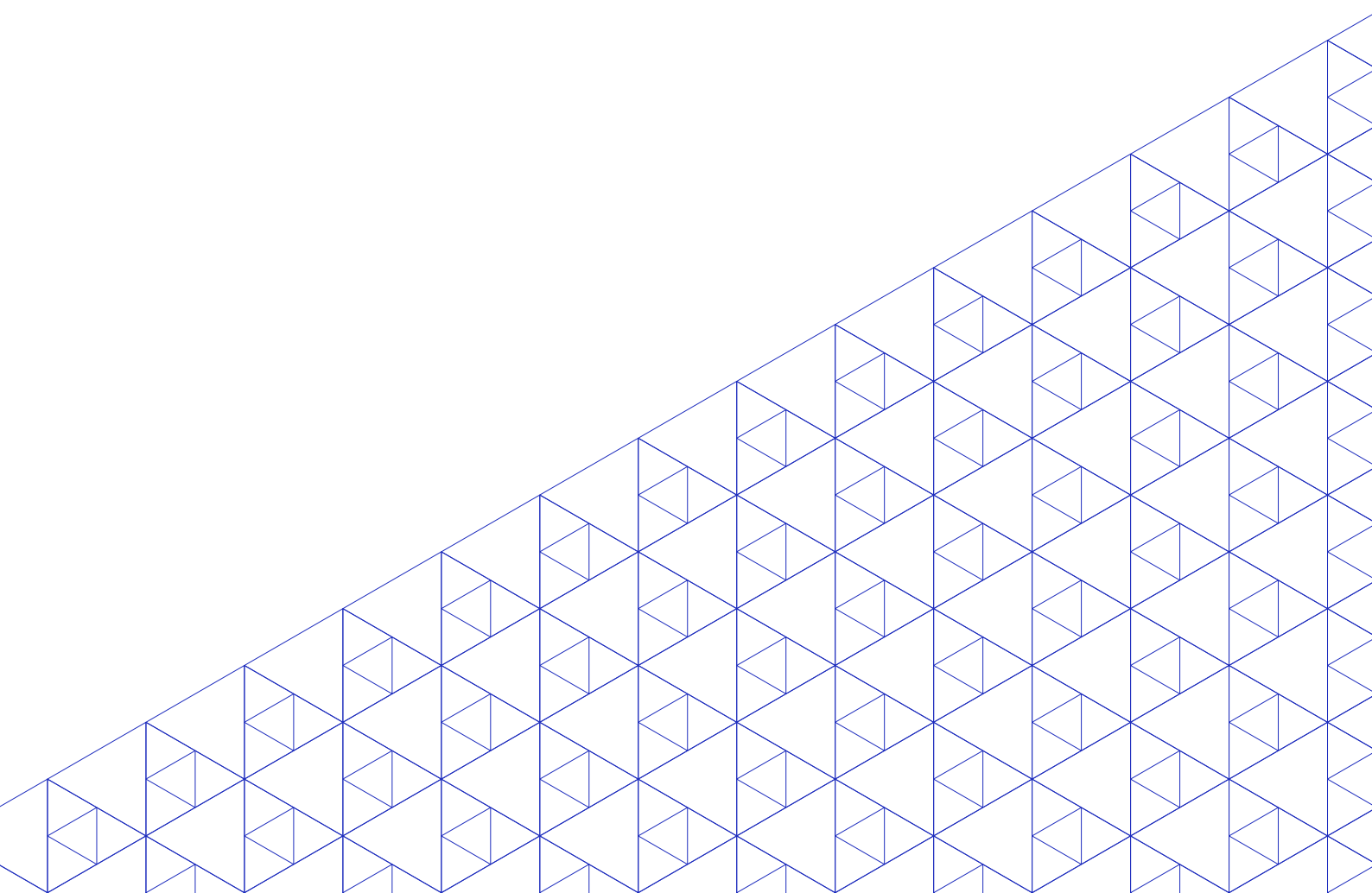




► Negotiations by workers in the informal economy

Authors / Verena Schmidt, Edward Webster, Siviwe Mhlana, Kally Forrest





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Abstract

Negotiations are a valuable and important tool for increasing the voice of workers in the informal economy. This paper provides empirical evidence from Africa, Asia and the Americas on negotiations and collective bargaining by workers in the informal economy. These practices demonstrate that negotiations involving workers in the informal economy, including those that culminate in collective agreements, are key to ensuring the fair distribution of the fruits of economic progress and labour protection to workers in many countries. They are also an important tool for reducing informalization trends. The paper also shows the multiple challenges workers in the informal economy are facing when organizing and entering into negotiations and outlines some possible pathways on how these can be reduced.

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▶ Introduction

Bargaining is a valuable and important tool for increasing the ability of workers¹ in the informal economy to defend their interests, promoting more inclusive labour protection and reducing decent work deficits (ILO 2020).² But workers in the informal economy face challenges to organize and engage in different forms of negotiations, limiting their capacity to achieve a fair share of the fruits of progress and improve their working and living conditions.

Informalization affects workers and economic units across the world. In recent decades, informality has increased in a number of countries despite economic growth. The global COVID-19 pandemic affected workers in the informal economy even more than other workers and increased the risks of growing informality (ILO 2020a).

Informality has multiple adverse consequences for individuals, enterprises and societies. Individuals who work informally are exposed to pervasive decent work deficits, such as lack of social protection and income security. They can also be seen as unfair competitors by formal workers. Enterprises that operate informally face high barriers in terms of access to capital, public infrastructure and markets, with negative implications for the productivity, business sustainability and working conditions of both business owners and employees. Informal enterprises are a source of unfair competition for those enterprises that comply with fiscal and labour laws (ILO 2022a). For governments and societies, informality means reduced government revenues, which in turn limits the scope of government action and weakens the rule of law, undermining social cohesion and inclusive development (ILO 2019a, 2019b).

The drivers of informality are multiple and transcend the world of work. They include factors that affect the economic and business environment, such as the inability to create sufficient formal jobs; the economic fluctuations that negatively affect the world of work; an inadequate regulatory framework (labour laws and regulations); and a weak enforcement system in the labour administration, including labour inspection (ILO 2021a).

The Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) provides a holistic framework on how formalization can be achieved. It states that “Members should undertake a proper assessment and diagnostics of factors, characteristics, causes and circumstances of informality in the national context to inform the design and implementation of laws and regulations, policies and other measures aiming to facilitate the transition to the formal economy”. Following the guidance of Recommendation No. 204, different categories of workers and economic units need different approaches to enable them to transition towards formalization.

Recommendation No. 204 recognizes in its Preamble that “employers’ and workers’ organizations play an important and active role in facilitating the transition from the informal to the formal economy” and states in Paragraph 33 that “employers’ and workers’ organizations should, where appropriate, extend membership and services to workers and economic units in the informal economy”.

Negotiations involving workers in the informal economy, including those that culminate in collective agreements, are key to ensuring the fair distribution of the fruits of economic progress and labour protection to workers in many countries. They are also an important tool for reducing informalization trends. Collective agreements determine wages; working hours; leave provisions and other conditions of work; the terms of

¹ The term “workers” is used in this paper to refer to all people in employment: employees, employers, own-account workers, dependent contractors and contributing family workers.

² In the Concept of Representation (University of California Press, 1967), Hannah Pitkin argues that “representation means, as the word’s etymological origins indicate, re-presentation, a making present again ... representation, taken generally, means the making present in some sense of something which is nevertheless not present literally or in fact”. In this working paper, “collective bargaining” will be used following the guidance provided in the Collective Bargaining Convention, 1981 (No. 154). “Representation” will be used more broadly to include all forms of dialogue and negotiation, including ad hoc meetings, tripartite social dialogue and collective bargaining.

employment; and the rules and procedures governing the relations between the bargaining parties (ILO 2021b). Historically, most workers and economic units in the informal economy have not been covered in many countries by collective agreements – not even been by labour laws more generally – which has made them particularly vulnerable. This limitation is closely linked to the capacity of these workers to be represented by trade unions. In some countries workers in the informal economy are excluded from collective bargaining rights, while in other countries the regulations or internal rules of trade unions have prevented unions from representing workers in the informal economy in the past. However, in recent years a number of unions in different countries have changed their internal rules and welcomed workers of the informal economy into their ranks (Visser 2019). According to ILO Conventions, all workers should have the right to organize and engage in collective bargaining (see section 2).

In spite of the challenges they face, workers in the informal economy have been able to organize and engage in various forms of negotiation, including in collective bargaining. This paper contributes to the existing body of research to document and analyse some of these practices and to consolidate a conceptual framework that identifies factors explaining challenges, trends and practices.

Objectives

The objective of this paper is to address the following research questions:

- Why and how have workers in the informal economy and their organizations been organizing to engage in collective action to defend their collective interests?
- What are the factors that influence the capacity of workers in the informal economy to organize?
- What types of negotiations have emerged involving organizations representing workers in the informal economy? How have collective agreements addressed the interests of these workers?
- What elements facilitate the negotiations of workers in the informal economy, including benefiting from collective bargaining?

This paper is a work in progress and aims to contribute elements to advance the debate on the representation of and negotiations for workers in the informal economy.

Methodology

This paper was developed based on a comprehensive literature review, interviews with experts and case studies. The literature review and the interviews with experts allowed the examination of relevant practices in eight countries,³ in each of which a specific organizational or negotiating practice involving workers in the informal economy was identified. Seven case studies were commissioned to local or regional experts in Argentina, Benin, Brazil, Colombia and South Africa. The theoretical deliberations were primarily based on an inductive approach, whereby the analysis of specific case studies led to the development of a more general conceptual framework.

³ Argentina, Benin, Brazil, Colombia, India, Mozambique, South Africa and the United States.

▶ 1 Who is part of the informal economy?

Following the guidance of Recommendation No. 204, the ILO refers to the informal economy as “all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements”. Recommendation No. 204 applies to the following categories of workers (authors’ emphasis):

4. This Recommendation applies to all workers and economic units – including enterprises, entrepreneurs and households – in the informal economy, in particular:

- a) those in the informal economy who own and operate **economic units**, including:
 - i) own-account workers;
 - ii) employers; and
 - iii) members of cooperatives and of social and solidarity economy units;
- b) **contributing family workers**, irrespective of whether they work in economic units in the formal or informal economy;
- c) **employees holding informal jobs** in or for formal enterprises, or in or for economic units in the informal economy, including but not limited to those in subcontracting and in supply chains, or as paid domestic workers employed by households; and
- d) **workers in unrecognized or unregulated employment relationships**.

It is important to recognize that the informal workforce is a very heterogeneous group, with a wide diversity in terms of conditions of work, level of earnings, types of occupation and employment status.

Statistical definitions

The International Conference of Labour Statisticians (ICLS)⁴ describes informal employment as a job-based concept. The **statistical definition of informal employment** (ILO 2003) differentiates three categories of workers: (i) employees; (ii) employers and own-account workers; and (iii) contributing family workers.

