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General Survey concerning employment instruments in light of
the 2008 Declaration on Social Justice for a Fair Globalization

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)

International Labour Office Geneva

General Survey concerning employment instruments

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Outline

	<i>Paragraphs</i>
Introduction	
Part A. Employment instruments	1–510
Chapter I. The Employment Policy Convention, 1964 (No. 122).....	1–95
Chapter II. The Human Resources Development Convention, 1975 (No. 142).....	96–185
Chapter III. The Employment Service Convention, 1948 (No. 88), and the Private Employment Agencies Convention, 1997 (No. 181)	186–383
Chapter IV. The Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189)	384–436
Chapter V. The Promotion of Cooperatives Recommendation, 2002 (No. 193).....	437–510
Part B. Global overview of employment policies	511–699
Chapter I – Introduction	511–529
Chapter II – Overview of the current world employment situation	530–546
Chapter III – Employment policies.....	547–668
Chapter IV – Some concluding remarks on employment policies	669–699
Part C. Continuing relevance of the instruments on employment	700–782
Chapter I – Status of ratifications	703–740
Chapter II – Status of the instruments.....	741–754
Chapter III – Suggestions by Members for standard-setting action	755–769
Chapter IV – Needs identified and technical assistance requested	770–777
Chapter V – ILO strategic objectives and the promotion of employment	778–782
Chapter VI. Concluding remarks: The importance of the employment instruments	783–807

Contents

	<i>Page</i>
Introduction.....	xi
Part A. Employment instruments	1
Chapter I. The Employment Policy Convention, 1964 (No. 122)	1
1. Introduction	1
(a) Realizing the right to work	2
(b) Full employment and development	4
(c) Full employment and decent work.....	5
2. Content of the obligations under the Convention.....	6
(a) Declare and pursue as a major goal	6
(b) The objectives of employment policy	8
(c) Relationship with other economic and social objectives	13
(d) Methods of giving effect to employment policy.....	16
(e) Consultations with representatives of the persons affected by employment policy measures.....	18
Summary: Convention No. 122	24
Chapter II. The Human Resources Development Convention, 1975 (No. 142)	25
1. Introduction	25
2. Right to education and training	27
3. Content of the obligations under the Convention.....	27
(a) Relationship between human resources development and employment...	28
(b) Relationship with other economic, social and cultural objectives.....	30
(c) Equality promotion	32
(d) The role of public employment services and other training providers	32
(e) Open, flexible and complementary systems of education and training	34
4. Measures to ensure implementation.....	36
(a) Policies and programmes.....	36
(b) Constitutional provisions and legislative action	37
(c) Tripartite agreements	38
(d) Labour market information, guidance and counselling.....	39
(e) Training for work in a lifelong perspective.....	39
(f) Consultations on human resources development	41

Summary: Convention No. 142	47
Chapter III. The Employment Service Convention, 1948 (No. 88), and the Private Employment Agencies Convention, 1997 (No. 181)	49
1. Introduction	49
(a) Employment Service Convention, 1948 (No. 88)	50
(b) Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)	52
(c) Towards the adoption of Convention No. 181	52
(d) Adoption of Convention No. 181	53
(e) Recent developments	53
2. Areas covered by the General Survey in relation to Conventions Nos 88 and 181	54
(a) Establishing a free public employment service	55
(b) Consultation with the social partners.....	55
(c) Cooperation between public services and private agencies	57
(d) Regulation of private employment agencies	61
(e) Remedies	64
(f) Supervision and penal measures	65
3. Overview of Conventions Nos 88 and 181	66
(a) Convention No. 88	66
– Organizational structure	66
– Ensuring effective recruitment.....	67
– Target groups.....	69
– Employment service staff: Qualifications and status	72
– Outreach to employers and jobseekers	73
(b) Convention No. 181	73
– Definitions	73
– Protection of workers in temporary work agencies.....	76
– Processing and protection of personal data	78
– Scope	79
– Prohibitions and exclusions.....	80
Practice of ratifying States in regard to prohibitions or exclusions.....	80
General prohibition of charging fees to workers.....	81
Exemptions	81
Practice of ratifying States in regard to fee charging.....	82
– Protecting fundamental rights.....	85
Freedom of association and collective bargaining	85
Prohibition of discrimination	86
Measures against the use of child labour.....	87
Forced labour	87
Mediation and labour migration	88
Summary: Conventions Nos 88 and 181.....	93

Chapter IV. The Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189)	95
1. Promotion of SMEs and job creation	95
2. Areas covered by Recommendation No. 189 that are examined in the present General Survey	96
(a) Establishment of an environment conducive to the creation and growth of SMEs	99
(b) Service infrastructure	102
(c) Development of an enterprise culture	102
Summary: Recommendation No. 189	106
Chapter V. The Promotion of Cooperatives Recommendation, 2002 (No. 193)	107
1. Introduction	107
2. Links with other international standards promoting cooperative identity	109
(a) International instruments	109
(b) Regional instruments	111
(c) ILO instruments	111
3. Scope of the Recommendation	113
(a) Establishment of a supportive national framework for the creation and promotion of cooperatives	113
(b) Skills development for cooperatives	119
4. The role of employers' and workers' organizations and cooperative organizations	119
Summary: Recommendation No. 193	121
Part B. Global overview of employment policies	123
Chapter I – Introduction	123
Chapter II – Overview of the current world employment situation	127
Chapter III – Employment policies	136
1. Industrialized countries	136
2. Transition economies	145
3. Developing countries	146
Chapter IV – Some concluding remarks on employment policies	161
Part C. Continuing relevance of the instruments on employment	169
Chapter I – Status of ratifications	169
(a) Convention No. 88	169
(b) Convention No. 122	171
(c) Convention No. 142	172
(d) Convention No. 181	173

Chapter II – Status of the instruments.....	176
(a) Convention No. 88	176
(b) Convention No. 122	177
(c) Convention No. 142	177
(d) Convention No. 181	177
(e) Recommendations Nos 189 and 193.....	178
Chapter III – Suggestions by Members for standard-setting action	178
Chapter IV – Needs identified and technical assistance requested	180
Chapter V – ILO strategic objectives and the promotion of employment	181
Chapter VI. Concluding remarks: The importance of the employment instruments	183

Annexes

A. Article 19 questionnaire on employment.....	187
B. Prospects of ratification.....	195
C. List of ratifications – Employment Service Convention, 1948 (No. 88)	199
D. List of ratifications – Employment Policy Convention, 1964 (No. 122).....	203
E. List of ratifications – Human Resources Development Convention, 1975 (No. 142)	207
F. List of ratifications – Private Employment Agencies Convention, 1997 (No. 181)	209

Introduction

This General Survey concerning employment instruments has been prepared in light of the fact that the first of the four strategic objectives highlighted in the ILO Declaration on Social Justice for a Fair Globalization (the Social Justice Declaration)¹ is the promotion of employment. This issue has become urgent and more relevant in the context of the current global economic crisis. Furthermore, since the Social Justice Declaration requires a more coherent, collaborative and coordinated approach by the ILO to achieve its strategic objectives, the Governing Body chose to focus on employment as it will be considered as the first recurrent item at the 99th Session of the Conference (2010). Finally, the Committee has had regard to the resolution “Recovering from the crisis: A Global Jobs Pact”, adopted by the International Labour Conference at its 98th Session (2009), particularly the section dealing with “Principles for promoting recovery and development”, which in effect paraphrases the contents of the Conventions and Recommendations discussed in this General Survey.

The intention behind synchronizing the subjects of the General Survey and the recurrent item report is to promote greater coherence between the normative and economic and social policy work of the Organization. This General Survey is also timely as it provides an opportunity for the Organization to follow up on the Global Jobs Pact through an analysis of the laws, practices and policies of countries in giving effect to these instruments in the field of employment, which are critical to the realization of the right to work as a human right. Thus, the Committee believes that the adoption of this innovative approach will contribute to this goal, and will better integrate the normative principles of employment policy with current social and economic considerations. The Committee hopes that this approach will complement the review of the ILO’s work on employment policy that is going to be the main focus of the recurrent item report.

Outline

The General Survey is composed of three parts. In Part A, the Committee sets out the historical background to the adoption of the instruments and their links with other international instruments. The Committee then reviews the legal content of the six employment instruments and describes the main issues that arise from the responses provided by governments and social partners to the questionnaire.² Part A further

¹ The four strategic objectives are: (i) promoting employment by creating a sustainable institutional and economic environment; (ii) developing and enhancing measures of social protection – social security and labour protection – which are sustainable and adapted to national circumstances; (iii) promoting social dialogue and tripartism; and (iv) respecting, promoting and realizing the fundamental principles and rights at work, which are of particular significance, as both rights and enabling conditions that are necessary for the full realization of all of the strategic objectives. See further: ILO Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference (ILC) at its 97th Session, Geneva, 10 June 2008, pp. 9–11.

² The questionnaire is reproduced in Annex A.

provides a detailed analysis of the requirements for compliance with each of the Conventions. Each requirement is illustrated by examples of practical measures taken by member States based on recent comments of the Committee of Experts or information provided in the replies to the questionnaire. The Committee also reviews the means used by governments to give effect to the Recommendations.

In Part B, using the key elements of employment policy that are set out in the legal analysis in Part A, the Committee presents and analyses the economic and employment data available based on the instruments covered by the General Survey.

Part C reviews the continuing relevance of the employment instruments discussed above. The Committee examines the responses of member States to the questionnaire, which requested those countries not having ratified the Conventions under review to describe the obstacles or other reasons that have impeded or delayed ratification or ratification prospects. After setting out these ratification obstacles and the prospects for ratification of the employment policy instruments, the Committee analyses the status of the instruments as identified by the Working Party on Policy regarding the Revision of Standards and in discussions in the Governing Body. Further utilizing the information obtained from the questionnaire, the Committee reviews the recommendations made by member States for ILO standard-setting action regarding the instruments and their requests for technical assistance.

Information available

The information available to the Committee consisted of reports communicated by 108 governments under article 19 of the Constitution.³ The Committee notes that, of these reports, 39 were received before the 31 May 2009 deadline, and 69 were received thereafter.⁴ Considering the new format of this questionnaire, and the shorter time frame for its completion, the Committee appreciates the efforts made by governments to complete it.

The Committee also used the information contained in the reports communicated under article 22 of the Constitution from countries having ratified one or more of the Conventions. Further, the Committee has drawn heavily on the information obtained from the questionnaire on employment taking due account of the nine observations received from employers' organizations and the 35 observations received from workers' organizations, from 29 countries.⁵ The Committee appreciates the contributions of the social partners.

³ Information received until 11 December 2009.

⁴ Details of the reports requested and received are given in Annex B.

⁵ Argentina (Confederation of Argentinian Workers (CTA)), Australia (Australian Council of Trade Unions (ACTU)), Bangladesh (Bangladesh Employers' Federation (BEF)), Brazil (Força Sindical), Canada (Confederation of National Trade Unions (CSN)), China (China Enterprise Confederation), Colombia (General Confederation of Labour (CGT)), Czech Republic (Czech–Moravian Confederation of Trade Unions (CMKOS)), Dominican Republic (National Confederation of Trade Union Unity), Gambia (Gambia National Trade Union Congress (GNTUC), Gambia Chamber of Commerce and Industry (GCCCI), Gambia Workers Confederation (GWC)), Germany (German Confederation of Trade Unions (DGB)), India (All India Manufacturers' Organization (AIMO), Trade Union Coordination Centre), Italy (Confederation of Italian Cooperatives (CONFCOOPERATIVE), General Confederation of Commerce, Tourism and Services (CONFCOMMERCIO), Italian Confederation of Managers and Other Professionals (CIDA), Italian Confederation of Workers' Trade Unions (CISL), Italian General Confederation of Labour (CGIL)), Jordan (Jordan Chamber of Industry), New Zealand (Business New Zealand, New Zealand Council of Trade Unions (NZCTU)), Pakistan (Pakistan Workers' Federation (PWF)), Peru (General Confederation of Workers of Peru (CGTP), Autonomous Confederation of

The Committee welcomes the Office's efforts to enable constituents to have access to and to submit the questionnaires electronically, which helped to ensure that the Committee received a high number of responses. The Committee also notes that the questionnaire was translated into Arabic.

The Committee notes that the Office in Geneva and the local offices funded activities in the field to obtain full and substantive replies to the questionnaire. The Committee notes that several countries in Africa (Benin, Burkina Faso, Malawi, Mali and Rwanda) and in Asia (Mongolia, Nepal and Viet Nam) received the assistance requested from the Office for the completion of the questionnaire with appropriate information. The Office also prepared country profiles using the information in the reports available from those countries that have already ratified the employment Conventions (Nos 88, 122, 142 and 181). The replies received were circulated within the Office in order to disseminate the requests made by governments for technical assistance and to coordinate activities in various departments.

In accordance with this approach, the Committee asks that all the information from the diverse replies received and the country profiles prepared be made accessible to the constituents.

Reflections

The Committee notes that, through the efforts mentioned, it received a high number of responses to the questionnaire. Given that this is a new questionnaire format, the Committee believes it useful to extrapolate some lessons learned to ensure that future questionnaires and the resulting General Surveys are increasingly informative and helpful.

Reflecting on the lessons learned, the Committee notes that, while efforts were made to obtain a high quality of reports from member States, many responses merely listed the national legislative texts or policy documents. The Committee recalls that the questionnaire contained a *mandatory* section requiring member States to discuss the impact of the employment instruments, including obstacles to ratification, suggestions for ILO standard-setting action and requests for assistance. However, the questionnaire also included an *optional* section, asking countries to provide comments regarding, inter alia, the effectiveness of the employment instruments, the impact that the instruments have had, and global influences. The Committee notes that some governments chose not to complete this optional section. As a result, some replies lacked the necessary explanation or context that would have permitted a better understanding of the policy choices made by countries with regard to the relevant employment instruments. With regard to future questionnaires, the Committee suggests that the information requested in the optional part of the questionnaire should be included in the mandatory part. The Committee also believes that it would be helpful to review the questionnaire for

Peruvian Workers (CAT), Single Central Organization of Workers of Peru (CUT), Chamber of Commerce of Lima (CCL), Poland Independent and Self-Governing Trade Union ("Solidarnosc"), Portugal (Confederation of Portuguese Industry (CIP), General Workers' Union (UGT)), Senegal (National Federation of Independent Trade Unions of Senegal), Serbia (Confederation of Autonomous Trade Unions of Serbia, Trade Union Confederation "Nezavisnost", Union of Employers of Serbia), Slovenia (Employers' Association of Slovenia), Sri Lanka (Lanka Jathika Estate Workers' Union (LJEWU)), Sweden (Confederation of Swedish Enterprise (CSE), Swedish Trade Union Confederation (LO)), Switzerland (Swiss Federation of Trade Unions (USS/SGB), Union of Swiss Employers (UPS)), Thailand (National Congress of Thai Labour), Turkey (Confederation of Turkish Trade Unions (TÜRK-İS)), United Kingdom (Trades Union Congress (TUC)), Bolivarian Republic of Venezuela (Confederation of Autonomous Trade Unions (CODESA), United Federation of Workers of Venezuela (CUTV)).

additional modifications, such as setting out precise definitions of conceptual terms to enable accurate comparisons between country responses.

Notwithstanding the need for modifications, the Committee is pleased that this innovative questionnaire achieved the objectives of the General Survey. Much of the information provided facilitated the Committee's examination of employment standards, policies, goals and practices. The Committee hopes that the General Survey provides helpful comments on the actions and programmes of individual member States. It has sought to highlight the progress made by member States in ratifying and implementing or giving effect to the relevant instruments, as well as the obstacles encountered in doing so. The Committee is at the same time cognizant of the fact that, while the examples highlighted are useful, they are not intended to indicate the degree, or lack thereof, of compliance by individual member States.

Compared to some previous General Surveys, the use of footnotes has been avoided where possible. This approach has been feasible, in part, because technological advances enable many readers to access easily much of the legislation and other statutory data cited.

While there are strengths and weaknesses in this new thematic approach, the present General Survey provides a global overview of the current state of employment policy in member States and the Committee hopes that member States will make use of the lessons that emerge from the information, data and analysis presented.

Part A. Employment instruments

Chapter I

The Employment Policy Convention, 1964 (No. 122)

1. Introduction

1. The International Labour Organization's mandate to address employment promotion can be discerned from its founding document. The Preamble of the Constitution identified the prevention of unemployment as among those conditions that must be improved to prevent such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled.

2. The 1944 Declaration of Philadelphia, which was subsequently incorporated into the Constitution, recognized "the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve ... full employment and the raising of standards of living" and, accordingly, the Organization's mandate to address employment creation.

3. Throughout the 1950s and into the 1960s, the ILO played a key role in the efforts of the United Nations system to raise living standards through economic growth in developing countries. The expanding membership of the Organization accompanied a focus on the grave difficulties encountered by developing countries in enabling their growing populations to participate fully in economic and social progress. Against this backdrop, the Organization convened a Meeting of Experts on Employment Objectives in Economic Development, which prefaced a general discussion on employment problems and policies at the Conference in 1961. The Conference subsequently adopted a resolution calling for ILO standards on the subject.¹

4. Following the work of a Preparatory Technical Conference on Employment Policy in 1963, the Conference adopted the Employment Policy Convention, 1964 (No. 122), and the Employment Policy Recommendation, 1964 (No. 122). In so doing, the Conference adopted a resolution concerning international action for the promotion of employment objectives and a resolution concerning the activities of the ILO in the field of employment policy.²

¹ ILC, 45th Session, 1961, resolution 22, *Record of proceedings*, pp. 900–901.

² ILC, 48th Session, Geneva, 1964, Appendix XVII, pp. 818–820.

5. At its 51st Session in 1967, the Conference adopted a resolution addressing international cooperation for economic and social development which, inter alia, requested the Director-General to prepare a workplan for employment and human resources. The World Employment Programme was thus proffered 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.

6. With a view to appraising the approach to employment and development, to take stock and distil policy conclusions to guide the ILO and its member States in their efforts to overcome unemployment and poverty, the Conference adopted a resolution to convene a tripartite World Conference on Employment, Income Distribution, Social Progress and the International Division of Labour.

7. Meeting in 1976, the World Conference on Employment adopted a Declaration of Principles and Programme of Action³ 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.

8. In 1979, the International Labour Conference 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 Conference.⁴ Accordingly, in 1984, the International Labour Conference adopted the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), which served to place the Employment Policy Convention, 1964 (No. 122), in the wider framework of the 1976 Declaration of Principles and Programme of Action.

9. The Committee recalls that the report form approved by the Governing Body for the Employment Policy Convention, 1964 (No. 122), pursuant to article 22 of the ILO Constitution, drew attention to the 1976 Declaration of Principles and Programme of Action.

(a) Realizing the right to work

10. It is clear that the drafters of the Employment Policy Convention, 1964 (No. 122), were mindful of the human rights dimension relating to the matters addressed by the Convention. In this regard, the Preamble of the Convention refers to the Universal Declaration of Human Rights, which provides that "everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment".

11. The Committee notes that, two years after the adoption of Convention No. 122, the United Nations adopted the 1966 International Covenant on Economic, Social and

³ ILO: Declaration of Principles and Programme of Action adopted by the Tripartite World Conference on Employment, Income Distribution, Social Progress and the International Division of Labour, Geneva, 4–17 June 1976 (Geneva, ILO, 1976).

⁴ ILC, 65th Session, Geneva, 1979, resolution concerning follow-up to the World Conference on Employment, *Provisional Record* No. 42, pp. 42/12–42/15.

Cultural Rights, which in its Article 6(1) similarly recognized that “the right to work ... includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and [that States parties would] take appropriate steps to safeguard this right”. The Committee on Economic, Social and Cultural Rights has underlined that the right to work “should not be understood as an absolute and unconditional right to obtain employment”. It has nonetheless stated that the right to work includes “the right of every human being to decide freely to accept or choose work”, including “not being forced in any way whatsoever to exercise or engage in employment and the right of access to a system of protection guaranteeing each worker access to employment”.⁵

12. The Committee also notes that the Employment Policy (Supplementary Provisions) Recommendation, adopted in 1984, further introduced a human rights dimension to the implementation of the objectives of the Convention. In this regard, it introduced the notion that “the promotion of full, productive and freely chosen employment provided for in the Employment Policy Convention and Recommendation, 1964, should be regarded as a means of achieving in practice the realisation of the right to work” (Paragraph 1). Recommendation No. 169 further provides that “full recognition by Members of the right to work should be linked with the implementation of economic and social policies, the purpose of which is the promotion of full, productive and freely chosen employment” (Paragraph 2).

13. Subsequently, in furtherance of the human rights dimension, the Committee notes that the follow-up to the Social Justice Declaration identifies the Employment Policy Convention, 1964 (No. 122), among the standards that are the most significant from the viewpoint of governance.⁶

14. As noted in paragraph 63 of the 2004 General Survey,⁷ many countries have incorporated a policy towards full employment or the right to work in their constitutional and legislative texts. More recent examples have been provided in the replies to the questionnaire. In its contribution to the present General Survey, the Government of Nepal refers to the ongoing phase of political transition and, in particular, to the 2007 Interim Constitution. The Committee notes that in its section 18, the Interim Constitution provides that “Every citizen shall have the right to employment as provided for in the law”. Rwanda has placed emphasis on employment in its 2003 Constitution by providing in article 37 that “Every person has the right to free choice of employment”. These two Constitutions highlight the importance of the right to work in post-conflict situations.

15. The Committee notes that the employment policy instruments serve as a framework to guide policy and legislative efforts for the realization of the right to work. They contribute to articulating the matters that need to be addressed by governments and social partners in devising and implementing their employment policy, as a means of delivering the right to work.

⁵ General comment No. 18: *The right to work* (Article 6 of the Covenant), adopted by the UN Committee on Economic, Social and Cultural Rights in 2005, para. 6.

⁶ Footnote 1, para. (A)(vi) of Part II of the follow-up to the Declaration on Social Justice for a Fair Globalization.

⁷ *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.

16. In this regard, the Committee notes that a number of countries have identified the link between the design and pursuit of an employment policy with the implementation of the right to work. For example, article 30 of the 1990 Constitution of Benin provides that “The State shall recognize for all citizens the right to work and shall strive to create conditions which shall make the enjoyment of this right effective and shall guarantee to the worker just compensation for his services or for his production”. Article 20 of the 1971 Constitution of the United Arab Emirates provides that “society shall appreciate work as a basic foundation for its progress. It shall endeavour to provide work to its citizens, ensure their qualifications and provide suitable conditions for that purpose, through legislation which protects workers’ rights and employers’ interests in the light of developed international workers’ legislation”. Article 80 of the 1987 Constitution of Nicaragua and article 60 of the 1972 Constitution of Panama both provide that work is a right and that the State shall elaborate employment policies aimed at full employment.

17. The Committee further notes that, in order to deliver the right to work in a meaningful and sustainable way, governments’ efforts to implement the Convention should be underpinned by a respect for all human rights, as enshrined in the 1966 Covenants. In this regard, the Government of Rwanda has indicated that the main purpose of its National Employment Policy of December 2007 is to “realize as much as possible fully productive and freely chosen employment through economic growth in accordance with the dignity and respect of fundamental human rights”. Similarly, article 170 of the 1988 Constitution of Brazil states that the economic order is “founded on the appreciation of the value of human work” and “is intended to ensure everyone a life with dignity”, with due regard for “the pursuit of full employment”.

18. In its replies to the questionnaire, the Government of Switzerland indicated that its Federal Constitution draws upon the recommendations of the Committee on Economic, Social and Cultural Rights and now provides that the “Confederation and the Cantons shall, as a complement to personal responsibility and private initiative, endeavour to ensure that ... everyone who is fit to work can earn their living by working under fair conditions” (article 41). In a similar manner, Argentina ascribes a constitutional status to the International Covenant on Social, Economic and Cultural Rights, among other instruments, such as the Universal Declaration of Human Rights, in article 75(22) of its Constitution. The Government of Argentina indicates that the content of Convention No. 122 constitutes a central axis of the national Government’s employment and labour policy.

(b) Full employment and development

19. The relationship between employment and the fight against poverty and social exclusion was acknowledged by the World Summit on Social Development in 1995 and the 24th Special Session of the United Nations General Assembly in 2000 which, among other measures, called on the ILO to develop a coherent and coordinated international strategy for the promotion of freely chosen, productive employment. In this context, the Committee on Employment and Social Policy of the Governing Body identified core elements of the Global Employment Agenda which, through the creation of productive employment, would better the lives of hundreds of millions of people who are either unemployed or whose remuneration from work is inadequate to allow them and their families to escape poverty.⁸

⁸ GB.282/ESP/1/1.

20. This link between full employment and development was further confirmed by United Nations General Assembly Resolution 60/1 on the 2005 World Summit Outcomes, in which the Heads of State and Government indicate their strong support for “fair globalization and resolve to make the goals of full and productive employment and decent work for all, including for women and young people, a central objective of [their] relevant national and international policies, as well as [their] national development strategies, including poverty reduction strategies, as part of [their] efforts to achieve the Millennium Development Goals ...”.⁹ The successful implementation of Convention No. 122 is therefore a valuable tool in the efforts to achieve the Millennium Development Goals.

(c) Full employment and decent work

21. In 2008, at its 97th Session, the Conference adopted the Social Justice Declaration which recognizes and declares, among other matters, that the commitments and efforts of Members and the Organization to implement the ILO’s constitutional mandate, including international labour standards, and to place full and productive employment and decent work at the centre of economic and social policies, should be based on the four equally important strategic objectives of the ILO.

22. In this regard, the 2008 Declaration identifies among the four strategic objectives of the ILO, “promoting employment by creating a sustainable institutional and economic environment in which: individuals can develop and update the necessary capacities and skills they need to enable them to be productively occupied for their personal fulfilment and the common well-being; all enterprises, public or private, are sustainable to enable growth and the generation of greater employment and income opportunities and prospects for all; and societies can achieve their goals of economic development, good living standards and social progress”.

23. The G20 leaders also noted the role to be played by active labour market policies in addressing the human dimension of the financial and economic crisis. In this regard, the leaders attending the London Summit in April 2009, in recognizing the human dimension to the crisis, committed themselves to “support those affected by the crisis by creating employment opportunities and through income support measures” and to “build a fair and family-friendly labour market for both women and men”, through measures such as “active labour market policies”.¹⁰ At the Pittsburgh Summit in September 2009, the G20 leaders reiterated their commitment to putting quality jobs at the heart of the recovery through the new Framework for Strong, Sustainable, and Balanced Growth which requires “structural reforms to create more inclusive labor markets, active labor market policies, and quality education and training programs”.¹¹

24. The Conference stated in the Global Jobs Pact that action for promoting recovery and development should be guided by the Decent Work Agenda and the 2008 Declaration. Accordingly, the Conference identified, among the principles for promoting recovery and development, the promotion of “core labour standards and other international labour standards that support the economic and jobs recovery and

⁹ Resolution 60/1 adopted by the United Nations General Assembly on 16 September 2005 on the 2005 World Summit Outcomes, para. 47. The Committee of Experts also noted this resolution in the general remarks regarding the Employment Policy Convention in its 2006 report, p. 301.

¹⁰ G20 leaders’ statement, The Global Plan for Recovery and Reform, London, 2 Apr. 2009, para. 26.

¹¹ G20 leaders’ statement, The Pittsburgh Summit, Putting Quality Jobs at the Heart of the Recovery, Pittsburgh, 25 Sep. 2009, para. 44.

reduce gender inequality”.¹² To this end, the Conference decided that “to limit the risk of long-term unemployment and increased informality which are difficult to reverse [it needed to] support job creation and help people into work”. To achieve this, the Conference agreed to “put the aim of full and productive employment and decent work at the heart of the crisis responses”. Such responses may include helping jobseekers by implementing effective, properly targeted active labour market policies.¹³

2. Content of the obligations under the Convention

25. Article 1, paragraph 1, of the Convention provides that “with a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment”. The content and meaning of each of the elements of this provision is discussed in turn.

(a) Declare and pursue as a major goal

26. The Convention creates a basic obligation on States to make an explicit formal pronouncement of their employment policy. This declaration may be considered an essential basis for a conscious effort to attain the goals of the Convention, and it emerges from national practice, taken as a whole, that an express commitment to pursue an active policy as a major national objective is essential if the goals of the Convention are to be given the necessary prominence in government policy.

27. The Convention requires national employment policy to be positioned as a major goal within the national agenda. Accordingly, the active employment policy should be pursued as a major goal of macroeconomic policy, and entails a focus on the design and implementation of such policies. The Committee has previously noted that “the achievement of full and productive employment should not be an afterthought, but should be considered throughout the macroeconomic policy formulation stage”.¹⁴

28. The Committee notes that an explicit formal declaration of a country’s employment policy can be expressed in a number of ways. Some countries, for example, pronounce the objective of full employment, whereas others articulate the duty of the State to promote conditions for the realization of the right to work. The Committee also notes that a country’s employment policy may take a variety of forms. Some countries, for example, include a general declaration to that effect in their constitutions and primary legislation. Other countries make more specific declarations about the details of their employment policies through secondary legislation and policy instruments, while others articulate policies in speeches by the Head of Government, or refer to employment policy in their poverty reduction strategies or national development plans.

29. The Committee notes that countries with recently adopted Constitutions, such as Ecuador and Bolivia, have stressed the importance of employment promotion in their constitutional texts. The 2008 Constitution of Ecuador, in article 33, provides that

¹² *Recovering from the crisis: A Global Jobs Pact*, ILC, 98th Session, Geneva, 2009, *Provisional Record* No. 19A, para. 9(7).

¹³ *ibid.*, para. 11.

¹⁴ See the general remarks regarding Convention No. 122 in the 2006 report, p. 301.

“Work is a social right and duty, and an economic right, a source of personal accomplishment and the basis of the economy. The State will guarantee working people full respect to their dignity, a decent life, fair remuneration and compensation and the performance of a healthy and freely chosen or accepted job”. Article 54 of the 2009 Constitution of Bolivia provides that “It is the State’s obligation to establish employment policies that prevent unemployment and underemployment with the aim of creating, maintaining and generating conditions that guarantee the workers the possibility of a decent and fairly remunerated labour occupation”. Furthermore, the centrality of employment is underpinned by the Constitution of Uganda. The President’s Manifesto of 2006, which seeks to deliver the constitutional provisions, articulates the Government’s pledge to “take all possible measures to create employment for all and ensure the protection and promotion of worker’s rights”.

30. Although Nepal has not ratified Convention No. 122, it indicates that it has a Labour and Employment Policy 2005. One of its objectives is to create an investment-friendly environment through a productive workforce providing employment opportunities for long-term economic development. The Committee noted in its observation that the Government of Mongolia had declared 2007 as the “Year of Job Creation”, whereby a set of activities and measures were developed to promote efforts towards job creation, to improve employment conditions through the distribution of labour market information to all citizens, to reduce poverty, to develop effective and efficient employment services in rural areas, and to revise the legal environment for employment promotion.¹⁵ The Government of the United Republic of Tanzania indicates that one of the specific objectives of the National Employment Policy, which was adopted in 2008, is “to promote the goal of decent and productive employment as a national priority and enable all participants in the labour force to gain productive and full employment”.¹⁶

31. Some countries referred to the importance of trade policies for the achievement of full employment.¹⁷ For example, in its reply to the questionnaire, the Government of Haiti indicates that the Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE) Act, initially approved by the United States in 2006, will contribute to a significant increase in employment creation. The HOPE Act provides for preferential access to the United States market for textile and apparel exports from Haiti.¹⁸ Since these are major export items from Haiti, the expansion of production in these labour-intensive industries made possible by the HOPE Act would result in a significant expansion of total employment in the country.

32. The Committee notes that the impact of trade policies on employment creation is an issue that it has dealt with in its review of some reports on the application of Convention No. 122. A recent example includes the comments formulated for

¹⁵ CEACR (80th Session), observation, Convention No. 122 (Mongolia), report 2010, para. 1.

¹⁶ Objective No. 2 of the Tanzanian National Employment Policy.

¹⁷ The Committee notes the joint study on trade and employment of the ILO and the secretariat of the World Trade Organization prepared in 2007 by Marion Jansen (WTO) and Eddy Lee (ILO).

¹⁸ In December 2006, the 109th Congress passed the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (HOPE I), which provides for special trade rules that give preferential access to US imports of Haitian apparel. Early assessments of the effectiveness of HOPE I, however, were disappointing, so the 110th Congress amended it through the Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II). J.F. Hornbeck: *The Haitian economy and the HOPE Act*, Congressional Research Service Report RL34687, Jan. 2009.

Guatemala.¹⁹ The Government indicated in its report that it was attempting to estimate the impact of the Central America Free Trade Agreement (CAFTA) on employment. Trade unions expressed concern that CAFTA has caused the loss of many jobs, especially in agriculture and small and medium-sized enterprises, in the first year of its implementation.

(b) The objectives of employment policy

33. It can be discerned from the drafting of the provision that States are expected to make ongoing efforts to promote full, productive and freely chosen employment. The Committee notes that, while Article 1, paragraph 1, does not require States to achieve such goals within any given length of time, States are required to pursue an active policy designed to promote them. This is in recognition of the possibility that the economic and social conditions and the level of development in a given country may be such that the attainment of the goal set by the Convention is impossible in the near future and can only be aimed at in the long run.

34. This implies an element of monitoring and review, and a degree of introspection in the implementation of employment policy, so as to assess the effectiveness of the policies pursued, allowing scope for policies to be revisited, revised and reoriented, so as to achieve the objectives identified by the Convention, in accordance with national conditions and practices.

35. Article 1, paragraph 2, of the Convention defines the goals and objectives of the employment policy, which should ensure that “(a) there is work for all who are available for and seeking work; (b) such work is as productive as possible; (c) there is freedom of choice of employment and the fullest opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin”. The Committee notes that the provision requires that these objectives be pursued in concert. In their reports on the application of the Convention, as well as in their replies to the questionnaire, various European Union Member States indicate that the objectives of full, productive and freely chosen employment are at the centre of European preoccupations formulated in the European Employment Strategy.

(i) *Full employment*

36. Full employment under the Convention is defined as “there is work for all who are available for and seeking work”.

37. While the aim of employment policy as set out in the Convention is the creation of employment opportunities for all who seek work, this does not imply that there should be no unemployment at all. As noted by the Committee in its General Survey on Convention No. 122 in 1972, some degree of “frictional” unemployment is inevitable since even well-functioning labour markets cannot perform the task of matching workers to available jobs instantaneously. Thus, at any given time, it is likely that a small percentage (2–3 per cent) of the labour force are unemployed while normal labour market adjustments are working through. However, such 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

¹⁹ CEACR (79th Session), observation, Convention No. 122 (Guatemala), report 2009, para. 4. The Government also indicated that some 700 formal jobs were lost in the agricultural sector and around 4,400 additional jobs were generated in the industrial sector in the first nine months that the CAFTA agreement was in force.

caused by an economic crisis. It is the prevention of these latter forms of unemployment that is the main challenge for employment policies directed at maintaining full employment.²⁰

38. The Committee recalls certain international standard definitions such as unemployment, economically active population and underemployment. Unemployment is based on three criteria to be satisfied simultaneously: “without work”, “currently available for work” and “seeking work”. Accordingly, the “unemployed” comprise all persons above the age specified for measuring the economically active population who during the reference period were: (a) “without work”, that is were not in paid employment or self-employment, as specified by the international definition of employment; (b) “currently available for work”, that is were available for paid employment or self-employment during the reference period; and (c) “seeking work”, that is had taken specific steps in a specified recent period to seek paid employment or self-employment.²¹ The economically active population comprises all persons of either sex who furnish the supply of labour for the production of goods and services during a specified time reference period.²² Underemployment exists when a person’s employment is inadequate in relation to specified norms or alternative employment, account being taken of his occupational skill (training and working experience).²³

39. The Committee further notes that a low unemployment rate or underemployment might include some form of hidden unemployment, that is unemployment that is not reflected in official unemployment statistics due to the way the statistics are collected. Insufficient labour market data might also be an indication of a high level of hidden unemployment.

40. In response to the questionnaire, many countries have reported on programmes and measures directed at increasing and assuring full employment. The Committee notes that there is a wide array of possible measures aimed at creating employment. In its reply to the questionnaire, the Government of China states that it will undertake fuller employment as the objective in the process of building up a more prosperous society at full scale by the year 2020, and will implement a development strategy of increasing employment. The Committee notes that, in 2007, China adopted the Employment Promotion Law, its first specialized law in the field of employment,

²⁰ General Survey on the reports relating to the Employment Policy Convention and Recommendation, 1964 (1972), para. 28, citing *Employment and economic growth*, Studies and Reports, New Series No. 67 (ILO, Geneva, 1964) p. 45. See also para. 32 of the 2004 General Survey citing the resolution concerning employment policies in a global context, adopted by the Conference at its 83rd Session (1996).

²¹ Special provisions are made for persons without work who have made arrangements to start work at a date subsequent to the reference period (future starts) and for persons whose employment contract is temporarily suspended (lay-offs). It should also be noted that the international standards, in formulating these three criteria, do not make reference to institutional or legal provisions, such as receipt of unemployment insurance benefits or registration at a public employment exchange. R. Hussmans et al.: *Surveys of economically active population, employment, unemployment, and underemployment: An ILO manual on concepts and methods*, International Labour Office, Geneva, 1990, p. 97.

²² *ibid.*, p. 11.

²³ *ibid.*, p. 121. Definition adopted at the 1966 International Conference of Labour Statisticians (ICLS). Two principal forms of underemployment are distinguished: visible underemployment, reflecting an insufficiency in the volume of employment; and invisible employment, characterized by low income, underutilization of skill, low productivity and other factors. The 1982 ICLS recognized, however, that “for operational reasons the statistical measurement of underemployment may be limited to visible underemployment”. It redefined the definition and introduced an approach to combine the measurement of visible underemployment with that of unemployment.

which aims to: (i) further define the important position of employment in national economic and social development, as well as the Government's responsibility to promote employment; (ii) re-emphasize the principle of fair employment and anti-employment discrimination; (iii) establish the working system to promote employment according to the principles of institutionalization, standardization and legalization; and (iv) provide a legal basis and protection for employment service and assistance activities. The Committee also notes, in the same way as the Conference Committee (98th Session, 2009), China's active employment policies and commitment to creating job opportunities by providing in its Employment Promotion Law that at least one member of each family is given access to employment.²⁴ Similarly, the Committee notes the comments formulated by the Bangladesh Employers' Federation stating that the Government is taking extra care to ensure that all citizens are employed by undertaking special measures such as ensuring that at least one person per household should be employed at the earliest.

41. The Committee noted with interest in its observation that India has sought to implement a National Rural Employment Guarantee Act (NREGA) which aims to provide 100 days of guaranteed unskilled waged employment to each rural household in more than 600 districts of the country.²⁵ Salient features of the NREGA include various measures, such as employment will be given within 15 days of application for work by a jobseeker, and that at least one third of persons to whom work is provided have to be women. Also, the 11th Five-Year Plan (2007–12) provides an opportunity to restructure policies to achieve a new vision based on faster, more broad-based and inclusive growth. It aims at making employment generation an integral part of the growth process and devises strategies to accelerate not only the growth of employment but also the wages of the poorly paid.

42. The Committee also noted with interest in its observation that Mozambique has adopted the Employment and Vocational Training Strategy (EEFP) as the guiding instrument for government policy up to 2015. The EEFP advocates measures such as the maximization of the employment variable in all development programmes and projects aimed at combating absolute poverty.²⁶

43. The Committee notes the information provided by the Government of the United States stressing the high political emphasis placed on "stimulating economic growth and development" and "ensuring that ... there is work for all who are available and seeking work". Recently adopted laws, such as the Emergency and Economic Stabilization Act (Troubled Asset Relief Program or TARP Act) and the American Recovery and Reinvestment Act of 2009 (Recovery Act), provide that the grant recipients must use grant funds "in a manner that maximizes job creation and economic benefit".²⁷

44. In its reply to the questionnaire, the Government of Malaysia indicates that the National Labour Policy was introduced in 1992 to accelerate economic growth and enhance the quality of life of the workforce. One of its objectives is to work towards full employment and to create jobs for all. San Marino is pursuing a policy aimed at full employment, in accordance with the provisions of Convention No. 122, through

²⁴ See article 56 of China's 2007 Employment Promotion Law.

²⁵ CEACR (79th Session), observation, Convention No. 122 (India), report 2009, para. 2.

²⁶ CEACR (80th Session), observation, Convention No. 122 (Mozambique), report 2010, para. 1.

²⁷ Section 1602 of the Recovery Act.

the practical application of Act No. 131 of 29 September 2005, entitled “Act for the promotion, support and development of employment and training”.

(ii) *Productive employment*

45. The Convention provides that employment policy should seek to ensure that “work is as productive as possible”, which allows the Committee to assess productivity in light of national conditions.

46. In Suriname, Policy Note 2006–10 of the Ministry of Labour specifies the measures which will be taken to promote employment and improve productivity. Productive work is also reflected in the Guidelines of Social–Labour Policy for 2007–11 developed by the Government of Peru and aimed at improving the performance of the labour administration, promoting employment and small and medium-sized enterprises (SMEs). Under the Guidelines, the Ministry’s role is to develop capabilities in order to generate productive employment and to foster the creation of micro and small enterprises. The concrete measures taken include providing access to trade information and other business development services, as well as financial help to enhance employability and employment, especially with regard to vulnerable groups. However, the Committee notes that the Autonomous Federation of Workers of Peru (CATP) considers that, since the National Employment Plan has not been approved, it is very difficult to implement the Guidelines and achieve their objectives.

47. Productive employment occupies a central place in the Mexican employment strategy set out in the 2007–12 National Development Plan, which sees fostering productivity as a means of attracting investment and creating formal, high-quality jobs. In its reply, the Government of Qatar indicates that, in March 1997, the Council of Ministers adopted a number of operational measures to encourage Qataris to work in the private sector. These include providing workers in the private sector with all of the benefits and incentives granted to those in the public sector, such as access to land, credit and statutory pensions. The Government of Malaysia also indicates that the strategy of its National Labour Policy is that “jobs created must be of quality and explicitly aim to upgrade workers to meet their need”.

(iii) *Freely chosen employment*

48. The Convention provides that the national employment policy should be aimed at ensuring 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 is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin”. The Committee notes that this requirement of the Convention may be considered as comprising two elements: first, the absence of compulsion to undertake work that has not been freely chosen or accepted; and, secondly, the opportunity to acquire qualifications and to use one’s skills and endowments free from any discrimination.

49. The Committee notes that the Committee on Economic, Social and Cultural Rights indicated that the right to work under the Covenant “affirms the obligation of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly”.²⁸ In this regard, the Committee on Economic, Social and Cultural Rights considered that States parties

²⁸ General comment No. 18: *The right to work* (Article 6 of the Covenant), adopted by the UN Committee on Economic, Social and Cultural Rights in 2005, para. 4.

should “develop and maintain mechanisms to monitor progress towards the realization of the right to freely chosen or accepted employment”.²⁹

50. The first of these aspects, that is the abolition of compulsory work, which is an obvious prerequisite of freedom of choice of employment, is dealt with in depth in two other Conventions, the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105).³⁰

51. As regards the second aspect of the above requirement, it appears that governments may not always specifically state or formally declare that one of the aims of their employment policy is to ensure equal opportunities or prevent any form of discrimination in employment. Yet, the intention to remove such discrimination is at the root of, and inherent in, most measures designed directly or indirectly to implement employment policies. The Committee recalls that ending discrimination in the labour market is one of the seven principles or pillars underlying the Global Employment Agenda. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Equal Remuneration Convention, 1951 (No. 100), are two of the most widely ratified ILO Conventions, and it is the usual practice of the Committee to examine policies and measures designed to prevent discrimination in the framework of the application of these Conventions.³¹

52. In this connection, Convention No. 122 also encourages countries to adopt policies and measures which meet the employment needs of particular categories of workers, such as women, young people, older workers and workers with disabilities. The Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), thus provides that “in the context of an overall employment policy, Members should adopt measures to respond to the needs of all categories of persons frequently having difficulties in finding lasting employment, such as certain women, certain young workers, disabled persons, older workers, the long-term unemployed and migrant workers lawfully within their territory”.³² Further consideration of the specific measures addressing particular categories of workers are detailed in Part B of this General Survey.

53. The Committee also observes that, in the context of the economic crisis, governments have adopted recovery programmes which seek to address the employment situation of the most severely affected members of the population. In this regard, the Government of Mexico indicates that it has adopted a programme which is aimed at creating transitional employment options and income for the most vulnerable groups of the population who have lost their jobs as a result of the economic slowdown. In Argentina, employability measures for vulnerable populations in the context of the crisis have been channelled through, among others, the Training for Work Programme, which offers vocational training measures, guidance and support concerning job search. The measures mainly target vulnerable persons who have not completed obligatory schooling, vulnerable youth, women, persons living with HIV/AIDS, inmates and members of indigenous communities. In 2008, 126,309

²⁹ *ibid.*, para. 45.

³⁰ For further details, see the Committee of Experts General Survey of 2007 on the eradication of forced labour.

³¹ For comprehensive information on Convention No. 111, the Committee refers to the surveys it has carried out: Special Survey, 1996; General Survey, 1988; see also paras 105–120 to commemorate the 50th anniversary of Convention No. 111 in its 2009 General Report.

³² Paragraph 15 of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169).

persons benefited from the policy actions. Similarly, Chile has adopted several measures to boost formal employment among low-income youth through the creation of a job subsidy for enterprises. In Egypt, the Government has proposed a stimulus package in order to deal with the impact of the crisis through three avenues: to stimulate effective demand to compensate for the shrinking external demand; to provide incentives to mobilize domestic investment and foreign direct investment; and to protect vulnerable groups against the adverse effects of the crisis. From this perspective, the Government has proposed, in the 2009–10 budget, a range of measures to support employment in small businesses and the export sector. Through the individual comments, the Committee intends to examine how the measures taken have contributed to alleviating the impact of the economic crisis in employment generation.

(c) **Relationship with other economic and social objectives**

54. Article 1, paragraph 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”. This provision therefore requires the measures of employment policy and other major decisions in the sphere of economic and social policy to be mutually reinforcing. The Committee has sought to pursue and underline the interdependence of economic, social and employment objectives by seeking information on the extent to which economic growth translates into better labour market outcomes and poverty reduction.³³

55. Paragraph 3 of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), goes a step further and recommends that “the promotion of full, productive and freely chosen employment should be the priority in, and an integral part of, economic and social policies of Members and, where appropriate, their plans for the satisfaction of the basic needs of the population”.

56. In the questionnaire, member States were asked to indicate whether they have taken measures to promote employment within the framework of a coordinated economic and social policy, and in their replies many countries have reported how they incorporate their employment objectives within the context of their poverty reduction strategies and national development plans. In this respect, the Committee notes that some countries that have not ratified Convention No. 122 have also taken these measures. The overall vision of the Tanzania National Employment Policy is to have a society engaged in decent, gainful employment capable of generating adequate income to sustain it, and to reduce poverty. The authorities of Zanzibar also describe a similar vision and refer to their 2009 Employment Policy, the Zanzibar Development Vision 2020 and the Zanzibar Strategy for Growth and Reduction of Poverty (MKUZA). The Malawi Growth and Development Strategy (MGDS) 2006–11, which was preceded by the 2002 Poverty Reduction Strategy Paper and the Poverty Alleviation Programme, articulates strategies for wealth and employment creation and emphasizes infrastructure development as one of the key elements. The economic framework set out in the MGDS is in concordance with the Decent Work Country Programme by focusing on the promotion of sustainable enterprises in employment-rich growth sectors. In Burundi, the Government and social partners have adopted a national plan for the creation of employment and poverty reduction. This plan emphasizes the creation of employment opportunities for young persons and

³³ See the general remarks regarding the Employment Policy Convention in the 2006 report, p. 301.

Employment Intensive Investment Programme projects. In Burkina Faso, the 2008 National Employment Policy establishes four main strategic points, one of which consists of creating a link between the National Employment Policy and other national policies in order to demonstrate how they are interrelated and to show how macroeconomic and sectoral policies can contribute to job creation and improve the quality of jobs.

57. The Committee notes that for countries that have ratified Convention No. 122, information is regularly requested concerning employment promotion within the framework of a coordinated economic and social policy. In the Honduras, Executive Decree No. PCM-05-2007 of 2007 integrates its National Decent Employment Generation Plan into its poverty reduction strategy, and ascribes it the status of a state policy. The Plan fits into a broader macroeconomic stability framework with geographically focused measures to create productive employment. The Committee noted that the Government of Cambodia has implemented the National Strategic Development Plan (NSDP), with the aim of reducing poverty and achieving the Cambodian Millennium Development Goals. In this regard, the Government has implemented the long-term “Rectangular Strategy” in order to deliver the NSDP. The Madagascar Action Plan (MAP) 2007–11 places the promotion of employment and poverty reduction at the centre of economic priorities. The Ministry of Labour supervises the Plan and sees that it is integrated in the programmes of all other ministries.

58. The importance of mainstreaming productive employment and decent work was also highlighted at the 11th African Regional Meeting (Addis Ababa, April 2007). The Committee notes that the project on the promotion of employment and poverty reduction (APERP), which began in January 2007 in Cameroon and Mali with the financial support of the French Government, should supplement the assistance provided by the ILO with a view to improving labour market policies by promoting the ratification and implementation of Convention No. 122 and other relevant Conventions.

59. The Committee noted Lebanon’s reform programme presented at the International Conference on Lebanon’s reconstruction in 2007. This programme is structured around three essential parts: structural reforms to stimulate growth and create more jobs, budgetary adjustments to provide revenues and promote the efficient use of public resources, and special programmes aimed at the poor and most vulnerable groups. In its observation addressed to Sudan, the Committee noted that, according to the Government, the employment policy occupies a central axis in the five-year plan for 2007–11. In this context, a poverty reduction strategy and programmes have been adopted for the employment of university graduates and rural workers. In its observation, the Committee also recalled that the UN had adopted a policy for post-conflict employment creation, income generation and reintegration which stresses that, in post-conflict situations, employment is vital to short-term stability, reintegration, economic growth and sustainable peace.³⁴

60. The Committee notes that an approach incorporating employment objectives within an overall economic and social plan is instrumental in addressing the human dimension of economic and financial crises. Uruguay’s Project on Employment Recovery, through support for the creation and consolidation of micro- and small enterprises in the framework of local development strategies, carried out with the

³⁴ CEACR (80th Session), observation, Convention No. 122 (Sudan), report 2010.

assistance of the ILO and the Italian Ministry of Labour, underlines the role of an active labour market policy and local development as part of the economic recovery strategy that followed the economic crisis during the 1990s. In a similar manner, in Argentina, the same actors, the ILO and the Italian Ministry of Labour, assisted in the project Support for the Reactivation of Employment in Argentina (AREA) in the post-crisis context of 2004. The project was aimed at reactivating the labour market through the strengthening of public employment services on a territorial basis.

61. In this respect, the Committee recalls that the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), advocates recognition of the importance of balanced regional development as a means of mitigating the social and employment problems created by the unequal distribution of natural resources and the inadequate mobility of the means of production, and of correcting the uneven spread of growth and employment between regions and areas within a country.³⁵ The Committee has consistently sought to encourage countries faced with differing rates of economic development across their regions to ensure a more equitable balance of policy efforts to redress this issue. Thus, for example, in the case of Germany, the Committee has followed the employment policy efforts taken by the Government as they pertain to both the new and old Länder.³⁶ In respect of Italy, the Committee has noted that, while the unemployment rate was in decline at the national level, this was composed of an increase in employment in the north and central regions of the country and a decrease in the south of the country over the same period. Accordingly, the Committee has sought further information on the effects of the legislative and other measures adopted to promote employment and, more specifically, on closing the gap between the various regions of the country as to the levels of employment.³⁷ The Committee also notes that the Government of Italy states in its reply to the questionnaire that, due to the current economic crisis and the macroeconomic framework, the conditions of immigrants and incomes are deteriorating, especially in the south.

62. The Committee noted in its observation that, in Slovakia, the National Reform Programme for 2008–10 provides for new active labour market policy measures with the objective of decreasing regional differences in employment rates, especially in underdeveloped regions with high unemployment rates.³⁸ In order to correct any disparities in the unemployment situation of the different regions, the Government of Japan, in its 2009 report on Convention No. 122, reported on the Act for Partial Amendment to the Employment Insurance Act and the Act on Promotion of Job Opportunities in Certain Regions, approved on 1 June 2007, which focus on supporting regions where the employment situation is severe. The Government of Cambodia has sought to increase investment in urban areas so as to generate productive employment and to absorb the flow of surplus labourers from rural areas. In China, the Government has implemented and coordinated employment policies, both in urban and rural areas, in different regions and targeting various employment groups. In the United Republic of Tanzania, the National Employment Policy has, among its objectives, the aim of fostering faster economic growth and the adequate allocation of investment resources to employment potential sectors such as agriculture,

³⁵ Paragraph 32 of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169).

³⁶ CEACR (79th Session), observation, Convention No. 122 (Germany), report 2009.

³⁷ CEACR (78th Session), observation, Convention No. 122 (Italy), report 2008, para. 2; and discussion at the 96th Session of the International Labour Conference, June 2007.

³⁸ CEACR (80th Session), observation, Convention No. 122 (Slovakia), report 2010, para. 1.

non-farm activities in rural areas, manufacturing and agro-processing industries, and infrastructure and social services sectors. The Committee notes in this regard that efforts should be taken to address both urban and rural development so as to ensure equitable regional development.

63. The Committee has also sought information on the measures adopted to address areas facing particularly high levels of unemployment due to the closure of a specific industry.³⁹ The Committee notes that, in the context of the global economic crisis, some replies to the questionnaire include information on the initiatives taken by countries to address employment issues in sectors or due to the closure of industries which have been significantly affected by an economic downturn. For example, Mexico cites the adoption of a Programme on the Preservation of Jobs at Risk, which is aimed at providing assistance to sectors that are especially sensitive to international demand for manufacture goods, such as car components, machinery and electronics. The objective of the Programme is to support the workers employed in such industries so that they can preserve their employment through the transfer of subsidies to prevent the rupture of their employment relationship, and through the agreed temporary modification of contractual relations. In its report on Convention No. 88, the Government of Peru indicated the proposals adopted in January 2009 by a tripartite group established to attenuate the impact of the international crisis on the economy, productivity and the labour market. Among the 15 measures envisaged, the Committee notes the intention of the Government to facilitate economic activity and to increase public procurement for SMEs. It is also envisaged to launch a national programme for workers laid off due to the crisis and provide them with vocational guidance and placement in new jobs.

(d) Methods of giving effect to employment policy

64. Regardless of the nature of the measures which may be necessary in different countries, or of the importance or character of the employment problems to be solved, governments that have decided to pursue an active employment policy must normally use or set up some form of procedure or machinery through which employment-oriented measures can be decided upon and reviewed.

65. Article 2 of the Convention requires governments 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 the employment policy]” and to “take such steps as may be needed, including when appropriate the establishment of programmes, for the application of these measures”.

66. Procedures to review and assess the results of employment policy measures are of crucial importance, both for governments and at the international level. Such review procedures serve as a helpful means for governments and the social partners to assess the extent to which the proposed measures have been implemented and the desired results have been achieved.

67. In the questionnaire, member States were asked to indicate whether they have established mechanisms to monitor progress towards full, productive and freely chosen employment, and to ensure coordination among key institutions.

68. The Committee notes that in the United Arab Emirates the Ministry of Labour, in coordination with its strategic partners, such as the Ministry of the Economy, the

³⁹ CEACR (79th Session), observation, Convention No. 122 (China), report 2009, para. 9. See also CEACR (78th Session), observation, Convention No. 122 (Ukraine), report 2008, paras 5 and 6.

Chamber of Commerce and Industry of the Emirates and other strategic partners, reviews periodically its labour policies to verify their conformity with the level and needs of economic growth in the country and their effectiveness in achieving its development objectives, which is in conformity with the provisions of the Convention. In Rwanda, the implementation of the National Employment Policy is reviewed every six months by the Government, the beneficiaries and other partners.

69. Paragraph 4 of the Employment Policy Recommendation, 1964 (No. 122), provides for employment policy to 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”. The report form for Convention No. 122 provides that Members should “describe the measures taken to collect and analyse statistical and other data concerning the size and distribution of the labour force, the nature and extent of unemployment and underemployment and trends therein, as a basis for deciding on measures of employment policy”.

70. In this connection, the Committee stresses the importance of compiling and analysing statistical data and trends as a basis for deciding measures of employment policy. The Committee has sought to follow up on progress made for the development of labour market information systems, for the purposes of ensuring that policy-makers have at their disposal up to date and accurate information which will guide their decisions. In its 2004 General Survey, the Committee highlighted the need to monitor progress and to analyse data, as even the best-designed policies can have unexpected effects, can become outdated due to changing circumstances or may need to be modified to achieve maximum benefit.⁴⁰

71. In Argentina, a study has been conducted on labour informality by the Ministry of Labour, Employment and Social Security on the basis of statistical data extracted from a special module of the Permanent Household Survey. This study provides implementation guidelines for specific policies and evaluates the impact of the measures implemented. The Government of Benin has indicated that the Employment and Training Observatory has been revitalized in order to provide better information about employment dynamics and indicators, and that committees on the follow-up of the implementation of employment measures exist. In South Africa, labour centres and provincial offices of the Department of Labour submit placement statistics. Statistics South Africa monitors employment trends and task teams exist among the government departments to ensure implementation of employment programmes. The Committee notes that improvements will be made to this process through the recent implementation of the electronic job-matching system in South Africa (ESSA).

72. In Brazil, the Committee noted in its comments on the application of Convention No. 122 that the Labour Market Observatory is a tool for research and planning whose objective is to produce and disseminate information, and to analyse and make action-oriented proposals for advising administrators of public policies. In Italy, the Labour Information System (SIL) is formed of the entire organizational structure, hardware and software resources, and networks available in the State, the regions, provinces and local authorities for the collection, processing and diffusion of data relating to placement and active employment policies for the purpose of monitoring and support for decision-making for interventions by central and local government in the labour

⁴⁰ See the final remarks in the 2004 General Survey, para. 491.

market. In Morocco, the Government states that it is aware of the strategic aspect of developing a labour market information system, and it has given instructions for the creation of a National Employment Observatory as the appropriate tool for better visibility on employment and the labour market. This structure has essentially the objectives of: providing the Government with analysis for the orientation and framework of employment policy; and putting information at the disposal of the stakeholders of the labour market permitting a better understanding of the supply and demand of labour. For statistical information on the current world employment situation, obtained through the ILO's Key Indicators of the Labour Market database, the Committee refers to the information provided in Part B of the General Survey.

(e) **Consultations with representatives of the persons affected by employment policy measures**

73. Article 3 of the Convention provides that “representatives of the persons affected by the measures to be taken, and in particular representatives of employers and workers, shall be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full co-operation in formulating and enlisting support for such policies”. Similarly, in the questionnaire, member States were asked to indicate whether they have consulted, in the formulation and execution of employment measures, the persons affected by these measures. Most member States answered positively and indicated that they consult the social partners with regard to employment policy measures.

74. The Committee notes that some workers' organizations indicate that governments only engage in consultations with the parties affected only after the authorities are well advanced in the drafting stage of policies. The Confederation of Argentinian Workers (CTA) indicates in its comments that information on employment policies is shared, but without the participation of the social partners in the adoption process. Furthermore, the Committee notes the comments formulated by the Canadian Labour Congress on Convention No. 122 stating that the involvement of the social partners appears to be limited to document sharing and very limited consultation, except on rare occasions. In this regard, the Confederation of Autonomous Trade Unions of Serbia suggests that it would be useful, when measures are adopted, to include the parties concerned from the start – trade unions, employers, NGOs, local actors in employment – in order to achieve a balance between real daily needs and possibilities (planned resources, measures, investments, etc.). The Committee recalls the importance of including representatives of interested groups during initial discussions regarding the formulation of employment policies.

(i) *Consultations in formulating employment policy*

75. The Committee notes that the scope of such consultations should not be limited to employment policy measures in a narrow sense, but should extend to all aspects of economic policy that affect employment. The social partners should therefore be consulted both on labour market or skills training programmes and on framing more general economic policies that have a bearing on employment promotion.

76. The Committee notes that, although a National Employment Policy has not yet been devised, the Government of Mauritius consults stakeholders in the course of the preparation of the national budget, in which for three consecutive years much emphasis has been laid on employment creation and sustained growth. It is to be noted that, in Malawi, the social partners are increasingly being recognized by government institutions and non-governmental organizations as key actors in social and economic development. In Singapore, to ensure that the inputs of representatives of workers and

employers are taken into consideration in the formulation of important policy decisions and legislation, the Government works closely with the unions and employers in various areas of employment measures. Tripartite committees and working groups are formed to study and drive long-term initiatives such as, enhancing the employability of older workers; fair employment; and work–life balance, as well as shorter term priorities, such as managing the economic downturn and the H1N1 influenza epidemic.

