

# **EMPLOYMENT SECTOR 2002/3**

*Working Paper on  
the Informal Economy*

## **International Labour Standards and the Informal Sector: Developments and Dilemmas**

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## Foreword

This report is one of a series of papers that were commissioned under the auspices of the ILO Inter-Sectoral Task Force on the Informal Economy in preparation for the general discussion on the informal economy at the 90<sup>th</sup> International Labour Conference (ILC) in Geneva in June 2002. The papers in this series include studies of regional trends, selected country level studies and thematic investigations at the global level. Most of them seek to identify new trends and patterns that have emerged over the last several years and to go into more depth regarding the factors underlying the continuing growth of the informal economy, not only in developing countries, but also in advanced countries and countries undergoing transition. Particular attention has been paid to the impact of globalization, liberalization, privatisation, migration, industrial reorganization and macro-economic policies prompting these trends.

The present paper, *International Labour Standards and the Informal sector: Developments and Dilemmas*, has been prepared by Charlotta Schlyter, Ministry of Foreign Affairs, Sweden. The author had drafted an earlier version of this paper in 1996 when she was working at the ILO. The present study attempts to explore how the informal sector should be approached in the light of the mandate of the ILO. It considers general issues in relation to international labour standards and the informal sector. The paper also provides a thorough review of the application of each major category of labour standards to the informal sector, through the examination of the texts of these instruments as well as the comments made by the ILO supervisory bodies.

The reader will observe that nearly all of the papers attempt to tackle the problem of conceptualising and defining the “informal sector”. This was also a special concern of those responsible for drafting the ILC 2002 report. However, the development of a conceptual framework and definition of terms for the ILC report was carried out coterminously with the production and finalization of the papers included in this series. Furthermore, the reference sources utilised by the authors of these papers employed a wide variety of definitions. Therefore it was not possible to agree in advance upon a single concept and definition for use by the authors of these papers. Elaboration of a proposed conceptual framework can be found in the ILC 2002 report on *Decent Work and the Informal Economy* as well as in the statistical booklet entitled *Women and Men in the Informal Economy: A Statistical Picture*.

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# 1. Introduction

The concept of the 'informal sector'<sup>1</sup> emerged in the early 1970's and has continued to gain recognition as a central theme in employment and human development. Although still widely ignored in national law and policy, or subject to various means of suppression, the informal sector occupies up to 90% of the workforce in many developing countries. In the face of growing unemployment worldwide, attention has been directed at the demonstrated potential of the informal sector to absorb workers rendered unemployed through factors such as structural adjustment and the rationalizing of modern industry.

Meanwhile, and as a result of the increasing focus on the informal sector, the often precarious and, occasionally, plainly dismal working conditions of its workers are receiving increasing attention. In the informal sector, which operates out of reach of most laws and policies applicable to the formal sector, we find the great majority of working children. Further, exploitative practices dangerous to the safety and health of workers are common due to the lack of information on healthier practices. This has led to calls for ways of strengthening the application of the international labour standards of the ILO in the informal sector.

However, the relation between the informal sector and international labour standards is a subject fraught with questions, two of the main ones being whether regulations designed for the formal sector can be in any way extended to the informal sector without stifling its further growth, and how, otherwise, persons working in the informal sector can be allowed to benefit from the protection offered by international labour standards. This has been referred to as *the dilemma of the informal sector*.

In its first section, this paper will explore the nature of this dilemma and how it should be approached by the ILO in the light of the mandate of the Organization. This will be followed by a discussion of general considerations relating to international labour standards in the informal sector. The main part of the paper will be devoted to the application to the informal sector of each major category of standards, starting with the fundamental human rights Conventions. Finally, the author will attempt to draw some conclusions.

Source material for the application of various Conventions to the informal sector are, apart from the actual texts of various Conventions and Recommendations, General and

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1 There is no universally accepted definition of what constitutes the 'informal sector'. In his 1991 report on the informal sector to the ILO Conference, the Director-General referred to 'very small-scale units producing and distributing goods and services, and consisting largely of independent, self-employed producers in urban areas of developing countries, some of whom also employ family labour and/or a few hired workers or apprentices, which operate with very little capital, or none at all, which utilize a low level of technology and skills, which therefore operate at a low level of productivity, and which generally provide very low and irregular incomes and highly unstable employment to those who work in it' (The Dilemma of the Informal Sector, Report of the Director-General (Part I) to the International Labour Conference, 78<sup>th</sup> Session 1991, p. 3). However, this description cannot be considered exhaustive. In 1993, the Fifteenth International Conference of Labour Statisticians (15<sup>th</sup> ICLS) adopted an international statistical definition of the informal sector which was to be based on a set of sub-categories based on the production units in which the activities take place (enterprise approach) rather than in terms of the characteristics of the persons involved (labour approach). The ICLS has, however, not been able to agree on a set of subcategories. There are also a number of alternative terms, of which the 'informal economy' is the most popular at present. However, in this paper, the 'informal sector' will be the term used (not least because it is that used by the ILO supervisory bodies) (see also para 6).

Special Surveys related to their application and comments directed to member States by the ILO supervisory bodies.<sup>2</sup>

Although considerable effort has gone into defining the informal sector, there is no universally accepted definition of what constitutes the 'informal sector'. For the purpose of this paper, the 'informal sector' will be understood to refer to income-generating activities taking place largely outside the formal regulatory framework of the institutional intervention of the State.<sup>3</sup>

## **2. The ILO and the 'dilemma of the informal sector'**

In the introduction to his 1991 report to the International Labour Conference, "The Dilemma of the Informal Sector" the Director-General gave it the following brief definition:

*The dilemma, put simply, is whether to promote the informal sector as a provider of employment and incomes; or to seek to extend regulation and social protection to it and thereby possibly reduce its capacity to provide jobs and incomes for an ever-expanding labour force.*<sup>4</sup>

This passage, which is often distilled from the above-mentioned report to illustrate the dilemma it describes, captures the often uneasy relationship between employment creation and regulations. Unfortunately, when quoted in isolation from the nuanced report of which it forms part, the "whether...or" formulation of this passage tends to leave the reader with a sense that the two independently positive objectives of employment creation and social protection - both of which are central concerns of the ILO - are irreconcilable in this context.

When considering a comprehensive ILO policy approach to the informal sector, we will have to define two terms included in the above passage, namely 'regulation' and 'jobs'. 'Regulation' because we must know of what kind of regulation we are talking; 'jobs' because we need to consider what constitutes a job which the ILO should be involved in creating.

The mandate of the ILO emerges from its Constitution. The Declaration of Philadelphia declares in its Article I c) that "poverty anywhere constitutes a danger to prosperity everywhere"; and clearly the creation of employment is a main contributor to the reduction of poverty. However, the Constitution also makes clear that the organization was established "whereas universal and lasting peace can be established only if it is based upon social justice, and whereas conditions of labour exist involving such injustice, hardship and privation to a large number of people as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of those working conditions are urgently required."

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<sup>2</sup> The CD-ROM version of the ILO standards database ILOLEX makes it possible to search with key-words through the texts of the ILO Conventions and Recommendations, and through the general surveys and general and individual comments made by the ILO supervisory bodies. A large portion of the material used in this paper was found through such searches with keywords such as "informal", "informal sector", "independent", "self-employed", "non-wage earners" (the latter not being synonymous to the 'informal sector' but nevertheless tending to lead to relevant passages).

<sup>3</sup> Ref. S. Sassen: Informalization: Imported through immigration or a feature of advanced economies?, Working USA The Journal of Labour and Society, Vol. 3, No. 6, March-April 2000, p. 8.

<sup>4</sup> The Dilemma of the Informal Sector, Report of the Director-General (Part I) to the International Labour Conference 78th Session 1991, p. 2

What this tells us is that measures to combat poverty undertaken by the ILO through, *inter alia*, employment creation, will be looking not only at the number of people who are economically active, but also at the conditions in which they are working. “Jobs” which the ILO engages in promoting will, therefore, have to meet certain basic criteria. Further, from reading the ILO Constitution we may conclude that the ILO is concerned with the subject of “regulation” only as it concerns or strongly relates to social protection: The application of a whole range of other kinds of regulatory instruments, such as tax measures, costs for registration, zoning laws, building standards and emission controls to the informal sector is not directly relevant to the ILO’s mandate. Their application to the informal sector will be an immediate concern to the ILO only if we assume that they cannot be seen in isolation from regulations regarding social protection.

