Promoting an inclusive employment policy
6. Promoting an inclusive employment policy

778. Supplementing the first five chapters of this Survey, which cover concepts and processes that contribute to governance in the world of work and present the challenges that some particular types of employment relationships face with respect to labour and social protection, this chapter focuses on inclusion, equality of opportunity and equality of treatment in employment and occupation. The objective is the implementation of an encompassing national employment policy which not only covers all aspects of growth and employment, but is also inclusive and ensures equality of opportunity and treatment for all persons in the labour market so that no one is left behind. In its report the Global Commission on the Future of Work observes that: “As the organization of work changes, new ways must be found to afford adequate protection to all workers, whether they are in full-time employment, executing micro tasks online, engaged in home-based production for global supply chains or working on a temporary contract”.977

779. Although technological advances have delivered productivity growth in recent decades, this has not generally been translated into shared prosperity. Productivity gains have to be redistributed with equity. Instead, there has been a trend towards employment polarization and rising inequality. The question is therefore how to ensure that the fruits of technological progress and rising productivity reach all workers, including women and minorities.978

780. Convention No. 122 provides in Article 1(2)(c) that the national employment policy shall aim at ensuring that “there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use [her/]his skills and endowments in a job for which [she/]he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin”.979

781. When equality of opportunity prevails, all members of society can compete on equal terms. Genuine or substantive equality of opportunity requires everyone to have a true opportunity to become qualified.980 It therefore involves leveraging the playing field so that all workers are in a position to compete, which requires adequate levels of education, vocational training and skills development to provide people with the first set of tools required to gain access to a labour market in transition.

782. In the framework of an inclusive national employment policy, a coherent and integrated strategy to facilitate the transition to the formal economy also needs to take into account the diversity of characteristics, circumstances and needs of workers and economic units in the informal economy. In addition to the requirement for tailored approaches, as outlined in chapter III, this is based on recognition of the fact that the informal economy has the effect of undermining equality of opportunity and that measures have to be taken to achieve inclusive development.981 Recommendation No. 204, indicates in Paragraph 11(f) that the integrated policy framework to facilitate the transition to formality should address “the promotion of equality and the elimination of all forms of discrimination and violence, including gender-based violence, at the workplace”.982 The promotion of gender equality and non-discrimination should be a guiding principle when designing coherent and integrated strategies to facilitate the transition to formality (Paragraph7(h)).

783. In conformity with the objective of inclusion, Recommendation No. 169 and Recommendation No. 204 invite Members to take measures to facilitate the transition to formality, while responding to the needs of all categories of persons who have difficulties in finding

978 MIT: The work of the future: Shaping technology and institutions, Fall 2019 Report, p. 15.
979 The right to equality and non-discrimination lies at the heart of human rights, and has been incorporated in various United Nations and regional human rights instruments. In terms of the ILO, the Committee recalls that Convention No. 111 is a fundamental Convention applicable to all workers without distinction whatsoever.
981 See the Preamble to Recommendation No. 204.
982 In this respect, the Committee notes the adoption by the ILC in June 2019 of the Violence and Harassment Convention (No. 190) and Recommendation No. 206, which are also applicable to the informal economy.
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Both Recommendations contain a list of the categories who experience greater difficulty in finding lasting and decent employment. The lists include: certain categories of women and young workers, workers with disabilities, older workers, the long-term unemployed and migrant workers, indigenous and tribal peoples, persons living with HIV or affected by HIV or AIDS, domestic workers and subsistence farmers.

From another perspective, uncertainty with regard to the existence of an employment relationship needs to be addressed to guarantee fair competition and effective protection for workers. A lack of clarity or ambiguity concerning the existence of an employment relationship may deprive workers of the protections to which they are due. Some workers are more vulnerable than others in these circumstances, which create a situation of inequality of opportunity in which workers often fall into informality. Recommendation No. 198 recognizes that this protection has to be accessible to all, and particularly to vulnerable workers. It sets out in Paragraph 5 a non-exhaustive list of such workers, who include women workers, young and older workers, workers in the informal economy, migrant workers and workers with disabilities.

I. Ensuring the participation of all workers

A comprehensive employment policy framework should include measures that respond to the needs of all categories of workers and promote the transition to paid work of the unemployed or inactive, including the long-term unemployed. Paragraph 9 of Recommendation No. 204 indicates that “Members should adopt, review and enforce national laws and regulations or other measures to ensure appropriate coverage and protection of all categories of workers and economic units”.

1. Taking the gender dimension into account

All the instruments covered by this Survey address the gender dimension of employment in one way or another. As already examined throughout this General Survey women face greater difficulties to participate in the labour market. Besides, they are over-represented in those sectors with more serious decent work deficits.

Chapters I and II address different dimensions of gender equality in the world of work. Women face more difficulties in gaining access to the labour market. They often lack genuine choice due to problems related to combining work with family responsibilities. They are also more represented in the informal economy in the great majority of countries, or in less protected working arrangements. They are frequently engaged in disguised or ambiguous working arrangements.

For this reason, public authorities, and particularly the labour administration and inspection, are invited to pay special attention to occupations and sectors with a high proportion of women workers. Moreover, in cases where a government has promoted homework together with other measures for the empowerment of women, the Committee has called for measures to be taken to ensure that women have broad access to the labour market and that such access is not restricted to a limited number of jobs and occupations, or to being housebound.

It is also important for member States to have a clear policy on gender equality and for the enforcement of the relevant laws and agreements to be improved at the national level with a view to addressing the gender dimension effectively.

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983 See paras 9, 15 and 17 of Recommendation No. 169 and paras 1, 7(i) and 15(h) of Recommendation No. 204.
984 See, for example, CEACR – Islamic Republic of Iran, C.111, observation, 2017; Saudi Arabia, C.111, observation, 2014.
2. The particular situation of some categories of workers

The following sections address the situation of some of the groups of people specified in the instruments under examination, namely from the viewpoint of the different obstacles they face to enter and remain in the labour market.

(a) Young persons

Around half of the world’s young people (aged 15 to 24 years) are in the labour force. However, over the past 20 years, the global labour force participation rate of young people has fallen from 55 to 45.7 per cent. Between 2017 and 2030, the global youth labour force aged 15 to 24 will increase by 41.8 million, driven by trends in Africa. Moreover, an estimated 21.8 per cent of young people are neither in employment nor in education or training (NEET). The quality of youth employment remains a concern. The Committee notes that, according to ILO statistics, some 362 million young persons in the world are in the informal economy, more than half of whom are in sub-Saharan Africa or southern Asia.

The Committee notes that many member States are addressing youth unemployment through active labour market policies (ALMPs). The Committee observes that most ALMPs for youth focus on the school-to-work transition. In some countries, young people are included as a major target group in all labour market policies and programmes.

The Youth Guarantee in the European Union

Implemented in 2014, the Youth Guarantee is a commitment by all Member States of the European Union to ensure that within four months of leaving school or becoming unemployed, anyone younger than 25 receives either a quality job offer suited to their education, skills and experience or the opportunity to acquire the education, skills and experience needed to find a job in future through an apprenticeship, traineeship or continued education. The programme has since been extended to persons up to the age of 29 in a number of countries.

The Youth Guarantee is aimed at systematically reaching young people who are not looking for a job and who are not in education or training (inactive NEETs). Previous interventions usually targeted only people explicitly seeking work, that is the young unemployed.

A wide variety of measures and initiatives have been included in the Young Guarantee: education and training for employment programmes; remedial education measures for school drop-outs; labour market intermediation services; and ALMPs targeted at labour demand, such as direct employment creation, hiring subsidies and start-up incentives. Several achievements of the Youth Guarantee can be highlighted, including the development of specific measures targeting young people in situations of vulnerability and the initiatives undertaken by European Union Member States to modernize national public employment services and improve their efficiency.

985 ibid p. 78.
986 ibid.
988 ibid., p. 22.
Ghana – The National Employment Policy provides a framework for accelerated decent job creation through sustainable growth in all sectors of the economy, and gives strategic direction to reduce unemployment among specific groups, including youth.

793. Specific policies and public employment programmes focusing on youth employment have been implemented in other countries based on employment-intensive strategies to facilitate direct job creation and improve the employability and employment prospects of beneficiaries, raise income levels, increase the quality of life and improve the functioning of the labour market. These programmes may include a very broad range of measures.

794. Many countries have implemented tailored youth employment services to support young people in accessing the labour market by providing job search and career guidance and employment coaching.

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Bulgaria – Youth mediators intervene between unemployed young people who are not in the process of acquiring a degree or undergoing training, and employers, labour offices and training institutions.

Mali – The Youth Promotion Agency (APJE) was created in 2003 with the objective of facilitating the access of young women and men in rural and urban areas to the labour market and to credit. The APJE intervention strategy is based on partnership between the Government, the private sector and beneficiaries.

795. Wage subsidies have been introduced in some countries as a means to increasing job creation.\footnote{991}

Republic of Korea – Under the Plan for Youth Jobs, a youth employment subsidy of up to 9 million won (approximately US$7,500) a year for three years is provided to small and medium-sized enterprises (SMEs) or middle-standing enterprises (larger than a SME and smaller than a large business) that hire young persons.

796. Training is paramount to ensure that young workers can access the labour market, particularly to their first jobs. With a view to ensuring that training programmes are optimally tailored to the needs of trainees and the labour market, it is important for the public authorities, the private sector and the social partners to be involved in their planning and implementation stages.\footnote{992}

India – The National Apprenticeship Promotion Scheme (NAPS) was launched in 2016 to provide incentives for employers to engage apprentices. A subsidy is provided to the employer of 25 per cent of the prescribed stipend, up to a maximum of INR1,500 a month per apprentice, and up to INR7,500 for three months/500 hours towards the cost of training with basic training providers.\footnote{993}

(b) Older workers

797. The share of “seniors” (persons aged 65 and above) and “older persons” (aged 55 and above) in both the working-age population and the labour force has increased in recent decades, and is projected to continue rising even more rapidly. Older workers are, at least in principle, less likely to be unemployed than young workers. But if they become unemployed, it takes them longer on average to return to work. Their participation in both formal education and on-the-job training is considerably lower than that of younger workers, mainly because employers are more reluctant to incur training costs for workers who are expected to remain in their firms for a shorter period of time.\footnote{994}

\footnote{991 For example, Croatia, Cyprus and Georgia.}
\footnote{992 See the ILO standards on training, and particularly: the Human Resources Development Convention, 1975 (No. 142), and the Human Resources Development Recommendation, 2004 (No. 195). See also P. Comyn and L. Brewer: Does work-based learning facilitate transitions to decent work?, Employment Policy Department, Working Paper No. 242, ILO, Geneva, 2018.}
\footnote{994 ILO: “Europe’s ageing population comes with a silver lining”, Opinion, ILO Brussels Office, Oct. 2018.}
The Committee notes that incentives are being enhanced in many countries to encourage work at an older age, based on such measures as lifelong learning policies and the implementation of targeted efforts to promote the participation of older workers in training and skills-updating schemes to help them adapt to emerging skills requirements.