Employees

For employees, informal employment is defined in terms of the employment relationship. According to international standards, “employees are considered to have informal jobs if their employment relationship is, in law or in practice, not subject to national labour legislation, income taxation, social protection or entitlement to certain employment benefits” (such as maternity leave, paid annual or sick leave advance, notice of dismissal, severance pay) (ILO 2003). The underpinning reasons may include the non-declaration of jobs; casual or temporary jobs; jobs with hours of work or wages below a specified threshold (such as for social security contributions); or lack of application of law and regulation. The formal or informal nature of a job held by an employee is determined on the basis of operational criteria, such as social security contributions and entitlement to paid sick leave and paid annual leave.

⁴ ICLS participants include experts from governments, mostly from ministries responsible for labour and national statistical offices, as well as from employers’ and workers’ organizations. Regional and international organizations and other interest groups attend as observers. The ICLS makes recommendations on selected topics of labour statistics in the form of resolutions and guidelines, which are then approved by the Governing Body of the ILO before becoming part of the set of international standards on labour statistics.

An example of an employee in informal employment could be an employee in a fully registered company that does not pay any or pays insufficient contributions to social security on his/her behalf.

Independent workers (own-account workers and employers)

Employers and own-account workers are considered to be in informal employment when their economic units belong to the informal sector. The informal sector is a subset of household enterprises that produce goods or services for sale in the market, and that do not have a complete set of accounts and/or are not registered under national legislation (ILO 1993).

An example of an independent worker in informal employment could be a market vendor, a rickshaw driver or a waste picker who is not registered with the relevant national authority.

Contributing family workers

Contributing family workers are by definition informally employed, regardless of whether they work in formal or informal sector enterprises. An example of a contributing family worker could be a spouse of a farmer. This paper will not deal with contributing family workers.

Dependent contractors

In 2018, the ICLS introduced the new category of “dependent contractors” (ILO 2018a):

▼▼ *workers who have contractual arrangements of a commercial nature (but not a contract of employment) to provide goods and services for or through another economic unit. They are not employees of that economic unit, but are dependent on that unit for organization and execution of the work, income, or for access to the market. They are workers employed for profit, who are dependent on another entity that exercises control over their productive activities and directly benefits from the work performed by them.*

At the time of writing this paper, only five countries have defined dependent contractors as **legal categories** – Australia, Italy, Mexico, Slovakia and the Republic of Korea. To date, therefore, the term “dependent contractors” is mostly a **statistical category** that aims to capture a category of workers that is considered to be growing. By defining this category of workers, the ICLS provides information to contribute to policy debates on non-standard forms of employment, employment creation and access to adequate social protection for all workers (ILO 2018b).

Dependent contractors are often part of the informal economy, as social security plans may not be accessible to them.⁵ The international statistical standard on work relationships and the revision of the international statistical standard on informality which defines informality for dependent contractors⁶ should facilitate the production of national statistics on dependent contractors. This will form part of an integrated national system of work statistics, based on common concepts and definitions that are aligned with the current international standards and guidelines for statistics on work adopted by the ICLS.

An example of a dependent contractor could be a food courier who owns a motorbike and works exclusively for one particular platform.

⁵ The definition of informal employment for dependent contractors is currently under discussion as part of the revision of international statistical standards on informality, which will be discussed and adopted at the 23rd International Conference of Labour Statisticians to be held in 2023.

⁶ This process is expected to be finalized at the 23rd International Conference of Labour Statisticians in 2023.

Size of the informal economy

Some 2 billion workers or 61.2 per cent of the world's employed population are in informal employment (including the agricultural sector). Informal employment exists in all countries but is far more prevalent in developing economies. The share of informal employment in total employment ranges from an average of 18.3 per cent in developed economies to 67.4 per cent in emerging economies and as high as 89.8 per cent in developing economies (ILO 2018c).

Globally, informal employment is a more significant source of employment for men (63.0 per cent) than for women (58.1 per cent). However, this global picture hides important regional disparities and in low- and lower-middle-income countries a higher proportion of women than men are in informal employment. In Africa, for example, 89.7 per cent of employed women are in informal employment compared to 82.7 per cent of employed men. Women working in the informal economy are often in more vulnerable situations than their male counterparts, for example when employed as domestic workers, home-based workers or contributing family workers (ILO 2018c).

Of those working in the informal economy, 45 per cent are own-account workers, 36.2 per cent are employees, 16.1 per cent are contributing family workers and 2.7 per cent are employers (ILO 2018c). Some authors have challenged labour statistics that show self-employment as the dominant employment status in the informal economy, on the basis that "wage employment" and "self-employment" do not capture the nature and variety of employment relations in developing countries (Rizzo, Kilama and Wuyts 2015). However, the new category of "dependent contractors" introduced by the ICLS in 2018 should enable a clearer distinction for these concepts.

▶ 2 The ILO institutional framework for representation of workers and bargaining in the informal economy

Acknowledging the negative effects of the informal economy, in 2015 ILO constituents adopted Recommendation No. 204. Previously, in 2002, the International Labour Conference (ILC) had adopted the Resolution and conclusions concerning decent work and the informal economy (ILO 2002).

Recommendation No. 204 is the first international labour standard to provide a framework that is both normative and developmental, focusing on the informal economy in its entirety and diversity. It provides guidance on how to pursue a threefold objective:

- facilitate the transition of workers and economic units from the informal to the formal economy, while respecting workers' fundamental rights and ensuring opportunities for income security, secure livelihood and entrepreneurship;
- promote the creation, preservation and sustainability of enterprises and decent work in the formal economy and the coherence of macroeconomic, employment, social protection and other social policies; and
- prevent the informalization of formal economy jobs.

Recommendation No. 204 recognizes that most people enter the informal economy not by choice but as the result of a lack of opportunities in the formal economy and the absence of other means of livelihood. It also acknowledges that decent work deficits are more pronounced in the informal economy and that the transition to formality is essential for inclusive development and decent work for all.

Recommendation No. 204 suggests that integrated policy frameworks to facilitate the transition to the formal economy, including access to and the use of public space (Para. 11(o)), should be developed. The Recommendation also states that "Members should recognize the importance of safeguarding the opportunities of workers and economic units for income security in the transition to the formal economy by providing the means for such workers or economic units to obtain recognition of their existing property as well as by providing the means to formalize property rights and access to land" (Para. 13).

Bargaining in the informal economy

As already mentioned, Recommendation No. 204 recognizes the important role of employers' and workers' organizations in facilitating the transition from the informal to the formal economy and states in Paragraph 33 that "Employers' and workers' organizations should, where appropriate, extend membership and services to workers and economic units in the informal economy".

All workers and employers, including those in the informal economy, should have the rights to freedom of association and to collective bargaining for furthering and defending their interests, as provided for in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). This is reaffirmed in Recommendation No. 204, which underlines the right of those in the informal economy to establish and join organizations, federations and confederations of their own choosing (ILO 2020a, 2020b).

Supporting interaction between employers' and workers' organizations and those in the informal economy is a key element of the ILO strategy to achieve the formalization of the informal economy. This point was also underlined in the Resolution and conclusions concerning the second recurrent discussion on social

dialogue and tripartism (ILO 2018d), which states in paragraph 3(k) that Members, with the support of the Organization, should:⁷

- ▶▶ *develop innovative approaches, including initiatives to ensure the exercise of freedom of association and the effective recognition of the right to collective bargaining are extended to, and respected in, employment relationships where they have not traditionally been available, and to new and emerging forms of employment, and that those workers are able to enjoy the protection afforded to them under the applicable collective agreements, in accordance with applicable laws and national circumstances;*

Transformations in the world of work can result in situations of employment misclassification that lead to the erosion of the employment relationship and create forms of work that do not always afford adequate labour and social protection. Such transformations affect workers in diverse forms of work arrangements. Recommendation No. 204 considers workers in unrecognized or unregulated employment relationships as workers in the informal economy (Para. 4(d)).

The Centenary Declaration for the Future of Work highlights the importance of the transition to formality, for ensuring adequate protection to all workers (part II.A) and promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all (part II.B); (ILO 2019d).

In the Global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient, which was adopted by the International Labour Conference at its 109th Session in 2021, the ILO endeavours to strengthen its support for Member States efforts' by "prioritizing and mainstreaming strategies to address the informal economy and insecure forms of work, which have been particularly affected by the crisis, including through research, development cooperation and policy interventions and guidance".

A number of other ILO Conventions are particularly relevant for workers in the informal economy, including Conventions that cover employment policy and promotion, vocational guidance and training or wages, among other issues.⁸

Looking at the two most recently adopted Conventions, the Violence and Harassment Convention, 2019 (No. 190) applies to both the formal and informal economy, stating in Article 8 that "[e]ach Member shall take appropriate measures to prevent violence and harassment in the world of work, including: (a) recognizing the important role of public authorities in the case of informal economy workers".⁹ The Domestic Workers Convention, 2011 (No. 189) specifically provides in its Article 2 that a Member State should consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and **those representative of employers of domestic workers** [authors' emphasis].

The Employment Relationship Recommendation, 2006 (No. 198) provides guidance on how to regulate the scope of the employment relationship and deter circumvention of the labour and social security rights that the relationship entails. It contains a series of principles that can guide countries when devising policies to address employment misclassification, including the principle of the "primacy of facts", according to which the determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of work and not by the parties' description of the relationship.

⁷ In addition, para. 5(a) of the conclusions states: "Strengthen the capacity of the most representative organizations of employers and workers to include in their ranks, according to national practice, representatives of membership-based representative organizations of workers and economic units from the informal economy to enable them to engage effectively in tripartite and bipartite social dialogue, negotiate and implement agreements and influence policies in line with the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)".

⁸ The Annex to Recommendation No. 204 contains a list of ILO and United Nations instruments relevant to facilitating the transition from the informal to the formal economy.

⁹ For a review of the application of labour laws to the informal economy, see ILO, *Extending the Scope of Application of Labour Laws to the Informal Economy*, 2010.

As indicated above, Recommendation No. 204 foresees that informal economy workers are involved in social dialogue and collective bargaining by means of their cooperation or joint organization with employers' and workers' organizations.

By contrast, the Social Protection Floors Recommendation, 2012 (No. 202) and the Domestic Workers Convention, 2011 (No. 189) allow consultations directly with organizations of workers in the informal economy, namely "persons concerned" in the case of Recommendation No. 202 and domestic workers in the case of Convention No. 189.¹⁰ For example, Recommendation No. 202 stipulates in Paragraph 3 that:

▼▼ *[r]ecognizing the overall and primary responsibility of the State in giving effect to this Recommendation, Members should apply the following principles:*

▼▼ *(r) tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organizations of persons concerned.*

Finally, the Guidelines for a just transition towards environmentally sustainable economies and societies for all (ILO 2015) provide a non-binding practical orientation for governments and social partners on how to formulate, implement and monitor a policy framework for a just transition. The just transition framework includes the establishment of targeted programmes in sectors in which a significant proportion of enterprises and workers are informal with a view to promoting formalization and awareness of social, economic and environmental policies. In the implementation of the framework, the Guidelines acknowledge the pivotal role of employers' and workers' organizations in bringing about social, economic and environmental sustainability with decent work and social inclusion.

