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**A view on international labour standards,
labour law and MSEs**

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Job Creation
and Enterprise
Development
Department

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Preface

The primary goal of the ILO is to contribute, with member States, to achieve full and productive employment and decent work for all, including women and young people, a goal embedded in the ILO Declaration 2008 on *Social Justice for a Fair Globalization, and¹* which has now been widely adopted by the international community.

In order to support member States and the social partners to reach the goal, the ILO pursues a Decent Work Agenda which comprises four interrelated areas: Respect for fundamental worker's rights and international labour standards, employment promotion, social protection and social dialogue. Explanations of this integrated approach and related challenges are contained in a number of key documents: in those explaining and elaborating the concept of decent work,² in the Employment Policy Convention, 1964 (No. 122), and in the Global Employment Agenda.

The Global Employment Agenda was developed by the ILO through tripartite consensus of its Governing Body's Employment and Social Policy Committee. Since its adoption in 2003 it has been further articulated and made more operational and today it constitutes the basic framework through which the ILO pursues the objective of placing employment at the centre of economic and social policies.³

The Employment Sector is fully engaged in the implementation of the Global Employment Agenda, and is doing so through a large range of technical support and capacity building activities, advisory services and policy research. As part of its research and publications programme, the Employment Sector promotes knowledge-generation around key policy issues and topics conforming to the core elements of the Global Employment Agenda and the Decent Work Agenda. The Sector's publications consist of books, monographs, working papers, employment reports and policy briefs.⁴

The *Employment Working Papers* series is designed to disseminate the main findings of research initiatives undertaken by the various departments and programmes of the Sector. The working papers are intended to encourage exchange of ideas and to stimulate debate. The views expressed are the responsibility of the author(s) and do not necessarily represent those of the ILO.

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¹ See http://www.ilo.org/public/english/bureau/dgo/download/dg_announce_en.pdf

² See the successive Reports of the Director-General to the International Labour Conference: *Decent work* (1999); *Reducing the decent work deficit: A global challenge* (2001); *Working out of poverty* (2003).

³ See <http://www.ilo.org/gea>. And in particular: *Implementing the Global Employment Agenda: Employment strategies in support of decent work*, "Vision" document, ILO, 2006.

⁴ See <http://www.ilo.org/employment>.

Foreword

This working paper is one of the follow-up activities to the discussion in November 2006 by the ILO Governing Body's Committee on Employment and Social Policy on "Business environment, labour law and micro- and small enterprises" (GB.297/ESP/1). The Committee encouraged the Office to examine the 'win-win territory' of where it is possible to reduce compliance costs for micro- and small enterprises (MSEs) and simultaneously improve effective protection for workers in those enterprises.

The working paper examines the extent to which International Labour Standards (ILS) apply to MSEs, as the International Labour Standards is the principal frame of reference for seeking guidance on the design and application of labour legislation in the national context.

ILO Standards are universally applicable to all workers and enterprises. Nonetheless, although several ILS have been ratified by most developing countries, application of Core Labour Standards as well as other International Labour Standards have remained difficult in the workplace with subsequent absence of workers' rights and protection and a general environment of inequity and vulnerability among various groups.

In the hope of increasing livelihood opportunities for the unemployed and underemployed workforce, ILO's member States have created in their respective national labour codes exemptions, exclusions and in some cases, parallel labour regimes for the MSEs. Although ILS in several instances allow member States to adapt to the unique national situations, such adaptation need not lead to the major portion of the workforce and enterprises remain outside the purview of labour law.

Successful implementation of innovative policies and good practice requires taking into account the special features of the context in which these policies and practices are implemented. The success of some of the initiatives owes much to the cohesiveness of members representing MSEs and to the responsiveness and openness of the national and local political systems.

An interesting lesson that emerges from the experiences reported in this working paper is the importance of enlisting the support of other state institutions in the efforts to strengthen and enforce labour rights. A broader institutional strategy is especially appropriate for ensuring respect of the fundamental principles and rights at work protected by the ILO Declaration.

The working paper is the result of collaboration between EMP/SEED, NORMES and DIALOGUE. It was prepared by Professor Julio Faundez under the technical supervision of Gopal Joshi (EMP/SEED) in collaboration with Nathan Elkin (NORMES) and Jane Hodges (DIALOGUE). Their respective technical inputs and those of various other colleagues from NORMES and EMP/SEED are gratefully acknowledged.

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Executive summary

The quality of employment in MSEs throughout the world is generally lower than in larger firms. In developing countries, however, conditions of employment in most MSEs are precarious, offering limited – if any – protection to their workers. In 1998, Recommendation No. 189 on Job Creation in Small and Medium-Sized Enterprises called upon member States to review their labour and social legislation to ensure generation of quality employment by small enterprises. The ILO remains concerned with the low levels of compliance and enforcement of labour law and labour-related laws on the MSEs, thus affecting enterprise growth and workers' protection.

The objective of this working paper is to contribute to current discussions and debates on how to improve the quality of and compliance with labour regulation among MSEs within a framework that fully respects the rules and principles embodied in international labour standards.

This study is a desk audit, based on ILO Reports and other official documents drawing information on national legislation mainly from annual reports and general surveys prepared by the ILO's Committee of Experts on the Application of Conventions and Recommendations. The objective of presenting this information is merely to reflect legal trends and national approaches to the regulation of labour and labour-related relations in MSEs.

Since its inception the ILS regime has been aware of the special needs and interests of small enterprises. Its approach, however, has evolved in line with economic, social and cultural changes. Some of the factors that Conventions take into account to address the needs of small enterprises are related to the size of the enterprise and the practical problems that small enterprises may have in complying with the standards embodied in the Convention.

State practice in both developed and developing countries shows that countries make ample use of the exclusions, discretion and flexibility envisaged by the ILS regime in the design of labour law rules that apply specifically to small enterprises. These special rules do not, however, amount to a coherent policy aimed at promoting MSEs or protecting its workers.

In some instances countries go beyond the limits set by international conventions, as is the case, for example when they exclude from the scope of the labour code workers in micro enterprises without providing them with alternative means of protecting their rights. Likewise, in some cases countries apply numerical thresholds in areas where the ILS regime does not contain such exemptions.

Whether or not specific thresholds are reasonable will depend on a variety of factors, including national legal traditions, peculiarities of the local context and the evolving interpretation of international standards. It is arguable that most of the provisions on collective dismissal that set special rules to workers of small enterprises are meant to protect rather than to discriminate against them. Yet, it is also undeniable that in countries where MSE workers lack effective mechanisms of representation, their interests and views are not adequately taken into account either by governments or by judicial bodies.

It is unlikely that the argument as to whether labour law hampers or facilitates the development of micro and small enterprises will be settled soon, as the characteristics and

behaviour of MSEs in developing countries vary. Most observers agree, however, that MSEs tend not to comply with labour law because they simply cannot afford it.

One of the strategies employed by these laws is to simplify labour law procedures, especially those relating to filling in forms and keeping records for the purpose of labour inspection, as is the case in Brazil. Another strategy is to allow MSEs to apply standards that are slightly below the general standards required by the law applicable to larger enterprises.

Successful implementation of innovative policies and good practice requires taking into account the special features of the context in which these policies and practices are implemented. The success of some of the initiatives owes much to the cohesiveness of members representing MSEs and to the responsiveness and openness of the national and local political systems.

An interesting lesson that emerges from the experiences reported in this working paper is the importance of enlisting the support of other state institutions in the efforts to strengthen and enforce labour rights. A broader institutional strategy is especially appropriate for ensuring respect of the fundamental principles and rights at work protected by the ILO Declaration.

Introduction

Micro and small enterprises (hereafter MSEs) provide a large share of employment throughout the world, especially in the developing world. In Latin America, enterprises with fewer than 20 employees account for 51 per cent of urban employment. In India, small informal enterprises provide employment for seven out of ten workers in the non-agricultural sector, while in Thailand, 90 per cent of private undertakings employ fewer than 10 people (ILO 2003c: 44).

The quality of employment in MSEs throughout the world is generally lower than in larger firms. In developing countries, however, conditions of employment in most MSEs are precarious, offering limited – if any – protection to their workers. This unacceptable situation is further aggravated because most workers in these enterprises already suffer from discriminatory treatment elsewhere in society, as they are poor women, recently arrived migrants or members of indigenous groups or ethnic minorities. The incidence of illegal child labour in micro and small enterprises is also very high.

It is against this background that, in 1998, Recommendation No. 189 on Job Creation in Small and Medium-Sized Enterprises called upon Members to review their labour and social legislation to ensure adequate working conditions and protection for their workers. Despite this request, poor conditions of employment among MSE workers persist.

The ILO has recently identified three main factors that account for the poor protection of MSE workers: the proliferation of parallel labour regimes that apply lower labour standards; the low levels of compliance and enforcement of labour law; and the inadequate representation of MSEs in the design of labour and labour-related laws (ILO 2006e: 6). Designing policies that address the issues arising from these three factors is not an easy task, especially if the objective is to improve the quality of employment in MSEs without undermining their growth prospects.

The ILO has endorsed measures aimed at simplifying the application of labour law relating to MSEs and has called for improvements in the dissemination of information about labour standards and regulations (ILO 2007: 93-94). It has also recognized that in some cases it may be necessary to adopt labour law provisions especially tailored to the needs of small enterprises (ILO 2006e: 14). The ILO, however, has emphatically and repeatedly stated that there should be no exemptions from or lowering of the core labour standards covered by the ILO Declaration of Fundamental Principles and Rights at Work (ILO 2007: 9, ILC 2002: 49).

The objective of this research paper is to contribute to current discussions and debates on how to improve the quality of and compliance with labour regulation among MSEs within a framework that fully respects the rules and principles embodied in international labour standards.

The paper is divided into four sections. The first section examines the extent to which international labour conventions and recommendations address, either directly or indirectly, the special needs and interests of MSEs. The focus of the second and third sections is national legislation. The second section examines the extent to which national labour regimes take enterprise size into account and identifies some features of small enterprises that explain why, in practice, some labour law provisions cannot be easily applied or simply are not applied to MSEs.

The third section discusses laws and policies for the promotion of MSEs in developing countries. The fourth section examines various policy initiatives by the governments and participation of social partners, membership-based organizations, and civil society organizations designed to achieve the ILO's Decent Work Agenda among micro and small enterprises. The concluding sections summarize the main points of the Report and offer recommendations.

This study is a desk audit, based on ILO Reports and other official documents. The information on national legislation is drawn mainly from annual reports and general surveys prepared by the ILO's Committee of Experts on the Application of Conventions and Recommendations. The objective of presenting this information is merely to reflect legal trends and national approaches to the regulation of labour and labour-related relations in MSEs. It is not a statement of the current state of the law.

Although commonly accepted criteria for defining micro, small or medium-sized enterprises may not be available, in general, however, countries employ a numerical criterion based on the number of employees. The most common numerical range used to define micro enterprises is from 1 to 5 or from 1 to 10 employees. The range for small enterprises is from 10 to 20 or 50 employees. Medium-sized enterprises are generally those that employ from 50 to 100 or 250.

Lower end of enterprises are commonly found to be operating within informal economy in many developing countries without workers' rights and protections and perhaps thus limiting growth in productivity and enterprise growth. The ILO has identified in its discussions the limiting factors as inadequacy of governance and regulatory environment on the informal enterprises (ILC 2002). Therefore, the issue of application of labour and labour-related has been prominent in reducing informality and achieving higher levels of workers' protection and productivity growth.

Section 1: International labour standards and MSEs

1.1 Background

International labour standards (hereafter ILS) are legal instruments designed and adopted by the International Labour Conference, the ILO's highest decision-making organ. Conventions are binding international treaties, while Recommendations are non-binding guidelines. The ILS regime, which dates back to 1919, is the oldest and most comprehensive international framework for reconciling economic growth and progress with prosperity and social justice for all. Today, these objectives are reflected in the ILO's Decent Work Agenda, which aims to achieve decent work for all through the respect for international labour standards and the promotion of employment, social protection and social dialogue (ILO 2005d).

In recent years there has been extensive debate about the strength and weaknesses of the international labour standard regime. The majority of observers have a positive view about the ILS regime and, from different perspectives, they explore ways of strengthening, both its content and the mechanisms necessary to secure its enforcement (Basu et al. 2003, Elliott and Freeman 2003, Fung et al. 2001, Hepple 2006, National Research Council 2004). There may be some concerns regarding practical challenge in providing coverage as intended under the ILS regime to MSE workers in the informal economy, since the poor economies may also be greatly preoccupied with extreme cases of poverty and survival (Kabeer 2004, Singh and Zammit 2004).

The objective of this section is thus twofold: to highlight some features of the ILS regime from the standpoint of international law; and to identify the extent to which ILO Conventions and Recommendations address issues that concern micro and small enterprises.

1.2 The ILS regime and international law

International labour conventions are multilateral treaties and, as such, are governed by general principles of international law – especially by the Vienna Convention on the Law of Treaties. The standard view in international law is that multilateral treaties either codify existing state practice or create a framework that facilitates the progressive development of a uniform practice. Thus, for example, the framing of international rules on diplomatic immunity could well be regarded as codification of existing practice, since the principles and rules on diplomatic immunity were widely accepted long before the Vienna Convention on Diplomatic Relations was adopted in 1961. On the other hand, the establishment of rules on the law of the sea, especially on the delimitation of sectors of the sea, such as the continental shelf, is generally regarded as progressive development of the law because one of the main purposes of these rules is to persuade states to unify their practice in this area.

The ILS regime, however, does not fit easily within the dichotomy of codification and progressive development. However, ILS has also shown its capacity to contribute to both codification and progressive development of the international law, i.e., by adopting Maritime Labour Convention in 2006. While today, due to the demands of globalization, legal harmonization of domestic standards is widely used in international law, the ILS regime anticipated this development.

1.3 ILS and flexibility

Any attempt to draft a legal instrument has to take into account social reality and thus reflect and respond in a flexible manner to the social environment it purports to regulate. In this sense, flexibility is an attribute of any sound approach to legal drafting. In the case of the ILS regime, flexibility acquires a special meaning because it is so mandated by the ILO's Constitution. Indeed, Article 19 (3) provides as follows:

In framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

It is interesting to note that the assumption underlying this provision is that industrial conditions throughout the world are "substantially" the same and that the exceptions are countries with climatic conditions, imperfectly developed industrial organization or any other circumstances that call for a modification of the general rule. Whether or not this assumption obtains today, flexibility remains a fundamental attribute since the main objective of the ILS regime is to ensure the widest possible acceptance of international labour standards by ILO Members and, once Conventions are ratified, to ensure that they are effectively applied (Politakis 2004, Servais 1986 and 2006).

