

**Social Dialogue, Labour Law and  
Labour Administration Department**

**Informal Economy, Undeclared Work and  
Labour Administration**

**José Luis Daza**

**International Labour Office - Geneva  
June 2005**

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## Preface

In line with the ILO resolution concerning decent work and the informal economy, adopted at the International Labour Conference in 2002, governments have a key role to play, in consultation with workers and employers, in promoting decent work through the extension of their services to the informal economy. This requires the development of innovative approaches and new tools which can be used by ministries of labour to promote decent work through technical assistance to small and micro-enterprises and independent or self-employed workers. During the current biennium, José Luis Daza, Senior Labour Administration Specialist of the Dialogue Department, worked on this research paper for ministries of labour on the theme “informal economy, undeclared work and labour administration”. He was supported by other colleagues: Giuseppe Casale, Normand Lecuyer, Rainer Pritzer and Alagandram Sivananthiram.

This research document was validated at an Experts’ meeting on “Undeclared work, informal economy and labour administration” which was held in Turin on 4-6 May 2005. The workshop key objective was to show how labour administration can contribute to extending decent work to those categories of workers deprived of rights, either because they are undeclared by their employers, or are considered excluded from the application of labour and social security laws. The Experts’ meeting saw the participation of Sathaporn Charupa, Director of Labour Protection, Ministry of Labour, Thailand; Mr. Ukrisdh Musicpunth, Labor Officer, International Labor Standard Section, Ministry of Labour, Thailand; Mr. Manohar Lal, Joint Secretary and Director-General, Labour and Welfare, Ministry of Labour and Employment, India; Mr. Sharda Prasad, Labour Commissioner, Government of Uttar Pradesh, India; Ms Theresia Ilembo, Ministry of Labour, Youth Development and Sports, Tanzania; Benjamin Zio, Director-General, Employment, Burkina Faso; Cem Toker, Advisor to the Minister, Ministry of Labour and Social Security, Turkey; Mr. Julio Gamero, Lima, Perú; David Tajgman, consultant; and Stefano Caffio, research fellow, University of Bari, Italy. Jim Baker, Director, ILO, ACTRAV, Geneva; Catherine Saget, ILO, TRAVAIL, Geneva and Daniela Bertino of the ILO Turin Center took also part in the working sessions of this meeting.

The Dialogue Department views this work as a contribution to the ongoing debate on promoting decent work in the informal economy and the changing role of labour ministries in this area. This document should be seen as a first step towards the practical work which is going to take place in the coming years.

I would like to take this opportunity to express my sincere appreciation to José Luis Daza, author of the paper, and to the Labour Administration team for coordinating this work.

Johanna Walgrave  
Director,  
Social Dialogue, Labour Law and  
Labour Administration Department



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## Contents

Preface.....	iii
Introduction: Decent work and the informal economy .....	1
1. Treatment of informal work by the ILO .....	3
1.1. The informal sector .....	3
1.2. The concept of the informal sector.....	3
1.3. International definition of the informal sector for statistical purposes .....	4
1.4. The informal economy .....	5
1.5. Informal employment.....	5
2. Perspective of the informal economy in developed countries and developing countries .....	7
2.1. Informality and illegality.....	7
2.2. Informal economy, illegal labour and undeclared work in developed countries.....	9
2.3. Informal economy and informal work in developing countries.....	13
2.4. Attitude of the public administration to informality .....	14
3. The legal framework of labour laws.....	16
3.1. Labour laws and their scope.....	16
3.2. The real scope of labour laws: Inclusions, exclusions and exemptions .....	17
3.3. Relationships included in the scope of labour laws .....	17
3.4. Exclusions .....	19
3.5. Exclusions that give rise to lack of protection due to lack of legal coverage.....	19
3.5.1. General exclusions.....	19
3.5.2. Relatively frequent exclusions.....	21
3.6. Exclusions from general labour laws which do not imply a lack of protection because there is a special regulatory framework.....	26
3.7. The form of the contract of employment as a determining factor in formal work.....	28
3.7.1. The employment relationship and contract of employment .....	28
3.7.2. Written contracts and verbal contracts.....	28
3.7.3. Mandatory written contracts .....	29
3.7.4. Work cards, books and other documents .....	31
3.7.5. Personnel books and registers.....	31
3.8. Work and the social security relationship: Formalities .....	32
4. Establishing the concept of informal work for the purposes of labour administration.....	34
4.1. Labour administration .....	34
4.2. Concept of informal work .....	36
4.3. The decent work deficit in the informal economy .....	37
4.3.1. Activities or persons or enterprises not covered by labour laws .....	37

4.3.2. Activities where laws are not enforced or complied with in practice...	38
4.4. The special case of freedom of association.....	40
4.5. Informality and gender.....	41
5. Labour administration and the informal economy: Challenges, experiences and trends.....	43
5.1. Challenges.....	44
5.2. Experiences.....	45
5.3. Trends.....	50
6. Conclusions.....	53
Annex: Selected texts from international labour standards.....	55
Informal sector.....	55
R169 Employment Policy (Supplementary Provisions) Recommendation, 1984.....	55
R195 Human Resources Development Recommendation, 2004.....	55
Self-employed workers.....	56
R192 Safety and Health in Agriculture Recommendation, 2001.....	56
Small enterprises.....	57
R169 Employment Policy (Supplementary Provisions) Recommendation, 1984.....	57
R189 Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998.....	57
Agriculture.....	59
C141 Rural Workers' Organisations Convention, 1975.....	59
C129 Labour Inspection (Agriculture) Convention, 1969.....	59
C184 Safety and Health in Agriculture Convention, 2001.....	59
Home work.....	59
C177 Home Work Convention, 1996.....	59
Cooperatives.....	60
R193 Promotion of Cooperatives Recommendation, 2002.....	60
Indigenous people.....	61
C169 Indigenous and Tribal Peoples Convention, 1989.....	61
Child labour.....	62
C138 Minimum Age Convention, 1973.....	62
R190 Worst Forms of Child Labour Recommendation, 1999.....	62
Migrants.....	63
C143 Migrant Workers (Supplementary Provisions) Convention, 1975.....	63
Labour administration standards.....	64
C150 Labour Administration Convention, 1978.....	64
C81 Labour Inspection Convention, 1947.....	65
C88 Employment Service Convention, 1948.....	65
Basic ILO database and selected bibliography.....	67

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## Introduction: Decent work and the informal economy

Evidence that a large part of the working population in developing countries work outside the parameters established by labour and fiscal laws, and that part of the services and goods produced in industrialized countries are produced clandestinely, has made the informal economy the focus of attention of economic and labour policies. Despite the fact that the informal economy is of universal concern nowadays, the definitions used, the ideas traded, the perception of the phenomenon, its consequences and the solutions proposed to remedy the associated problems are not the same in all parts of the world. Furthermore, a great difference can be seen between the perception and treatment of informality in developing countries and that in the highly industrialized countries.

The problems surrounding the informal economy can be addressed from many points of view, but when dealing with informality and work, there emerges a human dimension which forces us to think about people's conditions of work. For the International Labour Organization, whose mission is to improve the working conditions of people worldwide, the treatment of informality is intended to promote opportunities of decent work for all.<sup>1</sup>

The Director General of the ILO, in his Report on Decent Work submitted to the 87<sup>th</sup> session of the International Labour Conference (ILC) in 1999, pointed out that all those who work have rights at work and that the ILO must be concerned about all workers, including those who work outside the formal labour market, such as unregulated wage workers, self-employed workers and homeworkers. The Report stated that the informal sector accounts for almost 60 per cent of total employment in Latin America, and for over 90 per cent of urban jobs in Africa during the last decade.

In 2001, the Director General posed the question whether decent work could constitute a universal goal (*Report on the reduction of the decent work deficit*) and returned to the theme of informality, establishing that although the majority of the world's workers are employed in the informal economy, almost all of them lack adequate social security protection, organization and a voice at work. Considering that the principles of decent work are as important in the informal as in the formal economy, he urged that a way be found to extend rights to everyone.

At its 90<sup>th</sup> Session in 2002, the ILC addressed the theme of the informal economy and adopted a resolution on decent work and the informal economy in which it recognized the obligation of the ILO and its constituents to make decent work a reality for all workers and employers. The Resolution stated that informality was primarily a matter of governance, and considered that the difficulty of reducing the decent work deficit is much greater when the work performed is outside the limits of the coverage or scope of the legal and institutional framework. It also emphasized that, given that workers and enterprises in the informal economy are often not recognized, regulated or protected by law, a national legal and institutional framework becomes crucial.

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<sup>1</sup> *Decent work*, Report of the Director-General to the 87<sup>th</sup> Session of the International Labour Conference, Geneva, 1999.

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The Conference declared that the ILO should draw upon its mandate, tripartite structure and expertise to address the problems associated with the informal economy.<sup>2</sup> It recommended specific areas which should be a priority for the work programme and technical assistance. Of these, we highlight the following:

- To help member States to formulate and implement, in consultation with employers' and workers' organizations, national policies aimed at moving workers and economic units from the informal economy into the formal economy;
- To identify the obstacles to application of the most relevant labour standards for workers in the informal economy and assist the tripartite constituents in developing laws, policies, and institutions that would implement these standards;

Following these recommendations, the Social Dialogue, Labour Law and Labour Administration Department (DIALOGUE) included in its programme for the biennium 2004-2005 the preparation of a document which, taking into account the conceptual difficulties arising from the considerable diversity in the informal economy, would help to show how labour administrations can contribute to extending decent work to various categories of workers deprived of their rights because they have not been declared by their employers, because they are in forms of clandestine work, or because they are considered to be excluded from the scope of labour and social security laws.<sup>3</sup>

With a view to establishing a basis for a technical discussion, this working paper will attempt:

1. To describe the evolution of the terminology;
2. To describe what is meant by informal economy in industrialized and developing countries, taking labour legislation as a starting point;
3. To explain which activities by persons or enterprises are not covered by labour laws;
4. To highlight the decent work deficit in the informal economy in terms of the legal situation of those employed in it and suggest a concept of labour informality with which labour administrations can work;
5. To propose key elements for action by labour administrations in the framework of a global and integrated strategy to facilitate the transition from the informal to the formal economy.

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<sup>2</sup> *Conclusions on decent work and the informal economy*, International Labour Conference, Geneva, 2002, para. 35.

<sup>3</sup> *ibid.*



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## 1. Treatment of informal work by the ILO

### 1.1. The informal sector

The ILO used the expression “informal sector” for the first time in a study entitled *Employment, incomes and equality: A strategy for increasing productive employment in Kenya* (Geneva, 1972). The term was used to describe the activities of poor workers which were not recognized, recorded, protected or regulated by public authorities. Since then there have been numerous ILO activities and documents in which this term has been used.<sup>4</sup> The opposite of informal sector was the “modern sector of the economy”, but both terms were highly ambiguous.

Almost twenty years later, in 1991, the 78<sup>th</sup> session of the ILC examined “the dilemma of the informal sector”. The question was posed on whether the ILO and its constituents should promote the informal sector as a provider of employment and incomes, or seek to extend regulation and social protection to it and thereby possibly reduce its capacity to provide jobs and incomes for an ever expanding workforce.

The Report of the Director General to the 1991 Conference emphasized that “there can be no question of the ILO helping to ‘promote’ or ‘develop’ an informal sector as a convenient, low-cost way of creating employment unless there is at the same time an equal determination to eliminate progressively the worst aspects of exploitation and inhuman working conditions in the sector”.

The Conference discussion stressed that the dilemma should be addressed by “attacking the underlying causes and not just the symptoms” through “a comprehensive and multifaceted strategy”.<sup>5</sup>

### 1.2. The concept of the informal sector

Over the years, as the use of the term informal sector became more widespread, attempts were made to describe its composition, to measure the number of economic units and persons operating in informality, to account for their contribution to the gross domestic product and, of course, to explain the causes of informality.

Some ILO instruments refer to the informal sector but the first attempt to describe its nature can be found in the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), which in its paragraph 27 refers to the informal sector in terms of “economic activities which are carried on outside the institutionalised economic structures” .

The terminology has given rise to much debate, complicated by the various connotations of apparently equivalent terms in different languages (translations

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<sup>4</sup> “Non-structured sector” in French and Spanish documents.

<sup>5</sup> *Decent work and the informal economy*, Report VI to the 90<sup>th</sup> Session of the International Labour Conference, Geneva, 2002.

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sometimes use synonyms which are not usual or which in certain national or local usage confer on them particular nuances or make them dissimilar).

The term informal sector is now outdated and is now being used in a narrower sense. Instead, there is a shift towards the use of the term informal economy and to related concepts such as informal work, informal workers, informal enterprises or informal activities.

### **1.3. International definition of the informal sector for statistical purposes**

The concern to measure the phenomenon of informality led to the adoption of an international definition of the informal sector for statistical purposes at the 15<sup>th</sup> International Conference of Labour Statisticians in 1993. On that occasion, the informal sector was defined in terms of the characteristics of the “units of production” (enterprises) in which the activities took place, rather than in terms of the characteristics of the persons concerned or their work.<sup>6</sup> The definition for statistical purposes of the concept of “enterprises of informal workers” introduced the size of enterprise, measured by the number of workers, as one of the criteria for defining informality. The practical result in many developing countries was that, without taking other criteria into account, the broadest concept of informality focuses primarily on the size of enterprise, sometimes combined with the volume of business in monetary terms, but not the scope of the legislation concerning them.

While it is true that in some countries some laws existed, especially on safety and health at work, which did not include small enterprises in their scope (the so-called Factory Acts in common law countries), in the majority of countries there were no exclusions based on size. Nevertheless, in many developing countries “small” gradually became synonymous in practice with “informal” when speaking of enterprises and work.

In those countries, taking into account that the majority of employment occurs in small-scale economic units without corporate form (i.e. not constituted as limited companies), in family businesses and in various forms of self-employment, it is no wonder that when employment is quantified, the percentages involved reflect the predominance of the informal over the formal.

As background to the discussion of decent work and the informal economy during the 2002 ILC, the ILO presented a conceptual framework for employment in the informal sector which related the concept of employment in the informal sector based on enterprises to a broader concept of informal employment based on jobs. As a result, a distinction could be made between employment in the informal economy, informal employment, employment in the informal sector and informal employment outside the informal sector. Total employment (in terms of jobs) was broken down by type of unit of production (enterprises in the formal sector,

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<sup>6</sup> Hussmans, R. 2004. *Defining and measuring informal employment*, E/ESCAP/SOS/11 (Geneva, ILO).

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enterprises in the informal sector, households), by situation in employment, and by the formal or informal nature of employment.<sup>7</sup>

#### **1.4. The informal economy**

The 2002 ILC Resolution concerning decent work and the informal economy considered that the term “informal economy” was preferable to the term “informal sector” because the workers and enterprises in question did not fall within any one sector of economic activity, but cut across many sectors. Since then, in the ILO context, the use of “informal sector” has been systematically replaced by “informal economy”.

The Resolution also indicated that there is no universally accurate or accepted description or definition of the term “informal economy”, but it can be said to refer to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs.<sup>8</sup>

#### **1.5. Informal employment**

Since the 2002 ILC, labour statisticians have agreed on the value of supplementing statistics on employment in the informal sector with statistics on informal employment. It was considered that international statistical guidelines were needed on the definition of informal employment, and these were drawn up by the 17<sup>th</sup> International Conference of Labour Statisticians (ICLS) in 2003.

Under the *Guidelines on a statistical definition of informal employment* established by the ICLS in 2003, informal employment includes the following types of jobs:

- own-account workers employed in their own informal sector enterprises;
- employers employed in their own informal sector enterprises;
- contributing family workers, irrespective of whether they work in formal or informal sector enterprises;
- members of informal producers’ cooperatives;

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<sup>7</sup> *Report of the Working Group on informal employment*, 17<sup>th</sup> International Conference of Labour Statisticians, Geneva, 2003, Ch. 3, Annex.