**Sweden** – A major education initiative for lifelong learning and higher employment (Kunskapslyftet), launched in 2015, involves a considerable increase in the number of state-funded places in municipal adult education courses at the upper secondary level, higher vocational education, folk high schools and universities and university colleges.

In some countries, with a view to keeping people in the workforce longer, the retirement age is being raised (reversing early retirement policies) and work options and pensions are being made more flexible, for example by increasing opportunities for part-time or temporary work, and offering partial retirement options.

**CEACR** – In comments concerning Japan, the Committee noted that the age of eligibility for the fixed component of state pensions is being raised in stages to guarantee employment for everyone who wants to work up to 65 years of age. In accordance with the Act on Stabilization of Employment of Elderly Persons (Act No. 68 of 25 May 1971), enterprises with 30 or more workers are required to adopt employment security measures for older workers until the age of 65 years (if the workers so wish).

Financial and hiring subsidies are also available in certain countries to encourage employers to hire older workers.

**Malta** – Under the Mature Workers Scheme, employers hiring persons aged between 45 and 65, and who have been registered as unemployed for six months, will have their income tax deducted pro rata. Employers will receive up to a maximum of €11,600 in tax deductions on the chargeable income for the first two years of employment for each eligible employee. Moreover, employers who engage eligible employees may benefit from a further tax deduction of 50 per cent of the cost of training, up to a maximum of €400 per employee.

National initiatives are also being implemented to promote a change of attitudes in society concerning the value of older workers.

**Norway** – The social partners participate actively in the activities of the Centre for Senior Policy to raise awareness of the value of older workers, identify what is needed to motivate workers to remain at work longer and promote age diversity at work.

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995 For example, Burkina Faso.
996 For example, Brazil (Act No. 10741 of 2003 on the status of older persons, which includes a specific chapter on vocational training), Estonia and France (including “senior” contracts, among other measures).
997 For example, Cuba (Act No. 105 of 2008 on social security and its regulations, Decree No. 283 of 2009).
999 Similarly, Republic of Korea (for workers aged between 50 and 60).
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(c) Workers living with AIDS or affected by HIV or AIDS

802. The HIV epidemic remains one of the most significant health and human rights challenges facing the world today. Persons living with HIV encounter discrimination and stigma in all aspects of their daily lives, including refusal of employment, denial of health and social services, insults and physical abuse. Discriminatory attitudes in relation to HIV and AIDS are grounded in stigma, which is fuelled by fear and misinformation about HIV and the manner in which it can be transmitted. Many employers still perceive HIV as a condition that makes people dangerously contagious or otherwise unfit for work, giving rise to fear and intolerance in the workplace. Recommendation No. 200 emphasizes the principle that there should be no discrimination against or stigmatization of workers, in particular jobseekers and job applicants, on the grounds of real or perceived HIV status, and calls on Members to ensure the effective and transparent implementation of measures against discrimination in the workplace (Paragraphs 3(c) and 12).

(d) Migrants

803. In 2017, there were an estimated 258 million international migrants worldwide, including approximately 19 million refugees. The majority of migrant workers, some 96 million, were men, while 68 million were women. International migrants aged 15 and above accounted for 234 million of the estimated total of 258 million. A further statistical breakdown shows that international migrant workers accounted for 59.2 per cent of all international migrants and 70.1 per cent of all working-age migrants (see figure 6.2 below). recommendation No. 169 calls on Members to adopt policies “to ensure that international migration takes place under conditions designed to promote full, productive and freely chosen employment” (Paragraph 39(b)). The earlier migrants are integrated into the labour market, the better their prospects of integration. However, a precondition is legal access to the labour market.

804. The Committee notes the indication by some governments that specific measures have been adopted in national employment policies to address the situation of migrant workers. The provision to migrant workers of adequate information on their rights, sometimes through induction courses, is considered in some countries to be an effective means of ensuring that they enjoy their rights.

Greece – The project Innovative Response for Facilitating Young Refugees Social Support (2017–19), under the ERASMUS+ Strategic Partnership for Youth, focuses on early action for the integration of young refugees/asylum seekers (aged 16–24) through the strengthening of youth education and training policies, with the involvement of various stakeholders, including public bodies, the social partners and private training organizations.

1001 ibid., paras 5 and 11.
1004 The 2030 Agenda for Sustainable Development establishes a strong link between decent work and migration, especially in Sustainable Development Goals (SDGs) 8 and 10. In December 2018, the Global Compact for Safe, Orderly and Regular Migration was adopted. It offers the international community the opportunity to improve workplace conditions and provide decent work for migrant and national workers, and to change current misperceptions of migration by readjusting migration policies to include all aspects of the labour market.
1005 For example, Democratic Republic of the Congo.
1006 For example, France and Republic of Korea.
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Lithuania – The Action Plan 2018–20 for the Integration of Foreigners into Society includes: on-the-job language training for asylum beneficiaries; training on how to start a business; information on workers’ rights and possibilities for their protection; improvements to the Act on the recognition of regulated professional qualifications for the recognition of the vocational qualifications of foreign nationals; continuous monitoring of the labour market integration of foreign nationals; and assessment mechanisms.\textsuperscript{1007}

The Committee notes that measures have also been adopted to ensure that the occupational skills of migrants match the demand for skills in the host country and to improve their language skills.\textsuperscript{1008} In this regard, measures are reported in some countries for the formal recognition of the foreign qualifications of migrants and/or their skills.

Germany – The MYSKILLS project addresses the need to recognize non-formal skills. Computer-based tests in different occupations are offered by employment agencies and job centres to assess the competencies of refugees in those occupations. As well as in German, the tests are also available in English, Russian, Turkish, Farsi and Arabic.\textsuperscript{1009}

The integration prospects of migrant workers are also affected by recruitment practices.\textsuperscript{1010} The Committee recalls that, in accordance with Recommendation No. 169, countries “which habitually or repeatedly experience significant outflows of their nationals should take

\textsuperscript{1007} Similar measures have been adopted, for example, in the Netherlands (Task Force for the Employment and Integration of Refugees – TWIV) and Germany.

\textsuperscript{1008} OECD, ILO, World Bank and IMF: “Towards a framework for fair and effective integration of migrants into the labour market”, 2016, p. 12.

\textsuperscript{1009} Similarly, Austria (the Recognition and Assessment Act No. 55 was adopted in 2016 to cover the comparability of skills and educational qualifications acquired abroad).

measures to prevent malpractices at the stage of recruitment or departure liable to result in illegal entry to, or stay or employment in, another country” (Paragraph 41). In this respect, some country reports refer to measures to improve intermediation in the migration process.\footnote{For example, Mali.}

CEACR – In its comments on the \textit{Dominican Republic}, the Committee noted that Article 25 of the Constitution provides that foreign nationals shall have the same rights and duties as nationals, with the exceptions and limitations established by the Constitution and the law. The Labour Code, in Principle IV, provides that the laws shall cover “without distinction Dominican and foreign nationals, with the exceptions admitted in international treaties”. Moreover, section 26 of the General Migration Act, No. 285 of 15 August 2014, provides that foreign nationals with the authorization to work, in accordance with their entry category or subcategory, shall enjoy the protection of the relevant labour and social laws.\footnote{CEACR – \textit{Dominican Republic}, C.189, direct request, 2018.}

CEACR – In its comments on \textit{Mauritius}, the Committee noted the Government’s indication that all migrant workers enjoy the same terms and conditions of employment as those laid down for local workers under national legislation.\footnote{CEACR – \textit{Mauritius}, C.189, direct request, 2015.}

808. Recommendation No. 169 indicates that “both countries of employment and countries of origin, should, … conclude bilateral and multilateral agreements covering issues such as right of entry and stay, the protection of rights resulting from employment, the promotion of education and training opportunities for migrant workers, social security, and assistance to workers and members of their families wishing to return to their country of origin” (Paragraph 44).

On 12 February 2018, following discussions with the social partners, an agreement was signed on the regulation of labour migration between \textit{Armenia} and \textit{Bulgaria}. The agreement is intended to promote the effective regulation of labour migration between the two countries and the protection of the rights and interests of migrant workers.

809. Lastly, the Committee considers that measures to address negative public perceptions of migration (based on concerns relating the alleged negative economic impact of the presence of migrant workers and the willingness of migrants to integrate into the host society) are also important to ensure fair conditions for the participation of migrant workers in the labour market.

\textbf{(e) Domestic workers}

810. Women make up 83 per cent of all domestic workers, making it a highly feminized sector.\footnote{ILO: \textit{Domestic workers across the world: Global and regional statistics and the extent of legal protection}, Geneva, 2013, p. 19.} Domestic work is therefore an important entry point for women into the labour market, and the improvement of working conditions in the sector therefore has broader ramifications for gender equality in society. Very low wages, excessively long hours, the absence of a weekly rest day, the risk of physical, mental and sexual abuse, and restrictions on freedom of movement that sometimes amount to slavery, are some of the problems that frequently characterize the working conditions of domestic workers worldwide. These can partly be attributed to gaps in national labour and employment legislation, and often reflect discrimination based on sex, race and caste.\footnote{ibid., p. 95.}
The Committee emphasizes that governments should take measures aimed at ensuring the effective promotion and protection of the fundamental rights of all domestic workers with a view to the achievement of their right to decent working and living conditions. The present General Survey does not address the issue of domestic workers in detail, as it will be the subject of the next General Survey on decent work for care economy workers in a changing economy, in accordance with the decision of the Governing Body in 2018.

Workers in rural areas and subsistence farmers

Over half of the population in developing countries continue to live and work in rural areas, with agriculture as their most important source of income. The great majority of work in rural areas takes place in the informal economy, further increasing the vulnerability of the workers. People living in rural areas are almost twice as likely to be in informal employment (80 per cent) as those in urban areas (43.7 per cent). Sixty per cent of workers in informal employment live in rural areas, while the majority of those in formal employment are in urban areas (78.9 per cent). Workers in agriculture account for over half (51.8 per cent) of rural informal employment, compared with 13.1 per cent of informal urban employment, which is mainly concentrated in services (63.6 per cent). Irrespective of area of residence, in global terms the agricultural sector has the highest level of informality (93.6 per cent), compared with 57.2 per cent in industry and 47.2 per cent in services. Women represent a large share of the agricultural workforce, and their empowerment is crucial to improving rural livelihoods.

In their reports, some governments refer to increases in budget allocations to foster the transition to formality and the improvement of employment conditions in the agriculture sector. Others refer to the establishment of specific institutions at the national level to assist rural workers.