Several techniques are used to give effect to the principle of flexibility. Sometimes Conventions exclude specific sectors or group of workers from their scope. The Night Work Convention (No. 171, 1990), for example, excludes from its scope (Article 2(1)) persons employed in agriculture, stock raising, fishing, maritime transport and inland navigation. This Convention also allows Members to exclude wholly or partly from its scope limited categories of workers "when the application of the Convention to them would raise special problems of a substantial nature".

Other conventions provide that Members may phase in the application of the Convention. Thus, for example, Article 10 of the Workers with Family Responsibilities Convention (No. 156, 1981) stipulates that its provisions may be applied by stages. The Minimum Age Convention (No. 138, 1973), taking into account the economic development and administrative capacity of Members, allows them (Article 5(1)), after consultation with the organizations of employers and workers concerned, to limit the scope of application of the Convention.

Some Conventions make provision for the progressive extension of its terms to workers or sectors they do not initially cover. Thus, the Labour Administration Convention (No. 150, 1978) provides (Article 7) that "when national conditions so require, with a view to meeting the needs of the largest possible number of workers...each Member ... shall promote the extension, by gradual stages if necessary, of the functions of the system of labour administration". (The ILO Manual for Drafting ILO instruments contains a detailed discussion of flexibility, exclusion and exemption clauses in ILO instruments (ILO 2006f: 45-53)).

Just over two decades ago Jean-Michel Servais predicted that the quest for flexibility in the process of framing ILS would continue and would perhaps intensify (Servais 1986:198). This prediction has proved correct. Indeed, as George Politakis notes, in recent years the demand for flexibility has increased, in part because of the increasingly technical nature of recent conventions (Politakis 2004: 496). It could well be that the demand for flexibility is on the increase because today the ILO is seeking to reach an increasingly complex range of situations in new and unfamiliar contexts.

Thus, new forms of employment relations, including those in the informal economy, are requiring ever more creative approaches to the drafting of international labour conventions. Some observers have described this process as leading to a general softening of international labour standards (Duplessis 2006). Whether or not this is an accurate description of this process, it is undoubtedly true that the subject matter of Conventions is becoming increasingly complex and this complexity creates a demand for more flexibility.

1.4 The ILS regime is inclusive and dynamic

One of the consequences of the flexible nature of the ILS regime is its dynamism. Most conventions that address issues of fundamental human rights apply to all workers, rather than only to workers who are in a clear employer-employee relationship (Trebilcock 2004, Schyter 2002). This is contrary to the view that the ILS regime reflects an old-fashioned view of industrial development (Fudge and Owens 2006). The ILS regime is also permanently evolving to ensure it keeps up with social, economic and technological developments.

The dynamic quality of the ILS regime is borne out by provisions, such as those in the Labour Administration Convention (No. 150, 1978), that provide for the gradual extension of the benefits of the Convention to workers or enterprises it otherwise does not cover. Several other Conventions contain provisions that expand, albeit cautiously, the reach of its provisions. Thus, Convention No. 117, the Social Policy (Basic Aims and Standards) Convention (1962), provides that Members must take measures to improve living conditions of independent producers.

The 1995 Protocol to the Labour Inspection Convention (1948) extends the coverage of the Convention to activities in all categories of enterprises that are not considered as industrial or commercial. The Rural Workers' Organization Convention (No. 141, 1975) extends its coverage to all categories of rural workers, whether they are wage earners or self-employed. Likewise, the Labour Inspection (Agriculture) Convention (No. 129, 1969) applies to any agricultural undertaking in which employees or apprentices work regardless of their form of remuneration or the duration of their contract.

Several international labour conventions aim to protect workers who are not usually found in the standard type of employment relationship.⁵ Thus, for example, the Home Work Convention (No. 177, 1996) requires Members to develop and implement national policies aimed at improving the situation of home workers. A special objective of the Convention is to promote the equality of treatment between home workers and other wage earners. The Indigenous and Tribal Peoples Convention (No. 169, 1989) requires Members to adopt special measures to ensure the effective protection of workers who are traditionally excluded and often work in the informal sector.

1.5 Enterprise size as a factor in the ILS regime

The number of workers employed by an enterprise or the nature of the work carried out by a given enterprise are factors taken into account by a few, but important conventions.

⁵ See "Annotated Guide to R. 198 on the employment relationship", at <http://www.ilo.org/public/english/dialogue/ifpdial/downloads/guide-rec198.pdf>

In historical terms it is interesting to note that the Hours of Work Convention (No. 1, 1919), which sets the eight-hour day and forty-eight hour week norm, contains an exception regarding Japan. It provides (Article 9(f)) that in Japan the Convention applies to undertakings employing 10 or more employees. The Hours of Work (Commerce and Offices) Convention (No. 30, 1930) allows Members (Article 7) to make permanent exceptions for shops where the nature of the work, the size of the population or the number of persons employed render inapplicable the working hours stipulated by the Convention.

The Labour Inspection Convention (No. 81, 1947) provides that in the process of appointing inspectors Members should pay due regard (Article 2 (i) and (ii)) to the number, nature and size and situation of the workplace liable for inspection and to the number and classes of workers employed in such workplaces.

The Social Security (Minimum Standards) Convention (No. 102, 1952) and the Employment Promotion and Protection Against Unemployment Convention (No. 168, 1988) contain similar references to the size of enterprise. Both Conventions allow countries, under certain conditions, to reduce the number of workers entitled to benefits and specifically, they allow Members to exclude workers employed in enterprises employing fewer than 20 workers.

The Plantation Conventions also refer to enterprise size. The Convention Concerning Conditions of Employment of Plantation Workers (No. 110, 1958) excludes from coverage family or smallholdings producing for local consumption and not regularly employing hired workers. The protocol of this Convention (P 110, 1982) extends the exclusion of the Convention to undertakings of not more than 12.5 acres that do not employ more than 10 workers. The drafters of the Protocol seem to have been fully aware that this exception might prompt large plantation owners to sub-divide their property in order to escape the reach of the law. Thus, the Protocol provides that in their Report on the application of the Convention Members should indicate the measures they have taken to ensure that the Convention continues to be applied to undertakings that may have been created by the division of a plantation after the entry into force of the Protocol.

The Workers' Representatives Convention (No. 135, 1971) protects workers' representatives against any act prejudicial to them based on their status, on their activities as such, or on union membership. This Convention also provides (Article 2) that workers' representatives shall be provided with facilities to perform their functions, but due account should be taken of the "needs, size and capabilities of the undertaking concerned".

The Occupational Health and Services Recommendation (R. 112, 1959) refers to the size of the enterprise in order to determine the policy priority in establishing occupational health services. Paragraph 4 of the Recommendation provides that the objective is to set up occupational health services in all industrial, non-industrial and agricultural undertakings. Yet, acknowledging that this goal might be unattainable in many countries, it provides a system of priorities which, as well as including enterprises where health risks or hazards are the greatest, should include enterprises that employ more than a prescribed number of workers. It should be noted, however, that the Occupational Safety and Health Convention (No. 155, 1981) does not contain a similar type of provision. Under this Convention (Article 2 (2)) Members may wholly or partially exclude limited categories of workers in respect of which there are particular difficulties.

The Paid Educational Leave Convention (No. 140, 1974) provides (Article 9 (a)) that special arrangements to enjoy the benefits of paid leave should be made for workers who find it difficult to fit into general arrangements for paid leave. Special provisions

should also be made (Article 9 (b)) in the event that small or seasonal undertakings find it difficult to fit into general arrangements. It should be noted, however, that in either case, these special arrangements are not meant to exclude workers of small enterprises from the benefits provided by the Convention.

The Termination of Employment Convention (No. 158, 1982) contains perhaps the most important exception based on size of the enterprise. Article 2 allows Members, prior consultation with employers and workers, to exclude from all or from certain provisions of the Convention certain categories of employed persons “in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them”. It should be noted that the Termination of Employment Recommendation (No. 166, 1982) contains safeguards to prevent employers from resorting to short term contracts of employment so as to exclude workers from the protection of Convention No. 158.

1.6 Family enterprises and other small units

One of the most common exclusions allowed in the ILS regime concerns undertakings where only members of the family work. Thus, for example, the Hours of Work (Industry) Convention (No. 1, 1919) excludes undertakings in which only members of the family are employed. The Hours of Work (Commerce and Offices) Convention (No. 30, 1930), for its part, allows Members to exclude from the application of the Convention establishments in which only family members are employed.

The Night Work of Young Persons (Industry) Convention (No. 6, 1919), the Night Work of Young Persons (Non-Industrial Occupations) Convention (No. 79, 1946) and the Night Work of Young Persons (Industry) Convention (Revised) (No. 90, 1948) contain similar exceptions: undertakings in which only family members are employed are authorized to employ young workers, provided the work is not harmful, prejudicial or dangerous. The Night Work (Women) Convention (Revised) (No. 89, 1948) also contains an exception to the prohibition of employment of women during the night. Article 3 exempts from this prohibition undertakings in which only members of the family are employed. The Protocol of 1990 to this Convention allows Members, prior consultation with the social partners, to provide variations in the duration of the night period and in the exemptions stipulated in Article 3. The Maternity Protection Convention (Revised) (No. 103, 1952) allows national laws or regulations to exempt from the application of the Convention undertakings in which only members of the family, as defined by national laws or regulations, are employed.

It however has to be pointed out that Convention No. 103 is not anymore open to ratification, and that the Maternity Protection Convention, 2000 (No. 183), the most recent Convention on this matter, applies to all employed women, including those in atypical forms of dependent work. Convention No. 183, does therefore not allow the possibility to exclude any category of undertaking from its scope of application.

It however leaves it (Article 2, paragraph 2) to each Member the possibility to exclude, after consulting the representative organizations of employers and workers concerned, wholly or partly from the scope of the Convention limited categories of workers when its application to them would raise special problems of a substantial nature. The option to exclude can only be exercised once, upon submission by the Member of its first report on the application of the Convention. After this date, Members are no longer entitled to exclude additional categories of persons. In its subsequent reports, the Member

shall describe the measures taken with a view to progressively extending the provisions of the Convention to these categories.

The Holidays with Pay (Agriculture) Convention (No. 101, 1952) allows Members to exclude from the application of all or part of this Convention persons whose conditions of employment render its provisions inapplicable, such as members of the farmer's family employed by him. By contrast the Rural Workers' Organization Convention (No. 141, 1975) applies to tenant, sharecroppers or small owner-occupiers who work the land themselves, even if they do so with the help of their families.

1.7 References to small and medium-sized enterprises

Employment Policy Convention (No. 122), adopted in 1964, has been the cornerstone of the ILO's subsequent work in the field of employment and job creation in SMEs, specifically laying foundation for Recommendations 122 and 189 (ILC 2004). Convention calls upon the member States to adopt, as a major goal of social and economic policy, the objective of full, productive and freely chosen employment with availability of productive jobs. The pre-eminent role of small enterprises in job creation was referred to in Recommendation 122. Recommendation 189 provides that the fundamental role of SMEs is recognized in creating full, productive and freely chosen employment including increased participation of disadvantaged and marginalized groups. The Convention also laid foundation for development of the Global Employment Agenda that has emphasized decent employment through entrepreneurship (ILO 2003).

As interest in micro and small enterprises has grown, international labour conventions and recommendations have begun in recent years to refer specifically to them. The recent Promotional Framework for Occupational Safety and Health Convention (No. 187, 2006) stipulates (Article 4) that Members shall establish a national system that should include support mechanisms for the progressive improvement of occupational safety and health "in micro-enterprises, in small and medium-sized enterprises and in the informal economy". Convention No. 187 does not, however, define the terms micro, small or medium enterprises.

A previous recommendation, the Employment Policy (Supplementary Provisions) Recommendation (No. 169, 1984) uses the generic term small undertaking. More recently, Recommendation No. 189 employs the terms small and medium-sized enterprises (Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998) and leaves it up to Members to define the terms small and medium-sized enterprises. This Recommendation does, however, stipulate that it applies to all branches of economic activity and to all types of small and medium-sized enterprises, irrespective of the form of ownership, including family enterprises, cooperatives, partnerships, and sole proprietorships.

Recommendations No. 169 and 189 place special emphasis on the role of small enterprises in job creation. Thus paragraph 30 of Recommendation No. 169 urges Members to take into account the importance of small-undertakings as potential sources of new employment and as devices to enhance economic growth, and paragraph 31 urges Members to promote complementary relationships between small undertakings and other enterprises so as to improve their working conditions and their access to product markets, credit, technical expertise and advanced technology.

The employment potential of MSEs is once again given prominence by the Job Creation in Small and Medium-Sized Enterprises (R. 189, 1998). Noting in its Preamble

that small and medium-sized enterprises are increasingly responsible for the creation of the majority of jobs throughout the world, it calls upon Members to adopt measures consistent with the acknowledgement of this critical role (Paragraph No. 2).

Recommendation No. 189 addresses in more detail the issue of workers' rights in small enterprises. Paragraph 5 states that as well as suitable fiscal and monetary policies for the promotion of small enterprises, Members should establish and apply adequate social and labour legislation. Paragraph 6 further stipulates that measures for the promotion of small and medium-sized enterprises should be complemented by policies designed to enable these enterprises to provide productive and sustainable employment under adequate social conditions. These policies include providing these enterprises with fair systems of taxation and equal opportunity in financial matters. In the area of labour law, paragraph 6 stipulates that Members should "ensure the non-discriminatory application of labour legislation, in order to raise the quality of employment in small and medium-sized enterprises" and should "promote observance by small and medium-sized enterprises of international labour standards related to child labour". Paragraph 7 further develops the labour law implications of the policies identified in Paragraph 6. It calls upon Members to review their labour and social legislation to ensure that they meet the needs of small and medium-sized enterprises, while guaranteeing adequate protection and working conditions for their workers.

1.8 ILS guidance on MSEs

The foregoing shows that since its inception the ILS regime has been aware of the special needs and interests of small enterprises. Its approach, however, has evolved in line with economic, social and cultural changes. Some of the factors that conventions take into account to address the needs of small enterprises are related to the size of the enterprise and the practical problems that small enterprises may have in complying with the standards embodied in the Convention.⁶ This is the case, for example, of the exclusion clause of Convention No. 158 on the termination of employment.

Germany excludes from the scope of this Convention enterprises employing fewer than 6 workers. Such exclusion of small enterprises from the scope of this Convention is meant to provide small enterprises with administrative and financial flexibility (ILC 1995: No. 69). The exemption of small undertakings contained in the Hours of Work (Commerce and Offices) Convention (No. 30, 1930) and the reference to the size of the enterprise in relation to the appointment of labour inspectors (Convention No. 81) are, undoubtedly, prompted by practical considerations. The exclusions in the social security and employment benefits conventions (Conventions Nos. 102 and 168) also take into account the difficulties that poor countries would face if they were required to provide instant and comprehensive social protection coverage.

