

Law & Informality Insights



Neeramol Sutipannapong is a home-based worker who stitches a variety of hand bags and other products to help support her family. Photo: Paula Bronstein/Getty Images Reportage.

This issue showcases recent publications and resources that focus on informal workers gaining recognition and rights as workers.

In most countries, the legal framework provides labour rights and protections only to workers in formal employment relationships. Informal workers (both waged and self-employed) and economic units, meanwhile, are regulated by a range of national, sector-specific and city-level laws that are frequently punitive in their effect, compromising their livelihoods and violating their human rights.

WIEGO's Law Programme works to analyze and improve legal and regulatory frameworks for informal workers and to build the capacity of informal workers' organizations to use the law to fight for their recognition and rights as workers. This work happens at the local, national and international level.

We also publish research and create and disseminate resources for informal workers' organizations, activists, legal practitioners and academics, governments and policymakers.

This newsletter provides information on the Law Programme's recent publications and our key materials and resources. It is divided into two sections:

- The first part contains scholarly articles, arranged under three headings: labour law, human rights law, and urban law.
- The second part lists resources for lawyers or practitioners working with organizations of informal workers, and for informal worker organizations themselves.

Academic Articles

1. Labour Law Publications

The rise of global value chains and the informalization of work raises profound questions for the relevance of labour law. **Harry Arthurs** argues that with increasingly fewer workers being unionized, labour law — as the law of collective relations — will become irrelevant. Other scholars are grappling with how to regulate a transnational, mobile capital and are reconceptualizing labour law as a transnational discipline based on human rights, constitutionalism and development. Moreover, scholars are debating whether and how labour law might apply to people who are not employees.

WIEGO's contributions to these debates are informed by our work on the ground:

- with organizations of homeworkers — women who are subcontracted by firms or intermediaries to produce goods or render services for domestic and global supply chains — and who work from or near their homes;
- with organizations of street vendors and waste pickers, who are self-employed, but need to be able to negotiate collectively with local authorities for access to public space to trade, for access to waste and to services and infrastructure;
- and with domestic workers, who are often part of a domestic or global service supply chain.

We are engaging in debates on transnational labour law, and we are advocating for social protection and collective bargaining for informal workers who are self-employed.



In June 2017, we hosted a panel, “Informal Labour in Global Value Chains: Empirical Perspectives and Conceptual Challenges from the Global South” at the Labour Law Research Network Conference in Toronto. Three of the panel's papers were published in the **International Journal of Comparative Labour Law and Industrial Relations**, Volume 34,

Issue 3, January 2018.

» **Marlese Von Broembsen. “Constitutionalizing Labour Rights: Informal Homeworkers in Global Value Chains” (pp. 257–280).**

This article analyzes, from a constitutionalism perspective, the ubiquitous “due-diligence human rights framework” that aims to hold multi-national corporations accountable for the decent work deficits in their supply chains. The analysis draws on the theories of three scholars: Gunther Teubner, Ruth Dukes and Nancy Fraser. The article's objectives are three-fold. First, the analysis illustrates the value of Dukes' idea of a global labour law constitution, augmented by Fraser's theory of justice, as an analytic to identify who is excluded from participating, and the implications of their

exclusion. Second, the article makes a theoretical contribution to debates on constitutionalizing labour rights in a post Westphalian world, using outworkers/homeworkers to ground the discussion. Finally, it is hoped that the article will contribute to the social, and ultimately the legal recognition of homework as legitimate work.

» **Pamhidzai Bamu. “A Pluralistic Approach to Organizing Migrant Domestic Workers: The Case of the Zimbabwe- South Africa Global Care Chain” (pp. 313–344).**

Migrant domestic workers are among the most vulnerable workers across the world, because of their position as invisible workers and their precarious status as migrants. This article situates migrant domestic workers in the Zimbabwe-South Africa corridor within the global care chain literature. It recognizes the centrality of worker organizations to any efforts to address their situation. Drawing on the experience of worker organizations in South Africa, it argues for a pluralistic approach to worker organizing. This calls for the recognition of plural actors, policy domains, normative regimes, and narratives that shape the global care chain, and the leveraging of workers' plural identities.