<sup>8</sup> *Conclusions on decent work and the informal economy*, International Labour Conference, Geneva, 2002, para. 3.

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- employees holding informal jobs,<sup>9</sup> whether employed by formal sector enterprises, informal sector enterprises, or as domestic workers employed by households;
  - own-account workers engaged in the production of goods exclusively for own final use by their household.

The reasons for being considered informal may be the following: non-declaration of the jobs or the employees; casual jobs or jobs of a limited short duration; jobs with hours of work or wages below a specified threshold (e.g. for social security contributions); employment by unincorporated enterprises or by persons in households; jobs where the employee's place of work is outside the premises of the employer's enterprise (e.g. outworkers without employment contract); or jobs for which labour regulations are not applied, not enforced, or not complied with for any other reason.

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<sup>9</sup> Employees are considered to have informal jobs if their employment relationship is, in law or in practice, not subject to national labour legislation, income taxation, social protection or entitlement to certain employment benefits (advance notice of dismissal, severance pay, paid annual or sick leave, etc.).

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## 2. Perspective of the informal economy in developed countries and developing countries

The informal economy exists, even if it is not always easy to define or identify who is in it. Attempts to define it from an economic, sociological or legal standpoint, or by the use of quantitative (measurement of scale) or qualitative methods, have not replaced the popular perception of informality. People in general know informality from their own national perspective and personal experience, both of which are influenced by the causes of informality and its obvious manifestations. The greater or lesser development of countries and the degree of wealth or poverty of their societies can lead to very different views.

Two opposing views are, first, that which identifies the source of informality in poverty, and second, that which identifies it simply with cost-avoidance. For the first view, informal activities are about survival or subsistence; for the second, it is about reaching a threshold of profitability or obtaining benefits without complying with laws which impose burdensome obligations.

### 2.1. Informality and illegality

The terms “informal sector”, “informal work”, “non-organized labour”, “informal enterprise” or “informal worker” are commonly used in developing countries, much less in industrialized countries. The term “informal economy” is widely used in all countries, recently introduced in some – but not all agree on its meaning. Moreover, its use in different languages may also have different connotations or nuances.

Other apparently similar terms, such as illegal labour, hidden labour, clandestine employment, “black” labour, undeclared labour, clandestine workers, underground enterprises, etc., which are used quite frequently in industrialized countries, are not always interchangeable with those that refer to “informality”, and their use depends very much on the meaning specific to each language and, above all, their possible legal implications.

In the international context there have been many suggested definitions in various contexts. For the ILO, under the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), illegal employment is defined as “employment which does not comply with the requirements of national laws, regulations and practice”. The same Recommendation urged member States to take measures to combat effectively illegal employment, and to take measures to enable the progressive transfer of workers from the informal sector, where it exists, to the formal sector to take place.

The Organization for Economic Cooperation and Development (OECD) proposed a definition of hidden employment as “that which although not illegal in itself, has not been declared to one or more administrative authorities” (OECD *Employment Outlook*, 2004). This definition seems to suggest that not all concealment can be qualified as illegal.

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In reality, the descriptions referring to informality tend to be of a sociological or economic nature, while those of a legal character refer to illegality, concealment or failure to declare.

Nor should informality and illegality be likened to criminal activities. A supplement to the 1993 System of National Accounts is an international conceptual framework which measures the unseen economy and distinguishes the informal sector from underground production, illegal production and production by households for their own final consumption.<sup>10</sup>

Legal definitions of illegal labour are scarce and only recently introduced into labour law, as in Lithuania.<sup>11</sup> In some cases, as in Belgium, the definition is broad, since any violation of social legislation enforceable by the federal authorities is regarded as social fraud. In addition, certain forms of illegality fall into the category of “social crime”, such as the employment of five or more undeclared persons or the employment of at least three foreign workers without the required permits.

Some definitions of clandestine labour in a few European countries refer to activities which are considered illegal. Examples are situations where workers have no work permits, compulsory declarations are not made or tax or social security contributions are not deducted or withheld from workers' wages.<sup>12</sup>

For the OECD, illegal work is that which concerns persons who are not legally authorized to work (which should not be confused with illegal production). Specific examples are migrant workers without work permits or government employees who hold a second job incompatible with the duties of their first job. In many countries, labour by children below the prescribed minimum age is also

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<sup>10</sup> *Report of the Working Group on informal employment*, 17<sup>th</sup> International Conference of Labour Statisticians, Geneva, 2003, Ch. 3, Annex.

<sup>11</sup> Labour Code, Lithuania, 4 June 2002.

Article 98. Illegal Work. 1) Illegal work shall mean work: 1) performed without the conclusion of an employment contract although the characteristics of an employment contract specified in Article 93 of this Code are present; 2) performed by foreign citizens and stateless persons failing to comply with the procedure of their employment established by regulatory acts.

2. Illegal work shall not include assistance (help) and voluntary works. Their conditions and performance procedure shall be established by the Government.

3. Employers or their authorised persons, who have permitted to perform illegal work, shall be liable in accordance with the procedure prescribed by laws.

<sup>12</sup> Law of 3 August 1977 which prohibits clandestine labour, Luxembourg.

It considers clandestine labour to be:

- the exercise on an independent basis of professional activities governed by law (\*\*\*) regulating access to the occupations of artisan, shopkeeper, industrial, and certain liberal professions, without the authorization required for the purpose;
- the performance of paid work when the worker knows that the employer does not possess the authorization required by law or when he knows that his situation as employee is not legal under the law governing deductions from wages and remuneration or social security legislation.
- the law also prohibits using the services of a person or group of persons for the performance of clandestine work.

Available at <http://www.itm.etat.lu/droit/fr/1/index.htm>

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considered illegal, as well as remunerated activities undertaken by unemployed workers while they are in receipt of unemployment benefits.

Thus, even when illegality is the opposite of legality and formality can be synonymous with legality, illegality cannot always be equated to informality. In quite a number of countries, however, especially the industrialized ones, talking in legal terms, activities carried out outside the scope of the law are popularly called informal, and may be or are considered illegal because they do not comply with certain legal requirements or because they are in breach of some law.

The difference between informality and illegality, which has many national nuances, has not been the subject of much study, but has been present in some fora and discussions since the late 1990s (IALI Congress 2000).<sup>13</sup> At times the prevailing idea in the discussions was that informal productive units should not be qualified as illegal, especially in those contexts where the majority of the population live in a traditional framework where the social rules do not correspond to the legal rules (which are ignored).

In speaking of labour legislation and informality, it is customary in developing countries to say that “it does not apply” to the informal sector, while in industrialized countries, it is more common to say that “it is not enforced”.

## **2.2. Informal economy, illegal labour and undeclared work in developed countries**

One of the chief characteristics of informal activities in industrialized countries is its concealment or clandestine nature. These activities are generally invisible or difficult to locate, as when they are carried out in unmarked establishments not declared to the authorities. There are, for example, enterprises the majority of whose employees are legal, but which also have some workers who have not been declared or are under the guise of being independent or belonging to another enterprise. Other cases do not fall into the category of business activities but are domestic, such as cleaning, child care or gardening.

Activities carried out by independent workers are in principle not considered as informal. Although self-employment or autonomous work is outside labour legislation, it is normally obligatory to declare it to the authorities and it has broad protection in social security systems.<sup>14</sup>

In the majority of industrialized countries, economic activities carried out on the street, without a permanent establishment, or in open-air markets, are not considered informal in themselves, while those in developing countries tend to be

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<sup>13</sup> IALI: International Association of Labour Inspection.

<sup>14</sup> **Spain.** Decree 2530/1970 of 20 August regulating the Special Social Security Scheme of Self-employed and Autonomous Workers. Inclusion of the following is compulsory: (a) self-employed and autonomous workers, whether or not they are owners of individual or family firms; (b) the spouse and blood relations or kin up to the third degree, including workers defined in the previous paragraph who normally, personally and directly collaborate with them in performing work in the activity concerned, provided that they are not their employees.

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identified with the informal economy. These activities are regulated by law,<sup>15</sup> though this does not preclude cases of non-compliance. They have warranted the attention of both commercial and labour legislation and it is normally mandatory for persons who carry out such activities to be included in social protection systems.<sup>16</sup>

The terms used in dealing with the informal economy are not always the same, but in Europe, in the case of labour or employment, we frequently come across terms such as undeclared economy, underground economy, clandestine labour and undeclared labour. The term most used for labour purposes, at least officially in the documents of the European Union, is undeclared labour.

The question of undeclared labour has been referred to in community policy for many years. As far back as 1993, the *White Paper on Growth, Competitiveness and Employment* spoke of reintegrating marginalized workers and those performing clandestine work into the formal labour market.

Some studies carried out in the European Union estimate that the informal economy represents between 7 and 16 per cent of GDP.<sup>17</sup>

A 1998 Communication of the European Commission defined undeclared work as “any paid activities that are lawful as regards their nature but not declared to public authorities”. This definition is similar to the OECD definition previously cited. This definition excludes criminal activities, as well as work not covered by the usual regulatory framework and which does not have to be declared to public authorities, such as activities undertaken within the household economy.

The 1998 Communication was prepared with the aim of launching a debate on the causes of undeclared work and the policy options for combating it. The document considered that the main motivation for employers, employees and the self-employed to participate in the undeclared economy is economic. Working in the informal economy offers the opportunity to earn income and evade taxation on income and social contributions. It pointed out two dimensions to the problem of undeclared work: it can be viewed as an issue of individuals taking advantage of the system and undermining solidarity in the process, or as a reflection of the need for greater flexibility in the labour market and further adaptation of existing legislation. State intervention, then, should be oriented towards sanctions and revision of inappropriate legislation.

The same document also put forward a description of the participants in undeclared work, identifying the following groups:

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<sup>15</sup> **France.** Labour Code. Book 2. Regulation of labour. Article L200-1. Subject to the provisions of the present book are industrial and commercial establishments and their branches, irrespective of their nature ... Also subject to these provisions are establishments in which only family members are employed under the authority of the father, the mother, or guardian, even when such establishments carry out their activity on the public highway.

<sup>16</sup> **Spain.** Law 7/1996 of 15 January, regulation of retail trade. Article 55. Identification. Persons who engage in street vending must, in a manner easily visible to the public, display their personal details and the document attesting to the relevant municipal authorization, and an address for the receipt of possible complaints.

<sup>17</sup> Council Decision of 22 July 2003 on guidelines for the employment policies of the Member States (2003/578/EC).



- 
- second and multiple job holders;
  - the “economically inactive” population;
  - the unemployed; and
  - third country nationals illegally resident in the EU.

A related issue is the abuse of social security benefits and contributions fraud. It is common to find national policies and laws in which a fundamental element of combating informality is the regularization of workers – registering them in the social security system and ensuring that recipients of certain benefits are legally entitled to them.

The European Employment Strategy (established by the European Union) sets out each year general economic policy orientations for Member States and the Community. Since 2001, among the *Guidelines for employment policies* in Member States, the one on “transforming undeclared work into regular employment” has been systematically reiterated. The *Guidelines*, together with other measures, urge Member States to develop and implement broad actions and measures to eliminate undeclared work, which combine simplification of the business environment, removing disincentives and providing appropriate incentives in the tax and benefits system, improved law enforcement and the application of sanctions. The *2004 Guidelines*, which goes into detail for each country of the European Union, highlights the scale of the problem of undeclared work in at least two of the old Member States and seven of the new entrants.

In some countries, awareness of the size or growth of the informal economy has led to the creation of administrative structures, interdepartmental coordination systems, and programmes or initiatives aimed at combating illegal work in its various forms. For example, an inter-ministerial mechanism was established in France in 1997 to combat illegal work.<sup>18</sup> The mechanism brings together several organizations in a committee, with a national commission, departmental commissions and operational committees. In Italy, a plan to bring illegal work into the open was established along similar lines in the Ministry of Labour. Outside the EU, in Switzerland, the Federal Council has submitted to Parliament a bill on

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<sup>18</sup> In France, the term “illegal work” designates seven categories of fraud against social legislation:

- dissimulated work by dissimulation of activity, paid employment or hours worked;
- illegal subcontracting and illicit supply of labour;
- fraud in the introduction and employment of foreign labour without work permits;
- fraud observed in relation to the operation of foreign enterprises in the territory of France (fraud in service provision, against the monopoly of the International Office of Migrations, secondment of foreign workers);
- illegal accumulation of jobs;
- paid placement;
- fraud relating to replacement income.

Available at <http://www.travail.gouv.fr/odf/Dilti.pdf>

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“black” labour,<sup>19</sup> after undertaking a detailed study of this issue and its consequences.

For many years, the US Federal Labour Administration and the parallel departments at state level have carried out programmes and campaigns with the intention of ensuring compliance with the laws on conditions of work, such as minimum wage and the employment of children. Some sectors such as the textiles and clothing industry were the subject of monitoring campaigns due to the discovery of rampant clandestine immigrant labour and non-compliance with the laws on conditions of work. As the workshops were links in complex chains of subcontractors, a way sought to solve the problem by making the principal contractors and distributors legally responsible.

In the countries in transition, estimates indicate the existence of a considerable informal economy. Among the countries of the Commonwealth of Independent States (CIS), the informal economy is actually bigger than the formal economy in Azerbaijan, Georgia and Ukraine, and almost as large in Armenia, Belarus, the Republic of Moldova and the Russian Federation.<sup>20</sup>

OECD evaluations of the causes of the persistence of informal work in its undeclared form are similar to those of the EU, as are the measures proposed to prevent its growth and to bring informal activities back to the formal sector.<sup>21</sup>

Both in the USA and Europe, the problem of foreign workers without residence and work permits has given rise to numerous legislative and administrative measures, involving several government departments and especially the labour administration. Indeed, there is no lack of polemic on whether clandestine immigration and the informal economy go hand in hand, and whether the ease with which jobs in the hidden economy can be found encourages immigration “without papers”.<sup>22</sup>

On this subject, the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) provided that all necessary and appropriate measures should be adopted to suppress clandestine movements of migrants for employment and illegal employment of migrants. The Convention also states that provision should be made under national laws or regulations for the effective detection of the illegal employment of migrant workers and for the definition and the application of administrative, civil and penal sanctions, which include imprisonment in their range, in respect of the illegal employment of migrant workers.

In some European countries campaigns have been undertaken at various times to regularize foreign workers in illegal situations, involving fixing a period

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<sup>19</sup> [http://www.seco-admin.ch/themen/arbeit/recht/schwarzarbeit\\_recht/index.html?lang=fr&PHPSESSID=ef44008eb4cdfbe9b68d0192144c8feb](http://www.seco-admin.ch/themen/arbeit/recht/schwarzarbeit_recht/index.html?lang=fr&PHPSESSID=ef44008eb4cdfbe9b68d0192144c8feb)

<sup>20</sup> *Managing transition: Governance for decent work*, Report of the Director-General of the ILO for the Seventh European Regional Meeting, Feb. 2005, p. 45.

<sup>21</sup> See: *OECD Employment Outlook 2004*, Ch. 5.

<sup>22</sup> See “Study on the links between legal and illegal migration”, Communication of the European Commission, COM (2004) 412.

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during which employers could formalize contracts and declare the situation of their workers to the social security authorities without being subject to sanctions.<sup>23</sup>

### **2.3. Informal economy and informal work in developing countries**

While in developed countries informal activities are characterized by their concealment or low visibility, in developing countries quite the opposite occurs. A large proportion of activities are carried on in the open air, on an itinerant basis, involving occupation of public highways, permanent occupation of public areas and, in general, invisible premises or establishments even with signs to attract the attention of potential customers or users.

The list of informal economy operators include street vendors or those who offer services in the street, such as shoe cleaners, car washers, taxi drivers and unofficial porters, food stall operators, vendors of all types of articles, shoe repairers, barbers, etc., the majority of them self-employed. This is not an exhaustive list, although these are the most visible.