Exclusions regarding family enterprises relate mainly to night work by children or women or to work by family members in small agricultural undertakings. The assumption underlying these exclusions is that the family context provides these workers with protection against the risks the respective Conventions seek to cover (Von Potobsky 1992:621/5).

The "family enterprise" exception has not been used in recent Conventions. As well as changing notions of safety within family units, it is likely that the main reason for this

⁶ See "Manual for Drafting ILO Instruments", pp. 46 and Appendix 6 at: <http://www.ilo.org/public/english/bureau/leg/manual.htm>

development is that today most illegal child labour takes place in small-scale family undertakings. A large proportion of working children are found in family enterprises in the agricultural sector. Another sector where family enterprises employ children is small-scale mining, where children as young as 6 or 7 years old carry out support functions under dangerous and exploitative conditions (ILO 2002: 22,30, ILC 2004: 112).

Since the early 1980s, the ILS regime has adopted a more direct approach towards micro and small enterprises. Thus, in 1984, Recommendation 169, along with acknowledging the important role that small enterprises play in creating employment, also urged Members to take measures to improve working conditions in these undertakings.

Recommendation No. 189, which also acknowledges the role of small enterprises in employment generation, reflects a more explicit concern for the quality of employment in small enterprises. It states that measures taken by Members should be aimed at improving the quality of employment and that revisions of labour law that seek to meet the needs of small and medium-sized enterprises should not undermine the protection and working conditions of their workers. Thus, under the ILS regime Members have flexibility to adapt and tailor labour law provisions to the needs of micro and small enterprises, provided that the standards do not fall below those prescribed by international conventions and recommendations.

Section 2: National legislation and policies towards MSEs

2.1 Introduction

This section offers a general overview of the way national legislation in developing and developed countries regulates small enterprises. In the case of developing countries the focus of this section is specifically on MSEs as defined in the Introduction. The materials on developed countries also focus on micro and small enterprises, but include data relating to medium-sized enterprises because most of the statistics and studies of small enterprises in industrialized countries generally divide them into two categories: small enterprises, those employing 50 employees or fewer; and medium-sized enterprises, those employing between 51 and 250 employees. Thus the acronym these studies use to refer to enterprises in this sector is SME – small and medium size enterprises. In this chapter, the term SME refers specifically to micro, small or medium-sized enterprises in developed countries.

Micro and small enterprises in developed and developing countries have some common features. In both groupings of states, micro and small enterprises account for a large proportion of non-agricultural employment, wages tend to be lower than in large enterprises, the structures of workers' representation is weak, hours of work tend to be longer, equal opportunity policies are not enforced, pay tends to be determined unilaterally by the owner-manager and labour disputes rarely take the form of strike action.

Despite these similarities, there are also some major differences, most of which have to do with the differences in levels of economic and social development. Thus, for example, while in many developed countries the promotion of micro and small enterprises is often linked to high technology firms, this is rarely the case in developing countries. Indeed, in some developed countries salaries for highly qualified people are higher in micro and small firms than in larger firms (European Foundation 2001a: 7).

Likewise, while in terms of social protection and social security benefits workers of micro and small enterprises in developed countries do not fare as well as workers employed in large enterprises, this differential is often amply compensated by state-funded mechanisms of social protection and social security. Moreover, while in developed countries micro and small enterprises do not fully comply with occupational, health and safety regulations, the scale of the problem in these countries is miniscule, when compared with the situation of similar enterprises in most developing countries. Yet, despite these differences, both developing and developed countries treat small enterprises differently from larger enterprises.

This section does not address the issue regarding the distinction between micro enterprises that are fully legal and duly registered with national authorities and those that operate in the informal economy. It is generally agreed that the line that divides formal micro enterprises and informal enterprises is difficult to draw. Indeed, as Victor Tokman and his collaborators have argued in scores of articles and books the line that divides the formal and informal sector is characterized as a grey area where enterprises and workers move in and out of the sphere of formal legality (Tokman 1992). Indeed, in some countries, enterprises that are formal and legal in the eyes of the law do not necessarily comply with all the formalities required by labour law and hence their workers are 'informal workers'. Conversely, many informal enterprises comply with some legal requirements; for example, street vendors may obtain permission to occupy public spaces

under certain conditions, yet they may not comply with fiscal, labour or health regulations. Thus, formality and informality is better seen as a continuum, the one merging with the other (ILC 2002: 125, Maldonado 1997: 727, Sepulveda and Syrett 2007).

For the purpose of this section, the conceptual and practical difficulties raised by the distinction between micro and small enterprises, on the one hand, and informal enterprises, on the other, do not pose a major problem because the task here is merely to identify whether, and if so how, national legislation differentiates between enterprises in terms of the size of their workforce. The legal status of an enterprise, as formal or informal, is not generally a factor that the law takes into consideration when drawing distinctions regarding enterprise size. It is of course arguable that in many cases the distinction drawn by the law regarding the reach of the law in terms of the size of the enterprise may have the intended or, more likely, unintended consequence of either encouraging the enterprise to embrace formality or, again, more likely, pushing it further into the labyrinth of informality.

2.2 Enterprise size and the reach of labour law

In several developing countries workers in micro and small enterprises are not protected by labour law because the law excludes from its scope undertakings with fewer than a given number of workers. In Korea the Labour Standards Act only applies to enterprises that employ more than 5 workers (ILC 2006d: 28). In India, section 2 of the Factories Act, 1948, provides that labour legislation only applies to enterprises with 10 employees or more. Pakistan's Factory Act also limits the reach of labour legislation to enterprises that employ 10 or more workers (ILC 2001: 91). In Zimbabwe the threshold (section 3 of the Factories and Works Act, 1951 as consolidated and amended up to 1996) is 5 employees; while in Nigeria (section 87 of the Factories Act, 1987) the threshold is 10 employees (ILC 2006b: 9). Kuwait excludes from the scope of the Labour Code (section 2) workers at enterprises that operate without recourse to power and employ fewer than 5 people (ILC 2003: 455).

In some countries the Minister of Labour has the power, subject to some procedural requirements, to exclude or include categories of workers within the scope of the labour law. In Iran, for example, enterprises with fewer than 10 workers may be temporarily excluded from the reach of labour regulation (ILC 2006d: 28). In Botswana the Minister of Labour has the power to exclude, partially or totally, any specific occupation (ILC 2006d: 28). In South Africa, the Labour Relations Act and the Basic Conditions of Employment Act give firms the possibility of applying for temporary exemptions from some of the provisions of the Act (Bhorat et al. 2002: 50/1). In Nepal the Labour Act (192) only applies to establishments that employ 10 or more workers. The Act, however, gives the Government the power to exclude any larger establishment from any of the provisions of the Act. The Government also has the power to bring within the scope of the Act establishments that employ fewer than 10 workers.

2.3 Collective representation and consultation

Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise stipulates (Article 2) that workers and employees "without distinction whatsoever" shall have the right to establish and join organisations of their own choosing without prior authorisation. In practice, however, most countries require a minimum number of employees to form a union. Although the Convention does not directly address this point, the ILO's Committee of Experts has not found that such a requirement is necessarily inconsistent with the Convention. Instead, the Committee has held that the

number required to form an organization may vary according to the conditions in which restrictions are imposed.

In general terms, it would seem that the Committee regards reasonable a minimum requirement of 20 members to form a union. In the case of restrictions imposed on the establishment of an employers' association, the Committee has held that a provision requiring 10 or more employers engaged in the same industry or activity, or similar or related industries or activities, to establish an employers' association is excessive and constitutes a breach of the employers' right to establish organizations of their own choosing (ILO 2006d: 60/1).

The freedom of association of workers of micro and small enterprises is effectively denied by national regulation that imposes an excessively high threshold for the establishment of workers' organizations. Paraguay, for example requires 300 workers to establish branch trade unions. The Committee of Experts has repeatedly rejected the government's argument that this requirement is both necessary because of the country's national circumstances and acceptable because Convention No. 87 is silent on this point (ILC 2007a: 139).

A similarly inordinately high threshold is found in Serbia's Labour Code, which requires the founding members of employers' organizations to employ at least five per cent of the workforce in a given branch, group, subgroup, line of business or territorial unit. The Committee of Experts found that this requirement amounts to a denial of the employers' right to organize, especially those in micro, small and medium-sized enterprises (ILC 2006c: 123).

Venezuela, prompted partly by the views of the Committee of Experts, has recently reduced from 100 to 40 the minimum threshold required to form a trade union. It has also reduced from 10 to 4 the number of employers required to form an employers' organization (ILC 2007a: 178). Nigeria's Trade Unions Act requires 50 workers to form a union. This threshold, according to the Government of Nigeria, does not unduly restrict the establishment of unions (ILC 2007b). In Ecuador the threshold fixed by the law for the establishment of trade unions is 30 (ILC 2006c: 85/6).

It should be noted also that sometimes certain legal formalities required for the establishment of associations might have the effect of violating the right of freedom of association. In Haiti, for example, the Criminal Code requires government consent for the establishment of any form of association of more than 20 members (ILC 2004a: 86).

In many countries national legislation restricts the freedom of association of agricultural workers, especially in the case of workers employed by small-scale enterprises. In Bangladesh, for example, the Industrial Relations Ordinance of 1969 applies only to large-scale, organized farm enterprises. Likewise, in Pakistan the Industrial Relations Ordinance, 2002, does not extend to the agricultural sector, while in Sri Lanka the majority of agricultural workers are denied freedom of association, as they are mostly small farmers that operate in smallholdings. Even in cases where the law provides a relatively low threshold to allow for the establishment of unions, agricultural workers find it difficult to exercise their rights. In Ecuador, for example, where the law requires a minimum of 30 workers to establish unions, the owners of large plantations formally subdivide their holdings to prevent their establishment (ILO 2004a: 34/5).

It should be noted that Costa Rica has recently made some progress in allowing the unionization of agricultural workers. Previously, the Labour Code excluded from its scope, and hence from the right to form unions, workers in agricultural enterprises that had fewer than 6 workers. The Supreme Court, however, recently declared this provision

unconstitutional and thus, at least formally, labour rights and the right to organize have been recognized as applying to all agricultural workers (ILC 2003: 247). Yet, exclusions continue in force in other countries in the region. Thus, Honduras, for example, excludes from the rights of Convention No. 87 workers in agricultural enterprises that employ fewer than 11 workers (ILC 2004a: 86),

Most countries in EU 15 establish minimum thresholds below which collective representative structures are either not allowed or not protected. The two exceptions are Portugal (for workers' committees) and Sweden (trade union representation) where there is no minimum. The most common lower limit for allowing collective representation is 50 employees, which is the norm for works councils in France and for health and safety committees in Belgium and Spain. The threshold for a works council in Greece is 50, but is reduced to 20 if no trade union is present in the company. In Denmark the threshold for a works council is 35, while in Finland it is 30. (European Commission: 2006:66).

In Germany works councils are not allowed in enterprises with fewer than 5 employees (European Foundation 2001b: 1). As a consequence, in 1990, only two per cent of firms with fewer than 10 employees and less than ten per cent of small enterprises with fewer than 50 workers had established works councils. The corresponding figure for larger firms (between 50 and 499 workers) was 75 per cent. In Finland, the law that governs cooperation within enterprises does not apply in enterprises with fewer than 30 workers, while in Spain employees' representation is only allowed in enterprises that have more than 6 employees (European Foundation 2001: 5).

The European Union Directive (EU Directive/2002/14/EC) establishing the general framework for informing and consulting employees in the European Community excludes from its scope establishments employing fewer than 20 employees and undertakings employing fewer than 50 workers. Article 2 of the Directive defines an undertaking as a public or private undertaking operating within the territory of a Member State whether or not operating for profit.

An establishment is a unit of business located in the territory of a Member State where an economic activity is carried out on an ongoing basis. The Preamble of the European Directive (paragraph 19) explains that small undertakings and enterprises are excluded so as not to over-burden small enterprises with financial or legal constraints that might hinder their establishment and development.

2.4 Collective bargaining

The legal restrictions and structural impediments that workers in micro and small enterprises face regarding the establishment of unions naturally undermines their capacity to exercise their collective bargaining rights recognized by The Right to Organize and Collective Bargaining Convention (No. 98, 1949).

Yet, even in countries where these workers can form unions (such as Ecuador, Fiji, Lebanon, Peru, Swaziland, Uganda, and Venezuela), their capacity to bargain collectively is indirectly denied by the law by means of a requirement that, in order to bargain collectively, unions must represent at least half of the enterprise or bargaining unit. The impact of this requirement on agricultural workers in countries such as Ecuador, Fiji, Lebanon, Peru, Swaziland, Uganda, and Venezuela, is devastating. Indeed, because the agricultural sector is characterized by seasonal employment, unions have great difficulties in attracting such a percentage of members and, as a consequence, cannot exercise the right of collective bargaining (ILC 2004a: 34/5).

Collective bargaining in small enterprises in developed countries is also rare. In 2004 in the UK, for example, where collective bargaining occurs at company level, only five per cent of SME employees had their wages set by collective bargaining (Forth et al. 2006: 58). As a consequence, four-fifths of UK SME employees had their wages set unilaterally by management (Forth et al. 2006: 59). In countries with more centralized systems of bargaining, such as France, Belgium and Spain, sector agreements are extended to non-signatory employers, although it is not certain whether these agreements are fully implemented (European Foundation 2001:14). Table 1A in Annex offers an overview of the collective bargaining coverage in OECD countries.

2.5 Wages and employment conditions

In some countries legislation excludes, or authorizes the competent authority to exclude industries, enterprises or occupations from provisions that guarantee workers a minimum wage. Categories of workers excluded include home workers, as is the case in Chile, and persons involved in piecework, as is the case in Nigeria. Some countries, such as Botswana, Guyana, Nepal and Pakistan, exclude the agricultural sector altogether, while others exclude workers in small agricultural undertakings, as is the case in the Dominican Republic, which excludes agricultural enterprises that employ fewer than 10 workers. Nigeria excludes from minimum wage legislation workers employed in any type of establishment with fewer than 50 workers. In the Philippines workers in retail and service establishments with fewer than 50 workers are excluded (ILC 1992: 110).

Workers in micro and small enterprises are often denied some of the rights recognized under the Protection of Wages Convention (Convention No. 95). The main objective of this Convention is to ensure the prompt and direct payment of wages to guarantee the right of workers to dispose of their wages in whichever way they please. The Convention also protects workers from the employer's creditors.

States that have ratified this Convention are allowed (Article 2) to exclude certain categories of persons from any or all of its provisions whenever the application of these provisions would be inappropriate. The option to exclude can only be exercised once, upon submission by the Member of its first annual report on the application of the Convention. After this date, Members are no longer entitled to exclude additional categories of persons.

