

## Diversifying Working Styles and Social-Labor Policy

### Summary

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#### Research period

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#### Issues of research and survey

In recent years, people's working styles have become increasingly diverse, and the gray area between those who are "employed" and those who are "self-employed" is expanding. Among those who are "employed," the introduction of the free working hours system and telecommuting has given rise to an increase in the number of employees who work with less constraint of time and place of work. At the same time,

a greater number of self-employed people contract work with particular companies and are economically dependent on them. These types of working styles are expected to increase in the future as there are individuals who seek independence in their work and companies that want to reduce personnel expenses and employee benefits. On the other hand, NPOs also offer diverse working styles ranging from “paid work” to “unpaid volunteer work.” In particular, the number of NPOs has been steadily growing since the NPO law took effect in 1998, and there are rising expectations on NPOs as a provider of “places of work.”

There are, however, many issues that need to be addressed, such as the need to determine whether contract provisions and working environment are appropriate. In response to the rise of diverse working styles, policies should be prepared by considering continuity between employed and self-employed and between employed and volunteers. In this light, a major issue will be to review the labor laws, which until now have focused mainly on employed workers. There is a need for comprehensive analysis that considers the aspects of incentives, protection, and fair competition.

### **Method of research and survey**

Based on the above understanding of the issues, the Japan Institute for Labour Policy and Training launched “Research on Working Environment and Safety Net that Make Diverse Working Styles Possible,” which would continue for three and a half years from the autumn of 2003. The objective of the research is to widely analyze the state of diverse working styles of the employed and self-employed, and to present proposals on the working environment and the safety net.

In fiscal year 2003, we looked into the economic background and the state of diverse working styles that can be found in the gray areas between employed, self-employed, and volunteers, and identified the issues from existing surveys and literature. At the same time, we conducted two questionnaire surveys, namely, “Survey on the Employment of Contracted Workers” and “Survey on Vocational Development and Job Creation by NPOs.” We also examined the application of social laws on contracted workers and volunteers and identified the issues.

For the “Survey on the Employment of Contracted Workers,” we selected 2,000 companies that placed job offers for contracted work in job information magazines and websites and that were included in Teikoku Databank’s database on offices. The questionnaire sheets were mailed to the companies. We had effective response from 589 companies.

For the “Survey on Vocational Development and Job Creation by NPOs,” we sent the

questionnaire sheets to all NPOs (14,003) listed on the Cabinet Office website. We had effective response from 3,495 NPOs.

### **Future tasks**

We will conduct further research on the state of employment of contracted workers and volunteer workers. At the same time, we will comprehensively analyze the working environment and safety net of workers who cannot be defined as typical employed workers or typical self-employed workers and who work in a wide range of fields that cannot be categorized based on the definition of employed or self-employed, from the different angles of labor law, labor economics, human resources theories, and social security theories.

### **Outline of research results**

#### **1. Contracted workers and NPO workers**

We would first like to give an overview on the diversification of employment and working styles and on contracted workers and NPO workers.