» **Shelley Marshall. “A Comparison of Four Experiments in Extending Labour Regulation to Non-Standard and Informal Workers” (pp 281–311).**

Workers most exposed to economic risk around the world are commonly not covered by labour law, either because laws were designed with people with a standard, continuous employer in mind or because of poor enforcement. According to International Labour Organization (ILO) estimates informal work, as a percentage of non-agricultural employment, continues to account for over 50 per cent of all employment in half of the countries with comparable data across the globe. In one third of countries, it involves over 65 per cent of workers. There are exciting local and national experiments in new forms of labour regulation occurring in various countries that aim to extend labour regulation to non-standard workers, ensuring that they receive living minimum wages. This article compares four experiments in regulating work, including innovations in the regulation of work for head load (Mathadi) workers in India, immigrant industrial clothing outworkers in Australia, garment workers in Cambodia, and workers in Bulgaria who rely on a range of home-based activities to survive. The schemes have enjoyed varying success, providing lessons about what does and does not work in different contexts.

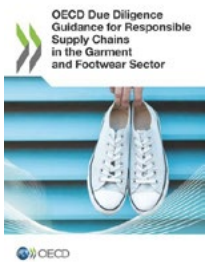


Pamhidzai Bamu was invited by the Oxford Human Rights Hub, the University of Kent and the International Labour Organization (ILO) to participate in the “A Better Future for Women at Work: Legal and Policy Perspectives” Conference in May 2017. Her paper argues for the extension of occupational health and safety protections to informal self-employed workers. It was subsequently published in a **special edition of the Oxford Human Rights Hub Journal.**

» Pamhidzai Bamu-Chipunza. 2018. **“Extending Occupational Health and Safety Law to Informal Workers: The Case of Street Vendors in South Africa”** U of OxHRH (pp. 61-85).

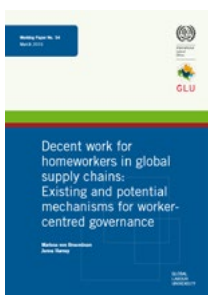
This article proposes how to align national occupational health and safety laws with international law that protects informal workers. It argues for a context- and occupation-specific approach to extending protection to informal workers, drawing on the case of street vendors in South Africa.

2. Human Rights Law and Global Value Chains



The WIEGO network participated in the 2016 International Labour Conference (ILC) general discussion on global supply chains, where the International Trade Union Confederation (ITUC) based its arguments on the UN Guiding Principles on Business and Human Rights. Since then, the Tripartite Declaration of Principles Concerning Multi-National Enterprises and Social Policy (ILO MNE Declaration) was revised to incorporate the UN Guiding Principles, and the **OECD negotiated the OECD Due Diligence Guidance on Responsible Supply Chains in the Garment and Footwear Sector** (the OECD Guidance), which is also based on the UN Guiding Principles. We are engaging with whether, and how, these and other international law instruments (including Convention 177 on Homework) might serve to realize labour rights and protections for homeworkers.

Our Publications



Marlese von Broembsen and Jenna Harvey. 2019. Decent Work for Homeworkers in Global Supply Chains: An Analysis of Existing and Potential Mechanisms for Worker-Centred Governance. Global Labour University/ ILO No. 54.

As informal wage workers who lack recognition and legal and social protections, homeworkers face a range of

decent work deficits. This paper analyzes the potential of existing national and global governance mechanisms to address four of these deficits for homeworkers in global supply chains: instability and insecurity of work; unsafe working conditions; poor wages; and a lack of freedom of association and the right to collective bargaining. We construct a typology that assesses each instruments' potential to address these decent work deficits in terms of: (a) the aspects of decent work that the instrument seeks to regulate; (b) the mechanisms that the instrument relies on to ensure compliance; and (c) the extent to which the instrument is legally enforceable, and by whom.