¹⁰ Of the 75.6 million domestic workers worldwide, 61.4 million (81.2 per cent) remain in informal employment (ILO 2021b,17).

▶ 3 Examples of representation and negotiation of workers in the informal economy

This section documents nine case studies from Africa, the Americas and Asia to illustrate different forms of bargaining. The first set of case studies provides examples of proto-bargaining and collective action. The second set of case studies provides examples of collective bargaining following the guidance of the Collective Bargaining Convention, 1981 (No. 154). The case studies are analysed in section 4 below.

The case studies in Colombia and Argentina deal with waste pickers. This shows the important contribution that workers in the informal economy play in terms of recycling, reusing and waste management.

Several case studies underline the importance of the business environment for decent work, including sound labour relations, such as the case study in Zimbabwe on access to land, the case study in Benin on safe working conditions and the case study in Colombia on procurement processes. Indeed, the “promotion of a conducive business and investment environment” is emphasized in Paragraph 11 of Recommendation No. 204 as part of the recommended integrated policy framework on the transition from the informal to the formal economy.

Collective action and negotiations

United States of America: Multiparty bargaining with fruit pickers union leads to adoption of detailed labour standards¹¹

Multiparty bargaining is one important approach to achieving negotiated agreements in the informal economy. In the agricultural sector in the United States, a number of fruit pickers worked informally as they were not covered by the National Labour Relations Act. Lead firms exercised a high level of control over work processes and began to take responsibility for labour conditions after a major seven-year boycott campaign led by the Farm Labor Organizing Committee (FLOC), a union of farmworkers in the midwestern United States, with the support of churches and other civil society groups.

In 1986, the FLOC compelled the largest company to resolve its dispute with farmworkers through an innovative process. The company agreed to cooperate in the formation of an association of tomato and cucumber suppliers in the states of Ohio and Michigan, respectively. FLOC then negotiated a three-way bargaining agreement whose signatories included FLOC, the company and the association of growers. The agreements included detailed labour standards, including classification-specific wage rates, paid holidays, health and safety standards and a grievance mechanism. They also created working groups to address day care, healthcare, housing and pesticides and established a process whereby new members of the growers' association recognized the union if a majority of workers joined it. These three-way contracts created strong incentives for suppliers to deal positively with the union.

The FLOC continues to organize farmworkers in the midwestern United States and maintains a stable membership through its relations with lead firms. Food brands are no longer formally parties to the agreements, but in practice the sourcing and pricing dynamics between the food brands, their suppliers and the union remains the same.

¹¹ For a detailed analysis, see Blasi and Bair (2019).

In 2016, the FLOC negotiated a four-year agreement that provided detailed labour standards typical of collective agreements, including classification-specific wage rates, a grievance mechanism, a seniority-based recruitment system with union oversight, and a “just cause” standard for discipline and termination.

Benin: Negotiations between street traders and market authorities at Dantokpa market¹²

In Cotonou, the dominant representative organization for street traders is the Syndicat National des Vendeurs, Vendeuses Assimilés des Marchés Autonomes du Bénin (SYNAVAMAB). The SYNAVAMAB is one of the first grass-roots unions of workers in the informal economy to be established by a trade union confederation in Benin. It was established by the Union Nationale des Syndicats des Travailleurs du Bénin (UNSTB) in 1992, arising from the need for representation for informal traders. With the support of its confederation and affiliations with organizations such as Streetnet International, the SYNAVAMAB has grown rapidly over the years and has gained recognition from key stakeholders, such as market authorities of the Société de Gestion des Marchés Autonomes (SOGEMA) and traders. SOGEMA serves as the state structure responsible for managing the market and on some occasions serves as an important platform for negotiation between the Government and traders. The representatives of traders on the board of Directors of SOGEMA are appointed by vote or through a non-elective process that involves consultation between the Ministry of Local Governance and the main street trader organizations. In 2017, the General Secretary of SYNAVAMAB was reappointed to the board of directors of the SOGEMA as the traders’ representative.

After the creation of the SYNAVAMAB, more organizations of street traders emerged and were successively appointed to the board of the SOGEMA. Each of these organizations seek to improve the conditions of traders, including through access to public space and respite from harassment by public authorities. In addition to demands for better hygiene and sanitation conditions at the market, they have been advocating for the extension of the electricity network to all sectors of the market; better security conditions for people and goods; and the maintenance of affordable rent for traders. These organizations also provide support to the victims of disasters so that they are able to find a place to continue their operations in the market.

An important illustration of the role of SYNAVAMAB in collectively defending the interests of its members emerged in April 2018, when a fire broke out at Dantokpa market. The SYNAVAMAB, together with the SOGEMA and the group of cereal traders from the affected Kpodji area, began negotiations to find appropriate solutions for those traders directly affected by the fire. The negotiations sought assistance from the Government to enable the victims, who were predominantly women traders,¹³ to resume their operations as quickly as possible by rehousing them after the redevelopment of the site and to ensure that rental costs would remain unchanged. The group sought an internal solution to fund the redevelopment of the site. The negotiation committee was made up of six elected representatives from the group of traders in the Kpodji area, the Secretary-General of the SYNAVAMAB and a SOGEMA authority assisted by two executives from SOGEMA.

Throughout the negotiation process, regular meetings of the group of victims were held on site. The negotiation committee also updated the victims on the progress of the negotiations and requested their opinions on certain issues being discussed. The same process was used by the board of SOGEMA and the Secretary-General of the SYNAVAMAB to liaise with the victims regarding the negotiation process and solutions to be taken.

The main outcomes of the negotiation process included the redevelopment of the affected area with internal funding from the SOGEMA, the rehousing of all of the victims and a moratorium on the payment of rental costs for a period of one year for all those affected by the disaster. The most important outcome,

¹² This case study builds on Kassim Assouma, “Benin: Negotiations between Street Traders and Market Authorities at Dantokpa Market”, ILO/INWORK background study (unpublished).

¹³ Women make up two thirds of the street traders at Dantokpa market.

however, was a transitional solution for the redevelopment of the affected area that allowed traders to resume their operations while waiting to be transferred to other sites.

This practice is an important example of how own-account workers managed to get access to forms of bargaining with a view to improving their everyday working lives.

Colombia: Waste pickers in Bogotá use legal tactics through a cooperative to win recognition and integration into the waste system countrywide¹⁴

In Bogotá, waste pickers represent a vulnerable cohort of workers, usually local migrants and internally displaced people with limited alternative employment opportunities. The official records indicate that 57.30 per cent of waste pickers were illiterate in April 2021, a figure that rises to 62.70 per cent among female waste pickers (RURO 2021). The gender structure is disproportionately male, with men forming 57.9 per cent of waste pickers aged 26 to 50 (Parra 2019; cited in Abizaid 2015).

The Asociación Cooperativa de Recicladores de Bogotá (ARB) is the main representative organization for waste pickers in Bogotá. The ARB is a cooperative association and represents 19 waste pickers' cooperatives from different districts in the city. ARB was established out of the need to protect the rights of workers following a series of structural and institutional attacks on waste pickers in the region. Accordingly, in 1990 three cooperatives (Rescatar, Porvenir and El Triunfo) joined to form the ARB with the aim of defending the rights of waste pickers to live and work in the city (Acosta Táutiva and Ortiz Olaya 2013). Over the years, the ARB and its confederation, the Asociación Nacional de Recicladores (ANR), have employed several legal strategies that have led to the recognition of waste picking as a job and the integration of waste pickers in the public waste management system across the country. The waste pickers who belong to ARB are mainly women (58 per cent) who are the heads of their families and are located in the two lowest socio-economic groups. On average, they have two dependants, and their income comes from informal employment (Abizaid 2015).

Until 2003, it was against the law to pick waste in cities with more than 8,000 inhabitants. Therefore, the waste pickers were informal and had no access to social security. In 2003, the ARB and the ANR filed a lawsuit that claimed the unconstitutionality of the prohibition to work in large cities. The Constitutional Court ruled that waste pickers had the right to work in all cities, regardless of their size.

Following this judgement, the two waste pickers' organizations filed another lawsuit with the court against the specialized agency for waste pickers in Bogotá, the Unidad Administrativa Especial de Servicios Públicos, claiming that the bidding process for urban service providers had violated their participation rights and failed to follow affirmative action procedures to guarantee the inclusion of vulnerable workers (case C-793 2008; 2009). The Constitutional Court (case C-741 2003) ruled in 2017 in favour of the waste pickers, compelling district authorities to implement certain policies to ensure that the waste pickers' organizations could participate in the next tender process and that the process would be fair (Colombia, National Decree 596 of 2116). In addition, between 2008 and 2017, the ARB and the ANR also brought cases before the Constitutional Court against the prohibition of waste picking in public spaces and for the right to legal recognition as independent service providers. The 8,000 workers represented by the ANR were deeply involved throughout these legal proceedings (Acosta Táutiva and Ortiz Olaya 2013).

The ARB also developed strategies to defend the rights of workers through community involvement, including through community dialogues, strengthening alliances, organizing demonstrations and promoting training programmes for its affiliates. The ARB participated in consultative processes, such as the round table for Solid Waste Management Integrated Plans, and obtained an ISO 9001 certification for quality management for small and micro businesses (Abizaid 2015).

¹⁴ This case study draws on Sara Cufre, "Colombia: Waste Pickers in Bogotá Use Legal Tactics to Win Recognition and Integration into the Waste System Countrywide", ILO/INWORK background study (unpublished).

ARB and ANR have been successful in securing the following rights for waste pickers in Bogotá through litigation:

- the right to operate in all places;¹⁵
- the right to become independent service providers;¹⁶
- the right for legal and economic recognition of waste picking as a job;¹⁷ and
- the right to bid and compete with other service providers, and to participate in the public waste management system¹⁸

To begin the process towards the formalization of waste picking in the country (District Decree, No. 564 of 2012), the state:

- provided waste pickers with identity cards;
- set a payment schedule for ARB and non-affiliates; and
- developed a programme to compensate the animal traction vehicles replacement.

The ARB continues to make demands with the aim of improving the working conditions of waste pickers in the city.

This case shows how cooperatives representing vulnerable own-account workers organize to fight for their rights, including through legal proceedings.

Mozambique: Small farmers associations and cooperatives and the National Union of Farm Workers promote agricultural production¹⁹

In national statistics, peasant farmers are generally categorized as own-account workers without employees and unpaid family workers, although the National Union of Farm Workers also has commercial farmers who employ people on a casual basis within its membership. Even though peasant farmers are embedded in the global value chains, they are not employees of multinational corporations. The demands centre on commodity prices rather than wages, agricultural extension rather than training, and investment in infrastructure rather than occupational safety and health.

