[94] The Committee notes the information provided by governments concerning specific action plans with quantitative and qualitative targets set out in national policies with multiple objectives, including reducing unemployment and labour underutilization[95] generating employment growth[96] and fostering the labour market participation of specific groups.[97] Some policies contain targets for the transition to the formal economy.

Thailand – In November 2016, the Cabinet of *Thailand* approved special measures as Thailand is becoming an ageing society. The promotion of employment for older workers is a priority measure. In 2017, the target was 39,000 older workers, although the actual number of older persons employed through the scheme was 41,950. In 2018, the target increased to 58,800, with 59,104 older workers being employed.

CEACR – In its comments concerning the *Dominican Republic*, the Committee noted with interest the adoption in 2014 of the National Employment Plan (PNE), the objectives of which include the creation of 400,000 jobs in four years, the promotion of decent jobs, the formalization of employment, equality of opportunity, equity and access to security.[98]

[94] ILO: *Employment policies for sustainable recovery and development: Recurrent discussion under the ILO Declaration on Social Justice for a Fair Globalization*, Report VI, ILC, 103rd Session, 2014, p. 46.
[95] For example: *Myanmar* (formal jobs); *Seychelles* (My First Job Scheme, skills development programme, unemployment relief scheme).
[96] For example, *Australia* (creating 1 million jobs).
[97] For example: *Armenia* (workers with disabilities), *Bosnia and Herzegovina* (Republika Srpska – employment of war victims) and *Denmark* (workers with disabilities).
[98] CEACR – *Dominican Republic*, C.122, observation, 2017. For additional information on the targets established by certain countries, see ILO: "Employment policy implementation mechanisms across countries", 2017, op. cit.

104. Once formulated, a national consensus on the policy should be sought in consultation with the social partners and other stakeholders. Validation of the policy by consensus is followed by formal adoption by the government, which gives the policy executive force through its political commitment. The policy should then be disseminated.

Nigeria – The preface to the National Employment Policy adopted in 2017 specifies that various stakeholders and the social partners made inputs to initial drafts. The stakeholders jointly reviewed and validated the policy and the accompanying implementation matrix at a workshop held in Abuja, where the suggestions made were incorporated into the final draft. The Federal Ministry of Labour and Employment then constituted a Technical Committee to finalize the policy, which was then approved by the Federal Executive Council.

CEACR – In its comments concerning *Cambodia*, the Committee noted with interest the adoption of the National Employment Policy (NEP) 2015–25 by the Council of Ministers. The NEP, developed in consultation with the social partners, aims to: increase decent and productive employment opportunities; improve skills and human resource development; and enhance labour market governance. NEP measures are being implemented through an inter-ministerial committee. Provincial and municipal committees will also be established to contribute to its implementation.[99]

CEACR – In its comments concerning *Madagascar*, the Committee noted with interest the adoption of Act No. 2015-040 of 9 December 2015, determining the orientation of the National Employment and Vocational Training Policy (PNEFP), which is the subject of an awareness-raising campaign. It is accompanied by an Operational Plan of Action (PAO). The objective of the PNEFP, together with the implementation of the General State Policy (PGE), the National Development Plan (PND) and the Sustainable Development Goals (ODD), is to eradicate unemployment and underemployment by 2020 through the creation of sufficient numbers of formal jobs to absorb jobseekers.[100]

105. An adequate budget should be allocated to deliver the national employment policy.

CEACR – In its comments concerning *Spain*, the Committee noted the observation by the CCOO that, in order to develop a good active employment policy, it is necessary to have an adequate budget. The CCOO expressed its concern that the budget allocation for active employment policies fell between 2013 and 2017.[101]

[99] CEACR – *Cambodia*, C.122, direct request, 2017.
[100] CEACR – *Madagascar*, C.122, observation, 2017.
[101] CEACR – *Spain*, C.122, observation, 2017.

(c) Implementation

106. Countries have established various types of systems to ensure the coordinated implementation of the policy at the national and local levels. Political commitment to the policy at the highest levels is essential to promote the ownership and commitment of all the actors concerned.

107. Institutional arrangements may be needed to support implementation. These generally include decision-making processes and an institutional framework, which generally include three basic elements: (a) public employment services; (b) labour market information systems (LMIS); and (c) the budget.

108. Public employment services play a key role in the implementation, monitoring and evaluation of employment policy. They perform functions such as counselling, placement and data collection. They may handle passive services (unemployment benefit) and active services (job incentives, job creation and skills development). Public employment services may have broad territorial and personal coverage, or may function as one-stop-shops in combination with other social services.[102] Some countries report that employment services focus on the labour market inclusion of specific groups.[103] Inter-ministerial committees (at national and local levels) are very important in the implementation stage to ensure employment mainstreaming which implies that each organization takes employment into account in its own mandate and coordinates with others.

> *Belarus* – According to the Government, all state employment services are accessible and provided free of charge. With a view to helping citizens find a job independently, the Ministry of Labour and Social Protection offers access free of charge to the national vacancies database through the information portal of the State Employment Service.

> *Georgia* – State Program on Employment Support seeks to develop and implement active labour market policies and employment support services, particularly to improve employment opportunities for people with disabilities, young persons and other groups.

109. Labour market information systems play a vital role in informing the design, implementation, monitoring and evaluation of focused and targeted active employment policies. They also help reduce transaction costs in labour markets by supplementing the incomplete information of labour market agents. Employment budget allocation and efficient management ensure implementation of the national policy. Budget allocation should also be the subject of close monitoring and evaluation to ensure cost-effective implementation.[104]

110. The Committee consistently requests governments to provide information on the implementation of national employment policies at the national level, requesting information on plans, programmes and statistical data as well as impact.

[102] For example, *Belarus, Georgia, Hungary* and *Lithuania.*
[103] For example, *Japan* with respect to older workers.
[104] ILO: "Employment policy implementation mechanisms across countries", 2017, op. cit., p. 7.

Bulgaria – In its report, the Government indicated that the updated employment strategy contains a mechanism for implementation and reporting. The approach adopted addresses employment not merely as a process of labour demand and supply, but as a system of social and economic relations, in which economic processes and social inclusion are of critical importance. The strategy outlines responsibilities for implementation in the various action areas. It engages sectoral ministries and agencies, and the social partners, and establishes indicators and specific deadlines for monitoring and evaluation.

(d) Monitoring, evaluation and revision

111. The monitoring and evaluation system assesses the impact of the measures taken and examines outcomes in relation to the targets and indicators adopted. Recommendations may also be made for the future to serve as a baseline for updating the policy. Stakeholders and the social partners should be engaged in this process which should be carried out periodically. Several countries have described their national monitoring and revision processes, the periodicity and timelines for revision, and the bodies responsible.

112. The Committee has consistently requested governments to provide information on the impact and effectiveness of the measures adopted to promote full, productive and freely chosen employment. ***It recalls that a comprehensive, participative and transparent monitoring and evaluation mechanism enables all the parties concerned to identify achievements and challenges in meeting policy objectives.*** The Committee notes that the great majority of national employment policies provide for participatory monitoring and evaluation mechanisms that accurately record progress.[105]

Bahrain reported that employment programmes are adjusted periodically in accordance with the relevant requirements.

Guatemala – The tripartite-plus National Decent Work Commission (CONED) launched the National Policy on Decent Work 2017–32 (PNED), which focuses on four strategic objectives: employment generation; human resource development; enabling environments for enterprises; and the transition to formality. Part 8 of the PNED provides that CONED is responsible for its annual evaluation and monitoring, for which it must identify or develop measurement instruments, which must be adapted to the strategic nature of the policy by identifying the best qualitative and quantitative indicators for the measurement of the results achieved.

Qatar – The Government indicates that research provides basic data to help gauge the relationship between the needs of the national labour market and the demographic, social and economic characteristics of individuals on the market. This data is used to design and evaluate national development policies and programmes.

[105] For example, the national employment policies of: *Armenia, Australia Barbados, Benin, Bosnia and Herzegovina (Republika Srpska), Burkina Faso, Comoros, Ethiopia, Ghana, Jordan, Kenya, Kiribati, Morocco, Mauritius, Republic of Moldova, Mongolia, Montenegro, Namibia, Nepal, Philippines, Rwanda, Seychelles, Slovakia, Slovenia, Sri Lanka, United Republic of Tanzania, Timor-Leste, Tunisia, Turkey* and *Uganda.*

CEACR – In its comments concerning *Austria*, the Committee noted that the achievement of targets for the employment of older workers is monitored every six months and that measures are taken without delay if progress is not being made.[106]

CEACR – In its comments concerning *Croatia,* the Committee noted that an independent and comprehensive evaluation of all active labour market policies carried out between 2010 and 2013 was published in February 2016 to determine their impact on employment.[107]

CEACR – In its comments concerning the *Czech Republic* the Committee noted that to assess the impact of the active employment policy measures taken and establish an ongoing monitoring and evaluation system, the Government launched the project "Evaluating the efficiency and effectiveness of AEP implementation".[108]

CEACR – In its comments concerning *Peru*, the Committee noted that the Government has adopted supplementary rules for the application and monitoring of compliance with the employment quota for persons with disabilities that is applicable to private sector employers. These rules were the subject of prior consultation with the social partners and with organizations of persons with disabilities.[109]

2. Challenges in the implementation of the national employment policy

113. The Committee notes that many countries have provided information on the range of challenges addressed in implementing the national employment policy. Demographic changes may give rise to difficulties in some countries, particularly the so-called "youth bulge".[110] Others refer to budgetary difficulties,[111] or human and economic shortages in the public structures responsible for implementing the national employment policy.[112] Some report a lack of cohesion in the labour market,[113] or difficulties in reaching consensus.[114]

[106] CEACR – *Austria*, C.122, observation, 2015.
[107] CEACR – *Croatia*, C.122, direct request, 2017.
[108] CEACR – *Czech Republic*, C.122, observation, 2017.
[109] CEACR – *Peru*, C.122, direct request, 2016.
[110] For example, *Afghanistan* and *Canada*.
[111] For example, *Burkina Faso, Democratic Republic of the Congo* and *Zimbabwe*.
[112] For example, *Mali* and *Togo.*
[113] For example, *Togo.*
[114] For example, *Sri Lanka.*

V. Job creation and inclusive and sustainable economic growth

114. Convention No. 122 provides, in Article 1, that national employment policies should aim to stimulate economic growth and development, raise living standards and prevent unemployment and underemployment. To this end, the national employment policy must include demand-side measures through macroeconomic and sectoral policies aimed at creating jobs. To achieve and maintain full employment, States have to position employment as a major macroeconomic goal within the national policy agenda and ensure that trade, investment and industrial promotion policies support the objectives of the Convention. The Committee notes the information provided by certain countries highlighting the important role of macroeconomic policies in successful employment policy implementation.[115] The Committee has periodically requested information on the impact of such policies on job creation and on combating unemployment and labour underutilization, creating quality jobs and ensuring the inclusion of specific groups facing barriers to entering or staying in the labour market.

Guatemala – The Government indicates that employment was not previously a major goal of national macroeconomic policy. The National Policy for Decent Employment (PNED) 2017–32 now places employment at the heart of macroeconomic policy.

115. Employment policies should also include measures to promote the growth of micro, small and medium-sized enterprises (MSMEs) and cooperatives, and other targeted programmes to help overcome specific labour market obstacles. On the supply side, employment policies need to link employment with education, skills training and capacity-building, especially in view of the rapid changes in the world of work.

116. Together with multinationals, MSMEs form part of local, regional and global supply chains and are well placed to provide not only jobs, but also opportunities for decent work. Measures should also be taken, including adequate governance measures, to create an enabling environment for entrepreneurship, innovation and sustainable enterprises.

The National Labour Council (CNT) from *Belgium* indicates that measures for the flexibilization of the labour market with a view to foster employment creation have resulted in poor quality employment.

The Federation of Finnish Enterprises (SY) indicates that the rigidness of the Finnish labour market system has hampered small companies' ability to create new jobs.

The General Confederation of Workers (CGT) from *Honduras* refers to the adoption of temporary employment programmes which foster precarious work and lowers workers' protection.

[115] Countries that have provided information on their macroeconomic policies are: *Argentina, Algeria, Bulgaria, Burkina Faso, Cabo Verde, Cameroon, China, Dominican Republic, Gabon, Georgia, Ghana, Guatemala, Honduras, India, Mali, Namibia, New Zealand, Nigeria, Seychelles, Thailand, Turkey* and *United Arab Emirates.*

The Federation of Korean Trade Unions (FKTU) considers that measures adopted by the Government to introduce regulatory sandboxes to create jobs will not result in quality jobs because they are aimed mainly to help enterprises face their finance difficulties.

117. Paragraph 30 of Recommendation No. 169 highlights the important role of small enterprises, cooperatives and associations as providers of jobs and contributors to inclusion. Moreover, micro- and small enterprises (MSEs) are flexible and can easily adapt to local conditions and needs. They have the potential to mobilize local savings, require little in the way of managerial skills and use traditional industrial skills that can respond more rapidly to regional and local employment creation needs.

1. Support for MSMEs

118. MSMEs, together with cooperatives, facilitate the inclusion of workers experiencing difficulties entering the labour market. MSMEs can also serve as a stepping stone for formalisation and in supporting a transition to a more environmentally sustainable world. Green transitions are likely to open up many business opportunities, although obstacles will have to be overcome related to the motivation of MSMEs, their business practices, relative lack of skills and the perceived cost and complexity of green transitions.[116]

119. Available ILO data shows that when self-employment, employment in MSMEs, agriculture and informal employment are taken into account, self-employed persons and MSMEs account for 70 per cent of employment globally. The share of employment in MSMEs is significantly higher in countries with lower income levels, where they provide the vast majority of jobs.[117] Each country has its own definition of MSMEs, which can differ radically, ranging from rural family enterprises to digital start-ups. These enterprises vary in size, sector, rural versus urban location, degree of formality, turnover, growth and age.[118]

120. MSMEs may present higher decent work deficits than larger enterprises. The goal is to encourage the creation and growth of MSMEs, while taking measures to ensure that they provide decent work. The 2007 ILC Conclusions concerning the promotion of sustainable enterprises noted that: "An environment conducive to the creation and growth or transformation of enterprises on a sustainable basis combines the quest for profit ... with the need for development that respects human dignity, environmental sustainability and decent work."

The CSI from *Benin* referred to the need to provide financial assistance to women and youth to develop entrepreneurship.

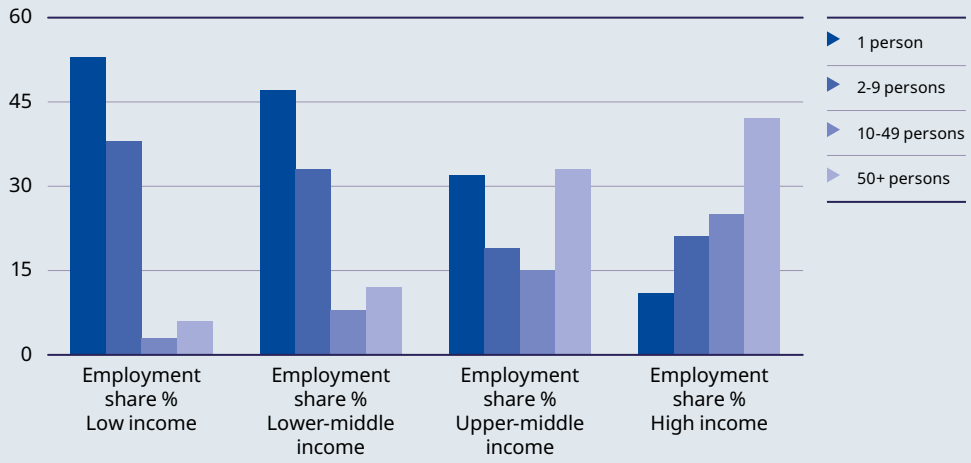
The Honduran National Business Council (COHEP), from *Honduras* refers to the adoption of decree 145-2018 to support MSMEs through incentives to job creation.

121. The Committee notes that, in view of the importance of MSMEs as drivers of economic growth and development, the ILO has recognized[119] the need to establish a legal framework adapted to their needs. To unlock the potential of MSMEs to create more and better jobs, employment policy can include measures such as investment in training to build

[116] ILO: Technical Note 4: Instrument concerning job creation in SMEs, the Standards Review Mechanism Tripartite Working Group (SRM TWG), September 2019.
[117] ILO: *Small Matters: Global evidence on the contribution to employment by the self-employed, micro-enterprises and SMEs*, 2019.
[118] ILO: Technical Note 4: Instrument concerning job creation in SMEs, op. cit.
[119] *Small Matters*, 2019, op. cit.

Figure 1.4

Employment shares by enterprise class across income groups



Source: ILO, 2019.

entrepreneurship and management skills in MSMEs and create an enabling environment to improve sustainability, productivity and working conditions.

122. The Committee further notes that digitalization offers significant opportunities for MSMEs to improve their management practices, productivity and market intelligence and to reach a larger client base with relatively low costs. However, many MSMEs lack basic digital skills and/or resources to capitalize on this opportunity.[120]

123. Part VI of Recommendation No. 169 indicates that the employment policy should take account of the importance of small enterprises in generating employment opportunities. The Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), recognizes that SMEs are drivers of economic growth and that they offer the potential for traditionally disadvantaged groups to gain access to productive, sustainable and quality employment opportunities. Recommendation No. 189 provides guidance on the elements that national employment policies should include in establishing an enabling environment for SMEs.[121]

124. The Committee recalls that the 2015 ILC Conclusions concerning small and medium-sized enterprises and decent and productive employment creation indicate that measures to be taken to create an enabling environment could include: simplifying overly complex regulations; improving MSME access to finance; clustering, networking, linking into technology platforms, and supply chain and local economic development; addressing decent work deficits; and public investment in infrastructure, as well as education and training and technology. SMEs can also take advantage of new technologies and innovations to improve their organization of work and production, while at the same time taking advantage of international trade and e-commerce.[122] The Conclusions acknowledge that improvements can most effectively be achieved by embedding specific SME policies in national development plans and generic policies, and highlights the fundamental role of governments in this respect.[123]

125. Recommendation No. 204 calls for an integrated policy framework addressing the promotion of entrepreneurship, MSMEs and other forms of business models and economic units, including cooperatives and other social and solidarity economy units.[124] Paragraph 1(b) of the

[120] ILO: Technical Note 4: Instrument concerning job creation in SMEs, op. cit.
[121] General Survey of 2010, para. 787.
[122] WTO: *World Trade Report 2016: Levelling the trading field for SMEs*, Geneva, 2016, p. 5.
[123] ILO: Conclusions concerning small and medium-sized enterprises and decent and productive employment creation, ILC, 104th Session, Geneva, 2015.
[124] See also ch. III.

Recommendation reaffirms the creation, preservation and sustainability of enterprises in the formal economy as a means of fostering formalization.

126. The Committee notes the information provided by governments concerning the specific measures taken to support the establishment, formalization, development and sustainability of SMEs.[125] The main measures taken by governments concern the following issues:

- removal of obstacles and onerous administrative procedures[126] such as one-stop shops, reduction of costs and the establishment of electronic procedures for registration and the payment of taxes;
- creation of institutions to promote SME creation and assist small business,[127] including public employment services,[128] training and information hubs to create SMEs, small business buses that travel the country engaging in awareness-raising, mentoring programmes,[129] events and fairs;[130]
- access to credit[131] and other financial support[132] including subsidies,[133] loans,[134] guarantees[135] and crowdfunding, as well as the establishment of credit institutions for SMEs;[136]
- tax exemptions and tax simplification;[137]
- access to public procurement;[138]
- improvement of legislative framework;[139]
- development of an entrepreneurial culture;[140]

[125] The following countries have provided information in this respect: *Afghanistan, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belgium, Benin, Bosnia and Herzegovina, Brazil, Burkina Faso, Cambodia, Cameroon, Canada, Central African Republic, China, Colombia, Democratic Republic of the Congo, Croatia, Cyprus, Denmark, Dominican Republic, Egypt, Estonia, Finland, France, Gabon, Georgia, Germany, Ghana, Greece, India, Indonesia, Ireland, Israel, Japan, Republic of Korea, Latvia, Libya, Mali, Malta, Montenegro, Morocco, Myanmar, Namibia, Nepal, New Zealand, Nigeria, Norway, Oman, Pakistan, Philippines, Poland, Senegal, Seychelles, Slovakia, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, United Arab Emirates, United Kingdom, Uruguay* and *Zimbabwe.*

[126] For example: *Algeria, Argentina, Armenia, Brazil* (Supplementary Act No. 123 of 14 December 2006), *Burkina Faso* (Decree No. 2017-1165/PRES/PM/MCIA/MATD/MINEFID of 27 November 2017 adopting the SME Charter), *Cambodia, Egypt, Gabon, Greece, India, Myanmar, Seychelles* and *Turkmenistan.*

[127] For example: *Algeria, Armenia, Australia* (New Business Assistance, Exploring being my Own Boss, self-start information hub and entrepreneurship facilitators), *Egypt* (Micro, Small and Medium Enterprise Development Agency), *Israel* (Small and Medium Business Agency – SMBA), *New Zealand* (Small Business Council), *Oman* (Public Authority for Small and Medium Enterprise Development), *Suriname* (Directorate for Entrepreneurship) and *Turkey* (Small and Medium Industry Development Organization – KOSGEB).

[128] For example, *Austria*.

[129] For example, *Montenegro.*

[130] For example, *Canada, Greece* and *Myanmar.*

[131] For example, *Algeria*.

[132] For example, *Armenia, Bahrain, Belgium, Ghana, Indonesia, Poland, Sudan, Thailand* and *Tunisia.*

[133] For example, *China.*

[134] For example, *Azerbaijan, Montenegro, Nigeria* and *Turkmenistan.*

[135] For example, *Dominican Republic* and *Libya.*

[136] For example: *Brazil* (Programme for Employment Creation and Income Generation – PROGER – and the National Guided Production Microcredit Programme – PMMPO), *Cameroon* (National Employment Fund), *India* (Pradhan-Mantri Mudra Yojana – PMMY – and the Micro Units Development and Refinance Agency Ltd. – MUDRA), and *Trinidad and Tobago* (National Entrepreneurship Development Company Limited of Trinidad and Tobago).

[137] For example: *Armenia, Belgium* (tax exemption for new entrepreneurs), *Brazil* (tax simplification) and *Dominican Republic* (National Tax Directorate to expedite formalization).

[138] For example, *Algeria, Dominican Republic, Gabon, India, Latvia, Mali, Poland* and *Thailand.*

[139] For example: *Belgium* (the tax reform for companies in 2018), *Central African Republic* (an SME code is being prepared), *France* (Act No. 00016/2005 of 20 September 2006 on the promotion of SMEs), *Gabon* (Act No. 15/1998 establishing the Investment Charter, Act No. 16/2005 on the promotion of SMEs and MSIs, Act No. 32/2005 on business incubators and industrial sectors), *Japan* (Law on the promotion of improvement in employment management in small and medium businesses to ensure the labour force and the creation of employment opportunities), *Seychelles, Turkmenistan* and *United Arab Emirates.*

[140] For example, *Armenia* and *Philippines.*

- business training particularly with respect to new technologies, new organizational measures;[141]
- establishment of incubation centres;[142]
- improving small enterprises productivity;[143]
- incentives for the creation of SMES in certain sectors;[144]
- incentives for members of disadvantaged groups that establish SMEs;[145]
- incentives for foreign direct investment.[146]

India – The Public Procurement Policy for Micro and Small Enterprises (MSEs) Amendment Order, 2018, provides that at least 25 per cent of annual procurement shall be targeted at SMEs. Of this total, 3 per cent must be earmarked for procurement from MSEs owned by women, and there is a target of 4 per cent for MSEs owned by entrepreneurs belonging to the scheduled castes and scheduled tribes. A portal has been launched to monitor the implementation of the policy.

Ireland – The Future Jobs Ireland 2019 programme focuses on SMEs, and particularly on the improvement of SME productivity. SMEs account for 99.8 per cent of Irish enterprises and the Government considers them to be key to the country's economic success.

CEACR – In its comments concerning *Algeria*, the Committee noted that major measures have been taken to encourage the creation of microenterprises, including: the simplification and reduction of procedures; facilitated access to credit for micro-entrepreneurs (with interest payments covered 100 per cent by the State); support after start-up provided by the National Youth Employment Support Agency (ANSEJ) and the National Unemployment Insurance Fund (CNAC); and access to public procurement and tax benefits for microenterprises in the south of the country and the Hauts Plateaux region. Incentives have also been established to promote knowledge-based activities and new technologies.[147]

[141] For example, *Armenia, Egypt* and *Philippines*.
[142] For example, *Egypt* and *Turkey.*
[143] For example, *Ireland, Japan* and *United Kingdom*.
[144] For example: *Brazil* (incentives for technological innovation), *Norway* (incentives for start-ups and innovation), *Pakistan* (fisheries, poultry, livestock farms, fruit and vegetable processing) and *Seychelles* (tourism, off-shore banking, and information technology).
[145] For example, *United States*, the Office of Disability Employment Policy (ODEP) has a programme to provide information to small businesses concerning workers with disabilities.
[146] For example, *Nepal*.
[147] CEACR – *Algeria*, C.122, direct request, 2017.

CEACR – In its comment concerning the *Dominican Republic*, the Committee noted that the objectives of the National Employment Plan relating to MSMEs envisaged the creation of 5,000 new enterprises and 90,000 new jobs in four years, a 10 per cent increase in the formality rate and the creation of 200 new agricultural and commercial cooperatives. The Government refers in its report to a series of measures taken to facilitate the creation of SMEs, such as the establishment of a guarantee fund, the setting up of a one-stop-shop at the National Tax Directorate to expedite formalization procedures and the promotion of new export markets. The Committee also noted that, in agreement with the Inter-American Development Bank, the Government has implemented policies for the award of public contracts to SMEs, enterprises owned by women, ecological enterprises and innovative entrepreneurs. The Government has also taken steps to evaluate the impact of these policies.[148]

According to the New Zealand Congress of Trade Unions (NZCTU), the facilities and exemptions granted to SMEs often have direct consequences on working conditions and wages.

127. The Committee notes that adequate data and statistics on SMEs need to be compiled to facilitate the adoption of tailor-made policies and interventions and to assist in supporting the formalization of SMEs. Skills development adapted to the particular needs of SMEs, the introduction to new technologies and appropriate measures for entrepreneurship development should also be considered when drawing up national employment policies. The Committee considers that all these measures should aim also to promote gender equality.

The CGT–FO from *France* refers to the measures taken by the Government to reduce SMES costs and indicates that this does not necessarily foster employment creation. In turn, CGIL CISL UIL from *Italy* indicate that measures such as tax and social security exemptions for SMEs result in lower protection for workers, mainly youth and women.

2. Enabling cooperatives

128. In the context of societal and structural change, there is increased interest in economic models based on cooperation, mutualism and solidarity.[149] Cooperatives are an effective vehicle for the inclusion of all categories of workers in employment. In particular, they can help women gain access to employment, especially in situations where their ability to participate in the world of work is reduced by social and cultural constraints. Cooperatives provide opportunities for groups that are vulnerable to exclusion, such as workers with disabilities, indigenous and tribal peoples and the long-term unemployed.

129. Cooperatives create employment in all sectors, from care and agriculture, to finance and insurance, in both urban (for example waste management) and rural areas (forestry and energy, among others). They have been instrumental in increasing access to work, upgrading and integrating small-scale farming into agri-business supply chains and improving livelihoods for rural workers. Cooperatives are becoming increasingly involved in both climate change adaptation (for example, through mutual insurance schemes for crops, support for crop

[148] CEACR – *Dominican Republic*, C.122, observation, 2017
[149] The Promotion of Cooperatives Recommendation, 2002 (No. 193), reflects the changes in the socio-economic environment in which cooperatives have to operate, as well as the constraints and opportunities arising out of globalization.

diversification and improved watershed management) and mitigation (renewable energy, forestry and agroforestry cooperatives). Cooperatives provide social security for many workers in the informal economy. Domestic workers, homeworkers and persons with disabilities have also benefited from integration in cooperatives. Platform cooperatives have also been established in recent years by the self-employed and platform workers as an alternative form of organization to advance social dialogue. Cooperatives have contributed to the representativeness of workers, especially in the informal economy.

130. Some countries began developing legislation on cooperatives several decades ago.[150] Others have integrated cooperatives into local and global supply chains.[151] Several countries report establishment of incubator programmes to develop cooperatives as a form of job creation,[152] to promote local and regional development[153] and to develop urban and rural cooperatives.[154] In some countries, cooperatives enjoy tax exemptions or credit allocations,[155] particularly those dedicated to work.[156] Some countries have provided information on the legal framework within which social security is provided to cooperative workers.[157] Others promote the establishment of cooperatives that foster financial access to sectors traditionally excluded from the financial system. Some promote cooperatives in the context of back-to-work programmes,[158] or for the employment of specific groups.[159]

3. Multinational enterprises

131. Paragraph 12 of Recommendation No. 169 calls on Members to encourage multinational enterprises (MNEs) to promote the employment policies envisaged in the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, as amended in 2017 (the "MNE Declaration") and to ensure that the negative effects of the investments of MNEs on employment are avoided and that positive effects are encouraged.

132. Drawing on the MNE Declaration, the Committee recognizes the fundamental role played by MNEs in the economies of both home and host countries, through foreign direct investment (FDI) and their own operations, as well as through forward and backward linkages with local or national enterprises.[160] They contribute not only to economic development, but can also be drivers of change for the implementation of fundamental labour rights and better working conditions, which can then spill over to MSMEs with which they interact in global supply chains. They can also contribute to technology and skills transfers. An increasing number of MNEs have specific supplier codes, most of which refer to relevant international labour standards. MNEs can be effective agents in promoting the Decent Work Agenda, for example by fostering formalization, when they are well embedded in the national context and aligned with national priorities.[161] Host countries have a role to play in ensuring enabling conditions for multinationals with the aim of creating employment.

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[150] For example, *Ghana* (Decree No. NLCD 252 of 1968, the "Co-operatives societies Act").
[151] For example, *Guatemala* (the National Development Plan sets a priority of integrating cooperatives into supply chains, access to financial resources and technological development) and *Philippines* (agriculture, forestry and fisheries).
[152] For example, *Togo*.
[153] See for example, *Brazil* (National People's Cooperatives Incubation Programme (PRONINC) and the National Fair and Cooperative Trade System (SCJS).
[154] *Honduras*, National Employment Policy, section 4.
[155] For example, *Republic of Korea*.
[156] For example, *Colombia* (Act No. 1233 and Regulatory Decree No. 3553 of 2008 exempt "associated labour cooperatives" from taxation.
[157] For example, *Cuba* (Legislative Decree No. 297 of 2012 provides for social security for cooperatives in the agricultural sector).
[158] For example, *Greece*.
[159] For example, *Indonesia* and *Poland* (for workers with disabilities).
[160] See, in this regard, ILO: *Employment policies for sustainable recovery and development: Recurrent discussion under the ILO Declaration on Social Justice for a Fair Globalization*, Report VI, ILC, 103rd Session, Geneva, 2014, para. 255.
[161] ibid., para. 258.

133. The Committee notes that the ILO MNE Declaration refers to the United Nations *Guiding Principles on Business and Human Rights*, which outline the respective duties and responsibilities of States and enterprises in relation to human rights. In this regard, it underlines that enterprises are required to comply with all applicable laws and to respect human rights, and that rights and obligations should be matched to appropriate and effective remedies when breached. The Committee recalls that the Guiding Principles apply to all States and to all enterprises, both multinationals and others, regardless of their size, sector, operational context, ownership and structure. The Committee further highlights the fundamental role of multinational enterprises in the development of global supply chains and their role of due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights, including decent work deficits.

134. In their reports, several countries refer to a variety of incentives adopted at national level, including tax and duty exemptions, to attract FDI and foster employment creation.[162] Some governments explicitly indicate that national laws and regulations apply to MNEs operating in the country.[163] Some national employment policies aim to promote forward and backward linkages between local small enterprises and MNEs in an attempt to maximize their positive contribution to local economies in terms of employment and training.[164] Some countries allow MNEs an important role in the policy review process.

Cambodia – The Law on Investment of 1993, as amended in 2003, adopts several measures to promote MNEs, including:

- encouraging domestic investment and FDI in priority sub-sectors with a high employment potential;
- promoting entrepreneurship;
- identifying and prioritizing sub-sectors with a high employment potential; and
- promoting employment in priority sub-sectors through enterprise development and support to SMEs in both urban and rural areas.

Morocco – The Government indicates that MNEs have a crucial role to play in creating direct and indirect jobs, technology transfer, skills development and respect for workers' rights in their activities. The Government is aware of the importance of encouraging the establishment of these companies in order to attract FDI so as to benefit from positive spin-offs and new production capacities.

CEACR – In its comments concerning *Panama*, the Committee noted in its report that the Government indicates that the country has concluded free trade agreements with a view to promoting growth. As a consequence, FDI increased by 19 per cent and almost 70 multinational enterprises have been established. It has also been found that the most dynamic economic sectors in terms of employment generation are those with the greatest international involvement.[165]

[162] For example, *Bahrain, Cambodia* and *Egypt.*
[163] For example, *Bahrain* and *Estonia.*
[164] For example, *Ghana* (National Employment Policy, Goal 9.9) and *Philippines.*
[165] CEACR – *Panama*, C.122, direct request, 2013.

VI. Fostering the green and blue economies

135. The Committee is bound to address the urgent issues of climate change and just transition policies, particularly in light of their fundamental impact on the world of work. It notes the findings of the ILO *World Employment Social Outlook 2018: Greening with jobs*, according to which environmental degradation increases risks from natural hazards and the loss of ecosystem services, both of which directly affect the number and quality of jobs and curtail the ability of workers to work. Women and categories of workers who are facing difficulties in accessing employment (such as migrants, refugees and forcibly displaced persons, people in poverty, and indigenous and tribal peoples) are most affected by environmental degradation. However, the report highlights that progress towards decent work is compatible with environmental sustainability. If work is the predominant cause of climate change, then inevitably it must be central to prevention, mitigation and adaptation strategies.[166]

136. The "blue economy" refers to those activities relative to the exploitation and conservation of the oceans. It concerns "the sustainable use of ocean resources for economic growth, the improvement of means of subsistence and of jobs, while at the same time preserving the health of ocean ecosystems"[167]. The blue economy encompasses a vast range of activities, from fishing to exploitation of mineral resources on the ocean floor, to coastal tourism, blue energy and biotechnologies, maritime transport, aquaculture and desalination. In fact, 72 per cent of Earth's surface is covered by oceans and seas. The blue economy thus has a crucial role to play in mitigating climate change.[168] Shallow coastal ecosystems, such as mangroves and tidal marshes or wetlands, as well as marine and submarine ecosystems, are now considered to be key elements in the fight against climate change. The ocean is not only essential to the welfare of our planet, it is also a workplace and an important source of jobs. Slightly over 60 per cent of the world's people live in coastal regions. According to the International Union for the Conservation of Nature (IUCN), there are close to 4 billion people who live less than 150 kilometres from the coast,[169] and more than 350 million people depend on the ocean for their subsistence.[170] The oceans are not only the daily workplace of tens of millions of persons,[171] they also represent the main economic sector of island States, particularly of small island developing States (SIDS).

137. The Committee recalls that the SDGs provide a global framework to combat climate change.[172] Addressing climate change requires policy responses that have an impact on economies and societies at many levels, across all economic sectors, and affect both the formal and informal economies. The impacts differ from country to country. Many different sectors and types of jobs will be affected. However, the achievement of environmental sustainability can lead to an economy that offers more and better jobs.[173]

138. Workers and enterprises have a key role to play in the transition, through green jobs, innovation, the adoption of new technologies and modes of production, investment and standard-setting.[174] In addition, the interconnectedness of supply chains means that consumption and production in one country are closely related to the emissions and materials used in others. It is therefore crucial to adopt policies that maximize job creation opportunities, while mitigating the risk of job losses and social disruption.[175]

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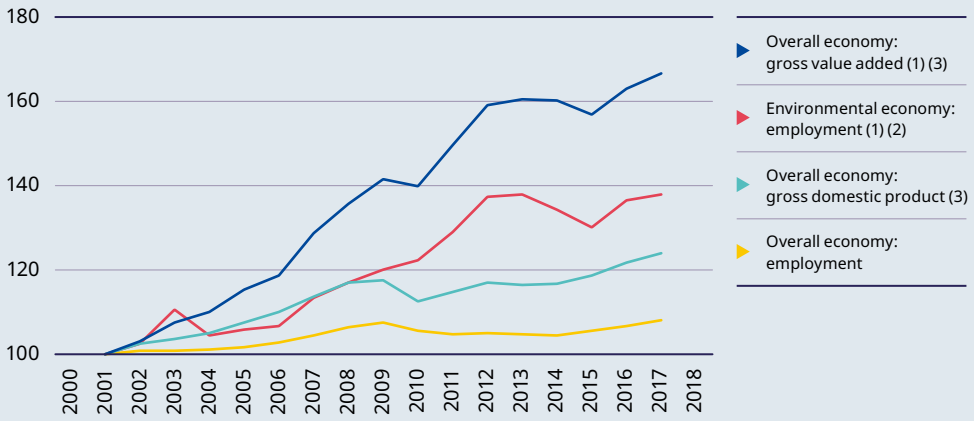
[166] M. Gueye, M. Prieto, and M.M. Travieso: "A just transition towards a sustainable world (of work)", in *Green European Journal*, June 2018.
[167] World Bank: *What is the blue economy*, 6 June 2017
[168] WWF: *Principles for a Sustainable Blue Economy*, 28 May 2015
[169] A Beoutis: Les dossiers de l'Observatoire du littoral, Démographie et économie du littoral, INSEE et le SoeS, 2009.
[170] ILO Statement to UN Oceans Conference Partnership Dialogue 4, 7 June 2017.
[171] ILO Statement to UN Oceans Conference Partnership Dialogue 7, 9 June 2017.
[172] ILO and United Nations Framework Convention on Climate Change: *Global Forum on Just Transition: Climate change, decent work and sustainable development*, Final Report, 2018, p. 3.
[173] K. van der Ree: "Mainstreaming green job issues into national employment policies and implementation plans: A review, Employment Working Paper No. 227", ILO, Geneva, 2017, p. 11.
[174] ILO: *World Employment Social Outlook 2018: Greening with jobs*, op. cit., pp. 62–63.
[175] ILO and United Nations Framework Convention on Climate Change: *Global Forum on Just Transition: Climate change, decent work and sustainable development*, 2018, op. cit., p. 4.

Figure 1.5

Development of key indicators for the environmental economy and the overall economy, EU-28, 2000–18 (2000 = 100)

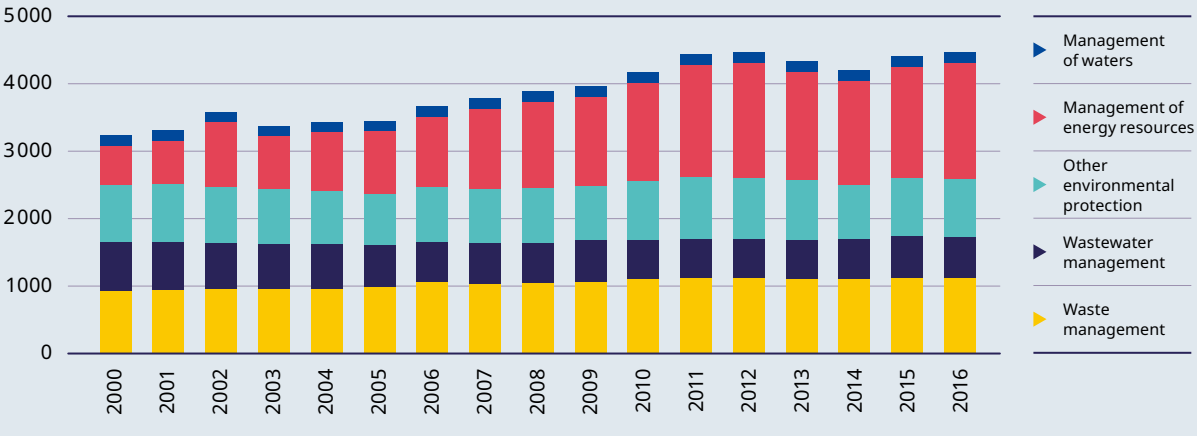


Notes: (1) Eurostat estimates; (2) In full-time equivalents; (3) Index compiled for chain-linked volumes data in EUR million (reference year 2010; at 2010 exchange rate).

Source: Eurostat (online data codes: nama_10_a10_e, nama_10_gdp, env_ac_egss1, env_ac_egss2).

Figure 1.6

Employment in the environmental economy, by domain, EU-28, 2000–16 (thousand full-time equivalents)



Note: Data for EU-28 are estimated by Eurostat.

Source: Eurostat (online data code: env_ac_egss1).

139. The Committee notes that several countries have adopted specific measures in their national employment policies,[176] national development frameworks[177] or other programmes or policies to address climate change, the transition to the green economy and the creation of decent green jobs. Some countries have established targets for the creation of green jobs.[178] Others are taking measures for the greening of traditional industries with the creation of new jobs and the development of "green skills".[179] Others have established a "just transition" strategy that involves awareness-raising, the adoption of measures to develop the green economy, including the recycling sector ("economie circulaire") or other specific sectors,[180] taking advantage of green technologies, and have introduced tax exemptions and credit loans for investment in the green economy.[181] Others have adopted specific legislation on green jobs.[182] Some countries are already adopting social protection mechanisms for workers exposed to structural change.[183]

An integrated policy framework for green employment: The example of the EU

In the EU, only a few Member States link policies for green growth to employment promotion. To promote a more combined approach, in 2014 the European Commission developed an integrated framework for employment policies in the transition to a green economy. It lays out targeted policy responses and tools to help make labour market and skills development policies conducive to job creation in the green economy. The main features of the framework are:

1. Bridging skills gaps

- Fostering skills development, meeting skills demands in growing eco-industries, upskilling across all sectors and reskilling in vulnerable sectors.
- Aligning sectoral training standards in vocational education and training with labour market needs, including through close involvement of the social partners to design and review training programmes, qualifications and accreditation systems.
- Improving forecasting of skills needs across sectors and industries.

2. Securing transition

- Anticipating change and managing restructuring, building on sectoral initiatives.
- Adapting labour market institutions through payments for ecosystem services focusing on green employment strategies and programmes.
- Promoting occupational mobility, as well as mobility of jobseekers, including through competence-based job matching.

[176] For example, *Brazil, Bulgaria, Canada, China, Comoros, Denmark, Ghana, Kenya, Malta, Mauritius, Mongolia, Morocco, Namibia, Nigeria, Philippines, Slovakia, Sri Lanka* and *Zimbabwe.*
[177] For example, *Barbados*, *Cambodia* (National Strategy Plan on Green Growth 2013–2030), *South Africa* and *Uganda* (Uganda Green Growth Development Strategy 2017/18 – 2030/31).
[178] For example, *Canada* (the Youth Employment Strategy includes plans to create 15,000 new green jobs).
[179] For example, *China* and *Slovakia*.
[180] For example, *Sri Lanka* (tourism, agriculture, health and manufacturing sectors).
[181] For example, *Comoros, Germany, Ghana, Kenya, Malta, Mauritius, Mongolia, Morocco, Namibia, Nigeria* and *Zimbabwe*.
[182] For example, *Philippines* (Republic Act No. 10771 prompting the creation of green jobs and granting incentives).
[183] For example, *Ghana*.

3. Supporting job creation

- Improving access to and use of existing funding opportunities.
- Shifting taxes away from labour towards polluting economic activities.
- Promoting green public procurement, assisted by regulations on certification and life-cycle costing approaches, and supported by capacity-building for public sector managers and private sector enterprises.
- Promoting entrepreneurship and social enterprises in expanding green sectors, accompanied by a dedicated Green Action Plan for SMEs with green skills upgrading of the workforce.

4. Improving data collection and quality

- Harmonizing statistics for more evidence-based policymaking and monitoring.
- Anticipating employment implications and transitional adjustments, including changing skills needs.

5. Promoting social dialogue

- Encouraging social partners to develop joint activities at cross-industry and sectoral levels.
- Ensuring workers' participation in environmental management, more efficient use of energy and resources, and the identification of new risks at the workplace.
- Enhancing workers' rights to information and consultation, including for the development of sector-wide resource-efficiency road maps.

Source: EU: Green Employment Initiative, 2014.

The Irish Congress of Trade Unions indicates that a Just Transition Implementation Pathways Policy should be adopted with the participation of workers in order to ensure decent work opportunities for displaced workers. It further suggests that a climate justice fund be established to guarantee the purchasing power of lower-income households.

140. ***The Committee considers that measures to address climate change should be taken into account in national transition plans, national development plans and national employment policies. The national employment policy, in coordination with other relevant national policies, should ensure the protection of workers who lose their jobs as a result of structural change. Such protection should consist not only of unemployment protection, but also the provision of skills training to strengthen employability through transitions, as well as appropriate incentives for the development of sustainable and innovative enterprises that create green jobs.***

VII. Impact of new technologies on employment

141. Technological innovation brings with it new possibilities and moves the frontiers of human capability much further than previously imagined. The impact of technology in the world of work is manifold. The Committee notes in this regard the intense public debate and anxiety that has already been triggered concerning the potential destruction and creation of jobs due to automation and robotization.[184] At the same time, automation and robotization have considerably improved working conditions in many sectors and hazards have been reduced. But new challenges have emerged: technology has enabled the emergence of new forms of work and the organization of work that are difficult to fully comprehend, in which roles and responsibilities are not clear, the lines between workers and employers are blurred or appear to be blurred, the time and space dimensions are diluted and individual privacy has almost disappeared. While the full impact of innovations on the world of work is not yet known, some aspects are under examination to determine whether the existing regulatory framework is still fit for purpose.[185]

142. The Committee notes that Recommendation No. 169 provides valuable guidance on addressing technological innovation in the world of work. Paragraph 26(d) indicates that the development of technology should be one of the major elements of national development policy as a means of increasing productivity, creating employment opportunities and satisfying basic needs. Technology should contribute to improving working conditions, reducing working time[186] and preventing the loss of jobs. Members should encourage the development of new technologies and research on their effects on the volume and structure of employment, conditions of employment, training, job content and skill requirements (Paragraphs 20 and 21).

143. The Recommendation also recognizes the challenges that technological change poses to the survival of enterprises and job stability. It calls on Members to facilitate adjustment to structural change at the global, sectoral and enterprise levels and the re-employment of workers who have lost their jobs as a result of structural and technological changes (Paragraphs 10 and 26(c)). The negative effects of technological changes on employment, working and living conditions and on occupational safety and health should be eliminated to the extent possible, in particular through the incorporation of ergonomic, safety and health considerations at the design stage of new technologies (Paragraph 22).

144. In its report, the Global Commission on the Future of Work observes that:

> Technological advances – artificial intelligence, automation and robotics – will create new jobs, but those who lose their jobs in this transition may be the least equipped to seize the new opportunities. … Specific measures are also needed to address gender equality in the technology-enabled jobs of tomorrow. …[187] As the organization of work changes, new ways must be found to afford adequate protection to all workers, whether they are in full-time employment, executing micro tasks online, engaged in home-based production for global supply chains or working on a temporary contract.

[184] See, for example: C.B. Frey and M. Osborne: *Technology at work: The future of innovation and employment*, Citi Global Perspectives and Solutions (Citi GPS), Oxford and New York, University of Oxford and CitiGroup 2015; World Economic Forum, 2018: The future of jobs report, Geneva, 2018; World Bank: *World Development Report 2016: Digital dividends*, Washington, DC, 2016. These are just some examples of the wide range of theories and positions concerning the impact of technology on job creation or destruction.

[185] M.M. Travieso: *Regulating technology at work* (forthcoming).

[186] Already in 1962, when examining ways to reduce working hours, the Reduction of Hours of Work Recommendation, 1962 (No. 116), suggested taking into account the "progress achieved and which it is possible to achieve in raising productivity by the application of modern technology, automation and management techniques" (Para. 7(b)). In 1961, the Workers' Housing Recommendation, 1961 (No. 115), made reference to the need to take into account technological developments when providing housing to workers.

[187] ILO: *Global Commission on the Future of Work: Work for a brighter future*, 2019, op. cit., p. 10.

145. In their reports, some governments recognize that technology can lead to better productivity and greener economic activities, while causing disruption in the labour market, which makes it necessary to provide adequate skilling, upskilling and reskilling to workers.[188] Some countries have adopted legislation on the introduction of technology and the need to evaluate its impact on employment and working conditions.[189]

146. The Committee has noted the adoption of measures within the context of national employment policies to promote technological development, including incentives for enhanced research, innovation and entrepreneurship.[190] Some countries have provided information on incentives and the promotion of labour-saving technologies and new forms of the organization of work which provide better services with fewer resources.[191]

147. Regarding the impact of new technologies on the world of work, the Committee notes that almost all countries have provided information on the reflection that is currently being developed at the national level on this subject, as well as the specific political, legislative and economic measures that they are adopting. Some countries are studying the impact of digital transformation on society, and particularly on the workforce.[192]

> *Denmark* – The Government has established a Disruption Council to discuss and bring forward suggestions on how Denmark can adjust to the future. Its members include trade unions, employers' organizations, entrepreneurs, experts, young persons, CEOs and ministers. The Disruption Council is looking into a number of major themes – including new technologies and business models, future skills and competencies, and the future of the Danish flexicurity-model.

148. In their reports, several countries refer specifically to the potential for job disruption as a result of technological changes.[193] Many are already developing strategies to mitigate the effect that these changes may have on workers. Some countries indicate that existing procedures, general legislation or social security mechanisms relating to retrenchment or the modification of working conditions are also applicable in the case of technological change.[194] Others have adopted new or adapted existing legislation and mechanisms to cope with structural and technological change.[195]

149. The role of public employment services in providing assistance to jobseekers in the event of job displacement is also highlighted,[196] as is the possibility of providing some type of public financial assistance or structural adjustment programmes to offer access training for individuals, and to help enterprises facing technological change to train workers.[197] Some countries have developed a procedure for the retraining of workers in other sectors, combined with measures to help companies find qualified staff.[198]

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[188] For example, *India*.
[189] For example, *Argentina* (Act No. 24013, section 23).
[190] See, for example, CEACR – *Algeria*, C.122, direct request, 2017; *Barbados*, C.122, direct request, 2017; *Hungary*, C.122, direct request, 2017; *Rwanda*, C.122, direct request, 2017.
[191] For example, *Denmark*.
[192] For example, *Ireland* (National Skills Council: *Digital transformation: Assessing the impact of digitalisation on Ireland's workforce*, 2018).
[193] For example, the *United Arab Emirates* indicates that 60 per cent of the current labour force is employed in posts vulnerable to automation.
[194] For example, *Algeria, Armenia, Bahrain, Belgium, Cambodia, Central African Republic, Colombia, Democratic Republic of the Congo, Cyprus, Dominican Republic, Gabon, Ghana, India, Indonesia, Latvia, Mauritius, Nepal, Norway, Pakistan, Palau, Poland, Portugal, Senegal, Suriname, Switzerland, Thailand, Trinidad and Tobago, Turkey, Turkmenistan, United Arab Emirates, United Kingdom* and *Uruguay*.
[195] For example, *Argentina,, Bosnia and Herzegovina, Brazil, Ecuador, Greece, Lithuania, Mali, Malta, Oman, Philippines, Romania, Seychelles, Sudan, Slovakia* and *Togo*.
[196] For example, in *Suriname* and *Sweden*.
[197] For example, *Australia, Austria, Bosnia and Herzegovina, Egypt* and *Estonia*.
[198] For example, *Australia, Austria* and *Belgium*.

United States – The Dislocated Worker (DW) program under the Workforce Innovation and Opportunity Act (WIOA) Title I serves as the primary vehicle to help workers who have lost their jobs as a result of layoffs gain new skills and find in-demand jobs. The DW program connects industries' needs for a skilled workforce to the public workforce system's trained workers. The DW program offers career counselling, training, credential attainment, and job placement. WIOA also authorizes Dislocated Worker Opportunity Grants, which are discretionary grants to states to fund career services and training. They provide resources to states and other eligible applicants to respond to large, unexpected layoff events causing significant job losses. The funding is intended to temporarily expand capacity to serve dislocated workers and meet demand for WIOA employment services.[199]

150. Some countries envisage the adoption of measures to address technological change through social dialogue,[200] tripartite consultations[201] or collective bargaining.[202] The legislation in some countries establishes the requirement to engage in collective bargaining on the impact of the introduction of technology, establish training systems to improve the adaptability of workers to change, and increase mobility and the consequences of these changes on working conditions.[203] In some countries, the social partners have established job security councils that offer individual support to enhance the prospect of finding new jobs, and may even provide financial support to displaced workers. They may cover different sectors and occupations.[204] In some cases, institutions responsible for regional or local development are also involved, as change may have a greater impact on some regions than on others.[205]

Belgium – Collective Labour Agreement No. 39 concerning information and consultation on the social consequences of the introduction of new technologies to companies with at least 50 workers provides that, when the employer decides to invest in new technology that has significant collective consequences on employment, the organization of work or working conditions, written information must be provided and consultations held with workers' representatives at the latest three months before the introduction of the new technology is commenced. Consultation must be organized if the new technology can give rise to "significant collective social consequences", in the form of a change in working conditions, the organization of work or employment consequences due to dismissals and transfers. If these information and consultation procedures are not respected, the employer may not unilaterally terminate a worker's employment contract, except for reasons unrelated to the introduction of the new technology. The burden of proof lies with the employer during the period when information should have been provided up to three months following the actual introduction of the new technology.

[199] See: 29 U.S.C. section 3172(b)(2), 29 U.S.C. section 3225; and National Dislocated Worker Grants.
[200] For example, *Australia, Suriname* and *United Kingdom*.
[201] For example, *Afghanistan, Indonesia* and *Japan*.
[202] For example, *Bangladesh* and *Belgium* (as of January 2020, a new collective agreement on e-commerce will apply to all companies that engage in night work or work on Sundays due to e-commerce).
[203] For example, *Argentina* (Act No. 24013, section 24).
[204] For example, in *Sweden*.
[205] For example, the Swedish Agency for Economic and Regional Growth is responsible for supporting the regions and municipalities most affected by restructuring.

151. Other countries have already adopted specific legislation, including constitutional principles addressing the impact of technology on workers,[206] while others have adopted legislation to regulate new forms of work in the framework of new technologies, such as e-commerce.

Brazil – Article 7 of the Brazilian Constitution provides the rights that aim to improve the social conditions of urban and rural workers: XXVII – protection on account of automation, as established by law.

152. The legislation in certain countries establishes certain skilling rights for workers in the event of the adoption of new technologies by the enterprise. These rights involve the requirement for the enterprise to finance training, which must take place during working hours.[207]

Canada – The Government indicates that, in Newfoundland and Labrador, technical knowledge and the impact of technology are part of the job evaluation system classification. This means jobs have recently been reviewed and assessed for their technical knowledge, which should result in a fair wage for technical knowledge which, in turn, should have an impact on the ability to recruit and retain workers in these skill areas. There are also technical change clauses in most, if not all, Canadian collective agreements.

Sri Lanka – The National Human Resources and Employment Policy of *Sri Lanka* contains a section on science, technology and innovation skills which envisages the development of a national technical workforce planning and development strategy.

CTA Autónoma from *Argentina*, indicates that there are no consultations or collective bargaining with the social partners with respect to the impact of new technologies at work.

BAK from *Austria* states that there is no sufficient training for jobseekers that will help them to access the labour market in the framework of structural and technological change.

With respect to e-commerce in particular, the FGTB, the CSC and the CGSL from *Belgium* referred to the fact that new legislation adopted on the issue risks to seriously affect health and safety of workers. This measure has been adopted without consultation with workers.

[206] For example *Brazil* and *Belgium*.
[207] For example, *Brazil* (Ministry of labour and Employment registration number: sp001130/2019. Section 34: Automation: "When automating production methods and introducing new techniques or machinery, the enterprise shall develop and offer training during working hours for as long as necessary so that the workers can better fulfil their new responsibilities.)

VIII. Conclusions

153. *The Committee considers that, in view of the complexity of the employment challenges across the world, there is no "one-size-fits-all" solution for the process of the design and development, or the content of the national employment policy. It is nevertheless essential to ensure that policies are:*

- *tailored to national economic and social conditions;*
- *embedded in a comprehensive framework;*
- *developed, implemented and evaluated through a consultative process with the social partners and representatives of those concerned by the measures to be taken; and*
- *monitored and evaluated in relation to the established targets and indicators.*

154. *The Committee emphasizes that the process should provide for the periodic revision of the policy and the adjustment of measures and plans to ensure their efficiency. The results achieved may contribute to setting a baseline for future employment policies.*

155. *The Committee stresses the need to create an enabling environment for MSME's, including cooperatives, by measures such as: simplifying overly complex regulations; access to finance; linking into technology platforms, supply chains and local economic development; addressing decent work deficits; and public investment in infrastructure, as well as education and training and technology. The Committee highlights the role that cooperatives can play in enabling people to work their way out of poverty and in helping them defend their interests and take part in decisions that concern them. MSME's and cooperatives can, together with multinationals and finance institutions, be a viable means of promoting decent and sustainable work, especially with proper policy frameworks and financial and institutional support mechanisms in place. The Committee further highlights the importance that the national employment policy fosters as far as possible the creation of green jobs with decent work.*

156. *Finally the Committee considers that all enterprises should have the opportunity to take advantage of new technologies and innovations to improve their organization of work and production and that measures should be taken to help workers navigate through transitions.*

Contents

Cyber café in Patpong district. Bangkok ©ILO

2

The employment relationship

I. Background

157. The employment relationship is a concept that is familiar in countries around the world, irrespective of the differences in national legal systems. It refers to the relationship between an employee (or worker) and an employer, for whom the employee/worker performs work under specified conditions and in exchange for remuneration. The employment relationship gives rise to reciprocal rights and obligations between the employer and the employee under national legislation. Access to employment-related rights and benefits is secured through the vehicle of the employment relationship. When the employment relationship is not the vehicle for these protections, many are inevitably provided by governments on an emergency basis at a considerable cost to the Government and to the taxpayer, while other benefits, such as social security, go unmet entirely.

158. Rapid changes in the labour market, particularly due to factors such as globalization, digitalization and other technological innovations, are affecting the way we work. As a result, new and emerging forms of work are being created which do not necessarily fit within the traditional notion of the employment relationship. These new forms of work have increased flexibility, but this same flexibility has led to a growing number of workers whose employment status is unclear and who, as a consequence, may be deemed to fall outside the scope of the employment relationship, and remain unprotected by those labour and employment laws which condition coverage on that very same relationship.

159. This chapter examines the history, content and application of the Employment Relationship Recommendation, 2006 (No. 198), in light of the changing landscape of the world of work. It examines the guidance set out in the Recommendation for determining when and in which circumstances an employment relationship and its attendant rights and obligations should be deemed to exist. It considers the relevance and impact of the Recommendation on employment promotion and job creation, particularly in relation to specific categories of workers who may be concentrated in jobs where there is uncertainty regarding the employment relationship.

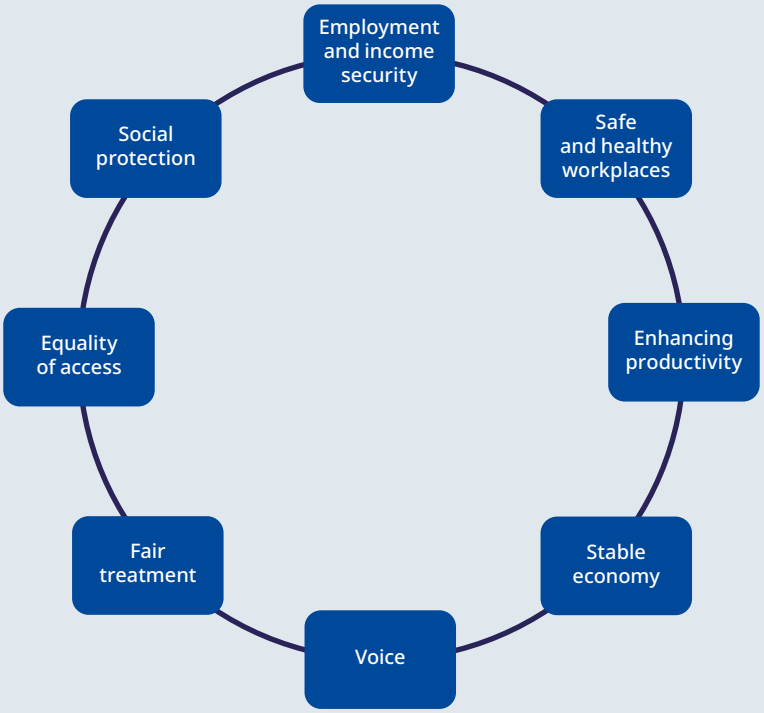
160. The employment relationship has served as a basis for a series of discussions in the ILO that have examined a range of working relationships, including those of self-employed workers, migrant workers, homeworkers, private employment agency (temporary) workers, workers in cooperatives, workers in the informal economy, the fishing sector and domestic workers.[208]

161. In 1997 and 1998, the ILC examined an item on contract labour.[209] The ILC discussion examined the situation of persons excluded from the employment relationship, including those in "triangular" relationships, as well as workers who perform work or provide services to other persons within the legal framework of a civil or commercial contract, but who are in fact dependent on or integrated into the firm for which they perform work or provide services. The objective of the ILC discussion was to protect certain categories of unprotected workers through the adoption of a Convention and Recommendation on the subject. The proposal ultimately failed, primarily because the proposed instruments did not clarify the scope of the employment relationship, and did not define who should be deemed to be covered by the employment relationship. Moreover, differences arose in concepts and terminology between countries and languages. Nevertheless, delegates from all regions referred to the employment relationship in its various forms and with different meanings, as a concept familiar to everyone. In addition, some of the tripartite constituents considered that the proposed Convention created a third category of workers who fell between the employed and the self-employed, which risked undermining workers' rights.

[208] ILO: *The employment relationship*, Report V(1), ILC, 95th Session, Geneva, 2006, para. 9.
[209] *The* issue of contract labour had been raised in a number of sectoral discussions, starting in 1950.

Figure 2.1

The multiple functions of the employment relationship



Source: J. Rubery: "Change at work: Feminisation, flexibilisation, fragmentation and financialisation", Employee Relations (2015, Vol. 37(6)).

162. In 1998, following the second discussion, the ILC adopted a resolution inviting the Governing Body to place the issue of the employment relationship on the agenda of a future session of the Conference. It also requested the Office to hold meetings of experts to examine: which workers in the situations that were being identified were in need of protection; and appropriate ways to protect these workers and how to define them, taking into consideration differences in national legal systems and language differences existing between countries.[210]

163. A Tripartite Meeting of Experts on Workers in Situations Needing Protection, in May 2000, concluded that changes in the world of work had resulted in situations where the legal scope of the employment relationship – which determines whether or not workers are entitled to the protections afforded by labour legislation – no longer accorded with the realities of employment relationships. This had resulted in a tendency whereby workers who should be protected by labour and employment law were not receiving that protection in fact or in law. The scope of regulation of employment relations no longer accorded with reality, which varied between countries and within countries, from sector to sector. The Meeting noted that, while some countries had adapted the scope of the employment relationship to take account of these changes, this had not occurred in other countries, leaving workers unprotected. The Meeting therefore concluded that countries should adopt or continue a national policy which would review at appropriate intervals and which would clarify or adapt the scope of the regulation of the employment relationship to align it with current realities for workers. It also agreed on

[210] There was a misunderstanding between "contract labour" in English and subcontracting in Spanish and French. ILO: Resolution concerning the possible adoption of international instruments for the protection of workers in the situations identified by the Committee on Contract Labour, ILC, 86th Session, Geneva, 1998.

elements that the national policy could include.[211] At the suggestion of the Meeting, the Office undertook a series of national studies to determine the extent to which dependent workers who should be afforded adequate protection under labour and employment legislation had ceased to be covered.[212]

164. In 2003, the ILC held a general discussion on the scope of the employment relationship and its impact on workers' rights. In its conclusions, the ILC indicated that there are rights and entitlements under labour legislation and collective agreements that are specific to or linked to workers who work within the framework of an employment relationship. It noted that changes in the structure of the labour market, the organization of work and the deficient application of the law are leading to a growing phenomenon of workers who are in fact employees but who find themselves without the protection of an employment relationship. There was a shared concern among the tripartite constituents that it is necessary to ensure that labour laws are applied to those in an employment relationship and that the wide variety of working arrangements are placed within an appropriate legal framework. Recalling that the protection of workers is at the heart of the ILO's mandate and that, within the framework of the Decent Work Agenda, all workers, regardless of employment status, should work in conditions of decency and dignity, the ILC recommended that the ILO envisage the development of a Recommendation to combat disguised employment relationships, which would provide for mechanisms to ensure that those in an employment relationship enjoy the rights to which they are entitled.[213]

165. Subsequently, in 2006, following extensive discussions, the ILC adopted Recommendation No. 198. This is the first occasion on which a General Survey has examined this important instrument.

[211] ILO: Report of the Meeting of Experts on Workers in Situations Needing Protection (MEWNP/2000/4(Rev.)), Geneva, 2000, para. 107.
[212] ibid. For an enumeration of the studies carried out, see ILO: *The employment relationship*, Report V(1), 2006, op. cit., footnote 8.
[213] ILO: Conclusions concerning the employment relationship, ILC, 91st Session, Geneva, 2003.

II. Rationale

166. The employment relationship is a universally recognized legal concept which provides a framework for the functioning of the labour market in many countries, and is taken into account explicitly or implicitly in a number of ILO standards. Certain ILO Conventions and Recommendations cover all workers without distinction, such as the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), while others refer specifically to the coverage of independent workers[214] or self-employed persons.[215] Others, such as the Termination of Employment Convention, 1982 (No. 158), and the Domestic Workers Convention, 2011 (No. 189), specify that they apply only to employed persons or to persons in an employment relationship, respectively.

167. In response to the challenges faced by enterprises' and workers' needs to work under flexible work arrangements, the concept of the employment relationship has evolved over time and become more diversified, covering situations that differ from traditional full-time employment. These types of working arrangements also lie within the framework of the employment relationship, and differ from civil or commercial contractual relationships under which the services of self-employed workers may be procured.[216]

168. However, the various discussions held over the years have acknowledged that an increasing number of workers, although they are in an employment relationship, do not enjoy the rights and protections to which they are entitled. This is the result of the profound changes occurring in the world of work in response to various factors, including globalization, technological change, transformations in the organization of work, reorganization, the increased participation of women in the labour market, migration flows and the shift to services.

169. This lack of protection has an adverse impact on workers and their families, affecting not only their incomes, but also their access to avenues of redress and to social protection. Lack of protection can also be counterproductive for enterprises, by diminishing productivity and distorting competition between enterprises at the national, sectoral and international levels, often to the detriment of those enterprises that do comply with labour law, leading to social dumping.[217] Moreover, as the workers concerned often do not have access to vocational education, this may result in lower competitiveness and a higher risk of occupational accidents, depending on the nature of the work. The lack of protection can have a ripple effect, extending to society at large. Low wages paid to unprotected workers may spill over to workers covered by the law, and negatively affect wages protected by collective agreements. Moreover, the lack of access to social protection of unprotected workers can have a significant financial impact in terms of unpaid social security contributions and taxes.

170. The ILO Global Commission on the Future of Work recalled that the employment relationship is the centrepiece of labour protection, but recognized the need to review and, where necessary, clarify and allocate responsibilities and adapt the legal scope of the employment relationship to ensure effective protection for workers who should be entitled to protection.[218] In turn, the Centenary Declaration reaffirms the continued relevance of the employment relationship as a means of providing certainty and legal protection to workers.

171. The establishment of a comprehensive and clear legal framework governing the employment relationship is crucial to promote full, productive and freely chosen employment, while providing for both security and flexibility in the labour market. The employment relationship brings with it many benefits, including access to social security, income security and the right to a safe and healthy workplace. Moreover, those in an employment relationship

[214] For example, the Human Resources Development Recommendation, 1975 (No. 150).
[215] For example, the Asbestos Recommendation, 1986 (No. 172), or the Job Creation in Small and Medium-*Sized* Enterprises Recommendation, 1998 (No. 189).
[216] ILO: *The employment relationship*, Report V(1), 2006, op. cit., para. 24.
[217] ILO: *The scope of the employment relationship*, Report V, ILC, 91st Session, Geneva, 2003, p. 14.
[218] ILO: *Global Commission on the Future of Work: Work for a brighter future*, 2019, op. cit., p. 38.

normally have access to vocational training and skills development, which enhances their productivity and provides opportunities for advancement. It is often more difficult to access protection for fundamental labour rights, such as the right to freedom of association and collective bargaining, and protection against discrimination, child labour and forced labour when the labour occurs outside of an employment relationship. Workers in an employment relationship are able to access dispute resolution procedures and mechanisms to seek redress for violations of their rights.[219]

172. National policies for the review of the legislation, examined below, should be taken into consideration within the framework of a coordinated national employment policy that aims to promote economic growth, job creation and decent work. Indeed, the employment status of workers has consequences for tax collection, as well as on social security rights and other entitlements that have an incidence on national programmes and budgets. Lack of clarity concerning employment status, or its concealment, may result in workers falling into informality, as seen in chapter III.

173. The objective of the Recommendation is threefold:

- the formulation and application of a national policy to review, clarify and adapt the scope of relevant laws and regulations, and to guarantee effective protection for workers in an employment relationship;
- the establishment of criteria for the determination of the existence of an employment relationship (conditions and indicators); and
- the establishment of an appropriate mechanism for monitoring developments in the labour market and the organization of work.

[219] ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, Geneva, 2016, pp. 12 and 13.

III. National policy of protection for workers in an employment relationship

1. Formulation and application of a national policy

Paragraph 1 of Recommendation No. 198 provides that:

Members should formulate and apply a national policy for reviewing at appropriate intervals and, if necessary, clarifying and adapting the scope of relevant laws and regulations, in order to guarantee effective protection for workers who perform work in the context of an employment relationship.

174. The Recommendation calls for member States, as a first step, to develop and adopt a national policy aimed at clarifying the scope of the employment relationship. The *objective* of the national policy is to "guarantee effective protection for workers who perform work in the context of an employment relationship" (Paragraph 1 of the Recommendation), including those "workers especially affected by the uncertainty as to the existence of an employment relationship" (Paragraph 5). While it does not specify the elements of the policy, the Recommendation encourages States to periodically review their national legislation to permit the clarification or adaptation of the scope of the regulation of the employment relationship in the national legislation to ensure that it continues to be aligned with the realities of a changing world of work.

175. The *periodicity* of the review should be determined at the national level. The review should be undertaken in consultation with the social partners, as part of an ongoing and dynamic process that encompasses clarifying, supplementing and stating as precisely as possible the scope of regulation of the employment relationship in the law addressing and clarifying objectively ambiguous situations; and combating disguised employment relationships; and addressing triangular working arrangements.[220] The legislation should allow workers to know who their employer is, what their rights are and who bears the responsibility for guaranteeing those rights. New and emerging forms of work and changes in the organization of work that give rise to uncertainty regarding the existence of an employment relationship should be addressed in the context of the periodic policy review process envisaged in Paragraph 1 of the Recommendation.

176. In their reports, several countries indicate that they do not have a specific national policy for the review of the relevant laws and regulations to determine the scope of the employment relationship, but provide no further information.[221] Other countries indicate that their existing policies and mechanisms for the review of the legislation also apply to the review of the legal scope of the employment relationship.[222]

The CTA Autónoma from *Argentina* and the CGTP-IN from *Portugal* indicate that there is no national policy for the revision of the regulation to determine the existence of an employment relationship.

177. A number of countries indicate that, while they do not have a specific review process, they carry out revisions when needed, on an ad hoc basis.[223]

[220] ILO: *The employment relationship*, Report V(1), 2006, op. cit., para. 58.
[221] For example, *Argentina, Cabo Verde, Cameroon, Chile, Colombia, Cook Islands, Croatia, Cuba, Dominican Republic, El Salvador, Honduras, Indonesia, Jamaica, Senegal, Slovakia, Spain, Sweden, Sudan, Thailand* and *Togo*.
[222] For example, *Austria* and *Bulgaria* (on the basis of the Law on normative acts, following an impact assessment by the Council of Ministers of new laws within five years of their entry into force).
[223] For example, *Canada, Costa Rica, Egypt, Estonia, Israel, Paraguay, Qatar, Suriname* and the *United States*.

Canada – In early 2019, the Minister of Employment, Workforce Development and Labour appointed an independent Expert Panel on Modern Federal Labour Standards. The Panel will examine, consult on and provide the Minister with evidence-informed advice on five complex issues related to the changing nature of work that warrant further study: (i) the federal minimum wage; (ii) the right to disconnect from work-related e-communications outside work hours; (iii) labour protections for non-standard workers; (iv) benefits: access and portability; and (v) collective voice for non-unionized workers.

178. Other countries have established mechanisms for the periodic review of legislation and regulations,[224] including labour law.[225]

Austria – Section 11 of the "Regulation of the Federal Chancellor on the principles of the effects-based impact assessment in the case of regulatory and other initiatives" (WFA-GV" BGBI.II No. 489/2019 as amended), establishes that regulatory initiatives must be evaluated internally no later than five years after they come into force or take effect in order to identify any potential for improvement and recommendations for implementation.

Belgium – The legislation on the scope and nature of the employment relationship (sections 328–343 of the Act of 27 December 2006) provides that the Act must be assessed by the National Labour Council and the Higher Council of the Self-employed and Small and Medium-sized Enterprises two years after its entry into force to assess its effectiveness and determine whether initiatives are needed to enhance its impact.

Republic of Korea – In accordance with the Framework Act on Government Work Assessment, the Employment and Labour Policy Assessment Committee, a body composed of internal and external members, regularly reviews the results of major employment and labour policies and activities related to the enactment and revision of laws and regulations. It posts the assessment results on the Ministry's website and submits them to the National Assembly.

179. In many countries, the competent authority responsible for conducting the review is the legislative body, which reviews national legislation on an ongoing basis to align it with labour market developments.[226] In other countries, this function is undertaken by the Ministry of Labour.[227] In some countries, ad hoc consultative bodies are established to carry out such reviews as necessary.[228]

[224] For example, *Austria, Republic of Korea, New Zealand* and *Sweden*.
[225] For example, *Afghanistan* (Labour Law, section 88), *Belgium* (Act on the nature of the employment relationship, sections 328–343); *Switzerland* (an extra-parliamentary commission, the Federal Labour Commission, on which the cantons, science, employers' associations, workers' associations and women's organizations are represented. As a body appointed by the Confederation, it performs public functions on behalf of the Federal Council and the administration. It gives its opinion to the federal authorities on legislative or implementation issues related to the Labour Act).
[226] For example, *Armenia, Bahrain, Belarus, Colombia, Finland* and *Mexico*.
[227] For example, *Ecuador, Guatemala, Montenegro, New Zealand, Nigeria, Philippines, Saudi Arabia* and *Seychelles*.
[228] For example, *Canada* and *Namibia* (a tripartite task force has been established to spearhead the amendment of the Labour Act).

United Kingdom – In 2016, the Prime Minister commissioned an independent review of modern working practices.[229] In February 2018, the Government responded to the review, accepting the vast majority of its recommendations, and engaged in consultations on their implementation. The consultations covered employment status, agency workers and increased transparency and enforcement. Following those consultations, in December 2018, the Government published the Good Work Plan,[230] setting out its vision for the future of the labour market, accompanied by an ambitious plan for the implementation of the recommendations arising from the review.

180. In some countries, existing tripartite advisory bodies have been mandated to examine legislation and propose new regulations relevant to the employment relationship.[231] Other governments refer in their reports to tripartite political discussions addressing the issue of the employment relationship, as the country's labour market is highly dependent on collective bargaining and social dialogue.[232]

181. A number of governments indicate that their legislation and its implementation is reviewed regularly and evaluated by labour inspectorates, which make suggestions and proposals for improvement.[233]

182. The role of the judicial authorities and case law in the review of legislation and the clarification of the employment status of workers is also highlighted by certain governments[234] and trade unions.[235]

Paragraphs 2 and 3 of Recommendation No. 198 provide that:

2. The nature and extent of protection given to workers in an employment relationship should be defined by national law or practice, or both, taking into account relevant international labour standards. Such law or practice, including those elements pertaining to scope, coverage and responsibility for implementation, should be clear and adequate to ensure effective protection for workers in an employment relationship.
3. National policy should be formulated and implemented in accordance with national law and practice in consultation with the most representative organizations of employers and workers.

183. Certain adjustments to the scope of the legislation may be necessary, for example when the lines between different employment relationships have become blurred, or when some forms of work or some categories of workers who were traditionally excluded from the employment relationship are now included (such as domestic workers, homeworkers or teleworkers), or to encompass new situations or work arrangements that were not envisaged when the law was adopted, such as digital labour platforms. The law may also be adapted to provide legal certainty and predictability in cases of conflicting judicial decisions on certain aspects of the employment relationship.

[229] *Good work: The Taylor review of modern working practices*, HM Government, July 2017.
[230] *Good work: A response to the Taylor review of modern working practices*, HM Government, February 2018.
[231] For example, *Cyprus* (Labour Advisory Board), *Japan* (Labour Policy Council), *Malta* (Employment Relations Board), *Myanmar* (Labour Law Reform–Technical Working Group (LLR–TWG), a tripartite body), *Oman* (Social Dialogue Committee), *Pakistan* (Tripartite Consultation Committees), *Palau* (Palau Labour Advisory Group), *Poland* (Labour Law Team in the Social Dialogue Council) and *Sri Lanka* (National Labour Advisory Council).
[232] For example, *Norway* and *Sweden*.
[233] For example, *Guatemala, Latvia* and *Lithuania*.
[234] For example, *Germany* and the *United States*.
[235] For example in *Argentina* the CGT RA indicated that the judicial authority implements legislation correctly and recognizes economic dependency and thus the employment relationship in the case of false dependency.

184. In their reports, several countries indicate that they have recently adapted or clarified their legislation on the scope of the employment relationship as a result of a review.[236]

> *Brazil* – The Temporary Work Act was amended by Act No. 13,429 of 31 March 2017 to clarify the scope of temporary contractual arrangements and the procedures for the operation and registration of temporary employment agencies. The amended Act is intended, inter alia, to provide the parties with the necessary legal certainty respecting their relationship.

185. Other governments indicate that the current law is sufficiently flexible to encompass new and emerging forms of work.[237]

> *Norway* – A committee issued an official Norwegian report (NOU) in 2017 on the "sharing economy". The Committee discussed whether there were aspects of the sharing economy that indicate a need to amend the term "employee" in the Working Environment Act, either because there is a gap in protection that the Working Environment Act does not address, or because the sharing economy creates more instances where parties disagree on status. The majority considered that the current Working Environment Act is sufficiently flexible to deal with possible conflicts that may arise in the sharing economy in relation to this question, and therefore concluded that there was no need to propose changes to the definition of employee contained in the Act.

186. Some governments indicate that the situation with respect to new or emerging forms of work has or is currently being examined. A number of governments identify part-time, temporary work,[238] platform work[239] and dependent self-employment[240] as posing challenges in terms of ensuring labour protection for workers or determining responsibilities. Some found it difficult to compile data on enterprises that have recourse to subcontracting or to the platform economy. Some governments indicate that they are in the process of modifying their labour legislation in response to current labour market needs.[241]

2. Form of the national policy

187. The Recommendation leaves it up to each State to choose the appropriate means of monitoring changes in the national labour market, identifying situations in which workers are left unprotected and devising the most appropriate means of addressing such situations. National policies on the employment relationship may be implemented through legislation, collective bargaining agreements, judicial decisions, codes of practice, or a combination of these.

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[236] For example, *Bangladesh* (Bangladesh Labour Act, 2006, as amended in 2018), *Belgium* (Decision No. 1970, of 2016, on the evaluation of the nature of work relation with a view to address disguised employment relationships), *Brazil, Canada, Finland* (working time arrangements), *France* (Labour Code, section L-7341-1 on platform work), *Japan* (Work Style Reform Law of 2018 to address pay inequalities among regular and non-regular part-time and fixed-term workers), *Philippines* (Order No. 174 of 2017 of the Department of Labor and Employment on subcontracting) and *Qatar*.

[237] For example, *Norway* and *Switzerland*.

[238] For example, *Finland*.

[239] For example, *Cambodia, Germany, Latvia, Mauritius, Norway* and *Peru*.

[240] For example, *Belgium*.

[241] For example, *Belarus* (draft Labour Code to include chapters on new issues, such as telework), *Benin, Chile* (the law is currently being revised), *Philippines, Poland, Jamaica, New Zealand* (Employment Relations (Triangular Employment) Amendment Bill introduced into Parliament in 2018) and *Saudi Arabia* (Telework).

3. Content of the national policy

Paragraph 4 of the Recommendation provides that:

The national policy should at least include measures to:

(a) provide guidance for the parties concerned, in particular employers and workers, on effectively establishing the existence of an employment relationship and on the distinction between employed and self-employed workers;

(b) combat disguised employment relationships in the context of, for example, other relationships that may include the use of other forms of contractual arrangements that hide the true legal status, noting that a disguised employment relationship occurs when the employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee, and that situations can arise where contractual arrangements have the effect of depriving workers of the protection they are due;

(c) ensure standards applicable to all forms of contractual arrangements, including those involving multiple parties, so that employed workers have the protection they are due;

(d) ensure that standards applicable to all forms of contractual arrangements establish who is responsible for the protection contained therein;

(e) provide effective access of those concerned, in particular employers and workers, to appropriate, speedy, inexpensive, fair and efficient procedures and mechanisms for settling disputes regarding the existence and terms of an employment relationship;

(f) ensure compliance with, and effective application of, laws and regulations concerning the employment relationship; and

(g) provide for appropriate and adequate training in relevant international labour standards, comparative and case law for the judiciary, arbitrators, mediators, labour inspectors, and other persons responsible for dealing with the resolution of disputes and enforcement of national employment laws and standards.

(a) Provision of guidance

188. The first and most important element of the national policy is that it should provide guidance to the parties concerned, particularly to employers and workers, on how to determine the existence of an employment relationship and how to distinguish between employed and self-employed workers. Paragraph 4(g) of the Recommendation refers to the need to ensure that all those responsible for dealing with the resolution of disputes and the enforcement of national employment laws and standards, including the judiciary, arbitrators, mediators and labour inspectors, receive appropriate and adequate training in relevant labour standards, comparative law and case law.

189. Legislation has been adopted in a significant number of countries that provides guidance on how to determine the existence of an employment relationship.[242] The criteria used to distinguish between employment and self-employment are sometimes set out exclusively in law, in a combination of law and jurisprudence[243] or exclusively by jurisprudence.[244]

[242] For example, *Afghanistan, Algeria, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belgium, Benin, Bosnia and Herzegovina* (Republika Srpska), *Brazil, Burkina Faso, Cambodia, Cameroon, Canada, Chile, China, Colombia, Croatia, Cyprus, Côte d'Ivoire, Egypt, Finland, Gabon, Georgia, Indonesia, Japan, Latvia, Lithuania, Montenegro, Morocco, Myanmar, Nepal, New Zealand, Nigeria, Sudan* (by definitions of parties), *Suriname, Togo* and *United Kingdom*.

[243] For example, *Chile* and *Republic of Korea*.

[244] For example, *Israel* (where the labour courts have established tests to examine if an employment relationship exists; the most important test is the so-called "mixed test", of which dominant component is the "integration in the organization test"). Several other examples are mentioned throughout the chapter.

The BAK from *Austria*, the Danish Trade Union Confederation (FH) and the Federation of Korean Trade Unions (FKTU) indicate that clear methods and guidance to determine the existence of an employment relationship are necessary in particular due to the upheaval in the world of work and the emergence of new forms of employment (not least as a result of increasing digitalization). The guidance provided by case law is neither sufficient nor univocal.

190. Almost all reporting countries, whether or not they have a national policy, have established a system that provides guidance on effectively establishing the existence of an employment relationship and making a distinction between employed and self-employed workers. This guidance may take different forms. In some countries, a mechanism or institution (such as an ombudsman, the ministry of labour, and conciliation and arbitration services) has been established that provides information and confidential advice on employment status, and carries out awareness-raising activities, particularly relating to fair labour practices, workers' rights, taxation and other issues. Information may also be provided through codes of practice, manuals, brochures, websites and social networks.[245]

Australia – The Fair Work Ombudsman[246] provides guidance in person and through its website regarding the existence of an employment relationship and on the distinction between employees and independent contractors (self-employed workers).

(b) Combating disguised and ambiguous employment relationships

191. The national policy should also address situations in which the employment relationship is disguised and the worker is left unprotected.[247] This may involve concealing the identity of the worker or according him or her a status other than that of employee, with the intention of releasing the real employer from any involvement in the employment relationship, and above all from any responsibility towards the workers.

192. Disguised employment relationships may occur in the context of civil or commercial contracts, as well as in the framework of cooperatives or training arrangements. While the worker may appear to be independent, in reality the employer directs and monitors the work activity in a way that is incompatible with the status of self-employment. Internships may also if misused, constitute disguised employment relationships.[248] The nature of the employment relationship may also be misrepresented to exclude dependent workers from rights and benefits they would otherwise enjoy. One form of employment relationship can also be used in place of another that would be more appropriate to the circumstances to avoid the protections provided for in the law. An example is the use of fixed-term contracts or contracts for a specific task, but which are repeatedly renewed with or without a break. As a consequence, the worker may be excluded from benefits provided to employees with

[245] For example, *Argentina* (*Basic Rules governing labour relations*); *Australia, Canada, Cabo Verde, Chile, Costa Rica* (*Compendio de criterios jurídico-laborales 1999–2014*), *China, Japan* (Labour Standards Act Study Group Report, "Criteria of workers in the Labour Standards Act", 19 December 1985), *New Zealand*, *South Africa* (South African Labour Guide)and *United Kingdom* (Employment Status Manual), *United States* (DOL "Misclassification of Employees as Independent Contractors").
[246] See: Fair Work Ombudsman.
[247] ILO: *The scope of the employment relationship*, Report V, 2003, op. cit., p. 25.
[248] See A. Stewart, R. Owens, A. Hewitt and I. Nikoloudakis: *The regulation of internships: A comparative study*, Employment Working Paper No. 240, ILO, Geneva, 2018.

open-ended contracts by labour legislation or collective bargaining.[249] Disguised employment relationships may also arise in multiple party arrangements (i.e. in subcontracting) if an intermediary is used to conceal the true identity of the employer.[250]

The German Confederation of Trade Unions (DGB) refers in this respect to the misuse of self-employment as a form of reduction of costs by employers. It highlights that according to estimates of the Labour Market Research Institute (IAB, 2017), there are between 235,000 and 436,000 people who are pseudo self-employed in their main occupation. On top of that is the damage to society as a whole when increasing numbers of self-employed people are not paying any social insurance contributions. This has an impact nowadays in the classification of platform workers.

According to the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), The National Labor Relations Board recently ruled that misclassification of employees as independent contractors is not by itself an unfair labor practice, leaving such misclassified employees without any means of gaining a determination of their status absent other unlawful conduct by the employer.

See *Velox Express, Inc.*, 368 *N.L.R.B.* No 61 (2019).

193. The employment relationship may also be objectively ambiguous, for example, when the main factors that characterize the employment relationship are not readily apparent. The relationship may be ambiguous where there are complex forms of relationships between workers and the persons to whom they provide their labour, or where the relationship between the parties changes over time. In such situations, even though there may not be any deliberate attempt to disguise the employment relationship, there may be genuine doubt concerning its existence.[251]

Removal of incentives to disguise or conceal the employment relationship

194. Paragraph 17 of the Recommendation calls on Members to develop effective measures aimed at removing any incentives that may exist to disguise an employment relationship.

195. The lack of a clear legislative and policy framework can facilitate concealment and give rise to difficulties for the effective implementation of the legislation. Many countries report that the presumption of the existence of an employment relationship, unless proven otherwise, and the use of factual criteria to determine the true nature of the relationship are adequate tools for deterring the practice of disguised employment. Labour inspection is also crucial, both in monitoring compliance and providing guidance.

[249] The Committee has referred, for example, to the replacement of the employment contract with other types of contract in order to evade the protection provided under the Termination of Employment Convention, 1982 (No. 158). See in this respect, ILO: *Protection against unjustified dismissal*, General Survey on the Termination of Employment Convention (No. 158) and Recommendation (No. 166), 1982, Report III (Part 4B), ILC, 82nd Session, Geneva, 1995, para. 56.

[250] See N. Contouris: "The Employment relationship: A comparative analysis of national judicial approaches", in G. Casale (ed.): *The employment relationship: A comparative overview*, Hart, Oxford, and ILO, Geneva, 2011, pp. 35–68.

[251] ILO: *The employment relationship*, Report V(1), 2006, op. cit., para. 42.

The NSZZ Solidarnosc from *Poland* argues that the law facilitates the substitution of employment contracts with civil law contracts, with particular emphasis on decisions and views of the Supreme Court. This court ruled in favour of civil law contracts even in situations in which the existence of an employment relationship might seem obvious (e.g. with respect to security guards that worked in a specific time frame and in a specific workplace, and thus remained under the supervision of the employer and performed their work using specific materials, e.g. uniforms, provided by the employer).

196. In many cases, national legislation prohibits exerting pressure on workers to become independent contractors. It may also be prohibited to dismiss workers and then rehire them as independent contractors to perform the same work.[252] Labour legislation frequently provides that fraudulent contracts shall be deemed null and void.[253] It is also common for legislation to provide that employers are automatically liable in such cases to pay the full contributions due on the gross sums paid to self-employed persons. In most cases, the employer must also pay the worker's part of the contribution.[254]

Chile – The Labour Code, section 507, prohibits "recourse to any subterfuge, concealment, disguise or alteration of identity or ownership if it results in the avoidance of compliance with labour and social security obligations established by law or agreement .... Any alteration undertaken in bad faith through the establishment of different corporate names, the creation of legal identities, the division of the company or other means which result for the worker in a reduction or loss of individual or collective labour rights and, especially in relation to the former, bonuses or indemnities for years of service, and in relation to the latter, the right to organize and collective bargaining, shall be considered subterfuge."

197. In some countries, disguised employment relationships are conflated with informal employment,[255] particularly in the case of undeclared work,[256] without placing it in the context of a specific type of contractual arrangement. It is often argued in this regard that high taxation and social security costs may push employers and employees to use self-employment arrangements and intermediary structures to conceal employment relationships. For this reason, some governments report that they are currently carrying out studies and research to ascertain whether this is the case and to identify remedial measures.[257] Some governments indicate that they are already taking measures, particularly to address undeclared work.[258] Criminal proceedings are also being initiated on the basis of infringement reports by labour inspectors or other authorities.

[252] For example, *Australia* (Fair Work Act, sections 357–359) and *Canada* (Labour Code, section 167.1, which is not yet in force).
[253] For example, *Argentina* (Act No. 20744 on labour contracts, section 14) and *Gabon* (Labour Code, sections 3–5, which establish a general prohibition).
[254] For example, *Algeria, Armenia, Belgium* (Programme Act (I) of 2006, section 340), *Colombia* (Substantive Labour Code, section 198) and *Malta* (Employment Status National Standard Order (SL 452.108)).
[255] For example, *Afghanistan, Azerbaijan, Bangladesh* and *Turkey.*
[256] For example, *Croatia* (Labour Act 2014, section 229(1) and (3)), *Cyprus* (Law No. 59(I) of 2010 on Social Insurance) and *Estonia*.
[257] For example, *Ireland* and *Sweden.*
[258] For example, *Switzerland* and *United Kingdom*. See also chs III and VI.

198. In many countries, the competency to requalify the employment relationship lies with the labour inspectorate,[259] the ministry of labour, the ombudsman or similar institutions and the judicial authorities, which periodically examine the true nature of the contract and monitor that there are no fraudulent situations. Coordination among the various national institutions responsible for labour and for tax collection may also be considered useful in determining the existence of disguised employment relationships.[260] This issue is examined in detail in chapter VII.

199. The reports do not provide substantive information on the sectors in which disguised employment is prevalent, despite certain references to the subcontracting of temporary and fixed-term workers, contracts in show business and in the platform economy, and the use of civil or commercial contracts instead of true employment relationships.[261]

200. The establishment of a clear framework for subcontracting is another means of addressing disguised employment.[262] In addition, preventive measures, including awareness-raising campaigns, can also be useful in reducing the incidence of disguised employment. Institutions that provide guidance also often provide information on how to prevent disguised employment relationships.[263]

(c) Ensuring standards applicable to all forms of contractual arrangements, including those involving multiple parties

201. Recommendation No. 198 indicates that the national policy should ensure standards applicable to all forms of contractual arrangements, including multiple party arrangements, with a view to ensuring that employed workers receive the protection to which they are entitled. Paragraph 4(c) specifies that these standards should apply to contractual arrangements with multiple parties, or so-called "triangular" employment relationships, in which employees of private employment agencies (the provider) are assigned to perform work for a third party (the user).[264] Triangular relationships take different forms, and are often encountered by workers in the traditional assembly lines, construction, garment and other sectors as well as the more recent digital economy.[265]

202. Paragraph 4(d) of the Recommendation seeks to ensure that these standards facilitate the identification of the parties to the relationship, the worker's rights and the allocation of responsibilities between the parties. The allocation of responsibilities varies between countries. In some countries, the provider and the user are responsible for specific areas, while in others both the user and the provider are jointly liable.[266]

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[259] For example, *Algeria, Cabo Verde, Costa Rica* (Manual of legal procedures for labour inspection, in accordance with Orders Nos DMT-017-2013 and DMT-014-2014), *Hungary* (Act No. LXXV of 1996, section 1(5)), *Italy, Republic of Korea, Nicaragua, Oman* and *Poland*.

[260] For example, *Spain*.

[261] For example, *Belarus*.

[262] For example, *Brazil* (Outsourcing Act No. 13,467 of 2017) and *Germany* (Labour Leasing Act (AÜG) of 2017).

[263] Some provisions in other ILO instruments are also intended to discourage disguised employment relationships. For example, Paragraph 8(1)(b) of the Promotion of Cooperatives Recommendation, 2002 (No. 193), calls on governments to "ensure that cooperatives are not set up for, or used for, non-compliance with labour law or used to establish disguised employment relationships, and combat pseudo cooperatives violating workers' rights, by ensuring that labour legislation is applied in all enterprises". Similarly, Article 2(3) of the Termination of Employment Convention, 1982 (No. 158), provides that: "Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention."

[264] ILO: *The employment relationship*, Report V(1), 2006, op. cit., para. 50.

[265] Also referred to as workers in the "gig economy" or platform workers. See, in this respect, ILO: *Inception Report for the Global Commission on the Future of Work*, Geneva, 2017, p. 33.

[266] ILO: *The employment relationship*, Report V(1), 2006, op. cit., para. 55.

(d) Access to procedures and mechanisms for determining the existence of an employment relationship

203. Where disputes arise regarding the existence and terms of an employment relationship, Paragraph 4(e) of the Recommendation calls for the parties concerned to have effective access to appropriate, speedy, inexpensive, fair and efficient procedures and mechanisms. The settlement of disputes concerning the existence and terms of an employment relationship should be a matter for industrial or other tribunals or arbitration authorities, including labour inspectorates, human rights bodies, social security tribunals, tax authority, etc., to which workers and employers have effective access in accordance with national law and practice. Such procedures must be accessible, fair and inexpensive (Paragraph 14).

204. Paragraph 15 of the Recommendation calls on countries to take measures to ensure compliance with laws and regulations concerning the employment relationship through labour inspection services and in collaboration with the social security administration and tax authorities. Enforcement programmes and processes should be monitored regularly to ensure their effectiveness.

> *New Zealand* – The Employment Relations Authority (ERA), an independent body set up under the Employment Relations Act 2000, resolves disputes relating to the employment relationship by examining the facts and making a decision based on the merits of each case. The ERA has exclusive jurisdiction to make determinations about employment relationship problems generally, including whether a person is an employee. Decisions made by the ERA are legally binding.[267]

(e) The gender dimension of the employment relationship

205. The Recommendation calls on Members to take particular account in the national policy to ensure effective protection to workers who may be especially affected by the uncertainty with respect to the employment relationship, including women (Paragraph 5). Paragraph 6(a) adds that women may also be concentrated in certain occupations and sectors where there is a high proportion of disguised employment relationships, or where there is a lack of clarity with regard to the existence of an employment relationship. For example, the situation of domestic workers, which are mainly women and who often have difficulties to demonstrate that they are working within an employment relationship.

206. The Committee considers that it is therefore crucial, when developing and implementing the national policy envisaged under the Recommendation, to bear in mind the gender dimension of issues surrounding the employment relationship. Moreover, member States should develop comprehensive and effective policies on gender equality and ensure enforcement of the relevant laws and agreements at the national level with a view to anchoring gender equality in all policy and legal frameworks, including those relevant to employment (Paragraph 6(b)). With respect to effective enforcement, the Recommendation calls for national labour administrations and related services to pay special attention to occupations and sectors with a high proportion of women workers (Paragraph 16).[268]

207. The Committee further recalls the importance of taking into account the situation of other specific groups, including the most disadvantaged workers, young persons, older workers, workers in the informal economy, migrant workers and persons with disabilities. It is also essential to consider the impact of multiple discrimination, as people who are subject to multiple forms of discrimination are more likely to be working under precarious conditions in which disguised employment relationships are prevalent, or where the employment relationship is uncertain.[269]

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[267] See also ch. VII on national practice.
[268] Specific examples are referred to in ch. VI.
[269] See in this regard ch. VI.

(f) Measures to address the transnational movement of workers[270]

208. As indicated in the Preamble to the Recommendation, the transnational dimension of the employment relationship also needs to be addressed, particularly with respect to the determination of who is a worker, the rights to which workers are entitled and the allocation of responsibility. This is particularly important in a globalized economy in order to ensure fair competition and effective protection of workers' rights, irrespective of whether the employment relationship crosses borders. Mobility should not be a motive for leaving workers unprotected. Accordingly, Paragraph 7 indicates that member States should take steps, after consulting the most representative organizations of employers and workers, to ensure that the national policy provides effective protection to and prevents abuses of migrant workers in their territories who may be uncertain as to their employment status and are often afraid to or discouraged from take action in this respect.[271] These measures may also be taken in collaboration with other countries, including through bilateral agreements to prevent abuse and fraudulent practices.[272]

209. The Recommendation highlights the importance of cooperation between States to address the issue. Paragraph 22 invites member States to establish specific national mechanisms to ensure that employment relationships can be effectively identified within the framework of the transnational provision of services. To this end, it encourages countries to develop systematic contact and exchange of information (see also section VI of this chapter).

210. In many countries, the general legal regime respecting the employment relationship applicable to workers is also applicable to migrant workers legally established in the country.[273] In some other countries, there is specific labour regulation covering migrant workers legally in the country,[274] or such legislation is being drawn up, for example with respect to remittances.[275] Some governments provide information on bilateral agreements to ensure the protection of workers recruited to work abroad.[276] Certain bilateral agreements exclusively cover the determination of the social security regime applicable to migrant workers.[277] In some cases, bilateral agreements or memorandums of understanding also contain specific provisions on hiring and working conditions.[278]

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[270] For a deeper analysis of this issue see, ILO: *Promoting fair migration*, General Survey concerning the migrant workers instruments, Report III (Part 1B), ILC, 105th Session, Geneva, 2016 (hereinafter the "General Survey of 2016") ch. 7, paras 421–459.

[271] The Government of *Switzerland* refers in this respect to the Tripartite Commission on measures related to the free movement of persons.

[272] See also Paragraph 43 of Recommendation No. 169, examined in ch. I, concerning the prevention of abuse or exploitation of migrant workers.

[273] For example, *Algeria, Canada* (the Immigration and Refugee Protection Act, section 209(3) guarantees temporary foreign workers (TFW) effective protections), *Ecuador* (instructions on controlling the exercise of the labour rights of foreign migrant workers) and *Republic of Korea* (Act on Private International Law, section 28, the employment contract).

[274] For example, *Afghanistan, Guatemala* and *Sweden*.

[275] For example, *Bangladesh* (the Bangladesh Labour Act, 2006, section 174, sets out rules to give effect to arrangements with other countries for the transfer of money paid as compensation).

[276] For example, *Afghanistan* (agreement with the *United Arab Emirates*), *Burkina Faso* (with *Côte d'Ivoire* and *Gabon*), *Cambodia* (with *Thailand* and *Republic of Korea*), *Colombia* (with *Costa Rica* and *Panama*), *Egypt* (with *Jordan* and *Sudan*), *Georgia* (the circular migration project, "Piloting Temporary Labour Migration of Georgian Workers to Poland and Estonia"), *Kiribati* (with *Australia* and *New Zealand*) and *Oman* (memorandums of understanding with labour-sending countries). The *United States* indicates that it has signed a number of MOUs with several countries *(Mexico, Ecuador, the Philippines, Dominican Republic).*

[277] For example, *Bulgaria* (with *United Kingdom*), *Cameroon* (with *France*), *Montenegro* (with, among others, *Austria, Hungary, Luxembourg, Serbia and Slovenia*) and *Uruguay*.

[278] For example, in the *Philippines*, workers, and especially domestic workers, are protected by additional provisions and the enhancement of the existing provisions in bilateral labour agreements, including protocols (guidelines) and the standard employment contract.

The Mexico–Canada Seasonal Agricultural Worker Program (SAWP) provides for safe, legal and orderly labour mobility and promotes the sending of Mexican agricultural day labourers to different provinces in Canada under conditions that guarantee respect for their labour rights, thereby eliminating intermediaries and preventing abusive and fraudulent practices.

The CTA Autónoma from *Argentina* indicates that a mechanism to determine the existence of the employment relationship across borders does not exist.

The BAK from *Austria* considers that there are small steps taken towards cooperation among national authorities. It further indicates that the proposal by the European Commission to set up a European labour authority to implement EU regulations on worker mobility in a fair, straightforward and effective manner is therefore expressly welcomed in order to improve the working conditions of migrant workers.

The FKTU from the *Republic of Korea* refers to the multiple reasons why a migrant worker may become an unregistered (irregular situation) migrant in the Republic of Korea and the difficulties they face to change employers.