(ii) *Content and nature of the consultations*

77. Article 3 of the Convention requires governments to consult the representatives of the persons affected by the measures with a view to taking fully into account their experience and views in developing the employment policy. In this regard, the consultations should also be used as a mechanism to enlist the support of the persons affected for the implementation of the policy which is eventually adopted. It does not, however, create an obligation for such policies to be negotiated until a unanimous agreement is reached.

(iii) *Actors engaged in the consultations*

78. It should be noted that this provision provides for a broad participatory approach to consultations, in that it does not limit consultations to the social partners, but refers to representatives of the persons affected by the employment measures. As requested by the report form, the consultations covered by the Convention should include the views of other sectors of the economically active population, such as those working in the rural sector and the informal economy.

79. With respect to the informal economy, the 90th Session of the Conference (2002) adopted a resolution concerning decent work and the informal economy which, inter alia, concluded that governments have a primary role to play in addressing decent work deficits in the informal economy, and that “specific laws, policies and programmes to deal with the factors responsible for informality, to extend protection to all workers and to remove the barriers to entry into the mainstream economy will vary by country and circumstance”. Accordingly, the Conference concluded that the formulation and implementation of such laws, policies and programmes “should involve the social partners and the intended beneficiaries in the informal economy”.⁴¹

80. In China, the social partners are involved at different stages in the process of research for the formulation of legislation and policies. In this regard, the Committee notes the comments made by the China Enterprise Confederation, indicating that it has been playing the role of a bridge and conveyer belt between enterprises and the Government. Through its membership network, it gathers information and requests from enterprises regarding recruitment, management of human resources and vocational training. The Committee also noted the Government of the Republic of Korea’s plan in 2008, which was aimed at enhancing regional labour–management cooperation and expanding the participation of the social partners through the reorganization of the Regional Tripartite Consultative Body into the Regional Consultative Body. The Regional Consultative Body will be composed of representatives of the social partners selected at the regional level, as well as representatives of civil society, SMEs and precarious workers. The Government of Zambia indicates that it embarked on a nationwide consultation process with its social

⁴¹ International Labour Conference, 90th Session (2002): Resolution concerning decent work and the informal economy, para. 21.

partners in the formulation of the national employment and labour market policy, which was officially launched in 2006. The Tripartite Consultative Labour Council initially approved the policy prior to it being tabled in the Cabinet for adoption.

81. In Singapore, as indicated in the Government's reply, a promotional tripartite approach has been adopted involving the Singapore Workforce Development Agency, the National Trades Union Congress and employers. In reply to the questionnaire, the Government of Nepal refers to a Convention which it has ratified, the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and states that all policies are formulated in consultation with the social partners. The Government also indicates that tripartite consultations are carried out regularly. In Bahrain, the Ministry of Labour maintains very close relations with the social partners and carries out consultations with them on all labour-related issues. With the social partners, the Ministry continually discusses new mechanisms and proposals for building capacity in the private sector at all levels – social, material and professional. In the United Arab Emirates, the Government reports regular and continuous consultations between representatives from the Ministry of the Economy, and of the Interior, the Federation of Chambers of Trade and Industry, representing employers, and the Coordination Committee of Professional Associations Operating in the Country, representing workers. It is through such consultations that agreement is reached on the formulation of employment policies and their implementation.

82. The Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), also addresses the role of multinational enterprises in achieving the objectives of the Convention. In this regard, it recommends that “Members should, after consultation with the organisations of employers and workers, take effective measures to encourage multinational enterprises to undertake and promote in particular the employment policies set forth in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 1977, and to ensure that negative effects of the investments of multinational enterprises on employment are avoided and that positive effects are encouraged”.⁴²

83. In this connection, the Committee notes that the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the ILO, provides that “Multinational enterprises should take fully into account established general policy objectives of the countries in which they operate” and that their activities “should be in harmony with the development priorities and social aims and structure of the country in which they operate”. To this end, the Tripartite Declaration of Principles calls for consultations to be held between multinational enterprises, the government and, wherever appropriate, the national employers' and workers' organizations concerned.⁴³

84. Many examples show the involvement of tripartite forums in the design and promotion of employment measures. In Brazil, the formulation, implementation and monitoring of employment policy is carried out by the tripartite National Employment Council (CDT) and the tripartite Advisory Council of the Workers' Assistance Fund (CODEFAT), which administers the implementation of employment policies. In the context of the current crisis, CODEFAT has been consulted on measures concerning

⁴² Paragraph 12 of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169).

⁴³ Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office at its 204th Session (Geneva, November 1977), as amended at its 279th Session (November 2000) and 295th Session (March 2006), para. 10.

tax reductions on the production of goods. However, action has also been taken within the Economic and Social Development Council, in which not only the social partners are represented, but also the leaders of social movements and associations, as well as churches and large entrepreneurs. The Council has prepared recommendations on employment for government action. Furthermore, the Committee notes that in Brazil, as in many other countries, ad hoc meetings concerning massive lay-offs have taken place between high-level government officials and the social partners. In New Zealand, on 27 February 2009, the Government organized a first-ever national one-day job summit to discuss the consequences of the crisis in the employment sector with a select group of 200 business and union leaders and government officials. The purpose of the summit was to bring together the major economic players and to brainstorm with them regarding ways to protect and create jobs. Among the topics discussed were plans to help redundant workers retrain and move to growth areas, other ways to encourage upskilling and specific ideas to keep and expand the number of apprentices.

85. In the context of employment deterioration, the Committee notes that corporate social responsibility promotes the development of enterprises by fostering a positive environment and dialogue among businesses and other stakeholders, in particular the authorities responsible for designing and implementing active labour market measures and workers' organizations. Spain refers in its replies to the questionnaire to the creation of a council on corporate social responsibility as an expression of the value of dialogue among all interested groups on the issue. The Government of Lithuania indicates that, since 2004, it has promoted corporate responsibility as a way to integrate social and environmental concerns in the business operations of corporations and their interactions with stakeholders. The Committee notes that the Government elaborated upon the draft measures promoting corporate social responsibility in 2006–08 and launched the National Responsible Business Award, which honours, inter alia, enterprises that manage to establish safe, healthy, high-quality and attractive jobs for their employees. The National Gender Equality Programme 2005–09 was established to increase opportunities for women to start and develop businesses and to promote their economic activity. In the United States, the Small Business Administration (SBA), through the 8(a) Business Development Program, assists firms owned and controlled by economically and socially disadvantaged individuals to enter the mainstream economy.

(iv) *Forums for consultations*

86. Consultations on matters directly relating to employment may take place through a permanent advisory council or committee, usually dealing with general labour matters, on which employers and workers are represented through periodic conferences or meetings between the officials of the responsible government departments and representatives of employers' and workers' organizations. They may also take place through ad hoc committees set up to review employment problems and policies. The Committee notes that, in South Africa, the National Economic Development and Labour Council (NEDLAC) consists of high-level representatives of various constituencies and the various chambers to discuss employment measures. All constituencies are consulted during the development of employment legislation and policies through the representatives of critical interest groups, such as the community, government and worker unions, and employer organizations, and through roadshows, forums and a public comment phase.

87. In Argentina, the National Employment, Productivity and Minimum, Vital and Mobile Wage Council constitutes a forum for consultations with the social partners. Its aim is to design policies and evaluate topics relating to labour relations, such as

income redistribution and the generation of decent employment. In Indonesia, employers and workers are to be consulted in the Tripartite Cooperation Institution (LKS Tripartite), established by Government Regulation No. 8 of 2 March 2005. In Sri Lanka, the Committee notes that the Lanka Jathika Estate Workers' Union states in its observations that no formal consultations are held with regard to the formulation and execution of employment measures. However, broad policies are discussed at the National Labour Advisory Council. Malawi employs an ad hoc social dialogue forum on specific issues. In this regard, social dialogue workshops have been held over the past six years at the national and regional levels, and the law also provides for a Tripartite Labour Advisory Council (TLAC) as a statutory mechanism for social dialogue on labour and employment issues. Efforts are being made to ensure the regularity of TLAC meetings.

88. The Government of Jamaica indicates that the formulation process for the National Development Plan (Vision 2030), which seeks to outline a comprehensive long-term plan to enable Jamaica to achieve developed country status by 2030, was inclusive and involved 11 national public consultations, as well as input from a wide array of stakeholders. In Costa Rica, the Ministry of Labour and Social Security submitted both the National Employment Plan and the Decent Work Country Programme to the approval of the tripartite Superior Labour Council with the intention of promoting social dialogue and tripartism. Analysis, research and consensus seeking have been supported by the ILO.

89. In reply to the questionnaire, the Government of China indicates that it has established a ministerial level joint meeting system on employment and work to address major issues. This joint meeting system is composed of 20 departments and units, such as the Ministry of Human Resources and Social Security as the focal point, the All-China Federation of Trade Unions, the All-China Women's Federation and the China Disabled People Federation. The Government of Mongolia reports that the National Employment Council consists of representatives of the Government and national organizations representing workers and employers, each with an equal number of representatives, to discuss, inter alia, employment policy proposals. The Government has also established a National Tripartite Committee on Labour and Social Consensus, composed of an equal number of representatives, to guide the development and implementation of state labour policies, settle collective disputes and consult on relevant economic and social policy issues.

90. The Committee noted in its observation that a Participation Summit was held in the Netherlands, in June 2007, at which the Government consulted the labour foundation (central employers' and employees' organizations) and the Association of Dutch Municipalities. The Participation Summit resulted in a tripartite policy commitment in which all partners acknowledged the urgency, challenges and outcome of the analysis related to the labour market and undertook to raising effective labour supply to 80 per cent, increase the adaptability of the labour market and create labour market opportunities for vulnerable groups.⁴⁴ In its report on Convention No. 122, the Government of India indicated that the 42nd Session of the Indian Labour Conference, the apex national-level tripartite body, held in February 2009, witnessed a comprehensive discussion on the global financial crisis, its effects on large-scale downsizing, lay-offs, wage cuts and job losses. Constructive suggestions were made during the deliberations. In its replies to the questionnaire, the Government of Latvia reports that it established the National Tripartite Cooperation Council (NTCC) for

⁴⁴ CEACR (80th Session), observation, Convention No. 122 (Netherlands), report 2010, para. 5.

consultations between appointed representatives of the Government, the Employers' Confederation of Latvia and the Free Trade Union Confederation of Latvia on employment matters.

(v) *Support for the implementation of employment policies*

91. The Convention not only requires consultations in connection with the formulation of employment policies, but also calls for the support of representatives of the persons affected to be enlisted in the implementation of such policies. The Committee recalls its comments in the 2004 General Survey where it considered that it is the joint responsibility of governments and the representative organizations of employers and workers to ensure that representatives of the most vulnerable and marginalized groups of the active population are associated as closely as possible with the formulation and implementation of measures of which they should be the prime beneficiaries.

92. In this regard, the Committee noted in its observation addressed to Slovakia that representatives of disadvantaged groups, including the Roma minority, have been consulted on the implementation of employment-related measures designed for disadvantaged jobseekers.⁴⁵

93. In addition, the Employment Policy Recommendation, 1964 (No. 122), also provides for employers and workers in the public and private sectors and their organizations to “take all practicable measures to promote the achievement and maintenance of full, productive and freely chosen employment”. The initiative for action of this kind rests with the employers and workers and their organizations directly, rather than with the Government.

94. The Committee notes that the final draft of the Zimbabwe Employment Policy Framework creates a tripartite taskforce to oversee the implementation of the framework. Government ministries with a component dealing with employment and skills development will also participate in the taskforce. The Government of Benin states in its reply to the questionnaire that a National Employment Charter, which stands as a collective agreement by the different parties on their respective roles in the resolution of employment questions, will soon be validated. The Government also indicates that the social partners' involvement is a positive factor in the decision-making process and the implementation stage.

95. Chile has involved workers and employers both in the negotiation and the implementation of its employment response to the crisis, called the National Agreement for Employment, Training and Labour Protection. In order to monitor its implementation, a tripartite steering committee has been created, to which employers' and SMEs' confederations, as well as trade unions, enjoy access. The Committee noted in its observation on Mozambique that the social partners are consulted on employment issues and also participate in the mobilization of resources for the creation of an Employment and Vocational Training Fund, as well as in the establishment of a Vocational Training Centre for Metalwork.⁴⁶

⁴⁵ Observation, Convention No. 122 (Slovakia), report 2010, para. 2.

⁴⁶ Observation, Convention No. 122 (Mozambique), report 2010, para. 8.

Summary

Convention No. 122

- ✓ **Convention No. 122, a significant instrument from the viewpoint of governance, serves as a blueprint for member States to apply as they implement active employment policies in their efforts to recover from the global economic crisis.**
- ✓ **The realization of the right to work as a basic human right can be attained through the promotion of full, productive and freely chosen employment as the cornerstone of economic and social policies.**
- ✓ **Innovative education and training policies should be designed, adopted and targeted at all jobseekers with the aim of better preparing them for those employment opportunities that will arise when the global economy recovers.**
- ✓ **Consultation with the social partners both at the earliest stages of policy formulation and during the implementation process is essential and enables governments to take fully into account their experience and views.**

Chapter II

The Human Resources Development Convention, 1975 (No. 142)

1. Introduction

96. The Preamble of the Constitution lists “the organization of vocational and technical education” among the measures that the Organization should promote. The Declaration of Philadelphia recognizes the solemn obligation to “further among the nations of the world programmes which will achieve ... 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” and “the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour”.

97. The Human Resources Development Convention (No. 142) and Recommendation (No. 150) were adopted in 1975 to cover all the aspects of vocational training and guidance. They superseded the Vocational Training Recommendation, 1962 (No. 117), which itself had replaced other more specific standards adopted since 1939.

98. In its 1991 General Survey, the Committee pointed out that the 1975 instruments “marked the move away from the traditional concept of vocational training purely as a means to achieve balance on the employment market and towards a broader and more dynamic concept of ‘human resources development’, as a major factor of economic and social development. This new term embraced training and guidance as part of a continuous lifelong process of expanding the individual’s opportunities for education, both in the individual’s own interest and for the welfare of the community”.¹

99. While reaffirming the continued validity of the general principles of Convention No. 142, at its 92nd Session (2004), the Conference adopted a new standard revising Recommendation No. 150, the Human Resources Development Recommendation No. 195. This instrument provides guidance on a number of issues that are central to contemporary education and training policy and the system reforms under way in member States. These issues include the policy, governance and regulatory framework of training; the increased roles and responsibilities of the social partners, the private sector and civil society in policy formulation and implementation, including investment and the funding of education and training; the provision of lifelong

¹ *Human resources development*, General Survey of the Reports on the Paid Educational Leave Convention (No. 140) and Recommendation (No. 148), 1974, and the Human Resources Development Convention (No. 142), and Recommendation (No. 150), 1975, Report III (Part 4B), ILC, 78th Session, Geneva, 1991, para. 9. It should be noted that in many countries different terms are used to cover the concept of human resources development.

learning and training opportunities for all; the development of policies and mechanisms for targeting learning and training programmes at particular groups with special needs; the development and recognition of “competencies” and prior learning, which form elements of many countries’ emerging frameworks of national qualifications; and the importance of effective systems of labour market information and career guidance.

100. Skills development policies constitute a core element of the ILO’s Global Employment Agenda (GEA), the policy framework for the employment promotion objective of the Decent Work Agenda. In its Conclusions on skills for improved productivity, employment growth and development, adopted at the 97th Session (2008), the Conference stressed that “education, vocational training and lifelong learning are central pillars of employability, employment of workers and sustainable enterprise development within the Decent Work Agenda, and thus contribute to achieving the Millennium Development Goals to reduce poverty”.² The Conference recognized that connecting skills development to broader growth, employment and development strategies requires that governments, working with the social partners, build policy coherence by linking education, research and skills development to labour markets, social policy, technology, public services delivery, trade, investment and macroeconomic policies that generate future employment growth.³

101. In the Social Justice Declaration, skills development policies figure prominently as a major policy area for employment promotion. The first ILO strategic objective identified by the Declaration refers to the creation of “a sustainable institutional and economic environment in which individuals can develop and update the necessary capacities and skills they need to enable them to be productively occupied for their personal fulfilment and the common well-being” as being instrumental to employment promotion.

102. At the London Summit in April 2009, the leaders of the G20 emphasized in their Global Plan for Recovery and Reform to address the world economic downturn the importance of investing in education and training in order to support employment.⁴ In formulating the new Framework for Strong, Sustainable, and Balanced Growth agreed upon at the Pittsburgh Summit held in September 2009, the G20 leaders recognized the necessity to strengthen the ability of workers to adapt to changing market demands and, for this purpose, to ensure access to training programmes that support lifelong skills development and focus on future market needs. They undertook to support robust training efforts in national growth strategies and investments. Recognizing that successful employment and training programs are often designed together with employers and workers, they also called on the ILO, in partnership with other organizations, to convene its constituents and NGOs to develop a training strategy.⁵

103. The Global Jobs Pact includes among the principles for promoting recovery and development “increasing equal access and opportunities for skills development, quality training and education to prepare for recovery”. Investing in workers’ skills development, skills upgrading and re-skilling to improve employability, including

² *Conclusions on skills for improved productivity, employment growth and development*, ILC, 97th Session, Geneva, 2008, para. 3.

³ *ibid.*, para. 16.

⁴ G20 leaders’ statement, *The Global Plan for Recovery and Reform*, London, 2 Apr. 2009, para. 26.

⁵ G20 leaders’ statement: *The Pittsburgh Summit, Putting Quality Jobs at the Heart of the Recovery*, Pittsburgh, 25 Sep. 2009, paras 44 and 45.

through the implementation of vocational and entrepreneurial skills programmes for paid and self-employment, is indicated as one of the measures to accelerate employment creation and to achieve full and productive employment. The need to provide “vocational and technical training and entrepreneurial skills development, especially for unemployed youth” is also emphasized with reference to the situation in developing countries.⁶

2. Right to education and training

104. The Universal Declaration of Human Rights, in Article 26(1), states that “technical and professional education shall be made generally available”. Under the International Covenant on Economic, Social and Cultural Rights, technical and vocational education forms part of both the right to education (Article 13(2)) and the right to work (Article 6(2)).

105. Article 6(2) of the Covenant refers to technical and vocational guidance and training programmes as a primary means “to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual”. In this respect, the UN Committee on Economic, Social and Cultural Rights noted that the right to work requires States parties to the Covenant to take positive measures to implement technical and vocational education plans to facilitate access to employment. Under the Covenant, technical and vocational education is not necessarily linked to a specific level of education. It is considered as being an integral element of all levels of education.⁷

106. The Committee notes that Recommendation No. 195 reflects the human rights instruments on this point. In Paragraph 4(a), the Recommendation refers to the right to education and training by stating that member States should “recognize that education and training are a right for all and, in cooperation with the social partners, work towards ensuring access for all to lifelong learning”.

3. Content of the obligations under the Convention

107. Article 1, paragraph 1, of Convention No. 142 requires Members to “adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services”. Under paragraph 2 of the same provision, these policies and programmes shall “take due account of – (a) employment needs, opportunities and problems, both regional and national; (b) the stage and level of economic, social and cultural development; and (c) the mutual relationships between human resources development and other economic, social and cultural objectives”.

⁶ *Recovering from the crisis: A Global Jobs Pact*, ILC, 98th Session, Geneva, 2009, *Provisional Record* No. 19A, paras 9(5), 11(2)(iii), 11(3), and 22(3).

⁷ See General comment No. 13 – *The right to education* (Article 13 of the Covenant), adopted by the UN Committee on Economic, Social and Cultural Rights in 1999, para. 15; and General comment No. 18 – *The right to work*, 2005, para. 27.

(a) Relationship between human resources development and employment

108. The Convention calls for the formulation of policies and programmes in the area of vocational guidance and vocational training, the implementation of which may be gradual and take account of national and regional conditions. Its provisions establish objectives which countries should aim to achieve. The Committee recalls that the text of subparagraphs 2(b) and (c) was modelled on Article 1, paragraph 3, of Convention No. 122 in order to allow the same flexibility in fulfilling the obligation imposed on member States as for the objectives set out in Convention No. 142.⁸

109. One of the major objectives assigned to the policies and programmes to be developed under the Convention is employment. In order to have a truly effective human resources development system, governments should think of human resources development as a key component of their broader employment policy.

110. The Committee notes that, at the time of their adoption, the standards laid down in the Convention were considered “pilot standards” on the contribution of vocational guidance and training to the objective of full, productive and freely chosen employment.⁹ In its 1991 and 2004 General Surveys, as well as in individual comments on the application of Convention No. 122 and Convention No. 142, the Committee has repeatedly stressed the many close and necessary links between the implementation of the two instruments. It has continuously noted with interest innovations in the provision of vocational training, particularly in expanding access and linking training more closely to employment promotion.¹⁰

111. The information made available for the present General Survey confirms that in many countries human resources development policies and programmes are increasingly employment-oriented.

112. In Afghanistan, the National Skills Development Programme (NSDP) was established in 2005 as a national priority programme through international technical assistance, including a relevant contribution from the ILO. The Government of Iraq indicated in the report provided on the application of Convention No. 142 that, in addition to support from the United Nations agencies, there are ongoing cooperation programmes with the ILO to strengthen national capacities in employment and vocational training for the development of human capital.

113. In replying to the questionnaire, the Government of Nepal affirms its commitment to uplifting its population’s skills so as to foster employment, even though it has not yet ratified the Convention. To this end, it has established vocational and skills development training centres at the national, regional and local levels under the authority of the Ministry of Labour and Transport Management. Furthermore, the Ministry of Industry runs skills and entrepreneurship development training programmes with nationwide coverage.

114. The Ukraine benefited from the assistance provided by the ILO, more recently in collaboration with the UNDP, in the implementation of employment-oriented modular vocational training programmes targeting in particular the unemployed. Modular-

⁸ *Human resources development: Vocational guidance and vocational training*, Report VI(2), ILC, 60th Session, Geneva, 1975, p. 13.

⁹ CEACR, *Human resources development*, General Survey, 1991, para. 52.

¹⁰ General Report of the Committee of Experts, Report III (Part 4A), ILC, 90th Session, Geneva, 2002, para. 66; CEACR, *Promoting employment*, General Survey, 2004, para. 202.

based vocational training is a flexible, individualized and outcome-oriented approach that allows trainees to acquire the necessary skills to work in a specific sector or industry. The project, which was completed in late 2005, was instrumental in introducing innovative approaches to vocational training and improving training delivery across the country through the development of new training curricula based on both vocational and core skills for employability.

115. Under Article 1, paragraph 1, of the Convention, countries are free to adapt their human resources development policies to the different realities existing at the regional level. Recommendation No. 195 encourages them to establish both a national strategy for education and training, and a guiding framework for training policies “at national, regional, local, and sectoral and enterprise levels” (Paragraph 5(a)).

116. Skills development must be adaptable to local and regional needs. The information provided by many countries shows that the involvement of local communities in the design of training programmes, as well as in the management and control of training institutions, has become a key element in their reforms of education systems. This trend is evident in both ratifying countries and countries which have not ratified Convention No. 142.

117. The Government of Canada indicates in its reply to the questionnaire that, since the needs of workers differ across the country and throughout sectors, the “provinces and territories are best placed to design and deliver training programs to suit the needs of workers and employers”. Labour Market Development Agreements have been negotiated with provinces and territories allowing the provision of funds to help Canadians upgrade their skills, train for a new occupation, get on-the-job experience, find a job or become self-employed. The Committee notes with interest the information provided by the Canadian provinces on the initiatives that they have undertaken.¹¹

118. Indonesia enacted in 2003 the National Education System Law No. 20, which identifies as a major area of intervention the decentralization of the education and training system. Schools in collaboration with local communities are now free to set out and manage their own education programmes. Expanding access to education in vocational high schools in accordance with local needs is one of the objectives of the 2005–2009 Strategic Plan, approved by the Ministry of Education, and pursued through more flexible vocational education programmes to better respond to local labour market demands.

119. The governance and administration of Australia’s new national training system was introduced under the framework of the 2005–08 Commonwealth-State Agreement for Skilling Australia’s Workforce in accordance with the requirements of the Skilling Australia’s Workforce Act 2005. This Agreement creates the basis for a partnership between the Australian, state and territory governments to implement new national training arrangements that support the national goals and objectives identified in “Shaping Our Future”, Australia’s National Strategy for Vocational Education and

¹¹ In Alberta, the First Nations Training Program provides First Nations people (primarily living on reserve) who are unemployed or underemployed with the skills needed for sustained employment in occupations with long-term employment prospects. The Ontario Labour Market Partnership Program (OLMP) supports partnerships between employers, workers’ and employers’ associations, and community organizations. The Program is intended to help partners address identified labour market issues; develop and implement strategies to improve their ability to plan for their human resource needs; implement labour force adjustment measures to deal with changes in the labour market that are driven by technological, economic, demographic or structural influences, including expansion, workplace problems, implications of changing technology for labour, changing educational requirements, and equity and youth issues.

Training 2004–10. Recognizing the local diversity of states and territories, the Agreement provides for annually updated bilateral agreements between the Australian Government and each jurisdiction, which identify national priorities and performance levels relevant to the jurisdiction concerned. Each state and territory is required to provide the Government with a Vocational Education and Training Plan setting out its strategy for meeting the statutory requirements under the relevant legislation, and the other requirements set forth in the Agreement.

120. Since 2002, France has undertaken a reform of its vocational training system focusing, *inter alia*, on the issue of decentralizing apprenticeship and continuous training to the regions. The regions coordinate the action of the various institutions operating in this field through the elaboration of a regional development plan. In Italy, the reform of the education system introduced by Law No. 133 of 2008 is aimed at the rational and effective use of funds focusing on the planning and implementation of a new territorial governance of education and training which is to be achieved by capitalizing on the independence of the education institutions and through the full involvement of the 20 regions and five autonomous provinces. In reporting on the application of the Convention, Switzerland indicated that, while training policies are under the responsibility of the federal authorities, their implementation is carried out in cooperation between the federal authorities, the cantons and social partners. The Federal Office for Vocational Training and Technology has decision-making powers in relation to the development and quality assurance of the overall training system, and the enactment of legislation, while the cantons perform executive and monitoring functions. The social partners are responsible for defining and reviewing the content of training programmes in accordance with the economic and social context.

(b) Relationship with other economic, social and cultural objectives

121. Article 1, paragraph 2(c), of the Convention requires member States to provide more than access to, and preparation for, employment by requiring that vocational guidance and vocational training policies and programmes take account of the mutual relationships between human resources development and other economic, social and cultural objectives. In line with Article 1, paragraph 3, of Convention No. 122, Convention No. 142 encourages governments to adopt an integrated approach to human resources development. The Committee recalls that, as indicated in individual comments, there should be a coherent and integrated system of human resources development, rather than a piecemeal collection of policies and programmes that may duplicate or negate one another.

122. This is confirmed in Recommendation No. 195, preambular paragraph 3, which recognizes that education, training and lifelong learning “should form an integral part of, and be consistent with, comprehensive economic, fiscal, social and labour market policies and programmes that are important for sustainable economic growth and employment creation and social development”.

123. The Convention provides in Article 1, paragraph 4, that the “policies and programmes shall be designed to improve the ability of the individual to understand and, individually or collectively, to influence the working and social environment”. It further states in paragraph 5 that the “policies and programmes shall encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work in their own best interests and in accordance with their own aspirations, account being taken of the needs of society”. Moreover, the reference to cultural objectives in Article 1, paragraph 2(c), was

included with the purpose of emphasizing that Convention No. 142 deals with the overall development of the individual.¹²

124. The Committee notes the Convention's emphasis on the individual. Human resources systems should strive to help each person find a meaningful voice in society. The focus of education and training policies should, accordingly, not just be on the technical aspects of human resources development. Rather, training, information and guidance should also address a broad range of issues to help individuals make informed choices so that they can participate fully in working and civic life. In this respect, Recommendation No. 195 emphasizes in preambular paragraph 5 that education, training and lifelong learning are contributing factors to personal development, access to culture and active citizenship.

125. Another key aspect of human resources development which is increasingly important to national education and training strategies is the development of individuals as active citizens by helping them to acquire the knowledge, skills and capacities required to participate in all spheres of social and economic life. Promoting active citizenship is among the long-term objectives defined in the new strategic framework for European cooperation in education and training, adopted by the European Council in 2009.

The European Union: Education and training as a key driver of the Lisbon Strategy

The Committee notes the detailed information received on education and training policies and systems in the European Union. Building higher skills through better education and training systems is an essential part of the European Union strategy to meet future challenges, such as the ageing of society, and to deliver the high levels of sustainable knowledge-based growth and jobs that are at the heart of the renewed Lisbon Strategy. The Integrated Guidelines for Growth and Jobs adopted for the period 2008–10 under the Lisbon Strategy call for increased investment in human capital through better education and skills as well as the adaptation of education and training systems in response to new competence requirements.

The European Commission points out, in its proposal of December 2008 for a "New Skills for New Jobs" initiative, that "the severity of the financial crisis adds an exceptional degree of unpredictability about the future of the world's economy – yet in order to put Europe on the road to recovery it is essential to enhance human capital and employability by upgrading skills".¹ As part of the European Economic Recovery Plan, a major "European employment support initiative" has been launched. The Commission proposed to simplify criteria for European Social Fund (ESF) support and step up advance payments from early 2009, so that EU members have earlier access to funds in order to: reinforce activation schemes; concentrate support on the most vulnerable; and improve the monitoring and matching of skills development and upgrading with existing and anticipated job vacancies, in close cooperation with social partners, public employment services and universities.²

¹² Report of the Committee on Human Resources Development, ILC, 60th Session, *Record of Proceedings*, Geneva, 1975, p. 521.

Skills upgrading is critically important for Europe's short-term recovery and long-term growth and productivity. In its conclusions on a strategic framework for European cooperation in education and training ("ET 2020"), the Council identifies four long-term strategic objectives: (1) making lifelong learning and mobility a reality; (2) improving the quality and efficiency of education and training; (3) promoting equity, social cohesion and active citizenship; and (4) enhancing creativity and innovation, including entrepreneurship, at all levels of education and training.³

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *New Skills for New Jobs: Anticipating and matching labour market and skills needs*, COM (2008) 868 final, 16 December 2008, p. 3.

² Communication from the Commission to the European Council, A European Economic Recovery Plan, COM(2008) 800 final, 26 November 2008, p. 11.

³ Council Conclusions on a strategic framework for European cooperation in education and training ("ET 2020"), 2941th Education, Youth and Culture Council meeting, Brussels, 12 May 2009, p. 3, para. 3.

126. The importance of promoting personal development and active citizenship is reflected in the comments made by the National Confederation of Trade Union Unity of the Dominican Republic (CNUS), which expresses its concern that the national training system is more focused on enterprises needs rather than workers' needs. CNUS is of the view that curricula should include not only professional qualifications, but also other elements that are fundamental to any training system aiming to favour personal development, such as human rights, social responsibility and citizenship. Similarly, the Pakistan Workers Federation (PWF) emphasizes that training for skills development could not only raise workers' employability and income generation capacities, but also bring them self-contentment as to their skills.

(c) Equality promotion

127. In Article 1, paragraph 5, of Convention No. 142, member States are reminded that access to human resources development programmes must be free from discrimination. The Committee notes that the criteria enumerated under Convention No. 111 on discrimination have to be taken into account in the application of this provision. Furthermore, by adopting an open wording, the Conference did not rule out the possibility of defining additional grounds of discrimination for the purpose of the application of Convention No. 142.¹³ Indeed, the Committee recognizes that human resources development is an important tool in combating discrimination by providing opportunities for the most vulnerable groups. The Committee indicated in its 1996 General Survey on equality in employment and occupation that training and vocational guidance are of paramount importance in that they determine the possibilities of gaining access to employment.¹⁴

(d) The role of public employment services and other training providers

128. Article 1 of Convention No. 142 identifies public employment services as one of the principal means to be relied on by governments in developing human resources policies and programmes closely linked to employment. In its General Survey of 1991 on human resources development, the Committee noted that the public employment services are clearly an ideal vantage point from which to monitor the harmonization of

¹³ *Human resources development*, General Survey, 1991, para. 47.

¹⁴ *Equality in employment and occupation*, General Survey on Convention No. 111, 1996, Report III (Part 4B), para. 69.

vocational training and employment and that they play an active role in vocational guidance in many countries.¹⁵

129. Convention No. 142 highlights some of the functions that are most appropriate for governments to perform within any vocational education and training system, such as ensuring that everybody has access to training, vocational guidance and labour market information, and addressing the education and training needs of young people, adults and persons with disabilities. Nonetheless, the Convention recognizes that each country has a unique set of economic circumstances, social concerns and cultural characteristics; thus, it maintains wide latitude to develop the most appropriate human resources development system.

130. In this respect, Recommendation No. 195 indicates in Paragraph 15(c) that each individual country has the discretion to determine, in consultation with the social partners, the roles and responsibilities of employment services and training providers with respect to vocational and career information and guidance.

131. A large number of countries, including countries that have not ratified the Convention, have stressed in their replies to the questionnaire the importance of cooperation with private training providers. Singapore's 2008 Continuous Education and Training MasterPlan involves the best private providers in this field, including best-in-class local and overseas training providers. India, which ratified Convention No. 142 in March 2009, has indicated that efforts are being made to attract private investment into the vocational training sector, which has been accorded top priority in its 11th Five-Year Plan 2007–12.

132. In some cases, employment services are delivered through private training providers based on the choices of jobseekers. Private providers play a central role in the delivery of training and career orientation services in the One-Stop Delivery System developed in the United States under the 1998 Workforce Investment Act (WIA). A network of One-Stop Career Centres provides jobseekers with a wide range of services in the area of career counselling, labour market information and job training. Eligible individuals can obtain training services from any approved training provider. Such providers may be public or private and may include post-secondary education institutions (universities and community colleges) and entities that carry out programmes under the National Apprenticeship Act.

133. In the United Kingdom, national active labour market policies are implemented through Jobcentre Plus, the integrated employment and welfare service, as well as the Flexible New Deal programmes which are delivered through providers in the private, public and voluntary sectors. The Government is seeking to improve performance and value for money by focusing on: competition, both at the point of tender and throughout the life of the contract; longer and larger contracts; and the establishment of a more strategic relationship with providers. Payment to contractors is based on outcomes to encourage the placing of customers into sustainable employment. Within the Training for Work Scholarship Programme (BECATE), developed in Mexico to offer financial support to unemployed or underemployed workers with a view to encouraging their participation in training courses so as to improve their qualifications, a pilot project makes use of training vouchers which allow workers to attend courses delivered by private training providers registered with the national employment service.

¹⁵ *Human resources development*, General Survey, 1991, para. 96.

(e) Open, flexible and complementary systems of education and training

134. Under Article 2 of the Convention, “open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training” have to be established and developed. Human resources development systems should be open to allowing individuals to choose their occupation later in life, and should not penalize them for previous choices. Human resources development systems should also be flexible. They should make reasonable efforts to accommodate the needs of people receiving training, full-time and casual workers, and people with special needs, in order to ensure access to employment for all.

135. Education, guidance and training are closely linked and form part of the overall process of human resources development. The Committee notes the importance of establishing synergies between general education, technical and vocational education and training, as well as vocational guidance. Technical and vocational education and training should be understood as a component of general education.¹⁶ The need for coordination between all the various facets of the education system is restated in Recommendation No. 195, which invites Members to “establish, maintain and improve a coordinated education and training system within the concept of lifelong learning” (Paragraph 6(1)).

136. The scope of application of Convention No. 142 is particularly wide. Articles 2 and 4 of the Convention imply that it embraces all systems of technical and vocational education, educational and vocational guidance and vocational training, whether the activities take place within the formal system of school education or outside of it. The Committee notes that the Convention covers “all sectors of the economy and branches of economic activity” and “all levels of skill and responsibility”, and that it applies to all workers, whether or not they are in an employment relationship, in the formal or informal economy.

137. The Conclusions concerning decent work and the informal economy adopted by the Conference in 2002 highlight the lack of education in addition to a lack of recognition of skills garnered in the informal economy as barriers to entering the formal economy. Training can be one of the instruments to address needs in the informal economy in order to improve workers’ employability and facilitate their transition towards the formal economy. Governments and the ILO through technical assistance are called upon to remove these obstacles by developing programmes and policies to ensure the provision of education, training and microfinance, which should be designed and implemented with the main objective of bringing workers or economic units in the informal economy into the mainstream.¹⁷ The Committee, in its observations, has constantly invited member States to provide information on their efforts to promote decent work for informal economy workers.¹⁸ In this respect, the Committee also wishes to recall that Recommendation No. 195 calls on Members to identify skills development policies that “address the challenge of transforming

¹⁶ See General comment No. 13 – *The right to education* (Article 13 of the Covenant), op. cit., paras 15 and 16, which refer in this connection to ILO Conventions Nos 142 and 117.

¹⁷ *Conclusions concerning decent work and the informal economy*, ILC, 90th Session, Geneva, 2002, paras 19, 25 and 37(f).

¹⁸ CEACR (78th Session), observation, Convention No. 122 (Barbados), report 2008, para. 5. See also CEACR (79th Session), observations, Convention No. 142 (Ecuador) and (Bolivarian Republic of Venezuela), report 2009.

activities in the informal economy into decent work fully integrated into mainstream economic life” (Paragraph 3(d)).

138. Training in the informal economy is an important tool to improve the performance and employability of workers with the purpose of integrating their activities into the formal labour market. Prior learning and skills gained in the informal economy, if validated by certification systems, can facilitate the access of workers in the informal economy into the formal labour market.

139. Some African governments, including Angola, Burundi and Rwanda, emphasized the importance of extending the coverage of training programmes, including apprenticeship schemes, to the informal economy. In particular, apprenticeship training is important to enhance the employability of young people, thereby improving access to decent work. Niger has created an apprenticeship scheme targeting women in the informal economy. Furthermore, the ILO has implemented two EU-funded pilot projects in Niger which combine on-the-job training with the development of functional literacy for low-educated apprentices; the provision of social protection for trainees; the introduction of competence-based qualifications; the training of master trainers; and enhanced dialogue with the social partners involving the National Federation of Artisans.

140. Bolivia has a policy that focuses on increasing the employability of workers currently in informal employment, as well as their access to social protection and health services. The central element of this policy is the development of training programmes. In Peru, the Special Commission appointed in 2007 to address issues related to the informal economy has noted the link between the high level of informality among micro and small enterprises and the limited access to vocational training available to workers in this sector, which is one of the main reasons for their low level of skills.

141. The information obtained from the replies to the questionnaire shows that there has been a gradual shift in recent years from teacher-centred education and training towards “learning” by the individual, which is often informal. This change of perspective is taken into account in Convention No. 142. The Committee notes that not all learning occurs in formal settings, and that non-formal and informal learning has an important role to play in education and skills formation. Recommendation No. 195 further develops this approach in Paragraphs 9(e) and 11(1) by encouraging Members to “recognize workplace learning, including formal and non-formal learning, and work experience”, and to create national frameworks for the recognition and certification of skills, whether acquired formally or informally, including “prior learning and previous experience”.

142. The Committee notes that several countries are introducing non-formal education and training programmes to reach groups of workers with special needs, while developing frameworks for the recognition of competencies acquired in a non-formal context.

143. The Government of Uganda intends to introduce non-formal training programmes throughout the country that are relevant to the skill needs of the rural workers. Other African countries, including Benin, Ghana and Mali, are making important efforts to modernize traditional apprenticeship schemes and to integrate them into a national training system. This takes the form of dual apprenticeship systems, in which craft enterprises cooperate with training centres to provide training and to issue certificates attesting the skills possessed by informal economy workers.

144. In Chile, the Programme for the Validation of Acquired Competences (RAP) aims to certify skills acquired outside the formal context in several sectors, such as metallurgy-mechanics, agriculture and food, tourism, mining, telecommunications, administration and commerce. In 2008, Uruguay created a National Council for Non-Formal Education, which provides advice and guidance and coordinates non-formal education programmes. Its advisory committee is composed of representatives of the Ministry of Labour and Social Development, the Ministry of Tourism and Sports, the National Youth Institute, the Uruguay Children and Adolescents Institute, teachers and private non-formal education institutions.

4. Measures to ensure implementation

145. The Committee recalls that the terms “policies and programmes” under Article 1, paragraph 1, of Convention No. 142, imply a strategy consisting of policies to be implemented by means of concrete programmes. Both terms are used in the plural, thereby reflecting the extent and diversity of the subjects covered, as well as the great number and variety of measures adopted and of implementing institutions.¹⁹

(a) Policies and programmes

146. The Committee observes that many countries have provided detailed information in their reports on the general policy or strategy that they have adopted as the basis for the implementation of significant reforms in the field of human resources development. In most cases, this is integrated into the national employment policy or a broader economic and social development plan.

147. Many countries consider human resources development as an integral part of their national employment policies, with the main objective of meeting labour market requirements by increasing the employability of workers and strengthening the links between education, vocational training and employment.

148. In most countries, the ministries responsible for labour matters are not the main authorities dealing with the issues covered by Convention No. 142. The plurality of ministries and institutions involved has given rise to the creation of new mechanisms with an advisory capacity or decision-making powers, which should ensure the effective coordination of vocational education and training with labour market needs.

149. A lack of coordination between the various bodies operating in the field of training has been pointed out in the reports submitted by several member States. In Paraguay, training activities are carried out by the National Service for Professional Promotion (SNPP) and the National System for Vocational Training (SINAFOCAL), which are both under the responsibility of the Ministry of Justice and Employment. In this regard, the National Secretariat for Youth Employment Generation, an inter-institutional entity of tripartite composition, has stressed the need to establish a governing authority for training policy, so as to avoid duplication and to ensure coordination with the Ministry of Education and Culture. Similarly, the Lanka Jathika Estate Workers Union of Sri Lanka refers to the lack of coordination existing between the policies set out by several bodies operating in the field of training, such as the Vocational and Technical Training Ministry, the Department of Technical Education and Training, the National Apprentice and Industrial Training Authority and the Vocational Training Authority.

¹⁹ *Human resources development*, General Survey, 1991, para. 59.

(b) Constitutional provisions and legislative action

150. The right to education is laid down in the constitutional provisions of many countries, including those that have enacted new constitutional instruments in recent years. In some cases, the right to training for all and the duty of the State to develop an effective education and training policy is set out. Pursuant to the 2007 Interim Constitution of Nepal, the State “shall pursue a policy of creating basic infrastructure to impart technical education, training and orientation” (Part 4, section 35.16). Under the 1995 Constitution of Bosnia and Herzegovina, the content of the right to education is further developed through direct reference to international instruments on human rights (article II, paragraph II). Under the Constitution of Ukraine, adopted in 1996, the State has the duty to ensure accessible and free pre-school, complete general secondary, vocational and higher education, and to implement programmes of vocational education, training and retraining according to the needs of society (articles 43 and 53).

151. Some constitutional provisions expressly refer to continuous training or lifelong learning and to the provision of training by private institutions. The Constitution of the Republic of Korea requires the State to promote lifelong education (article 31.5). Under the 1996 Constitution of South Africa, “Everyone has the right to establish and maintain, at their own expense, independent educational institutions that – (a) do not discriminate on the basis of race; (b) are registered with the State; and (c) maintain standards that are not inferior to standards at comparable public educational institutions” (article 29.3). Pursuant to the Constitution of Thailand, approved by referendum in 2007, the State has the duty to promote education and training management by professional training providers, alternative education, self-education and lifelong learning (section 49.3). Pursuant to article 78 of the Constitution of Bolivia, adopted in 2009, the State shall guarantee technical, vocational and humanistic education for men and women related to life, work and productive development.

152. In most countries, a legislative act or statutory order on education and vocational training provides the basis for the relevant structures and activities. Significant reforms are being implemented in a number of countries covering aspects such as the scope and levels of programmes and the roles of the different stakeholders involved in the provision of training, quality assurance functions, the criteria and the procedures for the admission of students and trainees to programmes; the effective governance and management of education and training institutions; the creation of mechanisms and organs for the regulation of qualifications (standards, assessment and certification) and training delivery in formal and non-formal institutions.

153. In Luxembourg, the reform of the vocational education and training system is being implemented through a law adopted in December 2008. The reform aims to improve the quality of vocational training, facilitate access to lifelong learning, and target education and training upon economic and social integration. In June 2008, Chile adopted Act No. 19.518 establishing a New Training and Employment Statute aimed at promoting skills development so as to contribute to employment, improve the productivity of workers and enterprises as well as the quality of production processes. Namibia enacted the Vocational Training Act (No. 1) in 2008. It provides for the funding of vocational education and training by establishing a National Training Fund and imposing a levy on employers. The organizational structure of the vocational education and training system has been streamlined by the creation of a National Training Authority (NTA), which will develop and implement a strategic plan for vocational education and training linked to the national policy for vocational education and training aimed at increasing access, equity and quality. The Business

Technical and Vocational Education and Training (BTVET) Act adopted in Uganda in 2008 creates an institutional framework for the promotion and coordination of BTVET activities. In 2008, Tunisia enacted two mutually supportive laws reforming the education and training system to pursue the objective, defined in its XIth Economic Development Plan (2007–11), of increasing the complementarity between general education, vocational training and higher education systems so as to make them more responsive to labour market demands.

154. Some countries are still adjusting their education and training systems to labour market requirements following their transition to a free market economy. In line with its poverty reduction and growth strategy, Viet Nam adopted a comprehensive Vocational Training Law in 2006 establishing a general regulatory framework for cooperation between employers, workers and training providers. In Bosnia and Herzegovina, a Framework Law on Secondary Vocational Education and Training was passed in 2008 based on a Strategy for the Development of Vocational Education and Training (2007–13). Lithuania introduced new provisions into its law on vocational training, which came into force in 2008, to essentially change the concept of vocational training so as to contribute to implementing lifelong learning, ensure the compliance of qualifications with labour market needs and involve the social partners in the management of vocational training.

155. Provisions on education and training can be found in national labour codes. In Argentina, the Labour Contract Law was amended by Law No. 24.576 in 1995 to include a specific chapter on vocational training. The revised Labour Code adopted in Gambia in 2007 also contains a chapter on human resources development, including an obligation for employers to provide initial and further training for their workers. Under the 1997 Labour Code of Niger, vocational training is the right of all workers, including initial and continuous training. In 2008, Turkey adopted a legislative act revising the Labour Law to include an employment package containing measures in the area of vocational education and training policies. The 1974 Philippine Labor Code, as subsequently amended, dedicates a main chapter to human resources development, which contains detailed provisions on apprenticeship as well as on training for workers with disabilities. The Syrian Arab Republic indicated in its report that the new Labour Law to be enacted in 2009 includes provisions on training policies.

(c) **Tripartite agreements**

156. In several countries, the principles underlying the reforms have been agreed upon with the social partners through tripartite agreements. In 2006, a Tripartite Agreement on Vocational Training for Employment was concluded in Spain in order to integrate into a single system continuous training for the employed and vocational training for unemployed workers. In Portugal, a Tripartite Agreement on the Reform of Vocational Training was concluded in 2007 with the aim, among others, of creating the conditions necessary to attain the objectives of the initiative “Novas Oportunidades”, namely increasing the secondary school enrolment rate and improving youth and adult qualifications. A Tripartite Agreement on the National Qualifications Framework was signed in Romania in 2005, whereby the Government and the social partners expressed their commitment to contribute to the establishment of a coherent national qualifications system applicable to initial and continuing vocational training in order to assure the development and access to qualifications in conditions relevant to the labour market. In Chile, the Government and the social partners signed the May 2009 National Agreement for Employment, Training and Labour Protection in response to the global economic crisis. Five of the six priority

measures contained in the Agreement contemplate incentives for companies to train workers, namely through training schemes co-financed by public authorities as an alternative to lay-offs.

(d) **Labour market information, guidance and counselling**

157. Article 3, paragraph 1, of Convention No. 142 requires Members to gradually extend their systems of vocational guidance and employment information “with a view to ensuring that comprehensive information and the broadest possible guidance are available to all children, young persons and adults”. The provision includes a specific reference to the development of appropriate programmes targeted at people with special needs, namely persons with disabilities.

158. Paragraph 2 of Article 3 defines as the areas that labour market information and guidance must cover: “the choice of an occupation, vocational training and related educational opportunities, the employment situation and employment prospects, promotion prospects, conditions of work, safety and hygiene at work, and other aspects of working life in the various sectors of economic, social and cultural activity and at all levels of responsibility.” The information provided should also include “general aspects of collective agreements and of the rights and obligations of all concerned under labour law; this information shall be provided in accordance with national law and practice, taking into account the respective functions and tasks of the workers’ and employers’ organisations concerned” (Article 3, paragraph 3).

159. At the time of their adoption, these provisions were of an innovative character: a participatory approach to education and vocational guidance through the involvement of parents, teachers and the social partners. They also encourage countries to supplement the traditional contents of guidance with information on labour law and collective agreements.²⁰ Recommendation No. 195, in Paragraph 15, brings to the attention of governments additional functions that employment services and training providers should perform, as well as other aspects that the information and guidance should cover, such as promoting the use of information and communication technology and encouraging the development of entrepreneurial skills.

(e) **Training for work in a lifelong perspective**

160. The main provision on training matters is Article 4 of Convention No. 142, which provides that “each Member shall gradually extend, adapt and harmonise its vocational training systems to meet the needs for vocational training throughout life of both young persons and adults in all sectors of the economy and branches of economic activity and at all levels of skill and responsibility.”

161. The Committee recalls that this provision covers all types of training (initial or pre-employment training, further training and retraining) in keeping with the increasingly prevalent concept of continuing education and training throughout life.²¹

162. The Convention stresses the importance of training throughout a person’s working life, which is now known as “lifelong learning”. Individuals need ongoing access to training to continuously upgrade their skills, giving them opportunities for career advancement and greater employment prospects. This aspect is central in Recommendation No. 195, where the term lifelong learning is defined in Paragraph 2(a) as encompassing “all learning activities undertaken throughout life for

²⁰ *Human resources development*, General Survey, 1991, paras 149–152.

²¹ *Human resources development*, General Survey, 1991, para. 65.

the development of competencies and qualifications.” The Committee notes that lifelong learning policies have now become an essential component of any coordinated education and training system.

163. The Committee observes that the impact on employment of the rapid increase in the ageing of the population is currently a matter of tripartite concern. The Office has undertaken research on employment and social protection in the new demographic context. The majority of industrialized countries are confronted with the issue of an ageing population. All EU countries, including countries that are current or potential candidates to accession, are developing policies and undertaking reforms to promote a culture of lifelong learning and active ageing with a view to enhancing adult skills. The objective is to bring the employment rate for older workers aged 55–64 as close as possible to the Lisbon Strategy target of 50 per cent by 2010. A set of policy measures are being implemented to overcome the barriers to employment for older workers: introducing incentives to hire them in the form of subsidies, allowing them greater mobility and flexible forms of employment, improving care for older workers in terms of health and safety at work, encouraging the employment of inactive older persons, promoting self-employment and social inclusion, encouraging the inclusion of older workers and persons in lifelong learning.

Enhancing skills of older workers

Increasing the participation and employment rates of older workers is a crucial issue common to advanced economies in light of the ageing and shrinking of their working age population. For this purpose, programmes promoting lifelong learning with a view to enhancing adult skills are being implemented in many countries.

In its 2009 report, the Committee highlighted some cases of good practices concerning the implementation of Convention No. 122 that are specifically related to older workers. In Finland, the five-year National Programme for Older Workers has proved effective in responding to the problems of the availability of labour arising out of demographic changes. Due to this programme, the employment rate for this category of workers has increased to reach the level that existed before the economic recession of the 1990s. The proportion of persons taking early retirement also decreased. According to a report published by the Finnish Central Pensions Office in April 2008, the average actual age for retirement increased from 59.1 years in 2005 to 59.5 years in 2007. The Veto National Programme (2003–07), which intended to motivate older workers to continue working for an additional two or three years, has also been implemented. In France, a national interoccupational agreement on the employment of senior workers was adopted in 2005, followed by a concerted national plan of action for the 2006–10 period. In Japan, further to the Law concerning Stabilization of Employment of Older Persons, job security measures for older persons have been taken since 2006 to secure steady employment for persons up to 65 years of age in various companies. Steps have also been taken to raise awareness and exchange information on the experiences of businesses whose employees may work until the age of 70. Furthermore, specialized training colleges and vocational schools provide a variety of learning opportunities that meet adults' needs.

In the Republic of Korea, specific measures have recently been implemented to raise the employment rate of older workers. Subsidies are provided to employers who hire a large number of older workers or retirees. A seniors-friendly wage system has been developed through a “Wage-Peak System Compensation Allowance”, which is provided to workers in enterprises that guarantee their employment until an agreed age according to the wage-peak system. This system provides older workers with an opportunity to work past their retirement age for a salary less than their peak salary. The Ministry of Labour has expanded the coverage of Senior Talent Banks, which provide job search and career counselling services to older workers who are unemployed. A job-placement network for seniors (Senior Net) has been developed and subsidies for enrolment in training courses are envisaged for workers aged 40 years or older who have been laid off by companies with fewer than 300 employees.

The measures adopted have had a positive impact on the employment rate of seniors, which increased from 57.8 per cent in 2003 to 60.6 per cent in 2007.

New Zealand's Positive Ageing Strategy launched in 2001 by the Minister for Senior Citizens focuses, *inter alia*, on the elimination of ageism and the promotion of flexible work options. The Strategy sets out a number of objectives relating to human resources development: (i) implementing fair and inclusive human resources policies in the government sector that support the employment of older workers and entitlements to training; (ii) providing family friendly workplaces, flexible working options and recognizing those with caring responsibilities; (iii) assisting those providing government services to older people to have an understanding and awareness of older people's issues; (iv) working with local government and the business sector to: eliminate age discrimination in hiring practices, enable staff to participate in work-based training, and encourage the provision of flexible working arrangements that enable older workers to remain in paid work as long as they are able; (v) promoting the continuation of paid employment into later years for those who wish to remain in paid work, in order to both prepare for retirement and to supplement retirement income.

In the United States, the Senior Community Service Employment Program is a federally sponsored job-creation programme targeted at low-income older Americans, which subsidizes part-time community service jobs for this category of workers. Participants work in a wide variety of community service jobs, such as nurse's aides, teacher aides, librarians, clerical workers and day-care assistants. The programme also provides job search assistance, and aims to place participants in either subsidized or unsubsidized employment. In addition, the Government has introduced federal tax arrangements under which employees can qualify for tax credits or deductions for qualified education and training expenses, including the Hope Tax Credit and the Lifelong Learning Tax Credit that are of special relevance to adult students.

164. A similar attention to the promotion of lifelong learning to tackle the rapid change in the age structure of the population is found in employment policies and legislative initiatives in some developing countries. Ageing is addressed as a key national development issue in the Tenth National Economic and Social Development Plan of Thailand (2007–11). The Government indicates that the employment of older workers is encouraged through flexible employment arrangements, such as part-time or temporary work, and by expanding employment opportunities for workers with specific skills. In Uruguay, Act No. 18437 of 2008 states in article 1 that “the State shall guarantee and promote quality education for all of its citizens, throughout their whole life, facilitating educational continuity”. The promotion of lifelong learning is indicated as one of the functions of the National Employment and Professional Training Institute (INEFOP).

(f) **Consultations on human resources development**

165. Article 5 of the Convention provides that “Policies and programmes of vocational guidance and vocational training shall be formulated and implemented in co-operation with employers’ and workers’ organisations and, as appropriate and in accordance with national law and practice, with other interested bodies”.

166. In its 2004 General Survey, the Committee expressed the conviction that broad social dialogue is the best guarantee of the effectiveness of employment policies and human resources development. Increased involvement of the representatives of employers’ and workers’ organizations is not only essential to ensure the successful

implementation of the necessary measures, but can also contribute to improving the quality of social dialogue.²²

167. The representatives of employers' and workers' organizations and those of other groups who are affected by policies and programmes in the field of education and training, including workers in rural areas and in the informal economy, are key actors in ensuring the effective implementation of human resources development policies and programmes.

(i) *Role of the social partners*

168. The role of the social partners and training providers is becoming increasingly relevant in the formulation of human resources development strategies. In most cases, their participation is articulated through bodies having a tripartite structure, including national, regional, local or sectoral boards or agencies. These bodies perform general consultative and supervisory functions, although sometimes they may have decision-making powers in defining vocational training policies.

169. Several countries mention in their replies to the questionnaire the importance of involving workers' organizations and private sector employers in the identification of training needs and the design of training programmes.

170. The Government of the United Kingdom indicated in its report on Convention No. 142 that, in 2008, the Commission for Employment and Skills (UKCES) was established to advise the Government at the highest levels across the country on employment and skills strategy, targets, policies and progress towards competitiveness goals. Having a tripartite composition, this body aims to strengthen the employer voice and provide greater employer influence over employment and skills systems in the United Kingdom as employers have prime responsibility for improving productivity.

171. The Committee took note with interest of Act No. 2007-130 on the modernization of social dialogue enacted by France in 2007, which provides that any draft reform envisaged by the Government relating to individual and collective labour relationships, employment and vocational training and to fields covered by national and interoccupational collective bargaining shall be the subject of prior dialogue with the social partners at the national and interoccupational levels with a view to the possible opening of negotiations.²³

172. In Panama, both the development and the application of training measures fall under the competence of the National Vocational Education and Human Development Training Institute (INADEH), created by law as an autonomous entity in 2006. The Institute coordinates its action with the Ministries of Labour, Economy and Finance, and Education. The respective Ministers and the social partners are members of its steering committee. INADEH and the relevant ministries also carry out joint activities, such as seminars on the identification of training needs and lectures on employment and vocational guidance issues. In Uruguay, the National Institute for Employment and Vocational Training (INEFOP) is a public body managed by a tripartite board which cooperates with the National Employment Directorate of the Ministry of Labour and Social Security. In line with the decentralization envisaged under the national employment strategy, the law also provides for the creation of tripartite employment and vocational training committees at department and sector levels.

²² *Promoting employment*, General Survey, 2004, para. 437.

²³ CEACR (79th Session), observation, Convention No. 122 (France), report 2009, para. 6.

173. The Committee recalls the very important role that the social partners play in implementing employment policies and programmes. In many countries, the influence of employers' and workers' organizations and other stakeholders is considerable. They are involved in the training of workers in a number of ways.

174. In EU countries, including countries that are candidates to accession, the social partners are actively involved in building up national qualifications frameworks and in the design and administration of training programmes. In Belgium, through the conclusion of interoccupational agreements, the social partners have continuously confirmed their commitment in the field of training. The Flemish Government and the social partners have recently agreed on the Competence-Agenda, which consists of ten priorities in the field of the development and recognition of competencies for students, jobseekers and workers. In Turkey, the social partners contribute to the definition of vocational qualifications in the Vocational Qualifications Authority (MIK) created in 2006, where they are represented, together with the ministries concerned, universities and other education and training providers. In its comments concerning the application of Convention No. 142, the Confederation of Turkish Trade Unions (TÜRK-İŞ) has expressed its concern at the low level of general education and training of the labour force in Turkey, emphasizing that the development of the education and training system is a primary means of eliminating national disparities and preventing poverty and social exclusion. It emphasized the necessity to speed up the process of redesigning the education system to make it more responsive to labour market needs. The Turkish Confederation of Employer Associations (TİSK) indicated that a draft action plan for vocational and technical education covering the 2008–12 period has been prepared by the Ministry of Education, which is to be implemented in cooperation with all the parties concerned. In Portugal, the social partners are agents of the vocational training system through their participation in the management of Vocational Training Centres, which are administrated by workers' and employers' organizations in partnership with the Institute of Employment and Vocational Training (IEFP). In Romania, the social partners are consulted on the preparation of draft legislation, strategies, policies and programmes on employment and human resources development issues, through a number of tripartite bodies at national and sectoral level. The National Council for Adult Vocational Training has sectoral committees, established through agreements between the social partners at the sectoral level, which contribute to the development of a regulatory framework for training activities and the evaluation and certification of competences. Furthermore, a National Observatory for Employment and Vocational Training has been set up within the Ministry of Labour to foster cooperation between the social partners, public institutions, universities and professional associations in the collection and analysis of labour market information. The development of public and private partnerships between institutions operating in the field of employment and vocational training is also encouraged.

175. In their contributions, the Italian Confederation of Workers' Unions (CISL) and the General Confederation of Commerce, Tourism and Service Industries (CONFCOMMERCIO) consider the inter-professional joint funds for continuing training, established by employers' and workers' organizations on the basis of specific agreements, as an important tool for skills development. These funds are mechanisms for financing company, sectoral and regional training plans that enterprises decide to run for their own employees. They may also finance individual training plans, as well as further preparatory or training-related activities. Companies associate themselves with the funds through the reallocation of a compulsory contribution due to the State to finance the payment of unemployment benefits. Over the first five years since their creation, 500,000 companies and over 6 million workers have been involved in

training activities financed under these funds. The Government of Italy also emphasizes the key role played by the social partners in the field of continuing training and lifelong learning through the use of such funds. A Tripartite Agreement between the Ministry of Labour, the regions and the social partners was signed in April 2007 with a view to ensuring coordination between training actions financed by the regions and those programmed and financed by the joint inter-professional funds.