In developing countries, a large proportion of production and transformation of goods, trade in all types of products, or services to the public, such as hairdressing or dressmaking, are carried on in small workshops, shops or visible establishments, permanent or temporary, in which workers are also employed by others. However, the rights of the vast majority of these paid workers, with regional and national differences, are not recognized by their employers, despite the fact that they are included in the scope of national legislation. These workers are not usually registered with the institutions that administer the social security system and contributions are not paid for them, so that such protective systems as exist, focused on health benefits and pensions, do not cover them in case of need.

In answer to the question of what the informal sector is and who informal workers are, it is usual to receive replies descriptive of particular situations, amalgams of situations which do not always have common characteristics and few definitions. Even the few legal definitions available have a certain degree of ambiguity.

One of the few countries which have a legal definition of the informal sector is Tanzania. For the purposes of the National Employment Promotion Service Act, “informal sector” means income-generating small-scale non-agricultural activities and self-employment, involving low levels of organization, capital and technology.

In Peru, an attempt was made to define informal activities in the Employment Promotion Act, 1995, which introduced a chapter on productive conversion programmes for enterprises in the urban informal sector. Considered as informal sector activities are those “predominantly of an informal character, for the purposes of that law, all those that were carried on independently in the context of a micro-enterprise or small enterprise, defined according to the relevant legal criteria and which did not reach the minimum levels of productivity determined for each job by the National Centre for Productivity (CENIP), and which mainly carry on their

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<sup>23</sup> For example: Belgium, Netherlands and Spain.

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activities in the commercial, services, small industry, construction and basic manufacturing aimed at the local, regional or national domestic market.”<sup>24</sup>

Despite the lack of a common definition, laws referring to the informal sector are numerous, although they tend to be descriptive rather than prescriptive in content or laws creating administrative organs or public entities to deal with some aspect of informality.

Taking into account that informal productive units can coincide with what are often termed micro-enterprises, the difference sometimes established is based on whether these are subsistence activities or profit-making ventures.

As regards conditions of work, it is clear that there is no regulation applicable to self-employed workers in matters such as wages, and as for those employed by others, real earnings can be below the legal minimum.

Neither are aspects such as the working hours and rest periods regulated for independent workers in labour legislation, although they may be subject to laws on opening and closing times for commercial or industrial establishments, which do not come under the labour authorities but stem from other ministries or local authorities. For employees, working time and rest are regulated, but it is likely that their duration is not respected, either through ignorance or lack of control.

In any case, informality has been regarded as a more or less natural phenomenon in many developing countries, hence the talk of promotion of the informal sector, in the sense of improving the material and social conditions of the persons affected.

#### **2.4. Attitude of the public administration to informality**

The differing visions of the phenomenon of informality from region to region around the world determine different attitudes on the part of the public authorities.

Generally, efforts to enforce existing legislation in developing countries have been scant, since governments have been overwhelmed by the growth of informality and have not seen the need to adopt firm or repressive measures, especially when the administrative control mechanisms have traditionally been ineffective.

Treating informal activities as a means of subsistence and inadequate regulation of the labour market or large segments of that market, have led to tolerance or ignorance on the one hand and political proposals to procure or facilitate some degree of protection on the other.

In countries where informality is regarded as a breach of the rules of the market, the attitude of public administrations has tended to be to try and enforce the law. State resources, informative, persuasive and repressive, have been set in motion to regularize situations which do not comply with the law.

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<sup>24</sup> Title V. Employment promotion. Law No. 26513 of 27 July 1995.

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Subject to the risk inherent in generalizations, we can summarize the attitude of public administrations to informality as follows:

- In industrialized countries, informality is equivalent to illegality. Thus, ministries of labour are obliged to combat it, irrespective of the size of the enterprises or sectors in which it is found.
- In developing countries, the labour administration tends to regard micro and small enterprises as outside the scope of regulation and tolerates them, without exerting any pressure to enforce existing laws.

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### 3. The legal framework of labour laws

#### 3.1. Labour laws and their scope

In many documents and debates on informal work, it is commonly said that labour legislation does not apply to the informal economy or that the legislation does not apply to informal enterprises. This assertion, which may be true in some cases, depends both on what is meant by the application of labour legislation and what is meant by informal economy or informal enterprises.

In 2002, the ILC stated in its Declaration that the term “informal economy” refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements.<sup>25</sup>

In this concept of the informal economy the chief references are, on one hand, persons (workers and employing enterprises), economic units (independent workers and enterprises), and on the other, legislation (a legal framework that is non-existent, inadequate or not enforced).

In the informal economy we find both independent and dependent workers, employees or wage workers of enterprise owners who work in the informal economy, and enterprises owners themselves. To analyse the situation of these persons, one must take into account whether they are dependent or independent workers, as different laws apply to each category. Furthermore, the majority of the countries in this study have no labour laws for independent workers.

As indicated in Report V, *The scope of the employment relationship*, which was discussed at the 91<sup>st</sup> session of the ILC in 2003, “workers’ protection has mainly been centred on the universal notion of the employment relationship, based on a distinction between dependent and independent workers, also known as own-account or self-employed workers. This is still the basic approach in many countries, with some variations ....”

The report also states that “the same approach is also reflected in many international labour standards: some ILO Conventions and Recommendations cover all workers, without distinction, while others refer specifically to independent workers or self-employed persons and others apply only to dependent workers.”

In order to determine to which persons or enterprises the provisions of labour legislation apply, a study was carried out on the scope of Member States’ labour legislation.

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<sup>25</sup> Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that – although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs.

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### 3.2. The real scope of labour laws: Inclusions, exclusions and exemptions

The notion of labour laws in this study was used in a broad sense. The analysis focussed on labour codes or general labour laws and social security laws in force in 2004. In countries which did not have legal texts which group or consolidate labour laws, a fairly detailed survey was carried out on the laws which govern contracts of employment, employment, small enterprises and occupational safety and health.

In general, labour laws contain clauses which describe their scope. These clauses specify inclusions and exclusions, i.e. to whom they apply and to whom they do not apply. In some countries, they only indicate inclusions generically, but exclusions may appear throughout in specific articles. In other countries, only exclusions are indicated. On a few occasions, they are silent as to the scope, in which case it may be necessary to refer to each country's system of interpretation of laws to infer to which persons they apply.

In the majority of common law countries, the substantive content of the law is preceded by a series of definitions, to which reference must be made to obtain a precise idea of the scope. These definitions extend to terms such as enterprise, entrepreneur, establishment, worker, contract of employment, subcontractor, domestic work, home working, etc.

As regards exclusions, there is a whole series of employment relationships which may be excluded from the scope of a general labour law, but which are regulated by a law with similar content, giving them special treatment.

### 3.3. Relationships included in the scope of labour laws

In the majority of countries, all employment situations are included in the scope of labour laws, i.e. those featuring employer and employee. From that starting point, explicit exclusions come into play, as well as those that are implicit, under another separate law, whether or not containing specific provisions.

**SENEGAL.** Law No. 97-17 of 1 December 1997 containing the Labour Code. Article L.2 – The present law applies to relationships between employers and workers. For the purposes of the present law, worker means any person, irrespective of sex or nationality, who, in return for remuneration, undertakes to place his professional activity under the direction of another natural or legal person, whether public or private. In determining classification as a worker, neither the legal status of the employer nor that of the employee shall be taken into account. Article L.3. – Any natural or legal person, subject to public or private law, employing one or more workers in the meaning of article L.2 shall be subject to the provisions of the present Code insofar as they apply to employers and constitute an enterprise.

Normally the scope refers to the subjects of the employment relationship, i.e. including employers, workers or both.

**CHINA** Labour Act. Dated 5 July 1994. Section 2. This Law applies to all enterprises and individual economic organizations (hereafter referred to as

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employing units) within the boundary of the People's Republic of China, and labourers who form a labour relationship therewith. State organs, institutional organizations and societies as well as labourers who form a labour contract relationship therewith shall follow this Law.

The figure of the employer takes various forms, such as entrepreneur or boss, and frequently, enterprise or establishment.

**IRAN** Labour Code. Dated 20 November 1990. Chapter I. General definitions and principles. Sec. 1. All employers and workers, as well as workplaces and production, industrial, services and agricultural establishments are required to comply with the provisions of this Code.

**TUNISIA**. Labour Code. General provisions. Article 1 – The present Code applies to industrial, commercial and agricultural establishments and their branches, irrespective of their nature, whether public or private, religious or secular, even if they are of a professional or charitable character,

It also applies to the liberal professions, artisanal establishments, cooperatives, civil societies, trade unions, associations and groups irrespective of their nature.

Numerous cases are also found in which inclusion refers to relations between parties to an employment relationship.

**NICARAGUA**. Law No. 185, Labour Code, 1996. Title I. General provisions. Chapter I. Subject and scope. Article 1. The present Code shall regulate employment relationships and establish the minimum rights and obligations of employers and workers.

Sometimes, the scope of a law is defined by the scope of others.

**BANGLADESH**. The employment of Labour (Standing orders) ACT, 1965. 1. Short title, extent, commencement and application. (4) It shall apply to:

- (a) every shop or commercial establishment to which the Shops and Establishments Act, 1965 applies;
- (b) every industrial establishment in the areas in which the Shops and Establishments Act, 1965 applies;
- (c) every industrial establishment in all other areas of Bangladesh, in which five or more workers are employed or were employed on any day of the preceding twelve months.

There is no lack of cases where it is stated that there may be special regulations.

**TADJIKISTAN**. Labour Code of 15 May 1997 Section 6. Special legal provisions relating to particular categories of workers. The provisions of the Labour Code shall apply to all workers.

Work done by particular categories of workers may have special characteristics depending on the form of ownership of the enterprise where the worker is employed, the nature and conditions of the work, the nature of the employment relationship with the enterprise, natural and climatic conditions, and various other objective factors, and shall be covered by separate legislation and other statutory instruments of the Republic of



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Tajikistan. However, the overall level of rights and safeguards provided shall not be inferior to those provided under the present Labour Code.

### **3.4. Exclusions**

Exclusions are also made by reference to the parties and their characteristics, their relationships (or absence of a relationship) or to sectors of the economy. However, some categories of workers excluded from the scope of general labour law have their conditions of work regulated by other labour or administrative legislation. What follows is an attempt to classify true exclusions, which are found in almost all legislations, and exclusion from a general law regulated by a specific law, of which some are very frequent, others frequent only in certain regions and others less frequent.

Included among the former, true exclusion, are situations in which there is no employment relationship: autonomous or independent work; family workers; members of cooperatives; priests; and charitable or voluntary work. Also included, however, are certain cases of an employment relationship: home working; domestic service; casual work; certain types of part-time work; and relationships excluded because of the size of the enterprise. “Au pair” work and certain types of unpaid apprenticeship could also be placed in this group.

Among the latter, situations regulated by other laws, are: civil servants and other public employees regulated by a statute, and activities in economic sectors governed by special regulations, such as agriculture, maritime work and air transport.

### **3.5. Exclusions that give rise to lack of protection due to lack of legal coverage**

#### **3.5.1. General exclusions**

(a) Normally excluded from the scope of labour laws is *autonomous work*, i.e. autonomous or independent (also designated as self-employed workers, workers on their own account, etc.) since in these cases no employment relationship of any kind exists. However, in the legislation of industrialized countries, the majority of provisions on occupational safety and health also affect this class of workers.

**JAPAN** Labour Standards Law [Law No. 49 of 7 April 1947 as amended through Law No. 107 of 9 June 1995]. Article 131. In respect of the application of the provisions of paragraph 1 of Article 32 regarding undertakings of a scale not larger than the scale stipulated by order or undertakings of a type stipulated by order (except when applied correspondingly under the provisions of paragraph 2 of Article 60), the words “forty hours” in paragraph 1 of Article 32 shall be read until March 31, 1997 as “the hours to be stipulated by order within the range of more than 40 hours but not more than 44 hours”.

**KOREA, REPUBLIC OF.** Law No. 5309, Mar. 13, 1997. Labor Standards Act. Article 10 (Scope of Application). (1) This Act shall apply to all businesses or workplaces in which more than 5 workers are ordinarily

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employed. This Act, however, shall not apply to any business or workplace which employs only relatives living together, and to a worker who is hired for domestic works.

(2) With respect to a business or workplace which ordinarily employs less than 4 workers, some of the provisions of this Act may be applicable as prescribed by the Presidential Decree (Enforcement Decree of the Labour Standards Act (Presidential Decree No. 15320).

**NEPAL.** Labour Act, 1992. Section 2. Definitions. (b) “Establishment” means any factory, organisation, institution or firm, or group thereof, established under current law with the objective of operating any industry, enterprise or service, and employing ten or more workers or employees.

**VIETNAM.** Law of 23 June 1994 containing the Labour Code. Article 138. In enterprises employing less than ten workers, the employer shall nevertheless be required to assure workers’ fundamental rights and interests in accordance with the provisions of the present Code, but shall enjoy a limitation or exemption from the scope of certain provisions and procedures to be determined by the Government.

Article 141. (1) The compulsory social security system shall apply to enterprises employing ten or more workers. In such enterprises, the employer and the worker respectively must contribute to the social security scheme, in accordance with the provisions of article 149 of this Code. Workers shall be entitled to social security benefits in the event of sickness, accident at work and occupational disease, maternity, retirement and death.

(2) In enterprises employing less than ten workers or those employed in work for periods less than three months, seasonal work or other casual work, social insurance costs shall be included in workers’ wages to allow them to participate in the voluntary social insurance scheme or make other insurance provision.

Article 182. ...When ten or more workers are employed, the employer shall be required to maintain a register of employment, wages and social security.

**(b) Members of the family of the entrepreneur or the owner of the business** are generally excluded, since it is considered that even though there is a dependent relationship, it is not contractual. The way in which this exclusion is expressed may vary, from the most generic provision to a list of the degrees of parentage covered. In many cases, as well as the family tie, there is a requirement of living in the same household and the absence of a wage.

**NIGERIA.** Labour Act. Section 91. Interpretation. “worker”... does not include: c) members of the employer’s family.

**IRELAND.** National Minimum Wage Act, 2000 (National Minimum Hourly Rate of Pay) 5. —This Act does not apply to the remuneration of a person who is (a) the spouse, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, step-son, step-daughter, grandson, grand-daughter, brother, sister, half-brother or half-sister of an employer, employed by the employer.

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**JORDAN.** Labour Code, Law No. 8 of 1996. Section 3. The provisions of this Code shall apply to all workers and employers, except: (2) an employer's family members working without remuneration in his undertakings.

(c) Normally excluded are **members of producer cooperatives**, since there is no dependent relationship, reference being made to the specific regulations on cooperative societies. In some countries, labour legislation is declared applicable on a subsidiary basis to cooperatives.

**BRAZIL.** Consolidated Labour Act. Art. 442. ... Irrespective of the branch of activity of the cooperative society, no employment relationship exists between it and its members, nor between the latter and its clients.

(d) In certain countries, **persons exercising an activity of a religious character** are excluded, identifying them by their inclusion in the organization of a particular faith or church and the function exercised (Germany, Denmark, Estonia, Finland, Switzerland).

**SWITZERLAND.** Federal Industry, Crafts and Commerce Act (Labour Act) of 13 March 1964. Art. 3. Neither shall the law apply to: a. Priests and other persons in the service of a church, nor members of monasteries, convents or other religious communities.

(e) In several countries, **voluntary or charitable work** is expressly excluded, as is work on a friendly or good neighbour basis performed on a casual and unpaid basis.

**SOUTH AFRICA.** Basic conditions of employment Act, 1997. Act No. 75. 1997. Application of this Act. 3. ( 1 ) This Act applies to all employees and employers except — (b) unpaid volunteers working for an organisation serving a charitable purpose.

In the foregoing cases, exclusion is justified by the absence of one or more of the contractual elements in the employment relationship.

### **3.5.2. Relatively frequent exclusions**

We shall see, below, other groups of cases where despite the existence of contractual elements, some countries have chosen to exclude them from the scope of labour legislation. Many more countries, however, instead of excluding them, have given them special treatment with exceptions to the application of certain rules.

