



107<sup>th</sup> Session of the International Labour Conference (May-June 2017)

Agenda item III

Committee on the Application of Standards

Briefing Note for Workers' Delegates

## General Survey on the working time instruments: Ensuring decent working time for the future, 2018

### BACKGROUND

Under Article 19 of the ILO Constitution, Member States are required to report at regular intervals, at the request of the Governing Body, on the measures they have taken to give effect to any provision of certain conventions or recommendations, and to indicate any obstacles, which have prevented or delayed ratification of a particular convention. At its 325th Session (October–November 2015) the Governing Body decided that in 2018 the General Survey would examine the instruments on working time:

Hours of work:

- Hours of Work (Industry) Convention, 1919 (No. 1);
- Hours of Work (Commerce and Offices) Convention, 1930 (No. 30);
- Forty-Hour Week Convention, 1935 (No. 47);
- Reduction of Hours of Work Recommendation, 1962 (No. 116);

Weekly rest:

- Weekly Rest (Industry) Convention, 1921 (No. 14);
- Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106);
- Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103);

Annual holidays with pay:

- Holidays with Pay Convention (Revised), 1970 (No. 132)
- Holidays with Pay Recommendation, 1954 (No. 98);

Night work:

- Night Work (Women) Convention (Revised), 1948 (No. 89);
- Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948;
- Night Work Convention, 1990 (No. 171);
- Night Work of Women (Agriculture) Recommendation, 1921 (No. 13);
- Night Work Recommendation, 1990 (No. 178);

Part-time work:

- Part-Time Work Convention, 1994 (No. 175);
- Part-Time Work Recommendation, 1994 (No. 182)

While aspects of working time were subject of a number of General Surveys between 1964 and 2005, this is the first time that a General Survey has addressed all the aspects of working time together. In total, 124 governments, 29 workers' organizations and 11 employers' organizations provided information and observations regarding these instruments. 67 countries have ratified at least one of the Conventions on **hours of work** (C.1, 30 and 47); 27 countries have ratified at least two of them. A total of 128 countries have ratified at least one of the two Conventions on **weekly rest** (C. 14 and C.106); 55 countries have ratified both Conventions. When it comes to **night work**, C. 89 has received 67 ratifications and 23 countries have denounced it. The Protocol of 1990 to C. 89, has received five ratifications and it has been denounced by two countries. C.171 has received 15 ratifications. C. 132 with respect to **annual leave** has been ratified by 37 countries. C. 175 on **part-time work** has received 17 ratifications.

**Chapter I: Hours of work**

Hours of work are defined as the time during which persons employed are at the disposal of the employer, not including rest periods (C.30). The instruments establish a **cumulative double limit** at 8 hours/day and 48 hours/week to ensure protection against undue fatigue and to ensure reasonable leisure and opportunities for recreation and social life of workers. The legislation in most countries is in conformity with the double limit. However, the Committee observed that the **averaging** of hours of work over periods longer than a week had become a frequent practice in many countries. The instruments are open to the averaging of working hours as long as it is limited to the same week and subject to a ceiling (9 hours/day max. under C.1 and 10 hours/day max under C.30). Under “exceptional circumstances” (not defined) and with respect to shift work, the averaging of hours of work over a period longer than one week is permissible. In this regard, the Committee emphasized the importance of maintaining reasonable limits and protective safeguards in devising such flexible arrangements to ensure that modern working time arrangements are not prejudicial to the health of workers or to the necessary work–life balance.

While the vast majority of sectors are covered by C.1 and C.30 taken together (except agricultural and domestic work), the instruments allow for both permanent and temporary exceptions. **Permanent exceptions** are allowed in the cases of intermittent work (activity not linked to production and by its nature interrupted by long periods of inaction- e.g. janitors, security guards) and preparatory or complementary work (work that needs to be performed before the normal hour for beginning work—e.g. cleaners). **Temporary exceptions** are permitted when there is abnormal pressure of work/unforeseen additional work; force majeure/urgent work; and in case of war or national danger. Even though the majority of countries provide for some type of **financial compensation** for overtime, the Committee also took note that a number of countries allowed for time off in lieu of payment. In this regard, it emphasized the importance of additional hours being paid at a higher rate than normal hours, even in the cases where compensatory time off is granted.

The **ITUC** raised concern with the apparent limitless overtime situation existing for many workers arising from legal exceptions and vague language, legal or de facto power granted to employers to determine and compensate for overtime, among others, with attendant health and well-being consequences for workers. Several trade unions (from Europe) highlighted the debilitating effects of averaging working hours over long periods on the health, safety and wellbeing of workers. In Austria, the *Federal Chamber of Labour* relate the increase in stress-related physical and mental illnesses to the need to reduce overtime work. The **IOE** called for more flexibility in regulation of overtime noting that the current Convention and its “fixed” working time system does not reflect new realities and diversities work forms where working time is no longer governed by laws but by collective and individual agreements. The IOE observe further that the restrictions on the means of extending working hours accounts for the low ratification of the two Conventions.