176. The Committee noted in its observation on the application of Convention No. 122 that in China trade unions at various levels have set up vocational training and job agencies, and popularized the re-employment model of microcredit loans, entrepreneurship training and the re-employment nurturing base.²⁴ In its replies to the questionnaire, the Government of Mongolia reports that a new law on vocational education and training was enacted in 2009. It provides for the creation of a social partnership between employers' and workers' organizations, professional associations and other economic entities to cooperate in the formulation of education and training policies, in the development of training content or standards and in the creation of a monitoring system. The law has also established a National Council on Vocational Education and Training with policy-making, regulatory and coordinating functions. The private sector, NGOs and professional associations are represented on its governing body. The Government of Nepal indicates that it has established a Council for Technical Education and Vocational Training that has accredited more than 160 private institutions with an annual enrolment of 12,000 students.

177. Malawi has introduced a formal training policy through the Technical, Entrepreneurial and Vocational Education and Training Authority (TEVETA) created in 1999. The TEVETA Board and its various committees are tripartite and also include representatives of other stakeholders from the private and public sector, civil society and NGOs. The Authority pursues the main objective of promoting an integrated, demand-driven, competency-based modular technical education and training system. Since 2000, it has been implementing a reformed National Apprenticeship Scheme in order to make it more flexible and responsive to labour market demands. Furthermore, through the Private Sector Training Programme, it supports training needs analysis and the development and organization of training for staff already employed in the private sector.

**South Africa: Involvement of the social partners
in skills development**

South Africa has a Skills Development Authority, created by the 1998 National Skills Development Act, which is composed of representatives of the governmental departments concerned, the social partners, training providers and other stakeholders. The Authority advises the Minister of Labour on national skills development policies, the formulation of guidelines concerning the implementation of the National Skills Development Strategy (2005–10) and the allocation of subsidies from the National Skills Fund. It also liaises with the Sector Education and Training Authorities (SETAs), 23 sectoral training funds administered by a board comprised of employers' and workers' representatives, on the implementation of policies and programmes.

²⁴ CEACR (79th Session), observation, Convention No. 122 (China), report 2009, para. 12.

As far as training for workers in SMEs is concerned, the National Skills Development Strategy envisages the establishment of specific training and skills development programmes financed through the National Skills Fund and grants provided by SETAs. Furthermore, the Active Labour Market Strategy (ALMS) programme emphasizes the importance of developing specific training programmes for small enterprises operating in the informal economy with a view to facilitating their integration into the formal economy. The ALMS also envisages the establishment of training workshops for entrepreneurs to provide support for those with innovative projects.

178. Lebanon's National Centre for Vocational Training is a public enterprise which provides training to adults and young people. Its governing board, chaired by the Director-General of the Ministry of Labour, is composed of representatives of the relevant governmental departments and of the social partners. Bahrain has a High Council for Vocational Training that is responsible for designing national vocational training policies and programmes. Employers' and workers' organizations are represented on this body, alongside the Ministry of Labour.

(ii) *Involvement of local committees and other actors*

179. Enterprises, especially large companies, can provide training. The fact that enterprises are vested with particular responsibilities as concerns the provision of training to their employees is underlined in the 1977 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, which provides that multinational enterprises "should ensure that relevant training is provided for all levels of their employees in the host country, as appropriate, to meet the needs of the enterprise as well as the development policies of the country. Such training should, to the extent possible, develop generally useful skills and promote career opportunities. This responsibility should be carried out, where appropriate, in cooperation with the authorities of the country, employers' and workers' organizations and the competent local, national or international institutions." Similarly, in its section IV relating to development of competencies, Recommendation No. 195 stresses that member States should "promote the expansion of workplace learning" through, inter alia, the utilization of high-performance work practices that improve skills, and the organization of on- and off-the-job training (Paragraph 9(f)(i) and (ii)).

180. Both in industrialized and developing countries, the involvement of the private sector and other stakeholders, such as local communities, in addressing the training needs of workers is a key element in many recently adopted national employment strategies. In countries where there is a strong partnership between the state and the private sector, the technical and vocational skill development system has diversified its sources of funding and improved the quality of training, making it more responsive to labour market requirements. In many countries, enterprises not only provide training but also participate in the design of training programmes.

181. Under the draft Uganda National Employment Policy, 2009, the Government recognizes the importance of skills development and training in improving the productivity, employability and competitiveness of the labour force and enterprises. The strategic orientations identified in this field include: (i) providing incentives for the private sector to enable them to impart integrated skills through entrepreneurial training programmes, attachment, mentoring and apprenticeship; (ii) strengthening vocational education and training as an integral component of the general education system; and (iii) promoting demand-driven training programmes through greater involvement of the private sector, civil society and other stakeholders. In Mauritius, the establishment of the Industrial and Vocational Training Board (IVTB) in 1988 led to the creation of the institutional framework necessary for the registration and quality

assurance of private training institutions. This has resulted in an increased access to technical and vocational education and training, greater diversity and levels in the training offered, and a strengthened public-private partnership in policy making, programme design, delivery and evaluation of training programmes. The liberalization of training provision is referred to as a general principle under the Ten-Year Education and Training Programme (PDEF) elaborated in 2001 by Senegal. The development of new forms of partnership with private enterprises in this field is considered an important factor that contributes to better matching between labour market needs and skills development. In its Sixth Five-Year Plan 2007–12, Egypt has formulated an education strategy aimed at addressing skills shortages and raising training levels, in particular for low-skilled unemployed workers, through the modernization of training centres and the extension of their coverage. The contribution of the private sector in the design and delivery of training is regarded as fundamental. In order to attain the goal of improving youth employability, the Decent Work Country Programme for Egypt envisages, inter alia, the creation of a national apprenticeship system based on a participatory approach in training needs assessment and the design and implementation of training programmes with the involvement of the social partners, civil society and the representatives of communities. The United Federation of Workers of Venezuela (CUTV) indicates that the provision of traineeships and community education services by enterprises has been promoted.

182. The Government of Nepal indicates that it has encouraged private sector investment in education, which has resulted in the establishment of private universities in the medical and engineering field. In Viet Nam, under the 2006 Law on Vocational Training, enterprises have the right to set up their own vocational training centres or joint ventures with a training institution to provide learning opportunities to their employees or new recruits. Tax deductions are provided for expenses related to the operational cost of these centres or the tuition fees paid for the training courses attended by workers.

183. In the Philippines, private training provision plays a major role in skills development. The Government reports that 62 per cent of the 4,514 technical and vocational education and training institutions nationwide are managed by the private sector. At the programme development level, the industry sector is involved in the development of training regulations. Industry experts, including private sector representatives, assist the Technical Education and Skills Development Authority in the development of competency standards and assessment tools. As part of a technical assistance package focusing on education and skills upgrading, the ILO contributed in the elaboration of India's national skills policy, which envisages the creation of a national skills development institution, a non-profit entity that will operate as a public-private partnership to ensure complementarity between private initiative and government action.

184. The Work and Income Service, which operates in New Zealand under the authority of the Ministry of Social Development, leads a programme of work called "Industry Partnership", which involves industry and industry trainers as co-designers of entry level skills training programmes that address sectoral skills shortages. In this connection, the Government of New Zealand also refers, in its reply, to the standard-setting and monitoring action of industry training organizations (ITOs), which are established by specific industries to arrange training for employees and oversee the quality of training arrangements. ITOs are supported partly by industry and partly through the Government by way of the Industry Training Fund. ITOs have three key areas of focus: setting standards for industries under their coverage, arranging training for employees, and strategic leadership in their industries on skill and training needs.

Industry training provides workers with a mix of on-the-job training and off-site training by an approved provider, such as a polytechnic or private training establishment.

185. The United States emphasizes in its reply the role of community colleges in implementing federal workforce programmes. These training institutions receive considerable grant funds for community-based job training from the Department of Labor to address critical shortages of workforce development capacity in many regions. Due to their close connection to the local labour market, community colleges understand the intricacies of local economies and prepare workers better for occupation in local industries. This close connection may also lead to “customized training”, in the context of which community colleges work directly with employers to provide training under contract. Community colleges can respond quickly to an individual employer’s training needs by developing either a specific training course or an entire training plan for the company’s staff.

Summary

Convention No. 142

- ✓ **Convention No. 142, as complemented by Recommendation No. 195, is critically related to the attainment of full employment and decent work, and to the realization of the right to education for all. Convention No. 142 also plays an important role in combating discrimination.**
- ✓ **Member States should pursue the implementation of human resources development policies by developing open, flexible and complementary systems of education and training.**
- ✓ **The provision and efficient management of vocational training and vocational guidance through employment services is critical to the implementation of the Convention, thereby reinforcing its close links with Conventions Nos 88 and 181.**
- ✓ **Consultation with the social partners in both the design and implementation of training policies and programmes is imperative for the full application of Convention No. 142.**
- ✓ **The involvement of local communities and the private sector, including through public–private partnerships, is key to the successful design and delivery of effective training policies and programmes.**

Chapter III

The Employment Service Convention, 1948 (No. 88), and the Private Employment Agencies Convention, 1997 (No. 181)

1. Introduction

186. After the founding of the Organization, its constituents believed that the mediation¹ and placement of jobseekers had to be solely undertaken by the public employment services that were increasingly being established. The constituents argued that, if the job placement of workers was considered a commercial transaction, possible abuses could occur and labour would just be a merchandise – a contravention of the fundamental principle that labour is not a commodity.² Consequently, only public authorities were initially seen as the rightful actors for matching supply and demand in the labour market and the guarantors of a level playing field for all workers.

187. Before 1914, private profit-seeking intermediaries organized nearly all job-placement efforts. During the First World War, the countries at war faced a national manpower shortage and a solution was found in new or greatly extended systems of public employment offices. After the conclusion of hostilities in 1918, efforts were made to consolidate this substantial progress in public employment service organizations.³

188. These efforts were encouraged by the adoption of the Unemployment Convention, 1919 (No. 2), which recognizes the existence of private free employment agencies and requires member States to coordinate the operations of private and public agencies on a national scale. However, the fact that only free private agencies, thus non fee-charging intermediaries, were mentioned and that member States were to establish free public employment services shows that the role exercised by private actors was of subsidiary importance only. The Unemployment Recommendation, 1919 (No. 1),⁴ accompanying Convention No. 2, goes even further and explicitly favours a monopoly of public employment services by recommending the prohibition of fee-charging agencies.⁵

¹ In the context of this General Survey, mediation refers to any action by third parties in the process of matching jobseekers with companies and can include placement and the provision of skills.

² As implied in section 1 of Part XIII of the Treaty of Versailles and explicitly confirmed in Article I(a) of the 1944 Declaration of Philadelphia.

³ ILC, 1947, *Employment service organisation*, Report V(I), Montreal, 1946, p. 4.

⁴ Recommendation No. 1 was adopted on 28 November 1919 and was withdrawn on 3 June 2002.

⁵ Paragraph 1, Unemployment Recommendation, 1919 (No. 1): The General Conference recommends that each Member of the International Labour Organisation take measures to prohibit the establishment of

189. In light of the Great Depression in the 1930s, the Employment Agencies Recommendation, 1933 (No. 42),⁶ acknowledged that the total abolition of fee-charging agencies might be difficult for those countries in which free public services were unable to assume the role previously played by private agencies. Thus, although the Fee-Charging Employment Agencies Convention, 1933 (No. 34),⁷ still requires the eventual abolition of private agencies within three years of ratification, Article 3 provides exceptions from this requirement. These exceptions are, however, very narrow. Article 3, paragraph 2, of Convention No. 34 provides that: “Exceptions may only be allowed in virtue of this Article for agencies catering for categories of workers exactly defined by national laws or regulations and belonging to occupations placing for which is carried on under special conditions justifying such an exception”. Prior to authorizing exceptions, the competent authority must consult the employers’ and workers’ organizations concerned. Although Convention No. 34 does not attribute a positive role to private agencies in the functioning of the labour market, it is nevertheless significant, as Article 1, paragraph 1(a), and Article 5 define, for the first time, fee-charging employment agencies as “any person, company, institution, agency or other organisation which acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker; the expression does not include newspapers or other publications unless they are published wholly or mainly for the purpose of acting as intermediaries between employers and workers”.

(a) **Employment Service Convention, 1948 (No. 88)**

190. The Committee recalls that the Employment (Transition from War to Peace) Recommendation, 1944 (No. 71), indicates that, in order to achieve full employment, economic measures providing employment opportunities must be supplemented by effective organization to help employers to secure the most suitable workers, to help workers to find the most suitable employment, and generally to ensure that, at any given moment, the necessary skills are available and are distributed satisfactorily among the various branches of production and the various areas. The Employment Service Recommendation, 1944 (No. 72), gave effect to the demands expressed by Recommendation No. 71 and recommends in Paragraph 1 that the essential duty of the employment service should be to ensure, in cooperation with other public and private bodies concerned, the best possible organization of industrial, agricultural and other employment as an integral part of the national programme for the full use of productive resources. In accordance with Paragraph 2 of Recommendation No. 72, to fulfil this duty, steps should be taken to strengthen the employment service and related authorities. These services should be responsible for:

- (a) collecting and making available information concerning labour supply, employment opportunities, the skills required to do particular jobs, changes in skill requirements within the different industries, employment and unemployment trends, the regularization of employment and the causes of unemployment, and other information of value in promoting full employment;

employment agencies which charge fees or which carry on their business for profit. Where such agencies already exist, it is further recommended that they be permitted to operate only under government licences, and that all practicable measures be taken to abolish such agencies as soon as possible.

⁶ Recommendation No. 42 was adopted on 29 June 1933 and was withdrawn on 3 June 2002.

⁷ Following its denunciation by 11 countries due to their ratification of Conventions Nos 96 or 181, Convention No. 34 is currently only in force for Chile.

- (b) assisting workers to find suitable employment and employers to find suitable workers;
- (c) assisting in developing and in determining the content of training and retraining courses;
- (d) developing methods of facilitating the transference, where necessary, of workers from one occupation or area to another;
- (e) helping to achieve the best possible distribution of manpower within each industry and area;
- (f) cooperating as may be required in the administration of unemployment insurance and assistance; and
- (g) assisting other public and private bodies in planning the location of industry, public works, housing projects, social amenities, and other social and economic measures.

191. In line with Paragraph 3 of Recommendation No. 72, the closest cooperation between the employment service and other authorities whose activities affect the employment situation, including authorities charged with responsibility for accelerating or slowing down public works in accordance with the current state of employment and unemployment, should be established at the national, regional and local levels. Paragraph 4 of Recommendation No. 72 calls for the employment service to cooperate closely with employers' and workers' organizations. Appropriate machinery should be devised to enable these organizations to assist in the formulation and carrying out of employment policy. The employment service should also cooperate with any joint industry committees which may be set up to facilitate the solution of the special problems of the industries concerned.

192. The Employment Service Convention, 1948 (No. 88), reflects the ideal that public services should ensure, in cooperation where necessary with appropriate public and private bodies, the best possible organization of the employment market as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive resources. Based on Recommendations Nos 71 and 72, Convention No. 88 laid the path for a more dualistic system, recognizing to a significant degree the contribution of private agents to the organization of the employment market.⁸

193. The Committee notes that the adoption of Convention No. 88 on 9 July 1948 contributed to the realization of the right to work, as set out in Article 23, paragraph 1, of the Universal Declaration of Human Rights, adopted in December 1948. As noted in paragraph 11 of this General Survey, the right to work is further emphasized by the International Covenant on Economic, Social and Cultural Rights in Article 6. With explicit reference to Convention No. 88, the Committee on Economic, Social and Cultural Rights has re-emphasized "the obligation to take appropriate measures for the establishment of employment services (public or private) at the national and local levels".⁹

⁸ ILC, 1947, *Employment service organisation*, Report IV(1), Geneva, 1947, p. 5.

⁹ General comment No. 18, *The right to work* (Article 6 of the Covenant), UN Committee on Economic, Social and Cultural Rights, 2005, para. 26.

(b) **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)**

194. Convention No. 88 and the corresponding Recommendations adopted by the Conference made a new approach necessary to the intermediation of employment which resulted in the adoption of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96).

195. Convention No. 96, which is still in force for 25 countries, gives member States the choice of either progressively abolishing fee-charging employment agencies (Part II of the Convention) or allowing a system of coexistence between public and private actors (Part III of the Convention). Part II of the Convention authorizes the labour market authorities to set a deadline by which fee-charging agencies have to be abolished. This would, however, not bar the establishment of new fee-charging agencies before the deadline. In addition, the Convention only permits the abolition of private agencies if a public employment service is established. If the regulatory approach stipulated in Part III of Convention No. 96 is chosen, fee-charging employment agencies and public employment services may coexist. Nevertheless, the Convention further emphasizes authorization and supervision by the competent authority. This includes a specific system of permissions from the competent authority if private agencies engage in placement or recruitment abroad. Under Convention No. 96, public employment services maintain the general prerogative in formulating labour market policies and are entrusted with the supervision of the private agencies. Thus, independent of the choice made by member States under Part III of the Convention, Article 10(b) provides that the prerequisite for the operation of private agencies is a yearly renewable licence.

(c) **Towards the adoption of Convention No. 181**

196. Since the 1960s, the increasingly heterogeneous approach taken by member States towards fee-charging employment agencies, especially in the wake of temporary work agencies, led to the conclusion that the institutional framework governing employment mediation needed to be overhauled. The Committee recalls that temporary work agencies were covered by Convention No. 96 and that they could therefore operate only in those member States that accepted Part III of the Convention. Some countries, such as Sweden,¹⁰ understood temporary work agencies to be the legal employers of workers they recruited, and thus authorized their existence despite the restrictions that this placed on fee-charging agencies by accepting Part II of Convention No. 96. Other countries took a non-regulatory approach towards fee-charging agencies.

197. The increasing international integration of national economies led to further changes in labour market structures, including an influx of migrants seeking employment in some countries and the emergence of new types of employment agencies. While public employment services faced budgetary constraints preventing them from serving the intensively diversified groups of jobseekers and employers, the proliferation of fee-charging agencies led to complaints concerning abuses and infringements. In the early 1990s, these developments increased even further and the

¹⁰ Request by the Swedish Ministry of Health and Social Affairs and memorandum in regard to the operations of "ambulatory typewriting agencies", ILO, *Official Bulletin*, Vol. XLIX (July 1966), pp. 391–392.

Organization became aware of the changed role that private employment agencies had assumed.¹¹

198. A revision of Convention No. 96 was seen as necessary and the intention of the revised Convention was to:

- set the pattern for the response to the dynamics of changing labour-market functions and recall the role of its actors;
- draw up general parameters to describe the main actors, namely public employment services and private employment agencies, as well as the nature of the relationship both between them and with their clients;
- establish general principles and provide guidance to protect: (i) labour markets against poor and unethical practices; (ii) workers' interests with regard to triangular employment relations, including contract labour, temporary work agencies and staff leasing arrangements; and (iii) workers recruited by private employment agencies in one country for work abroad;
- create environments that allow for the improved functioning of all employment agencies; and
- ensure that national governments are free to determine how the above subjects should be met.¹²

(d) **Adoption of Convention No. 181**

199. The Private Employment Agencies Convention, 1997 (No. 181), was adopted by the 85th Session of the Conference on 19 June 1997 and entered into force on 10 May 2000. To date, 21 countries have ratified this instrument (see Annex F).

200. The Preamble of the Convention recognizes the “role which private employment agencies may play in a well-functioning labour market” and affirms the need to protect workers against abuses, especially those who have been placed in employment outside their home country.

201. The Preamble's references to Conventions Nos 88 and 122, as well as to the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), show the interlinkages between state and private actors in a well-functioning labour market. In addition to making reference to the fundamental Conventions, it recalls the provisions of the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

(e) **Recent developments**

202. The Committee notes that in the context of the global economic crisis efficient employment services play a key role in maintaining full employment and securing the needs of the workers and enterprises affected. The Committee recalls the statement made by the Officers of the Governing Body in November 2008, which highlighted that in order to achieve this aim, placement services need to be strengthened.¹³

¹¹ ILO, *The role of private employment agencies in the functioning of the labour market*, 1994, Geneva.

¹² ILC, 1997, *Revision of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)*, Report IV(1), Geneva, 1996, p. 2.

¹³ Accessible at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_100689.pdf.

203. In preparing for the London Summit of the G20 leaders in April 2009, a Jobs Conference was held in London (24 March 2009) and, from 29 to 31 March 2009, a Social Summit in Rome. In the London meeting, it was noted that building the capacity of public employment services to deliver active labour market policy was viewed by many countries as a key priority.¹⁴ The Rome Social Summit found that “active labour market policies combined with well-designed unemployment benefit systems can improve the chances of jobless people re-entering the labour market and prevent long term unemployment. ... Governments should ensure that such policies are delivered through efficient, modern and well functioning public and, according to national policies, private employment services, which combine payment of benefits with effective job-matching services, as well as providing a way to other labour market help for those who need it”.¹⁵ The conclusions of the two meetings were incorporated in paragraph 26 of the G20 Final Communiqué of 2 April 2009, which confirms the role of employment services in implementing active labour market policies focusing on the most vulnerable. In September 2009, the relevance of the conclusions made by the London Jobs Conference and the Rome Social Summit was reaffirmed by the G20 Pittsburgh Summit.¹⁶

204. The Global Jobs Pact, adopted by the Conference at its 98th Session (2009), furthermore highlights the need for private actors to combat prolonged increases in unemployment, deepening poverty and inequality. Guided by the Decent Work Agenda and the commitments made in the 2008 Declaration, the Global Jobs Pact further emphasizes the need to protect workers against abuse. To this end, paragraph 112(ii), of the Global Jobs Pact states that it is necessary to provide resources to public employment services and to enhance their competences to ensure that jobseekers receive adequate support and quality services, and that their rights are respected.

2. Areas covered by the General Survey in relation to Conventions Nos 88 and 181

205. The Committee notes that the questionnaire inquired how member States monitor the mechanisms to achieve full employment and how they ensure coordination among key labour market institutions, such as public employment services and private agencies. These issues are covered in Article 1, paragraph 2, of Convention No. 88 and Article 13, paragraphs 1 and 2, of Convention No. 181. The questionnaire requested information on the particular role played by the social partners in the operation of public employment services and in the formulation and execution of active labour market measures, as provided in Articles 4 and 5 of Convention No. 88.

206. For the first time, the Committee has had the opportunity to examine the effect given to the regulation of private employment agencies, as stipulated in Convention No. 181. In this regard, the questionnaire requests information on the effect given to Articles 3 and 13 of Convention No. 181.

¹⁴ The London Jobs Conference 2009 – Chair’s report, para. 15.

¹⁵ Conclusions of the G8 Labour and Employment Meeting, Social Summit, Rome, 2009, *People first: Tackling together the human dimension of the crisis*, para. 9.

¹⁶ G20, The Pittsburgh Summit, *Putting quality jobs at the heart of the recovery*, 25 Sep. 2009, para. 44.

(a) Establishing a free public employment service

207. Under Part II of the questionnaire, member States were requested to indicate whether they have adopted, as an integral part of their employment policy, a free public employment service with functions equivalent to those set out in Article 1 of Convention No. 88. The Committee notes that almost all replying countries operate public employment services in this sense.

(b) Consultation with the social partners

208. Part II of the questionnaire further inquired into the consultations held for the formulation and execution of employment measures, as required by Articles 4 and 5 of Convention No. 88. The Committee recalls that the 2004 General Survey on promoting employment highlighted the fact that the public services' direct and constant interaction with employers and jobseekers in the job market is essential for the effective implementation of employment policies. Articles 4 and 5 of Convention No. 88 stipulate the need to involve the social partners in employment policy formulation and implementation through employment services. Article 5 provides that a general mediation policy shall be developed after consulting advisory committees comprising, as set out in Article 4, representatives of employers and workers.

209. The Committee further recalls in this regard that the social partners are an additional source of information for the government when formulating employment policies. Their involvement instils a sense of ownership, which is necessary for the effective implementation of employment policies. The importance of consultations with the social partners is re-emphasized in Article 3 of Convention No. 122 and Article 5 of Convention No. 142, which also include consultations with the representatives of other persons affected. In line with Convention No. 88, these provisions indicate that consultations enable the government to benefit from the experience and views of the social partners and other persons affected and permit it to secure full cooperation of these groups in formulating and enlisting support for the policies adopted. In this regard, the Committee recalls that it is essential, as noted with interest in regard to the Bahamas, that the representatives of the social partners are determined freely by their respective organizations.¹⁷ In regard to the Philippines, the Committee noted positively in 2005 that the Tripartite Industrial Peace Council conducts consultation meetings with various local governments, labour and employer groups on matters concerning employment service programmes.

210. The Committee notes that, in addition to the participation of the government and social partners, other stakeholders can also be invited to take part in the consultations. In Algeria, the National Employment and Poverty Reduction Observatory was created in 2005 and, in addition to representatives of the administration, employers and unions, includes participants from research and study institutes and representatives of community-based associations.¹⁸

211. It should further be highlighted that consultations within the meaning of Article 5 of Convention No. 88 need not to be confined to consultation or coordination on isolated matters. Accordingly, China reported in 2006 that the Standing Social Consultation Council in the Special Administrative Region of Macau acts as an advisory body and issues opinions on social/labour policy, particularly in regard to wages, job creation, social security and its social implications. In its 2004 observation

¹⁷ CEACR (76th Session), observation, Convention No. 88 (Bahamas), report 2006, para. 1.

¹⁸ CEACR (76th Session), observation, Convention No. 88 (Algeria), report 2006, para. 1.

on the application of the Convention by Peru, the Committee noted with satisfaction that the National Council for Labour and Employment Promotion, a tripartite advisory body that includes representatives of micro- and small enterprises and social organizations, had discussed and agreed on labour, employment promotion and social protection policies. The agenda of the National Council for Labour and Employment Promotion also focuses on placing persons as part of the CIL-PROEmpleo network and the Youth Intermediation Programme.

212. In the case of the Republic of Moldova, the Committee noted with interest in 2005 that the tripartite Administrative Council of the National Population Employment Agency is actively involved in addressing the problems of the organization and operation of public employment agencies and, that advisory councils have been established at the local level.¹⁹

213. In Senegal, consultations with the social partners on the organization and operation of the employment service are ensured through Decree No. 008119 of 15 December 2005 on the Creation of the National Intersectoral Committee charged with the Implementation, Control and Evaluation of the Declaration of Chiefs of State and the Government and the Fight against Poverty. In 2009, the Government of Mauritius reported that it would maintain the old structure of the National Empowerment Foundation which, through tripartite subcommittees, assesses employment and training opportunities.

214. In 2000, the Ministry of Labour and Social Welfare in Panama (MITRADEL) signed a collaboration agreement with the Labour Foundation. This agreement aims at strengthening social dialogue. Accordingly, various measures have been adopted to this end: the promotion of the Labour Foundation at the national and international levels, the setting up of workshops on its role at the international level and the nomination of the Labour Foundation to assist the Ministry of Labour and Social Welfare in the area of social dialogue.²⁰

215. In Bolivia, employers' and workers' organizations, as well as other civil society organizations cooperate even further with the public institutions. The Committee noted that these organizations actively participate and share responsibility with the public employment service in regard to policy development, implementation and even co-financing of certain programmes.²¹ The sectoral agreements concluded between the Argentinean Ministry of Labour and the social partners in specific sectors (textiles, construction, ceramics, metallurgy and mechanics, etc.) at the national and the provincial and local levels with a view to promoting employment should also be noted.²²

216. In the United States, the federal Workforce Investment Act (WIA), requires the designation of advisory committees at the state and local levels. The members of State Workforce Investment Boards (State Boards) represent diverse regions, including urban, rural and suburban areas. In addition to the State Boards, the WIA requires the establishment of Local Workforce Investment Boards (Local Boards), which have to

¹⁹ CEACR (76th Session), direct request, Convention No. 88, addressed to the Republic of Moldova in 2006; in its 2009 report, the Government confirmed the continuation of the tripartite consultation boards at the regional level and the launch of a strategy to intensify social dialogue.

²⁰ CEACR (75th Session), observation, Convention No. 88 (Panama), report 2005, para. 3.

²¹ CEACR (77th Session), observation, Convention No. 88, (Bolivia), report 2007, para. 2.

²² CEACR (76th Session), direct request, Convention No. 88, addressed to Argentina in 2006, para. 2.

make available to the public on a regular basis, through open meetings, information regarding their activities.

217. The Committee noted that in New Zealand the Ministry of Social Development has established a number of advisory bodies and committees and that the Government provided a list of the groups advising specifically on employment policies. It also noted Business New Zealand's view that, in areas where the Government has good reason to consult the social partners, consultations do occur. However, the New Zealand Council of Trade Unions (NZCTU), while acknowledging the range of employment policy advisory committees and bodies with external participants, observed that this did not constitute full and meaningful consultation, especially where there are no direct consultations with organizations representing workers' interests to seek nominees. Also, no mechanisms have been established to seek the views of the organizations.

218. The Committee further notes that informal or ad hoc consultations of employers' and workers' organizations may not be sufficient to give full effect to the provision. Appropriate arrangements for consultations often require the establishment of advisory committees, as the Committee noted in regard to Singapore,²³ to secure the full cooperation of representatives of employers and workers in the organization and operation of the employment service.

(c) Cooperation between public services and private agencies

219. Cooperation between public services and private agencies is essential to the functioning of the labour market. To this end, the questionnaire inquired into the cooperation and coordination between public and private actors: countries were asked whether they have established mechanisms to ensure coordination among key institutions within the meaning of Article 1, paragraph 2, of Convention No. 88, and Article 13, paragraph 1, of Convention No. 181 and to report on concrete cooperation between public and private employment services.

(i) *Securing effective cooperation*

220. Article 1, paragraph 2, of Convention No. 88 provides that it is essential for employment services to ensure, in cooperation where necessary with other public and private bodies, the best possible organization of the national employment market to achieve full employment and to develop and use productive resources. In addition, Article 11 requires the competent authorities to secure effective cooperation between public employment services and private employment agencies not conducted with a view to profit.

221. The requirement of cooperation in Convention No. 88 is mirrored in Article 13 of Convention No. 181, which calls for the promotion of cooperation between the public employment service and private employment agencies. Article 13, paragraph 1, of Convention No. 181 therefore requires member States to establish and periodically review conditions to promote cooperation between public and private services. As concerns the services provided, public employment services and private agencies are both actors in the labour market and should therefore mutually benefit from cooperation as their common aim is to ensure a well-functioning labour market and the achievement of full employment. However, the Committee wishes to emphasize that, under Article 1, paragraph 2, of Convention No. 88, the public authorities have

²³ CEACR (75th Session), direct request, Convention No. 88, addressed to Singapore in 2005.

the essential duty to ensure the best possible organization of the employment market.²⁴ This is re-emphasized in Article 13, paragraph 2, of Convention No. 181, which provides that public authorities retain final authority for formulating labour market policy and determine the utilization or control the use of public funds earmarked for implementation of this policy.

222. Paragraph 17 of the Private Employment Agencies Recommendation, 1997 (No. 188), provides the following examples of cooperation:

- pooling of information and use of common terminology so as to improve transparency of labour market functioning;
- exchanging vacancy notices;
- launching of joint projects, for example in training;
- concluding agreements between the public employment service and private employment agencies regarding the execution of certain activities, such as projects for the integration of the long-term unemployed;
- training of staff; and
- consulting regularly with a view to improving professional practices.

223. In Thailand, cooperation includes arranging annual meetings of representatives of recruitment agencies to keep them updated on laws and regulations. It also includes regular inspections of recruitment agencies and setting up of counter fraud employment centres in every province.²⁵

224. The Government of the Netherlands reports that most of the regional offices of the public Centres for Work and Income (CWI) also include a representative from one or more private agencies, and that the public employment service agencies facilitate access to information concerning temporary contracts on behalf of a user enterprise. Furthermore, temporary work agencies are partly located on the central floor of the public employment services, where some 33 mobility centres have become operational since the onset of the global economic crisis. These centres aim to bring together the regional network in the field of employment, income and training in a joint effort with private temporary work agencies. The National Federation of Christian Trade Unions (CNV) states in this regard that the effects of this cooperation have not been as good as expected.

225. In Romania, where public employment services and private employment agencies are both subordinates of the National Employment Agency, the National Employment Agency treats both as independent entities and ensures effective cooperation between public and private employment services.

226. In Poland, Romania and Sweden, cooperation with private agencies may include the outsourcing of mediation services by the local authority responsible for public employment services. In Sweden, an agreement between a local authority and a private employment agency is signed for the purpose of finding full-time employment for at least one year for an unemployed person with special needs. The costs incurred by the private employment agency are covered by the local authorities. The Swedish Trade Union Confederation (LO) recommends that private employment agencies

²⁴ cf. Articles 1 and 2 of Convention No. 122.

²⁵ CEACR (78th Session), direct request, Convention No. 88, addressed to Thailand in 2008, para. 3.

should be prevented from only accepting jobseekers who can easily be placed in employment, i.e. “creaming off”.

227. Also in Germany, which denounced Convention No. 96 in 1992, cooperation has taken the form of quasi outsourcing by the public employment services. In its comments on Convention No. 88, the Committee noted in 2006²⁶ that as early as 1998, the Government of Germany had allowed private providers to offer vocational guidance services. It further noted that the subsequent Job-AQTIV Act introduced the opportunity for jobseekers to benefit from private placement and training services.

228. The Government of Italy states that in order to ensure effective employment policies and improve the employability of jobseekers, close partnerships between the public employment service and private employment agencies are necessary. To this end, it has envisaged the establishment of a public–private network to match labour supply and demand. The Italian Confederation of Workers’ Trade Unions (CISL) observes that, although public and private actors are operating in a competitive environment, the public services indeed exercise functions in collaboration with private agencies.

229. Similarly, France, which has accepted Part III of Convention No. 96, has conducted a trial allowing the National Occupational Union for Employment in Industry and Commerce (UNEDIC) to have recourse to private operators. Underlying the trial is the 2006 Merger Agreement between the French Government, the National Employment Agency (ANPE) and UNEDIC. UNEDIC, which is managed by employers’ and workers’ representatives on a parity basis, is responsible for the coordination of the network of Associations for Employment in Industry and Commerce (ASSEDIC), including the administration of the unemployment insurance system. Section 5(c) of the Merger Agreement stipulates the conditions under which the UNEDIC may remunerate placement bodies for their services. This provision also highlights that the remuneration of external bodies has to depend on the quality and quantity of placements made. Furthermore, it is mandatory for services to be free-of-charge for jobseekers.²⁷ On 16 February 2008, ANPE completed the merger with ASSEDIC, resulting in the creation of *Pôle emploi*, the new entity comprising the public employment service and the unemployment insurance system.

230. In the Italian province of Genoa, a specific form of collaboration between public employment centres and private employment agencies, the Provini Project, has been launched, which is aimed at the placement of workers registered with public employment service centres. The project is part of an overall strategy to develop a public system and a public–private network and is aimed at going beyond the mere delivery of public services. It involves workers undertaking a vocational course in provincial employment centres. Feedback from the private employment agencies to the worker and the public employment centre is one of the priority objectives of the project, and communication is facilitated by bespoke software for the management and monitoring of the experiment. Further objectives include:

- identifying forms of collaboration between public and private services by defining procedures and modalities for shared work;

²⁶ CEACR (77th Session), observation, Convention No. 88 (Germany), report 2007, para. 3.

²⁷ CEACR (79th Session), observation, Convention No. 88 (France), report 2009, paras 1 and 3, and observation, Convention No. 96 (France), report 2009, para. 1.

- limiting the dispersal of information concerning workers and the reasons for the success or failure of their jobseeking efforts, at least with regard to the market for temporary work;
- ensuring the efficiency of courses offered by employment centres to workers to expand their practical experience of the labour market; and
- creating opportunities for the exchange and sharing of knowledge between the staff of employment centres and private agencies with regard to the various missions and consequent objectives in their relations with workers.

231. In Finland, the Government reports that the Ministry of Labour launched a partnership project in 2005 with the Private Employment Agencies' Association, which aims to find new forms of cooperation between public and private employment services.

232. In Costa Rica, a law is being drafted aimed at empowering the Ministry of Labour to regulate, coordinate and control private employment agencies. In Peru, private employment agencies are required to provide the administrative labour authorities with statistical information on vacancies and jobseekers segregated by sector, the number of job applications presented and remuneration.

233. In 2008, the Government of Djibouti indicated in its report Convention No. 88 that, despite the existence of private employment agencies, a significant number of requests for mediation of employment, originating in particular from young graduates, are received by the National Employment, Training and Vocational Integration Agency.

234. The Committee notes the Project for an Active Employment Programme (AIPP) established in Turkey. Under the Project, a task force has been established composed of representatives from the Turkish Employment Agency (İŞKUR) and the related private employment agencies. The task force aims to:

- evaluate the results of the application of national legislation concerning private employment agencies within the framework of Article 11 of the Convention;
- define principles for cooperation between organizations which undertake similar activities;
- support İŞKUR's efforts with regard to private employment agencies;
- improve the use of information and data provided by private employment agencies in determining the national employment policy; and
- identify private employment agencies operating without authorization.²⁸

(ii) *Obtaining and disseminating information*

235. To exercise its mandate, the competent authority responsible for the formulation and implementation of labour market policies has to be informed of the activities of private employment agencies. Article 13, paragraph 3, of Convention No. 181 therefore requires private agencies to provide the information requested by the competent authority, at intervals to be determined by the authority.²⁹ Most member States which have ratified Convention No. 181, such as the Czech Republic, have an

²⁸ CEACR (78th Session), direct request, Convention No. 88, addressed to Turkey in 2008, para. 4.

²⁹ Member States are also asked to provide examples of the information provided as part of their reporting obligation under Article 13, paragraph 3, of Convention No. 181.

annual reporting requirement. In regard to the content of the information that private employment agencies are required to provide, the competent authority in Portugal requires information on their structure and activities. In addition, private employment agencies conducting international mediation also have to provide further specific information to the Portuguese Ministry of the Interior and the General Directorate for Consular Affairs.

236. Under Article 13, paragraph 4, of Convention No. 181, this information has to be compiled and made publicly available at regular intervals. This enables the public, and especially potential jobseekers, to be kept aware of national labour market developments, thus contributing to the objective of Convention No. 181. The Committee notes that in Lithuania agencies licensed to engage in international mediation must submit monthly reports to the National Labour Exchange, which are then published on a quarterly basis. In the Czech Republic, the Ministry of Labour and Social Affairs keeps information on private employment agencies, such as a description of their activity. This information is published on the Internet and updated on a monthly basis.

(d) Regulation of private employment agencies

237. The Committee notes that the provision of information to the authority may be part of, but is not necessarily limited to, the licensing process under Article 3 of Convention No. 181. Article 3, paragraph 1, requires the legal status of a private employment agency to be determined in accordance with national law and practice, after consulting the most representative employers' and workers' organizations.

238. The Convention allows member States to determine the status of private employment agencies in accordance with the national requirements. In so doing, Article 3, paragraph 1, of Convention No. 181 requires member States to consult the social partners, which allows employers' and workers' organizations to contribute their views and experience.

239. The Member States of the European Union also have to take into consideration Directive 2008/104/EC on temporary agency work. The Directive was initiated in 2000 by the Union of Industrial and Employers' Confederations of Europe (UNICE), the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) as well as the European Trade Union Confederation (ETUC). Applying to workers with a contract of employment or employment relationship with a temporary work agency who are assigned to user enterprises, Directive 2008/104/EC recognizes the legitimate contribution of the temporary work sector in creating jobs as well as the responsibilities of agencies as employers.³⁰ The Directive establishes a protective framework for temporary agency workers, which is non-discriminatory, transparent and proportionate, while respecting the diversity of labour markets and industrial relations. Directive 2008/104/EC constitutes the framework legislation of the Community and requires EU Member States to adopt and publish the laws, regulations and administrative provisions necessary to comply with it by 5 December 2011.

240. By virtue of Article 3, paragraph 2, of Convention No. 181, the conditions governing the operation of private agencies shall be determined under a licensing or certification system, but may also be otherwise regulated or determined by national

³⁰ Further information available at:
<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/646&type=HTML>.

law and practice. Therefore, member States have to take action, either directly through the system of legislation, licensing or certification or, indirectly, by authorizing an existing national practice or one that is to be established.

241. In its response to the questionnaire, the Government of Germany states that the abolition of the national authorization procedure was an impediment to ratifying Convention No. 181, as it would contravene Article 3, paragraph 2. In May 2009, the German Confederation of Trade Unions (DGB) expressed its concern about the system of self-regulation of private employment agencies as currently applied. The current system neither prevents abuses, nor ensures the establishment of an effective system, and preference should therefore be given to a system of licensing or certification.

(i) *Certification or licensing*

242. Certification under Article 3, paragraph 2, of Convention No. 181 requires existing private agencies to be registered with the government authorities, although it does not provide for a timeframe. Licensing requires natural or legal persons to acquire authorization before commencing private agency business. Both mechanisms require a regulatory framework.

243. National circumstances differ, as do the respective approaches of member States to the operational framework for private employment agencies. In the majority of legislation, such as that in Burkina Faso, Colombia and Côte d'Ivoire, which have ratified Convention No. 96 and accepted Part III, the main regulations are included in special statutes, while detailed provisions can partly be found in ordinances or ministerial regulations. Accordingly, special statutes vest public enforcing agencies with the power to establish internal rules for the monitoring of private employment agencies. In this way, it is possible to avoid overburdening general legislation, such as Labour Codes, with detailed provisions, and a constant review process by the competent authority is ensured.

244. Portugal and Greece have systems of licensing. In 2005, the Committee noted the information provided by the Government of Georgia that, despite having a system of registration under which 11 private employment agencies had been registered, 25 private employment agencies had not applied for registration as they were obliged to do under the law and that punitive sanctions were being applied.

245. Estonia, Peru, Qatar and the United Arab Emirates require private employment agencies to register prior to commencing operation. In Mauritius and Ukraine, a system of licensing is the preferred option. In its 2009 report on Convention No. 2, Kenya reported that it had opted for a system of licensing under the Labour Institutions Act 2007, which establishes detailed requirements for the registration of private employment agencies.

246. The Committee notes that the national licensing and certification requirement for private agencies constitutes a means of ensuring the proper performance of private agencies and increases the transparency of the labour market. A system of licences or certification also allows government authorities to pre-screen applicants' capabilities and professional experience in job placement activities. The information obtained, such as who the actors are, the types of services offered by private agencies and the number of jobseekers employed by them or placed in employment, can assist the competent authority to determine the functioning of the private placement industry. As mentioned above, this information aids national authorities to direct their employment policies and thus improves the functioning of the labour market.

247. In this regard, the Committee notes the concern expressed by the Venezuelan Confederation of Autonomous Trade Unions (CODESA) in reply to the questionnaire. In the Bolivarian Republic of Venezuela, despite the existence of a public employment service, the operation of private employment agencies is not monitored by the competent authority.

248. In its reply to the questionnaire, the Turkish Confederation of Employers' Associations (TİSK) recommends that the establishment of private employment agencies should be allowed without special authorization and without levying fees for authorization, as this would help agencies and institutions working in this field to become registered and, therefore, a part of a system. TİSK observes that the high registration fees in the current system of authorization prevent many institutions from becoming legal. In this respect, the Committee recalls its 2007 comments on the application of Part III of Convention No. 96 by Turkey in which it noted that between 2004 and 2006 İŞKUR had received 157 applications for licences to operate private employment agencies, of which 153 were granted.

(ii) *Other systems*

249. As an alternative to systems of certification or licensing, Article 3, paragraph 2, of Convention No. 181 allows for appropriate national law and practice to regulate or determine the conditions governing the operations of private employment agencies. Through this alternative, the Convention provides discretion to governments on how to regulate private employment agencies. This allows countries that already had a regulatory system other than licensing and certification in place prior to ratifying Convention No. 181 to retain these systems. Nevertheless, it remains crucial that legal provisions or national practices governing private agencies are properly and permanently enforced. For this, the legal provisions must be impartial, transparent and able to assist private agencies to deliver their services appropriately and adequately.

250. In the Netherlands, the requirement for employment agencies to hold a licence has been abolished and the temporary employment sector has since opted for a form of self-regulation by introducing a private system of certification supervised by the sector itself. Now, temporary work agencies are registered by the Dutch Labour Standards Foundation (SNA), but operate in accordance with a national code of conduct that is based partly on collective bargaining agreements. The compliance of these codes with national requirements is mainly controlled by the Foundation for Compliance with Collective Agreements in the Temporary Employment Sector (SNCU), a private organization of the social partners in the private employment agencies sector. These standards relate mainly to the payment of taxes, social insurance contributions and the minimum wage. To ensure compliance with these standards, certificate holders are inspected twice a year by certifying institutions that have been designated by the Council for Accreditation. The Dutch Labour Inspectorate concentrates on the inspection of uncertified temporary agencies, especially in sectors with a high risk of non-compliance. The Netherlands Trade Union Confederation (FNV) observes that the high number of mala fide private employment agencies in the Netherlands can only be effectively eliminated through a system of permits.

251. An example for an international code of conduct is the "Ciett members' commitment towards a well-functioning international labour market" of the International Confederation of Private Employment Agencies (Ciett) which, founded in 1967, consists of 37 national federations of private employment agencies and six of the largest staffing companies worldwide. In this code of conduct, Ciett members have established a charter in which they recognize that:

- employment through private agencies should respect the international and national principles of non-discrimination on all issues linked to working conditions;
- private employment agencies should not charge directly or indirectly any fees or costs to workers for job-finding services;
- private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike;
- private employment agencies should facilitate access to training for the agency workers;
- social dialogue and collective labour bargaining should be seen as an appropriate means to organize the private employment agency industry, when relevant and fitting.

Ciett further expresses its members' commitment to cooperation with the public employment services. In the code of conduct, Ciett also fully endorses Convention No. 181 and "supports its members in encouraging their respective countries to ratify this ILO instrument, in case they have not done so".

252. The Committee draws attention to the fact that the aspect of supervision, as outlined in Articles 10 and 14 of Convention No. 181, is especially important in countries where a significant number of the requirements of Convention No. 181 are implemented through national or international codes of conduct or other means. The Committee highlighted this in 2007 in regard to Albania, where the main instrument regulating the operation of private employment agencies, Resolution No. 708 of 16 October 2003, is significantly elaborated in a code of conduct. Assisted by the Office, this code was compiled by the Albanian Union of Private Employment Agencies (UPEA), a voluntary association of employment agencies.

(e) Remedies

253. The Committee notes that the questionnaire requested member States to provide information on the establishment of adequate machinery under Article 10 of Convention No. 181. This Article requires member States to establish adequate machinery and procedures for investigating complaints, alleged abuses and fraudulent practices by private agencies, involving, as appropriate, employers' and workers' organizations.

254. As part of the information submitted, several countries have provided reports on complaints and the mechanisms for their investigation. In this regard, Japan reported on the number of complaints made over the reporting period. In the Netherlands, the industry itself has established a mechanism for the investigation of complaints through the SNCU. This Foundation offers employers and employees the opportunity to lodge complaints, which it then examines. The Government reported in 2007 that the SNCU had investigated an increasing trend for small temporary employment agencies to consistently infringe the law. According to the FNV, 5,000 to 6,000 mala fide private employment agencies were operating in the Netherlands in 2009. Consequently, the Government has introduced a package of measures to enforce the applicable laws, and the Labour Inspectorate, together with the SNCU has intensified its inspections of non-certified temporary employment agencies and of user enterprises hiring staff through such agencies. In this regard, as of 2009, the SNCU conducts 200 inspections per year. In Lithuania, the Ministry of Social Security and Labour accepts and examines complaints in accordance with national laws and a procedure established by the Minister.

255. The Committee recalls that as a prerequisite for the lodging of complaints, workers placed in employment or hired by private agencies have to be informed of their rights and the procedures to assert them. In the Netherlands, the SNCU informs affiliated and non-affiliated employers and workers about the content and application of the legally binding Collective Labour Agreement for Temporary Workers through its web site, an email service and telephone assistance in Dutch, English, German and Polish. In addition, the SNCU also organizes lectures and provides instruction on collective bargaining agreements through promotional activities at job fairs aimed at economic migrants.

(f) **Supervision and penal measures**

256. Part II of the questionnaire also requested information on the supervision and penal measures required by Article 14 of Convention No. 181. This Article provides that the provisions of the Convention shall be applied by laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements. It further entrusts the labour inspection service or any other competent public authority with supervision of the implementation of the Convention and requires member States to establish adequate remedies, including penalties, in case of violations. Consequently, Article 14 of Convention No. 181 provides for a variety of means for the implementation of the provisions of the Convention. Nevertheless, while a member State, depending on national circumstances, is free to choose how it implements the Convention, it must establish an effective supervisory mechanism operated by a competent authority and provide for adequate remedies and penal measures.

257. In the Republic of Korea, the competent authorities plan to initially use a system of incentives, which provides for penalties only if these fail. For this, a star-rating system is to be introduced to certify the best private agencies, thereby encouraging private agencies to make voluntary efforts to improve the quality of their services.

258. In its 2009 observation on Convention No. 122,³¹ the Committee noted the efforts made by China to reinforce its public employment services. In its replies to the questionnaire, the Government reports that it intends to further reinforce public employment services at the city, district, county, neighbourhood (township) and community levels. The Government has also stated that it intends to further regulate the private employment agency sector and to take strong measures against illegal agencies. It plans to pursue this objective through the promotion of privately operated employment agencies across the country and the evaluation of their credibility, aimed at directing them towards regulatory development. In Brazil, abuses by private agencies, such as attempts to recover payments for services rendered from future wages, are also penalized.

259. The Committee further notes the observations of the Uruguayan Inter-Union Assembly of Workers National Convention (PIT–CNT), which in 2007 reported serious deficiencies in the monitoring of private employment agencies under Convention No. 181.³² In particular, workers experienced difficulties in receiving their wages and some were not working under satisfactory conditions. In the view of the PIT–CNT, the action taken in relation to the supervision of third party recruitment is also inadequate. In response to these comments, the Government stated in 2009 that

³¹ CEACR (79th Session), observation, Convention No. 122 (China), report 2009, para. 2.

³² CEACR (78th Session), observation, Convention No. 181 (Uruguay), report 2008.

it was drafting a decree for the implementation of Act No. 183620 and remedying the deficiencies in monitoring.

3. Overview of Conventions Nos 88 and 181

260. In addition to the information provided in reply to the questions in the questionnaire, most member States have supplied a considerable amount of further information. The Committee finds that this constitutes an opportunity to provide an overall perspective on Conventions Nos 88 and 181 in this General Survey.

(a) Convention No. 88

– Organizational structure

261. Under Article 2 of Convention No. 88, the public employment service shall consist of a national system of employment offices under the direction of a national authority. In accordance with Article 3 of Convention No. 88, the organization of the network of employment offices has to be adjusted to new requirements. It has to comprise a network of local and, where appropriate, regional offices, sufficient in number to serve each geographical area of the country and located so as to facilitate access for employers and workers countrywide. The public employment service therefore has to be close to jobseekers and enterprises and efficiently organized to serve their needs. The Committee highlights in this regard the technical assistance provided by the Office to help member States to establish a country-wide network of public employment services. The projects undertaken by the Government of China in cooperation with the Office are exemplary in this regard.

262. The Committee notes the efforts made in the Philippines, where job fairs are usually held in strategic geographical areas throughout the country to match the respective manpower resources found in a particular locality with the job vacancies of participating employers and recruitment agencies.³³

263. The Committee further notes the implementation of the “Pilot Scheme for Improving Efficiency in Training and Employment” in Turkey. The Pilot Scheme, which is jointly implemented by trade unions and employer confederations for the development and implementation of social dialogue, is funded by the European Union, TISK and İŞKUR with the aim of reinforcing the ties between training and employment. TISK further remarked that representatives from the regional employment agency have participated in the Pilot Scheme during the implementation phase.³⁴

264. The Committee notes the concerns expressed by the Japanese Trade Union Confederation (JTUC–RENGO) in 2008 over the decreasing number of employment security offices in Japan due to plans for their merger or closure. In its 2009 comments on Convention No. 88, JTUC–RENGO reconfirmed its concerns and requested that closures of public employment services offices should be subject to the approval of the Labour Policy Council. A reduction in the number of public employment security offices would reduce the accessibility of such services for both workers and employers. The Government of Kenya also reported in 2004 that, in 2001, the number of

³³ CEACR (76th Session), direct request, Convention No. 88, addressed to the Philippines in 2006, para. 1.

³⁴ CEACR (78th Session), direct request, Convention No. 88, addressed to Turkey in 2008, para. 2.

employment offices was reduced from 41 to 24 to make better use of existing resources and improve service delivery.

265. The Committee notes the increase in public employment service offices in France and Finland. The Government of France stated in its report on Convention No. 88 in 2008 that the number of public employment offices gradually increased between 2006 and the first half of 2007. Similarly, the Government of Finland stated that the number of labour service centres or joint service offices increased from 29 in 2004 to 34 in 2005, reaching 40 centres in 2006.

– **Ensuring effective recruitment**

266. Reference to the organization of public employment services is also made in Article 6 of Convention No. 88. This Article provides that employment services shall be so organized as to ensure effective recruitment and placement for the benefit of workers and employers by assisting workers to find suitable employment and helping employers to find suitable workers. This means that applicants are registered for employment, their occupational qualifications, experience and wishes noted. They are interviewed for employment, their physical and vocational capacity evaluated and assistance is provided, where appropriate to obtain vocational guidance or vocational training or retraining. In relation to employers, public employment service agencies have to obtain precise information on the vacancies announced and the requirements to be met by the prospective workers. This also includes referring applicants and vacancies from one employment office to another in cases in which the applicants cannot be suitably placed or the vacancies suitably filled by the original office or in which other circumstances warrant such action (Article 6, subparagraph (a)).

267. To achieve these aims, employment services may seek support from other government entities. In Norway, public employment services refer to the Minister of Education as a central partner and purchase training courses for their clients from educational institutions. Employment offices in Ethiopia also cooperate with public offices and organizations concerned in the preparation of training programmes and the conduct of studies on how to improve vocational training, so as to enable proper implementation of the national employment policy.

268. In its 2009 report on the application of Convention No. 88, the Government of Sweden recalled that the activities of the public employment service were neither allowed to contribute to a distortion of competition in the labour market, nor to a removal of job opportunities from it – unless such removal was part of government employment policy. The Republic of Korea and Slovakia have created individual action plans, an individually customized employment service system, under which the individual jobseeker's abilities are examined through in-depth counselling and an individual employment service plan.

269. The specific measures that public employment services have to take are listed in Article 6(a) and (b) of Convention No. 88. These include the facilitation of occupational and geographical mobility, e.g. through the furtherance of temporary transfers of workers domestically, but also any movement of workers from one country to another as approved by the governments concerned.

270. The assistance provided by the Thai Department of Employment of the Ministry of Labour for workers seeking employment overseas may be noted in this respect. Negotiations on employment quotas for Thai workers take place with other countries and joint committees are set up to address problems related to employment. In the Netherlands, the Institute for Employee Benefit Schemes (UWV) and the Central Organization Work and Income (CWI) have established a joint entity aimed at

facilitating occupational and geographical mobility. Occupational mobility is supported by testing competencies in occupational areas in which jobseekers have not worked previously. Geographical mobility is encouraged by extending search activities to other regions, and even to the international level through the EURES system.

EURES – EUROpean Employment Services

Aimed at contributing to the creation of a common European labour market, EURES, the “EUROpean Employment Services”, which was established in 1993, is a cooperation network of the European Commission and the public employment services of European Union countries, plus Norway, Iceland, Liechtenstein and Switzerland. In addition to the role the public employment services of the European Union/European Economic Area play through their network of over 5,000 local employment offices with more than 100,000 staff, other regional and national bodies concerned with employment issues also participate; namely trade unions, employers’ organizations and local and regional authorities. In addition to the web-based Job Mobility Portal, EURES maintains a network of over 700 EURES advisers who are in contact with jobseekers and employers across Europe

The joint resources of the EURES member and partner organizations provide a basis for EURES services for both workers and employers wishing to benefit from the principle of the free movement of persons. The importance of EURES in identifying labour surpluses and deficits in different sectors and in overcoming qualification bottlenecks is constantly increasing. In addition, the network also helps jobseekers, particularly young persons, to improve their employability through the acquisition of professional experience abroad.

In European cross-border regions, EURES provides information and assistance in regard to problems related to cross-border commuting.*

* Available at: <http://ec.europa.eu/eures/main.jsp?catId=27&acro=eures&lang=en>.

271. The Committee notes with interest the two national congresses held on the public employment system, labour and wages in Brazil in 2004 and 2005. The objective of these congresses was to reconstruct the public employment system with the involvement of the Government, representative bodies of workers and employers and all services and programmes related to public labour market policies in order to promote the integration of workers into the market productive system through self-employment or business activities.³⁵

272. To achieve the aims set out in Article 6, subparagraphs (a) and (b), it is necessary for the competent authority, where appropriate together with other authorities and with the management of companies and trade unions, to collect and analyse to the fullest extent possible the available information on the employment market situation and its probable evolution, as laid down in Article 6(c) of Convention No. 88.

273. The UWV/CWI in the Netherlands also avails itself of research undertaken by specialized institutions. Aimed at tackling bottlenecks in matching labour supply and demand, UWV/CWI translates the assembled knowledge and shares it with municipalities and employers, including suppliers of vocational training and private suppliers of reintegration services.

274. The Committee also notes the information provided by the United Arab Emirates in its reply to the questionnaire. The Agency for the Development and Placement of

³⁵ CEACR (77th Session), observation, Convention No. 88 (Brazil), report 2007, para. 1.

National Human Resources, which is responsible for the formulation of public employment plans and strategies, and following up their implementation, undertakes analyses and field surveys of the labour market, provides advice and vocational guidance to the national labour force and evaluates the rate of placement of citizens in the public and private sectors. Similar activities with regard to the citizens of Qatar are exercised by the Qatari National Manpower Development Department.

275. In order to implement an effective employment policy, cooperation is also necessary between the public employment services and other government entities. By virtue of Article 6(d) and (e) of Convention No. 88, the public employment service has to cooperate in the administration of unemployment insurance and assistance and of other measures for the relief of the unemployed. The public employment service also has to assist, as necessary, other public and private bodies in social and economic planning calculated to ensure a favourable employment situation. The Committee refers once again to the preambular provisions of the Labour Administration Convention, 1978 (No. 150). As highlighted in the 1997 General Survey on labour administration, this Convention emphasizes the overall system of labour administration. The system encompasses the various bodies that deal with all matters relating to labour policy, including its international aspects and the provision of services and advice to employers and workers.³⁶

276. The Committee further recalls that cooperation between public employment services and other government institutions, within the meaning of Article 6(e) of Convention No. 88, also includes internal consultations at all levels of government, e.g. with authorities at the municipal level. In this regard, the Committee noted developments in Costa Rica, where the Ministry of Labour and Social Security concluded agreements with municipal authorities with a view to the decentralization of employment services, including the active participation of local governments and representatives of civil society.³⁷ In El Salvador, collaboration between the Ministry of Labour and municipal authorities has been institutionalized based on the Employment Management Manual.³⁸

277. The Committee notes that several countries, such as New Zealand and Norway, have started programmes to encourage and assist persons to find employment who are able to work and who are in receipt of social benefits. In New Zealand, where the Government is operating a client management system specifically designed for social security and employment services, this includes intensive job-search support through a 13-week programme, during which clients can participate in one or a combination of group-facilitated activities. In addition, between 2004 and 2007 the “Working for Families Package” was implemented, which was designed to make it easier for jobseekers to move from receiving benefits into work and to raise a family.

– Target groups

278. Article 7 of Convention No. 88 requires the development of targeted programmes for specific occupations and industries, including adequate measures to cater for the needs of particular categories of applicants for employment. From the replies to the questionnaire, the Committee observes that women, young persons, people with disabilities, older workers and migrant workers have generally been

³⁶ CEACR, General Survey on labour administration, 1997, para. 35.

³⁷ CEACR (77th Session), observation, Convention No. 88 (Costa Rica), report 2007, para. 1.

³⁸ CEACR (77th Session), direct request, Convention No. 88, addressed to El Salvador in 2007, para. 1.

targeted by the employment services. The Committee considers that gender issues are a cross-cutting concern inherent to the implementation of employment policies in compliance with all the instruments covered by the present General Survey.³⁹

279. The Committee further highlights the entry into force of the United Nations Convention on the Rights of Persons with Disabilities on 3 May 2008. The Convention, in Article 27, paragraph 1(d) and (e), requires ratifying States to safeguard and promote, including through legislation, the realization of the right to work of persons with disabilities. The specific measures to be taken include enabling persons with disabilities to have access to placement services, vocational training and continuing training facilities, and generally to provide assistance in finding, obtaining, maintaining and returning to employment.