The NZCTU from *New Zealand* refers to cases of migrant workers exploitation where the workers are not provided with a formal written contract, or where the contract submitted to authorities is replaced with a new contract at lower terms and conditions. This situation exists in some sectors such as horticulture and construction.

211. Some governments refer in their reports to systematic exchanges of information with other countries.[279] Many have also adopted legal provisions regulating the situation of national workers hired to work abroad.[280]

212. At the European level, reporting countries provide information on the manner in which they have applied European Union Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. The Directive aims to promote the transnational provision of services in a climate of fair competition, while guaranteeing respect for workers' rights. It is based on the premise that there is an employment relationship between the undertaking posting the workers and the workers themselves.[281] It is supplemented by Directive 2014/67/EU on the enforcement of Directive 96/71/EC and amending Regulation (EC) No 1024/2012 on administrative cooperation through the Internal Market Information System (the "IMI Regulation").

213. In this regard, the Committee notes the adoption of Directive (EU) 2018/957, of the European Parliament and of the Council, of 28 June 2018, amending Directive 96/71/EC. The Directive introduces amendments to reinforce the legal protection of posted workers,

[279] For example, *Bulgaria* (with the *Netherlands*).
[280] For example, *Burkina Faso* (Labour Code, sections 56 ff.), *Cambodia* (inter-ministerial Prakas No. 5188 of 2017 on procedures and formalities for the issuance, confiscation and denial of the travel document for Cambodian workers overseas), *Ecuador, Mexico* (Federal Labour Act, section 25) and *Nigeria* (the Labour Act, section 37, refers to agreements with other countries in cases where Nigerian nationals are employed abroad).
[281] For example, *Belgium* (posted workers are regulated by the Act of 5 March 2002), *Bulgaria, Croatia, Finland* (Act on Posting Workers, No. 447/2016), *Malta* (Posting of Workers in Malta Regulations, 2016 (S.L. 452.82)), *Norway* (posted workers), *Spain* (Act No. 45/1999), *Switzerland* (Act respecting posted workers, RS 823.20) and *United Kingdom* (Northern Ireland) (Posting of Workers (Enforcement) Regulations (NI) 2016).

including in situations of subcontracting. It lays a mandatory core set of terms and conditions of employment applicable according to the host Member State regulations regarding: pay, work and rest periods, paid annual leave, health and safety at work, posting of workers by temporary employment agencies, and equal treatment between men and women. The Directive introduces a mandatory equal treatment clause for posted temporary agency workers, in the sense that the conditions to be applied to cross border agencies hiring out workers must be those that are applied to national agencies hiring out workers. The same applies in the case of successive postings of the worker (if the worker is posted to other Member-State and, during that period, is posted to another Member-State). The user undertaking shall inform the temporary employment agency which hired out the worker in due time before commencement of the work.

214. Similarly, the Common Market of the Southern Cone (MERCOSUR) has provisions on the placement of workers in other member countries in the region, on equality and non-discrimination, as well as on protection against the illegal employment of migrant workers. The exchange of information concerning the free movement of skilled workers is also envisaged in bilateral and other regional agreements.[282]

215. ***Taking into account the new and emerging forms of the organization of work that involve multiple processes with different actors across borders, including digital platform workers, and the important development of global supply chains, the Committee considers that Paragraphs 7 and 22 of the Recommendation are of great relevance in light of these transformations.***

(g) Non-interference with true civil and commercial relationships

216. The manner in which people provide their labour differs from one situation to another. Some may perform work under the authority of an employer and for remuneration. Others may provide their labour or services independently and for an agreed fee, within the framework of a civil or commercial relationship.

217. The Recommendation does not limit in any manner the right of employers to establish civil or commercial contractual relationships, as indicated in Paragraph 8, which indicates that the national policy for protection of workers in an employment relationship should not interfere with true civil or commercial relationships. At the same time, it calls for workers in an employment relationship to have the protection to which they are entitled.

218. The use of civil and commercial contracts has become increasingly widespread in the context of new and emerging forms of work. Indeed, the employment relationship appears to have shrunk to leave space for a proliferation of cases in which entrepreneurs provide the same work or services that were previously carried out in the framework of the employment relationship, but are now under commercial or civil contracts.[283] In many cases, this gives rise to situations of what has been called "dependent self-employment", in which lines and responsibilities are sometimes blurred. Platform work is the object of intense debate throughout the world in this respect.

219. In this context, a distinction is often drawn between legitimate commercial or civil relationships and disguised employment relationships. While the employment relationship provides protections that compensate for inequalities in bargaining power between employers and workers, in true civil or commercial relationships the parties are deemed to have equal bargaining power. Clarification of the concept and scope of the employment relationship is therefore helpful in combating concealment and addressing any grey zones. On the one hand, employment relationships should not interfere with bona fide civil or commercial relationships. At the same time, national policy should prohibit the use of false civil or commercial contractual relationships to disguise any underlying relationships that in practice have the characteristics of an employment relationship.[284]

[282] For example, *Suriname* (for Caribbean Community (CARICOM) nationals).
[283] For specific data in this respect, see ILO: *World Employment Social Outlook: Trends 2019*, ILO, Geneva, 2019, p. 6.
[284] ILO: *The employment relationship*, Report V(2A), 95th Session, ILC, Geneva, 2006, p. 202.

220. The great majority of governments report that the system used to determine the existence of an employment relationship and its elements contributes to its differentiation from other civil or commercial contracts, which are generally regulated by other laws or regimes. Ultimately, the nature of contracts is determined, not on the basis of how they are labelled by the parties, but in accordance with the principle of the primacy of the facts.[285] The establishment of this distinction is one of the main tasks of labour inspectors and judges.

> *Poland* – The Labour Code, section 22(12), provides that employment contracts cannot be replaced by a civil law contract when the conditions for the performance of the work specified in section 22(1) (which describes the elements of the employment relationship) remain intact.

(h) Social dialogue and collective bargaining to find solutions concerning the scope of the employment relationship

221. Social dialogue is crucial in reaching consensus at the national level on the scope of the employment relationship. The Committee notes in this regard that the promotion of social dialogue requires the creation and strengthening of mechanisms for dialogue and exchange among constituents and the forging of alliances and partnerships to address effectively the complex issues surrounding the employment relationship.[286]

222. The Recommendation calls on Members to promote collective bargaining and social dialogue as a means of finding solutions to questions related to the scope of the employment relationship at the national level (Paragraph 18). In addition, to facilitate the determination of the existence of an employment relationship, consultations should be held to determine whether workers with certain characteristics are to be considered employed or self-employed (Paragraph 11(c)), as well as in relation to the transnational movement of workers (Paragraph 7(a)). The social partners should be represented on an equal footing in any national mechanism for the monitoring of developments in the labour market and the organization of work, and consulted in this respect (Paragraph 20).

223. The Committee notes some reports refer to existing consultation bodies tasked with all consultations related to workplace relations that may include also the scope of the employment relationship.[287] In other cases, governments indicate in general terms that collective agreements set out rights and obligations that impact directly on the employment relationship[288] The Committee observes, however, that from the information contained in the reports, it is not possible to determine to what extent such mechanisms have effectively been used to determine the scope of the employment relationship.

> *Latvia* – All issues related to employment relationships are discussed among social partners within the framework of the National Tripartite Cooperation Council (NTCC) and the Sub-Council of the Tripartite Cooperation in Labour Affaires (STCLA).

> *Suriname* – collective bargaining and social dialogue are used as a means of finding solutions to questions related to the scope of the employment relationship at national level, particularly when considering the adoption of legislation on the employment relationship.

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[285] ILO: *The employment relationship*, Report V(1), 2006, op. cit., para. 239.
[286] ILO: "The employment relationship: An annotated guide to ILO Recommendation No. 198", Geneva, 2007, p. 13.
[287] For example, *Australia* (the National Workplace Relations Consultative Council (NWRCC)); *Belarus*, (National Council for Labour and Social Affairs); *Bulgaria, Cambodia, Guinea Bissau, Hungary, Islamic Republic of Iran, Malta, Namibia* and *Portugal*.
[288] For example, *Bangladesh* and *Turkmenistan*.

IV. Determining the existence of an employment relationship

224. The Recommendation sets out a number of elements to be used in determining whether the parties concerned are in an employment relationship or another form of contractual arrangement.

225. Labour law in many countries contains provisions on the scope of the employment relationship. However, this issue is not always addressed adequately. Some national laws facilitate the recognition of the existence of an employment relationship and prescribe administrative and judicial mechanisms for monitoring compliance and enforcement. Others define the employment contract as the framework for the employment relationship, and provide definitions of employee and employer. The level of detail varies from one country to another. The most detailed national laws tend to establish a set of variables (conditions and indicators) to guide the determination of what constitutes an employment relationship, while in other cases the definitions are less detailed and leave the task of determining the existence of an employment contract to case law.

226. Amid this variety, the different laws may be seen to share common elements, in that the employment relationship is constituted by a legally recognized connection between the person who performs the work and the person for whose benefit the work is performed, in return for remuneration, under certain conditions established by national law and practice. In many jurisdictions, in particular under the civil law system, subordination is the key element. Three common elements in this respect are: work performed for another person; in exchange for remuneration; and within a relation of subordination.[289]

> *Côte d'Ivoire* – The 2015 Labour Code defines the employment relationship as one in which there is a relationship of subordination, remuneration and the provision of services.[290]

227. As noted below, a wider set of conditions, in addition to subordination, tend to be established in common law countries to determine the existence of the employment relationship. In some countries, these are the same elements that define a labour contract.[291]

228. Paragraph 10 of the Recommendation calls on Members to promote clear methods for guiding workers and employers as to the determination of the existence of an employment relationship. In principle, employment relationships fall within the scope of labour law, while other arrangements are regulated by commercial or contract law. This difference is crucial in determining, among other aspects, whether the worker will fall or not under the remit of the labour law. However, changes in the world of work are rendering the legal manifestations of the employment relationship tenuous and opaque, thus complicating the legal classification of work and the application of employment protection legislation.[292]

229. The ILC intentionally developed a flexible instrument that could accommodate different national circumstances and changes in the world of work. For this reason, the Recommendation provides guidance on the substance of the employment relationship, but does not attempt to define it.

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[289] See in this regard *I. Bettray v. Staatssecretaris van Justitie*: Reference for a preliminary ruling, Raad van State, *Netherlands* (Concept of worker – Community national employed under a social employment programme), Case 344/87.

[290] Similar definitions are provided in *Cambodia* (Labour Law Act 1997, section 3).

[291] For example, *Gabon* (Labour Code, section 18).

[292] See Contouris: "The employment relationship: A comparative analysis of national judicial approaches", 2011, op. cit.

1. The employment relationship: A determination based on the facts

Paragraph 9 of Recommendation No. 198 provides that:

For the purposes of the national policy of protection for workers in an employment relationship, the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties.

230. The true nature of any employment relationship should be established through an examination of the relevant facts. In the event of any discrepancy between the established facts and formal documents, the facts must prevail.[293] In accordance with the principle set out in the Recommendation, known as the *primacy of facts*, the realities of the relationship are dispositive and trump other elements, such as the intentions of the parties or the manner in which they describe the relationship.[294] The principle of the *primacy of facts* is helpful, particularly in situations where the employment relationship is deliberately disguised.[295] However, as indicated in Paragraph 9 of the Recommendation, the determination should be guided "primarily" by the facts relating to the performance of work and the remuneration of the worker. This does not prevent other elements from being taken into consideration. The provision of work and the fact that the work is performed in exchange for remuneration are sufficient in many countries to establish an employment relationship.

231. In many countries, this principle is set out either statutorily or through case law. It can be found in both civil law and common law systems,[296] at the constitutional level,[297] as a general principle of contract law,[298] or as established by courts.

Argentina – The National Labour Court of Appeal considered that: "In labour matters, the principle of the primacy of facts prevails. The nature of the relationship must be determined by the examination of the characteristics that shape it and define it on the basis of the reality of facts, and not the documentation (in this case, a service lease contract), which could have constituted one more imposition by the giver of work." 7th Chamber, 18 November 2002, *Zelasco, José F. v. Instituto Obra Social del Ejército*.

[293] H. Villasmil Prieto and C.A. Carballo Mena: *Recomendación 198 OIT sobre la relación de trabajo*, Caracas, Letraviva, 2016, p. 93.
[294] ILO: *The employment relationship*, Report V(1), 2006, op. cit., para. 26.
[295] ILO: *The employment relationship*, Report V(2A), 2006, op. cit., p. 79. See also: B. Waas and G. van Voss (eds): *Restatement of labour law in Europe, Vol. I: The concept of employee*, (Hart Publishing, UK, 2017).
[296] For example, *Argentina* (Act No. 20.744, section 23), *Costa Rica* (Labour Code, section 18), *Dominican Republic* (Labour Code, principle IX), *Mexico* (Federal Labour Act, section 20), *Peru* (General Act on labour inspection, No. 28.806, section 2(2)), *Poland* (Labour Code, section 22(1), *Panama* (Labour Code, section 63) and *Bolivarian Republic of Venezuela* (Basic Labour Act (LOTTT), section 53). For examples in common law see ILO: *Regulating the employment relationship in Europe: A guide to Recommendation No. 198*, Geneva, 2013, p. 33 ff. See also *United States*, US Department of Labour, FLSA 2019-6.
[297] For example, *Colombia* (Constitution, article 53).
[298] European Union Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union endorses this principle in preambular paragraph (8).

Brazil – The Fourth Regional Labour Court recognized the existence of an employment relationship between the employee and the employer on the grounds that the worker had been required to create a legal entity to be paid. During the proceedings, it was also shown that all of the other elements required for the recognition of an employment relationship were present. Case No. 0021209-20.2014.5.04.0221.[299]

Germany – Section 611a of the Civil Code provides that:

"The employment contract obliges the employee in the service of another person to perform work in personally, heteronomously and in accordance with instructions. The right to issue instructions may relate to the content, performance, time and place of work. Anyone who is not essentially free to organise his activity and determine his working hours is bound by instructions. The degree of personal dependence also depends on the nature of the activity in question. An overall assessment of all circumstances must be made in order to determine whether an employment contract exists. If the actual performance of the contractual relationship shows that it is an employment relationship, the designation in the contract is irrelevant."

United Kingdom – The Employment Appeals Tribunal has found that "... the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represents what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part.". *Autoclenz Ltd v. Belcher & Ors, Belcher* [2011] UKSC 41, at paragraph 35.

2. Elements that facilitate the determination of the existence of an employment relationship

(a) Use of a broad range of means

232. In many jurisdictions, a general rule of contract law is that the burden of proof rests on the complainant. However, it is often difficult for the worker to meet this burden, as the employer normally controls the information concerning the relationship. For this reason, the Recommendation encourages States to allow a broad range of means for determining the existence of an employment relationship (Paragraph 11(a)),[300] which also serves to deter the use of disguised employment relationships. The Committee notes that many countries require the employer to inform employees of the conditions applicable to the employment contract or to provide a written contract, a letter of engagement or other documents setting out the particulars of the employment contract or relationship, thereby providing the worker with a means of proving the existence of the employment relationship.[301]

[299] Similar examples can be found in ILO: "The employment relationship: An annotated guide to ILO Recommendation No. 198", 2007, op. cit., p. 32.
[300] See G. Casale: "The employment relationship: A general introduction", in Casale: *The employment relationship: A comparative overview,* 2011, op. cit., p. 27.
[301] ILO: *The employment relationship*, Report V(1), 2006, op. cit., para. 113.

United Arab Emirates – Federal Law No. 8 of 1980 regulating labour relations requires employers to issue a written contract of employment in two copies, one of which is to be given to the worker. If there is no written contract, the two parties may establish the working relationship by any means of legal proof.[302]

(b) Legal presumption of the existence of an employment relationship

233. Paragraph 11(b) of the Recommendation calls on member States to consider providing for a legal presumption of the existence of an employment relationship where one or more of the indicators established by law (referred to in Paragraph 13 of the Recommendation) are present. The Committee notes that the establishment of a legal presumption is a step forward in the process of easing the burden of proof, even if these are two different concepts. The burden of proof is then shifted from the worker to the employer.[303] ***The Committee considers this legal presumption as crucial to counterbalance the unequal bargaining power of the parties and as a consequence of the principle in* dubio pro operario *which is fundamental in labour law.***[304] This issue has also been the object of abundant jurisprudence.[305]

234. The presumption may be broad, in that working relationships are presumed to be employment relationships.[306] However, the law may specify that the presumption is triggered only once one or more indicators are present.[307] The presumption is generally rebuttable by the employer.

[302] Similarly, for example, *Algeria* (Act No. 90-11 of 1990 on employment relations), *Cabo Verde* (Labour Code, section 33), *Gabon* (Labour Code, section 20), *Mexico* (Federal Labour Act, section 21) and *Togo* (Labour Code, sections 37 and 10: "Proof of the contract or employment relationship may be provided by any means").
[303] ILO: "The employment relationship: An annotated guide to ILO Recommendation No. 198", 2007, op. cit., p. 27.
[304] The Committee notes in this respect that some latest judicial decisions do not take into account this principle, although it is normally firmly rooted in national jurisprudence. Judgment of the High Court of Justice of Madrid Section 04 of the Social Court of 19 September 2019 No. 715/2019 (rec. 195/2019) dismissing the appeal filed against the Judgment of the Court 39 of Madrid of 3 September 2018 declaring a true autonomous Glovo Rider (TRADE). According to the decision, the worker must prove the reality between the parties. If he does not do so, then the judges base its decision on what was "agreed" by the parties without taking into consideration the primacy of facts.
[305] See for example *Deborah Lawrie-Blum v. Land Baden-Württemberg*: Reference for a preliminary ruling: Bundesverwaltungsgericht, *Germany* (Worker – trainee teacher), Case 66/85. See also *United States*: Supreme Court of California, *Dynamex Operations West, Inc. v. Superior Court of Los Angeles County* [2018] 4 Cal. 5th 903.
[306] For example, *Argentina* (Act on labour contracts No. 20.744, section 23), *Cabo Verde* (Labour Code, section 33), *Colombia* (Labour Code, section 24), *Costa Rica* (Labour Code, section 18(2)), *Dominican Republic* (Labour Code, section 15), *El Salvador* (Labour Code, section 20), *Estonia* (Employment Contracts Act, section 2), *Honduras* (Labour Code, section 30), *Panama* (Labour Code, section 66), *Peru* (Act No. 29497, section 23(23)(1)), *Spain* (Workers' Statute, section 8) and *Bolivarian Republic of Venezuela* (LOTTT, section 53).
[307] For example, *Chile* (Labour Code, sections 7 and 8), *Malta* (Employment Status National Standard Order (SL 452.108) section 3), *Namibia* (Labour Amendment Act, 2012, section 128A), *Panama* (Labour Code, section 66) and *Togo* (Labour Code, section 37).

European Union-Directive on Transparent and Predictable Working Conditions (Directive 2019/1152)

Article 11 Where Member States allow for the use of on-demand or similar employment contracts, they shall take one or more of the following measures to prevent abusive practices:

(b) a rebuttable presumption of the existence of an employment contract with a minimum amount of paid hours based on the average hours worked during a given period;

Article 15 Legal presumptions and early settlement mechanism

1. Member States shall ensure that, where a worker has not received in due time all or part of the documents referred to in Article 5(1) or Article 6, one or both of the following shall apply:

(a) the worker shall benefit from favourable presumptions defined by the Member State, which employers shall have the possibility to rebut;

(b) the worker shall have the possibility to submit a complaint to a competent authority or body and to receive adequate redress in a timely and effective manner.

2. Member States may provide that the application of the presumptions and mechanism referred to in paragraph 1 is subject to the notification of the employer and the failure of the employer to provide the missing information in a timely manner.

In *Belgium*, sections 337(1) and (2) of the Programme Act (I) of 2006 create the presumption of employment in certain at-risk economic sectors. In the absence of proof to the contrary, the employment relationship is presumed to be performed under the terms of an employment contract if over half of the listed criteria are met. The following six economic sectors are covered by the presumption:

- construction;
- surveillance;
- transport;
- cleaning;
- agriculture;
- horticulture.

Colombia – The Constitutional Court had held that the presumption that every personal employment relationship is governed by a civil or commercial contract implies a transfer of the burden of proof to the employer. The employer, in order to rebut the presumption, must prove that a civil or commercial contract for the provision of services is not governed by labour standards exists in practice, and the mere production of the contract is not sufficient evidence in itself.[308]

[308] Decision No. c-665/98 of 12 November 1998.

Cuba – The Labour Code, section 23, provides that: "When the employment contract is not formalized in writing, the employment relationship is presumed by the fact that the worker performs work with the knowledge of and without opposition from the employer."

235. Some trade unions indicated that the legal presumption does not exist in the legislation of their country.[309] Others referred to the need that the legal presumption concerning the existence of an employment relationship be recognized at national level.[310]

The ITUC, the BAK from *Austria* and the NZCTU from *New Zealand* support the adoption of a broad presumption of the existence of an employment relationship. Furthermore, they consider it crucial to establish precise and specific factors including with respect to the performance of the work and the remuneration of the worker that will help determine the existence of the employment relationship.

Business New Zealand does not support the adoption of a presumption of the existence of an employment relationship

(c) Designated groups or categories of workers deemed to be employed or self-employed

236. In some cases, the law goes a step further and directly determines that certain workers in ambiguous situations are in an employment relationship. Conversely, legislation may specify that certain contractual arrangements are not considered to be employment relationships (Paragraph 11(c)).[311] For example, the legislation may give the Minister general discretion to make such a determination, or may refer specifically to a particular group.[312] In such cases, the presumption is not normally rebuttable. This concerns for example door to door sellers, sportspersons, models, etc.[313]

[309] For example, the NSZZ "Solidarność" from *Poland*.
[310] The TUC from the *United Kingdom* considers that measures should be taken to crack down on bogus self-employment, by creating a statutory presumption that all individuals will qualify for employment rights unless the employer can demonstrate they are genuinely self-employed. This presumption has been adopted by the Supreme Court of California in the *Dynamex* case and has given place to the adoption of new legislation in California.
[311] ILO: *The employment relationship*, Report V(1), 2006, op. cit., para. 27.
[312] ILO: "The employment relationship: An annotated guide to ILO Recommendation No. 198", 2007, op. cit., p. 29.
[313] For example, *Australia* (Victoria) (the Workplace Injury Rehabilitation and Compensation (WIRC) Act 2013, Schedule 1, Part 1, provides that, for the purposes of the WIRC Act, certain persons are deemed to be in an employer/employee relationship. Such arrangements include employer/student arrangements, persons attending training programmes, secretaries of a cooperative housing society, door to door sellers, timber contractors, drivers carrying passengers for reward, owner drivers carrying goods for reward, contractors that meet certain criteria, share farmers, religious bodies and organizations, certain persons employed in the public sector, municipal councillors, sporting contestants, riders and drivers in certain races and outworkers); and *France* (the Labour Code establishes this presumption with respect to models (section L7112-1), professional journalists (section L7121-3), entertainers (section L7313-1), travellers, representatives or market stall holders (section L7211-2), janitors, employees, housekeepers or cleaners of residential buildings. French law also establishes the presumption of a non-employment relationship in the case of natural persons registered in the various professional registers, such as the register of trade and companies, trades, road passenger transport companies, etc.). Similar provisions exist in *Mexico* (Federal Labour Act, section 285) and *Spain* (Royal Decree No. 1006/1985 regulating the special employment relationship of professional sportspersons).

(d) Conditions and indicators

237. While the Recommendation does not define the employment relationship, Paragraph 12 encourages Members to clearly define the conditions (factors) applied to determine the existence of an employment relationship, listing two such examples: subordination and dependence.

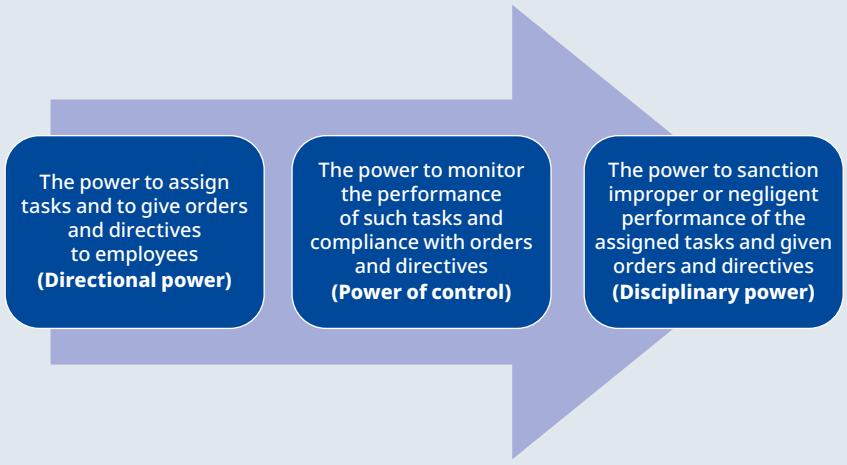
238. The employment relationship has traditionally been described as a dependent relationship defined by these two elements. In some countries, the legislation refers to "legal subordination" and "economic dependency". Additional factors are also used in many countries for the determination of an employment relationship. Some of the more common factors used include: the level of subordination to the employer, whether work is for the benefit of another and whether it is under instruction.

(i) Subordination

239. In many countries, the dependent relationship is demonstrated by a situation of subordination in which the employee is required to follow the instructions of the employer. This presupposes that the employee may freely leave the employer when he or she so chooses or freely chooses to follow the instructions (otherwise the situation could be one of forced labour). In many cases, subordination and dependency are synonymous, and are characterized by three elements – directional power, power of control and disciplinary power – exercised by the employer over the employee.

Figure 2.2

Subordination



Source: G. Casale: The employment relationship: A comparative overview, 2011, op. cit.

(ii) Economic dependency

240. National labour legislation also frequently refers to economic dependency, which is present where: the remuneration received by the worker from the employer constitutes his or her only or main source of income; the remuneration is paid by a person or enterprise in exchange for the worker's activity; and the worker is not autonomous and is economically linked to the sphere of activity in which the employer operates.

> *United States* – In *Dynamex Operations West, Inc. v. Superior Court*, the Supreme Court of California (US) considered that "here the hiring entity is a delivery company and the question whether the work performed by the delivery drivers within the certified class is outside the usual course of its business is clearly amenable to determination on a class basis. As a general matter, Dynamex obtains the customers for its deliveries, sets the rate that the customers will be charged, notifies the drivers where to pick up and deliver the packages, tracks the packages ...".

241. In many cases, this factor is used as a supplementary means of proof when doubts subsist as to the employment relationship. This element has gained importance in some countries that have adopted legal categories (such as dependent self-employed workers), in which economic dependency is a dispositive factor.

> *Panama* – The Labour Code, section 65, provides that: "Economic dependence exists in any of the following cases: (1) when the amounts received by the natural person rendering the service or performing the work constitute the workers' sole or principal source of income; (2) when the amounts referred to in the previous subsection come directly or indirectly from a person or company, or as a consequence of its activity; (3) when the natural person who provides the service or performs the work does not enjoy economic autonomy, and is economically linked to the activity undertaken by the person or company that can be considered as an employer. In case of doubt about the existence of an employment relationship, the proof of economic dependence determines that the relationship shall be so qualified."

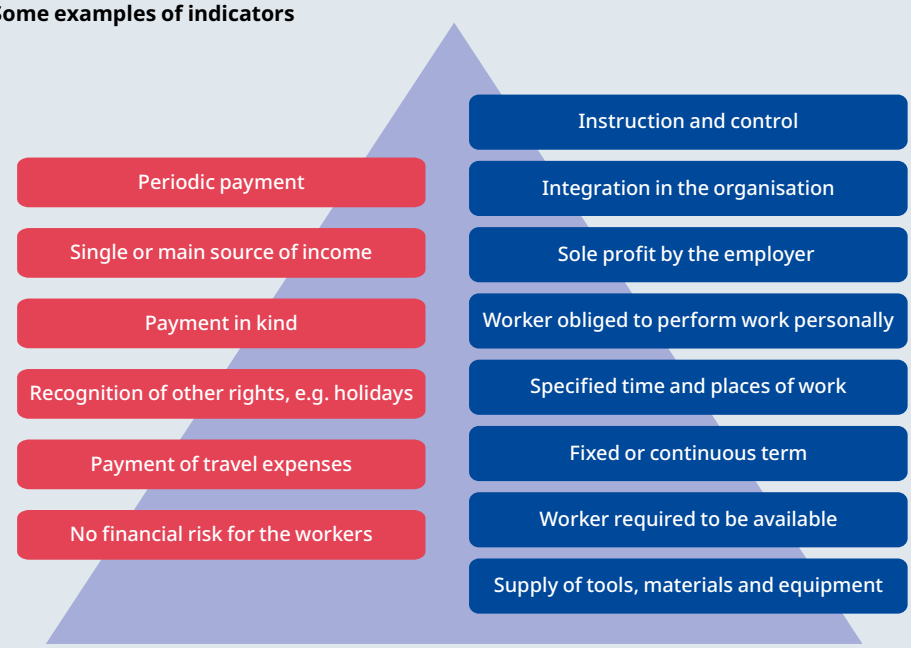
242. In addition to the factors or conditions referred to in Paragraph 12, the Recommendation also encourages Members to set out in their laws, regulations or through other means, specific indicators to be considered in determining the existence of an employment relationship. Paragraph 13 of the Recommendation provides a non-mandatory, non-exhaustive list of two types of indicators or criteria. One focuses on characteristics that demonstrate economic dependency, while the other focuses on how, when and where work is performed and the characteristics that demonstrate subordination (the left and right columns in figure 2.3 below).

243. These indicators aim at assisting in determining whether, irrespective of how it is described by the parties, the relationship between them is indeed an employment relationship.[314] These indicators assist in the determination of subordination, dependency or other factors that may be used to establish an employment relationship,[315] and take into consideration the evolving nature of the relationship. The indicators may be established by law,[316]

[314] Villasmil Prieto and Carballo Mena: *Recomendación 198 OIT sobre la relación de trabajo*, 2016, op. cit., p. 101.
[315] ILO: *The employment relationship*, Report V(1), 2006, op. cit., para. 28.
[316] For example, *Australia*, *Namibia* (Labour Amendment Act, No. 2 of 2012, section 128A), *Norway* (Working Environment Act, section 14), *Philippines* (Order No. 147 of the Department of Labor and Employment, section 3) and *Portugal* (Labour Code, section 12).

Figure 2.3

Some examples of indicators



Source: ILO.

by the courts[317] or even through social dialogue.[318] In some countries, the law provides that whenever a certain number of indicators are present, an employment relationship shall be presumed.[319] National courts generally apply an established set of indicators *(faisceau d'indices)* in examining the relationship.[320] Some trade unions request that the law codifies the criteria for determining the existence of an employment relationship, while others consider that, on the contrary, this will restrict judges' freedom to evaluate the real relationship.

Bolivarian Republic of Venezuela – The Basic Labour Procedure Act, section 116, provides that indicators and presumptions are auxiliaries established by law or by case law with the object of corroborating and supplementing the means of proof.

The NZCTU from *New Zealand* calls for consideration of changes to the law to codify criteria for employment in statute.

The TUC *(United Kingdom)* considered that the existing common law tests on employment status in employment law or tax law should not be codified in legislation. Codification would restrict the ability of the courts to adapt and apply the tests to new emerging forms of work, including platform work.

[317] For example, *Australia* (*Stevens v. Broadribb Sawmilling Co.*), *Croatia*, *Ireland*, *Jamaica*, *Mauritius* and *Sweden*.
[318] For example, *Ireland* (Programme for Prosperity and Fairness: Employment Status Group: Code of Practice for determining employment or self-employment status of individuals, 2007).
[319] See Casale: "The employment relationship: A general introduction, 2011, op. cit., p. 26. For example, *Malta* (Employment Status National Standard Order (SL 452.108), section 3).
[320] For example, *France* and *Belgium*. In most Latin American countries, the courts use indicators to determine the existence of subordination.

The IOE indicates that the criteria and indicators, as well as the presumption of employment relationships set out in Recommendation No. 198 pose a risk in that many independent contractor relationships may be mischaracterized as employment relationships, giving rise to new uncertainties and threatening many enterprises in the service industry. In the Employers' view, the Recommendation goes beyond disguised employment relationships and its provisions interfere with legitimate civil and commercial relationships. These issues are still relevant, particularly in light of the new ways of working that (digital) technology allows, including in the platform and gig-economies. In this respect, it is crucial to correctly classify the work relationship.

(iii) Multi-factor test

244. In some jurisdictions, however, the courts base their decisions on a combination of conditions, applying so-called "multi-factor" tests.[321] Each factor is examined and analysed in relation to each other, and no single factor is dispositive. The factors should be considered in their totality to determine whether a worker is subordinate or economically dependent on the employer, and should thus be considered an employee.

Australia – The courts have identified key indicators to help distinguish between employees and independent contractors. They consider the "totality" of the relationship, having regard to a number of factors, none of which is solely determinative. These factors include: the terms of the contract; who controls how the work is performed and the degree of that control; hours of work; expectation of work; who bears the risk; whether wages are paid; whether tools and equipment are supplied; and how tax is paid.[322]

245. Many jurisdictions do not distinguish between conditions and indicators, and use such terms as "factors", "conditions", "indicators", "criteria" and "tests" interchangeably, without making a clear distinction between them. Some authorities consider that indicators are too rigid, as their strict application may exclude many workers who should be considered to be in an employment relationship. For example, subordination or control may be inadequate to serve as a principal benchmark in the case of professional workers who enjoy objective

[321] For example, in the *United States*, the Equal Employment Opportunities Commission manual establishes that "The question of whether an employer-employee relationship exists is fact-specific and depends on whether the employer controls the means and manner of the worker's work performance. This determination requires consideration of all aspects of the worker's relationship with the employer. Factors indicating that a worker is in an employment relationship with an employer include the following: The employer has the right to control when, where, and how the worker performs the job. The work does not require a high level of skill or expertise. The employer furnishes the tools, materials, and equipment. The work is performed on the employer's premises. There is a continuing relationship between the worker and the employer. The employer has the right to assign additional projects to the worker. The employer sets the hours of work and the duration of the job. The worker is paid by the hour, week, or month rather than the agreed cost of performing a particular job. The worker does not hire and pay assistants. The work performed by the worker is part of the regular business of the employer. The employer is in business. The worker is not engaged in his/her own distinct occupation or business. The employer provides the worker with benefits such as insurance, leave, or workers' compensation. The worker is considered an employee of the employer for tax purposes (i.e., the employer withholds federal, state, and Social Security taxes). The employer can discharge the worker. The worker and the employer believe that they are creating an employer-employee relationship. This list is not exhaustive. Other aspects of the relationship between the parties may affect the determination of whether an employer-employee relationship exists. Furthermore, not all or even a majority of the listed criteria need be met. Rather, the determination must be based on all of the circumstances in the relationship between the parties, regardless of whether the parties refer to it as an employee or as an independent contractor relationship."

[322] See for example, Federal Court of Australia, *ACE Insurance Limited v. Trifunovski* [2013] FCAFC 3, and High Court in *Hollis v. Vabu Pty Ltd* [2001] HCA 44.

independence in carrying out their work due to their high level of skills.[323] These factors may also give rise to difficulties in determining the employment status of homeworkers.

246. The Committee notes that the interpretation of some indicators may be problematic in certain cases. For example, the provision of materials, machinery and tools by the worker is often considered as an indicator of the inexistence of an employment relationship. However, in some cases, such as in homework, workers normally use their own materials.[324] This also happens in digital platform work, where workers provide their bicycles or their computers. For example, in delivery services provided through a digital application, the bicycle or motorcycle used by the person making the delivery does not constitute the essence of the business, and it is instead a service provided through the algorithm that manages and evaluates the work performed. ***While noting that, in general, the material provided by workers does not necessarily constitute the essence of the business, the Committee considers that this element alone could not be taken as the only determinant of an employment relationship, as there may be other elements or indicators that more clearly demonstrate the essence of the business and the true relationship that exists between the parties, and the manner in which workers are integrated in the main business.***

> *Finland* – In relation to the employer's right to manage and supervise work, the Employment Contracts Act, chapter 1, section 1(3), provides that this right may be exercised irrespective of whether the worker carries out the work in his or her home or another place he or she has chosen, or whether the work is carried out using the worker's own equipment or machinery. The use of the worker's own equipment or machinery does not demonstrate that the worker is working outside an employment relationship, unless the conditions are such that it can be determined that the person performing the work in a contractual relationship is in a position of financial risk in relation to the work and its quality, which is typical of a self-employed person. Ultimately, the nature of the legal relationship shall be determined by an overall assessment of the worker's status and whether the worker is independent or non-independent.

247. Consideration of "mutuality of obligations" as an indicator of an employment relationship, interpreted in some jurisdictions as "continuity of obligations", might have the effect of excluding many casual workers who do not work on a continuing basis.[325] Moreover, in such situations as workers covered by zero-hours contracts, this indicator would not appear to encompass situations in which the existence of an "umbrella contract" or "global employment agreement" allows a multiplicity of casual individual contracts (see the section below on zero-hours contracts).[326]

248. Another indicator that requires careful consideration, particularly in light of new and emerging forms of work, such as platform work and new forms of the organization of work in supply chains, is the worker's "integration in the business organization". Due to the diversification of employment relationships, it is important to identify and consider the main objective of the business and the role of the specific worker in fulfilling this objective. This is particularly the case where reporting lines are blurred, control hierarchies are not readily apparent or workers are not in one established workplace, but are scattered around different locations. In such cases, the fact that the activities carried out by the worker are integrated

[323] A. Supiot: *Critique du droit du travail*, Presses Universitaires de France, 1994, p. 122.
[324] While this is envisaged as a possibility in the Home Work Convention, 1996 (No. 177), the same does not apply in all cases.
[325] For example, the criterion of "mutuality of obligation" is applied in the *United Kingdom*. It is also present in the legislation of such countries as *Australia, Ireland, Jamaica, South Africa* and *Trinidad and Tobago*, where its interpretation appears to be less problematic. See, in this regard, "N. Contouris: "Uses and misuses of 'mutuality of obligations' and the autonomy of labour law", UCL, Labour Rights Institute, Online Working Papers-LRI WP 1/2014.
[326] See in this respect, V. De Stefano and A. Aloisi, *European legal framework for "digital labour platforms"*, European Commission, Luxembourg, 2018, p. 32.

in the organization of the business could demonstrate the existence of a closer link between the worker and the employer than is described in the contract. This factor can be crucial in determining responsibilities in situations of agency work, subcontracting and complex supply chains (see also the concept of employer below).

Sri Lanka – The Supreme Court, in *Ceylon Mercantile Union v. Ceylon Fertilizer Corporation*, citing a previous decision, found: "In my judgment, it is really not possible, in Mr Atiyah's words to lay down ... a number of conditions which are both necessary to, and sufficient for, the existence of ... (a contract of service). The most that can profitably be done is to examine all the possible factors which have been referred to in these cases as bearing on the nature of the relationship between the parties concerned. Clearly not all of these factors will be relevant in all cases, or have the same weight in all cases. Equally clearly, no magic formula can be propounded for determining which factors should, in any given case, be treated as the determining ones. The plain fact is that in a large number of cases the court can only perform a balancing operation, weighing up the factors which point in one direction and balancing them against those pointing in the opposite direction. In the nature of things it is not to be expected that this operation can be performed with scientific accuracy."

United States. On 10 September 2019 the California Senate passed legislation known as AB 5 – a law codifying the "ABC test" from the landmark Dynamex v. Superior Court case, 4. Cal. 5th 903 (2018), to determine whether a service provider is an independent contractor or employee. The ABC test provides that, to classify a worker as a contractor instead of an employee, the hiring entity must prove each of the following three factors: (1) the worker is free of control from the company, both under contract and in fact; (2) the worker performs work outside the usual course of the hiring entities business; and (3) the worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed. The failure to prove any one of the three above factors would render a worker an employee of the hiring entity.

249. The relevance of each factor and indicator is very much determined by the nature of the work and the conditions in which it is carried out in each specific case. In the event of dispute, it is for the courts or other dispute resolution bodies to determine on a case-by-case basis whether or not an employment relationship exists in light of the legally established indicators or factors. It is important in this respect to assess the manner in which new technologies may enable new forms of remote control, such as in telework arrangements. Moreover, control may no longer be exercised directly or solely by the employer. For example, in the platform economy, control is partially exercised through evaluations made by clients.

United Kingdom – The *Employment Status Manual* (HMRC, 2016) indicates, in the section on determining status, that: "In deciding whether a person is in business on his own account or working under the control of and as part of the business of another, a variety of factors are relevant. ... The object of the exercise is to paint a picture from the accumulation of detail. The overall effect can only be appreciated by standing back from the detailed picture which has been painted, by viewing it from a distance and by making an informed, considered, qualitative appreciation of the whole. It is a matter of evaluation of the overall effect, which is not necessarily the same as the sum total of the individual details. Not all details are of equal weight or importance in any given situation. The details may also vary in importance from one situation to another. The process involves painting a picture in each individual case."

250. ***The Committee emphasizes that the conditions and indicators described in Paragraphs 12 and 13 of the Recommendation should not be considered exhaustive, nor do they establish any hierarchy. The elements set out in the Recommendation leave room for the establishment of others at the national level, and it is also necessary to take into account the evolution of the employment relationship, and the consequent requirement for new means of proving its existence. Current indicators may no longer be useful in determining the existence of future employment relationships. Member States should therefore consider the need to establish new criteria and disregard existing criteria when they are no longer useful. This would be in accordance with Paragraph 1 and the need to periodically review, clarify and adapt the scope of relevant laws to guarantee the effective protection of workers in an employment relationship.***

3. Personal scope

251. The elements gathered through presumptions, factors and indicators serve to determine whether or not the employment relationship exists (Paragraph 4(a)). Although the Recommendation does not provide a definition of "employer" or "dependent employee", the great majority of national laws, regulations and case law do.

(a) The employer

252. As the counterpart of the worker in the employment relationship, the employer has received much less attention than the worker. Courts are generally concerned to determine whether or not a worker is an employee. But neglecting the definition of employer may result in reduced protection for workers. In the traditional bilateral employment relationship, the employer is conceived as a singular person who coincides with the enterprise. However, transformations in the economic organization of enterprises have also had an impact on the concept of the employer, which is now envisaged as a plural subject. This is more evident in employment relationships involving multiple parties,[327] in which it is more difficult to identify the real employer, or where responsibilities are distributed among a group of employers.[328] This is sometimes referred to as the bifurcation of the employer's function.[329]

253. In most cases, the national legislation provides a definition of a singular employer and its representatives.[330] The term "employer" is used to refer to a natural or legal person for whom an employee performs work or provides services within an employment relationship.[331] There are also some countries in which the law does not define employer, leaving the issue to the judiciary.[332] In some cases, the concept is only deduced from the definition of worker.[333]

254. Courts have endeavoured to address this situation when trying to determine the true employer in a relationship by examining factors relevant to the employer–employee relationship, such as the selection process, hiring, training, discipline, evaluations, supervision and the assignment of duties, remuneration and integration into the business. In such cases, the end user may be found to be the "true" employer for the purposes of the claim.[334]

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[327] See, in this respect, the sections on temporary agency work and subcontracting.
[328] J. Prassl: "The concept of the employer", Oxford Monographs on Labour Law, OUP, 2016, p. 13. See also, N. Contouris and V. De Stefano: *New trade union strategies for new forms of employment*, ETUC, Brussels, 2019, p. 62.
[329] G. Anderson, D. Brodie and J. Riley: *The common law employment relationship: A comparative study*, Cheltenham, Edward Elgar, 2017, p. 44.
[330] For example, *Afghanistan, Argentina, Armenia, Azerbaijan, Bahrain, Bangladesh, Brazil, Burkina Faso, Bulgaria, Cambodia, Cabo Verde, Central African Republic, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Ecuador, El Salvador, Egypt, Georgia, Guatemala, Guinea Bissau, Honduras, India, Indonesia, Japan, Republic of Korea, Lithuania, Malta, Mauritius, Mexico, Montenegro, Morocco, Myanmar, Namibia, New Zealand, Nicaragua, Norway, Oman, Pakistan, Palau, Panama, Paraguay, Philippines, Poland, Romania, Senegal, Seychelles, Slovakia, Spain, Sudan, Switzerland, Thailand, Trinidad and Tobago, Turkey, United Arab Emirates, United Kingdom, Bolivarian Republic of Venezuela* and *Zimbabwe*.
[331] ILO: Conclusions concerning the employment relationship, 2003, op. cit., para. 1.
[332] For example, *Austria, Gabon, Ghana* and *Mali* (the definition is only given in the guide for the labour inspectorate).
[333] For example, *Algeria* (Act No. 90-11, section 2) and *Ireland*.
[334] Anderson, Brodie and Riley: *The common law employment relationship: A comparative study*, 2017, op. cit., p. 44.

Canada – The courts have held that: "... when there is a certain splitting of the employer's identity in the context of a tripartite relationship, a comprehensive approach has the advantage of allowing for a consideration of which party has the most control over all aspects of the work on the specific facts of each case."[335]

255. In addition, some countries have begun to gradually incorporate, in jurisprudence and even in the legislation, a broader concept of employer in the case of group undertakings and networks of enterprises which recognizes the notion of associated employers or co-employers.

Italy – Act No. 99/2013 amended section 30 of Legislative Decree No. 276/2003 to recognize enterprise networks that are allowed to co-employ workers, in accordance with the engagement rules established in the network contract.[336]

Italy – the Civil Court of Cassation found that: "In the presence of a group of companies, the interference of the parent company in the management of the employment relationship of employees in the companies in the group, which exceeds the role of general management and coordination to which it is entitled with regard to the activities of its subsidiaries, determines that the Board of Directors of the parent company is considered to be an employer, as it is the actual user of the service and the owner of the production organization in which the work has been carried out in a subordinate manner."[337]

256. Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union recognizes the possibility of multiple employers, including the fact that the person or persons ultimately responsible for the execution of the obligations for employers are not party to the employment relationship.[338] Other jurisdictions have addressed this bifurcation of the employer through recognition of the vicarious liability of employers and subcontracting enterprises.

Brazil – The Consolidation of Labour Laws, section 2(2), provides that: "Whenever one or more enterprises, each with its own legal personality, constitute an industrial or commercial group, or for any other economic activity, the principal enterprise and each of the subordinate enterprises shall be jointly and severally liable for the effects of the employment relationship."[339]

[335] *City of Pointe-Claire v. Quebec* [1997] 1 SCR 1015, para. 48.
[336] See also *United States*: the National Labour Relations Board (NLRB) has proposed a regulation establishing the standards for determining joint employer status.
[337] Cassazione Civile, 29 November 2011, No. 25270. See also, European Court of Justice, the "Heineken" case, "*Albron Catering BV v. FNV Bondgenoten and John Roest,* Case No. C-242/09, 21 October 2010.
[338] Article 1(5).
[339] Similarly, for example, *Panama* (Labour Code, sections 88–90).

(b) The traditional binary approach: Employee or self-employed

257. The Recommendation adopts a binary approach to the definition of employee: either the worker is in an employment relationship, or is not. Paragraph 4(a) refers to the need to clearly establish the distinction between employed and self-employed workers. However, current realities are not clear and a range of workers remain in the grey zone between these two categories. The increased occurrence of work outside the traditional employment relationship challenges the validity of a binary distinction between employment and self-employment.

(i) Employee

258. The 2003 ILC Conclusions indicate that the term "*employee*" is "a legal term which refers to a person who is a party to a certain kind of legal relationship which is normally called an employment relationship. The term "*worker*" is a broader term that can be applied to any person who works.[340]

259. The Recommendation, instead of providing a definition, contains guidance on the determination of the employment relationship to which the employee and the employer are parties.

260. The legislation in most countries establishes a definition of "employee", in relation to which the main elements referred to are subordination, the provision of work to another person and the receipt of remuneration in exchange.[341]

> *Germany* – In accordance with section 611a of the Civil Code (BGB):
>
> "An employee is any person who, pursuant to a civil law contract, is expected to perform a working activity ... subject to instructions by a third party on whom the person is personally dependent ...; (a) The right to give instructions can concern the content, performance, time, duration and place of the activity; (b) An employee is any person who cannot essentially determine freely his/her activities and his/her working hours; (c) The degree of personal dependency shall also be determined by the specific nature of the activity in each case."

(ii) Self-employed worker

261. When the factors or indicators required for the establishment of the employment relationship are not present, the worker is often considered to be self-employed. Although normally considered a residual category, in terms of its legal definition, more and more workers are being classified as self-employed, depending on the work arrangement.[342]

262. The increase in self-employment rates in certain countries is a response to the desire of workers for more autonomy and the development of self-entrepreneurship, or to a contracting labour market. Platform work has also affected the increase in self-employment.[343] Self-employed workers fall within the category of workers, and as such are entitled to all the fundamental principles and rights at work, even though in many cases these rights (particularly freedom of association, collective bargaining and non-discrimination) are not recognized for them, as noted by Committee of Experts and the Committee on Freedom of Association (see chapter VI). In some countries, self-employed workers enjoy certain labour rights, for example in relation to occupational safety and health[344] or social protection.

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[340] ILO, Conclusions concerning the employment relationship, 2003, op. cit., para. 1.
[341] See, for example, *Burkina Faso* (Labour Code, section 2).
[342] Some trade unions such as the CGT RA from *Argentina* refer to the tendency to foster self-employment relationships over the dependent one.
[343] C. Williams and F. Lapeyre: "Dependent self-employment: Trends, challenges and policy responses in the EU", Employment Working Paper No. 228, ILO, Geneva, 2017, p. 43.
[344] For example, *Belgium* (Social Criminal Code, sections 43–49 and chs IV and V) and *Italy* (Legislative Decree No. 81 of 2008).

263. Self-employed workers are normally excluded from the coverage of labour legislation, and no definition of this category is therefore normally set out in national labour legislation.[345] In their reports, some countries indicate that the condition of being self-employed is deduced from the absence of elements characterizing employees.[346]

264. If a worker is not considered to be an employee, is not integrated in a business or where he or she assumes personal business risks, she or he is generally considered to be self-employed.[347] As a residual category, the self-employed are engaged in a vast range of heterogeneous economic activities. In the end, it is the role of the courts to determine whether or not a specific economic activity in itself is to be considered as being carried out within an employment relationship. For instance, many circumstances that would be considered as self-employment could, following closer scrutiny, be considered as constituting an employment relationship. The fact of working for only one client, with the consequent economic dependency, has been assimilated to subordination. The provision of services to a multiplicity of clients or customers has not been considered, in some limited cases, as an indicator of independence, for example in the case of domestic workers, carers or nurses.[348] Similarly, ownership of tools, materials, and even the workplace, as already seen, does not exclude qualification as an employee.[349]

265. In case of doubt, lack of clarity or the absence of legal provisions, responsibility for the determination of the employment status of workers lies with the judiciary or specific institutions established at national level for this purpose.[350]

266. Self-employed workers are sometimes covered by specific laws or regulations.[351] However, in an increasing number of countries, a definition of self-employed workers is established in labour or employment law,[352] although they are more commonly defined in the civil code,[353] commercial code,[354] or social security,[355] tax[356] or health insurance[357] regulations.

> *Colombia* – Section 34 of the Substantive Labour Code defines independent contractors (the self-employed) as "natural or legal persons who contract the execution of one or several tasks or the rendering of services for the benefit of third parties, for a determined price, assuming all the risks, to carry them out with their own means and with freedom and technical and managerial autonomy".

[345] For example, *Canada*, *New Zealand* and *Seychelles*.
[346] For example, *Burkina Faso*.
[347] Contouris and De Stefano: *New trade union strategies for new forms of employment*, 2019, op. cit., p. 34.
[348] For example *France* (Labour Code, section L7231-1 C-trav).
[349] Contouris and De Stefano: *New trade union strategies for new forms of employment*, 2019, op. cit., p. 35.
[350] For example, the Government of *Canada* indicates in its report that the Canadian Association of Administrators of Labour Legislation (CAALL) had recently discussed the issue of the status of workers as independent contractors or as employees.
[351] For example, *Morocco* (Act No. 114-13 on self-entrepreneurship) and *Spain* (Act No. 20/2007 regulating the status of self-employment).
[352] For example, *Colombia* (Substantive Labour Code, section 34), *Lithuania* (Law on Employment, section 5) and *Namibia* (Labour Act 2012).
[353] For example, *Austria* (Civil Code, section 1151) and *Italy* (Civil Code, section 222).
[354] For example, *Germany* (section 84(1)).
[355] For example, *Bulgaria*, *Croatia*, *El Salvador, Gabon, Jamaica, Latvia, Switzerland, Trinidad and Tobago, Turkey, United Arab Emirates* and *United Kingdom*.
[356] For example, *Armenia* (Law on taxation privileges of persons, section 1) and *Slovakia* (Act No. 595/2003).
[357] For example, *Costa Rica*.

(c) Third categories? Dependent self-employed workers or other categories

267. A grey zone has always existed between employed and self-employed workers. However, recent changes in the organization of work, together with technological developments, has resulted in an expansion of this grey zone.

268. In 1998, the main objective of the ILC was to address the categories left out of the protections provided by the law.[358] In 2003, such workers were described as those "who perform work or provide services to other persons within the legal framework of a civil or commercial contract, but who in fact are dependent on or integrated into the firm for which they perform the work or provide the service in question".[359] However, in 2006, the Conference addressed the scope of the employment relationship as a whole, instead of addressing only specific categories of unprotected workers. As a result, the Recommendation adopted the binary approach that workers may be either employees or self-employed (Paragraph 4(a)).

269. Although not covered by labour law, the systems in some countries have progressively recognized some level of protection for certain categories of workers who do not fall squarely under the concepts of employee or self-employed worker and are commonly designated as "dependent self-employed" or "economically dependent" workers. Although formally self-employed, and not therefore covered by labour law, they remain economically dependent on a single principal client/employer for their source of income. In this intermediate situation, they retain more or less discretion concerning the manner and timing of the performance of their work, but are economically dependent on the payment of fees or wages. This is a form of self-employment in which the worker performs services for a person or business under a contract that is different from a contract of employment, depends on one or a small number of clients for income and receives instruction concerning how the work is to be performed.

The CTA Autónoma from *Argentina* and the FNV and CNV from the *Netherlands* refer to the need to address the difficulties in establishing a difference between dependent and self-employed workers. The FNV and CNV expressly indicated that they refuse that a third category of workers between employees and employers be created. Either the person is a real entrepreneur with capacity to negotiate and the means to insure him or herself, or he or she is unable to negotiate, depends on one or more clients and thus should be considered an employee.

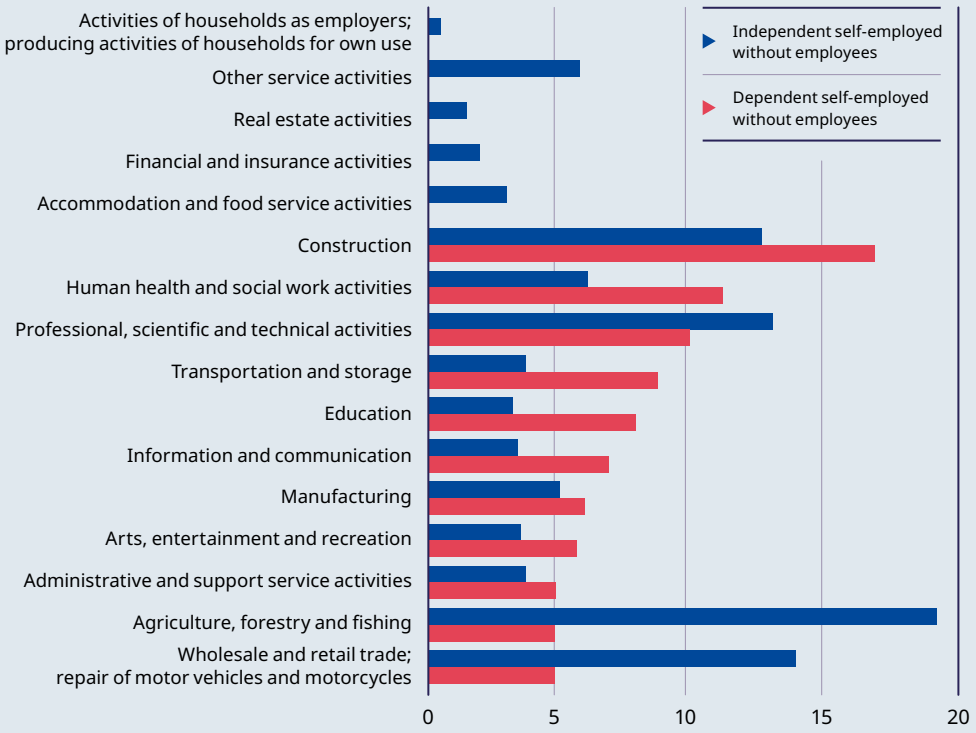
The NZCTU from *New Zealand* supports the review in the country of the situation of dependent contractors.

[358] During the 1998 ILC discussion on contract labour, many countries expressed opposition to the creation of this third category, in which workers have diminished protection. During the 2000 Meeting of Experts, dependent self-employed workers were described as autonomous workers who continue to provide services on a relatively continuous basis to one or a small number of persons, on whom they depend for their work and livelihood. This concept covers situations which fall between the two established concepts of subordinate employment and independent self-employment.

[359] ILO: *The scope of the employment relationship*, Report V, 2003, op. cit., p. 6.

Figure 2.4

Self-employed persons by professional status and economic activity EU-28, 2017 (percentage of professional status)



Source: Eurostat (Ifso_17csna).

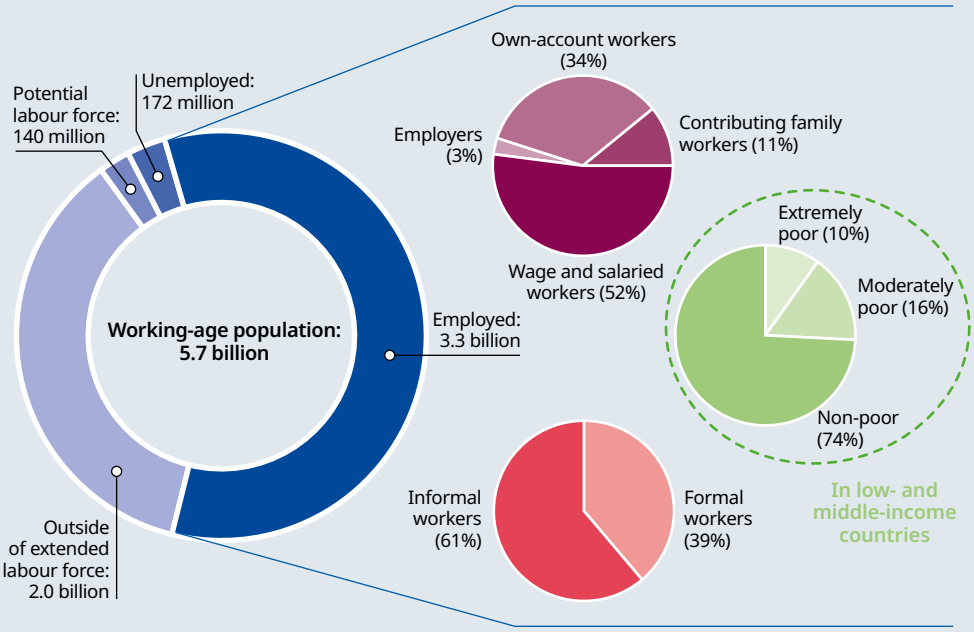
270. In various European countries,[360] at least some labour protections have been extended to dependent self-employed workers, although the level of protection and even the definition of "dependent self-employment" varies between countries. Some jurisdictions focus on economic dependency,[361] while others give precedence to the role of the worker in the employer's business.[362] In the European Union, dependent self-employment includes persons classified as self-employed who do not meet one or more of the following criteria: they have more than one client; they have the authority to hire staff; and/or they have the authority to make important strategic decisions about how to run the business. The objective is to safeguard the legal status of economically dependent and vulnerable self-employed workers who remain in the grey zone between employed and self-employed workers.[363]

271. It is important to highlight that these new measures appear not to have succeeded in breaking the binary division between employment and self-employment. Dependent self-employed workers are referred generally as a subgroup of the self-employed. Measures have been adopted in certain countries such as *Austria*, *Germany*, *Italy*, *Ireland*, *Spain* and the *United Kingdom* establishing this category of workers. However, they are not necessarily equal. The main characteristic is that labour and social protection has been extended beyond employment. They all fit the "modified binary divide" model.

[360] For example, *Austria, Germany, Italy, Ireland, Spain* and *United Kingdom*.
[361] For example, *Austria*, *Germany* and *Spain*.
[362] For example, *Italy*.
[363] Commission of the European Communities: *Green Paper: Modernising labour law to meet the challenges of the 21st century*, COM(2006) 708 final, Brussels, 2006.

Figure 2.5

Snapshot of the global labour market, 2018



Source: World Employment and Social Outlook: Trends 2019.

Some examples of dependent self-employment

Germany – Section 12a (1) of the Act on Collective Agreements states the following:

"The provisions of this Act shall apply mutatis mutandis

1. For persons who are economically dependent and comparable to an employee in their need of social protection (employee-like persons) if they work for other persons on the basis of service or work contracts, render the owed services personally and essentially without the cooperation of employees, and

(a) work predominantly for one person, or

(b) they are entitled to an average of more than half of a person's remuneration for their total gainful employment; (...),

2. For the persons referred to in point 1, for whom the employee-like persons work, as well as for the legal relationships established between them and the employee-like persons by service or work contracts [civil law contracts]." This "employee-like persons" *(arbeitnehmerahnliche Personen)*[364] have also the right to 24 days paid annual leave every year, occupational safety and health and protection against discrimination.[365]

[364] According to the German courts, "*arbeitnehmeranähnliche Personen*" are economically but not personally dependent (Federal Court of Labour, 15 November 1991).

[365] The Committee notes that this issue presents considerable challenges with respect to antitrust law and the right to collective bargaining of independent contractors particularly taking into account the ECJ decision in *FNV Kunsten Informatie en Media v. Staat der Nederlanden*.

Canada – The Labour Relations Act, 1995 defines the dependent contractor as: a person who performs work or services for another person for compensation or reward on such terms and conditions that the dependent contractor is in a position of economic dependence.[366]

Ireland – The Competition (Amendment) Act of 2017, section 15D, introduces two categories of workers over and above "employees", one of which is the "fully dependent self-employed worker", who is an individual: "(a) who performs services for another person (whether or not the person for whom the service is being performed is also an employer of employees) under a contract (whether express or implied, and if express, whether orally or in writing), and (b) whose main income in respect of the performance of such services under contract is derived from not more than 2 persons".

Italy – "*Parasubordinazione*" was addressed by section 409(3) of the Code of Civil Procedure, as amended by Act No. 533 of 1973, which applies to workers who collaborate with a principal client under a continuous, coordinated and predominantly personal relationship, even if subordinate by nature. They were granted access to the labour courts and (minimum) pension/social security coverage by the "Dini reform" of 1995. The main characteristics of *parasubordination* are: (i) continuity of the relationship; (ii) coordination between the worker and the client; and (iii) the predominantly personal provision of labour. Legislative Decree No. 81 of 2015, section 2, applies the characteristics of the subordinate work relationship to collaborative relationships in which the work performed is exclusively personal, continuous and the arrangements for its performance are organized by the client also in terms of the time and place of the work. Some differences with self-employment subsist between the *parasubordinatti* and the self-employed, as the former have access to the labour courts and are subject to higher social security contributions.

Spain – Act No. 2007/20, section 11, defines "economically dependent self-employed workers" (*trabajadores autónomos económicamente dependientes* – TRADE) as workers who: (a) perform an economic or professional activity in return for payment in a regular, personal, direct and predominant manner for an individual or organization, called the client; and (b) whose income is derived for at least 75 per cent from the client. They have the right to collective bargaining, but not the right to strike, and are entitled to annual leave.

United Kingdom – The category of "worker" is an intermediate category between "employee" and "self-employed". Workers are entitled to certain employment rights, including: the national minimum wage; protection against unlawful deductions from wages; the statutory minimum level of paid holiday; the statutory minimum length of rest breaks; to not work more than 48 hours on average per week, or to opt out of this right if they choose; protection against unlawful discrimination; protection for whistleblowing (reporting wrongdoing in the workplace); and to not be treated less favourably if they work part time. They may also be entitled to statutory sick pay, statutory maternity pay, statutory paternity pay, statutory adoption pay and shared parental pay.[367]

[366] Although there has been some departure from previous case law in this respect. See in this regard: *McKee v. Reid's Heritage Homes Limited* [2009] ONCA 916 and *Thurston v. Ontario (Children's Lawyer)* [2019] ONCA 640.
[367] See, in this regard, HM Revenue and Customs (HMRC): "Employment status".

(d) Statistical concepts[368]

272. International labour standards do not establish common definitions of employee, employer or self-employed worker. For statistical purposes, however, the ICLS has periodically adopted uniform criteria and definitions of these terms to ensure that the statistics collected at the national level are reliable and comparable. These statistical definitions do not replace legal definitions, as their purpose is different. They serve to seize a situation and gather data on the incidence of a phenomenon at the national and international levels. The statistical category is the result of an observation in reality without there being any type of prejudgement regarding the desirability or not of the phenomenon. In contrast, the establishment of a legal category implies attaching to it attributes, rights and responsibilities. ***The Committee encourages governments to take the necessary measures to collect information on the basis of the statistical concepts developed by the ICLS to enable policymakers and the social partners to gain a better understanding of the national and global situation, particularly with respect to dependent contractors, for which data appears to be scarce.***

Resolutions concerning employment status[369]

Employers

Employers are those workers who, working on their own account or with one or a few partners, hold the type of job defined as a "self-employment job", and, in this capacity, on a continuous basis (including the reference period) have engaged one or more persons to work for them in their business as "employee(s)". The meaning of "engage on continuous basis" is to be determined by national circumstances, in a way which is consistent with the definition of "employees with stable contracts".

Employees and employed workers

Employees are those workers who hold the type of job defined as "paid employment jobs". Employees with stable contracts are those "employees" who have had, and continue to have, an explicit (written or oral) or implicit contract of employment, or a succession of such contracts, with the same employer on a continuous basis. "On a continuous basis" implies a period of employment which is longer than a specified minimum determined according to national circumstances. (If interruptions are allowed in this minimum period, their maximum duration should also be determined according to national circumstances.) Regular employees are those "employees with stable contracts" for whom the employing organization is responsible for payment of relevant taxes and social security contributions and/or where the contractual relationship is subject to national labour legislation.

Self-employed workers

Self-employment jobs are those jobs where the remuneration is directly dependent upon the profits (or the potential for profits) derived from the goods or services produced (where own consumption is considered to be part of the profits). The incumbents make the operational decisions affecting the enterprise, or delegate such decisions while retaining responsibility for the welfare of the enterprise. (In this context "enterprise" includes one-person operations).

[368] The Committee recalls in this regard the relevance of the Labour Statistics Convention, 1985 (No. 160).
[369] ILO: Resolution concerning the International Classification of Status in Employment, 15th ICLS, Geneva, 1993.

Resolution concerning statistics on work relationships[370]

The Resolution classifies work according to the type of economic risk and type of authority. The classification based on the type of economic risk establishes a dichotomy between employment for pay and employment for profit which is analogous to the traditional distinction between paid employment and self-employment. Workers in employment for profit are assimilated to self-employed workers, who include independent workers in household market enterprises, dependent contractors and contributing family workers.

Dependent contractors

Dependent contractors are workers with contractual arrangements of a commercial nature (but not a contract of employment) to provide goods or services for or through another economic unit. They are not employees of that economic unit, but are dependent on that unit for organization and execution of the work, income, or for access to the market. They are workers employed for profit, who are dependent on another entity that exercises control over their productive activities and directly benefits from the work performed by them. (a) Their dependency may be operational (organization of the work) and/or economic (control over access to the market, price for the goods, or services or access to raw materials or capital items. ... (c) The activity of the dependent contractor would potentially be at risk in the event of termination of the contractual relationship with that economic unit. Dependent contractors are employed for profit and paid by way of a commercial transaction. They are therefore usually responsible for arranging their own social insurance and other social contributions...

[370] ILO: Resolution concerning statistics on work relationships, 20th ICLS, Geneva 10–19 October 2018 (ICLS/20/2018/Resolution I).

V. Opportunities and challenges in ensuring that legal protection is applicable to all contractual arrangements[371]

273. It was recognized during the preparatory work for the Recommendation that vast categories of workers, despite being in an employment relationship, are not protected. Two important phenomena were observed when the Recommendation was adopted in 2006, and are still relevant. One is the outsourcing of functions within the enterprise (described in some Latin American countries as *deslaboralización*) either to other enterprises or to self-employed workers (with varying degrees of independence). The other is the gradual replacement of the full-time, open-ended, with-one-employer and in the workplace relationship (or standard employment relationship) by other contractual arrangements.[372]

1. Different forms of employment relationships

274. Recommendation No. 198 is silent respecting the various forms of the employment relationship. The only specific contractual arrangement explicitly mentioned is the multiple-party employment relationship. However, as provided for in Paragraph 4(c) and (d), the Recommendation applies to all contractual arrangements in which an employment relationship can be demonstrated, which may range from traditional full-time, open-ended, permanent and one-employer relationships to part-time, fixed-term, intermittent and multi-party relationships, or a combination of the two.[373]

The Bulgarian Industrial Association (BIA) submitted proposals for amendments to the Labour Code for more flexible forms of employment.

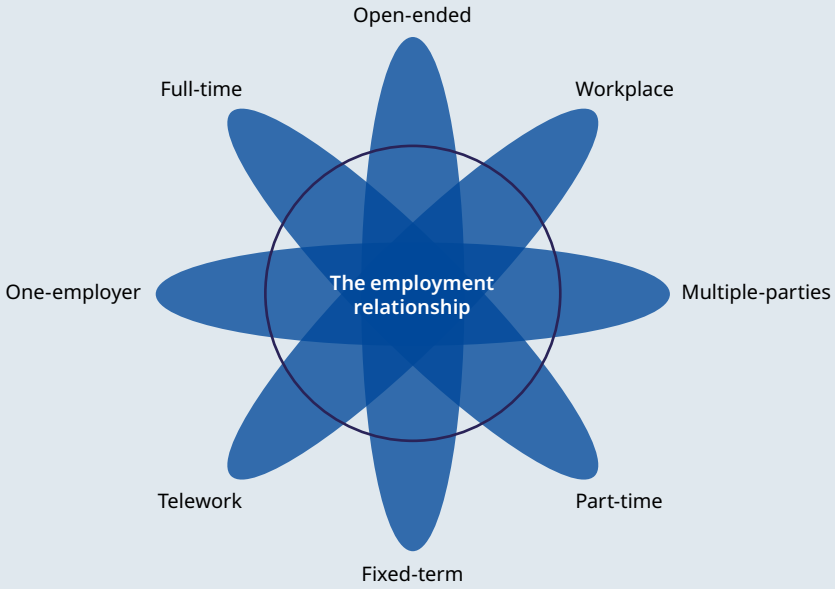
The NZCTU from *New Zealand* supports the adoption of regulation concerning triangular employment relationships.

According to the TUC of the *United Kingdom*, the issue of employment status has long been a problem for workers and their employers. Indeed, the current rules on status are complex and confusing. Partial deregulation of labour markets allowed for a wider use of temporary contracts and agency work, by expanding their scope to jobs that were not temporary in nature and by increasing the allowed duration and number of renewals. Involuntary part-time, including on-call work and zero-hour contracts have also increased. The TUC indicates that thanks to several union-backed cases, the courts and tribunals have rightly concluded that staff employed in the gig economy have many of the features of standard employment relationships and are therefore entitled to rights. These developments are welcome. But this does not mean that the issue of status is finally resolved. The problems relating to employment status are also not limited to the so-called gig economy but can be found across more traditional workplaces and sectors. The TUC believes that all workers, including agency workers, zero-hours contract workers and casual workers, should be entitled to the same floor of rights currently enjoyed by employees. A new single and broad "worker" definition should be adopted in UK employment law.

[371] Measures concerning the protection and equality of opportunity and treatment of all workers in contractual arrangements are addressed in ch. VI.
[372] These contractual arrangements are also known as non-standard forms of employment. See for example in this respect: ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, 2016, op. cit. See also B. Wass, G. van Voss (eds): *Restatement of Labour Law in Europe, Volume II: Atypical employment relationships* (Hart Publishing, UK, 2020).
[373] Home work and telework are examined in ch. IV.

Figure 2.6

Different variations of the employment relationship



Source: ILO

275. These various types of contractual arrangements lie within the framework of the employment relationship and as such should enjoy adequate protection. However, as noted below, differences exist concerning the rights and protections that workers enjoy under different contractual arrangements.[374] Greater attention is required in this regard as full-time, open-ended and permanent employment relationships have been progressively losing ground in relation to other types of employment relationships. Moreover, while other contractual arrangements may fall within the scope of the employment relationship, they may not fulfil the objectives of Convention No. 122 of the promotion of full, productive and freely chosen employment.[375] Workers covered by such arrangements may be compelled to accept these conditions if they are unable to secure traditional employment. They may be underemployed and unable to realize their potential, and often lack access to training and opportunities for advancement. On many occasions, the principle of equality of opportunities and treatment is directly not respected, although many countries have taken measures in this respect as will be seen in chapter VI.

276. As the labour market continues to evolve, and new forms of the organization of work and new work arrangements emerge, there is a blurring of roles that often has the effect of shifting onto the worker risks and responsibilities that were formerly borne by the employer. Examples include digital labour platforms and supply chains.

[374] In this regard, for example, the Termination of Employment Convention, 1982 (No. 158), provides that a Member may exclude from the protection workers engaged under a contract of employment for a specified period of time or a specified task (Article 2(2)(a)).

[375] There are, however, some legal provisions that facilitate moving from temporary to open-ended contracts. For example, *Italy* with the aim of ensuring transparency and proper coordination of employment incentives, section 30 of Legislative Decree No. 150 of 14 September 2015 establishes the national inventory of employment and labour incentives, which includes an incentive to turn a fixed-term contract into an indefinite contract for young people under the age of 35 (under 30 years as from 1 January 2019).

(a) Temporary work[376]

277. In contrast with permanent or open-ended jobs, temporary employment exists when workers are engaged for a specific period of time. These arrangements include fixed-term, project- or task-based contracts, as well as seasonal or casual work, including day labour. Both permanent and fixed-term contracts can be written or oral, formal or informal.

Brazil – The Temporary Work Act was amended by Act No. 13,429 of 31 March 2017 to clarify the scope of temporary contractual arrangements and the procedures for the registration of temporary employment. It also includes other provisions designed to give the parties the necessary legal certainty.

(i) Fixed-term, project or task-based work

278. Fixed-term work is an employment arrangement the purpose of which is implicitly or explicitly tied to conditions such as reaching a particular date, the occurrence of a certain event or the completion of a specific task or project. Fixed-term or temporary employment contracts are not directly regulated by international labour standards. However, the Termination of Employment Convention, 1982 (No. 158), requires adequate safeguards against recourse to fixed-term contracts solely with the aim of avoiding the protection afforded by the Convention.[377]

279. Public and private employers may favour fixed-term contracts for a number of reasons, including to counteract the negative consequences of an economic slowdown. They are also used, for example, to promote the labour market integration of youth. Fixed-term contracts offer enterprises flexibility to respond to changes in demand, replace temporarily absent workers or evaluate newly-hired employees before offering an open-ended contract. They can also serve the interests of workers when they provide opportunities to enter or re-enter the labour market, gain work experience, develop skills and expand social and professional networks. They may provide the opportunity to combine work with education. The incidence of temporary work varies from one region to another.[378]

280. Workers on fixed-term contracts receive fewer protections than those on open-ended (permanent or indefinite) contracts. Fixed-term contracts often have a specific termination date, or are limited to a specific task. Once the work has been completed, the employment relationship ends automatically and the worker is not entitled to severance pay or other indemnities.[379]

281. In practice, fixed-term workers usually earn lower wages for the same type of work than workers with permanent contracts. They may be excluded from employment-related benefits due to their shorter tenure or longer probationary period. They may also lack access to social protection, and particularly unemployment insurance. They have more limited access to on-the-job training, which could exacerbate occupational safety and health risks for them. Finally, workers on fixed-term contracts encounter barriers in union representation and collective bargaining coverage, including due to the fear that voicing their concerns or joining unions may result in their contracts not being renewed.

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[376] The measures taken by governments to address workers' rights in this regard are dealt with in ch. VI.
[377] ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, 2016, op. cit., p. 22.
[378] See, in this respect, M. Aleksynska and A. Muller: "Nothing more permanent than temporary? Understanding fixed-term contracts", INWORK and GOVERNANCE Policy Brief No. 6, ILO, Geneva, 2015.
[379] ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, 2016, op. cit., p. 225.

The FKTU from the *Republic of Korea* indicates that temporary workers are excluded from some of the protections provided for in the law, such as the recently adopted regulations on the reduction of working time.

282. In most countries, fixed-term contracts are regulated by specific legal provisions limiting the maximum period for which they can be used, the number of successive renewals and the requirements justifying their use.

Bolivarian Republic of Venezuela –Section 60 of the Basic Labour Act (LOTTT) provides for the possibility of open-ended contracts, fixed-term contracts or project contracts. Fixed-term contracts may only be extended twice. Section 62 provides that, following these two extensions, the contract shall be considered permanent.

283. In general, workers on project- or task-based contracts are even more precarious than workers on fixed-term contracts, and often have unstable earnings due to contract gaps. Project- or task-based work often gives rise to limited social security contributions, does not provide maternity or sick-leave compensation, and does not entitle workers to unemployment benefit. Such workers also lack representation and are usually not covered by collective agreement. Moreover, they may have little, if any, contact with other employees, further limiting their ability to voice concerns and seek compensation in the event of occupational accidents or illness.[380]

(ii) Casual work

284. The most common features of casual work are that it is: temporary, intermittent or seasonal; detached from the ordinary or permanent business activity of the employer; paid on a daily or hourly basis, or displays a combination of all these characteristics.[381] The 1993 ICLS resolution concerning the International Classification of Status in Employment (ICSE) describes "casual workers" as "workers who have an explicit or implicit contract of employment which is not expected to continue for more than a short period, whose duration is to be determined by national circumstance".

285. Casual work is defined or regulated in the labour legislation of over 40 countries, most of which are developing countries, although casual working arrangements are also regulated in industrialized economies. Enforcement of the provisions governing casual and daily work varies, and in some cases is non-existent.[382]

Cambodia – The Labour Law, section 9, defines casual workers as those "engaged to perform an unstable job" and to "perform a specific work that shall normally be completed within a short period of time; perform work temporarily, intermittently and seasonally".[383]

[380] ibid.
[381] ibid.
[382] ibid., p. 22.
[383] See, in this regard, V. De Stefano: "Casual work beyond casual work in the EU: The underground casualisation of the European workforce – and what to do about it", in *European Labour Law Journal*, 7(3), (2016), pp. 421–441.

Ecuador – The Labour Code, section 17, defines occasional contracts as those with the objective of dealing with emerging or extraordinary needs not related to the employer's usual activity, the duration of which shall not exceed of 30 days in a year. The wage or salary paid for occasional contracts shall be increased by 35 per cent of the hourly amount of the basic wage in the sector.

Egypt – The Labour Code, Book One, defines "casual work" as work not naturally part of the business performed by the employer and which does not require more than six months to be completed.

286. Casual work is often informal and, as such, is very often assumed to be outside the scope of employment regulation.[384] Moreover, it is often used to conceal other forms of more protected employment relationships. Digital Platform work is on many occasions casual work.[385] In some countries, the law explicitly excludes casual workers from the employment relationship. Some national laws do not contain provisions on casual work, but instead cover daily or hourly work, although under conditions that are very similar to those of casual work.[386] Casual work is sometimes regulated in the context of fixed-term contracts,[387] or certain activities.[388]

Brazil – Act No. 8,212 of 1991, section 12, provides that anyone who performs services of an urban or rural nature as defined in the regulations to several enterprises in the absence of an employment relationship shall be registered with the social security system as a casual worker.

287. In other cases, casual work is excluded from certain types of protection provided by law, such as protection against dismissal, rest periods, holiday and leave. It is sometimes possible to compensate leave through the payment of an indemnity.[389] At the regional level, certain instruments explicitly exclude casual workers.[390] Casual work is also considered in some international labour standards.[391] ***The Committee would like to highlight that the use of casual work on a regular basis, to carry on activities that concern the main business of the enterprise contributes is a form of disguised employment relationship and contributes to the natural precariousness of this type of work.***

[384] For example, *Qatar* (Labour Law, section 3), *Syrian Arab Republic* (Labour Law, section 5), *Sudan* (Labour Code, section 3) and *Yemen* (Labour Law, section 3).
[385] See in this regard, for example, V. De Stefano and A. Aloisi, *European legal framework for "digital labour platforms"*, 2018, op. cit., p. 32.
[386] For example, *Gabon* (Labour Code, section 26), *Lebanon* (Labour Code, section 3) and *Saint Lucia* (Labour Code, section 95).
[387] For example, *Central African Republic* (Labour Code, section 94) and *Togo* (Labour Code, section 49).
[388] For example, in *France*, casual workers are allowed in agricultural seasonal work.
[389] For example, *Costa Rica*, (Labour Code, section 156).
[390] For example, Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship and Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC.
[391] The Workmen's Compensation (Accidents) Convention, 1925 (No. 17), and the Sickness Insurance (Industry) Convention, 1927 (No. 24), allow the exclusion of casual workers not employed for the purpose of the employer's trade or business. Convention No. 158 and Recommendation No. 166 also allow the exclusion of casual workers.

(b) Part-time work[392]

288. In part-time work, the normal hours of work are fewer than those of comparable full-time workers. In many countries, there are specific legal thresholds that define part-time compared with full-time work. The great majority of international labour standards do not make a distinction between full-time and part-time workers, although some specifically address their situation.[393]

> *Argentina* – Act No. 20744, section 92 ter, defines part-time contracts as those under which the worker is required to provide services for a certain number of hours a day or a week for less than two thirds of the normal working day. In this case, the remuneration may not be less than the proportional remuneration corresponding to a full-time worker, as established by law or collective agreement, in the same category or position. If the agreed working time exceeds this proportion, the employer must pay the corresponding remuneration of a full-time worker.
>
> 2. Part-time workers may not work additional or overtime hours, except as provided for in section 89 of this Act. Any failure to comply with the daily hours set out in the part-time contract shall give rise to the requirement for the employer to pay the wage for the full working day for the month in which it occurred, without prejudice to other consequences arising out of such non-compliance.
>
> 3. Social security and other contributions collected with them shall be paid in proportion to the worker's remuneration and shall be consolidated in the event of multiple employment. In the latter case, the worker shall choose from among the social schemes to which the contributions are paid the one by which she or he will be covered.
>
> 4. Social security benefits shall be determined by regulation, taking into account the hours worked, the payments and contributions made. The payments and contributions made to the social scheme shall be those corresponding to a full-time worker in the same category as the worker.
>
> 5. Collective agreements shall determine the maximum percentage of part-time workers in each establishment who may work under this type of contract. They may also establish the priority for them to fill full-time vacancies in the company.

289. Part-time workers face discrimination in several ways due to their shorter working hours. They may be excluded from coverage by regulations or collective agreements, based on the number of hours they work or their earnings. They may also be subject to "less than proportional" treatment through the payment of lower wage rates for the same work or work of equal supply. Moreover, social benefit or labour protection provisions may be so designed that they do not take into account the circumstances associated with part-time work. Finally, they may experience discrimination in terms of work schedules, as well as access to training and career development opportunities, and they may encounter difficulties in exercising freedom of association and collective bargaining rights.

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[392] As the Part-Time Work Convention, 1994 (No. 175), exceeds the scope of the present General Survey, the Committee refers to its previous Survey, *Ensuring decent working time for the future* ILC, 107th Session, 2018, Report III(Part B), ch. V. The present General Survey only addresses issues pertaining exclusively to the employment relationship, and the rights and protections ensured to part-time workers deriving from an employment relationship. See also, ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, 2016, op. cit., especially chs 1, 2 and 6.

[393] In addition to Convention No. 175 and its corresponding Recommendation No. 182, the ILO instruments that address part-time work include: the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), the Employment Promotion and Protection against Unemployment Recommendation, 1988 (No. 176), the Nursing Personnel Recommendation, 1977 (No. 157), and the Workers with Family Responsibilities Recommendation, 1981 (No. 165).

The DGB of *Germany* indicates that in early 2019, the time limit for short-term employment exempt from social security contributions was increased indefinitely from two months or 50 days to three months or 70 days (amendment to section 8, para. 1(2) of the Fourth Book of the Social Code (SGB IV)). The change makes it possible for the volume of work without paying social security contributions or receiving social protection to be extended indefinitely. The provision has been implemented on a large scale in enterprises. The DGB opposes this increase in the limit and, as in the case of mini-jobs,[394] advocates transferring workers into regular employment that is subject to mandatory social insurance contributions.

United Kingdom – "Full-time, permanent work as an employee continues to make up the majority of employment … (63.0%). However, there has been a notable shift towards more flexible forms of working overtime, with changes in levels of self-employment and part-time working in particular. Currently, almost 26.2% of employment is in part-time work, compared to 25% in 1997 and self-employment now accounts for around 15.1% of total employment.... Part-time working has generally been on the rise for the past 20 years, hitting a high of 27.6% in 2012 suggesting that reduced hours working may have protected some jobs in the aftermath of the recession.... 12.4% of part-time workers say that they are working part-time because they could not find a full-time job. However, the majority of part-time workers (70.7%) say that they do not want a full-time job. This means that the ability to work part-time has benefitted around 18.4% of the total workforce who do not want a full-time job."[395]

(i) On-call work and zero-hours contracts

290. On-call work is an increasingly common form of part-time work that consists of working-time arrangements involving highly variable and unpredictable hours of work. On-call workers commonly receive very short advance notice of their work schedules, experience broad fluctuations in working hours and have little or no input into the timing of their work. Such arrangements have become increasingly common, particularly in industrialized countries, to enable employers to adapt quickly as business needs change.[396] In Latin America, the concept of "hourly work" *(trabajo por hora)* has a similar meaning to "on-call work".[397]

[394] The German minijob is a specific kind of employment whereby the employee earns no more than €450 per month. The system was developed to allow companies to hire staff without the insurance obligations, making it easier for part-time workers to take on another side job.
[395] *Good Work*, op. cit., pp. 18 and 19.
[396] In some developed countries, businesses use just-in-time scheduling software to determine "optimum staffing" in their stores, based on weather forecasts, sales patterns and other data. When sales are slower than foreseen, managers can send employees home before the end of a scheduled shift, or even cancel shifts at the last minute to reduce costs. In developing countries, although labour laws mainly include provisions on casual work and do not specifically address on-call work, these two forms of employment overlap to a certain extent. In Case C-518/15, the CJUE has recently determined that "Article 2 of Directive 2003/88 as applying to a situation in which a worker is obliged to spend stand-by time at his home, to be available there to his employer and to be able to reach his place of work within 8 minutes. It follows from all the foregoing that the answer to the fourth question is that Article 2 of Directive 2003/88 must be interpreted as meaning that stand-by time which a worker spends at home with the duty to respond to calls from his employer within 8 minutes, very significantly restricting the opportunities for other activities, must be regarded as 'working time'." European Union-Directive on Transparent and Predictable Working Conditions (Directive 2019/1152) contains provision on the need to provide workers with relevant information on working conditions.
[397] For example, *Honduras* has adopted Decree No. 354-2013 on hourly work which was criticized by the CGT Honduras as being a form of precarious work.

According to the DGB of *Germany*, "the largest group of people in precarious work are those with mini-jobs. In 2018, 7.5 million employees were in mini-jobs. Of those, 4.7 million were in only marginal employment, 2.7 million of them in the traditional working age bracket between 25 and 64. With an upper limit of €450 per month, mini-jobs are dead-end jobs with few prospects, low income and often poor working conditions. For example, employees working on call are only schedule to work when it suits the company. In many cases, mini-jobs are abused in order to circumvent the statutory minimum wage. To do so, the working times are increased without any adjustment in wages or a reduced wage adjustment is paid illegally."

291. Zero-hours contracts are similar to on-call work as, under such contracts, employers are not required to offer workers any fixed number of hours of work a day, a week or a month. Many countries report frequent recourse to zero-hours contracts and similar contractual arrangements. Conversely, some countries report that on-call work is prohibited by the national legislation.[398] In other countries, legislation has recently been adopted limiting or prohibiting the use of such contracts.[399]

United Kingdom – The Employment Rights Act of 1996 (ERA 1996), section 27A, provides that:

"(1) In this section 'zero hours contract' means a contract of employment or other worker's contract under which –

(a) the undertaking to do or perform work or services is an undertaking to do so conditionally on the employer making work or services available to the worker, and

(b) there is no certainty that any such work or services will be made available to the worker.

(2) For this purpose, an employer makes work or services available to a worker if the employer requests or requires the worker do the work or perform the services."

According to the TUC of the *United Kingdom*: "In recent years, the issue of the employment status has become more complex, with the growth in zero hours working, agency worker and platform work. It is not uncommon for employers to tell zero hours contract workers and agency workers that they have no rights – even though the legal reality may be very different. Employers also seek to avoid their employment and tax obligations by misclassifying staff as self-employed."

292. A significant challenge with on-call work, particularly with zero-hours contracts, is that the conditions that demonstrate the existence of an employment relationship may not be

[398] For example, *Bulgaria*.

[399] For example, *Ireland*. In *New Zealand*, major changes were introduced in the Employment Relations Act in 2016, prohibiting certain forms of zero-hours contracts and providing that employment contracts or collective agreements must specify, inter alia, the number of guaranteed hours of work, if any. If a number of guaranteed hours has not been set, the worker cannot be required to remain at the employer's disposal and can refuse hours of work that are offered. In addition, the employer cannot cancel shifts unless the contract contains a provision specifying a reasonable notice period and, if notice is not given, reasonable compensation to be paid in the event of cancellation.

readily apparent. For example, the indicator of "mutuality of obligation" between the parties is used by the courts in some countries to demonstrate the existence of a contract of employment. This concept requires "the presence of mutual commitments" to maintain the employment relationship over a period of time. This requirement may prevent a short-term engagement from constituting a contract of employment, in view of the lack of mutuality of obligation as to future performance.[400] The requirement of mutuality of obligation may be difficult to prove for zero-hours workers, as it may be argued that there is no commitment by the employer to provide work and often no commitment by the worker to accept any work proposed.

Ireland – The Employment (Miscellaneous Provisions) Act of 2018 prohibits the use of zero-hours contracts (with exceptions in limited circumstances). It requires minimum payments f0or low-paid employees who are required to be available for work but are not called into work (section 18). It creates a new entitlement to banded hour contracts (section 16), and it requires employers to notify employees in writing of the core terms of employment within five days of starting employment (section 7).

Table 2.1 Zero-hours contracts in Europe[401]

Allowed	Allowed, heavily regulated	Not generally allowed	Not used/rare
Cyprus *Finland* *Ireland* *Malta* *Norway* *Sweden* *United Kingdom*	*Germany* *Italy* *Netherlands* *Slovakia*	*Austria* *Belgium* *Czech Republic* *Estonia* *France* *Lithuania* *Luxembourg*	*Bulgaria* *Croatia* *Denmark* *Hungary* *Poland* *Romania* *Slovenia* *Spain*

Source: A. Adams and J. Prassl.

(c) Multiple-party employment relationships

293. Multiple-party arrangements are the only type of employment arrangement explicitly referred to in the Recommendation (Paragraph 4(c)), as an example of an arrangement other than the standard full-time employment relationship with one employer.

Australia – The Industrial Relations Act 2016, section 398, provides that:

"A person is a private employment agent if the person, in the course of carrying on business and for gain –

(a) offers to find –
  (i) casual, part-time, temporary, permanent or contract work for a person; or
  (ii) a casual, part-time, temporary, permanent or contract worker for a person; or

(b) negotiates the terms of contract work for a model or performer; or

(c) administers a contract for a model or performer and arranges payments under it; or

(d) provides career advice for a model or performer."

[400] Anderson, Brodie and Riley: *The common law employment relationship: A comparative study*, 2017, op. cit., p. 55. *Airfix Footwear Ltd v. Cope* [1978] ICR, 1210, 1214.

[401] A. Adams and J. Prassl: *Zero-hours work in the United Kingdom*, Conditions of Work and Employment Series No. 101, ILO, Geneva, 2018, p. 6.

(i) Temporary agency work

294. In temporary agency work, workers are hired by an entity, the temporary work or employment agency (TWA), for the purposes of assigning them to perform work for a third party (a person or an enterprise) under its control and supervision.[402] In some countries, temporary agency work is referred to as "labour dispatch,"[403] "labour brokerage"[404] or "labour hire".[405]

295. The Private Employment Agencies Convention, 1997 (No. 181), and its corresponding Recommendation, 1997 (No. 188), provide definitions of multiple-party work arrangements. Article 1 of Convention No. 181 defines private employment agencies (PEAs) as providing: (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom; or (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to as the "user enterprise") which assigns their tasks and supervises the execution of these tasks.

Croatia – Chapter 6 of the Labour Act provides that the term "temporary employment agency" means an employer who, based on a worker assignment contract, assigns workers to another employer to work there temporarily.

296. Private employment agencies may therefore match workers to jobs, acting as employment mediators, without becoming a party to the employment relationship.[406] Where so permitted by national law, they may also hire workers to make them available to an individual or corporate user. In such cases, the private employment agency assumes the role of employer. It recruits and employs workers, who perform work for a user enterprise under its supervision and control. Under this second model, the relationships are usually governed by two types of contracts: an employment contract between the temporary work agency and the worker, and another type of contract (either civil or commercial) between the agency and the user enterprise.

The CGTP-IN from *Portugal* indicates that fixed-term and temporary employment contract are commonly used to fill permanent positions rather than to meet the temporary needs of enterprises.

297. The Committee noted in its 2010 General Survey that temporary work agencies are in operation in nearly all countries that permit the establishment of private employment agencies.[407]

298. While there may be no direct employment relationship between temporary agency workers and users, they nevertheless bear certain responsibilities towards the temporary agency under the law of a number of countries, particularly with respect to occupational safety and health, and in cases where there is joint and several liability or subsidiary liability between the agency and the user. The law in many countries provides for such joint or

[402] ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, 2016, op. cit., p. 30.
[403] For example, in Asian countries, such as *China, Republic of Korea* and *Japan*.
[404] For example, in *South Africa*.
[405] For example, *Namibia*.
[406] For a description of the role played by private employment agencies as employment mediators, see ILO: General Survey of 2010, paras 300–302. See also ch. IV on home work.
[407] ibid., para. 305.

subsidiary liability in order to ensure greater protection for agency workers, in recognition of the difficulties that they may face in identifying their true employer and ensuring the protection of their labour rights.[408] The courts in many countries therefore apply a series of factors to determine the allocation of responsibility between temporary work agencies and users, where this is not addressed by the law.[409]In the case of temporary agency work, Convention No. 181 provides guidance concerning allocation of responsibilities with respect to worker's rights in accordance with Paragraph 4(c) and (d) of Recommendation No 198.[410]

> *New Zealand* – An Employment Relations (Triangular Employment) Amendment Bill was introduced to Parliament in February 2018 and is currently under consideration by the Select Committee. The Bill seeks to ensure that employees employed by one employer, but who work under the control and direction of another business or organization, are not deprived of certain rights.

299. Paragraph 23 of the Recommendation explicitly provides that Recommendation No. 198 does not revise the Private Employment Agencies Recommendation, 1997 (No. 188), and that it cannot revise Convention No. 181, recognizing the close link with the issues dealt with in those instruments.

(ii) Subcontracting

300. In the case of subcontracting, the subcontractor does not provide the workers (as a temporary work agency does) but executes work, provides goods or services. Subcontractors normally manage their own workforce, even if they work on the premises of the principal employer. However, the lines between the two are often blurred. Many jurisdictions establish a clear distinction between temporary agency work and subcontracting. Temporary work agencies are generally subject to licensing and, if they are licensed, may be allowed to hire workers, while subcontractors act as service providers. Some trade unions refer to a considerable increase in recourse to subcontracting.[411]

[408] See for example, *Chile* (Labour Code, section 183D); *Costa Rica* (Labour Code, section 399); *Peru* (General Labour Law, section 78), *Spain*, *Hungary* (Labour Code 221), *Greece* (Law 4554/2018).
[409] See for example, *Philippines, Pentagon International Shipping Services, Inc.,* Petitioner, *v. The Court Of Appeals*, *Filomeno V.. Madrio, Luisito G. Rubiano, JDA Inter-Phil. Maritime Services Corporation,* Respondents, GR No. 169158, July 2015. In the case of subcontracting, see also *Colombia*, the decision of the Constitutional Court, T-889/14, and *Spain*, Supreme Tribunal, Chamber 4 on social issues, decision No. 978/2017 of 5 December 2017, appeal for unification of doctrine. See also *India*, *Balwant Rai Saluja and anr. v. Air India Ltd. and ors.*, Civil Appeal Nos 10264-10266, 2013.
[410] Convention No. 181 establishes the requirement in Article 12 for ratifying States to "determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies ... and of user enterprises in relation to: (a) collective bargaining; (b) minimum wages; (c) working time and other working conditions; (d) statutory social security benefits; (e) access to training; (f) protection in the field of occupational safety and health; (g) compensation in case of occupational accidents or diseases; (h) compensation in case of insolvency and protection of workers claims; (i) maternity protection and benefits, and parental protection and benefits".
[411] For example, CGT RA *Argentina*.

Philippines – Order No. 174 of 2017 of the Department of Labor and Employment, section 8, permits contracting and subcontracting when:

"(a) The contractor or subcontractor is engaged in a distinct and independent business and undertakes to perform the job or work on its own responsibility, according to its own manner and method;

(b) The contractor or subcontractor has substantial capital to carry out the job farmed out by the principal on his account, manner and method, investment in the form of tools, equipment, machinery and supervision;

(c) In performing the work farmed out, the contractor or subcontractor is free from the control and/or direction of the principal in all matters connected with the performance of the work except as to the result thereof; and

(d) The Service Agreement ensures compliance with all the rights and benefits for all the employees of the contractor or subcontractor under the labor laws."

(iii) Challenges for workers in multiple-party arrangements

301. Outsourcing has become a widespread practice in the labour market which is used, not only for peripheral activities, but also to carry out the "core activities" of businesses. This is, for example, one of the main features of domestic and global supply chains, in which production is broken up into several stages. At the national level, provisions have been adopted allocating rights and responsibilities. In many countries, there are specific provisions to ensure equality of opportunity and treatment,[412] clarify roles and responsibilities or establish limits for the use of subcontracting.

Argentina – Act No. 20774 on the employment contract, section 136, provides that workers engaged by contractors or intermediaries shall be entitled to require the principal central employer, for whom such contractors or intermediaries provide services or perform work, to withhold from the amount that the latter are to receive and to pay them the amount owed to them by way of remuneration or other entitlements that can be accounted in financial terms arising out of the employment relationship.

Nicaragua – The Labour Code, section 9, provides that: "Contractors, subcontractors and other companies that hire workers to carry out work for the benefit of third parties, with capital, patrimony, equipment, management or other elements of their own, have the character of employers".

302. Some countries have adopted specific provisions prohibiting the use of subcontractors to replace full-time permanent workers.

[412] See, in this regard, ch. VI.

Philippines – Order No. 174 of 2017 of the Department of Labor and Employment, section 5, provides that the rules shall apply to all parties in an arrangement where an employer–employee relationship exists. Section 5 also prohibits labour-only contracting in an arrangement where the contractor or subcontractor does not have investments in the form of tools, equipment, machineries or work premises, and the contractor's or subcontractor's employees recruited and placed are performing activities which are directly related to the main business of the principal, or the contractor or subcontractor does not exercise the right to control over the performance for the work of the employee.

303. Some countries even consider subcontracting to be a form of disguised employment relationship.

Bolivarian Republic of Venezuela – The Basic Labour Act, section 47, provides that: "… outsourcing is understood as the simulation or fraud committed by employers in general, with the purpose of distorting, ignoring or hindering the application of the labour legislation …".

Similarly, section 48 provides that: "Outsourcing is prohibited, and it is therefore prohibited to contract work entities to perform work, services or activities that are permanent within the facilities of the contracting work entity, and directly related to the production process of the contracting company. The hiring of workers through intermediaries to evade the obligations of the labour relationship of the contracting party is also prohibited, as are work entities created by the employer to evade obligations in respect of the workers, and fraudulent contracts or agreements intended to simulate the labour relationship, using the legal forms of civil or commercial law, and any other form of labour simulation or fraud."

The Irish Congress of Trade Unions expresses concern over the practice by some employers that deliberately misclassify workers as self-employed subcontractors to avoid payment of social security, and established pay rates. Furthermore, workers employed with such contracts do not enjoy the same labour protections as directly employed workers.

304. ***The Committee emphasizes in this regard the paramount role of the principle of primacy of facts to determine the true identity of the employer in cases of multiple-parties relationships.***

(d) Homework and telework

305. Labour markets and the relationship between the employer and the employee are being redefined across the globe. As new types of casual jobs and non-standard employment arrangements emerge, in the form of short-term engagements and independent gig-economy contractors, the location of work is becoming less important.[413] Technology and changes in the organization of work have also led to an increasing number of enterprises having recourse to homeworking and teleworking.

[413] R. Home: "Blockchain and the future of work", 2017, Medium.

2. New forms of organization of work and contractual arrangements

(a) Digital or platform work – defining features

306. Many of the elements that characterize other types of employment relationship are present in digital platform work. Platform work offers a good illustration of how the problems and lack of clarity concerning the employment relationship that may exist in more traditional working arrangements, particularly in relation to the roles and responsibilities of the parties, are also present in new forms of work.