**Workers’ Group Recommendations**

The Workers’ Group may wish to join the Committee in emphasizing the importance of the double limit (8 hrs/day, 48hrs/week) by exposing the impact longer working hours have on the health and safety of workers as well as work-life balance. Moreover, Workers should also provide examples from various sectors where workers down the supply chains are still required to work excessive hours in order to maintain a job and a livelihood to demonstrate the continued importance and relevance of the double-limit. Workers should emphasise the need to maintain the number of additional hours performed by workers within a framework that takes into account not only the need for productivity and enterprise performance, but also the health and well-being of workers. Examples demonstrating the negative impact of averaging (varying the distribution of working hours over excessively long periods) will be helpful in demanding reasonable limits and protective safeguards for such arrangements in line with instruments. In addition, delegates may wish to caution against the excessive use of exceptions to working time regulations with respect to certain groups of workers and sectors. In this regard, groups of workers already excluded from working time regulation such as precarious workers should be highlighted. Moreover, the consequences of the round-the-clock work culture, in particular in light of the increased use of new technologies, on the health and safety as well as work-life balance should be stated. It would be particularly important to provide a gender perspective with respect to hours of work. In the 21st century, with more women than ever in the labour market and paid employment, the limitation of working time becomes extremely important in consideration of the increase in care responsibilities workers have.

## Chapter II: Weekly rest

The instruments (C. 14 and 106) provide for a **weekly rest period of at least 24 hours**. Three main aspects arise out of this general principle: duration (at least 24 hours), regularity (in every period of seven days) and continuity (consecutive hours). The Committee recalled that the rationale for guaranteeing weekly rest was to restore the physical and mental energy of workers after working several days consecutively and to ensure an adequate family and social life. The legislation in almost all ratifying and non-ratifying reporting countries grants at least 24 hours of weekly rest during a period of seven days. However, research from Eurofound revealed that over 52 percent of workers reported to have worked over weekends in 2015.

The Committee also emphasized the principle of **uniformity** enshrined in C.14 and C. 106 referring to the collective character of weekly rest with a view to ensuring, wherever possible, that it is taken at the same time by all workers on the day established by tradition or custom. The social purpose of this principle is to enable workers to take part in community life and in the special forms of recreation available on certain days.

The combined effect of C.14 and C.106 supplemented by R.103 extend the **scope** of coverage of the weekly rest instruments to nearly all economic sectors except agriculture. However, in most countries numerous categories of workers are excluded from standard regulations, including domestic workers, public service workers, the military and the police, executive managers, members of the judiciary, transport workers, seafarers and fishers, agricultural workers and teachers and educators.

Both instruments, C.14 (in general terms) and C. 106 (with more specific provisions) allow for **permanent exceptions** with respect to workplaces inherently required to remain operational in the day of rest; and **temporary exceptions** (in case of accidents and force majeure situations, abnormal pressure of work due to special circumstances and to prevent the loss of perishable goods). In this respect, the Committee highlighted that recourse to exemptions from the general 24-hour weekly rest rule should be kept to what is strictly necessary and has emphasized the need to specify conditions under which total or partial exemptions to the normal weekly rest scheme may be authorized, while avoiding provisions that are too broad.

The Committee also emphasized the importance of ensuring that **compensatory rest** is granted without exception whenever deviations from the ordinary weekly rest schemes are authorized as well as the need to **consult social partners** regarding the application of exemptions. The Committee also noted that a number of reporting countries either did not send any information on this issue or reported that no consultations had been held on the subject.

### Workers' Group Recommendations

The Workers' Group may wish to highlight the importance of periodic, uninterrupted and uniform weekly rest days for the health and well-being as well as social life of workers. Moreover, excessive permanent and temporary exceptions and their impact on workers should be exposed with examples and statistics from across regions and sectors. The Workers' Group may wish to join the Committee in emphasizing the need for compensatory measures, not only in monetary form but also with respect to compensatory time off, as safeguards. Workers should highlight the pressure this otherwise creates for workers to forego the rest period, in particular for those in low paid jobs. The importance of consultations with social partners before introducing special schemes should be highlighted and examples should be provided in this regard. Worker delegates should also call for social factors, and not only productivity needs, to be taken into consideration when introducing special weekly rest schemes.

## Chapter III: Annual holidays with pay

The General Survey found that the right to annual holidays with pay is widespread in many countries. The policy rationale for this longer period away from work is to protect the health and well-being of workers, allow family time, ensure more productivity, and, to limit working time over the course of the year. C. 132 excludes only seafarers while R. 98 excludes seafarers, agricultural workers and persons employed in undertakings or establishments in which only members of the employer's family are engaged from their **scope**. Moreover, workers without an employment contract are excluded from the scope of application of the protective legislation in most countries. The instruments do not require ratifying states to introduce a **minimum qualifying period** for entitlement to paid annual leave. Where governments choose to establish a minimum qualifying period, it should not however exceed six months. Absence from work beyond the reasonable control of the worker should be counted as part of the qualifying period (such as illness, injury, maternity).