This provision is not, however, fully observed. In 2000, for example, the Government of Bahamas published the Employment Protection Bill, which excludes from the scope of the Convention domestic employees, manual labourers and employees in small resorts with less than fifteen rooms. The Government also announced its intention to exclude from the Convention petrol station attendants (ILC 2003a: 27).

Convention No. 95 (Article 14) requires that workers should be adequately informed of general wage conditions and of the particulars of their wage for the period concerned. In several countries workers are informed of wage conditions through wage regulations that are often displayed at the workplace. The obligation to produce and display wages regulation, however, is often restricted to enterprises that employ more than 10 workers. This is the case in Thailand, Chad, the Democratic Republic of the Congo, Libya and Mali (ILC 2003a: 254).

In some countries the law requires employers to maintain an employer's wage register, containing all the wage details of its employees. These registers are supposed to be kept for a period of up to ten years and must be made available to labour inspectors. In several countries, persons employing domestic workers and small agricultural enterprises

employing fewer than 10 workers are exempted from this obligation. These countries include Burkina Faso, Djibouti, Madagascar, Senegal, Cameroon, Mauritius and Niger (ILC 2003a: 269).

The requirement of publishing employment rules dealing with matters related to the payment of wages and work organization is often restricted to enterprises that employ more than a minimum number of workers. In Croatia the minimum figure is 20 workers (ILC Wages Rep 2003: 255). In Chile only enterprises employing more than 25 workers are required to prepare work rules (Dialogue 2007).

It is generally known that wages and conditions of employment in MSEs in developing countries are poor, often falling below the minimum levels set by core international labour standards. Although in developed countries wages and conditions of employment in small enterprises are far better, they are not as good as those prevailing in larger companies.

Thus, for example, in all the EU 15 countries wages and conditions of employment of workers employed in larger companies are better than those prevailing in small enterprises. Indeed, according to a recent survey the average pay in SMEs in Europe is between 70-80 per cent of the average national pay. Workers in Italian SMEs are the lowest paid (62 per cent of national average), while SMEs in The Netherlands top the ranking with pay reaching 94 per cent of national average. This survey also confirms that as the size of enterprises increases, so do wages.

Thus, for example, in Germany, wages for workers in firms with fewer than 50 workers are lower than those working for firms that employ between 50 and 199 (Edwards and Ram 2006: Tables 2 and 3). A recent survey in the United Kingdom found that one-quarter of SME employees received £5 or less for an hour's work and most of these low-paid workers are women. Nonetheless, in the UK workers in SMEs record a higher level of job satisfaction than workers in larger companies (Forth et al. 2006: 62/3).

2.6 Hours of work, weekly rest and night work

Convention No. 1 on the hours of work in industry and Convention No. 30 on hours of work in offices and commerce allow for exceptions. Convention No. 1, which sets the eight-hour day and forty-eight hour week as the standard for industrial enterprises, exempts from this standard family undertakings (Article 2). Convention No. 30 allows permanent exceptions in shops and other establishments where "the nature of the work, the size of the population or the number of persons employed render inapplicable" the general standard set by the Convention (Article 7 c).

Undertakings involved in retail trade and restaurants, which in most developing countries are often micro and small enterprises, fall within the scope of the permanent exception to Convention No. 30. In Kenya, for example, the Shop Hours Act, which allows shops long opening hours, also allows the shops to require shop assistants to work during all the hours that the shop is open (ILC 2005: 53, 56). National legislation, however, often stretches the exceptions beyond the standard set by Conventions No. 1 and 30. Kuwait, for example, excludes temporary workers and workers employed in enterprises that employ fewer than 5 persons from the protection of these two Conventions.

The Weekly Rest (Commerce and Offices) Convention, 1957 (Convention No. 106) allows Members to exclude from the provisions of the Convention family enterprises that employ members of the family who are not and cannot be considered wage earners

(Article 5). The Convention also allows Members to exclude enterprises where, by virtue of the number of persons employed, the standard provisions of the Convention on weekly rest cannot be applied – “an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days”.

In these cases, the Convention allows Members to apply special weekly rest schemes (Article 7). The objective of this provision is to give Members flexibility, while guaranteeing workers in these enterprises weekly rest periods equivalent to those stipulated by the Convention. Thus, Section 2 of Kuwait’s Labour Code (1964), which denies weekly rest to workers employed in enterprises that employ fewer than 5 persons, is inconsistent with the Convention (ILC 2004a: 313).

Articles 10 and 11 of Convention No. 89 (Night Work (Women) Convention (Revised), 1948) make special provision for the application of the Convention to India and Pakistan, respectively. In both cases, the Convention provides that the term industrial undertaking includes factories and mines, as defined by the Factories and Mines Act of the respective countries. Pakistan defines factory as any premise that employs at least 10 workers. Thus, undertakings employing fewer than 10 workers are exempted from the Convention’s night work prohibition (ILC 2001: 91).

The exemption in national legislation from the rules governing the prohibition of night work (Conventions No. 89 and No. 171) is often based on the nature of the activity or the size of the enterprise. In Egypt, for example, a Ministerial Decree authorises a limited amount of night work by women in spinning and weaving companies and in factories.

Korea exempts undertakings that employ fewer than 4 workers from the prohibition of women’s night work. A more general exemption from the prohibition of night work applies in Korea to women employed in activities such as agriculture, forestry, fishing and livestock breeding. In Kuwait enterprises operating without recourse to power and employing less than 5 persons are exempt from the night work prohibition (ILC 2001: 102/3).

The available evidence for developed countries suggest that, in general, working time in small enterprises tends to be longer than in larger firms. In France, a recent survey found that there was a direct correlation between working hours and the size of the company. The smaller the company, the longer the working hours: the average working hours in 1999 in very small firms was 39.4 hours a week, while in large firms it was 38.8 hours a week. In this context it is interesting to note that in France the reduction of the working week to 35 hours, established in June 1998, initially excluded firms employing fewer than 20 employees. After January 2002 the 35-hour week was extended to smaller companies (ILC 1988). In January 2003, however, another Act relaxed the 35-hour week in order, inter alia, to take into account the needs of small enterprises (ILO 2003b: 70).

In Germany, holiday time in SMEs is shorter than in large companies. Working hours in Spain are considerably longer in micro and small enterprises compared to larger enterprises. Thus in 1999, the average annual working time in firms employing fewer than 11 workers was 1,812 hours, while the corresponding figure for firms employing more than 250 workers was 1,714 hours.

Two factors that explain the long working hours in Spanish SMEs are the excessive amount of overtime (which is rarely paid as such) and weekend work. (European Foundation 2001c: 10/11). It should be noted, however, that a recent survey of British SMEs did not find a significant variation in the number of hours worked by employees in small and large firms. This survey, however, did find that SMEs that required longer

hours of work were generally micro enterprises staffed by family members (Forth et al. 2006: 87).

2.7 Employment protection and collective dismissals

In most countries protective legislation relating to termination of employment does not apply to micro or small enterprises. As noted in section 2, above, Article 2 of Termination of Employment Convention (No. 158, 1982) stipulates that Members may exclude from all or some of the provisions of the Convention some categories of employees, such as workers on fixed-term contracts of employment or on probation. This Article (paragraph 5) also allows Members to exclude additional categories of workers “in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them”.

The assumption underlying Article 2 of the Convention is that Members will not abuse their right to exclude categories of workers. Indeed, Article 2, paragraph 6, states that Members that exclude workers pursuant to paragraph 5 are required to give reasons for the exclusion and are required, subsequently, to report on the evolution of their law and practice regarding the categories of workers excluded from the application of the Convention. Thus, the Committee of Experts, in its comments on Section 18 of Turkey’s Labour Act – which excludes enterprises employing fewer than 30 workers from the rule that requires dismissals to be based on valid reasons – requested Turkey to indicate whether the excluded workers were receiving protection equivalent to that offered by the Convention (ILC 2005a: 372).

In Pakistan the Industrial and Commercial Employment (Standing Orders) Ordinance (ICEO), excludes from the termination of employment safeguards establishments with fewer than 50 workers (Dialogue 2007a). In Sri Lanka the Termination of Employment of Workmen Act (1971) does not apply to undertakings that employ fewer than 15 workers (ILC 1995: 69).

In Thailand the law requires establishments employing 20 or more employees to negotiate an agreement setting out provisions on conditions of employment and termination of employment. Thus, in Thailand employees in undertakings with fewer than 20 workers do not have the safeguards afforded to workers of larger firms (Dialogue 2007b)

Some employment protection safeguards do not apply to workers of small enterprises. In France, for example, compensation, in addition to severance pay, is available to employees with at least two years of service, provided they work in firms with more than 11 employees (OECD 2003: 11). Small enterprises are generally not required to reinstate workers who have been unfairly dismissed on the ground that reinstatement is more practical in larger undertaking than in smaller undertakings, where personal factors assume greater importance (ILC 1995: 221).

In Italy the possibility of reinstatement is available to workers in firms employing more than 60 employees (OECD 2003:12). The law of individual dismissals regulates dismissals in Italian firms with fewer than 15 workers even if all the dismissals take place at the same time. In 2004 Australia removed the exemption from severance pay to small businesses employing fewer than 15 employees (OECD 2004: 59).

In Germany the Protection Against Dismissal Act (PADA) governs ordinary dismissals. PADA, however, does not apply to establishments that employ fewer than 6 full-time employees and it is only partially applicable to establishments that employ between 6 and 10 employees (Dialogue 2007 c). In 1991 the US National Conference of Commissioners of Uniform State Laws attempted to provide legislative guidelines for dismissals by developing a Model Employment Termination Act. This model Act, which is consistent with the Termination of Employment Convention (No. 158), restricts its scope to enterprises that employ 5 or more employees. In addition it only protects workers dismissed without a good cause who have been employed for an average of 20 hours a week for at least 26 weeks in the preceding year (Dialogue 2007d).

National laws define collective dismissal differently, based upon either the size of the enterprise or the proportion of employees dismissed within a given period. In Colombia, in undertakings that employ between 10 and 50 workers the proportion is 30 per cent. In undertakings that employ between 50 and 100 workers, the proportion is only 20 per cent. In enterprises that employ more than 1,000, the proportion is five per cent (Dialogue 2007e). Table 2A in Annex offers an overview of the practice in a select number of OECD countries.

2.8 Labour inspection

The exclusion of small enterprises from the scope of labour legislation has direct implications for the efficacy of national labour inspectorates since in most countries labour inspection only extends to areas covered by labour legislation. Although perhaps this outcome is formally consistent with Convention No. 81 (Convention concerning Labour Inspection in Industry and Commerce, 1948), it is probably inconsistent with its spirit. Indeed, (Article 2(1)) of the Convention does not identify the workplaces covered by the Convention. It merely states that labour inspection in industrial workplaces shall apply to all workers “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.” As a consequence, countries that exclude small enterprises from the scope of labour law are in fact excluding a large proportion of enterprises and a huge number of vulnerable workers from the labour inspection regime.

Labour inspection in rural areas in developing countries poses immense challenges. Article 4 of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), provides that the Convention shall apply to agricultural enterprises where employees or apprentices work regardless of the way they are remunerated or the type, form or duration of their contracts. This broad provision on the scope of application of the Convention is reaffirmed by the Convention’s broad definition of the term agricultural undertaking and an explicit provision (Article 1, paragraph 2) that states that no agricultural undertaking should be excluded from the national system of labour inspection. Moreover, the Convention also encourages Member States to extend the system of labour inspection to agricultural workers who are not formally in an employment relationship or in a position of dependency. In practice, however, these noble objectives have not been achieved since only a small proportion of enterprises in the agricultural sector are subject to any form of inspection (ILC 2006b: 10).

In Bolivia, for example, the Labour Code of 1942 excludes agricultural workers from its scope. Likewise, in Qatar, the Labour Code does not offer any protection to agricultural workers and, as a consequence, there is no state agency with responsibility for labour inspection in this sector. In countries where agriculture is covered, the labour inspection system does not extend to small-scale enterprises. In Bangladesh, for example, the Industrial Relations Ordinance of 1969 applies only to large-scale, organized farm

enterprises (ILO 2004a: 34). In Turkey, labour inspection in agriculture only covers undertakings employing 50 or more workers. Some countries do not limit the inspection system in terms of the size of the undertaking, but do so indirectly by excluding certain categories of workers from the labour inspection system. Thus, in Egypt, conditions of work of women and children working in agriculture are not within the remit of the labour inspection system (ILC 2006b: 17).

In several countries, labour inspectors in agriculture have broad powers to inspect living conditions of agricultural workers and their families. This is the case in Guatemala, Honduras, Kenya, Mauritius and Nigeria. Some of these countries, however, limit this type of inspection to large-scale enterprises. In Honduras and Guatemala, for example, this type of inspection is restricted to enterprises employing more than 20 workers (ILC 2006b: 20). Article 17 of Convention No. 129 provides that labour inspection in agriculture shall extend, in the manner determined by the competent authority, to the area of preventive control of new plants, new materials or substances and methods of processing materials. Colombia complies with this provision of the Convention, but only requires agricultural undertakings employing more than 10 workers to establish a safety committee. Undertakings that employ fewer than 10 workers are only required to appoint a 'lookout' designated jointly by employers and workers (ILC 2006b: 314).

Developing countries would probably resolve many of the problems relating to MSEs if they had effective systems of labour inspection. Yet, this is one of the weakest features of labour administration in developing countries. The problems that afflict labour inspection systems in developing countries are familiar: lack of human and material resources, poor training and prevailing levels of corruption. The recent retrenchment of state institutions has probably diminished even further the resources that countries allocate to their labour inspection systems. The figures are eloquent.

While in developed countries there is roughly one inspector for every 20,000 workers, in Sub-Saharan Africa and in the Asia Pacific region there is one inspector for every 80,000 workers (ILO 2006b). In some countries the number of inspectors is so low that it is even difficult to regard the country as having a national system of labour inspection. In Ethiopia, for example, the total number of inspectors is 44. Not surprisingly, labour inspectors are only expected to inspect enterprises with more than 1,000 workers, which they can do only once every five years (De Gobbi 2006a: 27). Applying a ratio of one inspector per 40,000 workers to various developing countries, De Gobbi found that Nigeria, which in 2001 had 500 inspectors, should have had 4,000 and Nepal, which in 2001 had 15 inspectors, should have had 125 (De Gobbi 2006: 37).

Even in regions where the overall number of labour inspectors is far from inadequate, there is a dramatic variation between countries. Thus, for example, in Latin America, while Chile has close to 20 inspectors per 100,000 workers, México has 1.72 and Ecuador only 0.57. Table 3A in Annex provides the number of labour inspectors available per 100,000 workers in Latin America.