##### **(a) Contracted workers**

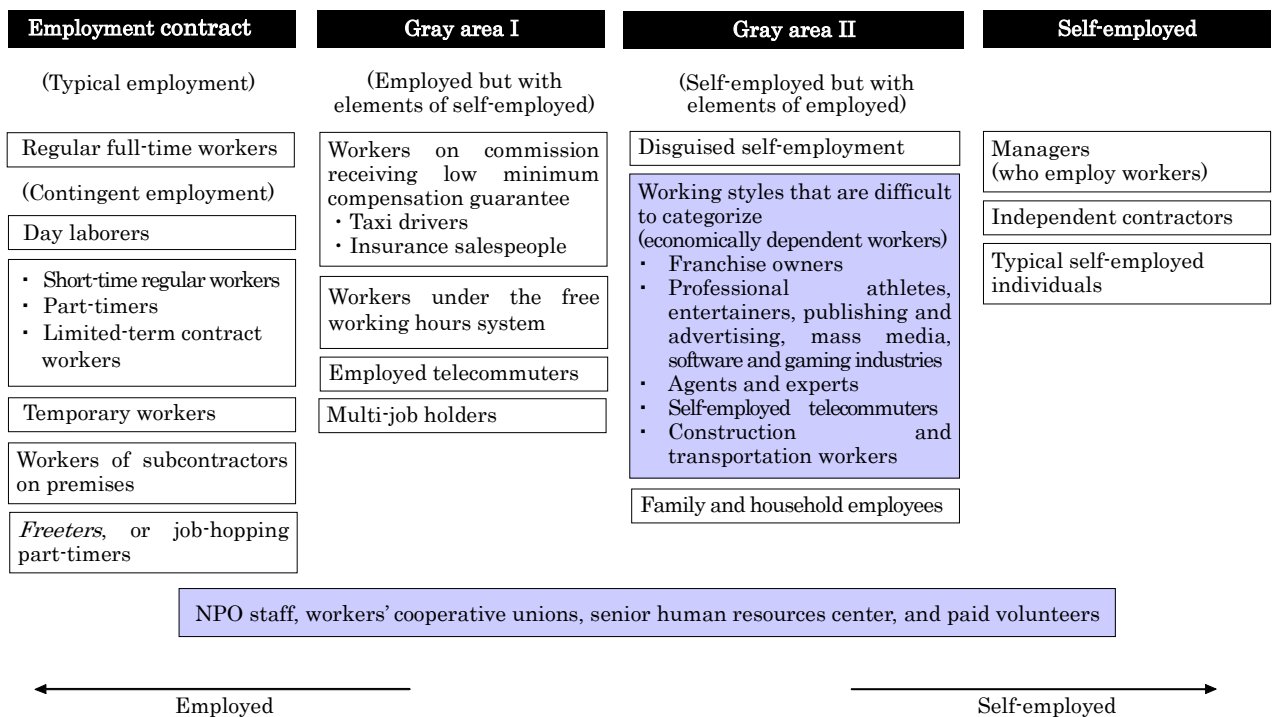
In recent years, working styles that cannot be easily classified as those of employed or self-employed are increasing. Among those who are employed, the number of employees who work with less constraint with respect to place of work, time, and way of working is increasing. On the other hand, a greater number of self-employed people contract work with particular companies and are economically dependent on them (Figure 1).

“Employed but with elements of self-employed” refers to workers who are treated as employees in terms of personnel management and categorized as “employed” in statistics but whose working styles are marked with elements of self-employed work. They include taxi drivers and life insurance saleswomen who work on commission for low minimum compensation guarantee, workers on free working hours system engaging in specialized work or planning, telecommuters (working in their homes or satellite offices) who have less constraint with respect to place of work, and multi-job holders who are not bound to a single employer.

“Self-employed but with elements of employed” relates to workers who are statistically categorized as “self-employed” and conclude contracts as self-employed (in other words, conclude labor supply contracts other than employment contracts) but

whose working styles are marked with elements of employment by companies because their ties with those particular companies are strong. For instance, many franchise owners take the form of self-employed. Actors, dancers, entertainers, professional athletes, those in the publishing, advertising, mass communication, software, and gaming industries, salespeople, agents, construction and transportation workers (ex. delivery staff), and self-employed telecommuters often have a contract with only one company.

**Figure 1. Types of employment and working styles**



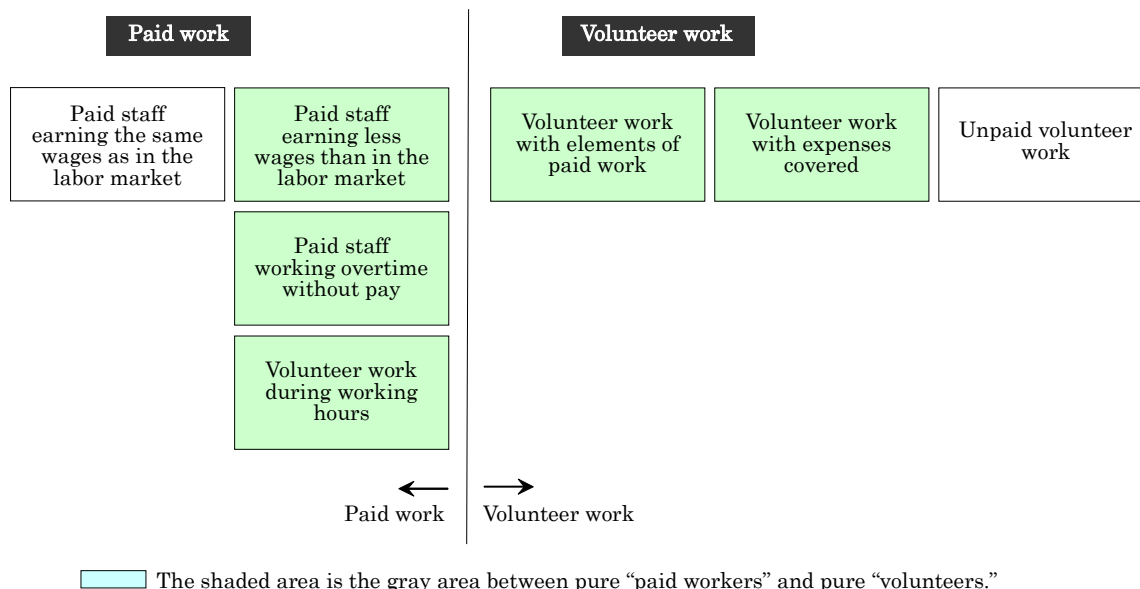
The working styles in the shaded area are discussed in this report