The majority of ratifying countries grant a minimum period of annual leave in their national legislation either at **three weeks** or more and are thus in conformity with the instrument. In a number of non-ratifying countries, the minimum basic annual leave granted is shorter than three weeks. Public holidays and weekly rest days may not be counted as part of paid annual leave. C. 132 guarantees that workers shall be entitled to at least their normal/average **remuneration** during the full period of their annual leave. The reference period for the calculation of the average wage varies between countries, and ranges from three months to one year. In addition, some countries provide for payment in cash or benefits in kind (e.g. for performance-related bonuses, commissions, incentive payments, compensation for night/hazardous work). The Committee encouraged the remuneration to be paid in advance of the leave.

C. 132 allows for the **division** of the annual holiday into different parts. However, two uninterrupted weeks of paid leave must be granted within one year from the end of the year in respect of which the holiday entitlement has arisen. The remaining days must be granted within a specific time limit to be established by the competent authority after consultation with the social partners. In this regard, the Committee recalled that an important aim of annual leave was to allow workers to rest and recover from physical and mental fatigue.

The legislation in the vast majority of countries contains provisions ensuring that workers are entitled to pro-rata paid leave or compensation in lieu, if they have completed the minimum qualifying period at the time of the **termination** of their employment contract in line with the instruments. The Committee also recalled that Article 11 of Convention No. 132 seeks to guarantee that holiday rights are acquired and retained irrespective of the grounds on which the employment relationship is terminated.

C.132 establishes that agreements to forgo paid annual leave for compensation shall be null and void. Many countries have similar provisions in their national legislation. However, the Committee also noted that the legislation in other countries is silent on the matter and that there are countries, which permit annual leave entitlements to be foregone totally or in part. Several **workers' organizations** pointed out that many short-term employment contracts prevent workers in certain sectors from benefitting from their annual leave rights. The Committee also noted several relevant judgments from the Court of Justice of the European Union reaffirming the inalienable character of the right of workers to annual holidays with pay.

### Workers' Group Recommendations

The Workers' Group may wish to join the Committee in denouncing the practice whereby workers are placed in a position to receive monetary compensation in lieu of their accrued annual leave entitlements and highlight the fact that C.132 insists on a period of rest and recovery for workers irrespective of any monetary compensation. In addition, Workers may wish to highlight how the rise of precarious employment has meant that workers are often excluded in practice from the right to paid annual leave.

## Chapter IV: Night work

The General Survey notes an **increasing trend for night work**. It reflects on research demonstrating that night work has an impact on workers' health and safety, work–life balance and productivity, depending on the manner in which night work is organized. Night work requires workers to act in opposition to their biological clocks by remaining awake, alert and productive at a time when the human biological drive for sleep is at its strongest. Working at night means that non-work time is often asynchronous with that of family members, and has been associated with increased work–family conflict, stress and relationship breakdown. Moreover, productivity at night may be compromised due to a number of underlying factors, including impaired health, a disturbed social life, shortened and disturbed sleep, and disrupted circadian rhythms. An increased risk of fatigue and sleepiness is associated with more accidents and errors, which in turn have an impact on productivity. Thus, night work is rarely a choice but a job requirement for most workers.

The ILO abrogated C.4 and C.41 prohibiting the employment of women in night work in 2017, given that the rationale for these instruments (i.e. night work detrimental to women's health and immoral) was considered to be outdated. C.89 on Night Work (Women) was adopted in 1948 to revise the definition of the term "night", to facilitate the development of double day-shifts and to allow more categories of sectors to employ women during the night. It was supplemented by a Protocol in 1990, which adds further exemptions on the prohibition of night work for women

and introduces special measures aimed at protecting maternity, which continues to remain a relevant objective. C.89 falls within the scope of the Standards Review Mechanism.

The more recent instruments, C.171 and R.178, are not gender-specific. Moreover, they only consider workers as night workers if a substantial number of hours of night work is performed. Ratifying states have flexibility in defining night work, which at a minimum should cover seven hours in total and include the period between midnight and 5 a.m. C.171 allows for enormous **flexibility** to ratifying states by allowing for the exclusion of whole categories of workers from its application. Moreover, the instrument allows for the **progressive application** of the protection measures required in the Convention. However, it has been made clear that the measures remain compulsory. The provisions on the protective measures to be taken in relation to the **health and safety** of night workers refer to: the assessment of workers' health and advice (free of charge), the transfer of workers unfit to work at night to day work (where practicable), first-aid facilities, and a safe and healthy environment for night workers. While **maternity protection** is primarily dealt with in other ILO instruments, C. 171 recognises the need for special maternity protection for women night workers due to the nature of night work. It establishes a general obligation for measures to be taken to provide pregnant women who work at night with an alternative to night work for a certain period. For the right to alternative work to be effective, any change in working hours must not affect the woman's income levels.

The Committee urged all governments to ensure that all night workers are compensated for the inherent risks and constraints of night work. It noted that a majority of countries, including all ratifying countries, had specific legal provisions recognizing the nature of night work through some kind of **compensation** for night workers. However, it also observed that a number of countries made no distinction between day and night work in respect of compensation. The instruments provide that appropriate **social services** shall be provided for night workers and, where necessary, for workers performing night work. This can include a variety of measures, which fall into six categories: transportation, resting facilities, access to food, care of young children, training and retraining, and cultural, sporting and recreational activities. The Committee noted that a majority of countries did not specifically require the provision of social or medical services to night workers or workers performing night work.