280. In line with Convention No. 88, the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), in Article 2 calls on each Member to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of persons with disabilities.⁴⁰ Articles 7 and 8 of Convention No. 159 draw on this and provide, inter alia, for the establishment and evaluation of placement and employment services for persons with disabilities also in rural and remote communities and recommends the use of general workers' services.⁴¹

281. In this context, the Committee wishes to recall the discussion at the Conference Committee on the Application of Standards in June 2006 dealing with the application of Convention No. 159 in Ireland. In 2005, the Committee of Experts had noted the initiatives for mainstreaming services to persons with disabilities. "Workway", a joint initiative of the Irish Congress of Trade Unions and the Irish Business and Employers Confederation, was aimed at raising awareness of, and addressing the issue of, barriers to employment for people with disabilities in the private sector. Workway involved the establishment of a number of regional networks around the country to raise awareness, explore skills availability among people with disabilities, identify local employment opportunities and provide information on the support that is available to people with disabilities and to employers. The tripartite discussions at the Conference also touched on the fact that in 2005 the Committee of Experts had noted with satisfaction that as part of the ILO/Development Corporation Ireland Partnership Programme 2001–04, the Government of Ireland had provided support to selected governments in Asia and Africa to enhance their capacity to implement effective legislation concerning the employment of people with disabilities. As part of the Partnership Programme, a knowledge base on existing laws and policies in the selected countries has been developed and technical consultations have been held with governments, employers, workers, representatives of persons with disabilities and parliamentarians on the steps required to improve the practical effectiveness of the laws and policies.⁴²

³⁹ Please refer, among others, to paras 568–576 and 629–639 of the General Survey.

⁴⁰ CEACR, General Survey on vocational rehabilitation and employment of disabled persons, Geneva, 1998, para. 81.

⁴¹ CEACR (79th Session), observation, Convention No. 88 (Djibouti), report 2009, para. 1; CEACR (76th Session), direct request, Convention No. 88, addressed to the United Republic of Tanzania in 2006, para. 2.

⁴² CEACR (76th Session), observation, Convention No. 159 (Ireland), report 2006, para. 1; ILC, 95th Session, Geneva, 2006, *Provisional Record* No. 24, p. 24/53.

282. The Committee also highlights the endeavours of the Government of Japan for the inclusion of people with disabilities in society and its support of the ILO/Japan Technical Consultation on Vocational Training and Employment of People with Disabilities. Furthermore, the Government has, as pointed out by the trade union RENGO, effectively adopted a quota system for large enterprises.

283. The Czech–Moravian Confederation of Trade Unions (CMKOS) highlighted that especially in the current economic situation, the practical implementation of specific labour market policies and tools is very important. Public employment services should therefore pay increased attention to disadvantaged groups.

284. Article 8 of Convention No. 88 requires employment and vocational guidance services to develop special arrangements for young persons. The Committee recalls in this regard the 2004 General Survey on promoting employment, which referred to the need to “develop and implement strategies that give young people everywhere a real chance to find decent and productive work”. This was one of the goals of the Millennium Declaration adopted by the United Nations in September 2000 at the Millennium Summit held in New York. This goal is directly related to the Global Employment Agenda and it underpins the Youth Employment Network, a global alliance that includes the ILO and the World Bank. The High-level Panel of the Youth Employment Network identified the need to foster development of the principles of employability, equal opportunities, entrepreneurship and employment creation. The Committee further recalls the conclusions of the Tripartite Meeting on Youth Employment, of 15 October 2004, concerning the need to promote decent national work for young people through the Global Employment Agenda.⁴³ Based on this Agenda, policies and programmes have to attribute employment services a significant role in youth guidance and counselling.

285. New Zealand has launched the Mayors’ Taskforce for Jobs initiative, a nationwide network of mayors that focuses on youth employment and youth engagement in local communities. The Republic of Korea has complemented its individual action programme with career guidance programmes, tailored to the characteristics of middle- and high-school students, youths and other vulnerable groups of workers. The Government of Indonesia, with technical support from the Office, has launched the Indonesia Youth Employment Action Plan which outlines policy recommendations and programmes to prepare youth for work, create jobs, foster entrepreneurship and promote equal opportunities. The Government of Suriname’s Foundation of Labour Mobilization and Development establishing training and retraining programmes for young workers, including school drop-outs, should also be noted.⁴⁴

286. In 2005, the Government of Madagascar indicated that the employment service envisaged a programme to place young first-time jobseekers, aged between 16 and 25, in apprenticeship in private enterprises, for which purpose an agreement would be established between the employment service and the employer to ensure that these measures were applied effectively. The Government of Angola stated in 2005 that employment and vocational training for young persons were among the ten priorities of the country’s poverty reduction strategy.

⁴³ ILO, conclusions of the Tripartite Meeting on Youth Employment, 15 October 2004, TMYEWF/2004/7, p. 3.

⁴⁴ CEACR (76th Session), observation, Convention No. 88 (Suriname), report 2006, para. 1.

287. The Committee notes the concern expressed by the Canadian Confederation of National Trade Unions (CSN) that the spread of temporary work agencies in Canada will lead to a lack of skilled labour. This is based on the fact that young employees in temporary work agencies do not undergo a professional education, e.g. in the form of apprenticeships, which may subsequently result in them being limited to low-skilled work. As this in turn results in precarious employment relationships, due to the widespread use of temporary work agencies, the problem is likely to affect the population as a whole.

288. The Committee also recalls its observations on youth employment in relation to Convention No. 122 that it has been making to France since 2006. The Committee noted that, in order to establish their individual strengths and needs, the National Employment Agency had conducted interviews with 57,000 young persons who had been unemployed for one year or more. This was further supported by the broader application of assisted contracts for lower skilled and unskilled young persons benefiting young persons who are distant from employment and likely to be affected by discrimination, and particularly those living in sensitive urban areas.⁴⁵ For young persons who work, the Act on Work, Employment and Purchasing Power (TEPA) envisages exemption from income tax. Also, the number of work placement contracts (CAE) was increased from 20,000 to 100,000. In consecutive reports, the Government maintained that the vocational and social integration of young persons was at the heart of the priorities set out in the Emergency Employment Plan.

289. In this respect, the Committee refers to paragraph 9 of the Conclusions on promoting pathways to decent work for youth adopted at the 93rd Session of the Conference (2005), which recalls that, while employment cannot be directly created but only encouraged by legislation or regulation, it is recognized that labour legislation and regulation based on international labour standards can provide employment protection and underwrite increased productivity, which are basic conditions in order to create decent work, particularly for young people.

– **Employment service staff: Qualifications and status**

290. To maintain the continuity, independence and high quality of services, Article 9 of Convention No. 88 provides that the staff of the employment service shall be composed of public officials whose status and conditions of service are such that they are independent of changes of government and of improper external influences. Furthermore, the staff shall be recruited with sole regard to their qualifications for the performance of their duties, and have to receive adequate training. This training has to continue throughout their employment.

291. The current restructuring of the public employment services system in Norway is aimed at improving the qualification and remuneration of its staff. This includes the introduction of a system of performance management and greater autonomy overall in applying allocated grants and choosing appropriate measures to achieve performance targets more efficiently.

292. In recent comments, the Committee has noted legislative developments with respect to the operation of the public employment service in Germany and other European countries. The reform of Germany's employment services resulted in an organizational change and a reorientation of the newly established Federal

⁴⁵ CEACR (79th Session), observation, Convention No. 122 (France), report 2009, para. 3.

Employment Agency (BA). The Government of Germany further reported that the restructuring of its employment services included changes to the staffing system. In particular, the status of civil servant would no longer apply to future staff members. Rather, new recruits would have the status of employees. The Committee noted that, in this context, the civil service rules concerning staff qualification, training and advancement would not apply to individuals with employee status and requested the Government of Germany to continue providing information on the status and conditions of service of the staff of the Federal Employment Agency, taking into account the requirements of Article 9 of Convention No. 88.

293. Finally, the Committee wishes to highlight the possibility for countries to benefit from technical cooperation for the training of staff. One example was the cooperation between the National Employment Service (SNE) in Djibouti and the EEC/World Bank, from which a number of SNE staff benefited, and which will be supplemented by further technical assistance from the Office.⁴⁶ Some 288 employment offices in Egypt also received technical assistance, including for staff training, from the Governments of Canada and the United States.⁴⁷

– Outreach to employers and jobseekers

294. Article 10 of Convention No. 88 requires the employment service and other public authorities, where appropriate, to encourage the full voluntary use of employment service facilities by employers and jobseekers.

295. In this context, the Committee refers once again to the reform of the German public employment service. The primary elements of this reform include a new institutional structure accompanied by a decentralized management system, the introduction of welcome centres in each of the Government's 180 employment agencies, an awareness programme for workers and employers on how to take advantage of employment services and counselling, call centres, as well as the development of information technologies, such as an online job market, for recruitment and placement.

(b) Convention No. 181

– Definitions

296. The Committee recalls that Article 1 of Convention No. 181 defines the term "private employment agency" as any natural or legal person, independent of the public authorities, which provides the labour market services listed in the Convention. The definition set forth in Article 1, paragraph 1, of Convention No. 181 generally encompasses any recruiter or direct service supplier outside the realm of public employment services. The Committee notes that, in order to best comply with the requirements of Convention No. 181, it is helpful if member States also set out a definition of "private employment agency" in their national legislation and other regulations to ensure that this term is applied consistently.

297. The Committee notes the indications provided by the Government of Chile⁴⁸ on the impact of Convention No. 181 on the legislation adopted in October 2006. Act

⁴⁶ CEACR (78th Session), observation, Convention No. 88 (Djibouti), report 2009, para. 3.

⁴⁷ CEACR (76th Session), direct request, Convention No. 88, addressed to Egypt in 2006.

⁴⁸ The Committee recalls that Convention No. 181 revised Convention No. 34, which is still in force only for Chile.

No. 20123 of 2006 regulates the employment of temporary workers under a subcontracting regime, including the operation of transitory service enterprises and transitory service labour contracts within the meaning of Article 1, paragraph 1(b), of Convention No. 181.

298. The Government of Poland stated that the technical assistance provided by the Office in 2002 resulted in the overall harmonization of Polish legislation with the requirements of the Convention, namely through the Act of 9 July 2003 on the employment of temporary workers, and finally in the ratification of Convention No. 181 on 15 September 2008.

299. The Committee also notes the views of the Government of Austria, where the legislation draws a very clear distinction between private employment agencies, on the one hand, and temporary work agencies, on the other. The Government observes that the existing provisions therefore deviate from the requirements of the Convention. Consequently, the current legislative body did not favour the ratification of Convention No. 181. This point of view is also shared by the Government of Germany.

Provision of labour market services

300. The Committee recalls that Article 1, paragraph 1(a) to (c), of Convention No. 181 enumerates the following three activities of private employment agencies:

- (a) provision of job-matching services without becoming a party to the employment relationship;
- (b) employment of workers in order to make them available to a third party (the “user enterprise”);
- (c) provision of other services relating to jobseeking.

301. Based on Article 1, paragraph 1(a), of Convention No. 181, private agencies are allowed to provide the labour market service of matching offers of and applications for employment without becoming a party to the employment relationship.⁴⁹ Private employment agencies performing this activity act as an employment mediator.

302. The following are examples of activities performed by private employment agencies acting as an employment mediator:

- *Intermediaries.* Although there are several sub-forms of intermediaries, they are the most typical and “traditional” type of private agencies, bringing together vacancies and jobseekers without becoming a party to an employment contract.
- *Fee-charging employment agencies.* Unless subsidized, these employment agencies compete among themselves and with public employment services and charge a fee for their general services either up front or after signing the employment contract. These agencies may specialize in a specific job market, region and type of work or economic sector, even worldwide and “online”.
- *Overseas employment agencies and agencies for the recruitment and placement of foreign nationals.* These agencies are mainly active in developing countries where they arrange for employment, and particularly on the Indian subcontinent, South-East Asia and, more recently, Central Europe. They specialize in selecting

⁴⁹ The Employment Relationship Recommendation, 2006 (No. 198), provides guidance on the measures that States can take to ensure effective protection for workers in an employment relationship. The Committee notes that, according to Paragraph 23, Recommendation No. 198 neither revises the Private Employment Agencies Recommendation, 1997 (No. 188), nor the Private Employment Agencies Convention, 1997 (No. 181).

and recruiting national workers for overseas jobs. While they act as employers' representatives from outside the country of operation, they may also sign employment contracts or act as intermediaries. As opposed to overseas employment agencies, agencies for the recruitment and placement of foreigners select and recruit workers abroad for local employers.

- *Executive search agencies.* Informally known as “head-hunters”, these agencies specialize in seeking talent in the managerial or consultancy field and in the professional field for strategic posts on behalf of the client employer.
- *Training and placement institutes.* Several training and placement institutes offering career-enhancing courses also provide job-search and placement services for their graduates. These services, which are not their main activity, are often outsourced to private agencies. The costs are frequently incorporated into the total of the course fees.

303. Based on Article 1, paragraph 1(b), of Convention No. 181, private agencies are further permitted to employ workers in order to make them available to a natural or legal third-party user, referred to in the Convention as the “user enterprise”. Under this provision, the private agency assumes the role of employer. It recruits workers, who are consequently employed by the agency, to make them available to a user enterprise which assigns the tasks to the workers and supervises them.

304. Temporary work agencies, which are also referred to as “skills providers”, are the classic example of agencies performing activities under Article 1, paragraph 1(b), of Convention No. 181. The employment relationships are usually governed by two types of contracts: an employment contract between the temporary work agency and the worker, and a contract between the temporary work agency and the user enterprise.

305. From the replies received to the questionnaire, the Committee notes that temporary work agencies within the meaning of Article 1, paragraph 1(b), are in operation in nearly all countries permitting the establishment of private employment agencies.

306. Other examples of agencies acting as skills providers include:

- *Staff leasing agencies.* Catering mainly for small enterprises, and only in jurisdictions where staff leasing without limitation is permitted by labour laws, the role of these agencies is to relieve user enterprises of the burden of personnel management in exchange for a comprehensive fee.
- *Job shops.* Job shops are spin-offs of specialized consultancies and services in which the persons in the consultancy market their services for varying lengths of time.
- *Career management agencies.* Career management agencies represent their clients in the entertainment business, the fashion industry, etc., vis-à-vis employers.
- *Employment enterprises.* Aimed at training and preparing partly long-term unemployed staff for entry or re-entry into employment, employment enterprises are mostly non-profit associations, partly established as public-private partnerships, and subsidized by governments.
- *Outplacement agencies.* Outplacement is defined as a package of services and consultation provided individually or collectively by an outplacement agency, at the request of and upon payment by an employer so that workers may, of their

own accord and as quickly as possible, find employment with a new employer or develop a professional activity on a freelance basis.

307. Additionally, a third category of activities by private employment agencies is provided for in Article 1, paragraph 1(c), of Convention No. 181. This provision covers those agencies offering services related to job seeking by providing information or consultation on job-searches. Job-search consultancies assist clients to assess their aptitudes and coach them for interviews with potential employers. Prior to authorizing private agencies to offer such services, the competent authority has to consult the most representative employers' and workers' organizations. The Committee notes that information is not available offering examples of the practice in regard to Article 1, paragraph 1(c) in the, 21 countries that have so far ratified Convention No. 181.

– **Protection of workers in temporary work agencies**

308. Articles 11 and 12 of Convention No. 181 provide additional protection for workers in temporary work agencies working for user enterprises within the meaning of Article 1, paragraph 1(b), namely employing workers with a view to making them available to a third party. Article 11 requires the member State to ensure that workers employed by temporary work agencies are adequately protected in relation to:

- freedom of association;
- collective bargaining;
- minimum wages;
- working time and other working conditions;
- statutory social security benefits;
- access to training;
- protection in the field of occupational safety and health;
- compensation in case of occupational accidents or diseases;
- compensation in case of insolvency and protection of workers' claims;
- maternity protection and benefits, and parental protection and benefits.

Article 12 requires member States to determine and allocate responsibility between employment agencies and user enterprises in relation to all of the above, with the exception of freedom of association.

309. In the case of the United Kingdom, the protection of workers' rights in accordance with Article 11 is ensured not through legislative provisions, but through the general system of collective bargaining. The British Trades Union Congress (TUC) expressed its concern about the limited protection against dismissal and the victimization of temporary work agency workers for taking official industrial action. Although unions can ballot agency workers and call on them to take collective action, workers in temporary work agencies have no means of legal redress if they are laid off, removed from an assignment or refused future assignments for taking part in industrial action.

310. The Committee emphasizes that the right of freedom of association and the right to collective bargaining are to be fully guaranteed to all workers placed by private agencies or employed by temporary work agencies, as highlighted in Articles 4 and 11 of Convention No. 181. Article 11 requires the State to take the necessary measures, such as legislative or other measures, as provided for in Article 14, to ensure that there

is adequate protection for employees of employment agencies if they engage in lawful industrial action.

311. In this regard, the Government of the United States drew attention to the fact that workers employed by temporary work agencies may not belong to the same bargaining unit of the user enterprise unless both employers consent, but that employees employed by the skills provider can still form their own bargaining units. Article 12 requires member States to determine and allocate, in accordance with national law and practice, the respective responsibilities of employment agencies and user enterprises in respect of collective bargaining. The Committee refers to its comments on Convention No. 87 and considers that any differential allocation of collective bargaining responsibilities between employment agencies and user enterprises must ensure that employees of employment agencies are able to exercise the right to bargain collectively *in practice*.

312. The Committee also notes the observations made by the Canadian CSN in relation to the national regulations governing temporary work agencies. The CSN refers to a ruling of the Supreme Court of Canada, stating that:

... situations involving tripartite relationships can cause problems when it comes to identifying the real employer if the labour legislation is incomplete in this regard. The tripartite relationship does not fit very easily into the classic pattern of bilateral relationships. The Labour Code [of Quebec] was essentially designed for bipartite relationships involving an employee and an employer. It is not very helpful when a tripartite relationship ... must be analysed. The traditional characteristics of an employer are shared by two separate entities – the personnel agency and its client – that both have a certain relationship with the temporary employee. When faced with such legislative gaps, tribunals have used their expertise to interpret the often terse provisions of the statute. In the final analysis, however, it is up to the legislature to remedy those gaps.⁵⁰

313. The Committee wishes to highlight the need to have a clear legal framework in place to secure adequate protection in the areas enumerated in Articles 11 and 12 of the Convention. Given the particularities of working arrangements in which employees work for a user enterprise that assigns and supervises the execution of the work and the indeterminacy of responsibility, it is necessary for member States to address these particularities through measures that ensure that in each case effective responsibility is determined. The adequacy of the measures must be evaluated against the criterion of whether they provide effective recourse for employees in respect of the matters listed in Article 12. When examining the information requested by the report form for Articles 11 and 12, the Committee considers that effect is given in these areas when they are applied through other Conventions ratified by States parties to Convention No. 181, as enumerated in the following table listing the most current respective Conventions:

⁵⁰ *Pointe-Claire (City) v. Quebec (Labour Court)*, [1997] 1 S.C.R. 1015, para. 63.

Freedom of association (to which reference is also made in Article 4 of Convention No. 181)	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
Collective bargaining (to which reference is also made in Article 4 of Convention No. 181)	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
Minimum wages	<ul style="list-style-type: none"> – Equal Remuneration Convention, 1951 (No. 100) – Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) – Minimum Wage Fixing Convention, 1970 (No. 131)
Working time and other working conditions	<ul style="list-style-type: none"> – Hours of Work (Industry) Convention, 1919 (No. 1), Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153) – Holidays with Pay Convention (Revised), 1970 (No. 132) – Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), – Night Work Convention, 1990 (No. 171), Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 – Part-Time Work Convention, 1994 (No. 175)
Statutory social security benefits	<ul style="list-style-type: none"> – Social Security (Minimum Standards) Convention, 1952 (No. 102) – Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), Medical Care and Sickness Benefits Convention, 1969 (No. 130), Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) – Maintenance of Social Security Rights Convention, 1982 (No. 157)
Access to training	<ul style="list-style-type: none"> – Paid Educational Leave Convention, 1974 (No. 140), – Human Resources Development Convention, 1975 (No. 142)
Protection in the field of occupational safety and health	<ul style="list-style-type: none"> – Occupational Safety and Health Convention, 1981 (No. 155), Protocol of 2002 to the Occupational Safety and Health Convention, 1981 – Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
Compensation in case of occupational accidents or diseases	<ul style="list-style-type: none"> – Employment Injury Benefits Convention, 1964 (No. 121), – Medical Care and Sickness Benefits Convention, 1969 (No. 130) – Maintenance of Social Security Rights Convention, 1982 (No. 157)
Compensation in case of insolvency and protection of workers claims	<ul style="list-style-type: none"> – Protection of Wages Convention, 1949 (No. 95) – Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)
Maternity protection and benefits, and parental protection and benefits	<ul style="list-style-type: none"> – Maternity Protection Convention (Revised), 1952 (No. 103) – Maternity Protection Convention, 2000 (No. 183)

– **Processing and protection of personal data**

314. Private employment agencies collect and process personal data on job applicants and workers for a number of purposes. Article 1, paragraph 3, of Convention No. 181 defines the term “processing of personal data of workers” as “the collection, storage,

combination, communication or any other use of information related to an identified or identifiable worker”, which is therefore open to accommodate future technical developments. To ensure the protection of the personal data of individuals, Article 6 of Convention No. 181 describes the safeguards to be implemented for the processing of personal data in the sense of Article 1, paragraph 3, of Convention No. 181.

315. In addition to the need to obtain data in order to match jobseekers with available vacancies, the data collected allows for quality control of the services and improves the customer service for jobseekers and the entity in which they are employed or by which they are supervised.

316. The Committee notes that, although personal data is needed by private agencies to exercise their functions, as outlined in Article 1, paragraph 3, of Convention No. 181, the processing of such data entails risks for workers if shared with third parties without the workers’ consent. The gathering of a large amount of data and the many different uses to which these data are put not only multiply the dangers of abuse, but might also permit close monitoring of the workers concerned by third parties. Article 6 of Convention No. 181, in conjunction with Paragraph 11 of the Private Employment Agencies Recommendation, 1997 (No. 188), therefore requires not only that data collection be kept to a minimum, but also highlights the role of national law and practice in safeguarding workers’ privacy.

317. In reply to the questionnaire, the Government of Brazil states that specific laws for the protection of workers’ personal data exist. In other countries, data privacy seems to be part of general data protection laws. The Committee notes that in Portugal the protection of workers’ data is enshrined in the Labour Code. Section 17 of the Labour Code limits the scope of employers to collect personal data from an employee or jobseeker to the necessary minimum. Section 492 allows the employer to process data related to the employee’s trade union affiliation only for the purpose of collecting trade union membership fees.

318. In this context, the Committee notes that, while in most countries national laws exist for the general treatment of personal data, not all of these address the specific requirements of the processing of workers’ personal data. The Committee therefore wishes to refer to the code of practice on the protection of workers’ personal data,⁵¹ approved by the Governing Body in November 1996 following a meeting of experts on workers’ privacy. The purpose of this code of practice is to provide guidance on the protection of workers’ personal data. It can be used in the development of legislation, regulations, collective agreements, work rules, policies and practical measures at the enterprise level.

– Scope

319. Article 2, paragraphs 1 to 3, of Convention No. 181, define the scope of the Convention by providing that it applies to all private employment agencies, to all categories of workers and all branches of economic activity, except for seafarers.

Seafarers

320. Seafarers are neither covered by Convention No. 181 nor by Convention No. 96, as most aspects of their employment and work have been treated separately since the creation of the ILO. Accordingly, one of the Organization’s earliest Conventions dealing with the subject was the Placing of Seamen Convention, 1920 (No. 9).

⁵¹ ILO, *Protection of workers’ personal data: An ILO code of practice*, Geneva, 1997, p. 8

Convention No. 9 prohibits any recruitment activities for pecuniary gain.⁵² Similar to workers on shore, the role played by private recruitment and placement agencies in the functioning of the labour market for seafarers, who currently number 1.2 million, is recognized in the Recruitment and Placement of Seafarers Convention, 1996 (No. 179). In addition to the prohibition of levying fees or other charges from seafarers for recruitment or for the provision of employment, Convention No. 179 also requires a system of licensing or certification or other form of regulation and the close supervision of all recruitment and placement services. The Maritime Labour Convention, 2006 (MLC, 2006), incorporates and updates Convention No. 179 in its Regulation 1.4 and the accompanying Code. Resolution XI, which was adopted together with the MLC, 2006, recognizes that the recruitment and retention of seafarers in a global labour market is a complex issue involving a social, political and economic dimension and, where appropriate, the provision of suitable policies by governments and industry alike.

– Prohibitions and exclusions

321. Article 2, paragraph 4(a), of Convention No. 181 allows member States to prohibit the operation of private employment agencies in respect of certain categories of workers. Article 2, paragraph 4(b), permits the exclusion of workers in certain sectors from the application of the Convention, subject to the availability of safeguards. The Committee recalls that ensuring the provision of adequate services that respond to the increasingly complex requirements of the labour market in some countries was one of the reasons for the adoption of Convention No. 181. Any prohibition or exclusion of private agencies therefore has to be examined by the competent authority, and the prior consultations of the social partners required by Article 2, paragraph 4, are a valuable input in this regard.

322. The Committee further notes that under Article 2, paragraph 4(a), of Convention No. 181, it is possible for governments to permit the operation of private employment agencies on a trial basis only, on condition that this serves the workers' interests and the social partners have been consulted.

Practice of ratifying States in regard to prohibitions or exclusions

323. By applying Article 2, paragraph 4(b), several countries have reserved the right to limit private employment agencies to certain activities to be determined by the authority responsible for labour matters.

324. Some ratifying States of Convention No. 181 have made use of the possibilities enumerated in Article 2, paragraph 4, and provided the relevant information. The Committee emphasizes that, in accordance with the article 22 report form, countries having availed themselves of these possibilities are invited to include, as laid down in Article 2, paragraph 5, updated information on the exceptions authorized for the consideration of the Committee.

325. In Algeria, Act No. 04-19 of 25 December 2004 on the Placement of Workers and the Supervision of Employment and Executive Decree No. 07-123 of 24 April

⁵² Article 2, paragraph 1, of Convention No. 9: "The business of finding employment for seamen shall not be carried on by any person, company, or other agency, as a commercial enterprise for pecuniary gain; nor shall any fees be charged directly or indirectly by any person, company or other agency, for finding employment for seamen on any ship."

2007 prohibit private employment agencies from engaging in mediation activities for the public sector, managers of companies and migrant workers.

326. In 2008, the Committee noted in relation to Belgium that the Flanders region had not yet invoked the provisions of Decree of 13 April 1999 enabling it to prohibit certain activities, in accordance with Article 2, paragraph 4, of Convention No. 181. The Committee further noted the indication by the Government of Wallonia that it may exclude certain categories of workers based on the structure of the national market and the development of specific sectors or the matching of labour supply and demand.

327. The Government of the Czech Republic initially indicated in 2003 that it intended to make use of Article 2, paragraph 4(a), of Convention No. 181. In 2006, the Committee noted the Government's statement that no recourse would be made to this provision.

328. Under section 1(2) of Government Decree No. 118/2001, Hungary has excluded art and theatre recruitment agencies, as well as placement activities exercised by local councils and education institutions, from the scope of the Convention.

329. The Government of Italy initially permitted the activities of private employment agencies in the agricultural sector and the construction industry on an experimental basis only. It indicated that under the terms of section 1(3) of Act No. 196 of 1997, this was in agreement with the social partners. In 2006, the Committee noted that agencies are now permanently allowed to place workers in employment in the agricultural sector.⁵³

330. In 2009, the Government of Morocco stated that, by virtue of section 477 of the Labour Code, the authorization granted to private employment agencies may be limited to certain activities determined by the government authority responsible for labour matters.

331. In Panama, section 6 of Executive Decree No. 105 of 26 December 1995 provides that private employment agencies, which are regulated by the Decree, are not allowed to place or recruit workers abroad, unless this is explicitly authorized by the General Employment Directorate based on the provisions contained in the Labour Code or any other acts in respect of working abroad.

General prohibition of charging fees to workers

332. The Committee recalls that Article 7, paragraph 1, of Convention No. 181 contains a general prohibition on the charging of fees or other costs, directly or indirectly, in whole or in part, to workers. However, paragraph 2 of Article 7 does permit exceptions. Through this device, member States may allow private employment agencies to charge fees or other costs for certain categories of workers, as well as specified types of services.

Exemptions

333. Exemptions from Article 7, paragraph 1, of the Convention may be authorized when they are "in the interest of the workers concerned" and in respect of "certain categories of workers, as well as specified types of services provided by private employment agencies" (Article 7, paragraph 2).

⁵³ CEACR (74th Session), direct request, Convention No. 181, addressed to Italy in 2004, para. 2; CEACR (77th Session), observation, Convention No. 181 (Italy), report 2007, para. 2.

334. The Committee notes that making use of this provision is subject to:

- *Consultation.* Prior to the authorization of the exceptions to charge fees or costs, the most representative organizations of employers and workers have to be consulted. This ensures that the social partners can express their views and share their experiences and concerns regarding the use of this provision.
- *Transparency.* Member States are required to create an appropriate legal framework indicating that the authorization is limited to certain categories of workers,⁵⁴ or specific types of services, and that it constitutes an explicit exception.⁵⁵ Additionally, it is necessary for the fees and costs to be disclosed. This not only includes the actual service fees, but also other expenses related to recruitment, such as visa fees.⁵⁶
- *Reporting.* Article 7, paragraph 3, of Convention No. 181 requires member States, as part of their reporting obligations under article 22 of the ILO Constitution, to provide to the Office with information and give the reasons for making use of the exceptions.

335. The Committee therefore notes that, when it is ensured that the national practice for the charging of fees and costs to workers is in compliance with the requirements of Article 7, paragraph 2, this practice does not constitute an impediment to the ratification of the Convention.

Practice of ratifying States in regard to fee charging

336. While only some countries that have ratified Convention No. 181 have made use of the possibilities enumerated in Article 7, paragraph 2, and provided the respective information, the Committee emphasizes that it has invited countries having availed themselves of this possibility to include in subsequent reports, as laid down in Article 7, paragraph 3, updated information on the exceptions authorized.

337. In 2007, the Committee noted that in Albania, section 4 of Resolution No. 708 allows private employment agencies to charge workers for necessary administrative expenses. The Committee invited the Government to specify the kind of administrative services for which agencies may require workers to pay fees and to indicate the reasons for authorizing such expenses and whether there is any control over the amount of fees under Resolution No. 708.

338. The Government of Belgium stated in 2008 that the authorities could determine, in the interest of the workers concerned or with a view to improving the matching of labour supply and demand, and following an opinion of the Economic and Social Council of the region or community, the categories of workers and services for which private employment agencies may charge a fee to workers. The Committee further notes that in the regions Brussels-Capital, Flanders and Wallonia, private employment agencies exercising placement activities for remunerated sports persons or artists can

⁵⁴ In Japan, charges can be levied from jobseekers in the field of housekeeping; also prospective cooks or waiters can be charged, cf. CEACR (74th Session), direct request, Convention No. 181, addressed to Japan in 2004, para. 4; CEACR (76th Session), observation, Convention No. 181 (Japan), report 2006, para. 4.

⁵⁵ CEACR (75th Session), direct request, Convention No. 88, addressed to the Republic of Moldova in 2005, para. 1.

⁵⁶ For example, administrative expenses (CEACR (78th Session), direct request, Convention No. 181, addressed to Albania in 2008, para. 3) and costs for the training and transportation of jobseekers where employers fail to pay them (CEACR (74th Session), direct request, Convention No. 181, addressed to Ethiopia in 2004, para. 4).

charge fees, commissions, contributions, access or inscription fees and specified compensation in the following circumstances:

- the compensation is indicated in the agreement between the agency and the employer or user;
- the sports person or artist receives a copy of this agreement;
- the compensation is limited to a certain amount of the performer's gross income.

In Wallonia, private employment agencies which seek vacancies on behalf of jobseekers are further allowed to charge compensation if the amount has been fixed in an agreement with the jobseeker. The Committee invited the Government to provide updated information on the exceptions made or planned to be made.

339. In 2006, the Government of Ethiopia indicated that, by virtue of the Private Employment Agencies Proclamation No. 104/1998, no categories of workers or types of service exist for which private employment agencies can charge a fee directly or indirectly. Yet the Committee found that illegal fee-charging of workers is practiced by some agencies and noted that some private employment agencies had requested legislative amendments in order to allow fee-charging, and that the issue had also been discussed between representatives of the Government, the social partners and other stakeholders.

340. With regard to Japan, the Committee noted in 2005 that collecting fees from jobseeking housekeepers, cooks and waiters had been maintained as a transitional measure. The Government of Japan further indicated that private employment agencies were allowed to charge fees to technologists, administrative executives and experienced technicians with an annual income exceeding 7 million yen.

341. The Government of Lithuania stated in 2007 that, under the Procedure for the Issue of Licences to Intermediaries for the Employment of Lithuanian Citizens Abroad, mediation services for employment abroad can either be charged for or may be free of charge. The Government reported that consultations on this matter were being held with agencies engaged in foreign employment mediation services.

342. In reply to the Committee's comments, the Government of the Republic of Moldova reported in 2009 that national legislation bars private employment agencies operating domestically or in a transboundary context from charging any fees to jobseekers.

343. In the case of Morocco, the Committee noted that costs could be deducted from the salaries of jobseekers placed in employment abroad by private employment agencies. The maximum amount to be charged is regulated by Decree No. 338.05 of 9 February 2005. The Committee requested the Government to indicate whether it had made use of this possibility.

344. In 2005, the Committee noted that in Portugal, sections 12 and 13 of Act No. 124/89 permit private employment agencies established with a view to profit to charge fees to jobseekers. Agencies may also request certain amounts from candidates placed in posts through their intervention, but these fees are limited by a ceiling set by national legislation. Following the Committee's request to provide further information on this authorization, the Government stated in its 2009 report that it is currently redrafting its national legislation. The aim of the current procedure is the abolition of fee-charging to workers.

345. The Government of Spain indicated that the successful placement of workers with employers at the request of the workers would justify payment for the services

provided by private employment agencies. The Government further indicated that the most representative organizations of employers and trade union associations have been informed and consulted in this respect and also refers to the opinion of the national Economic and Social Council in relation to Royal Decree No. 735/1995. Consequently, the Committee has requested the Government to provide information, as laid down in Article 7, paragraph 3, of the Convention.

346. In a report received in August 2009, the Government of Uruguay indicated that consultations on the subject had already taken place with the social partners but that the respective legislative provisions had not been enacted. The Committee intends to pursue the examination of this matter under the regular examination of the application of the Convention.

347. The Committee also notes that in most non-ratifying industrialized countries, where temporary work agencies dominate the private employment market, prohibition of fee-charging is standard. Certain industrialized countries, such as Germany, have allowed the charging of limited fees to jobseekers since 2002. The trade union DGB sees this as barely benefiting jobseekers and calls for the abolition of the authorization to charge such fees as the services rendered by private employment agencies mainly benefit employers.

348. Other non-ratifying countries, particularly those with a significant number of overseas placement agencies, have opted for either restricting the collection of fees and the charging of costs to certain categories of workers or, in the same way as in Nepal and India, ceilings have been fixed for fees and costs. India has set the ceiling for mediation charges to an amount equivalent to the first month's salary of the jobseeker and has limited the maximum service charge. It also establishes the requirement that the charges to be paid by the employer to private employment agencies do not affect the jobseeker's monthly wages.

349. Also in relation to overseas placement, the Committee notes the Recommended Guidelines for Migrant Recruitment Policy and Practice in the Greater Mekong Sub-Region, which include recommendations for the setting of ceilings for the fees charged to jobseekers. Assisted by the Office, the Guidelines were drafted by Cambodia, China, Thailand and Viet Nam :

4. Fees for recruitment services

4.1. Governments and recruitment agencies should try to minimise the costs of recruiting and hiring migrants that must be borne by workers and employers.

4.2. Fees for recruitment services should be borne by employers. Where this is not possible, governments should regulate the maximum fee for services that recruitment agencies are allowed to charge workers in consultation with employers' and workers' organisations.

4.3. Recruitment agencies should disclose all charges and terms of business to employers and workers, ensuring transparency about the costs (e.g. costs associated with documentation, etc) and the recruitment service fees.

4.4. Governments should regulate and monitor the way in which recruitment agencies are able to deduct fees from workers' salaries.

4.5. Employers and recruitment agencies must obtain written consent from workers on the deductions from their salaries and ensure that workers have full access to their savings accounts at all times.

4.6. Employers or recruitment agencies who manage salary deductions from workers should be required to issue written statements to workers about their gross salary and all deductions.

4.7. Governments should promote the establishment by governments, financial institutions or other organisations of lending facilities to provide low interest loans to workers who cannot afford recruitment agency fees.⁵⁷

– Protecting fundamental rights

Freedom of association and collective bargaining

350. Recalling the fundamental rights to freedom of association and to bargain collectively, Article 4 is the main provision in Convention No. 181 which protects workers against violations of fundamental principles and rights at work, enshrining the rights encompassed in Conventions Nos 87 and 98. These Conventions provide that all workers have the right to establish and join organizations and protect such organizations from interference by employers or governments. Measures are therefore required to guarantee that workers placed or recruited by private agencies are not denied the rights contained in these fundamental Conventions.

351. The Committee notes that the protective function of Article 4 of Convention No. 181 is not forfeited when workers leave the territory of the sending state. Even in a cross-border context, these rights and principles can be invoked in relation to the private employment agency in the sending country. This is also important in cases where these principles and rights are not adequately respected in the countries receiving workers placed by private employment agencies. This has been highlighted by the Government of Ethiopia, which refers to the problems arising due to the lack of readiness by employers and the legislation in some countries receiving Ethiopian workers placed abroad by private recruiters, as well as other cultural, demographic and economic factors that render it difficult to implement the fundamental principle of freedom of association and the right to collective bargaining. The Government intends to encourage Ethiopian workers abroad to form community associations aimed at enabling them to bargain with employers.

352. The Committee notes the concerns expressed by the British TUC in September 2009. The TUC stated that most workers in temporary agencies in the United Kingdom are not able to benefit from full freedom of association rights. This is due to their uncertain employment status, which results in their classification as “workers” who are not considered as part of the workforce for this purpose, in contrast with “employees”, who are engaged under a contract of employment and are regarded as part of the workforce. Consequently, they fail to qualify for many trade union rights.

353. The Committee further notes that, under Paragraph 6 of Recommendation No. 188, private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike. In this regard, the Committee has received expressions of concern from the TUC and the National Council of Unified Trade Unions of the Dominican Republic (CNUS).

⁵⁷ Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) (Cambodia, China, Thailand and Viet Nam), *Recommended guidelines for migrant recruitment policy and practice in the Greater Mekong Subregion*, 2008, p. 5.

Prohibition of discrimination

354. The overall aim of Article 5 of Convention No. 181 is to diminish and prevent all forms of discrimination. This is of particular importance to vulnerable groups, such as temporary workers,⁵⁸ disadvantaged minorities⁵⁹ and migrant workers⁶⁰ (including women workers),⁶¹ who often face difficulties in exercising their rights, either when they are employed by private agencies or placed in employment.

355. Article 5, paragraph 1, of Convention No. 181 requires member States to promote equality of opportunity and treatment in access to employment and to particular occupations by ensuring that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability. The Committee has recalled this requirement in its comments on the application of Convention No. 181 by Algeria. It noted that certain grounds of discrimination, such as race, colour, religion and national extraction, are not covered by the Labour Code, but that the new model terms of reference, which form part of Executive Decree No. 07-123 of 24 April 2007, are aimed at remedying this situation by obliging administrations and agencies to avoid any distinction, exclusion or preference based on discriminative criteria.⁶² The Lanka Jathika Estate Workers Union (LJEWU) has expressed its concern that the private employment agencies operating in Sri Lanka give preference to Muslim workers, as the countries of the Persian Gulf, which are the main recipients of Sri Lankan workers, prefer such workers. With regard to national minorities, the Committee has indicated in several comments, such as in those relating to the Republic of Moldova⁶³ and Belgium,⁶⁴ that measures should be taken to ensure that the activities of private employment agencies do not lead to discrimination against minorities.

356. The TUC also notes that employees of temporary work agencies in the United Kingdom are often highly vulnerable and face extensive exploitation. The mistreatment of employees of temporary work agencies is widespread, particularly among migrant workers, and includes pay levels below national minimum wage rates, as well as unlawful salary deductions for personal safety equipment, housing and transport costs. These workers are often accommodated in unsafe conditions and are deprived of their basic holiday entitlements. Similar observations have also been made by the Dominican CNUS.

357. By virtue of Article 5, paragraph 2, of Convention No. 181, paragraph 1 of this Article shall not be implemented in such a way as to prevent private employment agencies from providing special services or targeted programmes for the most disadvantaged jobseekers. The Committee notes that measures which are intended to eradicate discrimination are therefore encouraged through this provision. Nevertheless,

⁵⁸ Observation of the Italian General Confederation of Labour (CGIL), noted in CEACR (77th Session), observation, Convention No. 181 (Italy), report 2007, para. 2.

⁵⁹ ILC, 92nd Session, *Provisional Record* No. 22, Geneva, 2004, p. 57.

⁶⁰ CEACR (76th Session), direct request, Convention No. 181, addressed to Portugal in 2006, para. 4.

⁶¹ ILC, 92nd Session, *Provisional Record* No. 22, Geneva, 2004, p. 13.

⁶² CEACR (79th Session), direct request, Convention No. 181, addressed to Algeria in 2009, para. 3.

⁶³ CEACR (76th Session), direct request, Convention No. 181, addressed to the Republic of Moldova in 2006, para. 2.

⁶⁴ CEACR (79th Session), direct request, Convention No. 181, addressed to Belgium in 2009, para. 3.

measures aimed at preventing discrimination must not impede special services or targeted programmes, such as those provided by employment enterprises to assist workers facing disadvantages. Under article 22 of the Constitution, member States are invited to report whether special services or targeted programmes exist.

358. The Committee notes that in several countries, such as the Netherlands, public employment service agencies provide targeted programmes with the involvement of private agencies. The Committee notes the indication by the Employers' Association of Slovenia that workers employed by temporary work agencies for the most part perform simple and monotonous work. The Employers' Association considers that the inclusion of these workers in further education is necessary as their qualification level is very low and will worsen the situation on the labour market.

Measures against the use of child labour

359. Article 9 of Convention No. 181 requires member States to ensure that private agencies do not use children or place them in employment. The scope of this provision is similar to that of the Worst Forms of Child Labour Convention, 1999 (No. 182). The Committee recalls that member States have to prohibit child labour in the context of the conditions for awarding licences to private agencies, especially in a migratory context, as indicated in the Conclusions on a fair deal for migrant workers in a global economy, adopted at the 92nd Session of the Conference (2004).

360. The Committee recalls in this regard its comments to the Republic of Moldova, in which it noted that Act 451-XV of 30 July 2001 on the authorization of certain activities by private employment agencies does not prohibit their use of child labour. Trade unions are authorized to ascertain that child labour is not used by private employment agencies at the enterprise level. The Committee referred to its comments on the Minimum Age Convention, 1973 (No. 138), and emphasized that the professional qualification required to obtain a licence was not enough to guarantee in practice the absence of the use of child labour by private employment agencies. In reply to the Committee, the Government stated that, after having consulted the social partners, it strengthened its monitoring mechanisms and adopted Act No. 100-XVI of 27 May 2005 amending the provisions respecting private employment agencies and prohibiting private employment agencies from offering their services to young persons.⁶⁵

361. The Committee also recalls its 2006 comments addressed to Ethiopia, in which it noted that efforts are being made to put in place a national plan of action against the commercial sexual abuse, exploitation and trafficking of children.

Forced labour

362. The Committee notes that, through the reference in the Preamble to the Forced Labour Convention, 1930 (No. 29), Convention No. 181 reinforces the role played by public authorities and private employment agencies in eradicating forced labour. It further notes that forced labour is often linked to human trafficking in which abusive intermediaries might engage. In this regard, the Committee notes that the definition of "trafficking in persons", as set out in the Palermo Protocol to Prevent, Suppress and

⁶⁵ CEACR (76th Session), direct request, Convention No. 88, addressed to the Republic of Moldova in 2006, para. 1.

Punish Trafficking in Persons, especially Women and Children of 2000,⁶⁶ includes the “recruitment, transportation, transfer, harbouring or receipt of persons”.

363. In its 2007 General Survey on the eradication of forced labour, the Committee points out the link between the Palermo Protocol and the Forced Labour Convention, 1930 (No. 29). In paragraph 77 of the 2007 General Survey, the Committee further notes that trafficking in persons for the purpose of exploitation is encompassed by the definition of forced or compulsory labour provided under Article 2, paragraph 1, of Convention No. 29. In paragraph 92, the Committee refers to the findings of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO to examine the observance by Myanmar of Convention No. 29, in which the Commission of Inquiry stated that, irrespective of the position in national law with regard to the exaction of forced or compulsory labour, any violation of the prohibition of recourse to forced labour under Convention No. 29 constitutes an international crime and if the forced labour is committed systematically, it is a crime against humanity. The Committee emphasizes that the proper application of the Convention enhances the role of international labour standards in eradicating illegal practices by abusive private recruiters which might, if committed in a widespread or systematic manner, amount to a crime against humanity.

Mediation and labour migration

364. The protection of migrants recruited or placed in the territory of a member State is a pivotal point for the Convention and is laid down in Article 8 of Convention No. 181. Article 8, paragraph 1, of Convention No. 181 provides that a member State shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other member States, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These measures shall include laws or regulations which provide for penalties, including the prohibition of those private agencies which engage in fraudulent practices and abuses.

365. The Committee notes that Article 8 of the Convention draws on the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, of 18 December 1990, which fosters respect for the human rights of migrants. The UN Convention, which entered into force on 1 July 2003, aims to guarantee equal treatment, including the same working conditions for migrants and nationals, and the same access to a protective mechanism.

366. The Committee emphasizes that these references show the importance of including private agencies in the protection of workers in the transboundary mediation of labour. Such importance is already recognized in the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), which, unlike the Migration for Employment Convention (Revised), 1949 (No. 97), no longer tries to remedy the problems of migrant workers by relying only on public employment services. The Preamble to Convention No. 143 considers “that the migration of workers due to conditions in labour markets should take place under the responsibility of official agencies for employment or in accordance with the relevant bilateral or multilateral

⁶⁶ Article 3, paragraphs (a) and (c), of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000; cf. United Nations Office on Drugs and Crime, www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html.

agreements”. Governments were already called upon to set up the legislative framework regulating the “recruitment, placing and conditions of labour for migrants recruited otherwise than under government-sponsored arrangements for group transfers” in Annex I to Convention No. 97.

367. In demanding concrete action from the governments, Part I of Convention No. 143 complements Convention No. 97. It requires ratifying States to adopt all necessary measures, including penal provisions, to suppress the illegal employment of migrants and to act against organizers of illicit or clandestine movements of migrants for employment. This requirement entails the monitoring of recruitment agencies⁶⁷ within an effective migration policy and constitutes an important tool to combat trafficking for labour purposes. In addition, capacity building among workers recruited across borders is necessary.

368. The Government of Norway has expressed concern that foreign employees may be denied the rights set out in health, environmental and safety regulations, including regulations governing working hours and housing requirements. The impact of such violations is not only felt directly by the foreign workers affected, but may also be indirectly detrimental in overall terms to the workforce and businesses in Norway. An action plan against social dumping has therefore been launched. The action plan includes measures to help with the integration of migrants and aims to prevent exploitation of their vulnerable situation.

369. In line with this, Article 8, paragraph 1, of Convention No. 181 requires member States to establish a legal framework, including adequate penalties, such as fines or the closure of private agencies, to protect migrant workers against abuses committed by private agencies. The Committee notes in this context the Ciett code of conduct, which stipulates that any regulation on private employment agencies should enhance the fight against illegal practices and human trafficking.

370. The Committee wishes to recall the comments made by the All Pakistan Federation of Trade Unions (APFTU). The Government of Pakistan, which has accepted Part II of Convention No. 96, indicated in 2008⁶⁸ that, due to the country’s economic conditions, levies had been established for Pakistani workers migrating abroad. Consequently, the Government was not in a position to adopt a policy of the abolition of fee-charging employment services for migrant workers. The Committee, recalling the observations made by the APFTU that agencies are allowed to charge fees for recruitment abroad and that some of them are involved in human trafficking, referred to the ILO’s Multilateral Framework on Labour Migration and urged the Government to bring its legal framework into line with the requirements of Part II of Convention No. 96.

371. The ILO Multilateral Framework on Labour Migration, published in March 2006,⁶⁹ compiles non-binding principles and guidelines for a rights-based approach to labour migration and explicitly refers to Convention No. 181. It also comprises international guidelines on best practices, including guidelines on the licensing and supervision of recruitment and contracting agencies for migrant workers, as set out in Convention No. 181 and Recommendation No. 188. Drawing on the Migration for

⁶⁷ Article 3, paragraph 1, of Annex I to Convention No. 97; Articles 3, 4 and 6 of Convention No. 143.

⁶⁸ CEACR (79th Session), observation, Convention No. 96 (Pakistan), report 2009, paras 1 and 3.

⁶⁹ ILO, *Multilateral Framework on Labour Migration*, Geneva, 2006, pp. 24–25.

Employment Recommendation (Revised), 1949 (No. 86),⁷⁰ the 1999 General Survey on migrant workers⁷¹ and the resolution concerning a fair deal for migrant workers in a global economy of 2004, the Framework further provides that workers shall be given clear and enforceable contracts by those agencies before departure and should be provided with contact details of their nation's diplomatic missions in the receiving country.⁷²

372. The Committee further recalls the case studies of the 2005 “Labour migration policy and management: Training modules”, prepared for the ILO–Korea Partnership Programme on “Enhancing national migration management in Cambodia, Lao People’s Democratic Republic, Mongolia and Thailand”. These highlighted the fact that government intervention in both sending and receiving countries through transparent and appropriate regulatory institutions and measures is essential if labour markets are to function in a way that is efficient and equitable.

373. The training modules focused on the Philippines as an illustration of how foreign employment should be supervised by the State. The Philippines Government had initially established the Overseas Employment Development Board (OEDB) to serve as the main channel for recruiting and placing Filipino workers abroad. The OEDB was intended to serve as the central authority empowered to negotiate labour agreements with foreign employers in relation to workers other than seafarers. In agreement with the private employment agency sector, the Government authorized private employment agencies to meet the growing demand for placement services and established a new agency, the Philippine Overseas Employment Administration (POEA), as the supervisory authority. The POEA was given powers to regulate recruitment and protect migrant workers. Subsequently, the OEDB was absorbed by the POEA. Now, any entity recruiting workers for jobs outside the Philippines has to obtain prior authorization from the POEA. The POEA’s mandate includes:

- licensing and monitoring recruitment agencies;
- accrediting foreign employers and evaluating employment offers;
- reviewing employment contracts to ascertain compliance with minimum standards;
- adjudicating disputes concerning employment contracts and recruitment standards;
- worker registration and job-placement facility;
- programme to combat illegal recruitment;
- pre-departure documentation and briefing of workers;
- market research and development;
- developing recruitment and employment standards; and
- legal and welfare assistance to distressed migrants.⁷³

374. The Committee also draws attention to several technical assistance programmes implemented by the ILO to help member States develop the respective regulatory

⁷⁰ Article 22, subparagraph 2, of the Annex to Recommendation No. 86 provides that a written copy of the employment contract specifying the conditions of work, and particularly the minimum wage which is guaranteed, is to be delivered to the migrants before their departure.

⁷¹ CEACR, General Survey on migrant workers, Geneva, 1999, para. 649.

⁷² Abella, M., *Sending workers abroad*, Geneva, 1997, p. 86.

⁷³ ILO, *Labour migration policy and management: Training modules*, 2005, Bangkok, p. 29.

framework. In Nepal, the Office has assisted in the revision of the Foreign Employment Act and Regulations and has initiated a project aimed at strengthening the capacities of recruiting agencies and at developing a monitoring mechanism. To protect workers, Nepal has made it a requirement to have specific insurance. The Government has also established a separate welfare fund for workers sent abroad.

375. The Committee also wishes to highlight the ILO–Japan project on managing the cross-border movement of labour in South-East Asia, which commenced in 2005 and is intended to contribute to the promotion of rights and gender-based governance with a view to creating a regulatory framework for labour migration and protecting Asian migrant workers from exploitative and abusive treatment.⁷⁴ To achieve this, it is essential that, by the end of the project in 2010, countries have established efficient, safe and low-cost remittance systems and new initiatives for support services for the development of micro-enterprise in migrant workers' communities. The project is aimed at helping governments to formulate and implement coherent labour migration policies and programmes which respect the fundamental rights of migrant workers and are beneficial to employment, economic growth and development in both sending and receiving countries. For this, it is necessary to strengthen the capacity of governments, the social partners and other specific target groups to provide good governance for migration processes.

376. With regard to national requirements for sending workers abroad, the Committee has noted that, in some cases, countries prohibit private agencies from placing national jobseekers abroad or placing foreign workers in the national territory. In Algeria, for example, the Committee noted that section 2 of Executive Decree No. 07-123 of 24 April 2007 prohibits private agencies from placing national jobseekers abroad. In Panama, article 6 of Executive Decree No. 105 of 26 December 1995 prohibits private employment agencies in the country from placing or recruiting workers abroad, unless this is explicitly authorized by the General Employment Directorate, which supervises compliance with the Labour Code or any other act respecting the employment of foreigners. Similarly, the Ministerial Regulation of 25 April 2007 in Nicaragua prohibits the placement of national workers abroad. With the adoption in March 2006 of the new regulations respecting workers placement agencies, private employment agencies are allowed to place Mexican workers abroad after obtaining prior authorization from the Ministry of Home Affairs. The agencies have to provide migrant workers with information about the general working conditions in the receiving country and how their consular protection is ensured.

377. New Zealand requires the licensing of immigration advisers, which include recruitment agencies providing immigration advice and assistance to new migrant employees, following cases which resulted in hundreds of potential migrants being allegedly owed money by failed recruitment companies. In Lebanon, Resolution No. 13/1 of 22 January 2009 obliges private employment agencies engaged in recruiting foreign workers for domestic work in the country to obtain a licence. Section 29 of the Labour Code of Qatar (Act No. 14 of 2004) provides that a natural or legal person may not recruit workers from abroad for others unless such person has obtained a licence to do so. In the Syrian Arab Republic, Decree No. 27 of 25 February 2009 obliges operators of private employment agencies to specify the user enterprise and the working conditions of foreigners recruited to work in the

⁷⁴ Further information available at:
<http://www.ilo.org/public/english/region/asro/bangkok/japanmb/migrant.htm>.

country. It further prohibits private employment agencies from directly employing workers.

378. The United Arab Emirates considers foreign workers hired by local employment agencies as being employed by the user enterprise for which they are hired and grants those workers the same rights as the direct employees of such enterprises.

379. To ensure that foreign nationals working in Bulgaria are not exploited, the Government requires all foreign nationals wishing to work in the country to be in possession of a work permit. This work permit is issued by the National Employment Agency only if the conditions of work and pay offered are no less favourable than the conditions available to Bulgarian citizens for the relevant work category and if the remuneration enables such persons to maintain themselves adequately in Bulgaria. Under the terms of the Swedish Aliens Act (2005:716), similar requirements apply to foreign nationals wishing to work in Sweden.

380. To improve the protection of workers in a cross-border context, Article 8, paragraph 2, of Convention No. 181 encourages, but does not require, the conclusion of bilateral agreements to prevent abuses and fraudulent practices. Most of the countries that have ratified Convention No. 181 have concluded such agreements. The Committee wishes to highlight that if such agreements have not yet been concluded this does not constitute an impediment to the ratification of Convention No. 181. The Committee wishes to recall that the information provided by governments concerning Article 8, paragraph 2, should describe the content of such agreements and how they are able to secure adequate protection for migrant workers. In its 2009 report on Convention No. 181, the Government of Morocco provided copies of the bilateral agreements it has concluded with France, Italy and Spain.

381. Based on the information provided in the replies to the questionnaire, the Committee notes that countries that have not ratified Convention No. 181, such as Mexico, have also entered into such agreements, as shown by the Memorandum of Understanding signed by that country with the Government of Canada.

382. The Government of Nepal indicates that the objective of entering into bilateral agreements is to protect workers from abuses and fraudulent practices, in accordance with Article 8 of Convention No. 181, and that it has therefore concluded bilateral agreements with major labour-receiving countries, such as Bahrain, Republic of Korea, Qatar and United Arab Emirates. The Indonesian Ministry of Manpower and Transmigration (MOMT) has established a training programme focused on increasing the skills of migrant workers. As part of the training programme, seven memoranda of understanding have been concluded with receiving countries, including China, Japan, Jordan, Republic of Korea, Kuwait and Malaysia. The main elements of the memoranda are the designation of the agencies responsible for recruiting, selecting, and sending Indonesian workers and their counterpart in the receiving country. Further, quotas have been defined, recruitment requirements, procedures and mechanisms established and the terms of labour contracts defined, such as their maximum duration. Thailand has concluded memoranda of understanding with receiving countries to ensure that the fundamental rights of Thai nationals working overseas are protected. At present, such agreements have been signed with Japan, Republic of Korea and Malaysia. With a view to opening up legal migration for other nationalities migrating to Thailand, bilateral agreements are planned with Cambodia, Lao People's Democratic Republic and Myanmar.

383. The National Employment Strategy of the Republic of Moldova for 2007–15 aims to improve bilateral cooperation with host countries and includes the design of measures to facilitate temporary employment abroad. In order to cater for workers

returning to the Republic of Moldova, the Strategy also envisages the enactment of measures to simplify their return home. In 2001, Colombia and Spain signed an agreement on migration under which the provision of information on vacancies in Spain, inter alia, through the Embassy in Bogota, is administered by the Colombian National Training Service.

Summary

Conventions Nos 88 and 181

- ✓ **Convention No. 88 and Convention No. 181 complement one another. Public employment services and private agencies both contribute to the optimal functioning of the labour market and to the realization of the right to work.**
- ✓ **Consultation with the social partners is to be prioritized in the formulation and implementation of labour market policies.**
- ✓ **The essential duty of public employment services is to take action to achieve and maintain full employment. Public authorities retain the final responsibility for formulating labour market policy.**
- ✓ **Private employment services exist in most member States. However, some countries have not yet adopted an appropriate legal framework regulating them.**
- ✓ **Of those countries that have authorized the operation of private employment agencies, national practice shows that cooperation with public employment services exists and should be further encouraged.**
- ✓ **Action at the national and international levels is essential to eradicate abuses by intermediaries that engage in human trafficking or otherwise violate rights enshrined in the fundamental Conventions.**

Chapter IV

The Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189)

1. Promotion of SMEs and job creation

384. The adoption by the Conference at its 86th Session in June 1998 of the Job Creation in Small and Medium-Sized Enterprises Recommendation (No. 189) constitutes explicit recognition of the importance of small and medium-sized enterprises (SMEs) as a source of jobs. Even though the 2004 General Survey contained a chapter on SMEs, it is important to focus once again on this instrument, particularly against a background of the economic and financial crisis, which has not spared this type of enterprise.

385. The ILO has on several occasions reaffirmed the importance of SMEs as motors of economic growth and development and has emphasized the need to establish a legal framework that is adapted to their needs. In its 2004 General Survey, the Committee examined the role of SMEs in employment creation, including the definitions established by governments, the promotional practices adopted in this context and the financial services made available to them.

386. At its 96th Session (2007), the Conference adopted the Conclusions concerning the promotion of sustainable enterprises, which indicate that the “enabling environment for sustainable enterprise development comprises a large array of factors, the relative importance of which may vary at different stages of development and in different cultural and socio-economic contexts.¹ However, there are some basic conditions that are generally considered to be essential”. These interconnected and mutually reinforcing conditions include the importance of an entrepreneurial culture, the establishment of an enabling legal and regulatory environment and access to financial services. In this respect, the Conference invited member States to make it easier for SMEs to gain access to credit, leasing, venture capital funds or similar or new types of instruments and to create appropriate conditions for a more inclusive process of enterprise development.

387. The Social Justice Declaration advocates a new strategy in favour of open economies and societies based on social justice, full and productive employment, sustainable enterprises and social cohesion. It refers to all enterprises, public or private, and recognizes that the creation of a sustainable institutional and economic environment is bound to promote growth and create greater opportunities and prospects for employment and income for all.

¹ Conclusions concerning the promotion of sustainable enterprises, ILC, 96th Session, Geneva, 2007.

388. The present General Survey will examine the information provided by governments on the effect given to certain provisions of the Recommendation, namely the creation of an environment conducive to the growth and development of SMEs through the adoption of an appropriate policy and legal framework, the development of an effective service infrastructure, and the promotion of an enterprise culture.

389. The Committee notes that the Global Jobs Pact, in paragraph 11(6), emphasizes the contribution of SMEs and micro-enterprises to job creation, and invites member States to promote measures, including access to affordable credit, that would ensure a favourable environment for the development of SMEs.

2. Areas covered by Recommendation No. 189 that are examined in the present General Survey

390. The Recommendation outlines a series of elements that are of great importance for the promotion of SMEs. Firstly, in its preamble (eighth Paragraph), it expresses the conviction that respect for the fundamental Conventions in SMEs, with particular reference to the Minimum Age Convention (No. 138) and Recommendation (No. 146), 1973, will help Members in their efforts to eliminate child labour. The preamble emphasizes the close relations between Recommendation No. 189, employment policy, human resources development, cooperatives and compliance with occupational safety and health standards. Furthermore, in Paragraph 2(a) it recognizes the contribution of SMEs to the promotion of full, productive and freely chosen employment, including the creation of income-earning opportunities, the economic participation of disadvantaged and marginalized groups in society, training and the development of human resources.