307. Platform work is an arrangement that uses a digital platform through which organizations or individuals make contact and engage a third party (an individual or an entity) to provide a product or service in exchange for payment. Many different terms are used to describe the activities mediated through platforms. In addition to "platform work", these include: "gig work", "on-demand work", "work-on-demand via app", "digital labour", "digital (gig) economy", "crowdsourcing", "piecework" and "collaborative consumption".[414]

308. The gender dimension of platform work should also be taken into consideration. It has been found that those who engage in platform work as a main source of income are primarily men, while those who use platform work as a secondary source of income are primarily women.[415]

309. Digital platforms can be divided into two basic types: "web-based platforms", on which work is outsourced through an open call disseminated through the internet platform to a geographically disperse population; and "location-based applications (apps)", which allocate work to individuals located in a limited area.[416] In the case of web-based platforms, work may be performed digitally by people connected with the platform who are located in different places worldwide (crowdwork). In this way, specific, often repetitive, tasks are distributed across the globe to a flexible workforce of indeterminate size. Those providing the work, those who agree to perform the tasks and the platform are often located in three different countries. Accordingly, in the event of a dispute, conflicts of law issues inevitably arise.[417]

310. In location-based or work-on-demand platforms, jobs are advertised online, but are performed locally. As a general rule, payment for work performed through work-on-demand platforms is centralized. The worker, the client-user and the platform are normally located in the same jurisdiction. The platform intermediary normally assumes greater responsibilities in the selection, supervision and discipline of the workers. However, there is no uniform model for platforms and differences between both types of platform may be blurred. In certain platforms, the management of workers and the evaluation of their performance are carried out through algorithms that enable client-users to rate individual workers.[418] The main features of platform work include:[419]

- paid work is organized through platforms, normally paid on a piecework basis;
- three parties are involved: the platform, the client-user and the worker;
- the work involves the performance of specific tasks;

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[414] R. Florisson and I. Mandl: "Platform work: Types and implications for work and employment: Literature review", Eurofound, 2018, p. 1.

[415] See in this regard, A. Adams and J. Berg: "When Home Affects Pay: An Analysis of the Gender Pay Gap among Crowdworkers, Oxford, 2017.

[416] J. Berg, M. Furrer, E. Harmon, U. Rani and M. Six Silberman: *Digital labour platforms and the future of work: Towards decent work in the online world*, ILO, Geneva, 2018, p. 4.

[417] See in this regard, M. Cherry, *Regulatory options for conflicts of law and jurisdictional issues in the on-demand economy*, ILO, Conditions of Work and employment series, No. 106, 2019, p. 8 ff.: see also, V. De Stefano and A. Aloisi, *European legal framework for "digital labour platforms"*, 2018, op. cit.

[418] For example, Uber rating system: How is my rating determined?, www.help.uber.com.

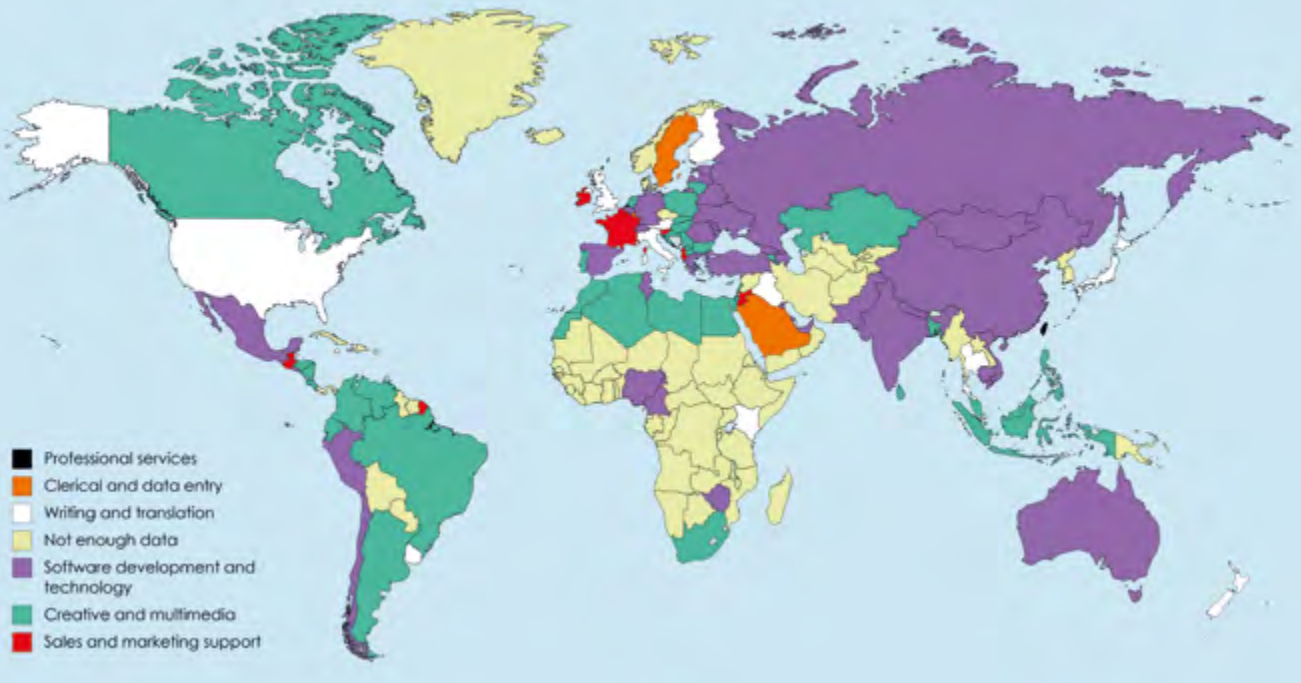
[419] Florisson and Mandl: "Platform work: Types and implications for work and employment: Literature review", 2018, op. cit., p. 1; and A. Stewart and J. Stanford: "Regulating work in the gig economy: What are the options?" in *Economic and Labour Relations Review*, 28(3), 2017, pp. 420–437.

- there is no guarantee of a minimum number of hours or of continued employment;
- intermediation and management are carried out by the internet platform;
- it is a form of outsourcing;
- jobs are broken down into time-bound "tasks";
- on-demand services are provided and work schedules are irregular or non-existent;
- workers provide some or all of the equipment required, such as transport (bicycle, car), computer and internet; and
- workers perform the task outside a specific workplace.

311. Platform work is a globalized phenomenon with impacts that vary across regions.

Figure 2.7

Top occupations by country



Source: Online Labour Index, 1–6 July 2017.

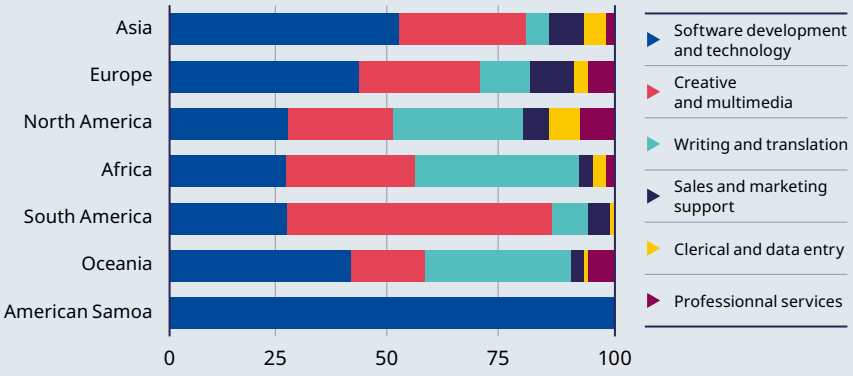
(b) Advantages and disadvantages of digital or platform work

312. From a business perspective, platform work enables enterprises to significantly reduce costs by outsourcing certain (core or accessory) activities.[420] The employer is therefore able to adapt rapidly to specific needs and demands, by choosing from a vast pool of workers, without having to establish a long-term employment relationship with any of them. Moreover, digital platforms ensure 24-hour access to labour.

[420] B. Waas, W. Liebman, A. Lyubarsky and K. Katsutoshi: *Crowdwork: A comparative law perspective*, Bund-Verlag GmbH, Frankfurt, 2017, p. 17.

Figure 2.8

Worker distribution within regions (percentage)



Source: Online Labour Index.

313. From the employment policy perspective, platform work may constitute a welcome source of employment for various reasons. It can facilitate access to the labour market for specific groups, such as young persons, workers with family responsibilities, workers with disabilities, or other groups facing difficulties in securing traditional full-time employment. Platform work can also benefit workers who require flexibility in terms of when, where and how much they wish to work.

314. However, many workers engage in platform work through necessity. Platform work is often perceived as "dead-end" work that does not lead to lasting employment. Many platform workers are subject to excessive working hours in a highly competitive context that pushes down wages. There are also increased occupational safety and health problems in some sectors, associated in many cases with a lack of training. In addition, platform workers often spend many unpaid hours searching for work.[421] The level of remuneration varies depending on the sector and type of platform work. Platform workers may also suffer wage penalties, such as fees for cross-currency payments. Moreover, due to the fragmented nature of platform work, their social and professional isolation creates barriers that make it difficult for them to join organizations representing their interests.

315. However, this may be changing, as some trade unions of digital workers have been established, and systems are also being developed that allow workers to evaluate platforms. Furthermore, new technologies are helping workers, particularly platform workers, to unionize.[422]

Argentina – The Platform Personnel Association (Asociación de Personal de Plataformas – APP) is a first level union with its registration pending with the National Directorate of Trade Union Associations.

Germany – IG Metall is open to self-employed members since 1 January 2016, with a focus on crowd- and platform-based workers. As of April 2017, self-employed members of IG Metall may receive insurance for legal costs up to €100,000 in cases of legal disputes with clients.

[421] Florisson and Mandl: "Platform work: Types and implications for work and employment: Literature review", 2018, op. cit., p. 68.
[422] H. Johnston and C. Land-Kazlauskas: *Organizing on-demand: Representation, voice, and collective bargaining in the gig economy*, ILO: Conditions of Work and Employment Series 94, 2019; and L. Stiffler, Can technology fuel the next labor movement? Union leaders pursue new innovations to empower workers, GeekWire, July 2016.

Italy – The "Charter of the fundamental rights of digital workers in the urban context" was signed in May 2018 by the Mayor of Bologna and the Councillor for Labour, the Riders Union Bologna, the CGIL, the CISL and the UIL, and the "Sgnam" and "Mymenu" brands of the new company, Meal SRL.

United Kingdom – The London-based Couriers and Logistics Branch of the Independent Workers of Great Britain is doing pioneering work defending the rights of workers in the British courier and logistics industry, including self-employed workers for major courier companies and food delivery companies such as Deliveroo and UberEats.

United States – In 2015, the State of Washington passed an ordinance that allowed drivers working for companies such as Lyft and Uber to unionize. The law faced challenges from multiple parties. In *Chamber of Commerce v. Seattle*, plaintiffs argued that the ordinance was pre-empted by federal antitrust law and the NLRA. The district court granted the city's motion to dismiss, holding that the state-action immunity doctrine exempted the ordinance from pre-emption by federal antitrust law. Plaintiffs appealed, and on 11 May 2018, the Ninth Circuit reversed and remanded the federal antitrust claims to the district court for further proceedings. The ruling followed the filing of an amicus brief by the Federal Trade Commission and DOJ that argued that the ordinance would violate federal law against price fixing. Additionally, a California court found that food-ordering service Grubhub correctly classified a delivery driver as an independent contractor. Since federal law does not give independent contractors a right to unionize, these cases have important implications for these workers' ability to unionize.

(c) Determining employment status in digital platforms

316. One of the most important challenges posed by platform work is the determination of the employment status of those working through digital platforms. While, in most cases, workers sign contracts as though they were independent contractors, examination of the conditions under which work is provided makes it possible to identify certain indicators of the existence of an employment relationship.

The FNV and CNV of the *Netherlands* and the Single Central Organization of *Chile* indicate that platform work is unregulated at national level. The status of workers and employers is not clear. The Socio-economic Council is currently studying the issue. As stated by the CTA Autónoma of *Argentina*, these workers are often classified as self-employed.

317. For example, even though the worker bears most of the risk, the platform exercises some degree of supervision and control, determining precisely when, how and where work must be performed.[423] In addition, the use of ratings systems or automatic review mechanisms to monitor and evaluate work performance is in contradiction with the presumed self-employed status of platform workers.[424]

[423] Although this has been denied in some Spanish decisions already examined under the legal presumption of the existence of an employment relationship in this chapter.
[424] V. De Stefano: "Labour is not a technology: Reasserting the Declaration of Philadelphia in times of platform-work and gig-economy", IUSLabor 2/2017, p. 6.

318. The nature of platform work varies from one case to the other. Platform work is in some instances a form of temporary work that could be equated to casual work or zero-hours contracts.[425] It may also be considered as a triangular or multiple-party employment relationship. The relationship between the worker and the intermediary, the platform, is governed by a contract, the nature of which is fairly difficult to determine.

319. Interesting measures have been adopted throughout the world to address digital platform work.

> *Germany* – Eight European crowdsourcing platforms, the German Crowdsourcing Association (Deutscher Crowdsourcing Verband), and the German Metalworkers' Union (IG Metall) announced the establishment of a joint Ombuds Office. The Ombuds Office will be tasked with resolving disputes between crowdworkers, clients, and crowdsourcing platforms and with overseeing enforcement of the "Crowdsourcing Code of Conduct" adopted by the platforms. The Code of Conduct was signed by the German crowdsourcing platforms Testbirds, clickworker, Streetspotr, Crowd Guru, AppJobber, content.de, and Shopscout and by the British platform Bugfinders. In total the eight platforms counted approximately 2 million worker registrations between them. Online labour platforms voluntarily agree to hold themselves to minimum standards with respect to working conditions and relations between workers, clients, and platforms. The goal of the Code of Conduct is to codify the existing standards in Germany with respect to fair dealings with crowdworkers and to ensure that these standards are maintained as the market for crowdwork grows.
>
> The Ombuds Office board represents platforms and workers equally and its members are volunteers.[426]

320. There are certain examples of legal provisions that specifically regulate platform work, and in particular which address the employment status of platform workers. Indeed, in some cases, avoiding regulation appears to be the rationale for the development of digital labour platforms.[427]

321. Some countries have recently adopted measures to improve control over platforms and provide further clarity concerning taxation.

> *Belgium* – The "Croo" Act requires platforms to be approved by the federal authority in order to be recognized as collaborative economy platforms. Below the threshold of €5,100, incomes are subject to an effective tax rate of 10 per cent and social legislation does not apply.

[425] ibid., p. 8.
[426] The Ombuds Office presented its report of the activities for 2017–18 in January 2019. In 2017 (November–December), seven cases were submitted to the Ombuds Office. In five of these cases, the mediation of the Ombuds Office panel produced consensual solutions. In the remaining two cases, the process was not pursued further by the complainant. In 2018, 23 cases were submitted to the Ombuds Office. In 15 of the 23 cases, the mediation of the Ombuds Office panel produced consensual solutions. In three of the 23 cases, the Ombuds Office panel issued a decision. Three of the 23 cases are still in mediation. The Ombuds Office mediates disputes that may arise between potentially opposed interests in the course of work on crowdsourcing/crowdworking platforms. The Ombuds Office seeks to find consensual solutions that are accepted by all parties. The Ombuds Office mediates individual cases in which the disputed sums are often relatively small, as well as complaints of a "fundamental" nature, for example regarding a platform's work processes or technical problems. In these cases, the Ombuds Office seeks to develop solutions in the common interests of both workers and platforms. In several cases, for example, the Ombuds Office recommended that a platform establish a worker advisory board to which workers could make suggestions regarding the platform's work processes and functionality.
[427] Stewart and Stanford: "Regulating work in the gig economy: What are the options?" 2017, op. cit.

The CSC, the FGTB and the CGSLB of *Belgium* refer to the adoption of a specific category of worker "the semi-agoral worker" that is midway between the employment relationship and voluntary work. According to the trade unions, this legal form is applicable to platform work. This has been widely criticized because in principle workers do not enjoy collective bargaining.

Portugal – Act No. 45/2018 addressing employment conditions in platforms in the transport sector provides that: drivers must have an employment relationship with the platform; platforms are considered transport operators, not intermediation services; drivers are required to obtain a special certificate; and there is 5 per cent tax on the net profits of platforms to cover administrative costs.

322. Some countries have amended their legislation to increase the level of protection afforded to platform workers.

France – The Labour Act of 2016 added provisions concerning the social responsibility of platform enterprises. The provisions apply to "independent" workers who provide services through a platform and relate to social security and access to training. If the platform engages workers to provide a service, it must also take responsibility for occupational liability and vocational training.[428]

323. In other countries, legislation is at the draft stage.[429] Some provisions go as far as suggesting that a specific category of workers should be created, while in other countries existing regulations are being examined to determine their applicability to platform workers.

324. The legal void in some cases, and the lack of clarity in others, has given rise to a growing number of judicial rulings on the employment status of platform workers. The judicial rulings available to date are mainly based on the elements and criteria described in the present General Survey to establish the employment status of workers, including:[430]

- there must be, at a minimum, an obligation for the worker to perform work when it is demanded by the employer;[431]
- the applicant worked in the respondent's business as part of that business;[432]
- the company "exercised power and control over the manner in which the services were rendered, particularly accepting or rejecting requests. Respect of these requirements was essential for the worker to receive good ratings and remain a "collaborator" with the company and retain authorization to access the platform";[433]

[428] *France* (Labour Code, sections L7341-1 and L7342-1 and 2).
[429] For example, *Chile* (Bill on labour modernization for family reconciliation, section 8 bis, platform work).
[430] For a description of the most relevant judicial decisions, see: M.L. Rodriguez Fernández: *Plataformas digitales y mercado de trabajo*, Informes y Estudios Empleo No. 56, Ministry of Employment and Social Security, Madrid, 2019; and I. Beltrán de Heredia Ruiz: "Una mirada crítica a las relaciones laborales" Blog de Derecho del Trabajo y de la Seguridad Social.
[431] *Australia*, Fair Work Ombudsman, decision of 7 June 2019 concerning Uber.
[432] *Australia*, *Joshua Klooger v. Foodora Australia Pty Ltd*: 16 November 2018.
[433] *Brazil*, *Rodrigo L. Silva Ferreira v. Uber*, 33rd Vara Do Trabalho de Belo Horizonte, 13 February 2017. Similarly, *Spain,* STSJ de Gijón (sala de lo social, sección 1), ruling No. 61/2019, Case No. 724/2018.

- the customer and the delivery route are assigned to the driver through an algorithm;[434]
- the contract is drawn up completely and unilaterally by the enterprise and is not negotiable, thereby demonstrating the existence of a relationship of authority between the company and the worker. The digital system also imposes the worker's schedule;[435] and
- the dominant feature of the worker's contract with the enterprise is the obligation of personal performance. The facility to appoint a substitute is limited by the fact that the substitute must come from the ranks of the same enterprise.[436]

325. Other jurisdictions have considered platform workers as independent contractors on the basis of such criteria as:

- the right to reject requests means that workers are "free to make money elsewhere as independent contractors pursing their own entrepreneurial opportunities in search of profit";[437] and
- the so-called ABC criteria for differentiating the self-employed from employees, according to which a worker is considered an independent contractor when: (a) the worker is free from the control and direction of the company in relation to the execution of the work, both under the contract for the execution of such work and in fact; (b) the employee performs work that is not part of the contracting entity's normal business activity; and (c) the employee is habitually engaged in an established independent commercial activity, occupation or business of the same nature as the work performed for the contracting entity.[438]

326. ***The Committee notes the very diverse criteria used to determine the status of platform workers, and the varied outcomes. It considers that this new form of work calls for a thorough examination of the real conditions of such workers, which is not always readily apparent.***

327. ***The Committee considers that the common characteristic of the use of technological means to distribute tasks to an indeterminate workforce cannot justify these activities being considered forms of work separate from the rest of the labour market.***[439] ***In any case, the Committee recalls that the full range of fundamental principles and rights at work are applicable to platform workers in the same way as to all other workers, irrespective of their employment status.***

(d) Supply chains

328. Supply chains may be considered an extreme example of the extension of multiple-party employment relationships. They are complex, diverse, fragmented, dynamic and evolving organizational structures which involve sometimes the cross-border organization of the activities required to produce goods or services and bring them to consumers, through inputs and various phases of development, production and delivery. Indeed, global supply chains depend on foreign direct investment (FDI) by multinational enterprises (MNEs) which participate either through wholly-owned subsidiaries or joint ventures in which the MNE has direct responsibility for the employment relationship. They also include the increasingly predominant model of international sourcing in which the engagement of lead firms is defined by the terms and conditions of contractual or sometimes tacit arrangements with suppliers and subcontracted

[434] *France*, Court of Appeal of Paris, 2nd Chamber, 10 January 2019, S N° RG 18/08357 - N° Portalis, 35L7-V-B7C-B6AZK.
[435] *Netherlands*, *FNV v. Deliveroo*, decision of 15 January 2019.
[436] *United Kingdom*, Supreme Court, 13 June 2018, *Pimlico Plumbers Ltd & anor v. Smith*.
[437] *United States*, *Ali Razak, Kenan Sabani and Khaldoun Cherdoud v. Uber Technologies, Inc.*, and Gegan, LLC, District Court, Pennsylvania Case 2:16-cv-00573-MMB Document 124, April 2018.
[438] *United States*: Supreme Court of California, *Dynamex Operations West, Inc. v. Charles Lee et al.*, April 2018. In this case, the court stated that workers will be considered as dependent employers unless the ABC criteria are met.
[439] See in this regard, for example, I. Beltran de Heredia Ruiz: *Work in the platform economy: Arguments for an employment relationship* (Barcelona, Huygens Editorial, 2019) p. 11 ff.

firms for specific goods, inputs and services.[440] The growth of international outsourcing through global supply chains has significant employment and governance implications. The Committee notes that while wholly-owned subsidiaries of MNEs have direct responsibility for employees, in global supply chains coordinated by a lead firm, where production is outsourced and subcontracted without ownership, the buyer is not the legal employer and has no formal responsibility for the employment relationship in the supplying company or further subcontracted firms, despite the significant impact of the lead firm – positive or negative – on conditions of work. The Committee highlights that this presents challenges for the promotion of decent work in global supply chains.[441]

329. Supply chains create opportunities for formal employment relationships that are compliant with international labour standards. This may be done through mechanisms of responsible business conduct or through less stringent MNE codes of conduct.[442] Labour force flexibility can also be increased through the use of third party labour intermediaries or labour contractors/brokers. This is associated with multiple-party employment relationships, in which the legal employer is separate from the entity for which the work is carried out. While the use of various types of employment relationships and contractual arrangements have contributed to increasing labour market participation, there is a risk that the workers concerned more frequently lack labour protection in law and/or practice. The use of different types of employment relationships presents significant regulatory, compliance and enforcement challenges. Employers may choose not to comply with protective labour legislation owing to the precarious nature of their orders. The labour inspectorate may face difficulties in enforcing the application of laws, especially in work outsourced to homeworkers or informal labour contractors, or in the challenging conditions of rural work or work beyond borders. The workers concerned may also experience difficulties in joining trade unions or being covered by collective bargaining agreements.[443]

330. In the ILC general discussion on global supply chains in 2016, it was noted that there are clear governance gaps that need to be addressed,[444] and recognized that the use of non-standard forms of employment and of intermediaries is common in this form of the organization of work.

331. The conclusions of the discussion call on governments to "[s]et out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations, and the fundamental principles and rights at work for all workers, including migrant workers, homeworkers, workers in non-standard forms of employment (other modalities of contractual arrangements) and workers in" export processing zones, and to "[i]mplement measures to improve working conditions for all workers, including in global supply chains, in the areas of wages, working time and occupational safety and health, and ensure that non-standard forms of employment meet the legitimate needs of workers and employers and are not used to undermine labour rights and decent work. Such measures should go hand in hand with increasing productivity".[445]

The NZCTU from *New Zealand* urged the Government to consider the monitoring and regulation of employment standards within international supply chains.

[440] ILO: *Decent work in global supply chains*, Report IV, ILC, 105th Session, Geneva, 2016, paras 4 and 5.
[441] ibid., para. 24.
[442] See in this respect ch. VIII.
[443] ibid., paras 67 and 68. See also chs III and IV.
[444] ibid., para. 132.
[445] ILO: Conclusions concerning decent work in global supply chains, ILC, 105th Session, Geneva, 2016, para. 16.

VI. The establishment of an appropriate mechanism to monitor labour market developments

332. The third part of Recommendation No. 198 focuses on the establishment of a mechanism to monitor developments in the labour market. The national policy should include an appropriate mechanism, or make use of an existing one, to monitor and review developments in the labour market and in the organization of work, and to formulate advice on the adoption and implementation of measures concerning the employment relationship (Paragraph 19). This mechanism should be given the responsibility of suggesting measures to fine-tune the relevant legal provisions or their application, as well as economic and social initiatives to correct dysfunctional trends, including initiatives to ensure that the necessary statistics are collected on a regular and systematic basis.[446] Social dialogue is crucial in this respect, and the most representative workers' and employers' organizations should therefore be represented in the mechanism and consulted regularly (Paragraph 20). For this purpose, information and statistical data should be collected and research undertaken on changes in the patterns and structure of work (Paragraph 21).

333. The Recommendation does not contain precise indications on the nature and scope of the mechanism, which should be defined at the national level. But it must be consistent with the possibilities and specific conditions of each country, and may be a new or existing mechanism.[447]

334. ***The Committee suggests that consideration is given to the possibility of the mechanism for the review and monitoring of labour market developments relating to the "employment relationship" being embedded in the wider employment policy reviews in the framework of Convention No. 122. These reviews are intended to ensure the effective implementation of the national employment policy to promote full, productive and freely chosen employment. The lack of clarity and concealment of employment relationships have an impact on the quality and quantity of work, the taxes collected and social security systems, as well as on economic and social policies as a whole.***

335. Several countries indicate that they are currently examining labour market developments to assess whether the existing legislation remains appropriate and to reflect on the best way of regulating new forms of work and the organization of work. In some cases, the monitoring is undertaken within the framework of existing institutions.[448] Other governments indicate that, in the context of social dialogue institutions, consultations are held on existing legislation and its adequacy to respond to labour market needs and developments.[449] Some trade unions indicate that this policy for the revision has not been adopted.[450]

336. Other governments indicate that they are in the process of establishing specific institutions responsible for monitoring the labour market and determining future trends. The issue of the future of work and the impact of new technologies and new forms of work on the labour market have triggered in-depth reflection processes in many countries around the world. These processes are being carried out in the framework of already existing mechanisms or new ad hoc commissions.[451]

[446] See Casale: "The employment relationship: A general introduction", 2011, op. cit., p. 30.
[447] ILO: *The employment relationship*, Report V(2A), 2006, op. cit., p. 204.
[448] For example, *Afghanistan* (High Labour Council), *Benin* (National Labour Advisory Council), *Canada* (Canadian Association of Administrators of Labour Legislation), *Chile* (National Labour Observatory) and *Sweden* (Swedish Agency for Work Environment Expertise, which has been commissioned to compile research and develop in-depth knowledge reviews of future working life).
[449] For example, *Algeria, China* and *Oman*.
[450] For example, the CGT RA from *Argentina*.
[451] For example, *Brazil* (Committee for Advanced Research on the Future of Work) and *Sweden*.

Denmark – The Government, the social partners and representatives of youth have established the Disruption Council to examine more flexible ways of working, and to review social security benefits for self-employed and temporary workers.[452]

337. In some countries, specific studies have been commissioned on the future of work and new forms of work.[453]

Business NZ of *New Zealand* considers that while monitoring the labour market developments has its merits, it is not clear whether engagement with the social partners on the issue will address its rigidities.

The NZCTU from *New Zealand* indicates that it is not aware of any formal mechanism to monitor developments in the labour market related to the employment relationship.

338. Paragraph 22 of the Recommendation calls for the establishment of specific national mechanisms to ensure that employment relationships can be effectively identified within the framework of the transnational provision of services, and the development of systematic contacts with other States for this purpose. This provision is therefore particularly relevant to borderless digital work. While many governments indicate that there are no specific measures in this regard, others have provided information on anti-dumping measures or controls on the illegal employment of cross-border workers.[454] Some refer to their migration policies.[455]

339. The Committee addresses the general role of law and judicial decisions with respect to Recommendation No. 198 in chapter VII.

[452] See, in this respect, Danish Ministry of Employment: *Prepared for the future of work: Follow-up on the Danish Disruption Council*, Copenhagen, 2019; and T.L. Poulsen: "5 ways Denmark is preparing for the future of work", *Global Agenda,* 21 November 2018.
[453] For example, *Switzerland*.
[454] For example, *Austria* (Anti-Wage and Social Dumping Act, No. 44/2016).
[455] The Committee further refers to its General Survey of 2016, paras 473–475.

VII. Conclusions

340. *As demonstrated by the examples referred to in previous sections, the courts and other forms of adjudication authority play a substantive role in the determination of the existence of an employment relationship, depending on the circumstances of each case. The law always leaves space for interpretation and clarification.*

341. *There is a growing debate about the role of the employment relationship as the most efficient channel for ensuring labour protection. Many forms of substantive protection are ensured for all workers. Irrespective of where and for whom they work, many other forms of protection are being progressively extended to workers beyond the employment relationship. The Committee highlights at the same time that the employment relationship can take a variety of forms, ranging from the most formal and clearly established employment relationship to more looser, evolving and less clear relationships.*

342. *The Committee considers that even if there are certain considerations suggesting the need for reviewing the employment relationship to recognize the evolution of the world of work and go beyond the factors and indicators referred to above, the Committee observes that an examination of the latest court rulings on platform work and the status of workers shows that the courts are continuing to base their decisions on conditions and indicators as examined above.*

343. *The Committee considers that the employment relationship is a mechanism that offers clarity to the labour market in relation to the attribution of the respective rights and responsibilities of workers, employers and third contracting parties. The Committee highlights in this respect the importance of taking measures to effectively remove incentives to disguise the employment relationship. Moreover, the Committee emphasizes that any evolution of the employment relationship should not result in a reduction of the scope of application of the labour law or in a reduction of workers' labour protection.*

Contents

Woman from Chisinau (Moldova)
selling canned food on a marketplace. © ILO

3

Facilitating the transition from the informal to the formal economy

I. Introduction to Recommendation No. 204

344. The first time that the term "informal sector" was used in the ILO was in 1972, in the framework of a strategy to increase productive employment in Kenya.[456] The term was intended to describe the activities of those who, although working very hard, were working poor and were not recognized, recorded, protected or regulated by the public authorities. In 1991, the ILC discussed the Director-General's report *The dilemma of the informal sector*,[457] the objective of which was to generate discussion among constituents on the problems to which the informal economy gives rise.

345. In 2002, the ILC held a general discussion based on a report on *Decent work and the informal economy*.[458] In its Conclusions, the ILC set out a new framework for action. It called on governments to develop and implement a range of policies and programmes and on the social partners to advocate for and extend representation to workers in the informal economy. It called on the ILO to undertake a series of actions to better address the needs of workers and economic units in the informal economy. It also emphasized the critical need for an integrated and comprehensive approach, grounded on the four pillars of decent work (employment generation, rights, social dialogue, and social protection), to meet the objective of moving out of informality. The Conclusions reflected consensus on some main elements, as well as the building blocks that would later constitute the future ILO instrument on informality. The consensus included recognition of the diversity of situations existing in the informal economy and the fact that the workers and economic units concerned experience specific disadvantages and decent work deficits. It further pointed to a comprehensive range of actions to address decent work and to facilitate the transition to formality.[459] The 2002 ILC perspective probably provides a unique integrated framework at the global level that recognizes and promotes the twin objectives of preserving and expanding the employment, income generation, poverty reduction potential of the informal economy, while extending social protection to the vast majority of the population working in the informal economy.

346. In 2007, the ILO organized an Interregional Symposium on the Informal Economy: Enabling Transition to Formalization. The overall objective of the Symposium was to exchange experience on the different approaches developed to facilitate the transition to formality and to assist ILO constituents develop knowledge on emerging issues and innovative approaches to addressing the informal economy across the four pillars of the ILO Decent Work Agenda.[460] At the same time, the Symposium identified knowledge and implementation gaps.

347. In March 2013, the Governing Body accepted the proposal to include on the Agenda of the ILC in 2014 a standard-setting item on "Facilitating gradual transitions from the informal economy to the formal economy" with a view to the adoption of a Recommendation. A Tripartite Meeting of Experts on Facilitating Transitions from the Informal Economy to the Formal Economy was held in September 2013 as part of the preparatory work for the future instrument.[461]

348. After a first discussion in 2014, the Transition from the Informal to the Formal Economy Recommendation was adopted in June 2015. While informality has already been addressed by

[456] ILO: *Employment, incomes and equality: A strategy for increasing productive employment in Kenya*, Geneva, 1972.
[457] ILO: *The dilemma of the informal sector*, Report of the Director-General (Part I), ILC, 78th Session, Geneva, 1991.
[458] ILO: *Decent work and the informal economy*, Report VI, ILC, 90th Session, Geneva, 2002.
[459] ILO: Conclusions concerning decent work and the informal economy, ILC, 90th Session, Geneva, 2002, especially paras 20, 31, 36 and 37.
[460] ILO: *The informal economy: Enabling transition to formalization*, Report of the Tripartite Interregional Symposium on the Informal Economy, Geneva, 27–29 November 2007, Background document, p. 7.
[461] ILO: *Report of the Director-General: Sixth Supplementary Report: Report of the Tripartite Meeting of Experts on Facilitating Transitions from the Informal Economy to the Formal Economy*, Governing Body, 319th Session, October 2013, GB.319/INS/14/6.

international labour standards,[462] Recommendation No. 204 is the first standard specifically dedicated to the subject, its different facets and the challenges that it poses to society.

349. The resolution adopted with the Recommendation invites governments, employers and workers jointly to give full effect to Recommendation No. 204. It also invites the Governing Body to request regular reports from member States under article 19 of the ILO Constitution as part of the existing reporting mechanisms, in particular General Surveys, and to review the progress made in the implementation of the Recommendation.[463] The decision by the Governing Body to include examination of Recommendation No. 204 in the present General Survey gives effect to this proposal.

350. The Committee further notes the follow-up strategy adopted by the Governing Body in October 2015 for the period 2016–21to give effect to the resolution. The strategy for action is based on four inter-related components: a promotional awareness-raising and advocacy campaign; capacity-building of tripartite constituents; knowledge development and dissemination; and international cooperation and partnerships.[464] Informality and the encouragement of formalization is reflected in the 2030 Agenda, and particularly target 8.3: "Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro, small and medium-sized enterprises, including through access to financial services".[465]

[462] See the following instruments: Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169); Human Resources Development Convention, 1975 (No. 142); Human Resources Development Recommendation, 2004 (No. 195), Labour Administration Convention, 1978 (No. 150); Employment Service Convention, 1948 (No. 88); Private Employment Agencies Convention, 1997 (No. 181); Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187); Employment Relationship Recommendation, 2006 (No. 198); Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189); Promotion of Cooperatives Recommendation, 2002 (No. 193); HIV and AIDS Recommendation, 2010 (No. 200); Social Protection Floors Recommendation, 2012 (No. 202); Employment and Decent Work and Peace and Resilience Recommendation, 2017 (No 205); Violence and Harassment Convention, 2019 (No. 190); Violence and Harassment Recommendation, 2019 (No. 206).

[463] ILO: Resolution concerning efforts to facilitate the transition from the informal to the informal economy, ILC, 104th Session, Geneva, 2015.

[464] ILO: *Formalization of the informal economy: Follow-up to the resolution concerning efforts to facilitate the transition from the informal to the formal economy*, Governing Body, 325th Session, October 2015, GB.325/POL/1/2, para. 14.

[465] According to the latest report on progress towards the Sustainable Development Goals of 2019, "Informal employment, which has an impact on the adequacy of earnings, occupational safety and health and working conditions, remains pervasive: in three quarters of countries with data on the subject, more than half of all persons employed in non-agriculture sectors are in informal employment." UN. E/2019/68.

II. Rationale behind the transition from the informal to the formal economy and scope of application

1. Scope of application: Differentiating between the informal sector, informal employment and the informal economy

351. Informal sector enterprises were defined by the 15th ICLS in 1993 on the basis of the following criteria: they are private unincorporated enterprises (i.e. enterprises owned by individuals or households that are not constituted as separate legal entities independently of their owners, and for which no complete accounts are available that would permit a financial separation of the production activities of the enterprise from the other activities of its owner(s)).[466] In 2003, the 17th ICLS adopted the term informal economy instead of that of informal sector as being more precise in reflecting the expanding and increasingly diverse group of workers and enterprises in both rural and urban areas operating informally.[467] The ILO has since defined employment in the informal economy as comprising two components: (i) employment in the informal sector as defined by the 15th ICLS, and (ii) other forms of informal employment (i.e. informal employment outside the informal sector).[468] These resolutions cover both agricultural and non-agricultural activities. However, the 1993 resolution provides in paragraph 16 that "for practical reasons, the scope of the informal sector may be limited to household enterprises engaged in non-agricultural activities".[469] Paragraph 7 of the 2003 Guidelines concerning the statistical definition of informal employment provides that "countries which exclude agricultural activities from the scope of their informal sector statistics should develop suitable definitions of informal jobs in agriculture, especially with respect to jobs held by own-account workers, employers and members of producers' cooperatives.[470]

352. The "informal economy" is therefore broader than the "informal sector" and captures all the relevant components of informality, including both production relationships (the informal sector) and employment relationships (informal employment). It accordingly covers situations of informality in all types of economic units, whether formal, informal or households.

[466] For more on informal employment, see, R. Hussmanns: "Statistical definition of informal employment: Guidelines endorsed by the Seventeenth International Conference of Labour Statisticians (2003)", paper prepared for the 7th Meeting of the Expert Group on Informal Sector Statistics (Delhi Group), (New Delhi, 2-4 February 2004), ILO, Geneva.
[467] ILO: Report I: General report, Seventeenth International Conference of Labour Statisticians, ch. 3, "Employment statistics", Geneva, 2003.
[468] Another challenge is that countries use different operational criteria for defining informal employment and employment in the informal sector, or if they do use the same criteria may combine them differently. This has an impact on the data outputs and the possibilities for their international comparison. In addition, many countries that measure informal employment exclude agriculture from the scope of informality because the criteria provided in the current definition cannot be easily applied to such activities. See, in this regard, Revision of the 15th ICLS resolution concerning statistics of employment in the informal sector and the 17th ICLS guidelines regarding the statistical definition of informal employment, ICLS/20/2018/Room document 17, 20th ICLS, Geneva, 1–19 October 2018.
[469] ILO: Resolution concerning statistics of employment in the informal sector, 15th ICLS, 1993.
[470] ILO: Guidelines concerning a statistical definition of informal employment, 17th ICLS, 2003.

(a) Material scope of application: The informal economy

Paragraph 2 of the Recommendation: Informal economy

For the purposes of this Recommendation, the term "informal economy":

(a) refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements; and

(b) does not cover illicit activities, in particular the provision of services or the production, sale, possession or use of goods forbidden by law, including the illicit production and trafficking of drugs, the illicit manufacturing of and trafficking in firearms, trafficking in persons, and money laundering, as defined in the relevant international treaties.

353. Paragraph 2 is not a definition, but rather a description of what the term "informal economy" covers and what it does not cover for the purposes of the Recommendation. It is also an acknowledgement of the broad diversity that the informal economy entails in terms of workers, enterprises and entrepreneurs. The term "activities" goes beyond employment and refers to employment, enterprises and production. For example, informality includes the partial failure to declare wages for work performed by employees in formal employment.

354. The material scope of the concept of the informal economy, as indicated in Paragraph 2 of the Recommendation, has an impact on laws on labour, social security, taxes and commerce, and their effective implementation. Under informal arrangements, there is a failure to report economic activities and employees, and to comply with fiscal and social security obligations, including the payment of taxes on production and sales, and social security contributions. Moreover, as economic units are not recognized, and therefore not protected, they cannot conclude contracts to safeguard their intellectual and physical property. Moreover, the employment relationship is not recognized, leaving workers without the rights and benefits to which they would otherwise be entitled to (in relation to wages, hours of work, holidays, pensions, etc.).

355. Paragraph 2(b) provides a non-exhaustive list of illicit activities that are not covered by the Recommendation, and specifies that such activities are those provided for in the relevant international treaties. No reference is made in this respect to activities that are classified as illicit under the terms of national legislation since, in view of differences in national legislation, this might have resulted in the exclusion from coverage by the Recommendation of various categories of workers and businesses, depending on the specific provisions of national law.

(i) Definition of economic units

356. The concept of the informal economy refers to workers and "economic units". Moreover, under the terms of Paragraph 4, the Recommendation applies to all workers and economic units in the informal economy. Paragraph 3 of the Recommendation indicates that the concept of "economic units" in the informal economy includes:

"(a) units that employ hired labour;

(b) units that are owned by individuals working on their own account, either alone or with the help of contributing family workers; and

(c) cooperatives and social and solidarity economy units."

357. During the preparatory work, the encompassing term of "economic units" was adopted so as to include other actors not covered by the conventional understanding of the term "enterprises". It normally includes production units, such as households employing domestic workers, which are not generally considered as enterprises. It also includes production activities undertaken in unidentifiable premises without a fixed location, such as "street vendors".[471] However, to make it clear that enterprises are also covered, the phrase "including enterprises, entrepreneurs and households" was added.

(b) Personal scope of application: Definition of informal employment

Paragraphs 4 and 5 of the Recommendation

4. This Recommendation applies to all workers and economic units – including enterprises, entrepreneurs and households – in the informal economy, in particular:

(a) those in the informal economy who own and operate economic units, including:
  (i) own-account workers;
  (ii) employers; and
  (iii) members of cooperatives and of social and solidarity economy units;

(b) contributing family workers, irrespective of whether they work in economic units in the formal or informal economy;

(c) employees holding informal jobs in or for formal enterprises, or in or for economic units in the informal economy, including but not limited to those in subcontracting and in supply chains, or as paid domestic workers employed by households; and

(d) workers in unrecognized or unregulated employment relationships.

5. Informal work may be found across all sectors of the economy, in both public and private spaces.

358. Paragraphs 4 and 5 envisage a very broad personal scope of application that covers all workers and all economic units, including enterprises, entrepreneurs and households, in the informal economy in all economic sectors, in both public and private spaces.[472] On the basis of the 1993 and 2003 statistical definitions, Paragraph 4 enumerates the categories of workers and economic units to which the Recommendation applies.

- *Employers, own-account workers and members of cooperatives and social solidarity economy units* (subparagraph (a)) are considered to be informal when their economic units are in the informal sector.[473]
- *Contributing family workers* (subparagraph (b)) are employed informally by definition, irrespective of whether they work in formal or informal sector enterprises.[474] They include, for example, family assistants in home work.[475]

[471] ILO: *Provisional Record No. 11(Rev.)*, Report of the Committee on Transitioning from the Informal Economy, ILC, 103rd Session, Geneva, 2014, para. 137.
[472] It should be noted that the original version of the "chapeau" of Paragraph 4 (number 6 at that time), proposed during the preparatory work, read as follows: "For the purposes of this Recommendation, 'informal employment' includes:" This wording reflected the statistical definition of "informal employment". However, the Workers' group considered that "informal employment" should not be used in the chapeau, as definitions adopted for the purpose of gathering statistics are not always appropriate to constructing definitions for the purpose of establishing labour standards. The chapeau of Paragraph 4 was thus changed to its current text. The focus was changed from a definition of "'informal employment" to an enumeration of the personal scope of application of the Recommendation. However, the subparagraphs remained unchanged. ILO: *The transition from the informal to the formal economy*, Report V(1), ILC, 104th Session, Geneva, 2015, p. 23.
[473] On the difference between the informal sector and the informal economy, see ILO: Resolution concerning statistics of employment in the informal sector, 15th ICLS, Geneva, 1993.
[474] ILO: Guidelines concerning a statistical definition of informal employment, 17th ICLS, Geneva, 2003, para. 3(2)(iii).
[475] See ch. IV.

- *Employees holding informal jobs either in or for formal enterprises or for economic units in the informal economy* (subparagraph (c)) are considered to be in informal employment on the basis of their employment relationship. They may be working informally in or for formal enterprises (some of these instances are referred to as "undeclared work", or the "shadow" or "grey" economy) or in informal economic units. To be considered informal, the employment relationship should not be, in law or in practice, subject to national labour legislation, income tax, social protection or entitlement to certain employment benefits (such as advance notice of dismissal, severance pay, paid annual or sick leave). The underpinning reasons may be the non-declaration of their jobs, casual jobs or jobs of a short duration, jobs with hours of work or wages below a specified threshold (for example for the payment of social security contributions) or the absence lack of the application of laws and regulations for statistical purposes. The formal or informal nature of a job held by an employee is determined on the basis of operational criteria, such as whether social security contributions are paid by the employer (on behalf of the employee), and entitlement to paid sick leave and annual leave. Subparagraph (c) explicitly refers to employees in subcontracting and in supply chains, or paid domestic workers employed by households, as the clearest examples of this situation. The Committee considers that homeworkers could also be included in this category.
- *Workers in unrecognized or unregulated employment relationships* (subparagraph (d)). This subparagraph was included at the suggestion of certain Government members on the understanding that a worker who does not have a recognized or regulated employment relationship is, by definition, working in the informal economy.[476] The Office proposed to merge subparagraphs (c) and (d) because workers in unrecognized and unregulated employment relationships are usually considered to be employees holding informal jobs.[477] However, this proposal was not accepted.

359. Subparagraphs (c) and (d) are closely related to the Employment Relationship Recommendation, 2006 (No. 198), and refer in reality to disguised or misclassified employment relationships.

360. Paragraph 5 of the Recommendation specifies that informal work may be carried out either in public or private spaces. The objective is to for the Recommendation to recognize the diversity of workplaces for workers in the informal economy, which include small workshops, private households, markets, streets and other public spaces.[478]

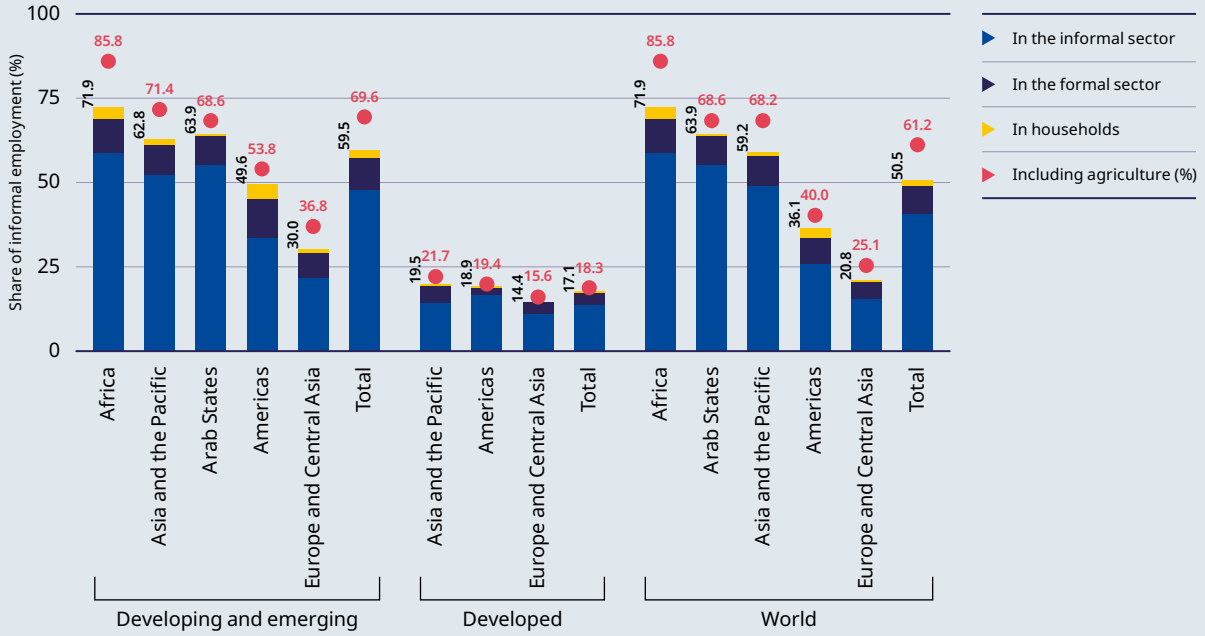
361. Work in the informal economy is often poorly paid, hazardous and insecure. The entrepreneurial spirit that is essential for social and economic development is too often sapped in a struggle for survival. It is therefore essential for the creation of decent work opportunities to be an integral part of local, national, regional and global development strategies.

362. The Committee notes that according to ILO statistics, two billion workers, representing 61.2 per cent of the world's employed population, are in informal employment, 52 per cent in the informal sector, 6.7 per cent in the formal sector and 2.5 per cent in households. Half of the world's employed population work informally in non-agricultural activities. Considering economic units, it is estimated that eight out of ten economic units are part of the informal sector and employ 52 per cent of global employment. Typically, informal economic enterprises are small, often based around families. Informal employment exists in all countries, irrespective of the individual country's level of socio-economic development, but it is far more prevalent in developing countries. The share of informal employment ranges from 18.3 per cent in developed countries to 67.4 per cent in emerging countries and as high as 89.8 per cent in developing countries (figure 3.1).

[476] ILO: *Provisional Record No. 11(Rev.)*, Report of the Committee on Transitioning from the Informal Economy, 2014, op. cit., paras 579–592.
[477] ILO: *The transition from the informal to the formal economy*, Report V(1), 2015, op. cit., p. 8.
[478] ILO: *Transitioning from the informal to the formal economy,* Report V(2), 2014, op. cit., p. 45.

Figure 3.1

Extent and composition of informal employment by region in developing and emerging and developed countries (percentages, 2016)



Source: ILO calculations based on household survey micro datasets

363. The vast majority of workers in Africa (85.8 per cent) relies on the informal economy. Asia and the Pacific region comes next with 68.2 per cent of informal employment on average but 21.7 per cent in developed Asia and the Pacific and 71.4 per cent in developing and emerging countries in the region. The third region the most affected by informal employment is the Americas. Finally, one fourth of all employed people are in informal employment in Europe and Central Asia.

364. In *low-income economies*, contributing family workers, including in farming households and the self-employed in agriculture and petty trading make up the majority of the informal economy. Over 90 per cent of informal employment occurs in informal sector units. In middle-income economies, informal employment in formal enterprises and households is a sizeable share of total informal employment. Such form of informality can result either from non-compliance (e.g. in the form of unregistered salaried work) or from the existence of forms of employment that are unregulated or unprotected (in particular in the context of triangular employment relationships).

365. In *high-income economies* self-employment represents a much smaller share of total employment but includes a significant proportion of disguised self-employment. This concerns employees holding informal jobs in or for formal enterprises, employees who do not have the right to labour benefits or are not covered by social security schemes, and workers for whom part of the activity is not declared (e.g. envelope payments) represent an important manifestation of informal employment. In some countries, atypical (other contractual arrangements different from the standard employment relationship) or disguised forms of employment represent important sources of growth in informal employment in the formal sector.

366. As already noted in chapter I, each ratifying State of Convention No. 122 is required to declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. Recommendation No. 204 also calls for such a policy (Paragraph 14).

367. Many countries treat job quantity and quality as a residual rather than a necessary factor of economic development.[479] When employment policies fail to provide the means for the inclusion of all those who are available for and seeking work, workers are forced to carry out any activities that will provide them with their necessary livelihood, even if such activities are not protected and are normally less productive. Especially in situations of high unemployment, underemployment and poverty, the informal economy offers significant job and income generation potential because of the relative ease of entry and low education, skills, technology and capital requirements. But the jobs created fail to meet the criteria of decent work[480] and pass under the radar of public control. Indeed, the informal economy may trap individuals and enterprises in a spiral of low productivity and poverty.

368. Informality is a persistent phenomenon that affects all countries in the world and which exists across a wide range of sectors, including casualized and precarious work in the formal economy.[481]

2. Addressing the root causes of informality

369. Changes in the world of work, including new forms of work and the organization of work, have intensified the informalization of production and employment relationships.[482] The informal economy evolves and its characteristics change as the world evolves.

370. Workers in the informal economy are very diverse in terms of type of production unit and employment status. Such diversity means that the workers and enterprises concerned face different problems that have to be addressed through a range of policies and measures. Notwithstanding these differences, workers and entrepreneurs in the informal economy share one important characteristic: they are not recognized or protected under the legal and regulatory framework, or do not benefit from its effective implementation. This entails a high degree of vulnerability. They face serious difficulties in organizing effectively, are rarely unionized and thus have no voice to claim their rights. They also have very little (and only informal) access to markets and financial facilities. Moreover, while not all those in the informal economy are poor, there is a strong overlap between informality and poverty. They also lack employment security, including protection against arbitrary dismissal or job loss, income security, career development, recognition of the skills and, most importantly, they face serious occupational health risks.[483]

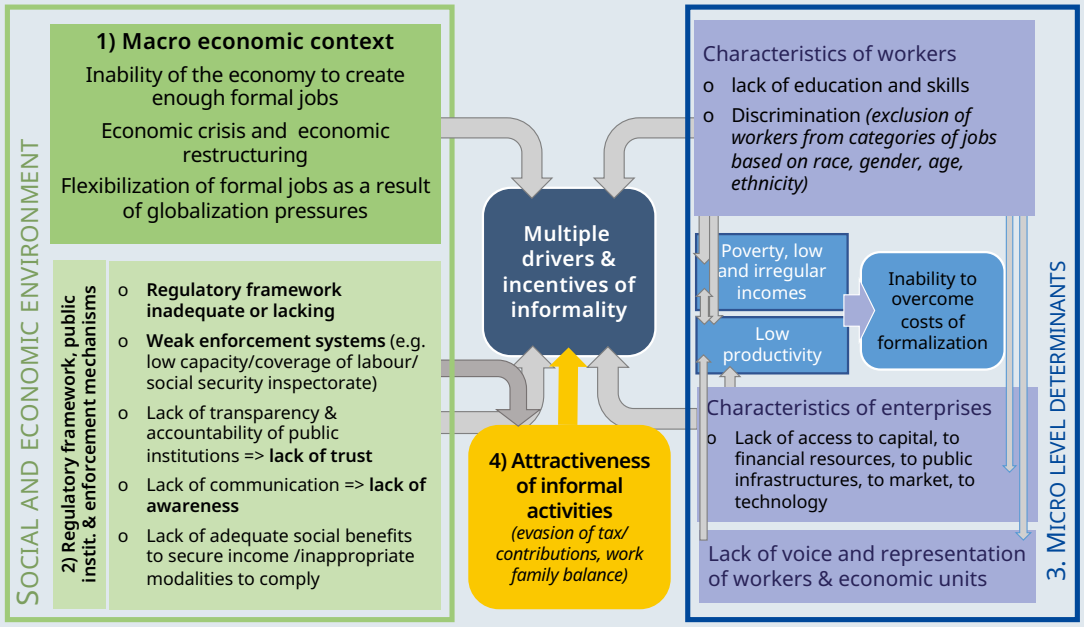
371. As all workers should enjoy rights at work, irrespective of where they work, it is crucial to take the necessary measures to address the negative manifestations of the informal economy, as well as its root causes. These are multifaceted and include: the legal and institutional framework that render it difficult to make the transition to formality; the absence of adequate macroeconomic and employment policies; the lack of strong and effective market and non-market institutions; the absence of equality of opportunity (due, among other reasons, to lack of skills) and persistent discrimination; and the lack of representation and voice. Poor governance is thus a key issue underlying informality.[484] But there are also many other factors.

372. Dealing with these root causes and multi-layered factors is crucial to ensuring a sustainable transition to formality. The negative aspects of work in the informal economy far outweigh its positive aspects. Informal employment provides an opportunity to secure basic survival needs for many people and under some circumstances it provides opportunities for

[479] ILO: Conclusions concerning decent work and the informal economy, 2002, op. cit., para. 14.
[480] ibid., para. 6.
[481] Some governments, such as those of *Austria* and *Denmark*, indicate in their reports that they do not have an informal economy. However, no indication is provided concerning employees holding informal jobs either in or for formal enterprises ("undeclared") work which is an existing practice in Europe.
[482] ILO: *Decent work and the informal economy*, Report VI, 2002, op. cit., p. 2.
[483] ibid., p. 3.
[484] ibid., p. 6; and ILO: *Transitioning from the informal to the formal economy*, Report V(2), ILC, 103rd Session, Geneva, 2014, p. 12.

Figure 3.2

The main drivers of informality



Source: F. Bonnet: Methodological note on national diagnostic of informality, ILO, Geneva, 2019.

flexible jobs with relatively high earnings. At the same time, persons in informal employment obtain no contributory social security from the work relationship and are often exposed to pervasive decent work deficits, working in jobs with low wages and in dangerous working conditions. In order to reduce inequality, poverty and vulnerability, and create the enabling conditions for formalization, it is necessary to associate economic growth with formal job creation, move towards better employment opportunities in the formal economy and improve the conditions of employment in informal activities.[485]

373. As indicated in the Preamble to Recommendation N. 204, the rationale for the transition stems from recognition that the high incidence of the informal economy is a major challenge for the rights of workers, including fundamental principles and rights at work, social protection, decent working conditions, inclusive development and the rule of law. This has a negative impact on the development of sustainable enterprises, public revenues and the scope of action of governments, particularly in the field of economic, social and environmental policy, sound institutions and fair competition in national and international markets. It also affects the living standards of the population and prevents families and economic units from improving productivity and escaping poverty.[486] There is global consensus that inclusive development is not possible unless rights and opportunities are extended to informal economy workers.[487]

374. Moreover, the informal and formal economies operate in a complex environment of linkages. What happens in the informal economy has an impact on the formal economy, and vice versa. There is a "continuum" between the formal and informal economies, within which workers and enterprises coexist and where the most serious decent work deficits are at the bottom end. The informal sector does not exist separately from the formal sector; rather it

[485] ILO: *Transitioning from the informal to the formal economy*, Report V(1), ILC, 103rd Session, Geneva, 2014, para. 30.
[486] ILO: *Decent work and the informal economy*, Report VI, 2002, op. cit., p. 6; and ILO: *Transitioning from the informal to the formal economy*, Report V(2), 2014, op. cit., p. 13.
[487] ILO: *Agenda of the International Labour Conference*, Governing Body, 317th Session, Geneva, March 2013, GB.317/INS/2(Rev.), Appendix I, para. 14.

produces for, trades with, distributes for and provides services to the formal sector.[488] Workers and producers in the informal economy are linked to the global economy in various ways (global production networks, migration, global economic cycles and variations in global commodity and food prices) which affect: the level of vulnerability of economic units and workers in the informal economy; the functioning and capacities of actors in the informal economy; transition paths to formality; and the possibility of the effective monitoring and enforcement of regulations on globalized enterprises operating in different jurisdictions. Informal economy activities, like others, are therefore strongly affected by changes in domestic aggregate demand, reductions in the flow of credit, the downturn in international trade and other dimensions of economic crises.[489]

III. Objectives of the Recommendation

Paragraph 1 of the Recommendation

This Recommendation provides guidance to Members to:

(a) facilitate the transition of workers and economic units from the informal to the formal economy, while respecting workers' fundamental rights and ensuring opportunities for income security, livelihoods and entrepreneurship;

(b) promote the creation, preservation and sustainability of enterprises and decent jobs in the formal economy and the coherence of macroeconomic, employment, social protection and other social policies; and

(c) prevent the informalization of formal economy jobs.

1. Facilitate transitions while protecting rights and livelihoods

375. The use of the term transition places emphasis on the process of advancing towards the goal of formalization to achieve decent work. The Committee has already referred to the progressive mainstreaming of workers and economic units into the formal economy as the ultimate goal, and consistently requests information on the rate of informality at the national level and the measures taken to facilitate the transition to the formal economy. This process takes time and requires sustained economic and social development, resulting from combined measures and policies to achieve full and productive employment and reduce poverty.[490]

CEACR – In its comments under the Employment Convention No. 122 concerning *Fiji*, the Committee noted that, since its inception in 2015, the Micro and Small Business Grant Scheme has assisted 6,622 entrepreneurs in transitioning into the formal economy, in businesses ranging from cash cropping and poultry farming to tailoring and hairdressing. Furthermore, the Ministry of Industry, Trade and Tourism continues to provide business development support services to entrepreneurs. The National Centre for Small Business Enterprise offers mentoring and training in the areas of financial management and sound business practices. Most of the recipients of the grants are women who start businesses in tailoring, canteen services, handicrafts, second-hand clothing and farming.[491]

[488] ILO: *Measuring informality: A statistical manual on the informal sector and informal employment*, Geneva, 2013, para. 1.13.
[489] ILO: *Transitioning from the informal to the formal economy*, Report V(1), 2014, op. cit., para. 24.
[490] ILO: General Survey of 2010, para. 697. See also, CEACR – *Dominican Republic*, C.122, observation, 2017.
[491] CEACR – *Fiji*, C.122 direct request, 2017.

376. It is common to draw a distinction between informality that has its origins in labour, and which relates to people, and informality that has an entrepreneurial origin, and which involves productive activities. Labour informality is associated with low-productivity occupations and with working situations in which workers, voluntarily or involuntarily, do not enjoy their labour and social rights, social security and other legal benefits. In contrast, entrepreneurial informality is related to the processes of the registration and operation of businesses from a productive/commercial viewpoint. The two types of informality are related through the labour market.[492]

377. The conditions for moving from informal to formal arrangements, or for hiring workers formally, should be accessible and attractive to employers and workers. Approaches to formalization should therefore ensure that their respective needs and concerns are addressed; that the transaction and real costs of formality are relatively lower than those of informality; that the benefits of formality are more important than those of informality; and that formal institutions, systems and procedures are trustworthy, transparent and efficient.[493] Governments should endeavour to demonstrate through policies and incentives that the transition to formality can improve working conditions, while helping livelihoods and entrepreneurship to thrive.

378. The Committee recalls the importance of ensuring that transition policies take into account the diversity of each context and the various categories of workers and enterprises affected, while protecting livelihoods and entrepreneurship opportunities, and extending the coverage of fundamental principles at rights at work, which are applicable to all workers, irrespective of the employment relationship or employment status, including workers and entrepreneurs in the informal economy.[494]

379. The importance has also been emphasized of allowing informal economic units to subsist, while assisting them to improve their operational and working conditions, as transition cannot happen overnight.[495] In many cases, these economic units are the only means of subsistence available. Care is therefore needed to ensure that transition does not generate new socio-economic problems resulting from the elimination of enterprises, or increase unemployment, with a resulting loss of income for workers whose only source of livelihood is employment in the informal economy. In this respect, the Recommendation acknowledges the importance of the recognition of existing property, as well as the provision of the means to formalize property rights and access to land (Paragraph 13).

CEACR – In its comments under Convention No. 122 concerning *India*, the Committee noted the Government's indication that enhanced wage earnings had led to a strengthening of the livelihood resource base of the rural poor in India as 72 per cent of the funds utilized were in the form of wages paid to workers. Furthermore, the Ministry of Rural Development had decided to redesign the ongoing Swarnjayanti Gram Swarojgar Yojana (SGSY) programme into the National Rural Livelihood Mission (NRLM) to make it universal in application, focused in approach, and time bound for poverty eradication by 2014–15. The idea was conceived as a cornerstone of the national poverty reduction strategy.[496]

[492] J.M. Salazar-Xirinachs, and J. Chacaltana: *Políticas de formalización en América Latina: Avances y desafíos*, Lima, ILO, 2018, p. 395.
[493] ILO: *Formalizing domestic work*, Geneva, 2016, p. 31.
[494] General Survey of 2010, paras 695–697.
[495] ILO: *Synthesis report of the National Dialogues on the Future of Work*, Geneva, 2017, p. 35.
[496] CEACR – *India*, C.122, observation, 2012.

CEACR – In its comments under Convention No. 122 concerning the *Philippines*, the Committee noted the Government's report that it had established the Worktrep Entrepreneurship Program (*Unlad Kabuhayan Program Laban sa Kahirapan*) to assist marginalized self-employed workers in the informal sector who wish to expand or make their small livelihood undertakings grow into feasible and sustainable business enterprises.[497]

380. Well-designed policies can facilitate transitions to formality and promote formal activities in a manner that provides new opportunities for all workers to move to the formal economy. Many countries also take measures to combat illegal employment by punishing the failure to declare workers. In some cases, informal jobs in or for formal enterprises as well as unrecognized employment relationships stem from the desire to avoid complex and costly administrative measures, and in others it is cultural. Certain measures focus on the regularization of workers in a vulnerable situation.[498]

381. The Committee notes in particular the wide range of policies and measures adopted to promote the transition to formality.

Finland – The Action Plan to combat the grey economy and economic crime for 2016–20 includes 20 projects (in various ministries). The principal measures are set out in the national strategy to address the grey economy and economic crime, and those with the broadest impact are included in the Action Plan.

New Zealand – BusinessNZ indicates that undeclared work takes place mainly on an individual basis. Workers, and in the majority of cases migrant workers, are required to work under terms and conditions inferior to those provided in the law.

CEACR – In its comments concerning the *Plurinational State of Bolivia*, the Committee noted the Government's indication that, in order to encourage the transition from informality to formality, the compulsory registration of employers and workers by size of enterprise has been reinforced. The Committee requested the Government to provide up-to-date information, disaggregated by sex and age, on the rate of informality in the country, and to provide detailed information on the measures taken to facilitate the transition of workers from the informal to the formal economy.[499]

[497] CEACR – *Philippines*, C.122, observation, 2009.
[498] For specific examples on legislation addressing this issue, see, ILO: *Transitioning from the informal to the formal economy*, Report V(1), 2014, op. cit., paras 98–99.
[499] CEACR – *Plurinational State of Bolivia,* C.122, direct request, 2018.

CEACR – In its comments concerning *Costa Rica*, the Committee noted that, in the framework of the implementation of the National Development Plan 2014-18, financial and business development services are supplied through the support network for small and medium-sized enterprises (SMEs). The Government reported the implementation of measures to promote the formalization of such enterprises, including the "Mobile business consultation programme", which provides capacity and support for enterprises for the formalization and registration of SMEs with the Ministry of Economic, Industrial and Commercial Affairs, which allows access to incentives such as tax breaks for legally registered companies, access to funds, participation in business symposia and preferential treatment in the award of contracts by the public administration.[500]

382. With respect to social protection, some governments refer in their reports to measures aimed at improving coverage through the regularization of the situation of employees who are not registered with the social security system.[501] In other cases, measures are aimed at the extension of social insurance to the self-employed, freelance workers and employers.[502]

2. Promoting the creation, preservation and sustainability of enterprises in the formal economy, decent jobs and policy coherence

383. Governments should also take measures to ensure the creation, preservation and sustainability of enterprises and decent jobs in the formal economy. This concerns two elements: the development of a conducive environment for enterprises, and the creation of decent jobs.

In its 2007 Conclusions concerning the promotion of sustainable enterprises, the ILC stressed that an environment conducive to sustainable enterprises includes social dialogue, respect for human rights and international labour standards, an entrepreneurial culture, sound and stable macroeconomic policy, an enabling legal and regulatory environment, the rule of law and secure property rights, and infrastructure. Poorly designed regulations and unnecessary bureaucratic burdens on businesses limit enterprise start-ups and the ongoing operations of existing companies, and lead to informality, corruption and efficiency costs.[503]

384. However, a conducive environment for business is not enough on its own, as there is also a need to create decent jobs in the formal economy as a policy priority.[504] This aspect is examined in greater detail in chapter 1, section V. To achieve this, it is necessary to ensure the coherence of macroeconomic, employment, social protection and other social policies, which is the second objective of the Recommendation.

385. Article 1 of Convention No. 122 requires the development of an employment policy that aims to place full and productive employment and decent work at the centre of economic and social policies. Such policy coherence is intended to ensure that growth is adequately linked to the generation of productive and sustainable employment. In so doing, national employment policies should encompass an integrated policy framework aimed at the formalization of the informal economy, as called for in Paragraphs 10, 14 and 15 of the Recommendation. Recommendation No. 204 acknowledges that informality is multifaceted and that a multidimensional approach is needed to address it, involving different policy areas, institutions and authorities in coordinated, coherent and integrated strategies.

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[500] CEACR– *Costa Rica*, C.122, direct request, 2018.
[501] For example, *Algeria* (Supplementary Finance Act (SFA), sections 57 and 58) and *Ecuador*.
[502] For example, *Algeria* (Supplementary Finance Act (SFA), sections 60 and 61) and *Bahrain*. The Committee recalls that its last General Survey referred to the social protection instruments, in particular, the Social Protection Floors Recommendation, 2012 (No. 202).
[503] ILO: *Conclusions concerning the promotion of sustainable enterprises*, ILC, 96th Session, Geneva, 2007, para. 11.
[504] ILO: *Report of the Tripartite Meeting of Experts on Facilitating Transitions from the Informal Economy to the Formal Economy*, 2013, GB.319/INS/14/6, op. cit., paras 114–115.

3. Preventing the informalization of formal jobs

386. The third objective of the Recommendation is to provide guidance on preventing the policies and measures adopted, and changes in the world of work, pushing workers and enterprises into informality. The Committee considers that this aspect is particularly topical, as changes in the organization of work and new forms of work has in certain cases resulted in greater flexibility in the labour market, the dilution of roles and responsibilities and the blurring of lines between dependent and independent workers. In many cases, this is leading to the informalization or casualization of work. Workers and economic units are increasingly being covered by flexible work arrangements, including outsourcing and subcontracting, at the periphery of the core enterprise or at the lowest level of the production chain. This is leading to a reduction in workers' protection and a lack of clarity concerning the identity of employers, who are often pushed into informality. Work that used to be carried out in the enterprise is now often performed by subcontractors, who are sometimes former workers of the enterprise who have become self-employed. Such work may be on the fringes of formality,[505] and may involve disguised employment relationships, as noted in Recommendation No. 198.

387. Paragraph 1(c) should be read in conjunction with Paragraph 4(c) and (d) of the Recommendation concerning the personal scope of application. Subparagraph (c) refers to those employees holding informal jobs in formal enterprises, or in economic units in the formal or informal economy and subparagraph (d) refers to workers in unrecognized or unregulated employment relationships (see section V(4)(b) of this chapter).

388. The Committee notes that some governments have provided information in their reports under Convention No. 122 on the measures taken, including through the adoption of regulations, to prevent informal employment.[506]

Argentina – The Special Unit for the Control of Irregular Work (UEFTI) was created in 2014 in the Ministry of Labour, Employment and Social Security to analyse, investigate and evaluate situations of unregistered work in sectors that are complex to inspect, as well as any forms of illegal subcontracting and labour and social security fraud.[507]

Honduras – In its report, the Government refers to a Bill on the social inclusion of self-employed and autonomous workers, submitted to the executive authorities in 2017. The objectives of the Bill include preventing the informalization of jobs.

CEACR – In its comments concerning *Bulgaria*, the Committee noted the Government's 2015–17 Single National Strategy to reduce compliance costs, including the adoption of preventive measures aimed at preventing entry into the shadow economy and measures to assist persons working in the informal economy engage in the transition to the formal economy. The Government added that these measures are combined with inspections in different areas of the economy, with the assistance of employers' organizations, and heavier penalties in the event that violations are detected.[508]

[505] J.M. Salazar-Xirinachs and J. Chacaltana: *Políticas de formalización en América Latina: Avances y desafíos*, 2018, op. cit., p. 172.
[506] For example, *Azerbaijan* (Presidential Order No. 3287 of 9 October 2017 approving the Plan of Action to eliminate informal employment).
[507] Promoción del Trabajo Registrado y Prevención del Fraude Laboral, Act No. 26.940 of 2014 on the promotion of registered work and the prevention of labour fraud, section 39.
[508] CEACR – *Bulgaria*, C.122, direct request, 2018.

IV. Assessment and diagnosis[509]

Paragraphs 6 and 8 of the Recommendation

6. In giving effect to the provisions of Paragraphs 2 to 5 above, and given the diversity of the informal economy across member States, the competent authority should identify the nature and extent of the informal economy as described in this Recommendation, and its relationship to the formal economy. In so doing, the competent authority should make use of tripartite mechanisms with the full participation of the most representative employers' and workers' organizations, which should include in their rank, according to national practice, representatives of membership-based representative organizations of workers and economic units in the informal economy.

8. Members should undertake a proper assessment and diagnosis of factors, characteristics, causes and circumstances of informality in the national context to inform the design and implementation of laws and regulations, policies and other measures aiming to facilitate the transition to the formal economy.

389. The informal economy is heterogeneous and may take very diverse forms based on the different characteristics, circumstances and needs of the workers and economic units involved (as reflected in Paragraph 7(a) of the Recommendation).[510]

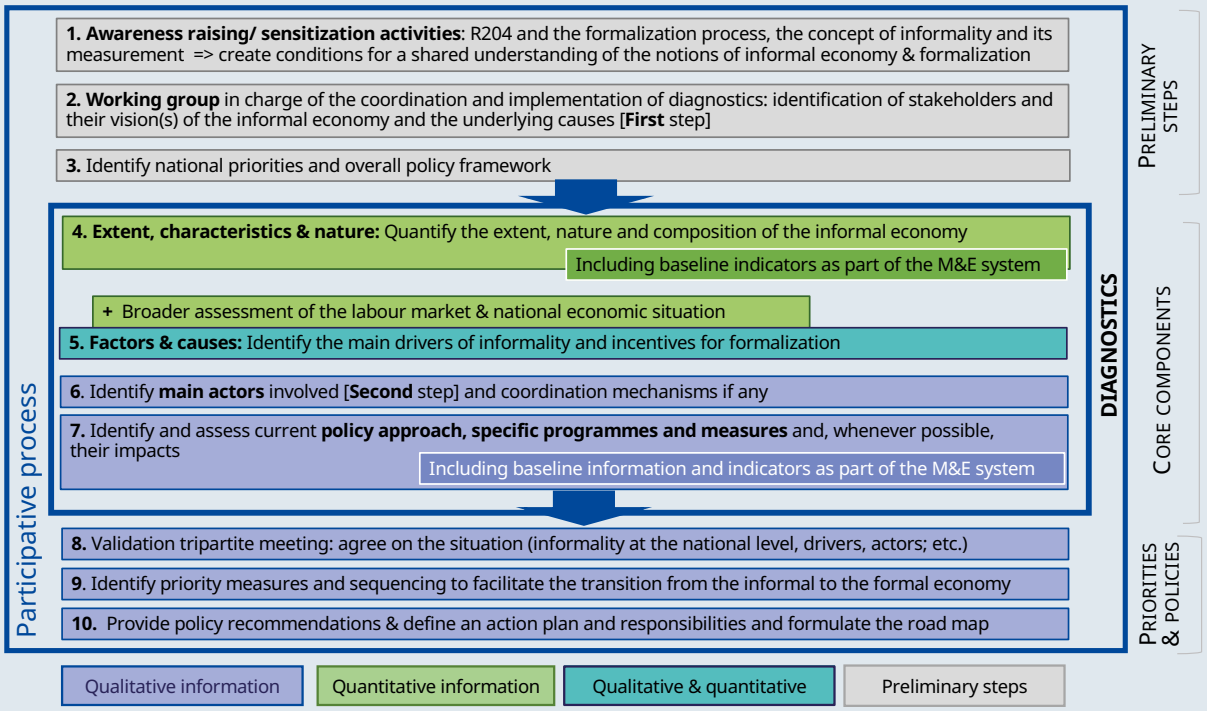
390. This diversity of situations calls for tailored policies. It is therefore important for the competent authorities to map the diversity, size and importance of the informal economy, and the relationship between the formal and informal economies. This assessment is crucial and should be conducted before the adoption, review and enforcement of national laws and regulations or other measures with a view to ensuring appropriate coverage and protection of all categories of workers and economic units. Background information on the size and growth of the labour force, the education and skills of those entering the labour market, rural-urban migration and the rate of urbanization is of great importance.[511] Strengthening the quality of the data collected on the informal economy can lead to improvements in policymaking. However, measuring the precise extent of the informal economy is not easy, as it largely consists of unrecorded and unregistered activities. A diagnosis exercise can help to build broad consensus on the situation, especially when the process is transparent and participatory, and therefore provide a good basis for agreeing on priorities and responsibilities and defining an action plan and a road map. It also provides a baseline for the monitoring and evaluation of policy measures and the rate of formalization. It should ideally be carried out during the early stages of the process of formalization. The Committee notes that, based on its experience on the ground, the ILO is preparing a methodological note setting out the scope and sequence of the diagnosis, which should be adapted to the circumstances of each country. While emphasizing the importance of adapting the diagnostic and assessment process to the national situation, the Committee considers it useful to describe the process carried out by the ILO on the ground, which could serve as a model and inspiration for other countries. This model has received tripartite validation at the national level in many countries. Figure 3.3 shows the different steps that could be followed by a diagnosis exercise.

391. The preparatory stage consists of steps 1 to 3, with the objective of bringing together stakeholders, mapping actors and understanding the nature of informality at the national level. A series of sensitization and awareness-raising activities are carried out and a working group appointed with responsibility for the national diagnosis with a clear role. National priorities are identified (and will be fixed in step 7).

[509] See, in this regard, F. Bonnet: *Methodological note on national diagnostic of information*, ILO, Geneva, 2019.
[510] ILO: *Decent work and the informal economy*, Report VI, 2002, op. cit., p. 2.
[511] ibid., p. 32.

Figure 3.3

Diagnosis steps



Source: ILO: *Women and men in the informal economy: A statistical picture*, 3rd ed., ILO, Geneva, 2018, figure 2.

392. The core of the diagnosis are steps 4 to 7. The scope and depth of this stage depend on the type of formalization chosen: national, sectoral or by group of workers or economic units. It is important to obtain the acceptance of the actors involved. If no priority group or sector is identified, a "light diagnosis" on informality can be carried out (a quantitative assessment of the nature and extent of informality). When a group or sector has been identified as a priority, it will be the object of an in-depth diagnosis:

- establishment of a profile of workers or economic units (quantitative, socio-demographic, composition of the economic sector, incidence of informality in the specific group, working conditions, and decent work deficits);
- establishment of a baseline for a subset of selected indicators to be assessed on a regular basis to monitor and evaluate progress (in this regard, it is important to examine the national capacity to produce statistics on a regular basis and agree on what should be evaluated and the set of indicators to be selected);
- identification of the main drivers of informality (see figure 3.2), which may relate to the inability to create formal jobs, an inadequate regulatory framework or weak enforcement, as well as the characteristics of workers (education, skills); experience shows that addressing the diverse drivers of informality in an integrated and coordinated manner produces better results;
- mapping of actors and existing coordination mechanisms in place, which involves the identification and assessment of policies, actors and responsibilities, as well as the coordination that exists between them; this should ideally be carried out with the participation of representatives of the informal economy;
- assessment of the level of integration of measures to reduce decent work deficits in national strategic policy frameworks. This involves determining how policies are translated into programmes, the balance between deterrence measures and incentives, based on the collection of evidence and evaluations.

393. The post-diagnostic phase consists of steps 8 to 10. During this phase, constituents review the results, validate them and decide on priorities as a basis for defining an action plan, which is the final goal. A tripartite validation meeting may be organized with the objective of reaching agreement on the priorities and design of the national action plan with balanced policy recommendations (a mix of incentives and compliance measures), roles and responsibilities. A gradual process of formalization could also be envisaged, but would involve the delicate task of determining one or more specific sectors or groups to be given priority over others.

Examples of diagnoses carried out at the national level

The Committee notes that, based on the methodology adopted by the ILO for the development of national diagnoses, 25 procedures are being currently carried out. They concern the whole economy in some cases, and specific sectors, groups of workers or economic units in others.[512] Comprehensive diagnoses of the informal economy at large are being undertaken in several countries, including *Brazil, Nepal, South Africa, Swaziland* and *Viet Nam*. In other countries, an approach has been adopted focusing on specific sectors, such as the construction sector in *Côte d'Ivoire* and *Madagascar*, the trade sector in *Burkina Faso* and the entertainment sector in relation to HIV and AIDS in *Cambodia*. Finally, other procedures are focussing on specific issues, such as: undeclared work in *Greece*; groups of workers, such as wage workers in microenterprises, in *Peru*; specific economic units, such as micro and small enterprises in *Cameroon*; or specific policy areas, such as social security in *Zambia*. Support is also being provided on measurement issues in the Caribbean, *India* and *Montenegro*. National action plans/road maps have been or are being formulated with ILO support, including the road map to tackle undeclared work in *Greece*, the five-year master plan for Kwazulu Natal Province in *South Africa*, and the formalization strategy in *Zimbabwe*. In Latin America and the Caribbean, strategies are being pursued based on multiple interventions, such as those implemented in *Argentina* and *Brazil*. It is expected that at least ten countries across the regions will champion the development and implementation of integrated policy frameworks over the 2016–21 period.

394. The Committee notes that some governments have provided information in their reports on the measures taken to carry out a diagnosis and assessment procedure on the incidence of informality at the national level in both urban and rural areas.[513] One report refers to the development of indicators that will help to determine future trends.[514] Others provide information on the meetings held at the national level to examine and reflect on the informal economy[515] which, as indicated by certain governments, provided an opportunity to raise awareness of the Recommendation.[516]

[512] ILO: *Outcome 6: Formalization of the informal economy*, Governing Body, 329th Session, March 2017, GB.329/POL/2, para. 9.
[513] For example, *Armenia* (in the framework of the National Action Plan), *Argentina*, *Cabo Verde* (study carried out in 2015), *Gabon* (a survey was carried out covering all business units in the country), *Indonesia* (different studies have been carried out on workers in micro and small enterprises, fishermen's work requirements, the employment relationship and informal businesses, and the protection of homeworkers) and *Seychelles* (a study is to be undertaken in 2019 with the assistance of the World Bank).
[514] *Thailand* report.
[515] For example, *Central African Republic, Colombia* and *Dominican Republic.*
[516] For example, *Benin*.

V. Coherent and integrated policy framework to facilitate transition

Figure 3.4

Integrated strategy for the transition to formality

Source: ILO

395. Paragraph 10 of the Recommendation calls for an integrated policy framework to be included in national development strategies, poverty reduction strategies and budgets, taking into account the roles and responsibilities of the different levels of government. Coordination and cooperation should also be ensured between the relevant bodies and authorities, such as tax authorities, social security institutions, labour inspectorates, custom authorities, migration bodies and employment services (Paragraph 12). Addressing informality requires an assessment of a combination of macroeconomic and institutional factors.[517]

396. The Recommendation aims to provide guidance on the wide range of policies that are effective in facilitating the transition to formality. The method suggested consists of addressing the underlying causes, and not just the symptoms, through a comprehensive and multifaceted strategy.[518] This is based on the shared understanding that an integrated strategy, together with policy coherence, institutional coordination and social dialogue, will facilitate the transition. Interventions are more effective when they are combined and address the different drivers of informality, and the diversity and scale of the informal economy.[519] While this is the

[517] J.M. Salazar-Xirinachs and J. Chacaltana: *Políticas de formalización en América Latina: Avances y desafíos*, 2018, op. cit., p. 27.
[518] ILO: *Provisional Record*, "Reply of the Director-General to the Discussion of his Report", ILC, 78th Session, Geneva, 1991, pp. 27/6–27/8.
[519] ILO: *Outcome 6: Formalization of the informal economy*, 2017, GB.329/POL/2, op. cit., para. 5.

overall objective, it does not mean that all the measures have to be taken at the same time. Dealing with informality is a long-term process that depends on its specific characteristics, and the level of social consensus achieved. In some cases, it may be decided to start modestly with one or two simple policies to serve as a model for the measures to come. For instance, some countries start by addressing informality in one specific sector (domestic work, home work). In other cases, social dialogue, and the involvement of all stakeholders, makes it possible to adopt a more comprehensive approach to addressing informality. In any case, the process takes time and, as noted above, there is no one-fits-all solution. The objective is to achieve in time an integrated framework that addresses the multifaceted aspects of informality.

> *Afghanistan* – The Government indicates that taking into consideration the prevalence of the informal sector and the magnitude of this task, only a gradual approach is possible. First steps have already been taken such as the regulation of the working conditions of daily wage earners adopted in 2018. Further measures are envisaged in this respect.

397. Paragraph 11 consists of an enumeration of a set of policy areas that are important for the transition from the informal to the formal economy. These policies are based on the 2002 ILC Conclusions and the four pillars of the Decent Work Agenda (employment, rights, social dialogue and social protection). The objective is for a coherent and integrated policy that takes into account the broad range of informal working arrangements and their specific dimensions, while shifting global policy attention towards job quality as a driver of economic development.[520]

398. The Committee notes that in their reports, many governments indicate that an integrated policy framework has been developed to facilitate the transition to the formal economy.[521] In some countries, measures have been adopted within broader national policies to address informality.[522] Many of national employment policies listed in chapter I refer explicitly to measures aimed at addressing the informal economy.[523] Some reports refer to the adoption of policies or measures for a gradual or progressive transition to formality.[524]

399. Some governments indicate that they are taking measures to address undeclared work,[525] with many referring to the measures taken to ensure the adequate registration of workers.[526] Others refer specifically to measures to achieve transition through the registration of certain categories of workers.[527] Other reports describe the simplification of registration processes to start new businesses (such as through one-stop shops and online registration).[528]

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[520] ILO: *Transitioning from the informal to the formal economy*, Report V(1), 2014, op. cit., p. 52.

[521] For example, *Afghanistan*, *Algeria, Argentina, Armenia, Australia, Azerbaijan, Bahrain, Bangladesh, Benin, Bosnia and Herzegovina, Burkina Faso, Cambodia, Cameroon, Cabo Verde, Central African Republic, Colombia, Democratic Republic of the Congo, Costa Rica, Croatia, Cyprus, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Finland, Gabon, Georgia, Ghana, Greece, Indonesia, Latvia, Libya, Namibia, Philippines, Poland, Senegal, Seychelles, Sudan, Thailand, Turkey* and *United Kingdom.*

[522] For example, *Afghanistan* (Afghanistan National Peace and Development Framework), *Armenia* (Government Decree No. 442-N of 2014 establishing a long-term development strategy), *Bosnia and Herzegovina* (Reform Agenda of the Federation of Bosnia and Herzegovina), *Burkina Faso* (Objective 2 of the Sectoral Policy on Labour, Employment and Social Protection), *Cambodia* (Objective 1.3 of the National Employment Policy 2015–25); *Colombia* (Labour Formalization Policy, Decree No. 567/2014, which is based on the National Development Plan), *Democratic Republic of the Congo* (National Employment Policy, item 7.4), *Dominican Republic* (Act on the National Development Strategy 2030, third strategic objective), *Ecuador* (National Development Plan 2017–21) and *El Salvador* (National Policy on Decent Work, strategic objective No. 4).

[523] *Albania, Barbados, Bosnia and Herzegovina, Burkina Faso, Cabo Verde, Comoros, Dominican Republic, El Salvador, Ethiopia, Fiji, Ghana, Guatemala, Honduras, Kenya, Mauritius, Republic of Moldova, Morocco, Namibia, Nepal, Nigeria, Paraguay, Philippines, Rwanda, Serbia, Seychelles, Sri Lanka, United Republic of Tanzania, Timor-Leste* and *Uganda.*

[524] For example, *Afghanistan*, *Bangladesh*, *Colombia* and *Egypt*.

[525] For example *Armenia, Estonia, Finland, Latvia, Poland* and *United Kingdom*.

[526] For example, *Estonia*.

[527] For example, *Bahrain* (registration of home-based workers) and *Chile* (telework, as 50 per cent of teleworkers are in the informal economy).

[528] For example, *Armenia*.

1. Guiding principles

400. Paragraph 7(a) to (l) of the Recommendation calls for certain guiding principles to be taken into account in designing coherent and integrated strategies to facilitate transition. Firstly, it is crucial to acknowledge the diversity of characteristics, circumstances and needs of workers and economic units in the informal economy and the need to address such diversity through tailored approaches (Paragraph 7(a)). An integrated and comprehensive strategy across a range of policy areas can ensure progressive transition, although different and multiple strategies may be applied taking into account national contexts and preferences (Paragraph 7(b) to (d)).

401. The strategies should respect human rights and fundamental principles and rights at work. International labour standards provide relevant guidance in specific policy areas (Paragraph 7(e) to (g)), including the promotion of equality of opportunity, and in particular gender equality (Paragraph 7(h)), as well as the elimination of all forms of discrimination and violence, including gender-based violence (Paragraph 11(f)).[529] The particular vulnerability of certain categories of workers to the most serious decent work deficits is recognized in Paragraph 7(i) of the Recommendation as an important element to be taken into account, as the informal economy is in many cases the last resort for these workers. This provision contains a non-exhaustive list that includes women, young people, migrants, older people, indigenous and tribal peoples, persons living with HIV or affected by HIV or AIDS, persons with disabilities, domestic workers and subsistence farmers.

402. In accordance with the Recommendation, measures to encourage the transition to formality should not hamper entrepreneurial potential, creativity, dynamism, skills or the innovative capacities of workers and economic units in the informal economy. A balanced approach should be adopted to incentives and compliance measures, involving the prevention and penalization of the deliberate avoidance of or exit from the formal economy for the purpose of evading taxation and the application of social and labour laws and regulations (Paragraph 7(j) to (l)).

2. Gender equality and informality

403. In view of the strong gender segmentation in the informal economy, it is important for gender equality to be mainstreamed in the integrated policy framework (as noted in chapters I and II). Women find it more difficult to gain access to and remain in the labour market, and they are also prevalent in jobs where the employment relationship is less clear.

404. Men are still predominant in higher paid jobs. Within any specific type of formal employment status, women's remuneration is lower than that of men, although the gap has narrowed somewhat in recent decades, based in part on the adoption of laws relating to gender equality. Moreover, in relation to informality, they face the double penalty of being in the informal economy and of being a woman. Women also tend to spend fewer hours in remunerative work than men, in part due to the hours spent in unpaid care work. Responsibilities for unpaid care work reinforce labour market segmentation, as women may be restricted to own-account or home-based work, even if their total hours worked are longer and their incomes lower. Women also tend to be clustered in "traditionally female" economic activities, such as domestic work and home work, which are often poorly paid and are frequently in the informal economy.

405. The formalization of wage employment and the enforcement of minimum wages can be effective means of raising women's wages and reducing the gender pay gap in the lower half of the pay distribution. Moreover, access to affordable child and other care services promotes

[529] The recent Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, are applicable to the informal economy.

gender equality and facilitates the transition to formality (Paragraph 21).[530] Measures should also be taken to promote women's entrepreneurship and to overcome social norms that prevent them from participating in the open labour market. Women and men should have equal access to property and land, skills development, including business development, finance and access to childcare, as well as the possibility of working shorter hours.

CEACR – In its comments concerning *Jamaica*, the Committee noted the Government's indication that women are still more at a disadvantage in the Jamaican job market than men and that, as a result, many of them have turned to the informal economy in order to meet their financial needs. The Government added that many rural women are more likely to be found in the informal economy, as they encounter difficulties in acquiring formal jobs in some rural areas, particularly if they have few or no academic or technical qualifications.[531]

406. Paragraph 11(f) of the Recommendation calls on Members to take measures to promote equality and the elimination of all forms of discrimination and violence, including gender-based violence, at the workplace.

3. Ensuring growth and employment

407. Informality has the effect of stifling the more efficient use of resources and improvements in productivity, and therefore has the result of making the economy operate below its potential, with negative impacts on growth.[532] But economic growth alone cannot reduce informality. Indeed, comparative data shows that countries at similar levels of economic development have very different levels of informality. In cases of mass informality, growth patterns cannot create sufficient formal jobs to absorb those who want to work.[533] Indeed, where it exists, informality shows that the objective of full, productive and freely chosen employment required by Convention No. 122 has not been attained. Indeed, the Committee notes that according to latest studies the productivity gap between informal and formal firms is substantial, averaging 75 per cent in a sample of 18 emerging and developing countries. Competition from informal firms also appears to weigh on the productivity of exposed formal firms: the productivity of formal firms that compete with informal firms is only three-quarters that of formal firms that do not compete with informal firms, after controlling for other firm characteristics. Improvements in the business climate, and economic development more broadly, can mitigate some of these negative productivity spillovers from informal to formal firms.[534]

The IOE indicates that productivity is also important to facilitate the transition to the formal economy. In this respect, four events need to occur simultaneously: (1) the productivity of micro and small economic units must grow steadily; (2) costly bureaucratic and administrative procedures and formalities must be kept to a minimum; (3) tax incentives or similar must be revamped; and (4) a better allocation of public resources is required, particularly of resources allocated to encourage entrepreneurship as an occupational choice where there are poor prospects of finding a job as a waged employee in the formal economy.

[530] See also ILO: *A quantum leap for gender equality: For a better future of work for all*, Geneva, 2019, p. 44.
[531] CEACR – *Jamaica*, C.122, direct request 2017. Similarly, in its report, the Government of *Turkey* acknowledges the high unregistered employment rate among women, for which reason measures are envisaged for the collection of data on this subject and in relation from rural to urban migration by women.
[532] See ILO: *Decent work and the informal economy*, Report VI, 2002, op. cit., p. 7.
[533] ILO: *Informality and non-standard forms of employment*, paper prepared for the G20 Employment Group meeting, 20–22 February 2018, Buenos Aires, p. 4.
[534] M. Amin, F. Ohnsorge and C. Okou: "Casting a Shadow, Productivity of Formal Firms and Informality, Policy Research Working Paper, 8945, World Bank Group, July 2019, p. 20.

408. Under the terms of Paragraph 11(a), the integrated policy framework called for by the Recommendation should promote strategies for sustainable development, poverty eradication and inclusive growth, together with the generation of decent jobs in the formal economy. Curbing the spread of informality involves making productive decent employment a central concern of economic and social policy by promoting employment-friendly macroeconomic frameworks and providing support for productive sectors.

409. The economic capacity of enterprises and workers is a key factor of formality, and productivity is an indicator of this capacity. A lack of investment, outdated technology, infrastructure gaps and educational deficits are some of the factors that contribute to low productivity. The goal is clearly to increase productivity and improve the availability of decent jobs. The promotion of sectoral policies may help to harness the highest employment generation potential in each country (Paragraph 11(m)).[535] Other elements that need to be taken into account in this respect include environmental sustainability and the promotion of growth in the green sector, as well as the consequent destruction and creation of jobs.

410. Full, decent, productive and freely chosen employment should, as indicated in Paragraph 14 of the Recommendation, be a central goal of the national development and growth strategy. The establishment of targets for employment creation, or for formalization, with measurable commitments, as noted in chapter I, can help in attaining this goal.[536]

The CGT RA of *Argentina* indicates that SMEs are the most affected by the latest macroeconomic adjustment policies. It further refers to the adoption of a programme aimed at enterprise economic recovery through tax exemptions. This is accompanied with adequate sanctions in case of unregistered workers.

Elements for a comprehensive employment policy framework

411. Paragraph 15 of the Recommendation calls on Members to promote the implementation of a comprehensive employment policy framework and proposes a set of elements that could be included. These elements include pro-employment macroeconomic policies; trade, industrial, tax, sectoral and infrastructure policies; enterprise policies; labour market policies; labour migration policies; education and skills development policies; and activation measures to facilitate the transition from school to work and from unemployment to employment. Moreover, depending on national circumstances, Members should ensure coordination across different levels of government and cooperation between the relevant bodies and authorities dealing with these policy areas (Paragraph 12). This enumeration, which is by no means exhaustive, demonstrates the multifaceted character of informality, which goes well beyond the world of work. In this regard, the Committee notes the wealth of information contained in the country reports on the broad range of measures adopted at the national level. The Committee notes in particular the measures taken to improve the employability of workers, especially the long-term unemployed and other groups encountering greater difficulties to enter the labour market.[537]

[535] ILO: *The informal economy and decent work: A policy resource guide supporting transitions to formality*, Geneva, 2003, Ch. 3.1, "Patterns of economic growth and the informal economy", p. 14.
[536] ILO: *Transitioning from the informal to the formal economy*, Report V(1), 2014, op. cit., p. 37.
[537] For example, *Armenia* (Government Decree No. 797-N of 2018, Ch. 9.2.1).

Armenia – The National Action Plan gives priority to improving the regulation of legal relations and developing the capacity of the Government and the social partners to facilitate the transition to formality, for which purpose the Government will continue to take measures to reduce the informal economy, formulate a policy to facilitate the transition to formal employment, structural changes, the improvement of education, the expansion of the tax framework and compliance with international standards.

412. Some reports refer to the need to address rural to urban migration, which tends to increase the urban informal economy, while negatively affecting rural development.[538] They consider that more data on this subject is necessary.[539]

413. Several governments refer to measures to improve labour productivity through education and to focus training and skills development on sectors with higher productivity levels.[540] Recognition of skills and prior learning is considered crucial to ensuring labour mobility.[541] Some reports indicate that training and re-training programmes have been established for young graduates, as well as a training fund to facilitate career change and new skills acquisition in existing and new jobs.[542] It is also considered necessary to revise school curricula. Some reports refer to the assistance provided to young persons to enter the labour market, including through: dual training, vocational training, assistance during transition (introductory training and pre-vocational training) and career guidance.[543] Several reports refer to the implementation of the European Youth Guarantee.[544]

Estonia – The main goal of the Youth Field Development Plan 2014–20 is to provide young people with a wide range of opportunities for development and self-fulfilment, including for learning and working, and to ensure that young people are successful in the labour market.

Nigeria – In tertiary education, there have to be links between on-the-job experiential training and classroom education to provide opportunities for young persons to acquire the level of skills required in the world of work. The National Universities Commission (NUC), the Industrial Training Fund (ITF) and similar regulatory bodies are responsible for the implementation of this policy.

414. Some reports refer to specific activation measures, such as labour exchanges, youth mediators (for young workers that are not in training to connect them with an employer). In some countries, measures have been taken for the formalization of certain categories of workers, including homeworkers,[545] or to address the needs of certain groups that are more vulnerable to exclusion.[546] Some refer to the need to create entry level jobs and a better incentives policy,[547] and to streamline labour market information to increase employment.[548]

[538] For example, *Sudan*.
[539] For example, *Turkey*.
[540] For example, *Armenia, Argentina* and *Vanuatu*.
[541] *Canada* report.
[542] For example, *Cabo Verde* and *Chile*.
[543] For example, *Germany, Hungary* and *New Zealand*.
[544] See ch. VI. For example, *Bulgaria* and *Estonia*.
[545] For example, *Bahrain*.
[546] For example, *Trinidad and Tobago*.
[547] For example, *Cabo Verde*.
[548] For example, *Cambodia*.

Slovakia – Active labour market measures are regulated by Act No. 5/2004 on employment services, which aims to increase employment, reduce regional differences, lower long-term unemployment and youth unemployment, and create new jobs by making use of various financial incentives to apply measures targeted at various categories, such as school graduates. Section 46 of the Act introduces a specific measure known as "Education and training for labour market needs", which enables these persons to undertake specific training to improve their employability by taking into account and broadening the skills and qualifications acquired during their education. Young persons participating in these active labour market measures have been noted to have a 72 per cent higher probability of finding a suitable job. There are also active labour market measures to improve the situation of disadvantaged jobseekers, which include financial incentives for their employers to keep them in employment.

CEACR – In its comments concerning *Costa Rica,* the Committee noted the Government's indication that, through the implementation of the *Empléate* youth employment programme, a series of activities have been implemented aimed at catering comprehensively for the beneficiaries of the programme, such as: (i) the creation of a link with the *Mi primer empleo* (my first job) programme, which promotes the creation of new job opportunities for women, young persons and persons with disabilities through financial incentives for enterprises which hire such workers; (ii) an increase in the number of agreements concluded with enterprises seeking workers whose occupational profile is compatible with the *Empléate* programme; and (iii) the collection of information on labour market trends and needs.[549]

CEACR – In its comments concerning *Hungary*, the Committee noted that the Government referred to the high ratio of persons with low levels of schooling among jobseekers and the high proportion of career starters, young persons and persons who have been unemployed for more than a year, noting that the long-term unemployed make up more than a quarter of jobseekers. In order to improve the employability of these groups, the Government has partially realigned existing active labour market programmes and developed new projects. In addition to tax incentives and other subsidies for employers, measures adopted under general programmes and projects specifically address jobseekers, making it less financially attractive to remain in unemployment and offering mentoring and tailored training based on a new customer classification (profiling) system launched in 2016, and offering housing benefits to make relocation more attractive.[550]

415. Some governments report the measures taken to promote entrepreneurship, particularly for women and in labour-intensive sectors.[551] In relation to taxation, some reports refer explicitly to the need to ensure that tax compliance goes hand-in-hand with an effective tax policy.[552]

[549] CEACR – *Costa Rica*, C.122, direct request, 2018.
[550] CEACR – *Hungary*, C.122, direct request, 2017.
[551] For example, *Cameroon*.
[552] For example, *Latvia* (in the framework of the Action Plan for public authorities to combat the "shadow economy" in 2016–20).

Honduras – In April 2018, the Honduran Council for Private Enterprise (COHEP) published the survey "Women in business management in Honduras", the objectives of which are to identify and broaden understanding of the barriers or obstacles that stand in the way of women's advancement in business and management; establish possible means of addressing the challenges; share recommendations on how to overcome these barriers and obstacles; and determine possible strategies for presentation to key actors.

Saint Vincent and the Grenadines – The Government plans to develop a training programme for young school-leavers trough the Youth Empowerment Service (YES) with a view to building an entrepreneurial culture and a better attitude towards work. The involvement of private sector businesses in the YES programme is promoted through tax incentives.

416. The Committee further notes that, in the framework of the strategy adopted by the Governing Body in 2015 for the implementation of Recommendation No. 204, support has been provided to mainstream and strengthen the objectives of formalization and decent work creation in national employment policies, as well as other national policy frameworks. The measures adopted include employment-intensive investment and public employment programmes. In this context, the Committee notes the ILO supported action carried out in *Côte d'Ivoire*, *Burkina Faso*, *Democratic Republic of the Congo*, *Ghana*, *Madagascar*, *Nepal*, *South Africa*, *Viet Nam* and *Zimbabwe*.[553]

4. An appropriate legislative and regulatory framework

417. Paragraph 9 of the Recommendation calls on Members to adopt, review and enforce national laws and regulations to ensure appropriate coverage and protection of all categories of workers and economic units. The informal economy is commonly understood to fall de facto or de jure out of the reach of the law and,[554] when this happens, workers and economic units are said to be "unrecognized", "unregulated" or "unprotected". There may be different reasons for this. Sometimes the reach of the law is limited and excludes certain activities or sectors from its application. Sometimes the law is not clear or the sector is not yet regulated (in the case of new forms of work or of the organization of work). In other cases, it is not a question of the adoption of the adequate regulations, but of governance and the institutional capacity for their implementation (Paragraph 23). In this context, it is important to ensure that existing labour market institutions do not create excessive or unnecessary transaction costs and constraints on economic actors that push them towards informality. Indeed, labour regulation should help to correct market imperfections and redress the inherent inequality between employers and workers, while promoting enterprises and providing clarity concerning employment status, rights and responsibilities.