Although Convention No. 171 does not contain provisions on **limits to the hours of night work**, Recommendation No. 178 sets out a number of principles in this respect. The normal hours of work for night workers should, in normal circumstances (exceptions permitted), not exceed eight in any 24-hour period in which they perform night work, as the balance between work and leisure needs to be maintained on a daily basis. The Committee emphasized the need for clear and enforceable limits for both normal hours of work and overtime.

### **Workers' Group Recommendations**

The Workers' Group may wish to provide examples and statistics demonstrating an increase in night work in practice. The various consequences of night work should be exposed, in particular health impacts for workers employed in night work over long periods. Moreover, it should be highlighted that workers are often forced to accept night work because their pay is so low that they cannot afford to decline the extra pay night work would bring. The creation of decent work opportunities is therefore crucial in preventing involuntary night work. Workers should also point at the impact of night work on social cohesiveness and should call on governments to guarantee protective measures. In light of the very broad exceptions and flexibility afforded by the instruments and in particular C.171, Workers should point at categories of workers excluded from legislative protections with respect to night work, both in law and practice. Workers should call on governments to ensure that all workers enjoy adequate protection from the negative consequences of night work. Governments should be urged to introduce a legal definition of "night work" and "night worker" coupled with adequate extra compensation. The Workers' Group should join the Committee in emphasizing that protective measures based on stereotypes regarding women's professional abilities and role in society are in contradiction with the principle of equality of opportunity and treatment between men and women. Repealing discriminatory protective measures must however at the same time be supported with the safeguarding of protective measures (such as adequate transportation and security), which benefit all workers and at the same time ensure that women can work on an equal footing with men.

## Chapter V: Part-time work

There is a substantial volume of part-time work in many parts of the world, often performed by women, with a serious impact on pay equity and pensions. Even though C.175 requires the adoption of measures to facilitate access to **productive and freely chosen part-time work**, part-time work is often not a fully free choice by workers but strongly linked to the problems to combine full time work with care for children and/or dependent relatives, the lack of appropriate frameworks or facilities to support and reconcile work and care, and the result of the impossibility of finding suitable full-time employment opportunities. This is particularly the case in a context where employers tend to prefer engaging part-time workers as a cost-cutting measure. R.182 highlights that measures should be taken to overcome specific constraints on the access of part-time workers to training, career opportunities and occupational mobility. To ensure that part-time work is freely chosen, it is important to offer the possibility of transferring from full-time to part-time work and vice versa. This is particularly key to facilitate the re-entry of parents returning from maternity and parental leave wishing to reintegrate into the paid labour force and to help avoid the “part-time trap”.

The instruments also establish the **principle of equal treatment** between part-time and full-time workers in similar positions to prevent unequal treatment linked to contractual status. However, there are a number of qualifications to this principle. The principle refers to “equivalent” (and not identical) conditions. Moreover, workers earning below a specific threshold may be excluded from the scope of statutory social security schemes. The Committee recalled that any such thresholds must be sufficiently low so as not to exclude an unduly large percentage of part-time workers. Although the instruments cover all part-time workers, **exclusions** are permitted for certain categories of workers, after consultations with social partners.

The Committee observed that, although only 17 member States have ratified Convention No. 175, many other countries have legislation that address the opportunities for and challenges of part-time work, and may provide a starting point towards ratification of the Convention in the future.

### Workers’ Group Recommendations

The Workers’ Group may wish to draw on examples demonstrating that part-time work is often involuntary (i.e. due to the lack of full-time jobs) and associated with poor working conditions and/or low pay, but also with the lack of facilities to combine work and care. Workers should call on governments to adopt legislative and practical measures to ensure that part-time work is not abused by employers as a cost-cutting measure, effectively depriving workers from their right to social security and skills development as well as rights arising under collective agreements. This means that governments should evaluate their labour law and social security legislation, if needed with ILO for technical support, on how to improve on this. Workers should particularly highlight the negative implications long-term and involuntary part-time work may have with respect to gender equality, in light of the fact that women are primarily employed under part-time contracts, and propose to put the provisions of transferring from part time to full time and vice versa into effect. The Workers’ Group should join the Committee in calling for the adoption of national laws and policies guaranteeing good quality part-time work, with training and career opportunities. Moreover, governments should be urged to develop anti-discriminatory measures to protect part-time workers from unfair treatment based on their contractual status. The Workers’ Group should call on countries, which already have legislation addressing the issues under the instrument to avail themselves of ILO technical assistance in order to evaluate what steps should be taken to ratify the Convention.

## Chapter VI: Working time arrangements

The General Survey reflects on a number of trends with respect to existing types of working time arrangements.