Taking into consideration the ILO’s mandate as discussed above, it is questionable whether the ILO may view its policy approach to the informal sector as a “whether...or” dilemma as suggested by the above passage. Thus, rather than asking whether to promote the informal sector or extend social protection to it, the ILO should consider how it can contribute to the creation of safe and better jobs in the informal sector while proposing ways of extending, as far as possible, social protection to its workers whether by regulation or other means. This might involve promoting the extension of some regulatory measures - those related to social protection - to the informal sector while encouraging countries to ease their application of regulations relating to taxes and registration on the informal sector, at least for a transitory phase.

Finally, the formulation of ILO policy with regard to the informal sector will require as ingredients a measure of modesty and another of realism. The informal sector will grow and flourish whether or not the ILO undertakes measures towards promoting it, and the ILO’s decision whether or not to promote it will have little more than marginal impact. What the ILO can do is to assist countries in promoting the growth, as far as possible, of safe and healthy jobs in the informal sector. Similarly, the extension of social protection, as we know it in the context of the formal sector, to the informal sector by the stroke of a pen is hardly feasible. What the ILO might aim at initially is to get social protection on the agenda for countries’ policy-making relating to the informal sector. In practical terms, it may help countries identify the level of application of various standards to the informal sector and to devise formulas to promote the application of the most important ones to the informal sector.

## **2.1 Standards and the informal sector**

It seems clear that the mandate of the ILO does not allow the organization to encourage States to promote the growth of the informal sector without regard to the need for some protection of its workers. However, this is not to say that the entire body of ILO standards, or even those ratified by any given country, should be applied with immediate effect in the informal sector. The need for carefully extending protection to the informal sector has been expressed through the **Employment Policy (Supplementary Provisions) Recommendation, 1984 (No.169)**:

*29 (1) While taking measures to increase employment opportunities and improve conditions of work in the informal sector, members should seek to facilitate its progressive integration into the national economy.*

*(2) Members should take into account that integration of the informal sector into the formal sector may reduce its ability to absorb labour and generate income. Nevertheless, they should seek progressively to extend measures of regulation into the informal sector.*

The idea of gradual extension of the functions of the system of labour administration (including activities relating to the conditions of work) to the informal sector had earlier been expressed in a central ILO instrument, the **Labour Administration Convention, 1978 (No. 150)**:

*Article 7. When national conditions so require, with a view to meeting the needs of the largest possible number of workers, and in so far as such activities are not already covered, each Member which ratifies this Convention shall promote the extension, by gradual stages if necessary, of the functions of the system of labour administration to include activities, to be carried out in co-operation with other competent bodies, relating to the conditions of work and working life of appropriate categories of workers who are not, in law, employed persons, such as:*

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

From this we can conclude that we may consider, when seeking ways to extend a particular aspect of social protection, the impact this move might have on the growth and sustainability of informal sector units and seek ways to ensure that the impact is not negative. Although it may be in informal sector workers' interest to gain better terms as regards hours of work, weekly rest, holidays with pay, minimum wages and social benefits, it is likely that only the largest and most successful enterprises are likely to be able to bear the costs of such measures. Clearly, the provision of one or several of these terms, for example a yearly paid holiday, might not be unaffordable to the informal sector employer. However, usually national law requires the adoption of a whole framework of regulations. The majority of informal sector operators, if trying to comply with a set of regulations designed for the formal sector, may see their profits reduced, or be rendered out of business altogether. The introduction of better conditions in the informal sector will, therefore, by necessity have to be progressive.

However, a few categories of labour standards are so fundamental to the well-being of workers that their promotion in the informal sector should not be further postponed. In the first place, this applies to the fundamental human rights Conventions on freedom of association, forced labour, discrimination and child labour. Another area of importance to the life and well-being of informal sector workers is the maintenance of certain standards as regards occupational safety and health. Further, although in most countries it would be

impossible to apply the same standards on social security which operate in the formal sector to the informal sector, attempts should be made to apply some basic principles enshrined in the Conventions dealing with important labour market policy matters, which should as far as possible be extended to the informal sector. Moreover, recent research is showing that the application of such fundamental standards is not harmful to economic development.<sup>5</sup>

In the recent debate about flexibility, it has sometimes been asked whether it is not the standards in the formal sector which should be lowered, perhaps even to a level with which the informal sector is able to comply. On this subject, the Director-General observes the following in his report:

*To move in the other direction - i.e. to reduce the standards of protection offered by legislation to workers in the modern sector in order to make them easily attainable in the informal sector would not only be socially unacceptable, but also of no help to the informal sector. There may well be some aspects of labour legislation in force which present unnecessary obstacles to the hiring and firing of workers. But, as a general rule, the inability of the informal sector to comply with certain aspects of labour legislation is not necessarily an indication that something is wrong with the legislation itself; it should rather be taken as a reflection of the quite unsatisfactory conditions in which the informal sector has to operate.*<sup>6</sup>

## 2.2 International Labour Standards applicable in the informal sector

Informal sector workers are only rarely referred to explicitly in the actual texts of Conventions and Recommendations of the ILO, either to exclude or include their application to such workers. Exceptions include the above-mentioned Convention No. 150 and Recommendation No. 169. In the case of some Conventions, the contents signal that it was intended to apply to all workers without distinction. One example is the **Social Policy Convention, 1962 (No. 117)**, which provides for measures to be taken to help ‘independent producers and wage-earners’ (almost certainly intended to include urban and rural informal sector workers) to improve their living conditions, and requires governments to take

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<sup>5</sup> There is an ongoing debate surrounding the interconnectedness of social and economic development. Studies are showing that social development and economic development are not only compatible but also interdependent. For example, a recent study by the OECD “International Trade and Core Labour Standards”, OECD, Paris, 2000, found that strengthening core labour standards increases economic growth and efficiency. Also countries with low labour standards do not enjoy better export performance than those with high standards. Furthermore, studies being carried out by the ILO in collaboration with the Asian Development Bank (ADB) indicate that there is significant and measurable cost to development when countries fail to apply labour standards regarding gender discrimination, child labour and occupational safety and health. These studies are to be concluded in September 2002 and it is hoped that this work will be expanded to include other international labour standards.

Other studies touching upon these issues include:

*The effects of core workers’ rights on labour costs and foreign direct investment: Evaluating the “conventional wisdom”* by David Kucera, <http://www.ilo.org/public/english/bureau/inst/download/dp13001.pdf>

*The Economic Impact of Child Labour* by Rossana Galli  
<http://www.ilo.org/public/english/bureau/inst/download/dp12801.pdf>

*GB.279/WP/SDG/2: Organization, bargaining and dialogue for development in a globalizing world*  
<http://www.ilo.org/public/english/standards/relm/gb/docs/gb279/pdf/sdg-2.pdf>

<sup>6</sup> *ibid.* pp. 38

practicable measures against usury among these groups.<sup>7</sup> Other examples are the conventions dealing with forced labour and the worst forms of child labour, which aim at categories of workers which more often than not are found in the informal sector. On the other hand, conventions the application of which requires a legally-established national machinery, such as the **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)** may seem difficult to apply in the informal sector, where legislation generally does not reach. These Conventions do not expressly exclude the informal sector from their scope, and in many cases, the promotion of certain central principles of the Conventions in the informal sector should be considered. However, in most cases, Convention texts do little to guide us in the question of their application to the informal sector.

Instead, indications as to a particular Convention's applicability are generally best sought in comments made within the framework of the ILO supervisory system of Conventions and Recommendations. This includes observations made by the ILO Committee of Experts on the Application of Conventions and Recommendations (hereafter: the Committee of Experts), whether general or directed to a specific country, as well as those made by the ILO Conference Committee on the Application of Conventions and Recommendations (hereafter: the Conference Committee). For example, in the framework of its dialogue with ratifying Governments regarding their application of individual Conventions, the Committee of Experts has often had reasons to note efforts of individual countries to extend the application of certain Conventions to the informal sector. It has also on several occasions pointed out to countries that the application of a particular Convention is not limited to the formal sector, and encouraged the countries in question to take steps to include the informal sector in policies aimed at implementing the provisions of the Convention.

In the following, we will take a closer look at some of the standards applicable in the informal sector, and, where available, guidance provided on this subject by the Committee of Experts and the ILO Conference Committee on the Application of Conventions and Recommendations.

A number of fundamental labour standards should apply to workers independently of where they operate. These are standards dealing with human rights-related matters. The eight fundamental human rights Conventions are in the area of *freedom of association* and *protection of the right to collective bargaining* (Nos. 87 and 98), *forced labour* (Nos. 29 and 105), *discrimination* (Nos. 100 and 111), and *child labour* (Nos. 138 and 182).