The Mozambican National Union of Farm Workers has a membership of 150,000 small- and medium-scale farmers. The farmers are organized in more than 5,000 associations and cooperatives across the country, which elect leaders to 80 district and 11 provincial trade unions that represent them in national forums. Some are also affiliated with other rural organizations, including the Rural Association of Mutual Aid.

Mozambique's associations and cooperatives have their origin in the socialist period between 1975–1990. Following failed attempts to collectivize the countryside through communal villages and state farms on former colonial plantations, the Frelimo Government adopted a cooperative model in an effort to promote agricultural production in the late 1980s. The General Union of Cooperatives of Maputo, comprising farmers in the green zones surrounding the capital city who provided a critical source of food in the context of civil war, played a critical role in dynamizing the national cooperative movement.

The membership of associations and cooperatives is far from homogeneous, reflecting the social differentiation of the countryside. Some are made up of landless or near-landless farm workers and others of commercial farmers who hire near-landless farm workers to till their fields. Many members engage in other

¹⁵ Colombia, Constitutional court case C-741, 2003.

¹⁶ Colombia, Constitutional court case T-724, 2003.

¹⁷ Colombia, Constitutional court case C-275, 2011.

¹⁸ Colombia, Constitutional court case T-724, 2003; 2017.

¹⁹ This case study was prepared by Ruth Castel-Branco, based on an interview conducted with Boaventura Monjane in August 2021.

economic activities, including *biscates* or short-term side labour, casual wage workers, petty trading, skilled trades, paid domestic work and migrant labour, as far afield as the plantations and mines in South Africa. Given the heterogeneity among the farmers, the demands of their organizations vary widely.

The objectives of the associations and cooperatives include securing access to land that belongs to the state; accessing agricultural inputs and credit; and improving their bargaining position vis-à-vis agricultural marketers. Some member organizations have welcomed the entry of multinational corporations, in the hope that agroindustry will open up new opportunities for business, while others have fought against the expropriation of land in the name of the industrial development of the countryside. Repertoires of action vary widely, from the burning of fields and community protests to the organization of local hearings.

At the national level, the National Union of Farm Workers focuses its energies on lobbying the Government and is regarded as an important negotiating partner of the Ministry of Agriculture. The National Union of Farm Workers' sources of power rest on both its organization and the fact that the state uses land (rather than social grants for instance) as a strategy to manage Mozambique's crisis of production.

India: Head loaders in Ahmedabad ²⁰

Head loaders work in wholesale textile markets in Ahmedabad in Gujarat in western India. They carry bundles of cloth or garments on their heads/shoulders and on carts, tricycles or small commercial vehicles, from one shop or market to another, from wholesalers to retailers or from the houses of home-based garment workers to wholesale merchants. They also carry, pack and sew parcels, transporting them from textile markets to bus or railway stations as a courier service. Both men and women and whole families work together as head loaders.

Head loaders do not have any employment contracts with those who use their services. They are not issued any employment letters. They do not have any fixed place of employment. They do not get social security benefits as per labour laws offering social security. The lack security of employment and income and the heavy loads they carry take a toll on their health. Furthermore, they are not covered by the Industrial Disputes Act, 1947, which recognizes the collective bargaining rights of workers.

About 5,000 head loaders work in the Panchkuva cloth market and about half of them are women. The women are almost all members of the Self-Employed Women's Association (SEWA), a trade union federation registered in 1972 that now represents 1.8 million informal women workers in more than 12 states in India, in both rural and urban areas.

SEWA strives to ensure that wages and working conditions are regulated by law and that fair wages and decent working conditions prevail. It also fights for women's pay parity with men head loaders. SEWA has helped secure identity cards for head loaders so that they can register with the labour welfare board for unorganized workers in the state. SEWA helps settle disputes between head loaders and employers regarding the non-payment of wages at the agreed rate. The head loaders are paid fixed piece-rate wages by shopkeepers and textile merchants, according to size of the parcel and the distance traversed. The wages are paid on a fortnightly or monthly basis. SEWA periodically negotiates with associations of head loader employers to secure payments due as well as wage increases. Employers at times refuse to pay revised wage rates, citing economic recessions.

More than 1,000 employers are represented by the Panchkuva Cloth Merchants Association and since the mid-1990s, SEWA has held negotiations and entered into collective agreements with it. In 2013, the Association entered negotiations only after the head loaders called for a *hartal* (work stoppage).

²⁰ This case study builds on Ramapriya Gopalakrishnan, "Wage Revision for Women Head Loaders in a Textile Market in Ahmedabad", ILO/INWORK background study (unpublished).

In 2019, the head loaders demanded a wage increase previously fixed in 2013 in view of rising inflation and their inability to make ends meet. Negotiations between SEWA and the Panchkuva Cloth Merchant Association were initiated. The head loaders' negotiating team comprised of SEWA officials and also had direct representation from the head loaders. The Panchkuva Cloth Merchant Association initially participated only half-heartedly. However, after three rounds of negotiations, an agreement was reached to increase the wage rates per standard weight of one parcel of 20 kgs, from 7 October 2019, for a period of three years.

The settlement is unique in that it is a signed agreement which allows for head loaders to individually engage in direct negotiations with employers on parcels that weigh more than the standard weight, as well as on tasks other than sewing, transporting and delivering. An interesting aspect of the agreement is that it seeks to protect the dignity of head loaders by prohibiting employers from insulting or demeaning them. The agreement also contains clauses imposing a duty on head loaders to work for all shopkeepers in the market and to carry parcels to any area required.

Collective agreements in the informal sector with respect to workers with multiple employers are rare, but the head loaders agreement may show the way forward for workers in other occupations in the informal sector.

South Africa: Street trader negotiations during the COVID-19 pandemic

Street traders are faced with the threat of relocation and eviction from marketplaces and streets and the lack of provision of housing and sanitation, as well as the inaccessibility of municipal officials. No supportive legislative framework exists.²¹

The informal traders have a national voice through the South African Informal Traders' Association (Webster and Forrest 2019). They engage with counterparts in national government departments, including the Treasury, and the South African Local Government Association, which is constitutionally mandated to oversee local governments. They represent own-account workers in policy and law-making, while promoting Recommendation No. 204.²²

However, the local level is paramount. In South Africa, there are 278 municipalities, comprising 8 metropolitan, 44 district and 226 local municipalities. The informal traders have organized in associations to represent themselves and have long engaged in ad hoc negotiations with municipalities, often in crisis situations. However, they lack a permanent voice in negotiating forums.²³

Due to the COVID-19 lockdown, local trader associations and South African Informal Traders Association representatives have been unable to meet and have therefore experimented with online meetings. Most traders have smartphones and these became central in uniting vendors nationwide. Using inexpensive mobile messaging voice notes, vendors report back on developments in their municipalities and upload relevant documents. The agenda and minutes are distributed by Streetnet, which provides mobile data where necessary (Horn 2021). This has enabled unprecedented street trader coordination as participant numbers are growing.

It is usually difficult to get government representatives to meetings, but they were more willing to engage online. The national Department of Cooperative Governance and Traditional Affairs presented a district development model, while the South African Local Government Association delegates promised to represent their issues across municipalities (Horn 2021; virtual WIEGO national street vendor meeting).

Traders have reported difficulties in accessing a COVID-19 pandemic relief grant and also allege discriminatory and intransparent allocation of permits, as well as city confiscations and evictions. Noting that direct protest was not permitted under COVID-19 pandemic regulations, a July 2021 meeting adopted a

²¹ Interview with Pat Horn (Coordinator, Collective Bargaining in the Informal Economy, WIEGO), conducted by Kally Forrest; and interview with Vanessa Pillay (National Programme Waste Pickers Integration, WIEGO), conducted by Kally Forrest, 23 June 2021.

²² Interviews with Horn and Pillay.

²³ Interviews with Horn and Pillay.

campaign on the theme “Do no harm”, including a pamphlet for distribution to municipalities and on social media (Horn 2021).

Local traders’ associations engaged in creative tactics to bring municipalities to the table. The Johannesburg Informal Traders Platform submitted a complaint to the Public Protector following confiscations and evictions without consultation. The Protector instructed the South African Local Government Association to convene a two-day summit for vendor representatives to dialogue with the municipality, including its Johannesburg Metro Police Department (Mali 2021). In the Nelson Mandela Bay District Council, vendors put pressure on the municipality, resulting in regular meetings of an informal economy stakeholders’ forum. The Council urged the Informal Traders Association, which has 500 members, to extend its coverage to represent all workers in the informal economy in the district. Vendors, including documented foreign nationals, are issued with permits, ending years of police harassment.

Own-account representation in South Africa reflects an ongoing struggle to gain a permanent voice, especially within municipalities. Most bargaining is on an ad hoc basis, as workers fight to create a regular platform to directly raise their issues.

Argentina: Waste pickers in Buenos Aires²⁴

In Buenos Aires, the dominant form of waste picker representation is conducted through cooperative movements. In the early 1990s, El Ceibo and Cartoneros del Tren Blanco, two of the oldest cooperative movements, began organizing to defend the rights of waste pickers in the city. Since then, several other cooperative movements have emerged. Most notably, in 2002 the Movimiento de Trabajadores Excluidos was established and in the mid-2000s it formed an alliance with El Álamo and the Popular Assembly, La Alameda. In 2011, this alliance led to the formation of the Confederación de Trabajadores de la Economía Popular (CTEP), a national confederation of workers in the informal economy.

In Argentina, Laws 25865 and 26223 of 2004 created a register of the providers of social economy goods and services for local development and a special access to social protection, which is known as “Monotributo Social”. The latter provides for a contribution of 50 per cent for access to social coverage, the rest being paid by the state. It applies to individual contributors and members of worker cooperatives with low incomes, who may be providers of the state within public programmes. However, this is not equivalent to the social protection of formal workers, as it does not guarantee a minimum wage and does not sufficiently cover the replacement income (paid leave, pensions, illness and so on) as was demanded by CTEP.²⁵

In 2019, together with other social movements, the CTEP formed a trade union, the Unión de Trabajadores de la Economía Popular. In 2002, despite not being registered as a trade union, cooperatives became the bargaining agents in negotiations with the local government. Among other things, cooperatives sought to defend the rights of waste pickers in the city through legalization and the improvement of working conditions.

According to normal practice, cooperatives must have an administrative council, which is elected every two years following a voting process involving the members of the cooperative movement. The council consists of a president, a secretary, a treasurer, a compliance officer and members of the cooperative. These positions require members to set internal organizational mechanisms, not only to comply with the regulatory framework but also to conduct the tasks associated with the cooperative’s role in the public hygiene management system. In addition, the council is responsible for organizing actions to demand resources from the local government, negotiating with clients and stakeholders and seeking solutions for disputes between the various waste picker organizations in the city.