It notes that the primary **personal reasons** for which workers are allowed to change their work schedules include maternity, childcare, care for sick or elderly family members, or their own health issues. In some countries, the courts have ruled that employers may not implement work scheduling that would cause disproportionate harm to an employee. There are also legal provisions in some countries, which allow workers to change work schedule due to traumas experienced outside of the workplace. This can help enterprises retain skilled and valued employees whom they might otherwise lose.

The concept of **shift work** allows companies to extend their operating hours beyond working time of individual workers and to accommodate peak periods of demand. This can however be problematic for workers' health and well-being, in particular when it comes to shift rotation. Thus, in some countries the legislation prohibits overlapping shifts, or requires rest periods between shifts so that workers do not work more than one consecutive shift.

**Hours averaging schemes** allow for variations in daily and weekly hours of work within specified limits, such as maximum daily and weekly hours, while requiring that working hours either do not exceed a specified average over a reference period (eg. weekly, monthly or annual total) -see Chapter I.

**Compressed work weeks** involve the same number of working hours being scheduled over fewer days than is typical in a standard work week, resulting in longer working days. This arrangement extends normal daily hours of work beyond eight, but reduces the number of consecutive days worked to fewer than five a week. The Committee recalled that in many cases compressed workweeks were likely to be in contravention of the requirements of the instruments, in particular due to the number of daily hours which are typically worked under these arrangements.

**Staggered working hour** arrangements allow the employer to fix different starting and finishing times for different groups of workers in the same establishment. While such a model allows the employer to accommodate daily peak periods of demand, staggered working hours might not offer workers sufficient discretion and flexibility as to the hours they work.

**Flexitime arrangements** allow workers to choose when they start and finish work, based on their individual needs, on condition that they work the required number of hours over a specified period. Such schemes may involve the designation of a period of core hours when all employees are required to be at work, bracketed by periods of flexible hours. More complex forms of flexitime arrangements allow workers to accumulate credit hours on working-time accounts and then use these stored/banked hours to take time off, subject to operational needs of the company (eg. the advance notice to take time off may be required).

**On-call hours** mean that workers have to be on standby outside their regular hours of work and may be called to work in case of need by the employer. The hours worked in this context are additional to those fixed in the work schedule. The unpredictability and long hours, including being on standby to respond to calls from their employer or household members have been recognized as particular concerns for domestic workers. The Committee noted that legislation in many countries differentiated between on-call time and "inactive on-call time". Consequently, the time spent by the worker at the place specified by the employer was deemed working time (i.e. remunerated) only when the worker's services were actually required.

**Work sharing** consists of a reduction in working time, with a corresponding reduction in wages, intended to spread a reduced volume of work over the same (or a similar) number of workers. Such arrangement may be used as a strategy to preserve jobs – e.g. to avoid lay-offs - or to create new employment, and help companies to retain their workforce during economic downturns.

### **Workers' Group Recommendations**

The Workers' Group may wish to join the Committee in emphasizing the importance of reasonable limits and protective safeguards in devising various flexible working-time arrangements to ensure protection from prejudice to health and safety as well as guaranteeing work-life balance. The challenges with respect to the unpredictability and long working hours associated with various types of working time arrangements should be exposed. It should be highlighted that the longer the reference period for averaging working hours are, the more burdensome resulting schedules can become for workers. Situations where a worker may be required to work 60 hours in one week and then 20 hours in the next bring a significant unpredictability for workers and should be avoided by drawing the safeguards foreseen in the Convention. It should be highlighted that the flexibility afforded by certain types of working time arrangements (such as on-call work) only benefits employers, while encroaching on the working time autonomy of workers without adequate remuneration. Supporting evidence from trade unions across regions and sectors would be helpful in calling on governments to ensure that necessary measures are taken to allow workers to benefit from flexible working time arrangements. The Workers' Group may also wish to refer to the problems arising out of split shifts, which may require workers to be available a few hours in the morning and then again in the evening, which, often means that workers have no real rest period during the day, especially in cases where commutes may be long and costly.

## Chapter VII: Emerging issues

There has recently been a rise in the number of jobs that do not guarantee any specific working hours during a calendar day or week. Workers are required to make themselves available for work without guaranteed working hours, e.g. **zero-hours contracts**. This trend is not addressed as such by ILO instruments. However, R.182 on Part-Time Work does specify that the number and scheduling of hours of work of part-time workers should be established taking into account the interests of the worker as well as the needs of the establishment. Moreover, any changes in the work schedule should be subject to restriction and prior notice. The Committee noted that some countries had taken measures to regulate on-call work such as the requirement to include notice period and compensation or guaranteed hours in employment contracts.

**Tele-work** involves various forms of organizing and/or performing work using information and communication technologies that is carried out away of the employer's premises on a regular basis. Advantages for workers include a reduction in commuting times, greater autonomy and flexibility in the organization of work as well as a better work-life balance. The disadvantages of such form of work include the tendency to work longer hours, an overlap between paid work and personal life and the intensification of work.

