

M A N U A L

10

trade union actions

to strengthen the status of
workers in the informal economy



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This publication is a product of the:
World Confederation of Labour



33, Trierstraat
B-1040 Brussels
Tel.: ++32 (0)2/285.47.00
Fax: ++32 (0)2/230.87.22
e-mail: info@cmt-wcl.org
Website: www.cmt-wcl.org

This publication was drawn up by Claire Bosse for the:
Verba Informal Economy programme

Tel.: ++32 (0)2/285.47.31
Fax: ++32 (0)2/230.87.22
E-mail: wim.degroof@cmt-wcl.org

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A list of collaborators is attached.

The document has been read and approved by the WCL.

Responsible editor:

Willy Thys, Trierstraat 33, B-1040 Brussels

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FOREWORD

Decent work¹ for everybody. The World Confederation of Labour (WCL) links the essence of all its activities to this basic aim. Also and particularly for people employed in the informal economy, the majority of the workers worldwide, the WCL wants to seek concrete answers to the in many cases difficult questions and concerns.

More and more people are seeking, sought or were compelled to seek salvation in the informal economy. For most of them it is an economy without security, expansion, profit or future. Without any protection they set to work with the ultimate end in view of 'subsisting'. Today, manifold forms of informal work are present in each trade sector. The challenge to the trade union movement in its search of decent work for all the workers is enormous. There are no simple answers because of the need to structure the informal economy workers so to achieve optimum protection.

The formal economic systems have shown for a long time already that they are unable to call a halt to the growing informal economy. In the meantime, the 'informal economy', result of an ultra-liberal, flexible and regulation-free economy, has proven above all things that it is one of the sources underlying poverty and degrading working circumstances. So, deceived are those who believe that the answer lies there.

Trade unions, employers and authorities will have to combine forces to formulate a constructive and efficient response to this major social and economic challenge.

1. For the WCL's definition of decent work we refer to: *International Labour Standards at the Service of Social Justice*, chapter 3.4.

The integration of the informal into the formal economy as put forward in the recent report of the *World Commission on the Social Dimension of Globalization*² raises the matter of the weak legal status of the informal economy workers to begin with. A realistic integration is inconceivable without a solid legal protection. Without this status an overall change-over is out of the question.

Legal instruments are available, but they are often not applied to workers in the informal economy. This manual is intended to support trade unions in their mission and zeal to obtain a better legal status for the informal economy workers. Practical working methods have gone to show that solutions are possible and that there exists a full-fledged place for the informal economy worker on the economic map.

With this practical manual the WCL also wants to give a clear response to the challenges of the ILO Conference 2002. It extends its hand to everybody who wants to join in its struggle for fully decent work.



Willy Thys
Secretary General

2. *A fair globalization. Creating opportunities for all*, Final Report 2004, no. 261-268.

WHY THIS MANUAL AND

In an era in which the informal economy is growing worldwide and poverty and exploitation are the order of the day, the trade union movement is facing an important new challenge: to organise the informal economy workers so to struggle together for the improvement of their legal status, working conditions and working circumstances.

Attempts at getting hold of the informal economy issue soon give rise to an endless series of questions. We enumerate a few of them by way of example:

- What is 'informal economy' understood to mean?
- What are the causes of this phenomenon?
- What groups of workers can be distinguished in the informal economy, and what is the best way to organise these groups?
- What are their priorities (job security, fair wages, shorter working hours, social security, prevention of industrial accidents and occupational diseases, etc)?
- What rights and obligations are in force or should be in force in the informal economy?
- What legal and other instruments are available to improve the situation of the informal economy workers?
- To whom must the action be directed?
- What are the obstacles to the application of the labour standards?
- What is the best way to deal with these obstacles?
- How do we recruit new members without losing the old followers?
- ...

During the Informal Economy seminars of the Trade Action of the World Confederation of Labour in 2003 and 2004, several strategies were discussed to organise the informal economy workers and to improve their situation. One of these strategies is of a legal nature, a subject that is elaborated in this manual.

HOW TO USE IT?

By legal strategy we mean two things:

1. to promote the application of existing national and international labour standards and
2. to acquire new rights for workers in the various sectors of the informal economy.

We have divided this subject into three parts:

1. A theoretical part, in which we distinguish between various groups of workers and examine what legal instruments are available to them.
2. A practical part, in which we give information on the reality of the informal economy in a few of the participating countries and sectors.
3. A strategic part, in which we give ten suggestions to develop a legal strategy.

The manual is intended for trade unionists who commit themselves to organising informal economy workers and for trade union leaders who endeavour to improve the legal status of the workers in their sector. The manual provides no concrete solutions for concrete legal problems. The subject is too complex, and the informal economy too extensive for that. The aim is to contribute to the discussion and to provide an insight into one of this century's important trade union items: the rights of the informal economy workers.