418. The modernization and strengthening of national legal systems, including compliance,[555] as well as the extension of social security coverage to all categories or, more specifically, to new categories of workers,[556] are among the issues relating to regulation addressed in country reports.

[553] ILO: *Outcome 6; Formalization of the informal economy*, 2017, GB.329/POL/2, op. cit.
[554] ILO: *Transitioning from the informal to the formal economy*, Report V(1), 2014, op. cit., paras 114 ff.
[555] For example, *Bahrain, Chile* and *Finland*.
[556] For example, *Algeria*.

419. At the same time, the integrated policy framework called for in the Recommendation should also seek to establish an appropriate legislative and regulatory framework that promotes and realizes the fundamental principles and rights at work and contributes to the creation of a conducive business and investment environment (Paragraph 11(b) to (d)). In their reports, some governments refer in general terms to the need to establish or improve the legal framework.[557]

(a) Ensuring fundamental principles and rights at work, and other labour standards

420. Fundamental principles and rights at work are also applicable to workers in the informal economy, as recognized in Paragraph 16 of the Recommendation. The Committee has already referred to the serious decent work deficits affecting workers in the informal economy, where forced labour, child labour and discrimination are common and there are significant obstacles concerning freedom of association and collective bargaining. At the same time, it is necessary to extend basic minimum standards on substantive matters to workers in the informal economy. The Annex to the Recommendation contains a list of ILO and United Nations instruments that are relevant to facilitating the transition to formality. Compliance with labour standards has specific positive consequences for workers in terms of better working conditions, better training and fewer work-related accidents. Paragraph 11(r) refers to the need to ensure income security, including appropriately designed minimum wage policies.

(b) The employment relationship and informality

421. In informal arrangements, workers may be holding informal jobs (as such unregistered or under-registered, for example, when they receive part of their earnings informally) (Paragraph 4(c). They may be in disguised or ambiguous employment relationships. Workers may also be in triangular relationships, in which it is not clear who the employer is. They may even be in special unrecognized and unregulated employment relationships (digital platform workers, domestic workers, homeworkers and rural workers) (Paragraph 4(d)). The diversity of situations in the informal economy requires differentiated legal solutions.

422. This issue is closely linked to the subject matter of Recommendation No. 198. Indeed, recognition of the existence of an employment relationship is critical for formalization. It is through this relationship that workers and employers gain access to regulation intended to protect their respective rights.[558] Deficiencies in the legal criteria for determining the existence of an employment relationship can blur the distinction between dependent and independent workers, and such a lack of clarity may be at the origin of informality.[559] For this reason, in some countries legislation places the burden of proof on the employer to demonstrate whether the worker is or not an employee.[560]

[557] For example, *Azerbaijan, Bosnia and Herzegovina* (Brcko District) and *Cabo Verde*.
[558] ILO: *Formalizing domestic work*, 2016, op. cit., p. 14.
[559] For example in *Austria*, the Employment Act entered into force on 29 June 2018 provides clarification on the list of employed persons, and section 5 on Informal Employment was added, alongside a definition of the term "informal employment", In *Finland*, the scope of application provision in the Employment Contracts Act (chapter 1, section 1) and the definition of an employment contract in this section are mandatory. The parties to an employment contract (or parties to a collective agreement) cannot legally agree that the Employment Contracts Act should not apply to an employment relationship that meets with all the criteria specified for an employment relationship.
[560] See ch. II on legal presumptions and burden of proof.

Canada – The Budget Implementation Act 2018, No. 2, amended the labour code to address disguised and undeclared employment relationships by: (a) explicitly prohibiting employers in the federally regulated private sector from treating employees as if they were not employees in order to avoid their labour standards obligations (new section 167.1 of the code, not yet in force), and (b) putting the burden of proof on the employer if the employer claims that a person who made a complaint against them is not their employee (new section 167.2 of the code, not yet in force). These amendments will create a disincentive for employers to disguise employment relationships and encourage workers to make a complaint if they feel their employer is not accurately reflecting their employment status.

423. In this regard, Paragraph 4(d) of Recommendation No. 204 indicates that it is applicable to workers in unrecognized or unregulated employment relationships. To address this situation, Paragraph 26 refers to the need to put in place appropriate mechanisms or to review existing mechanisms to ensure compliance with national laws and regulations respecting, among other areas, the enforcement of employment relationships so as to facilitate the transition to the formal economy.

424. It should also be recalled that the majority of workers in the informal economy are self-employed, workers in self-owned enterprises or contributing family members, who are normally outside the employment relationship.

(c) Good governance

425. During the preparatory works, there was broad agreement that informality is closely linked to poor governance. The growth of the informal economy can often be traced back to: inappropriate, ineffective, misguided or badly implemented macroeconomic and social policies, frequently developed without tripartite consultation; the lack of appropriate legal and institutional frameworks; the lack of good governance for the proper and effective implementation of policies and laws; and a lack of trust in institutions and administrative procedures. Three types of legal and institutional frameworks are of particular importance: labour legislation, business regulations and the legal framework to secure property rights, title assets and financial capital. At the same time, good laws and regulations are useless in the absence of strong and effective institutions for their implementation. It is therefore crucial to clarify the current institutional setting and to identify why some economic activities or categories of workers are not covered by formal arrangements, and the reforms or changes that could address this situation.[561]

426. To improve rights and protection in the informal economy, there is a need to invest heavily in the structures of good governance (Paragraph 23) to ensure the enforcement of contracts, the protection of property rights (including access to credit and capital), personal safety and social stability and the reduction of environmental and public health risks.[562]

(d) Improving labour administration and labour inspection and ensuring access to justice[563]

427. In most cases, the challenge lies in the lack of laws that are sufficiently clear as well as in the limited compliance and enforcement of the law. The integrated policy framework should include an efficient and effective labour inspection system (Paragraph 11(q)). In most countries, the scope of labour inspection is defined by the general labour legislation and the determining factor in law is often the existence of an employment or apprenticeship

[561] ILO: *Transitioning from the informal to the formal economy*, Report V(1), 2014, op. cit., paras 19 and 114.
[562] ILO: *Decent work and the informal economy*, Report VI, 2002, op. cit., p. 7. See also ch. VII.
[563] See also the Labour Administration Convention, 1978 (No. 150).

relationship. Paragraph 27 accordingly refers to the need to have an adequate and appropriate system of inspection that extends the coverage of labour inspection to all workplaces and all aspects of the informal economy (labour, social and fiscal).

428. At the same time, workers in the informal economy should enjoy efficient and accessible complaint and appeal procedures (Paragraph 29). The integrated policy framework should also provide for a balance between prevention and effective sanctions (Paragraphs 22 and 30).

429. The Committee of Experts has called on governments to consider the gradual extension of the labour administration system to cover workers who are not, in law, employed persons.

CEACR – The Committee has noted that in the *Republic of Moldova* enterprises and workers operating in the informal economy fall within the scope of the legislation on labour inspection and the employment and social protection of persons seeking employment. In this context, the labour inspectorate has identified and helped to legalize informal employment in enterprises operating in the formal sector.[564]

5. Social dialogue

430. All workers, including those in the informal economy, should enjoy freedom of association and collective bargaining rights, as provided for in the respective ILO Conventions. In this regard, Paragraph 11(e) indicates that the integrated policy framework should include the organization and representation of employers and workers to promote social dialogue. Although there are greater obstacles to social dialogue in the informal economy, social dialogue can be instrumental in ensuring that policies address informality more efficiently and rapidly. For this reason, it is crucial to create an enabling environment for employers and workers to exercise their right to organize and bargain collectively and to participate in social dialogue in the transition to the formal economy (Paragraphs 31 to 35).

431. The diversity of situations in the informal economy requires trade unions and employers' organizations to deploy multiple strategies to reach all workers and economic units. In some sectors where informality is prevalent and given the difficulties workers face to unionize, there are already structured organizations (trade unions, cooperatives and other types of representation) that represent the interests of workers. Trade unions and employers' organizations have several entry points to gain access to workers and enterprises in the informal economy, such as training on occupational safety and health and other subjects, and partnerships with associations of informal economy workers. Moreover, the fact that trade unions are present in joint bodies and other collective organizations enables them to represent the interests of workers in the informal economy. Workers from the informal economy should also have the possibility to establish their own unions.

432. The provisions of the Recommendation emphasize the need for the whole process of transition to be accompanied by fluid social dialogue, based on consultations with the most representative employers' and workers' organizations, as well as with representatives of workers and economic units in the informal economy. Paragraph 6 of the Recommendation adds that, in the process of identifying the nature and extent of the informal economy and its relationship with the formal economy, the competent authority should make use of tripartite mechanisms with the full participation of the most representative employers' and workers' organizations, which should include in their rank representatives of organizations of informal workers and economic units in the informal economy.

[564] CEACR – *Republic of Moldova*, C.150, direct request, 2010.

433. Recalling the particularly difficult and isolated situation of rural workers, the great majority of whom are in the informal economy, the Committee, with reference to its General Survey concerning the right of association of rural workers, considers that rural workers in the informal economy should enjoy the right to establish and join organizations of their own choosing, and that full account should be taken of the legal and practical implications for outsourced, seasonal, temporary, migrant and informal sector workers, and workers on family farms and small undertakings.[565]

434. The Committee notes the measures taken at the national level to promote social dialogue with a view to the adoption of measures for the transition to the formal economy. Several country reports indicate that the issue of informality and how to address it is on the agenda of tripartite consultative bodies at the national level.[566] Some reports refer to non-regular consultations carried out in the framework of tripartite commissions.[567] In other countries, specific action plans have been adopted with the collaboration of the social partners, including members of cooperatives and established ad hoc councils, to address informality with the participation of the social partners.[568] In some cases, negotiation forums have been established for each economic sector.[569] Some of the formalization plans address the critical role of the social partners in their effective implementation.[570] Other reports refer to periodic consultations held with the social partners to assess the nature and extent of the informal economy and means of formalization, which have already produced positive results.[571] In some cases, even if there are no structured tripartite mechanisms to deal with the informal economy, regular consultations are held in relation to impact studies.[572] In other cases, consultative bodies have been established on specific issues, such as occupational safety and health or social security, with a view to the extension of the corresponding rights to workers in the informal economy.[573]

> CEACR – In its comments concerning the *Islamic Republic of Iran*, the Committee noted that, as an example of tripartite cooperation on employment and labour market matters, the Government referred to the tripartite consultations held in May 2016 in Tehran during the Conference on the transition from the informal to the formal economy, in which challenges and guidelines were discussed by the tripartite constituents.[574]

435. However, the Committee notes that very little information is provided in the country reports on the participation of representatives of membership-based organizations of workers and economic units in the informal economy.

[565] ILO: *Giving a voice to rural workers*, *General Survey concerning the right of association and rural workers' organizations instruments*, ILC, Report III (Part 1B), 104th Session, Geneva, 2015.
[566] For example, *Colombia, Egypt, El Salvador, Portugal, Romania* and *Suriname*.
[567] For example, *Uruguay* (ad hoc discussions in the Wages Council and the Transport Committee).
[568] For example, *Azerbaijan, Guatemala* (Subcommission for the Transition to Formality), *Latvia* (Council for the Prevention of the Shadow Economy) and *Namibia*.
[569] For example, *Peru* (negotiating forums have been established for gastronomic catering, artists, security, fishing and football players).
[570] For example, *Zimbabwe*.
[571] For example, *Sudan* (consultations with the small industries and artisans unions).
[572] For example, in *Germany*, the Federal Government produces a report every four years on the impact of the Illicit Employment Prevention Act (SchwarzArbG). The report includes statements by the Länder, the relevant Federal Government departments and the cooperation authorities under section 2(2) of the SchwarzArbG, as well as comments by employers' and workers' organizations.
[573] For example, *Chile*.
[574] CEACR – *Islamic Republic of Iran*, C.122, direct request, 2017.

6. A conducive environment for sustainable business and investment

436. Sustainable enterprises are a principal source of growth, wealth creation, innovation, employment and decent work, and are therefore instrumental in improving standards of living and social conditions over time. While enterprises in the informal economy contribute to national growth, they do not do so to the fullest of their capacity. The fact that they are outside the legal framework excludes them from support and services that would make them thrive, thus improving their growth and productivity. The integrated policy framework should include the promotion of a conducive environment for the establishment of enterprises and the creation of decent jobs (Paragraph 11(c)).[575]

> The IOE indicates that the promotion of sustained productivity growth through an integrated strategy aimed at aligning and coordinating institutions, regulatory framework, and public and private policies to create an enabling environment while boosting enterprise-level productive efficiency, and seeking complementarity between government and enterprise actions, is of paramount importance.

437. The simplification of regulation and procedures, the lowering of registration costs and fair taxation may open avenues into the formal economy (Paragraph 25(a) and (b)).[576] A coherent legal, judicial and financial framework that formalizes property rights and access to land is also necessary (Paragraph 13).[577] Effective measures to promote public procurement and improve access to financial and business services, to markets, to entrepreneurship training and skills development, and to infrastructure and technology, are also fundamental for the creation of an enabling business environment and increased productivity (Paragraphs 11(g) to (l) and 25(c) to (e)).[578] Sectoral policies may also help to address the specific needs of enterprises (Paragraph 11(m)).[579] The Committee notes in this respect that the 2015 ILC Conclusions concerning small and medium-sized enterprises and decent and productive employment creation call on the ILO to build more robust knowledge on approaches that promote SME formalization and compliance with labour and social legislation.[580]

Supply chains and informality

438. Paragraph 4(c) of the Recommendation refers to employees holding informal jobs in economic units in subcontracting and in supply chains. Supply chains can include large, medium-sized and small enterprises across multiple tiers in both the formal and informal economies. In a cascade of subcontracting relationships, lead firms or their direct suppliers may seek to extract further price concessions from suppliers and subcontractors down the supply chain. In order to respond to the demands for low costs, high quality and speedy delivery, subcontractors frequently adopt highly flexible production and work patterns, which often include informality.[581] Furthermore, intense price competition between potential suppliers creates downward pressure on profits and wages, which can negatively impact working conditions, particularly for low-skilled workers and workers in the informal economy.[582] A "cascade" system sometimes operates among informal labour contractors, whereby contractors use workers provided by or sourced through other contractors or intermediaries.

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[575] See also ILO: Conclusions concerning the promotion of sustainable enterprises, 2007, op. cit., para. 5.
[576] ILO: Conclusions concerning decent work and the informal economy, 2002, op. cit., para. 27.
[577] ILO: *Decent work and the informal economy*, Report VI, 2002, op. cit., p. 113.
[578] The 2007 ILC Conclusions on the promotion of sustainable enterprises provided the basis for these provisions.
[579] See, for example, ILO: *Formalizing domestic work*, 2016, op. cit.
[580] ILO: Conclusions concerning small and medium-sized enterprises and decent and productive employment creation, ILC, 104th Session, Geneva, 2015, para. 20.
[581] ILO: *Decent work in global supply chains*, Report IV, ILC, 105th Session, Geneva, 2016, para 30.
[582] ibid., para. 34.

Labour abuses, including forced labour, may occur at some tiers of supply chains via unethical labour contractors with links to human traffickers, which provides one of the channels for "modern-day slavery" in the global economy.[583]

439. A large number of migrant workers experience difficult working conditions, particularly if they are in an irregular situation (and in the informal economy).[584] Similarly, forced labour and child labour remain a problem, particularly in portions of supply chains linked to the informal economy.[585]

7. Extending social protection

440. A lack of social protection is a key defining characteristic of the informal economy. Despite their greater exposure to risk and income insecurity, the vast majority of workers in the informal economy do not benefit from social security coverage. The lack of social protection is a major contributor to social exclusion and poverty. But its impacts are also felt in the formal economy, where workers and enterprises have to bear the full burden of funding the social security system through taxes or social insurance.

441. The transition process involves the progressive extension to all workers in the informal economy of social security (taking into consideration their contributory capacity), maternity protection, decent working conditions and the minimum wage. In this respect, the integrated policy framework should provide for the extension of social security coverage and the establishment of social protection floors (Paragraph 11(n)) and include occupational safety and health (OSH) policies (Paragraph 11(p)). Paragraph 17 adds that Members should take immediate measures to address the unsafe and unhealthy working conditions that often characterize work in the informal economy, and to promote and extend OSH protection to employers and workers in the informal economy.[586]

442. Moreover, when building and maintaining national social protection floors as provided by the Social Protection Floors Recommendation, 2012 (No. 202), particular attention should be paid to the needs and circumstances of workers in the informal economy and their families (Paragraphs 18 to 20). If possible, access to quality childcare and other care services should be made available to promote gender equality in the transition to formality (Paragraph 21).

8. Local development strategies

443. The integrated policy framework should also promote local development strategies, both rural and urban, including regulated access for use of public space and regulated access to public natural resources for subsistence livelihoods (Paragraph 11(o)). In this regard, the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), highlights the need to take into account specific employment deficits affecting certain regions and declining areas which have not benefited from national development and suggests the inclusion of certain measures in development plans and programmes (Paragraphs 33 and 34). These measures include: creating growth poles and centres; expanding the number and size of small towns to counterbalance the growth of large cities; improving access to essential services; encouraging the voluntary mobility of workers; investing in regional infrastructure

[583] ibid., para. 67.
[584] ibid., para. 75. Furthermore, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 provides in Art. 5 that: For the purposes of the present Convention, migrant workers and members of their families: (a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party; (b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.
[585] ibid., para. 90.
[586] See in this regard, ILO: *The informal economy and decent work: A policy resource guide – Supporting transitions to formality*, Geneva, 2013.

and promoting the participation of local communities in developing and implementing the respective measures. Local development strategies act as a disincentive for rural-urban migration and informality in urban areas.

> *Sudan* – According to the Government's report, significant disparities between urban and rural areas are contributing to an increasingly urban informal sector, which accounts for over 60 per cent of GDP. The concentration of investment and services in and around Khartoum state has encouraged rural-urban migration that is weakening agricultural productivity and deepening poverty in both urban and rural areas.

444. Over half of the population in developing countries continues to live and work in rural areas, with agriculture as their most important source of income. Agriculture is the sector in which most of the rural poor are concentrated and, while rural workers play a vital role in food production, they are often among the most vulnerable to discrimination and the absence of rights at work. The great majority of work in rural areas is in the informal economy, further increasing the vulnerability of the workers. Poor rural development fosters rural exodus to large cities increasing urban unemployment. Women represent a large share of the agricultural workforce, and their empowerment is crucial to improving rural livelihoods. Young people in rural areas are more likely to be unemployed, in unstable employment relationships and to leave school earlier then their urban counterparts.

445. In the absence of formal work opportunities, many engage in self-employment, including family work and subsistence farming. Where formal employment opportunities are available, they often take the form of casual or temporary work, for example in plantations. Levels of organization are low, and there is no collective bargaining or social dialogue to improve working conditions in rural areas in many parts of the world. Local development in rural areas can be hampered for various reasons, including the lack of specific rural policies and their implementation, the unavailability of specific rural data and limited emphasis on rural issues, weak local governance structures, limited services and a lack of investment. The Committee notes that many country reports refer to measures taken to promote local development and improve living conditions in rural areas with, in some cases, a positive measured impact on GDP.[587]

> *Indonesia* – The project to promote sustainable rural livelihoods through decent working conditions and opportunities for workers in oil palm plantations includes among its objectives increasing the capacities of national, provincial and local governments, and workers' and employers' organizations to address employment and labour-related challenges in the sector.[588]

> *Sri Lanka* – The Local Empowerment through Economic Development (LEED) project promotes the inclusion of the poor worker and person in situation of vulnerability in economic activities, including by promoting their organization, skills, and access to markets. The project has directly benefited over 35,000 people, included over 10,000 female-headed households.[589]

[587] For example, *Cabo Verde, Cyprus* and *Dominican Republic*.
[588] ILO: Promoting Decent Work on Oil Palm Plantation in Indonesia, Geneva 2019.
[589] See: Local Empowerment through Economic Development (LEED), ILO Country Office for Sri Lanka and the Maldives.

446. Cooperatives can be considered as a stepping stone out of informality.[590] In some cases, they facilitate access to markets and to financing. On other occasions, the cooperative model covers workers in the informal and/or rural economy who do not have access to public schemes. Low-income informal economy workers can pool risks and resources through cooperatives, and provide mutual insurance for the various risks that they face, such as death, disability, sickness and loss of assets.[591]

Morocco – Act No. 112.12 enables cooperatives to have access to public procurement.

The Latin American and Caribbean region has been fairly active and innovative in terms of institutional public policy instruments. The countries in the region have explored various strategies to promote formalization, which may be summarized as covering four areas: productivity improvements, standards, incentives and the strengthening of supervision. In some countries, the efforts made have covered several of these areas, and specific approaches have been adopted for groups such as salaried workers, self-employed workers and domestic workers, although in practice such initiatives have been less frequent.

Some countries have adopted productivity development programmes, although this option is the least frequent. Discussions have focused more on regulation, and particularly on the cost of applying certain types of regulations to the formalization process. Awareness-raising campaigns on rights have also been undertaken in certain countries to eliminate informality caused by a lack of awareness of workers' rights. Many campaigns have focused on the simplification of regulation and procedures in such areas as taxation, labour procedures, registration with the social security system and the creation of businesses.

Many formalization incentives are linked to taxation, with the aim of simplifying the process of tax declarations and payments, particularly for small enterprises. Some countries have merged taxes and social security into a single tax *(monotributo)*, with at least 15 countries in the region adopting a simplified tax system.

Emphasis has also been placed on the extension of social security coverage, particularly to specific groups (own-account, rural and domestic workers) who are more difficult to cover. In such cases, non-traditional affiliation programmes have been developed, with the aim of them being progressively be mainstreamed into the general social security system.

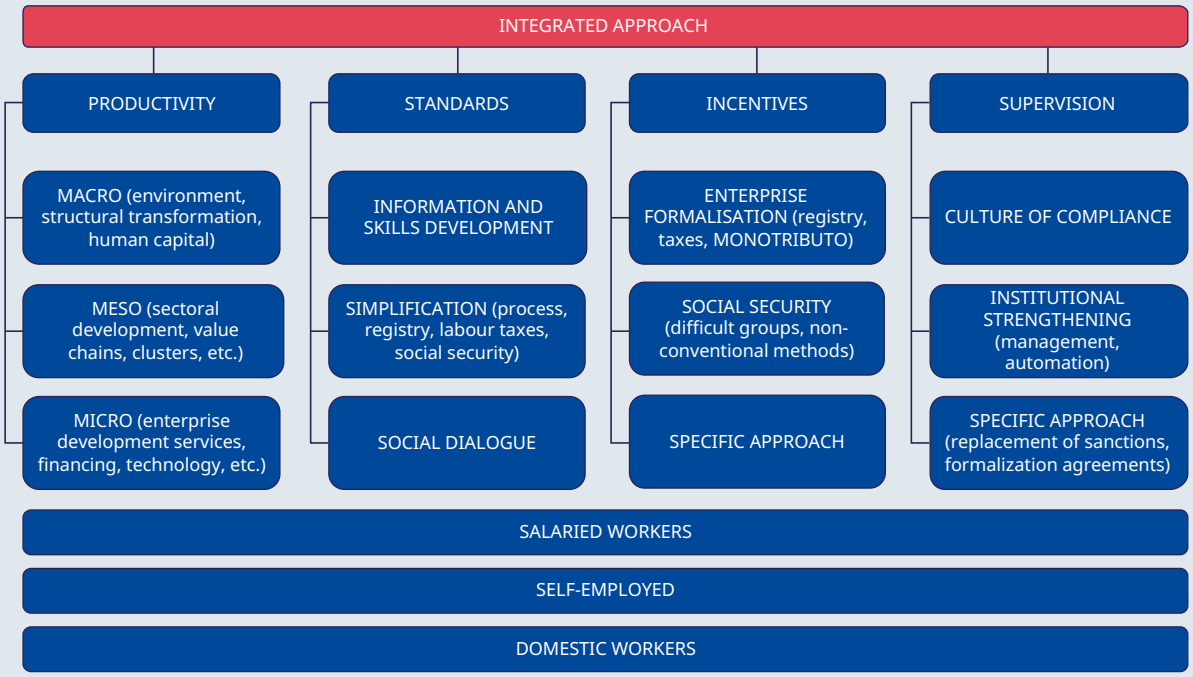
Source: J.M. Salazar-Xirinachs and J. Chacaltana: *Políticas de formalización en América Latina: Avances y desafíos*, 2018, op. cit., p. 395.

[590] In this regard, the Promotion of Cooperatives Recommendation, 2002 (No. 193), indicates in Paragraph 9 that "Governments should promote the important role of cooperatives in transforming what are often marginal survival activities (sometimes referred to as the "informal economy") into legally protected work, fully integrated into mainstream economic life."

[591] For example, *India* (Yeshasvini Cooperative Farmers Health Care Scheme and VimoSEWA for poor self-employed women), *Senegal* and *Nepal* (informal economy workers have combined in mutual health organizations to extend social protection coverage).

Figure 3.5

Schema for the formalization programme in Latin America and the Caribbean – A good example of an integrated policy framework



Source: ILO, FORLAC, Salazar-Xirinachs, José Manuel & Chacaltana, Juan Políticas de Formalización en América Latina: Avances y Desafíos. Lima: OIT, Oficina Regional para América Latina y el Caribe, FORLAC, 2018, p. 33.

VI. Specific measures for the formalization of micro and small economic units

Paragraph 25 of Recommendation No. 204

With respect to the formalization of micro and small economic units, Members should:

(a) undertake business entry reforms by reducing registration costs and the length of the procedure, and by improving access to services, for example, through information and communication technologies;

(b) reduce compliance costs by introducing simplified tax and contributions assessment and payment regimes;

(c) promote access to public procurement, consistent with national legislation, including labour legislation, through measures such as adapting procurement procedures and volumes, providing training and advice on participating in public tenders, and reserving quotas for these economic units;

(d) improve access to inclusive financial services, such as credit and equity, payment and insurance services, savings, and guarantee schemes, tailored to the size and needs of these economic units;

(e) improve access to entrepreneurship training, skills development and tailored business development services; and

(f) improve access to social security coverage.

447. Going a step further in the process of implementing the integrated policy framework for formalization, Paragraph 25 proposes a series of measures to contribute to the formalization of micro and small enterprises. Such enterprises face numerous constraints to growing and developing efficiently, including in relation to: access to credit and financial markets; low levels of technical and managerial skills; insufficient access to markets; inappropriate or burdensome registration procedures; and discriminatory practices respecting access to public and private procurement. The objective of these measures is to ease restrictions and eliminate discrimination against micro and small enterprises.

Trinidad and Tobago – The Micro and Small Enterprise (MSE) Policy 2013–16 provides the framework for the strategic and effective integration of MSEs into the formal economic structure, thereby allowing them to access resources and services, while simultaneously channelling their economic success towards employment creation. Measures adopted in this area include the National Integrated Business Incubator System (IBIS) and the FairShare Programme, which provide entrepreneurial development and procurement opportunities for MSEs, respectively.[592]

448. The country reports contain a wealth of information on measures of this type. Some governments have provided information on the various measures adopted with a view to fostering a sustainable enterprise environment,[593] and others refer to measures aimed at reducing unregistered employment in specific sectors (for example, agriculture).[594]

[592] CEACR – *Trinidad and Tobago*, C.122, direct request, 2017. Similarly, CEACR – *Algeria*, C.122, direct request, 2017.
[593] For example, *Senegal* and *Zimbabwe*.
[594] For example, *Turkey*.

1. Business entry reforms

449. In some countries, legislation has been adopted to make it easier to set up companies. The registration process has been simplified and shortened through on-line registration, and in some cases one-stop shops or single application models have been established to facilitate the registration process and the payment of taxes. This is sometimes done in the framework of broader E-government portals that enable the digital management of all interactions with the administrative services.[595] Some governments report the establishment of specific centres or agencies for the promotion, registration and establishment of enterprises.[596] Several reports refer to the adoption of specific action plans to reduce the administrative burden and create an enabling environment for business.[597]

> *Estonia* – The "entrepreneur account" is a new simple and affordable way of doing business. Once an entrepreneur account has been opened, registration as an entrepreneur is not required nor are accounting and tax reports because tax liability is calculated on the basis of the payments made into the entrepreneur account. An entrepreneur account is useful for people who provide services to other natural persons in areas that do not involve any direct expenses, or for people who sell self-produced goods, handicrafts or low-cost goods. Examples include babysitting, housekeeping, gardening, repair or construction services that do not involve direct costs. An entrepreneur account is also an appropriate solution for new forms of entrepreneurship, such as the payments made by one natural person to another through ride-sharing service platforms.

2. Reduced compliance costs

450. Among the measures taken to reduce compliance costs, some governments refer to the reduction of employers' contribution rates to promote the formalization of small enterprises,[598] or to the adoption of legislation establishing tax incentives.

> *Algeria* – The law allows the deduction of the employer's share of the social security contribution for each jobseeker recruited for any employer who recruits jobseekers for a period of at least 12 months, on condition that the employer is in compliance with social security contributions. Other incentives include: a higher allowance for employers recruiting first-time jobseekers; a monthly employment subsidy for three years for each person recruited with a contract for an indefinite period; and exemption from global social security contributions for any employer who provides training or further training for employees.

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[595] For example, *Argentina* (Act No. 27349 of 2017 on simplified companies), *Armenia, Australia, Azerbaijan, Benin, Cabo Verde, Estonia, Seychelles, Sri Lanka, Sweden, United Kingdom* and *Zimbabwe*. See also CEACR – *Algeria*, C.122, direct request, 2017.

[596] For example, *Cameroon, Canada* (Manitoba), *Gabon* and *Mauritius*. See also CEACR – *Costa Rica*, C.122, direct request, 2018.

[597] For example, *Croatia* (Action Plan for the Reduction of the Administrative Burden in the Economy 2019), *Republic of Korea* (Business Start-up Regulatory Reform Plan for 2018), *Mexico* (Federal Programme *Crezcamos Juntos*), *Philippines* (Administrative Order No. 38 creating the inter-agency taskforce to monitor progress in doing business and the Ease of Doing Business and Efficient Government Service Delivery Act of 2018), *Poland* (Act on Central Registration and Information on Business and the Information Point for Entrepreneurs for the Establishment of a Business).

[598] For example, *Algeria, Argentina, Mali* and *Turkey*.

451. In some countries, the minimum capital required to register a new enterprise has been reduced,[599] and in others, fees due when creating an enterprise have been abolished.[600] In others, tax exemptions have been established for newly established enterprises,[601] or for micro and small enterprises in general.[602] In order to foster women's entrepreneurship, tax exemptions have been established in one country and access to loans facilitated for enterprises created by women.[603]

452. In some cases, thresholds for tax exemption have been raised.[604] Simplified tax and payment regimes can also result in the reduction of costs.[605] For example, simplified schemes for accounts, tax returns and payments have been established in several countries. For example, in Latin America, a simplified tax system has been developed in some countries. In some cases, tax incentives have been associated with social security contributions, with the integration of several payments into a single tax, known as the *monotributo*.[606]

Brazil – The simplified national tax system *(Simples Nacional)* is a common tax collection, payment and enforcement system for micro and small enterprises established by Supplementary Act No. 123 of 2006, which includes all government bodies (Federal, state, Brasília and other municipalities). Participants must meet the requirements established by law, including a declaration to that effect in their employees' employment and social security documents. Repeated failure to comply with this requirement may result in exclusion from the system.

Philippines – the Barangay Micro Business Enterprises (BMBE) Law (RA 9178) is the main policy tool for the integration of informal economic units into the mainstream economy through incentives such as exemption from income tax, fees and the minimum wage for BMBE registrants.

3. Access to public procurement

453. In some countries, measures have been taken to facilitate access to public procurement for micro and small enterprises.[607] For instance, in certain countries, a percentage of calls for tenders involving contracts for the provision of goods and services to the state are reserved for micro and small enterprises.[608]

[599] For example, *Benin, Gabon* and *Morocco*.
[600] For example, *Togo*.
[601] For example, *Cameroon, Cabo Verde* and *Mauritius*. In *Colombia*, Act No. 1429 of 2010 establishes tax exemption for newly established micro and small enterprises.
[602] For example, *Cambodia, Peru* (the New Simplified Single Regime (RUS) allows a fixed payment and sales and income tax exemptions) and *Uruguay* (tax reforms and the measures adopted to promote investment include the reduction of the business tax). See, in this regard, ILO: *Recent experiences of formalization in Latin America and the Caribbean*, Regional Office for Latin America and the Caribbean, 2014.
[603] For example, *Nepal* (Women Entrepreneurship Development Fund – WEDF).
[604] For example, *Estonia* and *Georgia*.
[605] For example, *Canada, Costa Rica* (National Strategy for the Transition to Formality, tax simplification target), *Georgia* and *Lithuania*.
[606] For example, *Argentina, Colombia* and *Uruguay*.
[607] For example, *Cameroon* and *Finland* (National Procurement Act No. 1397/2016, section 2). See also CEACR – *Costa Rica*, C.122, direct request, 2018.
[608] For example, *Cabo Verde* (25 per cent of calls for tenders for the provision of goods and services and 20 per cent of the amount of the contract in the case of public works), *El Salvador* (the Act on procurement and contracts for the public administration (LACAP) establishes a threshold of 12 per cent of the annual national budget to be available for micro and small enterprises), *Mauritius, Senegal* (15 per cent of public procurement is for local artisans) and *United Kingdom* (the aim is to spend 33 per cent of procurement through the supply chain by 2022).

Algeria – 20 per cent of public contracts have to be allocated to microenterprises.[609]

454. In some cases, enterprises have to demonstrate a certain level of technology and product quality to have access to public procurement.

Republic of Korea – "Venture Nara" is an open market for start-ups and business ventures through which newly established enterprises can promote and supply goods, once they have passed the technological and product quality screening. Similarly, Korea Online E-Procurement System (KONEPS) processes every step of the procurement process electronically.[610]

455. Some governments indicate that they are in the process of developing a public procurement system that will include micro and small enterprises.[611] In some cases, when enterprises have been subject to a fine, they cannot participate in public procurement.[612]

4. Access to inclusive financial services

456. Access to finance is crucial for the operation of enterprises, and is also a priority for enterprises in the informal economy. Technology can help in this regard (for example e-wallets).[613] However, micro-entrepreneurs and small enterprises in the informal economy struggle to find banks that will provide them with the financial resources they need to develop and, when they eventually obtain credit, it is under more stringent conditions and is often more expensive. They generally only have access to the informal financial market, which is more onerous and risky.

457. In some countries, financial inclusion strategies have been implemented to help develop viable and sustainable microfinance.[614] One aspect of the strategy may consist of ensuring that at least a certain percentage of the total loan portfolio goes to micro, small and medium-sized enterprises (MSMEs).[615] In some cases, access to credit is facilitated for micro and small enterprises in new and emerging sectors, such as renewable energy[616] or the production of certain commodities.[617] In some countries, access to microcredit has been improved,[618] or preferential interest rates established for enterprises certified as SMEs.[619] In certain cases, access to finance has been developed through the establishment of a specific bank for SMEs,[620] or other funding and guarantee institutions.[621]

[609] Public Procurement Code, section 55 ter.
[610] A similar electronic procurement system has been established in *Malta* (the Electronic Public Procurement System (ePPS), which has also reduced administrative costs and includes training workshops and materials).
[611] For example, *Norway* and *Poland*.
[612] For example, *Azerbaijan*.
[613] See for example models for transition with new technologies in J. Chacaltana, V. Leung and M. Lee: *New technologies and the transition to formality: The trend towards e-formality*, ILO, Employment Policy Department, Working Paper No. 247, 2018.
[614] For example, *Bahrain, Bangladesh, Philippines* and *Thailand*.
[615] For example, *Philippines* (at least 8 per cent of the loan portfolio).
[616] For example, *El Salvador*. See also CEACR – *Algeria*, C.122, direct request, 2017.
[617] For example, *El Salvador*.
[618] For example, *Benin, Central African Republic* and *Indonesia*.
[619] For example, *Mauritius*.
[620] For example, *Cameroon*.
[621] For example, *Cabo Verde* (Pro Capital and CV Garante) and *Georgia* (Credit Guarantee Mechanism).

Botswana – The Botswana Financial Inclusion Roadmap 2015–2021 is a five (5) year plan that lays out the national priorities for the inclusion of all business sectors into the financial inclusion agenda. The Roadmap proposes six (6) priority areas of action which have been identified based on the most urgent customer needs and barriers.

458. In some countries, the measures adopted include "e-wallets", mobile banking and simplified conditions to open bank accounts or obtain credit cards, particularly for isolated enterprises and persons.[622] In certain cases, the measures adopted for SMEs include a combination of unemployment benefits and credits, consisting of subsidies, allowances or "start-up grants" for unemployed workers to finance new businesses.[623]

Georgia – "Enterprise Georgia" and the Innovation and Technology Agency of the Ministry of Economy and Sustainable Development are adopting tools to encourage SMEs to move from the informal to the formal economy. Enterprise Georgia is implementing various support mechanisms to develop entrepreneurship in the country, including: Micro and Small Business Support, which is designed to provide financial support and consulting services to micro and small businesses throughout the country; and Access to Finance, which is tailored to suit the specific stages of development and the financial needs of businesses. Within the framework of the Micro and Small Business Support programme, financial assistance is available for start-ups and expanding companies in the form of grants.

CEACR – In its comments concerning *Burkina Faso*, the Committee noted the training and financial support provided to micro and small enterprises in the informal economy. The Burkina Economic and Social Development Fund (FBDES) contributes to the financing of social measures and the SME Financing and Promotion Agency through the Special Job Creation Programme for Young Persons and Women (PSCE/JF) in the context of financing for informal economy actors.[624]

CEACR – In its comments concerning *Mongolia*, the Committee noted that, to assist in the transition from the informal to the formal economy, the Government has amended the Law on Employment Promotion to expand the provision of financial support to small and microenterprises through the granting of loans to private businesses and to citizens establishing community cooperatives.[625]

459. In certain cases, specific measures have also been established to upgrade the technological level of micro and small enterprises, including capital subsidies to purchase machinery.[626]

[622] For example, *El Salvador, Republic of Korea* and *Philippines*.
[623] For example, *Estonia, Finland* (the start-up grant ensures the income of a new entrepreneur for 12 months: Unemployment Security Act, Chapter 2, section 5(a)) and *United Kingdom* (New Enterprise Allowance).
[624] CEACR– *Burkina Faso*, C.122, direct request, 2018.
[625] CEACR – *Mongolia*, C.122, direct request, 2017.
[626] For example, *India* (Credit Linked Capital Subsidy Scheme – CLSS).

5. Access to entrepreneurship training, skills development and tailored business services

460. In some cases, national strategies for the transition to formality envisage an evaluation of specific skills development needs in the labour market and the development of an inclusive national skills strategy.[627]

> *Zambia* – In relation to women's entrepreneurship, the Committee notes that the Citizens Economic Empowerment Commission (CEEC) has developed various programmes for youth and women aimed at addressing the skills gap and providing the knowledge needed to engage in business activities.[628]

461. To maximize entrepreneurial potential, entrepreneurship programmes have been developed in some countries with a view to developing the core competencies of enterprises and individuals. The type and content of the training is dependent on the specific needs of the clients.[629] For example, training programmes may consist of record-keeping and cash management, basic business skills, marketing for SMEs, importing and exporting, effective management techniques and stock control.[630]

462. Some training activities are tailored for microbusinesses or persons in dependent self-employment.[631] Some consist of literacy programmes.[632] In some countries, targeted measures have been introduced covering some aspects such as the transfer of technologies,[633] or specific sectors.[634] In some cases, specific institutions have been established to assist micro and small enterprises to develop and strengthen SME networks with a view, for example, to obtaining credit or training, increasing productivity and competitiveness, or ensuring access to technology or skills development in new technologies and digitalization.[635] In other cases, business incubators have been created with the assistance of the private sector, or universities.[636]

> *Cook Islands* – The Cook Islands Tertiary Training Institute provides training and skills development and tailored development services for businesses.

463. Some governments report that awareness-raising workshops are organized periodically for new entrepreneurs,[637] or to improve skills in general.[638] Studies are being carried on in some countries to study the feasibility of establishing a training institution.[639]

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[627] For example, *Costa Rica*.
[628] See CEACR – *Zambia*, C.122, direct request, 2013. Similarly, in *Cabo Verde* skills development training is provided by the Organization of Women of Cabo Verde (OMCV).
[629] For example, *France, Gabon, Georgia, Kiribati, Namibia* and *Zimbabwe*.
[630] For example, *Trinidad and Tobago* (the National Entrepreneurship Development Company (NEDCO) has established centres nationwide).
[631] For example, *Republic of Korea*.
[632] For example, *Togo*.
[633] See CEACR – *Algeria*, C.122, direct request, 2017.
[634] For example, *Myanmar* (training for electricians and boiler operators).
[635] For example, *Egypt* (Micro, Small and Medium-sized Enterprises Agency), *Georgia* (Georgian Innovation and Technology Agency), *Ireland* (High Potential Start-Up), *Malta* (Malta Enterprise), *Senegal* (Agence de Développement et d'encadrement des Petites et Moyennes Entreprises – ADEPME), *Sweden* (Smart Industry and Digitalization Lift) and *Thailand*.
[636] For example, *Libya* (in the oil sector), *Mauritius, Philippines* (Negosyo Centers serve as hubs for entrepreneurial growth) and *Zimbabwe* (Hypercube Hub).
[637] For example, *Benin* and *Cameroon*.
[638] For example, *Cambodia* and *Slovakia*.
[639] For example, *Central African Republic*.

India – "Skill India" is a campaign for skills development and vocational training designed to create appropriate skill sets among rural migrants and the urban poor and to provide training loans for poor students. Various other entrepreneurship and skills development programmes are being implemented in *India* to promote entrepreneurship. For example, the Skill Development Scheme is designed to motivate various categories of youth, including women, workers with disabilities and persons who are below poverty level to consider self-employment and entrepreneurship as career options. The ultimate objective is to promote new enterprises, build capacity in existing MSMEs and develop an entrepreneurial culture in the country.

464. In one country, training to develop skills and managerial competence has been provided to cooperatives and enterprises in the social and solidarity economy, and observatories of the social and solidarity economy have been established.[640]

Philippines – The DOLE Integrated Livelihood Program (DILP), or Kabuhayan Program, is intended to assist poor, vulnerable, and marginalized workers by promoting entrepreneurship development and transitional employment. It provides grants to assist with capacity building for entrepreneurial ventures.

465. In certain countries, the public authorities have produced tools, brochures and booklets on the steps to be followed to start or register a new business and with a view to the development of an entrepreneurship culture.[641]

6. Social security coverage

466. Several reports make specific reference to the measures taken to ensure social protection for workers in the informal economy, and particularly in micro and small enterprises. Some measures are intended to establish simplified mechanisms to enable enterprises to register workers.[642] In certain cases, the objective is to extend coverage to particular categories of workers.[643]

467. The Committee further notes the efforts made by some countries to integrate unregistered workers in the rural and urban sectors into the formal economy, and the adoption of plans for the formalization of the informal economy.[644] Some governments indicate that they have adopted legislation to extend certain branches of social protection to workers in the informal economy.[645] In some cases, pro-rata contributions have been established for workers in atypical types of employment or reduced contributions for the self-employed. In many cases, these measures are targeted at micro and small enterprises.[646]

Thailand – Under the "Creating Opportunities and Social Equality" pillar of the 20-Year National Strategy (2018–37), the aim is to increase the number of informal workers registered with the social security system and develop an integrated welfare system through the collaboration of ministries, local administrative authorities, community organizations, businesses and civil society organizations.

[640] For example, *Morocco* (Mourfaka Programme).
[641] For example, *Seychelles*.
[642] For example, *Burkina Faso, Cabo Verde* (Act No. 70/VII/2014), *Costa Rica* (National Formalization Strategy) and *Senegal*.
[643] For example, *India* (construction workers), *Latvia* (persons on low incomes) and *Pakistan* (brick and agricultural workers).
[644] For example, *Estonia, Turkey* and *Thailand*.
[645] For example, *Mali* (Act No. 2018-074 respecting accidents).
[646] For example, *Malta*.

VII. Measures to ensure policy implementation and review

Paragraphs 38 and 39 of Recommendation No. 204

38. Members should give effect to the provisions of this Recommendation, in consultation with the most representative employers' and workers' organizations, which should include in their rank, according to national practice, representatives of membership-based representative organizations of workers and economic units in the informal economy, by one or a combination of the following means, as appropriate:

(a) national laws and regulations;

(b) collective agreements;

(c) policies and programmes;

(d) effective coordination among government bodies and other stakeholders;

(e) institutional capacity building and resource mobilization; and

(f) other measures consistent with national law and practice.

39. Members should review on a regular basis, as appropriate, the effectiveness of policies and measures to facilitate the transition to the formal economy, in consultation with the most representative employers' and workers' organizations, which should include in their rank, according to national practice, representatives of membership-based representative organizations of workers and economic units in the informal economy.

468. In the same way as the national employment policy required by Convention No. 122, it is important to review the effectiveness of the policies and measures adopted to facilitate the transition to the formal economy. The measures and policies adopted should be implemented and reviewed in consultation with the social partners and the representatives of workers and economic units in the informal economy.

469. Some governments have provided information on tripartite agreements at the national and local levels[647] concluded to address the various aspects of informality and for the implementation of the Recommendation.[648]

Costa Rica – On 13 October 2016, the Government and the social partners concluded a "Tripartite agreement for the implementation of Recommendation No. 204 on the Transition from the Informal to the Formal Economy in Costa Rica". The Government reports that measures have also been taken to strengthen social dialogue through the creation of a national forum for tripartite dialogue on the transition from the informal to the formal economy.[649]

[647] For example, *Honduras* and *Italy*.

[648] Such agreements have been concluded in *Bulgaria* (in 2018 between the AGLI and the two nationally representative trade unions, providing for joint implementation of commitments to combat informal work), *Ecuador* (National Agreement on employment, productive investment, innovation and inclusion) and *Portugal* (2011 Agreement on competition and employment and 2012 Agreement on the commitment to competition, growth and employment, which is intended to combat undeclared work).

[649] See CEACR – *Costa Rica*, C.122, observation, 2018.

The CTA Autónoma from *Argentina* refers in this respect to the lack of consultation with social partners concerning the transition to the formal economy and that the measures adopted by the government to foster formalization have been scarce.

The Confederation of Portuguese Business (CIP) indicates that in the Tripartite Agreement for Competitiveness and Employment of 2011, the social partners declared that the fight against the phenomenon of informality "is essential in the context of the pursuit of fiscal consolidation and a fair tax system, and even more so in terms of the competitiveness of the economic fabric, insofar as it promotes fair competition, especially between Portuguese products and imported products, and gains in efficiency and productivity through the elimination of distortion effects".

VIII. Conclusions

470. ***The Committee acknowledges the multifaceted and widespread nature of informality, which goes well beyond the world of work and is also related to commercial, fiscal and developmental aspects. As such, it needs to be addressed within the context of an integrated policy framework, rather than through a piecemeal approach.***

471. ***The Committee wishes to emphasize, however, that addressing informality is a process that takes time and requires tailored measures sustained over time. For this reason, the sooner measures are adopted the better. While the overall strategy is to address informality within an integrated policy framework that is the result of constructive social dialogue and consensus, nothing prevents governments from starting with more modest measures focused on certain aspects or sectors and which will be extended coherently in future phases.***

472. ***Informality is closely linked to employment policy. When the latter is not inclusive and does not promote full, productive and freely chosen employment, informality tends to expand. Moreover, a lack of clarity of labour regulation, and more specifically the absence of clarity concerning the employment status of workers, can contribute to the informalization of the economy. Digital labour platforms are a clear example. Under these conditions, achievement of the objective of the Recommendation is hindered due to the lack of clarity respecting roles and responsibilities, and particularly in relation to labour and social rights.***

473. ***At the same time, multiple-party employment arrangements, especially in local and global supply chains, also have a clear impact on the development of informality. By seeking more work at lower prices in a shorter time, successive layers of subcontracting place excessive pressure on some tiers of supply chains. This pressure, combined with excessive competition between countries and enterprises to obtain the contracts, is also an element at the origins of informality.***

474. ***The Committee considers that it is important for the functioning of labour markets to be organized in a manner that permits better integration between highly productive and less productive sectors, in which employment tends to be concentrated, based on skills and technology transfers, within a culture of compliance, which will foster greater transparency.***

475. ***The Committee considers that the debate concerning the effect of possible rigidities in the labour market and excessive labour costs, which are often identified as hampering business development and acting as a disincentive to regular employment, and the consequent calls for deregulation, needs to be based on fuller data and increased research. Such research should focus on the impact on informality not only of greater flexibility and lower costs, but also of improved productivity. It should focus particularly on how investment in infrastructure and technology, as well as education, vocational training and skills development, can foster productivity and curb informality.***

Contents

Louisette Fanjamalala (42 years old) doing sewing work at home with her nephew she is raising, in the Soavina district of Antananarivo, Madagascar. © ILO

4

Home Work

I. Introduction to Convention No. 177 and Recommendation No. 184

476. As noted in chapter II, work may be performed in a broad variety of settings, including on the employers' premises, or at the home of the worker or other premises of his or her choice. The Committee notes that very few ILO Conventions and Recommendations, apart from the home work instruments, make specific reference to home work.[650] Moreover, the application of certain instruments is restricted to workers in enterprises or establishments, while others permit the exclusion of certain categories of workers. The wording used in some ILO instruments and how they are defined at national level, may give rise to questions concerning their applicability to homeworkers. In addition, the instruments of general application that cover homeworkers too are often not applied to them in practice.[651] The Home Work Convention, 1996 (No. 177), and its Recommendation, 1996 (No. 184), are intended to ensure that homeworkers enjoy rights that are generally applicable and to address their specific situation more systematically. Convention No. 177 provides, in Article 10, that it does not affect more favourable provisions applicable to homeworkers under other international labour Conventions. The objective of the instruments is to bring the protection of homeworkers into line with that of other workers.

477. It has to be recalled, as it was in the preparatory work for the instruments, that the ILO Constitution provides that international labour standards shall not affect any more favourable provisions established at the national level.[652] Already in 1984, the International Labour Conference (ILC) had called for ILO action to deal with the special situation of homeworkers and placed special emphasis on the need to devise approaches with a view to giving them more effective protection.[653] In 1985, the ILC invited the Governing Body to consider the situation of home-based workers as a possible new item for future standard-setting. In 1988, in its Conclusions concerning rural employment promotion, the ILC called on the ILO to design programmes aimed at documenting and improving the legal, economic and social conditions of home-based workers.[654] A Meeting of Experts on the Social Protection of Homeworkers was held in 1990 to examine the nature and extent of the problems faced by homeworkers and provide policy advice concerning the national and international measures that could lead to more effective protection. Many of the experts believed that a better and more uniform understanding of the employment status of homeworkers would prevent ad hoc interpretations of labour legislation and that international guidance on this point would be very useful.[655] In 1993, the Governing Body included this issue in the agenda of the ILC, which adopted Convention No. 177 and Recommendation No. 184 in 1996.

478. The employment status of homeworkers is often unclear, either because they are not declared as workers or because the law is not clear. Indeed, the great majority of homeworkers are in the informal economy.[656]

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[650] Migration for Employment Convention (Revised), 1949 (No. 97); Migration for Employment Recommendation (Revised), 1949 (No. 86); Workers with Family Responsibilities Recommendation, 1981 (No. 165); Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99); Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), which refers to workers employed in homeworking trades; Maternity Protection Convention (Revised), 1952 (No. 103), which applies to women wage earners working at home; and Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). For further details, see ILO: *Home work*, Report V(1), ILC, 82nd Session, Geneva, 1995, pp. 75–77.

[651] ibid.

[652] Article 19(8). This is particularly relevant, as indicated below, in the case of telework, which is regularly carried out for a specific enterprise.

[653] ILO: Resolution on equal opportunities and equal treatment for men and women in employment, Conclusions, ILC, 71st Session, Geneva, 1985, para. 15(b).

[654] ILO: Conclusions concerning rural employment promotion, ILC, 75th Session, Geneva, 1988, para. 13(i); and ILO: *Social protection of homeworkers*, Documents of the Meeting of Experts on the Social Protection of Homeworkers, Geneva, 1990, p 1.

[655] ibid.

[656] For example, in its report, the Government of *Argentina* refers to the garment and footwear industries, in which informality prevails, and to the measures taken to address this situation. The Government of *Nigeria* also indicates that the formalization of homeworkers is one of the issues currently under examination.

II. Rationale for the adoption of international instruments on homeworkers

479. As recalled during the preparatory work, home work, that consists mainly of work carried out in a place other than the workplace of the employer for a remuneration, is a primary source of income for a large number of workers throughout the world. It may take many forms, from labour-intensive and skilled artisanal work (such as traditional embroidering) and industrial metal work, to telework or other information technology services. In the contemporary global economy, homeworkers also assemble and package goods, such as electronics, pharmaceuticals and auto parts.[657] Home work is concentrated in the informal economy, and is highly gendered. In many industrial sectors, the majority of homeworkers are women who have not been able to gain access to regular employment due to family responsibilities or lack of skills, or opt to work from home due to cultural and social norms.[658] Home work is also considered to be an alternative for older workers, workers with disabilities and isolated workers in rural areas.[659]

480. Homeworkers lack recognition and visibility. Moreover, home work is highly feminized. Many workers who are in a vulnerable situation, due to migration status, family responsibilities or discrimination, choose home work because it is invisible. In some cases, home work may be the only option, for example for some workers with disabilities.

481. Homeworkers often do not have contact with other colleagues, are rarely unionized and have difficulty in contacting a workers' representative in the event of problems. They are not often aware of their rights, and the lack of personal contact with colleagues and management makes it more difficult for occupational safety and health or skills-development issues, for example, to be taken into account.

482. In regions with high rates of unemployment or underemployment, home work is often the only means of earning an income. At the same time, globalization and technological improvements have brought radical changes to the organization of work, with recourse to home work increasing in many very diverse sectors. Home work is also an important element in both domestic and global supply chains, and is prevalent at the lowest levels of subcontracting chains.[660]

483. Home work offers greater flexibility to enterprises to respond to irregular and seasonal changes in the market, and greater opportunities to adapt production rapidly to market requirements and fluctuations in consumption patterns or seasonal demand. Home work makes it possible for employers to have a secure group of core workers, assisted by temporary workers or outworkers as a labour reserve. Moreover, enterprises can recruit from a much larger area than would otherwise be the case and reach out further for better skills. It helps enterprises minimize labour costs and allows the expansion of production capacity, without the need to invest in capital equipment and storage (also as a result of just-in-time production and stock management technologies). Activities are divided into self-contained or autonomous tasks that can be carried out independently by a distant and cheaper labour force. Telework also tends to reduce costs, and in many cases productivity is improved, as there are fewer interruptions and it is easier to concentrate, provided that this flexibility ensures that the workers will have the effective possibility to work without distractions.

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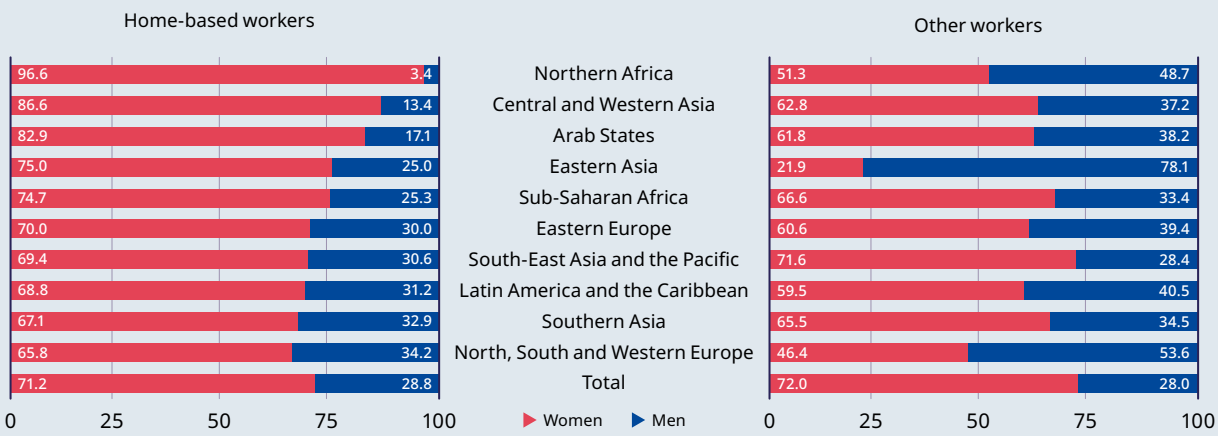
[657] M. von Broembsen: *Protecting homeworkers in global supply chains: Evaluating the rights-based approach*, WIEGO, Feb. 2017.
[658] J. Harvey: *Homeworkers in global supply chains: A review of literature*, WIEGO Resource Document No. 11, Manchester, UK, 2019, p. 2.
[659] M. von Broembsen: "The EU's commodification of labour: Homeworkers in global production networks in Bulgaria", paper prepared for presentation at the 6th Conference of the Regulating for Decent Work Network, Geneva, July 2019, p. 3.
[660] J. Harvey: *Homework, gender and inequality in global supply chains*, Discussion paper, New York, UN Women, 2018; and Harvey: "Homeworkers in global supply chains: A review of literature", 2019, op. cit., p. 1.

Figure 4.1

Women make up the majority of home-based workers (55 per cent) while they represent less than 40 per cent of total employment



Source: ILO, Preliminary Global and regional statistics (2019).

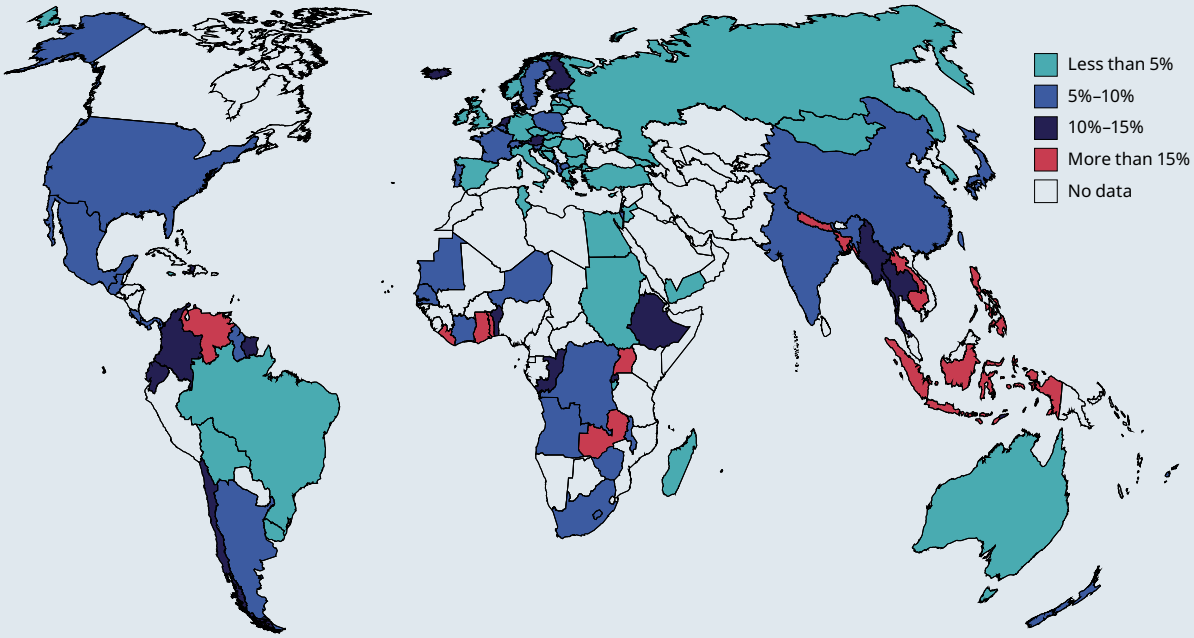
484. Home work also offers benefits for national economies. It is a source of job and enterprise creation, and may be an option in depressed regions with an abundant supply of underemployed labour. For workers, home work can be a valid alternative to regular employment in an enterprise, particularly for workers who are obliged or prefer to stay at home, including workers with family responsibilities, workers in rural or distant areas or workers with disabilities.[661] Home work can also be a provisional solution for those who are transitioning from one job to another or have not managed to find a regular job in an enterprise. In principle, homeworkers have more independence,[662] and can choose when they work and the pace of their work. Technology has improved communications between enterprises and workers, which has facilitated home work. Working at home also makes it possible to avoid the time spent and cost of transport.

485. However, concern is often expressed at both the national and international levels at the particularly vulnerable position of homeworkers in the labour market, the inadequacy of their legal protection, their weak bargaining position and their isolation, and consequent invisibility. The flexibility that benefits enterprises can be a source of stress for homeworkers, whose contracts may be ended abruptly. They are often not recognized (they often do not recognize themselves) as being part of the labour force. The employment status of homeworkers is frequently casual or ambiguous, and their terms of employment tend to be worse than those of other workers. Even in countries where protective labour legislation covers homeworkers, there is often a problem of enforcement. The diverse nature and sectors in which home work is undertaken, the diversity between the most traditional forms of home work and the most evolved (including some forms of platform work), compounded by the scarce and fragmented data on home work and the sectors in which it is prevalent, also make it difficult to provide a uniform definition of this type of work and address it adequately. It has been argued that factories in developing countries subcontract aspects of production to homeworkers in response to the purchasing practices of brands and retailers, tight deadlines, fluctuating demand and pressure on suppliers to reduce production costs.[663] Many homeworkers found themselves

[661] For example, *Bahrain* (Ministerial Decree No. 39 of 2010 regulating productive activity at home to promote homework). The Government indicates that this programme provides employment opportunities for youth, older and retired workers and contributes to women's empowerment.
[662] Although new technologies allow greater remote control by the employer.
[663] M. von Broembsen: "The EU's commodification of labour: Homeworkers in global production networks in Bulgaria", 2019, op. cit., p. 2.

Figure 4.2

Proportion of home-based workers: Country estimates



Source: ILO, Preliminary Global and regional statistics (2019).

at the lowest tiers of supply chains, generally in the informal economy facing various forms of discrimination and limited or no legal protection.[664]

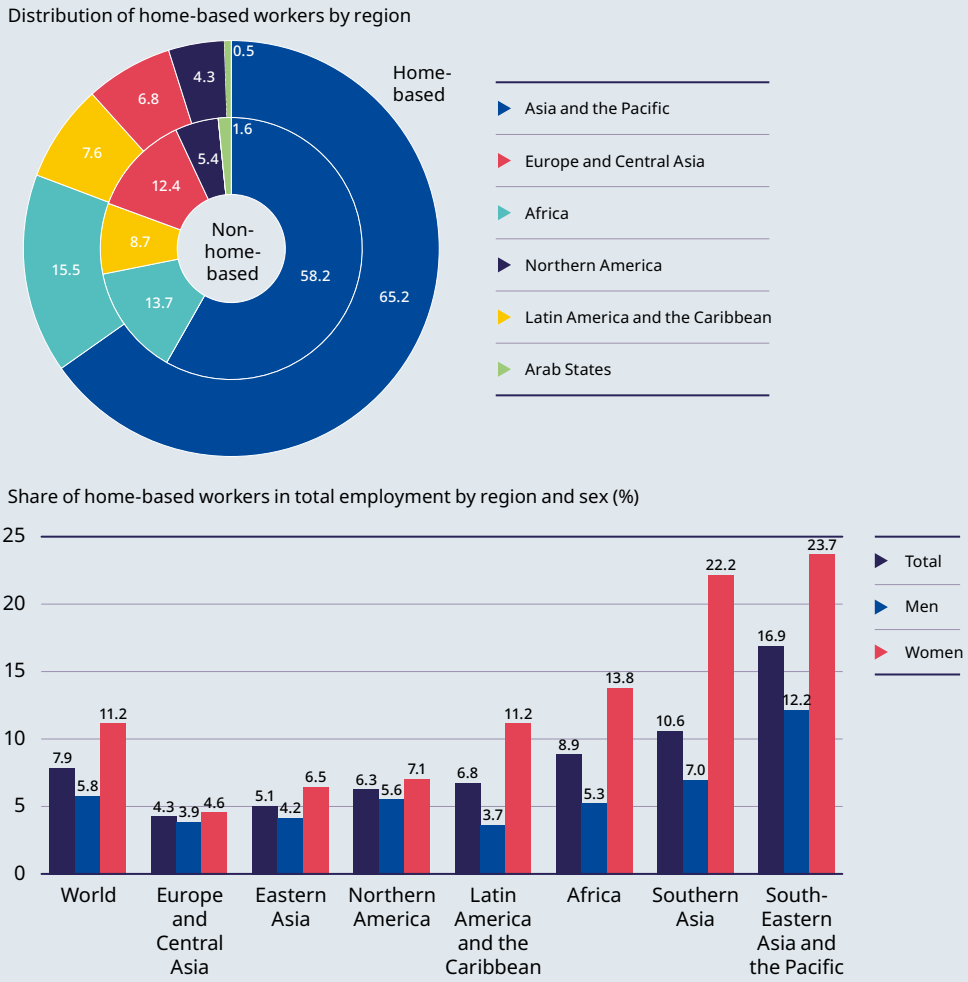
486. When the instruments were adopted, it was considered by many that there were inconsistencies between countries in terms of employment status, the level of coverage of labour legislation and the rights ensured to homeworkers. There was therefore broad support for the adoption of international regulation to bring homeworkers into the mainstream of the labour market, alleviate them from poverty, improve the situation of women and address child labour. Convention No. 177 and Recommendation No. 184 seek to establish a level playing field between homeworkers and regular workers, resulting in improved productivity and performance, and protecting employers from unfair competition. At the time of their adoption, the instruments were not supported by employers and some governments, which considered that the diverse nature and new and emerging forms of home work were an obstacle for regulation. Many also considered that standards on home work would affect workers and employers seeking flexibility.[665]

487. The Convention is promotional in nature and complements standards that already exist.[666] The Committee observes that further changes in the organization of work, fostered by substantial innovations in technology and communications, together with an increase in outsourcing and subcontracting, have resulted in an increase in all forms of home work, particularly in the context of supply chains and platform work. Home work, which has often been considered as an old-fashioned or pre-industrial form of work, is now synonymous with new models of business and entrepreneurship.

[664] ILO: Conclusions concerning decent work in global supply chains, ILC, 105th Session, Geneva, 2016, para. 3.
[665] ILO: *Record of Proceedings*, ILC, 83rd Session, Geneva, 1996, pp. 210–212.
[666] ibid, p. 213.

Figure 4.3

Proportion of home-based workers: Regional estimates



Source: ILO, Preliminary Global and regional statistics (2019).

488. The Committee considers that the instruments, adopted in 1996, have been useful tools for the transition to formality of a specific group of workers in a multiplicity of sectors at a time when the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), had not yet been adopted. They are also applicable to a whole set of new forms of work that are yet not recognized as such by the legislation in many countries (such as the gig economy and digital platform work), in which informality and casualization prevail.

489. The objective of the instruments is twofold:

(1) the adoption, implementation and periodic review of a national policy on home work; and

(2) the promotion, as far as possible, of equality of treatment between homeworkers and other wage earners.

III. Definitions and scope of application

Article 1 of the Convention

For the purposes of this Convention:

(a) the term ***home work*** means work carried out by a person, to be referred to as a homeworker,
  (i) in his or her home or in other premises of his or her choice, other than the workplace of the employer;
  (ii) for remuneration;
  (iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used,

unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions;

(b) persons with employee status do not become homeworkers within the meaning of this Convention simply by occasionally performing their work as employees at home, rather than at their usual workplaces;

(c) the term ***employer*** means a person, natural or legal, who, either directly or through an intermediary, whether or not intermediaries are provided for in national legislation, gives out home work in pursuance of his or her business activity.

Article 2 of the Convention

This Convention applies to all persons carrying out home work within the meaning of Article 1.

1. Definitions of home work and homeworker

490. The Convention only provides a definition of "home work" and of "employer". The definition of "home work" was the subject of intense debate. The wide range of sectors in which home work takes place and the different practices at the national level made it difficult to find common ground for an understanding. In the end, a short and concise definition was adopted to encompass the broad variety of situations involving home work, including telework. During the preparatory work, it was recalled that the definition should be viewed within the context of the Convention as a whole, the goal of which is to improve the situation of homeworkers, and that the intent is to have a broad definition so as to include those who may not already be recognized as having employee status, but who are not truly independent.[667]

(a) Work carried out by a person who is referred to as a "homeworker"

491. With the inclusion of the reference to home work here, it was no longer considered necessary to provide a definition of "homeworker". Home work has to be differentiated from the production of goods for personal consumption. It is part of the umbrella concept of "home-based work", which in contrast also includes self-employed workers and involves the direct transaction between the producer and the final consumer. Homeworkers, on the other hand, are usually paid a piece rate and are not involved in the sale of finished products. Even if, on many occasions, the two categories are very difficult to differentiate because they share many characteristics, such as poor working conditions and invisibility, it is important to distinguish between them in research and statistics as a basis for an adequate assessment of the situation of homeworkers in the labour market.[668]

[667] ILO: *Home work*, Report IV(2A), 1996, op. cit., p. 37.
[668] Harvey: "Homeworkers in global supply chains: A review of literature", 2019, op. cit., p. 3.

492. The terms "home-based work" and "home work" do not include:

- unpaid care work in one's own home;
- paid domestic work and care work in the households of others; or
- subsistence production for household consumption.

(b) Place of work

493. Work has to be performed outside the premises of the employer. It is generally, but not necessarily, undertaken in the worker's home. Workers may choose another place, such as a warehouse, workstation, workshop or co-working space, provided that it is not the employers' premises.

(c) Exclusion of occasional work

494. Article 1(b) of the Convention excludes from the definition of homeworkers employees who from time to time perform their work as employees at home. This provision is also relevant to teleworking.[669] The objective is to prevent workers who take home their normal work from being considered as homeworkers, rather than regular workers. Such workers are covered by the regulation governing the workplace, where most of their work is carried out. Moreover, the provision only refers to employees, and to cases in which work is performed for the same employer, but is occasionally carried out at home. This exclusion does not cover the case of workers with several jobs, one of which is regularly carried out at home for one or more employers. Such workers would be considered to be homeworkers.

(d) Remuneration

495. There must be a relationship of paid employment between the homeworker and the employer, subcontractor, agent or other intermediary. Article 1(a)(ii) of the Convention defines home work as work carried out "for remuneration", but does not specify the type of remuneration or how it should be established. It has to be born in mind, however the particularities of remuneration as it concerns homeworkers. They are often paid on a piece-rate basis. Besides, as they work from home, they are in charge of some costs that other workers do not have to face (energy, water, communications, machinery maintenance). This should be reimbursed to him/her.

(e) Compliance with the employer's specifications

496. The requirement for products or services to respond to the specifications provided by the employer is an element that serves to determine the "non-autonomous" nature of home work. As the work is undertaken outside the employer's premises, the level of supervision by the employer tends to be more restricted and limited to providing specifications. However, direct supervision is increasingly common, particularly now that new technologies, including telecommunications and "wearables", enable employers to exercise stricter control over remote work, especially in the case of telework.

497. Article 1(a)(iii) of the Convention refers to "a product or service". There was some discussion during the preparatory work concerning the exclusion of services, which are normally performed by independent workers. However, when examining some forms of services, such as proofreading or secretarial work, it was acknowledged that they could be performed within an employment relationship.

498. Under the terms of Article 1(a)(iii), the status of homeworkers is not determined by who provides the tools and materials. Homeworkers may use their own equipment, or equipment provided by the employer, or even by an intermediary (when so permitted by the legislation).

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[669] See, in this regard, CEACR – *Netherlands*, C.177, direct request, 2013.

If that were not the case, many workers who use their own materials would be excluded from the coverage of the instruments. There is a broad range of situations in this respect at the national level. In some countries where national regulations use this criterion as an indicator of independence, employers undertake a simulated sale of materials or machinery to the homeworker. The homeworker uses these materials to produce the goods or provide the services. As he/she is seen as providing the materials, he/she is considered as a self-employed worker. The term "other inputs" was inserted as some types of work, such as telework or intellectual work, may not involve materials or equipment.[670]

Hungary – The Labour Code, section 197, provides that:

(1) Unless otherwise agreed, the employer's right of instruction is limited solely to the definition of the duties to be discharged by the employee.

(2) The employer may restrict the use of the computing equipment or electronic devices supplied solely to the work that the employee performs on its behalf.

(3) An inspection concerning the completion of the work assignment shall not constitute any right for the employer to inspect any information stored on the computing equipment of the employee used for discharging his or her duties which are unrelated to the employment relationship. With regard to the right of access of the employer, the data necessary to control the prohibition or restriction prescribed in subsection (2) shall be considered to be related to obligations originating from the employment relationship.

(4) Unless there is an agreement to the contrary, the employer shall determine the type of inspection and the shortest period of time between the notification and commencement of the inspection if conducted in a property designated as the place of work. The inspection may not bring unreasonable hardship on the employee or on any other person who is also using the property designated as the place of work.

(5) In the absence of an agreement to the contrary, the employee's working arrangements shall be flexible.

(f) Exclusion of independent workers

499. A person working at home for remuneration, and whose work results in a product or service as specified by the employer, can only be denied the status of homeworker if he or she has the degree of autonomy and economic independence necessary to be considered an independent worker under national laws, regulations or court decisions. Article 1(a) of the Convention excludes from the definition of homeworker independent workers as defined by national laws, regulations or court decisions. This draws a distinction between homeworkers and independent artisans or professional freelance consultants. The only specific indicators set out in the instruments to help determine the condition of independent worker are "a degree of autonomy and of economic independence", with the definition being left to national laws and jurisdictions. This allows enough flexibility to cover the widest possible range of homeworkers.

500. The Committee recalls that the general term "home-based workers" encompasses all workers, both dependent and independent, who work from home. Homeworkers are thus one group of home-based workers. It is important to note that the available statistical data generally concerns the broader notion of home-based workers.

[670] ILO: *Home work*, Report V(2), ILC, 82nd Session, Geneva, 1995, p. 36.

(g) Assistants

501. Homeworkers do not always carry out the work alone; they are often helped by members of their family or by paid assistants. However, neither the Convention nor the Recommendation refer to assistants. This is in response to concerns that homeworkers who employ assistants may be considered to be employing other workers, and therefore be classified as independent contractors. This also gives rise to concerns as sometimes these assistants are underage children, as well as concerns regarding the amount of work allocated to homeworkers (as homeworkers may accept more work if they can count on help from their assistants) and the safety and health risks faced by assistants who have not received adequate training. This is also closely related to the low levels of remuneration received by homeworkers.[671]

502. With reference to child labour, Paragraph 10 of the Recommendation indicates that national laws and regulations concerning minimum age for admission to employment or work should apply to home work. Regarding occupational safety and health, Paragraph 21 indicates that homeworkers should be required to take reasonable care of their own safety and health and that of other persons who may be affected by their acts or omissions at work.

503. The legal status of assistants is more difficult to determine, and accordingly the application to them of protective legislation. Nor is the relationship between assistants and homeworkers, or between assistants and employers, specified in the instruments.

504. The Committee notes that this lack of clarity is reflected at the national level. Although the possibility for homeworkers to be helped by family members and assistants is envisaged in many legal provisions, they do not specify the legal status, working conditions and protection afforded to such assistants. Regulations in some countries provide for the possibility of having only one assistant,[672] and the law sometimes also allows apprentices.[673] Regulation in other countries only accepts homeworkers being assisted by their family members, and excludes all forms of paid assistance.[674]

(h) Scope of application

505. Article 2 establishes a broad scope of application of the Convention. This is important, as the term "home work" covers a wide set of activities that are quite different in nature, ranging from the production of goods to the provision of services in very traditional industries and types of manufacturing, to very modern forms of work, including telework and platform work when they meet certain conditions. The legislation in certain countries refers to homeworkers as "outworkers".

506. Specific legislation applicable to home work has been adopted in certain countries which contains definitions, including of home work.

> *Thailand* – The Homeworkers Protection Act B.E. 2553, section 3, defines "home work" as work assigned by a hirer in an industrial enterprise to a homeworker to be produced or assembled outside of the workplace of the hirer or other works specified by the ministerial regulations.

[671] ibid, p. 37.
[672] For example, *France* (Labour Code, section L7412-1(2)) and *Morocco* (Labour Code, section 8).
[673] For example, *Argentina* (Act No. 12713, section 3(a), which allows homeworkers to be assisted by one assistant or one apprentice).
[674] For example, *Algeria* (Executive Decree No. 97-474, section 2).

507. In some cases, only certain aspects of home work are regulated, such as working time.[675] In others, the general labour legislation contains specific sections on home work with definitions.[676]

508. The legislation in some countries confines home work to certain sectors. In some countries, the legislation on home work only applies to manual work, industrial work[677] or a specific sector.[678] It sometimes excludes certain sectors, such as teleworking,[679] or specific activities that can be undertaken at home, such as accountancy or translation.[680] In contrast, the law in some countries specifically covers telework,[681] while in others there are different legal provisions or regimes applicable to home work and telework.[682]

509. Some national regimes do not envisage the possibility of home work.[683] Other reports indicate that the national legislation does not contain a definition of employee or employer in relation to home work, without specifying whether the general regime is applicable to them, or whether home work is allowed at the national level.[684] The regulations in many countries provide a definition of homeworker.[685]

> *Austria* – The Homeworking Act 1960 (BGBl No. 105/1961, as amended) defines a homeworker as a person who is engaged in manufacturing, finishing, processing or packaging goods in their own home or a workplace selected by them on the orders of and on the account of persons who allocate home work.

510. In other countries, no distinction is made between homeworkers and other categories of workers in the general legislation; the concept of homeworker is included within that of "employee" or general labour provisions simply apply to homeworkers.[686]

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[675] For example, *Ireland* (Organisation of Working Time Act 1997, No. 20 of 1997).

[676] For example, *Belgium* (the Act of 3 July 1978 on labour contracts, Title VI, section 119, provides definitions and contains certain specific provisions on home work), *Central African Republic* (Labour Code, sections 186–188), *Ecuador* (Labour Code, sections 271–284), *El Salvador* (Labour Code, section 71), *Guatemala* (Labour Code, section 156), *Paraguay* (Labour Code, section 137), *Philippines* (Labour Code, sections 153–155), *Romania* (Law No. 53/2003, section 108 et ss) and *Turkmenistan* (Labour Code, sections 195–200).

[677] For example, *Japan* (home work is limited to industrial home work) and *Switzerland* (Act LTRD RS822.31 limits home work to industrial and manual work. Section 351 of the Code of Obligations provides a broader definition of a labour contract for home work which could, according to the Government's report, apply to the provision of services such as translation, or even to platform work).

[678] For example, *India* (the Beedi and Cigar Workers (Conditions of Employment) Act, 1966).

[679] For example, *Germany*.

[680] For example, *Austria* (according to the Government's report, the Homeworking Act, 1960 (BGBI No. 105/1961, as amended) does not apply to teleworking, accountancy or translation) and *Belgium* (the Act of 3 July 1978, Title VI, section 119, excludes telework).

[681] For example, *Bosnia and Herzegovina* (Republika Srpska, Labour Law, section 44) and *Estonia* (Employment Contracts Act, paragraph 6(4)).

[682] For example, *Belgium* (Collective Agreement No. 85 of 2005 and the Royal Order of 22 November 2006 for public officials), *Germany*, *Italy* and *Tajikistan* (the Labour Code 2016 includes home work (sections 252–254) and remote work (sections 255–257)).

[683] As indicated in the Government reports of *Afghanistan*, *Benin* and *Panama*.

[684] For example, *Burkina Faso* and *Kiribati*.

[685] For example, *Costa Rica* (Labour Code, section 209).

[686] For example, *Azerbaijan, Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina and Republika Srpska), *Burkina Faso, Botswana, Cambodia, China, Cyprus, Denmark, Estonia, Finland, Gabon, Georgia, Greece, Indonesia, Islamic Republic of Iran, Republic of Korea, Latvia, Lithuania, Malta, Mauritius, Montenegro, Myanmar, Namibia, Nepal, New Zealand, Norway, Peru, Senegal, Slovakia, Sri Lanka, Spain, Sweden, Togo, Ukraine* and *United Kingdom*.

Finland – The Employment Contracts Act, section 1, provides that the application of the Act shall not be prevented merely by the fact that the work is performed at the employee's home or in a place chosen by the employee, or by the fact that the work is performed using the employee's tools or machinery.

511. With regard to assistants, many laws allow assistance by family members or other workers, although some specify a limited number of assistants.[687] Some provisions make specific reference to the possibility of materials being provided by either the employer or the homeworker. The possibility of the homeworker buying materials from the employer to whom the finished product is then sold back is also envisaged in some national legislation. In some cases, the legislation even requires the contract to specify the modalities for such provision of materials.[688]

Algeria – Executive Decree No. 97-474 of 8 December 1997, section 2, provides that: Any worker shall be classified as a homeworker, within the meaning of this Decree, who carries out in his home work for the production of goods, services or processing for remuneration, on behalf of one or more employers, alone or with the help of the members of his family, excluding any employed person, and procures himself all or part of the raw materials and tools or has them delivered to him by the employer, excluding any intermediary.

Bulgaria – The Labour Code, section 107(b)(2), provides that workers or employees whose employment contract envisages the discharge of employment obligations related to the production of goods and/or the provision of services at the home of the employee or in other premises of their choice outside the workplace of the employer in exchange for remuneration and with their or the employer's equipment, materials and other auxiliaries shall be considered homeworkers and employees.

2. Definition of employer

512. The Convention also provides a straightforward definition of "employer" as a person, natural or legal, who gives out home work in pursuance of their business activity. Article 1(c) also acknowledges that home work may be given out through an intermediary, while recognizing that legislation in many countries prohibits recourse to intermediaries in that context. The definition of employer is important, particularly as home work is often hidden and employers may try to evade their obligations by declaring homeworkers as independent workers or by hiding behind intermediaries.

513. Those who give out work in pursuance of their business activity are considered to be employers. This helps to differentiate them from clients who order work for personal use. Furthermore, according to the preparatory work, the phrase "business activity" is sufficiently broad to cover the "business" of governmental or non-profit organizations, and is not restricted

[687] See also *Armenia* (Labour Code, section 98), *Italy* (Act No. 877 of 1973, section 1), *Japan* (Industrial Home Work Law, 1970) and *Morocco* (Labour Code, section 8, (allows only one assistant)).
[688] See, for example, *Armenia* (the Labour Code, section 98, provides that the order and periods for the provision of raw material, materials and semi-produced materials to the in-house worker, the order for the payment for the materials belonging to the in-house worker, transport of the finished product, as well as the order and periods of the payment of wages shall be stipulated by the employment contract).

to private sector profit-making activities. This definition of employer, in combination with the definition of home work and the provisions on the national policy on home work, helps to distinguish commercial from labour contracts for the purposes of the Convention.[689]

> *Ecuador* – The Labour Code, as amended in August 2018, section 274, defines employers in home work as manufacturers, traders, intermediaries, contractors, subcontractors, pieceworkers, etc., who give or commission work in this manner. It is immaterial whether or not they supply the materials and tools, or whether they fix the wage by the piece, by work or in any other way.[690]

514. The definition of employer in the context of home work may also refer specifically to telework.[691] In some cases, national legislation specifically considers home work as a possibility for the employer to outsource or subcontract production.[692] However, some laws explicitly prohibit this possibility in the event of restructuring, reorganization or conversion programmes.[693]

> *Philippines* – The Labor Code, article 155, defines the "employer" of homeworkers as any person, natural or artificial who, for his account or benefit, or on behalf of any person residing outside the country, directly or indirectly, or through an employee, agent contractor, sub-contractor or any other person:
>
> (1) Delivers, or causes to be delivered, any goods, articles or materials to be processed or fabricated in or about a home and thereafter to be returned or to be disposed of or distributed in accordance with his directions; or
>
> (2) Sells any goods, articles or materials to be processed or fabricated in or about a home and then rebuys them after such processing or fabrication, either by himself or through some other person.

515. In some cases, the law makes specific reference to the possibility of the homeworker working for one or more employers.[694]

3. Definition of intermediary

516. The definition of "employer" in Article 1(c) of the Convention is a person who "either directly or through an intermediary, whether or not intermediaries are provided for in national legislation, gives out home work …". Although there are several references to intermediaries in the Convention and the Recommendation, they are not defined in the instruments. Indeed, the wording of the instruments is succinct in relation to the role and responsibilities of intermediaries. During the preparatory work, they were referred to as persons who derive an income from taking orders from one or more enterprises and having them carried out by one

[689] ILO: *Home work*, Report V(2), 1996, op. cit., p. 39.
[690] See also *Panama* (Labour Code, section 138).
[691] For example, in *Bulgaria*, the term "employer" is legally defined in section 1(1) of the Additional Provisions of the Labour Code. "Employer" is any natural person, legal entity or its unit, as well as any other organizationally and economically separate entity (an undertaking, establishment, organization, cooperative, farm, venue, household, company or the like) which independently hires staff under an employment relationship, including for the purposes of performing home or telework and their provision for performance of work within an undertaking using hired personnel.
[692] For example, *Germany* (Homework Act, section 2(3)).
[693] For example, *Italy* (Act No. 877 of 1973 on rules protecting home work, section 2) and *Portugal* (Act No. 101/2009, section 2).
[694] For example, *France* (Labour Code, section L7412-1(1)) and *Peru* (Legislative Decree, Act on productivity and labour competitiveness, No. 728, section 87).

or more homeworkers.[695] Where they are permitted (they are prohibited in many countries), they are considered to be a means of matching the supply and demand for work. During the preparatory work, the argument was put forward that there should be no reference to intermediaries, as that might introduce uncertainty regarding the relationship between the intermediary, the employer and the workers. The status of intermediaries is not determined in the instruments, which responds to a desire to make it clear that the person responsible in relation to the worker is the employer as the giver of the work. However, in practice, the intermediary is often the person who gives out work to the homeworker. Sometimes finding the real employer is even more difficult in cases of chains of successive subcontractors and intermediaries, or even false cooperatives.

517. Article 8 of the Convention provides that: "Where the use of intermediaries in home work is permitted, the respective responsibilities of employers and intermediaries shall be determined by laws and regulations or by court decisions, in accordance with national practice" leaving it to the national jurisdictions to determine the legal status and responsibilities of intermediaries.

518. Intermediaries can be natural or legal persons. For example, in modern labour markets, private employment agencies are considered to be intermediaries which enable enterprises to enjoy greater flexibility in increasing or decreasing their workforce. Bearing in mind the provisions of the Private Employment Agencies Convention, 1997 (No. 181), the Committee observes that private employment agencies which provide the labour market services of matching offers and applications for employment are in some circumstances seen as acting as intermediaries without becoming a party to an employment contract.[696] This is in conformity with the notion that the relationship is not established between the intermediary and the homeworker, but between the employer and the homeworker.[697] It is also important to be aware of the interlinkages between intermediaries and the multiple-party arrangements referred to in Paragraph 4(c) of Recommendation No. 198. ***The Committee also considers that the role of digital platforms as employers or intermediaries should be further examined.***

CEACR – In its direct request concerning *Tajikistan*, the Committee noted that the specific responsibilities of placement agencies with respect to home work are not prescribed by legislation and it recalled that their responsibilities may be determined by legislation, regulations or by court decisions. The Committee accordingly requested the Government to provide information on any measures taken or envisaged to establish the respective responsibilities of employers and agencies with respect to the matters covered by the Convention.[698]

According to the CGT RA of *Argentina* intermediaries are often used in the country to conceal the true identity of employers.

519. In order to ensure transparency concerning the parties involved in the relationship and their responsibilities with respect to the homeworker, Paragraph 5 of Recommendation No. 184 indicates that homeworkers should be kept informed of the name and address of the employer and the intermediary. Paragraph 6 calls for the registration of employers and any intermediaries used, with a view to ensuring transparency regarding who the real employer is and how to deal with responsibilities. Moreover, Paragraph 18 indicates that: "Where an intermediary is used, the intermediary and the employer should be made jointly and severally liable for payment of the remuneration due to homeworkers, in accordance with national

[695] ILO: *Home work*, Report V(1), 1995, op. cit., p. 34.
[696] ILO: General Survey of 2010, paras 300–302.
[697] ILO: *Record of Proceedings*, ILC, 82nd Session, Geneva, 1995, No. 25, para. 69.
[698] *Tajikistan*, CEACR, C.177, direct request, 2016.

law and practice." The role of supervision and enforcement, and the availability of adequate mechanisms for dispute resolution, as indicated in Paragraph 28, is crucial in this respect.

520. Many governments indicate that their national legislation does not envisage the intervention of intermediaries in the field of home work,[699] or explicitly prohibits them.[700] In some regulations, intermediaries are included in the definition of employer.[701]

521. The laws in some countries provide a definition of "intermediaries",[702] who are persons who carry out work for the benefit of an employer, even when they appear to be independent entrepreneurs organizing the services of certain workers to carry out work in which they use premises, equipment, materials or other elements of an employer for the benefit of the latter, and in ordinary activities inherent or related to those activities. They are sometimes required to declare their status and the name of the employer on whose behalf they are acting when entering into employment contracts. Otherwise, they may be jointly and severally liable with the employer for the relevant legal and contractual obligations.

522. In some countries, the legislation concerning private employment agencies and temporary work agencies is also applicable to home work.[703] In some cases, the law provides that, where temporary work agencies intervene to provide home work, they are the employer of the homeworker.[704] Sometimes, this responsibility is divided: for example, occupational safety and health issues fall under the responsibility of the employer, while other protections are the responsibility of the agency.[705]

523. In some cases, although intermediation is allowed in home work, there are no legal provisions establishing the several liability of the employer and the intermediary for the payment of remuneration.[706] In certain other cases, several and joint liability is provided for by law.[707] In some countries, the subcontracting enterprise is identified with the intermediary. As they perform functions on behalf of the employer, joint liability is established by the regulations in many countries.[708] In other cases, joint liability is applicable to the intermediary only in cases where he or she has not registered as an intermediary.[709]

524. In terms of the employment status of intermediaries, under some national regulations they are considered to be workers in relation to the giver of work, and as employers in relation to the homeworkers performing the work.

> *Argentina* – Act No. 12713 of 1941 on home work, section 4, in fine, provides that "intermediaries ... shall be considered to be home-based workers in relation to givers of work and as employers subject to the requirements imposed upon them by this Act and its regulations in relation to those who they entrust with the performance of work".

[699] For example, *Afghanistan, Armenia, Austria, Colombia, Cyprus, Denmark, Jamaica, Mauritius, Montenegro, Spain, Togo, Turkmenistan* and *Ukraine*.
[700] For example, *Algeria* (Executive Decree No. 97-474, section 2), *Belgium, Dominican Republic* (Labour Code, section 273(2)), *Italy* (Act No. 877/1973, section 2(4), provides that, in the event of non-compliance, intermediaries and homeworkers shall be considered as employees of the employer) and *Mexico* (Federal Labour Act, section 316).
[701] For example, *Ecuador* (Labour Code, section 274).
[702] For example, *El Salvador* (Labour Code, section 4) and *Paraguay* (Labour Code, section 26(b)).
[703] For example, *Bosnia and Herzegovina, Estonia, Finland, Republic of Korea* and *Morocco*.
[704] According to the report from *Bulgaria*.
[705] According to the report from *Ireland*.
[706] For example, *Croatia* (Labour Market Act No. 118/18) and *Hungary*.
[707] For example, *Argentina* (Act No. 12713, section 4), *Costa Rica* (Labour Code, section 3), *Gabon* (Act No. 20/2007), *Honduras* (Labour Code, section 7) and *Bolivarian Republic of Venezuela* (LOTTT, section 210).
[708] For example, *Germany* (the Home Work Act (HAG) does not provide for such joint liability, except under certain conditions specified in section 21(2) respecting the use by the employer of an unreliable intermediary) and *Philippines* (Order No. 05-92 of the Department of Labor and Employment allows contracting and subcontracting, and in section 11 provides for the joint and several liability of the employer and the contractor or subcontractor).
[709] For example, *Paraguay* (Labour Code, section 25).

4. The question of the employment relationship of homeworkers

525. As seen in chapter II, the employment relationship may be defined as a legal link between a person who performs work and the person for whose benefit the work is performed in return for remuneration, under certain conditions established by national law and practice. Paragraph 12 of Recommendation No. 198 calls on Members to define the conditions (such as criteria and indicators) applied to determine the existence of an employment relationship, and refers to two such conditions, namely subordination and dependence. Paragraph 13 of Recommendation No. 198 provides a list of indicators that could also serve to determine the employment status of homeworkers (see chapter II).

526. Recommendation No. 204 is also relevant when examining the situation of homeworkers. Paragraph 4(c) of Recommendation No. 204 refers to "employees holding informal jobs in or for formal enterprises, or in or for economic units in the informal economy, including but not limited to those in subcontracting and in supply chains ...", while Paragraph 4(d) refers to "workers in unrecognized or unregulated employment relationships".

527. The special circumstances in which home work takes place and the fact that legislation is unclear or is silent respecting the employment status of homeworkers contributes to their vulnerability. They are often found at the end of complex supply chains, following a range of contractors, subcontractors, agents and intermediaries in different countries, which makes it difficult to determine the identity of the employer.

528. Article 1 of the Convention does not contain a specific reference to the employment status of homeworkers. It only specifies that independent workers, as defined by national laws, regulations or court decisions, are excluded from the coverage of the Convention. The employment status of the homeworkers who are covered by the Convention is less clear. This reflects the very diverse criteria prevailing during the negotiation of the instruments and the fact that, although in some countries homeworkers are included within the scope of traditional labour law, in many others they do not have the status of employee, but nor are they independent. Indeed, in many cases their status is grey or intermediate.[710]

529. During the preparatory work, the issue was raised of whether the exclusion of independent workers meant that all those who were covered by the Convention were employees. In its comments, the Office considered that the instruments should encompass those persons who are employees and those who are not employees but have a special status as homeworkers, as well as those whose status is unclear but resembles more closely an employee than an independent contractor.[711] Moreover, as indicated by the representative of the Government of France during the preparatory work, the Convention should also cover the situation of "false" independent workers.[712] Article 1 thus leaves the ground open for national jurisdictions to cover not only those cases in which the employment relationship is clearly established, but also workers in the informal economy, or where the employment status is not clear.

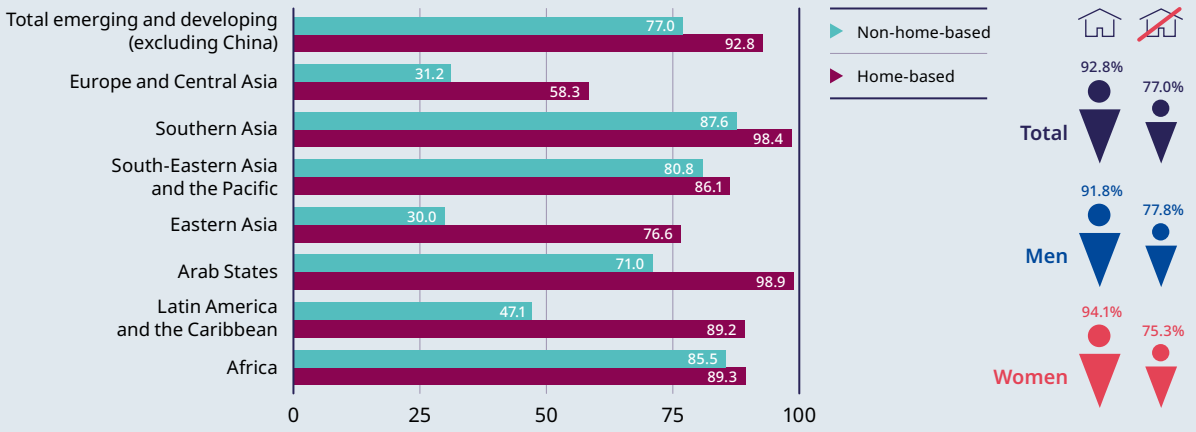
530. As noted above, the definition of homeworker should be viewed in the context of the Convention as a whole, which has the objective of improving the situation of homeworkers. From this perspective, the Convention's broad definition includes those who may not already be recognized as having employee status, but who are not truly independent.[713]

531. It is often argued that the main indicator of the employment relationship, namely subordination, is less clear in home work, as there is less possibility to supervise workers. However, there are other cases in which subordination is also less clear but where the dependency is not discussed. While economic dependence could be acknowledged as homeworkers depend

[710] See in this regard, ch. II, section on dependent self-employment.
[711] ILO: *Record of Proceedings*, 82nd Session, ILC, Geneva, 1995, para. 182.
[712] ibid., para. 61.
[713] ILO: *Home work*, Report IV(2A), 1996, op. cit., p. 37.

Figure 4.4

In developing and emerging countries, more than 90 per cent of home-based workers are in informal employment – Share of informal employment among home-based workers (emerging and developing countries, excluding China)



Source: ILO, Preliminary Global and regional statistics (2019).

on the work provided by the employer, they are often not under the direct control or supervision of the employer.

532. The situation varies at the national level, with homeworkers being considered as employees in some countries, and as self-employed workers in others. The nature of the employment relationship between the homeworker and the employer is crucial to determining whether or not general labour legislation is applicable to homeworkers. This is particularly the case in countries where there is no specific legislation on home work and where courts have to decide in each particular case whether a contract of employment exists in the case of home work. In turn, this has a direct impact on their working conditions and social protection.

533. The Committee observes that the recent definition of dependent contractors for statistical purposes adopted by the 20th ICLS may be of assistance in the determination of the employment status of homeworkers. The Committee recalls in this regard that the Resolution concerning statistics on work relationships defines "dependent contractors" as workers employed for profit, including workers without a contract of employment and those paid on a piece-rate basis. They are dependent on another entity that exercises control over their productive activities and directly benefits from the work performed by them. Their dependency may be of an operational nature, through organization of the work and/or of an economic nature. One or more of the following characteristics may be relevant for their identification:

(a) their work is organized or supervised by another economic unit (a client, an entity that mediates access to clients);

(b) the price paid for the goods produced or services provided is determined by the client or an intermediary;

(c) access to raw materials, equipment or capital items is controlled by the client or an intermediary;

(d) their actual working arrangements or conditions closely resemble those of employees.[714]

[714] ILO: Resolution concerning statistics on work relationships, 20th ICLS, Geneva, 2018, paras 35 and 36.

534. In many cases, there is a combination of an employment relationship and an independent contractor status. For example, in some countries, homeworkers are considered to be independent contractors under labour law and employees for other purposes, such as taxation or social security.[715] In certain countries, the law requires the existence of a labour contract to enjoy the same rights as other workers under the Labour Code.[716]

535. In other cases, homeworkers enjoy a specific status that provides some protection, but not to the same level as employees. The law sometimes specifically provides that there is an employment relationship.[717] For instance, the fact that work has to be carried out according to the specifications given by the employer is considered, in some legal systems, as an indication of the existence of subordination, which is one of the elements that demonstrates the existence of an employment relationship.

> *Italy* – Act No. 877 of 1973 on rules protecting homeworkers, section 1, provides that subordination, for the purposes of this Act, occurs when the homeworker is required to comply with the guidelines of the entrepreneur concerning the execution and the characteristics and requirements of the work.

536. In some countries, the law provides for a presumption of the existence of an employment relationship whenever there is home work.[718]

> *Greece* – Act No. 3846/2010 on job security guarantees and other provisions, section 1, provides that the agreement between the employer and the employee for the provision of services or work, for a fixed or indefinite period of time, especially in cases where work is paid by the piece, telework, home work, shall be presumed to disguise a dependent employment contract if such work is provided in person, exclusively or primarily to the same employer for nine consecutive months.[719]

537. In one country, the law presumes that the worker is an employee in cases in which the person is provided with tools of the trade or work equipment by the other person.[720] In one case, the law provides that the fact that the employer sells the materials to the homeworker for the purpose of transforming them into certain products that are in turn sold to that employer is proof of the existence of a labour contract for home work.[721]

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[715] For example, in *Poland*, while homeworkers are independent contractors under the Labour Code, they are considered to be employees for the social security system.
[716] See, in this regard, CEACR – *Bulgaria*, C.177, observation, 2018.
[717] For example, *Belgium* (Act of 3 July 1978 on labour contracts, as amended by the Act of 6 December 1996, section 119(1)), *Finland* (Employment Contracts Act, ch. 1, section 1), *Mauritius* (Employment Rights Act, section 5(6)(c)(c)) and *Peru* (Legislative Decree, Act on productivity and labour competitiveness, No. 728, section 88).
[718] For example, *Brazil* (Consolidation of Labour Laws, section 6, establishes no distinction shall be made between work performed in the employer's establishment, domestic work and remote work where the criteria for presumption of an employment relationship have been met) and *France* (Labour Code, section L7412-1, in respect of homeworkers, provides that there is no need to question: (a) whether there is a relationship of legal subordination between the homeworker and the giver of work, subject to the application of the provisions of section L. 8221-6; (b) whether she or he works under the immediate and habitual supervision of the giver of work; (c) whether the premises where the homeworker works and the equipment she or he uses, however significant, belong to the homeworker; (d) whether the homeworker procures accessory supplies for her or himself; and (e) the number of hours worked.
[719] This provision establishes a presumption in favour of salaried employment and the burden of proof that it is not a dependent employment contract is shifted to the employer in any challenge to that presumption.
[720] For example, *South Africa* (Labour Relations Act, No. 65 of 1995, section 200A).
[721] For example, *Guatemala* (Labour Code, section 156) and *Paraguay* (Labour Code, section 136).

538. In certain countries, the law takes into account the economic dependency of the homeworker. Although this is not necessarily a determinant of an employment relationship in all cases, it may help the courts to decide.[722] In other countries, the law specifies the criteria required to consider the existence of an employment relationship,[723] or an employment contract.

> *Colombia* – The Labour Code, section 89, provides that an employment contract exists when a person habitually provides services for remuneration in her own home, alone or with the help of family members, on behalf of an employer.

539. On the contrary, other laws provide that homeworkers are independent workers.[724] In some countries, even if considered as independent contractors, homeworkers (in some cases homeworkers only working in specific sectors) enjoy the same rights as employees.

> *Australia* – Under the Fair Work Act, section 12, the term ***"outworker"*** means:
>
> (a) an employee who, for the purpose of the business of his or her employer, performs work at residential premises or at other premises that would not conventionally be regarded as being business premises; or
>
> (b) an individual who, for the purpose of a contract for the provision of services, performs work:
>
> (i) in the textile, clothing or footwear industry; and
>
> (ii) at residential premises or at other premises that would not conventionally be regarded as being business premises.