**The right to be disconnected** is considered as a way forward in dealing with the blurring of the boundary between work and rest and the danger of "working without end" due to the growing use of the ICTs. Some countries have already introduced measures to mitigate the worry and stress associated with constant connectivity. Such measures may require enterprises to negotiate the "right to be disconnected" in the context of bargaining on occupational equality and the quality of life at work. In addition, some companies have implemented measures to limit the need for workers to check their emails outside normal working hours or to allow employees to register time spent working outside the employers' premises as working time, which opens up the possibility of overtime compensation.

**"Gig-economy work"** (or "on-demand economy" work) describes work brokered through on-line platforms. These forms of work raise important issues concerning labour protection as workers in the gig economy are almost invariably classified as independent contractors and thus do not have access to the rights of workers covered by a recognized employment relationship, including rights established by working time regulation.

### Workers' Group Recommendations

The Workers' Group may wish to highlight that while new forms of working time arrangements, some linked to digitalization, in principle may seem to provide greater flexibility and autonomy for workers and employers this often does not translate into a reality in practice. Instead, irregularity and unpredictability of working hours in combination with the unclear employment relationships are an increasing feature of work, in particular for workers in low paid and insecure jobs. For example, when it comes to the gig-economy, competitive pressures due to the wide availability of the internet, which augment the pool of workers competing for jobs, mean that wages are driven down so that workers may be forced to work longer hours to make an adequate living. Moreover, as some jobs are only posted or need to be carried out during certain times of the day, the flexibility enjoyed by workers to set their own hours may be limited. Given that work is posted from different locations and time zones, it may also require night work or work during unsocial hours. The Workers' Group may wish to emphasize the relevance of ILO Employment Relationship Recommendation No. 198 in recognizing the real employment status of gig-economy workers. As a direct consequence, workers should have access to labour protections as well as the right to bargain over their working-time. Moreover, the Workers' Group may wish to urge governments to regulate on-demand employment, including zero-hours contracts, by introducing minimum hours of work and/or pay with a view to prevent numerous negative consequences for workers, such as unpredictability and low pay. Workers may also wish to join the Committee in considering the following elements when it comes to regulating tele-work: voluntary nature, equal treatment, data protection and privacy, OSH, access to training and career development and collective rights of teleworkers.

## Chapter VIII: Social dialogue and collective bargaining

Consultation with social partners is a key element of most of the instruments examined. In the vast majority of countries, social dialogue worked alongside statutory regulations on working time but rarely constituted the main or isolated means of regulation. In recent years, a number of countries have adopted reforms consisting of decentralizing to the enterprise level collective bargaining on working time and allowing decentralized agreements

to derogate from more protective provisions in higher-level agreements, and even in some cases from legislative provisions on working time. The Committee reiterated that the replacement of labour legislation through collective bargaining would be contrary to the objective of promoting free and voluntary collective bargaining. Moreover, the Committee recalled that the protective provisions of international labour Conventions on working time did apply not only to national legislation, but also to collective agreements.

The **ITUC** recalled the importance of the regulation of hours of work, and particularly of the maximum working day and week for all workers. It emphasized that working-time arrangements and reductions in long hours could be advanced through collective bargaining at all levels and through workplace initiatives. There was a need for full tripartite consultation in relation to working time standards in order to close existing regulatory gaps, and to provide workers simultaneously with strong protection and maximum choice and autonomy in determining their work–life–family balance.

The **IOE** called on governments to focus on setting a basic regulatory framework and rely on employers and workers to work out adequate and adaptable solutions for themselves. Regulatory models should operate as default standard rather than only lawful option and allow workers and employers to depart from it. Collective bargaining should only offer a framework within which individual agreements can be reached on particular matters.

### Workers' Group Recommendations

The Workers' Group may wish to join the Committee in highlighting the key importance of regulatory provisions guaranteeing the protection and rights provided for in the working time instruments, which are as relevant for the world of work today and tomorrow as they were in the past. Social dialogue can be an effective means to expand and adapt these standards to sectors and workplaces, if the necessary respect for the right to collective bargaining is guaranteed. Workers should call on governments to ensure respect for the right to collective bargaining on working time at all levels and point at the detrimental consequences the decentralizing of collective bargaining may have on working time. It should be pointed out that the IOE seems to recommend to governments to allow employers to go below the minimum standards guaranteed by ILO standards and national legislation. This stands in diametrical opposition with the purpose of these standards, which is to guarantee minimum protections to workers. Moreover, the IOE seems to suggest that working time should be stipulated in individual employment contracts with collective bargaining agreements functioning merely as frameworks. It should be highlighted that this recommendation would undermine the right to free and voluntary collective bargaining. Furthermore, it is clear that in practice individual workers have almost no scope to engage in genuine negotiations with their employer about their employment contract. This is due to the significant imbalance in the power relationship between an individual worker, who is dependent on employment for his/her livelihood, and his/her employer. Thus, workers would be left with no protection whatsoever.