The manual has been written in such a way that parts of it can be used for lectures, presentations and training. The exercises and questionnaire will induce people to take an active part in the reflection on this subject.

When drawing up the manual, we have made use of the information provided by trade unionists from various countries and sectors within the framework of the Informal Economy programme of WCL Trade Action. Annex 1 provides the list of participants.

Claire Bosse

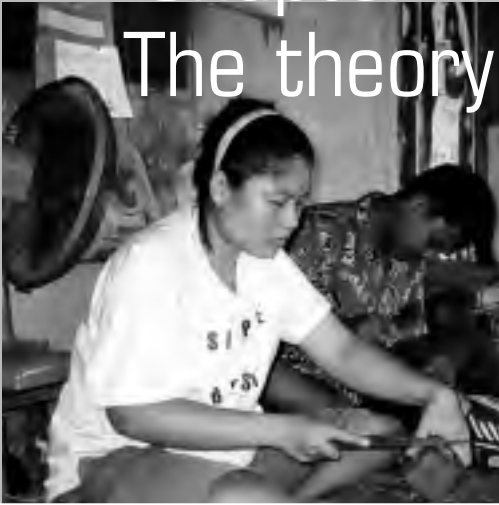
Legal adviser

Wim De Groof

WCL Informal Economy
programme coordinator

Chapter 1

The theory





1 Background

The existence of informal economic activities is not new. We are dealing here with an **age-old phenomenon** that we encounter all over the world.³ In times of economic and social progress it is possible to formalise and regulate part of these activities, provided that the government pursues a purposeful policy aimed at employment, equal opportunities for all and special attention to the weaker in society.

In times of crisis the informal economy will gain ground. Privatisation, mass dismissals, low prices of raw materials, indebtedness, export restrictions, low training levels, HIV/AIDS... have a disastrous effect on employment. More and more people seek **salvation** in informal economic activities to provide for themselves and their families. Those who cannot work due to illness, old age or incapacity are dependent on help from family and neighbours. This social safety net has grown less strong in recent decades.

In the past twenty years the informal economy has been marked by a **spectacular growth**. It has penetrated all the sectors of the economy and affected all the sections of the population. In many developing countries more than half the

active population is working on an informal basis, in some countries this rate exceeds even 80 percent. The informal economy has become a reality the trade union movement cannot get round anymore.

Yet, the extent and diversity of the informal economy make it difficult to work out cut-and-dried solutions. This is not our ambition anyway. A trade union or trade federation that wants to take action in the informal economy will have to start small and discover gradually the legal and other means by which it can improve the situation in its country and sector. **Theoretical knowledge** is an indispensable link in this.

The trade union movement has a long tradition. It was born in England, in the middle of the 19th century, in reaction to the bad working circumstances in the British industry. Child labour, low wages, long working hours, unsafe and unhealthy working circumstances were the order of the day at the time. As the industrial revolution advanced, more and more workers revolted. They protested against poverty, **exploitation** and **social injustice**. Their situation really improved from the moment they acquired the right

3. See for a better insight into the scope and backgrounds of the informal economy: ILO, *Decent work and the informal economy*, Report VI, International Labour Conference 90th Session, Geneva 2002. See also: A.V.Jose (ed.), *Organized Labour in the 21st Century*, Geneva: ILS 2002.

to vote, collective bargaining was introduced and laws were adopted to offer the workers protection. The first labour laws dealt with child labour. Later laws offered protection in the field of wages, working hours, and safety and health at the workplace.

But times have changed. Old industries were closed, and new production centres emerged in countries where the wage

cost is low, the trade unions have little experience with collective bargaining and the labour legislation is still in its infancy. This coincided with the growth of the **services sector**, which is marked by stiff competition, in which many people work for their own account and new forms of work come into being. That is why the international trade union movement is in search of new strategies to protect workers all over the world.

Exercise 1

Mapping out the situation of the informal economy workers is a first step on the way to their recognition, respect and protection.

Please find below a few characteristics of informal work that were noted down during one of the seminars. Indicate which of these characteristics apply to the informal economy workers in your country and sector.