[722] For example, *Portugal* (Act No. 101/2009, section 1).
[723] For example, *Morocco*.
[724] For example, *Germany* (Homework Act, section 2) and *Portugal* (Act No. 101/2009, section 1).

IV. Adopting, implementing and reviewing a national policy on home work

Article 3 of the Convention

Each Member which has ratified this Convention shall adopt, implement and periodically review a national policy on home work aimed at improving the situation of homeworkers, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations concerned with homeworkers and those of employers of homeworkers.

540. Convention No. 177 and Recommendation No. 184 are promotional. As such, the main requirement for ratifying States consists of the adoption, implementation and periodic review of a national policy on home work with the objective of improving the situation of homeworkers.

541. During the preparatory work, there were long discussions concerning the term "policy" and the scope of the national policy. As indicated by the ILO Legal Adviser at the time, there is no legal definition of policy in ILO instruments and the term "national policy" depends on the context in which it occurs in a given instrument. In the present case, the national policy should refer to homeworkers and their situation. The policy does not need to be a separate sectoral policy. It can be part of a broader existing labour policy or inserted in a general regulation. However, it has to aim specifically at improving the situation of homeworkers. This means that a national policy aimed at full, productive and freely chosen employment for all workers or a national equality agenda addressing all workers which does not specifically address the situation of homeworkers do not fulfil the requirements of the Convention.[725] At the same time, the provision offers sufficient flexibility for countries that do not have national employment policies.

542. The national policy should be implemented by means of laws and regulations, collective agreements, arbitration awards or any other appropriate manner consistent with national practice (Article 5). The Committee however emphasizes that no specific form of policy is required by the instruments. The Committee further notes the strong parallels between the requirements established for the adoption of a policy on homeworkers and the national policy on employment, as provided for in Convention No. 122. The Committee also notes that the Recommendation contains several provisions relating to the rights of homeworkers, labour inspection and programmes related to home work that should be taken into consideration when adopting, implementing or reviewing the national policy on homeworkers to ensure coordination and coherence. The national policy should also take into account other more favourable international labour Conventions applicable at the national level, as provided in Article 10 of the Convention.

543. Moreover, the national policy can be implemented not only at the national level, but also at regional, provincial or local levels, depending on the national system and the authority that is competent to take action. Paragraph 3(1) of Recommendation No. 184 calls on each Member to designate an authority or authorities entrusted with the formulation and implementation of the national policy on home work. In some countries, the Ministry of Labour is the designated authority.[726]

544. Article 3 of the Convention also highlights the importance of consultation in the formulation and implementation of the national policy. Tripartite bodies or organizations of workers and employers should participate in the formulation of the policy (Paragraph 3(2) of the Recommendation). They may be the same tripartite bodies, where they exist, that participate in the adoption of a national employment policy (see chapter I).

545. Acknowledging the isolation of homeworkers, Article 3 also refers to organizations concerned with homeworkers and organizations of employers of homeworkers. If there are no

[725] ILO: *Record of Proceedings*, No. 25, ILC, 82nd Session, Geneva, 1995, para. 80. See, for example, CEACR – *Finland*, C.177, direct request, 2003.
[726] For example, in *Argentina*.

such organizations, arrangements should be made to permit these workers and employers to express their opinions on the national policy and the measures to implement it (Paragraph 3(3) of the Recommendation).

546. National policies and their implementation measures should be based on information and data compiled regularly at the national level. This information should be disaggregated by sex, reflect the main characteristics of home work and be publicly available (Paragraph 4 of the Recommendation). The Convention also contains provisions on the need to ensure that labour statistics include home work to the extent possible (Article 6) and that national laws and regulations on safety and health at work apply to homeworkers (Article 7).

The Confederation of Labour of Russia (KTR) indicates that it is difficult to evaluate the situation of homeworkers in the country due to the lack of statistics on the subject, including on complaints filed before the labour inspectorate.

547. The Committee notes that the country reports contain little information on the adoption and review of a national policy addressing the specific situation of homeworkers, including by countries that have ratified the Convention.

Pakistan – The Government of Punjab adopted the Punjab Home-Based Workers (HBWs) Policy. The Policy aims to develop strategies, plans and programmes to protect and promote the rights and benefits of HBWs. It reaffirms the principles of equality and non-discrimination, the elimination of exploitation, the empowerment of HBWs and freedom of association. Registration, fair wages and remedies for non-payment, equality of treatment and wages, implementation of health and safety standards, and terms and conditions of work for HBWs are some of the rights and entitlements covered by the policy.

548. Many reports indicate that there is no national policy specifically aimed at improving the situation of homeworkers.[727] However, many reports provide information on the legal regime applicable to home work at the national level, including the various laws and regulations at different stages of development respecting the various aspects of home work and the protection of homeworkers. The reports also indicate how these measures are coordinated with the general legal framework applicable to all workers.[728] The Committee notes that some reports refer in particular to the legal regime applicable to telework and, in a few cases, to digital platform work (the gig economy). Some reports indicate that intense work is being carried out on the legal and practical structure of contract models in the gig economy and the extent to which existing labour regulation is adequate for new digitally-based business models.[729]

549. The policy required by the Convention must be periodically reviewed.[730] The review may coincide with that of the broader policy within which the home work policy is integrated. In this regard, the Committee notes that the legislation on home work is sometimes evaluated as part of a broader review of national laws and regulations with a view to ensuring the effective protection of workers in an employment relationship, as called for by Recommendation No. 198.[731]

550. Noting the indication by some governments that their national employment policy covers all workers, including homeworkers,[732] the Committee recalls that, in the comments it has made on the application of Convention No. 177 over the years, it has often requested ratifying Members to provide information on the adoption of a national policy specifically aimed at improving the situation of homeworkers.

[727] For example, *Bosnia and Herzegovina, Botswana, Estonia, Gabon, Ghana, Kiribati* and *Republic of Korea*.
[728] For example, *Ecuador, Finland, Germany, Mauritius, Morocco, New Zealand* and *Norway*.
[729] For example, *Germany* and *Jamaica*.
[730] See, for example, CEACR – *Belgium*, C.177, direct request, 2018.
[731] For example, the reports from *Finland* and *Latvia*.
[732] For example, *Guatemala, Ireland* and *Latvia*.

CEACR – In its comments concerning *Albania*, the Committee considered that the legislation does not elaborate further … on home-based work, and requested the Government to provide additional information on any consultations that may have so far been undertaken with the social partners in order to discuss the adoption and implementation of a national home work policy, having also regard to the requirements of Articles 6 and 8 of the Convention regarding the need to ensure equality of treatment between homeworkers and other wage earners and effectively protect homeworkers' rights through a system of inspection and sanctions.[733]

551. The national policy should concern all categories of homeworkers.

CEACR – In its comments concerning *Ireland*, the Committee pointed out that … while teleworkers may be on the professional end of the scale, in their great majority skilled salaried employees with tertiary level qualification, more traditional forms of homeworking involving low-paid, casual jobs and poor working conditions on the verge of the underground economy still exist and need to remain within the focus of Government's attention[734]

552. The Committee notes that several governments have provided information on the consultations carried out concerning the policy on home work. Some specifically refer to the increased interest of the social partners in issues relating to home work, and particularly the protection of rights, conditions of work and remuneration.[735] Some refer to current consultations,[736] and in particular to discussions held concerning self-employment and informality in the framework of home work.[737] Others indicate that there is an established mechanism to consult all workers, including homeworkers.[738] Some provide information on consultations with the social partners, including in some cases with the participation of homeworkers' organizations, concerning the determination of homeworkers' remuneration.[739] Some governments indicate that consultations were carried out when adopting new legislation on home work, and particularly telework.[740] Some indicate that there are no trade unions or employers' organizations specifically concerned with home work.[741] Others provide specific information on the collective agreements concluded on home work and telework.[742]

In 2017, the Estonian Trade Union Confederation and the Estonian Employers' Confederation signed an agreement setting out the main rules for teleworking, which contains ten recommendations on this type of work. Following the agreement, the Government prepared a proposal to adapt the legislation.

[733] CEACR – *Albania*, C.177, direct request, 2011. See also CEACR – *Bosnia and Herzegovina*, C.177, direct request, 2018; *Bulgaria*, C.177, observation, 2018; *Netherlands*, C.177, direct request, 2018; and *Tajikistan*, C.177, direct request, 2016.
[734] CEACR – *Ireland*, C.177, direct request, 2011.
[735] For example, *Algeria*.
[736] For example, *Cameroon*.
[737] For example, *Bulgaria*.
[738] For example, *Belgium* (Act of 5 December 1968 on joint committees and collective labour agreements, section 2), *Germany, Ghana, Islamic Republic of Iran* and *Ireland*.
[739] For example, *Argentina* and *Austria*.
[740] For example, *Azerbaijan, Canada, Croatia* (concerning the new Labour Code in 2014), *Morocco* (relating to the new Labour Code), *Philippines, Qatar, Spain, Thailand* and *United Kingdom*.
[741] For example, *Croatia, Democratic Republic of the Congo* and *Latvia*.
[742] For example, *Belgium* (Collective Labour Agreement No. 85 on telework concluded on 9 November 2005 in the National Labour Council. As part of this agreement, the social partners wanted this agreement to regulate all the specific terms and conditions relating to telework at home).

V. Ensuring equality of treatment

Article 4 of the Convention

(1) The national policy on home work shall promote, as far as possible, equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise.

(2) Equality of treatment shall be promoted, in particular, in relation to:

(a) the homeworkers' right to establish or join organizations of their own choosing and to participate in the activities of such organizations;

(b) protection against discrimination in employment and occupation;

(c) protection in the field of occupational safety and health;

(d) remuneration;

(e) statutory social security protection;

(f) access to training;

(g) minimum age for admission to employment or work; and

(h) maternity protection.

553. Ensuring equality of treatment "as far as possible" between homeworkers and other wage earners is the second main objective of Convention No. 177 and Recommendation No. 184. The term "wage earners" was preferred over the term "workers in the enterprise", with a view to broadening the comparison between the situation of workers working at home and that of other salaried workers.[743] Such a comparison has to take into account the special characteristics of home work and, as appropriate, the conditions applicable to the same or a similar type of work carried out in an enterprise. Thus, this comparison goes beyond workers in the enterprise and extends to other wage earners in general, as well as recognizing the fact that the circumstances in which homework is carried out do not make it possible to achieve full equality of treatment in all circumstances. It is also necessary to bear in mind the variety in types of home work and the sectors in which it occurs, as well as the incidence of each of the various forms of home work in each country and region.

554. It is important to bear in mind that Convention No. 177 does not affect more favourable provisions applicable to homeworkers under other international labour Conventions (Article 10). The Committee also wishes to recall that nothing in the Convention prevents the application of more favourable conditions at the national level. The Committee acknowledges, in this regard, that many national laws and regulations ensure equality of treatment between homeworkers and other workers in the country, as recalled by many governments in their reports.[744] Some reports specify that the principle of equality of treatment and non-discrimination is also applicable to teleworkers.[745]

555. Article 4(2) of the Convention enumerates specific areas in which equality must be promoted, including freedom of association, protection against discrimination in employment and occupation, occupational safety and health, remuneration, social security, training, minimum age for admission to employment and maternity protection. Paragraph 27 of the Recommendation adds that homeworkers should benefit from the same protection as that provided to other workers with respect to termination of employment.

[743] ILO: *Home work*, Report V(2), 1995, op. cit., p. 39.
[744] For example, *Argentina, Armenia, Azerbaijan, Belgium, Burkina Faso, Colombia, Costa Rica, Chile* (draft legislation) and *Poland*.
[745] For example, *Colombia, Chile* (draft legislation) and *Poland*.

1. Homeworkers right to establish or join organizations of their own choosing and to participate in the activities of such organizations

556. In recognition of the particular situation of isolation of homeworkers, Recommendation No. 184 provides that any restriction or obstacle to the enjoyment of the right to organize and to bargain collectively should be eliminated through the national policy on homework (Paragraphs 11 and 12).

557. The Committee has requested information on the manner in which it is guaranteed, in law and practice, that homeworkers are not subject to discrimination in relation, among other matters, to freedom of association.[746] The Committee has also noted cases in which the working conditions of homeworkers are regulated by collective bargaining.[747]

CEACR – In its comments concerning *Belgium*, the Committee has noted the Government's indication that, in certain joint commissions that still recognize "traditional" homework, collective labour agreements establish the same hours of work for such homeworkers as for other workers.[748]

558. The Committee notes the indication of many governments that the national legislation respecting the right to freedom of association is also applicable to homeworkers,[749] or at least does not exclude them from this right.[750]

559. The issue of access to the houses of homeworkers has to be taken into account when examining whether the right of association is ensured and enjoyed, and measures should be taken to ensure that homeworkers are informed of their right to join the unions of their own choosing, or establish new ones and to have direct contact with their union representatives. Other reports refer to the right of teleworkers to join trade unions.[751]

The NZCTU indicates that the right of homeworkers to have access to representation and to organize are restricted by provisions in the Employment Relations Act 2000 (section 19) which exclude union access to dwelling houses.

2. Protection against discrimination in employment and occupation

560. With regard to equality of treatment and protection against discrimination, the Committee notes that most governments indicate that the general legislation on equality is applicable to homeworkers.[752] Measures should be taken in the framework of the national policy on homework, as provided for in Article 4(2) of the Convention to ensure that homeworkers enjoy equality of opportunity and treatment. To achieve this, it is crucial for them to have access to vocational education and training programmes (Paragraph 29(d) of Recommendation No. 184), as well as to information on their working conditions and rights, and the identity

[746] See, for example, CEACR – *Ireland*, C.177, direct request, 2011.
[747] See, for example, CEACR – *Belgium*, C.177, direct request, 2018.
[748] ibid.
[749] For example, *Algeria* (Act No. 90-14), *Austria, Belgium* (the Act of 5 December 1968 on joint commissions and collective labour agreements also applies to homeworkers (section 2)), *Cyprus* (article 21 of the Constitution and the Trade Union Law of 1965), *Denmark* (Act on freedom of association), *Egypt, Germany* (Basic Law, section 9), *Jamaica* (Labour Relations and Industrial Disputes Act, 1975), *Panama, Senegal, Sri Lanka* (Trade Union Ordinance), *Sweden* (Constitution and the Employment (Co-determination in the Workplace) Act) and *United Kingdom.*
[750] For example, *Malta.*
[751] For example, *Cabo Verde* (section 5 of Legislative Decree No. 11/2018 of 5 Dec. 2018, which sets out the regime regulating homework, in conjunction with sections 36 et seq. of the Labour Code).
[752] For example, *Austria, Belgium, Cabo Verde, Denmark, Egypt, Georgia, Germany, Malta, Poland, Senegal, Slovakia, Sri Lanka, Sudan, Sweden, Thailand* and *United Kingdom.*

of their employer or intermediaries. The Committee considers that homeworkers should not be prevented from accessing opportunities for career transition and progression within and outside the enterprise.

3. Minimum age for admission to employment or work

561. In recognition of the fact that in practice homeworkers are often assisted by members of their families, including children, both Convention No. 177 and Recommendation No. 184 contain provisions on the minimum age for admission to employment or work. The family members concerned may be underage children, who may be forced to drop out of school or may be overburdened with work and studying. For this reason, Convention No. 177 provides in Article 4(2)(g) that equality of treatment shall be promoted in relation to the minimum age for admission to employment or work. Thus, the general rules on minimum age applicable to other wage earners should also apply to homeworkers. Recommendation No. 184 adds in Paragraph 10 that national laws and regulations concerning minimum age for admission to employment or work should also apply to homework.

CEACR – In its comments concerning *Thailand*, the Committee has noted that the Home Workers Protection Act of 2010 prohibits the assignment of children below the age of 15 years to carry out "homework" which by its nature may be hazardous to their health and safety.[753]

4. Occupational safety and health

562. Occupational safety and health gives rise to specific challenges in the case of homework. The fact that it is carried out in the worker's house or in a place of her or his choice makes control by the public authorities and the employer more difficult, as there is a need to balance the exercise of control with the right to the worker's privacy. That does not mean that homeworkers do not have the same entitlement as other workers to occupational safety and health protection. Convention No. 177 provides in Article 7 that national laws and regulations on safety and health at work shall also apply to homework, taking account of its special characteristics, and shall establish conditions under which certain types of work and the use of certain substances may be prohibited in homework for reasons of safety and health.[754]

563. The majority of reporting governments indicate that occupational safety and health regulations are applicable to homeworkers. Some national laws and regulations explicitly prohibit the use in homework of certain toxic or dangerous products that may harm the worker's health.[755]

[753] CEACR – *Thailand*, C.138, direct request, 2017.
[754] During the preparatory work for the homework instruments, it was suggested by several workers' organizations that the dangerous substances, processes or activities and equipment to be prohibited for homeworkers should be specified. However, in view of the broad variety of homework and the context in which it is carried out, this was considered very difficult to do. See, in this regard, ILO: *Home work*, Report V(2), 1995, op. cit., p. 117.
[755] For example, *Algeria* (Executive Decree No. 97–474, section 7), *Austria* (the 1983 Regulation prohibiting the use of hazardous substances or preparations within homeworking, BGBI178/1983), *Italy* (Act No. 877/1973, section 2), *Poland* (Regulation of the Council of Ministers of 31 December 1975, section 22) and *Thailand* (Homeworkers Protection Act 2010, sections 21 and 22).

Thailand – The Homeworkers Protection Act 2010, section 21, prohibits the engagement of homeworkers to carry out the following types of work:

(1) work involving hazardous materials pursuant to the law governing hazardous materials;
(2) work that is to be carried out with the use of tools or machines, vibration of which may be hazardous to the persons performing the work;
(3) work involving extreme heat or coldness which may be hazardous;
(4) other work which may affect health, safety or quality of the environment. The nature or type of work referred to under (2), (3) or (4) shall be those prescribed in the ministerial regulations.

Section 22 provides that it is forbidden for a hirer to procure or deliver raw materials, equipment or other inputs used for the performance of work that are hazardous to homeworkers, residents of the house, business visitors, including neighbouring communities and the environment.

564. In other countries, the legislation establishes the same protection in this respect as for workers in the enterprise.[756] Recommendation No. 184 indicates in this respect that the competent authority should ensure the dissemination of guidelines concerning the safety and health regulations and precautions that employers and homeworkers are to observe. Where practicable, these guidelines should be translated into languages understood by homeworkers (Paragraph 19). Employers should also contribute to ensuring the safety and health of homeworkers.

Malta – The General Provisions for Health and Safety at Work Places Regulations provide in Regulation 10 that it shall be the duty of every employer to carry out or to ensure that is carried out, a suitable, sufficient and systematic assessment of all the occupational health and safety hazards which may be present at the place of work and the resultant risks involved concerning all aspects of the work activity. According to the Government, the Regulations are applicable to homeworkers.

565. Recommendation No. 184 indicates that employers "should be required to: (a) inform homeworkers of any hazards that are known or ought to be known to the employer associated with the work given to them and of the precautions to be taken, and provide them, where appropriate, with the necessary training;[757] (b) ensure that machinery, tools or other equipment provided to homeworkers are equipped with appropriate safety devices and take reasonable steps to ensure that they are properly maintained; and (c) provide homeworkers free of charge with any necessary personal protective equipment" (Paragraph 20).[758]

566. The maintenance of equipment may be a problem because employers do not always have access to the worker's home. These are details that can be arranged between the parties, provided it is clear that employers are held responsible for the maintenance of the equipment they provide.[759] Homeworkers may, for example, notify the employer when the equipment needs attention or have it serviced at the cost of the employer.[760]

[756] For example, *Germany*.
[757] This is the case, for example, in *Italy* (Legislative Decree No. 81/2008, sections 36 and 37).
[758] For example, *Georgia* (Labour Code, Chapter VIII) and *Italy* (Legislative Decree No. 81/2008, section 3(9)).
[759] For example, *Japan*.
[760] ILO: *Home work*, Report V(2), 1995, op. cit., p. 121.

567. The Recommendation adds that homeworkers "should be required to: (a) comply with prescribed safety and health measures;" and "(b) take reasonable care for their own safety and health and that of other persons that may be affected by their acts or omissions at work, including the proper use of materials, machinery, tools and other equipment placed at their disposal" (Paragraph 21).[761] Homeworkers should have the right to refuse to carry out work which they have reasonable justification to believe presents an imminent and serious danger to their safety or health and should be protected from any undue consequences of such a refusal in a manner consistent with national conditions and practice. Homeworkers should report the situation to the employer without delay (Paragraph 22(1). In the event that the labour inspector or another public safety official determines the existence of an imminent and serious danger to the safety or health of a homeworker, his or her family or the public, the continuation of homework should be prohibited until appropriate measures have been taken to remedy the situation (Paragraph 22(2)). The Government, in cooperation with social partners, should promote and support programmes which improve homeworkers' safety and health such as by facilitating their access to equipment, tools, raw materials and other essential materials that are safe and of good quality (Paragraph 29(1)(f)).

568. Some governments have provided information on occupational safety and health regulations relating to telework and the requirement to conduct a risk assessment at the worker's house.[762] The right to disconnect also needs to be taken into account in relation to telework and occupational safety and health.[763]

569. ***With reference to the variety of types of work that can be carried out in the context of homework, and particularly telework and digital work, the Committee also considers it important to examine the special characteristics of certain forms of work and their impact on the health of workers. In particular, any digital platform work that consists of the processing of thousands of violent or pornographic images or films may have a seriously damaging impact on the mental health of workers. While recognizing the difficulties involved, the Committee considers that this type of work should be subject to particular scrutiny by the public authorities. Particular attention is required concerning child labour and the serious risks to which children are exposed in this type of work. The Committee further considers that international collaboration between public supervisory authorities can contribute to the development of good practices in this regard.***

5. Equal remuneration

570. Homeworkers are generally paid on a piece-rate basis. During the preparatory work for the homework instruments, it was acknowledged that this method of payment tends to result in significantly lower wages than those paid to workers in the workplace.[764] This in turn gives rise to other labour issues, such as excessively long working hours and the employment of unpaid and often underage "assistants".[765]

571. The causes of the low pay of homeworkers are multiple, but generally have their origins in the fact that the majority of homeworkers are women, they come from the poorest levels in society and are isolated, sometimes in remote areas, are often in the informal economy and are faced with great fluctuations in demand. This all places homeworkers in a weak bargaining position, forcing them to accept the wages on offer without complaining or seeking a better rate.

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[761] For example, *Croatia* (Labour Act, section 5) and *Italy*.
[762] For example, *Belgium* (collective agreement No. 85), *Chile* (to be covered by draft legislation) *Germany* (Workplace Ordinance (ArbStättV), section 1(3)), *Japan* (Guidelines for the appropriate performance of self-employed telework) and *Poland* (Labour Code, section 67).
[763] See General Survey of 2017, paras 746 et seq.
[764] ILO: *Home work*, Report V(1), 1995, op. cit., p. 16.
[765] ibid., p. 19.

572. The Committee acknowledges that even if the piece rate paid to homeworkers is similar or the same as the wages paid to workers in the enterprise and even if it respect minimum wage provisions, in practice they normally earn less than their counterparts on the premises of the enterprise. One reason is that their work is often more difficult to carry out (complex embroidery or difficult pieces, for example). They also have to perform all the types of work that are normally assigned to different persons in the enterprise, which reduces the possibility for them to produce more. For example, they normally have to receive and unpack the materials, wrap and deliver the products. Moreover, they have to pay all the maintenance costs of the workplace (water and electricity), and pay is discounted for any products that do not meet the quality requirements. In many cases, they also have to pay for the materials. The employer is generally responsible for all of these elements in the enterprise, while in the case of homework the costs are transferred to the homeworker. Whenever there is a chain of intermediaries or subcontractors, income tends to be subdivided even more.[766]

573. The issue of remuneration is closely linked to the time required to complete a product. Employers may tend to estimate the time needed to produce a product on the basis of the work performed in the enterprise, where workers are assigned very specific tasks which are distributed among them based on their skills. In the case of homework, it is often the case that the additional tasks that need to be carried out by homeworkers are not taken into account when fixing the rate for each piece.

574. Recommendation No. 184 addresses all these issues with the objective of promoting, as far as possible, equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of homework, as outlined in Convention No. 177 (Article 4). To ensure equality of treatment, their conditions of work need to be compared with those applicable to the same or a similar type of work carried out in an enterprise. It may be appropriate to take into account the remuneration paid to workers in the employer's enterprise for the same or a similar type of work. In order to get closer to the situation of workers in the factory, the Recommendation envisages that the pay of homeworkers may be based on a wage or by the piece.

575. The first of the provisions contained in Recommendation No. 184 is intended to ensure that minimum rates of wages are fixed for homework, in accordance with national law and practice (Paragraph 13). This is different from applying the minimum wage to homework, which was opposed by the Employer members and some governments during the preparatory work. The reasons given for this opposition were that the instruments do not only apply to workers in an employment relationship and that many countries do not have a minimum wage.[767] The provision is therefore applicable to the various existing systems, whether or not there is a minimum wage.

576. The Recommendation then indicates that rates of remuneration should be fixed preferably by collective bargaining. If that is not possible, they should be fixed by the national authority (after consulting the most representative organizations of employers and workers, as well as organizations concerned with homeworkers and employers of homeworkers, or at least with representatives of homeworkers and of employers of homeworkers), or through other appropriate wage-fixing machinery at national, sectoral or local levels (Paragraph 14(1)). Where none of these methods are possible, the rates of remuneration should be fixed by agreement between the homeworker and the employer (Paragraph 14(2)).

577. If the homework is paid by the piece, the rate of remuneration should be comparable to that received by a worker in the enterprise of the employer, or if there is no such worker, in another enterprise in the branch of activity and region concerned (Paragraph 15).

[766] ibid., p. 22.
[767] ILO: *Record of Proceedings*, [25...] Home Work Committee, ILC, 82nd Session, Geneva, 1995, p. 25/25.

578. The Recommendation also aims to ensure that homeworkers do not have to bear all the additional costs outlined above so that their situation can be assimilated insofar as possible with that of workers in the enterprise. It indicates in Paragraph 16 that homeworkers should receive compensation for costs incurred in connection with their work, such as those relating to the use of energy and water, communications, maintenance of machinery and equipment. They should also receive compensation for time spent in maintaining machinery and equipment, changing tools, sorting, unpacking and packing, and other such operations.

579. The Recommendation adds that national laws and regulations concerning the protection of wages should apply to homeworkers. These laws and regulations should ensure that pre-established criteria are set for deductions and should protect homeworkers against unjustified deductions for defective work or spoilt materials. Payments should be made either on delivery of each completed work assignment or at regular intervals of not more than one month (Paragraph 17).

580. Several governments have provided information on the system of remuneration of homeworkers. Some of them indicate that the same rules that apply to other workers in the same sector are applicable to homeworkers,[768] and that remuneration cannot be lower than the general minimum wage, where it exists,[769] or than the wage of workers in the enterprise premises engaged in similar or the same work.[770] In some countries, there is a specific minimum wage for homeworkers.[771] In certain cases, these rules apply specifically to teleworkers.[772] In other countries, the minimum wage rules are not applicable to homeworkers.[773] Some governments specify that the principle of equal remuneration for work of equal value is also applicable to homeworkers.[774]

581. In some countries, the remuneration of homeworkers is fixed on a piece-rate basis.[775] The labour legislation in certain countries specifies that the remuneration of homeworkers can be fixed on a piece-rate basis, or on a weekly or monthly basis.[776] Some national laws make specific reference to the possibility to make deductions from remuneration, for example in the case of defective work, and in some cases the law establishes limits for such deductions.[777] In other cases, deductions of this type are prohibited.[778]

582. In general, rules respecting working time are difficult to apply to homeworkers.[779] Although, in theory, they can work when they want, they seldom benefit from weekends or holidays. As they are paid on a piece-rate basis, and their earnings are low, they often have to accept more work than they are able to perform during normal working hours. Sometimes, the employer makes very unrealistic calculations of the time needed for production. Besides,

[768] For example, *Algeria, Austria* (through collective agreements), *Belgium, Cyprus, Denmark, Germany* (through collective bargaining) and *Thailand* (Homeworkers Protection Act, section 16).
[769] For example, *Algeria, Japan* (Industrial Homework Act, articles 8, 14 and 16) and *United Kingdom*.
[770] For example, *Costa Rica, Croatia, Guatemala* and *Honduras*.
[771] For example, *Mexico* (Labour Code, section 322).
[772] For example, *Colombia* (Act No. 1221 of 2008, section 6).
[773] For example, *Sri Lanka*.
[774] For example, *Bulgaria, Cabo Verde, Central African Republic, Jamaica, Latvia, Malta* and *Senegal*.
[775] For example, *Ecuador* (Labour Code, section 16), *Germany* (HAG, section 20), *Hungary* (Labour Code, section 198), *Italy* (Act No. 877/1973, section 8, provides that increases shall be determined by collective bargaining, which shall also provide for the 13th month, leave, public holidays and the reimbursement of costs, with payment due when the work is returned), *Nicaragua* (Labour Code, section 158), *Paraguay* (Labour Code, section 258) and *Poland* (Regulation of the Council of Ministers of 31 December 1975, section 12).
[776] For example, *Central African Republic, Costa Rica* (Labour Code, section 112), *Guatemala* (Labour Code, section 159), *Honduras* (Labour Code, section 170), *Mauritius* (First Schedule to the Employment Rights (Working from Home) Regulations 2019) and *Peru* (Labour Code, section 90).
[777] For example, *Costa Rica* (Labour Code, section 111), *Honduras* (Labour Code, section 169, permitting a 10 per cent deduction) and *Peru* (Labour Code, section 90; no more than 25 per cent of monthly remuneration when the worker is responsible for the loss or deterioration).
[778] For example, *Ecuador* (Labour Code, section 281).
[779] ILO: *Home work*, Report V(2), 1995, op. cit., p. 39.

due to the particular organization of work in supply chains, with very short deadlines, they are also under great pressure to work more rapidly. Employers may modify orders, or even reduce or withdraw them, depending on market fluctuations.

583. During the preparatory work for the homework instruments, many Employers' and Government delegates considered that placing limitations on the working time of homeworkers would remove the principal advantage of homework, namely flexibility in relation to working hours. Some of them considered that this should be left to collective bargaining. The view was also expressed that the conditions of homework and the technology used in some cases make it difficult to regulate and control.[780]

584. Recommendation No. 184 outlines some protections for homeworkers in relation to working time, even if they are often difficult to control. For example, Paragraph 23 indicates that a deadline to complete a work assignment should not deprive a homeworker of the possibility to have daily and weekly rest comparable to that enjoyed by other workers. In recognition of the difficulties inherent in endeavouring to impose the same rules on homework as in other sectors of the economy with respect to paid holidays and paid sick leave, particularly if homeworkers are not recognized as employees, the Recommendation indicates that the conditions under which homeworkers should be entitled to benefit, as other workers, from paid public holidays, annual holidays with pay and paid sick leave should be left to national laws and regulations (Paragraph 24).[781]

585. The Committee notes the indication by some governments that the national rules respecting working time are not applicable to homeworkers.[782] The view was also expressed that homework is paid on a piece-rate basis because it is not possible to control working time.[783] Some governments indicate that the issue is not regulated at the national level,[784] while others report that the general rules on working time, daily and weekly rest are also applicable to homework, particularly if homeworkers are in an employment relationship.[785] In some countries, national law provides that efforts have to be made to ensure that the working time of homeworkers is similar to that of workers in the enterprise.[786] In certain countries, the law provides that, in the case of homework, delivery and waiting time shall be counted as working time.[787]

586. In the case of telework, regulations in some countries provide that the telework agreement shall stipulate the hours of work,[788] or that the general rules on working time are applicable to teleworkers.[789] In one case, a maximum of working hours a week is specified, but in any case the hours worked should be similar to those applicable in the trade or business in general.[790]

587. In some countries, the law specifies that, while working time and rest periods are organized by homeworkers at their discretion, they are entitled to public holidays and leave.[791] The regulations in some countries establish minimum rest periods.[792]

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[780] ILO: *Home work*, Report V(2), 1995, op. cit., p. 126.
[781] ibid., p. 129.
[782] For example, *Belgium* (although limitations can be established through collective bargaining), *Chile, Finland, Paraguay, Slovakia* and *Spain.*
[783] Report of the Government of *Italy.*
[784] For example, *Panama.*
[785] For example, *Armenia, Austria, Bosnia and Herzegovina, Cambodia, Colombia, Cyprus, Denmark, Dominican Republic, Ecuador, El Salvador, Greece, Guatemala, Mexico, Montenegro, Nepal, New Zealand, Norway, Philippines, Sweden* and *Bolivarian Republic of Venezuela.*
[786] For example, *Japan* (for industrial homework).
[787] For example, *Paraguay.*
[788] For example, *Belgium.*
[789] For example, *Ecuador, Japan* and *Spain.*
[790] For example, *Mauritius* (Employment Rights (Working from Home) Regulations 2019).
[791] For example, *Ukraine* (Leave Act No. 504/96-VR).
[792] For example, *United Arab Emirates.*

588. In certain cases, although no explicit limitations are placed on the working time of home-workers, the law requires employers to take into account the physical and mental capacities of homeworkers to avoid or reduce safety and health hazards due to excessive workload.[793] Similarly, in some cases the law prohibits giving out an amount of work and setting deadlines that have a negative impact on the entitlement of homeworkers to daily, weekly or annual periods of rest.[794] In some cases, it is prohibited to allocate or deliver homework on Sundays or public holidays,[795] or to allocate to homeworkers a greater volume of work than a full-time member of staff would do during normal working hours.[796]

> *Mauritius* – The Employment Rights (Working from Home) Regulations 2019, First Schedule, provides that:
> ...
> (2) the hours of work of a homeworker – (a) shall not be less favourable than the hours of work prescribed in any enactment or specified in an agreement, as the case may be, applicable to the trade or business in which the homeworker is in employment; or (b) shall be as agreed between the employer and the homeworker where the homeworker is required to work lesser number of hours.
> (3) Where a homeworker is required to work on flexible hours – (a) the work allocated to him shall be performed and completed within a bandwidth to be agreed with his employer; (b) the homeworker shall be available during the core hours of work to be agreed with his employer for work-related communication.
> (4) The hours of work of a homeworker shall include time spent – (a) to collect work and materials; (b) to deliver completed work; (c) waiting at home for working tools and equipment to be repaired or maintained; (d) waiting at home for work to be delivered or otherwise assigned; (e) waiting for the employer to provide work; (f) waiting for instructions to be given over the phone or otherwise; (g) to attend meetings with the employer or his clients for business-related purpose.
> (5) A homeworker shall, after completion of his normal day's work, be entitled to a rest period of not less than 11 consecutive hours before resuming work.
> (6) A homeworker shall, in every working day, be entitled to an in-work rest break of one hour without pay to be taken at his discretion where he performs not less than four consecutive hours of work.

589. National law and practice also vary with regard to paid public holidays, paid annual leave and paid sick leave. In some cases, the same rules apply to homeworkers as to other workers.[797] In some cases, homeworkers benefit from specific paid leave or leave indemnities for certain days,[798] and in some cases these provisions are applicable after a threshold period of work.[799] The legislation in certain countries explicitly excludes recognition of indemnities for work on public holidays.[800] Some reports indicate that the applicable rules in this respect depend on the sector.[801]

[793] For example, *Finland*.
[794] For example, *Croatia* (Labour Act, section 17(17)).
[795] For example, *Austria* (Homework Act, section 12).
[796] ibid, section 14.
[797] For example, *Austria, Cambodia* (if the workers are in an employment relationship), *Colombia, Croatia, Cyprus* (sick leave is conditional on agreement with employer), *Denmark, Ecuador, Greece* (if the workers are in an employment relationship), *Montenegro, New Zealand, Norway, Portugal, Senegal, Sweden, United Kingdom* and *Bolivarian Republic of Venezuela*.
[798] For example, *Finland*.
[799] For example, *Algeria*.
[800] For example, *El Salvador*.
[801] For example, *Trinidad and Tobago*.

6. Statutory social security and maternity protection

590. Recommendation No. 184 provides that homeworkers should benefit from social security. It contemplates several options in this regard, including: extending existing social security provisions to homeworkers; adapting social security schemes to cover homeworkers; or developing special schemes or funds for homeworkers (Paragraph 25). The Committee notes that in their reports, many member States indicated that the general rules applicable to other categories of workers are also applicable to homeworkers.[802] In some cases, however, homeworkers are excluded from some specific benefits.[803] In a number of countries, homeworkers are considered as self-employed workers and, as such, are entitled to social security.[804] Some member States expressly acknowledge the high level of informality prevalent in this sector.[805]

591. Recommendation No. 184 also provides that national laws and regulations in the field of maternity protection should apply to homeworkers (Paragraph 26). Some governments report that national legislation extends maternity protection to homeworkers.[806]

> CEACR – In its comments concerning the *Netherlands*, the Committee noted the observations from the FNV, CNV and VCP, who express the view that women homeworkers should be entitled to maternity leave regardless of their employment status. The FNV urges the Government to look into this problem and, at a minimum, extend the maternity leave allowance for self-employed workers to homeworkers. In its response, the Government indicates that homeworkers are entitled to the same maternity protection coverage under the labour legislation as other wage earners, but does not specify the relevant legal provision. The Committee notes the benefits stated by the Government and acknowledges its full reply.[807]

7. Access to training

592. Recommendation No. 184 calls for programmes to be promoted and supported which provide training for homeworkers. The training should be provided as close as practicable to the workers' home and should not require unnecessary formal qualifications (Paragraph 29(1)(d) and (e)). Measures of this kind could also be applied to digital platform workers. Some governments indicate that, although homeworkers benefit from equal rights with respect to access to training, no requests for training are received from them.

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[802] For example, *Algeria, Argentina, Austria, Belgium, Cabo Verde, Denmark, Egypt, Gabon, Germany, Guatemala, Jamaica, Panama, Peru, Senegal, Sweden* and *Thailand*.

[803] For example, in *Italy*, pursuant to section 9 of Act No. 877/1973, current regulations for employees concerning social insurance and family allowances apply to homeworkers, with the exception of wage subsidies. Homeworkers are entitled to the following benefits: old-age, disability and survivors' pensions; sickness benefit; maternity benefit; unemployment benefit (not payable for inactive periods between one commission and the next); workplace accident and occupational disease benefit; wedding leave allowance; household allowance; and mobility benefit.

[804] For example, *Malta* (under the Social Security Act, homeworkers are insured for all benefits listed under art. 3(1) of Regulation (EC)833/2004).

[805] For example, *Argentina*.

[806] For example, *Guatemala*.

[807] CEACR – *Netherlands*, C.177, direct request, 2018.

VI. Registration and records

593. Paragraph 6 of the Recommendation calls for the registration by the competent authority at national level, and where appropriate at the regional, sectoral or local levels, of the employers of homeworkers and of any intermediaries used by such employers. The authority should specify the information that employers are required to submit or keep at the authority's disposal.

594. The registration of employers and intermediaries makes it possible to collect data relevant for the implementation of the Convention, and gives more visibility to companies that use home work. Paragraph 7 of the Recommendation outlines some requirements that should be established for employers of homeworkers:

(1) to notify the competent authority when they give out home work for the first time;

(2) to keep a register of all homeworkers, classified by sex;

(3) to keep a record of work assigned to a homeworker showing:
- the time allocated;
- the rate of remuneration;
- the costs incurred by the homeworker and the amount reimbursed;
- any deductions made in accordance with national laws and regulations;
- the gross remuneration due and the net remuneration paid, with the date of payment.

(4) a copy of this record should be provided to the homeworker.

595. At the national level, some systems require all employers (including employers of homeworkers) to register, without any distinction as to whether they hire workers or homeworkers.[808] There is sometimes a specific requirement for employers of homeworkers to register,[809] or to obtain a licence, which has to be renewed periodically.[810] The information registered includes the name and address of homeworkers, the quantity and type of work allocated, and remuneration.

596. The requirement of notification when giving out home work for the first time is not a request for a permit, but rather a means of informing employers of the regulations applicable to homeworkers and updating the register of givers of home work. Some national regulations require the employer to notify or register the first time that home work has been allocated to a worker.[811] In other cases, the law requires the employer to communicate the first allocation of work to the relevant health insurance provider.[812]

> *Argentina* – Act No. 12713, section 17, provides that the competent authority shall be responsible for registering givers of work, organizing the register of employers and workers, in which the persons, companies, associations, intermediaries associations and others involved in this form of work shall be recorded.

[808] For example, *Armenia, Belgium, Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina), *Cambodia, Cyprus, Finland, Greece, Honduras, Kiribati, Latvia, Mauritius* and *New Zealand*.
[809] For example, *Algeria* (Executive Decree No. 97-474, section 4), *Costa Rica* (Labour Code, section 110) and *Ecuador* (Labour Code, section 277).
[810] For example, *Dominican Republic* (Labour Code, section 272).
[811] For example, *Germany* (Homework Act, section 6).
[812] For example, *Austria* (Homeworking Act, section 5).

597. Under other legal regimes, the registration of the labour contract is required.[813] In some other cases, the law requires both the employer of homeworkers and homeworkers themselves to register with the competent authority,[814] while in other cases there is no requirement to register.[815]

598. In many legal systems, employers are required to keep a record of homeworkers. In some cases, in addition to personal data concerning the homeworker, the employer is also required to keep a record of the amount of work given, the price of the materials, dates of delivery of materials and the final product, and the remuneration paid.[816]

> *Ireland* – The Organisation of Working Time Act 1997, section 32, provides that: "(1) An employer who employs any outworkers shall keep, in the prescribed form, a register in which he or she shall cause to be entered prescribed particulars in respect of each such worker for the time being employed by him or her."

599. In some countries, workers are provided with workbooks, or copies thereof, containing certain prescribed information on, for example: wages paid, type and quantity of work handed out and completed, dates of delivery, materials received and handed back and, in some cases, the terms and conditions of employment. The workbook is sometimes provided by the employer, and sometimes by the competent authority.[817]

600. Paragraphs 6 and 7 of the Recommendation amount to considerable progress in making homeworkers and their employers more visible and facilitating inspection and supervision. The information collected by the employer on the homeworker is included in the information that has to be kept at the authority's disposal.

601. Intermediation is generally undertaken by private employment agencies or temporary work agencies, which have to be registered or authorized, or report regularly to the competent authority.[818] Some reports specify that the intermediary, as a representative of the employer, needs the authorization of the labour inspectorate. In some cases, the law also requires the registration of the labour contract concluded with the intermediary agency.[819]

[813] For example, *Bosnia and Herzegovina* (Republika Srpska), *Estonia* and *Peru* (Law on Productivity and Labour Competitiveness Act (LPCL), section 91). This is also the case in *Chile* under the Bill on remote work.
[814] For example, *Italy* (Act No. 877/1973, sections 3 and 4), *Switzerland* (Act on home work, section 10).
[815] For example, *Gabon, Japan, Sweden* and *Thailand.*
[816] For example, *Central African Republic* (Labour Code, section 188), *Costa Rica* (Labour Code, section 110), *Dominican Republic* (Labour Code, section 270), *Ecuador* (Labour Code, section 275), *Guatemala* (Labour Code, section 157), *Honduras* (Labour Code, section 167), *Montenegro* (Labour Law, section 167(2)), *Paraguay* (Labour Code, section 137), *Peru* (Legislative Decree, Law on Productivity and Labour Competitiveness, No. 728, sections 92–93), *Philippines*, (Order No. 05-92 of the Department of Labor and Employment, section 5), *Portugal* (Act No. 101/2009, section 12), *Senegal* (Order No. 11514 of 2009) and *Bolivarian Republic of Venezuela* (LOTTT, section 214).
[817] For example, *Algeria* (Executive Decree No. 97-474, section 6), *Argentina* (Act No. 12713, section 7), *Dominican Republic* (Labour Code, section 271), *Ecuador* (Labour Code, section 276), *Honduras* (Labour Code, section 168), *Japan* (Industrial Homework Act, section 3), *Nicaragua* (Labour Code, section 158), *Paraguay* (Labour Code, section 138), *Peru* (Legislative Decree, Law on Productivity and Labour Competitiveness, No. 728, section 92) and *Bolivarian Republic of Venezuela* (LOTTT, section 215).
[818] For example, *Greece, Hungary, Republic of Korea, Morocco, Peru, Philippines, Poland, Sri Lanka, Suriname* and *Turkey.*
[819] For example, *Senegal* (Decree No. 2009-1412).

VII. Provision of information

602. As indicated in Paragraph 5 of the Recommendation, homeworkers should be kept informed of their specific conditions of employment in writing or in any other appropriate manner consistent with national law and practice. This information should include, in particular: (a) the name and address of the employer and the intermediary, if any; (b) the scale or rate of remuneration and the methods of calculation; and (c) the type of work to be performed.

603. This provision is very flexible and does not require a written contract. What is important is for homeworkers to be provided with adequate information on their employer and the intermediary with whom they are working, as well as their conditions of employment. Paragraph 30 adds that, where practicable, information and programmes for homeworkers should be provided in languages understood by homeworkers, in recognition of the fact that many homeworkers are migrant workers, often in an irregular situation, who opt to work from home to hide from the authorities. Similarly, in the case of home work in global supply chains, in which enterprises operate across borders, such a requirement helps to ensure that homeworkers at the end of the chain receive information on their rights in their own language.

604. The specific information provided to homeworkers varies at the national level. In some cases, the law requires a written contract.[820] Sometimes, this is a general obligation applicable to all contracts, and in some cases an obligation that is only applicable in the case of home work.

605. Some national laws require the employer to provide a copy of the agreement or the labour contract to the homeworker. In other cases, the law only requires the employer to provide information to the homeworker concerning the terms and conditions and duration of the contract.[821] The law may also require employers to provide, on every occasion, or at the request of the homeworker, a statement of the work provided, materials or compensation received, or outstanding wages, as well as other necessary records relating to the employment relationship.[822]

606. In most countries, the law requires the labour contract or home work agreement to indicate the following: name and address of the employer; name of the enterprise; name and address of the worker; remuneration and form of payment; reimbursement of costs; place where the work is carried out; description of the tasks; working-time arrangements; delivery of materials; amount of work; and deadlines. In some cases, the law also requires an indication of the competent authority and the collective agreement applicable.[823] In some countries, specific laws or provisions on teleworking specify the information to be included in the labour contract for telework, and in some cases a written contract is also required.[824] The information required may include: working conditions; technological tools required; specific working days; responsibilities respecting equipment; and safety.[825]

[820] For example, *Belgium* (Act of 3 July 1978 on labour contracts, section 119(4)), *Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina, Labour Code, section 24, Republika Srpska, Labour Law), *Bulgaria* (Labour Law, section 62(1)), *Croatia* (Labour Law, section 15), *El Salvador* (Labour Code, section 71), *Estonia* (Employment Contracts Act, section 5(5)), *Germany* (Employment Disclosure Act (NachwG), section 2(1)), *Latvia* (Labour Code, section 40), *Mauritius* (Employment Rights (Working from Home) Regulations, 2019, sections 3(4) and (5)), *Mexico* (Federal Labour Act, section 318), *Montenegro* (Labour Law, section 14) and *Namibia* (Labour Act No. 11 of 2007, section 11(3), read with Regulation No. 3 of the Labour General Regulations).

[821] For example, *Cambodia* (Labour Law, section 67), *North Macedonia* (Labour Code, section 44), *Malta* (Employees Regulations), *Spain* (Royal Decree No. 1659/1998, section 8(5)), *Sweden* (Employment Protection Act) and *Switzerland* (Act on home work, section 3).

[822] For example, *Costa Rica* (Labour Code, section 110) and *Honduras* (Labour Code, section 167).

[823] For example, *Belgium* (Act of 3 July 1978 on labour contracts, section 119(4)), *Bosnia and Herzegovina* (Republika Srpska, Labour Law, section 44), *Croatia* (Labour Law, section 17), *Morocco* (Labour Code, section 94) and *Thailand* (Homeworkers Protection Act, section 9).

[824] For example, *Germany* (Workplace Ordinance (ArbStättV) section 2(7)).

[825] For example, *Belgium* (Collective Agreement of 5 December 2005, clause 6), *Colombia* (Decree No. 0884 of 2012 on teleworking, section 3) and *Ecuador* (Ministerial Decision regulating telework in the private sector, section 3).

607. The regulations in some countries require the employer to display or provide a copy of applicable homeworking bargaining agreements or homeworking tariffs, along with the list of fees for the homeworker.[826] Some provisions specifically provide for the right of the homeworker to request explanations from the contracting entity on how payment is calculated.[827]

VIII. Programmes related to home work

608. In addition to legislation and collective bargaining, a whole range of measures have been developed by governments, trade unions and non-governmental organizations (NGOs) to assist and support homeworkers. This is acknowledged in Paragraph 29 of the Recommendation, which invites Members, in cooperation with employers' and workers' organizations, to promote and support programmes, which should be available to both urban and rural homeworkers. These programmes should, in the first place, inform homeworkers of their rights and the various types of assistance that are available to them. Some governments produce information in several languages on home work and homeworkers' rights.

Ireland – The Workplace Commission has drafted a comprehensive set of employment law leaflets and publications available on its website: www.workplacerelations.ie.

United Kingdom – The Advisory, Conciliation and Arbitration Service (ACAS) has issued a guide on homeworking for employers and employees.[828]

609. The programmes implemented should also raise awareness of home work issues among employers' and workers' organizations, NGOs and the public at large (Paragraph 29(1)(b) of the Recommendation). When adopting policies, it is important, for example, for trade unions and employers' organizations to take into account the fact that homeworkers are not in the workplace. Trade unions should also provide assistance to homeworkers for the determination of their working conditions, particularly through collective bargaining. In this respect, the Committee highlights the important work carried out by many international workers' federations and organizations, which are carrying out research and launching information campaigns on the problems and difficulties faced by homeworkers.[829] It is also important for the public in general, and consumers in particular, to be aware of the importance of homeworking in the labour market, its impact on local and national economies and how homeworkers are integrated into more global supply chains.

[826] For example, *Austria* (Homeworking Act, section 8), *Germany* (Homework Act (HAG), section 8(1)) and *Jamaica* (Minimum Wages Act, section 11(c), although only concerning minimum wages).
[827] For example, *Germany* (Homework Act (HAG), section 28).
[828] *United Kingdom*: Homeworking – A guide for employers and employees.
[829] For example, the Home Based Women Workers Federation (HBWWF), the Self Employed Women's Association (SEWA) and Women in Informal Employment: Globalizing and Organizing (WIEGO). See also, ILO: *Home-based workers: Decent work and social protection through organization and empowerment: Experiences, good practices and lessons from home-based workers and their organizations*, Jakarta, 2015.

610. This is particularly important as home work is often invisible and carried out in isolation. For this reason, measures should be taken to facilitate the organization of homeworkers in organizations of their own choosing, including in cooperatives. Furthermore, to reduce isolation, programmes should facilitate the establishment of centres and networks for homeworkers to provide them with information and services (Paragraph 29(1)(g)). Many homeworkers are organized in producer cooperatives, and some homeworker cooperatives have been active in the formalization of jobs and have enabled homeworkers to pool resources and determine their own terms of employment.[830]

611. Due to their isolation, homeworkers are often not taken into account in relation to training, which is frequently provided at the workplace, and is therefore distant from their homes where they work. If homeworkers have the opportunity to improve their skills, productivity and income-earning capacity, their perspectives can be broadened and their living conditions improved, and their competitiveness could be based on increased productivity, instead of low wages. It is important for homeworkers that training is accessible to them and takes into account the specific situation of many homeworkers, who have not had access to education or skills development, and should avoid the requirement of unnecessary formal qualifications. At the same time, home work should be recognized as a valid work experience as a stepping stone to better opportunities (Paragraphs 29(1)(d) and (e)).

612. Home work is often envisaged as an option in the absence of childcare facilities. As already noted, home work is carried out mainly by women, who choose it, among other reasons, due to their family responsibilities. They can therefore combine work and childcare, often in the same place. This may be dangerous and stressful, and may also affect productivity. Programmes for homeworkers should therefore facilitate access to childcare, and include measures to address the fact that homeworkers are often assisted by their children and be aimed at eliminating child labour. Many homeworkers also experience great difficulty in gaining access to credit and adequate safe and healthy housing. Programmes should also take into consideration and improve the safety and health of homeworkers, for example facilitating their access to equipment, tools, raw materials and other essential materials that are safe and of good quality (Paragraph 29(1)(f) and (h)).

[830] Several homeworkers' cooperatives have been established at the national level, for example in *Nepal* (Home Based Workers Concern Society Nepal (HBWCSN), which includes 90 self-help groups and nine cooperatives in such sectors as wooden handicrafts, knitting, weaving, tailoring and briquette making), *Philippines* (Homenet Producers Cooperative), *India* (Ruaab SEWA, garment workers), *Senegal* (COOPTAG, tannery workers) and *Thailand* (Solidarity Group, garment workers).

IX. Sectors in which home work is commonly utilized

613. Home work is very diverse and is used in a wide range of economic sectors, from the most traditional, such as baking or garment and shoe manufacturing, to the most evolved forms of telework. A wide range of materials are used and different skills are required from the workers.

1. Telework

614. Progress in information and communication technologies (ICT) has facilitated the spread of electronic work at home, usually referred to as "telework", in which the link between paid work and the workplace is more evident than other forms of home work. Telework should not divert all attention from the core issues and problems raised by more familiar and traditional forms of home work. The issue of telework was addressed by the ILC in 1995 in the context of home work, when it was considered that it was important to devote some attention to the legal status of teleworkers, their remuneration, productivity, hours of work, changes in the organization of work and managerial styles, the impact on health and safety, and on employment, and the potential of telework to help certain specific categories of workers, such as workers with disabilities and workers with family responsibilities to enter or stay in the labour market.[831]

615. During the preparatory work, not all countries agreed on the need or the timeliness of addressing telework in this context. Others acknowledged telework as a new form of home work that goes beyond traditional manufacturing.[832] Some considered it to be "one of the most rapidly expanding and exploitative forms of home work".[833] It was also noted that it entails a danger of isolation and skills downgrading.[834] Others considered that it was possible to have more favourable working conditions for teleworkers than for workers in the enterprise.[835] In any case, it was recognized that further studies and research need to be undertaken on telework to determine its impact on working conditions.

616. Telework is varied and can take place in different economic sectors with varying skills requirements. As such, it can evolve, particularly in terms of the possibility of remote control by the employer. Some telework is brokered through platforms (for example, text and data processing), and as such is often given out from industrialized countries to those in the developing world, where labour and other costs are lower (see below).

617. The Committee has already addressed telework in its General Survey of 2017 on working time,[836] in which it noted the research conducted jointly by the ILO and the European Foundation for the Improvement of Living and Working Conditions (Eurofound),[837] which identifies advantages and disadvantages of telework. Advantages for workers include; a reduction in commuting times; greater autonomy and flexibility in the organization of work; a better work–life balance; and higher productivity. Companies also benefit from the improvement in work–life balance, which can lead to increased motivation and reduced turnover, as well as enhanced productivity and efficiency, and from a reduction in the need for office space and associated costs. The disadvantages of telework are the tendency to work longer hours, to create an overlap between paid work and personal life (work–home interference) and the intensification of work.

[831] ILO: *Home work*, Report V(1), 1995, op. cit., pp. 10 and 78.
[832] See, in this regard, ILO: *Record of Proceedings*, 1995, op. cit., pp. 25–27.
[833] ILO: *Home work*, Report V(2), 1995, op. cit., p. 4.
[834] ibid., p. 48.
[835] ibid., p. 4.
[836] ILO: General Survey of 2018, paras 736–745.
[837] Eurofound and ILO: *Working anytime, anywhere: The effects on the world of work*, Luxembourg and Geneva, 2017, p. 1.

618. The Committee also noted that, at the level of the European Union, the European Trade Union Confederation, the Union of Industrial and Employers' Confederations of Europe, the European Union of Crafts and Small and Medium-Sized Enterprises and the Centre of Enterprises with Public Participation had negotiated a framework agreement on telework in 2002. The agreement recognizes that telework covers a wide and rapidly evolving spectrum of circumstances and practices. It aims to establish a general framework at the European level concerning the employment conditions of teleworkers and at reconciling the need for flexibility and security shared by employers and workers. Most importantly, it grants teleworkers the same overall level of protection as workers who carry out their activities at the employer's premises. The agreement defines "telework" as a form of organizing and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer's premises, is carried out away from those premises on a regular basis. The agreement covers: the voluntary nature of teleworking (it cannot be forced on an employee); employment conditions (teleworkers have the same rights as comparable workers in the workplace); data protection (the employer is responsible for taking precautions with regard to data protection); privacy (the employer respects the privacy of teleworkers); equipment (the employer is generally responsible for providing, installing and maintaining the equipment necessary for regular telework, unless workers use their own equipment); occupational health and safety (the employer is responsible for the protection of the occupational health and safety of the teleworker); the training and career development of teleworkers (teleworkers have the same access to training and career development as comparable workers at the employer's premises); and the collective rights of teleworkers (teleworkers have the same collective rights as workers at the employer's premises). With regard to working time, the agreement provides that the teleworker manages the organization of his/her working time and that the workload and performance standards of the teleworker are equivalent to those of comparable workers at the employer's premises.[838]

619. Several countries have already adopted regulations on telework, some of which contain a specific definition of telework.

Hungary – The Labour Code, section 196(1), defines "teleworking" as those activities performed on a regular basis at a place other than the employer's facilities, using computers and other means of information technology, in which the end product is delivered through electronic means.

Turkey – Labour Law No. 4857, as amended by Act No. 6715 of 6 May 2016, section 14, defines teleworking as an employment relationship established in writing and based on the principle that employees perform work from their home or from outside the workplace through use of technological communication devices, within the scope of the business organization created by the employer.

[838] European Union framework agreement on telework, 2002.

620. Some governments refer in their reports to draft legislation on home work and telework.[839] Some indicate that the broad definitions contained in their legislation also cover telework, or that the general provisions of labour legislation are applicable to telework.[840]

621. Telework is sometimes addressed through collective bargaining.[841] One government indicates that, although not yet regulated, home work exists in practice, particularly in high-tech employment and the public sector, where it is permitted in exceptional cases after working hours.[842] Some countries have adopted specific legislation to address possible disadvantages of telework, such as ensuring safe and healthy working conditions for homeworkers or teleworkers.[843]

622. While noting that telework can take many different forms, some of which are permanent and others occasional, the Committee recalls that the Convention does not apply to persons with employee status who occasionally perform their work as employees at home rather than at their usual workplace. However, teleworking as a permanent arrangement, whether full-time or part-time, but not in alternation with office-based work, is clearly covered by the definition of "home work" in Article 1(a) of the Convention.[844]

623. The definition provided in the legislation in some countries is broad and encompasses different situations that go beyond the scope of the Convention, such as alternating work at the employer's premises and at home.[845] The Committee considers that, in such cases, the legal regime applicable to the work carried out in the employer's premises also applies to work carried out at home.

2. Digital platform work as a form of home work

624. Digital platform work, as described in chapter II, resembles home work, with the difference that a digital platform serves as an intermediary.[846] Resemblances to home work include: the strategy of breaking down tasks into small units that can be assigned to more or less skilled workers; the payment structure by task; and the fact that it is performed outside the employer's premises. Moreover, the matching services provided by some platforms for clients and workers appear, in practice, to be quite similar to home work intermediaries or temporary work agencies. The lack of clarity regarding the employment relationship is another characteristic that crowdwork shares with home work. Platforms, in the same way as other new forms of employment and working arrangements, are less transparent and sometimes conceal the true chain of responsibility. This is also a characteristic of home work and the intermediaries involved, where it is often necessary to identify the worker's "ultimate" employer. Digital platform work is similar to home work in that it concerns a broad and diverse range of sectors. The blurring of lines between working and leisure time, and between the workplace and home, are further common features. Furthermore, rejection of work by the

[839] For example, *Argentina*, a series of initiatives to establish policies and public institutions for this type of work have focused on teleworking. A Commission on Telework established by the Ministry of Labour, Employment and Social Security (MTESS) submitted a legislative project in 2007 to regulate occupational health and safety for teleworkers. The Ministry prepared a manual of best practices in telework and launched a tripartite observatory to follow the development of telework programmes in companies and promote best practices; see RED de Teletrabajo (in Spanish) and Manual de buenas prácticas en teletrabajo (in Spanish). In *Chile*, the Government submitted a bill to the National Congress in August 2018 seeking to amend the Labour Code in relation to remote work and telework. In the *Philippines,* House Bill No. 7402, the Telecommuting Act, and its counterpart measure, Senate Bill No. 1363, the Telecommuting Act of 2017, are pending before both Houses.

[840] For example, *Bosnia and Herzegovina* (Republika Srpska, Labour Code, section 44), *Germany* (Workplace Ordinance (ArbStättV), section 2(7)) and *Greece* (Act No. 3846/2010 on job security guarantees, section 1).

[841] For example, *Estonia* (collective agreement concluded in 2017).

[842] For example, *Israel*.

[843] For example, *Japan* ("Guidelines for the Appropriate Performance of Self-employed Type telework").

[844] See CEACR – *Netherlands*, C.177, direct request, 2013.

[845] For example, *North Macedonia* (Labour Code, section 52).

[846] J. Berg et al.: *Digital labour platforms and the future of work: Towards decent work in the online world*, Geneva, ILO, 2018, p. 6.

employer, which is common in digital platforms, also exists in home work, combined with a lack of career perspectives and access to continued training. Moreover, they are both generally in the informal economy.

625. Another common issue is low remuneration. Crowdworkers often do not find sufficient work and have to look for work continuously, without any guarantees of finding it. In contrast, in traditional low-end "home work" in manufacturing, workers are more likely to have a regular flow of work from their regular supplier or contractor.

626. At the national level, few reports refer specifically to platform work in the context of home work. However, some reports indicate that the provisions in force are not intended to cover platform work.[847] In certain cases, the broad definition of home work is considered to enable it to cover new forms of home work, such as platform work.[848] In one case, the Government indicates that, where gig economy workers have to perform services in a personally dependent manner according to the instructions and under the control of a third party, and thus have the status of employees, they enjoy the full protection of the labour legislation.[849] In another case, the Government indicated that it depended on the particulars of the case.[850]

Australia – Homeworkers who source work through the gig economy can be covered by the Fair Work Act insofar as they are employees.

Canada (British Columbia and Manitoba) – Labour legislation also applies to homeworkers working in the gig economy.

Cuba and *Cyprus* – The national labour legislation applies to all employees, and the same provisions therefore apply to homeworkers (including those working in the gig economy) in the same way as to any other employee.

627. ***The Committee considers that, insofar as digital platform work or crowdwork is carried out at home or in a place other than the employers' premises on a regular basis and for remuneration, it could fulfil the conditions to be considered a form of regular home work, and as such could be covered by the provisions of the Convention.***

3. Supply chains and home work

628. Globalization and new technologies have made it easier to fragment production into different stages within and between countries. Supply chains are characterized by short lead times and short-term buyer-supplier relationships. As indicated in chapter II, the possibility of subcontracting has provided increased flexibility for manufacturers to manage stocks, and also to reduce risks and costs. These are now shifted to the subcontractor, which in turn transmits them to other subcontractors and intermediaries throughout the chain. Homeworkers are at the bottom of this chain, often in the informal economy.

629. Moreover, advances in inventory management technology are allowing firms to retain small stocks of goods. This implies that suppliers often have to meet tight deadlines and

[847] For example, *Colombia*.
[848] For example, *Switzerland* (Code of Obligations, section 351).
[849] For example, *Germany* report.
[850] For example, *United States* report. According to the Government, it depends on multiple factors.

complete or modify orders with short lead times. When this occurs throughout the supply chain, its final impact affects homeworkers, who have to absorb the risks associated with high variations in demand. When suppliers are under pressure to meet the demand, they rely on homeworkers, and when demand is low they cease to use them.

630. The digital economy is increasingly becoming central to the redefinition of supply chains and the creation of competitive advantage, with speed and scale becoming the cornerstones of economic performance. Digital platform workers are often integrated into supply chains, and frequently face the same difficulties as traditional homeworkers.

631. At the national and international levels, the need has been recognized to create a more level playing field and improve the governance of supply chains. It is acknowledged that the strong bargaining powers of buyers (retailers) in supply chains should be accompanied by their participation in some of the costs and responsibilities. In this respect, the involvement and participation of workers is a key factor at both the national and international levels. Governments have a crucial role to play in formulating regulations and other policy responses to support private sector growth, while ensuring that growth is inclusive. At the same time, governance structures, such as the ILO and OECD, are very important at the local and global levels to guide countries in their "due diligence" in respect of fundamental principles and rights at work. The Committee notes in this regard the *OECD Due diligence guidance for responsible supply chains in the garment and footwear sector*, adopted 2017, which aims to minimize the risk of the marginalization of homeworkers through formalization and legalization, while promoting responsible supply chains.[851] The guidance recognize the role of all members of society at the national and global levels in this regard. The guidance highlight the intrinsic role of homeworkers as part of the workforce, who are entitled to equality of treatment and should be formalized to achieve good terms and conditions of employment. The Committee endorses the emphasis placed in the guidance on the need for further research to understand the reasons for the situation of homeworkers, recognize the diversity of home work, provide technical assistance to help in the process of formalization and enable the collaboration and participation of all stakeholders, and particularly organizations representing their particular interests, including trade unions and cooperatives. Awareness-raising and training, as called for in Paragraph 29 of the Recommendation, are crucial in this respect.

X. Conclusions

632. ***The Committee recalls that the adoption, implementation and revision of a national policy aimed at improving the situation of homeworkers and promoting as far as possible equality of treatment between homeworkers and other wage earners is the main objective of the Convention. The Committee recalls that, while the policy should specifically address the situation of homeworkers, it is not necessary for it to be a stand-alone policy, and that it may be a part or chapter of a broader national policy covering all workers. In this regard, the Committee wishes to highlight the close links between the objectives of Convention No. 122 on employment policy, Recommendation No. 204 on the transition to formality and the home work instruments, particularly regarding the adoption of a national policy.***

[851] OECD: *OECD Due diligence guidance for responsible supply chains in the garment and footwear sector*, 2017, op. cit.

633. *The national policy on home work is even more relevant as home work appears to be regaining momentum in the framework of the new forms of work enabled by information and communication technologies and within an ever more integrated labour market, in which home work is an important component of supply chains the world over.*

634. *The Committee highlights in this respect the importance that organizations representing the interests of homeworkers participate in the elaboration and revision of the national policy.*

635. *The Committee wishes to emphasize once again that teleworking as a permanent arrangement, whether full-time or part-time, and not in alternation with office-based work, is clearly covered by the definition of the term home work in Article 1(a) of the Convention. The Committee further recalls the wide variety of sectors in which home work occurs, from telework to more traditional forms of homeworking involving low-paid, casual jobs and poor working conditions on the edge of the informal economy, which needs to be taken into account when adopting, implementing or reviewing a national policy on home work.*

636. *The Committee emphasizes the importance of clarifying the employment status of homeworkers so as to ensure that they fully enjoy the rights to which they are due. In this regard, the Committee considers that the condition of dependency is an important element to be taken into account. However, the Committee recalls that Convention No. 177 is applicable to all cases in which homeworkers work under some form of economic dependency, including workers in the informal economy. The only homeworkers who are explicitly excluded from the coverage of the Convention are those who, in accordance with Article 1(a), in fine, have a degree of autonomy and of economic independence necessary to be considered independent workers under national laws, regulations or court decisions. The coverage of the Convention is not confined to workers who are clearly in an employment relationship and, as indicated in Article 2, it applies to all persons carrying out home work. The instruments are therefore useful tools to help workers in the transition from the informal to the formal economy.*

637. *Once it has been determined who is covered by the Convention, the Committee considers that measures should be taken to promote, as provided for in Article 4, as far as possible, equality of treatment between homeworkers and other wage earners with a view to improving their working conditions. The Committee considers that measures should be taken at the national level to facilitate the determination of the employment status of homeworkers. In this regard, the provisions of Recommendation No. 198 could also be taken into account in determining the homeworkers who are in an employment relationship.*

638. *While acknowledging that the instruments do not contain specific provisions respecting assistants, the Committee considers that whenever assistants for homeworkers are permitted in national legislation, consideration should be given to ensuring that occupational safety and health provisions are also applicable to them. The Committee further recalls that legislation concerning the minimum age for admission to employment or work, as well as prohibitions against hazardous work for children as set out in the fundamental Conventions Nos 138 and 182 are also applicable to homework. Moreover, the Committee considers that improving the living and working conditions of homeworkers, ensuring that they receive adequate remuneration and work reasonable hours is an important means of helping to ensure that they do not have recourse to child labour to assist them.*

639. *The Committee further considers that more data and research are necessary to improve understanding of the weight of home work in national economies and to shed more light on their working conditions. Governments should therefore adopt measures, where necessary, to ensure that monitoring, including labour inspection and enforcement measures, also cover homeworkers.*

Contents

Claire Renfrow works at Coco & Toulouse in Portland.
Oregon Department of Human Services,
March 2018. Photo: Andre Harboe

5

Employment and vocational rehabilitation for workers with disabilities

I. Introduction

640. Disabilities are complex, multidimensional and diverse in both origin and nature. They may be congenital, physical, mental or emotional. While a disability may involve a specific impairment, such as a mobility impairment requiring the use of a wheelchair, it is also due to a combination of personal and environmental conditions that evolve with time.

641. In its 2011 *World report on disability*, the World Health Organization (WHO) estimated that approximately 15 per cent of the world's population, or around 1 billion adults and children, are living with some form of disability, with some 2 to 4 per cent of the population experiencing significant difficulties in functioning.[852] Individuals may be born with a disability or acquire a disability at any time during the course of their lives. Almost everyone will experience a temporary, chronic or permanent impairment, whether partial or severe, on one or more occasions, due to an accident, illness or the ageing process.

642. Persons with disabilities experience substantially higher rates of poverty in every region of the world. They encounter discrimination, marginalization and exclusion in many settings, including in employment. Access to rehabilitation services and employment for persons with disabilities is essential to help them escape the cycle of poverty.

643. While systematic data on the employment of persons with disabilities is not available in many countries,[853] data from a number of countries shows that employment rates for persons with disabilities are generally well below those of the overall population.

> *Argentina* – the Government refers in its report to a national study carried out in 2018,[854] according to which 10.2 per cent of the population aged six or older is living with a disability. The unemployment rate for persons with disabilities over the age of 14 is 10.3 per cent, with only 32.2 per cent of this group being in employment. The employment rate is significantly higher for men with disabilities (at over 40 per cent), than for women (under 26 per cent).

644. According to the WHO 2011 *World report on disability*, the employment rate ranges between a low of 30 per cent in *South Africa* and 38 per cent in *Japan* to a high of 81 per cent in *Switzerland* and 92 per cent in *Malawi*.[855] The lower employment rates for women with disabilities are attributable to various factors, which may include stigma and discrimination, productivity differentials and disincentives to employment created by national disability benefit systems.[856]

645. In addition, when persons with disabilities secure employment, they are often concentrated in precarious and poorly remunerated jobs, which offer little or no opportunity for advancement or access to benefits.[857] Disabilities also entail economic and social costs, which are difficult to quantify and which may "include direct costs, some borne by people with disabilities and their families and friends and employers, and some by society".[858]

646. People with disabilities and their families often incur additional costs in order to achieve a standard of living equivalent to that of persons without disabilities. The additional spending may go towards healthcare services, assistive devices, costlier transportation options

[852] WHO: *World report on disability*, Geneva, 2011, p. xi.
[853] ILO: *The employment situation of people with disabilities: Towards improved statistical information*, Geneva, 2007.
[854] INDEC: *Estudio nacional sobre el perfil de las personas con discapacidad: Resultados definitivos 2018*, Instituto Nacional de Estadísticas y Censos, Buenos Aires, 2018.
[855] WHO: *World report on disability*, 2011, op. cit., p. 237.
[856] ibid.
[857] ILO: *Vocational rehabilitation and employment of disabled persons*, General Survey on the reports on the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), 1983, Report III (Part 1B), ILC, 86th Session, Geneva, 1998, (hereinafter, the "1998 General Survey"), para. 103.
[858] WHO: *World report on disability*, 2011, op. cit., pp. 42–43.

(particularly costs involved in travelling to and from work, especially when public transport services are inaccessible), heating, laundry, special diets or personal assistance. Many of these costs arise because of inaccessible environments, including working environments with barriers to accessibility, and therefore to employment. These costs could be reduced by measures to provide inclusive and accessible settings, in public spaces as well as workplaces.

647. In addition to higher costs associated with work, persons with disabilities also often encounter disincentives to employment due to the functioning of disability benefit schemes, under which employment, even volunteer employment, may result in a loss of benefits, including a loss of healthcare coverage. Where the cost of working is higher than remaining on disability benefit, persons with disabilities are likely to refrain from participating in the world of work, often at a significant cost to their sense of self-worth and dignity, and to society at large in terms of lost productivity.

Finland – The State Employer's Office (VTML) reports that the Finnish pensions system provides for partial disability, thus enabling workers with disabilities to continue working, at least on a part-time basis, while continuing to receive a disability pension.

648. The number of persons with disabilities is increasing globally, in part due to the link between disabilities and the ageing process. In a recent report, the United Nations Special Rapporteur on the rights of persons with disabilities emphasized that the world's population is ageing, with the number of persons 60 years of age or above growing at a rate of some 3 per cent a year. This proportion of the population is expected to grow from 12 per cent in 2015 to 21 per cent by 2050. Moreover, this increase is noted in almost every country in the world, and is not limited to high-income countries.[859] The prevalence of disability is expected to rise due to these demographic changes, as well as to an increase in chronic health conditions,[860] such as diabetes, cancer, cardiovascular disease and mental health conditions, including depression, burn-out and anxiety disorders.[861] Persons with disabilities are also living longer due to medical and scientific advances, combined with improvements in health and rehabilitation.[862]

649. The response to disability has changed significantly over the past 50 years, due largely to the movement led by organizations of persons with disabilities under the slogan "nothing about us without us". This has led to a shift in the approach to disability as a human rights issue, rather than merely a medical issue.[863] National legislation, policy and practices have moved away from solutions focused on segregating persons with disabilities in sheltered workshops and special institutions, moving towards greater social, economic and community inclusion,[864] particularly in relation to access to education and employment. The notion of disability inclusion refers to promoting and ensuring the participation of persons with disabilities in education, training and employment and all aspects of society and providing the necessary supports and reasonable accommodation to enable them to participate fully.[865]

[859] United Nations: "Rights of persons with disabilities", General Assembly, New York, A/74/186, 2019, para. 3.
[860] It is estimated that over 46 per cent of older persons globally live with an impairment.
[861] United Nations: "Rights of persons with disabilities", 2019, op. cit., para. 4.
[862] WHO: *World report on disability*, 2011, op. cit., p. 236.
[863] This paradigm shift is frequently described as the shift from a "medical model" to a "social model" of disability.
[864] As indicated in the reports of the governments of: *Algeria, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Democratic Republic of the Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Republic of Korea, Latvia, Lithuania, Mauritius, Mexico, Montenegro, Myanmar, New Zealand, Norway, Oman, Pakistan, Palau, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Senegal, Spain, Sri Lanka, Sudan, Seychelles, Sweden, Switzerland, Thailand, Turkey, Turkmenistan, United Arab Emirates, United Kingdom, Uruguay, Bolivarian Republic of Venezuela* and *Zimbabwe*.
[865] ILO: *Disability inclusion*, Governing Body, 316th Session, Geneva, November 2012, GB.316/POL/2, para. 21.

650. Thus, the focus on medical solutions has been superseded by the recognition that persons are disabled not only due to functional difficulties, but also to external factors, in particular arising out of historically negative perceptions and attitudes of disability held by many policymakers, educators, employers and employment and vocational training services, among others.

1. ILO standards on disability

651. In accordance with its mandate to promote social justice, employment and decent work, the ILO has been active in promoting the right to work of persons with disabilities since at least 1925, when it adopted the Workmen's Compensation (Minimum Scale) Recommendation, 1925 (No. 22), which called for the "vocational re-education" of injured workers to be provided by such means as the national laws or regulations deem most suitable.[866] In 1955, the ILO adopted the Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99), with the objective of meeting the employment needs of persons with disabilities through a continuous and coordinated process of rehabilitation involving the provision of vocational services, vocational guidance, vocational training and selective placement with a view to enabling persons with disabilities to secure and retain suitable employment.

652. The Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), reflects the ILO's commitment to social justice and the achievement of decent, full, productive and freely chosen employment for all through the promotion of equality for a specific group of workers, namely persons with disabilities. Convention No. 159 reflects the evolution of the ILO's approach to disabilities in its focus on respecting the principle of equality of opportunity and treatment for persons with disabilities and promoting their access to, retention and advancement in employment, particularly access to employment on the open labour market.

653. Convention No. 159 was adopted 25 years after the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Both instruments express the fundamental principles of equality of opportunity and treatment and non-discrimination established in the 1944 Declaration of Philadelphia, annexed to the ILO Constitution. Convention No. 159 reinforces the principles established in Convention No. 111 and sets the foundation for the protection and promotion of the labour rights of workers, including jobseekers, with disabilities. Convention No. 159 is accompanied by the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168), which provides detailed guidance for the effective implementation of the provisions of the Convention.

2. Other international standards

654. National and international initiatives, such as the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993), one of the major outcomes of the United Nations Decade of Disabled Persons (1983–1992), affirm the human rights of persons with disabilities. The Standard Rules were followed in 2006 by the adoption of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol to the Convention on the Rights of Persons with Disabilities. Both instruments were adopted unanimously by the United Nations General Assembly and strengthen the international framework for the protection of the rights of persons with disabilities.

[866] While Recommendation No. 22 is now classified as an outdated instrument, its adoption reflects the ILO's long-standing concern with the issue of the rehabilitation and employment of persons with disabilities, which was clearly a major concern following the end of the First World War.

655. The CRPD affirms the political, social, economic and cultural rights of persons with disabilities. Article 1 of the Convention provides that its objective is to "promote, protect and ensure the full and equal enjoyment of human rights and fundamental freedoms by all persons with disabilities, and promote respect for their inherent dignity." In Article 3, the CRPD embraces a series of general principles: respect for inherent dignity, individual autonomy, including the freedom to make one's own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children with disabilities and for the right of children with disabilities to preserve their identities. The Convention reaffirms a range of human rights to which all persons with disabilities are entitled, including the right to: life (Article 10); equal recognition before the law (Article 12); access to justice (Article 13); liberty and security of the person (Article 14); freedom from torture, or cruel, inhuman or degrading treatment or punishment (Article 15); freedom from exploitation, violence and abuse (Article 16); protection of the integrity of the person (Article 17); freedom of expression and opinion and access to information (Article 21); respect for privacy (Article 22); education (Article 24); health (Article 25); rehabilitation (Article 26); and employment (Article 27).

656. A total of 84 ILO member States have currently ratified ILO Convention No. 159,[867] while 180 countries have ratified the CRPD, with 95 countries also having ratified the Optional Protocol to the CRPD. The Committee notes that the 84 ILO member States that have ratified Convention No. 159 have also ratified the CPRD and have undertaken to apply its provisions. Accordingly, the Committee will also consider how the relevant provisions of the CRPD intersect with those of Convention No. 159 and Recommendation No. 168.

[867] *Viet Nam* is the most recent country to ratify Convention No. 159, on 25 March 2019.

II. Principles and objectives of the instruments in relation to vocational rehabilitation and employment

1. The ILO instruments

657. In adopting Convention No. 159, the Conference explicitly recognized that significant developments had taken place in the area of disabilities in terms of understanding rehabilitation needs, the scope and organization of rehabilitation services, and the law and practice of many member States. The Conference highlighted the right to full participation and equality of opportunity and treatment for persons with disabilities in all areas of life, including in social and economic life.[868] It considered that these developments warranted the adoption of new international standards on disability to ensure equality for all categories of persons with disabilities in both rural and urban areas, for employment and integration into their communities.

658. Convention No. 159 calls on ILO Members to develop, implement and periodically review, with the active engagement of a range of actors, and particularly of persons with disabilities themselves, employers' and workers' organizations, as well as organizations of and for persons with disabilities (Article 5), a national policy on vocational rehabilitation and employment of persons with disabilities (Article 2), based on the principles of equality of opportunity and treatment and non-discrimination (Article 4) that run throughout the Convention. Moreover, the policy shall aim to ensure access to appropriate vocational rehabilitation services for all categories of persons with disabilities and to promote the employment of persons with disabilities in the open labour market (Article 3).

Vanuatu – The National Disability Inclusive Development Policy 2018–2025 covers all types of disabilities. The Policy's vision is that, by 2025:

- All persons with disabilities will have the skills and necessary support to enable their contribution to society and the economy, at all levels of decision-making, and will live safe and happy lives; and
- All persons with disabilities will be included in all community, provincial and national development efforts and have equal access to their rights, including:
  - Access to services, such as health, education, justice, infrastructure and employment, among others;
  - Promotion of equality: including decision-making and leadership at all levels; and
  - Protection from crime, abuse and disaster.

659. Recommendation No. 168 indicates that persons with disabilities should enjoy equality of opportunity and treatment in respect of access to, retention of, and advancement in employment, and envisages the application of the principle of freely chosen employment wherever possible (Paragraph 7). In addition, the Recommendation affirms that the principle of equality of opportunity and treatment between men and women workers should be respected in providing vocational rehabilitation and employment assistance to persons with disabilities (Paragraph 8).

[868] Convention No. 159, Preamble.

2. The United Nations Convention on the Rights of Persons with Disabilities

660. The Preamble to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) reflects a significant paradigm shift in the approach to the issue of disability, embracing a human rights-based model of disability and moving away from the medical model under which persons were defined by their impairments. Paragraph (e) of the Preamble recognizes that "disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others".

661. As the United Nations Committee on the Rights of Persons with Disabilities (the CRPD Committee) observed in its General Comment No. 6:

> The human rights model of disability recognizes that disability is a social construct and impairments must not be taken as a legitimate ground for the denial or restriction of human rights. It acknowledges that disability is one of several layers of identity. Hence, disability laws and policies must take the diversity of persons with disabilities into account. It also recognizes that human rights are interdependent, interrelated and indivisible.[869]

662. The CRPD Committee, in General Comment No. 6, observes that equalization of opportunities, set out as a general principle in Article 3, "marks a significant development from a formal model of equality to a substantive model of equality. Formal equality seeks to combat direct discrimination by treating persons in a similar situation similarly." While it can help to address negative stereotypes and prejudice, it does not offer solutions for the "dilemma of difference", as it does not consider and embrace differences between human beings. "Substantive equality, by contrast, also seeks to address structural and indirect discrimination and takes into account power relations. It acknowledges that the 'dilemma of difference' entails both ignoring and acknowledging differences among human beings in order to achieve equality." The CRPD is based on a new model of inclusive equality, which embraces this substantive model of equality and extends and elaborates on the content of equality in:

> (a) a fair redistributive dimension to address socioeconomic disadvantages; (b) a recognition dimension to eliminate stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality; (c) a participative dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society; and (d) an accommodating dimension to make space for difference as a matter of human dignity.[870]

[869] United Nations Committee on the Rights of Persons with Disabilities: "General Comment No. 6 (2018) on equality and non-discrimination", CRPD/C/GC/6, 26 April 2018, para. 9.
[870] ibid., paras 10 and 11. See also ILO: *Promoting diversity and inclusion through workplace adjustments: A practical guide*, Geneva, 2016, p. 24.

III. Definitions and scope

663. The WHO 2011 *World report on disability* indicates that "disability" is an "umbrella term for impairments, activity limitations and participation restrictions, referring to the negative aspects of the interaction between an individual (with a health condition) and that individual's contextual factors (environmental and personal factors)".[871]

1. Definition of "disability"

664. Convention No. 159 and the CRPD define "disability" in relation to the person, rather than setting out an exhaustive definition of the term "disability" itself. A distinction between the two instruments can be found in the CRPD's focus on the interaction of disability with the external environment, under the so-called "social model" of disability.[872]

665. In many countries, the term "disability" is defined in the national legislation or regulations. In most cases, physical or mental impairments are included in the definition of disability, as envisaged in Article 1 of Convention No. 159.[873]

> *Republic of Korea* – Article 2(1) of the Anti-Discrimination Act: A disability … means "an impairment or loss of physical or mental functions that substantially limits an individual's personal or social activities for an extended period."

> *Palau* – the Disabled Person's Anti-Discrimination Act, section 502, defines disability as "a physical or mental impairment that substantially limits one or more of a person's major life activities."

666. The Committee notes that in a number of countries, broader definitions of disability have been adopted which include criteria in addition to physical and mental impairment, such as sensory[874] or intellectual impairments.[875]

667. Some countries have addressed specific needs in relation to disability on the basis of national circumstances, by extending the definition of disability to explicitly include certain criteria, such as: genetic disposition or acquired disorders;[876] permanent or long-term chronic or episodic illnesses[877] or conditions (diabetes, epilepsy);[878] organisms in the body that cause disease or illness,[879] such as HIV; conditions or characteristics, such as size or weight;[880] disturbed behaviour or perceptions of reality stemming from an illness or condition;[881] reliance

[871] WHO: *World report on disability*, 2011, op. cit., p. 4.
[872] While the traditional "medical model" of disability focuses on the individual's impairments or differences, the "social model" focuses on the manner in which society, or the external environment, interacts with the person with the disability.
[873] For example, *Australia* (Commonwealth, Victoria, Australian Capital Territory), *Austria, Belgium, Canada* (Alberta, Ontario, Newfoundland and Labrador, Nova Scotia), *Cook Islands, Costa Rica, Dominican Republic, France, Gabon, Guatemala, Honduras, Ireland, Jamaica, Kiribati, Republic of Korea, Namibia, New Zealand, Nigeria, Palau, Panama, Philippines, Sweden, Thailand, Trinidad and Tobago, United Kingdom and the United States*.
[874] For example, *Australia, Austria, Canada, Cook Islands, Dominican Republic, France, Gabon, Guatemala, Honduras, Namibia, Nigeria, Panama* and *Bolivarian Republic of Venezuela*.
[875] For example, *Australia, Canada, Cook Islands, Costa Rica, Gabon, Jamaica, Kiribati, New Zealand, Nigeria, Panama, Sweden, Thailand* and *Bolivarian Republic of Venezuela*.
[876] For example, *Australia, Guatemala*.
[877] For example, *Australia, Canada, Cook Islands, France, Gabon, Republic of Korea, Lithuania, Nicaragua, Nigeria, Palau, Panama, Sweden, United Kingdom* and *Bolivarian Republic of Venezuela*.
[878] For example, *Canada*.
[879] For example, *Australia* (Australian Capital Territory, Tasmania), *Ireland* and *Thailand*.
[880] The Committee noted with interest the adoption in *Guatemala* of Decree No. 5-2011, of 5 April 2011, amending sections 1 and 3 of Act No. 135-96 on care for persons with disabilities, to extend the definition of disability to include persons with disorders relating to their weight and size. CEACR – *Guatemala*, C.159, direct request, 2017.
[881] For example, *Canada*.

on assistive devices or aids, such as a wheelchair or assistive animal;[882] cognitive difficulties or learning disabilities;[883] brain injury, and psychological[884] or emotional conditions, including anxiety or depression

> *Canada* – the Alberta Human Rights Act, section 44(1), provides the following definitions:
> ...
> (h) "'mental disability' means any mental disorder, developmental disorder or learning disorder, regardless of the cause or duration of the disorder"
> ...
> (l) "'physical disability' means any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes epilepsy, paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a guide dog, service dog, wheelchair or other remedial appliance or device".

> *Ireland* – the Equality Acts (the Employment Equality Act, section 2(1), and the Equal Status Act, section 2(1)) provide that:
>
> "'disability' means:
> (a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,
> (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
> (c) the malfunction, malformation or disfigurement of a part of a person's body,
> (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
> (e) a condition, illness or disease which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour."

668. A number of countries refer to disability in terms of impairments, restrictions or limitations on activities of daily living,[885] while others classify disability in terms of degrees or percentages of loss of function, such as loss of range of motion or the severity of impairment.[886]

> *Dominican Republic* – Act No. 5-13, the Basic Act on equality of rights for persons with disabilities, section 4(6), defines "disability" as a: "Generic term that includes deficits, limitations of activity and restrictions on participation. It indicates the negative aspects of the interaction between an individual (with a deficiency) and its contextual factors (environmental and personal factors).

[882] For example, *Australia* (Australian Capital Territory, Tasmania), *Canada* (Alberta, Ontario, Nova Scotia) and *New Zealand*.
[883] For example, *Australia* (Victoria, South Australia, Australian Capital Territory, Tasmania), *Canada* (Alberta, Ontario, Newfoundland and Labrador, Nova Scotia), *Cook Islands, Ireland* and *Thailand*.
[884] For example, *Australia* (Victoria, South Australia, Australian Capital Territory), *Austria, Canada* (Alberta, Nova Scotia), *Cook Islands, France, Hungary, Kiribati, New Zealand, Philippines, Thailand* and *Trinidad and Tobago*.
[885] For example, *Austria, Canada* (Alberta, Ontario, Nova Scotia), *Costa Rica, Denmark, Dominican Republic, France, Gabon, Germany, Honduras, Lithuania, Namibia, Nicaragua, Nigeria, Norway, Turkey* and *Bolivarian Republic of Venezuela*.
[886] For example, *Belgium* and *Latvia*.

669. The Committee observes that in a number of countries disability is defined as including not only current or existing impairments, but also past or future disability, a predisposition to develop a disability, or a perceived disability.[887]

> *Australia* (Australian Capital Territory)
>
> For purposes of the Australian Capital Territory Discrimination Act, 1991, section 5AA(2), "disability" includes:
>
> "(a) behaviour that is a symptom or manifestation of the disability; and
>
> (b) a disability that a person may have in the future, including because of a genetic disposition to the disability; and
>
> (c) a disability that it is thought a person may have in the future, whether or not -
>
> (i) the person has a genetic disposition to the disability; or
>
> (ii) there is anything else to indicate the person may have the disability in the future ..."
>
> "**Note:** *Disability* also includes a disability that the person has or is thought to have, and a disability that the person has had in the past, or is thought to have had in the past".

> *United States* – The ADA Amendments Act of 2008 amended section 3 of the Americans with Disabilities Act of 1990 (42 USC 12102), providing that:
>
> "The term 'disability' means, with respect to an individual:
>
> (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
>
> (B) a record of such an impairment; or
>
> (C) being regarded as having such an impairment".
>
> The ADAAA further provides that "the definition of 'disability' shall be construed in favour of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act".[888]:

2. Definition of "persons with disabilities"

(a) Convention No. 159

670. The Convention defines persons with disabilities in relation to the person, rather than the nature of the disability. Article 1(1) provides that a person with a disability "means an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognised physical or mental impairment". The Convention adds that the purpose of vocational rehabilitation is to enable a person with a disability "to secure, retain and advance in suitable employment and thereby to further each person's integration or reintegration into society" (Article 1(2)).

671. The Convention explicitly applies to all categories of persons with disabilities (Article 1(4)).

[887] For example, *Australia, Canada, Ireland* and *United States*.
[888] Americans with Disabilities Act of 1990, (42 U.S.C. section 12101 et seq.) and ADA Amendments Act of 2008, Public Law 110-325 (S 3406).

(b) The CRPD

672. Article 1 of the CRPD establishes a flexible definition, under which "persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".

673. The CRPD applies to all persons with disabilities (Article 1(1)). The Committee notes that in the majority of reporting ILO member States, the national legislation contains a definition of persons with disabilities.[889]

Argentina – Act No. 22.431 of 1981 on a comprehensive protection system for persons with disabilities, section 2, provides that:

"For the purposes of this Act, any person shall be considered to have a disability if they suffer from a permanent or prolonged change in physical or mental functioning that, in relation to their age and social environment, implies considerable disadvantages in terms of family, social, educational or work integration".

Japan – the Law on the Welfare of Physically Disabled Persons, Article 4, provides that "the physically disabled" means persons aged 18 or older who suffer from disabilities in vision, hearing, etc., physical disabilities, or disease of heart and kidney beyond certain levels, and who are identified as a physically disabled person through the issuance of certificates by prefectural governors.

- the Law on the Mental Health and Welfare of Persons with Mental Disorders, Article 5, provides that "persons with mental disabilities" include those who suffer from mental illnesses, such as schizophrenia (integration disorder syndrome), acute intoxication or addiction thereof due to psychoactive substances, intellectual disabilities, psychopathy or other mental illness.
- the Basic Law for Persons with Disabilities, amended in July 2011, defines "persons with a disability" as including "a person with a physical disability, a person with an intellectual disability, a person with a mental disability (including developmental disabilities), and other persons with disabilities affecting the functions of the body or mind, and who are in a state of facing substantial limitations in their continuous daily or social lives because of a disability or a social barrier" (Article 2).

[889] For example, *Afghanistan, Algeria, Argentina, Armenia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Benin, Bosnia and Herzegovina* (Republika Srpska), *Brazil, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Cabo Verde, Central African Republic, Chile, China, Colombia, Democratic Republic of the Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Dominican Republic, Ecuador, Egypt, Estonia, Finland, Georgia, Germany, Ghana, Greece, Guatemala, Guinea-Bissau, Hungary, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kiribati, Republic of Korea, Lithuania, Mali, Malta, Mauritius, Mexico, Montenegro, Morocco, Myanmar, Namibia, Nepal, Nicaragua, Nigeria, Oman, Panama, Paraguay, Peru, Philippines, Poland, Qatar, Romania, Senegal, Seychelles, Slovakia, Spain, Sri Lanka, Sudan, Thailand, Togo, Trinidad and Tobago, Turkey, Turkmenistan, United Arab Emirates, United Kingdom* (Northern Ireland), *Uruguay, Bolivarian Republic of Venezuela* and *Zimbabwe.*

674. Many governments report that their national definition of "persons with disabilities" is aligned with that of the CRPD. Accordingly, instead of, or in addition to, definitions of "disability", which establish criteria based on types of impairments, restrictions and limitations, definitions of "persons with disabilities" have been developed in many countries that tend to focus on the impact that physical, mental or other impairments have on an individual and the manner in which these may interact to impede the person's full participation in activities of daily living.[890]

> *Jamaica* – the Disabilities Act, 2014, section 2, provides that a "'person with a disability' includes a person who has a long-term physical, mental, intellectual or sensory impairment which may hinder his full and effective participation in society, on an equal basis with other persons".
>
> The Disabilities Act, which was developed to protect the rights and dignity of persons with disabilities, also incorporates most of the definitions of the CRPD, including the definition of discrimination, which coincides with the definition contained in the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, and is aligned with the CRPD.

675. In a number of countries, a certification process has been established on a case-by-case basis which entails a medical examination to determine whether or not a person qualifies as having a disability and, if so, the type and severity of the disability.[891]

> *Poland* – Disability Assessment Boards issue disability certificates based on:
>
> (1) the status of the person with a disability;
>
> (2) the degree of disability; and
>
> (3) eligibility.
>
> Disabilities are classified as follows:
>
> - significant degree of disability: persons with an impairment, unable to work or capable of working only in sheltered conditions, and who require the permanent or long-term care and help of others (for a period of more than 12 months) in order to fulfil social roles due to an inability to do so independently;
> - moderate degree of disability: persons with an impairment, unable to work, or able to work only in sheltered conditions, or requiring temporary or partial help from other persons in order to fulfil social roles;
> - minor degree of disability: persons with an impairment causing a substantial reduction of the ability to perform work, in comparison with the capacity demonstrated by persons with similar vocational qualifications with a fully functional mental and physical ability, or having restrictions on the performance of social roles that may be compensated for with orthopaedic devices, supportive or technical measures.

[890] For example, *Belarus, Burkina Faso, Chile, Croatia, Cyprus, Finland, Georgia, Guatemala, Guinea-Bissau, India, Jamaica, Kiribati, Mali, Malta, Mexico, Morocco, Nicaragua, Nigeria, Oman, Panama, Paraguay, Philippines, Senegal* and *Trinidad and Tobago*.

[891] For example, *Bulgaria, Ecuador, Estonia, Georgia, Hungary, Japan, Mauritius, Nigeria, Poland, Slovakia* and *Turkey*.

The Bulgarian Industrial Association (BIA) observes that a change of approach is needed to reform medical expertise on the type and severity of disabilities of persons with impaired functionality. The assessment of the overall functionality, type and extent of the disability for a particular person should be based on the modern methodology implemented by leading European Union Member States, in particular the International Classification of Functioning, Disability and Health (ICF) adopted by the WHO in 2001. By adopting this approach, social security abuses and fraud will be restricted, and the conditions that discourage people with disabilities from becoming fully integrated into the labour market will be limited.

676. The Committee notes that in a large number of member States, broad definitions of persons with disabilities have been adopted that include not only physical or mental impairments, but also other criteria, such as sensory[892] or intellectual impairments,[893] psychological disorders,[894] congenital disabilities and emotional disorders.[895]

Australia – (South Australia): The definition of a person with a disability is contained in section 3 of the Disability Inclusion Act 2018:

"disability, in relation to a person, includes long-term physical, psycho-social, intellectual, cognitive, neurological or sensory impairment, or a combination of any of these impairments, which in interaction with various barriers may hinder the person's full and effective participation in society on an equal basis with others".

677. More detailed definitions have been adopted in some countries of the term "persons with disabilities", enumerating a range of specific impairments, such as visual, hearing or speech impairments.[896]

Cambodia – article 4 of the Law on the Protection and the Promotion of the Rights of Persons with Disabilities provides that the term "persons with disabilities" refers to any persons who lack, lose or damage a physical organ or mental capacity, which results in a disturbance to their daily life or activities, such as physical, visual, hearing, intellectual impairments, mental disorders and any other types of disabilities towards the insurmountable end of the scale.

[892] For example, *Algeria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina* (Republika Srpska), *Brazil, Bulgaria, Burkina Faso, Canada, Chile, Colombia, Croatia, Cyprus, Dominican Republic, Ecuador, Egypt, Finland, Georgia, Germany, Ghana, Guatemala, India, Indonesia, Ireland, Jamaica, Kiribati, Mali, Malta, Mauritius, Mexico, Montenegro, Morocco, Myanmar, Nicaragua, Nigeria, Oman, Panama, Peru, Philippines, Qatar, Romania, Senegal, Spain, Sudan, Togo, Trinidad and Tobago, Turkey, Turkmenistan, United Arab Emirates, Uruguay, Bolivarian Republic of Venezuela* and *Zimbabwe*.

[893] For example, *Azerbaijan, Bangladesh, Belarus, Belgium, Brazil, Bulgaria, Burkina Faso, Cambodia, Canada, Chile, China, Colombia, Croatia, Cyprus, Dominican Republic, Ecuador, Egypt, Finland, Georgia, Guatemala, India, Ireland, Israel, Italy, Jamaica, Japan, Kiribati, Mali, Malta, Mexico, Myanmar, Nigeria, Panama, Philippines, Qatar, Senegal, Spain, Trinidad and Tobago, Turkey, Turkmenistan, United Arab Emirates, Uruguay* and *Bolivarian Republic of Venezuela*.

[894] For example, *Azerbaijan, Belarus, Chile, China, Ecuador, Greece, Hungary, Japan, Morocco, Poland, Qatar, Thailand, United Arab Emirates* and *Uruguay*.

[895] For example, *Germany* and *Poland*.

[896] For example, *Algeria, Cambodia, China, Ghana, Hungary, Ireland, Italy, Japan, Mauritius, Myanmar and Zimbabwe.*

678. In many ILO member States, a conceptual approach has been adopted that defines persons with disabilities in terms of the complex and dynamic interactions between health conditions and contextual factors, both personal and environmental.[897]

> *Bangladesh* – the Rights and Protection of Persons with Disabilities Act, 2013, provides that:
>
> "'Persons with disabilities' include those who have long-term physical, mental, intellectual, under-developed or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".

> *Trinidad and Tobago* – the definition of "persons with disabilities", as reflected in the revised draft National Policy on Persons with Disabilities (July 2018), is derived from the CRPD. In the policy, "persons with disabilities" are defined as including "those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

679. The definitions of "persons with disabilities" in many countries also address partial or reduced capacity,[898] as well as permanent, long-term or chronic disability.[899]

> *Bulgaria* – the People with Disabilities Act (in force since 1 January 2019) provides that:
>
> "People with permanent disabilities" are persons with permanent physical, mental, intellectual and sensory deficiency which, during interaction with their environment, could hinder their full and effective participation in public life, and the medical expertise of whom has established the type and degree of disability at or over 50 per cent.

680. The Committee notes that the definitions used in the legislation or regulations in some countries continue to make use of terms in relation to disability and persons with disabilities that are considered to be pejorative and have been superseded in international human rights law. For example, references to disability as "invalidity", "insufficiency", "defect", "deficiency", "incapacity", "retard" or "retardation", or "handicap" perpetuate negative and discriminatory attitudes regarding the abilities of persons with disabilities. Such attitudes frequently have an impact on the fundamental right of persons with disabilities to enjoy full equality of opportunity and treatment, including in terms of access to general and specialized education, vocational rehabilitation and employment placement services, as well as to employment and specific occupations.

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[897] For example, *Algeria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Brazil, Bulgaria, Burkina Faso, Chile, Colombia, Croatia, Cyprus, Dominican Republic, Georgia, Germany, Guatemala, India, Indonesia, Mali, Malta, Mauritius, Mexico, Montenegro, Morocco, Nicaragua, Nigeria, Oman, Panama, Philippines, Senegal, Spain, Trinidad and Tobago, Uruguay* and *Bolivarian Republic of Venezuela*.

[898] For example, *Bahrain, Bangladesh, Belarus, Brazil, Bulgaria, Burkina Faso, Croatia, Cyprus, Egypt, Estonia, Finland, Germany, Greece, Hungary, India, Indonesia, Ireland, Jamaica, Kiribati, Mali, Malta, Mauritius, Morocco, Namibia, Nigeria, Philippines, Poland, Senegal, Spain, Sudan, Trinidad and Tobago, Turkmenistan, United Kingdom* (Northern Ireland) and *Uruguay*.

[899] For example, *Bahrain, Bangladesh, Belarus, Brazil, Bulgaria, Burkina Faso, Croatia, Cyprus, Egypt, Estonia, Finland, Germany, Greece, Hungary, India, Indonesia, Ireland, Jamaica, Kiribati, Mali, Malta, Mauritius, Morocco, Namibia, Nigeria, Philippines, Poland, Senegal, Spain, Sudan, Trinidad and Tobago, Turkmenistan, United Kingdom* (Northern Ireland) and *Uruguay*.