## **Chapter IX: Measures taken to ensure compliance with national laws and regulations on working time**

Most instruments examined in this study contain provisions aimed at the effective enforcement of working-time standards. The instruments require employers to **communicate** the beginning and end of hours of work, shifts, night work, rest periods and any changes made to working-time arrangements. The Conventions provide for flexibility in relation to the methods and forms of communication of hours of work. The Committee considered that notification had to be undertaken in such a way that workers and labour inspectors have easy access to the respective information. The Committee considered that sufficiently advanced communication by the employers to the workers of working schedules was an important element in the protection of workers' rights with a view to enabling them to organize their working and personal lives.

The Committee considered **keeping effective records** of working time, annual leave and payment records as one of the most important means of controlling compliance with working hours and overtime payments, which greatly assists labour inspectors in the enforcement of working-time provisions. The Committee underlined that labour inspectors and workers should be given access to working-time records so that they can easily verify compliance with the relevant provisions.

The Committee considered essential for member States to allocate the necessary human and material resources to **labour inspection** through the recruitment of an adequate number of inspectors, their training in the area of

working time, and the allocation of appropriate budgetary provisions, so that labour inspectors could carry out their duties of supervising compliance with working-time legislation effectively.

The Committee noted **challenges** to control the application of working time standards in certain economic sectors and in relation to specific categories of workers. With regard to **migrant** workers, the Committee recalled that the primary duty of labour inspectors was to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers, and not to enforce immigration law.

The Committee underlined the right of **domestic workers** to equal treatment with workers generally, in relation to normal hours of work, overtime compensation, periods of daily and weekly rest, and paid annual leave. The Committee encouraged governments to undertake relevant efforts adapted to the specific situation of domestic workers, in particular in view of the often limited access to private homes in view of privacy conditions.

The Committee noted the findings of a recent study revealing that **telework** gave rise to various difficulties in ensuring compliance. The frequent absence of working-time schedules or records impedes the control of compliance. Moreover, not only are the powers of labour inspectors restricted when work is undertaken from private homes, but the places from which telework is undertaken are rarely registered as workplaces, which means that labour inspectors are unaware of their existence. **Workers' organizations** warned against the abuse of new technologies to circumvent working-time provisions and called for the involvement of the social partners to ensure the measurement of working time. The **IOE**, while cautioning against overly tight monitoring mechanisms, requested the ILO to encourage member States to develop smarter and more cost-effective means of collecting data and monitoring working time, in recognition of the current realities in the world of work.

The Committee emphasized that it is essential for the credibility and effectiveness of working-time regulatory systems to ensure that sufficiently dissuasive **penalties** are established in the national legislation for violation of working time provisions. Member States should ensure that such penalties are effectively enforced.

### Workers' Group Recommendations

The Workers' Group may wish to highlight the importance of enforcement of working time regulation and refer to challenges in this respect, in particular in cases where labour inspectorates are not functioning effectively. Workers should highlight the categories of workers (migrants, domestic workers, informal economy workers, agency workers, workers employed in EPZs) frequently deprived from protections relating to working time due to the lack of adequate labour inspection. Moreover, it should be highlighted that emerging trends in working time arrangements, including telework, may make it more challenging to ensure the effective enforcement of working time regulation. The Workers' Group may also wish to call on member States to ensure that dissuasive penalties for violations in the area of working time are effectively enforced.

## Chapter X: Achieving the potential of the instruments

**Taking account of the instruments in the design of national legislations and policies:** A number of governments indicated in their replies that they had adopted or intend to adopt measures to incorporate provisions giving effect to the working-time instruments into national legislation or to implement them in practice. However, a great number of governments stated that no legislative changes were currently planned to give effect to ILO Conventions and Recommendations on working time.

**Prospects for ratification and difficulties that may prevent it:** A few governments indicated taking concrete steps towards the ratification of the working time instruments. Some governments reported examining the steps for ratification during tripartite consultations while others indicated their intention to consider ratification in the future. Those who indicated no intention at the current moment to ratify the working time instruments referred to a number of legal and practical difficulties. Some countries indicated that their legislation was largely in conformity with the instruments with some exceptions especially in the manner of implementation. Others countries indicated that their national legislation was more favourable, i.e. setting lower limits to working time, than the ILO Conventions. In some countries, socio-economic obstacles and lack of institutional capacity were put forward as obstacles. Denmark indicated that working-time issues were largely regulated through collective agreements without state interference. Spain and Sweden highlighted that C.171 was too detailed and prescriptive.

**Requests for technical assistance or development cooperation:** The Committee noted that only a few countries reported having received support from the ILO to bring their legislation into line with ILO Conventions, including the working-time standards. Several countries indicated that they would appreciate the provision of technical assistance in relation to the requirements of the instruments.

**Need for ILO standards-related action:** Some governments suggested the consolidation of working-time provisions in a new instrument through the Standards Review Mechanism (Australia). Others suggested the revision of the instruments because they no longer reflect modern realities with a particular view to increase the flexibility of employment legislation (Austria). Certain governments called on the ILO to give specific consideration to issues such as shift work in ILO instruments and to take into account new and emerging developments, including the impact of new technologies on hours of rest.

The IOE pointed at the low ratification rate of C.1 and C.30 indicating they no longer respond to current views. In the view of the IOE more general instruments such as the Article 24 of the Universal Declaration of Human Rights and Article 7(d) of the International Covenant on Economic, Social and Cultural Rights are adequate, meaning that it is not necessary to revisit the ILO's standards.