Labour inspection of small enterprises also poses a major challenge in developed countries. In France, for example, the frequency of labour inspection of enterprises employing fewer than 50 workers dropped from one inspection every 4.6 years in 1987 to one inspection every 20 years in 2002. The frequency of inspections in enterprises employing more than 50 employees is not much better. Indeed, in this type of enterprise, the frequency of inspection fell from one inspection every two years in 1987 to one inspection every 4.2 years in 2002. The French government attributes the decline in the number of inspections to several factors, including the reduction in the number of inspection units, the complexity of the regulatory framework and the lower capacity of the inspection staff (ILC 2005a: 323).

2.9 Occupational health and safety

Ensuring adequate standards of health and safety is a major challenge for enterprises in developing countries, especially for MSEs. In 2001 in Latin America, the number of work-related accidents was 30 million and the number of fatalities was 40 thousand (ILO 2006: 14-15). In Namibia, a countrywide survey of micro enterprise workers found that only half of the respondents had ever been given safety equipment by their employers (Karuuombe 2002: 41). In Vietnam, a survey of 100 micro enterprises, comprising some 5,000 workers, found that, on average, 39 per cent of workers suffered from some work-related ailment. The two most common causes of their ailments were poor lighting and the absence of adequate devices to get rid of dust and toxic gases (Thi Hong Tu 2003: 8).

In Europe, health and safety standards in small enterprises are significantly lower than in larger companies. Surveys of SMEs in Spain and France found that the chance of suffering accidents at work was twice as high in small enterprises than in larger enterprises. It is likely that one of the factors that accounts for the higher incidence of accidents is the absence in SMEs of internal mechanisms and procedures to monitor and enforce health and safety standards. The high number of temporary workers employed by SMEs is also cited as a factor accounting for their lower health and safety standards (European Foundation 2001: 26).

2.10 Child labour

The ILO reports that the majority of working children – some 70 per cent – are found in the agricultural sector, especially in small-scale family holdings (ILO 2002a: 22). In family enterprises in Indonesia parents do not consider their children as workers, but merely as helping in the family enterprise. Likewise, in Malaysia, child labour is frequent in food stalls and small retail outlets run by family enterprises (ILC 2004: 112). Thus, national legislation that excludes from the scope of labour law small family enterprises or very small enterprises – generally fewer than 5 or 10 workers – may have the unintended effect of encouraging child labour. The Committee of Experts has drawn attention to this problem several times. In the case of Honduras, for example, the Committee noted that the minimum age provisions could not be fully applied in the agricultural sector because the Code excludes from its scope agricultural undertakings that employ fewer than 10 workers (ILC 2005a: 225/6). In the case of Turkey, the Committee noted the negative consequences for child labour in excluding from the scope of the Labour Act agricultural and forestry undertakings that employ fewer than 50 workers (ILC 2006c: 220).

An additional factor that contributes to the proliferation of child labour is the weakness of the system of labour inspection. This is the case, for example, in Pakistan, where there is no labour inspection in enterprises employing fewer than 10 workers. Local unions are resisting the Government's attempts to decentralize the machinery of labour inspections on the ground that local agencies are controlled either by industrialists or by feudal lords (ILC 2006c: 208).

2.11 Equality legislation and policies against discrimination

Micro and small enterprises generally do not have specialized human resources personnel. As a consequence, virtually all their recruitment decisions are taken by the owner-manager, paying scant attention to ensuring respect to principles of equal opportunity. Indeed, as a recent ILO Report suggests, neither large nor small companies

tend to appreciate that there is a close link between non-discrimination and equality. Moreover, many firms, large and small, consider equal opportunity policies as little more than tedious bureaucratic nonsense (ILO 2003a: 109).

In the UK, small enterprises use informal recruitment procedures, relying largely on personal recommendations, word of mouth or enquiries by existing employees. The potential for discrimination in recruitment practices is thus enormous. Yet, because of the informality prevailing in these enterprises, there is no evidence that employees or job applicants complain about discriminatory practices (Forth et al. 2006: 33/34). It is interesting to note, however, that in the UK, members of ethnic minorities are the most active members of unions in SMEs (Forth et al. 2006: 47). It is not clear, however, whether the high level of participation in union activities by members of minorities is prompted by perceived discriminatory practices or whether it is due to other factors. According to the findings of a recent survey, almost two-third of small enterprises in the UK do not have a written equal opportunities policy and more than half of managers do not feel that such a policy is necessary (Forth et al. 2006: 79). In the United States persons employing fewer than 15 employees do not fall within the meaning of the term employer for the purpose of the Civil Rights Act, 1964 (amended by the Equal Opportunity Act, 1972) (ILC 1988).

Some of the provisions of equal opportunity laws that are meant to give effect to Convention 111 on Equality and Employment and Occupation often only apply to enterprises that have more than a minimum number of workers. This is the case, for example, in Belgium where only enterprises with 50 or more employees have to report on their equal opportunity policies (ILC 1988). In countries where public contracting is linked to affirmative action measures, the programmes are generally applicable to enterprises that employ a minimum number of workers.

In the United States the contract compliance programme applies to employers with 50 or more employees. In Canada, the Federal Contractor's Programme under the Employment Equity Act applies to companies employing 100 or more workers (Faundez 1997: 34). In Namibia firms employing fewer than 25 employees are not required to implement affirmative action policies in the area of employment. In South Africa the Employment Equity Act only requires employers with more than 50 employees or with a turnover above a certain level to implement affirmative action.

The objective of achieving equal remuneration for men and women workers for work of equal value (Convention No. 100) is especially difficult in small enterprises that employ a large proportion of women, most of whom have no contract of employment and when they do they generally work on a temporary or a part-time basis. Female workers in small enterprises in the agricultural sector are an especially exposed group of workers since in some countries such as Bahrain, Syria and Egypt, agricultural workers are excluded from the scope of legislation that guarantees equal remuneration between men and women. Several other countries guarantee equal remuneration, but restrict it to enterprises that employ either more than 5 workers (Costa Rica) or more than 10 workers (Dominican Republic and Honduras) (ILC 1986: 98).

2.12 Maternity protection

National legislation often restricts the requirement to provide crèche facilities to enterprises that employ a minimum number of women. In Venezuela and Argentina the minimum number is fixed at 30 (ILC 1986: 137). In Ecuador, the Labour Code obligation to provide crèche facilities applies to enterprises that employ more than 50 workers (men or women). Ecuador's Labour Code, however, does not contain any provision giving

working mothers the right to interrupt their work for the purpose of nursing their children. The Committee of Experts has reminded Ecuador that its Labour Code should recognize this right. It has also reminded Ecuador that women who are nursing children and are working in enterprises that do not have a crèche should benefit from a reduced working day of six hours, which should be remunerated as a full-working day (ILC 2004a: 348).

Further research on aspects such as the right to maternity leave and benefits, guarantees against dismissal, health protection measures, and protection against discrimination based on maternity grounds may be desirable.

2.13 Parental leave

Parental leave is another area where national legislation takes into account the size of enterprises. In the United States the law requires employers that employ more than 50 employees to grant up to 12 weeks of unpaid leave in the event of the birth or adoption of a child, or serious illness of a child, spouse or parent (ILC 1993: 158). In France parents are allowed to opt for half-time work, as an alternative to parental leave. This option, however, is not openly available to workers in enterprises that employ fewer than 100 workers. The managers in these firms are allowed to refuse the request of half-time work if it is considered prejudicial to the running of the enterprise (ILC 1993: 158).

2.14 Concluding comments

State practice in both developed and developing countries shows that countries make ample use of the exclusions, discretion and flexibility envisaged by the ILS regime in the design of labour law rules that apply specifically to small enterprises. These special rules do not, however, amount to a coherent policy aimed at promoting MSEs or protecting its workers.

In some instances countries go beyond the limits set by international conventions, as is the case, for example when they exclude from the scope of the labour code workers in micro enterprises without providing them with alternative means of protecting their rights. Likewise, in some cases countries apply numerical thresholds in areas where the ILS regime does not contain such exemptions. This is the case of the Freedom of Association and Protection of the Right to Organize Convention (No. 87, 1948) and the Right to Organize and Collective Bargaining Convention (No. 98, 1949). As explained above, the Committee of Experts has accepted, in respect of the establishment of enterprise unions, that a minimum of 20 workers is reasonable as a minimum requirement to form a union (ILO 2006a: 60/1).

Whether or not specific thresholds are reasonable will depend on a variety of factors, including national legal traditions, peculiarities of the local context and the evolving interpretation of international standards. It is arguable that most of the provisions on collective dismissal that set special rules to workers of small enterprises are meant to protect rather than to discriminate against them. Yet, it is also undeniable that in countries where MSE workers lack effective mechanisms of representation, their interests and views are not adequately taken into account either by governments or by judicial bodies.

The evidence suggests that both in developed and developing countries workers in micro and small enterprises endure conditions of employment that are less favourable than those found in larger enterprises or in the public sector. Examples of less favourable conditions include longer working hours, the proliferation of fixed term and other non-traditional contracts of employment, higher levels of accidents and health risks, greater

exposure to discriminatory practices and lower levels of social protection. In developed countries these unfavourable conditions rarely fall below the minimum standards set by the ILS regime. In developing countries, however, the unfavourable conditions that most MSE workers bear often fall way below national and international standards. Their plight is exacerbated by the absence of adequate provision by the state of basic health and social welfare services. It is therefore crucial to ensure that any differential treatment provided for in labour legislation for MSE and their workers is designed to secure improvements in the quality of employment, as called for by Recommendation No. 189.

Section 3: Laws and policies for the promotion of MSEs in developing countries

3.1 Introduction

This section examines legislative enactments and government policies specifically targeted at micro and small enterprises in developing countries. The aim of most of these laws and policies is to support the development and establishment of micro and small enterprises. The objectives that figure prominently in many of these laws include the dissemination of managerial skills, support of marketing initiatives and training of employees. Health and safety are also issues frequently addressed by these laws. These instruments focus on improving micro and small enterprises' access to credit and facilitating compliance with fiscal and other financial obligations. A few developing countries, however – mainly from Latin America – have inserted labour law clauses into MSE promotion laws, or, as is the case of Peru, have enacted special legislation that regulates specific aspects of labour relations in MSEs. The objectives of these clauses are to facilitate compliance with labour law by the introduction of regulatory flexibility to support and enhance the capacity of these undertakings to generate employment; to provide incentives for informal enterprises to become formal; and, to prevent registered enterprises from reverting back into the informal economy. Legislative initiatives discussed in this section may not purport to permanently establish a comprehensive regulatory framework especially tailored to micro and small enterprises.

3.2 General features of MSE promotion laws

The institutional structure established by these laws generally comprises a Board consisting of representatives from different sections of the Government, as well as representatives from unions and employers' associations. Government agencies represented on these Boards generally include officials from the Departments of Industry, Finance, Agriculture, National Planning Commission and the National or Central Bank. In Federal States, such as India, Ministers of State Governments are also invited to join the Board. In Colombia, the law requires the Minister of Economic Development to appoint two representatives of the micro-enterprise associations to advise the Minister on MSE policies (ILO 2004: 122).

Virtually all the laws that seek to promote micro and small enterprises establish mechanisms aimed at simplifying the process of registration, generally establishing a so-called "one-stop-shop" (ILO 2004: 104). In many cases, the process of registration takes place at the local level and is entrusted to municipalities and other local agencies. Some laws establish special funds to facilitate micro and small enterprises' access to credit. Preferential treatment for micro and small enterprises is a feature of most legislation.

In Brazil, this type of preferential treatment is authorized by the Constitution, which provides that all state organs (federal and state) shall "afford micro-enterprises and small enterprises...differentiated legal treatment...through simplification of their administration, tax, social security and credit obligations or through elimination or reduction thereof by means of law" (Brazil 2007). Brazil's constitutional clause on micro-enterprises is exceptional, but preferential treatment in tax and financial areas is not unusual.

Thus, as well as Brazil, several countries (Argentina and Peru) have established special lower rates of taxation or exempt micro enterprises from income tax for periods of

up to five years or more. Preferential treatment in public procurement is also often one of the goals set out in these laws (Peru), although, in general, these laws do not establish procedures to achieve this objective. Some laws (in India, for example) establish penalties for those who purchase goods or services from micro enterprises and fail to pay on time.

The Family Micro-Enterprise Law, approved by the Chilean Congress in 2001, sets out to legalize micro enterprises that operate in the home of the entrepreneur. The law, which lingered in the Congress for seven years, allows any legal activity unless it is dangerous, pollutes the environment or causes a nuisance in the neighborhood. The process of registration is simple and is carried out by Municipal authorities. The law does not contain specific labour law provisions, except for the prohibition of employing more than five workers from outside the immediate family and who do not permanently live in the premises. The implementation of the law encountered some delays because the Office of the Comptroller General raised objections relating to planning permissions and building regulations. There have been no comprehensive evaluations of this law, but early indications suggest that the take up rate has been disappointing (Vergara del Río 2006, Di Meglio et al. 2006: 188/91)

There is little doubt that even minute procedural improvements, achieved through better and more efficient administration of the law, can have a major positive impact on MSEs. Although it is undeniable that in recent years some exaggerated claims have been made about the economic benefits of speedy company registrations and prompt issuing of operating licenses – the so-called one-stop-shop policy – it is nonetheless undeniable that even small procedural improvements in the overall regulatory framework relating to MSEs can have huge positive outcomes (de Soto: 1986).

3.3 Labour law reform and MSEs

In several countries labour law provisions are especially designed to provide flexibility and facilitate MSE compliance with labour law. In South Africa the Labour Relations Act and the Basic Conditions of Employment Act offer firms the possibility of applying for exemptions specifically tailored for small and medium-sized enterprises. Firms that apply for exemption have to demonstrate that the standard required by the legislation is harmful to their business. The exemptions are temporary and usually involve release from the obligation to pay the minimum wage or from the strict application of rules relating to working hours, the length of overtime or the provision of certain benefits to workers (Bhorat et al. 2002: 50/1). South African observers have noted the advantage of temporary labour regimes. According to them temporary regimes are advantageous as they are flexible temporary devices that achieve a balance between the protection of workers and the efficient use of productive resources (Bhorat et al. 2002: 51).

In some Latin American countries changes in labour regulation relating to MSEs have been part of comprehensive attempts to increase employment generally through the establishment of more flexible labour markets. Thus, for example, in 1995 Argentina extended to small enterprises measures that were part of a wider package of labour law reforms. The measures modified dismissal regulations allowing small firms to introduce shorter advance-notice periods through collective agreements. They also allowed firms with fewer than 40 workers and sales below a given level to extend probationary periods from three to six months and exempted them from the requirement that temporary contracts should be validated by collective agreements. In some cases, these firms were also excused from paying compensation in the event of termination (Berg et al. 2006: 135).