681. The CRPD Committee has expressed concern that the laws and policies of certain States still approach disability through charity and/or medical models, and notes that the continued use of such models fails to acknowledge persons with disabilities as full subjects of rights and as rights holders. It also notes that efforts to overcome negative attitudinal barriers to disability have been insufficient, resulting in enduring and humiliating stereotypes, stigma and prejudice against persons with disabilities as being a burden on society.[900] Such perceptions serve only to perpetuate stigma and the persistent discrimination in employment and occupation that Convention No. 159 seeks to eradicate.

(c) Raising awareness and changing attitudes

682. Negative attitudes of educators, employers and co-workers with respect to the capacities and potential of persons with disabilities create barriers to the full participation of such persons in education and employment. Where employers perceive persons with disabilities as being *less* than non-disabled persons – less productive, less adaptable or less capable – jobseekers and workers with disabilities will encounter difficulties in entering and remaining in employment. Moreover, workers who come to the workplace with a disability, or acquire a disability during the course of employment, may find themselves marginalized or excluded by co-workers due to stigma, ignorance or misconceptions concerning their disability or disabilities.[901] Moreover, while workplace barriers due to disability may be solved by providing reasonable accommodation, accommodation may give rise to interpersonal tensions where co-workers perceive the accommodation as unfair because they imply more favourable working conditions.[902] Therefore, while many employers and co-workers are supportive of persons with disabilities, it is nevertheless essential for all workplace actors to raise awareness of disability, including of the value and need for reasonable accommodations, and to promote inclusive workplaces that support diversity.

683. The concept of stigma is defined in the HIV and AIDS Recommendation, 2010 (No. 200), as meaning "the social mark that, when associated with a person, usually causes marginalization or presents an obstacle to the full enjoyment of social life by the person" (Paragraph 1(d)). Persons with disabilities may be subject to both stigma and discrimination, particularly in countries or regions where a specific disability or characteristic, such as HIV status or albinism, is stigmatized due to cultural or religious beliefs.

684. In promoting employment and decent work for persons with disabilities on an equal basis with other workers, it is crucial to raise awareness of the capacities of persons with disabilities, and to address and eradicate preconceived notions and negative attitudes in all areas of life, including employment and occupation. For this reason, Paragraph 16 of Recommendation No. 168 calls for public information measures to overcome prejudice, misinformation and attitudes unfavourable to the employment of persons with disabilities and their integration or reintegration into society, while Paragraph 11(i) encourages the dissemination of information on examples of actual and successful instances of the integration of persons with disabilities in employment.

685. Article 8(1) of the CRPD calls on States parties to "adopt immediate, effective and appropriate measures: (a) To raise awareness throughout society … regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities" and "(c) To promote awareness of the capabilities and contributions of persons with disabilities". Article 8(2)(a) provides that such measures include "Initiating and maintaining effective public awareness campaigns designed … (iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market".

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[900] CRPD Committee: "General Comment No. 6 (2018) on equality and non-discrimination", op. cit., para. 2.
[901] UNAIDS: *People Living with HIV Stigma Index: Asia Pacific Regional Analysis*, 2011, p. 6. See also ILO: *Promoting diversity and inclusion through workplace adjustments: A practical guide*, 2016, op. cit., pp. 39–41.
[902] A. Colella: "Co-worker distributive fairness judgments of the workplace accommodation of employees with disabilities", in *The Academy of Management Review*, Vol. 26(1), (2001), pp. 100–116.

686. The ILO has promoted disability inclusion through a number of initiatives involving the tripartite partners. One such initiative is the ILO Global Business and Disability Network, a public–private partnership that seeks to achieve disability inclusion in the workplace through four main activities: knowledge-sharing; capacity building; development of joint projects and services; and involvement of Members in ILO activities or in those of its partners. Employers of all sizes, including small and medium-size enterprises (SMEs), participate in the Network. The ILO has prepared case studies on trade union activities to promote decent work for persons with disabilities, highlighting the vital role that workers' organizations can play in promoting inclusion and decent work for such persons.[903]

687. In some member States, laws or policies have been adopted to eliminate stigma,[904] raise awareness[905] and promote the employment of persons with disabilities by reducing the negative image or perception of people with disabilities in the workplace.[906]

Brazil – changing attitudes. According to the Director of the Division of Inspections with a View to the Inclusion of Persons with Disabilities and the Reduction of Discrimination in Employment, contractors often prefer not to make the modifications required for the employment of workers with disabilities: "A change in enterprises' attitude is needed so that they no longer see only these persons' disabilities and begin to identify their skills and abilities. Because they see only the disability, some enterprises prefer persons with minor disabilities so that they do not need to make an effort to modify the workplace".

Chile – following the entry into force of Act No. 21.015, the Civil Service, together with SENADIS (the national disability service) and the Ministry of Labour, have carried out training to raise awareness in the public sector concerning the issue of disability and inclusion, with the aim of achieving adequate employment of persons with disabilities.

Colombia – the Ministry of Labour carries out information activities to raise awareness in the world of work and provide assistance to businesses on mechanisms for the workplace inclusion of persons with disabilities and employment services. These activities promote labour market inclusion on the basis of the CRPD and the social model of disability and are designed to break down traditional paradigms and perceptions among the different actors involved in the world of work and to promote the right of persons with disabilities to employment on the open labour market, with adjustments that guarantee an inclusive and accessible working environment and non-discrimination in practice.

Sri Lanka – the National Policy on Disability, adopted in 2003, calls on employer's organizations and trade unions to act as advocates among their members to promote employment opportunities for people with disabilities by reducing negative stereotypes of disability among employers and workers and promoting job retention for those who acquire a disability while in employment.

[903] ILO: "Disability inclusion", 2012, op. cit., paras 14–16.
[904] For example, *Indonesia*.
[905] For example, *Brazil, Burkina Faso, Canada, Cameroon, Chile, Colombia, Dominican Republic, Indonesia, Ireland, Jamaica, Mali, Mauritius, Nicaragua, Panama, Peru, Sri Lanka, Trinidad and Tobago* and *United Arab Emirates*.
[906] For example, *Sri Lanka*.

IV. Accessibility and reasonable accommodation

688. Convention No. 159 and Recommendation No. 168 highlight the need for accessibility and for workplace adaptations (also known as reasonable accommodations). In recent years, the Committee has noted the adoption of legislation in member States requiring employers to provide reasonable accommodation in the workplace.

> CEACR – In its comments concerning *Italy*, the Committee noted with interest the adoption of Legislative Decree No. 76 of 28 June 2013, converted into Act No. 99 of 9 August 2013, which provides that employers in the public and private sectors are required to take appropriate steps to ensure that reasonable accommodation is provided in the workplace, as defined in the United Nations Convention on the Rights of Persons with Disabilities, to ensure equality of persons with disabilities with other workers.[907]

689. The Committee notes that, in its General Comment No. 6, the CRPD Committee emphasizes that accessibility and reasonable accommodation are two distinct concepts in disability law and policy. The CRPD Committee observes that accessibility should be ensured for all groups of persons and may be implemented gradually over time, while reasonable accommodation is an individual right that must be tailored to the needs of the individual and is of immediate application. It notes, however, that the right to reasonable accommodation may be limited in cases of undue hardship or disproportionate burden.[908]

690. Reasonable accommodation is therefore distinct from accessibility. Accessibility, through the application of universal design principles or assistive devices, has to be built into systems and processes to ensure access for all persons without regard to the needs of a particular individual. Article 4(3) of the CRPD requires States parties to establish accessibility standards, developed and implemented in consultation with organizations of persons with disabilities, as a systemic, forward-looking activity. In contrast, reasonable accommodation needs to be provided from the moment a specific individual with a disability requires or makes a request for an accommodation. The CRPD Committee has noted that, in contrast with the duty to ensure universal access, the "duty to provide reasonable accommodation is an individualized reactive duty that is applicable from the moment a request for accommodation is received".[909]

691. Both accessibility and reasonable accommodation are essential for the achievement of substantive equality of opportunity and treatment in employment and occupation for persons with disabilities, so that they may effectively exercise their fundamental right to full participation and integration into social and economic life. Recommendation No. 168 indicates that measures to promote employment opportunities for persons with disabilities which conform to the employment and salary standards applicable to workers generally should include the elimination, by stages if necessary, of physical, communication and architectural barriers and obstacles affecting transport and access to and free movement in premises for the training and employment of persons with disabilities; and appropriate standards should be taken into account for new public buildings and facilities (Paragraph 11(g)).

[907] CEACR, *Italy*, observation 2014, Convention No. 159.
[908] CRPD Committee: "General Comment No. 6 (2018) on equality and non-discrimination", op. cit., paras 40–43.
[909] ibid., para. 24.

1. Accessibility

692. Persons with disabilities are frequently excluded from employment, as well as from participation in their communities and society at large due to factors such as lack of accessibility to buildings, public spaces and public transport.[910] If an individual cannot go to and from the workplace, or cannot access the workplace, he or she cannot secure or remain in gainful employment. The principle of accessibility applies equally to all categories of workers with disabilities: those in protected or sheltered employment, those in formal or informal employment, and those who are self-employed entrepreneurs.

693. The CRPD Committee has observed that accessibility is both a precondition and a means to achieve de facto equality for all categories of persons with disabilities. To enable persons with disabilities to effectively access their right to inclusion in all areas of activity, including employment, it is necessary for States to ensure accessibility of the built environment, public transport and information and communication services. As it may take time to gradually ensure accessibility, equality of opportunity and treatment for persons with disabilities therefore has to begin with public planning that applies the principles of universal design, or the design of buildings, products or environments to make them both aesthetic and accessible to all persons, regardless of age, disability, status in life, or other factors.[911]

694. The Committee notes that a number of governments have provided information on the measures taken to eliminate physical barriers and structural obstacles which prevent or impair the mobility or access of persons with disabilities to facilities, public spaces or public or private workplaces.[912]

Canada – Manitoba is one of the first jurisdictions that enacted a law to help individuals with physical disabilities overcome barriers, including barriers to employment. The purpose of the Accessibility for Manitobans Act, adopted in December 2013, is to provide a clear and proactive process for the identification, prevention and removal of barriers that disable people and prevent them from achieving equal opportunities, independence and full economic and social integration. This will be implemented through the development of accessibility standards for customer service, information and communication, transport, employment and the built environment.

Ontario – the Integrated Accessibility Standards Regulation, under the Accessibility for Ontarians with Disabilities Act, 2005, sets out standards outlining accessibility requirements in key areas of daily life, including information and communications, customer service, transport, the design of public spaces and employment. For example, the accessibility employment standard requires employers to follow a baseline of accessibility from job recruitment to career development.

Nova Scotia – Access by Design 2030 is a strategy to meet the goal of an accessible Nova Scotia by 2030. The strategy identifies priorities and commitments to achieve this goal. As part of the strategy, standards will be developed regarding the built environment, education, employment, goods and services, information and communications, and transport.

[910] General Survey of 1998, op. cit., para. 103.
[911] The term "universal design" was coined by the architect Ronald Mace, an advocate for accessibility in building design. See also S. Goldsmith: *Designing for the disabled: The new paradigm*, Routledge, London, 1997. Goldsmith was the creator of the dropped curb or sidewalk ramp, now a standard feature in the built environment to ensure accessibility for wheelchair users and others, such as cyclists.
[912] For example, *Brazil, Burkina Faso, Canada, Chile, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, Egypt, Finland, France, Gabon, Ghana, Israel, Honduras, Hungary, Ireland, Italy, Mali, Mexico, Myanmar, Namibia, Nicaragua, Nigeria, Norway, Palau, Panama, Paraguay, Peru, Philippines, Poland, Spain, United Arab Emirates* and *Uruguay.*

Chile – Act No. 20.422 establishes standards for equality of opportunities and the social inclusion of persons with disabilities. Section 8 of the Act provides that: "With the aim of guaranteeing the right to equality of opportunities for persons with disabilities, the State shall establish measures against discrimination, which shall consist of accessibility requirements, the provision of reasonable accommodation and the prevention of harassment".

Accessibility requirements are those requirements that must be met by goods, environments, products, services and procedures, as well as conditions of non-discrimination in standards, criteria and practices, in accordance with the principle of universal accessibility.

695. Specific measures have been taken in a few member States to improve the efficiency of accessibility in public transport services for persons with disabilities with a view to facilitating, inter alia, access to vocational education and training and employment.[913]

Hungary – to enable persons with disabilities and persons with decreased capacity to work and live outside the capital, the support services, in addition to supplying care for persons with disabilities in their living environment, also provide assistance in accessing public services outside the house. This covers access to assistance and public services to meet basic needs, in accordance with the nature of the disability, through the operation of a special personal transport service.

Ireland – significant progress has been made under the National Disability Strategy in developing accessible public transport. For example, the entire Dublin Bus fleet is accessible for wheelchair users, as are Bus Éireann services in major cities, while the Rural Transport Programme has developed a series of door-to-door services in rural areas. The Rural Transport Programme provides services to people whose travel needs are not met by existing bus or train services. Services funded under the Programme complement, rather than compete with, existing public transport services provided by public or private transport operators. As well as providing regular public transport services and demand responsive services, the Programme also funds the provision of "Once Off" trips for individuals and community/voluntary groups to help address rural social exclusion. Under the Local Link Rural Transport Programme Strategic Plan 2018–22, a key objective is to ensure the provision of fully accessible transport on all services with a target of achieving at least 95 per cent fully accessible trips by 2020 within the Rural Transport Programme.

[913] For example, *Bosnia and Herzegovina, Burkina Faso, Canada, Denmark, Ecuador, Hungary, Ireland, Latvia, Lithuania, Nigeria, Switzerland, Turkey* and *United Kingdom*.

Switzerland – the requirements of federal law regarding the accessibility of public transport concern not only the construction of buildings and facilities, but also include requirements relating to the optical and acoustic aspects of information supplied to users. The ordinance on the technical requirements for engineering public transport to meet the needs of people with disabilities provides that those who are in a position to use the public domain autonomously and freely should also have independent access to public transport services. If, for reasons of proportionality, this requirement cannot be met by technical means, public transport companies must provide the necessary assistance through their staff. Furthermore, travellers with disabilities enjoy preferential rates with public transport companies.

696. Article 2 of the CRPD defines "universal design" as meaning "the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. 'Universal design' shall not exclude assistive devices for particular groups of persons with disabilities where this is needed."

Honduras – the Act on equity and comprehensive development for persons with disabilities, section 7, provides that:

"Universal accessibility" means "the conditions and facilities that must be met by physical environments, services, products and goods, as well as information and documentation so that it is understandable, usable and practicable for all persons, in conditions of convenience and security."

Nicaragua – Act No. 763 of 2011, section 3, defines "universal accessibility" as:

"the condition that shall be met by environments, goods, processes and services, as well as information, information and communication technologies, objects or instruments, tools and devices, in order to be understandable, usable and3 practicable for all persons under conditions of safety and comfort and in the most autonomous and natural manner possible, in both urban and rural areas."

(a) Accessible technology

Argentina – Act No. 26.653 on the accessibility of information on web pages (HTML version) was adopted in 2010.

697. The Committee highlights the importance of addressing the so-called digital divide in the context of persons with disabilities. Digitalization has led to many advances that can greatly improve standards of working and living for persons with disabilities. According to the Information, Technology and Innovation Foundation (ITIF), technology that enhances accessibility for persons with disabilities falls into three general categories:

- *assistive technology* (technology that is designed specifically to improve the functional capacities of a person with a disability);
- *adaptive technology* (technology that provides a mechanism that enables persons with disabilities to use technology that would otherwise be inaccessible to them); and

- *accessible technology* (technology that has many broader applications, but helps to remove barriers and make the world generally more accessible for persons with disabilities).[914]

698. The shift from analogue to digital technology has eliminated many barriers that previously impeded the use of technology by persons with disabilities, including limited availability and excessive cost. Digital information can now be converted into voice, text or even physical forms, such as Braille, permitting the development of many more low-cost and readily available general purpose devices that can be used by everyone, including persons with disabilities.[915]

699. Assistive technology is designed to improve the functional capabilities of persons with disabilities, and includes a range of devices and services, including IT-enabled prosthetics and implants, custom computer interfaces and accessible communication tools. Personal emergency response systems minimize safety risks for persons with disabilities at risk of a stroke or falling and are not costly. Adaptive technology makes information more accessible to persons with visual or auditory impairments. Computer screen readers, such as JAWS (Job Access with Speech) and screen magnifiers, enhance the ability of persons with visual impairments to access information, while tactile displays can convert electronic text on a computer to Braille.[916]

700. While digitalization offers greatly increased levels of access to information and communication for persons with disabilities, many of them do not have access to computers or other information technology due to cost. The digital divide is significant. A 2006 study found that 58 per cent of persons without disabilities used a home computer, compared with only 30 per cent of individuals with a disability.[917] The Committee notes that this disparity is all the more significant as access to Internet technology can enable many persons with disabilities to gain access to telework, as well as telecare. The Committee notes that, according to a 2016 World Bank report, the cost of assistive technology continues to be high, and can be cost-prohibitive for persons with disabilities in the absence of financial assistance schemes. The report indicates that the return on investment of technology accommodations in the workplace overwhelmingly shows that the direct and indirect benefits to employers almost always outweigh the costs of the accommodation.[918] Moreover, the ability to work digitally from home can make the difference between employment and unemployment for persons with disabilities that prevent them from commuting to a workplace. Many persons with disabilities also prefer digital work that provides them with a flexible and accessible work environment.[919]

> *Republic of Korea* – the Korea Agency for Digital Opportunity and Promotion (KADO) operates a programme to provide persons with disabilities with free computers and training in information technologies (Introduction of KADO).

701. Some reporting member States explicitly refer to promoting the use of technology to enhance the accessibility and participation of persons with disabilities in rehabilitation, training and employment.[920]

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[914] R. Atkinson and D. Castro: *Digital quality of life: Understanding the personal and social benefits of the information technology revolution*, ITIF, Washington, DC, 2008, p. 50.
[915] ibid.
[916] ibid., p. 51.
[917] K. Dobransky and E. Hargittai: "The disability divide in internet access and use," in *Information, Communication & Society,* 9(3), 2006, pp. 313–334.
[918] D. Samant Raja: *Bridging the disability divide through digital technologies*, World Bank Group, Background paper for the 2016 World Development Report: Digital Dividends, pp. 22–23.
[919] R. Atkinson and D. Castro: *Digital quality of life: Understanding the personal and social benefits of the information technology revolution*, 2008, op. cit., p. 52.
[920] For example, *Bahrain, Belarus, Bosnia and Herzegovina, Denmark, Egypt, Ghana, Hungary, Myanmar, New Zealand, Norway, Pakistan, Thailand, Turkey* and *United Kingdom*.

Belarus – with a view to the rehabilitation and further employment of persons with disabilities, organizational technology has been developed for adaptations to enable persons with disabilities to work. Such adaptation is undertaken according to their profession through individual rehabilitation programmes, and may take between six months and one year, depending on the ability of the person with disabilities.

Egypt – Law No. 12 of 1996 provides that the State shall ensure the provision of vocational guidance and job training to persons with disabilities according to their requirements, using modern technologies and comprehensive integration methods to achieve maximum independence, while ensuring quality, safety and security, in vocational training institutes, and all means of spatial accessibility and technology.

Myanmar – the action plans and programmes adopted by the National Committee and the Ministry of Social Welfare, Relief and Resettlement include training for civil service personnel and volunteers in modern technologies to assist them to provide services for persons with physical, mental and intellectual disabilities, including rehabilitation services.

Pakistan – the Government recognizes that assistive technology plays an important role in the rehabilitation of persons with disabilities. Special attention is therefore paid to the development of assistive technology, in consultation with the relevant organizations, particularly in the area of orthotics and prosthetics, for persons with disabilities.

Enterprises employing workers with disabilities are provided with incentives, financial assistance and exclusive contracts or priority production rights, as part of an overall policy to promote the gainful employment of persons with disabilities. Employers are encouraged to adopt measures to promote the use of new technologies and the development and production of assistive devices, tools and equipment, to facilitate the access of persons with disabilities to the open labour market so that they can enter and remain in employment.

2. Forms of reasonable accommodation and variations in terminology

702. Depending on the nature and extent of a worker's disability, an adaptation at the workplace or to the organization of the work may be necessary to enable the worker to perform the "essential" or "core" duties of the position for which the worker has been recruited or is expected to return. For example, a wheelchair user may require a ramp to be able to access the workplace, while a worker with a visual impairment may require a particular software package to be able to work on electronic documents and correspondence. A worker with a chronic condition may request an adjustment to the organization of the work or authorization to work flexible hours or to work from home, where necessary.

703. Such adaptations are also commonly referred to as reasonable adjustments or reasonable accommodation, with the terminology used varying between countries.

(i) Convention No. 159

704. Part III of Convention No. 159 on action at the national level for the development of vocational rehabilitation and employment services provides that vocational guidance, vocational training, placement, employment and other related services to enable persons with disabilities to secure, retain and advance in employment shall be used with necessary adaptations, wherever possible and appropriate (Article 7).

(ii) The CRPD

705. Article 27 of the CRPD recognizes the right of persons with disabilities to work, on an equal basis with others, and provides that this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. It calls on States parties to safeguard and promote the realization of the right to work through a series of measures, including by ensuring that reasonable accommodation is provided to persons with disabilities in the workplace. Article 5(3) of the CRPD calls on States parties to take all appropriate steps to ensure that reasonable accommodation is provided, in order to promote equality and eliminate discrimination. The definition of "discrimination", set out in Article 2 of the CRPD, makes it clear that denial of reasonable accommodation is a form of discrimination.

In the case of *Çam v. Turkey*, (Application No. 51500/08, issued on 23 February 2016) the European Court of Human Rights held unanimously that the denial of a reasonable accommodation constituted discrimination in violation of Article 14 of the European Convention on Human Rights (ECHR). The case concerned the refusal by the Turkish National Music Academy to enrol the petitioner as a student, based on its rules of procedure. The Court found that, while the petitioner was fully qualified for admission, she was refused enrolment because she was blind. The Court held that discrimination on the grounds of disability includes the denial of reasonable accommodation to facilitate the access of persons with disabilities to education. The accommodation was essential for the exercise of her human rights. The Court found that the national authorities had made no attempt to identify the petitioner's needs and had failed to explain how her blindness would preclude her from attending music lessons. It concluded that, by refusing the petitioner admission without considering the possibility of accommodating her disability, the national authorities had prevented her, without objective and reasonable justification, from benefiting from a musical education, in violation of the ECHR. In reaching its conclusions, the Court observed that the provisions of the ECHR should, in so far as possible, be interpreted in harmony with other provisions of international law of which it forms part, such as the European Social Charter and the CRPD.

(iii) What is a reasonable accommodation or adaptation

706. The term "reasonable accommodation" has been defined in two international instruments, namely Recommendation No. 200 and the CRPD. Paragraph 1(g) of Recommendation No. 200 defines "reasonable accommodation", in the context of HIV and AIDS, as: "any modification or adjustment to a job or to the workplace that is reasonably practicable and enables a person living with HIV or AIDS to have access to, or participate or advance in, employment".

707. The CRPD, in Article 2, defines reasonable accommodation as: "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms".

708. Depending on the nature and extent of a worker's functional impairment, she or he may encounter barriers to accessing, advancing or remaining in employment, or returning to employment after an absence. Reasonable accommodation seeks to remove or reduce these barriers by making existing facilities and information accessible to persons with disabilities, modifying equipment or the working environment, adapting the existing way of doing things, or by removing physical barriers in the workplace where necessary and feasible, such as by replacing a step with a ramp in order to facilitate access to the workplace by wheelchair users.[921]

709. The concept of reasonable accommodation encompasses two key elements:

- identification of the nature and extent of the barriers encountered and the effective measures required to remove or mitigate these barriers; and
- assessment of whether the accommodation is reasonable, an inquiry which generally turns on two factors:
  - whether the worker is able to perform the "essential functions" of the position in question with the accommodation[922]; and
  - whether the reasonable accommodation would constitute a disproportionate burden or undue hardship on the employer.

710. The Committee notes that, in a growing number of countries, employers are required to provide reasonable accommodation in all aspects of employment, including access to pre-employment education and training, vocational guidance, recruitment and selection, terms and conditions of employment and opportunities for advancement.[923] The provision of reasonable accommodation, where needed, is key to promoting diversity and inclusion in the workplace.

Colombia – the objective of Statutory Act No. 1618 of 2013 is to guarantee and ensure the effective exercise of the rights of people with disabilities, through the adoption of inclusion measures, affirmative action and reasonable accommodation, and the elimination of all forms of discrimination on the basis of disability.

The Government reports that the Ministry of Labour and the Public Employment Service Unit are implementing a series of measures in employment centres to make them accessible to persons with disabilities. These measures include reasonable accommodation, such as the use of technology (Software Magic and JAWS), the provision of courses in sign language, the use of Braille printers, accessible signage in offices to assist persons with visual disabilities, training for national employment service personnel, as well as an accessible Internet webpage and an application to enable persons with disabilities to access vacancy announcements published on the jobs portal.

Finland – the Non-Discrimination Act, section 15, contains provisions requiring authorities, education providers, employers or providers of goods and services to make due and appropriate adjustments that are necessary in each situation for a person with disabilities to be able, equally with others, to deal with the authorities and gain access to education, work and generally available goods and services, as well as to manage their work tasks and advance in their career.

[921] ILO: *Promoting diversity and inclusion through workplace adjustments: A practical guide*, Geneva, 2016, op. cit., p. 16.
[922] ibid., pp. 19–21.
[923] For example, *Australia, Belgium, Denmark, France, Finland, Hungary, Ireland, Japan, New Zealand, Slovakia, Sri Lanka* and *United Kingdom* and *United States*.

Slovakia – the Anti-Discrimination Act establishes the requirement for employers to provide reasonable accommodation. In particular, it requires them to take appropriate measures to enable a person with a disability to have access to employment, promotion or training and to advancement at work.

711. Employers may not be able to accommodate every request for a change to a job or workplace, and some modifications could be considered too disruptive to the functioning of the workplace.

712. At the same time, the mere fact that an accommodation may be inconvenient for the employer is not sufficient reason for its rejection. For example, if public funding is available to assist in meeting the costs of a modification, expense is not likely to constitute a justification for denying the requested accommodation. Reasonable accommodation makes the workplace more inclusive, while ensuring continued efficient operation of businesses.

713. In many cases, the cost to employers of providing a reasonable accommodation is negligible, or may even be non-existent.[924] In any event, the Committee notes that many reporting member States provide subsidies or have established funds to assist in meeting the costs of reasonable accommodation.[925]

Armenia – a one-time compensation payment is available to employers to cover the cost of adjusting the workplace for non-competitive persons with disabilities.

The employer is provided with a lump-sum compensation of up to 500,000 Armenian dram (around US$1,000) for the purpose of providing working skills to persons with disabilities and adapting the workplace with the special equipment needed for the job that meets the relevant technical and ergonomic requirements.

Ireland – the Employment Equality Acts 1998–2015 require employers to take appropriate measures to accommodate the needs of employees and prospective employees with disabilities. Reasonable accommodation can be defined as some modification to the tasks or structure of a job or workplace, which allows the qualified employee with a disability to fully do the job and enjoy equal employment opportunities.

The Irish Human Rights and Equality Commission (IHREC) provides information and guidance for persons with disabilities who consider they may have suffered discrimination in employment. It also provides practical guidelines on reasonable accommodation to assist employers.

The Department of Employment Affairs and Social Protection provides a range of employment supports aimed at helping employees with a disability to obtain and retain employment. The grants available from the Reasonable Accommodation Fund include the Job Interview Interpreter Grant, the Personal Reader Grant, the Employee Retention Grant Scheme and the Workplace Equipment/Adaptation Grant.

[924] ILO: *Promoting diversity and inclusion through workplace adjustments: A practical guide*, 2016, op. cit., pp. 24–25.
[925] For example, *Algeria, Armenia, Belgium, Bulgaria, Canada, Hungary, Ireland, Lithuania* and *Montenegro*.

V. The business case for diversity and inclusion of persons with disabilities

714. There is evidence to suggest that diversity and inclusion improve the performance and competitiveness of a business. An increasing number of companies recognize these benefits. The ILO Global Business and Disability Network brings together a range of employers who have voluntarily undertaken to promote the employment of persons with disabilities. While increased diversity arguably benefits society, the businesses concerned have also concluded that diversity constitutes good business practice.

The ILO guide *Promoting diversity and inclusion through workplace adjustments* highlights a number of factors in favour of diversity and inclusion within enterprises, including:

- A diverse workforce that is comfortable communicating varying points of view, providing a larger pool of ideas and experiences. This enables a company to be more innovative in planning and problem solving.
- A diverse collection of skills and experiences (for example languages and cultural understanding) allows a company to provide better service to customers, both locally and globally.
- Companies with a good reputation for sensitivity, diversity and accommodation can increase their market share with consumers from a wide range of backgrounds.
- Companies that value diversity and maintain an inclusive workplace culture may improve the retention of workers with diverse backgrounds and enhance their loyalty to the company. In turn, this can reduce the costs associated with employee turnover, provide higher returns on investments in training, and sustain institutional memory.

715. Persons with disabilities are found in all types of occupations and can be qualified and productive employees on an equal basis with non-disabled workers. In addition, they often demonstrate strong loyalty to their employers, contributing to low absenteeism and turnover rates. As a result, many enterprises consider that it is both efficient and profitable to hire and retain persons with disabilities.[926]

[926] WHO: *World report on disability*, 2011, op. cit., p. 236.

VI. Confidentiality

716. The Committee observes that, in order to obtain a reasonable accommodation, job applicants or workers are generally required to inform their potential or current employer that they require an accommodation.[927] Workers may be reluctant or afraid to disclose their need for an accommodation, especially in the case of conditions that are perceived negatively or particularly stigmatized, such as a mental health condition or a chronic illness, for example, AIDS. Where employers communicate support for workers who may require an accommodation and explain the procedures available for making a request, including how the employer will ensure the confidentiality of the worker's personal data, this helps to establish an enabling environment that can encourage workers to disclose their requirements.[928]

717. The ILO code of practice on the protection of worker's personal data, 1997, indicates that "[m]edical personal data should not be collected except in conformity with national legislation, medical confidentiality and the general principles of occupational health and safety, and only as needed: (a) to determine whether the worker is fit for a particular employment; (b) to fulfil the requirements of occupational health and safety; and (c) to determine entitlement to, and to grant, social benefits" (section 6.7). "Personal data covered by medical confidentiality should be stored only by personnel bound by rules on medical secrecy and should be maintained apart from all other personal data" (section 8.2).

VII. Barriers affecting specific groups of persons with disabilities

1. Stigma and discrimination

(a) The ILO instruments

718. Convention No. 159 explicitly provides that it is based on the principle of equality of opportunity and treatment (Article 4). The Discrimination (Employment and Occupation) Convention, 1958 (No. 111), provides in Article 1(1) that the term "discrimination" includes:

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

719. Article 1(3) of Convention No. 111 goes on to clarify that "the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment."

[927] ILO: *Promoting diversity and inclusion through workplace adjustments: A practical guide*, 2016, op. cit., p. 20.
[928] ibid., pp. 33–36.

(b) The CRPD

720. Article 2 of the CRPD defines "discrimination on the basis of disability" as:

> any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

2. Men and women with disabilities: The gender dimension

721. In its General Survey of 1998, the Committee noted that, although both men and women with disabilities are subject to discrimination, women with disabilities are doubly disadvantaged by intersectional discrimination based on gender and disability status (paragraph 114). Women with disabilities often experience discrimination in hiring and advancement, in accessing rehabilitation services, vocational or other training, are paid less for work of equal value and receive fewer employment-related benefits, particularly those designed to assist persons with disabilities, such as supplemental security income and disability insurance (paragraphs 115–118).

3. Mental, emotional or psychological impairments

722. The *World report on disability* observes that different impairments elicit different degrees of prejudice. Mental illness is highly stigmatized and the strongest prejudice is exhibited towards people with mental health conditions and intellectual impairments.[929] A global survey on stigma and discrimination against people with schizophrenia found that 29 per cent experienced discrimination in finding or keeping a job, and 42 per cent felt the need to conceal their condition when applying for employment, education or training.[930]

723. Mental illness has an enormous impact, entailing significant costs for workers, employers and society in general.[931] The WHO has estimated that depression alone is the leading cause of disability in the world today.[932]

724. The Organisation for Economic Co-operation and Development (OECD) notes that the costs of mental illness for workers, employers and society in general are huge. The ILO has estimated that the cost of mental illness is equivalent to 3–4 per cent of gross domestic product in the Member States of the European Union.[933] In addition to the personal cost to individuals in terms of their diminished sense of autonomy and self-esteem, mental illness is responsible for a very significant loss of potential labour supply, high rates of unemployment, a high incidence of absence due to sickness and reduced productivity at work.

4. Discrimination on a combination of grounds

725. The Committee wishes to highlight the impact of "intersectional discrimination" or "multiple grounds of discrimination" on women with disabilities. Where a woman with a disability also belongs to one or more disadvantaged or marginalized groups, the discriminatory barriers that she may encounter in entering, remaining or advancing in employment are compounded.

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[929] WHO: *World report on disability*, 2011, op. cit., p. 240.
[930] ibid.
[931] OECD: *Sick on the job? Myths and realities about mental health and work*, Paris, 2012.
[932] WHO: *Depression and other common mental disorders: Global health estimates*, 2017, p. 5.
[933] P. Gabriel and M-R. Liimatainen: *Mental health in the workplace: Introduction: Executive summaries*, ILO, Geneva, 2000, p. 5.

CEACR – In its remarks commemorating the 50th anniversary of the adoption of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee highlighted the phenomenon of intersectional discrimination, observing that "in many cases, discrimination in employment and occupation is not limited to discrimination on solely one ground. For example, sex-based discrimination frequently interacts with other forms of discrimination or inequality based on race, national extraction or religion or even age, migrant status, disability or health".[934]

The CRPD Committee, in General Comment No. 3, notes that, due to multiple and intersecting forms of discrimination, women and girls with disabilities face barriers in most areas of life, including with regard to equal access to education and employment opportunities.[935]

In General Comment No. 6, the CRPD Committee notes that "[d]iscrimination can be based on a single characteristic, such as disability or gender, or on multiple and/or intersecting characteristics. 'Intersectional discrimination' occurs when a person with a disability or associated to disability suffers discrimination of any form on the basis of disability, combined with colour, sex, language, religion, ethnic, gender or other status. Intersectional discrimination can appear as direct or indirect discrimination, denial of reasonable accommodation or harassment. For example, while the denial of access to general health-related information due to inaccessible format affects all persons on the basis of disability, the denial to a blind woman of access to family planning services restricts her rights based on the intersection of her gender and disability. In many cases, it is difficult to separate these grounds. States parties must address multiple and intersectional discrimination against persons with disabilities. 'Multiple discrimination', according to the Committee, is a situation where a person can experience discrimination on two or several grounds, in the sense that discrimination is compounded or aggravated. Intersectional discrimination refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable and thereby expose relevant individuals to unique types of disadvantage and discrimination."[936]

Discrimination on the basis of disability

726. The CRPD Committee observes that discrimination "on the basis of disability" in Article 5 encompasses:

> persons who have a disability at present, who have had a disability in the past, who have a disposition to a disability that lies in the future, who are presumed to have a disability, as well as those who are associated with a person with a disability. The latter is known as 'discrimination by association'. The reason for the broad scope of article 5 is to address and eliminate all discriminatory situations and/or discriminatory conducts that are linked to disability.[937]

[934] ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A)*, ILC, 98th Session, Geneva, 2009, para. 108.
[935] CRPD Committee: "General Comment No. 3 (2016) on women and girls with disabilities", UN/CRPD/C/GC/3, 2016, paras 2–3.
[936] CRPD Committee: "General Comment No. 6 (2018) on equality and non-discrimination", op. cit., para. 19.
[937] ibid., para. 20.

727. The Committee notes that, in a number of countries, the labour legislation prohibits discrimination on the basis of disability. In others, anti-discrimination clauses on grounds of disability are included in the Constitution.[938]

> *Bolivarian Republic of Venezuela* – Article 81 of the National Constitution provides that:
> "Any person with a disability or special needs has the right to the full and independent exercise of her or his capacities, to integration into the family and the community. The State, with the participatory solidarity of families and society, shall guarantee respect for her or his human dignity, equality of opportunity, satisfactory working conditions, and shall promote her or his training, capacity building and employment in accordance with her or his conditions, in accordance with the law."

728. Non-discrimination provisions in the legislation of a number of countries provide protection not only for persons who have an existing disability, but also for persons with a history of having had a disability, those who are perceived as having a disability, regardless of whether they are actually disabled, and those associated with someone who has a disability.[939]

VIII. Vocational rehabilitation and employment services

729. The ILO takes a two-pronged approach to promoting equality of opportunity and treatment in vocational guidance, vocational education and training and employment for persons with disabilities.

1. Vocational rehabilitation measures

730. First, recognizing that disability-specific programmes or protective measures are necessary to address the needs of persons with disabilities who may not be able to compete for employment on the open market, Convention No. 159 and Recommendation No. 168 allow for tailored solutions based on individual needs, which may vary widely and may evolve over time. Second, the instruments seek to ensure that persons with disabilities are mainstreamed in education, vocational training and employment wherever possible, so that they are included in general vocational guidance and skills development programmes and in enterprise- and employment-related vocational rehabilitation and employment services.

731. Reporting member States have, to different levels, established disability-specific programmes and protective measures to ensure the social and economic integration of persons with disabilities. These programmes are designed to address the specific needs of people with disabilities through the provision, for example, of individual rehabilitation programmes,[940] skills development programmes,[941] educational and training programmes,[942] condition management

[938] For example, *Brazil, South Africa* and *Bolivarian Republic of Venezuela*.
[939] For example, *United States*.
[940] For example, *Belarus*.
[941] For example, *Canada* and *Colombia*.
[942] For example, *Canada, Colombia, Denmark, Ghana, Latvia, Myanmar, Namibia, Peru, Philippines, Portugal, Qatar, Sri Lanka, Switzerland, Thailand, United Kingdom* and *Bolivarian Republic of Venezuela*.

programmes,[943] community-based rehabilitation programmes,[944] tailored programmes for people with mental or physical disabilities[945] at the national[946] or local[947] levels. Specialized institutions may be established offering customized vocational rehabilitation programmes for people with disabilities[948] using a community-based approach, or local non-governmental organizations may provide rehabilitation services.[949]

Cook Islands – Te Vaerua is a non-governmental organization that provides occupational therapy, physiotherapy and support, including assistive equipment and devices (such as wheelchairs, walking frames, commodes, electric beds, reading boards and lifting mats). Te Vaerua employs an administrator, physiotherapists, an occupational therapist, a rehabilitation assistant and an equipment officer to repair and adapt the equipment.

732. The Committee notes that measures have been taken in a majority of member States to provide a range of vocational rehabilitation services for persons with disabilities, including vocational guidance and vocational education and training.[950]

Austria – vocational training assistance is provided, within the framework of integrated vocational training, to young persons with disabilities who are subject to other constraints on their recruitment. Vocational training assistants are available to the young people throughout their training, both in the business and at school, to provide long-term training support.

- Job coaching is a particularly intensive programme that is part of the vocational assistance provided. It is intended for people in particular need of financial support as a result of a cognitive impairment, learning disabilities or a physical disability, and is also available in enterprises. The job coaches provide direct tailored support in the workplace to enhance the professional, communication and social skills of the employees concerned. Job coaching is primarily available for people with learning disabilities and can be an important form of support to achieve equality. The goal is for the employees who have received coaching to be in a position in which they are able to meet the demands made on them in the long term and independently.

[943] For example, *United Kingdom*.
[944] For example, *Sri Lanka*.
[945] For example, *Canada, Myanmar* and *United Arab Emirates*.
[946] For example, *Benin* and *Senegal*.
[947] For example, *Canada*.
[948] For example, *Bosnia and Herzegovina, Egypt, El Salvador, Estonia, Israel* and *Zimbabwe*.
[949] For example, *Cook Islands*.
[950] For example, *Algeria, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Democratic Republic of the Congo, Cook Islands, Costa Rica, Croatia, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Ghana, Guatemala, Hungary, India, Ireland, Israel, Italy, Japan, Republic of Korea, Latvia, Lithuania, Mauritius, Mexico, Montenegro, Myanmar, Namibia, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Senegal, Seychelles, Slovakia, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Thailand, Turkey, Turkmenistan, United Arab Emirates, United Kingdom, Uruguay, Bolivarian Republic of Venezuela* and *Zimbabwe*.

Austria (cont.)

- Personal assistance in the workplace. Despite their professional skills, it is often difficult for people with a severe functional impairment to gain access to paid work without tailored support. Such people often rely on assistance payments to remain in employment. Based on the premise of needs-based, self-determined, self-organized and equal participation in working life, the recipients of assistance receive the personal support that they need to carry out their professional work or to complete a training course.
- Employment and qualifications initiatives and increased demands in the labour market mean that persons with disabilities need targeted qualifications and employment initiatives that match their individual career prospects. The possibility of temporary employment can offer some stability and prepare them for work in the open labour market.

Within the framework of the fit2work project, the Ministry of Social Affairs takes responsibility for the coordination and organization of these programmes. Within this framework, the Ministry of Social Affairs and the Public Employment Service, together with other institutions, work closely together for the professional rehabilitation of persons with disabilities.

Azerbaijan – one of the objectives of the Strategic Road Map for the Development of Vocational Education and Training is the provision of support for the social integration of persons with disabilities to create the conditions for their entry into the labour market.

The European Union Twinning Project, launched in September 2017, contains a module entitled Support to the Azerbaijan Ministry of Labour and Social Protection in modernizing state employment services aimed at the creation of new services to promote the employment of people belonging to vulnerable population groups, and particularly persons with disabilities.

The Vocational Rehabilitation Centre for young people with health limitations is run by the Ministry of Labour and Social Protection with funding from the State Social Protection Fund.

Zimbabwe – women and men with disabilities are provided with vocational training and rehabilitation in three national rehabilitation centres, namely Ruwa, Beatrice and Lowdon Lodge. Lowdon Lodge is exclusively for women with disabilities. The training provided includes vocational training programmes in such occupations as carpentry, welding, horticulture and leather work.

733. In addition, legislation or policies have been adopted in some countries that take into account the principle of equality of opportunity and treatment between men and women with disabilities in vocational rehabilitation, while in others there is an explicit requirement for the gender dimension to be taken into account in the design and delivery of rehabilitation services.[951] In a number of countries, measures have been taken targeting specific groups of persons with disabilities, such as young persons.

[951] For example, *Benin* and *Bosnia and Herzegovina*.

2. Vocational guidance

734. The Committee recalls that the principle of non-discrimination applies to discrimination in both employment and occupation, as defined in Article 1 of Convention No. 111. Moreover, Article 1 of the Employment Policy Convention, 1964 (No. 122), requires Members to safeguard the right to full, productive and freely chosen employment without discrimination. Convention No. 159 calls for the national policy on vocational rehabilitation and employment of persons with disabilities to promote employment opportunities for such persons in the open labour market (Article 3), while Recommendation No. 168 calls for persons with disabilities to enjoy equality of opportunity and treatment in all aspects of employment which, wherever possible, corresponds to their own choice and takes account of their individual suitability for such employment (Paragraph 7).

(a) Employment placement services for persons with disabilities

735. The purpose of establishing specific programmes or protective measures for persons with disabilities is primarily to ensure that they enjoy equality of opportunity and treatment in access to the open labour market. The existence of an efficient public employment service is therefore an essential element of promoting equality of opportunity and treatment in employment and occupation. Well-designed public employment services can make a significant contribution to the social and economic inclusion and sustainable employment of persons with disabilities.

736. In a number of countries, rehabilitation services are administered by or operated under the supervision of the national employment service.[952] In most countries, persons with disabilities have access to the regular employment services to secure their labour market integration.[953] This approach is aligned with the fundamental principle underlying Convention No. 159 of ensuring equal treatment and fostering the integration of persons with disabilities into the regular labour market. In some countries, public employment services promote the labour market inclusion of people with disabilities by prioritizing their applications or offering personalized services and specific programmes for their inclusion in the open labour market.[954]

> *Australia* – Getting to Work, the Victorian public sector disability employment action plan 2018–25, provides a framework for action by individual departments in the public sector for the employment of people with disabilities.
>
> In Tasmania, employment assistance services for people with disabilities, including vocational rehabilitation, are provided by community organizations funded by the Commonwealth Government and by the Commonwealth Rehabilitation Service (CRS). The Disability Framework for Action 2018–21 is a government-wide approach in Tasmania to ensure that all people with disabilities have equitable access to mainstream government programmes, services and facilities.

737. In some countries, the provision of employment services for persons with disabilities is entrusted to a separate or specialized institution.[955]

[952] For example, *Australia*.
[953] For example, *Australia, Azerbaijan* and *Belarus*.
[954] For example, *Australia*.
[955] For example, *Benin, Canada* and *China*.

China – the Government has established employment service agencies for persons with disabilities at the provincial, city and county levels. The agencies provide free employment and vocational training services to help all categories of persons with disabilities gain access to employment or start their own business. In comparison with other population groups, services such as job introduction and vocational training for persons with disabilities are more personalized.

738. In certain countries, specialized employment services for people with disabilities are outsourced, and in a few countries priority is given to developing and securing partnerships with other organizations or stakeholders to offer tailored employment services for persons with disabilities.[956]

Canada – the Manitoba Department of Training and Employment Services concludes contracts with community-based organizations to assist unemployed persons with disabilities to prepare for, secure and retain employment. These services are targeted at individual needs, specific client groups and local communities. The support and services provided by each programme/organization may include: employment plan development, employment counselling, assessment services, information on the labour market and education/training opportunities, resumé and job search assistance, job-finding clubs and job reference/placement.

(b) Availability of services throughout all areas of the country

739. It is estimated that 80 per cent of all persons with disabilities worldwide live in rural areas in developing countries, and 70 per cent of this total have limited or no access to the services that they need.[957] In recognition of the challenges encountered by persons with disabilities in accessing rehabilitation and employment-related services outside urban areas, Article 8 of Convention No. 159 calls for measures to be taken for the provision of such services in rural areas and remote communities.

740. Part IV of Recommendation No. 168 addresses the provision of services in rural areas and calls for the development of services for persons with disabilities in rural areas and remote communities to form an integral part of general rural development policies (Paragraph 20). The measures envisaged by the Recommendation include the establishment of rural services or, alternatively, the use of services in urban areas to train rehabilitation staff for rural areas, and the establishment of mobile vocational rehabilitation units to serve persons with disabilities in rural areas and to act as centres for the dissemination of information on training and employment opportunities for persons with disabilities (Paragraph 21).

741. The establishment of programmes or measures to promote the development of vocational guidance, vocational rehabilitation and employment services for women and men with disabilities in rural areas and remote communities is reported in many countries.[958]

[956] For example, *Canada* and *Central African Republic*.
[957] CESCR: "General Comment No. 5: Persons with disabilities", United Nations Committee on Economic, Social and Cultural Rights, 1994 (E/1995/22), para. 8.
[958] For example, *Afghanistan, Algeria, Australia, Austria, Azerbaijan, Bangladesh, Belgium, Bosnia and Herzegovina, Burkina Faso, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Costa Rica, Croatia, Cyprus, Denmark, Dominican Republic, Ecuador, France, Georgia, Germany, Ghana, Guatemala, Honduras, Hungary, Ireland, Italy, Jamaica, Japan, Republic of Korea, Latvia, Lithuania, Namibia, Nepal, New Zealand, Nicaragua, Norway, Pakistan, Palau, Panama, Paraguay, Peru, Philippines, Poland, Senegal, Seychelles, Spain, Sri Lanka, Sudan, Thailand, Trinidad and Tobago, United Kingdom, Uruguay, Bolivarian Republic of Venezuela* and *Zimbabwe*.

Bangladesh – the Disabled Welfare Act, 2001, calls for action to improve opportunities for persons with disabilities by increasing their access to, and privileges and participation in, skills development programmes. A series of activities have been carried out under the National Skills Development Policy with the objective of promoting the establishment and development of vocational guidance, vocational rehabilitation and employment services for women and men with disabilities in rural areas and remote communities. [NB: the Disabled Welfare Act has been superseded by the adoption of the Persons with Disabilities Rights and Protection Act, 2013]

742. Mobile units have been established in a number of countries to provide both vocational rehabilitation and employment placement services for persons with disabilities in rural areas and remote communities.[959]

Algeria – the Social Development Agency (SDA) and its local solidarity units participate in action for the inclusion and empowerment of people with disabilities through the implementation of social programmes, schemes and surveys, particularly in rural and remote communities. Outreach cells support people and/or families with disabilities through:

- the identification of the needs of people with disabilities;
- psychological support for people with disabilities living in isolated areas;
- social mediation (the establishment of a handicap card, a financial allowance, professional integration ...);
- action to combat all forms of marginalization and social exclusion of persons with disabilities through catch-up and social integration programmes; and
- assistance to support and help people with disabilities search for jobs, particularly in rural and remote areas.

Ireland – the Department of Employment Affairs and Social Protection and the Health Service Executive have tested an individual placement and support (IPS) approach to help people with mental health difficulties to remain in or access work in mainstream settings. Three of the four pilot sites for the support model were in rural and remote areas, including West Cork, Cavan/Monaghan and County Galway. Under the IPS approach, individuals are offered opportunities to access competitive employment in the open market based on their skills and interests.

(c) Adequately trained vocational rehabilitation and employment service staff

743. In order to meet the needs of all categories of clients with disabilities, it is essential to ensure the availability of an adequate number of professionally trained and qualified vocational rehabilitation counsellors and specialists. In addition, the persons who provide vocational guidance, vocational training and employment placement services for workers need to be provided with adequate and appropriate training in the area of disabilities, including on the nature and scope of the support services and assistive aids available to enable persons

[959] For example, *Algeria, Ireland, Latvia* and *United Kingdom*.

with disabilities to be fully integrated into employment and, to the extent possible, into the occupation of their choice (Recommendation No. 168, Paragraph 23). They should also have appropriate training and experience to identify and handle the motivational issues and difficulties that persons with disabilities may encounter in seeking employment (Paragraph 28).

744. Steps have been taken in many countries to ensure that vocational rehabilitation and employment services personnel are qualified and receive specialist training to enable them to respond effectively to the requirements of persons with disabilities.[960]

Algeria – special priority is placed on the training, specialization and redeployment of specialized personnel responsible for teaching, educating, re-educating and providing social assistance in institutions for persons with disabilities. The Government emphasizes that specialized training is one of the essential elements to enable personnel to address in the best possible manner the true vocational guidance needs of persons with disabilities with a view to their labour market inclusion.

Armenia – employment professionals receive regular training and participate in courses, organized by both the Government and international organizations, to improve their qualifications.

Bahrain – to ensure that personnel are adequately qualified to provide services for persons with disabilities, the Ministry of Labour and Social Development is involved in the training and qualification of personnel to respond to the needs of persons with disabilities and treat them appropriately. The staff participate in in-house training courses and workshops, or in courses and workshops provided by organizations and institutes specialized in working with persons with disabilities.

The on-the-job training provided to trainees focuses on new perspectives for professional practice. Emphasis has recently been given to training psychologists and the provision of specialized programmes and seminars in support of the guidance and mental-health services available to all social categories, and particularly people with disabilities. To keep pace with the use of technology in education, special teachers and trainers have been provided with training in smartboard basics in collaboration with the Ministry of Education.

[960] For example, *Algeria, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Benin, Bosnia and Herzegovina, Bulgaria, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Congo, Côte d'Ivoire, Croatia, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, Estonia, Finland, France, Georgia, Germany, Guatemala, Honduras, Hungary, Ireland, Israel, Italy, Jamaica, Japan, Kiribati, Republic of Korea, Latvia, Lithuania, Malta, Mauritius, Myanmar, Nepal, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Philippines, Poland, Portugal, Senegal, Sudan, Sweden, Switzerland, Thailand, Trinidad and Tobago, United Arab Emirates, United Kingdom, Uruguay* and *Bolivarian Republic of Venezuela*.

Croatia – the Institute for Disability Certification, Professional Rehabilitation and Employment of Persons with Disabilities is responsible for the development and improvement of vocational rehabilitation. For this purpose, it supervises and coordinates the work of vocational rehabilitation centres and organizes training for specialists in the centres.

With a view to addressing more systematically the problem of the employment of persons with disabilities, the employment service has established a Division for Vocational Rehabilitation and Employment of Persons with Disabilities. Specialized employment counsellors for persons with disabilities are employed in all the employment service regional offices.

To ensure that a sensitive approach is adopted towards persons with disabilities, employment service counsellors regularly attend professional training, seminars and workshops focusing on the adoption of a holistic approach to clients and full care for their individual needs.

3. Access to education and employment opportunities

(a) Entitlement to accessible and inclusive education

745. As the Committee recalled in its 1996 Special Survey on equality of opportunity, inequalities in access to education can impair or even nullify equality of opportunity and treatment in all other areas, preventing those concerned from acquiring the specialized training or education needed to work in a specific occupation and to hold jobs that are as productive and freely chosen as possible. The Committee has emphasized that, if parts of the population are prevented from attaining the same level of education as others, this constitutes discrimination within the terms of Convention No. 111, as these differences will be extended into employment opportunities. Similarly, discriminatory practices affecting access to training or the quality of training are perpetuated or aggravated when the persons subjected to these practices compete for places in vocational training systems and, consequently, in employment and occupation. Therefore, access to training and education at the same level for everyone is one of the starting points for a policy to promote equality of opportunity and treatment in employment and occupation.[961] This principle applies equally to persons with disabilities.

746. The Human Resources Development Recommendation, 2004 (No. 195), calls on Members, among other objectives, to promote equal opportunities for women and men in education, training and lifelong learning, as well as access to education, training and lifelong learning for people with nationally identified special needs, such as persons with disabilities, young persons, low-skilled persons, migrants, older workers, indigenous people, ethnic minority groups and the socially excluded, as well as workers in SMEs, the informal economy, the rural sector and self-employment (Paragraph 5(g) and (h)). Paragraph 6(1) of Recommendation No. 195 indicates that "Members should establish, maintain and improve a coordinated education and training system within the concept of lifelong learning, taking into account the primary responsibility of government for education and pre-employment training and for training the unemployed, as well as recognizing the role of the social partners in further training, in particular the vital role of employers in providing work experience opportunities."

747. In its General Comment No. 2 on accessibility, the CRPD Committee emphasizes the need for accessibility in education and points out that, without "accessible transport to schools, accessible school buildings and accessible information and communication, persons with disabilities would not be able to exercise their fundamental right to an education" under Article 24 of the CRPD.[962]

[961] ILO: *Equality in employment and occupation,* Special Survey on equality in employment and occupation in respect of Convention No. 111, Report III (Part 4B), ILC, 83rd Session, Geneva, 1996, paras 70 and 71.
[962] CRPD Committee: "General Comment No. 2 (2014): Accessibility", CRPD/C/GC/2, para. 39.

748. Policies on inclusive education for persons with disabilities have been adopted in some member States.[963]

> *Mali* – a module on inclusive education is being integrated into the training for students in teacher training institutes.

> *United Kingdom* – the reforms introduced by the Children and Families Act 2014 are transforming the special educational needs and disabilities (SEND) system. Tailored support for longer-term aspirations of employment, higher education, independent living and community participation is focused strongly on 0–25 year olds and initiates preparation for adulthood from the earliest years. This includes education, health and care plans for learners with more complex disabilities and special educational needs.

749. Measures have been taken in a few countries to enhance primary and secondary education for children with disabilities and/or to provide special programmes for the education of youth with disabilities.[964]

> *Cambodia* – the Law on the Protection and Promotion of the Rights of Persons with Disabilities, article 39, provides that: "The State shall give due attention to establishing vocational training institutions for persons with disabilities. The educational, training, technical and vocational establishments of state, private or other organizations shall provide either training to persons with disabilities in accordance with the appropriate set quota, or provide free training to poor persons with disabilities or military veterans with disabilities."

> *Cook Islands* – the Cook Islands Disability Inclusive Development Policy and Action Plan 2014–19 provides, in priority area 3 on education and training, cultural life, leisure, recreation and sports, that:
>
> "Education is a human right and providing education to children with disabilities is an obligation under the CRPD. The Cook Islands [Inclusive Education] IE Policy (2011) is comprehensive and clearly states the responsibilities of the [Ministry of Education], schools, teachers etc. The Policy also notes that Inclusive Education is a process of change: changing the system to meet the needs of children. It will take some time for the process to be fully achieved. Implementation of the IE Policy needs to be sustained and enhanced. [People with disabilities] PWD are frequently excluded and isolated from participation in their communities: church, leisure, recreation, cultural and sporting activities. An inclusive society demands that PWD are included, not merely tolerated, and barriers to their participation be removed."

[963] For example, *Afghanistan, Australia, Austria, Azerbaijan, Bangladesh, Bosnia and Herzegovina, Burkina Faso, Cambodia, Cook Islands, Côte d'Ivoire, Estonia, Denmark, France, Germany, Ghana, India, Jamaica, Republic of Korea, Mali, Malta, Mauritius, Nepal, New Zealand, Norway, Pakistan, Poland, Trinidad and Tobago, Turkmenistan, United Kingdom* and *Bolivarian Republic of Venezuela*.
[964] For example, *Bosnia and Herzegovina, Burkina Faso, Cook Islands, Denmark, France, Germany, Ghana, Jamaica, Nepal, Norway, Thailand, Trinidad and Tobago* and *United Kingdom*.

750. Targeted measures have been adopted in some countries to enhance the access of persons with disabilities to higher education, including graduate programmes.[965]

> *Poland* – the "GRADUATE" pilot programme was launched by the Supervisory Board of the State Fund for the Rehabilitation of Persons with Disabilities under Resolution No. 12/2016 of 8 December 2016. The objective of the programme is to enable people with a disability who have completed higher education or are in their last year of higher education to enter the labour market. This objective is to be achieved through provision of comprehensive and individualized support to improve the professional qualifications of programme participants.

> *United Kingdom* – local authorities are required to inform young people of the support available to them for higher education and to provide information indicating how to claim this support, which can include a disabled students allowance (DSA). DSAs are available to help students in higher education with extra costs that they may incur on their course because of their disability, which can include ongoing health conditions, mental health conditions or specific learning difficulties, such as dyslexia.

(b) Equality of opportunity and treatment in employment and occupation

751. Convention No. 159 calls for the promotion of employment opportunities for persons with disabilities in the open labour market (Article 3) and provides that equality of opportunity and treatment for men and women workers with disabilities shall be respected (Article 4). The Convention provides that "[s]pecial positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers" (Article 4).

752. Article 5(4) of the CRPD, in a provision similar to Article 4 of Convention No. 159, provides that: "Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention".

(c) Special measures

753. Special measures may be required to help historically disadvantaged groups and enable them to compete in the world of work on an equal basis with others. The measures referred to below are tools that can be used by the tripartite partners to meet their shared obligation to promote the participation of persons with disabilities in the world of work. Special pre-employment measures may be helpful to prepare individuals with disabilities for the world of work, and to adapt the workplace for them, where necessary. Additional measures are sometimes required to ensure that persons with disabilities have access to opportunities for quality employment, and may include quota systems, levies and rehabilitation funds.

[965] For example, *Finland, Poland* and *United Kingdom*.

(d) Quotas, levies and rehabilitation funds

754. The Committee notes that quotas and incentives for the employment of persons with disabilities in both the public and private sectors have been established in many countries.[966] While quotas can constitute effective affirmative action measures, they should be accompanied by a comprehensive package of measures, including awareness-raising, targeted employment support and vocational guidance and training.

Germany – there is a quota of 5 per cent for the employment of persons with severe disabilities in enterprises employing over 20 people. The German Confederation of Trade Unions (DGB) reports, however, that persons with disabilities continue to be affected by higher rates of unemployment, and that the employment rate for persons with disabilities among private sector employers is 4.1 per cent, compared with 6.6 per cent among public sector employers. The DGB adds that one-quarter of enterprises (41,900) that are legally required to employ persons with severe disabilities do not employ any, and notes that this figure has been high for years. It observes that, alongside targeted support for unemployed persons with severe disabilities, it is important to increase the willingness of enterprises to hire and train persons with disabilities. The DGB notes that the civil service in the Federal Government and the Länder and communes has a responsibility to set an example for the vocational training of persons with disabilities. The DGB welcomes the fact that the civil service has set a target of 5 per cent of persons with disabilities among all trainees and considers that the target should be advertised and implemented more aggressively.

Bolivarian Republic of Venezuela – Act No. 38.598 of 2007 on persons with disabilities, section 28, establishes a quota of 5 per cent of persons with disabilities for public and private employers.

The Federal Chamber of Labour (BAK) of *Austria* reports that persons with disabilities are significantly less well integrated into the labour market than persons without disabilities, and unemployment affects persons with disabilities particularly severely. It adds that employers only comply with their duty to employ persons who are registered as having a disability to a very small extent and prefer to pay compensation instead. It observes that, while total unemployment is on the decline, persons with disabilities are only enjoying a below average advantage from the employment surge. The BAK thus welcomes the fact that, since the end of 2017, persons with disabilities have been one of the target groups of Austrian labour market policy, and are therefore eligible for special support. It emphasizes the importance of labour market support programmes and highlights the need for adequate budgetary allocations to enable the public employment service to have specialist advisory units to assist persons with a disability. It also considers that other support measures, such as job coaching, work assistance and pay subsidies should be universally available and adequate.

[966] For example, *Afghanistan, Algeria, Armenia, Australia, Bahrain, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cambodia, Canada, Cabo Verde, Central African Republic, Colombia, Croatia, Cyprus, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, Hungary, India, Indonesia, Israel, Italy, Jamaica, Japan, Republic of Korea, Latvia, Lithuania, Mali, Malta, Mexico, Montenegro, Morocco, Myanmar, Namibia, Nepal, Nicaragua, Norway, Oman, Pakistan, Palau, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Senegal, Spain, Sweden, Tunisia, Turkey, Turkmenistan, United Arab Emirates, Uruguay, Bolivarian Republic of Venezuela* and *Zimbabwe.*

755. The legislation of many countries establishes levies to be imposed on enterprises that do not meet the quota for employees with disabilities. The resources raised through fines are often used to cover the cost of reasonable accommodation and other initiatives to promote the employment of persons with disabilities.

China – enterprises that fail to meet the 1.5 per cent quota pay a fee to the Disabled Persons Employment Security Fund, which supports training and employment placement services for persons with disabilities. In most OECD countries, the success rate in meeting quotas for the employment of workers with disabilities ranges between 50 and 70 per cent.

Republic of Korea – public entities and employers with at least 50 employees are required to employ a certain proportion of persons with disabilities (3.1 per cent for private businesses and 3.4 per cent for public entities). Failure to comply gives rise to a levy. If the quota is exceeded, the Government funds 50 per cent of the social contributions of the workers with disabilities who exceed the quota. The Government also runs programmes to raise public awareness of persons with disabilities, support employment retention and improve workplace conditions. The Fifth Master Plan for the Employment Promotion and Vocational Rehabilitation of Persons with Disabilities (2018–22) seeks to create an inclusive labour market for persons with disabilities. Under the Plan, it is intended to strengthen the quota system, apply different levy amounts by business size and provide tailored support, including allowances to cover such expenses as commuting costs for persons with disabilities.

(e) Affirmative action measures

756. In some countries, special measures have been adopted in the form of affirmative action in employment and other settings. For example, as part of its response to European Union Council Directive 2000/78/EC[967] requiring Member States to introduce policies for the employment of persons with disabilities by 2006, a National Action Plan has been adopted in *Portugal* calling for affirmative action to increase the number of persons with disabilities in employment.

757. The Committee notes that measures have been taken in certain countries to facilitate the access to vocational training and employment of specific groups of persons with disabilities who face particular obstacles to recruitment.

In *Austria*, the BAK reports that the Vocational Training Act offers two options for the training of young persons with disabilities. To improve their integration into work, a training course may be followed either as part of an apprenticeship with an extended teaching period, or as part of a training arrangement with a partial qualification. The training programmes may be undertaken either in enterprises, or as part of cross-company training courses. The BAK notes that both training options represent vocational integration initiatives and are being followed by a rising number of apprentices (extended period of training) and trainees (partial qualification).

[967] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

(f) Recruitment and selection processes

758. Convention No. 159 and the CRPD are based on the principle of equality of opportunity and treatment for persons with disabilities. In accordance with this principle, the CRPD calls on States parties to recognize the right of persons with disabilities to work, on an equal basis with others. This "includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities" (Article 27(1)). The CRPD requires States parties to promote the realization of the right to work, which includes the right to return to work, including for those who acquire a disability during the course of employment, by taking steps to, inter alia, "[p]rohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions" (Article 27(1)(a)).

4. Terms and conditions of employment

(a) Return to work

759. As noted at the outset of this chapter, disabilities may affect anyone at any stage of life, due to a genetic predisposition to a specific condition or an accident or illness, which may or may not be work related. As persons live longer, many are continuing to work in their 60s and 70s (or longer) and the probability increases that they will acquire an impairment. Following an absence from the workplace, a worker who returns to work with a disability is entitled to all the protections afforded by Convention No. 159: equal access to vocational rehabilitation and employment-related services, the right to equality of opportunity and treatment in relation to all aspects of employment, including selection and recruitment, training and career progression, as well as protection against unfair dismissal and the provision of reasonable accommodation, if needed.

760. The CRPD calls on States parties to promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities (Article 27(k)). Moreover, Article 27(e) requires States parties to promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment.

761. In planning for the return of workers with disabilities, it may be necessary for such workers to be provided with reasonable accommodation to enable them to perform the essential duties of their position. Where reasonable accommodation is not possible, it may be necessary to redeploy workers to another position more suitable to their abilities. For example, if a driver has sustained a herniated disc that makes it impossible for her or him to drive for eight hours a day, it may be necessary or appropriate to provide the worker with training so that she or he can take another job that does not involve driving or lifting. It may also be necessary for a worker with an acquired disability to receive vocational guidance, education and training so as to be able to return to work.

762. ILO Recommendation No. 200 lists a number of measures to be taken in the context of disability, including to facilitate the return to work. Paragraph 13 provides that:

> Persons with HIV-related illness should not be denied the possibility of continuing to carry out their work, with reasonable accommodation if necessary, for as long as they are medically fit to do so. Measures to redeploy such persons to work reasonably adapted to their abilities, to find other work through training or to facilitate their return to work should be encouraged, taking into consideration the relevant International Labour Organization and United Nations instruments.

(b) Remuneration of workers with disabilities

763. The Committee notes that the labour legislation in many countries prohibits discrimination in employment on the basis of disability. In addition, a number of countries provide explicitly for equality of remuneration for workers with disabilities.[968] However, as the Committee observed in its 2014 General Survey, in several countries which have ratified the Minimum Wage Fixing Convention, 1970 (No. 131), workers with disabilities have been excluded from the scope of application of the Convention.[969] In certain countries, the legislation provides for the possibility of reducing the applicable minimum wage for workers with disabilities based on the worker's productivity.

> *Japan* – Authorization may be obtained to pay a worker with disabilities a minimum wage reduced by a certain proportion taking into account the worker's capacity.

> *Republic of Korea* – An employer may be authorized to make an exception to the scope of minimum wage provisions in cases where a worker's capacity is particularly diminished due to a physical or mental disability.[970]

764. In the Committee's view, the practice of paying workers with disabilities less than the established minimum wage is not in conformity with the principles of equality and non-discrimination that form the basis of Convention No. 159 and Recommendation No. 168. In this context, Paragraph 10 of Recommendation No. 168 indicates that measures should be taken to promote employment opportunities for workers with disabilities which conform to the employment and salary standards applicable to workers generally. However, as the Committee noted in its 2014 General Survey, in certain countries, lower minimum wage rates may be applied to workers with disabilities, although measures have more recently been taken in several countries to prevent any such reduction in minimum wage rates for workers with disabilities.[971]

765. The Committee notes that Article 27 of the CRPD reaffirms the principle of equal remuneration for work of equal value for persons with disabilities and calls on States parties to prohibit discrimination on the basis of disability in relation to employment. Article 27(b) calls on States parties to take steps to "[p]rotect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including … equal remuneration for work of equal value".

(c) Supported and sheltered employment

766. The principal objective of Convention No. 159 and Recommendation No. 168 with regard to the employment of persons with disabilities is to promote their employment in the open labour market. One means of achieving this objective is through supported employment schemes, which seek to integrate such persons into the open labour market by providing a range of services, including job coaching, specialized training, individually tailored supervision, transportation and assistive technology. These programmes have been successful

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[968] For example, *Belgium, Cuba, Luxembourg, Nicaragua* and *Romania*.
[969] ILO: *Minimum wage systems*, General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), Report III (Part 1B), ILC, 103rd Session, Geneva, 2014 (hereinafter the "2014 General Survey"), para. 78, referring to *Chile, Republic of Korea* and *Netherlands*.
[970] ibid., paras 290–291.
[971] For example, *Argentina, Czech Republic, France, New Zealand* and *Slovakia*.

in the integration into employment of persons with severe disabilities, such as intellectual impairments, learning disabilities and traumatic brain injuries.[972]

767. Recommendation No. 168 also envisages measures to promote sheltered employment for persons considered unable to compete in the open labour market. Sheltered employment consists of the provision of work opportunities for persons with disabilities in separate facilities, either in a separate business or a separate part of an enterprise.

Paragraph 11 of Recommendation No. 168 indicates that measures to promote employment opportunities for persons with disabilities should include:

"(a) appropriate measures to create job opportunities on the open labour market, including financial incentives to employers to encourage them to provide training and subsequent employment for disabled persons, as well as to make reasonable adaptations to workplaces, job design, tools, machinery and work organisation to facilitate such training and employment;

(b) appropriate government support for the establishment of various types of sheltered employment for disabled persons for whom access to open employment is not practicable;

(c) encouragement of co-operation between sheltered and production workshops on organisation and management questions so as to improve the employment situation of their disabled workers and, wherever possible, to help prepare them for employment under normal conditions;

(d) appropriate government support to vocational training, vocational guidance, sheltered employment and placement services for disabled persons run by non-governmental organisations;

(e) encouragement of the establishment and development of co-operatives by and for disabled persons and, if appropriate, open to workers generally;

(f) appropriate government support for the establishment and development of small-scale industry, co-operative and other types of production workshops by and for disabled persons (and, if appropriate, open to workers generally), provided such workshops meet defined minimum standards;

(g) elimination, by stages if necessary, of physical, communication and architectural barriers and obstacles affecting transport and access to and free movement in premises for the training and employment of disabled persons; appropriate standards should be taken into account for new public buildings and facilities;

(h) wherever possible and appropriate, facilitation of adequate means of transport to and from the places of rehabilitation and work according to the needs of disabled persons;

(i) encouragement of the dissemination of information on examples of actual and successful instances of the integration of disabled persons in employment;

(j) exemption from the levy of internal taxes or other internal charges of any kind, imposed at the time of importation or subsequently on specified articles, training materials and equipment required for rehabilitation centres, workshops, employers and disabled persons, and on specified aids and devices required to assist disabled persons in securing and retaining employment;

[972] WHO: *World report on disability*, 2011, op. cit., p. 242.

(k) provision of part-time employment and other job arrangements, in accordance with the capabilities of the individual disabled person for whom full-time employment is not immediately, and may not ever be, practicable;

(l) research and the possible application of its results to various types of disability in order to further the participation of disabled persons in ordinary working life;

(m) appropriate government support to eliminate the potential for exploitation within the framework of vocational training and sheltered employment and to facilitate transition to the open labour market."

(d) Incentives for the employment of persons with disabilities

768. The Committee notes that a range of financial incentives have been established in a majority of countries to promote the employment of persons with disabilities. These may take the form of tax incentives, particularly for SMEs. Reasonable accommodation in the workplace is supported in a number of countries.[973]

Australia – The Department of Employment and Workplace Relations runs a workplace modifications scheme which funds up to 10,000 Australian dollars (over US$6,500) for modifications made for the purpose of accommodating employees with disabilities.

(e) Self-employment for persons with disabilities

769. Entrepreneurship training and access to funding to start their own business can be a positive alternative for persons with disabilities, particularly for those who may prefer more flexible working arrangements, including the freedom to work from home and at hours of their own choosing.[974] However, many people with disabilities have few assets to secure loans, and may have lived below the poverty line for years. Mainstream microfinance programmes and entrepreneurship training should be made available for persons with disabilities to facilitate their participation in such programmes and to promote inclusive entrepreneurship.

(f) Persons with disabilities and the platform economy

770. The Committee notes that a steadily increasing number of persons with disabilities are engaged in diverse employment arrangements, such as homework, platform work or gig economy work. While many persons with disabilities may find such work arrangements to be preferable in terms of flexibility, they are often highly precarious and the existence of an employment relationship may be uncertain, with the consequence that the worker may be left unprotected by labour legislation. It is therefore essential that clear criteria be established to determine whether such workers can be considered to be in an employment relationship so that, in that event, they benefit from the protections to which they are entitled under national employment law and policy (see chapter II).

[973] In addition, Article 27(h) of the CRPD provides that States parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps to, inter alia: "Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures".

[974] D. Vaziri, et al.: *Disabled entrepreneurship and self-employment: The role of technology and policy building*, OECD, Paris, 2014.

771. Workers with disabilities may require flexibility in the organization of work, travel to and from work, and in dealing with medical and health issues and attending medical visits, physical or other types of therapy. Contingent work arrangements, such as through the gig economy and digital platform work, which offer flexibility, are attracting increasing numbers of persons with disabilities for whom these non-standard forms of working arrangements can make the difference between unemployed and earning a living. In many cases, however, these types of working arrangements provide lower remuneration, little to no benefits and give rise to income insecurity.[975]

(g) Consultations

772. Convention No. 159 and Recommendation No. 168 recognize the essential contribution that employers' and workers' organizations can make to the effective protection of the rights of persons with disabilities. The Convention requires Members to consult the representative organizations of employers and workers, as well as the representative organizations of and for persons with disabilities, on the implementation of the national policy on vocational rehabilitation and employment, including the measures to be taken to promote cooperation and coordination between public and private bodies engaged in vocational rehabilitation activities (Article 5). Recommendation No. 168 adds that representatives of the social partners and of organizations of persons with disabilities should be able to contribute to the formulation of policies concerning the organization and development of vocational rehabilitation services (Paragraph 32).

773. The CRPD requires States parties to respect the fundamental rights of persons with disabilities to form organizations of their own choosing and to bargain collectively, on an equal basis with all other workers. The principle of consultation and full participation is woven throughout the Convention, beginning with the Preamble, which considers that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them (Paragraph (o)).

Belarus – Working meetings are held on a regular basis with the participation of representatives of public associations for persons with disabilities and state administration bodies to discuss a new Bill on the rights of persons with disabilities and their social integration.

Bosnia and Herzegovina – Representatives of workers, employers and associations representing the interests of persons with disabilities are directly included in all decision-making processes related to vocational rehabilitation, vocational training and the employment of persons with disabilities. Consultations on all important questions in this regard are conducted on a weekly basis.

Egypt – Consultations are held with the social partners to ensure the provision of decent job opportunities and occupational training for persons with disabilities. Representatives of persons with disabilities are consulted on the development of provisions relating to them, and their aspirations and needs are given due consideration in the formulation of such policies.

[975] V. Di Stefano, "The rise of the 'just-in-time workforce': On-demand work, crowdwork and labour protection in the 'gig economy'", ILO 2016, pp. 5 and 11.

Germany – Organizations of persons with disabilities have been intensively involved in the implementation of the CRPD from the outset, as illustrated by their various submissions and comments, attendance at congresses and workshops, and participation in committees. In addition, organizations of people with disabilities and other civil society actors, such as employers' and workers' organizations, and associations of service providers in the support system for persons with disabilities, actively participate in the implementation of the CRPD, inter alia, through the Committee on the National Action Plan of the Federal Government for the Implementation of the CRPD established at the Federal Ministry of Labour and Social Affairs. The Advisory Council on the Participation of Persons with Disabilities also advises on measures, projects and programmes to promote the occupational inclusion of persons with severe disabilities, using resources from the compensation fund. The Advisory Council consists of 49 members, including representatives of workers, employers and organizations of persons with disabilities.

Honduras – The public policy for the exercise of the rights of persons with disability and their inclusion indicates that the policy was the outcome of intensive and fruitful collaboration between the public and private disability sectors, with the active and continuous participation of associations and organizations representative of persons with disabilities.

IX. Conclusions

774. ***The Committee considers that the prevention and elimination of employment-related discrimination against persons with disabilities must be based on proactive policies and anti-discrimination legislation that is effectively enforced through labour inspection and accessible mechanisms and procedures for redress. National employment policies should address the many dimensions of disability, taking into account the impact of multiple grounds of discrimination. Legislation and policies should provide for financial or other incentives to encourage employers to recruit and train persons with disabilities and provide reasonable accommodation where necessary, as well as support, including psychosocial support if needed, vocational education and training and social protection, for persons with disabilities who are seeking productive, freely chosen and sustainable employment.***

775. ***To enhance the employability of persons with disabilities in a changing labour market, the Committee emphasizes that education and training programmes, as well as employment services, should be accessible to persons with disabilities on an equal basis with other jobseekers, wherever possible, in addition to developing tailored services, where they are needed. Policy measures should also be designed to ensure that social protection schemes include persons with disabilities and are supportive of their return to work, and that any disincentives for persons with disabilities to seek work or return to work are eliminated.***

776. ***Recalling the pervasive and persistent nature of historical perceptions that associate disability with inability, the Committee emphasizes that discrimination and health-related stigma in the world of work cannot be eliminated without a profound change in attitudes towards persons with disabilities. As indicated in Paragraph 16(b) of Recommendation No. 168, member States should use carefully planned public information measures to overcome prejudice, misinformation and attitudes unfavourable to the employment of persons with disabilities and their integration and inclusion in their communities and into society. Member States should also take active measures to promote awareness among employers of the incentives and means available to them to facilitate the hiring and retention or return to work of persons with disabilities, including incentives to encourage employers of all sizes to act as models in promoting the employment of persons with disabilities in both the public and private sectors. Good practices could include establishing a disability management programme, developing partnerships with local vocational rehabilitation, vocational training and employment services for the recruitment of skilled workers with disabilities, and undertaking awareness-raising activities for their own workers (including management and human resource personnel). Employers should be encouraged to adopt a disability policy or a simple declaration of non-discrimination, depending on the size and capacity of the enterprise.***[976]

777. ***The Committee also considers that, in view of the time that has elapsed since the adoption of the Convention and the Recommendation in 1983, and taking into account developments at the national and international levels in relation to persons with disabilities, particularly the adoption in 2006 of the CRPD, consideration should be given to measures to ensure that Convention No. 159 and Recommendation No. 168 are more closely aligned with current international terminology and objectives in the area of disability, reflect more directly the elements of substantive and inclusive equality, and address the gender dimension of disability, as well as the impact of intersectional discrimination on the vocational rehabilitation and employment situation of persons with disabilities.***

[976] For examples of such activities and policy models, see ILO: *Promoting diversity and inclusion through workplace adjustments: A practical guide*, 2015, op. cit.

Contents

Walter Reed Project lab. HIV research programme. Nairobi, Kenya. © ILO

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Promoting an inclusive employment policy

778. Supplementing the first five chapters of this Survey, which cover concepts and processes that contribute to governance in the world of work and present the challenges that some particular types of employment relationships face with respect to labour and social protection, this chapter focuses on inclusion, equality of opportunity and equality of treatment in employment and occupation. The objective is the implementation of an encompassing national employment policy which not only covers all aspects of growth and employment, but is also inclusive and ensures equality of opportunity and treatment for all persons in the labour market so that no one is left behind. In its report the Global Commission on the Future of Work observes that: "As the organization of work changes, new ways must be found to afford adequate protection to all workers, whether they are in full-time employment, executing micro tasks online, engaged in home-based production for global supply chains or working on a temporary contract".[977]

779. Although technological advances have delivered productivity growth in recent decades, this has not generally been translated into shared prosperity. Productivity gains have to be redistributed with equity. Instead, there has been a trend towards employment polarization and rising inequality. The question is therefore how to ensure that the fruits of technological progress and rising productivity reach all workers, including women and minorities.[978]

780. Convention No. 122 provides in Article 1(2)(c) that the national employment policy shall aim at ensuring that "there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use [her/]his skills and endowments in a job for which [she/]he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin".[979]

781. When equality of opportunity prevails, all members of society can compete on equal terms. Genuine or substantive equality of opportunity requires everyone to have a true opportunity to become qualified.[980] It therefore involves leveraging the playing field so that all workers are in a position to compete, which requires adequate levels of education, vocational training and skills development to provide people with the first set of tools required to gain access to a labour market in transition.

782. In the framework of an inclusive national employment policy, a coherent and integrated strategy to facilitate the transition to the formal economy also needs to take into account the diversity of characteristics, circumstances and needs of workers and economic units in the informal economy. In addition to the requirement for tailored approaches, as outlined in chapter III, this is based on recognition of the fact that the informal economy has the effect of undermining equality of opportunity and that measures have to be taken to achieve inclusive development.[981] Recommendation No. 204, indicates in Paragraph 11(f) that the integrated policy framework to facilitate the transition to the formal economy should address "the promotion of equality and the elimination of all forms of discrimination and violence, including gender-based violence, at the workplace".[982] The promotion of gender equality and non-discrimination should be a guiding principle when designing coherent and integrated strategies to facilitate the transition to formality (Paragraph7(h)).

783. In conformity with the objective of inclusion, Recommendation No. 169 and Recommendation No. 204 invite Members to take measures to facilitate the transition to formality, while responding to the needs of all categories of persons who have difficulties in finding

[977] ILO: *Global Commission on the Future of Work: Work for a brighter future*, 2019, op. cit., p. 38.
[978] MIT: The work of the future: Shaping technology and institutions, Fall 2019 Report, p. 15.
[979] The right to equality and non-discrimination lies at the heart of human rights, and has been incorporated in various United Nations and regional human rights instruments. In terms of the ILO, the Committee recalls that Convention No. 111 is a fundamental Convention applicable to all workers without distinction whatsoever.
[980] R. Arneson: "Equality of opportunity", in E.N. Zalta (ed.): The Stanford Encyclopaedia of Philosophy, Summer 2015 edition.
[981] See the Preamble to Recommendation No. 204.
[982] In this respect, the Committee notes the adoption by the ILC in June 2019 of the Violence and Harassment Convention (No. 190) and Recommendation No. 206, which are also applicable to the informal economy.

lasting employment.[983] Both Recommendations contain a list of the categories who experience greater difficulty in finding lasting and decent employment. The lists include: certain categories of women and young workers, workers with disabilities, older workers, the long-term unemployed and migrant workers, indigenous and tribal peoples, persons living with HIV or affected by HIV or AIDs, domestic workers and subsistence farmers.

784. From another perspective, uncertainty with regard to the existence of an employment relationship needs to be addressed to guarantee fair competition and effective protection for workers. A lack of clarity or ambiguity concerning the existence of an employment relationship may deprive workers of the protections to which they are due. Some workers are more vulnerable than others in these circumstances, which create a situation of inequality of opportunity in which workers often fall into informality. Recommendation No. 198 recognizes that this protection has to be accessible to all, and particularly to vulnerable workers. It sets out in Paragraph 5 a non-exhaustive list of such workers, who include women workers, young and older workers, workers in the informal economy, migrant workers and workers with disabilities.

I. Ensuring the participation of all workers

785. A comprehensive employment policy framework should include measures that respond to the needs of all categories of workers and promote the transition to paid work of the unemployed or inactive, including the long-term unemployed. Paragraph 9 of Recommendation No. 204 indicates that "Members should adopt, review and enforce national laws and regulations or other measures to ensure appropriate coverage and protection of all categories of workers and economic units".

1. Taking the gender dimension into account

786. All the instruments covered by this Survey address the gender dimension of employment in one way or another. As already examined throughout this General Survey women face greater difficulties to participate in the labour market. Besides, they are over-represented in those sectors with more serious decent work deficits.

787. Chapters I and II address different dimensions of gender equality in the world of work. Women face more difficulties in gaining access to the labour market. They often lack genuine choice due to problems related to combining work with family responsibilities. They are also more represented in the informal economy in the great majority of countries, or in less protected working arrangements. They are frequently engaged in disguised or ambiguous working arrangements.

788. For this reason, public authorities, and particularly the labour administration and inspection, are invited to pay special attention to occupations and sectors with a high proportion of women workers. Moreover, in cases where a government has promoted homework together with other measures for the empowerment of women, the Committee has called for measures to be taken to ensure that women have broad access to the labour market and that such access is not restricted to a limited number of jobs and occupations, or to being housebound.[984]

789. It is also important for member States to have a clear policy on gender equality and for the enforcement of the relevant laws and agreements to be improved at the national level with a view to addressing the gender dimension effectively.

[983] See paras 9, 15 and 17 of Recommendation No. 169 and paras 1, 7(i) and 15(h) of Recommendation No. 204.
[984] See, for example, CEACR – *Islamic Republic of Iran*, C.111, observation, 2017; *Saudi Arabia*, C.111, observation, 2014.

2. The particular situation of some categories of workers

790. The following sections address the situation of some of the groups of people specified in the instruments under examination, namely from the viewpoint of the different obstacles they face to enter and remain in the labour market.

(a) Young persons

791. Around half of the world's young people (aged 15 to 24 years) are in the labour force. However, over the past 20 years, the global labour force participation rate of young people has fallen from 55 to 45.7 per cent. Between 2017 and 2030, the global youth labour force aged 15 to 24 will increase by 41.8 million, driven by trends in Africa. Moreover, an estimated 21.8 per cent of young people are neither in employment nor in education or training (NEET). The quality of youth employment remains a concern. The Committee notes that, according to ILO statistics, some 362 million young persons in the world are in the informal economy, more than half of whom are in sub-Saharan Africa or southern Asia.

792. The Committee notes that many member States are addressing youth unemployment through active labour market policies (ALMPs). The Committee observes that most ALMPs for youth focus on the school-to-work transition. In some countries, young people are included as a major target group in all labour market policies and programmes.

The Youth Guarantee in the European Union

Implemented in 2014, the Youth Guarantee is a commitment by all Member States of the European Union to ensure that within four months of leaving school or becoming unemployed, anyone younger than 25 receives either a quality job offer suited to their education, skills and experience or the opportunity to acquire the education, skills and experience needed to find a job in future through an apprenticeship, traineeship or continued education. The programme has since been extended to persons up to the age of 29 in a number of countries.[985]

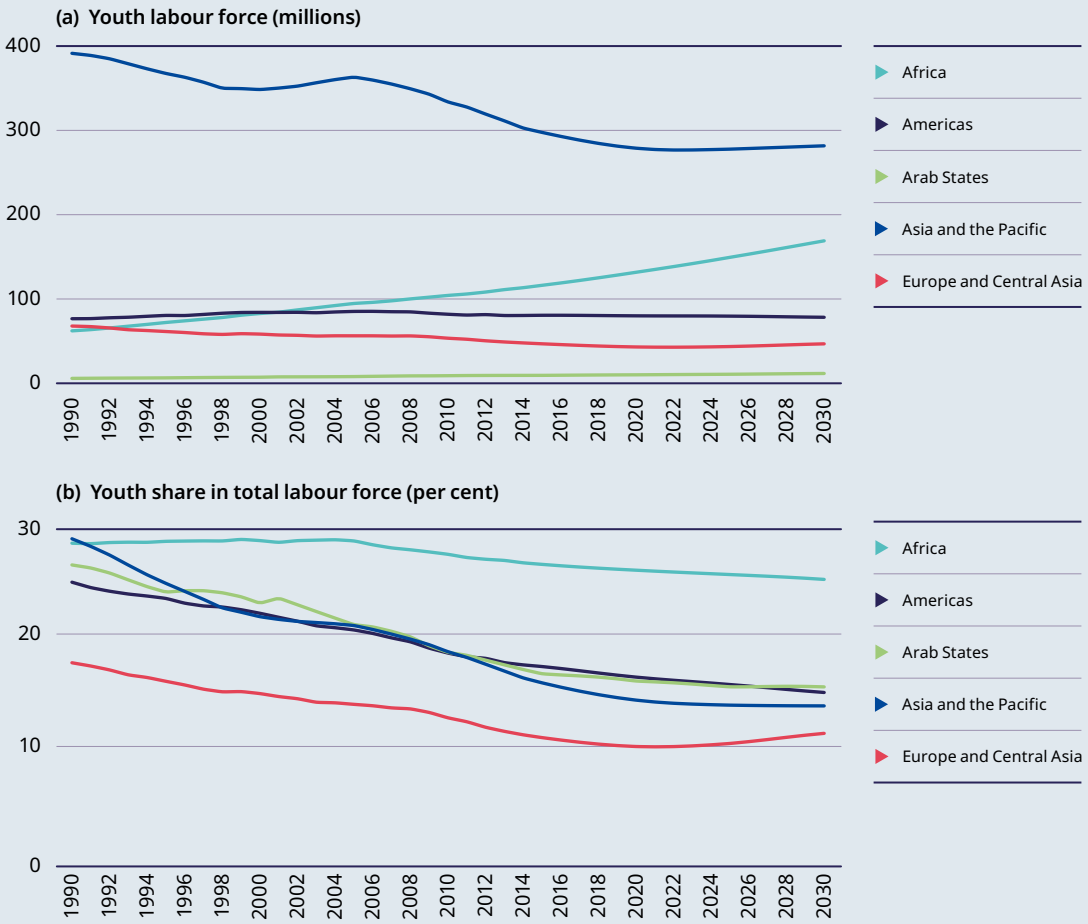
The Youth Guarantee is aimed at systematically reaching young people who are not looking for a job and who are not in education or training (inactive NEETs). Previous interventions usually targeted only people explicitly seeking work, that is the young unemployed.[986]

A wide variety of measures and initiatives have been included in the Young Guarantee: education and training for employment programmes; remedial education measures for school drop-outs; labour market intermediation services; and ALMPs targeted at labour demand, such as direct employment creation, hiring subsidies and start-up incentives.[987] Several achievements of the Youth Guarantee can be highlighted, including the development of specific measures targeting young people in situations of vulnerability and the initiatives undertaken by European Union Member States to modernize national public employment services and improve their efficiency.[988]

[985] ibid p. 78.
[986] ibid.
[987] V. Escudero and E. López Mourelo: *The European Youth Guarantee: A systematic review of its implementation across countries*, Research Department, Working Paper No. 21, ILO, Geneva, 2017, p. 15.
[988] ibid., p. 22.

Figure 6.1

Youth labour force trends and projections, by region, 1990–2030[13]



Source: ILO, Global Employment Trends for Youth, 2017, p. 24.

Ghana – The National Employment Policy provides a framework for accelerated decent job creation through sustainable growth in all sectors of the economy, and gives strategic direction to reduce unemployment among specific groups, including youth.

793. Specific policies and public employment programmes focusing on youth employment have been implemented in other countries based on employment-intensive strategies to facilitate direct job creation and improve the employability and employment prospects of beneficiaries, raise income levels, increase the quality of life and improve the functioning of the labour market.[990] These programmes may include a very broad range of measures.

794. Many countries have implemented tailored youth employment services to support young people in accessing the labour market by providing job search and career guidance and employment coaching.

[989] ILO: *Global employment trends for youth 2017*: *Paths to a better working future*, Geneva, 2017, p. 24.
[990] M. Lieuw-Kie-Song, S. Puerto and M. Tsukamoto: *Boosting youth employment through public works*, Employment Policy Department, Working Paper No. 203, ILO, Geneva, 2016, p. 1.

Bulgaria – Youth mediators intervene between unemployed young people who are not in the process of acquiring a degree or undergoing training, and employers, labour offices and training institutions.

Mali – The Youth Promotion Agency (APJE) was created in 2003 with the objective of facilitating the access of young women and men in rural and urban areas to the labour market and to credit. The APJE intervention strategy is based on partnership between the Government, the private sector and beneficiaries.

795. Wage subsidies have been introduced in some countries as a means to increasing job creation.[991]

Republic of Korea – Under the Plan for Youth Jobs, a youth employment subsidy of up to 9 million won (approximately US$7,500) a year for three years is provided to small and medium-sized enterprises (SMEs) or middle-standing enterprises (larger than a SME and smaller than a large business) that hire young persons.

796. Training is paramount to ensure that young workers can access the labour market, particularly to their first jobs. With a view to ensuring that training programmes are optimally tailored to the needs of trainees and the labour market, it is important for the public authorities, the private sector and the social partners to be involved in their planning and implementation stages.[992]

India – The National Apprenticeship Promotion Scheme (NAPS) was launched in 2016 to provide incentives for employers to engage apprentices. A subsidy is provided to the employer of 25 per cent of the prescribed stipend, up to a maximum of INR1,500 a month per apprentice, and up to INR7,500 for three months/500 hours towards the cost of training with basic training providers.[993]

(b) Older workers

797. The share of "seniors" (persons aged 65 and above) and "older persons" (aged 55 and above) in both the working-age population and the labour force has increased in recent decades, and is projected to continue rising even more rapidly. Older workers are, at least in principle, less likely to be unemployed than young workers. But if they become unemployed, it takes them longer on average to return to work. Their participation in both formal education and on-the-job training is considerably lower than that of younger workers, mainly because employers are more reluctant to incur training costs for workers who are expected to remain in their firms for a shorter period of time.[994]

[991] For example, *Croatia, Cyprus* and *Georgia*.
[992] See the ILO standards on training, and particularly: the Human Resources Development Convention, 1975 (No. 142), and the Human Resources Development Recommendation, 2004 (No. 195). See also P. Comyn and L. Brewer: *Does work-based learning facilitate transitions to decent work?*, Employment Policy Department, Working Paper No. 242, ILO, Geneva, 2018.
[993] See ILO: "Quality apprenticeships: Addressing skills mismatch and youth unemployment", Skills for Employment, Policy Brief, ILO, Geneva, 2019, p. 1.
[994] ILO: "Europe's ageing population comes with a silver lining", Opinion, ILO Brussels Office, Oct. 2018.

798. The Committee notes that incentives are being enhanced in many countries to encourage work at an older age,[995] based on such measures as lifelong learning policies and the implementation of targeted efforts to promote the participation of older workers in training and skills-updating schemes to help them adapt to emerging skills requirements.[996]

Sweden – A major education initiative for lifelong learning and higher employment *(Kunskapslyftet),* launched in 2015, involves a considerable increase in the number of state-funded places in municipal adult education courses at the upper secondary level, higher vocational education, folk high schools and universities and university colleges.

799. In some countries, with a view to keeping people in the workforce longer, the retirement age is being raised (reversing early retirement policies) and work options and pensions are being made more flexible, for example by increasing opportunities for part-time or temporary work, and offering partial retirement options.[997]

CEACR – In comments concerning *Japan,* the Committee noted that the age of eligibility for the fixed component of state pensions is being raised in stages to guarantee employment for everyone who wants to work up to 65 years of age. In accordance with the Act on Stabilization of Employment of Elderly Persons (Act No. 68 of 25 May 1971), enterprises with 30 or more workers are required to adopt employment security measures for older workers until the age of 65 years (if the workers so wish).[998]

800. Financial and hiring subsidies are also available in certain countries to encourage employers to hire older workers.

Malta – Under the Mature Workers Scheme, employers hiring persons aged between 45 and 65, and who have been registered as unemployed for six months, will have their income tax deducted pro rata. Employers will receive up to a maximum of €11,600 in tax deductions on the chargeable income for the first two years of employment for each eligible employee. Moreover, employers who engage eligible employees may benefit from a further tax deduction of 50 per cent of the cost of training, up to a maximum of €400 per employee.[999]

801. National initiatives are also being implemented to promote a change of attitudes in society concerning the value of older workers.

Norway – The social partners participate actively in the activities of the Centre for Senior Policy to raise awareness of the value of older workers, identify what is needed to motivate workers to remain at work longer and promote age diversity at work.

[995] For example, *Burkina Faso*.
[996] For example, *Brazil* (Act No. 10741 of 2003 on the status of older persons, which includes a specific chapter on vocational training), *Estonia* and *France* (including "senior" contracts, among other measures).
[997] For example, *Cuba* (Act No. 105 of 2008 on social security and its regulations, Decree No. 283 of 2009).
[998] CEACR – *Japan,* C.122, direct request, 2017.
[999] Similarly, *Republic of Korea* (for workers aged between 50 and 60).

(c) Workers living with AIDS or affected by HIV or AIDS

802. The HIV epidemic remains one of the most significant health and human rights challenges facing the world today. Persons living with HIV encounter discrimination and stigma in all aspects of their daily lives, including refusal of employment, denial of health and social services, insults and physical abuse.[1000] Discriminatory attitudes in relation to HIV and AIDS are grounded in stigma, which is fuelled by fear and misinformation about HIV and the manner in which it can be transmitted. Many employers still perceive HIV as a condition that makes people dangerously contagious or otherwise unfit for work, giving rise to fear and intolerance in the workplace.[1001] Recommendation No. 200 emphasizes the principle that there should be no discrimination against or stigmatization of workers, in particular jobseekers and job applicants, on the grounds of real or perceived HIV status, and calls on Members to ensure the effective and transparent implementation of measures against discrimination in the workplace (Paragraphs 3(c) and 12).

(d) Migrants[1002]

803. In 2017, there were an estimated 258 million international migrants worldwide, including approximately 19 million refugees. The majority of migrant workers, some 96 million, were men, while 68 million were women. International migrants aged 15 and above accounted for 234 million of the estimated total of 258 million. A further statistical breakdown shows that international migrant workers accounted for 59.2 per cent of all international migrants and 70.1 per cent of all working-age migrants (see figure 6.2 below).[1003]

804. Recommendation No. 169 calls on Members to adopt policies "to ensure that international migration takes place under conditions designed to promote full, productive and freely chosen employment" (Paragraph 39(b)).[1004] The earlier migrants are integrated into the labour market, the better their prospects of integration. However, a precondition is legal access to the labour market.

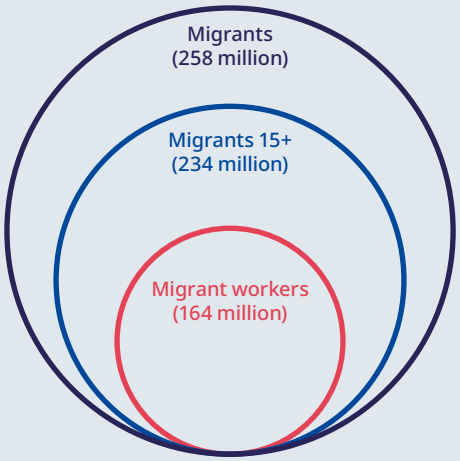
805. The Committee notes the indication by some governments that specific measures have been adopted in national employment policies to address the situation of migrant workers.[1005] The provision to migrant workers of adequate information on their rights, sometimes through induction courses, is considered in some countries to be an effective means of ensuring that they enjoy their rights.[1006]

> *Greece* – The project Innovative Response for Facilitating Young Refugees Social Support (2017–19), under the ERASMUS+ Strategic Partnership for Youth, focuses on early action for the integration of young refugees/asylum seekers (aged 16–24) through the strengthening of youth education and training policies, with the involvement of various stakeholders, including public bodies, the social partners and private training organizations.

[1000] United Nations: *The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS)*, Report of the Secretary-General, United Nations General Assembly, 20 Dec. 2010, A/HRC/16/69, para. 10.
[1001] ibid., paras 5 and 11.
[1002] See also ILO: *Promoting fair migration*, General Survey concerning the migrant workers instruments, Report III (Part 1B), ILC, 105th Session, Geneva, 2016.
[1003] ILO: *ILO global estimates on international migrant workers: Results and methodology*, 2nd ed., Geneva, 2018, p. 5.
[1004] The 2030 Agenda for Sustainable Development establishes a strong link between decent work and migration, especially in Sustainable Development Goals (SDGs) 8 and 10. In December 2018, the Global Compact for Safe, Orderly and Regular Migration was adopted. It offers the international community the opportunity to improve workplace conditions and provide decent work for migrant and national workers, and to change current misperceptions of migration by readjusting migration policies to include all aspects of the labour market.
[1005] For example, *Democratic Republic of the Congo*.
[1006] For example, *France* and *Republic of Korea*.

Figure 6.2

Global estimates of the stock of international migrants and migrant workers, 2017



Source: ILO: ILO global estimates on international migrant workers: Results and methodology, 2nd ed., Geneva, 2018, p. ix.

Lithuania – The Action Plan 2018–20 for the Integration of Foreigners into Society includes: on-the-job language training for asylum beneficiaries; training on how to start a business; information on workers' rights and possibilities for their protection; improvements to the Act on the recognition of regulated professional qualifications for the recognition of the vocational qualifications of foreign nationals; continuous monitoring of the labour market integration of foreign nationals; and assessment mechanisms.[1007]

806. The Committee notes that measures have also been adopted to ensure that the occupational skills of migrants match the demand for skills in the host country and to improve their language skills.[1008] In this regard, measures are reported in some countries for the formal recognition of the foreign qualifications of migrants and/or their skills.