The ITUC considered that it was important to maintain and strengthen existing minimum standards on working time as they fulfil an important regulatory function in an area that is key for the protection of workers against working conditions that may be detrimental to their health and safety, their social life and possibilities to combine work and care obligations. According to the ITUC, there is a need for full tripartite consultation on working-time standards to close existing regulatory gaps, provide workers simultaneously with strong protection and maximum choice and autonomy in determining their work-life balance.

### **Workers' Group Recommendations**

The Workers' Group, in reiterating the conclusions of the 2015 Recurrent discussion on the strategic objective of social protection (labour protection), may wish to highlight that the regulation of the hours of work, including the establishment of a maximum working day and week, for all workers regardless of the type of employment relationship remains an important objective. This has been recognized by virtually all governments referenced in the General Survey. Even where states have not ratified certain instruments, the national legislation seems to mirror a number of key elements in their provisions. The Workers' Group should welcome the fact that the cumulative limitation of working hours contained in C.1 and C.30 enjoys widespread recognition. At the same time, the instruments offer an enormous amount of flexibility with respect to their scope, allowing countries to exclude categories of workers, with respect to definitions and with respect to application of substantive provisions. In this regard, the Workers' Group should highlight that the wide discretion afforded with respect to flexibility excludes large parts of the working population from protection. Workers should therefore disagree with the characterization of the instruments as too prescriptive and detailed. The Workers' Group may wish to call on the ILO to encourage governments to avail themselves of technical assistance to fully appreciate how the standards could be given effect at the national level. In response to the comments of the IOE indicating that the general provisions of UN instruments adequately deal with working time, the Workers' Group should point out that those instruments do not provide for the same level of protection and rights, including monitoring and enforcement, and that the UN human rights bodies are largely guided by ILO standards in this area. For example, the 2015 General Comment on Article 7 of the International Covenant on Economic, Social and Cultural Rights concerning the right to just and favourable conditions of work uses the ILO instruments referenced in the General Survey as guidance.

## **Chapter XI: The way forward and concluding remarks**

The Committee acknowledged the low level of ratification of many of the working time Conventions, and observed that challenges persist in the implementation of certain provisions. However, the Committee considered that the limitation of working hours and the regulation of other aspects of working time remain an important goal both to protect workers and to ensure a level playing field for enterprises. The Committee referred to the 2011 ILO Tripartite Meeting of Experts on Working-Time Arrangements, which indicated that the provisions of existing ILO standards relating to daily and weekly hours of work, weekly rest, paid annual leave, part-time work and night work remain relevant in the twenty first century and should be promoted in order to facilitate decent work. The Committee also noted the suggestion by certain governments that there is a need to either consolidate the working-time standards

or to revise them, particularly to bring Conventions Nos 1 and 30 into line with new trends in working hours and working-time arrangements resulting from recent economic, demographic and technological developments.

The Committee proposed a number of elements to be considered, if such steps are envisaged (health and safety of workers, work-life balance, promotion of gender equality, consultation of social partners and allowing workers to have an influence over their hours of work). Moreover, the Committee raised the possibility of introducing flexible working-time arrangements that responded to the needs of employers and workers, taking into account the new trends referred to in this General Survey, and particularly the impact of new technologies on the organization of working time.

The Committee expressed the hope that the General Survey would make a useful contribution to the work of both the ILO Tripartite Meeting of Experts on working time and work–life balance tentatively planned for 2019 and of the Tripartite Working Group of the Standards Review Mechanism of the ILO Governing Body. Finally, the Committee considered that the question of compliance with working-time standards should be the subject of more in-depth tripartite examination in the future.

### **Workers' Group Recommendations**

When it comes to the way forward, the Workers' Group may wish to recall that the regulation of working time as an essential means to achieve social justice and lasting peace stands at the core of the values of the ILO embodied in its Constitution. While progress has been made in recognising the importance of limiting working hours in the interest of protecting the health and well-being of workers and overall social cohesiveness, there are new challenges ahead of us in the face of not only economic downturn but also the impact of new technologies in the workplace. Irregularity and unpredictability of working time are serious new challenges, while the need to reduce excessive working hours and burdensome schedules associated with shift and night work remains relevant in most countries. Moreover, billions of workers in the informal economy and in non-standard forms of employment continue to be deprived from any protective measures in law or in practice. In this context, workers remain extremely vulnerable to exploitative working time arrangements across the globe. The objective of the working time instruments remains as relevant as ever in our joint struggle for decent work. The Workers' Group should therefore call for the promotion of the ILO standards on working-time as a key means to achieve decent work. Workers should join the Committee in calling for an in-depth tripartite meeting on the questions of compliance with working-time standards and for the emerging issues to be addressed in the context of the Future of Work discussion. However, the Workers' Group should disagree with the proposal to dilute existing minimum standards, which are already extremely permissive with respect to the flexibility and exceptions they offer to ratifying states, through a consolidation or revision process.

17.05.2018