- | | |
|--|--|
| <input type="radio"/> Low training level | <input type="radio"/> No legal recognition |
| <input type="radio"/> Not registered | <input type="radio"/> No social security |
| <input type="radio"/> Living in poverty | <input type="radio"/> Not organised |
| <input type="radio"/> Long working days | <input type="radio"/> Low wages / incomes |
| <input type="radio"/> No job security | <input type="radio"/> No medical facilities |
| <input type="radio"/> No right to pension | <input type="radio"/> No employment contract |
| <input type="radio"/> Weak bargaining position | <input type="radio"/> No (paid) holidays |
| <input type="radio"/> Not aware of labour rights | <input type="radio"/> No payment of taxes |
| <input type="radio"/> No protection against industrial accidents and occupation diseases | <input type="radio"/> ... |



2 What are we talking about?

2.1 Employed or self-employed?

Those who commit themselves to improving the legal status of informal economy workers will first have to answer a few questions:

1. Do these people work for their own account and risk or for the account and risk of someone else?
2. In the first case: what are the needs, and to whom can one direct possible actions (local authorities, tradespeople, landowners, ...)?
3. In the latter case: is one familiar with the labour laws? Which laws are observed and which are not? How can the application of the labour laws be approved?

The first question is of major importance from a legal point of view. People who work **for their own account** and risk come basically under civil law or commercial law. It is assumed in this case that the parties involved are in an equal bargaining position, so that the one who does the work is capable of reaching good agreements on the level of remuneration and further working conditions.

Those who work **at the service of others**, however, come under the protec-

tion of the labour law. This law has always assumed that the worker as the weaker party to the contract needs protection. Labour law 'compensates' for the unequal position of power between employer and worker by means of binding provisions such as a minimum wage and the right to maternity leave. The parties must not deviate from this. If they do, the worker can claim his or her right before the court. In that case the law takes precedence over the content of the employment contract.

So, the protection by the labour law is restricted in many cases to those who work on the basis of an **employment contract**.⁴ An employment contract is an oral or written agreement between two parties, under which one party works for a remuneration under the authority of the other party. In theory this definition is broad enough to cover dependent informal economy workers. In reality, however, this concept has faded away and the knowledge of rights (and obligations) is limited.

Those who run their own small business or supply certain services independently

4. See ILO, Meeting of experts on workers in situations needing protection, *The employment relationship: scope, Basic technical document*, Geneva 5-19 May 2000, p. 4: 'Labour law is the answer of society to the unequal position of the worker in the labour relations, and the existence of international labour standards indicates to what extent countries agree with this. Labour law, as the realisation of the basic workers' rights, as a means to regulate competition and as an instrument of social harmony, has changed the way society functions.'

have basically no access to protection by the labour law. The basic labour standards, such as the freedom of association and the right to be free from slavery and child labour, apply to them too, of course.

For the rest, however, the labour law-related claims of the self-employed are limited in many cases. The same goes for social security, which in many cases is better developed for employed than for self-employed people.

Exercise 2.1

Give examples of employed and self-employed workers and check to which category the people you are trying to organise belong.

2.2 Grey zone

The distinction between employed and self-employed workers is made more difficult by the existence of a grey or twilight zone between both categories.⁵ In this twilight zone we find labour relations that show characteristics of both categories and therefore risk escaping the working of the labour law. We give a concrete example to illustrate this:

Example:

When the textile sector in Paraguay was confronted with growing competition and decreasing profits, many factories decided to close down. In a short time hundreds of women textile workers lost their jobs. Their employment contract was 'exchanged' for a homework contract that provided that they would purchase their own machines from the factory, take every week part of the production home

and receive for this a fixed price per product.

At first sight this contract is not a bad idea, for those who work hard can earn more than before. Only in course of time the **disadvantages** for the workers appear:

- loss of income security;
- unlimited working hours;
- growing use of child labour;
- mutual competition between former colleagues;
- bad working circumstances and an unhealthy environment;
- loss of protection against dismissal;
- loss of social security rights (no income in case of illness, pregnancy, industrial accident, unemployment and old age);
- higher price of production materials;
- loss of solidarity with co-workers;
- ...

5. A. Perulli, *Economically dependent/quasi-subordinate (parasubordinate) employment: legal, social and economic aspects*, EC June 1993, p. II.

The only one to benefit from this situation is the entrepreneur. An **entrepreneur** who is not bound by the labour law:

- can reduce his fixed labour costs (he is not bound by the legal minimum wage anymore and does not need to pay employers' contributions);
- can deploy only those who work best and complain least;
- does not need to maintain, rent or buy factories and machines anymore and can therefore invest his money elsewhere;
- does not need to fear strikes anymore;
- does not need to enter into collective bargaining;
- does not need to pay dismissal compensations;
- does not need to bother about the

labour inspectorate anymore;

- ...

In this example all the acquired labour rights are thrown overboard in one stroke. And this is the first step towards the informal economy, because the average homework contract can be cancelled from one day to the other, without further obligations. Even if it is understandable that people prefer homework to unemployment in times of economic crisis, we consider it a task of the trade union to **inform** people of the advantages of labour law. The same goes for other contracts (subcontracts, freelance contracts...) under which one party is economically fully dependent on the other.