The Committee notes that, in collaboration with the ILO, governments have implemented plans of action designed to promote decent jobs in plantations. The plans of action have been developed by national tripartite constituents on the basis of surveys and diagnostic reports. These processes have been conducted or are ongoing in Bangladesh, Dominican Republic, Ghana, Indonesia, Malawi and Sri Lanka.
6. Promoting an inclusive employment policy

Indonesia – A project to promote sustainable rural livelihoods through decent working conditions and opportunities for workers in Indonesian oil palm plantations has the objective of increasing the capacities of national, provincial and local governments, and workers’ and employers’ organizations to address employment and labour-related challenges in the oil palm plantations sector.1021

Malawi – A project is being carried out to promote sustainable rural livelihoods and decent work through improved employment opportunities and working conditions in the tea sector, the provision of capacity-building to tripartite constituents and targeted action to address decent work deficits in tea estates.1022

(g) Indigenous and tribal peoples

815. Indigenous and tribal peoples continue to be among the poorest population categories. Although they constitute a little under 5 per cent of the world’s population, they account for 15 per cent of the world’s poor.1023 Indigenous women, who often face discrimination from both within and outside their community, are particularly vulnerable to socio-economic exclusion. The persistence of discrimination and socio-economic exclusion, combined with the negative impact of climate change, disregard for their rights, low skills and training, weak market linkages and poor access to social protection, financial services and opportunities in the formal economy have played an important role in their continued marginalization.

816. As a result of a failure to recognize traditional skills, poor market opportunities, lack of access to credit and social protection, land insecurity and reduced access to natural resources, as well as weak infrastructural connectivity and access to public services, indigenous and tribal peoples are often in a situation in which they are unable to benefit adequately from emerging economic opportunities in the formal economy in rural areas. In this context, the Committee notes that Governments are taking measures to adapt existing programmes to the needs of indigenous communities.

Plurinational State of Bolivia – Emphasis has been placed on improving the working conditions of indigenous women in the construction sector. Some 250 women working in the construction industry have benefited from training and awareness-raising in technical areas, as well as occupational safety and health. Most of them are indigenous women, who have had very little access to formal education or vocational training.1025

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1021 See ILO: *Promoting decent work on oil palm plantations in Indonesia*, 2017–19 (Project IDN/16/02/NLD).
1022 See ILO: *Promoting decent work in tea plantations in Malawi’s Thyolo District*, 2018–20 (Project MWI/17/50/FLA). Similar projects are being carried out in Colombia, Egypt, Lao People’s Democratic Republic, Sri Lanka, United Republic of Tanzania, Viet Nam and Zambia. See also: *Local empowerment through economic development (LEED): Egypt Youth Employment (EYE): Jobs and Private Sector Development in Rural Egypt; National Rural Employment Strategy in Lao PDR towards increasing opportunities for decent and productive employment in rural areas; and Direct hiring opens up new horizons in Colombia’s palm oil sector*.
1025 See, “Women are building their own futures in Bolivia.”
II. Ensuring adequate protection for all

817. First and foremost, the Committee recalls that fundamental principles and rights at work are applicable to all workers regardless of their employment status. At the same time, the achievement of equality of opportunity and treatment requires not only the prevention of discrimination on various grounds including, where appropriate, occupational status, but also ensuring that the diverse variations of the employment relationship, different from the standard one, as well as other contractual arrangements with lower levels of protection are not used to reduce labour costs by offering worse terms and conditions of work.1026

818. Essential aspects of equality of treatment in employment include “terms and conditions of employment”1027 covering a broad range of areas, such as remuneration, working time, occupational safety and health and social security.

1. Fundamental principles and rights at work

819. The Committee recalls that the ILO Declaration on Fundamental Principles and Rights at Work, 1998, sets out the commitment of all member States to respect, promote and realize four categories of rights, even if they have not ratified the Conventions in question. These rights are freedom of association and collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation. The Committee further recalls that, under the terms of the Declaration, these rights, which are already enshrined in basic human rights instruments, are universal and applicable to all workers, irrespective of the level of economic development.1028

820. The report prepared for the 2012 recurrent discussion under the ILO Declaration on Social Justice for a Fair Globalization, 2008, emphasized that the growth of both unprotected work and the informal economy have affected the employment relationship and the protections it can offer, and have had an impact on the application of fundamental principles and rights at work, the enjoyment of which remains limited to a minority of workers in many instances. The report adds that “the increase in non-standard forms of employment, the weight of the informal economy, the persistent exclusion of certain categories of workers, and the exposure of export-led sectors to high levels of competition all highlight important challenges in the full application of these rights to all individuals which require innovative responses”. Another crucial aspect common to the four categories of fundamental principles and rights at work is their effective enforcement.1029

(a) Workers in all types of employment relationship and other work contractual arrangements

821. Part-time workers, fixed-term workers and workers in multiple-party employment relationships, as well as those in new and emerging contractual arrangements, are entitled to the same protection as comparable full-time workers with open-ended employment contracts in respect of the right to organize, bargain collectively and act as workers’ representatives, occupational safety and health, protection against discrimination in employment and occupation, and protection against forced and child labour.

Notes:
1028 The Committee examined the implementation of the fundamental Conventions in its General Survey of 2012.
822. The Committee has already noted that one of the main concerns raised by trade unions is the negative impact on trade union rights and labour protection of precarious forms of employment, and particularly: short-term temporary contracts that are systematically renewed; subcontracting (even by certain governments in their own public services to fulfil statutory permanent functions); and the non-renewal of contracts for anti-union reasons. Under some types of working arrangements, workers are often deprived of access to freedom of association and collective bargaining rights, particularly when they hide a real and permanent employment relationship. Some forms of precariousness can dissuade workers from joining a trade union. The Committee wishes to highlight once again the importance of examining in all member States, within a tripartite framework, the impact of these forms of employment on the exercise of trade union rights.1030

CEACR – In its comments concerning the Philippines, the Committee has emphasized that all workers (other than the armed forces and the police, as determined by national law), including temporary or outsourced workers and workers without an employment contract, without distinction or discrimination of any kind, enjoy the right to establish and join organizations to defend their occupational interests.1031

823. The Committee has also emphasized that, in practice, although they may in principle have the right to bargain collectively, workers covered by arrangements other than the standard employment relationship may find it very difficult to exercise this right effectively.

CEACR – In its comments concerning South Africa, the Committee observed that section 21 of the Labour Relations Act, as amended by the Labour Relations Amendment Act adopted in August 2014, provides that, in case of a dispute about a trade union’s level of representativeness, the decision taken by the commissioner must, in addition to the factors already provided for in the law, also consider the extent to which there are workers engaged in non-standard forms of employment in the corresponding bargaining unit (temporary employment services (labour broker) employees, employees with fixed-term contracts, part-time employees, or employees in other categories of non-standard employment).1032

824. This clearly depends on the type of contractual arrangement. For instance, temporary or agency workers have looser attachments to the enterprise and with other workers in the enterprise, even though they may share similar concerns on some issues, and conflicting concerns on others. They may fear retaliation, or may not even know their rights.1033 Workers in multiple-party contractual arrangements may find it difficult to determine the employer with which they should negotiate. With respect in particular to subcontracting, the Committee has requested a government to ensure that the guarantees afforded under Convention No. 87 fully apply to all workers, including those who are formally working as subcontract workers or contract labourers.1034 The Committee of Experts has also highlighted the extremely weak situation of casual workers, who often do not join trade unions out of fear that their fixed-term contracts of employment will not be renewed.1035

1030 General Survey of 2012, para. 935.
6. Promoting an inclusive employment policy

825. In the previous chapters of this Survey, the Committee has addressed various aspects of supply chains and their links with other contractual arrangements, homework and the informal economy. The Committee notes that the issue of the application of human rights and fundamental principles and rights at work also arises in relation to supply chains. In addition to issues relating to the effective exercise of freedom of association and the right to collective bargaining, the Committee notes that globalization and growing integration across countries and firms have led to the emergence of forced labour and trafficking in persons as significant issues in global supply chains.1036 The ILC Conclusions concerning decent work in global supply chains, adopted in 2016, recall that the “presence of child labour and forced labour in some global supply chains is acute in the lower segments of the chain”. The Committee considers that further research, including statistics, is needed to evaluate the incidence of informality, the lack of clarity with respect to the employment relationship and other or new work arrangements in all segments of supply chains, on the increase in child labour and forced labour. Further information is also needed on the rate of unionization of workers in global supply chains, and the incidence of collective bargaining. Statistical information would also help to determine developments in the situation.

(b) Workers in the informal economy

826. Recommendation No. 204 indicates in Paragraph 7 that the coherent and integrated strategies designed to facilitate the transition to formality should take into account the effective promotion and protection of the human rights of all those operating in the informal economy and the fulfilment of decent work for all through respect for fundamental principles and rights at work in law and practice (Paragraph 7(e) and (f)). Workers in the informal economy should enjoy freedom of association and the right to collective bargaining, including the right to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing. This requires the existence of an enabling environment. The Recommendation also calls on employers’ and workers’ organizations to extend membership and services to workers and economic units in the informal economy (Paragraphs 31–35).

827. The Committee has noted the indications by some governments that the informalization of the economy, together with job shortages, are among the causes of the rise in the number of victims of trafficking for slavery, servitude or forced labour. The situation is also affecting children.1037

CEACR – In its comments concerning Kazakhstan, the Committee noted the ITUC’s observations that statistics from the Ministry of Internal Affairs show that between 100,000 and 150,000 Kyrgyz citizens were registered in the country at the end of 2017. Since the beginning of 2017, Kyrgyz migrants have been falling prey to deceptive or informal recruitment practices, including misrepresentation of the place and nature of the work to be performed, the amount of wages and the legal status of employees. In most cases, employers retain migrants’ identity documents and do not formalize the working relationship by signing an employment contract.1038

828. The Committee notes that some governments explicitly indicate in their reports that there is no specific provision for the protection of human rights and fundamental principles and rights at work for workers in the informal economy.1039 Others consider that the most effective approach is through the transition to the formal economy,1040 facilitated by social security and apprenticeships, particularly for young workers, and the adoption of specific measures to penalize businesses that abuse workers.1041

1037 See, for example, CEACR – Albania, C.29, direct request 2018; and India, C.29, observation, 2015.
1039 For example, Poland, Seychelles and Slovakia.
1040 For example, Cambodia and Zimbabwe.
1041 For example, United Kingdom.
Some governments refer to existing national legislation that provides protection against human rights violations, but do not indicate whether these provisions are applicable to workers in the informal economy. Others indicate that the existing legislation is applicable to all workers, including workers in the informal economy. Some indicate that workers in the informal economy are covered by the national employment policy. Still others indicate that the national strategy for the transition to formality is based in the provisions of Recommendation No. 204. Some report that they are in the process of revising the legislation or adopting a national policy for the protection of human rights which will also cover workers in the informal economy, as well as a national policy on the transition to formality that will also address workers’ rights and fundamental principles and rights at work. Some governments provide information on the measures taken to prevent and combat human trafficking, and to prevent discrimination against women in the informal economy.