Source: Prepared for this project based on Michio Nitta, “Typical Employment and Contingent Employment: Developments in Japan,” Japan Productivity Center for Socio-Economic Development, *Atarashii Koyo Keitai no Kakudai to Rodoshijo-Seido eno Eikyo ni kansuru Chosa Kenkyu Houkokusho* (April 1999) and Works Institute, *Koyo Soshutsu eno Implication: Nihon-gata Kaigy Model to Kojin Kaigy no Soshutsu Shien* (2000), p. 41.

**(b) NPO workers**

Recently, working styles that are not suited to categorization by “employed” or “self-employed” are also increasing. NPO staff and paid volunteers are some of the examples. Diversification of working styles is particularly advanced within NPOs compared with other workplaces in the private and public sectors. There are various working styles ranging from “paid work” to “unpaid volunteers” (Figure 2).

**Figure 2. Gray area between “paid work” and “volunteer work”**



Source: Prepared by the authors based on Helmut K. Auheier *et al.*, “Work in the Non-Profit Sector,” ILO, 2003, pp. 6-20.

## 2. Outline of each chapter

### (a) Employed, self-employed, and volunteer work: diverse working styles in gray areas and identification of issues (Chapter 1)

In this chapter, we focused on the gray areas between the employed, self-employed, and volunteers, examining the state of affairs and identifying the issues from existing surveys and literature and two questionnaire surveys we conducted. The summary of our findings is as follows:

- (1) Ambiguous working styles that do not clearly fall either under employed or self-employed are also expanding in Europe and the U.S. Active discussions are being held in the ILO and the EU, but consensus building among nations and among the government, employers, and workers has been difficult.
- (2) The results of our survey showed that there were many contracted workers working as IT engineers, designers, photographers, salespeople, and construction workers, and that a large percentage of contracted workers had exclusive contracts with only one company. Therefore, it is assumed that “self-employed but with elements of employed” is also increasing in Japan.
- (3) While there are strong needs among individual workers for independent working styles, companies’ human resources strategies began to change significantly since

the 1990s for various reasons. Many of the corporate activities that were performed through direct employment were gradually replaced by outsourcing, which also led to an increase in “self-employed but with elements of employed.”

- (4) We looked into the issues related to “self-employed but with elements of employed” from the standpoints of worker protection and fair competition among companies on one hand and assistance for independent working styles and promotion of employers’ business on the other. For the former, worker’s compensation insurance, public pension, medical insurance, and obscure contract provisions were some of the issues. For the latter, transaction safety, matching of supply and demand of jobs, and vocational development were issues that were identified.
- (5) Diversification of working styles is particularly advanced within NPOs compared with other workplaces in the private and public sectors. There is especially an increase in the number of full-time staff working for low wages and poorer working conditions and volunteers who receive more than just expenses such as transportation expenses.
- (6) There is a need to clarify labor policy direction regarding the new working styles while paying close attention to continuity between paid work and volunteer work. This should be supplemented by assistance for appropriate employment management, securing and development of human resources, career development of youth, and smooth job transfer and gradual retirement of senior workers. In promoting these labor policies, NPOs should be actively involved.

In light of the above findings, we considered the desired policy response (labor and social security policies in the age of diversified working styles) as shown below.