The importance attached to these Conventions by ILO Member States is reflected in their high rate of ratification: well over 100 States have ratified each of the fundamental human rights Conventions; and five of the eight Conventions have received over 150 ratifications.<sup>8</sup> These Conventions are since 1995 subject of a particular promotional effort within the ILO, which will be pursued with the aim of their universal ratification.

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<sup>7</sup> The Social Policy Convention, 1962 (No. 117), Articles 5 and 13 (2).

<sup>8</sup> As from 10 March 2002, Forced Labour Convention, 1930 (No. 29): 160 ratifications; Abolition of Forced Labour Convention, 1957 (No. 105): 157 ratifications; Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87): 139 ratifications; Right to Organize and Collective Bargaining Convention, 1949 (No. 98): 151 ratifications; Equal Remuneration Convention, 1951 (No. 100): 156 ratifications; Discrimination (Employment and Occupation) Convention, 1958 (No. 111): 154 ratifications;

The applicability of these Conventions in the informal sector was emphasized in the report of the Director-General to the 1991 International Labour Conference<sup>9</sup>, and was subject for the following comment in his document submitted to the ILO Governing Body in November of the same year:

*First, priority should be given to the full observance - in the informal sector and elsewhere - of ILO standards concerning fundamental human rights: freedom of association, freedom from forced labour and freedom from discrimination, as well as of standards concerning the abolition of child labour. Practical measures will need to be taken in the countries concerned to ensure that national legislation is fully in accordance with these basic standards, that informal sector workers are made fully aware of their rights and have the possibility of asserting and enjoying them. National organizations of employers and workers should, in particular, be encouraged and assisted in their efforts to ensure that these standards are known, understood and applied in the informal sector.*<sup>10</sup>

### ***Freedom of Association***

Respect for the principle of freedom of association is fundamental to the ILO. The principle is enshrined in the ILO Constitution, and States which join the organization are bound to respect it. The two basic Conventions dealing with freedom of association are:

**? the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); and**

**? the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).**

In the case of rural workers, the above-mentioned Conventions are complemented by:

**? the Rural Workers' Organizations Convention, 1975 (No. 141).**

Convention No. 87 guarantees the right, freely exercised, of workers and employers, without distinction, to organize for furthering and defending their interest; while Convention No. 98 protects workers who are exercising the right to organize, forbids interference in workers' and employers' organizations and promotes voluntary collective bargaining.

The only exception to the rule which recognizes the right to organize "without distinction whatsoever" (Convention No. 87, Article 2) applies to the police and the armed forces (Article 9). This allows us to conclude that producers and workers in the informal sector have the right under the Convention to establish organisations for occupational

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Minimum Age Convention, 1973 (No. 138): 116 ratifications; Worst Forms of Child Labour Convention, 1999 (No. 182): 117 ratifications.

<sup>9</sup> Report of the Director-General (Part I) to the ILC 78th Session. 1991, p. 39

<sup>10</sup> GB. 251/CE/5/2, 251st Session, November 1991, para. 28.

purposes.<sup>11</sup> Convention No. 141 applies to “all rural workers, whether they are wage-earners or self-employed”, and makes no distinction between formal and informal sector workers.

In his report, the Director-General noted the following about the importance of granting this right to informal sector workers:

*Freedom of association is particularly important in this respect, because it is only through forming and joining organizations of their own choosing that those in the informal sector will be able to generate sufficient pressure to bring about the necessary changes in policies, attitudes and procedures that hamper the development of the sector and the improvement of working conditions in it.*<sup>12</sup>

#### Comments by the ILO supervisory bodies

The Committee of Experts has requested that measures be taken in countries where legislation denies the right to organize in the informal sector to ensure that this right be accorded to people working there.<sup>13</sup> Such legal obstacles may be present where a country's legislation does not recognize persons active in the informal sector as workers and employers and these, therefore, are not protected by the right to organize. Other rules, which in certain circumstances, may limit the possibilities for persons in the informal sector to organize are those which require authorization prior to establishment. Such requirements are in conformity with the Convention only where they do not delay or prevent the setting up of organizations.<sup>14</sup>

Rules which require an onerously high number of workers in order to form a union may work to prevent the setting up of such organizations in the informal sector. In its General Survey of 1994, the Committee of Experts noted that a number of countries maintained minimum requirements which might hamper the setting up of unions.<sup>15</sup> In comments directed to the Government of Venezuela for a number of years, the Committee of Experts has pointed out that its requirement of 100 workers to form unions of self-employed workers is too high.<sup>16</sup> Such a limit is likely to have a negative effect on the possibility of forming self-help associations in the informal sector, where unions of self-employed workers would be likely to be small-scale. The same limitation was discussed by the Conference Committee in 2000.<sup>17</sup> A Peruvian law which was the subject of a complaint by a number of Peruvian and international unions to the ILO Committee of Freedom of Association in 1987 presents the same kind of legislative obstacle. Here, a minimum of 20 workers was required in order to form an enterprise-level union. According to the Committee, this would have serious consequences for trade union activities in Peru's formal and informal sectors, especially

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<sup>11</sup> General Survey of the Reports on the Freedom of Association and the Right to Organize Convention (No. 87), 1948 and the Right to Organize and Collective Bargaining Convention (No. 98), 1949, Report III (Part 4B), ILC 81st Session 1994, para. 59.

<sup>12</sup> Report of the Director-General (Part I) to the 78th Sess. of the ILC 1991, p. 39.

<sup>13</sup> General Survey, Report III (Part 4B), ILC 81st Sess. 1994, para. 59.

<sup>14</sup> Ibid. paras. 68-75.

<sup>15</sup> General Survey, Report III (Part 4B), ILC 81<sup>st</sup> Sess., paras. 81-83.

<sup>16</sup> CEACR: Observation concerning Convention No. 87 to Venezuela (2000).

<sup>17</sup> ILCCR: Observation concerning Convention No. 87 to Venezuela (2000).

considering that 90 per cent of the country's enterprises are micro-enterprises with fewer than 20 workers per production unit.<sup>18</sup>

In some countries, self-employed workers - and thereby large segments of the informal sector operators - are excluded from application of the legislation where freedom of association is provided for, or prohibited by law from organizing for professional purposes. The importance of removing such barriers has been highlighted by the Committee of Experts in comments directed to, *inter alia*, Ethiopia and Nicaragua.<sup>19</sup> In 1999, the Committee noted with satisfaction Nicaragua's report on the adoption of a new Labour Code which covers self-employed workers in the urban and rural sectors, thereby giving them a formal right of association.<sup>20</sup>

### ***Informal sector self-help associations: challenges and prospects***

Once legal barriers to establishing organizations in the informal sector have been removed, governments need to consider ways of facilitating organizing among informal sector actors who wish to do so. Such programmes should be based on the local needs, and their design will, for example, depend on the degree to which the sector already is organized. Thus, where few organizations exist, governments may have to ensure that information regarding the right to organize is made known to informal sector actors. Where organizations exist, emphasis may instead be put on assisting organizations in finding ways of improving their situation, for example as regards working conditions.

There may be numerous obstacles to the creation of self-help organizations in the informal sector. The usually very small units involved and the heterogeneity of the sector are two factors which may make it difficult for persons active in the informal sector to unite around common interests and priorities. Competition between enterprises and individuals in the informal sector is another such obstacle.<sup>21</sup> The lack of organization within the informal sector in many countries is easily taken advantage of to deprive its workers from social protection and make them vulnerable to different kinds of harassment. However, there are also examples of countries where segments of the informal sector have been able to organize, notably in the Philippines, one of the project countries of the ILO Interdepartmental Project on the Urban Informal Sector.<sup>22</sup>

A productive way of organizing within the informal sector is by way of cooperatives. Such organizations may enable their members to have better access to credit, markets, technology and legal institutions than do individuals and smaller enterprises. However, in most countries cooperatives have as yet failed to play this role among informal sector workers. In his report, the Director-General suggests that one reason may be the relative weakness of the cooperative movement in many cities of the developing world. He also points to the tendency of cooperatives to be government-dependent, rather than autonomous organizations as defined in the ILO **Co-operatives (Developing Countries)**

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<sup>18</sup> CFA: Complaints against the Government of Peru presented by the General Confederation of Workers of Peru (CGTP) et al., Cases Nos. 1648 and 1650, Report No. 291.

<sup>19</sup> CEACR: Observation concerning Convention No. 87 to Ethiopia (1992); and Nicaragua (1997).

<sup>20</sup> CEACR: Observation concerning Convention No. 87 to Nicaragua (1999).

<sup>21</sup> Report of the Director-General (Part I) to the ILC 78th Sess. 1991, p. 39.