391. Recommendation No. 189 has a broad scope of application, as reaffirmed in Paragraph 4, which indicates that its provisions apply to “all branches of economic activity and all types of small and medium-sized enterprises, irrespective of the form of ownership (for example, private and public companies, cooperatives, partnerships, family enterprises, and sole proprietorships)”. At this level, the links are clear with the Promotion of Cooperatives Recommendation, 2002 (No. 193), particularly since the great majority of cooperatives are SMEs and they have an important role to play in the creation of sustainable employment.

392. In its examination of the replies received, the Committee notes that governments are almost unanimously aware of the role that can be played by SMEs in job creation and have adopted various national strategies to promote the development of this type of enterprise.

393. The Recommendation does not contain a definition of SMEs and leaves it to member States to develop such a definition, in consultation with the most representative organizations of employers and workers, on the basis of appropriate criteria taking into account national, social and economic conditions. In its 2004 General Survey, the Committee identified several quantitative and qualitative criteria relating to the definition of SMEs. Three main quantitative criteria can be used for defining the size of an enterprise: the number of workers or employees, the value of fixed assets and turnover. Various qualitative criteria can also be used, such as the type of ownership, the market supplied and the type of technology or equipment used. In practice, the number of workers is the most commonly used criterion, in view of its apparent simplicity and because data on the other indicators are often lacking.

Accordingly, in developed countries, SMEs appear to be economic units ranging from 50 to 250 employees.²

394. In its replies to the questionnaire, the Government of Peru indicates that 53 per cent of the active population work in micro- and small enterprises. The Government indicates that it has implemented policies and programmes to contribute to improving their productivity, competitiveness, and where they fall into the informal economy, to facilitate their integration into the formal economy, particularly through the adoption of labour regulations. In this respect, the Committee notes the adoption in June and September 2008 of the Law and Regulations to promote the competitiveness, formalization and development of micro- and small enterprises and access to decent employment (Legislative Decree No. 1086). The General Confederation of Workers of Peru (CGTP) and the three other trade union confederations that provided comments indicate that the legislation has had a negative impact on workers' rights in micro-enterprises and SMEs. The reduction in worker protection is likely to result in precarious and unproductive jobs. The Chamber of Commerce of Lima indicates that the new Regulations respecting micro-enterprises and SMEs considerably reduce the cost of the non-wage components of remuneration. The Committee also notes the ruling by the Constitutional Court of November 2007, referred to by the employers' organization, which endorsed the possibility of adopting specific legislation for the SME sector and the importance of ensuring compliance with labour legislation.³

395. The Confederation of Argentinean Workers (CTA) expresses its concerns regarding the abusive use of SMEs for outsourcing and subcontracting in order to diminish the level of working conditions and increase precarious employment. The National Council of Unified Trade Unions of the Dominican Republic has also indicated that even if Act No. 488-08 adopted in December 2008 to regulate the development and the competitiveness of SMEs seems inspired by the provisions of Recommendation No. 189, fundamental rights at work are not ensured for all employees in SMEs. Similarly, the Pakistan Workers Federation and Força Sindical from Brazil stress that in many SMEs the basic rights of the workers are not fully ensured and implemented.

396. The Committee further notes that the Australian Council of Trade Unions (ACTU) expresses a similar concern in its contribution to the General Survey. The ACTU recalls that Paragraphs 3 and 6(1)(b) of the Recommendation provide that

² The Committee refers to paragraph 322 of its 2004 General Survey indicating the common range of employees in micro-, small and medium-sized enterprises. In the case of micro-enterprises, the most common range of employees is from one to five or one to ten, although some countries permit a maximum number of 25 or 50. The most common range for small enterprises is from ten or 20 to 50 employees. The maximum number of employees can be as high as 100 or 500, although very few countries use these high maximum numbers. In the case of medium-sized enterprises, the most common range is 50 to 100 or up to 250 employees, with a few countries using lower or higher minimum numbers of employees.

³ Plenary ruling of the Constitutional Court of 21 Nov. 2007 on a submission to find unconstitutional certain provisions of the special agrarian regime. In the ruling, the Constitutional Court referred to two "emblematic cases representative of special labour regimes at the national level", the special rural workers regime and the regime governing micro-enterprises and SMEs. The ruling recognizes the specific characteristics of the labour market in the rural sector (and in that of micro-enterprises and SMEs). The State fulfils its role of developing and promoting productive employment as an element of social progress through the adoption of specific measures to promote employment in particular sectors. The adoption of differentiated and minimum legislation in two specific sectors in relation to remuneration, annual leave and severance pay does not appear to be in breach of the fundamental rights set out in the national legislation. In its conclusions, the Constitutional Court refers to the importance of action by the public labour inspection services in monitoring compliance with labour provisions, and also refers to the Labour Inspection Convention, 1947 (No. 81), ratified by Peru in 1960.

workers in SMEs should benefit from “the basic protection available under other relevant instruments” and that measures should be taken which “ensure the non-discriminatory application of labour legislation, in order to raise the quality of employment” in SMEs. The ACTU expresses concern at the new measures adopted in 2009 to amend the 2005 Work Choices Act and the introduction of a Small Business Fair Dismissal Code.⁴ The Committee notes the new legislative provisions on termination of employment which now apply to enterprises with fewer than 15 employees and that the issues raised in this respect are covered in its comments on the application of the Termination of Employment Convention, 1982 (No. 158), which has been ratified by Australia.⁵

397. The Committee also notes the concerns expressed by the New Zealand Council of Trade Unions – Te Kauae Kaimahi (CTU) that measures to encourage competitive business success should not be taken at the expense of workers’ rights. The CTU notes that recent employment legislation allows businesses with fewer than 20 employees to dismiss new employees during their first 90 days of employment without cause or recourse to standard employment protections, such as personal grievance provisions. According to the CTU, this legislative reform undermines workers’ rights. The CTU emphasizes that minimum labour rights should apply to SMEs as well as to larger employers. The Committee notes that, in its response to the comments formulated by the CTU, the Government of New Zealand refers to the applicable legislation protecting workers against unjustified dismissal.

398. The Committee recalls that certain Conventions permit, in respect of undertakings of a specific size and nature, the exclusion of limited categories of workers after consultation with social partners.⁶ It further notes that some governments have endeavoured to take measures to promote employment through the exclusion of workers in small enterprises from the protection afforded by the Conventions that they have ratified.⁷ The Committee considers that any measures designed to promote full employment and encourage the creation of productive and sustainable jobs, particularly in small and medium-sized enterprises, should be adopted in consultation with the social partners, under conditions that are socially adequate for all those concerned, and in full conformity with the international instruments ratified by the countries concerned.

⁴ The Fair Work Act, 2009, replaced the 2005 Work Choices Act. In addition, the Small Business Fair Dismissal Code entered into force in July 2009.

⁵ CEACR (80th Session), observation, Convention No. 158 (Australia), report 2010.

⁶ The Termination of Employment Convention, 1982 (No. 158), provides in Article 2, paragraph 5, that “In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organizations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them”. Also, the Minimum Age Convention, 1973 (No. 138), permits, in Article 5, paragraph 3, the exclusion of family and small-scale holdings producing for local consumption and not regularly employing hired workers from the provisions of the Convention. These flexibility devices are subject to particular reporting obligations.

⁷ In France, following the adoption in August 2005 of the “new jobs” contract designed to establish specific conditions for recruitment and dismissal in enterprises with fewer than 20 workers, a representation was made to the ILO under article 24 of the Constitution. The Committee of Experts was requested to follow up the conclusions of the tripartite committee (GB.300/20/6, Nov. 2007). The Committee of Experts made comments in 2007 and 2008 on the application of Convention No. 158 by France.

399. Within this framework, the Committee recalls that, in its Conclusions concerning the promotion of sustainable enterprises, the Conference urges all enterprises, regardless of their size, to apply workplace practices based on full respect for fundamental principles and rights at work and international labour standards.⁸

(a) Establishment of an environment conducive to the creation and growth of SMEs

400. In the questionnaire, member States were invited to provide information on the promotion and pursuit of an environment conducive to the creation and growth of SMEs. On various occasions in its comments on the application of Convention No. 122, the Committee has underlined the relationship between the formulation of an active employment policy and the development of SMEs. Governments have been encouraged to provide information on the impact of the measures adopted to reduce the obstacles encountered by SMEs, for example in obtaining credit to start up a business.⁹ Governments have also been invited to update the information on SMEs so that new measures can be adopted to increase employment opportunities, improve conditions of work in the informal economy and facilitate the progressive integration of the sector into the national economy.¹⁰

(i) *Legislative framework*

401. The promotion of measures and regulations that are favourable to SMEs implies the establishment of a legal, administrative and regulatory environment that is conducive to the creation and growth of enterprises which generate high-quality jobs. The promotion of administrative and regulatory reforms based on social dialogue would appear to be essential for the establishment of an environment conducive to the development of SMEs.

402. In their reports, many governments emphasize the role of SMEs in the achievement of employment objectives, namely the reduction of unemployment, particularly among the young, poverty alleviation and measures to combat precarious employment.

403. The information examined shows that governments have implemented policies for the promotion of SMEs, either through legislative measures (at the level of constitutions, laws, decrees, regulations or statutory codes), or through the implementation of a national plan or strategy. For example, the Government of India indicates that the Micro, Small and Medium Enterprises Development Act, 2006, gives effect to the provisions of Recommendation No. 189, and focuses on facilitating the promotion, development and enhancing the competitiveness and productivity of SMEs. In their comments, the Trade Union Co-ordination Centre recommends increasing the potential for local employment in Indian rural and urban areas by providing fiscal support through easy financial mechanisms and developing training institutes for the sector. In its comments, the Bangladesh Employers' Federation (BEF) also highlights the importance of SMEs, which employ over 20 million workers in the country. It further indicates that the Government has established the SME Foundation focusing on this specific sector. Many NGOs and microcredit organizations are also working for the development of SMEs in Bangladesh. The BEF

⁸ Conclusions concerning the promotion of sustainable enterprises, ILC, 96th Session, Geneva, 2007.

⁹ CEACR (79th Session), observation, Convention No. 122 (China), report 2009.

¹⁰ CEACR (79th Session), observation, Convention No. 122 (Costa Rica), report 2009.

also recalls the success of the Grameen Bank in managing microcredit programmes in Bangladesh and in many other countries.

404. The Governments of Burkina Faso, Burundi and Mali indicate that they have established an environment conducive to small enterprises through the codes of investment and of taxation. In Senegal, Framework Act No. 29 of 28 July 2008 for the promotion and development of small and medium-sized enterprises provides a new legal framework for SMEs. Its principal objectives include the establishment of a conducive legal, institutional and fiscal environment, an agreed definition of SMEs, the taking into account of their specific characteristics and their economic vulnerability. The Act also redefines relations between SMEs and large enterprises, with particular reference to subcontracting, and it encourages the development of the transfer of technology from research institutions and universities to SMEs, as well as ensuring the provision of support in many forms to enterprises to make them more viable and competitive through appropriate assistance and promotion measures. In its contribution to the General Survey, the National Federation of Independent Unions of Senegal (UNSAS) indicates that there should be an evaluation of the impact of the Framework Act in terms of its effectiveness and outreach to Senegal's business and investment environment.

405. The Government of Morocco reported on the Charter of SMEs, issued by Act No. 53 of 2000, which establishes a legal framework for the promotion of SMEs. The Committee noted that the programme "Moukawalati" (My Enterprise), promoting self-employment and facilitating the implementation by entrepreneurs of SME projects, has resulted in the development of over 1,000 small enterprises. The Government of Yemen refers to Law No. 23 of 2002 creating the Al-Amal Microfinance Bank to provide financial support to persons with low incomes so that they can start up projects, with particular reference to women in rural areas. Associations composed of between five and nine women with a common project can benefit from financing to start up a project. The Jordan Chamber of Industry indicates that, together with the Ministry of Industry and Trade and the Jordan Loan Guarantee Corporation, it contributes to the promotion of SMEs by providing credit and loans.

406. In Japan, the Small and Medium Enterprise Basic Law is designed to reinforce support measures for the creation of SMEs. The Law on Small and Medium-Sized Business Development of the Republic of Lithuania, adopted in 2007, defines small and medium-sized entities and the different forms of state support to SMEs. A new body, the Small and Medium-sized Business Council, that is composed of representatives of associations, members of which are business entities, has been institutionalized with a view to ensuring cooperation between business representatives and state authorities. According to the Law, small and medium-sized entities shall comprise medium-sized enterprises, small enterprises (including micro-enterprises), and natural persons, who shall, in the manner prescribed by law, enjoy the right to engage in independent commercial, production, professional or similar activities, including activities which require a business certificate.

(ii) *Promotional measures*

407. With a view to creating an environment that is conducive to the growth and development of SMEs, Paragraph 5 of Recommendation No. 189 contains a detailed enumeration of support measures for SMEs. Paragraph 5(a) recommends member States to adopt appropriate fiscal, monetary and employment policies to promote an optimal economic environment (as regards, in particular, inflation, interest and exchange rates, taxation, employment and social stability), including access to credit. According to Paragraph 5(b), member States should further establish appropriate legal

provisions as regards, in particular, property rights, including intellectual property, location of establishments, enforcement of contracts, fair competition as well as adequate social and labour legislation.

408. The Committee notes that the promotion of micro-enterprises through microfinance programmes is an important aspect of enterprise development policies. Microfinance is defined as the provision of financial services to the poor on a sustainable basis. Financial services that the working poor need and demand include different types of credit, savings, guarantees, insurance, transfer payments, remittances and other transactions. By promoting microfinance, member States might also enable the poor and those excluded from market transactions to set up micro-enterprises.¹¹ In their replies to the questionnaire, most member States have reported on improvements to their financial services by easing access to bank guarantees, loans and grants for SMEs and micro-enterprises.

409. The Confederation of Swedish Enterprises (SN) reports that the organization has pushed for credits to SMEs and changes in the Employment Protection Act in order to increase the mobility of the workforce and facilitate the employment of young people. The SN also indicates that it has pressed for a simplification of rules applicable to companies and a reduction of administrative costs.

410. In Paragraph 6(2) of the Recommendation, Members are invited to remove constraints to the development and growth of small and medium-sized enterprises, arising in particular from inappropriate, inadequate or overly burdensome registration, licensing, reporting and other administrative requirements, including those which are disincentives to the hiring of personnel.

411. The Italian Confederation of Senior Management in Industry (CIDA) indicates in its contribution that the provisions of section 20 of Act No. 266/97 provide for incentives for the placement of unemployed managers and the activation of projects that are useful for their re-entry into work. The incentives last 12 months and, in that period of time, firms have the opportunity to consider whether to employ these managers.

412. Several member States have indicated that they have reduced the administrative formalities associated with starting up a SME. For example, in France the Act of 4 August 2008 on the modernization of the economy provides for the simplification of the administrative steps needed to be self-employed or to start up a business. In Belgium, the measures taken by the Agency for Administrative Simplification (ASA) now make it possible to establish a small business within three days.

413. In its replies, the Government of Latvia indicates that in order to reduce the administrative burdens for SMEs the delay for their registration has been reduced to three working days. According to the company law regulation and auditing law regulation, annual accounts and consolidated annual accounts may be submitted exclusively to the State Revenue Service, which has to provide this information to the Register of Enterprises by electronic means to accelerate the registration process of SMEs.

414. In Paragraph 8, the Recommendation refers to economic difficulties that SMEs may experience and calls for them to be provided with strong and effective assistance.

¹¹ See the policy statement on microfinance for decent work which the Governing Body adopted at its 294th Session, appendix to GB.294/11(Rev.), report of the Committee on Employment and Social Policy (Nov. 2005).

The Committee notes that during the period of the current crisis many countries have launched recovery plans and adopted specific measures to help SMEs. The objective of the recovery plans is to create jobs by stimulating demand through consumption or through investments. Some of these plans provide for spending on health services, education, technology and infrastructure, of which SMEs and the sectors concerned could be the direct or indirect beneficiaries.

(b) Service infrastructure

415. The Committee has examined the measures taken by member States with a view to developing a service infrastructure for SMEs. Paragraph 11 of the Recommendation provides that, in order to enhance the growth, job-creation potential and competitiveness of SMEs, consideration should be given to the availability and accessibility of a range of direct and indirect support services for them and their workers, including human resources development and the implementation of related support services. Paragraph 11 further refers to a series of additional measures to be implemented with a view to strengthening SME growth, their job-creation potential and competitiveness, including: business pre-start-up, start-up and development assistance; business plan development and follow-up; business incubators; information services, including advice on government policies, etc.

416. In Mexico, the Fund for Productive Projects for Economic Development supports projects which promote and form production chains that strengthen the competitiveness of SMEs and develop high value added business through the application of technological knowledge and progress.

417. In Belarus, the Government carried out national programmes to establish favourable conditions for the sustainable development of small enterprises through the development of mechanisms for industrial cooperation between small business entities and large market participants; cooperation with entrepreneurial organizations; development of information support for small enterprises; and development of international cooperation for small enterprises.

418. The Recommendation calls on member States to facilitate the access of SMEs to research, innovation, information and communication technologies. Partnerships between enterprises and the establishment of research centres are essential to encourage innovation. Governments are called upon to pursue policy measures which, among other aims, reinforce the exchanges developed by skills centres, bring enterprises closer to universities, focus efforts on promoting the technological development of SMEs, and improve access to venture capital with a view to facilitating innovation.

(c) Development of an enterprise culture

419. Governments were also requested to provide information on the promotion of an enterprise culture to encourage the development of enterprises and the creation of jobs, as envisaged in Paragraph 10 of the Recommendation. Success in developing an enterprise culture essentially requires investment in training and the adoption of measures that take into account the specific needs of women and of disadvantaged and marginalized groups in society.

420. Although a large number of replies provide information on SME promotion policies, they do not provide information on the development of an enterprise culture, and some governments recognize that efforts still have to be made in this regard. In its reply, the Government of Indonesia highlights the fact that competitiveness and entrepreneurial spirit should be improved in order to assist SMEs' growth.

421. The Government of France indicates that the transmission of an enterprise culture starts at school by raising the awareness of young persons in relation to enterprises. Accordingly, a Council for the Extension of an Economic Culture (CODICE) has been set up in the Ministry of the Economy, Industry and Employment. The “vocational discovery” option has been launched in secondary schools and mini-enterprises have been developed in the secondary education system in the context of a partnership with the association Starting up a Business to Learn.

422. The Small Enterprises and Handicraft Development Authority (SEHDA) in Mauritius contributes to promoting the dissemination of an enterprise culture in SMEs by organizing several information activities, such as the Entrepreneurship Week. The itinerant programme “Caravan of SMEs”, launched in 2009, has provided a means of touring the country, and in particular of reaching out to rural areas and of providing support for small-scale entrepreneurs so as to help them start up new enterprises or improve existing businesses.

423. In Tunisia, measures have been taken to develop an enterprise culture and to spread an individual initiative culture at the university level through academic courses. These courses last one year and are designed to promote the integration of university graduates into the labour market by developing their capacity to pursue their own business project and be self-employed through, for example, the provision of tools and training in methods for the creation of enterprises and project development.

424. Following the adoption of Act No. 1014 of January 2006 on the promotion of an enterprise culture, the Government of Colombia has taken measures to introduce the teaching of business management techniques into school programmes. In March 2008, Costa Rica adopted Executive Decree No. 34112 which establishes the legal framework for the national programme to support micro-enterprises and social mobility. In Peru, the objectives of the *Mi Empresa* programme include the development of an enterprise culture among heads of enterprises. With ILO technical assistance, the Government of Peru has introduced business management courses into the secondary education system. It has also established a Research and Development Fund for Competitiveness.

(i) *Investing in training*

425. As noted in the questionnaire, in order to stimulate competitiveness, enterprise growth and job creation, it is important for enterprises to have access at the local and national levels to support services for the development of human resources. These should be encouraged, under the terms of Paragraph 11 of the Recommendation, through the promotion and development of enterprise-based training, support for training in occupational safety and health, and assistance in upgrading the literacy, numeracy, computer competencies and basic education levels of managers and employees.

426. The Committee notes that certain governments indicate in their replies that they do not yet have programmes for the establishment of service infrastructures, nor have they taken specific measures for the development of an enterprise culture (Benin, Jordan). The Government of Haiti, for example, indicates that it has not yet formulated a real policy to promote investment in this field, despite the adoption of training measures, and in its reply the Government of Cameroon indicates that it needs technical support to develop and enhance the training of future entrepreneurs. The Government of Iraq also indicates that the ILO submitted a programme on the development of trainers’ capacities in order to permit the unemployed to enter the world of business. The programme organized a workshop for trainees from the Ministry of Labour to adopt the project and include it in the training programmes at

such ministries. This initiative resulted in the formulation of a national programme for inclusion in educational and training curricula. The Government indicates that further technical support for the above programme is needed to develop a legal framework for the promotion of SMEs.

427. Investment in human resources also presupposes that public policies promote an approach of employability based on knowledge and skills. In its report, the Government of Algeria notes the introduction of training programmes for promoters on techniques for the creation and management of activities, particularly in the field of handicrafts, and indicates that nearly 7,000 persons working in handicrafts have benefited from training in this framework. In Benin, the National SME and Small and Medium-sized Industries (SMI) Charter provides, in section 12, that the State shall train SME–SMI managers and employees in management techniques, the “quality approach” concept, export techniques, creativity, innovation and, in particular, an enterprise culture through the strengthening of support structures.

428. The Government of Japan has developed a series of programmes of vocational training for jobseekers and young students who will be seeking a job in the near future. With the collaboration of universities and technical colleges, which normally gravitate around larger enterprises, human resources development has been extended to regional SMEs so that jobseekers can meet heads of enterprises on the occasion of employment fairs.

429. In New Zealand, the Ministry of Economic Development has established the APEC–IBIZ Training and Certification Programme to strengthen the development of human resources in SMEs. Business advisers and mentors have also been made available to entrepreneurs and SME managers to provide assistance and guidance.

430. In Senegal, the system established by the Technical Education and Vocational Training Development Fund (FONDEF) allows enterprises to offer training at only 20 per cent of the normal cost. An Internet site covers the FONDEF, on which applicants for training can find the registration forms online, together with information on microfinance institutions and the various enterprise support services.

(ii) *Awareness-raising campaigns*

431. SMEs can play an essential role in promoting greater economic participation by disadvantaged and marginalized groups in society, as indicated in Paragraph 2(d) of the Recommendation. In its replies, the Government of the Czech Republic indicates that, with a view to encouraging activities by disadvantaged groups, the Labour Code provides for a guaranteed minimum wage and lowest guaranteed wage levels for workers aged between 18 and 21 years in the context of their first job in an SME for a period of six months after they are taken on.

432. Paragraphs 10(4) and 16 of the Recommendation are complementary in inviting member States to design and implement, with full involvement of employers and workers concerned, awareness campaigns to promote, on the one hand, respect for the rule of law and workers’ rights and, on the other, to take due account of the specific needs of women and of disadvantaged and marginalized groups.

433. The Government of Nepal indicates that the Industrial Enterprise Act of 1992 was adopted to foster the development of SMEs and to help create employment opportunities for disadvantaged and marginalized groups (women, Dalits, indigenous and tribal peoples, etc.).

434. In its replies, the Government of Bahrain indicates that the Ministry of Social Development and the Development Bank have taken promotional measures to

facilitate the access to financing of certain social categories, with special reference to housewives to start up an SME. In the United Arab Emirates, special funds and programmes have been made available for young graduates wishing to engage in the creation of SMEs. These include the Ambition Programme implemented by the Emirates Bank, the SME Development Unit in the Economic Development Directorate in Dubai and the Khalifa Fund for the Promotion and Development of SMEs, which targets young graduates, as well as young businessmen and business women, through guidance, support and training. Women with home-based businesses are also supported by the Khalifa Fund.

435. The Government of Benin also indicates that a special SME–SMI programme is developing and equipping infrastructure for the benefit of women’s groups active in the cultivation of shea, manioc and palm nuts. In Senegal, specific measures have been taken to promote women’s entrepreneurship in the context of Framework Act No. 29-2008 of 6 February 2008 respecting the promotion and development of SMEs. In section 33, the Act reinforces and follows the SME Charter of 2003 by providing that 15 per cent of the proportion of public contracts set aside for SMEs have to be awarded to enterprises belonging to women.

436. In Greece, the programme “Promotion of Women’s Entrepreneurship” is targeted at the development, support and promotion of women’s entrepreneurship through financial support with a view to creating new and sustainable SMEs in the manufacturing and service industries, with emphasis being placed on economic growth at the regional and local levels. Other programmes have also been developed in this context, such as the “Subsidies for the provision of integrated interventions in favour of women”, “Positive actions in favour of women in small and medium-sized and large enterprises” and “Improving the conditions for the inclusion of vulnerable groups of women in the labour market”. The Government refers in its reply to a number of institutions and services to assist women entrepreneurs, such as the Greek Association of Women Entrepreneurs, the Information portal for women entrepreneurs and the National Chamber Network of Greek Women Entrepreneurs (EEDERGE). Awareness-raising measures also cover young persons and persons with disabilities. For example, the programmes “Enhancement of youth entrepreneurship” and “Enhancement of entrepreneurship for persons with disabilities” are designed to raise the awareness of youth and persons with disabilities concerning the SME environment and have also resulted in the creation of 250 new jobs. There is also a programme to promote entrepreneurship among the Roma people.

Summary

Recommendation No. 189

- ✓ **Recommendation No. 189 provides a specific framework to ensure that small and medium-sized enterprises, as well as micro-enterprises, create jobs in compliance with international labour standards.**
- ✓ **Consultation with the social partners and other stakeholders operating in the micro-enterprises and SME sector facilitates the adoption of policies and measures conducive to economic growth and job creation.**
- ✓ **Policies and programmes designed to promote full employment and to encourage the creation of productive and sustainable jobs in SMEs should be adopted in line with ratified international instruments.**
- ✓ **The promotion of an enterprise culture, and the adoption of measures that ease the burden of starting up a business, as indicated in Recommendation No. 189, are valuable means of integrating more workers into the formal economy.**
- ✓ **Access to credit and other incentives should be improved to enable people to set up micro-enterprises.**

Chapter V

The Promotion of Cooperatives Recommendation, 2002 (No. 193)

1. Introduction

437. The ILO recognized from the outset the role of cooperatives in employment creation and their contribution to the achievement of social justice. Accordingly, at its Third Session (in March 1920), the Governing Body established a Cooperatives Branch within the Office with a view to collecting full information on the cooperative movement and developing relations with the principal national and international cooperative organizations.

Definition of cooperatives

The Committee observes that Paragraph 2 of Recommendation No. 193 defines the term “cooperative” as an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.

The Committee further notes that cooperatives are based on a system of values and principles, as set out in Paragraph 3 of the Recommendation. The fundamental cooperative values are listed in Paragraph 3(a): self-help, self-responsibility, democracy, equality, equity and solidarity; as well as ethical values of honesty, openness, social responsibility and caring for others. The cooperative principles are listed in Paragraph 3(b): voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for community.

438. Article 12, paragraph 3, of the ILO Constitution, as adopted in 1946, includes a reference to cooperatives, authorizing the Organization to “make suitable arrangements for such consultation ... with recognized non-governmental international organizations, including international organizations of ... cooperators”. The Office has encouraged the development of cooperatives, mainly through technical assistance and information, and provided advice to governments, as well as to employers’ and workers’ organizations and cooperative organizations, on their role in this area.

439. With a view to establishing a legal framework for cooperative activities, at its 50th Session (1966), the Conference adopted Recommendation No. 127 concerning the role of cooperatives in the economic and social development of developing countries. Recommendation No. 127 is recognized as having played an important role in the support provided for cooperative development through legislation, policy, human resources development and financing.

440. During the 1980s, cooperatives underwent restructuring to adapt to a new economic and political situation in which some countries no longer engaged in their

promotion. It was in this context that the ILO considered that new standards were indispensable to guide and assist in the development of cooperatives, particularly in view of the fact that the scope of Recommendation No. 127 was limited to developing countries.

441. At its 274th Session (March 1999), the Governing Body therefore decided to place on the agenda of the 89th Session (2001) of the Conference the issue of the promotion of cooperatives with a view to the adoption of a revised standard. The Promotion of Cooperatives Recommendation (No. 193) was accordingly adopted in June 2002. The Recommendation reflects the new changes in the socio-economic environment in which cooperatives have to operate. It replaces and extends the scope of Recommendation No. 127, making Recommendation No. 193 universal in its scope of application. It reflects both the constraints and opportunities arising from globalization.

442. The Committee notes that Paragraph 2 of Recommendation No. 193 defines a cooperative as “an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise”. This definition was already set out in the International Co-operative Alliance (ICA) Statement on the Co-operative Identity of 1995.

443. The Recommendation places emphasis on the autonomy of cooperatives while, at the same time, highlighting the essential role of governments in establishing an appropriate policy and a legal and institutional framework. The social partners and cooperative organizations are also included in the Recommendation as essential actors in cooperative development.

444. The Recommendation focuses on four main issues: recognition of the importance of the role of cooperatives in economic and social development; the definition of the role of governments in the establishment of a supportive environment for the development of cooperatives; the active role of employers’ and workers’ organizations and of cooperative organizations; and the encouragement of international cooperation.

445. Under the terms of Paragraph 4 of Recommendation No. 193, member States should adopt measures “to promote the potential of cooperatives in all countries, irrespective of their level of development”. The promotion and strengthening of the identity of cooperatives should be encouraged on the basis of cooperative values and principles.

446. At its 96th Session (2007), the Conference adopted Conclusions concerning the promotion of sustainable enterprises, which indicate that cooperatives should have easier access to financing. The Conclusions also highlight the role of cooperatives as a means to address specific and marginalized groups within Decent Work Country Programmes.¹

447. Finally, in the Global Jobs Pact adopted by the Conference at its 98th Session (2009), a response to the crisis included “recognizing that cooperatives provide jobs in our communities from very small businesses to large multinationals and tailoring support for them according to their needs”.

¹ ILC, 96th Session (May–June 2007), *Provisional Record* No. 15, paras 11 and 24.

448. In the context of the present General Survey, the Committee has examined for the first time the measures adopted by member States to give effect to the provisions of the Recommendation. The questionnaire sent out to Governments invited them to provide information on the establishment of a policy and legal framework favourable to the development of cooperatives. The replies to the questionnaire have provided substantive information on the role of cooperatives in the establishment and development of income-earning activities and sustainable and decent jobs. Against the background of the global economic crisis, it is an appropriate time to examine cooperatives as self-help enterprises and to note that they are resisting the crisis better and are continuing to promote economic growth.²

2. Links with other international standards promoting cooperative identity

449. Recommendation No. 193 and two other international instruments contributed to the development of a framework for the cooperative movement: the Statement on the Co-operative Identity, adopted in 1995 by the International Co-operative Alliance, and the Guidelines aimed at creating a supportive environment for the development of cooperatives, drawn up by the United Nations in 2001.

(a) International instruments

450. At its 23rd Session (1968), the United Nations General Assembly requested the Economic and Social Council (ECOSOC) to examine the role of cooperatives in economic and social development. ECOSOC emphasized the importance of close collaboration between the Secretary-General of the United Nations, the ILO, the Food and Agriculture Organization (FAO), the United Nations Industrial Development Organization (UNIDO) and the International Co-operative Alliance (ICA), with a view to the formulation of a concerted programme of action in the field of cooperatives. The Joint Committee for the Promotion of Agricultural Cooperatives was established in 1971, and immediately, from 1973, the scope of its action was expanded to include the promotion of all categories and forms of cooperatives. In 1989, with a view to reflecting the changes that had occurred in relation to cooperatives, and at the same time to reinforce their action at the international level, the Joint Committee redefined its objectives and its name was changed to the Committee for the Promotion and Advancement of Cooperatives (COPAC). The members of the COPAC include the United Nations, FAO, the ILO and two non-governmental organizations, namely the ICA and the International Federation of Agricultural Producers (IFAP).

451. In 2001, COPAC was entrusted with the task of drawing up guidelines for the development of cooperatives. The guidelines, which were adopted in 2001 by the United Nations General Assembly, are aimed at the creation of a supportive environment for cooperative development.³ They contain recommendations on policy regarding cooperatives and the cooperative movement, including the need for public recognition of cooperatives, appropriate legal, judicial and administrative provisions, research, statistics and information, education on cooperatives, the provision of public

² J. Birchall and L.H. Ketilson: *Resilience of the cooperative business model in times of crisis*, Sustainable Enterprise Programme, ILO, Geneva, 2009.

³ *Guidelines aimed at creating a supportive environment for the development of cooperatives*, adopted by the General Assembly at its 56th Session, 2001.

funds for support to cooperatives and the need for institutional arrangements for collaboration and partnership.

452. In 2008, the United Nations General Assembly adopted Resolution No. 62/128 on cooperatives in social development. The Resolution places emphasis on the contribution of cooperatives to sustainable development, the eradication of poverty and the creation of livelihoods in various economic sectors in urban and rural areas. It also urges governments, relevant international organizations and the specialized agencies, in collaboration with national and international cooperative organizations, to take measures to support the development of cooperatives. Among these measures, the Resolution refers in paragraph 4(c) to developing an effective partnership between governments and the cooperative movement through joint consultative councils or other advisory bodies, implementing better legislation, sharing good practices, training, technical assistance and capacity-building of cooperatives, especially in the fields of management, auditing and marketing skills.

453. The International Co-operative Alliance (ICA), an independent non-governmental organization founded in London in 1895, adopted a Statement on Co-operative Identity in 1995. The ICA unites, represents and serves cooperatives worldwide. It currently has 223 member organizations from 85 countries from the various economic sectors, representing over 800 million individuals worldwide. The ICA Statement offers an example of the contribution of non-state bodies to the formulation of new international rules.

454. The extract from the ICA Statement covers the seven cooperative principles that are included in Paragraph 3(b) of Recommendation No. 193: voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for community. In accordance with the cooperative ideal, the free will of members to work together is one of the keys of their motivation and the primary basis for the establishment of a cooperative. If a principle is not respected, the cooperative mechanism is defective and cannot function properly.

455. The exercise of democratic control by the members of a cooperative means that they have equal voting rights in accordance with the rule of "one member, one vote". The economic participation of members signifies that members contribute equally to the capital of their cooperative and part of the capital is usually the indivisible property of the cooperative. Autonomy and independence require non-interference in the activities of cooperatives and the maintenance of their autonomy. These first four principles are fundamental principles in the absence of which a cooperative would lose its identity. They guarantee the conditions in which the members contribute, possess, control, benefit from the cooperative and share the economic and financial risks. The principle of education, training and information is a means of action that allows members to contribute fully to the development and promotion of cooperatives. Cooperation among cooperatives is an enterprise strategy leading to the strengthening of the cooperative movement at both the national and international levels, without which cooperatives would be economically vulnerable. Cooperatives should also be able to federate, particularly to remain competitive in order to defend their own interests. The last principle, concern for community, presupposes the contribution of cooperatives to sustainable development, which could imply their responsibility in relation to globally recognized problems, such as environmental protection, social justice and decent work, as well as poverty alleviation, always in the framework approved by their members.

(b) Regional instruments

456. In recent years, in response to globalization and the intensification of competition, regional organizations have endeavoured to develop cooperative legislation to guide the formulation of national cooperative laws in the various member States. For example, in 2003, the Council of the European Union adopted Regulation (EC) No. 1435/2003 on the Statute for a European Cooperative Society, as a legislative framework for cross-border cooperatives.⁴

457. The 16 member States of the Organization for the Harmonization of Business Law in Africa (OHADA) are proposing to adopt a Uniform Act on cooperatives. The Uniform Act would provide a common legal framework for all the member States of OHADA, offering greater security for the activities of cooperatives and their relations with their partners, while maintaining their specific characteristics.⁵

458. The *Ley marco para las cooperativas de América Latina* a Model Framework Act, was adopted in 2008 by ICA-Americas. It was established jointly with the ILO and the participation of other stakeholders. The Model Framework Act reflects the provisions of Recommendation No. 193 and contains 102 sections setting out provisions on general matters, statutes, members, social integration, cooperative bodies, dissolution and liquidation. A cooperative statute for MERCOSUR was proposed in April 2008.⁶

(c) ILO instruments

459. The preamble to Recommendation No. 193 refers to the 1998 Declaration on Fundamental Principles and Rights at Work and the fundamental and other Conventions with which it is closely linked, including the instruments covered by the present General Survey. Among other action, Paragraphs 4 and 5 of the Recommendation call for the adoption of measures to create and develop income-generating activities and sustainable decent employment and to respond to the needs of cooperative members, including those of disadvantaged groups in order to achieve their social inclusion, which is in line with the objectives of Convention No. 122.

460. With regard to Convention No. 142, Recommendation No. 193 recognizes the key role of training and the development of technical and vocational skills in the promotion of cooperative activities (Paragraph 8(1)(e) and (f)). It calls for the improvement of the access of members, workers and managers to information and communication technologies and refers, in Paragraph 8(1)(h), to training as a means of improving the level of productivity and competitiveness of cooperatives, and the quality of the goods and services they produce.

461. The Committee notes that the link between employment creation and small and medium-sized enterprises (SMEs) is evident in the great majority of countries. Indeed, as the majority of cooperatives are SMEs, policies for the promotion of SMEs also apply to cooperatives. Recommendation No. 189, in Paragraph 4, clearly establishes that its provisions apply to all branches of economic activity and all types of small and medium-sized enterprises, irrespective of the form of ownership (for example, private and public companies, cooperatives, partnerships, family enterprises and sole proprietorships). The adoption of Recommendation No. 193 reaffirms the importance

⁴ *Official Journal of the European Union*, L 207, 18 Aug. 2003, pp. 1–24.

⁵ Finalization of the draft OHADA Uniform Act on cooperatives: <http://www.ohada.com/AUSCM/>.

⁶ See <http://www.mercosur.coop/recm/spip.php>.

of the legal status of cooperatives, which needs to be distinguished from that of other economic entities.

462. The Committee notes that almost all governments have reported on the adoption of a policy for the promotion of cooperatives. However, governments do not always make it clear whether their replies relate to all SMEs, including cooperatives, or whether they see cooperatives as distinct from SMEs. Paragraph 8(1)(a) of the Recommendation calls for the joint promotion of the ILO fundamental labour standards and the 1998 Declaration “for all workers in cooperatives without distinction whatsoever”. Paragraph 8(1)(b) refers to the need to combat “pseudo cooperatives” by ensuring that cooperatives are not set up for, or used for, non-compliance with labour law. Cooperatives must not be used to establish “disguised labour relationships”. National policies should combat “pseudo cooperatives” that violate workers’ rights, among other measures, by ensuring that labour legislation is applied in all enterprises. The Committee notes that Recommendation No. 193 anticipates the guidance set out in the Employment Relationship Recommendation, 2006 (No. 198), which is also aimed at defining clearly the rights and duties of the parties to the employment relationship and at combating attempts to disguise the employment relationship, which may be a reason for setting up “pseudo cooperatives”.

463. In this respect, the Committee notes the concerns expressed by three trade union confederations in Peru concerning Act No. 27626, on temporary work cooperatives, which is intended to facilitate the provision of labour to user enterprises. The General Confederation of Workers of Peru (CGTP) indicates that the use of such forms of cooperatives contributes to avoiding the application of labour legislation. The Committee also notes the concerns raised by the General Confederation of Workers of Colombia (CGTC) on the growth of “pseudo cooperatives” in the form of *falsas cooperativas de trabajo asociado*, the emergence of which is often accompanied by the destruction of jobs and by massive lay-offs. Subcontracting to such “cooperatives” has made it possible for certain enterprises to lower their costs by reducing the number of workers covered by employment contracts, reducing social security costs and avoiding labour law protection. The Committee notes the Government of Colombia’s reference to the provisions of the legislation on the forms of cooperatives and, in particular, the determination of compensation for work, which is assimilated to remuneration on the basis of the work carried out by workers in these “pseudo cooperatives”.⁷ The Government of Colombia indicates that a new legislative framework for workers’ cooperatives is now intended to integrate into this context the concept of decent work in accordance with the ILO’s principles and to create effective instruments to ensure their control by the State.

464. In its comments, the Italian Confederation of Workers’ Unions (CISL) emphasizes that the legal and political context is becoming less favourable for cooperatives, and particularly for small cooperatives, which encounter difficulties in gaining access to credit and to public contracts. With a view to reinforcing the cooperative movement, protecting workers’ rights and promoting their participation in the trade union movement, the CISL reaffirms the importance of establishing effective supervision of labour legislation. The Committee notes the Protocol concluded in 2007 between the Ministry of Labour, the Ministry of Economic Development and the

⁷ Decree No. 3553 of 16 September 2008 issuing regulations under Act No. 1233 of 22 July 2008 respecting the social contributions of associated work cooperatives and pre-cooperatives of associated labour. Decree No. 4588 of 27 December 2006 issued regulations respecting the organization and operation of associated work cooperatives and pre-cooperatives of associated labour.

representatives of the social partners and of cooperatives, which is intended to introduce greater supervision and penalties for pseudo cooperatives. The Committee notes that, according to the CISL, the Protocol does not appear to have been applied since 2008. The Committee also notes the comments made by the Confederation of Italian Cooperatives (CONFCOOPERATIVE), which proposes the development of techniques to raise awareness about cooperatives at the national, regional and international levels.

465. The Committee accordingly emphasizes the importance of ensuring the application of labour laws so as to avoid the emergence of “pseudo cooperatives”, which are only intended to gain access to the benefits related to the status of cooperatives, such as tax advantages or social security benefits, while avoiding the application of labour legislation. Such practices must be combated and eradicated, particularly in workers’ cooperatives.

3. Scope of the Recommendation

(a) Establishment of a supportive national framework for the creation and promotion of cooperatives

466. The replies to the questionnaire show that governments are fully aware of the role that cooperatives play in job creation, in integrating the most vulnerable categories of the population and, particularly, in economic growth. In its preamble, the Recommendation recognizes “the importance of cooperatives in job creation, mobilizing resources, generating investment and their contribution to the economy”. It also recognizes that cooperatives exist in various forms, including consumer cooperatives, financial cooperatives, housing cooperatives, workers’ cooperatives and service cooperatives. The Recommendation specifies that it “applies to all types and forms of cooperatives” (Paragraph 1). Moreover, by facilitating the full participation of vulnerable groups in local development, cooperatives in all their forms contribute to full employment and to improving social integration.

467. Most governments indicate in their replies that the policies adopted by the public authorities are intended to promote the development of cooperatives and to establish a supportive environment for their operation. This consists, among other approaches, of establishing appropriate legal and institutional frameworks which facilitate the creation, operation and viability of cooperatives through the adoption or modification of regulations and the removal of obstacles to their participation in certain types of economic activity. To a varying extent, member States indicate that they have adopted promotional measures, modernized their legislation or established a new legal framework to be in conformity with the provisions of the Recommendation.

(i) *Cooperative identity*

468. The Committee notes that national policies should be in compliance with cooperative values and principles, as mentioned in Paragraph 3(a) and (b) of the Recommendation, which require, in particular, the effective protection and strengthening of the economic and financial autonomy of cooperatives.

469. In this respect, the Committee notes with interest from the replies received that the great majority of countries refer to the cooperative principles in their legislation. The large majority of countries in Latin America and Europe, as well as countries such as China and India, refer to cooperative identity in their legislation. In Turkey, the legislation on cooperatives is being revised and the Committee expresses the hope that this legislation will give effect to the values and principles set forth in the

Recommendation. The Canada Cooperatives Act of 31 March 1998, in section 7(1), emphasizes the internationally recognized cooperative principles. In Mali, Act No. 01076 of 18 July 2001, governing cooperative enterprises, provides in section 2 that cooperative enterprises shall adhere to the cooperative principles, namely voluntary membership, democratic control, equity in the distribution of any economic gains, the limitation of liability to the capital, education and cooperation among cooperatives. Their statutes shall make specific reference to the above. The General Workers' Union (UGT) of Portugal indicates that the Cooperative Development Programme was created to assist the establishment of new cooperatives, and to promote the expansion of the scope of cooperatives and their federations and confederations.

470. In Paragraph 4, the Recommendation emphasizes the importance of promoting “the potential of cooperatives in all countries, irrespective of their level of development”, in order to assist them and their membership, among other aims, to create and develop income-generating activities and sustainable decent employment. The Recommendation also calls on governments to take measures that include special provisions for disadvantaged groups and to facilitate the integration of the informal economy into the formal economy (Paragraph 5).

(ii) *The role of governments in the promotion of cooperatives*

471. The Recommendation invites governments to develop a supportive legal framework for the development of cooperatives, adopt promotional measures and establish programmes and institutions to promote cooperative activities.

Legislative framework

472. In accordance with Paragraph 6 of the Recommendation, governments should “provide a supportive policy and legal framework consistent with the nature and function of cooperatives and guided by the cooperative values and principles”. More precisely, governments are expected to adopt a policy that is conducive to the establishment of cooperatives and to provide an appropriate legal and institutional framework.

473. The main purpose of cooperative legislation is to establish a specific framework in which cooperatives can carry out their functions at the service of their members, while respecting their autonomy. The legal framework governing cooperatives encompasses cooperative legislation in the strict sense of the term (that is, for example, laws and regulations respecting cooperatives and their internal rules), in the broad sense (that is labour law, competition law, tax law, accounting rules and the implementation mechanisms of cooperative law), as well as the applicable constitutions and regional and international standards.

474. Cooperative legislation may take on various forms: constitutional provisions concerning cooperatives, general legislation or sectoral regulations. Ongoing ILO research has found that 59 constitutions refer explicitly to cooperatives. In the Republic of Korea, article 123 of the Constitution guarantees the development of cooperatives by facilitating the independent organization of persons working in SMEs in the agriculture and fishing sector. The 1982 Constitution of Turkey refers in article 171 to cooperatives and provides that, in view of their benefits to the national economy, the Government shall take measures to promote them, with particular reference to those intended to increase production and protect consumers. In Italy, the social role of cooperatives is set out in article 45 of the Constitution: “The Republic recognizes the social role of mutual cooperation without the objective of private speculation. The Law shall promote and facilitate their development through the most

appropriate measures and shall ensure, by means of appropriate controls, their nature and purposes ...”.

475. Article 308 of the Constitution of the Bolivarian Republic of Venezuela, adopted in 1999, provides that the State shall protect and promote cooperatives. Article 55 of the 2009 Constitution of Bolivia indicates that the cooperative system is based on the principles of solidarity, equality, reciprocity and equity.

476. The Committee notes a tendency for several States to promote social cooperatives. These are cooperatives which either provide a social service to the public and their members or bring together different stakeholders, such as social service beneficiaries, social security insurance providers or municipalities, as well as members of the health-care profession. In some countries, social cooperatives promote the integration of certain categories of workers, such as workers with disabilities and unemployed persons.

477. In Spain, social cooperatives (joint social integration cooperatives in Catalonia, social integration cooperatives in the community of Valencia and the Basque country) have the objective of employing those who are systematically excluded from the labour market, such as persons suffering from recognized disabilities or persons having difficulties with social integration. Section 106 of the Act of 16 July 1999 defines social cooperatives as non-profit-making associations, whose interest on their capital is limited to the statutory interest rate.

478. In Italy, cooperative legislation offers a good example in terms of innovation and development, with particular reference to the legislation respecting social cooperatives. In practice, the latter perform very well in economic terms and in relation to employment and are present in almost all economic sectors. In November 1991, Act No. 381 developed and established a legal framework for social cooperatives as they had emerged autonomously. In particular, it created a new type of cooperative, known as a “social cooperative”, and established a distinction between two types: cooperatives providing social, sanitary or educational services, known as type A; and those engaged in the vocational integration of disadvantaged categories of persons, known as type B. In section 1, Act No. 381 specifically recognizes that such cooperatives are pursuing “the general interest of the community, with a view to the human development and social integration of citizens”. The Act also provides for a category of members who are only active on a voluntary basis, and the development of more favourable relations between social cooperatives and public administrative services.

479. General legislation supplemented by administrative regulations can also be used to cover all types of cooperatives at the national level: this is the most common form of cooperative legislation, and is found, for example, in Bahrain,⁸ Burkina Faso,⁹

⁸ Law No. 24 of 2000 regulating cooperative associations.

⁹ Decree No. 2004-039 of 11 February 2004 giving effect to Act No. 014/99/AN of 15 April 1999 issuing the Regulations respecting cooperative societies and groups in Burkina Faso.

Madagascar,¹⁰ Morocco,¹¹ Mozambique,¹² New Zealand,¹³ Senegal,¹⁴ Sudan¹⁵ and Uruguay.¹⁶

480. The Independent Self-Governing Trade Union Solidarity (SOLIDARNOŚĆ) refers to the Act of 27 April 2006 on social cooperatives which in Poland provides for a special solution and a tool to create new jobs and promote the social reintegration of vulnerable groups of the population such as youth, women and the poor.

481. In other countries, sectoral legislation exists for cooperatives in the various cooperative sectors, such as for housing and agricultural cooperatives in the Syrian Arab Republic,¹⁷ fishing cooperatives in Mauritania¹⁸ and agricultural cooperatives in Greece.¹⁹ In Tunisia, Act No. 2005-94 of 18 October 2005 applies to mutual agricultural service societies and in its report the Government indicates that cooperative legislation is currently being revised with a view to promoting employment in the sector. The Government of China indicates that the Law on Farmers' Specialized Cooperatives, which entered into force in July 2007, is based both on the actual situation in China and the experience of basic principles of the international cooperative movement.

482. Specific chapters of more general codes, such as the Companies Code in Belgium²⁰ and the Rural Code in France,²¹ contain provisions on cooperatives.

483. In federal States, cooperative legislation may take on various forms, including general cooperative legislation at the federal level not supplemented by laws at the level of each state. There may also exist cooperative legislation at the level of each state, such as in Australia. In South Australia the legislative framework for the cooperative movement consists of the Co-operatives Act of 1996 and the Co-operative and Community Housing Act of 1991. The two texts incorporate the cooperative principles, as set out in the Annex to Recommendation No. 193.

484. India enacted new legislation on multi-state cooperative societies in 2002. The Government also reported that various state governments have in place legislation providing a legal framework to regulate the activities of cooperatives. The Committee notes the statement made by the West Bengal State Board of the All India

¹⁰ Act No. 99-004 of 21 April 1999 respecting cooperatives.

¹¹ Act No. 1-93-166 of 10 September 1993 amending Act No. 24-83 establishing the general status of cooperatives.

¹² The Assembly of the Republic adopted a new law on cooperatives on 30 April 2009.

¹³ The Co-operative Companies Act 1996, which integrates the Industrial and Provident Societies Act 1908 into company law.

¹⁴ Act No. 83-07 of 28 January 1983 establishing the general status of cooperatives, and Decree No. 83-320 of 25 March 1983 implementing the Act.

¹⁵ The Cooperative Societies Act 2003.

¹⁶ Act No. 18407 of 24 October 2008 respecting social cooperatives.

¹⁷ Law No. 17 of 2007 respecting housing cooperatives; Law No. 21 of 1947, respecting agricultural cooperatives; and Law No. 317 of 1958 respecting cooperative associations.

¹⁸ Act No. 96-10 of 25 January 1996 amending Act No. 67-171 of 18 July 1967 respecting small-scale fishing and savings and credit cooperatives for small-scale fishing.

¹⁹ Act No. 2810 of 8 March 2000 on agricultural cooperatives, as amended by Act No. 3399 of 2005.

²⁰ Section 350: Common provisions for all cooperative societies.

²¹ Section L 521-1 of the Rural Code on agricultural cooperative societies.

Manufacturer's Organisation (AIMO) indicating that the principles enunciated in Recommendation No. 193 are all incorporated in the Co-operative Societies Act, but that implementation leaves much to be desired. AIMO refers to abusive practices by cooperative banks and asks for better compliance with the Co-operatives Societies Act in order to ensure that cooperatives play their useful role in society.

485. In Canada, cooperatives have to be established under provincial or federal law before they can acquire legal status. They can be established under the terms of provincial legislation that indicates their status and manner of operation, or in accordance with the Canada Cooperatives Act of 31 March 1998, when they carry on their undertaking in two or more provinces. The Canada Cooperatives Act governs the establishment of cooperatives at the federal level. In certain cases, the legislation is only applicable if it is supplemented by regulations covering the sectors concerned that have been approved by the public authorities.

486. The Committee recalls the importance of cooperatives being accorded no less favourable treatment "than those accorded to other forms of enterprise and social organization", while respecting their characteristics, particularly with regard to the formation of their capital and their governance, and of laws and policies taking into account the organization of cooperation between members with a view to promoting their economic, social and cultural interests through the establishment and operation of an enterprise. Referring to Paragraph 7, subparagraph 2, of Recommendation No. 193, respect for the characteristics of cooperatives should result in regulations being limited to the manner in which they are organized, irrespective of the specific activity of the cooperative society.

Promotional measures

487. Paragraph 6(a) of the Recommendation provides that the establishment of "an institutional framework with the purpose of allowing for the registration of cooperatives in as rapid, simple, affordable and efficient a manner as possible" is vital for the development of cooperatives. Moreover, support services for cooperatives are designed to strengthen, facilitate or improve the activities of beneficiaries or users by providing them with access to information that they may be lacking. These services include: advisory commercial services for enterprises, accountancy services and management tools; self-help services; credit facilities and training programmes.

488. The Recommendation places emphasis on the principle of equality of treatment between cooperatives and other types of enterprise. Governments should ensure that cooperatives are "treated in accordance with national law and practice and on terms no less favourable than those accorded to other forms of enterprise and social organization" (Paragraph 7(2)), while maintaining the nature and characteristics of cooperative identity, particularly in relation to their tax status. The Committee notes that the distinction between the activity and the form of the enterprise is being increasingly widely respected. This is, for instance, the case in Mexico with the Act on Savings and Credit Cooperatives of April 2009, which makes a clear distinction between the banking function and the form of enterprise engaged in this function.

489. Under the terms of Paragraph 7(2) of Recommendation No. 193, governments "should introduce support measures, where appropriate, for the activities of cooperatives that meet specific social and public policy outcomes, such as employment promotion or the development of activities benefiting disadvantaged groups or regions. Such measures could include, among others and in so far as possible, tax benefits, loans, grants, access to public works programmes, and special procurement provisions". Such measures should be introduced in consultation with

organizations of cooperatives, as well as the employers' and workers' organizations concerned.

490. The Committee notes that many governments indicate that specific support measures have been adopted for the promotion and development of cooperatives. The Government of the Republic of Korea indicates that, following the adoption of the Agriculture Cooperatives Act, 1994, and the Forestry Cooperatives Act, 2000, it has taken measures to promote the development of cooperatives. These cooperatives enjoy tax benefits, including lower tax rates on income, exemption from value added tax for the goods and services supplied and exemption from school tax. The State and the public authorities should also facilitate the access of cooperatives to bank loans. In China, the Government has established a system of microcredit loans for any person wishing to establish a cooperative.

491. In its Rural Development Programme 2007–13, the Government of Slovenia emphasizes the importance of creating a conducive environment for the development of cooperatives through the application of measures that are no less favourable than those accorded to other forms of enterprise.

Programmes and institutions

492. Under the terms of Paragraph 11 of the Recommendation, "Governments should facilitate access of cooperatives to support services in order to strengthen them, their business viability and their capacity to create employment and income ... These services should include, wherever possible: (a) human resource development programmes; (b) research and management consultancy services; (c) access to finance and investment; (d) accountancy and audit services; (e) management information services; (f) information and public relations services; (g) consultancy services on technology and innovation; (h) legal and taxation services; (i) support services for marketing; and (j) other support services where appropriate."

493. The Canadian Co-operative Development Initiative (CDI) is a new government programme designed to help people develop cooperatives and to research and test new ways of using the cooperative model. The CDI has two components: "advisory services" to provide technical support to groups wishing to start up new cooperatives and "innovation and research" for those who require assistance in the management of existing cooperatives. The latter component is managed jointly by the *Conseil Canadien de la Coopération et de la Mutualité* and the Canadian Co-operative Association.

494. According to the information provided by the Government of the United States, the Rural Business-Cooperative Service (RBS) programme provides support for cooperatives in the fields of research, management and marketing. It is also responsible for establishing vocational education and training services for agricultural and rural workers. It publishes studies on subjects including financial, legal and policy information, emphasizing the latest economic trends, which are an important source of data for cooperatives. On 8 April 2009, the Department of Agriculture developed a new database which will help to measure the impact of cooperatives on economic development.

495. In the United Arab Emirates, the Cooperatives Department of the Ministry of Social Affairs is responsible for promoting cooperative activities and establishing programmes to raise broad awareness of the economic potential of cooperatives. A strategy designed to extend the scope of cooperative activities is under preparation by the Ministry of Social Affairs, which will allow the development of cooperatives in sectors such as agriculture, tourism and personal services.

496. Some Latin American countries have a decentralized approach to cooperatives. In Ecuador, in accordance with Ministerial Decision No. 0747 of 23 August 2007, the Ministry of Social Welfare has decentralized services to cooperatives to its regional and provincial offices. In Argentina, the steering committee of the National Institute for Associations and the Social Economy includes representatives of the provinces appointed by the Executive. In Panama, provincial offices have been established by the Panamanian Autonomous Cooperative Institute, which also carry out studies on the promotion of specific types of cooperatives by region.

(b) Skills development for cooperatives

497. Paragraph 8 of Recommendation No. 193 recognizes the importance of developing the technical and vocational skills of all the parties involved in cooperatives, including their members, workers and managers, as a fundamental element in promoting their active participation. Experience shows that cooperatives that attach great importance to the education and training of their members perform better than others.

498. The Government of India reports that it has been implementing a Central Sector Scheme for Cooperative Education and Training through the National Cooperative Union of India (NCUI) and the National Council for Cooperative Training (NCCT). The Government is providing grants to the NCCT to conduct a cooperative training programme in the country. The NCUI also receives grants to implement the special scheme for the intensification of cooperative education in States where it is less developed.

499. The Government of Greece indicates that women's cooperatives benefit from education and training programmes financed by the European Union, UNESCO and other international organizations. The Government of Slovenia reports that the Cooperative Union contributes to the education and training of its members and provides legal advice in the areas needed for the development of their activities.

500. In Indonesia, Decree No. 4/U/SKB/2000 on cooperatives and entrepreneurship was adopted jointly by the State Ministry of Cooperatives and Small-scale and Medium-scale Enterprises and the Ministry of National Education. Its objective is to raise the awareness of the public of cooperative culture through the organization of vocational training for cooperative members. In South Africa, the National Skills Fund has established a financing facility to support the acquisition of new skills in cooperatives, with several programmes addressing vulnerable categories of the population.

4. The role of employers' and workers' organizations and cooperative organizations

501. Paragraphs 14 and 15 of Recommendation No.193 call on employers' and workers' organizations, and cooperative organizations, to play an active role in the promotion of cooperatives. Employers' organizations should contribute to promoting cooperatives by setting up support services in the various fields of enterprise development, such as information, education, training, management advice and other services. They should also help micro-enterprises in the informal economy to improve their competitiveness, profitability and visibility on the commercial market so as to improve their integration into the formal economy. Employers' organizations should also participate, in collaboration with workers' organizations and other interested

groups, in enterprise committees, work teams and other mechanisms established at the central or local levels to discuss matters affecting the cooperative sector.

502. Paragraph 16 of the Recommendation enumerates a non-exhaustive list of measures that workers' organizations could provide to workers in cooperatives, including: services to assist in the establishment of cooperatives, advisory services for the exercise of the rights of workers and education and training services.

503. In France, the Higher Cooperative Council is an advisory body reporting to the Prime Minister that is entrusted with all matters relating to cooperation and for proposing any practical measures to promote the development of its various sectors. Since 11 March 1997, the Council has issued an annual report on cooperatives and their development. The report is drawn up in close collaboration with the National Cooperative Union (GNC) and its 15 member federations. The Council is a tripartite body which consists of representatives of cooperatives, the public administration and Parliament. The GNC brings together various cooperative organizations and is entrusted with the promotion and defence of their common interests at the national and international levels.

504. In Greece, the Pan-Hellenic Confederation of Unions of Agricultural Cooperatives (PASEGES) coordinates the activities of Greek agricultural cooperatives. Its mandate includes undertaking activities for the promotion of cooperatives, representing the cooperative movement in relation to the State and international organizations, providing education and training services on cooperative issues and providing advice on restructuring in the rural sector, financial support and promotional measures for rural workers.

505. In Slovakia, the Cooperative Union, established in 1992, represents the interests of its members in relation to the national authorities. In collaboration with educational institutions, it participates in the design and implementation of training and education programmes for cooperative members.

506. In Burkina Faso, the Consultation Council of the Cooperative Movement is responsible, inter alia, for putting forward proposals for the promotion of the cooperative movement. It is composed of ministerial representatives, representatives of NGOs and of the Rural Confederation of Faso.