In one group, special consideration is paid to the place where the work is carried out, whether at the worker's home (home work) or the employer's family home (domestic service, "au pair" work). Another group primarily concerns work referred to as precarious work (part time, temporary or casual work). Finally, in a separate group, exclusions are found based on the size of the enterprise.

#### **a. Exclusions based on the place of work**

(i) **Home work.** Although home work is almost always included in the scope of labour laws, a number of countries exclude it. Several European countries have excluded home work from the scope of their labour codes (Lithuania) or from

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some labour laws (Belgium and Luxembourg – working hours). For the purposes of the ILO Home Work Convention, 1996 (No. 177), Article 1, the term home work means work carried out by a person, to be referred to as a homemaker: (i) in his or her home or in other premises of his or her choice, other than the workplace of the employer; (ii) for remuneration; (iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions.

**Telework.** This can be regarded as a variant of home work. However, forms of telework have been identified performed in call centres or on a mobile or itinerant basis. No legal definitions for labour purposes or express exclusions from the scope of general labour legislation have been found.

In the European Framework Agreement of 16 July 2002, telework is a form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employers premises, is carried out away from those premises on a regular basis.

**(ii) Domestic service.** Domestic service is normally the subject of special treatment in the majority of countries, falling only partly within the scope of labour law or a special regulation. There are also many countries which have left this activity totally unregulated.<sup>26</sup>

## **b. Precarious work**

**(i) Casual work.** Some countries exclude casual workers of short-term temporary contracts from the scope of their labour laws.<sup>27</sup>

The problem that arises with these situations is that they are not always defined, nor defined with sufficient precision. Moreover, in many legislations, temporary contracts are not required to be in writing when their duration is less than a given period.

**ZAMBIA.** Employment Act. In this Act, unless the context otherwise requires-Interpretation “casual employee” means any employee the terms of whose employment provide for his payment at the end of each day and who is engaged for a period of not more than six months.

**BOTSWANA.** Employment Act, 1982 “casual employee” means an employee whose terms of contract are for a period of not more than twelve months, and which contain provisions limiting employment to not more than three days, or more than twenty two and a half hours work per week; contracts of employment may be oral or in writing, expressed or implied.

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<sup>26</sup> Cambodia, Japan, Singapore, Bahrain, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Yemen and Sweden.

<sup>27</sup> Kuwait, Bahrain (Persons employed in temporary and casual work which is outside the scope of the employer’s business and for a duration not exceeding three months).

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**JORDAN.** Casual work: work necessitated by unforeseen contingencies the completion of which does not require more than three months

*Work by students during academic vacations.* Some legislation, such as that in Luxembourg,<sup>28</sup> concerns itself with the conditions of paid work of school and university students during vacation.

(ii) *Part-time workers.* The term part-time worker, according to the Part-Time Work Convention, 1994 (No. 175), means an employed person whose normal hours of work are less than those of comparable full-time workers. Some countries (Germany, Austria, Denmark) exclude part-time workers whose income and length of work are less than determined minimum limits from the scope of social security schemes (except for work-related accidents).<sup>29</sup> In these cases, it is also usual to exclude them from the scope of protective measures relating to termination of the employment relationship, paid annual holidays and paid public holidays, maternity protection and sick leave. Thus, for example, in Ireland, the *Regular Part-Time Employees Act, 1991*, extended the protection of labour legislation to part-time workers who have completed 13 weeks service and who work for at least 8 hours a week.<sup>30</sup>

### c. Exclusions based on size of enterprise

Although in many countries there is a widespread view that labour law does not apply to micro-enterprises and small enterprises, in fact, only in a very small number of legislations are they outside the scope of the general regulations on employers and workers in enterprises of a certain size.

Exclusions of this type are very rare in labour codes and labour laws. Only ten per cent of the 178 ILO Member States have legislated such exclusions.

**KUWAIT.** Law No. 38 of 1964 concerning Labour in the Private Sector Art. 3. The following categories shall not be subject to the application of this law provisions: F) Owners of non-mechanical minor business concerns, normally employing less than five labourers.

Furthermore, some of these exclusions only affect enterprises in certain sectors, such as agriculture.

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<sup>28</sup> Law of 22 July 1982. The law presumes that the hiring is under a contract of work when a contract for the employment of school or university students conforming to the legal provisions has not been signed. The law does not admit proof to the contrary. The law fixes the maximum length of a contact for the employment of school or university students at two months in each calendar year, which may not be exceeded even in the case of more than one contract. Employment of school or university students does not give rise to their registration for sickness schemes or pensions insurance, consequently the related contributions are not due. However, employment of school and university students is subject to insurance against work-related accidents and thus the related contributions are payable. Available at <http://www.itm.etat.lu/droit/fr/6/4/1.htm>

<sup>29</sup> In Germany, for example, workers with wages under 400 euros per month or who work less than two months or less than 50 working days a year are excluded from the scope (except for work-related accidents).

<sup>30</sup> Worker Protection (Regular Part-Time Employees) Act, 1991. An Act to extend full protection under labour legislation to part-time workers who are normally expected to work for at least 8 hours a week and have completed 13 weeks' service.

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**COSTA RICA.** Labour Code. Article 14. The following are excepted: ... (c) strictly agricultural or livestock farms which permanently employ not more than five workers. However, the Executive may determine by decree which rules of this Code will continue apply to them. In this respect, these will be primarily those which do not involve a serious economic burden to employers.

**HONDURAS.** Labour Code, 1999. Article 2. The following are excepted: (1) agricultural or livestock farms which permanently employ not more than ten (10) workers.

Somewhat more frequent are exclusions of small enterprises from the scope of legislation on occupational safety and health, especially in countries where such legislation is laid down for industrial establishments. The majority of exclusions occur in African and Asian countries which followed the British Factory Acts model, and it is almost impossible to find such exclusions in other regions of the world.

**BANGLADESH.** Factories Act, 1965 (No. 4 of 1965). (f) 'factory' means any premises including the precincts thereof whereon ten or more workers are working or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with or without the aid of power, but does not include a mine subject to the operation of the Mines Act, 1923 (IV of 1923).

With respect to social security, exclusions from the scope of social security laws can be found in a number of developing countries, at least for certain contingencies, concerning enterprises of up to 5, 10 or 20 workers. The exclusions are found in less than 10 per cent of the countries, mostly in former British colonies. Exclusions based on the size of the enterprise have been found in Liberia, Nigeria, Sudan and Uganda in Africa, and in Bahrain, Bangladesh, India, Indonesia, Iraq, Jordan, Kiribati, Laos, Pakistan and Vietnam in Asia.

#### **d. Artisans**

The category of artisan appears in some legislations, usually referring to the self-employed and owners of micro and small enterprises, with full or partial exemption from labour legislation or subject to special regulations.

**MOROCCO.** Law No. 65-99 on the Labour Code (2003). Article 4. ... A special law shall determine relationships between employers and employees and conditions of work in sectors of a purely traditional character.

For the purposes of the first paragraph of this article, any natural person engaged in a manual trade, with the assistance of his spouse, his parents and descendants and additionally five assistants, at home or in another work place, for the purpose of manufacturing traditional products for sale, shall be considered to be an employer in a sector of a purely traditional character.

**ECUADOR.** Codification of the Labour Code, 1997

Art. 291. Persons considered as artisans. The provisions of this chapter include self-employed master craftsmen, workers, apprentices and self-employed artisans, without prejudice in the case if apprentices to the provisions of Title 1, Chapter VIII.

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An artisan means a manual worker, master craftsman or self-employed artisan who, duly registered with the Ministry of Labour and Human Resources, has invested in his workshop, work tools, machinery or raw materials an amount not greater than that established by law, and who has in his employ not more than fifteen workers and five apprentices, and who sells the articles produced in his workshop. Artisan also means a manual worker even when he has not invested any amount whatsoever in work tools or does not employ workers.

Art. 308. Obligations of accredited artisans. Artisans accredited by the National Council for the Protection of Artisans are not subject to the obligations imposed on employers by this Code.

However, artisans who are workshop owners are subject, with respect to their workers, to the provisions on minimum wages and legal compensation for unfair dismissal.

Workers shall also be entitled to holidays and are subject to the maximum working hours, as laid down in this Code.

Art. 310. Exemptions. Artisans who belong to trade or cross-trade organizations with legal personality shall enjoy the exemption to which paragraph 1 of article 308 refers.

**CAMBODIA.** Law of 10 January 1997, the Labour Code. Article 7.

Artisans means all persons working at home or elsewhere, personally engaged on their own account in a manual trade, whether or not using power-driven machine tools, with or without a sign and shop, principally engaged in the sale of the products of their own work, working alone or assisted by their spouse, members of their family working without pay, workers and apprentices, but in sole charge of their workshop.

The number of workers outside the family permanently assisting an artisan may not exceed seven. If the number exceeds seven, the employer shall lose the status of artisan.

**ISLAMIC REPUBLIC OF IRAN.** Labour Code. Dated 20 November 1990. Sec. 191. Small scale enterprises with fewer than ten workers may, as circumstances require, be temporarily excluded from some of the provisions of this Code. Determination as to such exceptional cases shall be in conformity with regulations to be proposed by the Supreme Labour Council and approved by the Council of Ministers.

**e. Employments classified as other than work with legal regulation**

“**Au pair**” placement. This type of relationship is regulated in many European States along the lines of the European Agreement (Council of Europe) of 24 November 1969. The Agreement considers that this type of placement does not imply an employment relationship and defines it as “the temporary reception by families, in exchange for certain services, of young foreigners who come to improve their linguistic and possibly professional knowledge as well as their general culture by acquiring a better knowledge of the country where they are received”.

**f. Unpaid work experience in enterprises**

This type of activity, where those involved are usually young students, is considered part of their education and may to some extent be covered through

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legislation on education or vocational training. To facilitate its acceptance in enterprises, the relationship has been deprived of its work character and responsibilities normally remain with educational establishments.<sup>31</sup>

However, apprenticeship contracts are normally regulated as a contract having the nature of work, with special characteristics (qualities of the employer, formalities, teaching a job, lower wages, defined duration, etc.).

### **3.6. Exclusions from general labour laws which do not imply a lack of protection because there is a special regulatory framework**

(a) In the majority of countries, the following categories of workers whose employer is the State are explicitly excluded from the scope of labour laws:

- Members of the armed forces and police
- Civil servants
- Judges

As this exclusion is made because such workers are included in the scope of other laws which govern their conditions of work, normally of an administrative character, it is obvious that they could in no way be regarded as informal. Furthermore, in some cases these workers, together with those in state corporations and large private firms, are almost the only formal workers in their countries.

**CAMEROON.** Law No. 92/007 of 14 August 1992, Labour Code. Article 1 (3). Excluded from the scope of the present Code are personnel governed by:

- The general civil service regulations;
- The regulations for the judiciary;
- The general regulations for the military;
- The special regulations for the national security service;
- The special regulations for the prison service;
- The specific provisions applicable to government auxiliary workers.

(b) Sectors with special regulations: agriculture, maritime work, air transport.

In some labour codes and laws, whole economic sectors or parts of sectors are excluded from the scope. The most common exclusion is agriculture, in totality or in part, as well as maritime work and, sometimes, air transport.

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<sup>31</sup> Article 6 of the ILO Minimum Age Convention, 1973 (No. 138) took this into account when it stated that it would not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority.



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**BRAZIL.** Consolidated Labour Act. Art. 7. The provisions of this Consolidated Act, except, where applicable, as expressly provided otherwise, shall not apply: ... (b) to rural workers, meaning those who, exercising functions directly linked to agriculture and livestock, are not employed in activities which, by virtue of the methods used or the purpose of the operations, are classified as industrial or commercial.

This exclusion in many cases does not mean a total absence of regulation, since the exclusion is frequently followed by reference to another regulatory act, at least with respect to certain maritime activities and air transport.

**BOLIVIA.** General Labour Act. Art. 1. The present act shall determine the general character of the rights and obligations arising from work, with the exception of agriculture which shall be the subject of a special provision.

**BENIN.** Law No. 98-004 of 27 January 1998. Article 2. Workers in the merchant marine and maritime fishing shall continue to be governed by the provisions of the Merchant Marine Code and subsequent laws and regulations.

It is fairly common to find countries in which some agricultural workers in cross-cutting occupations (such as mechanics or managers) or certain types of agricultural or livestock production, fall within the scope of labour law, while manual workers are excluded.

**NAMIBIA.** Labour Act 1992. Dated 13 March 1992. Exceptions. 3. The following categories of persons shall be excluded from the application of the provisions of this Code: (g) agricultural workers other than those employed in the operation, repair and maintenance of agricultural machinery, or in enterprises which process or market agricultural products such as cotton gins or dairy product factories, or in jobs related to the administration of agricultural projects including office work, accountancy, storage, gardening, and livestock husbandry.

In some cases, the scope has been extended by regulatory act to certain categories of agricultural workers and to certain agricultural enterprises.

**JORDAN.** Labour Code, Law No. 8 of 1996, Section 3. The provisions of this Code shall apply to all workers and employers, except: (4) agricultural workers excluding those who shall be covered by this Code pursuant to a decision taken by the Council of Ministers on the basis of a recommendation by the Minister.

**BURUNDI.** Decree Law No. 1/037 of 7 July 1993, revision of the Labour Code. Art. 14. The present Code shall apply to both public and private enterprises and agricultural operations in the modern sector.

Sometimes labour provisions can be found in laws which seek to cover many aspects of a particular economic sector. Thus the situation of workers in those sectors may be protected in another equivalent way, but may also not be protected. In any case, it can be seen that when the agricultural sector has its own separate regulations, the protection is less.

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### **3.7. The form of the contract of employment as a determining factor in formal work**

#### **3.7.1. The employment relationship and contract of employment**

A problem that usually arises when dealing with the scope of labour legislation is that of determining the employment relationships to which it actually applies. Does it apply to all employment relationships defined in the scope of the law or only those that are supported by a written contract of employment? Is it necessary to have a written contract of employment for a worker to be considered formal?

The concept of employment relationship applies to a situation which creates a legal link between a person, called the “employee” with another person, called the “employer”, to whom she or he provides labour or services under certain conditions in return for remuneration.<sup>32</sup>

This link is the product of an express or tacit agreement between the parties.

**BRAZIL.** Consolidated Labour Act. Art. 442. An individual contract of employment is the tacit or express agreement corresponding to the employment relationship.

The subtle difference between employment relationship and contract of employment is recognized in some legislations.

**NICARAGUA.** Law No. 185, Labour Code (1996). Article 19. An employment or work relationship, irrespective of its origin, is the provision of work by a natural person subordinated to an employer in return for payment of remuneration.

An individual contract of employment is a verbal or written agreement between an employer and a worker which establishes an employment relationship between them to carry out work or provide a service in person.

#### **3.7.2. Written contracts and verbal contracts**

There is a fairly widespread belief among workers in many countries that only written contracts entitle the parties to rights and obligations. This may be the case in practice, but in fact the majority of legal systems recognize that written and verbal contracts are equally valid.

**BOTSWANA.** Employment Act, 1982. PART III - Contracts of Employment. 14. Oral and written contracts of employment.(1) Subject to Part IV, contracts of employment may be oral or in writing, expressed or implied.

Furthermore, in the majority of labour codes and laws, a contract is presumed to exist if the characteristics typical of an employment relationship are present.

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<sup>32</sup> *Conclusions of the declaration on the employment relationship*, ILC, Geneva, 2003.

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**SPAIN.** Royal Legislative Decree 1/1995, of 24 March 1995, the Workers' Status (Reform) Act. Article 8. Form of contract. 1. The contract of employment may be concluded in writing or by word of mouth. It shall be presumed to exist between anyone who provides a service on behalf of and under the organization and direction of another person and the person who receives that service in exchange for remuneration paid to the former.

**SLOVENIA.** 2. Form of the Contract. Article 16 (Assumption of the Existence of Employment Relationship) In case of dispute on the existence of the employment relationship between the worker and the employer, it shall be assumed that employment relationship exists, if the elements of an employment relationship exist.