Ordinarily, the assembly meets annually, within four months of the financial year-end. In addition, ad hoc meetings are held whenever the administration council, the compliance officer or at least 10 per cent of

²⁴ This case study builds on Sara Cufre, “Waste Pickers in Buenos Aires”, ILO/INWORK background study (unpublished).

²⁵ Mariyana Amova and Mirta Vuotto, “The Creation of a Union Representation of the Popular Economy in Argentina”, draft paper prepared for UN Inter-Agency Task Force on Social and Solidarity Economy, June 2019.

members decide to call a meeting. The discussions and resolutions adopted are recorded in the minutes of the assembly and those of the administrative council. Assemblies are the main platform through which members are able to discuss their demands, resolve internal conflicts and negotiate with the government officials involved in the public hygiene management system.

Between 2002 and 2010, following several negotiation processes with the local government, cooperative movements won the following rights for waste pickers in the city:

- legal recognition and incorporation into the Public Service of Urban Hygiene as *recuperadores urbanos* (urban waste pickers);
- approval of a public tender which eliminated the payment per metric tonne collected; and
- prioritization and financial support for the collection and transportation of recyclable materials through the Zero Waste Act.

In addition, the city agreed to ensure the following provisions concerning:

- transportation logistics services for each collection zone;
- childcare services to prevent child labour;
- health and safety through guaranteed individual accident insurance schemes and personal protective equipment;
- economic support in the form of a monthly income (“social wage”) and financial aid for cooperatives based on the growth of their membership base;
- maintenance, security and administration of the green centres;
- jurisdictions for biddings; and
- a four-year contract with the waste pickers cooperatives.

Towards collective bargaining in the informal economy

India: Formalization of contract labourers through agreements²⁶

Since the early 2000s, there has been an increase in informal employment among factory workers in India, including contract labourers and fixed-term contract workers. According to the 2019–2020 Periodic Labour Force Survey in India, 73.0 per cent of employees with a temporary contract are in informal employment versus 19.3 per cent of employees with a permanent written contract.

The company referred to in this case study is a subsidiary of an Italian multinational company, which has a factory in the state of Tamil Nadu and produces tractors and diesel engines. The workforce consists of permanent employees, fixed-term contract workers and contract labourers. Contract labourers (off-roll workers) are employed through a third-party intermediary and are not issued any appointment letter or an employment contract in writing nor are they issued any identity card by the user enterprise. Therefore, the names of contract labourers do not figure in the employment rolls of the user enterprise and for a long time they did not have any social security benefits. Until 2019, contract labourers were therefore confronted with higher employment insecurity and a high degree of informality.

The factory was not unionized until August 2018, when the United Labour Federation (ULF) informed management that it represented the majority of workers and demanded recognition. The union aimed to negotiate wage revision for all the three categories of workers in the factory, as well as permanent employment for 58 off-roll workers who had been working in production from 3 to 14 years. As the company was slow

²⁶ This case study builds on Ramapriya Gopalakrishnan, “Formalization of Contract Labourers through Collective Agreements”, ILO/INWORK background study (unpublished).

to respond, the ULF alerted the Assistant Commissioner of Labour, who was the designated Conciliation Officer under the Industrial Disputes Act, 1947. Meanwhile, the management reached out to the ULF and proposed bilateral negotiations.

From November 2018, several rounds of negotiations were held. The union negotiating team consisted of seven ULF shop-floor workers and three ULF officials, while on the company side the senior general manager for human resources and the director of the company participated.

The trade union participating in negotiations represented not just the permanent workers – their members – but also the contract labourers.²⁷ The officials met with the latter to brief them after each round of negotiations and discuss the issues at stake. The union also organized general meetings from time to time to get inputs from all the workers in respect of negotiations. The union bargaining team actively participated in discussions and compared the wages of workers with wages in other factories in the region. They had access to the company's balance sheet and were able to press claims for higher wages and permanency. Occasionally, workers refused to continue negotiations until other demands were met. For instance, the interdepartmental transfer of a union official was reversed owing to such pressure. The union team also boycotted negotiations for a period to protest the management's unwillingness to compromise. Negotiations were protracted, but there was a commitment on both sides to resolve the outstanding issue.

On 9 December 2019, the negotiations culminated in the completion of two agreements on the permanency of off-roll workers and wage increases for permanent workers. On the question of permanency, the parties entered into a memorandum of understanding to underscore the management's position that it was a one-time measure not intended to create a precedent. It allowed for the absorption of 56 off-roll workers drawn up by both the union and employers, in a phased manner over a period of a year. During this time, the 56 workers were placed on probation as a preliminary step towards their permanent employment. A wage increase was also agreed, alongside a commitment by management to provide training if workers were deployed elsewhere in the company.

A separate "memorandum of settlement"²⁸ was signed in respect of wages for permanent workers, in the presence of the conciliation officer. The wages of permanent workers were increased in a staggered manner over a period of three and a half years as of January 2019.

Brazil: São Paulo domestic worker trade union signs collective agreement with employers' organization²⁹

The share of informal employment among domestic workers in Brazil is 61.6 per cent (ILO 2021b), which is double the share for other employees, of whom 32.9 per cent are in informal employment.³⁰ Due to persistent gender and racial inequalities, women and black people are disproportionately represented in domestic work, making up 93 per cent and 61 per cent, respectively, of domestic workers (IPEA 2019).

In São Paulo, the dominant form of representation for domestic workers is conducted through the Domestic Workers Union of the State of São Paulo (STD MSP). The association began with workers meeting informally to share their experiences and common struggles of the job. Along with social workers, a few employers and the Movimento de Renovação Sindical, which provided facilities for meetings, domestic workers began to formalize their association. Eventually in 1962, the National Association of Domestic Employees of São Paulo, which later became the STD MSP, was formed. In 1988, domestic workers won the constitutional right

²⁷ Contract labourers and fixed-term employees have little experience in trade union activities and often only a basic education; therefore, they were represented by permanent employees.

²⁸ The agreement is called a "memorandum of settlement" and not a collective agreement because the Industrial Disputes Act 1947 of India uses the terminology "memorandum of settlement". The agreement on wage revision was entered into as per section 12(3) of the Industrial Disputes Act and is therefore a memorandum of settlement.

²⁹ This case study builds on Sara Cufre, "São Paulo Domestic Worker Trade Union Signs Collective Agreement with Employers' Organization", ILO/INWORK background paper (unpublished).

³⁰ ILO estimates (unpublished).

to form trade unions. This amendment led to the formation of the Federação Nacional das Trabalhadoras Domésticas (FENATRAD) in 1997. The STDMSP is an affiliate of FENATRAD.

Despite these limitations, in 2017 the STDMSP successfully signed a collective agreement with an employers' organization, the Union of Domestic Employers of the state of São Paulo (SEDESP) (ILO, FENATRAD and STDMS 2021b). This agreement, which was renegotiated and signed on 1 March 2021, regulates the employment relationship between domestic workers and their employers in order to improve working conditions (including a minimum wage above the national minimum wage and weekly rest periods) and defend the rights of workers (ILO, FENATRAD and STDMS 2021a). The STDMSP formulated its demands following a series of meetings and consultations with its members. The union also held discussion groups in various neighbourhoods to raise awareness about labour rights and the ongoing discussions, for workers who could not attend meetings. STDMSP then called a general assembly to determine which issues would be prioritized in the next round of collective bargaining. During this meeting, members voted on the particular set of demands and elected a delegation that would represent them during the negotiation process. Once representatives from the STDMSP and the SEDESP had prepared a draft agreement, the STDMSP held another meeting to determine if members approved of the agreement before it was signed. With the approval of their members, representatives of the STDMSP and the SEDESP met with a Mediator at the Direção Regional do Trabalho to sign the Convenção Coletiva de Trabalho (CCT), which is a legally binding collective agreement and covers all registered domestic workers³¹ in São Paulo city.

The collective agreement signed by the STDMSP and the SEDESP helped to formalize domestic workers, most of whom had previously been in the informal economy. The collective agreement includes the following provisions for domestic workers in São Paulo: a minimum wage agreement; weekly rest periods for live-in domestic workers; requirements for employers to provide proof of salary payment; deadlines for the payment of salaries; vacation leave; an annual bonus or thirteenth monthly salary; and social protection for both workers and employers. In addition, employers' and workers' organizations agreed to provide the necessary guidance to both employers and workers in order to promote compliance with the relevant labour and social security laws, including guidance on costs, tax payments and the contractual obligations of both parties in the employment relationship (Acciari 2021; SEDESP 2016).

³¹ "Registered" means that the employer signs the "working card" (*carteira de trabalho*) of the worker. Each worker of the private sector is obliged to have such a working card. Once it is signed, the workers are formalized. However, for domestic workers, in addition to formalizing the employee, the employer must also register them in an online platform set up by the Ministry of Labour ("e-social") to enable them to pay their social security contributions.

▶ 4 Analysis of the existing models of representation by categories of workers

Models of representation of workers in the informal economy

Based on the literature review and case studies conducted, the relationship between the type of employment status and the various models of representation reveals a number of organizational/representational patterns for informal employees and own-account workers.

Informal employees

The case study of motor industry workers in India illustrates how the trade union representing permanent workers is able to bargain with the enterprises employing contract labour for both their own needs and the needs of contract labourers. In 2018, the ULF represented company workers in collective bargaining processes to negotiate for increased wages and the absorption of contract labourers employed through third-party employers.

Own-account workers

Own-account workers are considered to be in informal employment when their economic units belong to the informal sector.³² They are neither employers nor wage workers.³³ However, the needs and interests of own-account workers may be similar to those of employees in some cases, in particular for dependent self-employed workers. Own-account workers, as independent workers, are owners of an economic unit with (at least for some workers) a number of additional concerns that are shared with other types of entrepreneur.

The question that arises is whether own-account workers are best represented by employers' organizations or by workers' organizations. If own-account workers are in a relationship of dependency to another economic entity, the worker might then be best represented by a trade union. Examples of such own-account workers with a degree of dependency include street vendors and delivery workers. Representation can channel the voices of workers in the informal economy during consultations on policies that are relevant to them (for example access to market space) or consultations on workplace cooperation. In practice, services have been extended to workers in the informal economy by trade unions around the world. This includes the Trades Union Congress Ghana; the National Confederation of Workers of Senegal; the Congress of South African Trade Unions; the Trade Unions Congress of Kenya; the Federation of Building, Wood and Construction Workers of Togo; the Asian Domestic Workers Union in Hong Kong, China; and the Textile Clothing and Footwear Union of Australia (ILO 2019a, 2019b).

The legal status and spatial dimension of the work of own-account workers also explain the challenges in accessing traditional forms of representation. As a consequence, workers have developed alternative forms of representation, such as the creation of membership-based organizations or "associations" that are able to negotiate with local authorities for the improvement of working conditions and the protection of the livelihoods of workers in the informal economy. This is illustrated by the case studies of motorbike taxi drivers

³² The informal sector is a subset of household enterprises that produce goods or services for sale in the market, and that do not have a complete set of accounts and/or are not registered under national legislation; see ILO, Resolution concerning statistics of employment in the informal sector.