<sup>22</sup> Aryee, G, Project Implementation Report, The Interdepartmental Project on the Urban Informal Sector, ILO Geneva 1996, p. 18

**Recommendation (No. 127), 1966.** Some examples of success, nevertheless, exist: the Working Women's Forum (WWF) and the Self-Employed Women's Association (SEWA) in India started out as cooperative-type movements. Both have become successful movements providing a range of services for their members, and are now registered as trade unions.<sup>23</sup>

The role of workers' and employers' organizations in promoting and strengthening organizing in the informal sector is crucial. Both movements have decades of experience in the protection of their professional interests. In many parts of the world, they have had to defend their rights under the ILO Constitution and Conventions, and will have much to offer the informal sector in its efforts to assert its rights in this regard. Traditionally, however, the attitude of workers' and employers' organizations to the informal sector has been largely ambivalent. For the trade union movement, the informal sector can be said to represent the very situation it is wanting to fight: a largely unknown number of people working in substandard conditions, unprotected by the law. Employers' organizations have, for the most part, concentrated their efforts on the promotion and protection of the formal sector, and often viewed the informal sector as "unfair competition" rather than potential partners.

There are, nevertheless, signs of attitudes changing. Earlier expectations of the informal sector being progressively absorbed by the formal sector have gone unfulfilled, with the increase in later years of the proportion of workers employed in the informal sector at the expense of the formal sector. The Interdepartmental Project on the Urban Informal Sector demonstrated an increased willingness on the part of unions and employers' organizations to reach out to the informal sector. In Dar-es-Salaam, the OTTU has decided to set up informal sector units within its structure. In Bogota, the National Federation of Commerce assisted in organizing a trade-fair for micro-enterprises.<sup>24</sup>

In this context, it should be mentioned that the **Employment Policy Convention (No. 122), 1964** (Article 3) creates an obligation for governments to consult with representatives of the persons affected by measures to be taken under an employment policy. This subject will be revisited further on.

### ***Equality of Opportunity and Treatment***

The two basic instruments dealing with equality of opportunity and treatment are:

? **the Discrimination (Employment and Occupation) Convention, 1958 (No. 111);** and

? **the Equal Remuneration Convention, 1951 (No. 100).**

Another important instrument in the area of equality of opportunity and treatment is:

? **the Workers with Family Responsibilities Convention, 1981 (No. 156).**

Convention No. 111 requires each State which ratifies it to design and pursue a national policy aimed at promoting equality of opportunity and eliminating all forms of discrimination in employment and occupation based on race, colour, sex, religion, political opinion, national

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<sup>23</sup> Report of the Director-General (Part I) to the ILC 78th Sess. 1991, p. 46.

<sup>24</sup> Aryee, G, p. 18.

extraction and social origin. States having ratified Convention No. 100 have to design and pursue a policy to promote and apply the principle of equal remuneration for men and women for work of equal value. Finally, Convention No. 156 aims to create effective equality of opportunity for men and women workers with family responsibilities.

Convention No. 111 applies to “employment and occupation”, the latter of which has been interpreted to mean the trade, profession or type of work performed by the individual, irrespective of the branch of economic activity to which he or she is attached, or of the individual’s industrial status<sup>25</sup>. During the early stages of the discussion of the text of the Convention by the International Labour Conference, an amendment to delete the reference to “occupation” had been submitted by some governments<sup>26</sup>. This amendment was rejected on the grounds that it would not be right to exclude workers wishing to be self-employed from protection against laws, regulations and practices since such exclusion may have the effect of arbitrarily preventing them from carrying out their activities. A similar amendment aiming to exclude independent workers from the scope of the Convention presented at the 42nd Session of the Conference was also rejected<sup>27</sup>. Although the preparatory work does not explicitly address formality/informality of occupation, it is clear that there was agreement on as wide as possible a scope of application. Over the years, the Committee of Experts appears to have based its reasoning on the assumption that informal sector workers are covered by the Convention (see below).

Governments must ensure that the scope of national legislation prohibiting discrimination in employment and occupation is not limited to the formal sector. However, this is quite often the case. In its 1996 Special Survey on Equality in Employment and Occupation, the Committee of Experts pointed out that, although the informal sector is usually covered by general non-discrimination clauses in constitutional instruments, it is frequently excluded from such provisions in labour codes, which generally apply to the formal sector only<sup>28</sup>. As a consequence, enforcement mechanisms and complaints procedures remain out of reach for persons active in the informal sector. In its 1988 General Survey on the same subject, the Committee of Experts said the following as regards equality for this group:

*This category of the labour force - which includes workers from farmers to lawyers as well as artisans in the crafts - is quite heterogeneous and this heterogeneity is reflected in the great diversity of the practical conditions governing access to these activities. With due allowance for the variety of situations, it is nevertheless possible to discern some common characteristics as regards equality of access to these occupations. In the first place, in practice access to these occupations depends on material conditions: access to land, access to credit, access to the goods and services necessary for carrying on the occupations in question. Access to these goods and these services without discrimination on any of the grounds mentioned in the Conventions is one of the*

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<sup>25</sup>General Survey by the Committee of Experts on the Application of Conventions and Recommendations on equality in employment and occupation, ILC, 75th Session, 1988, para. 86.

<sup>26</sup>Record of Proceedings, ILC, 40th Session, Geneva, 1957, Appendix X, Seventh item on the agenda: Discrimination in the field of employment and occupation, paras. 17-19.

<sup>27</sup>Record of Proceedings, ILC, 42nd Session, Geneva, 1958, Appendix VI, Fourth item on the agenda: Discrimination in the field of employment and occupation, paras. 15 and 16.

<sup>28</sup>Special Survey of 1996, para. 89.

*objectives of national policy aimed at promoting equality of opportunity and treatment in employment.*<sup>29</sup>

#### Comments by the ILO supervisory bodies

In its 1986 General Survey, the Committee of Experts stated that the principle enshrined in the Equal Remuneration Convention applies to all workers without exception.<sup>30</sup> In a General Observation made in 1992, the Committee drew attention to the fact that Article 2, para. 1 of this Convention makes it applicable to all categories of workers.<sup>31</sup> Its application to the informal sector may not be entirely straight-forward: Convention No. 100 provides for the categorizing and objective evaluation of jobs; something which is difficult to do in the informal sector. However, promotion of the principle of equal pay for work of equal value can and should be promoted in every way possible.

In some cases, informal sector workers are barred from entitlements accorded to other workers by law, e.g. assistance with relation to child care and training facilities. Again, the challenge for governments lies in devising new ways for extending the provision of child care to workers in the informal sector. In fact, access to a child-care facility for a number of days a week may edge a family in informal occupation to a more viable and - in the long term - gradually formalized business by freeing an additional number of working hours for the adults in the family.

Further, it is important that the informal sector be included in local and national programmes to promote equality of opportunity and treatment. Such efforts have been noted by the Committee of Experts in the case of India, where the Ministry of Labour provided financial assistance to NGOs for running programmes aimed at organizing women in the informal sector and creating awareness among the women about their rights, including the right to equal remuneration for work of equal value<sup>32</sup>.

#### ***Freedom from Forced Labour***

The two basic instruments dealing with freedom from forced labour are:

**? the Forced Labour Convention, 1930 (No. 29); and**

**? the Abolition of Forced Labour Convention, 1957 (No. 105).**

Convention No. 29 provides for the suppression of forced labour in all cases except compulsory military service, certain civic obligations, prison labour, work exacted in cases of emergency and minor communal services. Convention No. 105 prohibits all forms of forced and compulsory labour exacted for certain purposes, including political coercion, economic

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<sup>29</sup> General Survey of 1988, paras. 89 and 90.

<sup>30</sup> General Survey by the Committee of Experts on the Application of Conventions and Recommendations on equal remuneration, ILC, 73<sup>rd</sup> Session, 1986, para 18.

<sup>31</sup> General Observation on Convention No. 100, 1992

<sup>32</sup> CEACR: Observation concerning Convention No. 100 to India (1992). See also CEACR: Direct Request concerning Convention No. 111 to India (1990), where the Committee noted the establishment of a National Committee on Self-Employed Women.

development, labour discipline, punishment for having participated in strikes and as a means of racial, social, national or religious discrimination.

Freedom from forced labour is fundamental. It applies to all persons, irrespective of activity.

Informal sector workers may be particularly vulnerable to exploitation in the form of forced labour. An example is debt-bondage, which in the informal sector may be practised undisturbed due to the lack of any form of inspection and limited access of persons in such a situation to legal recourse. Children are at even higher risk than adults of being exploited through such practices, or otherwise work under coercion or in a situation of dependency.