In 1998 Brazil extended a modified form of labour law to small undertakings, with the intention of general applicability. Thus, the provision that allowed firms to introduce fixed-term contracts with reduced social rights provided that firms with less than 50 employees could hire up to half of its employees under these conditions. The proportion of employees that could be hired under these conditions in larger firms was smaller as company size increased (25 per cent in firms with more than 200 employees) (Berg et al. 2006: 135, Vega 2005: 11/12).

Some developing countries, however, have introduced special labour law clauses in their MSE promotion legislation. The aim of these clauses is to simplify or adapt labour law obligations to the micro and small enterprise context. Thus, for example, Brazil's recently amended law on micro and small enterprises stipulates (Article 55) that, with regard to micro and small enterprises, labour, environmental and health inspection should be primarily educational or didactic, provided that the level of risk of the activities inspected is not high (Brazil 2007a). Brazil's micro enterprise law also exempts micro and small enterprises (Article 51) from filling in some forms and from keeping certain records relating to holidays, labour inspection and working hours.

A more controversial labour law clause inserted into an MSE promotion law is found in Section 8 of the Philippines Act to Promote the Establishment of Barangay Micro Business Enterprises (BMBEs) as of 22 July 2002. This section exempts Micro Business Enterprises from the minimum wage. This section makes it clear, however, that although workers in these small enterprises are not entitled to the minimum wage, "they shall be entitled to the same benefits given to any regular employee such as social security and healthcare benefits" (Philippines 2007). It is difficult to imagine, however, how a law that excludes workers from the minimum wage can, at the same time, credibly promise to protect workers' rights in the area of social security and healthcare.

Box 1:
Act for the Promotion and Formalization of Micro and Small Enterprises,
(Law No. 28015, 3 July 2003), Peru

Peru's special labour regime applies to micro and small enterprises, but only for a period of 5 years from the enactment of the Act – not from the time that the micro or small enterprise is registered under the Act. Thus, the Act is due to expire in 2008. Upon its expiration, the enterprises affected come under the ordinary rules of the Labour Code.

The Act defines micro enterprises as those that employ up to 10 workers and have an annual volume of sales below a specified amount. Small enterprises are firms that employ between 1 and 50 employees and have a volume of sales about five times larger than the amount specified for micro enterprises. In order to qualify under the Act the owner of the micro enterprise, or his/her representative, must submit an application to the Ministry of Labour providing information about the size and turnover of the undertaking, its location and, if appropriate, evidence that s/he has paid income taxes during the previous year.

Micro and small enterprises that qualify and are duly registered with the Ministry of Labour may apply a special labour regime, which consists of the following components:

1. Night work premium: micro and small enterprises that regularly operate at night are not required to pay the standard 35 per cent salary premium.
2. Holiday period: micro and small enterprises are allowed to reduce the annual holiday entitlement from 15 to 7 days a year.
3. Compensation in the event of unfair dismissal: the standard rate of one and a half months of salary per year of service up to a maximum equivalent to 12 months of salary is reduced to half a month's salary up to a maximum of six months.
4. Labour inspection: the law sets the Ministry of Labour an annual target of inspection for micro enterprises of 20 per cent. This target (Article 53), however, does not apply to enterprises that the law defines as small enterprises.

According to the Ministry of Labour, some 33,289 enterprises registered under the Act between 2003 and 2007. Unfortunately, this figure is not disaggregated, so it is not possible to know how many of these enterprises were formal before the Act came into force, how many have been recently established and how many are enterprises that previously operated informally. In any event, in order to assess the significance of this figure it is necessary to consider the size of the informal economy in Peru. Given that the number of informal enterprises operating in Peru is around two million, the number of registrations under the Act, though respectable, is still somewhat modest.

One of the factors that might explain the relatively poor impact of the Act is the fixed five-year period set for the duration of the special labour regime. Since it is safe to assume that one of the main objectives of the Act was to persuade informal enterprises to become formal, the five-year period set for the duration of the special regime is extremely short. Another factor that may explain the relatively modest impact of Peru's legislation is the Government's stated objective of intensifying the process of labour inspection.

Sources: www.mypeperu.gob.pe; Chacaltana 2006:35; Perry et al. 2007: 9-13.

3.4 Improving compliance with labour law

Many observers have noted that MSEs are the worst offenders when it comes to complying with labour law (Tokman 2001, Marshall 2004). Hence, it is not surprising that the aim of most labour law reforms targeted at MSEs is to establish a framework to facilitate compliance. One of the strategies employed by these laws is to simplify labour law procedures, especially those relating to filling in forms and keeping records for the purpose of labour inspection, as is the case in Brazil.

Another strategy is to allow MSEs to apply standards that are slightly below the general standards required by the law applicable to larger enterprises. This is the case of some of the provisions of Peru's special law on micro and small enterprises, as is the case of the provision in the Philippines that allows micro enterprises to pay wages below the minimum wage set for larger firms. A key assumption underlying this second strategy is

that excessive labour regulation is a disincentive for entrepreneurs, especially for those who run small companies and do not have the capacity, resources or knowledge to comply with labour law (Heckman and Pagés 2004). This assumption – though not universally shared (Bensusán 2007, Marshall 2004: 43; OECD 2006: 212 and OECD 2004: 63) – also informs the World Bank’s country rankings published annually by Doing Business, its flagship publication.

A recent World Bank Report on South Africa argues that excessive labour regulation leads to bad employment outcomes (World Bank 2007). According to this Report, South Africa ranks higher than all comparator countries (except for Brazil) in terms of difficulty in hiring and firing. Thus, the authors of the report do not find it surprising that MSEs in that country considered labour regulation as one of the most important constraints to increasing employment. Yet, this finding, which is based on the perception of MSE managers, is contradicted by a more comprehensive study that assesses the efficacy of South African Government policies on small, medium and micro enterprises over a period of ten years, from 1994 to 2004. According to this study most of the employment generated in this sector came from the creation of new enterprises, since due to structural reasons – unrelated to labour law – established micro enterprises generally tend not to generate new employment (Rogerson 2004: 770). This is also the case in Central America. According to the PROMICRO/OIT programme, only 5 per cent of micro enterprises in Central America (a total of 300,000) have potential for growth. Development for the rest of the micro enterprises involves not employment growth, but merely preventing further deterioration of conditions of employment (OIT 2003).

It is unlikely that the argument as to whether labour law hampers or facilitates the development of micro and small enterprises will be settled, as not enough is known about the characteristics and behavior of MSEs in developing countries. Most observers agree, however, that MSEs tend not to comply with labour law because they simply cannot afford it. This view is confirmed by a study carried out in Tanzania involving 150 micro enterprises. Indeed, since all the enterprises included in the survey were just about breaking even, had they fully complied with the law they would have gone bust (ILC 2002: 49).

In the context of Latin America, Victor Tokman has noted that micro enterprises with fewer than 10 workers cannot generally afford to pay the non-wage labour costs (Tokman 2001: 76). If micro enterprises are unable to comply with labour regulations because they don’t have the resources, is the solution to relax labour law requirements? Adriana Marshall, who conducted a cross-country analysis of labour legislation in Latin America, also found that non-compliance is disproportionately found among micro enterprises (especially those with no more than 5 employees). Yet, she emphatically rejects the idea that a relaxation of labour legislation would improve levels of compliance. In her view, non-compliance in Latin America is prompted largely by lax enforcement and by the prevailing views about acceptable levels of evasion; in other words, by the general climate of corruption (Marshall 2007: 3, 16). She notes, in particular, that firing costs do not influence compliance among micro enterprises, while perceptions of corruption have a clear effect in shifting their levels of compliance (Marshall 2007: 13).

It should be noted that the ILO fully endorses efforts to adapt and tailor labour law provisions to the capacity and needs of SMEs. This adaptation includes the differential application of labour law based upon enterprise size (ILC 2007: 92). Differential application of labour law or its simplification should not, however, involve any lowering of core labour standards: “it can only be justified in terms of promoting more effective application of the fundamental principles and rights at work” (ILC 2002: 49).

Section 4: Achieving decent work in micro and small enterprises

4.1 Introduction

Today it is generally accepted that micro and small enterprises have a major role to play in furthering economic growth. The laws that most countries have enacted to promote and support them are evidence of this awareness. Most of these laws, however, do not directly address the challenge of advancing the ILO's decent work agenda. Indeed, as explained in the preceding section, the main objective of these laws is to improve MSEs' access to markets, financial and business resources and to simplify fiscal and bureaucratic procedures. While there is no doubt that the successful implementation of these laws can, albeit indirectly, improve the quality of employment, achieving the ILO's decent work in micro and small enterprises requires more tailored policies. The quality of employment, as generally understood, comprises work-related factors that have an impact on the economic, social, health and psychological well-being of workers, then the challenge of achieving improvements in MSEs is an urgent priority (Reinecke 2002:9). Indeed, the quality of employment in most MSEs is poor and in some cases deplorable: workers lack adequate mechanisms of representation, their contracts of employment (generally unwritten) are precarious, working conditions are unsafe and they lack basic forms of social protection. The challenge of implementing the ILO's Decent Work Agenda in the context of MSEs is undoubtedly daunting. Yet, the available evidence shows that provided policy makers and social partners act with determination and a degree of realism, it is possible to achieve improvements in the quality of employment.

This section highlights and comments upon selected initiatives by governments, social partners and civil society organizations that may bring about more effective protection of MSE workers. Because most MSEs in developing countries operate in the informal economy, the materials in this section place special emphasis on creating effective mechanisms of representation for MSEs and their workers, within the framework of inclusive, effective and, hopefully, ever more democratic forms of governance.

4.2 Improvements in law and governance benefit MSEs

It is generally accepted that poor enforcement of the law and weak governance structures are two of the most serious obstacles for securing improvements in the quality of employment in MSEs and the informal economy generally (Trebilcock 2004). Lack of respect for the law and distrust of public authorities often create a vicious circle in which compliance with the law is not forthcoming because citizens distrust public authorities and public authorities are not obeyed because the rule of law is not respected.

A study of Indian MSEs found that more than half of the MSEs that needed a license to operate had difficulties obtaining it. The difficulties stemmed largely from interference by government officials, which was resolved either by paying bribes – 87 per cent of the cases – or resorting to friends with influence in government – 23 per cent of the cases (Allen et al. 2006: 33). These findings are confirmed by another study that focused on the city of Ahmedabad. According to this study, 62 per cent of the fees paid by small enterprises were collected illegally (Sudarshan 2002: 52).

This level of official corruption is not unusual in most developing countries. Thus, it is not surprising that in the eyes of proprietors of small businesses the legal system is highly discredited. Indeed, in India, most small businesses state that they do not have legal advisors, because they know all their business partners and could deal with them directly. According to Allen et al, in India “the formal legal system takes a back seat while reputation, trust and informal personal relationships are the driving factors in screening counter-parties to do business with” (Allen et al. 2006: 34).

Distrust of public authority and the legal systems is also prevalent in many cities in Latin American countries. In Ecuador, for example, when the cities of Quito and Guayaquil launched urban regeneration programmes, the main targets of the regeneration efforts were informal workers, beggars and street children. Thus, as Swanson argues, while the aim of the authorities was to create a sanitized space for tourists, they turned their attention away from the social factors that force poor people – mainly indigenous, in the case of Ecuador – to the streets in search of a living (Swanson 2007: 724). Ironically, as Swanson points out, while the slogan that inspired the urban regeneration programmes was *Más Ciudad* (More City), its outcome was *Menos Ciudad* (Less City) for the majority.

Distrust of the law and public authorities has led many operators of small businesses to develop their own structures of regulation. As Sergio Peña’s study on the regulation of informal commerce in México shows, when the state lacks capacity or legitimacy, markets are regulated by social norms that create competing models of regulations (Peña 2000: 59). The absence of effective state institutions often prompts community organizations to take responsibility for regulating their affairs. Indeed, in the absence of effective state authority communities often apply regulatory provisions similar, if not stricter, than those of the state.

Box 2:

Puente Aranda, a small squatter settlement in Bogotá, Colombia

Puente Aranda, a squatter settlement established in 1975, was located in the *barrio Los Comuneros* along a disused railway line, which was formerly owned by the state, but which was recently privatized. The community was cohesive because eviction was a permanent threat. Initially, the state-owned railway attempted to evict the inhabitants, but was dissuaded from doing so by other state agencies.

Law and order in Puente Aranda was maintained by an elaborate system of regulation developed and enforced by an elected assembly of the members of the settlement. Interestingly, the regulations enacted by the assembly, which largely related to matters of business, resembled the local Municipality’s bylaws. They set closing times for local shops, provided that public meetings could not take place at night and that work could not be carried out on the streets after 11p.m. The regulations also required members of the community to attend Assembly meetings, to participate in local events and pay a contribution to the community fund (Cansel 1999: 170). After the privatization of the railways, however, the new owners eventually succeeded in obtaining a court order and the dwellers of Puente Aranda were evicted.

The case of street vendors in Mexico City and the case of the squatter settlement in Puente Aranda, Bogotá, suggests that the people who make a living under precarious conditions are not averse to observing the law or complying with rules. What they often lack, however, is trust in public authorities and in the rule of law. One of the most effective means of enhancing and promoting people’s trust in the law is thorough the expansion of the mechanisms of representation and participation in decisions that affect them as citizens and as workers.

Source: Cansel 1999:161-175.

4.3 Representation and voice

The interest in MSEs by governments, international organizations and bilateral development agencies has undoubtedly contributed to raising their profile among national

and international officials. Yet, at the national level, their political, economic and social profile remains low, if not invisible. Political debates are unlikely to feature everywhere prominent interests on the potentials of the MSEs. Issues of interest to MSEs are also unlikely to be high on the agenda of the media, as these issues are regarded as too diffuse and weak to command either the attention of the public or the economic interests of their proprietors. Moreover, the interests of MSEs may or may not be on the tope of agenda of the unions or employers' organizations. Such low representation among the MSEs has prompted the ILO to call upon governments and social partners to develop the following three sets of policies (ILO 2006: 55):

- Promote changes in legislation and trade union regulations to facilitate the inclusion of MSE workers in workers' organizations.
- Facilitate relations between MSEs and trade union confederations and employers' organizations.
- Enhance the ability of MSEs and their workers to organize and develop networks and associations.

There is no doubt, that support by external agents to MSEs can go a long way towards enhancing their profile and strengthening their voice within the political and legal processes. This is especially important in the case of Egypt because small businesses are excluded from policy development, despite comprising 90 per cent of private non-commercial enterprises and generating 70 per cent of new jobs (de Gobbi 2005: 23). Thus in Egypt, 75 per cent of all registered NGOs are devoted to providing training and financial support to small businesses (de Gobbi 2005: 36/7).