507. The Committee notes that joint structures of this type, composed of representatives of the Government, the respective organizations and other actors (public-private partnerships) are increasingly common in several countries. Their main mission is to advise governments concerning the development of cooperative policies.

508. Cooperative organizations are encouraged to establish an active relationship with the social partners with a view to creating a favourable climate for the development of cooperatives, to provide technical support services and commercial and financial services, invest in human resources development and represent cooperatives at the international level.

509. The globalization of relations and the exchange of information between cooperatives has proven to be particularly advantageous. The Recommendation calls for greater international cooperation in the form of exchanging information on the best applicable practices in such fields as employment creation and income generation, legislation, training methods and techniques, technology and product standards with a view to promoting relationships between national and international bodies and institutions involved in the development of cooperatives (Paragraph 18).

510. In Canada, the *Conseil Canadien de la Coopération et de la Mutualité* has been made responsible for creating a conducive environment for the development of French-speaking cooperatives. Its role is to coordinate the strategic orientation of the French-speaking cooperative movement and to act as a Pan-Canadian representative of the cooperative movement in relation to the federal Government and other partners with a view to establishing a regulatory framework and programmes that facilitate the development of the cooperative model.

Summary

Recommendation No. 193

- ✓ **Recommendation No. 193 provides a specific framework for the creation and maintenance of cooperatives which create jobs and contribute to income generation.**
- ✓ **Cooperatives, controlled by their members, are democratically structured on the principle of “one member, one vote”.**
- ✓ **The Committee emphasizes the importance of combating “pseudo cooperatives”, which are mainly intended to gain access to tax benefits and to avoid the application of labour legislation.**
- ✓ **Policies and programmes designed to promote cooperatives should enhance cooperative-specific management, marketing skills and good governance.**

Part B

Global overview of employment policies

Chapter I – Introduction

511. As indicated in the outline, this Part of the report will analyse the information obtained for the General Survey according to the framework that is set out below.

512. The Committee recalls at the outset that the essential purpose of any General Survey is to assess the extent to which member States comply with the relevant ILO standards. As regards the present General Survey on employment instruments, the underlying objective is to assess how member States perform in their commitment to (and the correlative efforts they have taken to achieve) the goal of “full, productive and freely chosen employment”.

513. The Committee expects that, in giving effect to the employment instruments covered by the General Survey, member States will take the necessary steps to attain and maintain full, productive and freely chosen employment. These include attention to the human rights dimensions of Conventions Nos 122 and 142, such as the rights to work and to education and training that were discussed earlier in this report. For this purpose, the Committee suggests three fundamental steps to best implement the Convention.

514. The first fundamental step that member States should take is to *commit politically* to obtain full employment, reflected in national legislation or key declarations of intent, such as a national plan or similar overall policy framework.

515. The second fundamental step that member States should take is to *build or strive to build the institutions* that are necessary to ensure the realization of the full employment objective. 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.

516. The third fundamental step that member States should take is to *make the best possible effort, in relation to their level of development and economic capacity*, to achieve and maintain full employment. This step includes ensuring that the macroeconomic, trade, investment and industrial promotion policies all take into account the objective of full employment and that they mutually support it; that adequate programmes are in place to support the training, retraining and redeployment of workers; that the necessary measures are taken to promote the growth of small and

medium-sized enterprises and cooperatives; and that targeted programmes are being deployed to overcome handicaps faced by vulnerable groups of workers and to remove labour market discrimination. This step also includes setting up databases reflecting regional demands.

517. In analysing whether member States have taken the above steps, the Committee focuses on, generally, whether or not the necessary conditions for attaining full employment are in place. In so doing, the Committee notes that without a policy commitment, essential institutions and a sincere correlative effort, there is little likelihood that full employment can be achieved for a sustained period.

518. Notwithstanding the above, the Committee is aware that, even with the basic mechanisms and institutions in place and the best political will and correlative effort, the desired economic and employment outcomes may still not be achieved for a variety of reasons. One basic reason is that the quality of the member State's policy may be inadequate. This in turn could be due to honest mistakes in the choice of policies; lack of knowledge of what constitutes the policies and programmes that are most likely to work; lack of coherence between macroeconomic and employment policies; failure to adequately monitor and evaluate the impact of policies; or simply the absence of the technical skills required for good employment policy design and implementation. These factors that limit the effectiveness of a member State's effort can, however, be overcome through such means as improved knowledge of what constitutes the best package of policies; better mechanisms for ensuring coherence between macroeconomic and employment policies; enhanced efforts to learn through a continuous process of monitoring and evaluating policies; more technical training for policy-makers; and technical assistance from the ILO and other agencies in cases where the local capacity to improve on these counts is lacking.

519. This concern for effective policy efforts is reflected in the instruments. Thus, the Conventions and Recommendations covered by the General Survey not only set out the necessary conditions for attaining full employment, but also provide guidance on the principles of good policy-making, such as the need to ensure policy coherence, to consult those affected by policies, to collect and analyse data on employment outcomes and to continuously monitor and evaluate policy performance. The Recommendations, in particular the Employment Policy Recommendation, 1964 (No. 122), the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), and the Human Resources Development Recommendation, 2004 (No. 195), give more comprehensive guidance on good policy objectives and the measures to be taken for attaining them. These Recommendations are typically distilled from ILO empirical research findings analysing the relative effectiveness of different types of policy instruments and their modes of implementation for achieving the objective of full employment.

520. The General Survey has attempted to examine relevant statistical trends in employment and labour market performance. Indicators of overall progress or retrogression in a country's employment situation include: data on trends in the rate of unemployment and underemployment, labour productivity, real wages, the extent of informal employment, the extent of low-paying and insecure jobs, the levels of skill and other mismatches in the labour market, the skill levels of the labour force and the opportunities for workers to acquire and upgrade their skills. In addition, a disaggregation of these trends by gender, age, level of education and skills, ethnic background and other differentiating variables, such as physical and mental disability and learning difficulties, provides the Committee with the basis for assessing how a country is ensuring equality of opportunity in employment.

521. Unfortunately, the data necessary for such a comprehensive review of trends are not available for many developing countries. The only variable for which data are available is the rate of unemployment and its change over time. These trends in unemployment rates are discussed in Chapter II of this Part.

522. Before proceeding to discuss trends in the rate of unemployment, it is important to first understand the main factors that explain a change in the level of unemployment. This is essential for a correct examination of the policy implications of the trends that are observed in the level of unemployment. Another basic concern is to clarify the relative importance of employment policy among the explanatory factors. This needs to be taken into account in the assessment of the quality and effectiveness of any given set of employment policies.

523. Trends in the level of unemployment provide the Committee with an objective measure of progress and serve a useful diagnostic function. Negative trends indicate that the countries in question require special attention. The explanation of the poor performance could be because:

- (i) the countries are not sufficiently committed to pursuing the goal of full employment (this includes a failure to ensure broader access to education and training for lower income groups, especially in countries with a highly unequal distribution of incomes);
- (ii) they are committed to the goal, but the extent and quality of the supporting effort is inadequate to the task; or
- (iii) notwithstanding effort and commitment, performance has been poor because of economic factors beyond their control, such as a collapse in commodity prices or the global economic crisis.

524. Good performance, on the other hand, would be *prima facie* evidence that both the country's commitment and effort have been adequate. Countries falling into this category would be the positive examples that have been noted by the Committee in its comments on Convention No. 122. These factors may be used by the Committee as a basis for identifying the principles and best practices of policy design and implementation that can then be made available to countries seeking to improve their employment and labour market performance.

525. However, the Committee notes that it is possible that some cases of good overall employment trends will nevertheless fall outside the positive examples because good employment outcomes may be simply due to favourable economic conditions and not to the policy commitments and efforts cited above; for example, in very small resource-rich economies. Fortunately, while this exception remains a theoretical possibility, it is quite rare in practice. Even in resource-rich economies, it remains doubtful whether a country that is not committed to full employment could sustain high overall employment over the long term. Moreover, there are likely to be shortcomings in other employment dimensions, such as equal opportunities and treatment for all workers.

526. The Committee further notes that, in studying employment policy, it is often difficult to establish clear and direct causal links between particular policies and employment outcomes. Further, there are usually significant differences of view on what constitutes the best policies in particular circumstances, depending in part on which political inclination, economic school of thought and corresponding policy worldview is dominant at a particular time.

527. For instance, there have periodically been some major differences in views on what constitutes the best employment policy. A key example relates to the objective of full employment. From the 1940s to the early 1970s, when Conventions Nos 122 and 142 were adopted, the Keynesian theory that full employment was both a desirable and feasible objective was dominant within the economics profession. Under this theory, it was quite clear how to define full employment in terms of a rate of unemployment and the types of macroeconomic policy instruments that should be deployed to attain it. However, when this theory was supplanted by the neo-liberal school of economics, taking root in the 1980s, the position became less clear. The notion of full employment was replaced by the notion of the “natural rate” of unemployment, determined by the structure of an economy and the institutions and policy regimes that prevailed. Within this alternative framework, a country with highly regulated markets would, for instance, have a high natural rate of unemployment. Any attempt to bring this unemployment down to, say, the previously held notion of full employment through expansionary macroeconomic policy would be utterly futile and, even worse, would only achieve an increase in the rate of inflation. An important corollary of this neo-liberal view is that the best way of improving the employment situation is to deregulate markets and reduce the influence of trade unions in order to increase flexibility and hence lower the natural rate of unemployment. The emphasis on market deregulation was especially acute in matters relating to the labour market, where achieving greater labour market flexibility became a key element of economic reform programmes in many countries. Critics of this approach have, however, argued that there is very little empirical evidence from country experiences with labour market reform to support this belief that increased labour market flexibility would lower unemployment significantly. They have also pointed out that some countries that have maintained a high level of labour market regulation and social protection have nonetheless succeeded in lowering unemployment.

528. The above is an illustration of the tension of which the Committee has to be aware when economic analysis intersects with legal analysis, both of which can be affected by the political, social and cultural conditions. This tension also exists in areas dealing with: the extent and pace at which trade, investment and financial policies should be liberalized; the extent to which governments should intervene in order to promote particular industries or to promote the adoption of more employment-intensive techniques of production; the types of institutions that would provide the best combination of economic security for workers and ensure flexibility for enterprises; and the extent to which the private sector should be involved in providing public services, such as job placement, training and other active labour market policies.

529. Concurrently, the Committee acknowledges that there are also many areas in which there is agreement within economic policy views. This is true with several aspects of policy-making, such as: the use of cost-benefit analyses to evaluate programmes; the analysis of both the intended and unintended effects of government expenditures and regulations on the incentives facing economic agents; and the need to analyse the trade-offs between the considerations of efficiency and equity that are inherent in many aspects of policy design. Thus, the Committee is aware that there may be some differences in views, but believes that these potential differences should not deter the General Survey from considering economic studies of various aspects of employment policy.

Chapter II – Overview of the current world employment situation

530. As a backdrop to the information obtained from the replies to the questionnaire, reports on the application of ratified Conventions and other relevant sources, the Committee would like briefly to summarize the statistical information that is available on the global employment situation. The main source of this statistical information is the ILO's Key Indicators of the Labour Market database which, inter alia, sets forth the unemployment rates and employment trends of 112 countries. The most recent year for which such data are available is 2007. The overall trends presented below do not thus capture the impact of the current global economic crisis on employment. However, this issue will be discussed after the presentation of employment trends up to 2007 using the most recent estimates produced by the ILO and other agencies on the employment impact of the crisis.

531. The Committee notes that data on the employment situation are either not available or do not exist in a form that is compatible with ILO statistical standards in about one third of ILO member States. This is a serious limitation on attempts to monitor employment trends in individual member States and globally. Thus, the Committee notes this limitation in the employment tables presented below; they cover only countries for which data are available.

532. The data referred to in the above paragraphs has been used to create tables 1–4 and figure 1, infra, which has also been supplemented by data from the World Bank World Development Indicators for the per capita GDP statistics. Tables 1 and 2, respectively, show the distribution of the average unemployment rate in developing countries. The tables for all countries are broken down by the level of development; that is, countries are grouped according to whether they are developed, transition or developing countries. The tables for developing countries are broken down by geographical region. There are three categories of unemployment rates: 0–5 per cent, 5–10 per cent and greater than 10 per cent. The tables present the number of countries within each category, the percentage of each category within the region as a whole, as well as the names of countries that fall in each category. For example, table 1 shows that 54 per cent of developed economies fall within the band of an unemployment rate of 5–10 per cent.

Table 1. Distribution of countries by average unemployment rate (1998–2007)

	Developed		Transition		Developing ¹	
	Number of countries	Per cent of region	Number of countries	Per cent of region	Number of countries	Per cent of total
0–5%	11 (Austria, Cyprus, Denmark, Iceland, Ireland, Japan, Luxembourg, Netherlands, Norway, Switzerland, United States)	42	0	0	18	28
5–10%	14 (Australia, Belgium, Canada, Finland, France, Germany, Greece, Israel, Italy, Malta, New Zealand, Portugal, Sweden,	54	9 (Czech Republic, Estonia, Hungary, Kyrgyzstan, Republic of Moldova, Romania, Russian Federation, Slovenia, Ukraine)	41	25	39

General Survey concerning employment instruments

	Developed		Transition		Developing ¹	
	Number of countries	Per cent of region	Number of countries	Per cent of region	Number of countries	Per cent of total
>10%	1 (Spain)	4	13 (Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kazakhstan, Latvia, Lithuania, Montenegro, Poland, Serbia, Slovakia, The former Yugoslav Republic of Macedonia)	59	21	33
Total	26	100	22	100	64	100

¹ Please refer to table 2 for country details.

533. In analysing table 1, the Committee is concerned that in almost one third of the countries in the sample, the average rate of unemployment during the period of 1998–2007 is above 10 per cent. This level of unemployment is extraordinarily high when considering that, at the time of the adoption of Convention No. 122 in 1964, many industrialized countries had full employment with a level of unemployment of around 3 per cent. The Committee recalls that, at that time, the prevailing view about unemployment in developing countries was that the unemployment rate would be typically low, because average incomes in those countries were very low and there were no systems of unemployment insurance. Thus, few people could afford to be unemployed and instead had to undertake any remunerative activity that was available, however short the hours were and however paltry the income. This was clearly the case for those working on family farms. In spite of the significant extent of rural to urban migration that has occurred in most developing countries since the 1960s, the expectation that the unemployment rate would remain low still remains valid. The reason for this is that migrants into urban areas who could not find wage employment would typically have to resort to some form of activity in the informal economy in order to survive. They would thus also be classified as being employed. Thus, in both rural and urban areas people who engaged in such low-productivity and low-paying activities would nevertheless be classified as employed while being seriously underemployed. Hence, underemployment rather than unemployment was considered the dominant problem in developing countries. Thus, there was an expectation that unemployment rates in both industrialized and developing countries would be considerably lower than the levels shown in table 1.

534. Table 1 also reveals that, in addition to the countries with unemployment rates of over 10 per cent, an additional 45 per cent of countries had unemployment rates of between 5 to 10 per cent. The Committee observes that these levels would be considered high in terms of the expectations described above. The unemployment rate was less than 5 per cent in less than one third of the countries.

535. Table 1 also provides separate figures for industrialized, transition and developing countries and reveals that high unemployment rates of over 10 per cent predominantly afflicted transition and developing countries. Only one industrialized country had an unemployment rate of over 10 per cent. In contrast, more than half of transition economies had unemployment rates of over 10 per cent, while the same was true of one third of developing countries.

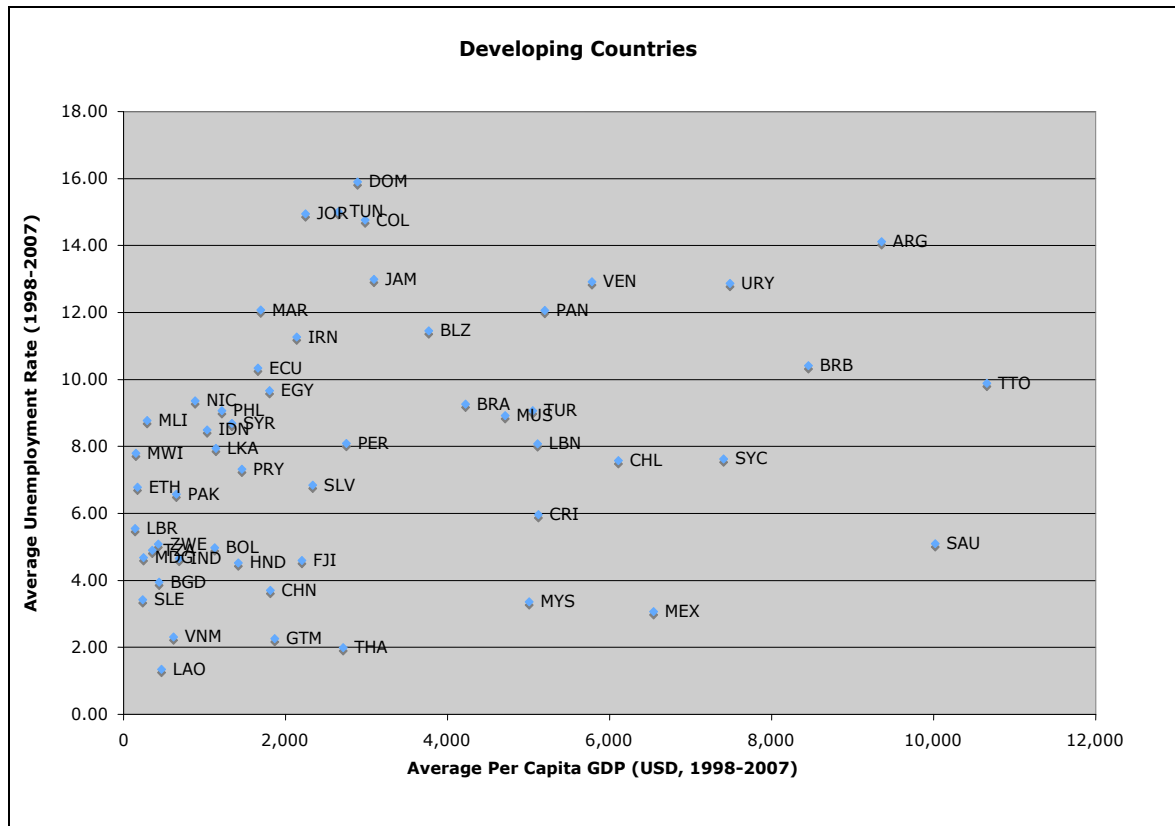
536. The Committee notes that there is a plausible explanation for the figures of the transition economies: the radical change in economic system that was implemented entailed a major economic collapse in output and a sharp rise in unemployment in many of these countries. The worst-affected countries have yet to recover fully from the economic trauma, and the high unemployment rates observed in half of the sampled countries may thus reflect the lingering effects of this transition process. Moreover, many of these countries now have systems of unemployment benefits, which make unemployment bearable for those unable to find work.

537. The situation is far more difficult to understand in developing countries, where there is an absence of definitive research to explain the discrepancy between the assumption that unemployment would be low in developing countries, on the one hand, and the fact that unemployment is so extraordinarily high in such a large proportion of them.

538. To better understand this discrepancy, figure 1 contains a graph of the relationship between the unemployment rate and the level of per capita GDP in developing countries. A reasonable hypothesis is that, as per capita income rises, both the “low income” and “absence of unemployment benefits” explanations for low unemployment become less clear. The unemployed would be in a better position to support themselves during periods of unemployment because they now would have higher incomes and would also be more likely to have access to unemployment benefits, as more countries would have begun to introduce such benefits. The Committee notes that, at first glance, figure 1 appears to show there is no discernible general relationship which could rule out the possibility that the rise in unemployment rates in developing countries is explained by rising average incomes. A closer examination of the graph, however, shows that this may be partly true. Seven out of the 21 countries with unemployment rates of more than 10 per cent are middle-income countries with per capita incomes of more than US\$5,000. But, this still leaves another 14 countries in which high unemployment coincides with low incomes. Furthermore, there is also a large concentration of countries with very low levels of per capita income that have unemployment rates of between 5 and 10 per cent.

539. Table 2 breaks down the unemployment rates by region in developing countries, and reveals that no developing country in Asia experienced exceptionally high unemployment. In contrast, the Committee observes that almost half of the countries in Latin America and one third of those in Africa have experienced such unemployment.

Figure 1 ¹



1 Countries analysed above include: Argentina (ARG), Bangladesh (BGD), Belize (BLZ), Bolivia (BOL), Brazil (BRA), Barbados (BRB), Chile (CHL), China (CHN), Colombia (COL), Costa Rica (CRI), Dominican Republic (DOM), Ecuador (ECU), Egypt (EGY), Ethiopia (ETH), Fiji (FJI), Guatemala (GTM), Honduras (HND), Indonesia (IDN), India (IND), Islamic Republic of Iran (IRN), Jamaica (JAM), Jordan (JOR), Republic of Korea (KOR), Lao People's Democratic Republic (LAO), Lebanon (LBN), Liberia (LBR), Saint Lucia (LCA), Sri Lanka (LKA), Morocco (MAR), Madagascar (MDG), Mexico (MEX), Mali (MLI), Mauritius (MUS), Malawi (MWI), Malaysia (MYS), Nicaragua (NIC), Pakistan (PAK), Panama (PAN), Peru (PER), Philippines (PHL), Paraguay (PRY), Sierra Leone (SLE), El Salvador (SLV), Seychelles (SYC), Syrian Arab Republic (SYR), Thailand (THA), Trinidad and Tobago (TTO), Tunisia (TUN), Turkey (TUR), United Republic of Tanzania (TZA), Uruguay (URY), Bolivarian Republic of Venezuela (VEN), Viet Nam (VNM), Zimbabwe (ZWE).

Countries not shown in the figure above include: Algeria, Bahamas, Botswana, Kuwait, Mauritania, Namibia, Singapore, South Africa, United Arab Emirates

Table 2. Distribution of developing countries by average unemployment rate (1998–2007)

	Asia		Middle East		Latin America		Africa	
	Number of countries	Per cent of region	Number of countries	Per cent of region	Number of countries	Per cent of region	Number of countries	Per cent of region
0–5%	10 (Bangladesh, China, Fiji, India, Republic of Korea, Lao People's Democratic Republic, Malaysia, Singapore, Thailand, Viet Nam)	71	1 (United Arab Emirates)	13	4 (Bolivia, Guatemala, Honduras, Mexico)	17	3 (Madagascar, Sierra Leone, United Republic of Tanzania)	17
5–10%	4 (Indonesia, Philippines, Pakistan, Sri Lanka)	29	4 (Lebanon, Saudi Arabia, Syrian Arab Republic, Turkey)	50	9 (Bahamas, Brazil, Chile, Costa Rica, El Salvador, Nicaragua, Paraguay, Peru, Trinidad and Tobago)	38	8 (Egypt, Ethiopia, Liberia, Malawi, Mali, Mauritius, Seychelles, Zimbabwe)	44
>10%	0	0	3 (Islamic Republic of Iran, Jordan, Kuwait)	38	11 (Argentina, Barbados, Belize, Colombia, Dominican Republic, Ecuador, Jamaica, Panama, Saint Lucia, Uruguay, Bolivarian Republic of Venezuela)	46	7 (Algeria, Botswana, Mauritania, Namibia, Morocco, South Africa, Tunisia)	39
Total	14	100	8	100	24	100	18	100

540. The Committee would like to highlight the phenomenon of high unemployment rates in developing countries, as its emergence suggests that the long-standing view ruling out the possibility of high unemployment in developing countries needs to be re-examined. In this setting, there may be variations between the primary, secondary and tertiary sectors. To re-examine the issue, it is important to study developing countries with high levels of unemployment, investigating what elements gave rise to the phenomenon, who the unemployed are and how they manage to survive with ostensibly neither income from employment nor from unemployment benefits. The Committee believes that these findings would be invaluable for the design of policies for attaining the goal of full, productive and freely chosen employment.

541. The Committee has also examined the changes in unemployment rates over the past decade. Table 3 presents information on unemployment rate changes over a period of roughly ten years in the sampled countries, and shows an unexpectedly positive picture for the period ending in 2007. Thus, two-thirds of countries experienced a decline in the rate of unemployment over this period, while less than one fifth saw a rise. This was generally true across countries at different levels of development, as well as across all regions of the developing world.

542. Tables 3 and 4 show the distribution of the change in unemployment up to the year 2007 within all countries as indicated in the tables, by the same general regions. Once again, there are three categories in which the countries are grouped: increasing, decreasing and no change. As with tables 1 and 2, tables 3 and 4 present the number of countries in each category and also the percentage of the category taken as a whole of the region. Table 3, therefore, shows that 69 per cent of the developed economies have unemployment rates that are decreasing.

Table 3. Distribution of countries by change in unemployment (1998–2007)

	Developed		Transition		Developing ¹	
	Number of countries	Per cent of region	Number of countries	Per cent of region	Number of countries	Per cent of region
Increasing	2 (Luxembourg, Portugal)	8	0	0	18	32
Decreasing	18 (Australia, Belgium, Canada, Cyprus, Denmark, Finland, France, Greece, Iceland, Ireland, Israel, Italy, Malta, New Zealand, Norway, Spain, Sweden, United Kingdom)	69	18 (Armenia, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Republic of Moldova, Poland, Russian Federation, Serbia, Slovakia, Slovenia, Ukraine)	90	32	57
No change	6 (Austria, Germany, Japan, Netherlands, Switzerland, United States)	23	2 (Romania, The former Yugoslav Republic of Macedonia)	10	6	11
Total	26	100	20	100	56	100

¹ Please refer to table 4 for country details.

Table 4. Distribution of developing countries by change in unemployment (1998–2007)

	Asia		Middle East		Latin America		Africa	
	Number of countries	Per cent of region	Number of countries	Per cent of region	Number of countries	Per cent of region	Number of countries	Per cent of region
Increasing	5 (Bangladesh, China, India, Indonesia, Singapore)	42	5 (Kuwait, Saudi Arabia, Syrian Arab Republic, Turkey, United Arab Emirates)	71	4 (Bolivia, Dominican Republic, Guatemala, Paraguay)	17	4 (Egypt, Mauritania, Mauritius, Namibia)	31
Decreasing	5 (Republic of Korea, Pakistan, Philippines, Sri Lanka, Thailand)	42	2 (Islamic Republic of Iran, Jordan)	29	16 (Argentina, Barbados, Belize, Chile, Colombia, Costa Rica, Ecuador, Jamaica, Mexico, Nicaragua, Panama, Peru, Saint Lucia, Trinidad and Tobago, Uruguay, Bolivarian Republic of Venezuela)	67	9 (Algeria, Botswana, Ethiopia, Madagascar, Morocco, Seychelles, South Africa, Tunisia, Zimbabwe)	69
No change	2 (Malaysia, Viet Nam)	17	0	0	4 (Bahamas, Brazil, El Salvador, Honduras)	17	0	0
Total	12	100	7	100	24	100	13	100

543. The Committee points out that the picture in table 3 omits the effects of the current, severe global economic crisis that has undoubtedly caused a significant rise in unemployment and underemployment across the world. The financial crisis that began in the United States in the summer of 2007 spread swiftly to other industrialized countries in 2008, especially in Europe, where the financial systems were tied to the United States financial markets. The financial crises in these countries soon turned into a severe economic downturn that led to a sharp rise in unemployment. Given the importance of these countries in the global economy, the effects of this economic contraction soon spread to the rest of the world through sharp falls in the demand for exports, commodity prices, flows of foreign direct investment and access to finance in general. Some of the worst-affected developing countries experienced a contraction in output, while almost all others experienced a significant decline in growth rates.

544. The severe global recession has led to a rise in unemployment in most countries, particularly the industrialized countries. In the OECD countries, the average unemployment rate rose from 6.1 per cent in 2008 to 8.6 per cent in September 2009. The rise in unemployment was particularly sharp in Ireland, Spain and the United States. In the United States, unemployment rose from a level of 4.6 per cent in 2007 to over 10.2 per cent in October 2009. In Spain, the unemployment rate stood at 19.3 per cent in October 2009 compared to a level of 11.4 per cent in 2008, while in Ireland the corresponding increase over the same period was from 6 per cent to 13 per cent. The ILO survey of country employment and social protection policy responses to the global economic crisis,¹ also shows that the average unemployment rate showed an upward trend in 2008 which continued in the first half of 2009. The average unemployment rate for G20 countries in March 2009 stood at 8.5 per cent, or 1.5 percentage points higher than a year earlier. The total number of unemployed, for the sample of countries, in March 2009, was 23.6 per cent higher than in March 2008. A more recent ILO study shows that about 4.5 million jobs have been lost in Brazil, China, the Russian Federation and South Africa since the onset of the crisis.² The Committee recalls that the Governing Body concluded at its 306th Session (November 2009) that “getting those who have lost their jobs back to work and ensuring that the millions of young women and men who start looking for work each year get a good start in their working lives is a vital first step for recovery and sustainable growth and development”.

545. It is therefore possible to infer from the decline in growth rates that there will be a rise in unemployment and underemployment in many developing countries. The Committee notes that the negative impact on employment is likely to be stronger in countries that are more integrated into the global economy. For example, in countries exporting primary commodities, the decline in the demand for agricultural commodities and in their prices will mean that the rural sector will face a rise in underemployment and a decline in incomes. There is also likely to be some rise in unemployment in the mining sector. In addition, a rise in unemployment will be most obvious in countries with a significant manufacturing sector due to the closure of plants and the cut-back in production. Similarly, employment in the tourism sector may fall with the decline in tourist arrivals. In all these cases, the decline in output and employment in trade-exposed sectors will also negatively affect employment in the rest of the economy. A fall in

¹ ILO, *Protecting people, promoting jobs*, an ILO report to the G20 Leaders' Summit, Pittsburgh, 24–25 September 2009, Geneva, Sep. 2009.

² ILO, *World of Work Report 2009: The global jobs crisis and beyond*, Geneva, Dec. 2009.

remittances from migrant workers abroad will also have a negative effect in countries that have a significant dependence on this source of income.

546. In the industrialized countries, the economic downturn and the rise in unemployment has been mitigated to a significant extent by increased government expenditures to rescue key financial institutions, ease the credit squeeze, and stimulate aggregate demand. Direct measures to preserve jobs, such as the bailing out of major firms facing financial distress, the provision of subsidies to maintain employment and the stepped up implementation of active labour market measures have also been introduced. In contrast, most developing countries are not in a position to implement such counter-cyclical measures because their governments have limited financial resources. In addition, many developing countries do not have a strong enough institutional capacity to implement direct measures to contain the rise in unemployment similar to those introduced in the industrialized countries.

Chapter III – Employment policies

547. The Committee notes that the information from the replies to the questionnaire and from reports on the application of Conventions Nos 88, 122, 142 and 181 provide a clear indication that most countries are committed to the goal of increasing productive employment as part of their economic and social policies and are making efforts to realize this.

1. Industrialized countries

548. Most industrialized countries have ratified Convention No. 122. They all have a set of policies dedicated to employment promotion and alleviating unemployment in the form of various active labour market policies, systems of human resources development and vocational training, the promotion of small and medium-sized enterprises and social protection.

549. The Committee further notes that they also have well-developed institutions to implement these policies, such as public employment services, vocational education and training systems, public agencies to deliver services directed at small and medium-sized enterprises and statistical systems for monitoring labour market developments and the impact of employment programmes. There is also considerable research, undertaken both within governments and in academia, on issues related to the design and evaluation of the effectiveness of employment and labour market policies.³ Similarly all countries have institutions for tripartite consultations on employment issues, albeit differing in the degree of importance that this is accorded in the structure of governance.

550. In addition to having clear *policy commitments* and a developed *institutional framework* for implementing these policies, there is also evidence that significant effort is being made towards the achievement of employment objectives. This is reflected in the fact that significant budgetary resources are devoted to active labour market measures and other employment programmes. For example, expenditures on active labour market programmes amount to 2 to 3 per cent of GDP in many industrialized countries.

³ For a review of this research literature, see D. Grubb and J.P. Martin, “What works for whom: A review of OECD countries’ experiences with active labour market policies”, *Swedish Economic Policy Review*, Vol. 8, No. 2, autumn 2001, pp. 9–56.

551. The Committee considers it relevant to note that the industrialized countries participate in multilateral systems (outside the ILO) which monitor employment performance and policy developments. For example, they are all part of the OECD process, which conducts peer reviews of economic and social policies, including employment and labour market policies. The OECD also produces considerable research that, *inter alia*, evaluates employment and labour market policies in the industrialized countries and proposes policy options. In addition, in a considerable sub-set of the industrialized countries, namely the 27 Member States of the European Union, there is a clear commitment to a common employment strategy, the Lisbon Strategy for Growth and Jobs that was adopted in 2000. This involves a process of annual monitoring of national progress in achieving the commonly agreed EU targets.

552. Turning from minimum conditions to the main orientations and content of employment policies in the industrialized countries, the Committee considers it important to note at the outset that there has been a major shift of thinking on the role of macroeconomic policies in employment promotion. Until the onset of the current economic crisis, little trace remained of Keynesian thinking on the use of macroeconomic policies to influence the overall level of employment. The EU Lisbon Strategy limits the role of macroeconomic policy to ensuring macroeconomic stability, which is seen as being the most important contribution to promoting employment growth.

553. The Committee notes, however, that this new policy stance has not been rigidly maintained in the face of the current economic crisis. Unprecedented counter-cyclical fiscal and monetary policies were quickly deployed in most industrialized countries, as the financial meltdown threatened to set off another Great Depression and attendant mass unemployment in the global economy.

554. From an employment perspective, as macroeconomic policy becomes more passive, labour market policies become more active. Indeed, active labour market policies now occupy centre stage in employment policies in the industrialized countries. They are now deployed to achieve multiple objectives: to increase the proportion of the labour force that is in employment and thereby reduce dependence on unemployment benefits and other forms of social support; to increase social cohesion (or reduce social exclusion); and to ensure greater equality of opportunity in the world of work.

555. The Committee considers it useful to review briefly the background of the shift from active macroeconomic policies towards labour market policies aimed at raising the employment rate (or the proportion of the employed working age population). The problem of a low employment rate usually arises from two basic factors.

556. The first factor is a decline in the demand for labour, which could be the result of: major macroeconomic shocks, such as the oil price shocks of the 1970s and early 1980s which caused a reduction in total employment; a global financial and economic crisis, such as the present crisis; or increasing international competition, which has led to the steady loss of manufacturing jobs in many industrialized countries. This decline is typically most pronounced for relatively vulnerable groups of workers, such as youth, older workers, women workers and workers with disabilities. These groups are disadvantaged because of perceptions by employers, often unfounded, that they are less productive due to a lack of experience, in the case of young workers, or a diminished capacity to work, in the case of older workers and some workers with disabilities. It is important to note that, in this case, the fall in the employment rate of these groups is not due to any change in their willingness to work, but rather to the decline in the total availability of jobs.

557. The second factor is the balance that is struck in a given country between the incentives to work or to remain inactive, especially for those in low-paid jobs. Although it is clear that most people of working age would prefer to work rather than remain on passive income support because of the personal satisfaction and social status that flows from having a job, the balance of incentives between work and inactivity does also exert an influence on the choice that is made between work and inactivity. A case in point is where the interplay between the tax and welfare benefits systems results in the perverse situation where it is financially more attractive to remain on benefits rather than to return to work. In such a case, reforms to increase the rewards to work, backed up by strong measures to ensure access to quality training opportunities for the unemployed and childcare facilities, are likely to result in an increase in the employment rate.

558. The Committee notes that in the 1970s and 1980s, when there was a sharp rise in unemployment, several European countries adopted policies that reduced the incentives for some groups of workers to remain in employment as a means of relieving overall unemployment. The introduction of measures in some countries to make early retirement more attractive to older workers is an example of such a policy. Similarly, some countries relaxed the conditions for qualifying for disability benefits as a means of reducing measured unemployment. In those cases, the decline in the employment rate of older workers and of workers with disabilities was the result of policies designed to achieve precisely this outcome.

559. In this context, the Committee notes that a central theme of current labour market policies in most industrialized countries is the imperative to increase the employment rate by increasing incentives to work and simultaneously making it more difficult and financially less attractive to rely on welfare benefits. Such a two-pronged, carrot-and-stick approach is being applied in many industrialized countries. Some of the main motivations for adopting such a policy stance have been: the rising fiscal cost of maintaining a high proportion of the working age population on unemployment, disability and early retirement benefits; the erosion of public support for passive welfare payments (i.e. as more people suspect widespread abuse of the welfare system); and growing concerns that a high rate of welfare dependence limits a country's international economic competitiveness.

560. The Committee notes that, to provide incentives that make work more attractive, several countries have introduced a variant of an earned income tax credit. This involves the granting of an income tax rebate for wage earnings below a certain level, which thus avoids the previous policy anomaly where it was more attractive to remain on welfare than work because the tax system unwittingly reduced the net income from earnings. The United States has introduced a Work Opportunity Tax Credit (WOTC) as "one tool in a diverse toolbox of flexible strategies designed to help move people from welfare into gainful employment and obtain on-the-job experience". The United Kingdom and Sweden have also introduced similar schemes. In France, incentives are offered to the unemployed who set up an enterprise or are in self-employment in the form of the continued payment of social benefits for a period of up to a year. In addition, exemptions from social charges are also granted to these fledgling entrepreneurs.

561. Aside from increasing financial incentives, the obstacles for genuine jobseekers to return to work are also being reduced. Extensive support services are being made available, ranging from training in literacy, numeracy and basic social skills to individually tailored vocational training portfolios.

562. The Committee has observed that these programmes do not pin their faith solely on achieving the right voluntary responses from the target group. Rather, there is a clear

trend towards supplementing incentives with stronger elements of conditionality. The United Kingdom has introduced several programme elements of this nature. The New Deal for Young Persons makes it mandatory for 18 to 24-year-olds who have received unemployment benefits for six months to attend training courses designed to increase their employability. The programme seeks to give skills, confidence and motivation to help them find work and improve their prospects for doing so. A similar programme has been introduced in Spain, where the long-term unemployed and young unemployed persons are offered either a job or a place in a training programme for a period of six to 12 months. In Italy, proposals for welfare reform set out in 2008 highlighted the objective of making the receipt of benefits conditional on proactive conduct and responsibility.

563. The Committee has also observed that a prime target of these “return to work” policies in several European countries is the large group of people who are on occupational disability benefits. In the United Kingdom, several mutually supportive programmes have been introduced to achieve the target of lifting 1 million people off incapacity benefits by 2015. A key element has been the replacement of the incapacity benefit by an employment and support allowance that will be conditional on new medical assessments of capacity to work. For those found to be able to work, it became obligatory to attend work-focused interviews and to develop a plan of action to return to work. This is buttressed by a range of support services to facilitate a return to work. The Pathways to Work programme aims to provide advice; training programmes to help manage a health condition as well as to increase skills and confidence; and temporary increase in income during the first year of work. The Access to Work programme reaches out to employers to help overcome work-related obstacles resulting from disability through measures such as adapting workplaces and providing special equipment and making support workers available.

564. The Netherlands also gives high priority to reducing the proportion of the labour force, high by comparative standards, that is on disability benefits. It has adopted an approach similar to that in the United Kingdom with the introduction of more rigorous medical screening of eligibility for disability benefits, as well as programmes encouraging a return to work. In addition, it has made it more costly for employers to place workers on disability benefits (because it is a cheaper alternative to firing them) by obliging them to pay 70 per cent of the cost of the sickness benefits for the first two years.

565. The Committee further observes that, apart from the introduction of stricter conditionality, several European countries have also reduced the duration of entitlement to unemployment benefits. A case in point is Norway, which in spite of having a low unemployment rate of only 2.5 per cent in 2008, restricted entitlement to unemployment benefits from four to a maximum period of two years.

566. An important additional motivation (alongside the economic ones discussed above) behind the move to get more people to return to work is that of increasing social cohesion. In the case of the long-term unemployed and jobless youth, the fear that they would become permanently disconnected from the social mainstream unless they were reintegrated into the labour market was an important motivation behind the shift towards policies that emphasized a return to employment. The Committee observes that social exclusion is harmful to those directly affected and breeds negative social consequences across generations. Children growing up in families that suffer from social exclusion are also likely to face severe disadvantages in obtaining an education and a decent job. Thus, the long-term unemployed and jobless youth are the priority targets of active labour market policies in most industrialized countries.

567. With respect to social cohesion, the Committee notes that migrant workers are also an important target group in those industrialized countries that have experienced a significant recent increase in immigration. The Netherlands has set up a National Diversity Management Network, a centre of expertise mandated to promote good practices in handling the special needs of ethnic minorities in fields such as individual counselling, job placement and the promotion of entrepreneurship. Government subsidies are also provided for projects aimed at improving the labour market position of immigrants by improving their language proficiency, skills and job search strategies. Similarly, Portugal has in place the Options Programme that is national in scope and seeks to promote the social inclusion of children and young people from the most vulnerable socio-economic backgrounds, especially descendants of immigrants and ethnic minorities. It is built around strategic areas of intervention: increasing access to formal and non-formal learning, vocational training and employability, civic and community participation and “digital inclusion”. Spain has promoted the growth of *Empresas de Inclusión*, non-profit organizations that implement programmes to increase social inclusion. Similarly, Portugal has fostered the growth of private social solidarity institutions. Both Canada and Portugal have programmes to facilitate the assessment and recognition of the qualifications of immigrants with a view to enhancing their employment prospects.

568. Another major objective of labour market policies is the achievement of greater equality in terms of access to employment, as well as of the conditions of employment of various categories of workers. The principal groups targeted in this context are women, older workers and workers with disabilities. Most countries have introduced anti-discrimination, age and disability legislation that applies to these categories of workers. These have taken the form, for example, of legislation on equal pay and age discrimination. In addition, there are a variety of programmes to promote gender equality at work and increased employment opportunities for older workers and workers with disabilities.

569. The Government of the United Kingdom reports that its recent initiatives to promote gender equality include measures to promote enterprises run by women, the introduction of a statutory duty on all public authorities to eliminate discrimination and to promote equality, and the promotion of the undertaking of the methodology of voluntary equal pay reviews by all organizations. The Government of Japan reports programmes that focus on the labour market reintegration of women who have stopped working in order to raise children; these programmes provide counselling and job-placement services.

570. The Committee notes that most industrialized countries have legislation and labour market programmes to raise the employment rate among older workers. In several European countries, these programmes seek to undo the effects of schemes, now considered to have been unwise, that promoted early retirement in the 1980s as a means of lowering high unemployment. In the Netherlands, for example, tax benefits for retirees under the age of 65 have been removed. Similarly, in Norway the pension system has been reformed to give improved incentives for older workers to prolong their working life. In Italy, changes have been introduced to allow older workers to receive both a pension and an employment income. These are intended to promote both a higher participation rate of older workers and a reduction of their recourse to undeclared employment.

571. The Committee observes that, apart from reducing the incentives for early retirement, a range of measures aimed at promoting higher participation rates among older workers have been introduced in several countries. Such measures are accorded

special importance in Japan in the face of stagnant population growth and a pronounced ageing of the population. In this context, extending the working life of older workers is an important option for maintaining an adequate supply of labour. Most other industrialized countries also face this problem of population ageing, albeit less acutely than in Japan.

572. Some countries have programmes to promote more positive attitudes on the part of both workers and employers towards an extension of working life. In the United Kingdom and Portugal, for instance, emphasis is placed on promoting awareness of the benefits of prolonging working life. Similarly, the Netherlands has a programme to counter prejudices against the retention of older workers. In these circumstances, the Committee expresses its hope that these countries have legislation that provides a right and a formal procedure to work beyond their normal retirement age, and that this include sanctions and redresses.

573. With regard to workers with disabilities, the Committee recalls that attention has been focused in this respect on the problem of the unusually high proportion of the working age population on disability benefits in some countries and the measures that were being taken to resolve this problem. The underlying view that prompted the adoption of such measures is that there was significant abuse of the disability benefit system because it was too lax. People who were only marginally disabled but still capable of working were able to have themselves classified as disabled. Hence, reforms in this area have introduced more stringent criteria for disability benefit eligibility.

574. Nevertheless, the Committee notes that its earlier discussion of the disability issue also showed that the programmes involved emphasized not only the tightening of eligibility conditions, but also an array of supporting measures to benefit the genuinely disabled. These ranged from individual counselling and training for workers with disabilities to promoting the adaptation of work premises and equipment by employers to meet the special needs of workers with disabilities. Regarding the latter aspect of the issue, the Committee notes with interest that Japan is promoting the growth of home work among workers with disabilities, while Sweden has promoted cooperatives to employ workers with disabilities.

575. Another aspect of equality in employment that is prominent on the policy agenda in some countries is that of countering the rise of labour market dualism. This is the case in Spain, where earlier labour market reforms had resulted in a significant growth in the use of non-regular contracts of employment associated with inferior social benefits and less employment security. The current Spanish policy is to reduce the dualism between these two segments of the labour market. Incentives, in the form of lower corporate tax and social charges, are being provided to induce employers to use regular, rather than irregular, contracts of employment. At the same time, stronger regulation of temporary and subcontracted work has been introduced.

576. The Committee also notes that, in Japan, there has been increasing labour market dualism arising from a decline in the prevalence of the lifelong employment system. The group most adversely affected has been young workers. It has been estimated that one third of young workers are now in non-regular employment. An issue of special concern in Japan is that this segment of the labour market is characterized by frequent “job-hopping” by young workers which undermines their long-term career prospects. Measures that have been adopted to counter this include a scheme to apply a seniority principle (i.e. giving priority to youth who have worked longest in temporary jobs) in determining access to regular jobs and the introduction of a system of job cards which provides details on the holder’s qualifications and employment history after they have

received career counselling. The Job Card will be used in the jobseeking process and to start further training. It is expected that this system will enhance both vocational training and career development for young workers.

Human resources development

577. The Committee observes that human resources development policies play a central role in efforts to achieve full, productive and freely chosen employment. This observation has been amply demonstrated in the foregoing discussion of employment policies, for which member States have provided examples of their labour market programmes that rely on training programmes to increase the employability of their workers. For example, the industrialized countries share a strong focus on training for employment. This focus holds, regardless of whether their ultimate objective is to reintroduce the long-term unemployed and those on disability benefits into employment, or to enhance the employment prospects of vulnerable groups of workers (such as youth, older workers, women workers and migrants).

578. However, the Committee notes that these labour market programmes, while important, are only part of the overarching effort to enhance the skills of the workforce in industrialized countries. The labour market programmes described are essentially remedial in nature, in that they address deficiencies in the level of skills (and motivation, in some cases) of particular groups of workers. They provide an invaluable “second chance” for those insufficiently equipped to gain initial entry or re-entry into the labour market.

579. The Committee observes that, in addition, most industrialized countries are generalizing their efforts to enhance the skills of their entire workforce through the provision of broad and equitable opportunities for “lifelong learning”. For example, in referring to the education and training system, a recent European Union document states that “lifelong learning should be regarded as a fundamental principle underpinning the entire framework, which is designed to cover learning in all contexts – whether formal, non-formal or informal – and at all levels: from early childhood education and schools through to higher education, vocational education and training and adult learning”.⁴ Such a framework allows workers to upgrade their skills; retrain themselves in new skills to facilitate a voluntary career change or one forced by redundancy; or simply to expand their intellectual and cultural horizons.

580. There are also important economic considerations that underlie the creation of systems of lifelong learning, relating to the need to adapt to structural changes in an era of rapid globalization, widespread changes in work organization within enterprises and the increasing skill intensity of labour demand caused by accelerating technological change and the emergence of a knowledge economy. Systems of lifelong learning are an important means of responding to these new challenges. From an individual perspective, they provide increasingly necessary opportunities for those already in employment to adapt and upgrade their skills throughout their working lives. From a societal perspective, lifelong learning is also a powerful means of enhancing economic flexibility and international economic competitiveness.

581. The Committee notes that this latter concern to increase international economic competitiveness appears to be a major driving force behind human resources

⁴ Council of the European Union, Conclusions on a strategic framework for European cooperation in education and training, p. 3, para. 3. See also above box on the European Union: Education and training as a key driver of the Lisbon Strategy, Chapter II, para. 125.

development policies in the industrialized countries. For example, the European Union set itself the goal, set forth in the Lisbon Strategy, of becoming “the most competitive and dynamic knowledge-based economy in the world”. Similarly, the United Kingdom has established a Commission for Employment and Skills to ensure that the country’s education and skills system contributes to the highest levels of productivity. The establishment of this Commission was the result of a key recommendation of an independent report entitled “Prosperity for all in the global economy: World class skills” published in 2006.

582. Industrialized countries outside the European Union have also adopted similar policies. For example, the United States has launched a High Growth Job Training Initiative, a strategic effort to prepare workers to take advantage of new and increasing job opportunities in high-growth, high-value demand and economically vital sectors of the American economy. It has also established the Workforce Innovation in Regional Economic Development (WIRED) programme, which seeks to address the challenges associated with building a globally competitive workforce. In addition, the United States utilizes the Science, Technology, Engineering, and Mathematics (STEM) programme to promote, attract and prepare disadvantaged youth and dislocated workers for STEM careers, while simultaneously enhancing the competitive position of local and regional employers. New Zealand’s national Skills Strategy has in recent years emphasized the importance of having a future-focused tertiary education strategy aimed at directly contributing to national economic and social goals.

583. The Committee also notes that another issue of concern for several industrialized countries is the mismatch between the skills produced by the education and training system and the skills demanded by employers, which is resulting in skills shortages in some industries. This problem is being tackled through a variety of measures. In Italy, the system of higher technical education and training is being reorganized as a channel for higher technical specialization as an alternative to university. The aim is to align training more closely to the needs expressed in the labour market. New Zealand has launched a programme called “Industry Partnerships”, which involves industry and industry trainers as co-designers of entry-level skills programmes that will address sector skill shortages. Canada’s Skills and Transition Strategy is responding to skilled labour shortages by launching an Apprenticeship Completion Grant programme.

The promotion of small and medium-sized enterprises

584. The Committee observes that the industrialized countries give high priority to the promotion of small and medium-sized enterprises. Italy provided a particularly clear statement of the rationale for this prioritization in its reply, stating: “small and medium enterprises are the foundation of our country’s economic system. Over 90 per cent of companies are small or medium-sized and they are particularly important for our country in that they represent the framework of the entire productive system and are thus a cornerstone of Italian industry”.

585. The Committee observes that a wide range of interrelated programmes are being deployed to promote small and medium-sized enterprises, including: granting subsidies and exemptions from certain taxes; giving preferences in government procurement and contracting; promoting exports; enhancing access to finance and the provision of loan guarantees; research and technology transfer; promoting linkages between SMEs, on the one hand, and large enterprises and universities and research institutes, on the other; promoting an enterprise culture; a wide range of training programmes; and reforms to reduce the regulatory burden on SMEs and to provide a business environment conducive to their growth. In its comments, the General Workers’ Union (UGT) of Portugal

indicates that several measures have been taken to make the organization of SMEs more flexible. Nevertheless, the structural problems affecting them have not changed, and SMEs continue to be characterized by their conservatism and lack of risk-taking. The UGT also reports that issues such as vocational training, equal opportunities and occupational safety and health, which are subjects amply covered by Recommendation No. 189, must not be overlooked. Effective worker participation in the definition of modernization strategies and vocational training plans should also be implemented. Furthermore, the UGT highlights the importance of engaging in the definition of an employment policy and political and legislative framework which supports and promotes entrepreneurial dynamism specifically with the participation of the social partners.

586. The Committee notes that, as in other fields discussed earlier, the European Union has adopted a common position on the promotion of SMEs through the Small Business Act, adopted in 2008 by the European Commission. The Act lays out ten principles for promoting SMEs that should guide the conception and implementation of policies at both the European Union and national level, including: the creation of an environment within which entrepreneurs can thrive and entrepreneurship is rewarded; the adoption of the “think small first principle” (all new legislative and administrative proposals should be subjected to an assessment of their impact on SMEs); the facilitation of access to finance; and the provision of aid to SMEs so that they benefit from opportunities offered by the European Union and world markets.

587. The Committee observes that the United States Small Business Administration (SBA) seeks to remove constraints to the development and growth of small enterprises arising from inadequate access to credit and capital markets and to training in technical and management skills, as well as from overly burdensome regulations. Apart from programmes to reduce these constraints, the SBA also helps to create and strengthen an enterprise culture and promotes cooperative linkages between small and large companies with its Mentor-Protégé programme. The Committee notes that the granting of preferences to SMEs in government procurement and contracting is a particularly powerful promotional tool. Federal agencies are required to establish contracting goals with 23 per cent of all government contracting targeted to small firms. The SBA also works to create an environment for maximum participation by small, disadvantaged and women-owned enterprises in federal government contract awards.

588. The Committee notes that the United Kingdom also has a comprehensive strategy for the promotion of SMEs. Among the wide range of programmes, the Committee notes with particular interest that the Government is working to launch a network of enterprise academies; that it has set a target of reducing the regulatory burden by 25 per cent by 2010 and that to this end it is considering the introduction of a system for “regulatory budgets” that would limit the regulatory costs of new regulation that can be introduced; and that it has made it mandatory for government departments to purchase at least 2.5 per cent of research and development from SMEs.

589. New Zealand also recognizes the fundamental role that SMEs play in job creation. The Government has appointed a Minister of Small Business and centres its policies on creating a stable macroeconomic environment and introducing microeconomic reforms to create the space and freedom for firms to apply their innovative and entrepreneurial energies within a competitive environment.

590. The Committee notes Japan’s New Small and Medium Enterprise Basic Law, aimed at supporting the growth of a wide range of independent SMEs. A network of SME Support Centres has been established to offer one-stop service counters. Special

subsidies are also provided to SMEs for creating employment in new and growing sectors of the economy and trade fairs are organized overseas to promote SME exports.

591. Canada has set up a special agency, Business Canada, as a multi-channel government information service for businesses and start-up entrepreneurs. In addition, a programme entitled BizPal provides a new service delivery model to improve access to information on the permits and licences needed from all orders of Government to start or develop a business. There are also a variety of programmes to encourage exports by SMEs.

2. Transition economies

592. The Committee notes that, in the last 20 years, economic development among transition economies has diverged significantly. Most of the transition economies in Central and Eastern Europe have become new Member States of the European Union or are in the process of acceding to it. The countries already in the European Union have largely achieved the transition to a market economy and to democracy. Many States in the Balkans, except for Slovenia, which is now part of the European Union, have struggled with internal conflict and are faced with the task of building new institutions. They are currently aligning their institutions and policies with those of the European Union in order to achieve accession. The Committee further notes that Central Asian Republics of the former Soviet Union have, in contrast, been experiencing similar development challenges as those confronting developing countries. These challenges include raising per capita incomes from relatively low levels, reducing poverty, kick-starting industrialization from a largely agrarian economic base and generating sufficient productive jobs for a growing labour force. Nevertheless, the Committee notes that very few countries provided substantive information in their replies to the questionnaires. In this respect, the Committee notes with interest the information provided by Hungary, in its contribution to the General Survey, concerning the assistance received from the ILO and Japan in supporting the design of employment policies during the transition period. The Government also indicates that the project promoted the revision of Hungarian employment policy tools and programmes, and facilitated the revision of the legislation on employment promotion and unemployment benefits.

593. The Committee observes that all transition economies experienced a sharp rise in unemployment in the initial years of the transition process. While the situation has since improved in most countries, recent levels of unemployment still remain high by international standards in about half of the countries for which data are available, with an unemployment rate of over 10 per cent. In a few countries, such as Bosnia and Herzegovina and Montenegro, the unemployment rate is as high as 30 per cent. Thus, the challenge of achieving full employment clearly remains daunting in a significant number of transition economies.

594. The employment policies in the transition economies that are now part of the European Union seem to be aligned with the Lisbon Strategy. Similarly, their human resources development and small and medium enterprise development strategies are also compatible with common European Union efforts in these areas. Within this framework, the Committee notes some specific initiatives that particular countries have undertaken to complete the process of building market economy institutions. In the field of SME promotion, Latvia is implementing a Programme for Support for Consolidation of Intellectual Property Rights. This programme provides funding to SMEs for the registration of intellectual property rights over items such as new products, industrial design, semiconductor topographies and plant varieties. Emphasizing the importance of attracting foreign investment in many transition economies, Latvia has also established a

Foreign Investors Council, chaired by the Prime Minister, in which foreign investors and their representatives in Latvia participate.

595. The Committee notes that, similarly, Poland has recently amended the Act on Special Economic Zones to provide more effective measures to increase investment. Poland is also strengthening its system for monitoring progress in implementing its employment policies and forecasting changes in the labour market. Slovenia has introduced an amendment to the Prevention of Undeclared Work and Employment Act that provides a legal basis for “mini jobs”, activities pursued by people who are not full-time employees which do not exceed 20 hours a week or 40 hours a month. This amendment is designed to deal with the phenomenon in transition economies of non-standard work, especially in self-employment, which emerged only when the transition process began.

596. Slovakia has taken measures to address the problem, also characteristic of most transition economies, of the vocational education and training system that was inherited from its previous economic system and which has not been fully modified to meet the needs of its market economy. In this context, Slovakia has introduced new curricula and training programmes into its education and training system, which have reduced the over-specialization characteristic of its previous vocational school system.

597. The Committee notes that the countries of the former Yugoslavia are experiencing a rather novel issue of reintegrating the large number of internally displaced persons and refugees generated by the war into their labour markets. Some of these countries also face the difficult task of expanding the coverage of their nascent systems of lifelong learning. In Bosnia and Herzegovina, for example, only 1.9 per cent of adults currently have access to opportunities for lifelong learning.

3. Developing countries

598. The Committee notes that the term “developing countries” refers to a large and diverse group of countries. This ranges from countries with very low per capita incomes to emerging economies with income levels that are converging with those in the industrialized countries. In this section of the report, the standard international definition of a developing country has been used, except for the inclusion of Singapore and the Republic of Korea within the group. Although these two countries are now generally considered to be industrialized countries, the Committee notes that they were still developing countries as recently as 20 years ago and that the development strategies they followed to achieve industrialized country status have been a subject of considerable interest to economic policy-makers across the developing world. For this reason, the Committee considers it useful to include them in the discussion of employment policies in developing countries.

599. The Committee observes that, in the developing countries, the policy commitment to employment promotion is typically reflected in their economic and social development plans or strategies. Furthermore, in the case of low-income countries that are part of the World Bank process of preparing poverty reduction strategies as the framework through which foreign aid is channelled, there is typically a commitment to increasing productive employment as a means of reducing poverty.

600. Across the developing world, there appear to be essential similarities in the way the employment issue is tackled. The Committee notes that there are also interesting patterns of variation, across regions, in the relative emphasis given to different elements of policy and the types of employment policy institutions. In view of this, the Committee will refer

to a few key points of similarity and variation at appropriate points in the following review.

The commitment to employment promotion

601. The Committee notes that, in Asia, there is typically a clear recognition of the need to increase productive employment as a major goal of development policy. This is seen most clearly in the case of countries such as Cambodia, China, Mongolia and Viet Nam. In these countries, the goal of employment creation is reflected in legislative instruments or national plans. In Mongolia and China, laws on employment promotion were adopted in 2001 and 2007, respectively. In Viet Nam, a five-year National Target Programme on Employment Promotion was adopted in 2006, while in Cambodia a “Rectangular Strategy” for Growth, Employment, Equity and Efficiency was launched in 2006. In these latter two countries employment promotion is included in their Poverty Reduction Strategies as well as in their national development plans. From the information available, only Mongolia has laws or plans with fixed quantitative targets for employment growth. Mongolia’s target has been expressed as the creation of 60,000 jobs a year during the plan period, which the Government reports should lead to a reduction of the rate of unemployment to 3 per cent by the final year of the plan. The Committee notes with interest that, in the cases of China, Mongolia and Viet Nam, the expression of the commitment to the employment objective in the form of formal plans reflects the remaining influence of the system of central planning in spite of substantial economic reforms targeting the market economy.

602. The Committee also notes that in Asian countries such as Afghanistan, India, Indonesia, Nepal, Pakistan and Thailand, employment promotion either features as part of their national development plans or they have a national policy on employment. For example, Thailand has a chapter on employment in its 10th National Economic and Social Development Plan 2007–11, while Indonesia has a Medium-Term Development Plan 2004–09 which gives priority to a multidimensional poverty reduction strategy and prioritizes the expansion of employment opportunities for the poor. Nepal has a Labour and Employment Policy that was formulated in 2005, a main objective of which is to increase productive employment opportunities for the workforce. Pakistan formulated a National Employment Policy in 2008. In India, the 11th Five-year Plan 2007–12 makes employment generation an integral part of the growth process and sets out strategies to accelerate not only growth in employment but also the wages of the poorly paid.

603. In contrast to the above, some countries, such as Singapore, the Philippines and the Republic of Korea, do not have an explicit national employment plan. Rather, their commitment to employment is expressed in various dimensions of economic and social policies. Singapore’s commitment is demonstrated by its workforce skill-level programmes aimed at increasing its international economic competitiveness, an economic strategy that its small, open economy has been pursuing successfully since the 1960s. To this end, Singapore has adopted a Masterplan on human resources development and major programmes for skill upgrading, such as the Skills Programme for Upgrading and Resilience (SPUR). The commitment of the Republic of Korea is demonstrated by its active labour market policies, human resources development policies and the promotion of small and medium-sized enterprises, while that of the Philippines is demonstrated through the development of human resources and small enterprises in rural areas.