³³ Own-account workers are independent workers without employees, unlike employers (either "employers in corporation" or "employers in household market enterprises") who do have employees; see ILO, International Classification of Status in Employment, "18-A: Status in Employment according to type of authority".

and street traders in Benin and South Africa. In addition, as demonstrated by the case study of motorbike taxi drivers in Parakou, Benin, organizations of workers in the informal economy are also concerned with the daily operations and challenges faced by workers, such as the confiscation of goods, evictions and the regulation of work in the motorbike taxi and street trading industries, respectively.

The case studies of waste pickers in Bogotá and the small farmers associations in Mozambique show how trade unions and workers in the informal economy develop innovative business models in the form of cooperatives that aim to improve the rights, equality and representation of workers in the informal economy.

In some cases, the government at local or national level is an important counterpart for own-account workers in negotiations.

Own-account workers – such as electricians, “handy persons” (workers who earn money by doing small jobs for people such as making and repairing things in their house), plumbers and yoga teachers, who have many clients and control over their work, may be better represented by employers’ organizations. However, this question is beyond the scope of this research.

Dependent contractors

Another case scenario is that of workers in ambiguous employment relationships. This is the case of platform workers, who are often considered as dependent contractors. According to Berg et al. (2018), digital labour platforms do not generally recognize workers in these forms of work as wage workers. Rather, it is common for workers to be hired as “self-employed persons” or “independent contractors”. As a result, it is difficult for platform workers to hold those who benefit from their labour (such as executives of digital labour platforms) accountable for obtaining access to the right to collective bargaining to improve their working conditions.³⁴

The General Survey on promoting employment and decent work in a changing landscape found that “the binary categorization of employed and self-employed workers may not be adequate to accommodate the evolving circumstances in the labour market” (ILO 2020a, 13). Employee status is a crucial gateway for determining entitlements to labour and employment law protections. In response to this uncertainty, some countries endeavour to move beyond the binary categorization of employed and self-employed and have included in their laws a “third” or “hybrid” category that is situated between the categories of “employee” and “independent contractor”. Canada, Italy, Germany and the Republic of Korea have introduced reforms to recognize such a third category (Cherry and Aloisi 2018). In Spain, the Government recently adopted legislation to presume the existence of the employment relationship for platform delivery workers whenever the enterprise organizes, manages and controls services and working conditions through algorithms using a digital platform.³⁵

Factors influencing models of representation

Based on the case studies reviewed in section 3 above, the following six factors have been identified that influence representation in the informal economy:

- power resources
- spatial dimension of work
- gender
- ethnicity, caste and migration status

³⁴ For a discussion on the classification of platform workers, see ILO (2022b) and Berg et al. (2018).

³⁵ Spain, Royal law decree 9/2021 of 11 May modifying the Workers’ Statute, approved by Royal Decree 2/2015 of 23 October, to grant the labour rights of persons devoted to delivery in the framework of digital platforms; for further information, see Hadwiger (2022).

- regulatory framework and ability to enforce workers' rights
- existing trade union cultures

These six factors are examined below.

Power resources

According to the power resources approach, the models of representation in the informal economy are often influenced by the potential sources of power that workers are able to access. Traditionally, sources of workers' power can be derived from three sources: (a) the ability to disrupt production or services, distribution and exchange of goods and services; (b) the scarcity of labour; and (c) political influence (Batstone 1988). Workers can leverage their power resources through collective bargaining institutions and other associational means, such as trade unions, workers' forums, cooperatives and membership-based organizations. Schmalz, Ludwig and Webster (2018) identify four main power resources that workers possess which allow them to assert their interests in a given context: structural power, associational power, societal power and institutional power.

Structural power refers to the position of workers in the economic system and is based on the potential leverage that workers have to cause disruption to economic processes in the workplace and/or marketplace, such as through organized strike action.

If workers lack sufficient structural power, they are able to unite collectively and assert their power through associational means, giving rise to **associational power** – the power that enables workers to participate in collective bargaining processes at the workplace, sectoral or global levels (Schmalz, Ludwig and Webster 2018).

In contrast, **societal power** is expressed outside the workplace and arises from the viable alliances that workers develop with other social groups and organizations whose interests are aligned with their own interests as workers.

Finally, **institutional power** arises from the combination of structural and associational power with the aim of strengthening the legislative rights of workers in an economy (Schmalz, Ludwig and Webster 2018).

Table 1 identifies the potential sources of labour power that workers in the informal economy can leverage and applies the power resources approach to the nine case studies reviewed in this paper and the levels at which these power resources may be applied – that is, at the workplace, sectoral, community, national and global levels. It is important to note the very limited use of structural power and the overwhelming importance of associational and institutional power. The use of societal power in two of the case studies is also notable – the support of civil society groups for farm workers in the United States and the small farmers case in Mozambique.

► **Table 1. Use of power resources in negotiation: Analysis of case studies**

Case study	Structural power	Associational power	Institutional power	Societal power
United States: multi-party bargaining		FLOC	FLOC, a company and association of growers, negotiates three-way agreements, including labour standards	Consumer boycott led by community groups
Benin: street traders		SYNAVAMAB, an affiliate of UNSTB	SOGEMA, a platform for negotiations between government and traders	
Colombia: waste pickers		Cooperatives of ARB, an affiliate of ANR,	Constitutional Court recognized right to work in all city spaces and to become service providers	
Mozambique: small farmers		National Union of Farm Workers; some associations/cooperatives affiliated with rural organizations such as the Rural Association of Mutual Aid	Negotiates with Ministry of Agriculture	Includes local hearings, community protests
India: head loaders	Hartal (work stoppage)	SEWA	Negotiates with Panchkua Cloth Merchant Association	
South Africa: street traders		South African Informal Traders' Association	Negotiates with municipality and metropolitan police in Johannesburg	
Argentina: waste pickers		Cooperative movements and a national confederation of workers in the informal economy	Local government	
India: motor industry informal employees		ULF	Assistant Commissioner of Labour, Vellore	
Brazil: domestic workers		STDMSF, affiliate of FENATRAD	– Direção Regional do Trabalho – Collective agreements with the employers' organization Sindicato dos Empregadores Domésticos do Estado de São Paulo	

Spatial dimension of work

The spatial dimension of work refers to the location or context in which work occurs – household, market, street, factory or cyberspace. The spatial dimension of work has significant implications for wages, income through contractual arrangements, working conditions, access to social protection and the models of representation that workers are able to access.

The case studies discussed in this paper show how the low degree of organization of workers in the informal economy is partly due to dispersed and isolated workplaces, such as those of small farmers, crowd

workers, street vendors, domestic workers and home-based workers. For example, home-based and domestic workers are isolated from each other by the nature of their workplace. Home-based workers are often marginalized in their communities and even in their families. Live-in domestic workers face the risk of losing their connection with their own families. Home-based workers are often at the bottom of supply chains and they have little engagement with the enterprises of the lead firms (ILO 2021c).

In many countries, there is also an urban–rural divide. Particularly in rural areas, workers in the informal economy have a lack of awareness about representative employers’ and workers’ organizations and how they might be able to benefit from their support (Traub-Merz 2020).

The case study of street traders in Cotonou, Benin, described the negotiation process that took place between local authorities and market traders following the fire that broke out at Dantokpa market. The negotiations sought various interventions from the local government that would protect livelihoods, improve working conditions and enable the victims of the fire to resume their operations as quickly as possible. Throughout the negotiation process, regular meetings were held at the market in order to allow the negotiating partners to witness the realities on the ground.

Gender

Domestic work shows the gender division of labour particularly well, as demonstrated in the case study on domestic workers in São Paulo. Globally, domestic work remains a female-dominated sector, employing 57.7 million women who account for 76.2 per cent of domestic workers. Women domestic workers outnumber men domestic workers in almost all countries and in all regions except the Arab States (ILO 2021b). Due to the isolated and feminized nature of domestic work, which is predominantly informal, gender plays a crucial role in creating supportive forms of representation rather than traditional adversarial trade unionism. For example, the domestic workers’ trade union in Paraguay offers domestic workers childcare services to allow them more time to work and earn an income (D’Souza 2010). Trade unions have also been involved in advocacy for the protection of domestic workers against gender-based violence in the workplace. In 2020, the International Domestic Workers Federation (IDWF) launched a campaign to stop gender-based violence and the harassment of domestic workers in the workplace. The campaign also called for the ratification of Convention No. 190, which seeks to eliminate violence and harassment in the world of work (IDWF 2020).

Ethnicity, caste and migration status

Citizenship and migration status play a critical role in determining the model of representation of workers in the informal economy, as can be seen in the case study on head loaders in India. Migrant workers’ models of representation are influenced by their unique vulnerabilities, both as workers and as undocumented residents. To date, these workers have not broadened their struggle for immigrant rights and the decriminalization of non-citizen workers, as has been documented in the well-known case of the Justice for Janitors campaign in California (Paret 2015).

Similarly, Saracini and Shanmugavalen (2019) argue that the social hierarchies perpetuated by caste structures in society represent significant barriers to the attainment of representation in the economy. Contrary to traditional trade union representation, organizations such as the National Centre of Labour in India seek to address not only economic issues such as wages and work-based legal and social protections but also the discrimination and atrocities that Dalit workers face because of their caste (Chigateri et al. 2016).

Regulatory framework and ability to enforce workers’ rights

The case studies showcase the use of legal procedures by organized workers in the informal economy to achieve improvements in their legal status and improve their working and living conditions.

The cooperatives of waste pickers in Colombia employed various legal strategies for the legal and economic recognition of their work. Through a series of lawsuits filed with the Constitutional Court, they successfully

won the right for the legal and economic recognition of waste picking as a job and the integration of waste pickers in the public waste management system across the country.

In São Paulo, the domestic workers' association or *sindicato*, in the absence of an employer counterpart, pushed for improved labour legislation, including minimum wage-setting or sectoral wage determination, as was also the case in South Africa. Despite the existence of legal rights, the ongoing disputes with public authorities remains a central obstacle to realizing those rights. In a comparative study of food couriers in Johannesburg, Accra and Nairobi, police harassment emerged as the most acute problem faced by workers (Webster and Masikane 2020).

Relationship between workers in the informal economy and existing trade unions

Workers in the informal economy represent the majority of the world's working people – and yet representation remains fragmentary and scattered. Formal workers and employers in many parts of the world also face similar challenges (Traub-Merz 2020; Spooner, Montague-Nelson and Whelligan, 2021), in addition to shrinking representation as a result of declining industries, large firms and public sectors, which were traditionally highly organized, as well as the fragmentation of employment relationships (ILO and OECD 2018).