Arguing for a plural, over-overlapping concept of governance – hard and soft, operating at national, regional and international levels – we offer suggestions for improving the instruments that hold the most promise for protecting homeworkers. The paper concludes that enforcement of the provisions in these instruments that protect homeworkers is contingent upon strong social movements and, most importantly, the recognition and incorporation of representative organizations of homeworkers into governance processes.

Realizing Rights for Homeworkers: An Analysis of Governance Mechanisms

Marlese von Broembsen
Lead Programme Director
Worker in Informal Employment, Globalization and Organizing

Jenna Harvey
Global Policy Cities Coordinator
Worker in Informal Employment, Globalization and Organizing

Marty Chen
Lecturer in Public Policy of the Harvard Kennedy School
Senior Advisor, Women in Informal Employment, Globalization and Organizing



Marlese von Broembsen, Jenna Harvey, and Marty Chen. 2019. “Realizing Rights for Homeworkers: An Analysis of Governance Mechanisms.” Written for the Carr Centre for Human Rights, Kennedy School, Harvard University: CCDP 2019-004, 3/5/2019.

Following the Rana Plaza factory collapse in Bangladesh, the labour rights violations in global supply chains, and indeed the governance of global supply chains, has become a pressing global issue. This paper evaluates key existing global and national supply chain governance mechanisms from the perspective of the most vulnerable workers in supply chains – informal homeworkers.



Marlese von Broembsen and Laura Alfery. 2019. “The UN Guiding Principles and the Informal Economy: A Focus on Homeworkers in Global Supply Chains” in *Navigating a New Era of Business and Human Rights*, edited by Matthew Mullen, published by Article 30.

The UN Guiding Principles on Business and Human Rights (2011) marked the “end of the beginning,” ushering in a new era. A wave of new organizations, policies, and activities have led to hope and opportunities but have also caused trappings and challenges. *Navigating a New Era of Business and Human Rights* is an open-access collection produced through a collaboration between faculty and researchers at the Institute of Human Rights and Peace Studies, Mahidol University and Article 30. Each chapter in this collection reckons with a vexing issue in the field of business and human rights. We contributed a chapter that analyzes the potential of the OECD Guidance to impact homeworkers.



Marlese von Broembsen. 2019. "The EU's Commodification of Bulgarian Homeworkers: Regulating Informal Labour in Global Production Networks." WIEGO Working Paper No. 40.

This paper interrogates the potential of contemporary international law instruments to realize decent work for homeworkers. It grounds the discussion

with reference to data on homeworkers in Bulgaria. The paper argues that the complex labour relations of the global economy necessitates a multi-layered, overlapping regulatory matrix that regulates plural jurisdictional scales, relies on plural mechanisms, and recognizes workers' plural identities. It shows, with reference to Bulgaria, that even if global framework agreements and international law instruments include provisions to protect homeworkers' human rights, unless representative organizations of homeworkers participate in crafting the protections, they are unlikely to be enforced. Not only are homeworkers exploited – in Bulgaria they are paid a third of the minimum wage – but not regulating homework jeopardizes efforts to protect factory workers. The paper also shows how recognition at the international level (Convention 177) enabled social recognition for Bulgarian homeworkers at the national level, which led to Bulgaria's ratification of Convention 177 (C177). Legal recognition – in the form of trade union registration – at the national level enabled the trade union of informal workers (UNITY) to use the ILO reporting mechanism to report on its government's non-compliance with C177, which in turn has given them a seat at the negotiating table.

3. Urban Law Publications

Urban Law is a relatively new, important legal discipline, particularly for self-employed workers who rely on local city authorities for housing (home is the workplace for many informal workers) and for workers that need access to public space to reach customers, and to access public resources and services.



Thomas Coggin. 2018. "Informal Work and the Social Function of the City: A Framework for Legal Reform in the Urban Environment." WIEGO (Law) Working Paper No. 39.