Various legal systems consider that a contract exists from the moment the provision of services begins.

**GUATEMALA.** Labour Code, Article 19. For the individual contract of employment to exist and to be concluded, it is sufficient that the employment relationship commences, being the fact itself of the provision of services or the execution of the task under the conditions set out in the preceding article.

The growing use of new communication technologies has led some countries additionally to recognize contracts in "electronic form".

**FINLAND** Employment Contracts Act (55/2001) Section 3. Form and duration of employment contract. An employment contract may be oral, written or electronic.

Some codes expressly indicate that verbal contracts must conform to the provisions of labour legislation.

**VIET NAM.** Law of 23 June 1994, Labour Code. Article 28. The contract of employment shall be established in writing, in two copies, one for each party. An oral contract may be concluded in respect of certain work of a temporary nature not lasting longer than three months, or in the case of domestic employees. In the case of an oral contract, the parties are presumed to conform to the provisions of labour legislation.

### **3.7.3. Mandatory written contracts**

In some countries, the written form of the contract of employment is compulsory, but that does not preclude recognition of the employment relationship when that formality has not been honoured. In various cases where the written form is mandatory, the employer is held to be responsible.

**MEXICO.** Federal Labour Act. Article 26. The absence of the written document to which articles 24 and 25 refer does not deprive the worker of the rights derived from labour laws and the services provided, since the employer will be deemed liable for failure to observe that formality.

In others, the contract is considered valid even though not all the requirements had been recorded in writing.

**SLOVENIA.** 2. Form of the Contract. Article 15. (Written Form of the Employment Contract). (1) The employment contract shall be concluded in

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written form. ... (4) The existence and validity of an employment contract shall not be affected by the fact that the contracting parties did not conclude the employment contract in written form, or that not all components of the employment contract referred to in Article 29 were laid down in writing.

In some cases, a certificate from the employer can serve as a substitute for the written contract.

**CROATIA.** Labour Act (No. 758/95). Section 11. Form of the contract of employment (1) The contract of employment shall be made in writing. (2) A failure on the part of the contractual parties to make a contract of employment in writing shall not influence the existence and validity of such a contract. (3) If the contract of employment is not made in writing, the employer shall give to the employee a written certificate about the contract no later than on the fifteenth day from the day that work commences ...

In other cases, the employer is required to maintain a record of each employee with whom he has a verbal contract.

**ZAMBIA** Employment Act (No. 57 of 1965), as amended up to Act No. 15 of 24. (1) Every employer shall prepare and maintain at his expense, or cause to be prepared and maintained, a record of contract for every employee employed by him under an oral contract of service ... (3) Every record of contract shall be prepared in duplicate and one copy shall be given to the employee at the time of his engagement

Labour legislation, as seen in the previous examples, protects the employment relationship regardless of its form. However, ignorance of the law leads many workers without a written contract to consider themselves without rights because they are not in possession of a document which contains their contract or because they have difficulty in proving their employment relationship by other means. This is why many countries allow any form of evidence as proof of the existence of the contract.

**BULGARIA.** Form. Art. 62. (Amend., SG, No 100/1992) (1) (Amended - SG, No. 2/1996) The employment contract shall be concluded in writing. (2) (New - SG, No. 2/1996) Employment relations shall also arise where no employment contract concluded in writing is available, but the employer has admitted the employee to work, and he/she has commenced the performance of such work. In such cases the existence of employment relations may be ascertained by all means of evidence

**TUNISIA.** Labour Code Law No. 66-27 of 30 April 1966, as amended on 15 July 1996. Art. 6: the contract of employment is an agreement whereby one of the parties, called the worker or employee, undertakes to provide the other party, called the employer, with his personal services under the direction and control of the latter, in return for remuneration. The employment relationship may be proved by any means.

There are nevertheless countries where some types of contracts not only must be in writing but must also be registered or approved by the labour authorities. There are even cases where the worker must provide a photograph.

**ZANZIBAR.** Labour Act, 1997 35. (1) The types of contracts referred to in section 34(a), (b) and (c) shall: (a) be in writing; (2) Every contract of service

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entered into between the employer and employee shall be attested by the Labour Officer.

On some occasions, in order for the contract to be executed, the worker must be provided in advance with work documentation issued by the administration.

**HAITI.** Decree of 24 February 1984 updating the Labour Code of 12 September 1961. 15. No person may be party to an individual contract of employment, as an employee, unless in possession of a work certificate issued by the Department of Labour, in the form, under the conditions and subject to the sanctions contemplated in the law.

There exist prerequisites to contracting, such as medical certificates of fitness, which owe their origin to well-intentioned protective regulations, but which may involve a cost which cannot be afforded by an unemployed worker or not easily affordable by a micro-entrepreneur.

### **3.4.7. Work cards, books and other documents**

Some countries require workers to have a specific identity document which may be a requirement for hiring or to formalize the social security relationship. Documents such as work cards, folders or books, issued by the Ministry of Labour, are falling out of use. However, documents of membership of the social security system are almost universal and facilitate or are essential for access to certain social security benefits such as health.

In some countries, such as Brazil, the “work and social security card” is compulsory to work in any activity.<sup>33</sup> In Cambodia, it is compulsory for employees.<sup>34</sup> In Argentina, it is compulsory for rural workers. In both cases, the document shows the period of employment and wages, as well as other details, thus providing the worker with evidence of the contract.

### **3.7.5. Personnel books and registers**

In many cases enterprises are required to maintain a register of workers entering their service, which may be the only formal record of the contract. Registers must be standardized and are published and issued by ministries of labour. This type of register is an important element of legal security and serves as evidence of the employment relationship and the economic conditions of employment and must be available to labour inspectors.

The registration system in the enterprise can have different purposes and uses. In some cases, it shows the entry of the worker and even replaces written

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<sup>33</sup> **Brazil.** Consolidated Labour Act. Art. 13. The Work and Social Security Card is compulsory for the exercise of any employment, including of a rural nature, even of a temporary nature, and for the exercise of a paid professional activity on a self-employed basis.

<sup>34</sup> **Cambodia.** Law of 10 January 1997, Labour Code. SECTION 4. The work book. Article 32. Any person of Cambodian nationality working as a paid employee for another is required to obtain a work book. No person may employ in his service any person who does not comply with the provisions of the previous paragraph. Article 34. The purpose of the work book is to identify the bearer, the nature of the work for which he is hired, the length of the employment, the agreed wage and method of payment, and successive employments.

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contracts, especially in the case of temporary contracts. It also shows termination of services.

**SPAIN.** Royal Legislative Decree 1/1994 of 20 June. Revised text of the General Social Security Act. Article 101. Personnel Registration Book.

Employers shall maintain and keep up to date a Personnel Registration Book, in which all workers shall be recorded from the time when they commence providing their services.

2. Other systems of documentation of enterprises may be established in place of the Registration Book by regulatory provisions of general or specific scope.

In other cases, they also serve to note workers' wages and deductions in respect of social security contributions or taxes.

**SENEGAL.** Law No. 97-17 of 1 December 1997. Labour Code.

Article L.116. Irrespective of the nature and duration of work performed and the amount of remuneration received, all payments of wages, unless otherwise authorized on an individual basis by the labour inspector and the social security department, shall be the subject of a supporting document known as a pay slip, prepared and certified by the employer, and given to the worker at the time of payment.

All information shown on the pay slip must be copied, at the time of each wage payment, in a register known as a payroll register. At the time of each payment, this register, together with the pay slip itself, shall be initialled by the worker concerned ...

... The payroll register shall be kept by the employer, at the establishment, on the same basis as the accounting records, and must be presented immediately on request to the labour and social security inspectorate, even in the absence of the chief of the establishment ...

**LESOTHO.** Labour Code Order, 1992. 60. Records and Notices (1) The employer of any employee to whom a wages order applies shall keep in Sesotho or English such records as are necessary to show whether or not the provisions of this Part are being complied with in respect of such employees. The records shall be retained by the employer for a period of at least five years after the date of the last entry therein.

### **3.8. Work and the social security relationship: Formalities**

In order for the system of protection established by social security systems to be effective, a social security relationship must be established between the managing entities or administrators of the various schemes and employees or self-employed workers. In contributory schemes, entitlement to benefits fixed for a certain contingency are only recognized, in the case of employees, when they are declared to the managing entity and when the enterprise has collected the contributions for the minimum qualifying period for each benefit.

Normally, to declare a worker, the enterprise must have been previously registered with the organization that manages the social security scheme and must have certificates to that effect. Once the workers have been declared, the enterprise

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must submit periodic declarations showing the contribution basis for each worker and must pay the corresponding contributions within the due time limits. Contributions are calculated on a pre-determined basis or on actual wages. For some contingencies, the whole contribution is charged to the employer, for others, a percentage is paid by the employer and part by the worker. In any case, the employer must deduct the worker's share and pay it together with his own to the collecting agency.

For independent or self-employed workers, the situation is similar. They are responsible for registering themselves and making periodic contribution payments.

The formality of the enterprise and the employee and the formality of the independent worker, in compulsory social security systems, are always subject to declaration. In order, however, for the situation to be legal as well as formal, the persons subject to the obligation must be able to prove payment of contributions.

This protection mechanism has a cost for the enterprise and for the worker, in the form of contributions. For the employer, in addition to the net cost, it may involve an administrative cost, which is why social security administrations in many countries have simplified procedures and provide direct assistance to small enterprises in preparing monthly declarations and declarations via the Internet.

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## **4. Establishing the concept of informal work for the purposes of labour administration**

What does formality mean? In almost all countries, “formal” means that which conforms to the rules, and “formality” refers to conduct aimed at compliance with the rules or a state of being in compliance with the rules. “Formalities” usually means the set of procedures and documents which clothe the situation in legality. Their opposites “informal” and “informality” would be, respectively: that which does not conform to the rules and an attitude of non-compliance with the rules or a state of not being in compliance with the rules.

In practice, however, in some countries, all self-employed workers and micro-enterprises, and even small enterprises whose owners are natural persons, are subsumed in the concept of the informal economy or informal sector.

Efforts to define the informal sector in legal terms have been rare. Nonetheless, when it comes to persons engaged in informal work, there are frequent references to obligations or rights, emphasizing the abundance and economic burden of the former and the difficulties involved in implementing the latter. Despite the lack of definition, the term informal sector is found in some legal texts, especially in Africa and Asia, taking their meaning as read.

### **4.1. Labour administration**

As established in the ILO Labour Administration Convention, 1978 (No. 150), the term “system of labour administration” covers all public administration bodies responsible for and/or engaged in labour administration. It thus includes ministerial departments or public agencies, including parastatal and regional or local agencies or any other form of decentralised administration, and any institutional framework for the co-ordination of the activities of such bodies and for consultation with and participation by employers and workers and their organizations.

The system of labour administration, usually organized around a ministry of labour, normally has specialized units to manage each of the principal programmes entrusted to it by national legislation. Thus, for example, as indicated in the Labour Administration Recommendation, 1978 (No. 158), there should be units for such matters as the formulation of standards relating to working conditions and terms of employment; labour inspection; labour relations; employment, manpower planning and human resources development; international labour affairs; and, as appropriate, social security, minimum wage legislation and questions relating to specific categories of workers.

Labour laws establish a framework of rights and obligations for workers and enterprises. In many cases, the obligations of enterprises refer directly to their employees, but in others they refer to the public administration. In any case, labour laws are a focal point or source of formalities regulated through procedures conducted by organs of the public administration.



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A recent World Bank study which deals with the creation and activity of enterprises indicates that the basic formalities are: declaration of existence and registration with the fiscal authorities and social security administration. However, all countries demand more formalities, according to that study, and it has further been found that in the countries with the highest per capita incomes, formalities are less than in low income countries.<sup>35</sup>

With respect to informal work, it is important to know the functions of ministries in relation to registration of enterprises, declarations and authorizations to enterprises to operate, declarations of wages and social security contributions or even registration of trade unions. However, there are two services of the labour administration, namely the labour inspectorate and the public employment service, which have special relevance. Both services have been covered in detail in international standards, the Labour Inspection Convention, 1947 (No. 81) and the Employment Service Convention, 1948 (No. 88).

Labour inspection is responsible for securing the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors. It is clear that inspection operates within a framework of current laws and will intervene in enterprises and relationships covered by those laws.

The chief mission of public employment services is to assist workers to find suitable employment and assist employers to hire suitable workers for the needs of the enterprise. To this end, they maintain a register of applicants for employment, take note of their occupational qualifications, experience and work preferences. They also obtain from employers precise information on vacancies, including the requirements to be met by applicants for those vacancies.

The insufficient geographical coverage of employment services in developing countries, combined with their lack of resources has undermined their effectiveness. This has resulted in a lack of confidence on the part of employers and workers on the effectiveness of employment services. However, in many developed countries which have unemployment insurance, public employment services collaborate in the administration of benefits and the application of other measures designed to help the unemployed. In several countries they administer part of the vocational training provision. The combination of administration of benefits, vocational guidance and intermediation in recruitment, together with the administration of labour market programmes justifies the retention of this type of service in the public domain.

International instruments on labour administration only mention informality, as in article 7 of the Labour Administration Convention, 1987 (No. 150), when it refers to the possible extension of the functions of the system of labour administration to include activities of appropriate categories of workers who are not, in law, employed persons, such as: ... (b) self-employed workers who do not engage outside help, occupied in the informal sector as understood in national practice...".

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<sup>35</sup> *Doing business in 2004*. Understanding Regulation (WB Oxford University Press), 2004.

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## 4.2. Concept of informal work

The concept of informal economy as accepted by the ILC in 2002 needs to be analysed in depth to arrive at a practical concept of “informal work”, in the sense of serving as a reference for the activity of the labour administration. Not all the formalities which enterprises are obliged to observe are of a labour nature and not all the rights claimed by workers in the informal economy refer to labour rights or aspects of social protection.

If the obligations imposed by laws and compliance with obligations are the essence of formality, informality can only be expressed in a negative way, i.e. “not being” or “not doing”. Two situations of informality can be distinguished:

- Activities of persons and enterprises which are not covered by the law which means that they operate outside it. There are no obligations to fulfil or rights to be satisfied or claimed.
- Activities of persons and enterprises where the applicable law is not enforced, i.e. the law is not applied in practice. Obligations are not fulfilled and rights are not recognized.

The difference between these situations is fundamental:

- In the first case, informality stems from the lack of a formal reference: there is no applicable law, thus it is not subject to rights or obligations.
- In the second case, the informality stems from not complying with formal requirements: there are applicable labour laws but they are wholly or partially not enforced.

How do these different situations arise?

- In the first case, when there is no law applicable to a situation, the cause lies in the absence of legal provision for that situation or express legal exclusion. In this situation, one can genuinely speak of informality.
- The cause which leads to the second situation, non-compliance, may be ignorance, because the very existence or content of the laws is not known. It may be the will of persons, deliberate behaviour to evade costs, without discounting the fact, recognized by the ILC in 2002, that sometimes the law itself discourages compliance because it is inappropriate, cumbersome and excessively costly. In this situation, one can speak of illegality.

We can establish a third, intermediate, category, for those situations where it is insufficiently covered by formal systems, although there may be problems of identification. This category could arise, for example, where there are regulations on conditions of work, but not social security.

The case where labour regulation exists together with exclusion from social security tends to result from inadequate development of social security institutions and is normally associated with a presumption or evidence of lack of capacity on

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the part of the persons concerned or the beneficiaries of protection to contribute. Here, too, one can properly speak of informality.

### **4.3. The decent work deficit in the informal economy**

At the 2002 ILC (RES Conclusions, para. 35), when its constituents asserted that the ILO should draw upon its mandate, tripartite structure and expertise to address the problems associated with the informal economy, they also suggested that an approach based on decent work deficits would have considerable merit and should be pursued. It should also reflect the diversity of situations and their underlying causes found in the informal economy.