2.3 Subordination

What many people do not know, is that the name and content of the new contract are not decisive. If the woman textile worker in our example still works according to the directions and instructions of her former employer and he has the power to lead and supervise, there is in fact still an employment contract. The judge will look at the **facts**, not at what has been put on paper.

So to claim protection by the national labour law, there must be an **authority relation** between the worker and the

employer. This means that the worker is compelled to obey reasonable directions from the employer. The employer may control the work and give instructions about the way it must be carried out. The worker is legally subordinate to the employer.

Subordination is a legal concept that is further developed in the national case law and literature. The judge will decide case by case if authority and subordination are involved. He does so on the basis of facts put forward by the parties.

The worker will advance facts that are indicative of the existence of an employment relationship. The employer or contractor will advance facts that are indica-

tive of self-employment. If the judge establishes subordination, the labour law applies. In that case the worker is protected by the labour law.

Exercise 2.3

By means of the checklist below, the trade union can help workers determine their legal status. It make sense to complete or refine this list on the basis of the national jurisprudence and literature. Lawyers and academics from the own country can help with this.

Check for a concrete group of workers if the aforementioned elements apply to them. One or more indicators combined can point to the existence of an employment contract. In that case it is possible to plead for application of the national labour law.

- The worker is part of the organisation of the employer.
- The worker runs no personal financial risk when carrying out the work.
- The worker receives a fixed remuneration.
- The worker has no own materials or equipment at his or her disposal.
- The employer determines the working hours.
- The employer gives instructions about the way the work must be carried out.
- The employer controls the work and is able to punish shortcomings.
- The employer supervises the work.
- ...

If none of these indicators apply, we are dealing with **self-employed work**. In that case the labour law offers hardly if any protection. Other forms of protection (e.g. civil law or commercial law) are possible, however.

2.4 Labour suppliers and subcontractors

New forms of labour have in common that the direct link between employer and workers has disappeared. A worker no longer works from 8 am to 5 pm in the factory under the supervision of the employer, but is deployed on the basis of **casual assignments and subcontracts** or works at home on his or her own machine. The traditional employment contract is more and more often exchanged for contracts outside the scope of the labour law. Thus it can occur that a company has the same work carried out by permanently employed people and by others who work for their own account, such as subcontractors, freelancers and other self-employed persons.

The (sub)contractor can work with a pool of workers who are deployed in various projects as need may require. In the **building sector** the work is in many cases carried out by a small permanent core of skilled workers who are completed with casual unskilled workers according to the needs. In some cases these casual workers receive a higher hourly wage than the permanent workers, but they are not certain of work and protection. This makes their status uncertain.

Example:

in the Pakistani building sector 'labour and manpower suppliers' ensure the application of the supply-and-demand system on the labour market. Informal workers are deployed by subcontractors who carry out work

for contractors who in turn work for the client. There is no direct link between the principal contractor and the unskilled (informal) worker.

Employment agencies and manpower suppliers see to the supply and demand on the labour market. Some of them earn a lot of money that way, because the control of their activities is limited. It often occurs that both the worker and the contractor pay a **commission** for the services of the supplier. In case of employment abroad the risks are even higher, certainly so if all the contacts run through the supplier. Migrant workers in Sri Lanka, for instance, are in a very vulnerable position. If the employer does not exist or abuses the situation, the worker remains empty-handed.

The role of the employment agencies can be a once-only (as meant above), but also permanent. The worker has no contract with the actual employer, only with the **employment agency**. There is a triangular relation between worker, contractor and agent, in which it is often unclear who is responsible for the observance of the labour law.

A related problem is that of the **production chains**. In order to keep the cost of the finished product (e.g. furniture, footwear or toys) possibly low and to be able to deliver on time, parts of the production are put out under contract to small companies or workshops.

Example:

An example of this can be found in the Thai wood-processing industry, where parts of furniture are manufactured in several workshops outside the company.

When these workshop in turn put out the work to other contract workers, the labour relation between the principal contractor and the worker becomes

unclear. In that case the chain runs through several contractors and subcontractors.

Moreover, production chains can extend over several countries. If the wages are not paid on time or an industrial accident happens, it is in many cases unclear who is liable for the damages: the subcontractor or the contractor? Or are all the contractors and subcontractors in the production chain liable?

Exercise 2.4

Which party or parties are in your view responsible (or should be responsible) for observing the labour law-related regulations and standards?

Draw a production chain and indicate where the responsibility lies: the main contractor, the subcontractors, the informal workers and / or the consumers?