2. Labour protection

As noted during the preparatory work for Recommendation No. 204, in some countries, the scope of application of labour legislation is very broad and, at least in theory, it therefore applies to all workers, including those in the informal economy. In other cases, national labour legislation entirely excludes workers in the informal economy, or is applicable only to formal employment relationships. In some cases, specific legislation has been adopted to protect certain categories of workers, such as domestic workers, homeworkers and self-employed workers. However, even when the informal economy, or some informal economy workers, are covered by the national labour legislation, its application may be impeded by a general lack of monitoring or enforcement capacity.

In its observations, the ITUC considers that there remain numerous issues that are either not addressed at all by ILO standards, or are only partially addressed, including the regulation of temporary employment, triangular employment relationships (not involving agencies), on-demand work, collective bargaining with user companies and equality of treatment. The ITUC recalls that Recommendation No. 198 is not binding and there is limited awareness of its content and application in practice, also due to the fact that it is not subject to supervision by the ILO supervisory bodies. There is accordingly a clear need for new standards to address the decent work gaps identified above and to provide support to governments and the social partners to ensure adequate protection for all workers, irrespective of their contractual arrangement or employment status.

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1042 For example, Chile, Croatia, Oman and Senegal.
1043 For example, Armenia, Dominican Republic, Estonia, Mauritius, New Zealand and Sri Lanka.
1044 For example, Burkina Faso.
1045 For example, Costa Rica.
1046 For example, Cabo Verde, China and Benin.
1047 For example, Cabo Verde.
1048 For example, Canada (human trafficking hotline and increased budget); Palau (Anti-Human Trafficking Office); and Switzerland (Swiss Coordination Unit against the Trafficking in Persons and Smuggling of Migrants – SCOTT).
1049 For example, Philippines (Magna Carta of Women, Republic Act No. 9179, section 4).
1050 ILO: Transitioning from the informal to the formal economy, Report V(1), 2014, op. cit., paras 89 and 90.
1051 For example, Argentina (Act No. 26844 of 2013 establishing the special regime for labour contracts for domestic workers), Burkina Faso (Decree No. 807/PRES/PM/MTSS of 2010 determining the working conditions of domestic workers), Plurinational State of Bolivia (Act No. 2450 of 2003 regulating domestic workers), Brazil (Constitutional Amendment No. 72 of 2013 establishing equality of labour rights between domestic workers and other urban and rural workers), Nicaragua (Act No. 666 of 2008 amending the Labour Code in respect of domestic work) and Switzerland (Order of 2010 issuing the model employment contract for domestic workers).
1052 For example, Spain (Act No. 20/2007 on the status of self-employed workers).
831. The purpose of this section is to examine ways in which adequate working conditions can be ensured for all workers so that they enjoy the labour protection to which they are due, thereby contributing to equality of opportunity and treatment and fostering inclusion. This would in turn reduce the incentive to make inappropriate use of less protective working arrangements and ensure a level playing field for workers and enterprises. The present examination focuses in this regard on the measures taken at the national and regional levels to ensure equality of treatment with respect to remuneration, working time, occupational safety and health, and social security.

832. The Committee wishes to emphasize that, in some instances, what is required, rather than strict equality, is the establishment of certain limitations on the use of some types of contractual arrangements that have been abused or that constitute incentives to disguised employment relationships, as outlined in Recommendation No. 198 (Paragraph 4(b)).

833. The Committee recalls that greater security and predictability in the employment relationship is crucial for improved labour and social protection. Workers should have a clear idea of whether they are employees or self-employed so that they can determine clearly which part of their labour and social protection is their responsibility and which is the employer’s. Ensuring the correct classification, and preventing misclassification, are key to affording adequate access to labour and social protection, as well as collective bargaining and lifelong learning. The Committee observes that in many countries rights, benefits and protection have been gradually extended to previously unprotected workers.

Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union

The objective of the Directive is to improve working conditions.

The Directive lays down minimum rights that apply to every worker in the European Union who has an employment contract or employment relationship as defined by law, collective agreements, practice in force, with consideration to the case law of the European Court of Justice.

The employer shall provide each worker in writing, within the first week of work, with the following information: the identities of the parties to the employment relationship, the place of work, a specification of the work, the starting date, duration (for temporary contracts), paid leave, notice periods, the amount and components of remuneration, the length of the working day or week, any applicable collective agreements, the probationary period (if any), the training entitlement provided by the employer, the arrangements and remuneration for overtime, the identity of the user (in the case of temporary agency workers) and the identity of the social security institutions.

If the work pattern is entirely or mostly unpredictable, the employer shall inform the worker of: (i) the principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours; (ii) the reference hours and days within which the worker may be required to work; (iii) the minimum notice period to which the worker is entitled before the start of a work assignment and, where applicable, the deadline for cancellation.

The maximum duration of any probationary period shall not exceed six months (with some possible exceptions), or a proportionate period in the case of fixed-term employment relationships.

1054 The Directive allows the exclusion from its application of civil servants, public emergency services, the armed forces, police authorities, judges, prosecutors, investigators or other law enforcement services.
6. Promoting an inclusive employment policy

834. As recalled earlier, Recommendation No. 204, in Paragraph 9, calls on Members to adopt, review and enforce national laws and regulations or other measures to ensure appropriate coverage and protection of all categories of workers and economic units. The purpose of the review is to assess, among other issues, whether the existing legislation is adequate, whether there are new categories of workers who lack protection and are consequently in the informal economy, and any shortcomings in implementation or enforcement. The Committee considers in this regard that digital platform work, in all its diverse forms, merits in-depth reflection on the manner in which adequate labour protection can be ensured for the workers concerned.

(a) Dependent self-employed workers

835. With respect to certain intermediate legal categories between employment status and self-employment that exist in some jurisdictions, the Committee considers that, while the national legislation in the countries concerned categorizes these workers as falling within the realm of self-employment, it also recognizes the need to acknowledge the existence of dependency and, in this specific case, economic dependency. The Committee observes in this respect that not all employment relationships are equal; the employment relationship is versatile and responds over time to all types of work, and adapts to new forms of work. Moreover, subordination and dependency may have different manifestations, which do not necessarily diminish or affect the reality of the employment relationship. This is particularly true in the current context of new technologies and flexible ways of working, in which direct management has evolved into more dilated forms of control. However, the Committee is of the view that all of these changes require increased vigilance as they increase the risk of misclassification, leading to a high level of “bogus” self-employment with the consequent risk of a lack of adequate labour and social protection (in respect of wages, working time and training, as well as healthcare, access to housing and maternity protection), unfair competition between enterprises and greater strain on public finances.

836. The Committee recognizes that the development of intermediate legal categories between employment and self-employment may provide self-employed workers with some sort of labour protection. At the same time, the Committee notes that, in practice, they may also have a negative effect on the employment relationship and on workers’ rights which would call for increased vigilance. Indeed, once such intermediate categories of work arrangements exist, which are less costly, there will be a higher interest in making use of them to the detriment of the employment relationship and the protections it entails, even if the form of the contract does not correspond to the real situation. The Committee considers that these intermediate categories between employment and self-employment may constitute an incentive for the emergence of disguised employment relationships, and as such may run counter to the purpose of Paragraph 4(b) of Recommendation No. 198. The Committee also considers that the impact of this classification on working conditions, public finances and taxes should be further studied. The Committee further considers that a review of the intermediate legal categories between employment and self-employment would be helpful to provide further clarification on the employment status (employed or self-employed) of workers, taking into account the primacy of the facts, and enabling reflection on measures for ensuring that workers enjoy the rights to which they are entitled, while retaining the adaptability of the labour market.

(b) Workers in diverse forms of employment relationships or contractual arrangements

837. The present section concerns the employment status of workers in varying forms of employment relationships as well as those workers covered by other new and emerging contractual arrangements. Their employment relationship may be temporary, part-time or include multiple parties, as noted in chapter II. But, workers who are covered by other contractual arrangements, and even some of those in an employment relationship, often do not enjoy equal working conditions or labour and social protection, even though they are performing the same work as other workers in the enterprise.
838. With a view to promoting equality, measures that limit or prohibit recourse to these forms of working arrangements, as well as their possible conversion into standard employment relationships, are among the approaches adopted to improve working conditions.

Romania – The Labour Code (section 92(1)) provides that temporary employees shall have access to all services and facilities granted by the user undertaking, under the same conditions as its other employees.

839. The Committee acknowledges that different situations may require differing forms of employment relationship with different levels of protection. However, the principle of substantive equality includes the requirement that, over time, or after a certain period of time, all workers have access to more permanent and stable employment relationships. The objective is for this diverse form of employment relationship or other contractual arrangements to act as stepping stones to open-ended contracts, for example for young workers, instead of entrapping them in successive low-paid temporary contracts. The Committee will only examine those working conditions that present most challenges in the respective form of the employment relationship.

Principle No. 5 of the European Pillar of Social Rights (Gothenburg, 17 November 2017) provides that, regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training, and that the transition towards open-ended forms of employment shall be fostered. In accordance with legislation and collective agreements, the necessary flexibility for employers to adapt swiftly to changes in the economic context shall be ensured. Innovative forms of work that ensure quality working conditions shall be fostered. Entrepreneurship and self-employment shall be encouraged and occupational mobility facilitated. Employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contracts. Any probationary period shall be of reasonable duration.

(i) Fixed-term contracts

840. The legislation in many countries limits fixed-term work to specific tasks of a temporary nature.\textsuperscript{1055} The law sometimes specifies the reasons for which fixed-term contracts may be concluded.\textsuperscript{1056}

\textsuperscript{1055} For example, Oman (Labour Code, section 1(9)).

\textsuperscript{1056} Similarly, Belgium (Act of 24 July 1987, section 1, under which the causes are: the temporary replacement of a permanent worker; an exceptional increase in work; the performance of exceptional work; and certain occasional artistic services) and Sweden (Employment Protection Act, 1982, section 5).
6. Promoting an inclusive employment policy

Algeria – Act No. 90-11, section 12, provides that the employment contract may be concluded for a fixed period, full time or part time, in the cases explicitly provided for below:

► when the worker is recruited for the performance of a contract related to non-renewable work or service contracts;
► when replacing the incumbent of a position who is temporarily absent and for whom the employer is required to retain the position;
► when the employing organization is required to carry out periodic work of a discontinuous nature;
► when additional work is required, or when justified by seasonal reasons;
► in the case of activities or jobs of limited duration or which are by nature temporary.