The decent work deficit means the absence of sufficient employment opportunities, inadequate social protection, the denial of rights at work and shortcomings in social dialogue. This deficit can easily be visualized if it is borne in mind that of every 100 workers worldwide, six are fully unemployed according to the official ILO definition, and another 16 are unable to earn enough to get their families over the minimal poverty line of one dollar per person per day, that close to two countries out of every five have serious or severe problems of freedom of association, that an estimated 250 million children are working worldwide, that 3,000 people a day die as a consequence of work-related accidents or disease, and that only about 20 per cent of the world's workers have adequate social protection. Furthermore, it can be added that workers and employers in the informal economy are inadequately represented, or even when they are organized, the absence of institutional mechanisms can hinder their participation in social dialogue.

All these ideas on the decent work deficit were set out in the Report of the Director-General of the ILO to the General Conference in 2001, adding that in the case of the *rights gap*, in many cases, progress could be achieved rapidly through legislative action and appropriate development policies.

#### **4.3.1. Activities or persons or enterprises not covered by labour laws**

As we have seen in previous sections, some work situations are outside the scope of labour laws, such as self-employment and family work in almost all countries; and casual work and micro or small enterprises with 5-10 workers – in a few cases up to 20 – in some developing countries (in the latter case related to the size of the enterprise, 10 per cent of ILO member States are affected).

However, in the majority of cases, self-employment is subject to some form of declaration, and in the industrialized countries, its inclusion in the social security system is mandatory. The obligations of declaration and contribution fall on the independent worker, who may also be required to comply with safety regulations in respect of his own work.<sup>36</sup>

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<sup>36</sup> Safety and Health in Construction Convention, 1988 (No. 167). Article 7. National laws or regulations shall require that employers and self-employed persons have a duty to comply with the prescribed safety and health measures at the workplace.

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Family workers tend to be equated with self-employed workers, so that if the one is unregulated, so is the other.

The subject of casual workers is more complex, since it may involve an area of informality in the midst of formal relations. In some cases, the definition of casual is so broad that its duration would be equivalent to temporary work in some cases, or seasonal workers in others. In both cases, casual workers may co-exist in the same enterprise alongside fixed and formal workers, the former having full rights and the latter no more entitlement than their wages and, at best, full coverage for work-related accidents.

In the case of micro or small enterprises with a defined maximum number of workers, we are faced with employment relationships in which the labour law exempts the employer from obligations, although we might suppose that the ordinary civil law of contract applies. We can find three common variants, the first micro and small enterprises without any applicable labour regulation; the second, with application of laws on conditions of work, sometimes limited to wages and working hours, without occupational safety rules and without social security obligations; and the third, only excluding social security laws.

If we equate regulation to formality and absence of regulation to informality, cases of the total absence of regulation would be true areas of informality. If there is no regulation, one cannot speak of obligations or rights.

Where there are no obligations requiring a responsible person, the labour administration has hardly any scope for action. Thus, for example, a labour inspector cannot require a small entrepreneur who is excluded to implement a particular safety measure in a production process or to give his workers a pay slip. In the event of a work-related accident, the victim will not be able to request monetary benefit, neither will he have medical assistance, and it is probable in the event of an accident that his only chance of claiming compensation will be restitution for injury as laid down in the civil or criminal law.

In the area of pure informality, the labour administration usually refrains from any initiative or, at best, may provide access to vocational training, information on prevention of risks or promotion of voluntary pensions provision. Cases can also be found of funds for the development of self-employment and micro-enterprises, but in many countries it is the ministries of industry or trade which are responsible for these subjects.

#### **4.3.2. *Activities where laws are not enforced or complied with in practice***

Without returning to the concept of undeclared work, and bearing in mind the different degrees of compliance with the laws in each country, the situations in which labour and social security laws are most frequently not enforced arise in domestic work, home work, rural work and micro and small enterprises.

Domestic work (household employees). In this case, recognized worldwide as a problem area, we find a few countries where there is no regulatory framework and many others where there are special labour regulations and a social security scheme applicable to household employees.

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Special labour regulations involve numerous exceptions to the general legislation, in terms of wages (possibility of counting food and lodging as part of wages), working hours and rest (hours of compulsory presence, time off, limited exits, night work, etc.) and termination of the employment relationship (wide-ranging grounds and lower compensation).

The applicable social security schemes tend to have lower contribution bases and reduced cover for contingencies. Sometimes the contribution is borne exclusively by the household employee, as when they provide services in several households.

The State exercises limited control, declarations of establishment are not made because employment in the service of a family is not considered a business activity and control is difficult, since inspection services do not normally have the legal power to enter private homes to carry out inspections.

Home work. In the majority of countries, this is regulated in the same way as any other employment relationship, except with respect to working hours and rest periods, which cannot be controlled by the employer. With regard to remuneration, piece work is very common and cases of payments below the current minimum wage may arise.

It is difficult for the State to control home work, since in many cases it involves concealed activities not declared by the employers (sometimes with the connivance of the workers – to evade contributions and taxes) or disguised as contracts or subcontracts. In many cases, only one employee is registered even though all family members work. Except when they have access to records or accounts of the enterprise, it is very difficult for inspectors to exercise control, as they usually lack authority to enter a workshop located in a private home.

Rural work. General or special legislation is difficult to apply in rural work. On one hand, in rural areas in many countries there can be a general ignorance of the existence of the applicable laws or their content. Added to this is the fact that the highest illiteracy rates usually occur among rural populations, whose local language may be other than the official language, making it more difficult for them to understand legal rules which are usually written only in the official language. Furthermore, ancestral customs in some communities have more sway than legislation. On the other hand, much agricultural work is seasonal and involves many itinerant workers – registration procedures are not observed when these are complex, time-consuming and costly.

The social security system is not always able to deliver immediate or at least accessible health services in certain regions, and as such there is little interest on the part of workers in contributing to a system which is deemed inadequate.

Finally, the State usually does not have a labour administration with sufficient manpower and resources to inform, assist and inspect agricultural enterprises, which means that labour laws are not respected, occupational safety and health regulations are ignored and the absence of registration of workers is not detected. Moreover, it is estimated that the use of child labour by agricultural producers is frequent.

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Micro and small enterprises. It is in micro and small enterprises that the highest level of non-compliance with labour laws is found in all countries, according to the reports of labour inspection authorities. Violations include non-compliance with formalities, i.e. the absence of declarations or permits to establish the enterprise and failure to declare workers to the social security administration. Substantive non-compliance include violations of minimum wage laws, non-observance of safety regulations, and failure to make social security contributions.

The administration's first problem is to detect, locate and identify enterprises and their owners, followed by the difficulty of identifying workers and the nature of their contracts or relationships. Next comes checking the conditions of work and the employer's obligations. When a single inspection service is responsible for enforcing labour legislation as a whole and has adequate resources at its disposal, the task becomes easier, but it is time-consuming and depends to some degree on the collaboration of local authorities and the frequency of complaints, whether by individuals or organizations. When there are several inspection services, the task is more difficult and complex, since various officials have to be coordinated and mobilized, applying different rules and procedures in accordance with work plans whose priorities may not coincide.

#### **4.4. The special case of freedom of association**

There is a general feeling that workers in the informal economy need representation and help in organizing and bargaining. As in other areas of recognition and application of rights, the complex composition of the informal sector makes it necessary to seek solutions for each type of worker.

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) states that workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation. This right, however, is applied in many different ways and national legislation may establish rules for the constitution and recognition of organizations. In some countries, general laws on the right of association are used, but in many cases there are laws specifically applicable to the right of work-related freedom of association. Ministries of labour are usually charged with administering these processes.

It is common for some laws to apply to employers and others to employees. Despite the existence of a legal framework for the formation of trade unions, some categories of workers, such as those on fixed-term contracts and seasonal and casual workers may face restrictions and in practice it may be very difficult to form an organization in the context of small enterprises.

Furthermore, not all specific laws cover self-employed workers. In some cases they are likened to employees and in others, when they have workers in their service, to enterprises. For these workers – who form the largest group in the informal economy – their only option to form an association may be to resort to the general law on associations, which is outside the remit of ministries of labour.

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As regards collective bargaining, this is confined by definition to paid employment. In the Collective Bargaining Convention, 1981 (No. 154), the term collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more workers' organizations, on the other. Bargaining is also possible in the absence of trade unions between elected representatives of workers and employers, which can be very useful in the context of small enterprises not covered by higher level bargaining.<sup>37</sup>

Independent or self-employed workers do not have an employer, so they do not have conditions of work to negotiate and thus are not parties to collective bargaining in terms of labour law. However, self-employed workers may have interests to defend and, of course, to negotiate with national or local public administrations. There are a number of examples of bargaining between municipal authorities and vendors' associations which have led to agreements on occupation of public spaces and payment of rates. Although the result of the bargaining is a fully valid agreement, its legal nature will be different from that of a labour agreement, such that in the case of a dispute, neither the labour administration nor the labour courts will have power to intervene.

#### **4.5. Informality and gender**

The ILC 2002 Resolution considered that women are more likely than men to be in the informal economy. Among the causes mentioned are the general character of the feminization of poverty and those related more specifically to discrimination in access to education and training and other economic resources.

As we have seen previously in activities with high female participation, such as domestic employment, there is a lack of regulation in a number of countries. In many countries, household employees are excluded from social security systems, so that many women who only have access to this type of work lack protection throughout their working life and do not have the benefits of health care, maternity programmes, family allowances or retirement pensions.

Women's work is undervalued and in many cases invisible. In family enterprises, home work and rural work, it is common for all family members – men, women and even children – to contribute as much as they can to the business. However, in many cases, only the man's role is recognized as the sole owner of the business or property and the only party to contracts or arrangements of an employment or commercial nature. It is highly likely that only in cases of ownership of the business, home or land by women is it possible to provide them with any system of protection.

Women generally do not have the same opportunities as men to establish themselves as independent workers or entrepreneurs. Although the difficulties or obstacles do not necessarily stem from labour legislation, a few labour ministries have extended their activities and functions by establishing administrative units which provide information and advice to women on setting up enterprises or facilitate access to credit from public funds or private credit institutions.

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<sup>37</sup> See Workers' Representatives Convention, 1971 (No. 135).

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With women accounting for the majority in the informal economy, trade unions can also make efforts to create or adapt internal structures to promote the participation and representation of women and accommodate their specific needs.



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## 5. Labour administration and the informal economy: Challenges, experiences and trends

If the real issue is how to extend rights to everyone and not limit their application, the critical problem in this respect, as indicated by the Director-General of the ILO in 2001, is one of agency. The extension to the informal economy of the goal of decent work cannot depend exclusively on the mechanisms of state regulation and representation which are applied elsewhere. We need new ways to increase economic capabilities and strengthen voices, defend rights, generate and transfer resources and change incentives. There is often scope for new forms of action by existing actors, but there is also a need for new actors and new institutions to raise skills, open markets and improve working conditions.<sup>38</sup>

The ILC in 2002 stated that:

“Since decent work deficits are often traceable to good governance deficits, the government has a primary role to play. Political will and commitment and the structures and mechanisms for proper governance are essential. Specific laws, policies and programmes to deal with the factors responsible for informality, to extend protection to all workers and to remove the barriers to entry into the mainstream economy will vary by country and circumstance.

Governments have a lead responsibility to extend the coverage of social security, in particular to groups in the informal economy which are currently excluded. The implementation and enforcement of rights and protections should be supported by improved systems of labour inspection and easy and rapid access to legal aid and the judicial system. It is the responsibility of governments to provide an enabling framework at national and local levels to support representational rights. National legislation must guarantee and defend the freedom of all workers and employers, irrespective of where and how they work, to form and join organizations of their own choosing without fear of reprisal or intimidation. Obstacles to the recognition of legitimate, democratic, accessible, transparent and accountable membership-based organizations of workers and employers in the informal economy must be removed, so that they are able to participate in social dialogue structures and processes.”

The Labour Administration Convention, 1978 (No. 150), Article 7, deals in article 7 with the extension of services to a series of workers outside the scope of labour law and which in many countries are considered per se as belonging to the informal economy. The text reads as follows:

When national conditions so require, with a view to meeting the needs of the largest possible number of workers, and in so far as such activities are not already covered, each Member which ratifies this Convention shall promote the extension, by gradual stages if necessary, of the functions of the system of labour administration to include activities, to be carried out in co-operation with other competent bodies, relating to the conditions of work and working life of appropriate categories of workers who are not, in law, employed persons, such as--

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<sup>38</sup> *Reducing the decent work deficit: A global challenge*, Report of the Director-General, 89<sup>th</sup> Session of the International Labour Conference, Geneva, 2001.

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- (a) tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers;
  - (b) self-employed workers who do not engage outside help, occupied in the informal sector as understood in national practice;
  - (c) members of co-operatives and worker-managed undertakings;
  - (d) persons working under systems established by communal customs or traditions.

Of these four groups, only co-operatives and worker-managed undertakings, which are usually included in the term “social economy” have been the subject of general treatment by labour administrations, and in some countries self-employed workers also. Reports of the Committee of Experts show that in other cases there are no significant experiences. However, if we go as far as to consider artisans as being in the last category, various experiences could be described.

## 5.1. Challenges

To effect change in the current situation in which some workers have protection and others have little or no protection at all, the starting point is the political will and commitment to extend protection to all workers.

This starting point affects the whole of society and thus the government, which must have the framework and mechanisms to produce change. The government, through its various ministries, will have to influence the factors responsible for informality and eliminate entry barriers to the formal economy.

To meet the needs of the population, the government as a whole must work on three fronts: to prevent informality, to formalize informal activities and to reduce the protection gap. It also means designing and implementing policies on prevention, formalization or regularization and extension of protection.

The ministry of labour, as the typical organ of labour administration, with its dependent agencies and in collaboration with other government departments, must:

1. influence the factors responsible for informality within the scope of its powers and eliminate barriers to entry to the formal economy created by its own procedures;
2. prepare laws, policies and programmes to extend protection to all workers and increase social security coverage;
3. ensure the application and enforcement of rights and protection with the support of more effective labour inspection systems and easy and rapid access to legal assistance;
4. adapt their structure and organization, modifying or creating services and mechanisms to produce change in the areas for which it is responsible, in cooperation with other administrations, if applicable; and
5. create a framework which supports the rights of association and allows participation in bodies and processes for social dialogue by all those

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who, because they carry out their activities in an informal way, lack representation.

In practice, all these measures, in succession or simultaneously, complement or combine with each other, as individual measures on their own may not yield appreciable results.

## 5.2. Experiences

Following are examples of consolidated experiences and other more or less novel initiatives which may suggest the way forward.

1. *Intervention in the factors responsible for informality and elimination of barriers by simplifying work-related procedures.*

Several countries, such as Burundi and Comoros, among others, exempt written contracts from all types of stamp and registration. Other countries which have reformed their labour codes in recent years, such as Honduras (1997), Guatemala (1995) and Panama (1995), also make all procedures with respect to the labour administration free of charge.

**Djibouti.** A 1996 decree introduced a single form of contract and membership in social organizations. The form consists of five separable sheets, the first for the national employment service, the second for the social insurance scheme, the third for the inter-enterprise medical service, the fourth for the worker and the fifth is retained by the employer, who must give the other copies to the intended recipients within forty-eight hours following recruitment. Employers may obtain the form from various organizations and job applicants are provided with a form on registering with the national employment service.

**India.** A 1988 law (*Exemption from Furnishing Returns and Maintaining Register by Certain Establishments Act, 1988*) simplifies the documentation and declarations to the labour authority on wages in so-called “small enterprises” (10-19 employees) and “very small enterprises” (up to 9 workers).

**France.** The Labour Code (Art. L.129-2) introduced the method of payment by employment-service cheque, which can be used by individuals to pay the wages of domestic workers and social security contributions. The system is designed to facilitate hourly-paid domestic work. The amount includes a 10 per cent top-up as proportional holidays remuneration. The employer submits an application to join the *Centre National de Traitement du Chèque Emploi Service (CNTCES)* which authorizes the entity to deduct social security contributions directly in respect of the workers concerned. The cheques and contributions slips in which the number of hours worked are declared can be obtained free of charge from the bank where the householder has his account.