A study group on “the future of labor laws in Europe,” headed by Alain Supiot, described social rights, which also cover rights of labor and social security, by using four concentric circles. The outermost circle represents social rights guaranteed universally, regardless of type of occupation or whether one is employed or not. The second circle stands for rights pertaining to unpaid work such as childcare, nursing care, volunteer activities, and training. The third circle represents basic law for workers regardless of whether one is employed or self-employed. The innermost circle symbolizes laws pertaining particularly to paid work, and in this case, rights vary depending on the degree of subordination in employment. The study group’s proposal obviates extreme disadvantages to anyone choosing to work as an employee, as a self-employed person, or an unpaid worker and lets those separating from or changing jobs to maintain professional status. Based on the Supiot proposal, we considered in this chapter major

rights and policies from the viewpoint of core rights that are provided to all workers and of providing staged security in accordance with the degree of subordination in employment and economic dependency.

It is expected that more people will choose to change their working styles among employed, self-employed, and volunteer work (paid volunteer work) in the future. It is desirable that the contents and level of entitlements do not differ greatly between the different working styles. The gap in labor and social security that lies between employed workers and self-employed workers is a particularly serious issue. There is also a need for unambiguous system design. It is hoped that an overview would be made on the broad fields of social laws, and thorough examination made from the point of view of giving core rights to all workers and providing staged security in accordance with the degree of subordination in employment and economic dependency.

**(b) Changes in companies' human resources utilization and an increase in work contracted to individuals (Chapter 2)**

The ambiguity in the classification of employed and self-employed working styles means that the rationality of determining the application of various work rules for employed (minimum wage law, social labor insurance, etc.) based on one's employment becomes less valid. A summary of the reasons for and state of employment of contracted workers by companies is as follows:

- (1) The percentage of companies contracting out work to individuals is only slightly less than the percentage of companies that employ temporary workers. Therefore, it is not only a few companies that contract work out to individuals.
- (2) Job opportunities created by contracting work to individuals are equal to about 80 percent of job opportunities created by employing temporary workers. The presence of contracted workers cannot be ignored considering the number of jobs created.
- (3) The reason companies contract work to individuals is that they look to utilizing individuals' skills in specialized fields. Therefore, when concluding a contract with individuals, companies lay emphasis on individuals' specialized skills and expertise.
- (4) With respect to contracted workers' discretion in managing work progress and time and in bearing the costs for equipment and so forth, the results of surveys on both companies that contract out work to individuals and individuals who work as contracted workers showed that about 20 percent of contracted workers had discretion. This was the case not only for those who worked independently, but also for contracted workers who worked under the direction of their companies

much like regular employees.

- (5) Not many contracted workers had discretion, and some even had to report to the office of their companies. However, many contracted workers mentioned that they had more freedom in their use of time compared to regular employees and were also free from companies' established practices and interpersonal relations, which they mentioned were some of the advantages of their working style. Many of them wished to continue in this working style, and few wanted to return working as regular employees.
- (6) Contracting work to individuals not only is expected to create more job opportunities, but is also supported by workers as a working style with a relatively high level of discretion in the performance of work. Not all such work assures a high level of discretion, however. Some are very close to the working style of regular employees. With respect to contracting work to individuals, consideration should be made not on the modality of contracts, but on application of work rules suited to the working style and based on an employment contract.

**(c) Use of contracted workers (Chapter 3)**

We examined the results of the questionnaire survey on companies that used contracted workers. The key points are as follows:

- (1) Demand for contracted workers is expected to increase in the future. We asked 312 companies that currently use contracted workers whether they intended to increase the number of contracted workers they use. As a result, 49.7 percent replied that they intended to do so (answers given: "intend to increase" and "intend to increase slightly").
- (2) While companies look to the expertise contracted workers can provide, they also use contracted workers for the purpose of saving on personnel costs. The reasons cited by the largest percentage of companies for using contracted workers were "to employ them for specialized work" (63.6 percent) and "to secure human resources that were immediately effective and had a high level of skills" (55.9 percent). Clearly, companies have expectations on contracted workers' expertise. On the other hand, around 30 percent of the companies also gave their reasons as "to save on personnel costs," "to adjust the payroll in accordance with the business cycle," and "to adjust to changes in temporary or seasonal workloads." The use of contracted workers from the standpoint of cutting on personnel costs cannot be overlooked.
- (3) While job description and conditions for concluding a contract are provided for in an agreement with a company, contracted workers have significant discretion as to



performance of work. Slightly less than 70 percent to more than 90 percent of the companies laid down job description and conditions for concluding a contract (remuneration, instructions, number of days or hours of work, place of work, etc.) in an agreement with contracted workers (answers given: “lay down to the details” or “lay down to some extent”). On the other hand, 72.1 percent of all companies surveyed replied that how each contracted worker performs his or her job was left to the worker’s discretion (answers given: “leave almost all to the worker” or “basically leave to the worker”). This shows that contracted workers have significant discretion as to the performance of work.