Germany – The MYSKILLS project addresses the need to recognize non-formal skills. Computer-based tests in different occupations are offered by employment agencies and job centres to assess the competencies of refugees in those occupations. As well as in German, the tests are also available in English, Russian, Turkish, Farsi and Arabic.[1009]

807. The integration prospects of migrant workers are also affected by recruitment practices.[1010] The Committee recalls that, in accordance with Recommendation No. 169, countries "which habitually or repeatedly experience significant outflows of their nationals should take

[1007] Similar measures have been adopted, for example, in the *Netherlands* (Task Force for the Employment and Integration of Refugees – TWIV) and *Germany*.
[1008] OECD, ILO, World Bank and IMF: "Towards a framework for fair and effective integration of migrants into the labour market", 2016, p. 12.
[1009] Similarly, *Austria* (the Recognition and Assessment Act No. 55 was adopted in 2016 to cover the comparability of skills and educational qualifications acquired abroad).
[1010] OECD, ILO, World Bank and IMF: "Towards a framework for fair and effective integration of migrants into the labour market", 2016, op. cit., p. 7.

measures to prevent malpractices at the stage of recruitment or departure liable to result in illegal entry to, or stay or employment in, another country" (Paragraph 41). In this respect, some country reports refer to measures to improve intermediation in the migration process.[1011]

CEACR – In its comments on the *Dominican Republic*, the Committee noted that Article 25 of the Constitution provides that foreign nationals shall have the same rights and duties as nationals, with the exceptions and limitations established by the Constitution and the law. The Labour Code, in Principle IV, provides that the laws shall cover "without distinction Dominican and foreign nationals, with the exceptions admitted in international treaties". Moreover, section 26 of the General Migration Act, No. 285 of 15 August 2014, provides that foreign nationals with the authorization to work, in accordance with their entry category or subcategory, shall enjoy the protection of the relevant labour and social laws.[1012]

CEACR – In its comments on *Mauritius,* the Committee noted the Government's indication that all migrant workers enjoy the same terms and conditions of employment as those laid down for local workers under national legislation.[1013]

808. Recommendation No. 169 indicates that "both countries of employment and countries of origin, should, … conclude bilateral and multilateral agreements covering issues such as right of entry and stay, the protection of rights resulting from employment, the promotion of education and training opportunities for migrant workers, social security, and assistance to workers and members of their families wishing to return to their country of origin" (Paragraph 44).

On 12 February 2018, following discussions with the social partners, an agreement was signed on the regulation of labour migration between *Armenia* and *Bulgaria*. The agreement is intended to promote the effective regulation of labour migration between the two countries and the protection of the rights and interests of migrant workers.

809. Lastly, the Committee considers that measures to address negative public perceptions of migration (based on concerns relating the alleged negative economic impact of the presence of migrant workers and the willingness of migrants to integrate into the host society) are also important to ensure fair conditions for the participation of migrant workers in the labour market.

(e) Domestic workers

810. Women make up 83 per cent of all domestic workers, making it a highly feminized sector.[1014] Domestic work is therefore an important entry point for women into the labour market, and the improvement of working conditions in the sector therefore has broader ramifications for gender equality in society. Very low wages, excessively long hours, the absence of a weekly rest day, the risk of physical, mental and sexual abuse, and restrictions on freedom of movement that sometimes amount to slavery, are some of the problems that frequently characterize the working conditions of domestic workers worldwide. These can partly be attributed to gaps in national labour and employment legislation, and often reflect discrimination based on sex, race and caste.[1015]

[1011] For example, *Mali*.
[1012] CEACR – *Dominican Republic*, C.189, direct request, 2018.
[1013] CEACR – *Mauritius*, C.189, direct request, 2015.
[1014] ILO: *Domestic workers across the world: Global and regional statistics and the extent of legal protection*, Geneva, 2013, p. 19.
[1015] ibid., p. 95.

811. The Committee emphasizes that governments should take measures aimed at ensuring the effective promotion and protection of the fundamental rights of all domestic workers with a view to the achievement of their right to decent working and living conditions. The present General Survey does not address the issue of domestic workers in detail, as it will be the subject of the next General Survey on decent work for care economy workers in a changing economy, in accordance with the decision of the Governing Body in 2018.[1016]

(f) Workers in rural areas and subsistence farmers

812. Over half of the population in developing countries continue to live and work in rural areas, with agriculture as their most important source of income. The great majority of work in rural areas takes place in the informal economy, further increasing the vulnerability of the workers. People living in rural areas are almost twice as likely to be in informal employment (80 per cent) as those in urban areas (43.7 per cent).[1017] Sixty per cent of workers in informal employment live in rural areas, while the majority of those in formal employment are in urban areas (78.9 per cent). Workers in agriculture account for over half (51.8 per cent) of rural informal employment, compared with 13.1 per cent of informal urban employment, which is mainly concentrated in services (63.6 per cent). Irrespective of area of residence, in global terms the agricultural sector has the highest level of informality (93.6 per cent), compared with 57.2 per cent in industry and 47.2 per cent in services. Women represent a large share of the agricultural workforce, and their empowerment is crucial to improving rural livelihoods.

Colombia – In the context of the implementation of the Final Agreement for the Ending of Conflict and the Construction of a Stable and Lasting Peace, the Ministry of Labour is competent in relation to Part 1 on comprehensive rural reform, and more specifically under 1.3.3.5 on the formalization of rural work and social protection, and particularly the promotion of women's integration into non-traditional types of production, for which short, medium and long-term measures are planned.

813. In their reports, some governments refer to increases in budget allocations to foster the transition to formality and the improvement of employment conditions in the agriculture sector.[1018] Others refer to the establishment of specific institutions at the national level to assist rural workers.[1019]

Bulgaria – According to data from the National Statistical Institute, there was a significant increase in employees in agriculture during the first six months of 2016 when one-day contracts were introduced, in comparison with the first half of 2015, when one-day contracts had not yet been introduced. In April 2016, for the first time since 2004, the number of employees in agriculture exceeded 80,000.

814. The Committee notes that, in collaboration with the ILO, governments have implemented plans of action designed to promote decent jobs in plantations. The plans of action have been developed by national tripartite constituents on the basis of surveys and diagnostic reports. These processes have been conducted or are ongoing in *Bangladesh, Dominican Republic, Ghana, Indonesia, Malawi* and *Sri Lanka*.[1020]

[1016] ILO: "Minutes: Legal Issues and International Labour Standards Section", Governing Body, 334th Session, Geneva, October–November 2018, GB.334/LILS/PV, para. 69.
[1017] ILO: *Women and men in the informal economy: A statistical picture*, 3rd ed., Geneva. 2018.
[1018] For example, *Italy*.
[1019] For example, *Philippines* (Executive Order No. 366 created the Bureau of Workers with Special Concerns).
[1020] See ILO: *Decent work on plantations: Decent work in the rural economy*, Geneva.

Indonesia – A project to promote sustainable rural livelihoods through decent working conditions and opportunities for workers in Indonesian oil palm plantations has the objective of increasing the capacities of national, provincial and local governments, and workers' and employers' organizations to address employment and labour-related challenges in the oil palm plantations sector.[1021]

Malawi – A project is being carried out to promote sustainable rural livelihoods and decent work through improved employment opportunities and working conditions in the tea sector, the provision of capacity-building to tripartite constituents and targeted action to address decent work deficits in tea estates.[1022]

(g) Indigenous and tribal peoples

815. Indigenous and tribal peoples continue to be among the poorest population categories. Although they constitute a little under 5 per cent of the world's population, they account for 15 per cent of the world's poor.[1023] Indigenous women, who often face discrimination from both within and outside their community, are particularly vulnerable to socio-economic exclusion. The persistence of discrimination and socio-economic exclusion, combined with the negative impact of climate change, disregard for their rights, low skills and training, weak market linkages and poor access to social protection,[1024] financial services and opportunities in the formal economy have played an important role in their continued marginalization.

816. As a result of a failure to recognize traditional skills, poor market opportunities, lack of access to credit and social protection, land insecurity and reduced access to natural resources, as well as weak infrastructural connectivity and access to public services, indigenous and tribal peoples are often in a situation in which they are unable to benefit adequately from emerging economic opportunities in the formal economy in rural areas. In this context, the Committee notes that Governments are taking measures to adapt existing programmes to the needs of indigenous communities.

Plurinational State of Bolivia – Emphasis has been placed on improving the working conditions of indigenous women in the construction sector. Some 250 women working in the construction industry have benefited from training and awareness-raising in technical areas, as well as in occupational safety and health. Most of them are indigenous women, who have had very little access to formal education or vocational training.[1025]

[1021] See ILO: *Promoting decent work on oil palm plantations in Indonesia*, 2017–19 (Project IDN/16/02/NLD).
[1022] See ILO: *Promoting decent work in tea plantations in Malawi's Thyolo District*, 2018–20 (Project MWI/17/50/FLA. Similar projects are being carried out in *Colombia, Egypt, Lao People's Democratic Republic, Sri Lanka, United Republic of Tanzania, Viet Nam* and *Zambia*. See also: *Local empowerment through economic development (LEED)*; *Egypt Youth Employment (EYE): Jobs and Private Sector Development in Rural Egypt*; *National Rural Employment Strategy in Lao PDR towards increasing opportunities for decent and productive employment in rural areas*; and *Direct hiring opens up new horizons in Colombia's palm oil sector*.
[1023] World Bank: *Implementation of Operational Directive 4.20 on Indigenous Peoples: An independent desk review*, Operations Evaluation Department, Washington DC, 2003.
[1024] See ILO: "Social protection for indigenous peoples", Social Protection for All Issue Brief, Apr. 2018.
[1025] See, "Women are building their own futures in Bolivia".

II. Ensuring adequate protection for all

817. First and foremost, the Committee recalls that fundamental principles and rights at work are applicable to all workers regardless of their employment status. At the same time, the achievement of equality of opportunity and treatment requires not only the prevention of discrimination on various grounds including, where appropriate, occupational status, but also ensuring that the diverse variations of the employment relationship, different from the standard one, as well as other contractual arrangements with lower levels of protection are not used to reduce labour costs by offering worse terms and conditions of work.[1026]

818. Essential aspects of equality of treatment in employment include "terms and conditions of employment"[1027] covering a broad range of areas, such as remuneration, working time, occupational safety and health and social security.

1. Fundamental principles and rights at work

819. The Committee recalls that the ILO Declaration on Fundamental Principles and Rights at Work, 1998, sets out the commitment of all member States to respect, promote and realize four categories of rights, even if they have not ratified the Conventions in question. These rights are freedom of association and collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation. The Committee further recalls that, under the terms of the Declaration, these rights, which are already enshrined in basic human rights instruments, are universal and applicable to all workers, irrespective of the level of economic development.[1028]

820. The report prepared for the 2012 recurrent discussion under the ILO Declaration on Social Justice for a Fair Globalization, 2008, emphasized that the growth of both unprotected work and the informal economy have affected the employment relationship and the protections it can offer, and have had an impact on the application of fundamental principles and rights at work, the enjoyment of which remains limited to a minority of workers in many instances. The report adds that "the increase in non-standard forms of employment, the weight of the informal economy, the persistent exclusion of certain categories of workers, and the exposure of export-led sectors to high levels of competition all highlight important challenges in the full application of these rights to all individuals which require innovative responses". Another crucial aspect common to the four categories of fundamental principles and rights at work is their effective enforcement.[1029]

(a) Workers in all types of employment relationship and other work contractual arrangements

821. Part-time workers, fixed-term workers and workers in multiple-party employment relationships, as well as those in new and emerging contractual arrangements, are entitled to the same protection as comparable full-time workers with open-ended employment contracts in respect of the right to organize, bargain collectively and act as workers' representatives, occupational safety and health, protection against discrimination in employment and occupation, and protection against forced and child labour.

[1026] ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, Geneva, 2016, p. 251.

[1027] Convention No. 111 refers to "terms and conditions of employment" Art. 1(3), and the reference is further elaborated in the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), in Paragraph 2(b)(iii)–(vi). See in this respect ILO: *Equality in employment and occupation,* General Survey of the Reports on the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1998, ILC, Report III (Part 4B), 75th Session, Geneva, 1988; and *Equality in employment and occupation,* Special Survey on Equality in Employment and Occupation in respect of Convention No. 111, Report III (Part 4B), ILC, 83rd Session, 1996.

[1028] The Committee examined the implementation of the fundamental Conventions in its General Survey of 2012.

[1029] ILO: *Fundamental principles and rights at work: From commitment to action*, Report VI, ILC, 101st Session, Geneva, 2012, para. 86.

822. The Committee has already noted that one of the main concerns raised by trade unions is the negative impact on trade union rights and labour protection of precarious forms of employment, and particularly: short-term temporary contracts that are systematically renewed; subcontracting (even by certain governments in their own public services to fulfil statutory permanent functions); and the non-renewal of contracts for anti-union reasons. Under some types of working arrangements, workers are often deprived of access to freedom of association and collective bargaining rights, particularly when they hide a real and permanent employment relationship. Some forms of precariousness can dissuade workers from joining a trade union. ***The Committee wishes to highlight once again the importance of examining in all member States, within a tripartite framework, the impact of these forms of employment on the exercise of trade union rights.***[1030]

CEACR – In its comments concerning the *Philippines*, the Committee has emphasized that all workers (other than the armed forces and the police, as determined by national law), including temporary or outsourced workers and workers without an employment contract, without distinction or discrimination of any kind, enjoy the right to establish and join organizations to defend their occupational interests.[1031]

823. The Committee has also emphasized that, in practice, although they may in principle have the right to bargain collectively, workers covered by arrangements other than the standard employment relationship may find it very difficult to exercise this right effectively.

CEACR – In its comments concerning *South Africa*, the Committee observed that section 21 of the Labour Relations Act, as amended by the Labour Relations Amendment Act adopted in August 2014, provides that, in case of a dispute about a trade union's level of representativeness, the decision taken by the commissioner must, in addition to the factors already provided for in the law, also consider the extent to which there are workers engaged in non-standard forms of employment in the corresponding bargaining unit (temporary employment services (labour broker) employees, employees with fixed-term contracts, part-time employees, or employees in other categories of non-standard employment).[1032]

824. This clearly depends on the type of contractual arrangement. For instance, temporary or agency workers have looser attachments to the enterprise and with other workers in the enterprise, even though they may share similar concerns on some issues, and conflicting concerns on others. They may fear retaliation, or may not even know their rights.[1033] Workers in multiple-party contractual arrangements may find it difficult to determine the employer with which they should negotiate. With respect in particular to subcontracting, the Committee has requested a government to ensure that the guarantees afforded under Convention No. 87 fully apply to all workers, including those who are formally working as subcontract workers or contract labourers[1034] The Committee of Experts has also highlighted the extremely weak situation of casual workers, who often do not join trade unions out of fear that their fixed-term contracts of employment will not be renewed.[1035]

[1030] General Survey of 2012, para. 935.
[1031] CEACR – *Philippines*, C.87, observation, 2016. See also CEACR – *Peru*, C.98, observation, 2018.
[1032] CEACR – *South Africa*, C.98, direct request, 2018.
[1033] ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, 2016, op. cit., p. 212.
[1034] CEACR – *Japan*, C.87, observation, 2017.
[1035] See for example, CEACR – *Belarus*, C.98, observation, 2016, and *South Africa*, C.98, direct request, 2018.

825. In the previous chapters of this Survey, the Committee has addressed various aspects of supply chains and their links with other contractual arrangements, homework and the informal economy. The Committee notes that the issue of the application of human rights and fundamental principles and rights at work also arises in relation to supply chains. In addition to issues relating to the effective exercise of freedom of association and the right to collective bargaining, the Committee notes that globalization and growing integration across countries and firms have led to the emergence of forced labour and trafficking in persons as significant issues in global supply chains.[1036] The ILC Conclusions concerning decent work in global supply chains, adopted in 2016, recall that the "presence of child labour and forced labour in some global supply chains is acute in the lower segments of the chain". ***The Committee considers that further research, including statistics, is needed to evaluate the incidence of informality, the lack of clarity with respect to the employment relationship and other or new work arrangements in all segments of supply chains, on the increase in child labour and forced labour. Further information is also needed on the rate of unionization of workers in global supply chains, and the incidence of collective bargaining. Statistical information would also help to determine developments in the situation.***

(b) Workers in the informal economy

826. Recommendation No. 204 indicates in Paragraph 7 that the coherent and integrated strategies designed to facilitate the transition to formality should take into account the effective promotion and protection of the human rights of all those operating in the informal economy and the fulfilment of decent work for all through respect for fundamental principles and rights at work in law and practice (Paragraph 7(e) and (f)). Workers in the informal economy should enjoy freedom of association and the right to collective bargaining, including the right to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing. This requires the existence of an enabling environment. The Recommendation also calls on employers' and workers' organizations to extend membership and services to workers and economic units in the informal economy (Paragraphs 31–35).

827. The Committee has noted the indications by some governments that the informalization of the economy, together with job shortages, are among the causes of the rise in the number of victims of trafficking for slavery, servitude or forced labour. The situation is also affecting children.[1037]

> CEACR – In its comments concerning *Kazakhstan*, the Committee noted the ITUC's observations that statistics from the Ministry of Internal Affairs show that between 100,000 and 150,000 Kyrgyz citizens were registered in the country at the end of 2017. Since the beginning of 2017, Kyrgyz migrants have been falling prey to deceptive or informal recruitment practices, including misrepresentation of the place and nature of the work to be performed, the amount of wages and the legal status of employees. In most cases, employers retain migrants' identity documents and do not formalize the working relationship by signing an employment contract.[1038]

828. The Committee notes that some governments explicitly indicate in their reports that there is no specific provision for the protection of human rights and fundamental principles and rights at work for workers in the informal economy.[1039] Others consider that the most effective approach is through the transition to the formal economy,[1040] facilitated by social security and apprenticeships, particularly for young workers, and the adoption of specific measures to penalize businesses that abuse workers.[1041]

[1036] ILO: *Combating forced labour: A handbook for employers and business*, Geneva, 2015, p. 1.
[1037] See, for example, CEACR – *Albania*, C.29, direct request 2018; and *India*, C.29, observation, 2015.
[1038] CEACR – *Kazakhstan,* C.29, observation, 2018.
[1039] For example, *Poland*, *Seychelles* and *Slovakia*.
[1040] For example, *Cambodia* and *Zimbabwe.*
[1041] For example, *United Kingdom.*

829. Some governments refer to existing national legislation that provides protection against human rights violations, but do not indicate whether these provisions are applicable to workers in the informal economy.[1042] Others indicate that the existing legislation is applicable to all workers, including workers in the informal economy.[1043] Some indicate that workers in the informal economy are covered by the national employment policy.[1044] Still others indicate that the national strategy for the transition to formality is based in the provisions of Recommendation No. 204.[1045] Some report that they are in the process of revising the legislation or adopting a national policy for the protection of human rights which will also cover workers in the informal economy,[1046] as well as a national policy on the transition to formality that will also address workers' rights and fundamental principles and rights at work.[1047] Some governments provide information on the measures taken to prevent and combat human trafficking,[1048] and to prevent discrimination against women in the informal economy.[1049]

2. Labour protection

830. As noted during the preparatory work for Recommendation No. 204, in some countries, the scope of application of labour legislation is very broad and, at least in theory, it therefore applies to all workers, including those in the informal economy. In other cases, national labour legislation entirely excludes workers in the informal economy, or is applicable only to formal employment relationships.[1050] In some cases, specific legislation has been adopted to protect certain categories of workers, such as domestic workers,[1051] homeworkers and self-employed workers.[1052] However, even when the informal economy, or some informal economy workers, are covered by the national labour legislation, its application may be impeded by a general lack of monitoring or enforcement capacity.

In its observations, the ITUC considers that there remain numerous issues that are either not addressed at all by ILO standards, or are only partially addressed, including the regulation of temporary employment, triangular employment relationships (not involving agencies), on-demand work, collective bargaining with user companies and equality of treatment. The ITUC recalls that Recommendation No. 198 is not binding and there is limited awareness of its content and application in practice, also due to the fact that it is not subject to supervision by the ILO supervisory bodies. There is accordingly a clear need for new standards to address the decent work gaps identified above and to provide support to governments and the social partners to ensure adequate protection for all workers, irrespective of their contractual arrangement or employment status.

[1042] For example, *Chile, Croatia, Oman* and *Senegal.*
[1043] For example, *Armenia, Dominican Republic, Estonia, Mauritius, New Zealand* and *Sri Lanka.*
[1044] For example, *Burkina Faso.*
[1045] For example, *Costa Rica.*
[1046] For example, *Cabo Verde, China* and *Benin.*
[1047] For example, *Cabo Verde.*
[1048] For example, *Canada* (human trafficking hotline and increased budget); *Palau* (Anti-Human Trafficking Office); and *Switzerland* (Swiss Coordination Unit against the Trafficking in Persons and Smuggling of Migrants – SCOTT).
[1049] For example, *Philippines* (Magna Carta of Women, Republic Act No. 9179, section 4).
[1050] ILO: *Transitioning from the informal to the formal economy*, Report V(1), 2014, op. cit., paras 89 and 90.
[1051] For example, *Argentina* (Act No. 26844 of 2013 establishing the special regime for labour contracts for domestic workers), *Burkina Faso* (Decree No. 807/PRES/PM/MTSS of 2010 determining the working conditions of domestic workers), *Plurinational State of Bolivia* (Act No. 2450 of 2003 regulating domestic workers), *Brazil* (Constitutional Amendment No. 72 of 2013 establishing equality of labour rights between domestic workers and other urban and rural workers), *Nicaragua* (Act No. 666 of 2008 amending the Labour Code in respect of domestic work) and *Switzerland* (Order of 2010 issuing the model employment contract for domestic workers).
[1052] For example, *Spain* (Act No. 20/2007 on the status of self-employed workers).

831. The purpose of this section is to examine ways in which adequate working conditions can be ensured for all workers so that they enjoy the labour protection to which they are due, thereby contributing to equality of opportunity and treatment and fostering inclusion. This would in turn reduce the incentive to make inappropriate use of less protective working arrangements and ensure a level playing field for workers and enterprises. The present examination focuses in this regard on the measures taken at the national and regional levels to ensure equality of treatment with respect to remuneration, working time, occupational safety and health, and social security.

832. The Committee wishes to emphasize that, in some instances, what is required, rather than strict equality, is the establishment of certain limitations on the use of some types of contractual arrangements that have been abused or that constitute incentives to disguised employment relationships, as outlined in Recommendation No. 198 (Paragraph 4(b)).

833. The Committee recalls that greater security and predictability in the employment relationship is crucial for improved labour and social protection. Workers should have a clear idea of whether they are employees or self-employed so that they can determine clearly which part of their labour and social protection is their responsibility and which is the employer's. Ensuring the correct classification, and preventing misclassification, are key to affording adequate access to labour and social protection, as well as collective bargaining and lifelong learning. The Committee observes that in many countries rights, benefits and protection have been gradually extended to previously unprotected workers.[1053]

Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union

The objective of the Directive is to improve working conditions.

The Directive lays down minimum rights that apply to every worker in the European Union who has an employment contract or employment relationship as defined by law, collective agreements, practice in force, with consideration to the case law of the European Court of Justice.[1054]

The employer shall provide each worker in writing, within the first week of work, with the following information: the identities of the parties to the employment relationship, the place of work, a specification of the work, the starting date, duration (for temporary contracts), paid leave, notice periods, the amount and components of remuneration, the length of the working day or week, any applicable collective agreements, the probationary period (if any), the training entitlement provided by the employer, the arrangements and remuneration for overtime, the identity of the user (in the case of temporary agency workers) and the identity of the social security institutions.

If the work pattern is entirely or mostly unpredictable, the employer shall inform the worker of: (i) the principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours; (ii) the reference hours and days within which the worker may be required to work; (iii) the minimum notice period to which the worker is entitled before the start of a work assignment and, where applicable, the deadline for cancellation.

The maximum duration of any probationary period shall not exceed six months (with some possible exceptions), or a proportionate period in the case of fixed-term employment relationships.

[1053] OECD: *Policy responses to new forms of work*, Paris, 2019, p. 27.
[1054] The Directive allows the exclusion from its application of civil servants, public emergency services, the armed forces, police authorities, judges, prosecutors, investigators or other law enforcement services.

834. As recalled earlier, Recommendation No. 204, in Paragraph 9, calls on Members to adopt, review and enforce national laws and regulations or other measures to ensure appropriate coverage and protection of all categories of workers and economic units. The purpose of the review is to assess, among other issues, whether the existing legislation is adequate, whether there are new categories of workers who lack protection and are consequently in the informal economy, and any shortcomings in implementation or enforcement. ***The Committee considers in this regard that digital platform work, in all its diverse forms, merits in-depth reflection on the manner in which adequate labour protection can be ensured for the workers concerned.***

(a) Dependent self-employed workers

835. With respect to certain intermediate legal categories between employment status and self-employment that exist in some jurisdictions, the Committee considers that, while the national legislation in the countries concerned categorizes these workers as falling within the realm of self-employment, it also recognizes the need to acknowledge the existence of dependency and, in this specific case, economic dependency. The Committee observes in this respect that not all employment relationships are equal; the employment relationship is versatile and responds over time to all types of work, and adapts to new forms of work. Moreover, subordination and dependency may have different manifestations, which do not necessarily diminish or affect the reality of the employment relationship. This is particularly true in the current context of new technologies and flexible ways of working, in which direct management has evolved into more diluted forms of control. ***However, the Committee is of the view that all of these changes require increased vigilance as they increase the risk of misclassification, leading to a high level of "bogus" self-employment with the consequent risk of a lack of adequate labour and social protection (in respect of wages, working time and training, as well as healthcare, access to housing and maternity protection), unfair competition between enterprises and greater strain on public finances.***

836. The Committee recognizes that the development of intermediate legal categories between employment and self-employment may provide self-employed workers with some sort of labour protection. At the same time, the Committee notes that, in practice, they may also have a negative effect on the employment relationship and on workers' rights which would call for increased vigilance. Indeed, once such intermediate categories of work arrangements exist, which are less costly, there will be a higher interest in making use of them to the detriment of the employment relationship and the protections it entails, even if the form of the contract does not correspond to the real situation. ***The Committee considers that these intermediate categories between employment and self-employment may constitute an incentive for the emergence of disguised employment relationships, and as such may run counter to the purpose of Paragraph 4(b) of Recommendation No. 198. The Committee also considers that the impact of this classification on working conditions, public finances and taxes should be further studied. The Committee further considers that a review of the intermediate legal categories between employment and self-employment would be helpful to provide further clarification on the employment status (employed or self-employed) of workers, taking into account the primacy of the facts, and enabling reflection on measures for ensuring that workers enjoy the rights to which they are entitled, while retaining the adaptability of the labour market.***

(b) Workers in diverse forms of employment relationships or contractual arrangements

837. The present section concerns the employment status of workers in varying forms of employment relationships as well as those workers covered by other new and emerging contractual arrangements. Their employment relationship may be temporary, part-time or include multiple parties, as noted in chapter II. But, workers who are covered by other contractual arrangements, and even some of those in an employment relationship, often do not enjoy equal working conditions or labour and social protection, even though they are performing the same work as other workers in the enterprise.

838. With a view to promoting equality, measures that limit or prohibit recourse to these forms of working arrangements, as well as their possible conversion into standard employment relationships, are among the approaches adopted to improve working conditions.

> *Romania* – The Labour Code (section 92(1)) provides that temporary employees shall have access to all services and facilities granted by the user undertaking, under the same conditions as its other employees.

839. The Committee acknowledges that different situations may require differing forms of employment relationship with different levels of protection. However, the principle of substantive equality includes the requirement that, over time, or after a certain period of time, all workers have access to more permanent and stable employment relationships. The objective is for this diverse form of employment relationship or other contractual arrangements to act as stepping stones to open-ended contracts, for example for young workers, instead of entrapping them in successive low-paid temporary contracts. The Committee will only examine those working conditions that present most challenges in the respective form of the employment relationship.

> Principle No. 5 of the European Pillar of Social Rights (Gothenburg, 17 November 2017) provides that, regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training, and that the transition towards open-ended forms of employment shall be fostered. In accordance with legislation and collective agreements, the necessary flexibility for employers to adapt swiftly to changes in the economic context shall be ensured. Innovative forms of work that ensure quality working conditions shall be fostered. Entrepreneurship and self-employment shall be encouraged and occupational mobility facilitated. Employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contracts. Any probationary period shall be of reasonable duration.

(i) Fixed-term contracts

840. The legislation in many countries limits fixed-term work to specific tasks of a temporary nature.[1055] The law sometimes specifies the reasons for which fixed-term contracts may be concluded.[1056]

[1055] For example, *Oman* (Labour Code, section 1(9)).
[1056] Similarly, *Belgium* (Act of 24 July 1987, section 1, under which the causes are: the temporary replacement of a permanent worker; an exceptional increase in work; the performance of exceptional work; and certain occasional artistic services) and *Sweden* (Employment Protection Act, 1982, section 5).

Algeria – Act No. 90-11, section 12, provides that the employment contract may be concluded for a fixed period, full time or part time, in the cases explicitly provided for below:

- when the worker is recruited for the performance of a contract related to non-renewable work or service contracts;
- when replacing the incumbent of a position who is temporarily absent and for whom the employer is required to retain the position;
- when the employing organization is required to carry out periodic work of a discontinuous nature;
- when additional work is required, or when justified by seasonal reasons;
- in the case of activities or jobs of limited duration or which are by nature temporary.

In all these cases, the employment contract must specify the duration of the employment relationship, and the reasons for its fixed duration.

841. In some cases, the employer has to justify the renewal of a fixed-term contract.[1057] National law sometimes sets limits on the duration of fixed-term contracts, or limits the number of successive renewals.[1058] These limits may also be applicable in the case of casual work. In some cases, the law establishes a total time-limit for the duration of successive contracts.[1059] After a certain number of successive fixed-term contracts, or if the limits are not respected, the contract is considered to become permanent.[1060] The same applies in the case of tacit renewal.[1061] National law sometimes provides that the maximum number of workers with temporary contracts shall be determined by collective agreement. In some countries, limits on the successive use of fixed-term contracts have been imposed by the judicial authorities.[1062]

Lithuania – The Labour Code of 2017 introduces certain changes to the regulations on fixed-term contracts, including:[1063]

- the possibility of using fixed-term contracts for work of a permanent nature (on condition that they do not account for over 20 per cent of all contracts concluded by the enterprise);
- the doubling of the rate of unemployment insurance contributions for fixed-term contracts in comparison with open-ended contracts;
- a decrease in the maximum overall duration of successive fixed-term contracts from five to two years (with some exceptions);
- the requirement of a minimum notice period for work relationships of over a year, and the provision of severance pay for work relationships of over two years.

[1057] For example, *Croatia* (Labour Act, section 1) and *Italy* (Legislative Decree No. 87 of 2018, known as the *Decreto Dignità*).
[1058] For example, *Argentina* (Act No. 20744 on labour contracts, section 93, provides that fixed-term contracts may be concluded and are renewable for up to five years. With the exception of contracts for less than a month, notification has to be provided when the contract is coming to an end and failure to provide such notification results in the contract becoming permanent) and *Croatia* (the Labour Act, section 12, establishes a limit, in principle, of three consecutive years).
[1059] For example, *Italy* (under the terms of the *Decreto Dignitá,* the total period that can be covered by a fixed-term contract has been reduced from 36 to 24 months, and the contract is renewable up to four times).
[1060] For example, *Algeria* (Act No. 90-11, section 14), *Chile* (Labour Code, section 183T), *China* (Labour Standards Act, section 9) and *Turkey* (Act No. 4857, section 11).
[1061] For example, *Switzerland* (Federal law supplementing the Swiss Civil Code, section 334).
[1062] For example, *Switzerland* (the Swiss Federal Supreme Court and the Swiss Federal Administrative Court have made successive renewals of fixed-term contracts more difficult (decisions of 2017 and 2016, respectively)).
[1063] See OECD: *Policy responses to new forms of work*, 2019, op. cit., pp. 36 et seq. on the examples provided.

842. In some cases, national legislation establishes financial disincentives for fixed-term contracts. In some countries, higher social contribution rates apply for fixed-term contracts, with the intention of making them more costly for employers in relation to open-ended contracts.[1064] Measures have been taken in some countries to encourage employers to hire workers under open-ended contracts by enhancing the flexibility of those contracts or offering financial incentives.[1065] However, the Committee notes that, in some cases, this flexibility involves a lowering of barriers to dismissal, the extension of probationary periods for new employees on open-ended contracts, a reduction in entitlement to paid sick leave and/or exemption from social security contributions.[1066] There are also some jurisdictions in which the requirements for fixed-term contracts have been loosened.[1067]

Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work

Principle of non-discrimination: "In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds."

Measures to prevent abuse: European Union Member States shall introduce (after consultation with the social partners) one or more of the following measures in their national laws to prevent the misuse of successive fixed-term contracts: (a) objective reasons justifying the renewal of fixed-term contracts; (b) the maximum total duration of successive fixed-term contracts; and (c) the number of renewals of fixed-term contracts. In addition, they have to determine (after consultation with the social partners) under what conditions fixed-term contracts: (a) shall be regarded as "successive"; and (b) shall be deemed to be contracts or relationships of indefinite duration.

843. The Committee notes that several types of measures are taken at the national level to try to level the playing field. For instance, in some cases, the legislation envisages the possibility of contract breaks not being taken into account when establishing continuity of service so that temporary, and more particularly, casual workers, can qualify for protection. Another possibility is for fixed-term or casual contracts to be converted into a standard employment relationship after a certain number of casual contracts.

844. Concerning remuneration in particular, the Committee notes that in some countries, law and practice require a qualifying period for entitlement to equality of treatment with respect to all or some of the elements of remuneration. Temporary workers (including casual workers) and part-time workers (including workers covered by on-call or zero hour contracts) often find it very difficult to attain the various thresholds required by the law in this respect, and therefore earn lower levels of remuneration. In other cases, the legislation provides for equality of remuneration for casual workers.[1068]

[1064] For example, *Italy* (the *Decreto Dignità* increases the additional contribution established for fixed-term contracts in 2012 by 0.5 per cent for each renewal) and *Spain* (an increase in social contributions from 36 to 40 per cent for contracts of under five days' duration was adopted in 2018). Similar measures have also been adopted in *France* and *Portugal*.

[1065] See OECD: *Policy responses to new forms of work*, 2019, op. cit., p. 38.

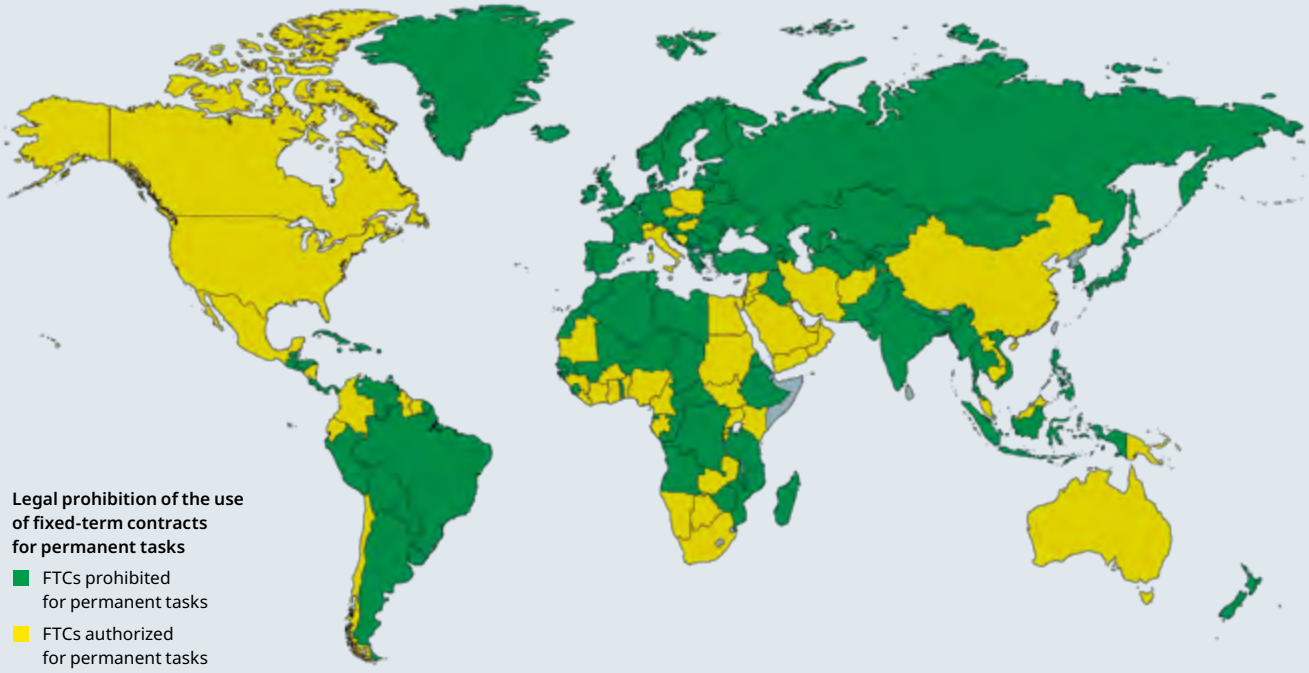
[1066] For example, *France, Italy* (although successive legislative modifications and the judicial authorities have limited this possibility) and *Netherlands*. Social security exemptions have been introduced in *Croatia, France, Italy, Netherlands* and *Portugal*, among others.

[1067] For example, *Estonia* (restrictions have been reduced), *France* (while the law establishes a limitation of 18 months in total and in the number of renewals (twice), legal changes introduced in 2017 give precedence to sectoral agreements, which could establish less protective measures) and *Netherlands* (the period has been increased from two to three years following which consecutive fixed-term contracts are converted into an open-ended contract).

[1068] See, for example, *Cambodia* (Labour Law, 1997, section 10 (with exclusions)) and *Ghana* (Labour Act, section 74(2)).

Figure 6.3

Legal prohibition of the use of fixed-term contracts for permanent tasks



Source: A. Aleksynska and A. Muller: "Nothing more permanent than temporary? Understanding fixed-term contracts", INWORK and GOVERNANCE Policy Brief No. 6, ILO, Geneva, 2015, based on data from ILO, World Bank and national labour laws.

Ghana – The Labour Act 2003, section 74(2), provides that: "A casual worker shall: (a) be given equal pay for work of equal value for each day worked in that organization".

(ii) Part-time contracts

845. In relation to part-time work, in order to ensure that it is freely chosen it is important to offer the possibility of transferring from part-time to full-time work, and vice versa.[1069] This is particularly important, for instance, as a means of facilitating the re-entry of parents returning from maternity and parental leave who wish to be reintegrated into the paid labour force and to help avoid the "part-time trap". Moreover, the refusal by a worker to transfer from full-time to part-time work, or vice versa, should not in itself constitute a valid reason for termination of employment.

846. In the case of part-time work, the workers concerned should enjoy conditions equivalent to those of comparable full-time workers with regard to the scheduling of annual leave and work on customary rest days and public holidays. They should also have access, on an equitable basis, and as far as possible under equivalent conditions, to all forms of leave available to comparable full-time workers, in particular paid educational leave, parental leave and leave in cases of illness of a child or another member of a worker's immediate family.

[1069] See, for example, *Croatia* (Labour Code, section 62).

Council Directive 97/81/EC concerning the Framework Agreement on part-time work concluded by the Union of Industrial and Employer Confederations of Europe (UNICE), the European Centre of Enterprises with Public Participation (CEEP), and the European Trade Union Confederation (ETUC), establishes the principle of non-discrimination under which part-time workers must be treated no less favourably than comparable full-time workers, unless different treatment is justified on objective grounds. The Directive allows the exclusion of part-time workers who work on a casual basis when there are objective reasons for so doing, and after consultation with the social partners.

847. In the case of part-time workers,[1070] the application of the principle of equal treatment also includes the concept of proportionality, where appropriate. Accordingly, payments or entitlements may be allocated pro rata to part-time workers in proportion to the hours worked, based on the applicable employment or social protection system. Their remuneration should not be lower than that of a comparable full-time worker solely because they work part-time. The pro rata rule is applicable to any pecuniary entitlements, including those relating to maternity leave, termination of employment, paid annual leave and paid public holidays, and sick leave. Measures should be taken, as far as practicable, to ensure that part-time workers have access on an equitable basis to the welfare facilities and social services of the establishment concerned, which should be adapted to take the needs of part-time workers into account.[1071]

Central African Republic – The Labour Code, section 194, provides that: "Part-time workers shall not receive solely on the grounds that they are part-time workers, a basic wage lower than that of full-time workers in a comparable situation."

Spain – The Workers' Charter, section 12(4), provides that: "Part-time contracts shall be governed by the following rules: ... (d) Part-time workers shall have the same rights as full-time workers. ... (e) The conversion of full-time work into part-time work and vice versa shall always be voluntary for the worker and may not be imposed unilaterally ... The workers may not be dismissed or be subject to any other type of sanction or detrimental effect for rejecting such conversion."

848. The Committee notes that in some countries the law establishes limits on the minimum number of hours of part-time work contracts.[1072] In others, it specifies the minimum time reduction for a contract to be considered part time.[1073] In some cases, the law provides that the maximum number of workers covered by part-time contracts in an establishment shall be determined by collective bargaining.

[1070] See, in this regard, the General Survey of 2018, ch. V.
[1071] For example, *Argentina* (Act No. 20744, section 92ter, provides that part-time work is less than two-thirds of the usual full-time day, and that remuneration must be proportionate to that; if the working day is longer than this proportion, the worker is entitled to receive the full-time wage), *Burkina Faso* (Act No. 028-2008, section 47) and *Croatia* (Labour Code, section 62).
[1072] For example, *Algeria* (Act No. 90.-11, section 12, provides that part-time work cannot be less than half of the legal duration of full-time work), *Argentina* (Labour Contracts Act, section 92ter), *Central African Republic* (Labour Code, section 189, provides that a part-time contract must cover at least one third of time less than a full-time contract) and *Côte d'Ivoire* (Decree No. 96-202 of 1996, section 2, provides that a part-time contract must be for under 30 hours a week or 120 hours a month).
[1073] For example, *Argentina*, *Central African Republic*, *Côte d'Ivoire* and *Senegal* (the Labour Code, section 137, provides that contracts for at least one fifth less than normal full-time work are considered to be part-time contracts).

Côte d'Ivoire – Decree No. 96-202 of 1996, section 13, provides that the part-time workers benefit from all the legal and regulatory rights recognized for full-time workers, particularly in relation to:

- the right to organize, collective bargaining and representation in the enterprise;
- maternity protection;
- paid leave and public holidays;
- sick leave;
- termination of the employment contract.

The financial benefits deriving from these rights shall be determined in proportion to hours of work and earnings.

849. Workers covered by "on call" contracts (under which their hours can vary from one week or day to the next), including zero hours contracts (where there is no minimum number of guaranteed hours), should also have access to similar rights and benefits in relation to maximum hours of work and holidays. However, it is often difficult for them to work fewer hours in view of the consequences on their earnings. Measures aimed at eliminating exclusivity clauses,[1074] or allowing workers to refuse work, may help them to combine several jobs, if necessary and if they so wish. Other protections consists of maintaining their entitlement to wages in the event of shifts being cancelled. In some countries, the law explicitly limits the possibility of using on-call work and zero hours contracts.[1075]

Finland – Amendments to the Finnish Employment Contracts Act respecting the use of zero hours contracts entered into force on 1 June 2018. In accordance with the amendments:

- employers must have a genuine need to use variable working hours contracts;
- the employer's need for labour must be the minimum number of hours of work set out in the employee's employment contract. If the employee's actual working hours over the past six months show that the agreed minimum working hours do not correspond to the actual need for labour, the employer is required to negotiate adjusted working hours at the employee's request;
- the employer must inform the employee in writing of its expectations regarding how often and in which situations the employer will be able to offer work;
- employees have a right to sick pay if they are incapable of work due to sickness or injury on the scheduled work day;
- employees are entitled to compensation for loss of earnings during the notice period if they are offered less work than during a 12-week reference period preceding their last work shift. If the employment relationship has lasted less than a month when notice of termination is given, there is no obligation to compensate for loss of earnings.

[1074] For example, *New Zealand* and *United Kingdom*.
[1075] There is reflection in the *United Kingdom* on limiting recourse to this type of contract, following the publication of the Taylor report (M. Taylor: *Good work: The Taylor review of modern working practices,* London, 2017). The Good Work Plan accepts the introduction of the right to request more predictable working hours in zero hours contracts.

850. In some countries, the legislation establishes a "ban" on zero hour contracts.[1076]

Ireland – The Employment (Miscellaneous Provisions) Act 2018 amends section 18 of the Organisation of Working Time Act 1997 (OWTA) to prohibit zero hours contracts, except in the following circumstances:

- where the work is of a casual nature;
- where the work is done in emergency circumstances; or
- short-term relief work to cover routine absences for the employer.

Workers are also protected against penalization for invoking a workers' right and a provision on "banded hours" ensures that the contract of employment reflects the hours effectively worked. Employees are entitled to request to be placed in a band of hours that better reflects the hours they have worked over a 12-month reference period.

The law does not however prohibit "if and when" contracts (arrangements under which an employer is under no obligation to provide guaranteed hours and the worker is under no obligation to accept any hours offered. But workers' rights are covered by the Act).[1077]

851. In some cases, the law requires employers to communicate working schedules or the cancellation of shifts with sufficient notice in advance.[1078]

Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union

Minimum predictability of work

1. Member States shall ensure that where a worker's work pattern is entirely or mostly unpredictable the worker shall not be required to work by the employer unless both of the following conditions are fulfilled: (a) the work takes place within predetermined reference hours and days; and (b) the worker is informed by his or her employer of a work assignment within a reasonable notice period established in accordance with national law, collective agreements or practice.

2. Where one or both of the requirements laid down in paragraph 1 is not fulfilled, a worker shall have the right to refuse a work assignment without adverse consequences.

Complementary measures for on-demand contracts

Where Member States allow for the use of on-demand or similar employment contracts, they shall take one or more of the following measures to prevent abusive practices: (a) limitations to the use and duration of on-demand or similar employment contracts; (b) a rebuttable presumption of the existence of an employment contract with a minimum amount of paid hours based on the average hours worked during a given period; (c) other equivalent measures that ensure effective prevention of abusive practices.

[1076] In *New Zealand*, the Employment Relations Act, as amended in 2016, prohibits any arrangement without guaranteed hours, but requires employees to be available for work for a certain number of hours every week.
[1077] See OECD: *Policy responses to new forms of work*, 2019, op. cit., p. 42.
[1078] For example, *Canada* (Labour Code, the 2017 and 2018 amendments, which have not yet entered into force, require working time to be scheduled 96 hours in advance and establish the right to refuse work if this period is not respected, minimum rest periods and the right to refuse overtime), *Chile* (Labour Code, section 40bisC), *Ireland* (the Employment (Miscellaneous Provisions) Act 2018 requires employers to communicate five days in advance the number of hours that the employer reasonably expects the employee to work in a normal working day and normal working week), *New Zealand* (the Employment Relations Act 2000 requires reasonable notice when cancelling a shift) and *Norway*. See also ch. II.

The Directive also provides that: Member States shall facilitate the transition to another form of employment; any mandatory training shall be provided free of cost, shall count as working time and, where possible, shall take place within working hours; the worker shall benefit from favourable presumption, the right to redress and protection against adverse treatment or consequences; protection from dismissal and possibility to introduce rules of evidence which are more favourable to workers (the burden of proof); penalties; and the non-regression of the general level of protection already afforded to workers.

(iii) Multiple parties contractual arrangements

852. In the case of temporary agency work, with a view to avoiding abuses of subcontracting, and considering temporary agency workers as providers of services, regulations in some countries provide that subcontracting is not possible for the principal activities of the enterprise. This has also been the finding of the courts in many cases. In some countries, the law provides for joint liability of the agency and the user enterprise[1079] in relation to such workers' rights as remuneration, social security and occupational safety and health. In some cases, the law requires objective reasons for recourse to temporary agency work. In most countries, the use of temporary agency workers to replace striking workers is prohibited.

853. In the case of temporary agency workers, who are covered by a form of multiple party contract, the challenge is to determine who the employer is, and more specifically who is responsible for the labour and social protection of the workers. In some countries, the legislation considers that temporary agency workers are in an employment relationship with the user enterprise. As noted in chapter II, the legislation in many countries establishes the joint liability of the agency and the user employer.

854. With respect to remuneration, the regulations in some countries establish what is commonly known as a "Swedish derogation" for temporary agency workers who are employed by agencies under a permanent contract and are paid between assignments. Under this arrangement, the workers concerned give up the right to pay parity with comparable permanent staff in return for a guarantee that they will receive a certain amount of pay when they are between assignments.

United Kingdom – The Agency Worker Regulations 2010 provide, in regulation 10, for pay between assignments, and that "the contract of employment contains a statement that the effect of entering into it is that the employee does not, during the currency of the contract, have any entitlement" to the right to equality with respect to pay. In the context of the Good Work Plan, this opt out of equal pay entitlements is due to be repealed.

855. With respect to occupational safety and health, the Committee recalls that in its General Survey of 2017 on occupational safety and health it recognized that subcontracting can present a challenge in terms of ensuring compliance with occupational safety and health obligations. It recalls that the arrangements in place for two or more employers undertaking activities at the same worksite should apply to situations of multiple contractors and subcontractors. The task of ensuring that an adequate level of safety and health is maintained at worksites, involving several contractors of all sizes and trades, requires the establishment of effective mechanisms for collaboration, coordination and communication, as well as the definition of the respective duties and responsibilities of each of the actors on the site.[1080]

[1079] For example, *Argentina* (Act on labour contracts, section 29), *Belgium, Philippines* and *Turkey*.
[1080] ILO: *Working together to promote a safe and healthy working environment*, General Survey on the occupational safety and health instruments concerning the promotional framework, construction, mines and agriculture, Report III (Part 1B), ILC, 106th Session, Geneva, 2017, para. 263.

(iv) Digital platform work

856. Although it is more difficult to appraise and address, the situation of digital platform workers also raises many challenges with respect to income insecurity and excessive working hours, particularly as in most cases their terms of service are imposed unilaterally, and the only choice open to the workers is to accept the terms of service offered or to seek work elsewhere.[1081] In some cases, as indicated below, national legislation adopts specific protection measures to ensure that digital platform workers benefit from equal working conditions.

857. Remuneration is often very low in digital platform work. As there are few regulations covering pay in this type of work, the conditions are normally established by the platforms themselves. However, some positive private initiatives have been launched in this respect.[1082] In addition to the question of the application of the principle of equal remuneration for work of equal value, in order to ensure adequate working conditions for this category of workers, it is also necessary to link remuneration to working time. Workers need to be guaranteed a certain number of hours of work to be able to earn a living.

858. In many countries, ensuring the occupational safety and health of workers in the varying forms of the employment relationship, including digital platform workers, gives rise to difficulties. Adequate access to occupational safety and health and training is one of the issues that have to be addressed in the case of workers who are subject to extreme mobility within workplaces and unreasonable working hours, as well as for homeworkers and teleworkers. Other contractual arrangements and digital platform work sometimes involve telework. In such cases, access to the workers' house to ensure compliance with occupational safety and health requirements may give rise to problems. In this respect, the Committee refers to its examination of the situation of homeworkers and the measures taken at the national and international levels to address their situation. Issues such as access to workers' homes are addressed in the sections of this General Survey covering labour inspection. Several challenges also arise in ensuring occupational safety and health in the case of digital platform work. For example, there is a very high risk of accidents in relation to transport platforms, particularly where transport and delivery are carried out by motorcycle or bicycle. Similarly, OSH measures should be considered when platform work involves the examination of pornographic or violent images.

859. ***The Committee encourages governments to examine closely the measures that could be taken to ensure that safety and health requirements are met in sectors and workplaces characterized by multi-contracting and subcontracting. This could include measures to mandate or promote the coordination of safety and health activities at the level of the enterprise and clear communication in this regard, and steps to ensure compliance by contractors and subcontractors with workplace occupational safety and health procedures and arrangements. The Committee also recalls the need to ensure the application of effective protective measures, including the provision of personal protective equipment and clothing at no cost to the worker in relation to all workers, including those covered by other contractual arrangements.***

3. Social protection

860. Though separated in the present publication to facilitate understanding, the majority of social protection policies cannot be decoupled from the job. Social security represents an integral part of employment and cannot and should not be dissociated from it. This does not prevent countries from broadening the "palette" of social protection mechanisms and integrating new ones that are unrelated to employment status. However, for workers in a dependent employment relationship, social security must remain an integral part of their employment, namely with contributions also being made by the employer (even if sometimes

[1081] J. Berg et al.: *Digital labour platforms and the future of work: Towards decent work in the online world*, ILO, Geneva, 2018, p. 95.
[1082] ibid., pp. 95 et seq.

these may be largely subsidized to foster formalization processes). Delinking social security from employment would result in reduced protection. Indeed, a basic level protection would be implemented in place of insurance mechanisms that replace income. Such a situation would create a disincentive to formalization processes.

861. The Committee notes that the growing diversification of employment and work arrangements has implications for access to adequate social protection. This situation has been compounded by the digital economy, automation and globalization. New forms of work and of organization of work are leading to lower levels of protection that in turn call for new policy responses better adapted to these new realities.

862. The Committee has already referred in its latest General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202), to the importance of social protection and the need to adopt policies that promote the extension of coverage not only to traditional forms of informal work, but also to newly emerging forms of informal activity, including work in the digital economy. Promoting access to adequate, inclusive and effective social protection for workers in all forms of work and employment arrangements serves as a vehicle for contemporaneously promoting equality and non-discrimination.

> The European Pillar of Social Rights provides that "[r]egardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection".[1083]

863. National strategies should seek to establish the right mix of non-contributory and contributory mechanisms taking account of national circumstances, and with a view to ensuring coverage of all workers, while giving special consideration to the needs of workers in various types of contractual and employment arrangements.

864. There is a need to work in two specific areas: on adapting existing contributory schemes and expanding non-contributory schemes. This combination of social insurance and tax-financed social security schemes represents the principal mechanisms for ensuring social protection, by ensuring income security and access to healthcare through collectively financed mechanisms. These two types of schemes are also crucial to securing basic income security for all, including for persons without contributory capacity.[1084] These contributory and non-contributory schemes should be used appropriately and effectively to close gaps in protection and be extended progressively to all persons through coordinated and coherent policy approaches. Such approaches should ensure that the schemes are adapted to the specific circumstances of the population groups concerned, to progressively increase the number of persons that have access to mechanisms providing higher levels of protection than those basic levels envisaged by the social protection floor.[1085]

865. Effective and inclusive social protection policies and legal frameworks are necessary to ensure decent work for all workers. These could include:

- adapting existing protection mechanisms to ensure coverage of all workers by, for instance, eliminating or reducing thresholds on minimum hours, earnings or duration of employment, so that workers working under other contractual and employment arrangements are not excluded from coverage;

[1083] *Universal social protection for human dignity, social justice and sustainable development*, General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202), Report III (Part B), ILC, 108th Session, 2019, (hereinafter "General Survey of 2019"), para. 590.
[1084] ibid., para. 435.
[1085] ibid, para. 653.

- making systems more flexible with regard to the contributions required to qualify for benefits, including by allowing for interruptions in contribution records;
- enhancing the portability of benefits between different social security schemes and employment statuses;
- guaranteeing a nationally defined social protection floor that provides for at least basic social security guarantees to all in need of such protection as part of national social protection systems;
- adapting (un)employment insurance schemes to respond to the contingencies specific to workers in non-standard forms of employment;
- making full use of ICT to integrate data and information management to support new initiatives by social protection administrations;
- adapting, as required, labour market institutions to the changing work environment (improvements in working conditions, skills development, employment relationships and collective bargaining); and
- coordinating social protection policy with other public policies to help workers manage risks and better accommodate transitions in their working lives.

Turkey's Integrated Social Assistance Information System is a process management and information system for carrying out a full range of social assistance procedures – applications, inquiry, delivery and monitoring.

Recourse to systems of unique identification number and unified contribution collections has been noted across Latin American countries.

(a) Adapting contributory mechanisms

866. Social insurance is the main mechanism of support for formal workers. It may also provide an important social protection mechanism for workers in the informal economy (Paragraph 20 of Recommendation No. 204). It may be necessary to take additional measures to take the specificities of other contractual and employment arrangements into account, so as to ensure effective coverage.

867. To be successful, policy responses could:

- favour mainstreaming approaches to ensure that workers in other contractual and employment arrangements are covered under the collectively financed social protection mechanisms and are afforded protection equivalent to the protection for workers in standard forms of employment; and
- accompany such approaches by measures to support smooth transitions between different types of jobs for workers, while ensuring their continued social insurance coverage. Workers in other contractual and employment arrangements will thus be able to continue building their social insurance entitlements over their working lives, thereby facilitating labour mobility and contributing to greater stability, better protection and effective safeguards against the informalization of employment.

(b) Strengthening non-contributory mechanisms

868. Tax-financed social protection benefits (such as social assistance) play a key role in complementing other existing social protection mechanisms to secure a social protection floor for all, that is, a basic level of protection for those in need, as advocated by Recommendation No. 202. Such non-contributory schemes financed from general taxation revenues play a particularly important role for those who are not sufficiently covered by contributory mechanisms. For example:

- Guaranteeing old-age pensions: Tax-financed pension schemes can ensure at least a basic level of income security in old age for (former) workers in other contractual arrangements; some countries,[1086] provide a universal pension for older people that guarantees a basic level of income security. Contributory pensions complement this universal pension. Other countries[1087] provide non-contributory old-age pensions for those who have not earned sufficient entitlements under the social insurance scheme, or do not reach a minimum level of income security.
- Guaranteeing child and unemployment protection: Tax-financed benefits may also close coverage gaps for workers in other contractual and employment arrangements in relation to child and family benefits,[1088] unemployment protection and social assistance.[1089]
- Guaranteeing health protection: Tax financing is essential for national health services,[1090] as well as for subsidizing health insurance contributions for low-income workers, including many non-standard workers who may not otherwise be sufficiently covered.

869. Measures aimed at guaranteeing some form of social protection regardless of type of employment close coverage gaps and reduce the need to track entitlements across jobs for particularly low wage earners. Some social protection benefits – such as health protection, child benefits and parental leave – are already universal in many countries.[1091] In some countries, means-tested income replacement payments to low-income households,[1092] are used to close coverage gaps; however, tracking self-employment income and dealing with highly fluctuating earnings remains a challenge.

870. Establishing universal basic income schemes (UBI) is sometimes presented as having the potential to resolve access problems by providing an equal and unconditional benefit to all. Independence of entitlements from the employment record is considered as one of the key advantages of UBI schemes, together with a simplification of administrative processes and the closing of coverage gaps. However, the introduction of a UBI would represent a significant departure from most existing social protection policies and strategies. A UBI would also require a significant amount of fiscal space, which may exceed the economy's capacity to sustain the co-existence of a UBI with other social protection benefits to ensure adequate levels of protection. Many governments have already implemented universal benefit schemes for specific subgroups of the population, such as children or the elderly. In countries where schemes such as universal child benefits or pensions have already been implemented, they have been a very effective means of filling coverage gaps and ensuring at least a basic level of income security at a manageable cost.

871. As seen in previous chapters, employment and work arrangements other than the more typical open-ended, full time, dependent employment relationship tend to be associated with some decent work deficits, as well as with weaker social protection. One of the reasons that

[1086] For example, *Canada*
[1087] For example, *Australia* and *South Africa*.
[1088] For example, *Argentina*.
[1089] For example, *France* and *Germany*.
[1090] For example, *United Kingdom*.
[1091] For example, OECD countries.
[1092] For example, *Australia* and *New Zealand*.

workers are engaged in other contractual or work arrangements is that they cannot manage to access more permanent and stable forms of work.

872. Barriers to labour mobility are highest if social protection mechanisms are directly or indirectly linked to a specific employment contract, particularly if these are associated with certain vesting periods, such as severance payments or employer-provided health or pension insurance. Where they are not linked to a contract with a specific employer, social insurance mechanisms can potentially support labour mobility. Nevertheless, the exclusion of certain categories of workers (e.g. the self-employed, in many countries) or restrictive minimum thresholds with regard to working time, salary or employment periods, can constitute barriers to labour mobility. Many countries have begun to identify and remove such barriers, with the objective of ensuring that social insurance mechanisms can realize their full potential of protecting the workforce and broader population. More attention is also being paid to ensuring that tax-financed mechanisms can play a more prominent role in ensuring at least a basic level of protection for all, in other words, a social protection floor.

873. Some countries have introduced, or are considering introducing, personal activity accounts to be used flexibly according to individuals' needs.

> *France* – The personal activity account (*compte personnel d'activité, CPA*) allows all workers, regardless of their labour market status, to accumulate pension entitlements and "points" accrued on past jobs, for training and education, leave days not taken and strenuous work. While the transition between different employment statuses may entail accumulating no further or fewer points, the previously acquired points are not lost. The aim of this reform has been to move from an approach where rights are linked to the individual's employment status to one of individual rights that are transferable between employment statuses, as well as to adapt to the changing realities of increasingly non-linear career paths. Such an account is also intended to simplify the social protection system and improve individuals' knowledge of their rights and entitlements.[1093]

(i) Self-employed workers

874. Social insurance coverage for self-employment, including for dependent self-employment remains an important challenge. Although many countries cover some categories of self-employed workers through mandatory or voluntary coverage, globally, coverage rates remain low, resulting in significant social protection gaps for this group of workers. A number of countries have reported on measures taken to extend social insurance coverage for self-employed workers, including:

- simplified tax and contribution payment mechanisms;[1094]
- mandatory coverage of farmers through mechanisms adapted to their specific characteristics and needs;[1095]
- coverage of specific groups, such as artists and related occupations through special social insurance funds;[1096]
- measures to ensure equal treatment of workers in dependent self-employment, to prevent their misclassification and to curb disguised employment in situations where workers are

[1093] Similarly, in *Germany*, the Government's White Paper "Work 4.0" (2017) proposes to establish long-term personal accounts for each individual that are equipped with an initial credit at the start of their working life, which can be accumulated through subsequent contributions. This credit can be used for skills development, vocational training or career breaks.
[1094] For example, *Argentina, Brazil,* and *France.*
[1095] For example, *Brazil* and *France*.
[1096] For example, *Germany.*

(re)classified as self-employed contract workers in order to avoid social insurance contributions;[1097] and

- measures aimed at taking into account the particular situation of workers on digital platforms, considering that these workers often combine work in the digital economy with a "regular" job through which they may enjoy some social protection coverage.

875. The establishment of an adequate methodology for the calculation of contributions is crucial to cover these new forms of self-employment, as earnings are often low and/or volatile, and as self-employed persons are typically required to cover both the employee and employer contribution rate. These concerns can be addressed through a number of solutions: for example, adapting contribution assessment and payment schedules to the characteristics of the worker, such as using annual instead of monthly contributions for rural workers and producers;[1098] flat contributions; proxy income measures;[1099] or the use of broad contribution categories. Simplified administrative procedures for registration and contribution and tax payments, such as monotax mechanisms[1100] also help to ease the administrative burden on the self-employed, thereby incentivizing their formalization and ensuring their access to social insurance benefits.

(ii) Part-time workers

876. The principles of equal treatment and proportionality between part-time and comparable full-time workers are also applicable to statutory social security schemes. Indeed, part-time workers should enjoy conditions equivalent to those of comparable full-time workers, which may be determined in proportion to hours of work, contributions or earnings, or through other methods consistent with national law and practice. Social protection gaps constitute a significant challenge to part-time workers. Depending on minimum hour or salary thresholds specified in national legislation, several categories of regular part-time workers may find themselves excluded from some or all social security benefits.

877. Options for extending social protection coverage to part-time workers include:

- lowering eligibility thresholds based on a minimum number of working hours or earnings, as contemplated by the ILO Part-Time Work Convention, 1994 (No. 175), Article 8(2) of which recommends setting such thresholds in a manner that avoids the exclusion of an "unduly large percentage of part-time workers".
- facilitating social insurance coverage for part-time workers who perform work for multiple employers, as well as for those combining part-time dependent work and self-employment. This may involve the adaptation of legal frameworks and streamlining of administrative procedures, including simplifying and facilitating electronic access to registration, consultation and contribution collection mechanisms.[1101]
- recognizing periods of leave to care for children or other family members by topping up social security entitlements, so as to allow those who have reduced their working time because of caregiving duties to increase their levels of social security coverage. A number of national social insurance schemes recognize periods of child-rearing when calculating contribution periods to facilitate access to social security benefits and reduce gender inequalities.[1102]

[1097] For example, *Germany* and *Italy* have implemented measures to close protection gaps and ensure equal treatment with wage employees, including by extending access to social security.
[1098] For example, *Brazil*.
[1099] For example, *Brazil* and *Republic of Korea*.
[1100] For example, *Argentina, Brazil* and *Uruguay*.
[1101] For example, *Australia* and *New Zealand*.
[1102] For example, in the case of pension calculation entitlements in *Germany*, *Japan* or the *United Kingdom*.

Côte d'Ivoire – Decree No. 966-202 of 1996 provides that:

Article 14: The part-time worker is subject to the contributions due to the National Social Welfare Fund. He receives the benefits provided by this organization in proportion to the contributions paid. However, no benefit restriction is applicable to a part-time worker in the event of accident or occupational disease.

Article 15: The employer of a part-time worker must pay the contributions due to the National Social Welfare Fund.

(iii) Temporary workers

878. While workers working on fixed-term contracts over several months are generally covered by existing social protection mechanisms, those with short contracts and casual workers, including day labourers, typically lack coverage.

India – The majority of casual workers fall outside the scope of social security legislation. To address this challenge, India is establishing a unified system of digital record keeping known as *Aadhaar*. Benefits for rural populations include streamlined access to the payment of subsistence benefits for low-income households who are eligible for the "cooking gas subsidy" and "social assistance pensions".

879. Different rules are applied in some countries to temporary workers in comparison with other workers.[1103] Lowering eligibility thresholds is therefore critical to extend coverage and ensure greater parity among workers in different forms of employment.

(iv) Workers in the digital economy

880. The Committee considers that more efforts should be made to ensure that those in "new" forms of work and employment are covered under the same terms and conditions as other workers. In many cases, it may be necessary to adapt existing administrative and financing mechanisms to facilitate such inclusion through innovations, such as:

- adaptation of regulatory frameworks and enforcement mechanisms that keep pace with digital technologies, to ensure that digital platforms respect their obligations with respect to the protection of workers, and allow fair competition with other economic actors;
- simplification of administrative procedures and adaptation to the specific characteristics and needs of workers in the digital economy;
- automatic collection contributions and taxes through online and mobile services; and
- examination of the potential of digital platforms following a cooperative model that share services and benefits among service providers.

881. Some countries[1104] have introduced mechanisms adapted to ensure social protection coverage for taxi drivers, including those working through digital platforms. Where such mechanisms are part of the general social insurance scheme or provide for portability arrangements, workers transitioning from one form of employment to another, or combining different types of employment, will not experience interrupted or reduced social security coverage. At the same time, ensuring coverage of digital platform workers helps to ensure a level playing field and a fair competitive environment among economic actors in both the "old" and "new" economy.

[1103] For example, *Mexico* (with respect to sickness and maternity coverage).
[1104] For example, *Indonesia* and *Uruguay*.

882. Another challenge lies in how to overcome obstacles with regard to social security coverage for workers with multiple employers, including workers on digital platforms. One option is to establish a digital security system (DSS) that would facilitate for workers on digital platforms the accumulation of sufficient contributions and work hours, based on contributions that each employer pays on their behalf into a personal DSS account, which would then transfer the accumulated contributions into existing social security programmes.[1105] Some platforms have already put in place mechanisms that enhance worker protection.

883. With respect to cross-border digital platform work, the Committee considers that the issue is part of the broader reflection on global supply chains and social dialogue across borders.

> *Indonesia* – The Government has introduced a digital mechanism to securitize the new application (similar to Uber) that the country has for motorcycle taxi rides. When using the application, a small amount of the tariff is automatically deducted for accident insurance, covering both the driver and the passenger for the duration of the trip.

> *Uruguay* – Taxi drivers, including those working through digital platforms (e.g. Uber), are covered by social insurance, requiring the registration and payment of social insurance contributions through an easy-to-use online application (BPS Uruguay, 2017). This innovation builds on Uruguay's long experience with covering self-employed workers and workers in micro-enterprises through a simplified tax and contribution payment mechanism (*monotributo*).

4. Measures to progressively extend labour and social protection to all workers in the informal economy

884. Lack of labour and social protections is one of the hallmarks of the informal economy. Issues such as wage regulation, working time, maternity protection and the work–family balance have traditionally been perceived as inapplicable to the informal economy.

885. During the preparatory work for Recommendation No. 204, a vast majority of governments and workers' organizations and some employers' organizations agreed that social security, safety and health, decent working hours and minimum wages should be progressively extended to workers in the informal economy. It is through formalization that access to these protections can be made effective. Indeed, accessing such protections constitutes an incentive for formalization that would be weakened if similar protections were provided to workers in the informal economy without a full transition to the formal economy.[1106] This is implicitly acknowledged in Paragraph 18 of Recommendation No. 204, which provides that Members should progressively extend in law and practice, to all in the informal economy, social security, maternity protection, decent working conditions and a minimum wage that take into account the needs of workers and consider relevant factors, including but not limited to the cost of living and the general level of wages in the country. One of the elements of transition is the recognition that it is a process that takes time and that can take place progressively.

886. As seen in chapter III, Recommendation No. 204 thus seeks to promote a transition to formality over time. To achieve this, as provided for in Paragraph 11 of the Recommendation, several elements should be taken into account in the context of an integrated policy

[1105] See for example, E. Weber: "Setting out for Digital Social Security", ILO, Research Department, Working Paper No. 34.
[1106] ILO: *Transitioning from the informal to the formal economy*, Report V(2), op. cit., p. 40.

framework designed to guide the transition to the formal economy. These elements include income security and an appropriately designed minimum wage (Paragraph 11(r) of Recommendation No. 204).

(a) Social protection floors

887. When designing and maintaining national social protection floors, particular attention should be paid to the needs and circumstances of those in the informal economy and their families (Recommendation No. 204, Paragraph 19).

888. The Committee recalls that Recommendation No. 202 emphasizes that "[s]ocial security extension strategies should apply to persons both in the formal and informal economy and support the growth of formal employment and the reduction of informality" (Paragraph 15). The dual strategy of promoting both the horizontal and vertical extension of coverage, as set out in Recommendation No. 202, is also reflected in Recommendation No. 204. Both Recommendations emphasize the importance of social protection floors in guaranteeing at least a basic level of coverage for those in the informal economy, and of extending access to contributory social insurance mechanisms. Social protection policies contribute to facilitating the transition of workers and economic units from the informal to the formal economy, including by promoting the creation, preservation and sustainability of enterprises and decent jobs in the formal economy and the coherence of macroeconomic, employment, social protection and other social policies (Recommendation No. 204, Paragraph 1(a) and (b)).[1107]

889. The incorporation of workers and economic units into the social security system constitutes another necessary step in the transition to formality. At the same time, it is important to take into account the specific circumstances of workers and economic units in the informal economy as well as their diversity. Moreover, it is important to differentiate between wage workers, whose employers should be required to contribute to social insurance schemes and own-account workers, who do not have an employer to fund contributory schemes. Recommendation No. 204 invites member States to progressively extend social insurance coverage to the informal economy and, if necessary, to adapt administrative procedures, benefits and contributions, taking into account their contributory capacity (Paragraph 20).

890. In its latest General Survey on social protection floors, the Committee emphasized that, in a context of prevailing high, and even growing levels of informality, and persistent inequality, poverty and vulnerability, it is of the utmost importance for national social security extension strategies to include effective protection measures for workers in the informal economy and to facilitate their transition to the formal economy. As recognized in Recommendations Nos 202 and 204, guaranteeing at least a basic level of income security and essential healthcare for all through a nationally defined social protection floor is essential to foster social justice and inclusive development, and to promote decent and productive employment. Social protection policies can also play a major role as an integral component of national strategies aimed at transitioning towards formal employment with a view to progressively achieving higher levels of labour and social protection for as many persons as possible.[1108] The extension of social insurance to categories of workers with contributory capacity who were previously not covered, including through entirely or partially subsidizing contributions, is increasingly being used as a means of ensuring protection and fostering formalization.[1109] Such measures also reduce unfair competition among enterprises. Social protection policies should be duly coordinated with other major public policies aimed at formalizing economies, including tax, education and employment policies. Such policies are key to building and maintaining comprehensive, inclusive and adequate systems.[1110]

[1107] General Survey of 2019, para. 589.
[1108] ibid., para. 591.
[1109] ibid., para. 593. See in this regard the examples provided in paras 593 and 594 of the General Survey.
[1110] ibid., para. 596.

Argentina – The transition programme to the supplementary social wage, established in 2017, has the objective of promoting "socio-productive entrepreneurship" through the provision of a financial supplement for those working in the so-called "popular economy". The benefit is equivalent to 50 per cent of the minimum living wage. However, the Government indicates that protection gaps have been identified, including the lack of health coverage for the self-employed and informal workers, and that policies are being developed to close the coverage gaps.[1111]

Philippines – The Integrated Livelihood and Emergency Employment Program offers employment and entrepreneurship opportunities to displaced, disadvantaged and unemployed workers. The measures available include entrepreneurship development assistance and wage employment for between ten and 30 days.

891. The Committee recalls that the Maternity Protection Convention, 2000 (No. 183), applies to all employed women, including those in atypical forms of dependent work (Article 2). Furthermore, Recommendation No. 204 invites member States, if possible, to grant access to quality childcare and other care services to promote gender equality in the transition to formality (Paragraph 21).

(b) Occupational safety and health

892. While transition to formality takes place progressively, during the preparatory work for Recommendation No. 204, it was agreed that ensuring occupational safety and health for workers and economic units should be considered as an urgent measure that should be implemented without delay.[1112] Paragraph 11(p) of the Recommendation provides that the integrated policy framework to guide the transition to formality should address effective occupational safety and health policies. Moreover, when addressing rights and social protection, Recommendation No. 204 invites Members to take immediate measures to address the unsafe and unhealthy working conditions that often characterize work in the informal economy and to promote and extend occupational safety and health protections to employers and workers in the informal economy (Paragraph 17(a) and (b)).

893. In this regard, the Committee recalls that Convention No. 184 and Recommendation No. 192 are cited in the Annex to Recommendation No. 204 as relevant instruments to facilitate the transition from the informal to the formal economy. Article 4(3)(h) of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), provides that the national system for occupational safety and health shall include, among others, support mechanisms for a progressive improvement of occupational safety and health conditions in micro-enterprises, in small and medium-sized enterprises and in the informal economy.

894. In its General Survey of 2017 on occupational safety and health, in the context of the mining sector, the Committee identified the existence of a sometimes large informal subsector and the widespread use of subcontracting as further obstacles to the monitoring of working conditions in a sector where the incidence of fatal and serious accidents was high.[1113]

895. The Committee also referred to the particular situation of the agricultural sector, where informality is prevalent, as well as to the high number of precarious workers. The Committee highlighted the low coverage and participation of agricultural workers in national social protection systems.[1114]

[1111] ibid., para. 478.
[1112] ILO: The transition from the informal to the formal economy, *Provisional Record* No. 10-2(Rev.), ILC, 104th Session, 2015, p. 36.
[1113] *Working together to promote a safe and healthy working environment,* General Survey of 2017, para. 458. See also CEACR – *Peru*, C.176, direct request, 2014.
[1114] General Survey of 2017, para. 114.

III. Conclusions

896. *The Committee stresses that an inclusive national employment policy provides for equality of opportunity and treatment for all workers, including jobseekers. This requires examining the manner in which productivity gains are redistributed and taking steps to ensure that those groups most vulnerable to exclusion are provided with equal opportunities to participate in the labour market. Developing and maintaining inclusive employment policies and programmes may require specific and targeted measures that should be developed and adopted in consultation with the social partners and the groups concerned.*

897. *The Committee highlights the importance of raising awareness at the national level of the different existing varieties of employment relationships and the new and emerging types of contractual arrangements that predominate in the labour market and the labour and social protections available to those working under such arrangements.*

898. *The Committee notes the essential role of monitoring bodies, particularly the labour inspectorate in this regard. In addition, compilation and analysis of labour statistics concerning contractual arrangements, disaggregated by sex and age, among other criteria, is of critical importance to enable an assessment of changes in the labour market.*

899. *The Committee stresses the importance of ensuring transparency in the labour market. In particular, workers should be provided with sufficient information concerning their working conditions and the procedures available to them in the event of rights violations.*

900. *In particular, the Committee considers that close monitoring is needed concerning those contractual arrangements that do not ensure minimum working conditions, or a reasonable degree of predictability. In this regard, the practices of on-call work and zero hour contracts should be closely monitored. The Committee further considers that steps should be taken at the national level to facilitate the ability of workers, over time, to access more permanent employment relationships, if they so wish.*

An employee takes down details. © Oregon Department of Transportation

7

Monitoring, compliance and enforcement

901. Poor enforcement and lack of compliance with the law are significant factors in cases where workers lack protection. Strong political commitment is needed to ensure compliance with the law and provide the necessary support to law enforcement mechanisms, with the involvement of the social partners, where appropriate.[1115] When there is a good system of governance (which includes, for example, labour inspection and labour administration) countries can rely on structures to ensure compliance that do not depend exclusively on individual action through complaint mechanisms. In this respect, the Preamble to the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), acknowledges that informality has multiple causes, including weak governance (in this context it is noted that labour inspection is primarily applicable to formal paid employment) and structural issues, and that public policies can speed up the process of transition to the formal economy, in a context of social dialogue.

902. This is even more relevant at present, in view of the impact of globalization and new technologies on the labour market, which is characterized by new forms of work and the organization of work. The proliferation of new working arrangements, which in many cases involve greater flexibility, as well as the blurring of lines between autonomous and subordinate work, is creating uncertainty, with roles and responsibilities becoming less clear. Digital platform work, teleworking and the increasing mobility of labour are manifestations of this transformation.

903. The Employment Relationship Recommendation, 2006 (No. 198), in Paragraph 4(f), calls on Members to ensure compliance with, and effective application of, laws and regulations concerning the employment relationship. The labour inspection services, the labour administration, the courts and industrial or arbitration tribunals, as well as other enforcement bodies, have an important role to play in the settlement of disputes and the clarification of the employment status of workers. Moreover, as recognized in the Preamble to Recommendation No. 198, employment protection should be accessible to all, particularly vulnerable workers, and should be based on law that is efficient, effective and comprehensive, with expeditious outcomes, and that encourages voluntary compliance.

904. Enforcement and compliance provisions are particularly important in complex cases in which individual workers are not able to assert their rights effectively. As noted in the preparatory work for Recommendation No. 198, by and large, the general problems associated with compliance and enforcement of labour law also affect the employment relationship. While specific measures have been introduced to address problems of disguised employment relationships and difficulties surrounding "triangular" employment relationships, lack of compliance and poor enforcement continue to be a challenge in many cases.[1116]

905. Social dialogue plays a substantive role in ensuring compliance. Unions can assist workers in the procedures as well as act in their name. Furthermore, ensuring worker representation is crucial in individual complaints mechanisms. Work councils, are good examples of this. Workers and employers contribute to building a culture of compliance.

[1115] ILO: Conclusions concerning the employment relationship, ILC, 91st Session, *Provisional Record* No. 21, Geneva, 2003, para. 10.
[1116] LO: *The employment relationship*, Report V(1), ILC, 95th Session, Geneva, 2006, para. 64.

I. Labour administration and inspection

906. Sound labour administration and inspection systems are crucial for labour market governance, and particularly the enforcement of labour regulation, both for the protection of workers at the national level and in the context of globalization. They have a specific role to play in addressing the difficulties arising out of new working arrangements, the multiple forms of the employment relationship and the particular challenge of informality, with the overall aim of protecting all workers, especially those most vulnerable to exclusion. Irrespective of the multiple issues raised by globalization, the aim of labour administration is to ensure the best possible standards of labour market governance through the enforcement of labour regulation. All government enforcement agencies, and particularly the labour inspectorate, the social security administration and the tax authorities should cooperate actively for the effective implementation of national legislation.[1117]

1. Labour inspection and determination of the existence of an employment relationship

907. Recommendation No. 198 indicates that the competent authority should adopt measures with a view to ensuring respect for and implementation of laws and regulations concerning the employment relationship, for example through labour inspection services and their collaboration with the social security administration and the tax authorities (Paragraph 15).

908. The competence of the labour inspection services is determined by national legislation, and has traditionally been limited to dependent employment. Self-employed work has generally been excluded from labour law, and as such has fallen outside the realm of labour inspection. It should however be noted that the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), do not exclude any workers from coverage on the basis of the formalities of their employment relationship.

909. While competence to determine the existence of an employment relationship always lies with the judicial authorities, the labour inspection services may impose sanctions where there is a presumption of the existence of such a relationship and the rights and protections to which workers are entitled have not been granted. However, the judicial authorities are always the last instance for decision.

910. The research undertaken and the conclusions reached by labour inspectors on the existence of an employment relationship are based on the principle of the "primacy of facts", as described in chapter II. Accordingly, they may conclude that certain criteria or indicators are present that demonstrate the existence of an employment relationship. For example, many labour inspection services are focusing increasingly on civil or commercial relationships to assess the validity of contracts. In many cases, apparent independent relations for provision of services in practice conceal a genuine employment relationship (false self-employment).

911. The reports drawn up by the labour inspection services help the courts to decide on the existence of an employment relationship. Labour inspectors periodically collaborate with the social security administration and the tax authorities in this respect.

Spain – In December 2012, the labour inspectorate of Valencia issued a decision ordering Deliveroo (a digital platform for delivery riders) to pay €160,814.90 for the period between May 2016 and September 2017 for the provision of labour by certain persons who had not been registered with the social security general scheme as employees. The decision was confirmed by the judicial authorities.[1118]

[1117] ILO: Conclusions concerning the employment relationship, 2003, op. cit., para. 10.
[1118] Ruling by Labour Tribunal No. 6 of Valencia, 1 June 2018 (No. 633/2017).

912. Recommendation No. 198, in Paragraph 16, calls on labour administrations to regularly monitor their enforcement programmes and processes. In this respect, they can usefully develop innovative information and education programmes and outreach strategies and services with the involvement of the social partners. Labour administrations, in accordance with the role envisaged for them by the Labour Administration Convention, 1978 (No. 150), also play an important role in the formulation of laws and regulations aimed at addressing problems relating to the scope of the employment relationship. For example, they monitor the application of the law, collect data on labour market trends and take measures to change work and employment patterns, and to combat disguised employment relationships. They identify sectors and occupational groups with high levels of disguised employment and adopt a strategic approach to enforcement. Labour administrations and inspection services also play an important role in the provision of guidance in relation to changes in the labour market and the resulting needs, for example in the case of grey areas, lack of clarity and ambiguous situations, especially concerning new forms of work. In many countries, labour administrations are playing a substantive role in examining the circumstances and conditions in which digital platform work is carried out and whether or not there is an employment relationship.

913. Recommendation No. 198 adds that, in the process of monitoring and enforcement, special attention should be paid to occupations and sectors with a high proportion of women workers (Paragraph 16). This is particularly relevant in light of the increasing participation of women in the labour market, including in the informal economy (see chapter III). The importance of monitoring and enforcement in this regard is reinforced by the fact that women predominate in certain occupations and sectors in which the proportion of disguised and ambiguous employment relationships, as well as informality, is relatively high, such as domestic work, textiles and clothing, sales/supermarkets, nursing and the care professions, as well as homework. Moreover, exclusions or restrictions relating to certain rights may disproportionately affect women, particularly in specific sectors, including in some export processing zones. In this regard, care is needed in relation to certain incentives that may be adopted for specific jobs in which women are more prevalent (such as tax exemptions or reductions in social security contributions), which might have a negative impact on their rights and pensions in the future.

Austria – The labour inspection services aim to achieve people-oriented workplaces by means of the application of a gender and diversity approach (MEGAP), through the prevention of risks at work that are systematically underestimated. In so doing, they make an important contribution to improving working conditions, and particularly those of employees who generally receive less attention, namely: employees with disabilities and health conditions, those with different languages and cultures, part-time workers, agency workers and workers from outside the company. In the context of the MEGAP approach, the workplaces of men and women are examined to ascertain whether attributions are made on the basis of gender, which can lead to less effective employee protection.

2. Labour inspection and the informal economy

914. In practice, even when they have a broad mandate, labour inspection services do not generally cover all the manifestations of the informal economy.[1119] The Committee further recalls that, when it examined the mandate and role of labour inspection in its 2006 General Survey, it noted that the scope of labour inspection is limited by the legislation in many countries and excludes certain sectors. This is especially the case in the informal economy, and particularly the informal sector, where a multitude of small enterprises are often excluded from the coverage of the legislation, as well as in the case of enterprises employing fewer than a threshold number of workers.[1120]

915. The integrated policy framework for the transition to formality called for by Recommendation No. 204 (see chapter III) should provide for a balanced system of supervision by the labour administration, and particularly the labour inspection services, which includes penalties, alongside a combination of educational and persuasive measures. Paragraph 11(q), in conjunction with Paragraph 22 of Recommendation No. 204, refers to the need to take appropriate measures, including through a combination of preventive measures, law enforcement and effective sanctions, to address tax evasion and avoidance of social contributions, labour laws and regulations. This is coherent with Paragraph 12 of the Recommendation, which invites Members to ensure coordination across different levels of government and cooperation between the relevant bodies and authorities when formulating and implementing an integrated policy framework. Coordination should involve such bodies as tax authorities, social security institutions, labour inspectorates, customs authorities, migration bodies and employment services. Such cooperation and coordination is designed to respond to the broad spectrum of the informal economy, which goes well beyond employment and touches upon many aspects of workers' lives.

916. Recommendation No. 204 refers to the need for an adequate and appropriate system of inspection that extends coverage to all workplaces in the informal economy (Paragraph 27). The system of inspection should aim to protect workers and provide guidance for enforcement bodies, including on how to address working conditions in the informal economy. Members are therefore invited to extend labour inspection beyond the traditional employment or apprenticeship relationship.

917. Any incentives should be designed to facilitate the effective and timely transition from the informal to the formal economy.[1121] At the same time, sanctions should be adequate and strictly enforced (Paragraph 30) to discourage non-compliance.

918. The diversity of the informal economy makes it necessary to adopt specific measures that are adapted to the national situation. In this context, measures can be taken by labour administrations that are conducive to business development and decent work, such as facilitating registration procedures, providing information and organizing awareness-raising activities. Experience and practice vary at the national level, with some national administrations focusing more on combating tax evasion, while others rely more on labour administration as a governance tool. It is nevertheless important to establish common lines of intervention for national labour administrations and inspection services. It should be borne in mind that

[1119] However, the Committee recalls that the Labour Administration Convention, 1978 (No. 150), is the first ILO Convention to promote the extension, by gradual stages if necessary, of the functions of the system of labour administration to include "self-employed workers who do not engage outside help, occupied in the informal sector as understood in national practice" (Art. 7).

[1120] ILO: *Labour inspection*, General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), Report III (Part 1B), ILC, 95th Session, Geneva, 2006 (hereinafter, the 2006 General Survey"), paras 23 and 24.

[1121] This can be read in conjunction with Para. 17 of Recommendation No. 198, which invites Members to develop effective measures aimed at removing incentives to disguise an employment relationship.

high transaction costs and onerous reporting obligations may impose significant constraints on MSMEs, pushing them into informality.

919. In most cases, the necessary legislation exists and workers are covered by the respective laws, although levels of compliance and enforcement may be poor, or the regulatory framework may be insufficiently clear. The system of labour administration has the role of reaching out to all workers, and particularly those in the informal economy, with the ultimate goal of walking them through the path of formalization.

920. The Committee has called on governments to consider the gradual extension of the system of labour administration to cover workers who are not, in law, employed persons.[1122] In this context, the labour inspection services can identify and help to legalize informal employment in enterprises operating in the formal sector.

921. Recommendation No. 204 calls on Members to take appropriate measures, including through a combination of preventive measures, law enforcement and effective sanctions, to address tax evasion and avoidance of social contributions, labour laws and regulations, and to ensure that the preventive and corrective measures (either administrative, civil or penal) adopted are adequate and strictly enforced (Paragraphs 22 and 30).

922. In most developed countries, the labour inspection services tend to focus on one of the manifestations of the informal economy, namely unrecognized and unregistered work. A multifaceted approach is often adopted to address the growing phenomenon of informal work, as well as disguised employment relationships and new forms of work or atypical work. These phenomena are often intertwined.

The European Platform tackling undeclared work

The European Platform tackling undeclared work enhances cooperation between European Union countries. It brings together relevant authorities and actors involved in fighting undeclared work to tackle this issue more effectively and efficiently, while fully respecting national competences and procedures.

The Platform:

- helps European Union countries to better deal with undeclared work in its various forms;
- drives change at the national level;
- promotes better working conditions and formal employment;
- aims to increase awareness of issues related to undeclared work.

This European Union level forum allows different actors, including social partners and enforcement authorities, such as labour inspectorates, tax and social security authorities, to:

- exchange information and good practices;
- learn from each other and together;
- develop knowledge and evidence;
- engage in closer cross-border cooperation and joint activities.

[1122] For example, CEACR, *Kyrgyzstan*, direct request, C.81 and C.150, 2018; CEACR, *Togo*, direct request, C.81, C.129 and C.150, 2017; CEACR, *Trinidad and Tobago*, direct request, C.81 and C.150, 2018.

923. In order to address the challenges of informal work, labour inspection services often make use of a combination of preventive and punitive measures. The preventive action includes information and dissemination campaigns, hotlines and call centres. Punitive measures consist of administrative and penal sanctions. More recently, "name and shame" campaigns have been used, which result in negative publicity for enterprises using informal work.

924. In many countries, the labour inspection systems are confined mainly to urban areas. The shortage of financial, human and material resources prevents them from overcoming the enormous difficulties of supervising a large number of agricultural undertakings (which are often small), as their geographical remoteness entails long journeys for inspection purposes. The result is often that small undertakings in the informal sector located in remote areas are not covered by monitoring.

Labour inspection in practice

925. The Committee notes that many governments in their reports only describe in general terms the objectives and mission of the labour inspection services and the labour administration, without making specific reference to the employment relationship or to measures intended to address informality. Some governments provide information on the activities carried out by the labour administration, and particularly the labour inspection services, to address disputes relating to the existence of an employment relationship. For instance, in some cases, the law specifically establishes the competence of labour inspectors to gather information from workers and employers concerning the existence of the employment relationship.[1123]

926. In some countries, the labour inspectorate has a conciliation function,[1124] and provides clarification and advice to the parties on request. Labour inspectors may also have broad competencies, for example covering social security issues[1125] or resolving labour disputes.

> *Greece* – The labour inspectorate has an effective mechanism for resolving labour disputes between employers and workers. All workers, irrespective of whether their work is declared or whether they work in the informal economy or are pseudo self-employed workers, have the right to resort to labour dispute resolution mechanisms.[1126]

927. Some reports provide information on the interaction of the labour inspection services with other public agencies in relation to informal work.[1127] The agencies concerned are generally those that deal with social security and taxes.[1128] Some reports also refer to the exchange of information, collaboration and signature of cooperation agreements with other public agencies.[1129]

[1123] For example, *Latvia* (sections 3(3) and 5(2) of the State Labour Inspectorate Law).
[1124] For example, *Burkina Faso* (Order No. 2017-032/MFPTPS/SG of May 2017); *Cambodia* (chs XII and XVII of the Labour Law); *Cameroon*, *Gabon*, *Italy*, *Senegal* and *Spain.*
[1125] For example, *Namibia*.
[1126] See Act No. 4144/13.
[1127] For example, *Australia*, *Belarus*, *Cameroon, Estonia*, *Gabon* (Labour Code, sections 231 et seq.), *Greece*, *Hungary* (OSH committees), *Lithuania*, *Republic of Korea* (with the Ministry of Culture and Sports), *Montenegro*, *New Zealand, Paraguay, Sudan, United Kingdom, Bolivarian Republic of Venezuela* and *Zimbabwe*.
[1128] For example, *Algeria* (Act No. 02-11 of 24 December 2002 on finance, section 27 on the exchange of information with the tax administration, and Act No. 04-17 of 10 November 2004, section 38 bis), *Armenia, Bosnia and Herzegovina, Bulgaria, Cook Islands, Ecuador, Ireland, Latvia, Montenegro* and *Norway.*
[1129] For example, the labour inspectorate of *Poland* has signed an agreement with the President of the Polish social insurance institutions on cooperation to carry out joint preventive action on illegal employment. Similar agreements have been signed in *Paraguay.*

Cambodia – The Government works closely with the National Social Security Fund (NSSF) to encourage companies, entities and other organizations to formalize their registration with the NSSF so that social security benefits are fairly distributed. The Ministry of Labour and Vocational Training has also updated its labour inspection checklist, is promoting the effectiveness of regular and special labour inspection programmes and conducts periodic labour inspections, which raise the awareness of both employers and workers. The tax authorities are endeavouring to promote the formalization of businesses through the simplification of accounting requirements and tax payments, and the introduction of e-registration and tax incentives.[1130]

928. Many reports contain information on action plans involving the Ministry of Labour, and particularly the labour administration and the labour inspection services, to address undeclared work, fraudulent employment arrangements and false self-employment.

Belgium – Each year the Social Information and Research Services (SIRS) implement an action plan to combat social fraud. The plan includes specific action by the Government, SIRS and the social inspection services to ensure a strengthened and better coordinated approach to combat fraudulent employment arrangements, including false self-employment.

Guatemala – The general labour inspectorate has signed a collaboration agreement with the Superintendence of Tax Administration, the Guatemalan Social Security Institute and the Ministry of the Economy. The agreement has made it possible to carry out focused and regionalized inspection plans, particularly in sugar cane and African palm production, and the agricultural sector.

Hungary – Act No. LXXV of 1996 on labour inspection, section 8(3), provides that, during the course of its action, the labour authority shall cooperate with the other authorities concerned. Under section 131(19) of Act No. CL of 2017 on tax rules, if the tax and customs authority identifies an unregistered employee of a taxpayer, it shall notify the labour and health insurance authorities by sending a copy of its final decision determining the employment relationship.

Oman – In 2017, a comprehensive inspection programme was carried out covering 4,869 enterprises to evaluate compliance with the provisions of the Labour Code. The programme focused on the employment status of workers, hours of work, leave, rest periods and the timely and regular payment of wages, as well as the relevant provisions, regulations and executive decisions relating to working conditions, worker protection and occupational safety and health (OSH). Both workers and employers were provided with advice and guidance concerning their legal rights.

[1130] In *Germany*, effective action against undeclared work and illegal employment requires coordinated cooperation and an intensive exchange of information between all the parties involved, in accordance with the Illicit Employment Prevention Act (SchwarzArbG), sections 2(2) and 6. Accordingly, the Illegal Employment Audit Division (FKS) collaborates with several authorities and agencies, including the tax authorities, the Federal Employment Agency (BA) and pension insurance institutions. The various authorities exchange information, depending on the requirements of the respective cases. Moreover, inspection and prosecution powers have been combined at the federal level in the FKS.

929. Certain legislative initiatives have been adopted establishing requirements for agreements between the public authorities and employers to foster formalization.

> *Colombia* – Act No. 1610 of 2013 on labour inspection and labour formalization agreements is intended to promote the adoption of "formalization agreements" between the Ministry of Labour and employers to promote and monitor commitments that generate job stability. One of its objectives is to formalize labour relations through effective commitments by employers to improve the types of employment relationship used, through permanent employment contracts, with the active participation of the Office of the Deputy Minister of Labour Relations and Inspection, territorial labour departments and the labour inspection services.

930. The exchange of information in this context has been facilitated by new technologies and advanced electronic systems.[1131]

> *Estonia* – The main cooperation tool for undeclared work is the employment register. Since 1 July 2014, all people who are employed or working on a voluntary basis in Estonia must be registered by employers in the new employment register. The register should result in a reduction of undeclared work and increased tax revenues through the requirement for the registration of employees before employment starts and by facilitating supervision by taxation officials. The register will increase the amount of electronically gathered data relating to administrative decisions and facilitate data exchange between the various public institutions. The employment register is also the basis for determining employment-related social benefits (health insurance, pensions and unemployment insurance) and for supervising the fulfilment of employment-related obligations.

> *Qatar* – The smart application "Amerni", launched recently by the Ministry of Labour, gives comprehensive access to all the Ministry's services for the enforcement of laws respecting employment and the employment relationship, including social security. The application allows workers to submit complaints by mobile phone in their own language. These measures were taken in order to ensure respect for the laws concerning the employment relationship.

> *United Arab Emirates* – The Smart Inspection System distributes tasks automatically to inspectors. The system also guides and supports inspectors during inspections by providing the required information and questions, providing smart reports in support of appropriate decision-making and monitoring the performance and efficiency of inspections and inspectors.
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> The system classifies establishments into five risk levels, ranging from level five (very high risk) to level one (low risk), on the basis of 23 different risk factors derived from the data compiled and analysed from various internal systems (including the rate of compliance with wage payments, number of labour complaints, number of dismissal reports, number of work permits completed) and external systems (validity of the commercial licence and turnover of licensed workers). The system proactively guides inspections to potential and anticipated risks so that they can be addressed before they occur.

[1131] For example, *Armenia* (Decree No. 678-N of 2015 adopting an electronic information system), *Austria* and *Pakistan* (Punjab).

931. Some reports refer to the adoption of measures to follow contracting patterns by enterprises, such as the number of cases in which full-time contracts are regularly transformed into part-time contracts, or rotation work.[1132] Similarly, the labour inspection services intervene in some countries in cases where workers are only hired on a succession of temporary contracts over and above the maximum limits set out by law.

New Zealand – The Government indicates that, in June 2018, the labour inspectorate undertook 75 proactive inspections of subcontractors in the data cabling industry as part of a joint operation with Immigration New Zealand and the Inland Revenue. Initial analysis identified 73 subcontractors rolling out broadband networks in Auckland which were potentially in breach of minimum employment standards. The investigations have found that contracting employers were failing to maintain employment records, pay the minimum wage, provide holiday entitlements and provide employment agreements. A number of employers were also identified as adopting practices such as "volunteering" or extended trial and training periods without pay. The labour inspectorate is continuing its investigations with a view to adopting a broad range of compliance actions.

Spain – In 2017, the labour inspectorate ordered the transfer of 92,925 workers engaged under temporary working arrangements to contracts without limit of time. The temporary contracts had exceeded the maximum renewals permitted (for example, three years, with a possible extension of 12 months, in the case of service contracts).[1133]

932. Some reports provide specific information on labour inspection interventions in specific sectors where disguised employment relationships and undeclared work tend to be prevalent, such as agriculture, construction, food and drinks.[1134]

The Confederation of Labour of Russia refers to the limited powers of the federal labour inspectorate to establish the nature of the relationship between the parties. Although the state labour inspectorate can issue a notice in the event of a civil law contract that actually covers labour relations, it can only do so in the case of undisputed violations (Labour Code, section 19(1)). The presumption of the existence of an employment relationship can only be made by the court that is competent for the relevant category of dispute (Labour Code, Part 3, section 19(1)).

933. The merger of procedures by different institutions into a common procedure can facilitate compliance and monitoring by the labour inspection, as well as the social security and tax authorities.[1135]

[1132] For example, *Greece*.
[1133] Ministerio de Empleo y Seguridad Social: Plan Estratégico de la Inspección de Trabajo y Seguridad Social, 2018–2020, p. 8.
[1134] For example, *Guatemala* (sugar cane and African palm production and the agricultural sector), *Ireland* (construction and food and drinks, among others).
[1135] For example, in *Turkey*, in 2016, the simplified declaration submitted by the employers to the tax office and the monthly premium and service certificate submitted to the Social Security Institution (SSI) were merged into the simplified and premium service declaration as a result of the cooperation between the SSI and the tax authorities. Joint inspections are also conducted in cooperation between the SSI and the tax authorities to prevent informal economic activities and employment. The frequency and scope of these joint inspections are determined jointly by the two institutions and data obtained through the monitoring of workplaces by the tax authorities is regularly shared with the SSI.

934. In addition to preventive and compliance measures, penal sanctions are also used to combat undeclared work.[1136] Some reports indicate that these sanctions have been strengthened to make them more dissuasive.

> *Canada* – A number of measures to strengthen compliance and enforcement measures were adopted by the Budget Implementation Act, 2017, No. 1. They include: (i) expanded powers for inspectors to determine wages owed and issue compliance orders; (ii) improved wage recovery tools; (iii) a streamlined adjudication process; (iv) a new recourse mechanism to deal with employer reprisals; (v) a new power to order employers to conduct internal audits; and (vi) the establishment of an administrative monetary penalty system (allowing for penalties not exceeding $250,000 to deter violations of occupational health and safety and labour standards).

935. Some governments indicate in their reports that the labour inspectorate collaborates closely with equality bodies to ensure that gender equality and the situation of women at work is taken into account. Others have carried out activities focusing on sectors where women are prevalent, such as domestic work, healthcare, hotels and restaurants, services and retail sales.[1137]

> *Italy* – The national labour inspectorate exchanges information with equality councillors, in accordance with the Protocol of Understanding between the national labour inspectorate and the Office of the National Equality Council, concluded on 6 June 2018. The Protocol calls for the coordination of action, the exchange of experience and training for personnel on equality and equal opportunities with a view to improving the application of the legislation.

936. In their reports, some governments refer to special plans of the labour inspection services to address the situation of workers in vulnerable situations, without providing further clarifications.[1138]

937. Many governments report recent measures increasing the level of penal sanctions to enforce the payment of social security contributions.[1139] In some cases, the law establishes a provisional period during which the employer can regularize the situation.

> *Germany* – The inspection services of the German Pension Insurance Fund (DRV) check all employers at least every four years to ensure that they have fulfilled their reporting and contribution obligations. If necessary, contributions can be requested retrospectively and late payment surcharges can be imposed. Failure to pay employee contributions carries a sentence of imprisonment of up to five years or a fine under section 266a of the Penal Code.

> The DGB in *Germany* and the CGTP in *Portugal* are opposed to the adoption of measures that offer incentives to remain in the informal economy by granting special privileges to employers, which are liable to create a second-class category of workers and legalize discriminatory situations, and do not dissuade employers from non-compliance, thereby perpetuating informality.

[1136] For example, *Algeria, Gabon* and *Spain*.
[1137] For example, *Hungary, Jamaica, Mexico, Nepal* and *Turkey*.
[1138] For example, *El Salvador*.
[1139] For example, *Algeria*.

3. Inspection and homework

938. The fact that homework is carried out in isolation and is in a certain manner hidden from public scrutiny was considered to be one of the reasons for the basic vulnerability of homeworkers during the preparatory work for the Home Work Convention (No. 177) and Recommendation (No. 184), 1996.[1140] The characteristics of homework, including the information deficit, the weakness of collective representation, the high level of informality and the privacy of the workplace, require specific approaches for labour inspection.