In all these cases, the employment contract must specify the duration of the employment relationship, and the reasons for its fixed duration.

Lithuania – The Labour Code of 2017 introduces certain changes to the regulations on fixed-term contracts, including:

► the possibility of using fixed-term contracts for work of a permanent nature (on condition that they do not account for over 20 per cent of all contracts concluded by the enterprise);
► the doubling of the rate of unemployment insurance contributions for fixed-term contracts in comparison with open-ended contracts;
► a decrease in the maximum overall duration of successive fixed-term contracts from five to two years (with some exceptions);
► the requirement of a minimum notice period for work relationships of over a year, and the provision of severance pay for work relationships of over two years.

841. In some cases, the employer has to justify the renewal of a fixed-term contract. National law sometimes sets limits on the duration of fixed-term contracts, or limits the number of successive renewals. These limits may also be applicable in the case of casual work. In some cases, the law establishes a total time-limit for the duration of successive contracts. After a certain number of successive fixed-term contracts, or if the limits are not respected, the contract is considered to become permanent. The same applies in the case of tacit renewal. National law sometimes provides that the maximum number of workers with temporary contracts shall be determined by collective agreement. In some countries, limits on the successive use of fixed-term contracts have been imposed by the judicial authorities.

1057 For example, Croatia (Labour Act, section 1) and Italy (Legislative Decree No. 87 of 2018, known as the Decreto Dignità).
1058 For example, Argentina (Act No. 20744 on labour contracts, section 93, provides that fixed-term contracts may be concluded and are renewable for up to five years. With the exception of contracts for less than a month, notification has to be provided when the contract is coming to an end and failure to provide such notification results in the contract becoming permanent) and Croatia (the Labour Act, section 12, establishes a limit, in principle, of three consecutive years).
1059 For example, Italy (under the terms of the Decreto Dignità, the total period that can be covered by a fixed-term contract has been reduced from 36 to 24 months, and the contract is renewable up to four times).
1060 For example, Algeria (Act No. 90-11, section 14), Chile (Labour Code, section 183T), China (Labour Standards Act, section 9) and Turkey (Act No. 4857, section 11).
1061 For example, Switzerland (Federal law supplementing the Swiss Civil Code, section 334).
1062 For example, Switzerland (the Swiss Federal Supreme Court and the Swiss Federal Administrative Court have made successive renewals of fixed-term contracts more difficult (decisions of 2017 and 2016, respectively)).
1063 See OECD: Policy responses to new forms of work, 2019, op. cit., pp. 36 et seq. on the examples provided.
842. In some cases, national legislation establishes financial disincentives for fixed-term contracts. In some countries, higher social contribution rates apply for fixed-term contracts, with the intention of making them more costly for employers in relation to open-ended contracts.\textsuperscript{1064} Measures have been taken in some countries to encourage employers to hire workers under open-ended contracts by enhancing the flexibility of those contracts or offering financial incentives.\textsuperscript{1065} However, the Committee notes that, in some cases, this flexibility involves a lowering of barriers to dismissal, the extension of probationary periods for new employees on open-ended contracts, a reduction in entitlement to paid sick leave and/or exemption from social security contributions.\textsuperscript{1066} There are also some jurisdictions in which the requirements for fixed-term contracts have been loosened.\textsuperscript{1067}

843. The Committee notes that several types of measures are taken at the national level to try to level the playing field. For instance, in some cases, the legislation envisages the possibility of contract breaks not being taken into account when establishing continuity of service so that temporary, and more particularly, casual workers, can qualify for protection. Another possibility is for fixed-term or casual contracts to be converted into a standard employment relationship after a certain number of casual contracts.

844. Concerning remuneration in particular, the Committee notes that in some countries, law and practice require a qualifying period for entitlement to equality of treatment with respect to all or some of the elements of remuneration. Temporary workers (including casual workers) and part-time workers (including workers covered by on-call or zero hour contracts) often find it very difficult to attain the various thresholds required by the law in this respect, and therefore earn lower levels of remuneration. In other cases, the legislation provides for equality of remuneration for casual workers.\textsuperscript{1068}

\textsuperscript{1064} For example, Italy (the Decreto Dignità increases the additional contribution established for fixed-term contracts in 2012 by 0.5 per cent for each renewal) and Spain (an increase in social contributions from 36 to 40 per cent for contracts of under five days’ duration was adopted in 2018). Similar measures have also been adopted in France and Portugal.

\textsuperscript{1065} See OECD: Policy responses to new forms of work, 2019, op. cit., p. 38.

\textsuperscript{1066} For example, France, Italy (although successive legislative modifications and the judicial authorities have limited this possibility) and Netherlands. Social security exemptions have been introduced in Croatia, France, Italy, Netherlands and Portugal, among others.

\textsuperscript{1067} For example, Estonia (restrictions have been reduced), France (while the law establishes a limitation of 18 months in total and in the number of renewals (twice), legal changes introduced in 2017 give precedence to sectoral agreements, which could establish less protective measures) and Netherlands (the period has been increased from two to three years following which consecutive fixed-term contracts are converted into an open-ended contract).

\textsuperscript{1068} See, for example, Cambodia (Labour Law, 1997, section 10 (with exclusions)) and Ghana (Labour Act, section 74(2)).
6. Promoting an inclusive employment policy

Ghana – The Labour Act 2003, section 74(2), provides that: "A casual worker shall: (a) be given equal pay for work of equal value for each day worked in that organization".

(ii) Part-time contracts

845. In relation to part-time work, in order to ensure that it is freely chosen it is important to offer the possibility of transferring from part-time to full-time work, and vice versa. This is particularly important, for instance, as a means of facilitating the re-entry of parents returning from maternity and parental leave who wish to be reintegrated into the paid labour force and to help avoid the “part-time trap”. Moreover, the refusal by a worker to transfer from full-time to part-time work, or vice versa, should not in itself constitute a valid reason for termination of employment.

846. In the case of part-time work, the workers concerned should enjoy conditions equivalent to those of comparable full-time workers with regard to the scheduling of annual leave and work on customary rest days and public holidays. They should also have access, on an equitable basis, and as far as possible under equivalent conditions, to all forms of leave available to comparable full-time workers, in particular paid educational leave, parental leave and leave in cases of illness of a child or another member of a worker’s immediate family.
6. Promoting an inclusive employment policy

Council Directive 97/81/EC concerning the Framework Agreement on part-time work concluded by the Union of Industrial and Employer Confederaions of Europe (UNICE), the European Centre of Enterprises with Public Participation (CEEP), and the European Trade Union Confederation (ETUC), establishes the principle of non-discrimination under which part-time workers must be treated no less favourably than comparable full-time workers, unless different treatment is justified on objective grounds. The Directive allows the exclusion of part-time workers who work on a casual basis when there are objective reasons for so doing, and after consultation with the social partners.

847. In the case of part-time workers, the application of the principle of equal treatment also includes the concept of proportionality, where appropriate. Accordingly, payments or entitlements may be allocated pro rata to part-time workers in proportion to the hours worked, based on the applicable employment or social protection system. Their remuneration should not be lower than that of a comparable full-time worker solely because they work part-time. The pro rata rule is applicable to any pecuniary entitlements, including those relating to maternity leave, termination of employment, paid annual leave and paid public holidays, and sick leave. Measures should be taken, as far as practicable, to ensure that part-time workers have access on an equitable basis to the welfare facilities and social services of the establishment concerned, which should be adapted to take the needs of part-time workers into account.

Central African Republic – The Labour Code, section 194, provides that: “Part-time workers shall not receive solely on the grounds that they are part-time workers, a basic wage lower than that of full-time workers in a comparable situation.”

Spain – The Workers’ Charter, section 12(4), provides that: “Part-time contracts shall be governed by the following rules: ... (d) Part-time workers shall have the same rights as full-time workers. ... (e) The conversion of full-time work into part-time work and vice versa shall always be voluntary for the worker and may not be imposed unilaterally ... The workers may not be dismissed or be subject to any other type of sanction or detrimental effect for rejecting such conversion.”

848. The Committee notes that in some countries the law establishes limits on the minimum number of hours of part-time work contracts. In others, it specifies the minimum time reduction for a contract to be considered part time. In some cases, the law provides that the maximum number of workers covered by part-time contracts in an establishment shall be determined by collective bargaining.

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1070 See, in this regard, the General Survey of 2018, ch. V.
1071 For example, Argentina (Act No. 20744, section 92ter, provides that part-time work is less than two-thirds of the usual full-time day, and that remuneration must be proportionate to that; if the working day is longer than this proportion, the worker is entitled to receive the full-time wage), Burkina Faso (Act No. 028-2008, section 47) and Croatia (Labour Code, section 62).
1072 For example, Algeria (Act No. 90-11, section 12, provides that part-time work cannot be less than half of the legal duration of full-time work), Argentina (Labour Contracts Act, section 92ter), Central African Republic (Labour Code, section 189, provides that a part-time contract must cover at least one third of time less than a full-time contract) and Côte d’Ivoire (Decree No. 96-202 of 1996, section 2, provides that a part-time contract must be for under 30 hours a week or 120 hours a month).
1073 For example, Argentina, Central African Republic, Côte d’Ivoire and Senegal (the Labour Code, section 137, provides that contracts for at least one fifth less than normal full-time work are considered to be part-time contracts).
Promoting an inclusive employment policy

Côte d’Ivoire – Decree No. 96-202 of 1996, section 13, provides that the part-time workers benefit from all the legal and regulatory rights recognized for full-time workers, particularly in relation to:

- the right to organize, collective bargaining and representation in the enterprise;
- maternity protection;
- paid leave and public holidays;
- sick leave;
- termination of the employment contract.

The financial benefits deriving from these rights shall be determined in proportion to hours of work and earnings.

Finland – Amendments to the Finnish Employment Contracts Act respecting the use of zero hours contracts entered into force on 1 June 2018. In accordance with the amendments:

- employers must have a genuine need to use variable working hours contracts;
- the employer’s need for labour must be the minimum number of hours of work set out in the employee’s employment contract. If the employee’s actual working hours over the past six months show that the agreed minimum working hours do not correspond to the actual need for labour, the employer is required to negotiate adjusted working hours at the employee’s request;
- the employer must inform the employee in writing of its expectations regarding how often and in which situations the employer will be able to offer work;
- employees have a right to sick pay if they are incapable of work due to sickness or injury on the scheduled work day;
- employees are entitled to compensation for loss of earnings during the notice period if they are offered less work than during a 12-week reference period preceding their last work shift. If the employment relationship has lasted less than a month when notice of termination is given, there is no obligation to compensate for loss of earnings.