For trade unions and employers' organizations, the possibility of including workers in the informal economy, particularly in areas in which it is very prevalent, is a clear way to embrace the realities of the world of work and strengthen their legitimacy with public authorities, as well as the agreements they negotiate. Workers in informal employment have joined existing workers' organizations or established new ones and have embarked on various forms of collective action to pressure employers and public authorities into negotiations for better working conditions, terms of employment and regulations that provide protection and support for these workers (ILO 2019a, 2019b). But in many countries, limitations persist that make it difficult for trade unions to represent workers in the informal economy, including legal barriers in the national legislation of some countries and in some instances those unions' own internal rules.

For some trade unions and employers' organizations, organizing workers and economic units is an important part of their renewal strategies and a way to reverse membership decline (Visser 2019).³⁶

Workers in the informal economy are a very heterogeneous group in terms of their categories of work, spatial dimensions and organizational cultures. They therefore face a number of different challenges and need to adopt different strategies to access forms of representation.

The establishment of SEWA in India demonstrates the challenge of organizing in the informal economy when other parts of the trade union movement and policymakers do not recognize own-account workers in the informal economy as workers. For this reason, workers' organizations representing workers in the informal economy often lack recognition and legal personality and as a result cannot fully function and provide services such as collective bargaining. There is therefore a need to develop an alternative form of representation with different objectives and rules for participating in regulatory processes (Webster 2011).

By contrast, the case study on street traders in Benin illustrates how grass-roots movements are able to form alliances with existing trade unions and build collective power. The trade union confederation, the UNSTB, was able to establish the SYNAVAMAB, which has gained recognition as a powerful bargaining agent representing workers in the informal economy.

³⁶ Edlira Xhafa and Melisa Serrano, "Representation Models and Forms of Collective Action of Workers in Informal Employment", ILO/INWORK background study (unpublished).

▶ 5 Emerging patterns of negotiation for workers in the informal economy

The nine case studies included in this paper present emerging patterns of bargaining and representation in the informal economy. Three broad categories of workers in the informal economy have been identified: informal employees, dependent contractors and own-account workers (see section 4 above). Drawing on the categorization of negotiations provided in Carré et al. (2018, 17), three forms of bargaining and representation in the informal economy are examined more closely below: ad hoc negotiations, regular negotiations and collective bargaining (Carré et al 2018).³⁷

Ad hoc negotiations

Ad hoc negotiations between workers in the informal economy and authorities (such as local town administrations in charge of organizing market halls) embrace a range of everyday administrative issues involving permits, licences, tariffs and spatial issues, as well as representation for immediate problems or crises such as confiscations and raids by security authorities. These are mainly bilateral and short-term negotiations, with no commitment from the authorities to continue them (Carré et al 2018).

Own-account workers in South Africa engage mainly in ad hoc negotiations, usually from a weak position, but they may be used to leverage more ongoing bargaining. Own-account traders in the North-West Province in India who experienced difficulties in accessing a national COVID-19 relief grant in 2021 successfully negotiated a one-off municipal grant of US\$245 for each economic unit across the region.

Again, Indian head loaders in Ahmedabad in Gujarat have participated in protests that have led to ad hoc negotiations. Some years ago, they went on strike to demand the withdrawal of a circular issued by the police that allowed slow-moving vehicles to impede their work. Subsequent negotiations led to the withdrawal of the circular.

Members of the Mozambican National Union of Farm Workers from time to time engage in more disruptive action to force ad hoc negotiation on the expropriation of land in the name of industrial development in the countryside. They draw frequently on societal power, in that their repertoires of action vary widely from the organization of local hearings and community protests to the burning of fields (Castel-Branco 2021).

Ad hoc negotiations can be peaceful or disruptive and although they tend to be located at the workplace level can also be employed to resolve conflicts on a larger scale. They may reflect the relative powerlessness of groups of workers or may accompany other forms of representation that reflect a stronger power base. They may also provide a stepping stone for the establishment of more regular negotiations.

Regular negotiations

Regular negotiations in the informal economy imply a measure of permanence and will likely involve an agreement to meet on an ongoing basis. Informal economy workers with few statutory rights have formed their own membership-based organizations to directly represent their interests and negotiate with state authorities or employers. These include specific sections for workers in the informal economy within existing trade unions; trade unions that are specifically established for workers in the informal economy; and cooperatives and associations.

³⁷ Carré et al. (2018) use the term “statutory negotiations”.

In some cases, these organizations have merged or extended services to workers in the informal economy. The organization of waste pickers in Bogotá is an example of associational power through liaising with a cooperative (the ARB) (ARB 2021). Legal strategies combined with the associational and growing institutional power of cooperatives in Bogotá have enabled regular bargaining with state authorities, resulting in important bargaining outcomes, and have allowed for the significant extension of these rights countrywide.

The 2,500 women head loaders in the Panchkuva cloth market in Ahmedabad, India, were not covered by the Industrial Disputes Act, 1947 and therefore deprived of the right to collective bargaining. Through their representation by the SEWA trade union, they were able to benefit from ad hoc and regular negotiations with the state and the employers. These multi-employer negotiations were led by women.

Regular negotiations can also be held at the national level. Mozambique's National Union of Farm Workers, representing numerous farm workers' associations and cooperatives, is regarded as an important negotiating partner of the Ministry of Agriculture. One of the trade union's main objectives is securing access to land that belongs to the state (Castel-Branco 2021).

The case studies show that negotiations for the rights of workers in the informal economy is possible in many different forms, while many workers in the informal economy have significant bargaining power and often have a bargaining counterpart. However, their negotiating counterpart may not be an employer. This requires adopting different negotiating approaches, especially at the local level.

The studies also illustrate that the ability to enter regular bargaining is dependent on the power that workers can strategically draw on to bring employers and state authorities to the negotiating table. The Indian head loaders wielded some structural power – employers were dependent on head loaders to distribute their products. The growing institutional power of cooperatives in Bogotá also facilitated regular bargaining with state authorities, which included the extension of waste pickers' rights countrywide. Farm workers' cooperatives in Mozambique also wielded considerable societal power as the Government was aware that the wholesale privatization of land could lead to unemployment and widespread social unrest (Castel-Branco 2021).

Regular negotiations incorporate a measure of permanence and as such may be a precursor to collective bargaining. In this sense, they can be seen as an instrument for the formalization of workers in the informal economy into the mainstream economy, as envisaged in Recommendation No. 204.

Collective bargaining

Collective bargaining through which workers can directly represent their needs is scarce in the informal economy. However, collective agreements ensure decent livelihoods and conditions for vulnerable workers who are isolated and cannot easily access a source of power. Collective bargaining offers multiple openings for organizations of workers in the informal economy to introduce specific issues that are of interest to them (Carré et al 2018).

Two studies show that workers are developing *hybrid organizational forms*, which can bring together associations, cooperatives, workers centres or other NGOs and self-organized workers with trade unions (Webster et al. 2021; Spooner, Montague-Nelson and Whelligan, 2021). Workers in the informal economy organize according to circumstances. In some Eastern European countries, for example, own-account home-based workers cannot form trade unions and they therefore registered as associations. De facto, they are operating as trade unions or cooperatives.

Following the guidance of Recommendation No. 204, one of the key questions for employers' and workers' organizations is what services are to be extended or proposed to those in the informal economy. This could contribute to build interest and trust among those in the informal economy. One way to extend services to those in the informal economy is to initiate or extend relations and eventually include them in negotiations and/or to include their concerns in the collective agreements and/or tripartite negotiations.

The case study on the collective agreement for formalizing contracted labourers in a company in India demonstrates the importance of entrenching statutory worker rights. In São Paulo, Brazil, domestic workers' engagement in regular negotiations were finally awarded the statutory right to collective bargaining, which enabled them to build on the São Paulo agreement in 2017.

Examples of collective bargaining beyond those examined through case studies exist in Senegal and Togo. In Senegal, The National Confederation of Workers of Senegal initiated action to formalize workers who were employed informally in the private security sector, including by creating trade unions in companies that employed guards. The trade union negotiated a collective agreement with employers, which was signed in January 2019 and entered into force in February 2019. The agreement covered aspects such as social dialogue, representation, wages, social security, career development, job classification and disciplinary measures. According to the Ministry of the Interior, the collective agreement covers 40,000 security guards (ILO 2019a).

In Togo, most construction workers are informal. In 2019, an employer organization, the National Entrepreneur Group of Construction and Public Works, and a trade union, the Federation of Building, Wood and Construction Workers, negotiated a collective agreement for building companies. The collective agreement includes provisions for salaries, dispute resolution, the right to strike and workplace representation, including for workers in the informal economy.³⁸

Challenges in the interaction between employers' and workers' organizations and those in the informal economy

Organizations in the informal economy and representative employers' and workers' organizations may have different interests and priorities. They also may have very different organizational cultures, particularly in terms of how organizations and interactions are structured and organized based on the specific nature of the membership. A recent study also found that some workers' organizations may fear that workers in the informal economy could outnumber their current members. In addition, there is a perceived risk of losing status and prestige and potential issues in collecting union dues from workers in the informal economy (Spooner, Montague-Nelson and Whelligan 2021).

Extending membership and services by employers' and workers' organizations may mean that those in the informal economy need to be trained on the organization and structure of a formal organization (such as on standing orders, elections, transparency, accountability and communication with members) (ILO 2019b). However, employers' and workers' organizations first need to understand the needs and aspirations of those in the informal economy. Representative employers' and workers' organizations may also learn new skills on organizing and campaigning from informal economy associations. For example, the Federation of Kenyan Employers conducted surveys in order to get a better understanding of informal sector enterprises, including their knowledge and perception of employers' and workers' organizations, the challenges they face and their needs for services.

Workers in the informal economy and informal economic units are sometimes seen as unfair competitors by trade unions and employers' organizations, because those in the informal economy operate partially or fully outside legal requirements (such as registration, specific taxes and minimum wages). On the other hand, those in the informal economy may see representative employers' and workers' organizations as part of the "establishment" and therefore difficult to approach, so that workers in the informal economy may not be willing to approach them.

A recent study by the Friedrich-Ebert-Stiftung has highlighted the lack of awareness of informal economy workers with respect to representative employers' and workers' organizations (ILO 2021a; Traub-Merz 2020). Therefore, in some national contexts trade unions and employers' organizations may need to raise

³⁸ Togo, *Votresalaire.org*, [Convention collective des entreprises de bâtiments des travaux publics et connexes du Togo](#), 2019.

awareness among their members about how extending their services to those in the informal economy could be beneficial for existing union members and informal economy workers. The main role of trade unions and employers' organizations is to represent their members. In democratic membership-based organizations, existing members need to be convinced that it is necessary to actively organize members with a potentially different background and organizational culture than existing members, such as those in the informal economy. The employers' and workers' organizations may need to first understand the needs and aspirations of those in the informal economy.