#### Comments by the ILO supervisory bodies

Legislation incompatible with the ILO conventions on forced labour may, for example, be that which sets out a legal obligation to work enforced by sanctions. On a few occasions, the Committee of Experts has had reason to comment on legislation which prescribes that any person who cannot show that he or she has a job or is registered in an educational or vocational training establishment may be assigned to compulsory labour.<sup>33</sup> Informal sector workers may be particularly vulnerable to such legislation, where it exists.

In 1999, the Conference Committee discussed for the third time the situation of adults and children belonging to indigenous communities in Atalaya in Peru. It was highlighting the severity of the situation for two communities who had been removed from their original territory and recruited and held by violent means for the purposes of forced labour. One of the measures put forward by the Government to remedy the situation was a programme of inspection adapted to the informal sector. The Committee also discussed reports regarding minors working without remuneration in a number of chestnut-peeling enterprises. The actual recruitment was carried out by small, unregistered, recruitment companies. Because of the seriousness of the situation, the authorities carried out a campaign of inspection of these companies and moved to close the ones which were resorting to illegal practices, while the ones who run their businesses in conformity with the law were legalized.<sup>34</sup>

On one occasion, the Committee of Experts noted in an observation directed to Pakistan the intention of a national programme of action to make efforts to deal with the kidnapping and forced labour of children. This had been called for to deal with a situation of an estimated number of 8 to 10 million working children, mostly active in the informal sector, and under unknown conditions.<sup>35</sup>

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<sup>33</sup> CEACR: Observation concerning Convention No. 29 to Tunisia (1994); and the Central African Republic (1999). In 1997, the Committee noted with satisfaction that the legislation in question in the case of Tunisia had been repealed.

<sup>34</sup> ILCCR: Observation concerning Convention No. 29 to Peru (1993; 1999).

<sup>35</sup> CEACR: Observation concerning Convention No. 29 to Pakistan (2000).

## ***Child Labour***

The basic instruments dealing with child labour are:

**? the Minimum Age Convention, 1973 (No. 138); and**

**? the Worst Forms of Child Labour Convention, 1999 (No. 182).**

Convention No. 138 is considered as a general instrument which is meant to gradually replace earlier Conventions on minimum age. The earlier Conventions, applicable to certain economic sectors, including industry<sup>36</sup>, non-industrial occupations<sup>37</sup>, agriculture<sup>38</sup> and seafarers<sup>39</sup>, stated a minimum age of 14 years. These Conventions are in force in a number of countries which have not ratified Convention No. 138. Other Conventions to be taken into account are those dealing with work under certain conditions, such as night work<sup>40</sup> and work underground<sup>41</sup>, and those dealing with medical examination of young workers<sup>42</sup>.

Convention No. 138 requires ratifying States to pursue a national policy aimed at the effective abolition of child labour and the progressive raising of the minimum age to a level consistent with the fullest physical and mental development of young persons. As a general principle, the age to be specified has to be no lower than the age of completion of compulsory schooling and, in any event, no less than 15 (developing countries may initially specify it as 14).

Although Convention No. 138 is intended to cover all workers, its articles 4 and 5 make it possible to exclude limited categories of workers, or certain branches of economic activity or types of undertakings, respectively, from its application. This must be done by way of a declaration by the country in question at the time of ratification. Whether or not it can be made to exclude the informal sector is unclear. A comment by the Committee of Experts to Equatorial Guinea from 1999 appears to suggest that it could (see below para. 58). However, to date, none of the close to 115 countries which have ratified the Convention has opted to exclude the informal sector.

Convention No. 182 was drafted with the intention of committing countries to eliminating as a matter of urgency, the worst forms of child labour. In the wording of the Convention, this comprises:

*(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory*

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<sup>36</sup> Minimum Age (Industry) Convention, 1919 (No. 5); Minimum Age (Industry) Convention (Revised), 1937 (No. 59).

<sup>37</sup> Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33); Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60).

<sup>38</sup> Minimum Age (Agriculture) Convention, 1921 (No. 10).

<sup>39</sup> Minimum Age (Sea) Convention, 1920 (No. 7); Minimum Age (Sea) Convention (Revised), 1936 (No. 58).

<sup>40</sup> Night Work of Young Persons (Industry) Convention, 1919 (No. 6); Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79); Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90).

<sup>41</sup> Minimum Age (Underground Work) Convention, 1965 (No. 123).

<sup>42</sup> Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78).

*labour, including forced or compulsory recruitment of children for use in armed conflict;*

*(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;*

*(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;*

*(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety and morals of children.<sup>43</sup>*

The activities covered by Convention No. 182 are more likely than not to be taking place in the informal sector, and the countries which ratify it are, therefore, required to design and implement programmes aimed at reaching out into the informal sector. In the words of the Convention, the Government has to first identify where these types of child labour exist,<sup>44</sup> and then proceed to establish appropriate mechanisms to monitor the implementation of the Convention.<sup>45</sup> This includes the prevention of children's involvement in such activities, removing those already involved, and ensuring access to free basic education, or, as appropriate, vocational training.<sup>46</sup>

Convention No. 182 entered into force only in 2000, and the dialogue between governments and the Committee of Experts has barely begun. However, there can be no doubt as regards the willingness among governments to commit to the Convention: two years after its adoption, it has already collected an unprecedented 116 ratifications. The future will show how countries take on the challenge of implementing the Convention. In this, the ILO can be expected to continue to assist countries, *inter alia*, through its IPEC programme.

#### Comments by the ILO supervisory bodies

As noted above, countries which have ratified the Minimum Age Convention No. 138 are required to apply its provisions to the informal sector. In a comment to Equatorial Guinea, the Committee stated that "the Convention applies to all kind of employment or work regardless of the formal nature of the work, unless recourse is made to the flexibility clauses under articles 4 and 5 to exclude limited categories of workers, or certain branches of economic activity, respectively."<sup>47</sup> This comment, while stating the applicability of the Convention to the informal sector, also - implicitly - appears to suggest that the informal sector as a whole may be excluded through the above-mentioned flexibility clauses. However, more likely the Committee was referring to the possibility of excluding certain branches of economic activity, including in the informal sector.

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<sup>43</sup> Article 1 of the Convention.

<sup>44</sup> Article 4(2) of the Convention.

<sup>45</sup> Article 5 of the Convention.

<sup>46</sup> Article 7(2) of the Convention.

<sup>47</sup> CEACR: Direct request concerning Convention No. 138 to Equatorial Guinea (1999).

The Committee of Experts has also found reason to remind countries of the application of another child labour Convention to the informal sector, namely the **Medical Examination of Young Persons (Non-Industrial Occupations), 1946 (No.78)**. This Convention provides that children and young persons under eighteen years of age must not be admitted to employment or work in non-industrial occupations unless they have been found fit for the work through medical examination, which shall be provided free of charge.<sup>48</sup> According to Article 7.2 (a) of the Convention, it also applies to children “in itinerant trading or any other occupation carried on in the streets or in places to which the public have access”.

In comments directed to Cameroon in 1997, the Committee noted the practical difficulties raised by the Government of extending the medical examination for fitness for employment to children and young persons in the informal sector. It, nevertheless, pointed out that these children fall within the scope of the Convention, and asked the Government to indicate the measures taken to ensure application of the Convention by extending medical examinations to children and young people in the informal sector. It, finally, suggested that the Government ask the technical assistance of the ILO in order to work out a practical solution in this case.<sup>49</sup>

*Another particularly dramatic aspect of the problem [of child labour] which has captured the attention of public opinion is the plight of children who live and work on the streets. While most countries have legislation prohibiting these forms of child labour, they cannot be combated by law enforcement alone (or, in the case of street children, by clearing them off the street); law enforcement measures need to be accompanied by measures to extend and improve facilities for education - formal and non-formal - and by various welfare measures that can be provided through community action. They also need to be accompanied by measures that tackle the root of the problem, namely, the poverty of parents of working children. For instance, income-generating projects could be targeted at the parents, perhaps on the basis of an agreement to keep their children in school.<sup>50</sup>*

### **3. Employment policy and human resources development**

A number of central ILO Conventions and Recommendations provide standards in the area of employment policy and human resources development. These instruments extend to all sectors of the labour market and work force, including the informal sector, and give rise to obligations on ratifying countries to take into account workers already involved in the sector, as well as the potential of the sector to provide jobs and incomes in times of diminished formal sector opportunities, when developing and implementing policies in these areas.

#### ***Employment policy***

The most central instrument dealing with employment policy is:

**? the Employment Policy Convention, 1964 (No. 122).**

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<sup>48</sup> Articles 2(1) and 5 of the Convention.

<sup>49</sup> CEACR: Observation concerning Convention No. 78 to Cameroon (1997).

<sup>50</sup> Report of the Director-General (Part I) to the ILC 78th Sess. 1991, p. 39.