Since it is likely that most of these NGOs are externally funded, it is an open question whether this type of external support is sustainable in the long term and whether it reaches the least visible units within the MSE sector. Some observers have pointed out that the involvement of external actors is indeed the most effective way of overcoming the weaknesses of local institutions, both at the state and civil society levels (Bhattacharya 2006: 4, 8).

Latin American observers who have studied the behaviour of micro enterprise workers have noted that traditional methods of trade union mobilization cannot be easily applied, as most workers in this sector are either illiterate or semi-literate (Castillo et al 2002: 12, Calle 2003: 205). Another obstacle in the process of mobilizing MSE workers is that their precarious conditions of employment, which should act as triggers for mobilization, often have the opposite effect. It leads towards passivity and resignation. Moreover, in some countries MSE workers see themselves either in transit to better paid and more secure jobs in larger undertakings.

A recent survey in Namibia found that although most MSE workers are satisfied with their jobs, they would rather be elsewhere in the public sector (Karuuombe 2002: 58). But workers also make strategic choices in the opposite direction. Indeed, Judith Tendler's study of the economy in the Northeast of Brazil shows that many workers in large firms see their jobs as temporary, since they are keen to become independent in a less authoritarian environment. In order to achieve this objective, they often get themselves sacked in order to use their severance pay to set up their own businesses (Tendler 2002: 15).

The foregoing suggests that the background and interests of workers in the MSE sector are far too diverse and complex to encapsulate within a single policy package. Indeed, the social and economic gap between micro and small enterprises is perhaps too wide. Indeed, several research reports confirm that enterprises with more than 20 and

fewer than 50 workers tend to do relatively well out of officially sponsored programmes aimed at MSEs. This is the case, for example, in Egypt, South Africa and Central America (De Gobbi 2005: 37, Rogerson 2004: 773, World Bank 2007: 24; OIT 2003).

The plight of workers of micro enterprises (fewer than 10 employees) is quite different. They are trapped in precarious conditions of employment and do not reap the economic benefits of government sponsored programmes. Thus, not surprisingly, in an attempt to resolve this dilemma Victor Tokman has called upon policy-makers to distinguish between undertakings that have a potential for growth and development and those that do not have such potential. For this second group he proposes that the focus of policy should be on poverty alleviation programmes (Tokman 2001a: 52). It is not clear whether the proposed poverty alleviation programmes would make a meaningful contribution towards redressing the representation deficit of micro enterprises.

Established trade unions have an important role to play in overcoming the representation deficit of MSEs, as is the case in Chile, Colombia and Kenya (ILO 2004: 121, Tokman 2001: 123, 231/2). The representation deficit of MSEs is also unlikely to be remedied through the spontaneous activity of established trade unions. Trade unions, however, should be equipped with knowledge and skills to reach out to workers in MSEs (ILO 2004: 121). In several countries, active union support may not be always forthcoming to address the problems of MSE workers in the lack of such capabilities.

In South Africa, neither the unions nor the Department of Labour are in position to accommodate the all the requirements of the MSE workers. As a consequence, independent workers attempt to register with the Department of Social Welfare as a non-profit organization (Motala 2002: 15/6). Unions in Zambia are not reluctant to support the organization of workers in small enterprises, but they are not keen to do so in collaboration or in competition with NGOs and other civil society organizations. They refuse to share this task with other organizations because they fear that doing so would undermine their unique role within the political system (Heidenreich 2007: 27).

Self-help is also the main pillar of a wide range of savings and credit cooperatives established by micro and small enterprise workers in countries such as Tanzania, El Salvador, Singapore, Kenya and the Philippines (Levin 2002: 30).

In Durban, after dealing with persistent harassment from the police, street traders established in 1995 an association, the ITMB (Informal Traders Management Board), which represents them and has managed successfully to negotiate with the police and local authorities (Motala 2002: 17). In Latin America, municipal authorities have begun to regard the regulation of street traders as a developmental issue, rather than an issue of law and order. The city of Bogotá, for example, has developed the notion of orbital markets, which are public spaces where small traders and their workers are allowed during two days a week (Calle 2003: 117).

Such shift in policy has largely been achieved through the pressure of associations established by street-traders. These associations – which Victor Tokman describes as something between a trade union and a business association (Tokman 2001: 224) – have flourished in several Latin American cities. In Bogotá there are 106 associations of street traders and 66 associations of refuse recycling workers. In Santiago there are 8 street-traders associations. In Peru street-traders associations are decentralized and organized territorially, with a membership of 3,000. In Chile and Colombia these associations have forged strong links with the union movement, but this is not the case in Peru (Tokman 2001: 123, 231/2).

**Box 3:
Self-Help**

The case of SEWA (Self-Employed Women's Association of India) is perhaps the best example of self-help. Indeed, SEWA, established in 1972 and representing some 300,000 workers, is as much a union as it is a mutual aid society. It provides its members with a variety of services including banking, childcare, legal aid, vocational training and insurance. It empowers its members, in so far as it enables them to change their behaviour as economic agents. SEWA's strategy is not confrontational. Instead of exclusively struggling for higher wages or better conditions, it seeks to reduce women's vulnerabilities by enhancing their employment opportunities. In South Africa, SEWU (Self-Employed Women's Union), established in 1993 – and inspired by SEWA – is another example of a self-help organization that endeavours to improve working facilities of its members, as well as their literacy, negotiating and lobbying skills .

Sources: Sudarshan 2002: 52; Datta 2003: 355/6; Motala 2002: 33, Skinner and Valodia 2003: 440.

In Italy, small and medium-sized enterprises have established a Confederation that represents 60,000 enterprises, which, in turn, employ over 1 million workers. In Canada and the Bahamas employers' organizations have dynamic policies in place aimed at promoting membership among small and medium-sized enterprises (ILO 2004: 122). These policies, however, are often unsuccessful because small entrepreneurs, who are often extremely individualistic, fail to see the benefits of joining large organizations. In this context, it is worth recalling that in Europe employers' organizations find it difficult to recruit members among small enterprises (European Commission 2006: 12, 38-39).

Recommendation 169 (paragraph No. 28) concerning Employment Policy encourages Members to promote relationships between the formal and informal sectors. In particular, this Recommendation urges Members to provide informal sector enterprises with greater access to resources, product markets, credit, infrastructure, transport facilities, technical expertise and improved technology. Paragraph 30 of this Recommendation further specifies that Members should promote complementary relationships between small undertakings and other undertakings to improve working conditions. Until recently, however, employers' associations in developing countries have not shown much interest in MSEs.

Thus, in many countries, employer's associations have launched projects to recruit MSEs and to provide them with a variety of training programmes to help them overcome the many barriers they face in developing their business objectives. Most of these efforts have targeted small and medium-sized companies, as these are the ones that are most attractive to established businesses. In Kenya, for example, the Federation of Kenyan Employers has been involved in supporting small businesses since 1989. One of the major components of the programme is to promote linkages between large and small firms. This programme has facilitated links with major companies, such as General Motors, and small undertakings, who now supply parts that hitherto used to be imported (ILO 2005).

Box 4:
Support of large firms

The experience of the Chamber of Commerce of Medellín, in Colombia, deserves close attention because it involves an interesting partnership between the private sector and state institutions in a city hitherto plagued by violence and insecurity. The scheme set up by the Chamber of Commerce, called *Medellín: My Enterprise*, is known locally as *El Padrinazgo* – or the Godfather Scheme (Cámara de Comercio de Medellín 2007). It is a mentoring scheme supported by the local Municipality and by state institutions with an expertise in training. It involves the adoption by a large firm – the mentor – of a small firm. Firms that qualify to join the scheme are firms with more than 5 employees, registered at the Medellín Chamber for at least one year and with a certain volume of trade. The only firms that are not allowed to join are firms in the retail sector. The objective of the scheme is to enable large firms to transfer business and management skills, including management of human resources, to small enterprises. The selection of firms for the scheme is elaborate and contains various safeguards to protect the interests of small firms and to ensure that small firms have the capacity to benefit from it. The mentor firm does not receive any form of economic compensation for its services. Once the mentor and the small firm are identified experts from the Chamber of Commerce carry out a diagnosis and propose a business plan to improve any deficits identified by the diagnosis. There then follow monthly working group meetings during which the mentor provides periodic advice and technical assistance on the implementation of various aspects of the proposed business plan.

The number of small enterprises that so far (December 2007) have benefited from this scheme is 912 and the number of established large enterprises that have played the role of mentor is 732. According to the Chamber of Commerce, the scheme, as well as benefiting individual companies, has had an important impact on the reduction of unemployment and on the reduction of crime and violence in the city. Between 2001 and 2007, unemployment in Medellín declined by 10 per cent, while income per capita in the city doubled to reach US \$ 5,300. The Chamber of Commerce also credits this scheme with the dramatic decrease in the rate of homicide in the city. Indeed, between 2002 and 2007, the homicide rate in the city dropped from an average of 310 per month in 2002 to 50 per month in 2007. Perhaps this claim is slightly exaggerated.. Yet, even if partially correct Medellín's scheme offers interesting lessons on how linkages between small and large enterprises can bring about economic, as well as social and political benefits to small enterprises and their workers.

Source: Echeverri 2007.

4.4 Extending social security

Social Security (Minimum Standards) Convention, 1952 (No. 102) is intended to set out an overall standard for social security and establish minimum standards for both the persons to be protected and the level of benefits and the conditions under which they are granted. Convention No 102 is also applicable to MESs. Though, as previously indicated Convention No. 102 contain flexibility provisions that allow (Article 3) Members to exclude, under prescribed conditions, "... industrial work places employing 20 persons or more, and also their wives and children." It constitutes an appropriate tool for the gradual extension of a minimum benefit package to a more comprehensive social security system, including a higher level of income security and improved medical care benefits.

The distinction between middle-income (**mi**) and low-income (**li**) per capita developing countries is important due to the fact that important recent developments in the extension of social security show that **mi** developing countries can afford social security schemes in respect of their financial, administrative, human and political resources to achieve universal coverage **through a combination of contributory and tax financed social security schemes**. Several **mi** countries have recently reached universal coverage in at least one of the social security branches (e.g. Republic of Korea,

Costa Rica and Chile) or are taking important measures to reach universal coverage (e.g. Tunisia, Colombia, Brazil, The Philippines and Thailand).⁷

MSE workers in developing countries either have no social protection or, if they do, it is of very poor quality. In some cases they are excluded from the system because they are either not officially registered as workers or because they work for very small enterprises that are not required to contribute towards social security. In Uganda, for example, the National Social Security Fund is a contributory fund that only covers workers in firms with 5 or more employees (Keene-Mugerwa 2006: 14). It has been estimated that in Africa, 90 per cent of workers are not covered by social security (Frye 2005: 13). In countries where some MSE workers are covered by social security, the quality of coverage for MSE workers is generally undermined by policies designed to reduce non-wage labour costs and to make jobs more flexible.

This happened in Argentina, Brazil and Mexico, between 1990 and 2003. During this period, the proportion of micro enterprise workers contributing to the social security system experienced a sharp decline: in Argentina it dropped from 38 to 23 per cent; in Brazil it dropped from 46 to 38 per cent, and in Mexico it dropped from 15 to 12 per cent (Berg et al. 2006: 40). In addition, during this period, in a sample that included nine Latin American countries (Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Peru and Venezuela), non-compliance with social security obligations registered a marked increase in all except Colombia (Marshall 2007: 19).

The lack of adequate social protection is a problem that transcends MSEs. It has been estimated that only one in 5 people in the world have adequate social security coverage (Van Ginneken 2003: 290). In India, the National Commission for Enterprises in the Unorganized Sector has floated the ideal of establishing a mechanism to extend social security cover to workers hitherto outside the social security system (ILO 2007: 4). In 2005 the Commission submitted a draft bill (The Unorganized Sector Workers Social Security Bill) for consideration to the Government. The scheme proposed by the Bill includes old-age pension, personal accident insurance and medical insurance.

The Commission does not make any suggestions on how this proposal might be financed. Given the reluctance of governments to extend social security protection through increases in general taxation and given the costs involved in extending the membership of existing schemes, attention has turned towards community-based protection based on community, ethnic or territorial ties (Meknassi 2006: 221/2). Interesting examples of traditional community mechanisms are the Iddir and Equbs in Ethiopia (De Gobbi 2006: 39-41). The Iddir is generally a village-based institution. Its members make contributions to a common fund either in cash or in kind. The Equbs is a rotating savings and credit association that provides insurance against certain risks and it is also a source of funding for business. An advantage of these mechanisms is that members' contributions are flexible; they pay more into the fund during the harvesting season.

Under the general label "microinsurance", the ILO has promoted and supported a variety of community and/or locally-based mechanisms. Microinsurance schemes require raising extra resources, generally obtained from members of the scheme, to extend social protection to workers hitherto excluded from it (ILO 2007: 12).

⁷ W. Van Ginneken, *Extending social security coverage: Concepts, global trends and policy issues*, *International Social Security Review*, Vol. 60, No. 2-3, April-September 2007, pp. 39-57.

In Latin America, several countries have launched microinsurance initiatives. In 1996 in Bolivia, for example, the Instituto Politécnico Tomás Katari established a mutual health insurance scheme to cover basic health care. Its members (some 2,000) are home-based workers and informal workers on very low incomes. The scheme is financed partly by its members and partly by grants.

In Uruguay there is a scheme aimed at improving health care for inhabitants in two suburbs (some 4,500 people), which is financed almost exclusively by its members. In Nicaragua some 7,000 rural workers make contributions to a special scheme that provides health protection to its workers (ILO 2005b: 6-7). Similar social protection schemes have been established in Tanzania (Forastieri 1999: 7-8).

The medium and long-term sustainability of these programmes is a matter of concern. According to the ILO, the prospects for success are strengthened if the schemes are kept simple, affordable and located close to their members (ILO 2000:17).

4.5 Occupational health and safety

As noted in section 2.9 above, securing acceptable standards of health and safety is a major challenge for MSEs in developing countries. One of the most serious obstacles identified by the ILO in the efforts to improve occupational health and safety is the social partners' lack of awareness of the importance of the problem.

In Latin America, for example, with the exception of Brazil and Costa Rica, none of the countries has coherent national or sector strategies to help enterprises comply with their health and safety obligations (ILO 2006: 16). Convention No. 187 (Promotional Framework for Occupational Safety and Health Convention, 2006) underlines the importance of improving health and safety standards in MSEs. Under the Convention, Members undertake to maintain and progressively develop a national system for occupational health and safety. This national system, according to the Convention (Article 4 (3) (h)), shall include, where appropriate, "support mechanisms for a progressive improvement of occupational safety and health conditions in micro-enterprises, in small and medium-sized enterprises and in the informal economy".