3 What legal instruments do we have?



3.1 Observation

There is no doubt that globalisation has yielded more losers than winners. In many countries privatisation and mass dismissals have had a disrupting effect. In other countries the economic growth has failed to get off the ground or the profits have disappeared in the pockets of the ruling elite. The power of the trade union movement and the protection of the labour law have crumbled away. Because many informal economy workers work for their own account, they view the labour law as irrelevant and expect no good from trade union membership.

This is not our point of view, of course. The trade union movement has struggled for years to achieve that the labour law is recognised and improved. We do not want to throw the labour law overboard just like that. To offer protection to dependent workers without an employment contract, we have to:

1. adapt the existing legislation (labour law, civil law, social law, commercial law, public law, tax law, criminal law...);
2. seek new forms of protection, eg collective agreements and voluntary

codes of conduct (such as the OECD Guidelines);

3. try to achieve that the informal economy workers are represented in the social dialogue.

We obviously cannot do this on our own. ILO experts have been discussing for years how people needing protection can be brought under the scope of the labour law.⁶ In the year 1997 and 1998, they thought to have found the solution with a convention on **contract labour**. The proposals did not make it because it is hard to define contract labour and it was not deemed indicated to create a new, less protected group of workers. The debate on this subject is by far not over, however.⁷

In brief, we should not accept the idea that informal economy workers have no labour rights or cannot exercise their rights anyway.⁸ On the contrary, the trade union movement jointly with governments and employers will have to see to it that workers needing **protection** actually get it. The success of this action will be partly decisive for the future of the trade union movement.

6. See: ILO, *Report of the Meeting of Experts on Workers in Situations Needing Protection*, doc. MEWNP/2000/4.

7. See: ILO, *Contract labour*, Report V, 86th Session of the International Labour Conference, Geneva 1998; ILO, *Resolution concerning decent work and the informal economy*, International Labour Conference, 90th Session, Geneva 2002; and ILO, *The scope of the employment relationship*, Report V, 91st Session of the International Labour Conference, Geneva 2003.

8. See for ILO instruments: ILO, *Decent Work and the informal economy*, Report VI, International Labour Conference 90th Session, Geneva 2002, pp. 44-47.

The labour law derives from several sources: international treaties and conventions, national laws and decrees, collective agreements between employers

and workers, individual agreements, custom and habit. In the following paragraphs we will give a survey of some of these sources.

Exercise 3.1

The trade union takes action to improve the status of the informal economy workers.

Think of a suitable slogan.

3.2 Human rights

In this paragraph we are dwelling on the basic labour rights (called also basic social rights) that emanate from the **Universal Declaration of Human Rights** (1948) and the International Treaty on Economic, Social and Cultural Rights (1966) of the United Nations.

These labour rights are reckoned among the **human rights** and therefore apply to everyone who works. This implies that no distinction must be made between employed and self-employed workers or between formal and informal economy workers. The basic labour rights are at the root of many labour laws worldwide.

The **United Nations** member states have undertaken reciprocally to recognise and apply the following basic labour rights:

- the right of everybody to constitute trade unions and to join a freely chosen trade union;
- the ban on slavery;
- the protection of children and young people against economic and social exploitation;
- the right to equal pay for work of equal value, without any distinction;
- the right to a fair wage enabling the worker and his/her family to lead a decent existence;
- the right to safe and healthy working circumstances;
- the right to rest and leisure time, a reasonable reduction of the working time and periodic paid holidays;
- the right of working mothers to paid leave during a reasonable period before and after the birth of their child;
- the right to social security, including provisions in case of unemployment, illness, disablement, old age or another lack of income resulting from circumstances independent of the worker's will.

Exercise 3.2

Indicate how in your country the above-mentioned basic labour rights are recognised and applied to workers in general and to informal economy workers in particular.

Use a scale from 0 (very bad) to 10 (very good).

3.3 Basic ILO conventions

The International Labour Organisation (ILO) has occupied itself since 1919 with the protection of workers by means of conventions and recommendations in the labour field. The ILO is part of the UN family and is based in Geneva.

It is a tripartite organisation, in which governments, employers' organisations and trade unions from all over the world cooperate from the conviction that **social justice** is essential for peace. In the opinion of the ILO, economic growth is essential but insufficient to guarantee equality and social progress and to eradicate poverty.

The *International Labour Code* contains about 180 conventions and over 180 recommendations. Annex 2 gives a survey of the conventions. It is not expected that many new subjects will be added.