Guidelines related to the implementation of the principles laid down in the Convention can be found in two equally central Recommendations, **the Employment Policy Recommendation, 1964 (No. 122)** and **the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)**.

Convention No. 122 provides that each ratifying State shall “declare and pursue, as a major goal, an active policy to promote full, productive and freely chosen employment”.<sup>51</sup> The third and last material Article of this short Convention requires consultation to be undertaken with persons affected by the policies formulated, as follows:

*Article 3. In the application of this Convention, representatives of the persons affected by the measures to be taken, and in particular representatives of employers and workers, shall be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full co-operation in formulating and enlisting support for such policies.*

This includes informal sector workers, as has been recalled by the Committee of Experts on numerous occasions (see below).

In the Employment Policy Recommendation which was adopted in 1984 (No. 169), a short chapter has been devoted to the informal sector (no.V). The chapter’s opening paragraph states that “national employment policy should recognize the importance as a provider of jobs of the informal sector”(Paragraph 27(1)) and that “employment promotion programmes should be elaborated and implemented to encourage family work and independent work in individual workshops, both in urban and rural areas”(Paragraph 27(2)). Measures to be taken are proposed in Article 28, as follows:

*Members should take measures to promote complementary relationships between the formal and informal sectors and to provide greater access of undertakings in the informal sector to resources, product markets, credit, infrastructure, training facilities, technical expertise and improved technologies.*

This is also where we find the earlier cited Article which describes the dilemma of the informal sector, referring to the need for progressively extending measures of regulations to the informal sector while taking into account that such integration may reduce its ability to absorb labour and generate income.

#### Comments by the ILO supervisory bodies

In many instances the Committee of Expert’s observations and direct requests under Convention No. 122 are used as a forum for an ongoing dialogue between the Committee and the reporting governments on matters concerning employment policy, including those relating to the informal sector. Thus, in their reports due every two years under the Convention, Governments frequently provide information on the size and structure of the informal sector, and the Committee comments on the consistency of policies implemented with the provisions

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<sup>51</sup> Article 1 of the Convention.

of the Convention, where necessary requesting supplementary information from the Government. For example, in 2000, the Committee of Experts, referring to the report of a tripartite Committee from 1998, said the following in an observation to Venezuela:

*The Committee recalls that the tripartite committee set up by the Governing Body of the ILO to examine the representation submitted by the CLAT [Latin American Central of Workers] and the Latin American Federation of Trade Workers (FETRALCOS) expressed the opinion that it would be in conformity with the requirements of the Convention for the Government to take advantage of the effort made by the workers in the informal sector to organize themselves to seek, through dialogue, in the spirit of Article 3 of the Convention, solutions to the employment problems arising from the existence of a very substantial informal sector (document GB. 273/14/5, adopted in November 1998). The Committee trusts that the Government will include in its next report complete and detailed information on the employment policy measures adopted with regard to the informal sector, as well as the manner in which the representatives of persons affected in this sector are consulted in respect of employment policy<sup>52</sup>*

Such dialogue has also taken place in the framework of related instruments, for example the **Employment Service Convention, 1948 (No. 88)**. In 1999, the Committee of Experts noted information supplied by the Government of the Philippines on the consultation regarding social assistance programmes of certain categories, including informal sector workers.<sup>53</sup> Further, in the context of the **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)**, the Committee noted that the Employment Exchange of the Ministry of Labour and Social Affairs in Uganda facilitates the placement and employment of disabled persons in the formal as well as the informal sector, and asked for more details of such services for disabled persons.<sup>54</sup>

By far the greatest number of comments relating to the informal sector by the Committee during later years concern the obligation under Article 3 of Convention No. 122 to include representatives of persons active in the informal sector in consultations on employment policy. Generally, the Committee reminds the government of the contents of Article 3, and asks for information as regards any action taken to ensure that representatives of the informal sector are properly consulted in relation to employment policies which concern them. In 1999 and 2000, the Committee directed such comments to a large number of governments.<sup>55</sup>

However, there are indications that countries find reaching out to the informal sector difficult. Many of the requests for information on methods for such consultations are repeats

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<sup>52</sup> CEACR: Observation concerning Convention No. 122 to Venezuela (2000). See also Report of the Committee set up to examine the representation made by the Latin American Central of Workers (CLAT) and the Latin American Federation of Trade Workers (FETRALCOS) under article 24 of the ILO Constitution alleging non-observance by Venezuela of the Employment Policy Convention, 1964 (No. 122), document GB.273/14/5, adopted in November 1998.

<sup>53</sup> CEACR: Observation concerning Convention No. 88 to the Philippines (1999).

<sup>54</sup> CEACR: Direct Request concerning Convention No. 159 to Uganda (1994).

<sup>55</sup> See e.g. CEACR: Direct Request concerning Convention No. 122 to Guatemala (1999); Guinea (1999); Panama (1999); Uganda (1999); Observation concerning Convention No. 122 to Bolivia (2000); Costa Rica (1999); Ecuador (1999); Honduras (1999); Paraguay (1999); Peru (1999); Tunisia (2000); Uruguay (1999).

which have remained unanswered for a number of years. Where countries have actually replied to these requests for information, it has often been to signal problems in extending consultations to the informal sector. In its comments, the Committee of Experts, while recognizing these difficulties, has made clear that countries must work to solve these difficulties. An example is the following comment to Bolivia:

*[The Government] states that consultations with representatives of the economically active population, such as those working in the rural and informal sectors, will be deferred until reliable representatives are found, since at present it is difficult to identify, quantify, or localise them, etc.: it is impossible for the State to know what their needs and requirements are in order to be able to give its support or implement its projects. The Committee again observes that in general the provisions of the Convention and of Recommendations Nos. 122 and 169 on employment policy do not provide for the postponement or suspension of consultations...<sup>56</sup>*

Many factors may contribute to the difficulties experienced by States in consulting representatives of the informal sector. A central such factor is the low level of organization in the informal sector. There just may not be any representatives which are in a position to say that they speak for smaller or larger segments of the informal sector. Another problem is the heterogeneity of the sector. Different groups may have widely different interests and experiences, and all should be represented for consultations to be adequately held and fully constructive. The very nature of the sector as operating outside established legal systems may also create a reluctance of informal sector operators to establish permanent links with the authorities in some countries, due to fear that the outcome of such contacts would be various obligations towards the State, such as taxes and registration requirements which could bring some operators out of business. The sometimes strained relationship between national and local authorities must also be addressed in order for the sufficient level of trust to be established for productive consultations to be held.

On a few occasions, countries have requested and received assistance from the ILO in designing and implementing programmes aimed at the informal sector, including ways to consult its operators.<sup>57</sup> For countries where large segments of the population, perhaps as much as 90% of the population, is engaged in the informal sector, the step from consultations with the organized sector to consultations with the informal sector is no small one. At the same time, it is vital in order for labour policy to be representative for the needs of the majority of the labour force. Clearly the ILO can play a role by proposing models and providing comparative examples.

The central Convention in the area of Human Resources Development is:

**? the Human Resources Development Convention, 1975 (No. 142).**

Further guidance is provided by the **Human Resources Development Recommendation, 1975 (No. 150).**

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<sup>56</sup> CEACR: Observation concerning Convention No. 122 to Bolivia (1991).

<sup>57</sup> See e.g. CEACR: Direct request concerning Convention No. 122 to Uganda (1999).

Convention No. 142 requires each ratifying State to “adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services”(Article 1). Article 4 states that “each Member shall gradually extend, adapt and harmonize its vocational training systems to meet the needs for vocational training throughout life of both young persons and adults in all sectors of the economy and at all levels of skill and responsibility”.

In its latest General Survey related to human resource development, the Committee of Experts devotes a section to vocational training systems in the informal sector, which, it says, is covered implicitly by Convention No. 142 and related instruments in this field.<sup>58</sup> It goes on to describe a number of ways of adapting training systems to the particular needs and conditions of persons active in the informal sector. For example, among small-scale artisans, there is traditionally a great reliance on apprenticeship. In some countries, efforts have been made to consolidate skills in the informal sector through the provision of mobile training units or central support workshops, where possible administered by local artisans. In these, informal sector entrepreneurs can have access to knowledge and, in some cases, equipment otherwise not available to them.<sup>59</sup>

Through these groups or workshops, it is also possible to provide training which relates to the running of a micro-enterprise, such as basic book-keeping, ways of obtaining credit, drawing up estimates or specifications, basic marketing, maintenance of tools and other equipment, occupational safety and health and labour legislation. If necessary, this list could include literacy training. The Committee also refers to some experiments by the ILO in training for illiterate or near-illiterate people active in the informal sector through skits and drawings describing everyday events and communicating practical advice.<sup>60</sup>

During the decade which has passed since the last General Survey on human resources development, the Committee of Experts has paid little attention to human resources in its comments to countries under Convention No. 142. However, in a direct request to Kenya in 1999, the Committee noted with interest a new policy adopted by the Government to promote training opportunities in small enterprises and in the informal sector.<sup>61</sup> A new general survey covering the relationship between Convention No.122 and Convention No.142, as well as Recommendation No.189, is to be carried out by the Committee of Experts in 2003.