849. Workers covered by “on call” contracts (under which their hours can vary from one week or day to the next), including zero hours contracts (where there is no minimum number of guaranteed hours), should also have access to similar rights and benefits in relation to maximum hours of work and holidays. However, it is often difficult for them to work fewer hours in view of the consequences on their earnings. Measures aimed at eliminating exclusivity clauses, or allowing workers to refuse work, may help them to combine several jobs, if necessary and if they so wish. Other protections consists of maintaining their entitlement to wages in the event of shifts being cancelled. In some countries, the law explicitly limits the possibility of using on-call work and zero hours contracts.

For example, New Zealand and United Kingdom. There is reflection in the United Kingdom on limiting recourse to this type of contract, following the publication of the Taylor report (M. Taylor: Good work: The Taylor review of modern working practices, London, 2017). The Good Work Plan accepts the introduction of the right to request more predictable working hours in zero hours contracts.
850. In some countries, the legislation establishes a “ban” on zero hour contracts.\textsuperscript{1076}

*Ireland* – The Employment (Miscellaneous Provisions) Act 2018 amends section 18 of the Organisation of Working Time Act 1997 (OWTA) to prohibit zero hours contracts, except in the following circumstances:

- where the work is of a casual nature;
- where the work is done in emergency circumstances; or
- short-term relief work to cover routine absences for the employer.

Workers are also protected against penalization for invoking a workers’ right and a provision on “banded hours” ensures that the contract of employment reflects the hours effectively worked. Employees are entitled to request to be placed in a band of hours that better reflects the hours they have worked over a 12-month reference period.

The law does not however prohibit “if and when” contracts (arrangements under which an employer is under no obligation to provide guaranteed hours and the worker is under no obligation to accept any hours offered. But workers’ rights are covered by the Act).\textsuperscript{1077}

851. In some cases, the law requires employers to communicate working schedules or the cancellation of shifts with sufficient notice in advance.\textsuperscript{1078}

**Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union**

**Minimum predictability of work**

1. Member States shall ensure that where a worker’s work pattern is entirely or mostly unpredictable the worker shall not be required to work by the employer unless both of the following conditions are fulfilled: (a) the work takes place within predetermined reference hours and days; and (b) the worker is informed by his or her employer of a work assignment within a reasonable notice period established in accordance with national law, collective agreements or practice.

2. Where one or both of the requirements laid down in paragraph 1 is not fulfilled, a worker shall have the right to refuse a work assignment without adverse consequences.

**Complementary measures for on-demand contracts**

Where Member States allow for the use of on-demand or similar employment contracts, they shall take one or more of the following measures to prevent abusive practices: (a) limitations to the use and duration of on-demand or similar employment contracts; (b) a rebuttable presumption of the existence of an employment contract with a minimum amount of paid hours based on the average hours worked during a given period; (c) other equivalent measures that ensure effective prevention of abusive practices.

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\textsuperscript{1076} In *New Zealand*, the Employment Relations Act, as amended in 2016, prohibits any arrangement without guaranteed hours, but requires employees to be available for work for a certain number of hours every week.

\textsuperscript{1077} See OECD: *Policy responses to new forms of work*, 2019, op. cit., p. 42.

\textsuperscript{1078} For example, *Canada* (Labour Code, the 2017 and 2018 amendments, which have not yet entered into force, require working time to be scheduled 96 hours in advance and establish the right to refuse work if this period is not respected, minimum rest periods and the right to refuse overtime), *Chile* (Labour Code, section 40bisC), *Ireland* (the Employment (Miscellaneous Provisions) Act 2018 requires employers to communicate five days in advance the number of hours that the employer reasonably expects the employee to work in a normal working day and normal working week), *New Zealand* (the Employment Relations Act 2000 requires reasonable notice when cancelling a shift) and *Norway*. See also ch. II.
The Directive also provides that: Member States shall facilitate the transition to another form of employment; any mandatory training shall be provided free of cost, shall count as working time and, where possible, shall take place within working hours; the worker shall benefit from favourable presumption, the right to redress and protection against adverse treatment or consequences; protection from dismissal and possibility to introduce rules of evidence which are more favourable to workers (the burden of proof); penalties; and the non-regression of the general level of protection already afforded to workers.

(iii) Multiple parties contractual arrangements

852. In the case of temporary agency work, with a view to avoiding abuses of subcontracting, and considering temporary agency workers as providers of services, regulations in some countries provide that subcontracting is not possible for the principal activities of the enterprise. This has also been the finding of the courts in many cases. In some countries, the law provides for joint liability of the agency and the user enterprise in relation to such workers’ rights as remuneration, social security and occupational safety and health. In some cases, the law requires objective reasons for recourse to temporary agency work. In most countries, the use of temporary agency workers to replace striking workers is prohibited.

853. In the case of temporary agency workers, who are covered by a form of multiple party contract, the challenge is to determine who the employer is, and more specifically who is responsible for the labour and social protection of the workers. In some countries, the legislation considers that temporary agency workers are in an employment relationship with the user enterprise. As noted in chapter II, the legislation in many countries establishes the joint liability of the agency and the user employer.

854. With respect to remuneration, the regulations in some countries establish what is commonly known as a “Swedish derogation” for temporary agency workers who are employed by agencies under a permanent contract and are paid between assignments. Under this arrangement, the workers concerned give up the right to pay parity with comparable permanent staff in return for a guarantee that they will receive a certain amount of pay when they are between assignments.

United Kingdom – The Agency Worker Regulations 2010 provide, in regulation 10, for pay between assignments, and that “the contract of employment contains a statement that the effect of entering into it is that the employee does not, during the currency of the contract, have any entitlement” to the right to equality with respect to pay. In the context of the Good Work Plan, this opt out of equal pay entitlements is due to be repealed.

855. With respect to occupational safety and health, the Committee recalls that in its General Survey of 2017 on occupational safety and health it recognized that subcontracting can present a challenge in terms of ensuring compliance with occupational safety and health obligations. It recalls that the arrangements in place for two or more employers undertaking activities at the same worksite should apply to situations of multiple contractors and subcontractors. The task of ensuring that an adequate level of safety and health is maintained at worksites, involving several contractors of all sizes and trades, requires the establishment of effective mechanisms for collaboration, coordination and communication, as well as the definition of the respective duties and responsibilities of each of the actors on the site.

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1079 For example, Argentina (Act on labour contracts, section 29), Belgium, Philippines and Turkey.
(iv) Digital platform work

856. Although it is more difficult to appraise and address, the situation of digital platform workers also raises many challenges with respect to income insecurity and excessive working hours, particularly as in most cases their terms of service are imposed unilaterally, and the only choice open to the workers is to accept the terms of service offered or to seek work elsewhere.\textsuperscript{1081} In some cases, as indicated below, national legislation adopts specific protection measures to ensure that digital platform workers benefit from equal working conditions.

857. Remuneration is often very low in digital platform work. As there are few regulations covering pay in this type of work, the conditions are normally established by the platforms themselves. However, some positive private initiatives have been launched in this respect.\textsuperscript{1082} In addition to the question of the application of the principle of equal remuneration for work of equal value, in order to ensure adequate working conditions for this category of workers, it is also necessary to link remuneration to working time. Workers need to be guaranteed a certain number of hours of work to be able to earn a living.

858. In many countries, ensuring the occupational safety and health of workers in the varying forms of the employment relationship, including digital platform workers, gives rise to difficulties. Adequate access to occupational safety and health and training is one of the issues that have to be addressed in the case of workers who are subject to extreme mobility within workplaces and unreasonable working hours, as well as for homeworkers and teleworkers. Other contractual arrangements and digital platform work sometimes involve telework. In such cases, access to the workers’ house to ensure compliance with occupational safety and health requirements may give rise to problems. In this respect, the Committee refers to its examination of the situation of homeworkers and the measures taken at the national and international levels to address their situation. Issues such as access to workers’ homes are addressed in the sections of this General Survey covering labour inspection. Several challenges also arise in ensuring occupational safety and health in the case of digital platform work. For example, there is a very high risk of accidents in relation to transport platforms, particularly where transport and delivery are carried out by motorcycle or bicycle. Similarly, OSH measures should be considered when platform work involves the examination of pornographic or violent images.

859. The Committee encourages governments to examine closely the measures that could be taken to ensure that safety and health requirements are met in sectors and workplaces characterized by multi-contracting and subcontracting. This could include measures to mandate or promote the coordination of safety and health activities at the level of the enterprise and clear communication in this regard, and steps to ensure compliance by contractors and subcontractors with workplace occupational safety and health procedures and arrangements. The Committee also recalls the need to ensure the application of effective protective measures, including the provision of personal protective equipment and clothing at no cost to the worker in relation to all workers, including those covered by other contractual arrangements.

3. Social protection

860. Though separated in the present publication to facilitate understanding, the majority of social protection policies cannot be decoupled from the job. Social security represents an integral part of employment and cannot and should not be dissociated from it. This does not prevent countries from broadening the “palette” of social protection mechanisms and integrating new ones that are unrelated to employment status. However, for workers in a dependent employment relationship, social security must remain an integral part of their employment, namely with contributions also being made by the employer (even if sometimes

\textsuperscript{1082} ibid., pp. 95 et seq.
The European Pillar of Social Rights provides that "[r]egardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection".\(^{1083}\)

863. National strategies should seek to establish the right mix of non-contributory and contributory mechanisms taking account of national circumstances, and with a view to ensuring coverage of all workers, while giving special consideration to the needs of workers in various types of contractual and employment arrangements.

864. There is a need to work in two specific areas: on adapting existing contributory schemes and expanding non-contributory schemes. This combination of social insurance and tax-financed social security schemes represents the principal mechanisms for ensuring social protection, by ensuring income security and access to healthcare through collectively financed mechanisms. These two types of schemes are also crucial to securing basic income security for all, including for persons without contributory capacity.\(^{1084}\) These contributory and non-contributory schemes should be used appropriately and effectively to close gaps in protection and be extended progressively to all persons through coordinated and coherent policy approaches. Such approaches should ensure that the schemes are adapted to the specific circumstances of the population groups concerned, to progressively increase the number of persons that have access to mechanisms providing higher levels of protection than those basic levels envisaged by the social protection floor.\(^{1085}\)

865. Effective and inclusive social protection policies and legal frameworks are necessary to ensure decent work for all workers. These could include:

- adapting existing protection mechanisms to ensure coverage of all workers by, for instance, eliminating or reducing thresholds on minimum hours, earnings or duration of employment, so that workers working under other contractual and employment arrangements are not excluded from coverage;

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\(^{1084}\) ibid., para. 435.