Under the ILO Declaration⁹ the member states are under the obligation to respect, promote and put into practice four **basic principles**. These principles apply to **all the workers** regardless their legal

status and regardless the fact whether they belong to the formal or in the informal economy.¹⁰ This becomes even clearer when we place them together with the **eight core conventions**:

Freedom of association and effective recognition of the right to collective bargaining (Conventions 87 and 98)

- The *Freedom of Association and Protection of the Right to Organise Convention, 1948 (C. 87)* calls the recognition of the principle of freedom of association essential for improving the working circumstances and achieving peace and sustainable development. Workers and employers, without distinction whatsoever, shall have the right to establish and join organisations of their own choosing without previous authorisation.
- *The Right to Organise and Collective Bargaining Convention, 1949 (C. 98)* is aimed to protect workers against acts of anti-union discrimination related to their work.

9. ILO, *Declaration on Fundamental Principles and Rights at Work and its Follow-up*, adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998.

10. ILO, *Decent work and the informal economy*, Geneva 2002, p. 39.

**Abolition of all forms of forced or compelled labour
(Conventions 29 and 105)**

- The *Forced Labour Convention, 1939 (C. 29)* instructs the member states to ban all forms of forced or compulsory labour within the shortest possible period.
- The *Abolition of Forced Labour Convention, 1957 (C. 105)* prohibits the use of all forms of forced or compulsory labour for political or economic purposes, as a disciplinary measure or as a means of discrimination based on race, social origin, nationality or religion.

**Abolition of work- or occupation-related discrimination
(Conventions 100 and 111)**

- The *Equal Remuneration Convention, 1951 (C. 100)* guarantees the application of the principle of equal remuneration for men and women for work of equal value to all the workers. This can be achieved by means of national laws or regulations, legally recognised mechanisms to fix wages, collective agreements between employers and workers or a combination of these various means.
- The *Discrimination (Employment and Occupation) Convention, 1958 (C. 111)* defines discrimination as follow: any distinction, exclusion or preference on the basis of race, colour, sex, religion, political opinion, social origin, which harms the principle of equal opportunity or equal treatment in employment or occupation. Member states ratifying the Convention must pursue a national

policy of equal opportunity and equal treatment at work and prohibit discrimination.

**Effective abolition of child labour
(Conventions 138 and 182)**

- The *Minimum Age Convention, 1973 (C. 138)* induces the member states to pursue a national policy aimed at the effective abolition of child labour and at raising the minimum age for access to employment. It bears pre-eminently upon employment in the informal sector.
- The *Worst Forms of Child Labour Convention, 1999 (C. 182)* provides for taking measures to put an end to the worst forms of child labour (prostitution, exploitation...).

Despite the broad field of application of these conventions it is not easy for the informal economy workers to exercise their rights, the freedom of association and collective bargaining in the first place. In some countries it is prohibited or practically impossible to organise **informal economy** workers. In other countries trade unions have not enough adherents, so that they fail to be heard at the national and the international level. In many cases collective bargaining is difficult because the labour relations are unclear. The informal economy is generally characterised by a low rate of unionisation, so that trade unions have little influence on the policies of employers and governments.

The exercise of other basic labour rights proves to be not easy either in practice.

Child labour and discrimination occur at a large scale in the informal economy. It is difficult to change this without a thorough knowledge of the historical, cultural and religious context.

Nevertheless, it is important that basic

labour rights violations in the informal economy are effectively denounced. The trade union can call in the WCL's Standards Department or the ILO for this. International pressure can undoubtedly help improve the situation of the informal economy workers.

3.4 Other ILO conventions

Apart from the basic ILO conventions we have just discussed, there are dozens of other conventions that can apply to informal economy workers. Invoking these conventions is only possible if the country concerned has ratified them. A ratified convention can have a **direct effect** between the authorities and the citizens and/or a **horizontal effect** among citizens. This depends on the nature and content of the convention and on the provision in the Constitution. In cases of doubt the judge will have to decide.

ILO conventions can contain **technical standards** (e.g. the Benzene Convention, 1971), protect **certain groups of workers** (e.g. the Indigenous and Tribal Peoples Convention, 1989) or contain **policy standards** (e.g. the Social Policy (Basic Aims and Standards) Convention, 1962).

Some conventions can be introduced gradually, so that a country's level of development can be taken into consideration.

Conventions and recommendations supply **starting points** and contain legal instruments to improve the situation of the informal economy workers. It is not necessary to know all the conventions and recommendations by heart. The title can help determine which conventions are relevant for the sector one is employed in. The ILO's International Labour Code contains **useful material** for workers in v for many situations and many workers. It is important to be aware of this material and to be able to use or apply it.

A few **priority conventions** deserve our special attention:

- *Labour Inspection Convention, 1947 (C. 81)*

Labour inspectors must secure the enforcement of the legal provisions relating to working hours, wages, safety, health and welfare and the employment of children; report violations to the competent authorities; and advise employers and workers on the applica-

tion of these legal provisions. The Convention establishes standards for a properly functioning labour inspection. A protocol was adopted in 1995.