WIEGO engaged in the UN Habitat process that led to the *New Urban Agenda* and we are engaging in the realization of *Sustainable Development Goal (SDG) 11* on sustainable cities

and communities, and its interface with SDG 8 on Decent Work. We invited Thomas Coggin, who together with WIEGO served on a UN Habitat Committee and is a co-coordinator of the International Research Group on Law and Urban Space (IRGLUS), to write a working paper that reflects on the implications of the New Urban Agenda for legal reform in cities.

From the paper:

"As a way of staking a claim in the urban environment, informal workers have looked to the judiciary to establish, safeguard, and implement their livelihoods. This has created a bodywork of jurisprudence around the world which, predominantly, has affirmed informal worker rights. The judiciary has been a key interface between informal workers and the state, and the law has been a critical instrument for informal workers in claiming a political citizenship."

» **Marlese von Broembsen. Forthcoming. "Social Inclusion and the New Urban Agenda: Street Vendors and Public Space" in *Law and the New Urban Agenda*, edited by Nestor Davids and Geeta Tewari of the Urban Law Centre, Fordham Law School, and published by Routledge.**

The New Urban Agenda (NUA) articulates a commitment to "promoting full and productive employment and decent work for all, by ensuring the creation of decent jobs and equal access for all to economic and productive resources and opportunities." It recognizes the contribution made by informal workers in cities and emphasizes that political, legal and financial institutions should "broaden inclusive platforms that allow meaningful participation in decision-making". When it comes to the institutions necessary to realize its vision of an inclusive city, however, the NUA is remarkably short on detail. This chapter explores the relevance of the NUA's vision of social inclusion for workers whose livelihoods depend on access to urban public space. It focuses on street vendors – the most visible and prevalent of informal workers in both the global North and South – and examines the kinds of institutions that could realize "meaningful participation in decision-making" for street vendors. The chapter analyzes the institutions fought for and adopted by street vendor organizations in India and contrasts this with the approach taken in Monrovia, Liberia.

Resources for Lawyers and for Organizations of Informal Workers

We have produced a wide range of resources to support worker organizations in specific countries (see, for example, our work in [Bulgaria](#), [Malawi](#), [Mexico City](#) and [South Africa](#)) and for specific occupational groups (examples below). The resource list below contains only the resources applicable more generally.

1. General resources



Marlese Von Broembsen and Martha Chen. 2016. **“Eliminating Legal Barriers from the Perspective of the Informal Economy.”** Written for the Secretariat, UN Secretary-General’s High-Level Panel on Women’s Economic Empowerment.

In closing, we offer a video that examines how domestic workers are fighting for change and working to leverage ILO Convention 189 (C189).

Domestic Workers and ILO Convention 189: Making it Real – Africa

2. Street vendors



Jacques Jonathan Nyemb and Teresa Marchiori. 2019. **“Turning the Law into a Shield for Street Vendors in African Countries.”** WIEGO Legal Brief No. 4.



WATCH THE VIDEO »



For specific information go to:

- **2:48** Sharing experiences
- **5:19** Why Convention 189 is important
- **6:25** Strategies for change
- **8:30** Making it Real: A Toolkit



Lauren Kohn. 2017. **“Using Administrative Law to Secure Informal Livelihoods: Lessons from South Africa.”** WIEGO Technical Brief (Law) No. 10.



Pamhidzai H. Bamu. 2019. **“Street Vending Laws and Legal Advocacy: Reflections from Ghana, India, Peru, South Africa and Thailand.”** WIEGO Resource Document No. 14.

3. Domestic Workers



Pamhidzai H. Bamu-Chipunza. 2018. **“Promoting Decent Work for Domestic Workers: Lessons from Five Countries.”** WIEGO Resource Document No. 8.



Women in Informal Employment:
Globalizing and Organizing



WIEGO, 2018. **“Your Toolkit on ILO Convention 189 – The Domestic Workers’ Convention.”**