604. The Committee also notes that, in those Asian countries that have not ratified Convention No. 122, the replies to the questionnaire do not contain any clear overall statement that they are committed to the objective of “full, productive and freely chosen

employment” as defined in Article 1. For example, in Singapore, the reply states that “the spirit of Convention No. 122 is broadly in line with Singapore’s employment policy to create decent jobs for her workers and enhance their capabilities so that they remain employable”.

605. The Committee is aware that it is tempting to draw the inference that the national plans expressing a commitment to employment creation in overall and sectoral economic plans illustrates its heightened importance in the policy-making process of post-reform countries than in market economies. The plans established in post-reform countries are certainly closer in form to those advocated by Convention No. 122 in terms of prioritizing full employment in economic and social policies. In its comments, the Committee has requested more information on the resources and measures undertaken to achieve the employment objective.

606. The Committee notes that there are interesting similarities and differences in the relative priorities identified in national employment policies. A common priority in most East and South East Asian countries is fuller integration into the global economy to achieve greater economic growth and employment creation. As already mentioned, this priority is central in Singapore, an economy that is often cited as a model of the successful exploitation of the economic opportunities resulting from globalization. In Cambodia, the employment strategy prioritizes the further expansion of labour-intensive manufacturing exports, the expansion of tourism and an increase in the export of workers to foreign countries. Similarly, in the Philippines, a country in which a significant proportion of the labour force already works abroad, the expansion of labour exports remains a major policy priority. The Philippines also prioritizes the need to increase its international economic competitiveness in its National Competitiveness Council. In Indonesia, the development plan identifies the acceleration of exports and tourism as one of its priority means of increasing the rate of economic growth. Thailand’s national development plan has, as a major goal, the development of the capabilities and skills of its labour force to increase its competitiveness.

607. Turning to Latin America, the Committee notes at the outset that this region has the highest rate of ratification of the Conventions covered by the General Survey among the regions in the developing world. It is also the region that has responded most fully to the questionnaire sent out in the context of the General Survey with respect to both the response rate and the fullness of the responses.

608. The Committee is not surprised that, given the high rate of ratification of Convention No.122 in Latin America, many countries demonstrate a clear commitment to the goal of full, productive and freely chosen employment in their legislative instruments. Most of these countries state that the goal of employment promotion and the right to work is either enshrined in their Constitutions or is present in one or more legal instruments in their extensive system of labour and social legislation. Some countries have provided information in their reports on the initiatives taken at the regional level to coordinate their employment policies. In this regard, the Committee noted in its observation on Convention No. 122 addressed to Paraguay that the MERCOSUR Labour Ministries restated, in their statement at the 98th Session of the Conference (2009), that the right to work is a fundamental human right that creates economic and social prosperity.⁵

⁵ CEACR (80th Session), observation, Convention No. 122 (Paraguay), report 2010, para. 2.

609. The Committee observes that the commitment to the employment objective in national policies and programmes is also evident in most countries. Argentina has a *Plan Integral de Promoción de Empleo*, 2008–11, as well as a Decent Work Country Programme, formulated in 2004. Cuba states that employment promotion is part of its national plan, and that a national employment plan and a system of manpower planning and labour allocation are included in its central planning process. Bolivia reports that it intends its 2008 draft national employment policy to be included in its national plan. Costa Rica has a draft national employment policy that was drafted with ILO assistance. Nicaragua requested ILO assistance in drafting a national employment plan. Colombia is implementing decent work projects, and Brazil has a national Public Policy for Employment.

610. The Committee notes that some of these national employment plans and policies have also set certain targets, such as Argentina's previous employment plan, which set a target of reducing the unemployment rate from 20 per cent in 2003 to 7.8 per cent in 2008.

611. Generally, the replies from Latin American countries provide less information than some other countries on the main priorities in national employment policies. In the case of these countries, some priorities, such as increasing integration into the global economy and improved coordination between employment and industrial policies are mentioned as aspects of their national employment policy. In Latin America, the focus seems to be on direct employment creation programmes and active labour market policies. For example, the reply from Mexico to the question of the effect it has given to the provisions of Convention No. 122 is entirely devoted to describing the activities of its National Employment Service, which is essentially a labour exchange and a provider of labour market information.

612. Turning to Africa, the Committee considers it relevant to note that most of the countries in sub-Saharan Africa are characterized by low per capita incomes. They are predominantly dependent on agriculture and have very small modern sectors, including the public sector and a mining or agricultural export sector in some countries. The Committee also notes that sub-Saharan Africa has had a very low rate of economic growth for most of the past three decades and, in contrast with industrializing countries in other regions of the developing world, has experienced relatively little structural change and manufacturing growth. Although there have been encouraging signs in recent years that this has begun to change with a rise in the rate of economic growth in several countries, it still remains true that employment in most sub-Saharan African countries is dominated by self-employment in smallholder agriculture and the urban informal economy. Wage employment is mostly confined to the modern sector, which rarely accounts for more than 10 per cent of total employment. In such a context, employment policy is largely synonymous with overall development policies, that is policies to increase output and productivity in the agricultural sector and to promote the growth of labour-intensive industries in the modern sector. These policies are the most potent means of improving employment conditions for the country as a whole. Where successful, these policies reduce unemployment and increase the incomes of the majority of the population who depend on the agricultural sector for their livelihoods and also provide increasing opportunities for workers to find better paid jobs in a growing labour-intensive modern sector.

613. The Committee observes that almost all sub-Saharan countries appear to recognize the importance of the goal of employment promotion and have adopted plans or national policies to achieve this. Cameroon, Eritrea, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Rwanda, Sudan, United Republic of Tanzania and Zambia all have

current national employment policies, while the Central African Republic indicates that a national employment policy will be defined and adopted following tripartite consultations. In three of these countries (Mali, Niger and Uganda), the national employment policies were framed with ILO assistance. The authorities of Zanzibar have also indicate that the ILO provided assistance in the process of formulating the employment policy. In addition, most of these countries have also adopted poverty reduction strategies that include employment promotion as an area for action.

614. The Committee notes that North African countries, such as Algeria, Morocco and Tunisia, also have national employment plans or policies. For example, Algeria has a National Plan for the Promotion of Employment and the Reduction of Unemployment, while Tunisia has a National Employment Policy and Morocco has a National Employment Strategy.

615. The Committee notes that these plans or national policies on employment are, for the most part, general statements of intent and priority areas for action. Quantitative targets have been set in three countries. Niger reports that the target is to reduce unemployment from a level of 18.9 per cent in 2005 to 10.5 per cent by 2012. In Sudan, the 25-year national strategy (running from 2007 to 2031) sets a very high target for employment growth of 7 per cent per annum. Cameroon reports that the national employment policy sets a target for the reduction of underemployment from the level of 78 per cent in 2008 to 40 per cent by 2012. Cameroon's employment target is based on the assumption that economic growth in the plan period will be 7 per cent a year, which represents a substantial increase over past growth rates.

616. In contrast to the above, Malawi states that it has no national employment policy, although it has specific programmes on employment directed at target groups and the promotion of small and micro-enterprises. The Government of Malawi reports that it has recognized the need to have a national employment policy since the late 1990s, and that "the Ministry of Labour has been working with ILO/SAMAT (now SRO/Harare) and the Lusaka Area Office but so far the resources have not been identified." Mauritius also states that it has "yet to develop a comprehensive national employment policy with the objective to promote full, productive and freely chosen employment. As such there is currently no specific review/monitoring mechanism or consultative framework to achieve such objective." South Africa does not have a national employment policy, but it does have both a National Skills Development Strategy and an Active Labour Market Policy Programme.

617. The Committee considers that the information available provides some indication of the various elements of employment policy that are emphasized in different countries. Only a few countries mention export promotion as a key objective of their employment and development strategies. Uganda mentions the setting up of export processing zones in its reply on its policies for the promotion of SMEs, while Niger and Madagascar mention tourism as a sector to be promoted. Rwanda states that measures to assist agricultural producers to meet international product standards are an important means of increasing exports and employment. Both Senegal and Mali cite the reform of their investment codes, which presumably also cover foreign investment, as a means of increasing employment creation. Again, in contrast to East and South East Asia, only Mauritius mentions the promotion of labour exports as a means of tackling the employment problem in spite of the de facto emigration that occurs from several sub-Saharan African countries.

618. The Committee notes that, interestingly, several countries have recognized the importance of increasing the labour intensity of investments in infrastructure, an

approach the ILO has long advocated, as a means of increasing employment. To this end, Rwanda has adopted policies to raise awareness of the availability of labour-intensive construction techniques, build partnerships with the private sector and provide training in this field. Uganda has introduced the use of project selection criteria to promote labour-intensive projects and provide support to labour-intensive enterprises. Niger cites the use of public work schemes as a means of employment creation. Madagascar also states that it has adopted measures to promote labour-intensive investment in infrastructure, but provides no additional information on the issue.

619. Despite the predominance of the agricultural sector in these economies, only a few countries cite agricultural and rural development policies as a significant part of their employment promotion policies. Rwanda and Uganda were the only two countries to mention land reform as a policy issue. Similarly, only Zambia mentions rural industrialization as an objective, while Rwanda has policies to explicitly promote SMEs in rural areas. Both Niger and Uganda mention the promotion of regional “growth poles” as part of their employment strategies for rural areas. Land reforms are major issues in Zimbabwe and South Africa. In Zimbabwe, this is included in the Global Political Agreement that brought in the Inclusive Government in February 2009.

620. The Committee considers that one indicator of the importance attached to the employment issue is whether or not special measures have been adopted to deal with the negative impact of economic crises on employment. The Government of China refers to the adoption of Notification No. 4 of 3 February 2009 of the State Council to deal effectively with employment issues under the present economic situation and other documents on how to face the current economic situation and stabilize the labour relationship. In Singapore, the SPUR programme mentioned earlier is “a tripartite effort to save jobs and stave off sustained unemployment” and includes higher subsidies for payrolls and training courses so that employers are encouraged to retain their workers and improve their skills in preparation for the upturn, as well as generic and sector-specific job-training programmes and job search and training facilitation.

621. The Committee notes that, among those Latin American countries already mentioned in Part A (paragraphs 53 and 63), Argentina, Mexico and Peru have adopted measures to mitigate the negative impact of the crisis. These measures include public works programmes to create social infrastructure and community development, and employment generation and training schemes targeted at the vulnerable groups most affected by the crisis.

622. The current global economic crisis has had a negative impact on most countries in the world, and the problem is well expressed by the Government of Malawi in its replies to the questionnaire. It states that “globalization poses serious challenges to the attainment of full employment and the pursuance of such a policy. Further, the massive job losses associated with the economic crisis have made matters worse particularly in respect of donor funded non-governmental organizations and multinational companies operating in Malawi.”

Institutions for employment policy formulation and implementation

623. Turning to the institutions for employment policy formulation and implementation, the Committee notes that all Asian countries have public agencies with a remit for one or more aspect of employment policy. Mongolia and Viet Nam have National Councils on Labour and Employment issues, while Singapore has a tripartite National Wages Council which also deals with employment issues. In India, the Planning Commission has a division dealing with employment issues; there is also a national-level apex tripartite

body that periodically discusses employment issues. Both Singapore and the Philippines mention the importance of coordination between labour and economic ministries in the context of their employment policies. Singapore identifies inter-ministerial coordination between the Ministries of Labour, Trade, and Education as being particularly important. All Asian countries except Cambodia mention some form of tripartite consultation on employment policy. Cambodia has a tripartite Labour Advisory Council, but employment policy is not within its purview. In addition to tripartite consultation, Singapore also mentions the importance of wider public consultation on policy issues. It also highlights the importance of monitoring developments in the labour market. Mongolia has an Employment Fund dedicated to financing employment creation projects.

624. The Committee notes that most Latin American countries also have a fairly elaborate system of national agencies dealing with various aspects of employment policy. This is exemplified by Brazil, which has a Fund for Worker Support (FAT) which finances programmes to generate and maintain employment and incomes. These programmes are implemented by an agency called PROGER and their coverage includes people in the informal economy, small and micro-enterprises and cooperatives. In addition, MERCOSUR Countries have “observatories” and agencies that are responsible for monitoring developments in their labour markets.

625. The institutions responsible for employment policy also typically have tripartite consultations embedded within their structure. For example, the National Council on Employment in Argentina is tripartite in composition and also deals with the setting of the minimum wage. In Brazil, the FAT is governed by a tripartite deliberative council. Most countries state in their replies that they have some process of consulting the social partners on the formulation of employment policy. Where they do not have permanent consultative mechanisms, these countries cite instances of consultations in the context of the formulation and implementation of particular employment projects or programmes.

626. In the case of Africa, the Committee considers it an encouraging development that several countries have taken recent steps to strengthen these consultations. In 2004, Mali created a new Ministry of Employment and Cameroon created a Ministry of Labour. Côte d’Ivoire created a National Commission on Employment in 1999, but it is currently non-operational. Mauritania created an inter-Ministerial Committee on Employment. Rwanda states that it plans to create a National Employment Agency, and Uganda indicates that it plans to set up a High-level National Employment Council. The Committee further notes some interesting institutional innovations, including the permanent mechanisms for dialogue with the private sector in Rwanda and the web-based labour market information system in Mauritius.

627. In terms of existing institutions, most countries typically have variants of a National Employment Agency. Mali has a Social and Economic Council, a tripartite body which also deals with labour and employment issues. In the African countries, the Ministry of Labour usually handles employment policies, and some of these countries have a special Employment Division for this purpose.

628. Regarding institutions for social dialogue on employment policy, only a few African countries provided specific information. As mentioned above, Mali has a national Economic and Social Council. Both Côte d’Ivoire and Mali state that consultations on employment policy take place within the framework of their Poverty Reduction Strategy process. Zambia has a National Employment and Labour Sector Advisory Group that has a technical committee to monitor and evaluate employment policies. Malawi has a Tripartite Labour Advisory Council and a special tripartite forum, Public Private Dialogue. Rwanda states that it plans to create a National Labour Council.

Interestingly, this National Labour Council is intended to include the social partners as well as representatives of non-governmental organizations.

Policies for specific groups

629. The Committee notes with interest that most countries state that they have policies targeted at the informal economy, women, youth, older workers, people with disabilities and migrants. In its 2009 report on Convention No. 122, the Government of India communicated the Unorganized Workers' Social Security Act, which was enacted on 30 December 2008. The Committee notes with interest that the Act provides that the Government may formulate suitable welfare schemes, such as educational schemes for children and skills upgrading for workers in the informal sector. In Asia, the most explicit programmes on the informal economy are to be found in the current or former centrally planned economies. In Mongolia, there is a national programme on the informal economy, a key element of which is its incorporation into the formal economy through a system of registration based on issuing identity cards. China also gives priority to the incorporation of the informal economy into the formal economy, while Viet Nam emphasizes the development of community-based insurance programmes as a means of improving the welfare of workers in the informal economy.

630. In the case of Latin America, the Committee notes that most countries lay strong emphasis on, and have elaborate policies and programmes targeting the informal economy. Argentina has set a well-articulated policy for the informal economy, and the Government considers informal employment to be one of the most serious challenges that have emerged in the labour market. It sees the extension of the informal economy as an erosion of the fundamental rights of workers and their families. Its overriding objective is therefore to end informal employment, but the policy recognizes the importance of taking into account the high level of heterogeneity that characterizes the informal economy in designing specific interventions. The Government of Bolivia indicates that it considers the integration of workers in the informal economy as one of its priorities as proposed by a policy document drafted in 2009. Particular initiatives have been proposed by the Ministry of Labour to promote the transition towards the formal economy. Brazil, as mentioned earlier, implements a wide range of employment and income generation programmes directed at the informal economy, principally through PROGER. Most other countries also have programmes in such areas as microcredit, training and small and micro-enterprise development that cover the informal economy.

631. Turning to Africa, the Committee notes that most countries have policies targeted at the informal economy, youth and women workers. As regards the informal economy, Rwanda indicates that it prioritizes this sector because "in the years to come in light of the rate of population increase and public sector restructuring, employment creation will depend less on Government than in the past hence the need to refocus development policies and strategies towards the private sector (including the informal economy) as a way to promote employment". The Central African Republic indicates that its employment policies extend to the informal economy. The Government refers to its 2008–10 PRSP and the actions to be undertaken, which include establishing support bodies for self-employment and income-generating activity. Cameroon states that it is implementing a special project and is promoting the formation of producer groups and the extension of credit to rural producers. Mali states that it is also establishing producer groups (*chambres d'artisans*) and has reduced import duties for informal sector producers. Niger states that it provides training and has created an apprenticeship scheme for its informal economy. Malawi is in the process of reviewing its Business

Licensing Act and is promoting microfinance. Uganda states that it is seeking to increase linkages between informal sector and modern sector enterprises.

632. With reference to policies for women and youth, the Committee notes that most Asian countries also have policies directed at improving the position of women workers in the labour market. The most comprehensive approach appears to be in Cambodia, which has a strategic plan addressing fundamental issues, such as the need to change social attitudes and mainstream gender issues into economic and social policies. In Viet Nam, targets have been set to increase the share of women in employment. In the Philippines, the emphasis is placed on improving skill training and increasing job opportunities for women.

633. The Committee notes that in relation to youth employment, Viet Nam has adopted a Youth Development Strategy and China gives priority to measures to tackle the growing problem of graduate unemployment. Indonesia launched a Youth Employment Action Plan in 2004 that was formulated with ILO assistance.

634. The Committee also notes that most countries in Latin America have employment programmes directed at women and youth. Bolivia states that it has a plan on youth employment that focuses on the provision of training and the insertion of youth into the labour market. Colombia also states that it has a national policy on youth. Peru has a youth employment programme entitled PROJOVEN, and Argentina has a programme to provide more and better jobs for youth. Uruguay has a policy of reserving quotas for youth and women in training programmes. Brazil has a programme to prepare youth for the labour market as well as for alternative income-generating activities.

635. Argentina states that Resolution No. 650 of 2002 of the Ministry of Labour requires the incorporation of a gender perspective in the design and management of all actions in the field of employment and human resources development, as well as in programmes to improve the working conditions, access to employment and security of employment of the female working population. It has also had a Tripartite Commission on Gender Equality in the World of Work since 1998. Brazil states that it has established a Special Secretariat for Policies for Women.

636. Turning to Africa, the Committee notes that Mali has recently created a Ministry for Women and Rwanda has adopted a national plan for women and Malawi a gender policy. Cameroon is implementing a UNDP-funded project. On youth, both Malawi and Rwanda state that they have national plans on the issue while Mali is creating a special agency, *Agence pour l'emploi des jeunes*, to promote youth employment. In South Africa, the Umsobomvu Youth Fund, run by the Department of Labour, makes funding available to youth and women to set up small businesses and provides business plan development assistance and other advice. With regard to workers with disabilities, several countries cited existing legislation on the issue.

637. With reference to older workers, the Committee notes that China provides subsidies to enterprises for hiring older workers. Special attention is given to the re-employment of older workers in the 40 to 50 age group who have been made redundant by the substantial restructuring of state enterprises that has been occurring in the economic reform process. The Committee also notes that Singapore intends to introduce legislation by 2012 to make it compulsory to re-employ older workers beyond the retirement age if they meet certain criteria. The National Trade Union Congress, with the support of the Singapore National Employers Federation, has already started working with unionized companies to ensure that they have appropriate human resources policies on the re-employment of older workers and adopt a more elderly-friendly work environment. The Committee observes that Singapore's policy towards older workers

may arise from the phenomenon of the ageing of the population and the consequent potential slow growth of the labour force. Brazil states that it has legislation establishing the rights of older workers to employment and professional activity compatible with their condition; it also prohibits discrimination against older workers through practices such as the setting of age limits for entry into employment. Its National Skills Plan (PNQ) training programme gives priority to workers over 40 years of age. Uruguay reports that it is considering the provision of training programmes for older workers who are experiencing difficulties in reintegrating the labour market.

638. The Committee notes that China has set quotas for the employment of workers with disabilities and is implementing other preferential measures. Singapore has adopted a different approach of providing subsidies to enterprises for hiring workers with disabilities. Argentina reports that it is implementing a programme of awareness raising and training directed at enterprises and offices to promote the insertion of workers with disabilities into the labour market. Bolivia states that its new Constitution covers the issue of workers with disabilities and provides for a quota of 4 per cent of jobs in public institutions and private enterprises for persons with disabilities. Brazil states that it has legislation on the insertion of persons with disabilities into the labour market and on apprenticeship contracts for persons with disabilities. It states that, in recent years, employment opportunities for the disabled have increased.

639. The Committee notes that only one country, namely India, reports the existence of a major national employment programme directed at rural workers. India launched the National Rural Employment Guarantee Act (NREGA) in 2005. This programme provides guaranteed employment for up to 100 days per year on rural public works projects and is seen as a major plank in the efforts to reduce rural underemployment and poverty.

Human resources development

640. Another priority area of employment policy is human resources development. The Committee notes that most Asian countries have variously named national human resources policies. Singapore has an Education and Training Resource Development Masterplan, Cambodia a Strategic Plan and the Philippines a National Technical Education and Skills Development Plan. Viet Nam has a Law on vocational training. Thailand has, within its national development plan, a Strategy to Develop Human Quality and Thai Society towards a Knowledge Economy. These countries also have public agencies responsible for skills development. The Philippines has a National Competitiveness Council, Singapore a Workforce Development Agency and Mongolia a National Council on Vocational Education and Training, while Afghanistan is creating a National Vocational Education and Training Authority. In addition, Singapore has a system of training levies to fund skills development and the Philippines has a dual training system presumably based on the well-known German apprenticeship system.

641. The Committee also notes that, in terms of the priority objectives of human resources development policy, both Singapore and the Philippines stress the importance of increasing employability by endowing the workforce with the relevant skills demanded by enterprises. Singapore also places great emphasis on the promotion of programmes of lifelong learning to help workers maintain up to date skill levels, find their niches in the labour market and seize new opportunities in new growth sectors. It has put in place subsidized career upgrading and switching programmes to help workers transit to increased responsibilities and/or new opportunities. In relation to systems for the provision of training, Viet Nam stresses the importance of cooperation among training institutions, while Singapore believes in an open policy that draws on the best-

in-class local as well as overseas training providers. Singapore also emphasizes the importance of linking skills development with industrial development policies and, in this context, is targeting skills development for growth sectors such as aerospace, precision engineering, process manufacturing, finance, information and communications technology, tourism and hospitality and digital media.

642. Turning to human resources development in Latin America, the Committee notes at the outset that many Latin American countries have, in comparison with the rest of the developing world, fairly well developed systems of vocational education and training. Notably, the system in Brazil, centred on the Brazilian National Industrial Learning Service (SENAI), has often been cited as a model worthy of emulation by other developing countries. The Committee also recalls that the ILO played a major role in shaping the development of these training systems when it launched a major programme of technical cooperation in manpower planning and vocational training in the 1960s.

643. Only two countries, Brazil and Peru, indicate that they have a national plan on human resources development. Brazil's national plan, PNQ, sets the target of providing training to at least 20 per cent of the labour force per year and emphasizes the extension of training to the socially excluded.

644. The Committee notes that in the absence of explicit national policies, evidence on the commitment to human resources development is to be found instead in the legislation and public agencies responsible for human resources development. Here, the Committee observes that every country has legislation on vocational education and training, either as a separate instrument or as part of the national employment or labour law. Similarly, all countries have one or more public agencies dealing with vocational education and training.

645. The structure of public agencies responsible for vocational education and training is broadly similar across Latin America. There is typically a national institute for training that has overall responsibility for the system. Examples of these are INEFOP in Uruguay and SENA in Colombia. In some countries, there is also a body responsible for the certification of qualifications. Most countries also mention in their replies that there are mechanisms for tripartite consultations either in the governance structure of the training system or in the context of specific programmes. Several countries mention the importance of involving workers' organizations and the private sector in the identification of training needs and in designing training programmes in the light of this.

646. In terms of the policy or programme priorities that are mentioned in the replies provided, the Committee notes that Argentina, Chile and Costa Rica all stress that training should contribute to increasing the employability of the workforce and the competitiveness of the economy. Costa Rica focuses on expanding its skills base in information and communications technology as a means of increasing its international competitiveness. Argentina has a National System of Continuous Learning that seeks to provide lifelong opportunities for workers to upgrade their skills or acquire new ones as a means of increasing their employability and the competitiveness of the economy. Chile has developed a flexible network of apprenticeships as a means of achieving these ends.

647. Some countries emphasize the need to extend training opportunities to marginalized social groups or to the informal economy. As already mentioned, the reduction of social exclusion is a major objective of Brazil's national training plan. Argentina and Costa Rica refer to programmes that target the informal economy.

648. Turning to human resources development in Africa, the Committee notes that three countries, Mali, Mozambique and South Africa, have a national policy on vocational

education and training. Mali's national policy was prepared with ILO assistance. Most countries that have national employment policies mention that their plans include policies on vocational education and training. For example, Madagascar indicates that the goal of increasing the employability of its workforce through education and training is part of its Decent Work Country Programme for 2008–12.

649. Several countries cite existing legislation on the question of vocational education and training. The Committee observes that, regardless of whether these countries have a national policy or legislation on vocational education and training, almost all have public agencies dedicated to providing training and managing the training system as a whole. South Africa has a skills development fund that is financed from a 1 per cent payroll tax levied on all enterprises with more than 500 workers. A scarce skills list is published annually and funding is prioritized towards these areas. Strategic projects in terms of future growth and strategic importance to the country are also identified and funded in terms of their skill development. Mauritius has an elaborate training system which includes a Human Resource Development Council that manages the financing of the training system through a 0.5 per cent levy on payrolls, the IVTB that is responsible for the planning and development of publicly funded training institutions and the Mauritius Qualifications Authority, which has regulatory responsibility over the whole training system. In addition to public institutions, 350 private institutions offer training, mainly in management and information technology. The IVTB also runs an apprenticeship system based on the German dual system. The training provided by the IVTB has evolved over time with new centres being set up to cater for new fields, such as electronics and precision engineering in line with the government's effort to diversify the industrial base of the economy. In the view of the Government, these efforts have resulted in "an increase in access to TVET, greater diversity and levels of training on offer, strengthened public-private partnership in policy-making, programme design, delivery and evaluation."

650. Uganda reports that it has a Department of Industrial Training which is responsible for the provision of training. The Government aims to ensure that the training programmes are demand-driven through greater involvement of the private sector in policy formulation and the development of curricula/syllabi, and intends to introduce non-formal training programmes throughout the country that will be relevant to the skills needs of the rural people. In francophone countries, the National Employment Agencies typically have vocational training as part of their functions. Several countries, such as Niger and Mali, have special funds that are dedicated to the financing of training.

651. The Committee notes that several countries refer to problems they were experiencing in the field of vocational training, as well as to areas that they are seeking to emphasize. Zambia indicates that it faces resource constraints that have resulted in declining investments in technical and vocational education and training. Mauritania states that it faces the problem of a mismatch between the skills produced by the educational system and those demanded in the labour market, and Madagascar is directing its efforts towards increasing the employability of its labour force. Rwanda indicates that it is experiencing skill shortages in several areas. Sudan mentions the problem of unemployed university graduates and states that it has set up a special fund to tackle the problem. Burundi, Niger and Rwanda stress that it is important to extend the coverage of training programmes, including apprenticeship schemes, to the informal economy. Several countries also indicate that they have special training projects or programmes targeting youth and women.

The promotion of small and medium-sized enterprises

652. The Committee observes that all Asian countries that contributed to the General Survey appear to prioritize the promotion of small and medium-sized enterprises. These countries either have a public agency dedicated to this goal or national legislation establishing the framework for the development of small and medium enterprises. Viet Nam has an Office for Small and Medium Enterprises and Cambodia has a National Productivity Organization, as well as a Standards Institute focusing on SMEs. Singapore has created a Standards, Productivity, and Innovation Board (SPRING) with the function of supporting the growth of SMEs. The Republic of Korea has a Framework Act on small and medium enterprises, and Mongolia has a Law on small and medium enterprises.

653. These countries implement a wide and interesting array of measures for the promotion of SMEs. In its reply to the questionnaire, the Government of Singapore notes that “(i)n 2008, 99 per cent of all enterprises in Singapore were SMEs, and together they employed six out of every ten workers. Singapore’s SME promotion policy centres on growing innovative companies and fostering a competitive SME sector”. The key elements of the policy include subsidies and other forms of support for financing, management development, technology acquisition and innovation, and access to markets. The maintenance of a business-friendly policy environment and the streamlining of regulations for start-up and operations are also emphasized. In addition, networks of bodies representing SMEs, in which entrepreneurs can interact with their peers and share learning and resources, are also encouraged.

654. The Committee notes that some countries highlight several interesting measures. The Republic of Korea and Viet Nam state that they give preference to SMEs in government procurement as a promotional tool. Viet Nam also provides tax exemptions and interest rate subsidies for SMEs, and the Republic of Korea and Singapore provide credit guarantees. The Republic of Korea promotes the channelling of venture capital to SMEs and Mongolia seeks to facilitate the issuance of stocks and shares by SMEs as a means of raising capital. Interestingly, the Philippines mentions microfinance as a means that the Government is utilizing to promote SMEs. Both the Republic of Korea and Viet Nam promote linkages through subcontracting between large firms and SMEs. Both of these countries seek to promote cooperation between SMEs, on the one hand, and universities and research institutes, on the other, as a means of improving their access to knowledge and technology.

655. In Latin America, most countries emphasize this aspect of employment policy. Countries have adopted measures to promote SMEs through some combination of legislative measures, promotional policies and direct programmes to assist them through the provision of credit, training and improved access to markets and technology.

656. The Committee observes that Cuba states that there is no special category of SMEs in the organization of its enterprise system, as defined in Recommendation No.189. The state enterprise is the foundation of the economic system and the legislation is applied to all production units equally regardless of whether they are small, medium or large.

657. Brazil, Nicaragua and Peru have legislation on the promotion of SMEs. Peru has a law establishing a special labour regime for SMEs and has taken measures to simplify procedures for the formalization of enterprises. Chile indicates that its Parliament is in the process of considering draft legislation providing for special treatment of SMEs.

658. The Committee notes that most countries have public agencies devoted to the promotion of SMEs. Nicaragua has a National Council on SMEs which defines

strategies and promotes public–private sector cooperation in promoting SMEs; it also provides tax exemptions and credit access or guarantees for SMES. In Chile, an agency called SERCOTEC promotes self-employment and public–private initiatives in setting up enterprises, and SENCE provides subsidized or free training courses for SMEs. The Bolivarian Republic of Venezuela has a national institute for SME development and an industrial credit fund called the FONCREI; Brazil has a support service for SMEs called SEBRAE; and Argentina a national fund that offers credit to SMEs. Argentina also has a sub-secretariat for SMEs in the Ministry of Finance. Similarly, in Mexico, the Ministry of Finance has a financial advisory programme for SMEs as well as a fund to support projects which promote the development of production chains and high value added businesses; the fund also promotes SMEs in rural areas and urban *colonias*.

659. Turning to Africa, the Committee notes that most countries have policies and special agencies for the promotion of small and medium-sized enterprises. Cameroon created a Ministry for Small and Medium Enterprises in 2004 and an agency, MICROPAR, to foster micro-enterprise start-ups. Niger states that it has adopted a national Microfinance Strategy and promotes production chains and networks as well as regional growth poles for SMEs. Senegal has recently adopted an “SME Policy Circular” through which it presents proposals for a national strategy for the promotion of SMEs. It has also launched the SME Caravan Programme designed to facilitate the access of enterprises to bank financing. Mali created a *Centre du Secteur Privé* and promotes microfinance and women entrepreneurs. Zambia has a Small Enterprise Development Board. South Africa supports SMEs with respect to skills development and, to this end, established a Skills Development Fund that finances a range of SME training programmes. As mentioned earlier, Uganda plans to set up export processing zones as part of its SME promotion policy and is strengthening incentives for the growth of the private sector. The Committee notes with interest that Uganda also promotes the setting up of joint private–public SMEs.

660. Rwanda has a wide array of policies for private sector development, in general, and SMEs in particular. The Government reports that it is committed to “creating a favourable environment for business promotion through creation of enterprises, mobilization of domestic financial resources and attracting private foreign investment”. The measures it has adopted to this end include strengthening the security of investments through the modernization of the legal system, establishing enterprise registration centres in the principal town of each district, promoting investment in information and communication technology, and strengthening existing structures for providing support and advice to entrepreneurs.

661. Mauritius reports that it also has comprehensive policies for SME development. With regard to the business environment, it adopted the Business Facilitation Act in 2006 to relax licensing requirements. The Committee notes that this Act is designed to be favourable to the informal economy: the Act anticipates that start-ups should be completed within three days and home-based production units exempted from licensing requirements. Mauritius has also set up a variety of agencies responsible for different aspects of SME development, including the Small Enterprise and Handicraft Development Authority, a Development Bank, a Small Enterprise Development Fund to promote venture capital and the National Empowerment Foundation. It is also implementing a programme to develop SME villages in which support programmes will be concentrated. The Government reports that these programmes have been very effective; the value added produced by the SME sector increased by 82 per cent between 2002 and 2007, while employment increased by 19 per cent.

662. The Committee observes that Tunisia also has wide-ranging policies to promote SMEs. The Government has recently introduced changes in tax laws to provide more exemptions to SMEs in the first three years after they start up. In addition, Tunisia also provides traditional support services to SMEs. The Committee notes with interest the strong emphasis placed on promoting innovative SMEs in high value added industries, such as biotechnology, information and communication technologies, multimedia and electronics. Among the measures being implemented to this end are networks of: integrated “technopoles”, cyber parks to host enterprises engaged in the offshoring of ICT services, and enterprise incubators in the proximity of universities to attract high-skilled entrepreneurs. Morocco has a National Agency for the Promotion of Small and Medium-sized Enterprises which is mandated to contribute to the promotion, development and competitive modernization of enterprises. Regional investment centres have also been set up to provide one-stop services to facilitate SME start-ups.

Cooperatives

663. The Committee notes that most Asian countries have policies for cooperatives. Singapore and Viet Nam have laws designed to provide a supportive policy environment for the development of cooperatives. In addition, Singapore also supports pro-active self-regulation of the cooperative sector through the Singapore National Cooperative Federation (SNCF). This apex organization of the cooperative movement administers a central cooperative fund that provides grants, training and technical support to its constituents. The Republic of Korea provides tax benefits and loans to cooperatives. Mongolia highlights the fact that the development of cooperatives is important in repairing the institutional gap that was created by the hasty wholesale privatization of state and cooperative farms during the initial years of the transition process.

664. In Latin America, the Committee notes the available information indicating that most countries have laws governing the establishment and operation of cooperatives. Most countries also have public agencies dealing with the cooperative sector. These include IPACOOOP in Panama, a National Institute for Cooperatives in Argentina and INFOCOOP in Costa Rica. Mexico has a fund for promoting cooperatives and Chile has an Employment Agency, SENCE, which is also responsible for cooperatives.

665. In the case of Africa, only a few countries provided information on their policies regarding cooperatives. Rwanda has a National Cooperatives Policy and Malawi has a Cooperative Development Policy. Malawi also states that it has a Cooperatives Act, adopted in 1998. Mauritius also reports that it has a supportive legal framework for the development of cooperatives. Mali states that it has a support centre for cooperatives. A few countries refer to agricultural or rural cooperatives in spite of the predominance of the agricultural sector in their economies and the potentially important role that producer and marketing cooperatives could play in advancing rural development in such a context.

Employment services

666. The Committee notes that most Asian countries have public employment agencies. On the question of private employment agencies, the Republic of Korea, Singapore and Viet Nam have adopted legislation to regulate their operation. Cambodia relies on profit-making private employment strategies to promote the increased export of labour. Singapore concedes that, while it agrees with the need to regulate private employment agencies, and does so through the Employment Agencies Act, which does not satisfy all the provisions of Convention No. 181.

667. All Latin American countries have public employment agencies. With regard to private employment agencies, Chile reports that its agencies are regulated, except those

dealing with the placement of highly skilled and highly educated workers. Bolivia indicates that it seeks to ensure that private employment agencies do not become a means of creating precarious jobs.

668. The Committee notes the indication by Côte d'Ivoire, Mali and Mauritius that they have a public employment service, and Rwanda reports that it plans to establish one. In contrast, Malawi states that it has neither a public employment service nor any system for regulating private employment agencies. Zambia states that it has legal instruments to regulate private employment agencies, but that enforcement is weak. Rwanda indicates that there are very few private employment agencies in the country. Côte d'Ivoire, on the other hand, states that private employment agencies are regulated, and Mali has created a National Private Council Bureau (CONABEM) that is responsible for this task.

Chapter IV – Some concluding remarks on employment policies

669. The Committee is satisfied to note, from the perspective of Convention No. 122, that almost all countries are committed to the goal of increasing productive employment. Most countries have identified this goal in one or a combination of the following forms. A significant number of countries, especially those in Europe and Latin America, either include references to this goal in their constitutions and/or in parts of their social and labour legislation. Other countries have special laws on employment promotion defining the key policies and providing for the establishment of the institutions to implement them. A large number of countries, including many of those where the goal of employment promotion is enshrined in legal instruments, have also expressed this commitment in the form of key policy documents. A majority of countries have national employment plans or policies. In addition, countries that are part of the PRSP process have usually indicated that employment creation is an important part of their poverty reduction strategies.

670. The Committee observes that most countries have either legislation and/or policies on key elements of employment policy, such as human resources development, small and medium-sized enterprises and cooperatives. A few countries have national plans or policies on these aspects of employment policy that are linked to overall development strategies. For the most part, however, the policy statements are sectoral in nature or consist of the implementation of specific projects or programmes in these areas.

671. The Committee notes that mainly positive responses were given to questions regarding measures to meet the needs of particular categories of workers (i.e. workers in the informal economy and rural sector, women, youth, older workers, workers with disabilities and migrant workers). Only a small number of countries state that they do not have special policies or measures for these groups. The vast majority indicate that they have special policies for all or most of these workers.

672. Thus, the Committee considers that in terms of both an overall commitment to the goal of promoting productive employment and more specific commitments to key elements of employment policy and targeting groups of workers, the assessment is a very positive one.

673. Turning to the institutions for achieving these policy goals, the Committee notes that most countries also have public agencies responsible for overall employment policy. From this perspective, the Committee notes that some countries in sub-Saharan Africa report that new ministries or agencies dealing with key aspects of employment policy

have been created in the past few years. In some countries, such as Cuba, and some former centrally planned economies, the agency responsible for employment policy is the ministry or agency responsible for national planning. In the vast majority of countries, the ministry of labour or a division of it has responsibility for dealing with employment policy. In some cases, there is an agency responsible for public employment services entrusted with the responsibility for employment policy. Similarly, almost all countries also have special public agencies responsible for key aspects of employment policy, such as human resources development, targeted employment-creation programmes and small and medium-sized enterprises. The agencies for small and medium-sized enterprises vary in terms of how important they are within the administrative hierarchy: full ministries (in a few cases); divisions of the labour ministry; and independent statutory bodies or funds.

674. A significant number of countries also have various mechanisms for tripartite consultations on employment matters. Again, these mechanisms vary in terms of their importance in the institutional hierarchy. Some countries have national tripartite councils for employment and labour issues, and others have consultative mechanisms linked to the governance of public agencies responsible for vocational education and training or the promotion of small and medium-sized enterprises. In other cases, the consultations are more ad hoc tripartite consultations and take place on occasions such as the adoption of a national employment policy or the implementation of a major employment programme or project.

675. The Committee notes that the situation is less positive with respect to institutions for the collection of labour market information and the monitoring of labour market trends; the monitoring and evaluation of employment policies and programmes; and the integration of employment policies into overall economic policies.

676. With regard to labour market information, the Committee notes that many countries report that they have some data collection activity attached to their public employment service, but do not specify whether this amounts to conducting regular national labour force surveys. The Committee considers it unlikely that many of these countries do in fact have regular national labour force surveys, since such data do not appear in the ILO's statistical database. Thus, the data collection activity mentioned in the replies must refer to more limited exercises that fall short of monitoring overall employment trends. The Committee also notes that the fact that very few countries cite figures on employment trends can also be construed as a corroboration of this fact.

677. With reference to the monitoring and evaluation of employment policies and programmes, the Committee notes that only a small minority of countries provided substantiated replies that demonstrated that this is indeed a regular part of the process of formulating and implementing employment policies and projects. Other countries provided either no or only a cursory response to this part of the questionnaire.

678. The Committee notes that the responses regarding the integration of employment policies into overall economic policies also provided little detail, and only a few countries provided substantive replies to this question. In these cases, the Committee observes that the countries appreciate the importance of linking employment and human resources development policies to overall development policies, and especially to industrial promotion policies, and have mechanisms to facilitate the necessary policy coordination across ministries. A few other countries concede that there is little policy coordination and recognize that this is a problem to be overcome. The rest of the countries provided no or limited replies, and the Committee notes that these responses

make it difficult to form any impression on whether the issue of policy coordination is being addressed or, if it is, how effectively it is being done.

679. The Committee notes the basic difficulty that only data from industrialized countries are available on the resources that governments are devoting to the achievement of the goal of employment creation. The data available from international statistical sources do not provide breakdowns of government expenditures that are detailed enough to identify how much is being spent on employment policies. For example, it is difficult to determine how large the budget is of ministries or other public agencies responsible for key aspects of employment policy. Similarly, given that several ministries and agencies may be involved at the national level, it is difficult to ascertain how much is being spent on the key programmes that are mentioned, such as direct employment creation programmes, the promotion of small and medium-sized enterprises and vocational education and training. It is also not known how many officials are working on these programmes and their level of technical competence.

680. The Committee notes that very few countries supplied such information in either their reports on the application of the relevant Conventions or in their replies to the questionnaire. The Committee is aware that, in large part, this omission is due to the fact that the information was not explicitly requested for this General Survey. In the absence of such information, however, the Committee notes that it is difficult to form any idea of the size of the effort that has been devoted to employment creation and how adequate this is in relation to each country's overall financial and institutional capacity given its level of development. Only a few countries indicated that inadequate resources for one or more parts of their employment policies and programmes were a problem.

681. The Committee also notes that very limited information was provided on the outcomes or impact of various employment policies and programmes. It was noted earlier that a significant number of countries provided no information on overall trends in employment. Thus, this key general indicator of progress in achieving the employment objective cannot be used in these instances as a significant element in forming a judgement of the adequacy of employment policies and programmes. This aside, it would have nonetheless still have been useful to have direct information on the size of employment programmes and their achievements. Such information would have been important for drawing inferences about the level of effort devoted to attaining the employment objective and the results that have been achieved through these efforts. This is particularly important for direct employment creation schemes and for programmes targeted at particular groups of workers. In these cases, it would have been very useful to know how large the effort was in relation to the needs (for example, the proportion of the target group that benefitted from such programmes) and the extent of progress that is being made in overcoming a given problem.

682. In the absence of information on the extent of the effort that is being made to achieve the employment objective, it is useful to examine the available information on the quality of the effort that is being made, based on an examination of the replies provided by governments, as well as the principal documents referred to in these replies. The Committee reiterates that the framework that guides this examination is drawn from the principles of good employment policy in the context of Conventions and Recommendations included in the present General Survey. In addition, research findings on the nature of the employment problem in countries at different levels of development and in different regions of the developing world are also drawn upon. The key questions that are posed in this examination of the quality of the effort that is being made to promote employment are whether, in the light of this framework, the contents of employment policies address the key issues and have adopted the right priorities.

683. The Committee recalls its earlier observation that national employment policies vary significantly in terms of their substantive content, technical underpinnings and degree of integration with overall development strategies and economic policies. Some policies are little more than general statements of intent without clear indications of an overall strategy or priorities. In a few cases, these policies or plans contain quantitative targets in terms of the number of jobs to be created or the reduction in the rate of unemployment that is to be achieved. Similarly, only a few employment policies or plans are linked to overall development strategies or plans.

684. The Committee notes with concern that only a few of these policy documents focus on a key employment policy aspect: the need to find means of increasing the employment intensity of growth, especially in developing countries. Most of these developing countries are labour-abundant and capital-scarce, with high rates of labour force growth. Thus, there is strong pressure to maximize the rate at which new jobs are being created, particularly in the modern sector, in order to absorb these growing numbers of jobseekers. In addition, there is a large backlog of underemployed workers who are eager to move into the more productive jobs that are created in the modern sector. Given that these countries are capital-scarce, there are clear limits to the extent to which they can increase employment through only seeking to raise the level of investment. They must also seek ways of increasing the number of jobs that can be created with a given level of investment. In other words, the Committee notes that it would be advisable for these countries to seek to raise the level of the labour intensity of growth.

685. The Committee observes that there are two ways of increasing the labour intensity of growth: promoting the growth of labour-intensive rather than capital-intensive industries and promoting the use of labour-intensive techniques of production if economically feasible. The ILO has long advocated that employment policies in developing countries should emphasize efforts to maximize the extent to which both of these means of increasing employment intensity can be harnessed. For example, this position was advocated by the Comprehensive Employment Strategy Missions that were fielded by the World Employment Programme in the early 1970s. This has remained a major part of ILO policy advocacy, and remains current as of the Global Employment Agenda.

686. The Committee therefore notes with concern that this key element is not strongly reflected in the employment policy documents that have been examined. While the issue of raising labour intensity is sometimes mentioned, there are very few cases in which employment policy centres on this goal. Nor are there many cases in which explicit policies identify this goal. A few countries refer to the need to promote the use of labour-intensive techniques, but this is confined to the specific area of labour-intensive infrastructure projects.

687. The Committee emphasizes that this relative absence of attention on the employment intensity of growth should be a cause of concern since there is evidence, much of it from ILO research, that labour intensity has fallen in recent years. The results of this research suggest that this trend may be linked to the increasing globalization of the world economy. The increasing competition for shares of export markets for manufactured products may be pushing developing countries to adopt more capital-intensive techniques of production in order to maintain their competitive edge. At the same time, increasing inflows of foreign direct investment may be introducing production technologies that, while perhaps relatively labour-intensive in the context of industrialized countries, are capital-intensive in the very different context of developing countries. The Committee thus encourages the ILO to advance its work in this crucial

area with a view to formulating countervailing policies that member States could consider incorporating in their employment policies.

688. An additional aspect of employment policy in developing countries which deserves emphasis is the promotion of employment in rural areas through agricultural development and non-farm rural employment development. This is particularly the case in low-income countries, where the majority of the population still depends on the rural economy for their employment and livelihoods. The need to give priority to rural employment arises not only from its weight in total employment, but also from the fact that the majority of the poor population in low-income countries is typically located in rural areas. This latter phenomenon is linked to the fact that productivity and earnings are relatively low in the rural economy. Thus, if employment policy is to have a large impact in predominantly rural economies, both in terms of increasing aggregate productive employment and contributing significantly to the reduction of poverty, it must emphasize the promotion of rural employment.

689. The Committee notes that only a few of the low-income and predominantly agricultural countries that have provided information on their employment policies appear to have placed the required emphasis on the promotion of rural employment. With a few exceptions, rural employment is not highlighted in the information that has been provided on national employment policies. Similarly, the Committee observes that the replies to the question on rural workers confirm the impression that the promotion of rural employment is not central to employment policies.

690. The Committee recalls its earlier observation that most developing countries do not appear to have strong institutions for the integration of employment policy into overall development strategies or economic policies. This impression is confirmed in part by the information provided on the contents of national employment policies. As noted in the review in the previous section, employment policies in only a few reply to the questionnaire (namely, those in Asia) highlight links with policies such as trade liberalization and export promotion, industrial promotion and the attraction of foreign direct investment. The Committee notes that this might be a shortcoming in an era when opportunities for growth and employment creation are increasingly influenced by the process of globalization.

691. Turning from these strategic aspects of employment policy to more specific areas of intervention, the Committee notes the greater extent to which the policy positions advocated by the ILO and other international organizations have been assimilated and reflected in the specific policies and programmes of member States. In the field of human resources development, a significant number of countries mention that, as part of their policy objectives, they need to improve the employability of the workforce, both as a means of increasing their prospects of obtaining a job and to increase the competitiveness of the economy. Similarly, many countries also mention the importance of involving the private sector in the identification of training needs and the design and implementation of training programmes. In the same way, several countries mention the importance of providing continuing opportunities for workers to upgrade their skills and the need to extend training programmes to the informal economy and to vulnerable groups.

692. In the field of promoting small and medium-sized enterprises, there is a similarly positive picture on the extent to which ILO ideas have been disseminated. The policies described by most countries reveal an appreciation of reforming the business and regulatory environment to make it more supportive of the growth of SMEs, of providing

special incentives for SMEs and of extending credit, entrepreneurship and management training and other support services to SMEs.

693. The Committee further notes that the concept of the informal economy⁶ and the need to devote special attention to it in developing countries, first advocated by the ILO in 1972,⁷ has also been widely assimilated. Most developing countries refer to it in their employment plans or policies and have policies and programmes directed at raising productivity and incomes in this sector. The common elements of these programmes include credit and microfinance programmes, the provision of sites where these activities can be carried out, training, encouraging the formation of producer groups and assistance in acquiring inputs and in marketing. Some countries have also introduced measures to extend labour and social protection to workers in this sector.

694. The Committee notes the above evidence on the broad dissemination of some key ILO ideas on employment and, at the same time, recognizes that there remain other concepts on which there are divergent characteristics among member States. A good example is the concept of the informal sector.

695. The Committee recalls its earlier statement that the concept of the informal sector was developed in the early 1970s to promote a better understanding the nature of the employment problem in developing countries. The intent was to promote a shift away from policies based on the then-prevailing stereotype that the informal sector was synonymous with marginal, parasitical and illegal activities (and hence should be repressed), and towards the view that positive policies should be adopted to increase the productivity of informal sector employment and to link it with the formal sector. Far from being a negative factor, the existence of an informal sector was in fact a necessary and beneficial adjustment to the economic constraints faced by poor countries.

696. The Committee stresses that this concept was intended to apply only in the context of developing economies, and not to industrialized countries, where the existence of some economic activities evading tax and other regulations posed a different set of issues.

697. There are also different understandings of the concept of the informal economy in some developing countries. While most countries emphasize measures to raise productivity and incomes in the informal economy and to facilitate the growth of micro-entrepreneurship within it, a few countries still emphasize the registration of informal economy activities or their abolition. The Committee acknowledges that a progressive mainstreaming of workers into the formal economy is the ultimate goal, but points out that this goal should be achieved through sustained economic and social development. During much of this long-term process, it is important to include assistance to the informal economy as part of policies to achieve full and productive employment and to reduce poverty. Such action towards the informal economy should include efforts to

⁶ In its Conclusions concerning decent work and the informal economy (ILC, 2002), the Conference recognized that although there is no universally accurate or accepted description or definition, there is a broad understanding that the term “informal economy” accommodates considerable diversity in terms of workers, enterprises and entrepreneurs with identifiable characteristics. The term “informal economy” refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. See <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/pr-25.pdf>.

⁷ ILO, *Employment, incomes and equality: A strategy for increasing productive employment in Kenya*, Geneva, 1972.

extend access to justice, property rights, labour rights and business rights to informal economy workers and business.⁸

698. The Committee notes that the information made available for the General Survey suggests that this broad conception of employment policy has, in practice, been applied in only a few countries. Most countries, including many industrialized ones, clearly understand the term “employment policy” to mean only the activities that are within the remit of ministries of labour.

699. The Committee also notes that there appear to be divergent understandings of the term “employment policy”. The conception of employment policy in Convention No. 122 is a broad one, as seen in the reference in the Preamble to the Convention to the responsibility of the ILO “to examine and consider the bearing of economic and financial policies upon employment policy,” as set out in the Declaration of Philadelphia, and to the need to conduct employment policy “within the framework of a coordinated economic and social policy” in Article 2. From this perspective, employment policy encompasses not just the programmes typically implemented by ministries of labour, such as active labour market policies and employment services, but should also include efforts to mainstream the objective of full employment in macroeconomic, trade, investment and industrial policies.

⁸ The Committee notes the report issued in June 2008 by the Commission on Legal Empowerment of the Poor, Making the law work for everyone, endorsing the ILO Decent Work Agenda as an empowering and integrated framework for workers in the informal economy.

Part C

Continuing relevance of the instruments on employment

700. This part of the General Survey analyses the relevance of the employment instruments previously discussed in the context of the Social Justice Declaration. The Committee believes that analysing the relevant portions of the replies presented by governments and social partners will shed light on the prospects for further ratification and better compliance, including the current status of the instruments as defined by the Governing Body, and suggestions for potential ILO standard setting.

701. The Committee recalls that, under the ILO Constitution (article 19, paragraph 5(e)), member States have to state “the difficulties which prevent or delay the ratification” of the Conventions that they have not ratified. By analysing the information on their ratification prospects, the Committee intends to provide examples of the intentions expressed by governments regarding the Conventions covered by the General Survey and hopes that this will facilitate new discussions of ratification at the national level. By doing so, the Committee does not intend to provide directives for ratification. The Committee readily acknowledges that ratification decisions are left to national policy and discussions between national authorities and the social partners.

702. As provided in Convention No. 144,¹ which is also identified by the Social Justice Declaration as a governance Convention, national authorities and representatives of the social partners are invited to hold tripartite consultations in order to consider, at appropriate intervals, what measures might be taken to promote the ratification of unratified Conventions and the effect to be given to Recommendations.

Chapter I – Status of ratifications

703. Part I of the questionnaire on employment asked member States whether they had ratified the Conventions under review and, if not, the obstacles or other reasons that were impeding or delaying ratification, as well as ratification prospects. The Committee welcomes the insightful responses of member States to these inquiries, and notes that these responses proved informative regarding the ratification of the pertinent instruments and the relevance and usefulness of the Conventions. These responses are tabulated and provided in Annex A.

(a) Convention No. 88

704. Convention No. 88 came into force on 10 August 1950. As of 1 November 2009, it had received 86 ratifications. The most recent instrument of ratification was registered

¹ Members which have not ratified Convention No. 144 may refer to the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152).

on 7 January 2009 (*Albania*), while seven more ratifications (*Georgia, Indonesia, Kazakhstan, Republic of Korea, Mauritius, Montenegro and Serbia*) have been registered in the last ten years. The list of States which are currently bound by the terms of Convention No. 88 is given in Annex B.

705. The Committee recalls that, to date, Convention No. 88 has been denounced by three member States: Bulgaria on 13 March 1961; Italy on 9 August 1971; and the United Kingdom on 6 August 1971. The Committee notes that no denunciations have been made for the last three decennial periods for denunciation.

706. Bulgaria, Trinidad and Tobago and the United Kingdom indicate in their replies that, while they have no immediate prospects of ratifying the instrument, they apply the provisions or overarching principles of Convention No. 88 in their national legislation. To this end, the Government of the United Kingdom reports that, since 2002, its public employment service, JobCentre Plus, provides “work for those who can and support for those who cannot”, and that this programme has helped 7.4 million people move out of poverty and into employment.

707. Of those reporting member States that have not yet ratified Convention No. 88, five (Kuwait, Mexico, Morocco, Saudi Arabia and United States) indicate that the instrument is divergent from their national legislation. Nevertheless, the Governments of Morocco and the United States both report that their national legislation provides for public employment services to help facilitate the employment of their citizens. The Government of Mexico recalls its reservation to ratify the Convention because, at the time of its adoption, the national legislation in force (the Employment Agencies Regulation of 1934) did not envisage effective cooperation between the public employment service and private employment agencies as called for by Article 11 of Convention No. 88. The Government further indicate that, in March 2006, it adopted new regulations regarding private employment agencies.

708. Several countries indicate that it is an inopportune time to ratify Convention No. 88. Thus, Benin and Mongolia indicate that they lack sufficient information to ratify the instrument. Mongolia reports that it is on track to ratify this Convention, but that its stakeholders need an improved understanding of the Convention’s requirements and it requests the ILO to provide a specific, detailed assessment as to whether it is in position to ratify the Convention. Further, twelve member States (Bangladesh, Burkina Faso, Burundi, Chile, Eritrea, Malawi, Nepal, Rwanda, Saint Lucia, South Africa, Sudan and Zimbabwe) indicate that they lack the appropriate resources or national opportunity at this time to ratify the instrument. Several of these member States, including Burundi, Eritrea, Malawi and Zimbabwe, cite the current economic crisis and financial challenges as an important impediment to ratification. The report from Malawi indicates that its national legislation gives effect to the Convention, but urgently requests technical cooperation and financial assistance in this context. Additionally, the Governments of Chile, Rwanda, Saint Lucia, South Africa and Sudan report that their employment institutions either need development, or are in the process of development, before ratification may be possible. Finally, Nepal reports that it is in a period of political transition, but will address the ratification of other Conventions, such as Convention No. 88, after ratifying all of the core Conventions.

709. The Government of Ukraine reports that it does not consider Convention No. 88 to be necessary. The Government of Poland indicates that it does not plan to ratify Convention No. 88 because it disagrees with some of its particular provisions: Article 6(d) of the Convention, requiring States to participate in the administration of unemployment insurance; Article 9 of the Convention, requiring employment stability

for employment service staff and their independence from changes in government; and Article 10, involving the voluntary use of employment service facilities by employers and workers. The Government of Poland also notes that the Working Party on Policy regarding the Revision of Standards (the Cartier Working Party) did not consider this Convention to be up to date, and cites this consideration as an argument against ratification. The Independent and Self-Governing Trade Union (Solidarność) in turn requests the Government of Poland to ratify Convention No. 88, emphasizing that “the situation resulting from the current crisis is an appropriate moment for ratification”.

710. The ratification of Convention No. 88 is currently being considered by 17 member States (Benin, Cameroon, Chile, Côte d’Ivoire, Eritrea, Estonia, Jordan, Latvia, Mali, Mongolia, Myanmar, Nepal, Rwanda, Saint Vincent and the Grenadines, South Africa, Sudan and Uruguay). The Committee notes that the Pakistan Workers Federation has requested, inter alia, that Pakistan establish public employment services in accordance with the Convention.

(b) **Convention No. 122**

711. Convention No. 122 came into force on 15 July 1966. The Committee welcomes the 100th ratification registered for Convention No. 122 in October 2009 (*Gabon*) and the 101st ratification also registered in October 2009 (*Burkina Faso*). The Committee notes that nine ratifications (*Albania, Antigua and Barbuda, Bulgaria, Central African Republic, Dominican Republic, Estonia, Lithuania, Montenegro and Serbia*) have been registered in the last ten years. The list of States which are currently bound by the terms of Convention No. 122 is given in Annex C.

712. Many countries indicate in their replies that they have given priority to the ratification of the fundamental Conventions before discussing the prospects of ratifying Convention No. 122 or other Conventions. The Committee notes the relatively high volume of ratifications of this Convention. In particular, the Committee observes that all of the Member States of the European Union have ratified Convention No. 122, except for Luxembourg and Malta. Additionally, in Latin America, only Argentina, Colombia and Mexico have not ratified the Convention.

713. Of those countries that have not ratified the Convention, Indonesia, Kuwait, Malaysia, Mexico and Saudi Arabia report that the provisions of Convention No. 122 diverge from their national legislation or policies. Nevertheless, the Governments of Kuwait and Malaysia report that their national legislation complies, at least in part, with the requirements of the Convention. The Government of Indonesia indicates that provisions, policies and national programmes relating to Convention No. 122 have not been applied thoroughly in all parts of the country.

714. The Government of Benin indicates that it lacks sufficient information at this time to ratify Convention No. 122, but reports that its national legislation is more or less in compliance with the Convention’s requirements. Similarly, Burundi indicates that ratification of this Convention would logically follow the formulation of an employment policy document outlining the application of the Convention and the impact of the global economic crisis. While Mauritius reports that the ratification of Convention No. 122 is premature, since it lacks a comprehensive employment policy promoting full, productive and freely chosen employment, the Government also requests ILO assistance in formulating an employment policy paper that analyses the global, evolving economic situation, taking into account the effects of the financial recession on the economy of Mauritius. Malawi reports that, as a dualistic economy dominated by subsistence agriculture and high levels of underemployment, it is difficult to fully implement the

Convention. The Government of Malawi therefore also requests technical assistance in providing a full and independent situation analysis in terms of meeting the requirements of the Convention.

715. Four member States (Belize, Egypt, Eritrea and Nepal) indicate that they lack the appropriate resources or the national or procedural opportunity at this time to ratify Convention No. 122. Egypt and Nepal specifically indicate that their Governments are undergoing political transition at the present time and are not therefore in a position to ratify the Convention. The Syrian Arab Republic and Zimbabwe both report that consideration of ratification will follow the finalization of their employment strategies and policies.

716. The Government of Switzerland indicates that a new examination might proceed upon request by any member of its Tripartite Federal Commission for ILO Matters. In this respect, the Committee notes that the Travail Suisse workers' organization requested the Swiss Government to proceed with this tripartite dialogue on ratification, but that the employers' organization does not see the need to re-examine the Convention. The United States also reports that it needs time for tripartite discussions concerning the ratification of the Convention, although it notes that, based on a preliminary examination, it does not observe any significant differences between the requirements of the Convention and its national laws.