939. As noted in chapter IV, homework can take a number of forms. It can encompass highly-skilled and highly-paid professionals employed formally, as well as casual and vulnerable informal workers working under poor conditions. During the preparatory work, access to the home was one of the issues that was considered to be problematic.[1141] Two concerns were expressed: respect for privacy and acceptance that governments would not have to create new systems of inspection if their law and practice already provided for a system.[1142] In practice, a particular difficulty associated with homeworking arises in relation to the identification of the employment relationship. The employer is often not easy to identify, as she or he may be hidden in a complex web of contracting and subcontracting, or there may well be various employers. Many situations are ambiguous and homeworkers are not always easily distinguishable from other categories of workers. For example, a homeworker may hand out work to other homeworkers, and may therefore be both a homeworker and a subcontractor. In many cases, homeworkers are not in a continuous employment relationship, which can make the identification of the specific employment relationship more difficult.

940. Convention No. 177 provides in Article 9 that a system of inspection consistent with national law and practice shall ensure compliance with the laws and regulations applicable to homework. Article 9 refers to inspection in general, and is not limited to labour inspection. This is because national law and practice varies. In some countries, the labour inspection services have limited areas of competence covering a narrow set of issues, such as wages and hours of work, while other matters, such as health and safety, are covered by other authorities.

941. The phrase "consistent with national law and practice" is intended to meet the two concerns noted above relating to privacy and recognition of existing systems of inspection. The provision does not preclude any specific system. Inspection may depend on the consent of the worker, or be undertaken at her or his request, or in the event of reasonable grounds of suspicion of a dangerous or illegal activity. The inspection system may also encompass audits of records, interviews with workers and employers and spot checks of the delivery of work. In turn, Recommendation No. 184 indicates, in Paragraph 8, that, in so far as it is compatible with national law and practice concerning respect for privacy, labour inspectors or other officials entrusted with enforcing provisions applicable to homework should be allowed to enter the parts of the home or other private premises in which the work is carried out.

942. Access to the household is limited and, as a rule, labour inspectors must obtain the consent of the householder or the authorization of a judicial or other competent authority. Alternative methods tend to be used, with inspection visits reserved for cases in which close observation of working (or living) conditions is required, or for serious situations of criminal abuse.

943. A commonly used operational method of inspection consists of the analysis of documents and registers, combined with interviews with employers, workers and third parties outside the workplace. However, this method has limitations, for example, where such documents do not exist or are unavailable to the authorities, particularly if the work is carried out informally. The registers required in Paragraphs 6 and 7 of Recommendation No. 184 are

[1140] ILO: *Home work*, Report V(1), ILC, 82nd Session, Geneva, 1995, pp. 19 and 36.
[1141] ibid., pp. 45, 51 and 76 and Home work, *Record of Proceedings*, ILC, 83rd Session, Geneva, 1996, para. 264.
[1142] ILO: *Home work*, Report V(2), ILC, 82nd Session, Geneva, 1995, p. 58 and *Home work*, Report IV (2A), ILC, 83rd Session, Geneva, 1996, p. 63.

important elements for inspection, as is any information provided by the employer to the public authorities. Moreover, observation of actual working conditions may be required, for example in the case of OSH inspections, investigations of work accidents or whenever the presence of the worker and actual working conditions need to be observed by the inspector.

944. Convention No. 177 provides, in Article 9(2), that adequate remedies, including penalties where appropriate, in case of violation of laws and regulations shall be provided for and effectively applied. A broad range of remedies are possible, such as fines, orders for the payment of wage arrears and reinstatement. Penalties are one type of remedy. As indicated during the preparatory work, other enforcement mechanisms may also be appropriate and are not precluded by this provision, such as access to judicial proceedings and complaint procedures.[1143]

Labour inspection in practice

945. In some national systems, the competences of the labour inspectorate in relation to homework are similar to those for other sectors of the economy.[1144]

946. In some cases, the general legislation governing labour inspection contains a chapter dedicated to homework.[1145] In other cases, as homework is assimilated to self-employment, and is therefore regulated by civil or commercial laws, it is not subject to labour inspection.[1146]

> *Honduras* – It is the duty of the labour inspectorate to ensure compliance with the provisions of the Labour Code. Chapter III of the Labour Code governs homework, which is not therefore excluded from compliance with national labour legislation. In cases in which employers are not in compliance with the labour legislation, an administrative penalty procedure is applied, in accordance with the inspection legislation in force, to penalize the employer and remedy any breach identified in the course of inspection.

947. At the national level, specific systems have been established to facilitate monitoring in certain countries. For instance, members of trade unions or professional associations may be tasked with inspection functions.

> *Argentina* – Act No. 12.713 on homework, section 18, provides that: "For the purposes of improving compliance with the provisions of this Act, the enforcement authority may appoint with the functions of official inspectors, acting jointly or separately, the members of the occupational associations proposed by such associations, in the manner and proportion determined by section 21, for the following purposes:
>
> (a) to carry out inspections and monitoring;
>
> (b) to supervise the operations of the delivery and reception of goods;
>
> (c) to control the payment of wages and the related conditions;
>
> (d) to request from the enforcement authority the intervention of the forces of order to secure effects and documentary evidence of infringements to the law."

948. Some national laws contain provisions indicating the specific issues that have to be monitored by labour inspectors, such as the register of employers, books and the visible posting of wage rates in the premise[1147] or, more specifically, compliance with OSH requirements.

[1143] ILO: *Home work*, Report V(2), 1995, op. cit., p. 58.
[1144] For example, *Bosnia and Herzegovina* (Republika Srpska), *Burkina Faso, Cabo Verde, Costa Rica, Republic of Korea* and *Latvia*.
[1145] For example, *Australia* (Fair Work Act) and *Honduras*.
[1146] For example, *China*.
[1147] For example, *Mexico* (Labour Code, section 330) and *Trinidad and Tobago*.

949. Access to the home or other private premises where homework is performed is either not considered or is specifically prohibited by some national laws.[1148] In other cases, specific measures have been adopted to ensure respect for privacy and workers' rights, such as the requirement of the consent of the homeworker or a court order.[1149] In some cases, access to the home is only permitted in the presence of union representatives, while in others it is not clear from the information provided by governments whether access to the house of the homeworker is possible.

> *Australia* – The Fair Work Act (Part 3–4) establishes the right of permit holders (union officials) to enter premises where work (including homework) is performed to: hold discussions with employees; investigate suspected contraventions of workplace laws or instruments; or investigate suspected contraventions of workplace health and safety laws. To exercise the right of entry, a permit holder must hold a valid and current entry permit from the Fair Work Commission and, in general, with the exception of entry to investigate suspected workplace health and safety contraventions, must give 24 hours' notice before entering premises. Entry can only occur during working hours.

950. Some governments refer in their reports to rules applicable to telework.

> *Germany* – There is no separate system for monitoring or ensuring occupational safety in telework. Such monitoring is undertaken as part of the supervisory activities of the OSH authorities, which are not authorized to enter the private premises of teleworkers. However, an exception may be made in individual cases to avert urgent threats to public safety or public order (Occupational Safety and Health Act (ArbSchG), section 22(2), fifth indent). In addition, the documented risk assessment for telework jobs or confirmation of the same arrangements as in the enterprise can be inspected. Under the terms of the Workplace Ordinance (ArbStättV), a private law agreement between the employer and the employee must specify the conditions under which inspection of the telework job may be carried out in the employee's private domain.[1150]

951. In other cases, the legislation explicitly allows labour inspectors to enter premises where home work is carried out.

> *Ecuador* – The Labour Code, section 283, on the powers of labour inspectors provides that:
> "With regard to home work, in addition to general powers, it is also the responsibility of labour inspectors:
> ...
> 2. To ensure that the wage rate is posted in a visible place in the respective premises, and that payments are made in accordance with what is established therein; and
> 3. Conduct periodic inspections of premises in which home work is performed in cases where it appears that more than five workers are working together. They may also inspect workshops when they receive complaints that the work carried out there is dangerous or unhealthy."[1151]

[1148] For example, *Belarus* (prohibited), *Cameroon* (not considered), *Cabo Verde* (prohibited), *Egypt* (prohibited) and *Romania* (prohibited).
[1149] For example, *Belgium* (the Social Penal Code, section 24, contains very detailed provisions on access to the house of the homeworker). Similarly, *Austria, Brazil, Canada, Croatia, Cyprus, Denmark, Estonia, Guatemala, Ireland, Morocco, New Zealand, Norway, Peru* and *Spain.*
[1150] Similarly, *Spain* (Workers' Charter, section 13).
[1151] Similarly, *Denmark* (Act on Occupational Safety and Health Enforcement and Cooperation on Occupation Safety and Health Workplaces), *Malta, Namibia, Slovakia* and *Thailand*.

952. The law may also establish a particular system of inspection applicable to homework,[1152] or exclude homework from the competence of the labour inspectorate.[1153]

4. Labour inspection and workers with disabilities

953. Quota schemes are used in a number of countries as affirmative action measures to promote the labour market integration of persons with disabilities (see chapter V). Quotas are normally established by law, decree or regulation. Under quota schemes, employers with a specified minimum number of employees are required to ensure that a certain percentage (a quota) of their workforce consists of persons with disabilities.

954. There are three basic types of quota schemes:

- a quota requirement, reinforced by a levy;
- a quota requirement not backed up with effective sanctions or an effective enforcement mechanism; or
- a non-binding quota or target based on a recommendation, such as a government circular.

955. Legislation on the employment of persons with disabilities generally contains provisions specifying the institutional structures responsible for the monitoring and enforcement of the law. The monitoring and evaluation of compliance with equal employment opportunity policies and laws may be left to the labour inspection services, or assigned to equality bodies, national human rights institutions or other similar entities. In some countries, special organizations and bodies have been established to promote compliance with the principle of non-discrimination, and they may have a statutory duty to implement and enforce equal employment opportunity laws and policies. As these laws and policies also touch upon human rights law, compliance, for which the State is ultimately responsible, cannot be left to individuals and private interest groups, but requires a degree of state involvement.

956. Policies and laws often require employers to collect data on the number of persons with disabilities that they employ and report the data to a special agency. The data can be used by works councils, which are often responsible for promoting equal employment opportunities in the firm, and by the social partners when drawing up or evaluating collective agreements. The collection of such data involves a restriction on the right to privacy of the persons with disabilities concerned, as the information collected on these persons and the presence or absence of disabilities is supplied to others. Careful consideration is required on how the need for information can be balanced with the promotion of equal employment opportunities for a disadvantaged and under-represented group. The reconciliation of information collection and the right to privacy presupposes the adoption of laws setting out the exact purposes and clearly defined circumstances under which information on individuals may be collected, maintained and disseminated.

957. The labour inspection services, in the context of their normal data collection duties, may be called upon to gather data on the action taken to give effect to a disability law or equality law with a disability dimension, and on any infringements of the related requirements. In addition to detecting and remedying violations during inspection visits, labour inspectors also have an important role to play in prevention, including through the provision of technical information and advice. The advantage of using existing enforcement institutions is that they usually have the authority and resources to investigate and monitor compliance by individual employers. Organizations of and for persons with disabilities may lack these resources.

[1152] For example, *El Salvador*.
[1153] For example, *Philippines*.

II. Access to appropriate, speedy, inexpensive, fair and efficient procedures and mechanisms to settle disputes

958. Recommendation No. 198 calls on the competent authorities to adopt measures to ensure respect for and the implementation of laws and regulations respecting the employment relationship, including dispute settlement machinery.[1154]

959. It also indicates that the national policy called for in the Recommendation should include measures to provide effective access to appropriate, speedy, inexpensive, fair and efficient procedures and mechanisms for settling disputes regarding the existence and terms of an employment relationship (Paragraph 4(e)).

960. Recommendation No. 198 adds in Paragraph 14 that the settlement of disputes concerning the existence and terms of an employment relationship should be a matter for industrial or other tribunals or arbitration authorities to which workers and employers have effective access in accordance with national law and practice. Depending on the national industrial relations systems, such dispute settlement machinery may be tripartite or bipartite. It may have general competence or may be limited to specific sectors of the economy.[1155]

961. Recommendation No. 204 also calls on Members to put in place mechanisms with a view to ensuring compliance with national laws and regulations ensuring the recognition and enforcement of employment relationships (Paragraph 26). When an employment relationship is not clearly established, workers are at risk of falling into informality. In fact, workers often do not know whether or not they are entitled to protection under the labour law. Both Recommendations have the same goal of ensuring the protection of workers within a clear and well-established framework. Recommendation No. 204 adds that Members should put in place efficient and accessible complaint and appeal procedures, and provide for preventive and appropriate corrective measures to facilitate the transition to the formal economy and ensure that the administrative, civil or penal sanctions provided for by national laws for non-compliance are adequate and strictly enforced (Paragraphs 29 and 30). As indicated in the preparatory work for Recommendation No. 198, the lack of legal recognition or status in the informal economy deprives workers of their fundamental rights, which is a governance issue. Refocusing the scope of the employment relationship is a step in transforming work in the informal economy into decent work in the mainstream economy.[1156]

962. Informality touches upon a broad array of issues that go well beyond the employment relationship, for which workers and economic units should have access to complaint and appeal procedures. Paragraph 26 of Recommendation No. 204 is not therefore limited to the employment relationship. It calls on Members to put in place appropriate mechanisms or review existing mechanisms with a view to ensuring compliance with national laws and regulations to facilitate the transition to the formal economy. Access to efficient and accessible complaint and appeal procedures for workers in the informal economy should also be ensured (Paragraph 29). The system should take into consideration the fact that workers may be afraid to put forward their claims, may lack legal literacy or may not be able to afford legal services.

1. Specialized bodies and mechanisms

963. In some countries, there is a requirement to establish labour dispute settlement committees at the enterprise level, which are sometimes supplemented by high-level dispute settlement mechanisms with general competence.[1157] These bodies are sometimes bipartite or tripartite. According to the reports, some of them have the explicit competence to deal

[1154] ILO: *The employment relationship: An annotated guide to ILO Recommendation No. 198,* Geneva, 2007, p. 46.
[1155] ILO: Conclusions concerning the employment relationship, 2003, op. cit., para. 14.
[1156] ILO: *Provisional Record* No. 21, Committee on the Employment Relationship, ILC, 91st Session, Geneva, 2003, para. 64, Worker Vice-Chairperson.
[1157] For example, *Egypt*, *Islamic Republic of Iran*, *Myanmar, Panama* and *Turkmenistan.*

with issues related to the employment relationship,[1158] while other types of ad hoc institutions have been established in other cases.[1159]

Australia – The Fair Work Ombudsman provides a free service and can investigate disputes relating to the existence of an employment relationship or an alleged breach of false contracting provisions. In cases where the Fair Work Ombudsman believes that a worker has been misclassified, the Ombudsman may opt to mediate the dispute between the parties or to work cooperatively with the business.[1160]

Belgium – The Administrative Commission on the Regulation of the Employment Relationship was established under the Industrial Relations Act (Programme Act) of 27 December 2006, section 329. It is responsible for taking decisions relating to the qualification of an employment relationship, at the joint or unilateral request of the parties and prior to the commencement of the relationship. The procedure is simple and free of charge. The decisions of the Commission are valid for a period of three years and may be appealed to the labour court. All decisions of the Commission are published on the website of the Employment Relations Commission and a report is drawn up each year on the activities of the Administrative Commission. The parties can always challenge their employment relationship before the labour courts and tribunals. However, if there is no appeal, social security institutions are bound by the decisions of the Commission.

964. In some countries, industrial courts are also competent for disputes concerning the employment relationship,[1161] while in others they are covered by arbitration boards.[1162]

United Kingdom – The Advisory, Conciliation and Arbitration Service (ACAS), a statutory public body, helps the parties reach a settlement without recourse to the courts. Participation in the procedure is voluntary for both the employer and employee. Potential claimants are required to contact the ACAS before making a claim with an employment tribunal. If the parties go to a tribunal for the determination of their employment status, the ACAS continues to offer post-claim conciliation services. In the case of a dispute concerning entitlement to rights, redress is through an employment tribunal, which will first consider the individual's employment status to determine whether the individual is entitled to protection or has a case against the employer. Decisions can be revised by the Employment Appeal Tribunal, the Court of Appeal and the Supreme Court. During each appeal, no new points of law may be considered, only those originally considered.

[1158] For example, *Afghanistan, Algeria, Belarus, Bosnia and Herzegovina* (Labour Law, section 116) and *Brazil* (Consolidation of Labour Laws, section 625A, and Labour Reform Act No. 13467, section 855B).
[1159] For example, *Belgium*.
[1160] The Fair Work Ombudsman may also opt to litigate suspected breaches of false contracting provisions in the courts to enforce workplace laws, impose penalties and deter employers from committing violations. The Fair Work Commission is Australia's national workplace relations tribunal. It may engage in mediation or conciliation to resolve an alleged contravention of the prohibition of misrepresenting employment as an independent contractor relationship. It can make a recommendation or express an opinion on the matter, including an opinion about the employment status of the worker. The agreement of both parties is required for the Fair Work Commission to provide a binding decision on a workers' employment status.
[1161] For example, *Denmark* and *Estonia* (the Labour Dispute Resolution Act of 2018 establishes the procedure for Labour Dispute Committees, which operate within the labour inspectorate).
[1162] For example, *Armenia* (Labour Code, section 264(3)) and *Cambodia* (Labour Law, chs XII and XVII, once conciliation has failed).

965. In some countries, competence to review the employment relationship is vested with the social security services or tax authorities.[1163] In such cases, it is important to ensure the harmonization of the criteria and concepts relating to the classification of contracts and the employment relationship in order to avoid contradictions and a lack of coherence.

The DGB in *Germany* supports the approach of further developing the procedure for determining employment status and organizing it consistently in the various branches of social insurance. In so doing, it is necessary to ensure that the status determined under social security law is the same as that under labour law, as the concept of employee under social security law is not identical to that of worker under labour law. It is therefore possible under the current case law for a person to be considered to be in "false self-employment" under social security law, and to be genuinely self-employed under labour law.

966. In other cases, the ministry of labour or the labour administration is competent for mediation and conciliation.[1164] In some countries, there is a requirement to engage in negotiation (mediation and conciliation) before having access to the courts,[1165] while in others this is optional before an appeal is made.[1166] In certain countries, the role of conciliation is vested in specialized conciliation centres or tribunals.[1167]

Ireland – The Scope Section of the Department of Employment Affairs and Social Protection (DEASP) has the legal authority to make determinations on employment status under the Social Welfare Consolidation Act 2005, while the Workplace Relations Commission determines employment status in relation to employment rights. If agreement is not reached, the dispute may be referred to the adjudication services of the Workplace Relations Commission.

Mexico – The Federal Labour Prosecutor (PROFEDET) is a decentralized body of the Secretariat of Labour and Social Welfare (STPS) and has the function of protecting the rights of workers before the labour authority, through the provisions of advisory services, conciliation and legal representation.

South Africa – The Commission for Conciliation, Mediation and Arbitration (CCMA) provides advice on whether a worker is an employee.

967. In one country, if the question of employment status is a collective issue, a national mediation council can intervene.[1168] In some cases, a collective agreement may determine that certain individual issues, such as employment status, can be submitted to conciliation.[1169] Disputes can also be resolved through negotiations between the trade union and the employer.[1170]

[1163] For example, *Cyprus*.
[1164] For example, *Chile, Costa Rica, Cyprus, El Salvador, Georgia, Jamaica, Mexico, Namibia, Nepal, Philippines, Qatar, Sri Lanka* and *Trinidad and Tobago*.
[1165] For example, *Cook Islands, Mexico, Nicaragua, Palau, Panama* and *Spain* (in certain cases).
[1166] For example, *Italy* (Act No. 183/2010).
[1167] For example, *Mexico*.
[1168] *Suriname*.
[1169] For example, *Spain* (Workers' Charter, sections 85 and 91).
[1170] For example, *Sweden*.

There are sometimes special settlement procedures for workers who are under a specific type of employment contract, such as a fixed-term or part-time contract.

> *Republic of Korea* – For non-regular workers, the Act on Fixed-Term Workers and the Act on Temporary Agency Workers establish dispute settlement procedures concerning employment conditions. This is to eliminate discrimination against these categories of workers. Where any fixed-term, part-time or temporary agency worker faces discrimination in relation to working conditions, including wages and welfare benefits, without any reasonable cause, she or he may apply for corrective action to the respective regional or national labour commission,[1171] which has mediation and arbitration, as well as adjudicatory functions.

968. According to some reports, measures are being taken in certain countries to amend the legislation to cover situations of misclassification,[1172] or to ensure that arbitration laws also cover the determination of the employment relationship.[1173]

2. Courts and tribunals

969. In general, as indicated in certain reports, national courts and tribunals are competent to deal with cases concerning the existence of an employment relationship.[1174]

> *Germany* – It is the prerogative of the labour courts to make binding decisions on disputes arising out of employment relationships. A special "fast-track" procedure is available under the Labour Court Act (ArbGG), section 8(1), with reduced court fees in comparison with other civil law proceedings (Court Costs Act (GKG), section 3(2), Annex 1, Part 8). The labour or social courts are responsible for deciding on employee status or the existence of an employment relationship (ArbGG, section 2(1)(3)(b), and the Social Court Act (SGG), section 51(1)). Employees can assert their individual rights arising out of the employment relationship before the labour courts, where the question of whether or not an employment relationship exists can also be clarified. Such a determination is not based on the formal designation of the contract, but its actual implementation. Employees can file a complaint and engage in litigation in person, although under the ArbGG, section 11, they can also be represented by other persons, and particularly lawyers or trade union legal officials.

970. In some jurisdictions, provision is made for legal assistance (totally or partly financed by the State) for workers in the case of labour disputes, including cases concerning the employment relationship.[1175] The Committee considers that provision of legal aid, including pro bono legal aid and financial assistance, is crucial to enable workers to claim labour protections to which they are entitled.

[1171] See, for example, the Act on Fixed-term Workers, ch. IV.
[1172] For example, *Canada*.
[1173] For example, *China*.
[1174] For example, *Austria, Azerbaijan, Benin, Bulgaria, Croatia, Israel, Latvia, Mali, Norway, Poland, Romania, Senegal* and *Slovakia*.
[1175] For example, *Finland, Sri Lanka* and *Suriname*.

The Federal Chamber of Labour (BAK) of *Austria* indicates that cross-border cooperation in relation to employment issues is still extremely limited for a variety of reasons. It therefore welcomes the proposal by the European Commission to establish a European Labour Authority to ensure that European Union rules on labour mobility are enforced in a fair, simple and effective manner.

The Confederation of Labour of *Russia* welcomes the fact that the Supreme Court bases its decisions on Recommendation No. 198 to identify the indicators of an employment relationship. In lower instances, on the contrary, the existence of an employment relationship is regularly set aside due to the incorrect application of labour law.

3. The role of law and judicial decisions in determining employment status

971. As demonstrated by the examples referred to in various parts of this Survey, and particularly in chapter II, the courts and other forms of adjudication play a substantive role in the determination of the employment relationship, depending on the circumstances of each case. There is always room for interpretation and clarification of the law, in both civil and common law systems.

972. There is a growing debate about the role of the employment relationship as the most efficient channel for ensuring labour protection.[1176] Many forms of substantive protection are available for all workers, irrespective of where and for whom they work. Many other forms of protection are being progressively extended to workers beyond the employment relationship. At the same time, as work can be provided through a variety of arrangements, ranging from the most rigid and clearly established employment relationship to the loosest form of autonomy, it is claimed by some that a new and broader concept should embrace this plurality. Certain experts refer, for example, to the "personal work relation" as offering the personal scope for the application of labour law to all those engaged in work for another person.[1177]

973. In this regard, the Committee highlights that there are some rights and protections, such as fundamental principles and rights at work that are applicable to all workers irrespective of their employment status. Besides, even if certain considerations suggest the need for an evolution in analysis of the employment relationship so as to go beyond the factors and indicators referred to in chapter II, the Committee observes that examination of the latest court rulings on platform work and the status of workers shows that the courts are continuing to base their decisions on the conditions and indicators reviewed above. Additionally, the Committee considers that the employment relationship continues to be the primary mechanism that offers clarity to the labour market in relation to the attribution of the respective rights and responsibilities.

[1176] N. Contouris: "The employment relationship: A comparative analysis of national judicial approaches", in G. Casale (ed.): *The employment relationship: A comparative overview,* Hart, Oxford and ILO, Geneva, 2011, p. 68. Authors such as Supiot and Freedland are the leading commentators in this respect.
[1177] See, in this regard, N. Contouris and V. De Stefano: *New trade union strategies for new forms of employment*, ETUC, Brussels, 2019, p. 7.

974. The employment relationship varies according to circumstances. As indicators which serve to determine the employment relationship in a specific case and at a specific time may not be appropriate in other cases, it is necessary for the judge to assess the facts and the situation in practice on a case-by-case basis. Determining whether or not a specific working arrangement constitutes an employment relationship is not merely a matter of ticking boxes each time the existence of a criteria or condition has been demonstrated. It is necessary to weigh the facts and circumstances in each case. For that reason, the Committee considers that such approaches as automatic decision-making through the use of artificial intelligence to replace the value judgments made by courts are questionable as they raise the risk of arbitrary findings.

4. Remedies for homeworkers

975. With regard to homeworkers, Convention No. 177 provides in Article 9(2) that adequate remedies, including penalties where appropriate, in case of violation of the respective laws and regulations, shall be provided for and effectively applied. Recommendation No. 184 adds that "[i]n cases of serious or repeated violations of the laws and regulations applicable to home work, appropriate measures should be taken, including the possible prohibition of giving out home work, in accordance with national law and practice" (Paragraph 9). It also indicates that the competent authority should ensure that there are mechanisms for the resolution of disputes between a homeworker and an employer or any intermediary used by the employer (Paragraph 28). Furthermore, in view of the vulnerability of homeworkers to fluctuations in the labour market and seeking to ensure as far as possible equality of treatment with other workers, Recommendation No. 184 also provides that homeworkers should benefit from the same protection as that provided to other workers with respect to termination of employment. The Committee notes that little information has been provided in the reports on this subject.

Austria – The rights established in the Homeworking Act are enforced through the labour and social courts. Responsibility for monitoring remuneration currently lies, in accordance with the Anti-Wage and Social Dumping Act, section 14(1)(3), with health insurance providers. Section 64 of the Act establishes fines for breaches of the provisions of the Homeworking Act, and a permanent or temporary ban on the allocation of homework is envisaged as a further sanction.

Germany – Homework is regulated by the Home Work Act (HAG), which is enforced by the highest labour authorities of the Länder and their designated offices (section 3(2) of the HAG). This also includes the right to enter and inspect a private residence to avert urgent threats to public safety or public order (section 3(2) of the HAG in conjunction with section 139(b) of the Trade and Industry Code (GewO)). In the event of violations of the HAG, the highest Land labour authority or its designated office may prohibit the distribution or transfer of homework (section 30 of the HAG), and further penalties are provided for in sections 31 et seq.

III. Information, awareness-raising and training

976. Recommendation No. 198 indicates that the national policy on the employment relationship should include measures to provide for appropriate and adequate training in relevant international labour standards, relevant laws and regulations as well as comparative and case law for the judiciary, arbitrators, mediators, labour inspectors and other bodies and persons responsible for dealing with the resolution of disputes and enforcement of national employment laws and standards (Paragraph 4(g)). Training materials, which could include guidelines drawn up by the social partners, could significantly enhance the capacity to effectively address problems associated with disguised and ambiguous employment relationships. They could be supplemented by an exchange of experience and working methods between countries.

977. With respect to the transition to formality, Recommendation No. 204 calls on member States to provide guidance to enforcement bodies, including on how to address working conditions in the informal economy (Paragraph 27). Members should also take measures to ensure the effective provision of information, assistance in complying with the relevant laws and regulations, and capacity building for relevant actors (Paragraph 28).

978. In many countries, dispute resolution bodies are also responsible for awareness-raising and training.[1178] Awareness-raising campaigns have been carried out in certain countries covering sectors where women are more prevalent[1179] and for certain specific groups, such as migrants.[1180]

> *Ireland* – The Workplace Relations Commission provides information on industrial relations rights and obligations under Irish employment and equality legislation. The Department of Employment Affairs and Social Protection launched a campaign in 2018 to raise awareness about false self-employment.

979. In the case of homeworkers in particular, taking into account their situation of isolation, measures to improve enforcement should go beyond traditional inspection and could include: access to legal services and inspection at the national and local levels; the involvement of trade unions, employers' organizations and other non-governmental organizations; the dissemination of information among homeworkers on their legal rights, including through brochures in accessible languages on the relevant laws and regulations; and the establishment, where appropriate, of an office of an industrial ombudsperson to monitor conditions and serve as an arbiter for complaints.[1181]

[1178] For example, *Australia* (Fair Work Ombudsman), *Mexico* (Office of the Federal Attorney for the Defence of Labour – PROFEDET), *Myanmar* and *United Kingdom* (ACAS).
[1179] For example, *Mexico* (domestic work).
[1180] For example, *Oman*.
[1181] See also ch. IV.

IV. Statistics

980. Collecting statistical data and conducting research and periodic reviews of changes in the structure and patterns of work at the national and sectoral levels should be part of the national policy framework. The methodology for the collection of data and for research and reviews should be determined following a process of social dialogue. All data collected should be disaggregated by sex, and national and sectoral research and reviews should explicitly incorporate the gender dimension and take into account other aspects of diversity.[1182] They should, for example and to the extent possible, include homework (Article 6 of Convention No. 177). This information will serve as the basis for the national policies to be adopted.[1183] Besides, in order to adequately assess the importance of the informal economy at national level, the disaggregation of statistics should also take into account age, workplace, the number of informal economic units, the number of workers employed and their sectors and other specific socio-economic characteristics on the size and composition of the informal economy (Paragraph 36(a) of Recommendation No. 204). Governments and social partners should also undertake research and studies on changes in the patterns and structure of work at the national and sectoral levels, taking into account the distribution of men and women as well as other relevant factors (Paragraph 21 of Recommendation No. 198).

981. Several reports indicate that no statistics are collected at national level concerning the informal economy[1184] or that there is very little information or mere estimations gathered in this respect.[1185] It is argued that this information is not easy to collect in highly developed industrialized countries where informality consists mainly in undeclared work.[1186] In this respect, some reports indicate the statistical information gathered concerning undeclared work.[1187]

982. By contrast, several countries indicate that this information is periodically collected[1188] or that they are taking measures to start collecting this information.[1189] Other countries specified that this information is not disaggregated by the factors indicated in the instruments.

[1182] ILO: Conclusions concerning the employment relationship, 2003, op. cit., para. 18.
[1183] For example, the national policy on home work (Para. 4 of Recommendation No. 184).
[1184] For example, *Algeria, Austria, Bosnia and Herzegovina, Botswana, Burkina Faso, Cameroon, Canada, China, Democratic Republic of the Congo, Estonia, Guinea-Bissau, Hungary, Ireland, Kiribati, Malta, Montenegro, Romania, Seychelles, Spain, Suriname, Thailand* and *Zimbabwe*.
[1185] For example, *Australia, Belgium, Benin, Colombia, Guatemala, India, Latvia, Myanmar, New Zealand, Philippines, Slovakia, Sweden* and *United Kingdom*.
[1186] For example, *Germany* and *Norway*.
[1187] For example, *Poland* and *Portugal*.
[1188] For example, *Armenia, Belarus, Costa Rica, Dominican Republic, Ecuador, El Salvador, Gabon, Gambia, Jamaica, Mexico, Morocco, Nepal, Nigeria, Panama, Paraguay, Senegal, Sri Lanka, Turkey* and *Turkmenistan.*
[1189] For example, *Honduras*.

V. Beyond borders: Improving global governance

983. As indicated during the preparatory work for Recommendation No. 198, the problem of lack of protection preceded globalization, but has been exacerbated by it.[1190] Global trade and production are a substantive source of growth and development in all countries. However, globalization raises numerous challenges for labour, including the lack of effective implementation and enforcement mechanisms at the global level. Furthermore, the absence or weakness of enforcement mechanisms at the national level may constitute an obstacle to globalization, as many multinational enterprises (MNEs) are increasingly reluctant to do business in economies with weak institutions, which may entail reputational risks.[1191]

984. A broad range of measures have been adopted at the public and private levels for the development of policies and regulatory frameworks to achieve a fairer globalization within more coherent and coordinated frameworks. These initiatives include multilateral and intergovernmental standards and processes, such as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the *OECD Guidelines for Multinational Enterprises*, the United Nations Global Compact and the United Nations *Guiding Principles on Business and Human Rights*, with the related due diligence process, which have already given rise to some legislative measures.[1192]

> *France* – A corporate "duty of care" Act was adopted in early 2017 following four years of consultations involving such actors as non-governmental organizations (NGOs), members of Parliament, unions, lawyers, academics and enterprises. The Act encourages large MNEs to adopt a "vigilance plan" to identify risks of serious violations of environmental and human rights. The plan must map, analyse and rank such risks, and establish alert and monitoring mechanisms. The plan and its alert and monitoring mechanisms should be formulated in consultation with stakeholders, including representative union organizations and, failing that, within the framework of multiparty initiatives by subsidiaries. The Act covers all French companies employing at least 5,000 people themselves and through their French subsidiaries, or a minimum of 10,000 employees located in France and abroad, in both parent and foreign subsidiaries.

[1190] ILO: *Provisional Record* No. 21, 2003, op. cit., para. 32 (Worker Vice-Chairperson).
[1191] ILO: *Cross-border social dialogue*, Report for discussion at the Meeting of Experts on Cross-border Social Dialogue, Geneva, 12–15 February 2019, p. 3.
[1192] ibid., p. 4

At European level, in June 2019 the European Council adopted a Regulation establishing a European Labour Authority (ELA). The aim of this new body is to support compliance and coordination between Member States in the enforcement of EU legal acts in the areas of labour mobility and social security coordination. It will also provide access to information for individuals and employers in cross-border labour mobility situations. The main tasks of the ELA will be:

- improving the access to information for employees and employers on their rights and obligations in cases of cross-border mobility, free movement of services and social security coordination;
- supporting coordination between member states in the cross-border enforcement of relevant European Union law, including facilitating concerted and joint inspections;
- supporting cooperation between member states in tackling undeclared work;
- assisting Member States authorities in resolving cross-border disputes;
- supporting the coordination of social security systems, without prejudice to the competences of the Administrative Commission for the Coordination of Social Security Systems.

The ELA will enhance cooperation between Member States without prejudice to their national competences. In cases of undeclared work, violations of working conditions or labour exploitation, the ELA will be able to report them and cooperate with the authorities of the Member States concerned. It will also support national authorities in carrying out inspections to tackle irregularities. These inspections would take place either at the request of Member States or, if they agree, to the ELA's suggestion. Follow-up measures will be taken at national level.

It is expected that the ELA will start functioning by the end of 2019, reaching its full operational capacity by 2023.

United States – The California Transparency in Supply Chains Act came into effect in January 2012 following increasing pressure from consumers wanting to purchase ethically-manufactured and sourced products. The Act requires certain companies to publicly disclose their efforts to eradicate human trafficking and modern slavery from their direct supply chains. Specifically, retailers and manufacturers subject to the Act must disclose their efforts in the following five areas: verification, audits, certification, internal standards, and employee training. In 2015, the California Attorney General issued non-binding guidance to assist companies in complying with the statute.

985. At the same time, together with Global Unions,[1193] enterprises have signed international framework agreements, which often make reference to certain ILO Conventions and create a conducive environment for social dialogue. These agreements generally recognize the role of suppliers and subcontractors in the production process, and the importance of respecting working conditions throughout the process. It is important for these agreements to have an impact at all levels of the supply chain, and to reach the lowest tiers of the production process, where the most isolated and vulnerable workers (including homeworkers) are concentrated. MNEs normally encourage suppliers and subcontractors to adhere to these agreements and

[1193] ILO: *Cross-border social dialogue*, 2019, op. cit., p. 7, for a snapshot of employers' and workers' organizations at the cross-border level.

exercise some pressure to ensure compliance. In some cases, the agreements may provide for the termination of the contractual relationship in the event of non-compliance.[1194]

986. Private governance systems are a response to economic globalization and the inadequacy of public governance institutions to address the societal pressures generated by globalization.[1195] Indeed, once enterprises operate beyond national boundaries, public institutions, which are normally national, tend to lose their impact. Corporate social responsibility (CSR), or responsible business conduct (RBC) policies and initiatives, are intended to ensure compliance with the law throughout the supply chain and, in particular, to meet the responsibilities of enterprises to respect human rights. Such measures may be developed through corporate codes of conduct, supplier codes or other initiatives. Governments are increasingly providing a framework and incentives for such initiatives including, in some cases, the adoption of legislation and the formulation of action plans and strategies.[1196]

The FNV and the CNV from the *Netherlands* indicate that businesses in the *Netherlands* have been signing voluntary agreements together for more internationally responsible business conduct (IRBC). These IRBC agreements are based on agreed norms of the UN *Guiding Principles on Business and Human Rights*, the *OECD Guidelines for Multinational Enterprises* and the ILO fundamental labour standards. The Dutch trade unions are involved in the process of creating these agreements for companies, governments, employers' and workers' organizations, and social organizations to make their supply chains sustainable and socially responsible. Drafting these agreements is done within the framework of the Dutch Social and Economic Council, in cooperation with governmental agencies, trade associations, and companies. The aim is to work together in order to achieve goals which can't be achieved individually, such as:

- living wage;
- stronger unions;
- regular working days.

Agreements have been signed in the textile, banking, forestry, gold mining, food industry, pensions, stone and metal sectors.

[1194] F. Hadwiger: *Global framework agreements: Achieving decent work in global supply chains*, Background paper, ILO, Geneva.
[1195] F. Mayer and G. Gereffi: "Regulation and economic globalization: Prospects and limits of private governance", in *Business and Politics*, 12(3), 2010, pp. 1–25.
[1196] ILO: Meeting of Experts on Cross-border Social Dialogue, Conclusions, Geneva, 12–15 February 2019, paras 10 and 11.

VI. Conclusions

987. *The Committee observes that the reports provide information on the existence of a wide range of mechanisms for monitoring, compliance and enforcement. These mechanisms have a varying level of development. Several of the examples noted in the present Survey may serve as good practices for other member States.*

988. *It is, in any case, essential to ensure that enforcement bodies are provided with the capacity and means to carry out their mission, and particularly to provide adequate responses to the new challenges and situations arising in the rapidly evolving world of work. Social dialogue has an essential role to play in shedding light on problems and decent work deficits, as well as highlighting obstacles for enforcement.*

989. *There is a common understanding of the importance of coordination and cooperation between institutions at the national level in ensuring adequate enforcement. Such cooperation and coordination should also be promoted between institutions in different countries in response to the global integration of markets.*

990. *Even though the issue of global governance is not addressed in the present Survey in its full depth, the Committee considers it to be a crucial and highly topical subject. Current labour markets are characterized by the fragmentation of production and global value chains, and this fragmentation often has considerable impact on labour rights. At the same time, further research is needed on the influence of global supply chains on the formalization or informalization of national economies, as well as on the interlinkages between the increase in work arrangements other than the standard employment relationship and global supply chains. The Committee also emphasizes the importance of broad reflection on global governance mechanisms that can help to ensure fair competition, particularly taking into account the needs of developing countries, the disparities between the North and the South, and the protection of the most vulnerable workers in all countries. The Committee calls on governments and the social partners to strengthen dialogue across borders with a view to ensuring the adequate enforcement of national legislation in a context of full respect for the fundamental principles and rights at work of all workers at all levels of the supply chain. In particular, the Committee emphasizes the need to pay special attention to workers who are most vulnerable to exclusion at the national level, who in many cases are not adequately taken into account by national legislation.*

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Achieving the potential of the instruments

I. Measures to give further effect to the instruments

991. The report form for this General Survey requested governments to provide information regarding the implementation and impact of the eight instruments under examination:

- The Employment Policy Convention, 1964 (No. 122).
- The Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).
- The Home Work Convention, 1996 (No. 177).
- The Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168).
- The Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169).
- The Home Work Recommendation, 1996 (No. 184).
- The Employment Relationship Recommendation, 2006 (No. 198).
- The Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).

992. In particular, governments were requested to report on any modifications made or envisaged to national legislation or practice, or any intention or action taken to adopt measures, including ratification, to give effect to the provisions of the instruments, as well as any difficulties that might prevent or delay ratification.

1. Taking account of the instruments in the design of national legislation, policies and programmes

993. A number of governments report that they have taken or envisage taking measures to enact or amend their national legislation or regulations to give effect to all or some of the provisions of the instruments under examination, or to implement them in practice. In this respect, the Government of *Ecuador* refers to a number of measures adopted, including: the Basic Public Service Act, of 6 October 2010, as amended up to 23 October 2018 and its General Regulations of 1 April 2011, as amended up to 28 September 2018.

994. The Government of the *United Kingdom* indicates that the main modifications to national laws, regulations or practice concerning the Conventions or Recommendations examined in the General Survey are the actions the Government is taking in response to the Taylor Review of modern working practices, the implementation of the United Kingdom's Industrial Strategy, and measures to support the employment of persons with disabilities, the long-term unemployed and older persons.

(a) Convention No. 122 and Recommendation No. 169

995. The Government of *Canada* indicates that amendments to the Canada Labour Code address several of the provisions of the Conventions and Recommendations that are the subject of the General Survey. Amendments to the Labour Code adopted on 13 December 2018 address provisions in Recommendation No. 169 concerning equal treatment, wages and income, as well as career development.[1197] The amended Labour Code requires employers in the federally regulated private sector to pay employees performing the same work under the same conditions the same rate of wages, regardless of their employment status (subject to specified exceptions). In addition, temporary work agencies are now required to pay their employees who perform work for another employer (the user enterprise) the same rate of wages as the user enterprise pays to his or her employees performing the same work under

[1197] Paragraph 7 of Recommendation No. 169 provides that "policies, plans and programmes … should aim at eliminating any discrimination and ensuring for all workers equal opportunity and treatment in respect of access to employment, conditions of employment, wages and income, vocational guidance and training and career development".

the same conditions (subject to exceptions). The amendments also require employers who notify their employees of employment and promotion opportunities within the company to notify all their employees, irrespective of their employment status. These provisions will contribute to ensuring equal treatment of all private sector employees. The Government also notes that section 189 of the Labour Code was aligned with Paragraph 10(b) of Recommendation No. 169 by establishing safeguards to ensure an employee's continuity of employment (for the purpose of entitlements such as annual vacations) in the event of the sale, lease or transfer of the property of the worker's employer. The safeguard includes situations in which the employer loses a service contract and the worker is subsequently hired by the employer who takes over the contract.

996. The Government of *Gambia* indicates that the National Employment Policy is currently under review and that the Labour Act on the Expatriates Quota of 2007 has been reviewed.

997. The Government of *Guatemala* indicates that it has presented Initiative No. 5007, which approves the new Act on the preservation of employment, adopted as Decree No. 19-2016, as part of the efforts made to prevent unemployment in the country.

998. The Government of *Zimbabwe* indicates that it is working on the revision of the National Employment Policy.

(b) Recommendation No. 198

999. The Government of *Australia* is currently considering the Fair Work Amendment (Right to Request Casual Conversion) Bill 2019. The Bill provides all eligible casual employees covered by the Fair Work Act, including those covered by enterprise agreements and those who are award or agreement free, with the right to request their conversion to full-time or part-time employment. The Bill is yet to be passed by the Australian Parliament. The Government is also considering the establishment of a National Labour Hire Registration Scheme. Moreover, the Migrant Workers' Taskforce, which was established on 4 October 2016 to provide expert advice to different governmental bodies on ways to deliver better protection for workers, including improvements in law, law enforcement and investigation, also examined labour hiring practices for companies that employ migrant workers. The government of Victoria is advocating a national labour hiring regulatory framework and will also develop a more detailed policy position regarding the gig economy following the inquiry referred to elsewhere in this response.

1000. The Government of *Belgium* refers to the Act on the nature of the employment relationship (Act of 27 December 2006) *(Loi sur la nature de la relation de travail)* which ensures legal certainty with regard to the classification of labour relations. It includes specific provisions on the nature of labour relations to prevent the phenomenon of false self-employment and false wages. The Act provides for a commission for the regulation of the employment relationship to take decisions on the classification of an employment relationship.

1001. In accordance with this requirement, on 26 January 2016, the National Labour Council issued Opinion No. 1970 – Assessment of the nature of the employment relationship. After consulting the relevant occupation and interoccupational organizations represented on the High Council of Independent Members and SMEs, the High Council issued an opinion on 15 December 2015 on the evaluation of the Act on the nature of the employment relationship.

1002. In *Cameroon*, decision of the Prime Minister No. 022/CAB/PM of 22 February 2016 established the Technical Platform for the management of migrants at work with the objective of building up a framework to exchange and reflect on the best policies for the region.

1003. The Government of *Canada* reports that the 2018 Labour Code amendments place the burden of proof in an employment dispute on the employer in cases in which the employer claims that the complainant is not an employee. The mere fact that a complaint has been brought in accordance with the Labour Code against the employer is sufficient to create the

legal presumption that the complainant is the employer's employee. The Government notes that this amendment brings the Labour Code into conformity with Paragraph 11(b) of Recommendation No. 198, which indicates that: "For the purpose of facilitating the determination of the existence of an employment relationship, Members should, within the framework of the national policy referred to in this Recommendation, consider the possibility of ... (b) providing for a legal presumption that an employment relationship exists where one or more relevant indicators is present." The Government of Canada further notes that Paragraph 17 of Recommendation No. 198 indicates that Members should develop, as part of the national policy referred to in this Recommendation, effective measures aimed at removing incentives to disguise an employment relationship. The recent amendments to the Labour Code explicitly prohibit employers in the federally regulated private sector from misclassifying employees as private contractors in order to avoid their obligations under labour standards. Further, the ability to impose administrative monetary penalties (AMPs) on employers who contravene certain provisions of the Code was enacted on 22 June 2017 as part of the Budget Implementation Act 2017, No. 1. Once in force, these two provisions will work with the abovementioned presumption of an employment relationship to remove any incentive to disguise employment relationships and to penalize employers who do. The Canadian province of Quebec indicates that recent amendments to the labour legislation introduced provisions respecting private employment agencies and temporary work agencies which recruit temporary migrant workers.

1004. The Government of *Cabo Verde* indicates that two significant regimes governing, respectively, temporary work and home work were added to Cabo Verdean law. These regimes will promote employment in *Cabo Verde* by introducing new types of employment contract. The regime governing temporary work was established by Legislative Decree No. 1/2016; matters relating to temporary work permits are covered by the subsequently adopted Legislative Decree No. 12/2018 of 5 December 2018. The legal regime governing home work was adopted through Legislative Decree No. 11/2018 of 5 December 2018 which, in addition to introducing a new form of employment to the world of work, also provides protection to persons with disabilities, primarily motor disabilities, bearing in mind that such persons can work from home. Section 4(j) of this Legislative Decree expressly requires equality of opportunity: "One of the goals of the regime governing home work is to ensure more equal employment opportunities for all, and particularly for persons with disabilities."

1005. The Government of *Ecuador* adopted the Authorization for the Implementation of the Telework Pilot Plan, issued by Ministerial Decision No. 41, and published in the *Official Gazette* Supplement No. 906 of 20 December, 2016.

1006. The Government of *Honduras* reports that it has developed an Act on social and employment inclusion for independent and self-employed workers, which is currently before the National Congress.

1007. The Government of *Guatemala* refers to section 18 of the Labour Code, which provides that the employment contract is, regardless of its denomination, the economic-legal link by which a person (the worker) is obliged to provide to another person (the employer) his or her personal services or to carry out a task personally and under a relationship of dependence and direct or indirect supervision by the employer, in exchange for compensation in whatever form. Section 19 provides that, in order for the individual contract of employment to be deemed to exist and become effective, it is sufficient to initiate the employment relationship, which is the very fact of providing services or performing a task under the conditions indicated in the preceding section.

1008. The Government of *Paraguay* indicates that it is promoting the adoption of a regulation on part-time employment. A Bill was presented to Congress in August 2018 to regulate part-time employment between workers and employers in the private sector for the performance of a job.

1009. The Government of *Suriname* indicates that modifications have been made or are envisaged to the following national laws giving effect to all or some of the provisions of the Conventions or Recommendations that are the subject of the General Survey: Contract Labour Act (enacted 2018); Private Employment Agencies Act (enacted 2017); Labour Exchange Act 2017 (enacted 2017); Maternity Protection Act (pending before the National Assembly); Decent Working Time Act (on work–life balance; approved by the Council of Ministers, submitted to State Council); Equality of Treatment on the Workplace Act (approved by the Council of Ministers, to be submitted to the State Council); Violence and Sexual Harassment on the Workplace Act (approved by Council of Ministers, to be submitted to the State Council); and the Workers Registration Act (a review with the focus on modernization and re-enactment: in the preparatory stages).

(c) Convention No. 159 and Recommendation No. 168

1010. The Government of *Belgium* refers to the adoption of the Anti-discrimination Act (Act of 10 May 2007), which prohibits all forms of discrimination, including the refusal to provide reasonable accommodation for a person with a disability (section 14). The Government of *Cameroon* refers to the adoption of Act No. 2018/010 of 11 July 2018 to ensure equal treatment for workers with disabilities.

1011. The Government of *Egypt* refers to the adoption of Law No. 10 of 2018 on the Rights of Persons with Disabilities in accordance with the Conventions and Recommendations of the International Labour Organization

1012. The Government of *Finland* indicates that legislation on services for persons with disabilities will be reviewed when the current legislation is consolidated into a single act on special services for persons with disabilities. The new legislation was submitted to Parliament on 27 September 2018 and is due to enter into force on 1 January 2021. Once adopted, the new Act will protect the right of all persons with disabilities to access services in accordance with their individual needs. It will ensure sufficient and appropriate services for all persons with disabilities equally and strengthen their participation and right to self-determination. The Non-Discrimination Act (1325/2014) includes provisions on, for example, the prohibition of discrimination, as well as reasonable adjustments to adapt working conditions to make them suitable for persons with disabilities.

1013. The Government of *Mali* reports that it has taken measures to implement the provisions of Convention No. 159 through the adoption of Act No. 2018-027 of 12 June 1995 on the rights of persons living with a disability. In *Canada*, the provincial government of Nova Scotia refers to the Nova Scotia Accessibility Act, 2017, indicating that accessibility standards (regulations) will be developed in relation to goods and services; information and communication; transportation; employment; education; and the built environment.

1014. The Government of the *Bolivarian Republic of Venezuela* indicates that it is currently working on the modification of the Act on workers with disabilities.

(d) Convention No. 177 and Recommendation No. 184

1015. With respect to the Home Work Convention, 1996 (No. 177), the Government of *Belarus* adopted Act No. 131-Z in 2014 introducing amendments to the Labour Code to bring it into conformity with the Convention. The Government of *Bulgaria* notes that in application of Convention No. 177, the Bulgarian Labour Code includes special measures to regulate the employment relationships of persons who work at home. Chapter Five, section VIII, of the Labour Code establishes requirements for the performance of home work, which aim to provide effective protection of the rights of this group of workers.

1016. The Government of *Canada* recalls that Paragraph 5 of Recommendation No. 184 calls for a homeworker to be kept informed of his or her specific conditions of employment in writing or in any other appropriate manner consistent with national law and practice. It notes

that the Labour Code does not distinguish between employees who perform work in their employer's workplace and those who perform work at home. Thus, homeworkers benefit equally from the requirement, introduced as part of the 2018 Labour Code amendments, for employers to provide their employees with a written employment statement containing specific information prescribed by regulation, including details of the employer, the title of the position held by the employee, the employee's role, the wage rate or scale of the employee, and any other relevant information.

1017. The Government of *Croatia* indicates that during the most recent reform of its labour legislation in 2014, a new Labour Act was adopted. Among other changes, the revised Act introduced modifications of the provisions respecting home work with the aim of reducing employers' obligations and making home work more attractive. Employers are no longer required to submit copies of employment contracts for home work to the labour inspection authorities, nor are they required to record daily and weekly rest periods as long as they maintain records on the start and end of working time.

1018. While the Government of *Guatemala* has not ratified Convention No. 177, it indicates that the Labour Code, adopted by Decree No. 1441 by the National Congress contains a special regime that effectively addresses home work (sections 156–160), as well as the National Policy on Decent Work (2017–32).

1019. The Government of *Ecuador* has adopted amendments in the area of labour to give effect to ILO instruments, including the adoption of the Basic Act on Social Justice and the Recognition of Home Work. The Government of *El Salvador* reports that the Organization of Women Transforming the World *(Organización de mujeres transformando el mundo)* has made a proposal to the National Assembly for the reform of the special regime for home work. The proposal is under consideration by the Committee on Labour and Social Welfare of the National Assembly.

1020. The Government of *Italy* indicates that, although it has not ratified Convention No. 177, Act No. 877 of 1973 implements its provisions. The Government of *Mauritius* indicates that it has adopted the Employment Rights (Working from Home) Regulation 2019.

1021. The Government of *Qatar* reports that it is modifying national laws, regulations and practices with a view to protecting migrant workers' rights and achieving better practices in this regard. Act No. 15 of 2017 concerning domestic workers is consistent with Convention No. 177 and Recommendation No. 184. Furthermore, Act No. 21 of 2015 regulating the entry and exit of expatriates and their residence is consistent with Paragraph 15 of Recommendation No. 169 concerning expatriate migrant workers residing lawfully in *Qatar*.

(e) Recommendation No. 204

1022. With respect to Recommendation No. 204, the Government of *Costa Rica* indicates that, through the Tripartite Agreement for the Implementation of Recommendation No. 204, a tripartite dialogue process is ongoing with the aim of giving effect to the provisions of the Recommendation with ILO support.

1023. The Government of *Cyprus* indicates that, in May 2017, a Unified Labour Inspection Service was established to conduct targeted inspections at workplaces with a view to the protection of the rights of workers. Appropriate measures are taken against employers which violate working conditions regulations, including cancellation of the employer permit. The Inspectorate's main goal is to combat undeclared work and thus to enable the transition of informal workers to the formal economy.

1024. The Government of *Guatemala* indicates that on 21 November 2018, it presented a Bill to Congress, the Act on the promotion of micro-, small and medium-sized enterprises, which aims to implement an employment policy with the intention of curtailing the informal economy and promoting the creation of a diverse range of micro-enterprises.

1025. The Government of *Montenegro* has adopted the Action Plan for the Suppression of the Grey Economy and established the Commission for the Suppression of the Grey Economy. The plan has established measures to combat the grey economy under the jurisdiction of various State bodies, which the aim of contributing to reducing the fiscal deficit and to encouraging business entities to introduce business into legal practices.

1026. The Government of *Switzerland* refers to the revision in 2018 of the Act on undeclared work.

2. Prospects for ratification and potential challenges

(a) Prospects for ratification

1027. A number of governments report having ratified all of the Conventions covered by the General Survey. In addition, some governments, such as that of *Bosnia and Herzegovina,* indicate that they have ratified all the Conventions and that almost all the provisions of the Recommendations examined in the General Survey are substantially applied in practice. The Government of *Azerbaijan* indicates that it is currently considering the ratification of the Home Work Convention, 1996 (No. 177). The Government of *Belarus* has ratified Convention No. 122, but indicates that the main provisions of Conventions Nos 159 and 177 are incorporated into national legislation. The Government of *Cameroon* reports that a study examining the ratification of Convention No. 177 is currently underway, and that a similar study exploring the ratification of Convention No. 159 will be considered, as appropriate. The Government of the *Islamic Republic of Iran* reports that it has ratified Convention No. 122 and the possibility of ratifying Conventions Nos 159 and 177 is being studied. The Government of *Italy* reports that only Convention No. 177 has not been ratified. It notes, however, that Italian legislation regulating home work (Act No. 877/1973) provides protection in this area.

1028. The Government of *Japan* indicates that it has taken measures under the Industrial Home Work Act to protect industrial homeworkers, while taking guidance from the Convention on matters such as scope, safety and health, minimum wages and the right to organize. The Government will nonetheless carefully examine the ratification of this Convention, taking the national situation into consideration. The Government of *Sudan* also indicates that it is considering the ratification of Conventions Nos 159 and 177. It has already ratified Convention No. 122.

1029. The Government of *Turkmenistan* indicates that the relevant authorities are analysing current laws and other regulations on employment and the vocational rehabilitation of persons with disabilities with a view to the possible ratification of Conventions Nos 122, 159 and 177.

1030. A number of governments that have ratified Convention No. 122 indicate that they are not currently considering the ratification of Conventions Nos 159 and 177 *(Bangladesh, Canada, Estonia, Honduras, Lithuania, New Zealand, Sri Lanka, Suriname, United Kingdom, Bolivarian Republic of Venezuela)*. Some governments report that they have ratified Conventions Nos 122 and 159, but the ratification of Convention No. 177 is not envisaged at present *(Australia, Croatia, Mali, Panama, Poland, Senegal, Slovakia, Sweden, Trinidad and Tobago, Turkey, Uruguay)*. The Government of *Costa Rica* notes that it submitted Convention No. 177 to the Legislative Assembly, but that ratification of the Convention was not approved. The Government of *Mauritius* reports that the National Employment Policy is being formulated and that the ratification of Convention No. 122 will be envisaged thereafter. The Government of *Morocco* indicates that Convention No. 177 is following the process for ratification. The Government of *Colombia* reports that ratification of Conventions Nos 122, 159 or 177 is not currently under consideration. The Government of the *Cook Islands* indicates that it is focusing on ratifying the fundamental Conventions.

1031. The New Zealand Confederation of Trade Unions (NZTU) expresses support for the ratification of Conventions Nos 159 and 177. While it highlights the urgent need to ratify Conventions Nos 87 and 138, it does not consider this to be a barrier to the progressive

ratification of all ILO Conventions currently in force. It therefore calls on the Government to commit to a programme to ratify all current ILO Conventions, starting with the fundamental and priority Conventions. Several other national trade unions call for the ratification of one or several of the Conventions under study. In this regard, the General Confederation of Workers of Argentina (CGT RA) supports the ratification of Convention No. 122. Moreover, the Federal Chamber of Labour of Austria (BAK) supports the ratification of Convention No. 159 and insists on the ratification of the Domestic Workers Convention, 2011 (No. 189), as it concerns one of the most vulnerable categories of women in the world of work. The German Confederation of Trade Unions (DGB) considers it important for *Germany* to ratify Conventions Nos 122, 159 and 177. The Swiss Federation of Trade Unions (USS/SGB) regrets that *Switzerland* has not ratified Convention No. 177 and expresses the view that the ratification of that Convention would help to remedy the lack of protection for homeworkers.

(b) Potential challenges preventing or impeding ratification

(i) Legislative obstacles

1032. The Government of *Algeria* indicates that the following obstacles impede the ratification of Convention No. 177. First, the national legislation does not recognize the intermediary in an employment relationship. Indeed, Executive Decree No. 97-474 of 8 chaabane 1418 (corresponding to 8 December 1998) establishing the specific regime for employment relationships relating to home work exclude all intermediaries between the worker and the employer. Section 2 of the Decree provides that "for purposes of the present Decree, a home worker is any worker who carries out in their own home activities in respect of the production of goods, services or transformation for remuneration, on account of one or more employers, carries out his/her activities alone or with the assistance of members of his/her family to the exclusion of salaried work and who obtains by his/her own means all or part of the primary materials and tools or is provided with them by the employer, to the exclusion of any intermediary".

1033. The Government of *Denmark* reports that tripartite consultations have been carried out on the subject of a possible Danish ratification of Convention No. 177. However, at the last discussion in February 2009, it was not possible to arrive at a common agreed recommendation within the Danish Permanent ILO Committee, established in accordance with the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), to promote the implementation of International Labour Standards. The following issues were seen at that time as challenges or obstacles:

- The Convention would require supplementary legislative measures, including on wages, which in *Denmark* are left to be regulated through collective agreements by the social partners.
- The Convention was perceived as conflicting with the Danish definition of a worker, e.g. when it comes to the employer's access and ability to instruct and control the performed work.
- The Convention was seen to focus on home-based micro- and small enterprises (outside *Denmark*), rather than the new types of jobs that have emerged due to modern technology.

1034. The Government of *Eritrea* indicates that there are some issues concerning development of human resources, the adoption of the Civil Service Code or the adoption of the private employment agency regulations which have priority over the ratification of Convention No. 122. For this same reason, the Government does not envisage for the moment the ratification of Convention No. 159 although it considers that technical assistance from the Office on workers with disabilities would be necessary.

1035. The Government of *Spain* considers that, while there is a large degree of harmony between Spanish legislation and Convention No. 177 and Recommendation No. 184, there are some elements that pose obstacles to ratification (above all, the obligation to develop a national policy in the area of distance work and requirements with respect to occupational safety and health, as well as obligations under the Recommendation). The Government further indicates that there is limited legislation providing for telework.

1036. The Government of *Switzerland* indicates that the principles underlying Convention No. 177 are in large part in conformity with those contained in Swiss legislation. However, the Convention covers all types of home work, whether this is industrial, artisanal or not, and requires a labour inspection system to enforce the legislation applicable to home work. Swiss law governing home work applies only to artisanal and industrial home work. The inspection measures required by the Convention under Article 9 also address other types of home work, for example scientific, artistic, commercial and technical work. It would thus be necessary to amend Swiss public law to align it with the Convention. Such a legislative revision is not contemplated in the near future.

1037. The Government of *Cyprus* reports that it has not considered ratification of Convention No. 177, noting that certain of its provisions are not in complete accordance with national legislation. The Government of the *United States* reports that Conventions Nos 122, 159 and 177 have not undergone the necessary tripartite analysis to determine feasibility for ratification.

(ii) Practical obstacles

1038. The Government of *Benin* indicates that it envisages ratifying Convention No. 122 in the near future, although there are financial difficulties concerning the necessary gap analysis. However, there are no prospects for the ratification of Conventions Nos 159 and 177.

1039. The Government of *Guinea Bissau* indicates that the difficulties encountered recently have been related to the submission of these Conventions to Parliament owing to the cost of their reproduction (about €1,500). Copies must be provided to the social partners within the framework of tripartism to Cabinet officials and to deputies; the cost of the Convention's publication in the *Official Gazette* and of its processing with a view to the deposit of the instrument, the ratification with the Director-General of the ILO must also be covered. The general State budget covers only the salaries of the staff of the Department of Labour, Employment and Vocational Training. Therefore, it is extremely difficult to complete the process of ratifying a Convention. Another problem is political instability with new ministers and department heads being appointed every year. This does not facilitate the follow-up of agendas, particularly with international organizations and, specifically, with the ILO, since its reports require working time and appropriate teamwork.

1040. The Government of the *Seychelles* notes that, for various reasons, namely lack of knowledge concerning the practice of home work, and given that *Seychelles* is a very small country and that workers only travel short distances to their workplaces, home work has not yet been discussed with the stakeholders. It indicates that consideration of possible ratification of Conventions Nos 122, 159 and 177 will be undertaken at a later stage after national consultations have been conducted. The Government of *Togo* indicates that a gap analysis would be needed with a view to the ratification of Conventions Nos 159 and 177. Convention No. 122 has already been ratified

3. Proposals for ILO action

(a) Requests for technical assistance or development cooperation

1041. Many countries either did not respond to this question or indicated that they had not requested technical assistance *(Latvia*, *Lithuania*, *Norway*, *Switzerland*, *United Kingdom)*. However, the Government of *Latvia* indicates that appropriate assistance could be provided through interpretation of the correct application of the legal provisions of ILO Conventions and Recommendations.

1042. The Committee notes that a few governments report that they have requested or received technical assistance. The Government of *Azerbaijan* indicates that, following a request from the Ministry of Labour and Social Protection of the Population to the ILO, an agreement was reached with the ILO regarding a visit to the city of Baku by an international labour standards expert.

1043. The Governments of *Burkina Faso*, *Cabo Verde*, *Costa Rica*, *El Salvador*, *Nepal*, *Nigeria*, *Senegal* and *Zimbabwe* have requested technical assistance for the implementation of Recommendation No. 204 and the transition from the informal to the formal economy. The Government of *Costa Rica* has also requested technical assistance on home work and *El Salvador* on the process of ratification of Convention No. 177. Some Governments, such as those of *Honduras*, *Jamaica* and the *Philippines*, indicate that they have already received technical assistance on the transition to the formal economy.

1044. The Government of *Chile* indicates that it has received technical assistance from the Office with respect to the standards on home work in the framework of the adoption of new legislation on telework. The Government of *Colombia* indicates that it has requested technical assistance concerning some issues related to the instruments under consideration. The Government of the *Democratic Republic of the Congo* indicates that the ILO has provided technical assistance with respect to the drafting of the National Employment Plan. The Government of *Egypt* indicates that it welcomes the continuation of current technical assistance on the implementation of labour standards.

1045. The Government of *Kiribati* refers to the importance of receiving technical assistance on the following issues: amendment of national labour legislation to ensure that employment is properly identified and that proper measures are in place to regulate it, avoid disguised or ambiguous employment relationships, and consultations with a view to the transition from the informal to the formal economy. It also refers to technical assistance on the development of regulation covering intermediary bodies for the employment of workers in the domestic or overseas labour market.

1046. The Government of *Mali* reports that it has benefited from multi-faceted technical assistance for the formulation of the national employment policy. An ILO expert provided support to the Government for the implementation of two projects currently being carried out, namely: the Programme of Support for Employment Promotion and Poverty Reduction (APERP 3); and the Project for Improving the Employability of Rural Youth. In the context of implementing the plan of action of the National Employment Policy (NEP), the ILO has also supplied support. The Government of *Mauritius* indicates that the ILO technical assistance is being provided for the formulation of the national employment policy, and that it will request the ILO technical assistance on other instruments. The Government of *Myanmar* indicates that, through its Decent Work Country Programme (2018–21), agreed with the ILO and the tripartite constituents, it aims to reduce gaps or inconsistencies with regard to the promotion of employment and decent jobs for all workers and of labour protections. In cooperation with the ILO, the Government of *Myanmar* is undertaking a number of activities, including reforms of the labour law and the social security system, skills development for the workforce, and the promotion of good industrial relations. The ILO is also requested to provide technical support to the Ministry of Labour, Immigration and Population.

1047. The Government of *Oman* and the social partners signed a memorandum of understanding with the ILO in 2011 to implement the Decent Work Country Programme. The memorandum of understanding was renewed for a further two years in 2017 to complete the programme to promote, among other measures, effective employment policies; boost the capacities of the technical education and vocational training sector and promote employment services, including for workers with disabilities; and promote an entrepreneurial culture.

1048. The Government of *Palau* indicates that the ILO is providing technical assistance. The Government of *Panama* has requested technical assistance on Convention No. 122. The Government of *Sri Lanka* reports that it is seeking ILO technical assistance to carry out a gap analysis with a view to the possible ratification of the Convention No. 177. The Government of *Sudan* has requested technical assistance in support of its efforts to ratify Conventions Nos 159 and 177.

1049. The Government of *Qatar* indicates that there is currently close cooperation with the ILO to see best practices with respect to migrant workers.

1050. In order to align itself with international standards for transnational service provision, the Government of *Morocco* has expressed interest in ILO technical support in the field of part-time work and the identification of labour relations in response to transnational service provision. The Government of *Morocco* also requests ILO support in the field of home work through a quantitative survey.

1051. The Government of *Seychelles* refers to the discussions undertaken with the ILO regarding the National Employment Policy and indicates that an official request for technical assistance will be forwarded to the ILO. The Government of *Suriname* has requested technical assistance in the context of its Decent Work Country Programme to strengthen the labour market system by reinforcing labour inspection and providing capacity-building on equality of treatment and the effective application of the principle of equal pay for work of equal value.

1052. The Government of *Sri Lanka* reports that it intends to bring domestic workers under the protection of the labour laws. The Cabinet of Ministers has approved this policy and the Government is in the process of identifying gaps in legislation. The Government has requested technical assistance to carry out a situation analysis of domestic work in *Sri Lanka,* as well as a gap analysis for the purposes of ratification of Convention No. 177.

1053. The Government of *Thailand* indicates that it has availed itself of ILO technical assistance through a research project on the Development of Good Practices in the Employment of Homeworkers in *Thailand*, which was undertaken within the framework of the Workshop on Promoting Law Enforcement on the Protection of Home-Based Workers Project. The research has been carried out on the garment and fishing net industries from October 2017 to the present. Moreover, for employment-related matters, ILO technical assistance in the form of relevant research materials, legal knowledge, as well as a creative training approach for Ministry personnel responsible for the provision of such services would be of great benefit.

1054. The Government of *Turkmenistan* indicates that it is considering the ratification of Convention No. 122 and that the provision of technical assistance by the ILO on the subject could accelerate process. Moreover, the Government envisages requesting technical assistance on labour, employment and social protection.

1055. Some governments have requested technical assistance on the international labour standards in general. Others have requested technical assistance on other matters: *Gabon* (trade union elections); *Panama* (Work in Fishing Convention, 2007 (No. 188)), *Togo* (training for the labour administration on international labour standards).

(b) Gaps or inconsistencies and future standard setting

(i) Comments from governments

1056. A number of governments indicate that they have not undertaken an assessment of gaps or inconsistencies that should be addressed in future standard setting, particularly with regard to new and emerging issues that should be the object of international regulation. The Government of *Sudan* reports that it has identified no gaps. Other governments, such as those of *New Zealand, Norway, Senegal, Suriname* and *Trinidad and Tobago* indicate that they have no proposals regarding gaps or inconsistencies that should be addressed by future standard setting concerning the instruments covered by the General Survey.

1057. The Government of *Algeria* considers that new technologies have destabilized traditional forms of work, which has resulted in an increase in informal work and higher health risks, while opening new work opportunities. This should be re-examined from the viewpoint of standard-setting. The Government of *Bulgaria* refers to internet platforms and crowdsourcing as issues that should be addressed by future standard setting. The Government of *India* considers that standard setting could address new forms of work.

1058. The Government of *Lithuania* indicates that new standards are needed on apprenticeships.

(ii) Comments from employers' organizations

1059. The International Organisation of Employers (IOE) highlights that Convention No. 122 remains relevant today. Productivity is a crucial determinant of investment, job creation, standards of living and wealth creation. Recalling the Centenary Declaration that called for "harnessing the fullest potential of technological progress and productivity growth, including through social dialogue, to achieve decent work and sustainable development, which ensures dignity, self-fulfilment and a just sharing of the benefits for all", the IOE highlights the importance of productive employment for competitiveness, skills development and social and economic stability. It further indicates that productivity is high on the agenda for the employers and that the ILO should support governments and enterprises to develop a comprehensive strategy on productivity growth. Government action should focus on labour market policies that are able to support employment creation and employability, to activate the long-term unemployed and to encourage labour market mobility. The IOE highlights the relevance of Convention No. 122 and Recommendation No. 204, acknowledging their impact in shaping the social, labour and business landscapes of today as well as those of tomorrow. In particular, the IOE recognizes the central importance of involving the social partners in the implementation of both instruments, as well as the financial support from governments, employers and employees in funding recommended measures. The implementation of both instruments requires sound macroeconomic policies for the creation of wealth and employment, effective labour market policies, the necessary fiscal space, and sustainability.

1060. With regard to the other instruments that are the subject of this General Survey, the IOE considers that Convention No. 177 and Recommendation No. 184 lack relevance. The IOE indicates that Convention No. 177 does not fully address the complexity of the issues relating to home work. In its view, the Convention is not sufficiently clear concerning the various forms of home work that exist in industrialized and developing countries; the informal character of home work; or the triangular relationship between homeworkers, employers and intermediaries. These issues are now even more complex, as more workers than ever demand work flexibility and potentially many more could be home workers. With respect to Recommendation No. 198, however, the IOE considers that the rigidity of the criteria set out in the Recommendation for classification of the employment relationship is unsuitable, and conflict with the competence that the Recommendation provides governments to shape the regulatory framework on employment relationships at the national level. It adds that using the criteria in the Recommendation affects labour administration, hinders new and innovative job creation and increases the potential for labour disputes and litigation, as well as

the overall costs of public administration. The IOE thus considers that Convention No. 177 and Recommendations Nos 184 and 198 lack relevance owing to the changes that have been occurring in the world of work and do not respond to current needs and appear to enjoy little support at national level.

1061. The Federation of Finnish Enterprises (SY) does not consider it necessary to adopt new standards in the areas under examination, as there are notable differences between national employment policies across countries. Regulation must also take into account changes in the nature of work and the significant differences across sectors. Regulation must continue to facilitate the organization of work without affecting competitiveness. It is also necessary to leave enough freedom to governments to adopt sector specific regulations that are flexible and take into account the needs of the workplace.

(iii) Comments from workers' organizations

1062. The International Trade Union Confederation (ITUC) considers that, while some ILO standards, such as the Private Employment Agencies Convention, 1997 (No. 181), address certain challenges, there remain numerous issues that are either not addressed by ILO standards or are only partially addressed. This includes the regulation of temporary and triangular employment relationships (not involving agencies), on-demand work, collective bargaining with user companies and equality of treatment. Recommendation No. 198 is a very important instrument that provides guidance on critical aspects with regard to misclassification. However, the Recommendation is not binding and awareness of its content and application in practice is limited, including by the fact that it is not subject to supervision by the ILO supervisory bodies. The ITUC considers that there is a clear need for new standards to address the decent work gaps identified above and to support governments and the social partners in ensuring adequate protection for all workers, irrespective of their contractual arrangement or employment status. Moreover, greater efforts should be made by the Office to promote the effective implementation of Recommendation No. 198.

1063. The Free Trade Union Confederation of Latvia (FTUCL) considers that global supply chains, cross-border collective bargaining and on-line platforms should be addressed by future standard setting. These issues lack proper harmonized legal instruments, but they are developing and spreading internationally very rapidly under the influence of globalization and digitalization.

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Food production line: Baumkuchen with green tea flavour. Otabe Company.
Industrial food-processing enterprise. Kyoto, Japan. © ILO

Concluding remarks

1064. *The Committee welcomes this opportunity to examine the three Conventions and five Recommendations selected by the Governing Body to be the subject of this General Survey. The choice of instruments has enabled the Committee to address the impacts across all countries and regions of profound and continuing changes in the world of work with regard to new and emerging forms of employment relationships and contractual arrangements. These transformations of the way we work affect an increasingly large group of women and men from all walks of life and across all occupations and economic sectors, including in particular those in the informal economy.*

1065. *At the outset, the Committee wishes to express its appreciation and acknowledge the high response rate – and substantive quality – of many of the responses received to the detailed questionnaire from both governments and the social partners. It is hoped that the strategic focus of this General Survey will provide a useful overview of the current situation existing in ILO member States in relation to the application of the instruments under examination. The General Survey has served to clarify specific provisions of the instruments, with a view to optimizing their effective application. In addition, the General Survey has identified some potential gaps in international labour standards that may be addressed in the future at the national or international level. The Committee has also taken note of certain legal or practical impediments to the ratification or implementation of one or more instruments, as expressed in a number of reports.*

1066. *In the context of this General Survey, the Committee has examined the objective of promoting full, productive and freely chosen employment from various perspectives, including from a gender equality perspective, as well as from a broader equality perspective. Thus, the General Survey has paid particular attention to the impact of changes in the structure and organization of work on disadvantaged groups, including young persons, older workers, persons with disabilities, persons living with HIV or AIDS, home workers, domestic workers, migrant workers, racial and ethnic minorities, indigenous and tribal peoples, rural workers and informal workers.*

1067. *The Committee expresses the hope that this General Survey will constitute a useful contribution to the recurrent item discussion on the strategic objective of employment planned for 2021, and support the work of the Tripartite Working Group of the Standards Review Mechanism of the ILO Governing Body. The Committee wishes to raise a number of specific points in respect of the application of the instruments in national law and practice:*

(a) In carrying out its analysis of the instruments, the Committee has taken into consideration profound changes that have taken place in the world of work in recent decades. Changes in the organization and structure of work, as well as the evolving nature of the employment relationship, have had broad-ranging impacts on societies and individuals, particularly on disadvantaged groups who encounter difficulties in accessing, remaining and advancing in employment and decent work. The Committee considers that further in-depth tripartite consultations on these ongoing changes and their impacts would be of great value in identifying appropriate means of action to ensure decent work for all.

(b) Technological and demographic changes, as well as the urgent need to address environmental and climate issues would further support the need for ongoing tripartite consultations on the future of employment and decent work. At the same time, the constantly evolving rules governing the world of work could call for the establishment of new parameters. In this context, declaring and pursuing comprehensive employment policies and programmes to achieve full, productive, decent and freely chosen employment and, at the same time, promote diversity and inclusion takes on another dimension.

(c) National employment policies and programmes should be developed around two main axes. First, it is crucial that the policies approach all relevant facets of employment in a coherent and comprehensive manner and be coordinated with other socio-economic policies and programmes at all levels, whether national, regional or global. Second, it is essential

to ensure that national employment policies and programmes are inclusive and promote diversity, taking into account the particular circumstances and needs of all segments of the population. The Committee notes that all instruments examined in this General Survey contemplate the development and implementation of national policies that promote equality of opportunity and treatment, equitable working conditions and the active participation of the relevant stakeholders, including of the persons affected by measures to be taken.

(d) The Committee recalls that enhancing the productive nature of employment and decent work are prerequisites for raising living standards and eliminating poverty. It has long been recognized that increased productivity and poverty reduction are closely interlinked. This relationship warrants re-examination in the framework of growing inequalities throughout the world, coupled with the prevalence of informal work. The Committee therefore considers that further studies would be useful in assessing the impact of productivity on growth and transition to formality, as well as to determine how the benefits of increased productivity are redistributed in society.

(e) The Committee highlights that, to increase productivity in a sustainable manner requires skills and competencies that most, if not all, workers will be required to acquire or update over the course of their working lives. This underscores the crucial importance of lifelong learning, particularly in light of continuous technological innovations, as well as ongoing climate and environmental change. In this respect, the Committee considers that, to design a comprehensive, evidence-based national employment policy, it is necessary to first carry out a skills needs assessment across the relevant economic sectors, in consultation with the social partners. The results of the assessment will, in turn, enable academic and vocational education, guidance and training curricula to be better aligned to the needs of the labour market.

(f) The Committee recalls that income generation and the creation of decent jobs should form an integral part of national employment agendas across ILO member States. With this strategic objective front and centre, States should promote the establishment and development of sustainable enterprises of all sizes, and facilitate their transition to the formal economy where appropriate. The Committee notes that, in this respect, it is crucial to formulate an enabling environment that takes into account and concretely replies to the needs of these enterprises. Moreover, in the context of an ever-growing and increasingly integrated market, governments should adopt coordinated measures to foster decent work within supply chains at both national and global level. In this respect, Governments should encourage multinational enterprises to respect fundamental principles and rights at work. In this regard, the Committee recalls the fundamental role that multinational enterprises play in the development of global supply chains and their corresponding responsibility to exercise due diligence to identify, prevent, mitigate and redress rights violations.

(g) Social and environmental concerns should be taken into account in designing and pursuing a national employment policy. The Committee considers that paving the way for a just transition will give rise to opportunities for sustainable economic growth and the creation of small and medium-sized enterprises that are in turn able to generate decent jobs. At the same time, the national employment policy should ensure effective protection of those workers who lose their jobs due to structural change. Such protection could include provision of unemployment insurance in a framework of inclusive social protection systems, which successfully secure transitions and face the challenges related to reaching universal coverage while providing adequate levels of protection. Skills training aiming to enhance employability, entrepreneurship training and establishment of incentives aiming to support the creation of sustainable and innovative enterprises are also crucial to ensure that both people and enterprises can securely navigate through these transitions. The Committee recalls in this regard the guidelines provided by the Social Protection Floors Recommendation, 2012 (No. 202).

(h) The Committee considers that the development and adoption of a national employment policy requires the establishment of a transparent and participatory process which gives a voice to all those concerned. The policy should present a coherent vision of the country's situation and employment objectives, providing for regular monitoring and review mechanisms and adequate budgetary allocations to permit the achievement of the policy's objectives. The Committee emphasizes the importance of ensuring continuity of the policy over time, as well as of expressing strong commitment to its effective implementation at all levels.

(i) Moreover, the Committee points out that each of the various instruments under examination calls for the development and implementation of national policies: the national policy on vocational rehabilitation and promotion of employment of workers with disabilities (Convention No. 159); the national policy on home work (Convention No. 177); and the national policy for reviewing, clarifying and adapting the scope of relevant laws and regulations for the effective protection of workers in the context of the employment relationship (Recommendation No. 198). The Committee suggests that, to promote good governance, such policies could be integrated into the national employment policy, with a view to ensuring coordination and coherence of the employment policy with other socio-economic policies.

(j) Turning to the second axis of the policy, the Committee emphasizes the importance of ensuring inclusiveness. When the national policy fails to include all workers, or to adopt measures to establish enabling environments for enterprises, both workers and enterprises risk becoming trapped in informality, which is both caused and perpetuated by the lack of, or a weak system of governance. For this reason, the Committee stresses the need for the national employment policy to include measures to facilitate the transition from the informal to the formal economy.

(k) The Committee draws attention to paragraphs 4 and 26 of Recommendation No. 204, which link informality to unrecognized and unregulated employment relationships. Paragraph 26 calls for Members to put in place appropriate mechanisms or review existing ones, with a view to ensuring compliance with national laws and regulations, including ensuring recognition and enforcement of employment relationships, thus facilitating the transition to the formal economy. Where Recommendation No. 198 is not applied and the employment relationship is not clearly defined, workers will remain unprotected and in conditions of informal employment. Moreover, the Committee stresses that the scope of the relevant laws and regulations should be regularly reviewed and, if necessary, adapted, taking into account the existence of disguised employment relationships as well as new and emerging forms of working arrangements, to ensure that protections are extended to those workers that are in fact in an employment relationship.

(l) The Committee notes that, for some time, there has been a significant erosion of the distinctions between the employment relationship and self-employment, leading to the exclusion of an increasing number of workers from labour law coverage and protections. Self-employed workers are generally governed by civil or commercial law under various forms of contractual arrangements, including subcontracting, civil contracting and service contracts, among others. Consequently, labour law ceases to fulfil its original function, which is to redress imbalances in bargaining power between employers and workers. This trend leading to a blurring of the lines between the two categories of workers represents, unfortunately, a slippery slope. Labour protections may disappear, but the differences in bargaining power remain, leaving individual workers to assume responsibilities that were previously incumbent on the employer, such as payment of social security contributions, occupational safety and health, payment of employment-related taxes and costs of materials and equipment.

(m) The Committee considers that this situation requires careful examination on a case-by-case basis, to determine the true nature of the work performed and the nature and scope of the existing employment relationship. At the same time, it is necessary to examine whether the indicators that may have been established to determine the existence of a working

relationship, such as economic dependence, control or subordination, continue to be fit for purpose, or whether it is necessary to adopt new criteria or indicators that better correspond to new and evolving working arrangements. The Committee suggests that it may be useful to engage in further reflection on the manner in which decent work can be assured to all workers, regardless of their employment status.

(n) The Committee considers that intermediate categories between dependent employment and self-employment may provide self-employed workers with some sort of labour protection. At the same time, it may constitute an incentive for the emergence of disguised employment relationships, and as such may run counter to the purpose of Paragraph 4(b) of Recommendation No. 198. The Committee considers that the impact of this classification on working conditions, public finances and taxes should be further studied. The Committee further considers that a review of the intermediate legal categories between dependent employment and self-employment would be helpful to provide further clarification on the employment status (employed or self-employed) of workers, taking into account the primacy of the facts, and enabling reflection on measures for ensuring that workers enjoy the rights to which they are entitled, while retaining the adaptability of the labour market.

(o) The Committee once again acknowledges the difficulty of striking the right balance between accommodating the desire for increased flexibility expressed by certain enterprises and workers, while also ensuring that all workers have the ability to exercise fundamental principles and rights at work, as well as enjoy the labour and social protections to which they are entitled.

(p) The Committee stresses that all workers, without distinction, are entitled to equality of opportunity and treatment in employment and to effective protection against discrimination, including against discrimination on multiple grounds. The instruments under examination refer to specific categories of disadvantaged workers. In such situations, it may be necessary to take active measures to establish a level playing field.

(q) While employment status is not an expressly protected ground of discrimination under international labour standards, given the increase of diverse forms of working arrangements, some of which are significantly more precarious than others, the Committee considers that further attention should be paid to addressing the potential of employment discrimination on this basis.

(r) Digital platform work is a form of working arrangement, which requires clarification with respect to the issue of the employment status of platform workers as well as the employer status of digital platforms. Measures are urgently needed to enhance predictability and income stability of these workers, as well as of other workers in new and emerging forms of work, clarifying the allocation of responsibilities between employers and workers, particularly in multi-party arrangements and informing workers and employers of their rights and obligations in the employment context.

(s) The Committee recalls that gender equality is essential to equality of opportunity and treatment in employment and occupation for all workers, regardless of their employment status. The principle of gender equality must be ingrained in the national employment policy, as well as in any poverty reduction policy or strategy, including policies for the transition to formality, or those that address specific groups of workers. Addressing gender equality also means addressing unpaid work and promoting an equitable distribution of family responsibilities, including for both children and dependent adults.

(t) Women make up the majority of home workers in many countries, often as a result of difficulties they encounter in accessing "regular" employment due to family responsibilities, lack of skills, or, in some cases, social norms. Homework is regaining momentum due to globalization and technological advancements that have increased recourse to home work in many sectors as a fundamental component of the supply chain. This is true for both traditional forms of home work, as well as for digital platform work (crowdwork) and telework. The Home Work Convention (No. 177) and Recommendation (No. 184), 1996, call for equality

of treatment for this category of often isolated, unorganized and unskilled workers and other wage earners. In this respect, the Committee highlights the need to clarify the employment status of home workers to ensure that they enjoy the rights and protections they are due. The Committee considers that particular attention should be paid to the living and working conditions of home workers, particularly in terms of their remuneration, working hours and occupational safety and health.

(u) While attention should be paid to the quality of working conditions, home work, particularly through digital platforms, may also provide needed flexibility and increased opportunities for persons with disabilities. Pursuant to Convention No. 159 and Recommendation No. 168, persons with disabilities are entitled to equality of opportunity and treatment to enable them to access, remain and advance in employment, which corresponds to their own choice and takes account of their individual suitability for the particular employment or occupation. The 2006 CRPD complements the principles set out in the ILO instruments, calling for States Parties to recognize the right of persons with disabilities to "the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities (CRPD, Article 27)". To ensure equality of opportunity and treatment in employment and occupation and counter low rates of labour market participation, the Committee considers that it is essential to integrate active labour market measures in national employment policies and programmes, as well as in other socio-economic policies, including poverty reduction policies. Steps should be taken to ensure effective protections against disability-related discrimination, including denial of reasonable accommodation, as well as for their transparent enforcement. In addition, incentives should be developed to enable persons with disabilities to participate in inclusive education, vocational guidance and training programmes and benefit from employment placement and counselling services.

(v) The Committee recalls that the compilation and dissemination of reliable, comparable labour statistics with regard to employment trends and the situation of specific groups of workers is crucial to assess the nature of measures to be developed and monitor the results of their implementation. There is a lack of systemic reliable data on the employment situation of persons with disabilities and home workers, as well as of other groups in supply chains. In addition, the Committee notes that the 2018 Resolution of the ICLS on statistics relevant to the employment relationship and status in employment provides new statistical definitions that take account of new and emerging forms of employment and that call for follow-up at the national level.

1068. *In sum, the Committee takes note of the changing landscape of work due to globalization and digitalization, and the consequences of such changes on workers, particularly those most vulnerable to exclusion Taking into account the guidance provided by the 2019 Centenary Declaration concerning the need to develop a human-centred approach to the future of work, as well as the goals established under the 2030 Agenda for Sustainable Development, the Committee considers that the ILO tripartite constituents have an important role to play in collaborating in the development and pursuit of active employment policies and programmes that integrate fully the principles of equality, inclusion, inherent dignity and full participation of all members of society, leaving no one behind.*

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Virtual reality googles. © Institute for Future Environments

Appendixes

Appendix I. Ratification status (Conventions Nos 122, 159 and 177)

Members	Convention No. 122	Convention No. 159	Convention No. 177
Afghanistan	—	Ratified 07/04/2010	—
Albania	Ratified 07/01/2009	—	Ratified 24/07/2002
Algeria	Ratified 12/06/1969	—	—
Angola	—	—	—
Antigua and Barbuda	Ratified 16/09/2002	—	—
Argentina	—	Ratified 13/04/1987	Ratified 31/07/2006
Armenia	Ratified 29/07/1994	—	—
Australia	Ratified 12/11/1969	Ratified 07/08/1990	—
Austria	Ratified 27/07/1972	—	—
Azerbaijan	Ratified 19/05/1992	Ratified 19/05/1992	—
Bahamas	—	—	—
Bahrain	—	Ratified 02/02/1999	—
Bangladesh	—	—	—
Barbados	Ratified 15/03/1976	—	—
Belarus	Ratified 26/02/1968	—	—
Belgium	Ratified 08/07/1969	Ratified 10/06/2015	Ratified 02/10/2012
Belize	—	—	—
Benin	—	—	—
Bolivia, Plurinational State of	Ratified 31/01/1977	Ratified 19/12/1996	—
Bosnia and Herzegovina	Ratified 02/06/1993	Ratified 02/06/1993	Ratified 18/01/2010
Botswana	—	—	—
Brazil	Ratified 24/03/1969	Ratified 18/05/1990	—
Brunei Darussalam	—	—	—
Bulgaria	Ratified 09/06/2008	—	Ratified 17/07/2009
Burkina Faso	Ratified 28/10/2009	Ratified 26/05/1989	—
Burundi	—	—	—
Cabo Verde	—	—	—
Cambodia	Ratified 28/09/1971	—	—
Cameroon	Ratified 25/05/1970	—	—
Canada	Ratified 16/09/1966	—	—
Central African Republic	Ratified 05/06/2006	—	—
Chad	Ratified 04/06/2015	—	—
Chile	Ratified 24/10/1968	Ratified 14/10/1994	—
China	Ratified 17/12/1997	Ratified 02/02/1988	—
Colombia	—	Ratified 07/12/1989	—
Comoros	Ratified 23/10/1978	—	—
Congo	—	—	—
Cook Islands	—	—	—
Costa Rica	Ratified 27/01/1966	Ratified 23/07/1991	—
Côte d'Ivoire	—	Ratified 22/10/1999	—

Members	Convention No. 122	Convention No. 159	Convention No. 177
Croatia	Ratified 08/10/1991	Ratified 08/10/1991	—
Cuba	Ratified 05/02/1971	Ratified 03/10/1996	—
Cyprus	Ratified 28/07/1966	Ratified 13/04/1987	—
Czech Republic	Ratified 01/01/1993	Ratified 01/01/1993	—
Democratic Republic of the Congo	—	—	—
Denmark	Ratified 17/06/1970	Ratified 01/04/1985	—
Djibouti	Ratified 03/08/1978	—	—
Dominica	—	—	—
Dominican Republic	Ratified 29/03/2001	Ratified 20/06/1994	—
Ecuador	Ratified 13/11/1972	Ratified 20/05/1988	—
Egypt	—	Ratified 03/08/1988	—
El Salvador	Ratified 15/06/1995	Ratified 19/12/1986	—
Equatorial Guinea	—	—	—
Eritrea	—	—	—
Estonia	Ratified 12/03/2003	—	—
Eswatini	—	—	—
Ethiopia	—	Ratified 28/01/1991	—
Fiji	Ratified 18/01/2010	Ratified 01/12/2004	—
Finland	Ratified 23/09/1968	Ratified 24/04/1985	Ratified 17/06/1998
France	Ratified 05/08/1971	Ratified 16/03/1989	—
Gabon	Ratified 01/10/2009	—	—
Gambia	—	—	—
Georgia	Ratified 22/06/1993	—	—
Germany	Ratified 17/06/1971	Ratified 14/11/1989	—
Ghana	—	—	—
Greece	Ratified 07/05/1984	Ratified 31/07/1985	—
Grenada	—	—	—
Guatemala	Ratified 14/09/1988	Ratified 05/04/1994	—
Guinea	Ratified 12/12/1966	Ratified 16/10/1995	—
Guinea - Bissau	—	—	—
Guyana	—	—	—
Haiti	—	—	—
Honduras	Ratified 09/06/1980	—	—
Hungary	Ratified 18/06/1969	Ratified 20/06/1984	—
Iceland	Ratified 22/06/1990	Ratified 22/06/1990	—
India	Ratified 17/11/1998	—	—
Indonesia	—	—	—
Iran, Islamic Republic of	Ratified 10/06/1972	—	—
Iraq	Ratified 02/03/1970	—	—
Ireland	Ratified 20/06/1967	Ratified 06/06/1986	Ratified 22/04/1999
Israel	Ratified 26/01/1970	—	—
Italy	Ratified 05/05/1971	Ratified 07/06/2000	—

Members	Convention No. 122	Convention No. 159	Convention No. 177
Jamaica	Ratified 10/01/1975	—	—
Japan	Ratified 10/06/1986	Ratified 12/06/1992	—
Jordan	Ratified 10/03/1966	Ratified 13/05/2003	—
Kazakhstan	Ratified 06/12/1999	—	—
Kenya	—	—	—
Kiribati	—	—	—
Korea, Republic of	Ratified 09/12/1992	Ratified 15/11/1999	—
Kuwait	—	Ratified 26/06/1998	—
Kyrgyzstan	Ratified 31/03/1992	Ratified 31/03/1992	—
Lao People's Democratic Republic	—	—	—
Latvia	Ratified 27/01/1992	—	—
Lebanon	Ratified 01/06/1977	Ratified 23/02/2000	—
Lesotho	—	—	—
Liberia	—	—	—
Libya	Ratified 27/05/1971	—	—
Lithuania	Ratified 03/03/2004	Ratified 26/09/1994	—
Luxembourg	—	Ratified 21/03/2001	—
Madagascar	Ratified 21/11/1966	Ratified 03/06/1998	—
Malawi	—	Ratified 01/10/1986	—
Malaysia	—	—	—
Maldives, Republic of	—	—	—
Mali	Ratified 12/04/2016	Ratified 12/06/1995	—
Malta	—	Ratified 09/06/1988	—
Marshall Islands	—	—	—
Mauritania	Ratified 30/07/1971	—	—
Mauritius	—	Ratified 09/06/2004	—
Mexico	—	Ratified 05/04/2001	—
Moldova, Republic of	Ratified 12/08/1996	—	—
Mongolia	Ratified 24/11/1976	Ratified 03/02/1998	—
Montenegro	Ratified 03/06/2006	Ratified 03/06/2006	—
Morocco	Ratified 11/05/1979	—	—
Mozambique	Ratified 23/12/1996	—	—
Myanmar	—	—	—
Namibia	Ratified 20/09/2018	—	—
Nepal	—	—	—
Netherlands	Ratified 09/01/1967	Ratified 15/02/1988	Ratified 31/10/2002
New Zealand	Ratified 15/07/1965	—	—
Nicaragua	Ratified 01/10/1981	—	—
Niger	Ratified 06/06/2018	—	—
Nigeria	—	Ratified 26/08/2010	—
North Macedonia	Ratified 17/11/1991	Ratified 17/11/1991	Ratified 03/10/2012
Norway	Ratified 06/06/1966	Ratified 13/08/1984	—

Members	Convention No. 122	Convention No. 159	Convention No. 177
Oman	—	—	—
Pakistan	—	Ratified 25/10/1994	—
Palau	—	—	—
Panama	Ratified 19/06/1970	Ratified 28/01/1994	—
Papua New Guinea	Ratified 01/05/1976	—	—
Paraguay	Ratified 20/02/1969	Ratified 02/05/1991	—
Peru	Ratified 27/07/1967	Ratified 16/06/1986	—
Philippines	Ratified 13/01/1976	Ratified 23/08/1991	—
Poland	Ratified 24/11/1966	Ratified 02/12/2004	—
Portugal	Ratified 09/01/1981	Ratified 03/05/1999	—
Qatar	—	—	—
Romania	Ratified 06/06/1973	—	—
Russian Federation	Ratified 22/09/1967	Ratified 03/06/1988	—
Rwanda	Ratified 05/08/2010	—	—
Saint Kitts and Nevis	—	—	—
Saint Lucia	—	—	—
Saint Vincent and the Grenadines	Ratified 09/11/2010	—	—
Samoa	—	—	—
San Marino	—	Ratified 23/05/1985	—
Sao Tome and Principe	—	Ratified 17/06/1992	—
Saudi Arabia	—	—	—
Senegal	Ratified 25/04/1966	—	—
Serbia	Ratified 24/11/2000	Ratified 24/11/2000	—
Seychelles	—	—	—
Sierra Leone	—	—	—
Singapore	—	—	—
Slovakia	Ratified 01/01/1993	Ratified 01/01/1993	—
Slovenia	Ratified 29/05/1992	Ratified 29/05/1992	—
Solomon Islands	—	—	—
Somalia	—	—	—
South Africa	—	—	—
South Sudan	—	—	—
Spain	Ratified 28/12/1970	Ratified 02/08/1990	—
Sri Lanka	Ratified 03/02/2016	—	—
Sudan	Ratified 22/10/1970	—	—
Suriname	Ratified 15/06/1976	—	—
Sweden	Ratified 11/06/1965	Ratified 12/06/1984	—
Switzerland	Ratified 11/02/2013	Ratified 20/06/1985	—
Syrian Arab Republic	—	—	—
Tajikistan	Ratified 26/11/1993	Ratified 26/11/1993	Ratified 29/05/2012
Tanzania, United Republic of	—	—	—
Thailand	Ratified 26/02/1969	Ratified 11/10/2007	—

Members	Convention No. 122	Convention No. 159	Convention No. 177
Timor-Leste	—	—	—
Togo	Ratified 30/03/2012	—	—
Tonga	—	—	—
Trinidad and Tobago	Ratified 19/09/2013	Ratified 03/06/1999	—
Tunisia	Ratified 17/02/1966	Ratified 05/09/1989	—
Turkey	Ratified 13/12/1977	Ratified 26/06/2000	—
Turkmenistan	—	—	—
Tuvalu	—	—	—
Uganda	Ratified 23/06/1967	Ratified 27/03/1990	—
Ukraine	Ratified 19/06/1968	Ratified 15/05/2003	—
United Arab Emirates	—	—	—
United Kingdom	Ratified 27/06/1966	—	—
United States	—	—	—
Uruguay	Ratified 02/06/1977	Ratified 13/01/1988	—
Uzbekistan	Ratified 13/07/1992	—	—
Vanuatu	—	—	—
Venezuela, Bolivarian Republic of	Ratified 10/08/1982	—	—
VietNam	Ratified 11/06/2012	Ratified 25/03/2019	—
Yemen	Ratified 30/01/1989	Ratified 18/11/1991	—
Zambia	Ratified 23/10/1979	Ratified 05/01/1989	—
Zimbabwe	—	Ratified 27/08/1998	—

Appendix II. Governments that provided reports

- Afghanistan
- Algeria
- Argentina
- Armenia
- Australia
- Austria
- Azerbaijan
- Bahrain
- Bangladesh
- Belarus
- Belgium
- Benin
- Bosnia and Herzegovina
- Botswana
- Brazil
- Bulgaria
- Burkina Faso
- Cabo Verde
- Cambodia
- Cameroon
- Canada
- Central African Republic
- Chile
- China
- Colombia
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Cyprus
- Democratic Republic of the Congo
- Denmark
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Eritrea
- Estonia
- Fiji
- Finland
- France
- Gabon
- Gambia
- Georgia
- Germany
- Ghana
- Greece
- Guatemala
- Guinea-Bissau
- Honduras
- Hungary
- India
- Indonesia
- Iran, Islamic Republic of
- Ireland
- Israel
- Italy
- Jamaica
- Japan
- Kiribati
- Korea, Republic of
- Latvia
- Libya
- Lithuania
- Mali
- Malta
- Mauritius
- Mexico
- Montenegro
- Morocco
- Myanmar
- Namibia
- Nepal
- New Zealand
- Nicaragua
- Nigeria
- Norway
- Oman
- Pakistan
- Palau
- Panama
- Paraguay
- Peru
- Philippines
- Poland
- Portugal
- Qatar
- Romania
- Saudi Arabia
- Senegal
- Seychelles
- Slovakia
- Spain
- Sri Lanka
- Sudan
- Suriname
- Sweden
- Switzerland
- Tajikistan
- Thailand
- Togo
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- Uruguay
- Vanuatu
- Venezuela, Bolivarian Republic of
- Zimbabwe

Appendix III. Workers' and employers' organizations that provided reports

Workers' organizations

Argentina

- Confederation of Workers of Argentina (CTA Autonomous)
- General Confederation of Labour of the Argentine Republic (CGT RA)

Austria

- Federal Chamber of Labour (BAK)

Belgium

- Confederation of Christian Trade Unions (CSC)
- General Confederation of Liberal Trade Unions of Belgium (CGSLB)
- General Labour Federation of Belgium (FGTB)

Chile

- National Association of Fiscal Employees (ANEF)
- Single Central Organization of Workers of Chile (CUT)

Finland

- Central Organization of Finnish Trade Unions (SAK)
- Confederation of Unions for Professional and Managerial Staff in Finland (AKAVA)
- Finnish Confederation of Professionals (STTK)

France

- General Confederation of Labour - Force Ouvrière (CGT-FO)

Germany

- German Confederation of Trade Unions (DGB)

Honduras

- General Confederation of Workers (CGT)

Ireland

- Irish Congress of Trade Unions (ICTU)

Italy

- Italian Confederation of Workers' Trade Unions (CISL)
- Italian General Confederation of Labour (CGIL)
- Italian Union of Labour (UIL)

Latvia

- Free Trade Union Confederation of Latvia (FTUCL)

Netherlands

- National Federation of Christian Trade Unions (CNV)
- Netherlands Trade Union Confederation (FNV)

New Zealand
- New Zealand Council of Trade Unions (NZCTU)

Poland
- Independent and Self-Governing Trade Union "Solidarnosc"

Portugal
- General Confederation of Portuguese Workers - National Trade Unions (CGTP-IN)

Russian Federation
- Confederation of Labour of Russia (KTR)

Spain
- General Union of Workers (UGT)
- Trade Union Confederation of Workers' Commissions (CCOO)

Switzerland
- Swiss Federation of Trade Unions (USS/SGB)

United Kingdom
- Trades Union Congress (TUC)

United States
- American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

Employers' organizations

Belgium
- National Labour Council (CNT)

Bulgaria
- Bulgarian Industrial Association (BIA)

Finland
- Federation of Finnish Entreprises
- State Employer's Office (VTML)

Honduras
- Honduran National Business Council (COHEP)

Korea, Republic of
- Korea Employers' Federation (KEF)

New Zealand
- Business New Zealand

Portugal
- Confederation of Portuguese Business (CIP)

Switzerland
- Union of Swiss Employers (UPS)