#### **4. Labour administration**

The term “labour administration” refers to public administration activities in the field of national labour policy. Apart from the general standards on labour administration we also normally refer standards on labour inspection and labour statistics to this category.

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<sup>58</sup> General Survey by the Committee of Experts on the Paid Educational Leave Convention (No. 140), and Recommendation (No. 148), 1974 and the Human Resources Development Convention (No. 142), and Recommendation (No. 150), 1975, ILC, 78th Session, 1991, para. 275.

<sup>59</sup> Ibid. para. 276.

<sup>60</sup> Ibid. para. 277.

<sup>61</sup> CEACR: Direct request concerning Convention No. 142 to Kenya (1999).

## ***Labour administration***

The central Convention dealing with labour administration is:

### **? the Labour Administration Convention, 1978 (No. 150).**

Further guidelines as to its scope and application can be found in the **Labour Administration Recommendation (No. 158)**.

Article 4 of Convention No. 150 provides that each ratifying Member shall, “in a manner appropriate to national conditions, ensure the organization and effective operation in its territory of a system of labour administration”. The scope of “labour administration” has in the Recommendation been divided into three main areas: labour protection, labour relations and employment. The preparatory work to the Convention<sup>62</sup> identified *labour protection* as, among other things, the study and review of conditions of work and life and terms of employment; preparation of laws and regulations governing labour standards; fixing minimum wages; promoting the improvement of conditions of work and life of workers whose status is not that of wage earners or salaried employees; enforcement of labour standards and administration of labour inspection services; supervision of occupational safety and health conditions at workplaces; developing legal provisions related to social security schemes; and analysing data related to performance of all these activities. In the field of *labour relations*, administrative systems should, *inter alia*, promote sound labour relations and support collective bargaining; and assist in the settlement of labour disputes. Finally, as regards *employment*, the system of labour administration should assist in the preparation, administration, co-ordination, control and review of a national employment policy (see Paragraph 20(1) of the Recommendation).

The earlier quoted Article 7 states that the system of labour administration, when required by national conditions, shall be extended to groups not traditionally included in such systems, including self-employed workers occupied in the informal sector.<sup>63</sup> In the course of the preparatory work on the Convention, the Office pointed out that the extension of the scope of labour administration activities to cover these groups had been recommended by the African Advisory Committee at its Third Session in Dakar in 1967, by the Third African Regional Conference in Accra in 1969 and, finally, by the Asian Advisory Committee at its Sixteenth Session in Kuala Lumpur in 1974. The same report mentions a few examples of efforts made by labour ministries in Africa and Asia to provide assistance through its labour administration to rural and urban workers in this category, referred to in the report as “non-wage-earners”, mainly through vocational training and employment counselling. However, it goes on to point out that local conditions and shortage of resources often restrict such extension of the labour administration temporarily.<sup>64</sup>

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<sup>62</sup> Labour Administration: Role, Functions and Organisation, Report V(1), ILC, 61th Session, 1976, p.19.

<sup>63</sup> In the context of an interpretation requested by Canada in 1988, the Committee of Experts stated that the possibility of a gradual extension of the system of labour administration applies to self-employed workers in the *informal sector* only. Self-employed workers in the formal sector must be covered by the system of labour administration (ILC: Interpretation of a decision concerning Convention No. 150, Labour Administration, 1978, Canada, published 1988).

<sup>64</sup> Ibid. p. 32.

In its General Survey of 1997 on labour administration, the Committee of Experts notes that neither the Convention nor the Recommendation gives an exhaustive list of what is required of a “system of national labour administration”, and the related “national labour policy”. The Convention merely indicates a minimum content and meaning of the terms, and the Recommendation provides further guidance. Implicitly encouraging countries to take these concepts further, the Committee continues:

*The Committee considers, however, that it is worth pointing out that certain aspects of national labour policy have become increasingly important in recent years, such as the protection of children at work, the promotion of equality of opportunity and treatment in employment, the training and upgrading of skills for and in the workplace in general, as well as for women and other less-favoured social groups and categories, in particular, inter alia, young people, the disabled and rural and urban self-employed persons.*<sup>65</sup>

Fifty-two countries have ratified Convention No. 150 to date,<sup>66</sup> and the Committee of Experts has on occasion directed requests for more information regarding the extension of functions of the system of labour administration to informal sector workers, occasionally expressed as workers who are not, in law, employed persons. For example, in 1999, the Committee put the following request to the Government of Jamaica:

*The Committee asks the Government to indicate whether the system of labour administration also covers workers who are not, in law, employed persons, in respect of their conditions of work and working life. If not, please indicate whether the Government considers that national conditions require to meet the needs of the largest numbers of workers, the gradual extension of the functions of the labour administration system to include activities to cover them, and the measures taken to this end.*<sup>67</sup>

### ***Labour statistics***

The central instrument in this field is:

#### **? Labour Statistics Convention, 1985 (No. 160)**

This Convention requires a country to collect, compile and publish basic labour statistics, which should be progressively expanded, in accordance with its resources, to cover a number of subjects listed in the Convention, including the economically active population, its structure and distribution, household expenditure and income, etc. The Convention does not specifically refer to the informal sector. Nevertheless, it would seem that in order to fully reflect the economically active population and household income, labour statistics should cover informal sector workers, especially in countries where the sector is substantial. However, the collection of such data from the informal sector is a resource demanding task.

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<sup>65</sup> General Survey by the Committee of Experts on the Labour Administration Convention (No. 150) and Recommendation (No. 150), 1978, ILC, 85<sup>th</sup> Session, 1997, para.45.

<sup>66</sup> Rate of ratification as of July 2001.

<sup>67</sup> CEACR: Direct request concerning Convention No. 150 to Jamaica (1999). See also direct requests to the Democratic Republic of Congo (then Zaire) (1996); and Zambia (February 1995).

Thus far, the size and structure of the informal sector has not been specifically addressed by the Committee of Experts in its comments to countries.

### ***Labour inspection***

The central instrument in the field of labour inspection is:

**? the Labour Inspection Convention , 1947 (No. 81); and**

**? the Labour Inspection (Agriculture) Convention, 1969 (No. 129).**

Convention No. 81, which has been ratified by more than 120 countries, requires a country to maintain a system for labour inspection in industry, and - if the country has accepted to apply Part II of the Convention - in commerce. Convention No. 129, which has attracted much fewer ratifications (around 40) applies to agricultural undertakings. According to Article 5 of Convention No. 129, any country may undertake, by a special declaration, to also cover “tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers”. The formulation is most likely intended to allow for coverage of the rural informal sector. To date, no country has made such an undertaking.

Article 2(1) of Convention No. 81 states the following regarding the application of the Convention:

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

Part II on commercial workplaces has a corresponding provision (Article 23). The term “enforceable” appears to indicate that the obligation was intended to cover the formal sector. Nevertheless, where legal provisions on conditions of work and the protection of workers extend to the informal sector, and efforts are made to adopt labour inspection services to inspect certain segments of this sector, inspection may turn out to be “enforceable” well beyond the formal sector.

Moreover, although the labour inspection Conventions may not in themselves require the extension of labour inspection to the informal sector, such an obligation may well arise from other Conventions. The abolition of forced labour (Conventions Nos. 29 and 105) requires some form of inspection of the informal sector, as so does the Convention on the Elimination of the Worst Forms of Child Labour.