717. Notwithstanding these obstacles, 19 of the reporting member States (Argentina, Bahamas, Bahrain, Bangladesh, Belize, Benin, Burundi, Egypt, Eritrea, Mali, Myanmar, Nepal, San Marino, Singapore, Switzerland, Syrian Arab Republic, United States, United Arab Emirates and Zimbabwe) indicate that there are prospects for ratification, and four member States (Côte d'Ivoire, Rwanda, Saint Vincent and the Grenadines and Trinidad and Tobago) indicate that they have already initiated the ratification process.

(c) Convention No. 142

718. Convention No. 142 came into force on 19 July 1977. As of 1 November 2009, it had received 67 ratifications. In March and October 2009, two ratifications were registered by *India* and *Burkina Faso*, respectively. Eight more ratifications (*Antigua and Barbuda, Central African Republic, Islamic Republic of Iran, Lebanon, Luxembourg, Republic of Moldova, Montenegro, and Serbia*) have been registered in the last ten years. The list of States which are currently bound by the terms of Convention No. 142 is given in Annex D.

719. Six member States (Canada, Chile, Kuwait, Mali, Morocco and Saudi Arabia) report that they are not considering the ratification of Convention No. 142 because it is divergent from their national legislation. However, the Government of Canada indicates that generally its national legislation and policies are consistent with the requirements of the Convention, but concedes that ratification would be difficult because all 14 of its jurisdictions would have to agree to the ratification.

720. Benin and Mongolia indicate that they lack sufficient information at this time to ratify the instrument. The Government of Mongolia states that its revised Law on Vocational Education and Training, adopted in 2009, complies with the provisions of Convention No. 142, but requests the ILO to provide support so that it can assess whether the country is in a position to ratify the instrument.

721. Sixteen reporting member States (Bolivia, Burundi, Costa Rica, Eritrea, Estonia, Honduras, Indonesia, Malawi, Mali, Mauritius, Peru, Sudan, Syrian Arab Republic, Thailand, United States and Zimbabwe) indicate that they are not in a position to ratify

Convention No. 142 at this time. Specifically, the Governments of Bolivia, Estonia and Mauritius report that their current employment policies or programmes are presently deficient. Mauritius explains that it faces obstacles to ratification due to weaknesses in its present Technical and Vocational Education and Training System, in part because the system: is unable to provide increased and more equitable access to vocational education and training; is unable to provide sufficient targeted training for women and disadvantaged groups; has not yet developed a culture of lifelong learning; remains insufficiently responsive and relevant to market needs for trained workers; and suffers from problems of management and under-funding. Estonia acknowledges that its system for career services is currently under construction, but avers that it aims to afford all people access to career services and to provide lifelong vocational training. The Governments of Burundi, Eritrea and Indonesia endorse professional training and work centres, but cite financial means as the primary obstacle to ratification. Finally, Costa Rica, Honduras, Malawi, Syrian Arab Republic and United States report that they will need to engage in social dialogue before a decision on ratification may be confirmed.

722. Twenty-nine of the reporting member States (Bahrain, Bangladesh, Belize, Benin, Bolivia, Cameroon, Costa Rica, Côte d'Ivoire, Eritrea, Estonia, Honduras, Malawi, Malaysia, Mauritius, Mongolia, Mozambique, Myanmar, Nepal, Panama, Peru, Saint Vincent and the Grenadines, Singapore, Sudan, Suriname, Syrian Arab Republic, United States, United Arab Emirates, Uruguay and Zimbabwe) indicate that there are prospects for the ratification of Convention No. 142, or that they otherwise administer national legislation in accordance with the instrument, while Romania and Rwanda intend to initiate the ratification process. Bahrain reports that it is convinced of the importance of the role of the private sector in human development, and has thus allowed for the possibility for the private sector to open training centres.

(d) **Convention No. 181**

723. Convention No. 181 came into force on 10 May 2000. As of 1 November 2009 it had received 21 ratifications. The most recent instrument of ratification was registered on 15 September 2008 (*Poland*). The list of States which are currently bound by the terms of Convention No. 181 is given in Annex F.

724. Divergence from national legislation was cited by 16 member States (Austria, Canada, Cuba, Ecuador, Germany, Greece, Republic of Korea, Kuwait, Mali, Mauritius, Mexico, Romania, San Marino, Singapore, Switzerland and United States) as an obstacle to the ratification of Convention No. 181. The Government of Canada indicates that all jurisdictions provide similar protections to workers in their general labour legislation as those in the Convention, but reports that not all provinces and territories have specific legislation governing private employment agencies and that, where such legislation exists, it may not be as detailed as the Convention requires. The Governments of Austria and Ecuador report that they will not ratify the Convention based on other national priorities or opposition to intermediary employment operations. Similarly, the Government of Cuba reports that employment is regulated by the State, and not private entities. Germany, Republic of Korea, Mauritius, Romania and the United States report that they cannot ratify Convention No. 181 based on the requirement in Article 7, that is incompatible with their national employment policies, to prohibit private employment agencies from charging, directly or indirectly, in whole or in part, fees or costs to workers.

725. Benin and Mongolia report that they lack sufficient information at this time to ratify the instrument.

726. The Governments of Australia, Burkina Faso, Burundi, Estonia, Guatemala, Nepal and Sudan indicate that ratification is not being considered at this time, either because their labour markets are experiencing a period of transition or their private employment agencies are underdeveloped.

727. Belize, Brazil, Sweden, Syrian Arab Republic, Ukraine and Zimbabwe indicate that ratification will be examined by the social partners.

728. Since the adoption of Convention No. 181 in 1997, the Committee has invited member States that ratified its predecessor, Convention No. 96, to consider ratifying the new Convention. In regard to those countries that have accepted Part III of Convention No. 96, the Committee wishes to recall that, while Articles 10 to 14 of Convention No. 96 provide for the regulation of fee-charging employment agencies, Convention No. 181 is more specific and takes into account newer developments in the sector and national circumstances. In addition, the Committee re-emphasizes that public employment services and private agencies are both actors in the labour market and that their common aim is to contribute to a functioning labour market and the achievement of full employment. This aim can only be achieved, as stated above, through mutual cooperation as stipulated in Article 1, paragraph 2, of Convention No. 88, and mirrored in Article 13 of Convention No. 181.

729. In its comments on Convention No. 96 concerning Costa Rica,² the Committee noted that private employment agencies were prohibited by law and requested the Government to keep it informed of the progress made with regard to the legislative and other procedures necessary for the ratification of Convention No. 181. In turn, the Government indicates that ratification is currently being considered. As the country does not have the necessary legal and administrative infrastructure to give effect to the provisions of Convention No. 181, the Government is concerned that the supervision of private employment agencies may be difficult to achieve.

730. In 2005, the Committee highlighted to Egypt, inter alia, the role that Convention No. 181 and Recommendation No. 188 play in the licensing and supervision of placement services for migrant workers and the role that Convention No. 181 attributes to private employment agencies for the functioning of the labour market. The Government of Egypt indicates that prospects of ratification exist and that parts of the Labour Law are already in conformity with the provisions of the two instruments.

731. In response to the Committee's comments made in 2005,³ the Government of Guatemala states in its reply to the questionnaire that the ratification of Convention No. 181 is currently not under consideration. In order to regularize private employment agencies, it is necessary for the National Employment System to become a state policy. In its contribution to the General Survey, the Government invited the ILO to support this state policy reform.

732. Honduras, India and Iraq report that there currently are no (or poor) prospects for ratification, either because their national legislation does not satisfy the Convention's provisions, or because the social partners have not agreed to its ratification.

733. New Zealand and the United Kingdom report that there is no prospect of ratification because they do not recognize the necessity of the Convention. The Committee notes that the British TUC believes that the Government of the United

² CEACR, (77th Session), direct request, Convention No. 96, addressed to Costa Rica in 2007, para. 2.

³ CEACR, (76th Session), direct request, Convention No. 96, addressed to Guatemala in 2006, para. 2.

Kingdom should ratify Convention No. 181 to ensure that the nation's agency workers are protected from discrimination and exploitation. The Committee further notes the Pakistani Workers' Federation's statement urging the Government to ratify Convention No. 181.

734. Notwithstanding the above obstacles, 36 member States (Bangladesh, Belize, Benin, Bolivia, Brazil, Cameroon, Central African Republic, Chile, Côte d'Ivoire, Egypt, Eritrea, Estonia, France, Honduras, Israel, Jordan, Lebanon, Malawi, Madagascar, Mongolia, Montenegro, Mozambique, Myanmar, Nepal, Peru, Rwanda, Saint Vincent and the Grenadines, Serbia, Sudan, Sweden, Syrian Arab Republic, Tunisia, Ukraine, United Arab Emirates, Bolivarian Republic of Venezuela and Zimbabwe) indicate that there are prospects for ratification.

735. Of these countries, the Committee notes that the Government of the Central African Republic, Côte d'Ivoire and Seychelles have begun the process of ratifying Convention No. 181. The Government of Israel indicates that it is currently considering the ratification of Convention No. 181 and notes that national legislation already covers the main provision of Convention No. 181.

736. The Government of Bolivia indicates that ratification of Convention No. 181 is currently being considered, as the acceptance of Part II of Convention No. 96 has thus far proven to be an obstacle for the effective organization of the employment market. In addition, the Government observes that its current legislation already permits the operation of temporary work agencies and that it is aimed at authorizing the operation of private employment agencies.

737. In 2008, the Government of France indicated that it was in the process of considering once again the possibility of ratifying Convention No. 181.⁴ The Government indicates in its response to the questionnaire that prospects for ratification exist due to the adoption of Act No. 2005-32 of 18 January 2005, through which the mediation market has been opened to private agencies and the monopoly of the National Employment Agency (ANPE) was brought to an end. Future consultations are planned in order to examine the possibility of ratifying Convention No. 181.

738. In its comments to Sri Lanka, the Committee highlighted the role of Convention No. 181 in the licensing and supervision of placement services for migrant workers. The Committee further notes that, in the comments that it made on the 2009 report on Convention No. 96, of which Sri Lanka has accepted Part III, the Sri Lankan National Trade Union Federation (NTUF) indicated that Sri Lankan trade unions have signed agreements with Middle Eastern trade unions to protect and assist Sri Lankan housemaids working in the region. In its comments to Turkey, the Committee also recalled that, in particular, Article 3 of Convention No. 181 contains more flexible provisions for the supervision of private employment agencies than Convention No. 96.

739. In its 2007 comments to Senegal, the Committee noted the Government's statement that the application of Part III of Convention No. 96 had not been satisfactory. However, the Government thereafter determined that the ratification of Convention No. 181 was not appropriate. The Government reports that Recommendation No. 188 would be helpful in the formulation of new national employment rules. Commenting on the Government's report under Convention No. 96, the National Union of Autonomous Trade Unions of Senegal states that the competent authority does not exercise

⁴ CEACR, (79th Session), observation, Convention No. 96 (France), report 2009, para. 1.

satisfactory supervision of private employment agencies and that, consequently, illicit practices have multiplied.

740. The Committee notes that some of the countries that have accepted Part II of Convention No. 96 are currently considering the authorization of private employment agencies in their territories. In this regard, in its individual comments, the Committee has invited Bangladesh, Gabon, Ghana, Luxembourg, Mauritania, Swaziland and the Syrian Arab Republic to keep it informed of any developments concerning the possibility of ratifying Convention No. 181.

Chapter II – Status of the instruments

741. At its 262nd Session (March–April 1995), the Governing Body established the Working Party on Policy regarding the Revision of Standards. The Working Party's aims were to assess current needs for the revision of standards, examine the criteria to be applied to revisions and analyse the difficulties and inadequacies of the standard-setting system with a view to proposing effective practical measures to remedy the situation.⁵ The Working Party conducted case-by-case examinations of all the ILO Conventions and Recommendations adopted prior to 1985 and formulated a significant number of proposals, which have been further discussed and approved by the LILS Committee and the Governing Body.⁶

742. In the paragraphs below, the Committee aims to provide information on the views expressed in the replies to the questionnaire on the status of the employment instruments, in the hope of facilitating discussions in the Governing Body.

(a) Convention No. 88

743. In November 1996, the Office prepared a paper for the third meeting of the Working Party in which 28 Conventions, including Convention No. 88, were examined with a view to deciding on the need for their revision.⁷ The Working Party decided at that time that the provisions of the Convention were up to date and useful, and therefore that there was no need for review. In that respect, the Working Party proposed to maintain the status quo with regard to the Convention, and that the status of the Convention would be re-examined at an appropriate time.⁸

744. The Committee recalls that Convention No. 88 was adopted concurrently with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee notes that, while Convention No. 87 is now one of the eight fundamental Conventions, both Conventions Nos 87 and 88 were considered of equal importance at the time of their adoption. In light of the above, the Committee observes that Convention No. 88 has acquired a new dimension and that governments and the social partners may perceive a need to contemplate its ratification.

⁵ The mandate of the Working Party is appended to GB.267/LILS/WP/PRS/2.

⁶ See GB.283/LILS/WP/PRS/1/2.

⁷ See GB.267/LILS/WP/PRS/2, para. II.16.

⁸ See GB.267/LILS/4/2, para. 12.

(b) Convention No. 122

745. At its first meeting (November 1995), the Working Party, based upon consensus, proposed that four priority Conventions, including Convention No. 122, would be excluded from any revision along with the basic human rights Conventions.⁹

746. In 2008, the Conference adopted the Social Justice Declaration, in which Convention No. 122 was identified as one of the Conventions having the most significant importance from the viewpoint of governance.¹⁰

747. At its 304th Session (March 2009), the Governing Body asked the Office to prepare a report in the context of the follow-up to the Social Justice Declaration.¹¹ In this regard, the Committee notes the adoption by the Governing Body in November 2009 of a six-year plan of action that focuses on achieving the twofold goal of rapid widespread ratification and effective national implementation of the four governance Conventions.¹² The Committee considers that this Convention is an important tool to assist countries to address the employment dimension of the economic crisis.

(c) Convention No. 142

748. For the fourth meeting of the Working Party (March 1997), the Office prepared a document in which 35 Conventions were examined, including Convention No. 142.¹³ At that time, the Working Party decided to invite member States to ratify the Convention. Additionally, the Working Party intended that the Office would undertake a study on the means and methods to increase and develop technical cooperation in the field of human resources development, including the development of a practical guide to help in the formulation and implementation of policies and programmes tailored to national conditions. Finally, it was decided that the Convention could be re-examined in due course.

749. The Committee notes that practical guides were not developed at the time of the above meeting, as suggested, but that work was initiated on reviewing Recommendation No. 150, which resulted in the adoption of Recommendation No. 195 in 2004.

(d) Convention No. 181

750. As mentioned in the previous paragraphs, the Working Party's November 1996 meeting involved an examination of 28 Conventions. At this meeting, the Working Party decided to examine the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), at a subsequent meeting in the light of the work on private employment policy that would be undertaken at the June 1997 Conference.¹⁴

751. Thereafter, the Working Party carried out a renewed examination of Convention No. 96 at its sixth meeting in March 1998, at which time it was decided to defer the examination of Convention No. 96 to its November 1998 meeting.¹⁵

⁹ See GB.264/LILS/4, para. 50(c)(i).

¹⁰ See the ILO Declaration on Social Justice for a Fair Globalization, Part II(B)(iii).

¹¹ See documents GB.304/LILS/4, para. 31, and GB.304/9/2, para. 51(i)(a).

¹² See GB.306/LILS/6, Nov. 2009.

¹³ See GB.268/LILS/5, para. III.2.

¹⁴ See GB.267/LILS/4/2, paras 13 and 14.

¹⁵ See GB.271/LILS/WP/PRS/1, under II.1, and GB.271/LILS/5, paras 30–32.

752. During its seventh meeting (November 1998), the Working Party decided that the States parties to Convention No. 96 should be invited to contemplate ratifying Convention No. 181, as appropriate, the ratification of which would, ipso jure, involve the immediate denunciation of Convention No. 96. It was further decided that, once Convention No. 181 came into force, the Working Party (or the LILS Committee) would re-examine the status of Convention No. 96 in due course.

(e) **Recommendations Nos 189 and 193**

753. The Committee recalls that the status of Recommendations was also reviewed by the Cartier Working Party, but that Recommendations Nos 189 and 193 were not taken into account at that time because they had been adopted recently. The Committee recalls its suggestion in the 2004 General Survey that the Governing Body adopt new report forms for Conventions Nos 122 and 142, including the text of Recommendation No. 189.

754. The Committee reiterates the interest of facilitating the task of the national authorities responsible for preparing reports by reproducing in new report forms the text of Recommendations Nos 189 and 193.

Chapter III – Suggestions by Members for standard-setting action

755. The questionnaire on employment for the General Survey reproduced in Annex A asked member States, as well as employers' and workers' organizations, to provide suggestions concerning possible standard-setting action (including new standards or revision) and to review the status of the instruments.

756. The Committee notes that the majority of responding governments, i.e., 80 out of 108, provided no suggestions for standard-setting action (including new standards or reviewing the status of the instruments) on that occasion.

757. The Committee notes that employers' organizations have not presented comments and observations regarding these matters.

758. The Committee further notes that some workers' organizations incorporated in their comments the suggestions formulated by the International Trade Union Confederation (ITUC). These suggestions include, inter alia, that the ILO strengthen its leadership in light of the current economic crisis by providing guidance on: (1) how to place decent work at the core of economic and social policies building upon the concept of decent work; (2) precarious employment, including but not limited to the "disguised and ambiguous employment relationships and in case of multiple contractual arrangements to clarify who the employer is, what rights the workers have and who is responsible for them"; (3) how to maximize decent work outcomes in global supply chains and development; and (4) how to examine disputes concerning provisions of the 1977 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policies and to propose solutions for their settlement.

759. The Committee notes that six countries propose the consolidation of the instruments. In their responses, the Governments of Brazil, China, Estonia and Nicaragua suggest that the ILO might consolidate the Conventions into one instrument. China indicates that this consolidation would reduce the burden of reporting obligations on member States.

760. Estonia advises that, if and when the Conventions are consolidated, they should be updated. Similarly, Namibia suggests that Conventions Nos 122, 88 and 142 should be

reviewed, as they were drafted several decades ago. The Government of Seychelles suggests that the ILO establish an additional core Convention setting forth a comprehensive and consolidated occupational health and safety standard.

761. As regards Convention No. 122, Brazil suggests the development of one instrument that focuses on the integration of employment policies, vocational training, employment services and employment security. The Government of Mauritius advises that any modifications to Convention No. 122 should focus on labour redeployment, the employment of women and the protection of the right to employment of vulnerable groups such as persons with disabilities and older workers. The Government of Zimbabwe suggests that the ILO address issues relating to the informal economy and that it should endeavour to ensure that employment issues take centre stage in the recovery processes and packages in the context of the global financial crisis.

762. With respect to Convention No. 88, the Governments of South Africa and Zimbabwe suggest focusing on the recruitment and placement of migrant workers. Specifically, Zimbabwe recommends the development of an instrument to govern the practice and process of international recruitment and placement, and South Africa calls for the instrument to promote the return of scarce skills into the country. South Africa further recommends adding a provision to Convention No. 88 that would directly deal with child labour. In its reply, the National Council of Unified Trade Unions of the Dominican Republic (CNUS) suggests that the ILO create a direct responsibility between employers and workers whose employment relationship was developed through private employment agencies. Further, the CNUS urges sufficient, dissuasive sanctions on member States that violate the provisions of the Convention.

763. With respect to Convention No. 142, the Government of Zimbabwe calls for the issue of vocational training to be emphasized as being of paramount importance, with a view to preventing child labour in general, and its worst forms in particular. The Government further suggests requesting member States to report annually on the efforts made to intensify vocational training as a way of ending the vicious circle of poverty for most children. Similarly, the Government of Iraq proposes that the Convention should encourage member States to provide financial and other incentives to trainees to promote enrolment in national vocational training programmes. Iraq further proposes that the Convention should encourage member States to adopt new forms of vocational training policies with the participation of the social partners.

764. As regards Convention No. 181, the Government of Mauritius suggests that any standard-setting action should take into account the fact that employment agencies have an important role to play in orderly labour migration. The CNUS requests the ILO to promote this Convention and strengthen it.

765. As regards Recommendation No. 189, Brazil suggests the integration of job-creation aspects in SMEs and the requirement to develop sustainable enterprises. The Government of New Zealand, however, warns that it will be extremely difficult to draft a new instrument that is able to accommodate the diversity of national policies and practice in this area. Iraq calls for the Recommendation to clarify the concept of “microenterprises”.

766. With respect to Recommendation No. 193, the Government of Mauritius advises that, in the light of the present problems affecting the world economy, the resilience and effectiveness of cooperatives should be comprehensively assessed and, consequently, upgraded if necessary. The Government of the Bahamas suggests that the ILO may wish to develop a Convention that gives further support to the establishment and protection of

cooperatives. The CNUS suggests that greater attention should be placed on the tendency to use cooperatives to disguise the employment relationship.

767. The Government of Zimbabwe suggests that Recommendations Nos 189 and 193 be consolidated into one instrument, contending that the instruments are practically the same as they both require coordinated and synergistic programming of interventions.

768. In a general statement, the Government of New Zealand warns that any standard-setting action should be principles-based and outcomes-focused, while accommodating the diversity of social and economic policies in member countries and promoting core universally accepted principles; should not be too prescriptive, in order to avoid inflexible limitations upon the ways in which associated obligations can be realized; and should not be sector-specific, but rather have minimum universal standards to provide a framework of minimum protections for the employment and working conditions of workers across all sectors.

769. The Committee observes that, similarly, the Government of Bahrain suggests that the special circumstances of different regions and States should be taken into account, and the Government of Bangladesh suggests that the ILO consider national laws that comply with Conventions even if those Conventions have not yet been ratified. Finally, the Government of Malaysia advises that Conventions should be reviewed to be less prescriptive.

Chapter IV – Needs identified and technical assistance requested

770. The Committee recalls that the Social Justice Declaration called on the ILO to assist member States in their efforts to implement international labour standards, in accordance with national needs and circumstances. To this end, the questionnaire asked member States to identify any assistance requested from the ILO in their efforts to ratify or best implement the employment instruments. In so doing, the Committee recognizes that requests for assistance indicate that member States aim to ensure potential ratification, compliance and best practices regarding the employment instruments.

771. Forty-three member States included requests for technical assistance in their replies. The Committee notes with interest that 26 of these requests,¹⁶ i.e., over half, contain general inquiries concerning technical support and assistance for devising and implementing employment programmes.

772. The Committee observes that many requests for assistance deal specifically with the Conventions and/or Recommendations that member States wish to either ratify or implement better. To this end, the Committee anticipates that these specific requests will be readily addressed by the Office through its services in headquarters and the field.

773. As regards Convention No. 122, technical assistance has been requested by the Governments of Benin, Burkina Faso, Saint Lucia, Saint Vincent and the Grenadines, United Republic of Tanzania and Zimbabwe. In addition, the Governments of Iraq and Malawi have requested assistance in assessing labour market and economic conditions, while the Government of Mongolia has requested policy advice and Sudan has requested

¹⁶ Antigua and Barbuda, Bangladesh, Belize, Brazil, Chile, Colombia, Costa Rica, Ecuador, Eritrea, Indonesia, Lebanon, Saint Lucia, Mozambique, Mauritius, Malaysia, Namibia, Nigeria, Nicaragua, Nepal, Panama, Peru, Romania, Serbia, Syrian Arab Republic, Bolivarian Republic of Venezuela and Zimbabwe.

assistance in drafting reports. The Committee notes that, with respect to this latter request, many member States may not have the resources to draft reports on the application of the employment instruments and would thus benefit from ILO assistance.

774. With respect to establishing and maintaining vocational and employment programmes under Convention No. 142, the Governments of Iraq, Thailand and Saint Vincent and the Grenadines have requested ILO assistance. The Governments of the Bahamas, Mongolia and Malawi have requested assistance to assess their national labour market systems or national labour strategies under this Convention.

775. Turning to Convention No. 88, the Committee notes that the Governments of Antigua and Barbuda, Iraq, Malawi and South Africa have requested technical assistance and training. The Government of Saint Lucia has requested exchange programmes, and the Government of Saint Vincent and the Grenadines has requested continued support for the development and operation of the national labour market information system.

776. The Committee observes that, with regard to Convention No. 181, the Governments of Antigua and Barbuda, Burkina Faso, Iraq, Malawi, Mozambique, Syrian Arab Republic, Bolivarian Republic of Venezuela, South Africa and Zimbabwe have requested technical support or an advisory assessment of their current endeavours. Further, the Government of the Bahamas suggests that the ILO organize a seminar to educate the social partners on the problems faced by member States that have not ratified Convention No. 181, and the Government of Thailand suggests that the ILO should provide assistance in disseminating good examples of regulatory frameworks for private employment agencies. The Government of Tunisia has requested assistance in conducting a study to evaluate the reality and prospects for the development of the national labour market, and the Government of Mongolia has requested assistance with capacity-building programmes.

777. As regards Recommendations Nos 189 and 193, the Committee notes that technical advice and support have been requested by the Governments of Antigua and Barbuda, Bahamas, Croatia, Iraq, Saint Lucia, Mongolia, Malawi, Serbia, Bolivarian Republic of Venezuela and South Africa. In addition, the Government of South Africa has requested assistance in the mentorship and sustainability of small businesses, and data on possible niche opportunities for small business owners under Recommendation No. 189. For Recommendation No. 193, the Government of Saint Lucia has requested training for public sector staff, the Government of Mongolia has requested support to develop a cooperative development programme and the Government of Malawi has requested a review of its cooperatives policy.

Chapter V – ILO strategic objectives and the promotion of employment

778. The Committee observes with interest that, through the course of this General Survey, it has not been possible to mention a particular employment Convention or Recommendation without further discussing or involving other fundamental or priority Conventions. Thus, it is readily apparent that these employment instruments are intrinsically linked and cannot be analysed in a vacuum.

779. The Committee recalls in this respect that the employment Conventions discussed above are closely linked to the fundamental Conventions. Thus, the principles of Conventions Nos 87 and 98, providing that all workers have the right to establish and join organizations and to be protected from employer or government interference, are enshrined in Convention No. 181, Article 4. Further, Article 9 of Convention No. 181,

prohibiting private agencies from using or placing children in employment is related to Conventions Nos 138 and 182 with the aim of ensuring that professional licensing requirements guarantee in practice the absence of the use of child labour by private employment agencies. In addition, the Committee recalls that Conventions Nos 100 and 111 focus on promoting equality in the labour market. In that regard, there is a clear linkage between Convention No. 122 and Conventions Nos 100 and 111, as the former aims to ensure that member States provide each individual worker with the opportunity to acquire qualifications and to use their skills and endowments free from any constraint. Convention No. 122 also addresses Conventions Nos 29 and 105, which both deal with the abolition of compulsory work. Article 1, paragraph 5, of Convention No. 142 refers to Convention No. 111 by reminding member States that access to human resources development programmes must be free from discrimination.

780. The employment instruments also have linkages with several other Conventions which, albeit not fundamental, are nevertheless important instruments in their own right. The discussion of Conventions Nos 88 and 181 dealt with: Convention No. 2, recognizing the existence of free private employment agencies; Convention No. 34, providing limited exceptions to the requirement that member States totally abolish private agencies within three years following ratification; Convention No. 96, giving member States the choice of either progressively abolishing private agencies or allowing for a system of coexistence between public and private actors; Convention No. 168, reminding member States of the importance of coordinating its systems of protection against unemployment and its labour market institutions; Conventions Nos 97 and 143, prioritizing attention to migrant workers in an overall employment policy; Convention No. 150, aiming to strengthen the bodies that deal with all matters relating to labour policy; Convention No. 159, calling on each member State to implement a national policy on the vocational rehabilitation and employment of persons with disabilities through placement and employment services; and Convention No. 29, with the aim of eradicating the exploitation and trafficking of persons, in particular for those working for abusive private agencies.

781. Mindful of the interdependence between the employment instruments, the Committee notes a further common thread between them: the necessity and importance of tripartite consultations. These consultations are called for in the Conventions and Recommendations covered by the present General Survey, as well as in the Conventions dealing with labour inspection. As the Committee indicated in its 2006 General Survey, the labour inspectorate can attain its objectives only if appropriate measures are adopted by the competent authority to promote effective collaboration with employers and workers in its activities.¹⁷ The Committee notes that a plan of action for a promotional campaign for the ratification and effective implementation of Conventions Nos 81, 122, 129 and 144 has now been approved by the Governing Body.

782. As mentioned earlier, at its 304th Session (March 2009), the Governing Body asked the Office to prepare a report following up on the Social Justice Declaration setting out a final plan of action for the implementation of the standards strategy. The Committee notes that this plan of action emphasizes the linkages between the governance instruments, cited above, as a means of promoting employment and strengthening the role of international labour standards in creating a basis for and supporting rights at work.¹⁸

¹⁷ 2006 General Survey on labour inspection, para. 163.

¹⁸ See GB.304/LILS/4, para. 31, and GB.306/LILS/6, appendix, para. 26.

Chapter VI

Concluding remarks: The importance of the employment instruments

783. Since the Second World War, the realization that poverty anywhere is a threat to prosperity and peace everywhere has motivated international bodies to take action. The Declaration of Philadelphia of 1944 recognized the “solemn obligation of the International Labour Organisation to further among the nations of the world programmes” designed to achieve “full employment and the raising of standards of living”. In the same vein, the Universal Declaration of Human Rights, adopted in 1948, provides that “everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment”. Convention No. 122, adopted in 1964, refers expressly in its preamble to the Universal Declaration of Human Rights. In 1966, the International Covenant on Economic, Social and Cultural Rights recognized “the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and [that States parties would] take appropriate steps to safeguard this right”.

784. The Social Justice Declaration, adopted in 2008, identifies Convention No. 122 as a most significant instrument from the viewpoint of governance, as it provides that member States “shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment”. The employment instruments discussed in this General Survey enable member States to create the conditions that will permit them to achieve the goals set by Convention No. 122.

785. The Committee believes that there are three fundamental steps to achieving full, productive and freely chosen employment. The first is to make a political commitment to achieve full employment. The Committee observes that Convention No. 122, in Article 2, sets out that member States shall implement a framework of a coordinated economic and social policy, which is to be clearly defined and declared.

786. The second fundamental step calls for member States to build or strive to build institutions necessary to ensure the realization of full employment. To this end, Conventions Nos 88 and 181 invite member States to establish employment services to assist workers and employers in achieving and maintaining optimal employment. Thus, the conjunction of these Conventions forms a necessary building block for employment growth. Further, Convention No. 122 invites member States to establish procedures to implement active labour market measures and to keep those measures under review. The Convention accordingly asks governments and the social partners to periodically review their labour market measures to evaluate their effectiveness in achieving full employment.

787. The third fundamental step is for member States to make the best possible effort, in relation to their level of development and economic capacity, to achieve and maintain full employment by:

- supporting the training and retraining of workers under Convention No. 142;
- promoting the development of cooperatives, as stipulated in Recommendation No. 193, since they play an important role in job creation, integration and poverty reduction; and
- promoting the development of small and medium-sized enterprises as they also play a pivotal role in poverty reduction through job creation, in keeping with Recommendation No. 189.

788. The employment Conventions and Recommendations taken together therefore provide a framework to: realize the human right to work and to education for all; confront and mitigate the effects of the global economic crisis; and ensure continuing and genuine tripartite consultations.

789. The Committee reiterates that Convention No. 122 enjoins member States to realize the right to work by focusing on the effective implementation of employment policies to maximize full employment. Additionally, under Convention No. 142, the Committee observes that member States increasingly recognize the interdependence between the realization of the right to work and the right to education for all. As a consequence, governments and the social partners have agreed to make lifelong skills development an essential component of national employment policies and development strategies.

790. Convention No. 142 provides an essential framework for reducing the mismatch in the level of skills in labour markets. Recommendation No. 195 also recognizes lifelong learning as crucial for both the competitiveness of enterprises and the employability of workers. Public employment services and private employment agencies, under Conventions Nos 88 and 181, provide the necessary institutions for the achievement of full employment, particularly where there is a coordination of efforts.

791. The importance of maintaining labour standards is emphasized in the Global Jobs Pact, adopted by the Conference in June 2009 in the midst of the present global economic crisis. In this regard, the employment instruments, together with the fundamental Conventions and other relevant ILO standards, provide governments with the essential tools to maintain labour standards as a basis for a sustainable recovery.

792. The Committee recognizes that women and vulnerable workers are most affected by economic downturns and are usually the last to regain employment as the economy recovers. The Committee notes that the majority of member States indicate that they have enacted special policies to assist women and vulnerable workers to obtain and retain employment. Several member States report on a variety of programmes to promote gender equality at work and to increase employment opportunities for older workers and workers with disabilities.

793. The Committee observes that some member States emphasize the importance of developing small and medium-sized industries and some promote microfinance programmes to spur the development of micro-enterprises which can further economic growth. The promotion of microfinance programmes is in line with Recommendation No. 189, as these programmes encourage poverty reduction through the growth and development of a diverse enterprise structure, and in particular support women entrepreneurs.

794. The Committee emphasizes that social dialogue is essential in normal times and becomes even more so in times of crisis. The employment instruments require member States to promote and engage in genuine tripartite consultations. A significant number of countries have various mechanisms for tripartite consultations on employment matters.

795. The Committee welcomes the efforts of member States to take into account other stakeholder perspectives, such as representatives of local communities, and urges member States to intensify their efforts in this regard. Social dialogue on budgetary responses to employment policies should be promoted to foster equitable and transparent allocations.

796. The Committee notes that most developing countries show a clear commitment to the objective of employment promotion and have adopted a wide range of policies and programmes to this end. Nevertheless, the rate of unemployment remains high in a significant proportion of developing countries. The employment instruments point to three useful policy options for reducing unemployment, which do not appear to have received sufficient emphasis in current policies in some of these countries. The first is to identify and adopt measures to increase the labour intensity of economic growth. The second is to devote increased attention to employment promotion in rural areas, as this is where the majority of the labour force in many developing countries is still located. The third is to provide access to funding to encourage an entrepreneurial spirit for young persons and women. The protection of groups of special concern may also be enhanced.

797. The Committee recommends that the ILO undertake an in-depth study of unemployment in developing countries. It notes that the traditional view that unemployment rates in developing countries should be low, in part because of a lack of social protection measures, runs counter to actual experience over the past two decades. Because high unemployment rates in many developing countries hinder their economic development, it is important to understand their causes as the first step to designing policy initiatives that can respond effectively to the phenomenon.

798. A central theme in the labour market policies of industrialized countries is the imperative to increase the size of the economically active population by providing incentives to work and simultaneously making it less attractive to rely in the long term on welfare benefits. The Committee observes that to achieve this objective industrialized countries are shifting towards active labour market policies.

799. The Committee stresses the importance of moving unemployed persons back into work as quickly as possible. Not only does this benefit the individual, but it also bolsters social cohesion. The long-term unemployed and jobless youth are particularly susceptible to becoming disconnected from the social mainstream. The resulting social exclusion is harmful not only to those directly affected, but also to their communities, which can suffer a rise in anti-social and criminal behaviour and other ill effects of deprivation. Indeed, the effects of social exclusion have a negative impact, especially on children and future generations.

800. From the data received, the Committee observes that there is a growing problem of unemployment among educated workers, particularly young university graduates, who are unable to find secure employment commensurate with their skill level. This is now an issue for the advanced market economies as well as developing countries. Not only are their skills underutilized, but this pattern of casual jobs can prove detrimental to their lifetime career progression. The Committee encourages governments to develop job creation and career guidance policies targeted at this new category of the educated unemployed.

801. The Committee welcomes the growing number of ratifications and increased efforts to implement the employment instruments by member States. It further welcomes the six-year plan of action adopted by the Governing Body in November 2009 which focuses on achieving widespread ratification and effective national implementation of the four governance Conventions, including Convention No. 122.

802. The Committee calls on member States who are in a position to ratify Conventions Nos 88, 122, 142 and 181 to do so. The Committee points out that Conventions Nos 88 and 181 have received fewer ratifications, although they play a fundamental role in the efficient functioning of, and access to, labour markets. The Committee encourages member States to avail themselves of the technical assistance provided by the Office, where necessary.

803. The Committee is of the view that the current crisis has provided the Organization with an opportunity to review whether the employment instruments as currently framed are sufficient to assist member States in future to respond to economic and financial crises of the kind currently experienced. The Committee welcomes the helpful proposals of some governments and workers' organizations concerning standard-setting action, although it wishes that it had received proposals from a greater number of governments and from employers' organizations.

804. The Committee recalls that the Social Justice Declaration highlights the "interdependence, solidarity and cooperation among all Members of the ILO that are more pertinent than ever in the context of a global economy". This principle holds particularly true in the global economic crisis, when interdependent markets require joint efforts to obtain sustainable economic recovery. Cross-border issues, such as labour migration and scarce skills allocation, underline the need for cross-border solutions.

805. Employment policies and measures to mitigate the impact of economic difficulties require more inter-agency, inter-ministerial cooperation and broadened networking between different stakeholders and communities.

806. The Committee is of the view that, based on all the information available to it, two standard-setting options can be contemplated. Taking into account the importance of internationally coordinated and coherent action in times of crisis, the first option would be for a new instrument, in addition to the current instruments, to fill the gap in the current framework. Such an instrument could establish guiding principles and policies to deal with preventive crisis action and effective crisis responses in accordance with the objectives of the Declaration of Philadelphia, the Social Justice Declaration and the Global Jobs Pact.

807. A second option, however, that can be considered in light of the interdependence and linkages between the instruments examined in this General Survey is the adoption of an instrument consolidating all the instruments relevant to employment. This would be designed to create a comprehensive and coherent set of global standards relating to employment based on those that are found in the existing employment-related instruments and which address the gap mentioned above in the current framework. The Committee considers that the consolidation of the instruments reviewed in this General Survey, and possibly of other instruments relevant to employment, would benefit member States. Consolidation would contribute to greater coherence, efficiency and visibility of the instruments, as well as reducing the reporting burden on member States, thereby promoting better implementation and compliance. To this end, Convention No. 122 would: continue to provide the overarching theme for this new instrument, which would address the need for an integrated approach between macroeconomic and financial policies and employment and social policies; and commit member States to the achievement of full, productive and freely chosen employment.

Annex A

Article 19 questionnaire on employment

REPORT

to be made no later than 31 May 2009, in accordance with article 19 of the Constitution of the International Labour Organization by the Government of, on the position of national law and practice in regard to matters dealt with in the instruments referred to in the following questionnaire.

ARTICLE 19 QUESTIONNAIRE ON EMPLOYMENT

This questionnaire contains three parts, Part II is optional

Part I. Impact of ILO instruments

The following table sets out selected instruments to be covered by the article 19 questionnaire concerning the strategic objective of employment. The objective of this table is to get information from member States, employers' and workers' organizations on the law and practice in countries regarding non-ratified Conventions and Recommendations as well as obstacles to ratification of the relevant Conventions. It also seeks information on member States' needs and suggestions for standards-related action.

	<p>A.</p> <p>(1) If your country has not ratified the following Conventions, what are the obstacles or other reasons that impede or delay ratification and what are ratification prospects?</p> <p>(2) To what extent does your country give effect to the provisions of the following non-ratified Conventions and Recommendations?</p>	<p>B. Please answer the following three questions for the six instruments:</p>		
		<p>(1) What suggestions would your country wish to make concerning possible standard-setting action (including new standards, revision) review of the status of the instruments or other action to be taken by the ILO?</p>	<p>(2) Has there been any policy support and technical cooperation support provided by the ILO to give effect to the instruments in question?</p> <p>If this is the case, what has been the effect of that support?</p>	<p>(3) What are the future policy advisory support and technical cooperation needs of your country to give effect to the objectives of the instruments in question?</p>
<p>Employment Policy Convention, 1964 (No. 122)</p> <p>Employment Service Convention, 1948 (No. 88)</p> <p>Private Employment Agencies Convention, 1997 (No. 181)</p> <p>Human Resources Development Convention, 1975 (No. 142)</p> <p>Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189)</p> <p>Promotion of Cooperatives Recommendation, 2002 (No. 193)</p>				

	<p>A.</p> <p>(1) If your country has not ratified the following Conventions, what are the obstacles or other reasons that impede or delay ratification and what are ratification prospects?</p> <p>(2) To what extent does your country give effect to the provisions of the following non-ratified Conventions and Recommendations?</p>	<p>B. Please answer the following three questions for the six instruments:</p>		
		<p>(1) What suggestions would your country wish to make concerning possible standard-setting action (including new standards, revision) review of the status of the instruments or other action to be taken by the ILO?</p>	<p>(2) Has there been any policy support and technical cooperation support provided by the ILO to give effect to the instruments in question?</p> <p>If this is the case, what has been the effect of that support?</p>	<p>(3) What are the future policy advisory support and technical cooperation needs of your country to give effect to the objectives of the instruments in question?</p>
<p>Employment Policy Convention, 1964 (No. 122)</p> <p>Employment Service Convention, 1948 (No. 88)</p> <p>Private Employment Agencies Convention, 1997 (No. 181)</p> <p>Human Resources Development Convention, 1975 (No. 142)</p> <p>Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189)</p> <p>Promotion of Cooperatives Recommendation, 2002 (No. 193)</p>				

Part II. Trends, policies and developments

	Yes/ No	Relevant legislation	Main policies, other measures and institutional arrangements	Comments (e.g. effectiveness, impact, global influences, etc.)
I. NATIONAL EMPLOYMENT POLICY				
Please indicate whether your country has:				
1. Adopted an active policy to promote full, productive and freely chosen employment? C122 Art. 1, para. 1				
2. Taken measures to promote employment within the framework of a coordinated economic and social policy? C122 Art. 1, para. 3; Art. 2				
3. Established mechanisms to monitor progress toward full, productive and freely chosen employment, and to ensure coordination among key institutions? C88 Art. 1, para. 2; C122 Art. 2; C142 Art. 1, para. 1; C181 Art. 13, paras 1–2				
Consultation				
Please indicate whether your country has:				
4. Consulted the social partners in the formulation and execution of employment measures? C122 Art. 3; C88 Arts 4–5				

	Yes/ No	Relevant legislation	Main policies, other measures and institutional arrangements	Comments (e.g. effectiveness, impact, global influences, etc.)
5. Consulted in the formulation and execution of employment measures, the persons affected by these measures (including the rural sector and the informal economy)? CI22 Art. 3				
II. POLICIES				
6. Has your country taken measures to: (i) ensure that its employment policies cover and take special account of the informal economy? (ii) promote transition of informal activities to the formal economy? (iii) consult social partners in the adoption of these measures?				
Please indicate whether your country has:				
7. Adopted, as an integral part of its employment policy, a free public employment service. C88 Art. 1				
8. Regulated private employment agencies and established cooperation between private employment agencies and the public employment service. C88 Art. 1, para. 2 and Art. 11; CI81 Arts 3 and 13				

	Yes/ No	Relevant legislation	Main policies, other measures and institutional arrangements	Comments (e.g. effectiveness, impact, global influences, etc.)
9. Does your employment policy contain measures to meet the needs of the following particular categories of workers:				
(i) women?				
(ii) young people?				
(iii) people with disabilities?				
(iv) older workers?				
(v) workers in the informal economy?				
(vi) migrant workers?				
(vii) rural workers?				
III. SKILLS DEVELOPMENT				
10. Has your country adopted measures relating to vocational training, retraining and further training:				
(i) with institutions to bring employers, workers and training providers together to improve skills matching and the quality and relevance of training? CI42 Art. 5				
(ii) directed towards creating prospective employment opportunities, i.e. anticipating future growth sectors and their skills needs? CI42 Art. 1				

	Yes/ No	Relevant legislation	Main policies, other measures and institutional arrangements	Comments (e.g. effectiveness, impact, global influences, etc.)
(iii) in order to encourage individuals to develop and update their competencies and skills to enable them to adapt to the labour market and engage in productive employment? C142 Art. 1, para. 5				
(iv) in order to create a conducive environment for enterprises to invest in providing learning opportunities? R189 Para. 10(3)				
IV. ENTERPRISE DEVELOPMENT				
11. Have the following measures been taken by your country:				
(i) the promotion and pursuit of an environment conducive to the creation and growth of small and medium-sized enterprises? R189 Para. 2 and Part II				
(ii) the adoption and implementation of a policy and legal framework favourable to cooperatives? R193				
(iii) the adoption and implementation of policies and programmes that support a service infrastructure for SMEs, and promote a culture of entrepreneurship? R189 Parts III and IV				

Part III

Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the ILO.

Please state whether you have received from the organizations of employers or workers concerned any observations concerning the effect given, or to be given, to the instruments to which the present report relates. If so, please communicate a copy of the observations received together with any comments that you may consider useful.

Annex B

Prospects of ratification

	108 reports received
☒	Convention ratified
○	Ratification process initiated
●	Prospects of ratification
⌘	Convention presents divergences with national legislation and practice
◆	Ratification not considered/deferred/rejected
⋯	No reply to question or reply contains no indication on prospects of ratification
†	Convention denounced

	C088	C122	C142	C181
Afghanistan			☒	
Albania	☒	☒		☒
Algeria	☒	☒	☒	☒
Angola	☒	⋯	⋯	⋯
Antigua and Barbuda	⋯	☒	☒	⋯
Argentina	☒	●	☒	◆
Armenia	⋯	☒	⋯	⋯
Australia	☒	☒	☒	◆
Austria	☒	☒	☒	◆
Azerbaijan	☒	☒	☒	
Bahamas	☒	●	◆	◆
Bahrain	⋯	⋯	⋯	⋯
Bangladesh	●	●	●	●
Barbados		☒		
Belarus	☒	☒	☒	◆
Belgium	☒	☒	●	☒
Belize	☒	●	●	●
Benin	●	●	●	●
Bolivia	☒	☒	●	●
Bosnia and Herzegovina	☒	☒	☒	
Botswana				
Brazil	☒	☒	☒	●
Brunei Darussalam				
Bulgaria	†	☒	◆	☒
Burkina Faso	◆	☒	☒	◆
Burundi	◆	●	◆	◆
Cambodia		☒		
Cameroon	●	☒	●	●
Canada	☒	☒	⌘	⌘
Cape Verde				
Central African Republic	☒	☒	☒	●
Chad				
Chile	●	☒	◆	●
China	⋯	☒	⋯	⋯

General Survey concerning employment instruments

Colombia	☒	◆	◆	◆
Comoros		☒		
Congo				
Costa Rica	☒	☒	●	◆
Croatia	⚡	☒	⚡	⚡
Cuba	☒	☒	☒	⌘
Cyprus	☒	☒	☒	⚡
Czech Republic	☒	☒	☒	☒
Côte d'Ivoire	●	○	●	●
Democratic Republic of the Congo	☒			
Denmark	☒	☒	☒	
Djibouti	☒	☒		
Dominica				
Dominican Republic	☒	☒		
Ecuador	☒	☒	☒	◆
Egypt	☒	●	☒	●
El Salvador	☒	☒	☒	
Equatorial Guinea				
Eritrea	●	●	●	●
Estonia	●	☒	●	●
Ethiopia	☒			☒
Fiji				
Finland	☒	☒	☒	☒
France	☒	☒	☒	●
Gabon		☒		
Gambia				
Georgia	☒	☒	☒	☒
Germany	☒	☒	☒	⌘
Ghana	☒			
Greece	☒	☒	☒	⌘
Grenada				
Guatemala	☒	☒	◆	◆
Guinea		☒	☒	
Guinea-Bissau	☒			
Guyana			☒	
Haiti	⚡	⚡	⚡	⚡
Honduras	⚡	☒	●	●
Hungary	☒	☒	☒	☒
Iceland		☒		
India	☒	☒	☒	◆
Indonesia	☒	◆	◆	◆
Iran, Islamic Republic of		☒	☒	
Iraq	☒	☒	☒	◆
Ireland	☒	☒	☒	
Israel	☒	☒	☒	●
Italy	†	☒	☒	☒
Jamaica		☒		
Japan	☒	☒	☒	☒
Jordan	●	☒	☒	●
Kazakhstan	☒	☒		
Kenya	☒		☒	
Kiribati				
Korea, Republic of	☒	☒	☒	⌘
Kuwait	⌘	⌘	⌘	⌘
Kyrgyzstan		☒	☒	
Lao People's Democratic Republic				
Latvia	●	☒	☒	⌘
Lebanon	☒	☒	☒	●
Lesotho				
Liberia				

Libyan Arab Jamahiriya	☒	☒		
Lithuania	☒	☒	☒	☒
Luxembourg	☒		☒	
Madagascar	☒	☒	●	●
Malawi	◆	◆	●	●
Malaysia	☒	◆	◆	◆
Mali	●	●	✕	✕
Malta	☒			
Marshall Islands				
Mauritania		☒		
Mauritius	☒	◆	●	✕
Mexico	◆	✕	☒	◆
Moldova, Republic of	☒	☒	☒	☒
Mongolia	●	☒	●	●
Montenegro	☒	☒	☒	●
Morocco	✕	☒	✕	☒
Mozambique	☒	☒	●	●
Myanmar	●	●	●	●
Namibia	◆	◆	◆	◆
Nepal	●	●	●	●
Netherlands	☒	☒	☒	☒
New Zealand	☒	☒	◆	◆
Nicaragua	☒	☒	☒	≡
Niger			☒	
Nigeria	☒	●	●	●
Norway	☒	☒	☒	✕
Oman				
Pakistan				
Panama	☒	☒	●	☒
Papua New Guinea		☒		
Paraguay		☒		
Peru	☒	☒	●	●
Philippines	☒	☒	≡	≡
Poland	◆	☒	☒	☒
Portugal	☒	☒	☒	☒
Qatar	≡	≡	≡	≡
Romania	☒	☒	○	✕
Russian Federation		☒	☒	
Rwanda	●	○	○	●
Saint Kitts and Nevis				
Saint Lucia	◆	◆	◆	◆
Saint Vincent and the Grenadines	●	○	●	●
Samoa				
San Marino	☒	●	☒	✕
Sao Tome and Principe	☒			
Saudi Arabia	✕	✕	✕	✕
Senegal	≡	☒	≡	≡
Serbia	☒	☒	☒	●
Seychelles	◆	◆	◆	○
Sierra Leone	☒			
Singapore	☒	●	●	◆
Slovakia	☒	☒	☒	○
Slovenia	☒	☒	☒	✕
Solomon Islands				
Somalia				
South Africa	●	≡	≡	≡
Spain	☒	☒	☒	☒
Sri Lanka				
Sudan	●	☒	●	●
Suriname	☒	☒	●	☒

General Survey concerning employment instruments

Swaziland				
Sweden	☒	☒	☒	●
Switzerland	☒	●	☒	✕
Syrian Arab Republic	☒	●	●	●
Tajikistan		☒	☒	
Tanzania , United Republic of	⚡	⚡	☒	⚡
Thailand	☒	☒	◆	◆
The former Yugoslav Republic of Macedonia	☒	☒	☒	
Timor-Leste				
Togo				
Trinidad and Tobago	◆	○	◆	◆
Tunisia	☒	☒	☒	●
Turkey	☒	☒	☒	
Turkmenistan				
Tuvalu				
Uganda		☒		
Ukraine	◆	☒	☒	●
United Arab Emirates	●	●	●	●
United Kingdom	†	☒	☒	◆
United States	✕	●	●	✕
Uruguay	●	☒	●	☒
Uzbekistan		☒		
Vanuatu				
Venezuela, Bolivarian Republic of	☒	☒	☒	●
Viet Nam				
Yemen	◆	☒	⚡	●
Zambia		☒		
Zimbabwe	◆	●	●	●

Annex C

List of ratifications

Employment Service Convention, 1948 (No. 88)

Date of entry into force: 10.8.1950	86 ratifications in force
Albania	7.1.2009
Algeria	19.10.1962
Angola	4.6.1976
Argentina	24.9.1956
Australia	24.12.1949
Austria	25.9.1973
Azerbaijan	11.3.1993
Bahamas	25.5.1976
Belarus	25.9.1995
Belgium	16.3.1953
Belize	15.12.1983
Bolivia	31.1.1977
Bosnia and Herzegovina	2.6.1993
Brazil	25.4.1957
Canada	24.8.1950
Central African Republic	9.6.1964
Colombia	31.10.1967
Costa Rica	2.6.1960
Cuba	29.4.1952
Cyprus	23.9.1960
Czech Republic	1.1.1993
Democratic Republic of the Congo	16.6.1969
Denmark	30.11.1972
Djibouti	3.8.1978
Dominican Republic	22.9.1953
Ecuador	26.8.1975
Egypt	3.7.1954
El Salvador	15.6.1995
Ethiopia	4.6.1963

Date of entry into force: 10.8.1950	86 ratifications in force
Finland	23.11.1989
France	15.10.1952
Georgia	11.9.2002
Germany	22.6.1954
Ghana	4.4.1961
Greece	16.6.1955
Guatemala	13.2.1952
Guinea-Bissau	21.2.1977
Hungary	4.1.1994
India	24.6.1959
Indonesia	8.8.2002
Iraq	22.6.1951
Ireland	29.10.1969
Israel	21.8.1959
Japan	20.10.1953
Kazakhstan	18.5.2001
Kenya	13.1.1964
Republic of Korea	27.12.2001
Lebanon	1.6.1977
Libyan Arab Jamahiriya	20.6.1962
Lithuania	26.9.1994
Luxembourg	3.3.1958
Madagascar	3.6.1998
Malaysia	6.6.1974
Malta	4.1.1965
Mauritius	3.9.2004
Republic of Moldova	12.8.1996
Montenegro	3.6.2006
Mozambique	6.6.1977
Netherlands	7.3.1950
New Zealand	3.12.1949
Nicaragua	1.10.1981
Nigeria	16.6.1961
Norway	4.7.1949
Panama	19.6.1970
Peru	6.4.1962
Philippines	29.12.1953
Portugal	23.6.1972
Romania	6.6.1973
San Marino	23.5.1985
Sao Tome and Principe	1.6.1982

Date of entry into force: 10.8.1950	86 ratifications in force
Serbia	24.11.2000
Sierra Leone	13.6.1961
Singapore	25.10.1965
Slovakia	1.1.1993
Slovenia	29.5.1992
Spain	30.5.1960
Suriname	15.6.1976
Sweden	25.11.1949
Switzerland	19.1.1952
Syrian Arab Republic	26.7.1960
Tanganyika	30.1.1962
Thailand	26.2.1969
The former Yugoslav Republic of Macedonia	17.11.1991
Tunisia	11.10.1968
Turkey	14.7.1950
Bolivarian Republic of Venezuela	16.11.1964

Annex D

List of ratifications

Employment Policy Convention, 1964 (No. 122)

Date of entry into force: 15.7.1966	101 ratifications
Albania	7.1.2009
Algeria	12.6.1969
Antigua and Barbuda	16.9.2002
Armenia	29.7.1994
Australia	12.11.1969
Austria	27.7.1972
Azerbaijan	19.5.1992
Barbados	15.3.1976
Belarus	26.2.1968
Belgium	8.7.1969
Bolivia	31.1.1977
Bosnia and Herzegovina	2.6.1993
Brazil	24.3.1969
Bulgaria	9.6.2008
Burkina Faso	28.10.2009
Cambodia	28.9.1971
Cameroon	25.5.1970
Canada	16.9.1966
Central African Republic	5.6.2006
Chile	24.10.1968
China	17.12.1997
Comoros	23.10.1978
Costa Rica	27.1.1966
Croatia	8.10.1991
Cuba	5.2.1971
Cyprus	28.7.1966
Czech Republic	1.1.1993
Denmark	17.6.1970
Djibouti	3.8.1978

Date of entry into force: 15.7.1966	101 ratifications
Dominican Republic	29.3.2001
Ecuador	13.11.1972
El Salvador	15.6.1995
Estonia	12.3.2003
Finland	23.9.1968
France	5.8.1971
Gabon	1.10.2009
Georgia	22.6.1993
Germany	17.6.1971
Greece	7.5.1984
Guatemala	14.9.1988
Guinea	12.12.1966
Honduras	9.6.1980
Hungary	18.6.1969
Iceland	22.6.1990
India	17.11.1998
Islamic Republic of Iran	10.6.1972
Iraq	2.3.1970
Ireland	20.6.1967
Israel	26.1.1970
Italy	5.5.1971
Jamaica	10.1.1975
Japan	10.6.1986
Jordan	10.3.1966
Kazakhstan	6.12.1999
Republic of Korea	9.12.1992
Kyrgyzstan	31.3.1992
Latvia	27.1.1992
Lebanon	1.6.1977
Libyan Arab Jamahiriya	27.5.1971
Lithuania	3.3.2004
Madagascar	21.11.1966
Mauritania	30.7.1971
Republic of Moldova	12.8.1996
Mongolia	24.11.1976
Montenegro	3.6.2006
Morocco	11.5.1979
Mozambique	23.12.1996
Netherlands	9.1.1967
New Zealand	15.7.1965
Nicaragua	1.10.1981

Date of entry into force: 15.7.1966	101 ratifications
Norway	6.6.1966
Panama	19.6.1970
Papua New Guinea	1.5.1976
Paraguay	20.2.1969
Peru	27.7.1967
Philippines	13.1.1976
Poland	24.11.1966
Portugal	9.1.1981
Romania	6.6.1973
Russian Federation	22.9.1967
Senegal	25.4.1966
Serbia	24.11.2000
Slovakia	1.1.1993
Slovenia	29.5.1992
Spain	28.12.1970
Sudan	22.10.1970
Suriname	15.6.1976
Sweden	11.6.1965
Tajikistan	26.11.1993
Thailand	26.2.1969
The former Yugoslav Republic of Macedonia	17.11.1991
Tunisia	17.2.1966
Turkey	13.12.1977
Uganda	23.6.1967
Ukraine	19.6.1968
United Kingdom	27.6.1966
Uruguay	2.6.1977
Uzbekistan	13.7.1992
Bolivarian Republic of Venezuela	10.8.1982
Yemen	30.1.1989
Zambia	23.10.1979

Annex E

List of ratifications

Human Resources Development Convention,
1975 (No. 142)

Date of entry into force: 19.7.1977	67 ratifications
Afghanistan	16.5.1979
Algeria	26.1.1984
Antigua and Barbuda	16.9.2002
Argentina	15.6.1978
Australia	10.9.1985
Austria	2.3.1979
Azerbaijan	19.5.1992
Burkina Faso	28.10.2009
Belarus	3.5.1979
Bosnia and Herzegovina	2.6.1993
Brazil	24.11.1981
Central African Republic	5.6.2006
Cuba	5.1.1978
Cyprus	28.6.1977
Czech Republic	1.1.1993
Denmark	5.6.1981
Ecuador	26.10.1977
Egypt	25.3.1982
El Salvador	15.6.1995
Finland	14.9.1977
France	10.9.1984
Georgia	22.6.1993
Germany	29.12.1980
Greece	17.10.1989
Guinea	5.6.1978
Guyana	10.1.1983
Hungary	17.6.1976
India	25.3.2009

General Survey concerning employment instruments

Date of entry into force: 19.7.1977	67 ratifications
Islamic Republic of Iran	19.3.2007
Iraq	26.7.1978
Ireland	22.6.1979
Israel	21.6.1979
Italy	18.10.1979
Japan	10.6.1986
Jordan	23.7.1979
Kenya	9.4.1979
Republic of Korea	21.1.1994
Kyrgyzstan	31.3.1992
Latvia	8.3.1993
Lebanon	23.2.2000
Lithuania	26..1994
Luxembourg	21.3.2001
Mexico	28.6.1978
Republic of Moldova	19.12.2001
Montenegro	3.6.2006
Netherlands	19.6.1979
Nicaragua	4.11.1977
Niger	28.1.1993
Norway	24.11.1976
Poland	10.10.1979
Portugal	9.1.1981
Russian Federation	3.5.1979
San Marino	23.5.1985
Serbia	24.11.2000
Slovakia	1.1.1993
Slovenia	29.5.1992
Spain	16.5.1977
Sweden	19.7.1976
Switzerland	23.5.1977
Tajikistan	26.11.1993
United Republic of Tanzania	30.5.1983
The former Yugoslav Republic of Macedonia	17.11.1991
Tunisia	23.2.1989
Turkey	12.7.1993
Ukraine	3.5.1979
United Kingdom	15.2.1977
Bolivarian Republic of Venezuela	8.10.1984

Annex F

List of ratifications

Private Employment Agencies Convention,
1997 (No. 181)

Date of entry into force: 10.5.2000	21 ratifications
Albania	30.6.1999
Algeria	6.6.2006
Belgium	28.9.2004
Bulgaria	24.3.2005
Czech Republic	9.10.2000
Ethiopia	24.3.1999
Finland	25.5.1999
Georgia	27.8.2002
Hungary	19.9.2003
Italy	1.2.2000
Japan	28.7.1999
Lithuania	19.3.2004
Republic of Moldova	19.12.2001
Morocco	10.5.1999
Netherlands	15.9.1999
Panama	10.8.1999
Poland	15.9.2008
Portugal	25.3.2002
Spain	15.6.1999
Suriname	12.4.2006
Uruguay	14.6.2004