**Peru.** The Micro and Small Enterprise (Promotion and Formalization) Act, 2003 (Law No. 2815) is aimed at promoting competitiveness, formalization and development of micro and small enterprises to increase sustainable employment, their productivity and profitability, their contribution to the gross domestic product,

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expansion of the domestic market and exports, and their contribution to tax revenues. The Act provides for training and technical assistance instruments, mechanisms to facilitate access to markets and access to financing. With an eye on formalization, it simplifies procedures for the formation of corporations and obtaining municipal licences. It also establishes a tax regime for micro and small enterprises and a special labour scheme for micro-enterprises (up to 10 workers and a certain turnover) on a temporary basis.

2. *Preparation of laws, policies and programmes aimed at extending protection and social security coverage to all workers.*

**Sri Lanka.** Under the National Workers Charter, the State must ensure that workers in the “non-organized sectors” are guaranteed minimum conditions of work to prevent them from being exploited. The Labour Commission is empowered to fix wages and conditions of work for such workers and is responsible for carrying out inspections to enforce the laws on working hours and rest. It also states that it must ensure full protection under labour laws to workers employed by contractors.

**Morocco.** The new Labour Code (Law 65-99 of 6 May 2004) extends its scope to paid homeworkers, simplifying their classification to preclude the possibility of them being classed as independent subcontractors. It establishes special arrangements for different sectors and envisages a special law to regulate relationships and conditions of work in sectors of a purely traditional character, considering employers as natural persons with family assistants, who engage in a manual trade involving the manufacture of traditional products for sale.

**South Africa.** *The Basic Conditions of Employment Act*, amended in 2002, establishes a series of criteria for the classification of a person as employed, unless proved to the contrary, irrespective of the form of contract, including, among other things, “a person who is economically dependent on another person for whom he works or provides a service” or “a person who works or provides services solely for another person”. In addition, the same Act (*Sectional Determination 8: Farm Worker Sector No. R. 1499. Official Gazette, 2002*) regulates the conditions of work of farm and agricultural workers, and establishes minimum wages, including those for domestic staff and keepers.

**Malawi.** The Employment Act, 2000 considers an employee to be any person who by virtue of his work is in a situation of economic dependence on another or whose situation is closer to that of an employee than an independent worker, including sharecroppers.

**Dominican Republic.** Law 87-01 of 2001 which creates the Dominican Social Security System provides, with respect to the Contributory Pensions Scheme (old age, incapacity and survivors’ insurance) that membership by an employee and the employee is obligatory, indivisible and permanent, whether or not the beneficiary remains employed, engages in two or more jobs simultaneously or transfers to work in the informal sector.

**India.** The Indian State of Tamil Nadu was one of the pioneers in the extension of social security to workers in the “non-organized” sector. In 1994, a law was passed by the state Ministry of Labour creating a Social Welfare Board for

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construction workers. The Board, run by a committee chaired by the Commissioner of Labour, and with employer and worker participation, administers a social welfare scheme which includes work-related accident insurance, education subsidies and marriage, birth and death grants. The fund is financed by payment of 0.3 per cent of the budget estimate for each construction work. The majority of the Board's administrative staff have been provided by the Ministry of Labour, which has reduced the administrative costs. The fund covers over half a million workers in the sector, and has kept the level of disbursements relatively low, providing benefits to some 39,000 beneficiaries, which has allowed a considerable level of reserves to be accumulated. At present, there is a project to introduced a pension scheme.

There is also a national social security project for workers in the non-organized sector (workers not covered by the Industrial Employment Act, 1946 and the Factories Act, 1948, and those in commercial establishments not covered by the social security laws) which will benefit 37 million workers. The new legislation established a fixed contribution payable by small productive units.

**Indonesia.** A decree of the Ministry of Human Resources of 17 January 2000 introduces a social security programme for casual workers and workers with single job or piecework contracts. It establishes economic benefits for work-related accidents, illness, maternity, old age and death, as well as health assistance. If the duration of work is less than three months, a contribution is made in respect of work-related accidents and life insurance. If the work lasts three months or more (and at least 20 days per month for casual workers) contributions are also made to old age and health schemes.

**Thailand.** The Social Security Act, 1990 established a general social security system to be introduced progressively. Initially, it only covered workers in enterprises with 20 or more workers, with the intention of covering workers in enterprises of 10 or more workers over a period of three years. Progressive increases in contributions and benefits were also envisaged, leading to the introduction of the retirement pension in 1998. Contributions are set at 9 per cent of wages, paid in equal shares by employers and workers. The State provides a further 2.5 per cent subsidy. The system would thus cover 9.5 million workers in one million three hundred thousand enterprises. Finally, the Royal Decree of 2002 provided that all employers, starting from one worker, came within the scope of the Social Security Act. This extension to micro-enterprises meant coverage to a further three and a half million workers in one million two hundred thousand enterprises.

3. *Guaranteeing the application and enforcement of rights and protection supported by effective administrative services*

**Peru.** The General Labour Inspection and Worker Protection Act was amended in 2004 (Law No.28292), guaranteeing confidentiality of complaints, strengthening inspectors' powers and extending their scope of action to worker cooperatives and home work employment agencies. The Micro and Small Enterprise (Promotion and Formalization) Act, 2003 (Law No. 2815) envisaged annual inspection targets of 20 per cent of registered micro-enterprises.

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**Chile.** The Labour Code, amended in 2003, established a system of sanctions which are progressively severe as a function of the number of workers in an enterprise. It allows fines imposed by the labour inspectorate on enterprises of less than ten workers to be replaced (only once per year) by compulsory attendance at training programmes organized by the Directorate of Labour for a period not exceeding two weeks.

**Dominican Republic.** The Dominican Social Security System, created by Law 87-01, is a single system of membership, contributions, benefits plan and service provision. It introduced a single pensions register which encompassed the beneficiaries of all pension funds and plans existing at the time. It also charged the National Social Security Council (CNSS) with the tasks of establishing within one year a single information system to optimize the process of joining, collection and payment, and ensuring the timely detection and sanctioning of evasion and late payment. The information sub-systems of the pensions fund administrators, health insurance administrators and social security schemes formed part of the single information system which, in turn, was made compatible with the central government integrated financial management system. The CNSS remained responsible for ensuring the prompt registration of all members in the system. Pensions and occupational safety supervisors were given powers to inspect and carry out investigations as appropriate for early detection of evasion or fraud by employers and/or workers, and to examine any of the employer's documents or records. It also established coordination and collaboration between the Secretariat of State for Labour, the Directorate of Inland Taxes and all other public or private agency which could provide relevant information.

#### *4. Adaptation of the framework and organization of the labour administration*

**Burkina Faso.** The Decree of 7 March 1997 establishing the organizational structure of the Ministry of Employment, Labour and Social Security created a Directorate for the Promotion of the Informal Sector in the Directorate General of Employment and Vocational Training, responsible for: contributing to better knowledge of the sector; identification of its basic and further training needs and organization; undertaking initiatives to consolidate jobs in the sector; assisting in modernizing the sector by encouraging creativity among micro-entrepreneurs; contributing to better incomes, etc. This unit was retained in the recent amendment of 2002 (Decree 465 of 28 October 2002) under which the former ministry became the Ministry of Labour, Employment and Youth. In addition, in its local branches, established in 2003 in the regional directorates, the employment and vocational training service is charged with promoting the informal sector. Under the technical supervision of the Ministry, a support fund for the informal sector (FASI) has been in operation since 1999 (Decree 98-053 of 28 February 1998) which is active in the agricultural and livestock sectors, commerce, construction, transport and crafts production, services and the arts. In its first three years of operation, the FASI granted credits to finance 3,957 projects, which led to the creation of 5,829 jobs and the consolidation of a further 7,824 jobs.

**Costa Rica.** The Integrated System for Support to Micro and Small Enterprises (SYAMYPE) was created in 1998. It includes a support fund, FONAMYPE, as a second-tier financing institution serving as a conduit for resources from the formal financial sector and international cooperation. Enterprises are classified legally in accordance with criteria involving the number

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of workers, asset values and annual sales. The system's governing and coordinating organ is the Supreme Council for Support to Micro and Small Enterprise (COSUMPYE), chaired by the Minister of Labour and Social Security and composed of representatives from the public sector (five ministries) and the private sector (four representatives). The latter include a representative of associations and guilds of micro and small entrepreneurs.

**Egypt.** Decree No. 2013/2003 regulates employment in the informal sector, defined as illegal work. It established a commission in the Ministry of Labour and Emigration to monitor employment in the informal sector, especially agricultural workers, seasonal workers, seafarers, mining and quarry workers, and public construction workers. The Commission's functions include proposing rules on safety and health, travel and subsistence, and examining applications for authorization of employment offices for such workers (which may be extended to associations, institutions and trade unions). Contracting or subcontracting by labour contractors is prohibited; sanctions are established for violations, and the employment offices concerned are required to protect workers against exploitation by intermediaries.

**Tanzania.** The 1999 Act creating the National Employment Promotion Service makes it responsible for promoting wage employment and self-employment. The Service operates through local offices which deal with registration and intermediation. It established a national employment advisory council whose functions include: advising the minister on job creation in rural and urban areas; carrying out studies into the productive use of human resources in the government, industrial, commercial, agricultural and informal sectors; and advising on proposed legislation, the informal sector and micro-enterprises, the establishment of centres for the informal sector and the promotion of special funds to finance activities in the informal sector.

**Belgium.** A law of 3 May 2003 instituted a Federal Council for the prevention of illegal work and social fraud, a Federal Coordinating Committee and district offices. The Council must ensure the implementation of the policy defined by the Council of Ministers which involves coordinating the actions of the various departments concerned and raising awareness among various services and departments. It must also provide guidance on prevention and may submit proposals for amending legislation. The district offices, set up in each judicial district, organize and coordinate checks on compliance with legislation. The law envisages the conclusion of partnership agreements between the responsible ministries and professional organizations, which could lead to information and awareness campaigns aimed at professionals and consumers and the detection of clandestine work. One of these agreements was signed in 2003 with the Federation of Passenger Transport Employers (FEAA) in order to collaborate in combating unfair competition from "black" labour, all forms of unfair employment and non-compliance with regulations. To this end, the administration undertakes to increase checks, together with other information and preventive measures which will also be evaluated by the parties.

5. *Creation of a legal framework to support rights of association and allow participation in the structures and processes of social dialogue*

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**Spain.** The Freedom of Association Act (Law 11/1985, 2 August 1985) allows self-employed workers who do not have workers in their employ, unemployed workers and those who have ceased work as a result of incapacity or retirement to join trade unions. They are not permitted to found trade unions which have the specific object of protecting individual interests, without prejudice to their capacity to form associations under specific legislation.

**Peru.** Decree Law No. 25593 of 1992, which regulates the labour relations of workers in the private sector, introduced the possibility of independent workers forming organizations, when it states in Article 6 that: “Organizations of workers who are not dependent within an employment relationship shall be governed by the provisions of this decree law, as applicable.” Trade unions formed in this way shall acquire legal personality and be entered in the appropriate register maintained by the labour authority. Registration is a formal, voluntary act, which cannot be refused except in the case of failure to comply with the requirements laid down by the decree law.

**Burkina Faso.** Law 08-93-ADP of 13 May 1993 established the Chamber of Representatives, the 120-member consultative body (includes four representatives of the informal sector).

### 5.3. Trends

#### 1. *Clarification of concepts and definitions*

- Introduction by law of the definition of micro enterprise and small enterprise, based on objective criteria.
- Legal definition of independent worker and criteria to determine the existence of an employment relationship.
- Regulation of artisans and crafts industries.
- Definition of casual labour.

#### 2. *Simplification of procedures and reduction of costs of formalization*

- Substantial reduction or elimination of expenses involved in the registration of enterprises with labour administrations and social security authorities.
- Replacement of authorizations to open establishments by simple declarations of opening.
- Simplification of requirements, forms and procedures for hiring workers through public employment offices.
- Introduction of one-stop shops or unified procedures for the creation of enterprises.
- Recognition of contracts of employment irrespective of the form in which they are concluded and acceptance of any means of evidence.



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### 3. *Extension of protection*

- Modification of labour legislation extending its scope to all types of wage workers, sometimes with the introduction of exemptions or special regulations in situations in which specific laws or rules are difficult to apply or enforce.
- Extension of social security systems to new categories of wage workers, especially in small enterprises, and temporary workers. The extension applies at least for certain contingencies, with contribution schemes set at a level which enables employers to meet the periodic payments.
- Introduction of special voluntary and compulsory social security schemes for self-employed workers, including those in agriculture, with contribution arrangements adjusted to the ability to pay of those concerned through the choice of contribution base.

### 4. *Improving management tools, methods and procedures*

- Creation or upgrading of databases and statistics on enterprises and workers.
- Cooperation between different agencies of the labour administration and other government departments.
- Development of plans and information programmes on the content of labour laws aimed primarily at micro and small enterprises, including information centres, help lines, publications, leaflets, websites and visits to employment centres.
- Modification of working methods of labour inspectors, focusing on micro and small enterprises. Review of sanction procedures and use of persuasive and punitive measures as alternative or complementary measures.

### 5. *Administrative changes*

- Creation of support funds for the creation of micro and small enterprises or to allow workers to set up a business on their own account.
- Creation of administrative units aimed at promoting the social economy, such as cooperatives and other associative enterprises.
- Creation of units and programmes aimed at working women.
- Extension of the activities of occupational safety services to micro and small enterprises, and to self-employed workers.
- Introduction of Internet-based administrative practices.

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6. *Limited extension of rights of representation*

- Legal extension of the right of association to independent workers, either by including them in wage workers' organizations, or by the formation of their own organizations with a status equivalent to trade union.
- Inclusion of representatives of associations of persons working in the informal economy in various consultative bodies.

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## 6. Conclusions

1. *The most commonly used definitions of the informal sector are not practical for labour administration.*

The definitions in use include heterogeneous situations which do not always allow the same legal treatment. The definitions include situations of persons and entities, some not regulated and others regulated, including different degrees of regulation. The definitions include elements foreign to the applicable legal frameworks and do not take into account the difference between the absence of rules, non-compliance with the rules and their effects.

2. *Formality and informality in work.*

Formality implies compliance with a series of legal rules of a civil, commercial, administrative, fiscal, labour and social security nature. Formality in work can be limited to compliance with labour and social security laws, at least as far as the scope of action or intervention of the labour administration is concerned.

3. *Different categories of workers in the informal economy.*

There are two types of worker active in the informal economy: wage workers and self-employed workers. The legal status applicable to each is different and cannot be ignored by the labour administration or the persons concerned. Solutions to the problems and needs of each, although some may be common, involve differential treatment. Moreover, some of the problems of enterprises and self-employed workers fall outside the ambit of the labour administration.

4. *Protection and rights.*

To speak of protection of workers in the informal economy is not the same as speaking of rights. Protection refers to a result, a condition of the process of obtaining it. Thus one can speak of social protection or protection from occupational hazards. Rights, in labour terms, have their counterpart in obligations. The counterpart of wage workers' rights is employers' obligations, together with their own obligations as employees. The rights of self-employed workers depend on their own obligations, normally in relation to agencies of the public administration.

5. *The exercise of rights by salaried workers implies labour formality of employers.*

If there is a legal framework which determines the obligations of the employer and the employer does not fulfil them, informality is understood as irregularity or illegality, which implies liability. The goal of the labour administration to guarantee labour rights means making employers fulfil their obligations, i.e. compulsory formalization. However, the procedures and methods used by labour administrations to achieve these results can vary.

6. *To make social protection effective, a regulatory framework and a system of financing is necessary.*

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When protection is sought for those who are without it, it means extending social security benefits. In some cases, those not covered can be accommodated more or less easily in existing systems. In other cases, it will be necessary to create new or special schemes, but in all cases it is necessary to provide financing and decide who will bear the costs and how contributions will be collected and benefits administered. In general, all this falls within the ambit of the labour administration or involves some kind of activity on its part, thus it must at the same time upgrade the services concerned.