Clearly, some form of labour inspection is an important key to any efforts aimed at improving conditions of work in the informal sector and in preventing practices such as child labour and bonded labour. However, such inspections in the informal sector would be likely to require a different approach as well as different bench-marks. In his 1991 report, the Director-General said the following:

*“In most countries it would not be possible for labour inspection services or occupational health services - which are generally under-staffed or ill-equipped - to promote or enforce improved standards in the informal sector. But is it totally unrealistic to expect that more informal types of labour inspection and occupational health and safety counselling could be provided through community-based action, aided and stimulated by NGOs, voluntary agencies or by the government itself. Or, to go a step further, is it not possible to envisage a system of labour inspection auxiliaries (recruited, for example, from retired craftsmen), who are familiar with the realities of life and work in the informal sector, and who would receive some rudimentary training by the official trade inspectorate or by trade unions? Their role would not be so much to enforce regulations (although they could expose some particularly abusive forms of exploitation in the sector) as to provide training, advice and information to the owners and workers in informal sector enterprises...”<sup>68</sup>*

#### Comments by the ILO supervisory bodies

In a General Observation from 2000, the Committee of Experts noted that government reports under Convention No. 81 and annual reports on the work of the inspection services contained an increasing volume of information on the fundamental rights of workers. However, the Committee regretted that so little information was provided on the supervisory and advisory work pertaining to child labour. It, therefore, asked governments to ensure that information on inspections relating to child labour be regularly included in the reports.<sup>69</sup>

In comments to, *inter alia*, Sri Lanka and Uruguay, the Committee has asked whether the informal sector is included in the activities of the labour inspectorate.<sup>70</sup>

## **5. Conditions of work**

A large number of ILO Conventions (some 50 in all) refer to conditions of work, whether specific aspects or in specific branches of activity. Generally, these have been divided in wages; general conditions of work (e.g. hours of work, paid leave); occupational safety and health; and social services. All of the above are of as much relevance to informal sector workers as they are to workers in formal employment. However, again, there are clear difficulties in verifying and enforcing standards as regards conditions of work in the informal sector. Moreover, the majority of ILO Conventions and Recommendations in this field are not tailored to apply in the informal sector.

Where labour inspection or any form of surveillance of the informal sector is possible, it would appear that the first step would be to identify and prevent the most abusive conditions. This would for example be situations of debt bondage or salaries so low that it amounts to exploitation based on dependency, for example in the case of child workers. However, much can probably be achieved in the field of occupational health and safety, where workers may

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<sup>68</sup> Report of the Director-General (Part I) to the ILC 78<sup>th</sup> Sess. 1991, p. 41

<sup>69</sup> CEACR: General Observation concerning Convention No. 81 (2000)

<sup>70</sup> CEACR: Direct request concerning Convention No. 81 to Sri Lanka (1999); Observation concerning Convention No. 81 to Uruguay (2000).

be exposed to dangers or pollutants as a result of lack of knowledge about alternatives. In his report, the Director-General noted the following:

*“A third area, which deserves priority attention, is occupational safety and health. While it may not be possible for informal sector enterprises to comply with the full range of government safety and health regulations, attention can be focused on the particularly serious risks to which informal sector workers can be exposed - including, for instance, the risks associated with the use of machinery (often antiquated and unreliable machinery without safety guards) with which informal sector workers may not be familiar; with the use of hazardous substances; with air and water pollution; or simply with inadequate lighting and ventilation. Here, too, the problem is not so much one of attempting to enforce compliance with regulations as of providing informal sector enterprises with information and guidance on the often simple and inexpensive measures that can be taken to reduce such risks”.<sup>71</sup>*

### **Occupational safety and health**

There are a number of Conventions relating to specific areas in the area of occupational safety and health. However, a central instrument in this field is:

#### **? the Occupational Safety and Health Convention, 1981 (No. 155).**

Another important instrument is the newly adopted

#### **? Safety and Health in Agriculture, 2001 (No. 184).**

Convention No. 155 requires States to formulate and implement a coherent national policy on occupational safety, occupational health and the working environment. The Convention covers “all branches in which workers are employed”. It is clearly formulated to apply to the formal sector only. However, a coherent national policy in this field should ideally consider how to reach out to informal sector workers, and Convention No. 155 therefore seems to be a helpful platform for a dialogue on such matters between the Committee of Experts and Governments.

Convention No. 184 requires ratifying countries to formulate, carry out and periodically review a coherent national policy on safety and health in agriculture.<sup>72</sup> Certain undertakings and categories of workers may be excluded from application when special problems arise, but must be progressively covered.

Other important instruments in the field of occupational health and safety are the **Radiation Protection Convention, 1960 (No. 115); Asbestos Convention, 1986 (No. 162); Chemicals Convention, 1990 (No. 170); Guarding of Machinery Convention, 1963 (No. 119); Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148); Safety and Health in Construction Convention, 1988 (No. 167)**. It should be noted

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<sup>71</sup> Report of the Director-General (Part I) to the ILC 78<sup>th</sup> Sess. 1991, p. 40.

<sup>72</sup> Article 4 (1) of the Convention.

that Conventions No. 119 and No. 148 apply to "all branches of economic activity".<sup>73</sup> However, whether or not the Conventions were drafted to apply to the informal sector, these Conventions and their accompanying Recommendations constitute important points of reference for policy options aimed at improving the situation of occupational health and safety in the informal sector.

### *Other relevant Conventions*

Another instrument of relevance to the informal sector is the **Home Work Convention, 1996 (No. 177)** and its related Recommendation No. 184. The Convention is clearly drafted to apply to formal employment relationships. Further, after five years, the Convention has received only two ratifications, a circumstance which signals that the provisions of this Convention are regarded as too demanding (or irrelevant, which here is less likely). Nevertheless, the content of this instrument has been widely used by persons involved in organizing and assisting home workers in different countries.

Finally, mention should be made of the **Indigenous and Tribal Peoples Convention, 1989 (No. 169)**. This instrument covers a wide range of issues related to labour and social policy with regard to indigenous and tribal peoples, guided by the principle of self-determination. Although the text of the Convention does not address formality/informality, the scope of the Convention seems to demonstrate an intention to cover indigenous workers in all branches of economic life. Moreover, an important number of the world's indigenous and tribal peoples are active in the informal sector, through their subsistence and other traditional non-monetary occupations. Convention No. 169 was preceded by an earlier Convention No. 107 on 'indigenous and tribal populations'. This Convention, the approach of which is integrationist, is now closed for ratifications, but remains in force for a number of countries.

## **6. Comments and conclusions**

The progressive integration of the informal sector into national economies foreseen in the Employment Policy Recommendation will for now remain a distant prospect. Thus, although no doubt many informal sector operators take the step to the formal sector during their careers, formal employment will remain the exception in many countries for years to come. This makes the "dilemma of the informal section" more of an academic discussion. Formalizing the informal sector is not within reach. For the ILO, the task then becomes to assist countries to extend, to the extent possible, the aspect of "formality" which aims at protecting informal sector workers.

This paper has constituted an attempt at analyzing the applicability of various labour standards to the informal sector. That the fundamental human rights conventions should be applied in the informal sector seems clear and has been confirmed by the supervisory bodies of the ILO. For many other Conventions, the picture is less clear. In some cases, the instruments appear to have been drafted with the formal sector in mind, but there seems to be no reason why they should not apply to the informal sector, where this is possible.

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<sup>73</sup> Articles 17 (1) and 1 (1) respectively.

With a few exceptions references to the informal sector remain fairly rare in the body of comments to governments.<sup>74</sup> One reason could be that the traditional assumption in the context of labour standards discussions is that it is concerned with the formal sector only, even where the applicability of a Convention to the informal sector has been established. Another reason is likely to be the ambiguity, in many instances, as to whether a certain standard applies to the formal sector and how much can be demanded of government as regards informal sector policy. A third will be the fact that the social partners - particularly the workers' organizations - which bring many issues to the attention of the ILO's supervisory bodies, pay little or no attention to the informal sector, and the Committee of Experts does not have the investigative capacity to penetrate beyond the veil of governments' reports without their help. A stance in this matter by the Committee of Experts as regards certain conventions might be useful and could perhaps contribute to bringing the discussion forward.

The labour standards of the ILO have contributed to improving the working lives of millions of formal sector workers. However, for labour standards to be relevant to workers worldwide, they have to be able to reach out to the informal sector. In many countries, the ILO is already involved in activities aimed at promoting policy concerning informal sector workers. However, like in the context of the formal sector, international labour standards and technical assistance complement one another. It is always useful to consider the goals and principles agreed upon by countries in the Conventions and Recommendations of the ILO, and how they may be employed to benefit a larger number of working people - whether or not they are touched by the legal framework in a wider sense.

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<sup>74</sup> See for example the frequent requests for countries to consult informal sector workers on employment policy under Convention No. 122.

## **List of Employment Sector Papers on the Informal Economy**

"Decent Work in the Informal Economy: Abstracts of working papers".

1. "Globalization and the Informal Economy: How Global Trade and Investment Impact on the Working Poor", by Marilyn Carr and Martha Alter Chen.
2. "Supporting workers in the Informal Economy: A Policy Framework", by Martha Alter Chen, Renana Jhabvala and Frances Lund.
3. "International Labour Standards and the Informal Sector: Developments and Dilemmas", by Charlotta Schlyter.