- (4) Contracted workers’ remuneration is determined through negotiation between the company and the contracted worker, and the worker’s performance is reflected on the remuneration. As many as 72.4 percent of the companies responded that they decided contracted workers’ pay through negotiation with them.
- (5) The degree of employee status varies among contracted workers. Regardless of the difference in employee status, contracted workers do not have sufficient protection from injuries and other accidents during the performance of their work.

#### **(d) Working conditions and workers of NPOs (Chapter 4)**

We looked at the state of employment by NPOs from the results of the Survey on Vocational Development and Job Creation by NPOs we conducted in January 2004. In particular, we studied the possibility of NPOs to create jobs and also the working style of “paid volunteers” and the minimum wages, which are apparently lower than they are in the general labor market.

##### **(1) Workers of NPOs and possibility of job creation**

The size of most NPOs is comparable to the size of small enterprises, and their undertakings are supported by workers of diverse working styles. The largest percentage of workers is volunteers. Among the paid staff, a large percentage is non-regular staff. However, NPOs hope to increase the number of regular staff in the next three years. The possibility of job creation is particularly high among “enterprise-type NPOs” that overlap with community business.

## (2) Wages of NPOs

The wages of regular staff of NPOs are lower than those of private companies. Their annual income ranges from ¥1.74 million to ¥3.01 million. The hourly wages of non-regular staff are around ¥759 to ¥1,090, which do not differ greatly from those provided by private companies. The wages tend to rise as NPOs' finances expand.

## (3) Working style of “paid volunteers”

About 40 percent of all NPOs employ “paid volunteers.” Characteristic of the method of payment is “payment of a certain amount of money for expenses” mainly in the fields of welfare and nursing care services. Generally, the employee status of paid volunteers is lower than that of non-regular staff. However, paid volunteers' working styles and working conditions differ depending on each NPO's field of activity and financial scope, and in some cases, their employee status is higher than that of non-regular staff.

## (4) On “application of minimum wages”

The majority of NPOs see application of minimum wages positively. At the same time, however, many organizations hope for “easing of the requirement for a certain period.” The reason mentioned by many NPOs was the difficulty in paying personnel expenses as their finances were not strong enough.

## **(e) Career development at NPOs: from the perspective of human resources and vocational development (Chapter 5)**

In recent years, NPOs are gaining attention as possible providers of places of work. The main assumption is that NPOs could employ middle-aged and senior workers in order to tap into the experience and knowledge they possess (second career) and develop the skills of young people and particularly of young *freeters*, or young job-hopping part-timers (a step up their careers). For the latter, NPOs would have to prepare a system for their education and training. As the history of NPOs is still short, they will need to engage in human resources development, including training of successors.

### (1) Main attributes of NPOs by composition of workforce

Based on the assumption that NPOs will require a greater number of paid staff for their future development as NPOs, we compared the attributes of NPOs that employed paid staff and that did not among those NPOs that were supported by volunteers. The results showed that organizations that employed paid staff were larger and were more advanced in many areas including personnel management. With the development of NPOs' activities, they should reinforce their organization and increase the number of paid staff.

### (2) On employment of senior staff members (second career)

A relatively large number of paid staff members employed by NPOs were senior workers of 50 years or above. The reason cited by the most NPOs with respect to their employment was that “they had a store of experience and knowledge.” For NPOs, which tend to lack human resources in a variety of fields, senior staff members with their experience and knowledge are valuable.

(3) On employment of youth (a step in youth’s careers)

With respect to what paid staff members do after they are separated from a particular NPO they work for, we found that many young people use the experience they gained working for an NPO for transferring to another job. Main destinations for them were private companies and other NPOs and organizations. By preparing a system of education and training for youths, NPOs will have the potential for training them so that they can, based on the experience they gained at an NPO, take the next step in their careers.