*7. The exercise of collective rights goes hand in hand with recognition of the personality of collective persons.*

To give a voice to workers in the informal economy, it is necessary to facilitate the formation of organizations to represent them. In the case of self-employed workers and micro-enterprises, in addition to the associative framework, a framework must be developed to recognize their personality, interests and representativeness, so as to allow public administrations to take them into account.

*8. Services and units of the labour administration for micro and small enterprises and self-employed workers.*

The experience of several countries suggests the value of organizing services aimed at small productive units and self-employed workers, especially when there is a special regulatory framework. The functions to be performed and the type of service to be organized may vary, but targeting information and prevention can be most helpful in extending formality.

*9. Ensuring compliance with legal provisions.*

The system of labour inspection, with adequate resources, must extend its activities to all establishments, in all sectors, to make workers' rights a reality. Inspection services must have functional powers and be able to monitor compliance with all legal provisions relating to conditions of work and protection of workers.

*10. Decent work policies in the informal sector.*

A policy of extending rights and social protection coverage is not the same as a policy of enforcing rights or effective protection. In the first case, it is necessary to introduce legislative measures, while in the second it is a case of making use of the administrations' mechanisms through its administrative units, programmes, procedures and methods of work.

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## Annex: Selected texts from international labour standards

### Informal sector

#### R169 Employment Policy (Supplementary Provisions) Recommendation, 1984

##### V. Informal sector

27. (1) National employment policy should recognise the importance as a provider of jobs of the informal sector, that is economic activities which are carried on outside the institutionalised economic structures.  
  
(2) Employment promotion programmes should be elaborated and implemented to encourage family work and independent work in individual workshops, both in urban and rural areas.
28. Members should take measures to promote complementary relationships between the formal and informal sectors and to provide greater access of undertakings in the informal sector to resources, product markets, credit, infrastructure, training facilities, technical expertise and improved technologies.
29. (1) While taking measures to increase employment opportunities and improve conditions of work in the informal sector, Members should seek to facilitate its progressive integration into the national economy.  
  
(2) Members should take into account that integration of the informal sector into the formal sector may reduce its ability to absorb labour and generate income. Nevertheless, they should seek progressively to extend measures of regulation to the informal sector.

#### R195 Human Resources Development Recommendation, 2004

3. Members should identify human resources development, education, training and lifelong learning policies which:
  - d) address the challenge of transforming activities in the informal economy into decent work fully integrated into mainstream economic life; policies and programmes should be developed with the aim of creating decent jobs and opportunities for education and training, as well as validating prior learning and skills gained to assist workers and employers to move into the formal economy;
  - ...

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## Self-employed workers

### R192 Safety and Health in Agriculture Recommendation, 2001

#### IV. Other provisions

##### Self-employed farmers

12. (1) Taking into consideration the views of representative organizations of self-employed farmers, Members should make plans to extend progressively to self-employed farmers the protection afforded by the Convention, as appropriate.
  - (2) To this end, national laws and regulations should specify the rights and duties of self-employed farmers with respect to safety and health in agriculture.
  - (3) In the light of national conditions and practice, the views of representative organizations of self-employed farmers should be taken into consideration, as appropriate, in the formulation, implementation and periodic review of the national policy referred to in Article 4 of the Convention.
13. (1) In accordance with national law and practice, measures should be taken by the competent authority to ensure that self-employed farmers enjoy safety and health protection afforded by the Convention.
  - (2) These measures should include:
    - (a) provisions for the progressive extension of appropriate occupational health services for self-employed farmers;
    - (b) progressive development of procedures for including self-employed farmers in the recording and notification of occupational accidents and diseases; and
    - (c) development of guidelines, educational programmes and materials and appropriate advice and training for self-employed farmers covering, inter alia:
      - (i) their safety and health and the safety and health of those working with them concerning work-related hazards, including the risk of musculoskeletal disorders, the selection and use of chemicals and of biological agents, the design of safe work systems and the selection, use and maintenance of personal protective equipment, machinery, tools and appliances; and
      - (ii) the prevention of children from engaging in hazardous activities.
14. Where economic, social and administrative conditions do not permit the inclusion of self-employed farmers and their families in a national or voluntary insurance scheme, measures should be taken by Members for their progressive coverage to the level provided for in Article 21 of the Convention. This could be achieved by means of:
  - (a) developing special insurance schemes or funds; or
  - (b) adapting existing social security schemes.

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15. In giving effect to the above measures concerning self-employed farmers, account should be taken of the special situation of:
- (a) small tenants and sharecroppers;
  - (b) small owner-operators;
  - (c) persons participating in agricultural collective enterprises, such as members of farmers' cooperatives;
  - (d) members of the family as defined in accordance with national law and practice;
  - (e) subsistence farmers; and
  - (f) other self-employed workers in agriculture, according to national law and practice.

## **Small enterprises**

### **R169 Employment Policy (Supplementary Provisions) Recommendation, 1984**

#### **VI. Small undertakings**

30. National employment policy should take account of the importance of small undertakings as providers of jobs, and recognise the contribution of local employment creation initiatives to the fight against unemployment and to economic growth. These undertakings, which can take diverse forms, such as small traditional undertakings, co-operatives and associations, offer employment opportunities, especially for workers who have particular difficulties.
31. After consultation and in co-operation with employers' and workers' organisations, Members should take the necessary measures to promote complementary relationships between the undertakings referred to in Paragraph 30 of this Recommendation and other undertakings, to improve working conditions in these undertakings, and to improve their access to product markets, credit, technical expertise and advanced technology.

### **R189 Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998**

#### **II. Policy and legal framework**

5. In order to create an environment conducive to the growth and development of small and medium-sized enterprises, Members should:
- (a) adopt and pursue appropriate fiscal, monetary and employment policies to promote an optimal economic environment (as regards, in particular, inflation, interest and exchange rates, taxation, employment and social stability);
  - (b) establish and apply appropriate legal provisions as regards, in particular, property rights, including intellectual property, location of establishments, enforcement of contracts, fair competition as well as adequate social and labour legislation;

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(c) improve the attractiveness of entrepreneurship by avoiding policy and legal measures which disadvantage those who wish to become entrepreneurs.

6. The measures referred to in Paragraph 5 should be complemented by policies for the promotion of efficient and competitive small and medium-sized enterprises able to provide productive and sustainable employment under adequate social conditions. To this end, Members should consider policies that:

(1) create conditions which:

(a) provide for all enterprises, whatever their size or type:

(i) equal opportunity as regards, in particular, access to credit, foreign exchange and imported inputs; and

(ii) fair taxation;

(b) ensure the non-discriminatory application of labour legislation, in order to raise the quality of employment in small and medium-sized enterprises;

(c) promote observance by small and medium-sized enterprises of international labour standards related to child labour;

(2) remove constraints to the development and growth of small and medium-sized enterprises, arising in particular from:

(a) difficulties of access to credit and capital markets;

(b) low levels of technical and managerial skills;

(c) inadequate information;

(d) low levels of productivity and quality;

(e) insufficient access to markets;

(f) difficulties of access to new technologies;

(g) lack of transport and communications infrastructure;

(h) inappropriate, inadequate or overly burdensome registration, licensing, reporting and other administrative requirements, including those which are disincentives to the hiring of personnel, without prejudicing the level of conditions of employe effectiveness of labour inspection or the system of supervision of working conditions and related issues;

(i) insufficient support for research and development;

(j) difficulties in access to public and private procurement opportunities;

(3) include specific measures and incentives aimed at assisting and upgrading the informal sector to become part of the organized sector.



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#### IV. Development of an effective service infrastructure

15. Members should consider appropriate policies to improve all aspects of employment in small and medium-sized enterprises by ensuring the non-discriminatory application of protective labour and social legislation.

### **Agriculture**

#### C141 Rural Workers' Organisations Convention, 1975

##### Article 3

1. All categories of rural workers, whether they are wage earners or self-employed, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations, of their own choosing without previous authorisation.

#### C129 Labour Inspection (Agriculture) Convention, 1969

##### Article 3

Each Member of the International Labour Organisation for which this Convention is in force shall maintain a system of labour inspection in agriculture.

##### Article 4

The system of labour inspection in agriculture shall apply to agricultural undertakings in which work employees or apprentices, however they may be remunerated and whatever the type, form or duration of their contract.

#### C184 Safety and Health in Agriculture Convention, 2001

##### Temporary and seasonal workers

##### Article 17

Measures shall be taken to ensure that temporary and seasonal workers receive the same safety and health protection as that accorded to comparable permanent workers in agriculture.

### **Home work**

#### C177 Home Work Convention, 1996

##### Article 3

Each Member which has ratified this Convention shall adopt, implement and periodically review a national policy on home work aimed at improving the situation of homeworkers, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations concerned with homeworkers and those of employers of homeworkers.

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#### Article 4

1. The national policy on home work shall promote, as far as possible, equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise.

#### Article 7

National laws and regulations on safety and health at work shall apply to home work, taking account of its special characteristics, and shall establish conditions under which certain types of work and the use of certain substances may be prohibited in home work for reasons of safety and health.

#### Article 9

1. A system of inspection consistent with national law and practice shall ensure compliance with the laws and regulations applicable to home work.

2. Adequate remedies, including penalties where appropriate, in case of violation of these laws and regulations shall be provided for and effectively applied.

## Cooperatives

### R193 Promotion of Cooperatives Recommendation, 2002

8. (1) National policies should notably:

(a) promote the ILO fundamental labour standards and the ILO Declaration on Fundamental Principles and Rights at Work, for all workers in cooperatives without distinction whatsoever;

(b) ensure that cooperatives are not set up for, or used for, non-compliance with labour law or used to establish disguised employment relationships, and combat pseudo cooperatives violating workers' rights, by ensuring that labour legislation is applied in all enterprises;

(c) promote gender equality in cooperatives and in their work;

(d) promote measures to ensure that best labour practices are followed in cooperatives, including access to relevant information;

(e) develop the technical and vocational skills, entrepreneurial and managerial abilities, knowledge of business potential, and general economic and social policy skills, of members, workers and managers, and improve their access to information and communication technologies;

(f) promote education and training in cooperative principles and practices, at all appropriate levels of the national education and training systems, and in the wider society;

(g) promote the adoption of measures that provide for safety and health in the workplace;

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(h) provide for training and other forms of assistance to improve the level of productivity and competitiveness of cooperatives and the quality of goods and services they produce;

(i) facilitate access of cooperatives to credit;

(j) facilitate access of cooperatives to markets;

(k) promote the dissemination of information on cooperatives; and

(l) seek to improve national statistics on cooperatives with a view to the formulation and implementation of development policies.

## **Indigenous people**

### **C169 Indigenous and Tribal Peoples Convention, 1989**

#### **Part III. Recruitment and conditions of employment**

##### **Article 20**

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

3. The measures taken shall include measures to ensure:

(a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

#### **Part IV. Vocational training, handicrafts and rural industries**

##### **Article 23**

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the

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traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

#### Part V. Social security and health

##### Article 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

## Child labour

### C138 Minimum Age Convention, 1973

#### Article 1

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

#### Article 2

1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

#### Article 5

3. The provisions of the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

### R190 Worst Forms of Child Labour Recommendation, 1999

#### Programmes of action

2. The programmes of action referred to in Article 6 of the Convention should be designed and implemented as a matter of urgency, in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of the children directly affected by the worst forms of child labour, their families and, as appropriate, other concerned groups committed to the aims of the Convention and this Recommendation. Such programmes should aim at, inter alia:

- (a) identifying and denouncing the worst forms of child labour;
- (b) preventing the engagement of children in or removing them from the worst forms of child labour, protecting them from reprisals and providing

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for their rehabilitation and social integration through measures which address their educational, physical and psychological needs;

- (c) giving special attention to:
  - (i) younger children;
  - (ii) the girl child;
  - (iii) the problem of hidden work situations, in which girls are at special risk;
  - (iv) other groups of children with special vulnerabilities or needs;
- (d) identifying, reaching out to and working with communities where children are at special risk;
- (e) informing, sensitizing and mobilizing public opinion and concerned groups, including children and their families.

## II. Hazardous work

3. In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to:

- (a) work which exposes children to physical, psychological or sexual abuse;
- (b) work underground, under water, at dangerous heights or in confined spaces;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
- (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

## Migrants

### C143 Migrant Workers (Supplementary Provisions) Convention, 1975

#### Article 2

1. Each Member for which this Convention is in force shall systematically seek to determine whether there are illegally employed migrant workers on its territory and whether there depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations.

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2. The representative organisations of employers and workers shall be fully consulted and enabled to furnish any information in their possession on this subject.

### Article 3

Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members—

- (a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and
- (b) against the organisers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions, in order to prevent and to eliminate the abuses referred to in Article 2 of this Convention.

### Article 6

1. Provision shall be made under national laws or regulations for the effective detection of the illegal employment of migrant workers and for the definition and the application of administrative, civil and penal sanctions, which include imprisonment in their range, in respect of the illegal employment of migrant workers, in respect of the organisation of movements of migrants for employment defined as involving the abuses referred to in Article 2 of this Convention, and in respect of knowing assistance to such movements, whether for profit or otherwise.

## Labour administration standards

### C150 Labour Administration Convention, 1978

#### Article 7

When national conditions so require, with a view to meeting the needs of the largest possible number of workers, and in so far as such activities are not already covered, each Member which ratifies this Convention shall promote the extension, by gradual stages if necessary, of the functions of the system of labour administration to include activities, to be carried out in co-operation with other competent bodies, relating to the conditions of work and working life of appropriate categories of workers who are not, in law, employed persons, such as--

- (a) tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers;
- (b) self-employed workers who do not engage outside help, occupied in the informal sector as understood in national practice;
- (c) members of co-operatives and worker-managed undertakings;
- (d) persons working under systems established by communal customs or traditions.

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## C81 Labour Inspection Convention, 1947

### Article 1

Each Member of the International Labour Organisation for which this Convention is in force shall maintain a system of labour inspection in industrial workplaces.

### Article 2

1. The system of labour inspection in industrial workplaces shall apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors.

2. National laws or regulations may exempt mining and transport undertakings or parts of such undertakings from the application of this Convention.

### Article 3

1. The functions of the system of labour inspection shall be:

- (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;
- (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;
- (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

2. Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

## C88 Employment Service Convention, 1948

### Article 1

1. Each Member of the International Labour Organisation for which this Convention is in force shall maintain or ensure the maintenance of a free public employment service.

2. The essential duty of the employment service shall be to ensure, in co-operation where necessary with other public and private bodies concerned, the best possible organisation of the employment market as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive resources.

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Article 2

The employment service shall consist of a national system of employment offices under the direction of a national authority.

Article 3

1. The system shall comprise a network of local and, where appropriate, regional offices, sufficient in number to serve each geographical area of the country and conveniently located for employers and workers.



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## Basic ILO database and selected bibliography

*Informal economy resource database.* This informal economy database contains over 400 ILO entries directly or indirectly related to the informal economy and is a continuation of the mapping process initiated after the General Discussion on Decent Work and the Informal Economy at the 90th Session of the International Labour Conference. Available at <http://www.ilo.org/dyn/dwresources/iebrowse.home>

*ILOLEX.* Database on international labour standards containing over 75,000 full-text ILO documents. Available at <http://www.ilo.org/ilolex/index.htm>

*NATLEX.* Information on national laws including labour, social security and related human rights issues. Available at <http://www.ilo.org/public/english/support/lib/dblist.htm>

*Minimum wages database.* Provides information on minimum wage legislation in about 100 ILO member States. Available at <http://www.ilo.org/travaildatabase/servlet/minimumwages>

*Social security programs throughout the world.* Covers six different databases on social protection: Scheme Description, Complementary and Private Pensions, Reforms, Legislation, Bibliography and Thesaurus. Produced by the International Social Security Association (ISSA) with the support of the ILO. Available at <http://www.issa.int/span/homef.htm>

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