\(^{1085}\) ibid., para. 653.
making systems more flexible with regard to the contributions required to qualify for benefits, including by allowing for interruptions in contribution records;

enhancing the portability of benefits between different social security schemes and employment statuses;

guaranteeing a nationally defined social protection floor that provides for at least basic social security guarantees to all in need of such protection as part of national social protection systems;

adapting (un)employment insurance schemes to respond to the contingencies specific to workers in non-standard forms of employment;

making full use of ICT to integrate data and information management to support new initiatives by social protection administrations;

adapting, as required, labour market institutions to the changing work environment (improvements in working conditions, skills development, employment relationships and collective bargaining); and

coordinating social protection policy with other public policies to help workers manage risks and better accommodate transitions in their working lives.

Turkey’s Integrated Social Assistance Information System is a process management and information system for carrying out a full range of social assistance procedures – applications, inquiry, delivery and monitoring. Recourse to systems of unique identification number and unified contribution collections has been noted across Latin American countries.

(a) Adapting contributory mechanisms

866. Social insurance is the main mechanism of support for formal workers. It may also provide an important social protection mechanism for workers in the informal economy (Paragraph 20 of Recommendation No. 204). It may be necessary to take additional measures to take the specificities of other contractual and employment arrangements into account, so as to ensure effective coverage.

867. To be successful, policy responses could:

favour mainstreaming approaches to ensure that workers in other contractual and employment arrangements are covered under the collectively financed social protection mechanisms and are afforded protection equivalent to the protection for workers in standard forms of employment; and

accompany such approaches by measures to support smooth transitions between different types of jobs for workers, while ensuring their continued social insurance coverage. Workers in other contractual and employment arrangements will thus be able to continue building their social insurance entitlements over their working lives, thereby facilitating labour mobility and contributing to greater stability, better protection and effective safeguards against the informalization of employment.
(b) Strengthening non-contributory mechanisms

868. Tax-financed social protection benefits (such as social assistance) play a key role in complementing other existing social protection mechanisms to secure a social protection floor for all, that is, a basic level of protection for those in need, as advocated by Recommendation No. 202. Such non-contributory schemes financed from general taxation revenues play a particularly important role for those who are not sufficiently covered by contributory mechanisms. For example:

- Guaranteeing old-age pensions: Tax-financed pension schemes can ensure at least a basic level of income security in old age for (former) workers in other contractual arrangements; some countries\(^\text{1086}\) provide a universal pension for older people that guarantees a basic level of income security. Contributory pensions complement this universal pension. Other countries\(^\text{1087}\) provide non-contributory old-age pensions for those who have not earned sufficient entitlements under the social insurance scheme, or do not reach a minimum level of income security.

- Guaranteeing child and unemployment protection: Tax-financed benefits may also close coverage gaps for workers in other contractual and employment arrangements in relation to child and family benefits,\(^\text{1088}\) unemployment protection and social assistance.\(^\text{1089}\)

- Guaranteeing health protection: Tax financing is essential for national health services,\(^\text{1090}\) as well as for subsidizing health insurance contributions for low-income workers, including many non-standard workers who may not otherwise be sufficiently covered.

869. Measures aimed at guaranteeing some form of social protection regardless of type of employment close coverage gaps and reduce the need to track entitlements across jobs for particularly low wage earners. Some social protection benefits – such as health protection, child benefits and parental leave – are already universal in many countries.\(^\text{1091}\) In some countries, means-tested income replacement payments to low-income households,\(^\text{1092}\) are used to close coverage gaps; however, tracking self-employment income and dealing with highly fluctuating earnings remains a challenge.

870. Establishing universal basic income schemes (UBI) is sometimes presented as having the potential to resolve access problems by providing an equal and unconditional benefit to all. Independence of entitlements from the employment record is considered as one of the key advantages of UBI schemes, together with a simplification of administrative processes and the closing of coverage gaps. However, the introduction of a UBI would represent a significant departure from most existing social protection policies and strategies. A UBI would also require a significant amount of fiscal space, which may exceed the economy’s capacity to sustain the co-existence of a UBI with other social protection benefits to ensure adequate levels of protection. Many governments have already implemented universal benefit schemes for specific subgroups of the population, such as children or the elderly. In countries where schemes such as universal child benefits or pensions have already been implemented, they have been a very effective means of filling coverage gaps and ensuring at least a basic level of income security at a manageable cost.

871. As seen in previous chapters, employment and work arrangements other than the more typical open-ended, full time, dependent employment relationship tend to be associated with some decent work deficits, as well as with weaker social protection. One of the reasons that

\(^{1086}\) For example, Canada

\(^{1087}\) For example, Australia and South Africa.

\(^{1088}\) For example, Argentina.

\(^{1089}\) For example, France and Germany.

\(^{1090}\) For example, United Kingdom.

\(^{1091}\) For example, OECD countries.

\(^{1092}\) For example, Australia and New Zealand.
workers are engaged in other contractual or work arrangements is that they cannot manage to access more permanent and stable forms of work.

872. Barriers to labour mobility are highest if social protection mechanisms are directly or indirectly linked to a specific employment contract, particularly if these are associated with certain vesting periods, such as severance payments or employer-provided health or pension insurance. Where they are not linked to a contract with a specific employer, social insurance mechanisms can potentially support labour mobility. Nevertheless, the exclusion of certain categories of workers (e.g. the self-employed, in many countries) or restrictive minimum thresholds with regard to working time, salary or employment periods, can constitute barriers to labour mobility. Many countries have begun to identify and remove such barriers, with the objective of ensuring that social insurance mechanisms can realize their full potential of protecting the workforce and broader population. More attention is also being paid to ensuring that tax-financed mechanisms can play a more prominent role in ensuring at least a basic level of protection for all, in other words, a social protection floor.

873. Some countries have introduced, or are considering introducing, personal activity accounts to be used flexibly according to individuals’ needs.

**France** – The personal activity account (compte personnel d’activité, CPA) allows all workers, regardless of their labour market status, to accumulate pension entitlements and “points” accrued on past jobs, for training and education, leave days not taken and strenuous work. While the transition between different employment statuses may entail accumulating no further or fewer points, the previously acquired points are not lost. The aim of this reform has been to move from an approach where rights are linked to the individual’s employment status to one of individual rights that are transferable between employment statuses, as well as to adapt to the changing realities of increasingly non-linear career paths. Such an account is also intended to simplify the social protection system and improve individuals’ knowledge of their rights and entitlements.1093

(i) Self-employed workers

874. Social insurance coverage for self-employment, including for dependent self-employment remains an important challenge. Although many countries cover some categories of self-employed workers through mandatory or voluntary coverage, globally, coverage rates remain low, resulting in significant social protection gaps for this group of workers. A number of countries have reported on measures taken to extend social insurance coverage for self-employed workers, including:

▶ simplified tax and contribution payment mechanisms1094
▶ mandatory coverage of farmers through mechanisms adapted to their specific characteristics and needs;1095
▶ coverage of specific groups, such as artists and related occupations through special social insurance funds;1096
▶ measures to ensure equal treatment of workers in dependent self-employment, to prevent their misclassification and to curb disguised employment in situations where workers are

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1093 Similarly, in Germany, the Government’s White Paper “Work 4.0” (2017) proposes to establish long-term personal accounts for each individual that are equipped with an initial credit at the start of their working life, which can be accumulated through subsequent contributions. This credit can be used for skills development, vocational training or career breaks.

1094 For example, Argentina, Brazil, and France.

1095 For example, Brazil and France.

1096 For example, Germany.
(re)classified as self-employed contract workers in order to avoid social insurance contributions, and

- measures aimed at taking into account the particular situation of workers on digital platforms, considering that these workers often combine work in the digital economy with a “regular” job through which they may enjoy some social protection coverage.

875. The establishment of an adequate methodology for the calculation of contributions is crucial to cover these new forms of self-employment, as earnings are often low and/or volatile, and as self-employed persons are typically required to cover both the employee and employer contribution rate. These concerns can be addressed through a number of solutions: for example, adapting contribution assessment and payment schedules to the characteristics of the worker, such as using annual instead of monthly contributions for rural workers and producers; flat contributions; proxy income measures; or the use of broad contribution categories. Simplified administrative procedures for registration and contribution and tax payments, such as monotax mechanisms, also help to ease the administrative burden on the self-employed, thereby incentivizing their formalization and ensuring their access to social insurance benefits.

(ii) Part-time workers

876. The principles of equal treatment and proportionality between part-time and comparable full-time workers are also applicable to statutory social security schemes. Indeed, part-time workers should enjoy conditions equivalent to those of comparable full-time workers, which may be determined in proportion to hours of work, contributions or earnings, or through other methods consistent with national law and practice. Social protection gaps constitute a significant challenge to part-time workers. Depending on minimum hour or salary thresholds specified in national legislation, several categories of regular part-time workers may find themselves excluded from some or all social security benefits.

877. Options for extending social protection coverage to part-time workers include:

- lowering eligibility thresholds based on a minimum number of working hours or earnings, as contemplated by the ILO Part-Time Work Convention, 1994 (No. 175), Article 8(2) of which recommends setting such thresholds in a manner that avoids the exclusion of an “unduly large percentage of part-time workers”.

- facilitating social insurance coverage for part-time workers who perform work for multiple employers, as well as for those combining part-time dependent work and self-employment. This may involve the adaptation of legal frameworks and streamlining of administrative procedures, including simplifying and facilitating electronic access to registration, consultation and contribution collection mechanisms.

- recognizing periods of leave to care for children or other family members by topping up social security entitlements, so as to allow those who have reduced their working time because of caregiving duties to increase their levels of social security coverage. A number of national social insurance schemes recognize periods of child-rearing when calculating contribution periods to facilitate access to social security benefits and reduce gender inequalities.

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1097 For example, Germany and Italy have implemented measures to close protection gaps and ensure equal treatment with wage employees, including by extending access to social security.

1098 For example, Brazil.

1099 For example, Brazil and Republic of Korea.

1100 For example, Argentina, Brazil and Uruguay.

1101 For example, Australia and New Zealand.

1102 For example, in the case of pension calculation entitlements in Germany, Japan or the United Kingdom.
Promoting an inclusive employment policy

Côte d’Ivoire – Decree No. 966-202 of 1996 provides that:

Article 14: The part-time worker is subject to the contributions due to the National Social Welfare Fund. He receives the benefits provided by this organization in proportion to the contributions paid. However, no benefit restriction is applicable to a part-time worker in the event of accident or occupational disease.

Article 15: The employer of a part-time worker must pay the contributions due to the National Social Welfare Fund.

(iii) Temporary workers

While workers working on fixed-term contracts over several months are generally covered by existing social protection mechanisms, those with short contracts and casual workers, including day labourers, typically lack coverage.

India – The majority of casual workers fall outside the scope of social security legislation. To address this challenge, India is establishing a unified system of digital record keeping known as Aadhaar. Benefits for rural populations include streamlined access to the payment of subsistence benefits for low-income households who are eligible for the “cooking gas subsidy” and “social assistance pensions”.