- *Social Policy (Basic Aims and Standards) Convention, 1962 (C. 117)*

This Convention establishes a strong link between economic growth and social progress. The main purpose of economic development is to improve the living standard of the population, according to Article 2 of the Convention. The government must take measures to guarantee all the workers a minimum living standard. This supposes a broad social policy: measures in the field of health care, housing, nutrition, education, child care, equal treatment, working conditions, minimum wage, protection of migrant and agricultural workers, social security and public services. In brief, the Convention supplies various starting points for trade union action in favour of the informal economy workers.

- *Employment Policy Convention, 1964 (C122)*

This Convention compels the member states to pursue an active policy aimed at full, productive and freely chosen employment. When developing this

policy, the stage and level of the country's economic development and the relation between employment and other economic and social goals may be taken into account.

- *Labour Inspection (Agriculture) Convention, 1969 (C. 129)*

Under this Convention the labour inspection system applies to all the agricultural workers regardless the way they are paid and regardless the type, form and duration of their contract. Enforcement of labour laws, advice and information to employers and workers and reporting labour standards violations are among the core tasks of the labour inspection (see also C. 81).

- *Labour Administration Convention, 1978 (C. 150)*

This Convention is about extending tasks and activities of the labour administration to groups of workers who are not, in law, employed persons, such as agricultural workers, self-employed workers occupied in the informal economy and members of co-operatives. The government can call on trade unions and employers' organisations to carry out these activities.

Exercise 3.4

Suppose that you work with migrant workers and want to invoke the *Migrant Workers Convention, 1975 (C. 143)*.

Read the Convention. Write a leaflet for the migrant workers in which you explain the rights and standards contained in this Convention.

Observation: check if the government has ratified this Convention and insist, if necessary, on its ratification and application.

3.5 Survey

Below you find a chronological survey of other conventions that may be useful also for informal economy workers. You can find the complete text of each convention on the website of the ILO.¹¹ Here we have limited ourselves to the essence.

- *White Lead (Painting) Convention, 1921 (C. 13)*

The Convention limits the use of white lead or lead sulphate when painting the interior of buildings. Workers in this sector, particularly youths under 18 and women, must be protected against the health risks of working with these substances.

- *Migration for Employment Convention (Revised), 1949 (C. 97)*

Under this Convention the government must supply free assistance and information to migrant workers. In cooperation with other member states it must take

action against misleading propaganda on emigration and immigration, supply health care and fight discrimination.

- *Social Security (Minimum Standards) Convention, 1952 (C. 102)*

This Convention establishes minimum social security conventions. It encourages governments to provide facilities in case of unemployment, illness, employment injury, invalidity, pregnancy and old age. The facilities can be gradually introduced and extended.

- *Plantations Convention, 1958 (C. 110)*

With this Convention the ILO wanted to extend the application of existing conventions to commercial plantations. The Convention can be gradually introduced and contains provisions on a variety of subjects such as migrants, minimum wage, annual holiday, weekly rest, maternity protection, compen-

11. See www.ilo.org/ilolex/english/index.htm.

sation for industrial accidents, freedom of association and collective bargaining, labour inspection, housing and health care. In 1982, the Convention was partly revised by a protocol.

- *Guarding of Machinery Convention, 1963 (C. 119)*

This technical Convention compels the government to establish regulations to protect workers against the risks related to the use of dangerous machines.

- *Maximum Weight Convention, 1967 (C. 127)*

This Convention, which covers all the branches of economic activity, protects workers who regularly transport freight. The freight must not be so heavy that it harms the workers' safety and health. The government must arrange for adapted training and instructions. Women and young workers enjoy special protection.

- *Minimum Wage Fixing Convention, 1970 (C. 131)*

A government that ratifies this Convention must arrange for a minimum wage system covering groups of wage earners that are specified in consultation with representative employers' and workers' organisations. The minimum wage level is dependent on:

- the needs of workers and their families, the living costs and living standard of other social groups;
- economic factors such as the requirements of economic development, production levels and employment.

- *Benzene Convention, 1971 (C. 136)*

The production and use of benzene entail high health risks for the workers. The government that ratifies this technical Convention must take the necessary measures to prevent these risks. This applies to all activities in which workers are exposed to benzene.

- *Rural Workers' Organisations Convention, 1975 (C. 141)*

Rural workers' organisations can play an important role in the country's economic and social development. The government that applies this Convention undertakes to pursue an active policy aimed at the creation and growth of rural organisations. The term 'rural workers' refers to workers engaged in agriculture, handicrafts or a related occupation in a rural area. Rural workers have the right to create and to join trade unions of their own choice without prior consent. Their legal status is not important in this: the Convention applies to wage earners as well as to self-employed persons (Art. 3). Rural workers' organisations must be able to operate independently and on a voluntary basis.