The Convention's use of the words "progressive improvement" in connection with occupational health and safety conditions in MSEs constitutes an acknowledgment that change in this complex area is slow. Improvements in health and safety require resources and adequately trained personnel, two factors that are scarce in most developing countries. As one of the leading experts in the field points out, there is no point in setting high environmental standards to the use of chemicals if inspection services do not have well-trained technicians, suitable measuring instruments or laboratories to test relevant samples (Castellá 2002: 12). It is an open question, however, whether shortage of resources should lead to a neglect of health and safety risks in MSEs, as implied by the suggestion that inspection systems should focus primarily on high-risk industries and businesses (Castellá 2002: 34).

It is important to note that participatory approaches can contribute to enhancing health and safety in small enterprises. In Sweden, for example, workers in companies employing more than 5 employees are entitled to appoint a representative to the company's health and safety committee. This representative can, in turn, require employers to ensure the safety of the working environment and can refer to the competent authority any refusal to comply with health and safety regulations (ILC 2006b: 56).

4.6 Labour inspection

Lack of resources is often cited as one of the main factors accounting for the failings of labour inspection system in developing countries. In order to compensate for their lack of resources, some countries have adopted innovative policies. They have sought support from employers, which generally takes the form of providing the inspectors with transport.

In Turkey, employers' associations are carrying out inspection functions on their own initiative. The Confederation of Turkish Tradesmen and Handicrafts (TESK) has established a system of workplace inspection to protect working adolescents. The Turkish Confederation of Employers' Association (TISK) has focused its attention on small and medium-sized enterprises in the metal industry. Their objective is to encourage employers to register working children in formal apprenticeship schemes and to improve occupational safety (ILO 2002a: 90).

It must be noted that the Committee of Experts has cautioned, however, that any contribution by social partners to this task should not compromise the independence of labour inspectors (ILC 2006b: 56). Some countries, such as Pakistan, have attempted to devolve some of the tasks of labour inspectors to local authorities. This otherwise sound policy of decentralization is, however, not necessarily advisable in countries where local interests tightly control local authorities, as is the case in Pakistan (ILC 2006c: 208).

Improvements in labour inspection also include flexible approaches towards the enforcement of labour law provisions. Chile, for example, inspired perhaps by the approach to traffic violation policies in some developed countries (UK, for example), introduced in 2001 a much celebrated device to substitute fines with training (Fenwick et al 2007: 93, 108). The scheme in Chile only applies to enterprises with fewer than 10 employees and it involves attending a training course of no more than two weeks in place of the fine. The employer must request the substitution of the fine, but only if the underlying infraction has been remedied. This option cannot be exercised more than once in twelve months. If the employer fails to attend the course, s/he is liable to pay the fine with a 50 per cent surcharge (Vergara del Río 2006: 156).

Schrank and Piore (2007: 11), drawing their inspiration from the French system of inspection, have recently proposed that inspection should have a pedagogical, rather than a policing function. They have also proposed that developing countries should follow the French model, which divides inspecting responsibilities between inspectors and the so-called *controleurs*. The idea is that inspectors should focus their attention on larger enterprises, while *controleurs* carry out tutelary-type inspections in micro and small enterprises. They note that their proposal does not entail less strict inspections, but merely applies different skills and approaches to small enterprises (Schrank and Piore 2007: 32).

4.7 Initiatives on equality

Financial and fiscal measures designed to promote the employment of disabled persons, such as subsidies and tax breaks, can be applied to micro and small enterprises. In France, for example, since 1988, the law provides that firms that employ 20 or more are required to employ disabled people in at least 6 per cent of the posts. In Germany there is a similar requirement for firms that employ 16 or more employees (ILC 1988).

In Sweden, a recent amendment of the Equal Opportunities Act requires enterprises employing more than 10 employees to prepare an annual comparative wage chart to identify any wage differentials due to gender. This provision requires employers to

identify differentials between men and women workers who perform work of equal value and to compare wages between different groups of workers doing work that is customarily dominated by women. Where employers detect a gender-based differential they are required to prepare an action plan in order to eliminate it within a period of three years (ILC 2004a: 226).

4.8 International initiatives

International interest in compliance with labour standards has, in recent years, led to the emergence of interesting alliances comprising trade unions from developed countries, international NGOs, leading multinational companies and governments of the major industrialized countries. The object of this heterogeneous movement is to bring pressure to bear on certain developing countries to eradicate labour practices that are universally condemned, such as forced and child labour, and to ensure that conditions of work in developing countries are fair and humane. This movement has brought about the emergence of company codes of practice, which, through various processes of certification, seek to guarantee that the products imported into developed countries are not tainted by unfair or other unacceptable forms of labour practices. A stronger form of intervention is the bilateral trade mechanism. Under the umbrella of the GATT/WTO system of Generalized Trade Preferences, developed country governments condition preferential access to their markets to the observance of basic labour rights.

Some observers regard the intervention of external agencies as a useful device for encouraging national officials and institutions to comply with international standards (Bhattacharya 2006: 8). There is evidence that some of these international campaigns have had a positive impact. In Indonesia, for example, the minimum wage and anti-sweatshop campaigns have achieved some improvements in working conditions. As a result of the campaign real wages in Indonesia have increased by 50 per cent. Yet, the increase in the value of the minimum wage also led to a 10 per cent decline in employment. Curiously, however, the decline in employment did not affect the textile, footwear and apparel industry, which was the main target of the anti-sweatshop campaign (Harrison and Scorse 2006: 155).

Kimberly Elliott and Richard Freeman offer a similarly positive assessment of international campaigns in relation to Bangladesh, Pakistan, Côte d'Ivoire and Cambodia (Elliott and Freeman 2003: 111-126). Optimism about the achievements of these campaigns has led some scholars to put forward wide-ranging proposals involving the cooperation of private and public agencies at the national and international level to improve compliance with international labour standards (Fung et al. 2001). Fung et al.'s proposals sparked an interesting debate involving well-known experts in the field including, among others, Paranab Bardhan, Guy Standing, Kaushik Basu and Ian Ayres (Fung et al. 2001).

Richard Locke and his team have put forward one of the most balanced assessments of what they call the code of conduct movement. In their view, external pressure in the form of codes of conduct, though essential for generating corporate support, is not sustainable unless there is effective enforcement of the law by national government and unions are actively providing workers with voice and representation (Locke et al. 2007: 34/5).

It could well be that externally induced campaigns or official pressure from outside may make an important contribution to improving compliance with labour standards. It is not certain, however, whether the vast majority of workers in MSEs, most of whom are not involved in export-related activities, stand to benefit from these initiatives.

4.9 Concluding comments

The preceding sub-sections discuss several policy initiatives by workers, employers, governments and NGOs, all of which are designed to improve MSE compliance with national and international labour standards. Some of these initiatives have already inspired workers and employers in some countries while others should provide food for thought for policy-makers in other countries.

Whether these initiatives can be implemented and sustained in environments that are often radically different from that in which they originated is, of course, an open question. The quality of governance is also a crucial factor in determining the likely success of a particular policy. Just like legal transplants often fail to take root in hostile institutional environments, so policy transplants face the same problem. Since we do not have accurate tools to measure or compare the quality of governance, policy advice in this area can only be tentative and provisional. It is certainly not an exact science.

Successful implementation of innovative policies and good practice requires taking into account the special features of the context in which these policies and practices are implemented. The success of some of the initiatives owes much to the cohesiveness of members representing MSEs and to the responsiveness and openness of the national and local political systems. This is probably the reason for the success of the struggle of street vendors in Durban and in some Latin American cities.

An interesting lesson that emerges from the experiences reported in this Section is the importance of enlisting the support of other state institutions in the efforts to strengthen and enforce labour rights. In countries where institutions in charge of labour administration are weak and not properly resourced, the involvement of Human Rights Commissions or Constitutional Courts may have a major impact in strengthening workers' rights and thus inducing compliance with national and international labour standards.

A broader institutional strategy is especially appropriate for ensuring respect of the fundamental principles and rights at work protected by the 1998 Declaration:

- Freedom of association and the effective recognition of the right to collective bargaining;
- The elimination of all forms of forced or compulsory labour;
- The effective abolition of child labour; and
- The elimination of discrimination in respect of employment and occupation.

These rights, widely acknowledged as fundamental, are also essential components of any democratic policy, as evidenced by their status in the constitutional and legal orders of most countries in the world. Thus, the respect, promotion and enforcement of these rights should not be regarded as the exclusive responsibility of the Ministry of Labour. Other institutions can and should be enlisted in this task. Although wider institutional support for the enforcement of these rights does not guarantee success, it does make it more likely.

Section 5: Summary of conclusions

1. Since its inception, the ILS regime has taken into account the needs and interests of small enterprises. This concern is reflected in the various numerical thresholds, exemptions and exceptions contained in the text of international labour conventions and recommendations.
2. Since the early 1980s, some conventions and recommendations have explicitly referred to micro and small enterprises, acknowledging the important role they play in the generation of employment, but noting as well the importance of securing improvements in the quality of employment.
3. The brief survey of national legislation and policy towards micro and small enterprises in Section 2 shows that labour legislation in developed and developing countries makes ample use of the exemptions and exclusions allowed by the ILS regime.
4. Section 2 shows that, occasionally, countries stretch their legislation beyond acceptable limits, thus restricting some fundamental rights of workers. Restrictions on the right of workers to exercise their freedom of association are perhaps the most glaring example of this policy.
5. The materials in Section 2 also show that the ILO's supervisory bodies have persuaded many countries to amend their legislation so as to ensure that their policies on MSEs comply with international labour standards.
6. Some countries, as explained in section 3, have introduced clauses in their labour legislation aimed specifically at simplifying procedures and other requirements in order to facilitate MSE compliance with labour law.
7. The ILO, as noted in section 3, fully endorses efforts to adapt and tailor labour law provisions to the needs of MSEs. Differential application of labour law, however, can only be justified if it contributes towards a more effective application of the fundamental principles and rights at work. It should not involve any lowering of core labour standards.
8. Changes in the law are not the only way of improving the quality of employment in micro and small enterprises. Indeed, as section 4 shows, governments, social partners and civil society organizations have successfully implemented a range of innovative policies designed to improve MSE compliance with national and international labour standards. These initiatives include microinsurance programmes, mentoring of small firms by large firms, simplified systems of inspection, external initiatives designed to monitor the enforcement of core labour standards and support by unions and civil society groups to ensure that workers and owners of micro and small enterprises have greater voice and presence in policy development and policy-making.
9. Successful implementation of innovative policies and good practice, generally, requires taking into account the context in which these policies are implemented. It also requires designing a broad institutional strategy to enlist the support of civil society organizations, as well as constitutional courts, human rights commissions and municipal authorities.

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Annex

Table 1: Collective bargaining coverage in OECD countries

| Country | Collective bargaining coverage characteristics |
|---------|---|
| Denmark | Bargaining covers 35% enterprises >10 employees; 38% >25; 46% >50; 56% >100; 51% >250. |
| France | Sector agreements may be extended to non-members of signatory organisations. One in 5 company agreements signed in firms with fewer than 50 employees. |
| Germany | Branch level agreements cover 35.7% of private sector establishment – 56% of those with 5-9 employees; 57.5% of those with 10 to 19; 59% of those with 20-49, and 70.3% of those with 50-99 employees. |
| Italy | Firms with fewer than 20 employees tend not to be covered. Firms with between 20 and 100 employees are covered by national/sector bargaining and those with 100 plus covered by company bargaining. Company agreements: 8.7% in small establishments (20-99); 19.9% (enterprises 100-499); and 32.9% large establishments (500 plus). |
| Norway | Bargaining covers 50% of employees in small enterprises (under 20 employees) and 68% in medium-sized enterprises (20-99 employees). |
| Spain | SMEs covered by bargaining since sector agreements apply to whole industry and not only to members of sector organizations (not clear whether agreements are implemented though). |
| Sweden | Agreements cover 70% of enterprises with up to 20 workers. |

Source: European Foundation 2001: Table 6.

Table 2: Definition of collective dismissal

| Country | Notification period and definition of collective dismissal |
|----------------|---|
| Austria | Within 30 days, 5+ workers in firms with 20-99 employees; 5%+ in firms with 100-599; 30+ workers in firms with 600+ workers. |
| Belgium | Within 60 days, 10+ workers in firms with 20-99 employees; 10% + in firms with 100- 300; 30+ workers in firms 300+ employees. |
| Canada | Within 4 weeks, 50+ employees in federal jurisdiction, Alberta, Manitoba, Newfoundland and Labrador, Ontario (some exceptions) and British Columbia (in 2-month period). Between 10+ and 25+ employees in the other jurisdiction. |
| Czech Republic | Within 30 days, 10+ workers in firms with 20-100 employees, 10% workers in firms with 101-300 employees, 30+ workers in firms with >300 employees. |
| Denmark | Within 30 days, >9 workers in firms with 21-99 employees; >9% in firms with 100-299; >29 workers in firms with 300+ employees. |
| Germany | Within 30 days, 5+ workers in firms with 21-59 employees; 10% or 25+ workers in firms with 60-499; 30+ workers in firms with 500+ employees. |
| Greece | Within a month, 4+ workers in firms with 20-200 employees; 2% + or 30+ workers in firms with 200+ employees (at the beginning of the month). |
| Ireland | Within 30 days, 5-9 workers in firms with 20-49 employees; 10+ workers in firms with 50-99; 10% in firm with 100-299; 30+ in firms with 300+ employees. |
| Italy | Within 120 days in firms with 15 and more employees, 5+ workers in a single production unit; 5+ workers in several units within one province. |
| Spain | Within 90 days, 10+ workers in firms with < 100 employees; 10%+ in firms with 100-299; 30+ workers in firms with 300+ employees. |
| Switzerland | 10+ workers in firms with 20-99 employees; 10%+ in firms with 100-299; 30+ in firms with 300+ employees. |
| Turkey | Within a month, 10+ workers in firms with 20-100 employees, 20+ workers in firms with 101-300, 30+ workers in firms with 300+ employees. |
| United Kingdom | Within 90 days, 20+ employees. |

Source: OECD 2003: 19/21.

Table 3: Labour inspectors in Latin America

| Country | Inspectors/ 100,000 workers |
|--------------------|-----------------------------|
| Chile | 19.25 |
| Guatemala | 7.53 |
| Uruguay | 5.79 |
| Panama | 5.60 |
| Dominican Republic | 5.54 |
| Costa Rica | 4.66 |
| Honduras | 3.97 |

| Country | Inspectors |
|-------------|------------|
| Argentina | 3.05 |
| Paraguay | 2.70 |
| Brazil | 2.45 |
| El Salvador | 2.28 |
| Mexico | 1.72 |
| Nicaragua | 1.58 |
| Perú | 1.34 |
| Colombia | 1.24 |
| Ecuador | 0.57 |

Source: Schrank and Piore 2007: 22.

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