(4) On vocational development

The most significant issue NPOs have regarding human resources is the need to secure volunteers and train successors. A relatively large number of NPOs employing paid staff also mentioned the need to improve the quality of employment by enhancing the specialized skills of their staff and ameliorating working conditions. While some NPOs have their own training programs, NPOs generally expect public support in education and training. There is a strong need for vocational development for training successors and improving expertise.

**(f) Issues related to labor laws regarding contracted workers and NPOs (Chapter 6)**

(1) Contracted workers

It can be assumed that the degree of subordination in employment of the contracted workers who became subject of our survey varies widely from individual to individual.

We observed that some companies were using contracted workers “to save on personnel costs” and “to adjust the payroll in accordance with the business cycle” by replacing employees with contracted workers. If, in such a case, the work was being carried out by contracted workers in an exactly the same way as regular employees, the companies in question would have to be regulated as a case of the so-called “disguised self-employed.”

This should be clearly distinguished from cases where contracted workers are in full agreement with the contract they sign. There are arguably not a few contracted workers who would relinquish protection afforded by labor protection laws for more freedom with respect to time and place of work and for the advantage of receiving pay

not based on seniority but based on performance. Providing protection to such workers, based on their “employee status,” may limit their freedom and be contrary to their needs. It should be added, however, that there are certain types of protection, such as accident compensation, that may be provided to contracted workers who are purely self-employed.

## (2) Volunteers working for NPOs

Consideration on the “employee status” of paid volunteers depends not only on their subordination in employment, but also on whether the money they receive can be defined as “wages.” In addition, the final decision on their “employee status” must also take into consideration the field in which a particular NPO is active and the nature of their activities.

While recognizing the “employee status” of paid volunteers will be premised on defining the money they receive as “wages,” the subsequent application of the minimum wage law may impose strict restriction on the use of NPO funds. On this point, it is worth noting that our survey’s respondents felt that “the standard (of minimum wages) should be lowered for a certain period, for instance, after an establishment of an NPO” as a measure to ease the minimum wage law. Future discussion on this subject should include discussion on how much labor laws and regulations can be eased in light of the unique characteristics of NPOs.

There is also room for examining whether the protection provided for by the labor protection laws should be completely negated in cases where the “employee status” is denied. If, for instance, volunteers, including unpaid volunteers, are working under the supervision of a volunteer organization, the application, on such volunteers, of labor protection laws (laws and precedents) that are based on personal subordination should be acceptable. In particular, as in the case of contracted workers, legislation on accident compensation for volunteers should be positively considered as a policy issue.

## **(g) Safety net and the law (Chapter 7)**

Laws are applicable to those who fall within the personal scope of application each law stipulates. With respect to worker protection laws and other social laws, the personal scope of application is defined as “employees,” which is interchangeable with “subordination in employment” or “personal subordination.”

We examined social laws, court rulings, and academic theories to investigate whether contracted workers and volunteers are subsumed in this concept of “employees.” For contracted workers, although they may, in some cases, be considered as “employees,” judging from how they are employed, they are basically not “employees” insofar as they

receive work on contract or commission. For volunteers, their activities do not constitute “labor” in the legal context and when considering the possible form of their contract and employment, they are unlikely to be subsumed in the above concept of “employees.”

As regards subordination in employment, we pointed out that “personal subordination” should be replaced with “subjectability to command” because the former had lost its significance today; that the term, “subjectability to command,” only anticipated the essence of labor contracts and did not affect the concept of “employees”; that since the objective of labor was to earn wages and a livelihood, the term, “economic subordination” was significant with respect to the concept of “employees”; that the term, “economic subordination” should be replaced by “economic dependency” because “subordination” might give rise to misunderstanding; and that the employee status should be determined by economic dependency alone.

Moreover, we considered that volunteers basically had no economic dependency—although this may not apply to all cases considering the difference between paid and unpaid volunteers and the diversity of their activities—and that minimum social protection, such as accident insurance, social security, safety and health, and equality, is needed. It should be noted, at the same time, that some volunteer workers may closely resemble contracted workers depending on how they are paid.

Lastly, there is a need to respect the intention of contracted workers and prepare a system for excluding the application of social laws. For volunteers, attention should be given to volunteer organizations’ competitiveness vis-à-vis private companies and ensure that application of social laws does not impede the development of such organizations.

#### <Reference>

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## **<Composition of the Report>**

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Section II: Details

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