Different rules are applied in some countries to temporary workers in comparison with other workers. Lowering eligibility thresholds is therefore critical to extend coverage and ensure greater parity among workers in different forms of employment.

(iv) Workers in the digital economy

The Committee considers that more efforts should be made to ensure that those in “new” forms of work and employment are covered under the same terms and conditions as other workers. In many cases, it may be necessary to adapt existing administrative and financing mechanisms to facilitate such inclusion through innovations, such as:

- adaptation of regulatory frameworks and enforcement mechanisms that keep pace with digital technologies, to ensure that digital platforms respect their obligations with respect to the protection of workers, and allow fair competition with other economic actors;
- simplification of administrative procedures and adaptation to the specific characteristics and needs of workers in the digital economy;
- automatic collection contributions and taxes through online and mobile services; and
- examination of the potential of digital platforms following a cooperative model that share services and benefits among service providers.

Some countries have introduced mechanisms adapted to ensure social protection coverage for taxi drivers, including those working through digital platforms. Where such mechanisms are part of the general social insurance scheme or provide for portability arrangements, workers transitioning from one form of employment to another, or combining different types of employment, will not experience interrupted or reduced social security coverage. At the same time, ensuring coverage of digital platform workers helps to ensure a level playing field and a fair competitive environment among economic actors in both the “old” and “new” economy.

For example, Mexico (with respect to sickness and maternity coverage).

For example, Indonesia and Uruguay.
6. Promoting an inclusive employment policy

882. Another challenge lies in how to overcome obstacles with regard to social security coverage for workers with multiple employers, including workers on digital platforms. One option is to establish a digital security system (DSS) that would facilitate for workers on digital platforms the accumulation of sufficient contributions and work hours, based on contributions that each employer pays on their behalf into a personal DSS account, which would then transfer the accumulated contributions into existing social security programmes. Some platforms have already put in place mechanisms that enhance worker protection.

883. With respect to cross-border digital platform work, the Committee considers that the issue is part of the broader reflection on global supply chains and social dialogue across borders.

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**Indonesia** – The Government has introduced a digital mechanism to securitize the new application (similar to Uber) that the country has for motorcycle taxi rides. When using the application, a small amount of the tariff is automatically deducted for accident insurance, covering both the driver and the passenger for the duration of the trip.

**Uruguay** – Taxi drivers, including those working through digital platforms (e.g. Uber), are covered by social insurance, requiring the registration and payment of social insurance contributions through an easy-to-use online application (BPS Uruguay, 2017). This innovation builds on Uruguay’s long experience with covering self-employed workers and workers in micro-enterprises through a simplified tax and contribution payment mechanism (monotributo).

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4. Measures to progressively extend labour and social protection to all workers in the informal economy

884. Lack of labour and social protections is one of the hallmarks of the informal economy. Issues such as wage regulation, working time, maternity protection and the work–family balance have traditionally been perceived as inapplicable to the informal economy.

885. During the preparatory work for Recommendation No. 204, a vast majority of governments and workers’ organizations and some employers’ organizations agreed that social security, safety and health, decent working hours and minimum wages should be progressively extended to workers in the informal economy. It is through formalization that access to these protections can be made effective. Indeed, accessing such protections constitutes an incentive for formalization that would be weakened if similar protections were provided to workers in the informal economy without a full transition to the formal economy. This is implicitly acknowledged in Paragraph 18 of Recommendation No. 204, which provides that Members should progressively extend in law and practice, to all in the informal economy, social security, maternity protection, decent working conditions and a minimum wage that take into account the needs of workers and consider relevant factors, including but not limited to the cost of living and the general level of wages in the country. One of the elements of transition is the recognition that it is a process that takes time and that can take place progressively.

886. As seen in chapter III, Recommendation No. 204 thus seeks to promote a transition to formality over time. To achieve this, as provided for in Paragraph 11 of the Recommendation, several elements should be taken into account in the context of an integrated policy...
framework designed to guide the transition to the formal economy. These elements include income security and an appropriately designed minimum wage (Paragraph 11(r) of Recommendation No. 204).

(a) Social protection floors

887. When designing and maintaining national social protection floors, particular attention should be paid to the needs and circumstances of those in the informal economy and their families (Recommendation No. 204, Paragraph 19).

888. The Committee recalls that Recommendation No. 202 emphasizes that "[s]ocial security extension strategies should apply to persons both in the formal and informal economy and support the growth of formal employment and the reduction of informality" (Paragraph 15). The dual strategy of promoting both the horizontal and vertical extension of coverage, as set out in Recommendation No. 202, is also reflected in Recommendation No. 204. Both Recommendations emphasize the importance of social protection floors in guaranteeing at least a basic level of coverage for those in the informal economy, and of extending access to contributory social insurance mechanisms. Social protection policies contribute to facilitating the transition of workers and economic units from the informal to the formal economy, including by promoting the creation, preservation and sustainability of enterprises and decent jobs in the formal economy and the coherence of macroeconomic, employment, social protection and other social policies (Recommendation No. 204, Paragraph 1(a) and (b)).

889. The incorporation of workers and economic units into the social security system constitutes another necessary step in the transition to formality. At the same time, it is important to take into account the specific circumstances of workers and economic units in the informal economy as well as their diversity. Moreover, it is important to differentiate between wage workers, whose employers should be required to contribute to social insurance schemes and own-account workers, who do not have an employer to fund contributory schemes. Recommendation No. 204 invites member States to progressively extend social insurance coverage to the informal economy and, if necessary, to adapt administrative procedures, benefits and contributions, taking into account their contributory capacity (Paragraph 20).

890. In its latest General Survey on social protection floors, the Committee emphasized that, in a context of prevailing high, and even growing levels of informality, and persistent inequality, poverty and vulnerability, it is of the utmost importance for national social security extension strategies to include effective protection measures for workers in the informal economy and to facilitate their transition to the formal economy. As recognized in Recommendations Nos 202 and 204, guaranteeing at least a basic level of income security and essential healthcare for all through a nationally defined social protection floor is essential to foster social justice and inclusive development, and to promote decent and productive employment. Social protection policies can also play a major role as an integral component of national strategies aimed at transitioning towards formal employment with a view to progressively achieving higher levels of labour and social protection for as many persons as possible. The extension of social insurance to categories of workers with contributory capacity who were previously not covered, including through entirely or partially subsidizing contributions, is increasingly being used as a means of ensuring protection and fostering formalization. Such measures also reduce unfair competition among enterprises. Social protection policies should be duly coordinated with other major public policies aimed at formalizing economies, including tax, education and employment policies. Such policies are key to building and maintaining comprehensive, inclusive and adequate systems.

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1108 ibid., para. 591.
1109 ibid., para. 593. See in this regard the examples provided in paras 593 and 594 of the General Survey.
1110 ibid., para. 596.
6. Promoting an inclusive employment policy

**Argentina** – The transition programme to the supplementary social wage, established in 2017, has the objective of promoting “socio-productive entrepreneurship” through the provision of a financial supplement for those working in the so-called “popular economy”. The benefit is equivalent to 50 per cent of the minimum living wage. However, the Government indicates that protection gaps have been identified, including the lack of health coverage for the self-employed and informal workers, and that policies are being developed to close the coverage gaps.1111

**Philippines** – The Integrated Livelihood and Emergency Employment Program offers employment and entrepreneurship opportunities to displaced, disadvantaged and unemployed workers. The measures available include entrepreneurship development assistance and wage employment for between ten and 30 days.

891. The Committee recalls that the Maternity Protection Convention, 2000 (No. 183), applies to all employed women, including those in atypical forms of dependent work (Article 2). Furthermore, Recommendation No. 204 invites member States, if possible, to grant access to quality childcare and other care services to promote gender equality in the transition to formality (Paragraph 21).

(b) **Occupational safety and health**

892. While transition to formality takes place progressively, during the preparatory work for Recommendation No. 204, it was agreed that ensuring occupational safety and health for workers and economic units should be considered as an urgent measure that should be implemented without delay.1112 Paragraph 11(p) of the Recommendation provides that the integrated policy framework to guide the transition to formality should address effective occupational safety and health policies. Moreover, when addressing rights and social protection, Recommendation No. 204 invites Members to take immediate measures to address the unsafe and unhealthy working conditions that often characterize work in the informal economy and to promote and extend occupational safety and health protections to employers and workers in the informal economy (Paragraph 17(a) and (b)).

893. In this regard, the Committee recalls that Convention No. 184 and Recommendation No. 192 are cited in the Annex to Recommendation No. 204 as relevant instruments to facilitate the transition from the informal to the formal economy. Article 4(3)(h) of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), provides that the national system for occupational safety and health shall include, among others, support mechanisms for a progressive improvement of occupational safety and health conditions in micro-enterprises, in small and medium-sized enterprises and in the informal economy.

894. In its General Survey of 2017 on occupational safety and health, in the context of the mining sector, the Committee identified the existence of a sometimes large informal subsector and the widespread use of subcontracting as further obstacles to the monitoring of working conditions in a sector where the incidence of fatal and serious accidents was high.1113

895. The Committee also referred to the particular situation of the agricultural sector, where informality is prevalent, as well as to the high number of precarious workers. The Committee highlighted the low coverage and participation of agricultural workers in national social protection systems.1114

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1111 ibid., para. 478.
1112 ILO: The transition from the informal to the formal economy, *Provisional Record* No. 10-2(Rev.), ILC, 104th Session, 2015, p. 36.
III. Conclusions

896. The Committee stresses that an inclusive national employment policy provides for equality of opportunity and treatment for all workers, including jobseekers. This requires examining the manner in which productivity gains are redistributed and taking steps to ensure that those groups most vulnerable to exclusion are provided with equal opportunities to participate in the labour market. Developing and maintaining inclusive employment policies and programmes may require specific and targeted measures that should be developed and adopted in consultation with the social partners and the groups concerned.

897. The Committee highlights the importance of raising awareness at the national level of the different existing varieties of employment relationships and the new and emerging types of contractual arrangements that predominate in the labour market and the labour and social protections available to those working under such arrangements.

898. The Committee notes the essential role of monitoring bodies, particularly the labour inspectorate in this regard. In addition, compilation and analysis of labour statistics concerning contractual arrangements, disaggregated by sex and age, among other criteria, is of critical importance to enable an assessment of changes in the labour market.

899. The Committee stresses the importance of ensuring transparency in the labour market. In particular, workers should be provided with sufficient information concerning their working conditions and the procedures available to them in the event of rights violations.

900. In particular, the Committee considers that close monitoring is needed concerning those contractual arrangements that do not ensure minimum working conditions, or a reasonable degree of predictability. In this regard, the practices of on-call work and zero hour contracts should be closely monitored. The Committee further considers that steps should be taken at the national level to facilitate the ability of workers, over time, to access more permanent employment relationships, if they so wish.