▶ 6 The way forward: Towards a broadening and strengthening of representation and negotiation in the informal economy

Our research objective was to document recent cases of bargaining and representation in the informal economy and to begin to develop an analytical framework for examining the common elements of the most successful initiatives. In this section we conclude by offering some general findings gleaned from this exercise that might be relevant for the broader debate about representation and negotiation in the informal economy.

The research highlights the elements that are instrumental for effective representation and negotiation in the informal economy and documents a number of negotiating experiences undertaken by organized workers in the informal economy. It also describes and analyses the different forms that negotiations can take, such as ad hoc negotiations, regular negotiations and collective bargaining. Where trade unions are involved, negotiations often take the form of collective bargaining or negotiations in tripartite bodies.

The paper explores the outcome of these different forms of negotiations and stresses the need for collective bargaining to cover workers more broadly, including those in the informal economy.

Challenges for representation and negotiation in the informal economy

The fundamental ILO Conventions play a particularly important role for workers in the informal economy as Members States of the ILO have to respect, promote and realize the principles concerning the fundamental rights, regardless of whether they have ratified them or not. Convention No. 87 applies to “[w]orkers and employers, **without distinction whatsoever**” (Art. 2, emphasis added), while the scope of Convention No. 98 states that “[w]orkers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment” (Art. 1, emphasis added).

The ILO emphasized the significance of freedom of association for the improvement of conditions of workers in the informal economy as early as 2002, in paragraph 17 of the Resolution and conclusions concerning decent work and the informal economy:

▼▼ *Without organization and representation, those in the informal economy generally do not have access to a range of other rights at work. They are not able to pursue their employment interests through collective bargaining or to lobby policy-makers on issues such as access to infrastructure, property rights, taxation and social security.*

Freedom of association for those in the informal economy is reaffirmed in Recommendation No. 204, which underlines the right of those in the informal economy to establish and join organizations, federations and confederations of their own choosing and to engage in collective bargaining. Collective bargaining can be seen as the “practical expression of freedom of association, whereby people band together to maximize their bargaining power” (Trebilcock 2004). In 2004, the ILO contemplated that “serious rights deficits” existed for workers in the informal economy in relation to the broad principle of freedom of association and the effective recognition of the rights to collective bargaining as described in the Conventions (ILO 2004).

These challenges include the fact that workers in the informal economy often work in micro- and small enterprises, which may or may not be informal. In these enterprises, the minimum legal thresholds for

establishing a union may constrain their ability to organize. In addition, the conditions for entering into collective bargaining with their employer are unlikely to exist in practice.³⁹

In the case of own-account workers and dependent contractors, regulatory frameworks in some countries may prohibit these workers to set up or sign up for trade union membership, as they cannot prove the existence of an employment relationship.

The practices have also showcased challenges linked to the isolated and spacial dimension of the work, the absence of a clear negotiating counterpart in the context of collective bargaining, the nature of the interests of workers in the informal economy beyond the work-related agendas of trade unions, or the legal limitations faced by workers' organizations in some countries to represent workers who are not in an employment relationship.

Key elements to be considered for effective representation and negotiation in the informal economy

The case studies under review illustrate how trade unions have extended their services to workers in the informal economy, including those in new forms of work, such as in the gig and platform economy, and have engaged in different forms of negotiations – ad hoc or regular – as well as collective bargaining.

Based on the above-mentioned model proposed by Schmalz, Ludwig and Webster, four elements were seen as particularly important for effective representation: associational power, institutional power, structural power and a regulatory framework for industrial relations. The use of societal power in two of the case studies is also notable.

Organizations of workers in the informal economy with strong **associational power** are able to establish other forms of labour power. Associational power was important in all the case studies. For example, the waste pickers in Colombia used associational power through building alliances with other waste picker groups.

With strong associational power, organizations of workers in the informal economy may gain the **institutional power** necessary to improve the situation of their members and the enforcement of labour rights in the future.

Another important element of representation in the informal economy is **structural power** (workers' leverage). With limited power resources, the exercise of workers' voice lies in their ability to disrupt and make their demands heard.

By contrast, workers in the informal economy who benefit from a clear regulatory framework are able to employ various legal strategies to assert their rights and demand better conditions in the workplace. The trade unions representing permanent workers used existing legislation to demand better wages for their members and the absorption of contract labourers employed through third-party employers at the factory. Similarly, waste pickers' cooperatives in Bogotá, Colombia, employed legal processes in the Constitutional Court for the legal and economic recognition of waste pickers in the city.

The importance of a strong representative negotiating partner for the state and employers to engage with is evident (and vice versa in the case of employers). The studies reviewed for this paper show that representation of workers in the informal economy takes many forms, including the merging of different

³⁹ The setting of minimum thresholds for establishing trade unions is permissible as long as these thresholds are "reasonable". In that regard, ILO, *Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association*, sixth edition, 2018, para. 441, notes that: "While a minimum membership requirement is not in itself incompatible with Convention No.87, the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered. What constitutes a reasonable number may vary according to the particular conditions in which a restriction is imposed." See also ILO and OECD (2020).

kinds of membership-based organizations and the forging of alliances. These organizations are structured to enable genuine representation with mandates and reporting requirements.

According to the experiences analysed, **ad hoc negotiations**, which are often held by own-account workers, have sometimes developed into **regular negotiations**, which are usually held by associations or organizations of workers in the informal economy rather than by informal groupings. Organizations of informal economy workers may form their own organizations or become sections of trade unions, cooperatives or associations. Regular negotiations may be held on workers' rights and working conditions or spatial issues.

The location of negotiations may also vary. In the informal economy the workplace is the most common location for negotiations (market, factory, farm, street); however, negotiations may also be held at city and regional levels, as well as sectoral, regional, national and global levels. Negotiations often unfold simultaneously.

Collective bargaining is the formalized and institutionalized form of regular negotiations. However entrenched, workers' rights require some form of formal negotiation, such as collective bargaining that is legally binding, which is important as the bedrock for formalizing the informal economy.

The case studies show that without a **regulatory framework**, different forms of negotiations, including collective agreements, cannot be made legally binding. Informality, by definition, implies that work in the informal economy is – willingly or not – beyond the scope of the law.

How can protection granted through collective agreements be extended to workers in the informal economy?

There are four main ways in which workers in the informal economy may benefit from collective bargaining: clarifying the employment relationship of the workers in the informal economy (in particular own-account workers); extending membership and services to those in the informal economy; extending the coverage of collective agreements (see for example Hayter and Visser 2018; ILO 2019a, 2019b; Visser 2019); and multiparty bargaining.

Clarification of the employment relationship

The majority of own-account workers are truly independent workers who are not dependent on any other specific economic units (other than their own economic unit), and therefore with no possibility to establish an employment relationship with anyone else. Nevertheless, there is a need for clarification of the existence of an employment relationship for some own-account workers, including in the platform economy.

However, as mentioned above, some countries endeavour to move beyond the binary categorization of employed and self-employed by including in their laws a “third” or “hybrid category which are somewhere between “employees” and “independent contractors”. National regulatory frameworks should ensure that workers in the informal economy have the right to organize and collective bargaining in line with ILO standards. These rights are recognized by the ILO core Conventions No. 87 and 98. They are also recognized by the ILO Centenary Declaration (2019) as enabling rights for attaining inclusive and sustainable growth.

Extension of membership and services

Following the guidance provided in Recommendation No. 204, “employers’ and workers’ organizations should, where appropriate, extend membership and services to workers and economic units in the informal economy” (Para. 33). In that way, workers in the informal economy or employers can become involved in collective bargaining within the existing structure and the institutional framework. This will increase the leverage of the employers’ and workers’ organization through increased representation due to increased membership, as well as the leverage of those in the informal economy by their being able to access social

and economic forums and/or collective bargaining. Bargaining parties could include special provisions in collective agreements for those in the informal economy, for example by providing a pathway to formalization through regularization or social protection or access to training or loans through bargaining councils.

Extending membership and services to workers in the informal economy might require addressing legal limitations in the existing laws or reviewing potential limitations included in the internal constitutions of the workers' or employers' organizations.

Extension of collective agreements

The Collective Agreements Recommendation, 1951 (No. 91) considers, where appropriate and having regard to national practice, that "measures ... should be taken to extend the application of all or certain stipulations of a collective agreement to all the employers and workers included within the industrial and territorial scope of the agreement" (Art. 5(1)). Various countries make provisions for the Minister of Labour, a public agency or the court to extend a collective agreement to all employers and employees that fall within its scope (Hayter and Visser 2018). Usually, extension is linked to criteria such as the representativity of union coverage. For example, in South Africa the 1995 Labour Relations Act states that the applicant union or employers' organization must be "sufficiently representative within the proposed jurisdiction". The criterion of "sufficient representativity" is not defined in the Act. However, the reference point for determining representativity is "all employees" and the "total number of employers and employees within the scope of the council". Interestingly, the Labour Relations Act was amended in 2014 to provide that, when determining whether the employers' or workers' organizations are sufficiently representative, the Minister may consider the composition of the workforce in the sector, including the extent to which there are employees of temporary employment agencies working in the sector and the extent to which employees are engaged on fixed-term contracts or are working part-time. Presumably, this provision in the Act will allow the Minister to exclude non-standard employees (who are difficult to organize) from her or his calculation of whether the parties to an agreement are "sufficiently representative".⁴⁰ An agreement can therefore be more easily extended to the sector, including the informal units operating in the sector.⁴¹

Multiparty bargaining

Another feasible approach to achieve negotiated agreements could be through multiparty bargaining, as shown by the FLOC example in the United States. The advantage of multiparty bargaining is that three-way bargaining may circumvent the issue of the employment relationship status of own-account workers by including brands and lead firms. Research by Blasi and Bair (2019) reveals that multiparty bargaining can evolve over time via formalization, expansion or strengthening of instruments. While initial agreements may be weak in terms of substance or enforcement opportunities, they nevertheless provide a foundation that can be built upon (Blasi and Blair 2019).

⁴⁰ Shane Godfrey, "Contested Terrain: The Extension of Multi-employer Collective Agreements in South Africa", in Hayter and Visser (2018), 137–157.

⁴¹ In 2019, the Labour Relations Act was further amended and the function to determine the levels of representativity was shifted from the Minister to the Registrar of Labour Relations. It is up to the Registrar to provide sufficient proof of the levels of representativity of the parties concerned.

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Interviewees and interviewers

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Ahmed, Sorraiya (Isibanesabathengisi Informal Traders); interviewed by Kally Forrest on 1 July 2021.

Barret, Jane (Organization and Representation Programme Director, WIEGO Johannesburg); interviewed by Kally Forrest on 17 July 2021.

Dor, Lynford (Casual Workers Advice Office); interviewed by Siviwe Mhlana on 28 July 2021.

Horn, Pat (Coordinator, Collective Bargaining in the Informal Economy, WIEGO); interviewed by Kally Forrest on 22 July 2021.

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Maldovan Bonelli, J.; interviewed by Sara Cufre on 2 July 2021.

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