- *Human Resources Development Convention, 1975 (C. 142)*

Under this Convention the government must adopt and develop training programmes enabling workers without any discrimination to develop and use their skills in their own interest and in that of society as a whole.

- *Migrant Workers (Supplementary Provisions) Convention, 1975 (C. 143)*
 With this Convention the ILO tries to call a halt to the uncontrolled and unlimited migration of workers. Governments must provide information, regulation and control of abuses and discrimination. Cooperation with other UN organisations is encouraged.
- *Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (C. 148)*
 This Convention, which basically applies to all branches of economic activity, is aimed at the gradual introduction of measures to prevent, and protect against, occupational risks resulting from air pollution, noise and vibrations. The measures must be laid down in national laws or regulations. The implementation and application occur in close consultation with the most representative organisations of employers and workers.
- *Occupational Safety and Health (Dock Work) Convention, 1979 (C. 152)*
 The Convention protects all workers involved in loading and unloading ships, though the government can allow exceptions. The implementation of the Convention requires a whole series of measures: measures to prevent fire and explosions on the ship, sanitary facilities, medical supervision, transport of workers, loading and unloading of dangerous substances, etc.
- *Occupational Safety and Health Convention, 1981 (C. 155)*
 Under this Convention the government must pursue, in consultation with the most representative employers' and workers' organisations, a coherent policy with regard to safety and health at work.
- *Workers with Family Responsibilities Convention, 1981 (C. 156)*
 This Convention protects workers in charge of the care for their children or other dependent family members. The government must take measures to arrange for equal treatment and equal opportunities of men and women on the labour market. The Convention applies to all branches of economic activity and to all groups of workers.
- *Vocational Rehabilitation and Employment Convention (Disabled Persons) Convention, 1983 (C. 159)*
 Under this Convention the government must pursue a policy to improve the accessibility of the labour market for disabled persons and to create equal opportunities.
- *Occupational Health Services Convention, 1985 (C. 161)*
 A government that ratifies this Convention must see to the gradual development of health care services for workers in all sectors of the economy.
- *Asbestos Convention, 1986 (C. 162)*
 Asbestos is a dangerous substance that can produce deadly forms of lung cancer. The Convention applies to all

activities in which workers are exposed to asbestos. The government must establish laws and regulations to protect workers against the dangers of asbestos. The ILO published on this issue a Code of Practice (1984).

- *Safety and Health in Construction Convention, 1988 (C. 167)*

The government must enact national laws and regulations to compel employers and self-employed workers to observe the measures regarding safety and health at work. Workers in the building sector must be enabled to give their opinion on working procedures that influence the safety and health at work. They must be given the right (and the obligation) to commit themselves to safe working circumstances.

- *Indigenous and Tribal Peoples Convention, 1989 (C. 169)*

The Convention provides measures to put an end to the discrimination of a country's indigenous population. Together with the population the government must develop programmes to protect their rights. Respect for the own identity, culture, language and religion comes first in this regard. The Convention is very broad and provides the introduction of social security, training and equal remuneration among other things.

- *Night Work Convention, 1990 (C. 171)*

The government must take measures to protect night workers in fields such as safety and health, pregnancy pro-

tection and an adapted remuneration. The Convention applies to all workers employed by somebody else, except in some sectors like agriculture and fishery.

- *Home Work Convention, 1996 (C. 177)*

With this instrument the ILO wants to ensure a better application of the conventions and recommendations to homeworkers. The definition of home work contains the following elements:

- work that is carried out by a person in his or her house or in another house of his or her choice other than the employer's workshop;
- for a remuneration or compensation;
- resulting in a product or service as demanded by the employer;
- no matter who uses the materials, equipment or other supplies, unless this person has a level of autonomy and economic independence that is necessary to be considered a self-employed workers by the national laws, regulations and courts.

Homeworkers' organisations can insist on ratification of the Convention and cooperate on a national policy to improve the situation of the homeworkers.

- *Private Employment Agencies Convention, 1997 (C. 181)*

The ILO recognises the importance of private employment agencies, but at the same time points out the need to protect workers against abuses. The government must therefore regulate the working of these agencies in order

to prevent discrimination and protect migrant workers and children among others. Employment agencies must not charge workers who make use of their services.

- *Maternity Protection Convention, 2000 (C. 183)*

The Convention applies to all pregnant workers, including those in atypical labour relations, but the government can exclude certain groups. In that case the protection must be gradually

extended. Women workers can claim maternity and delivery leave, social security, protection against dismissal, etc.

- *Safety and Health in Agriculture Convention, 2001 (C. 184)*

Under this Conventions governments in consultation with representative workers' and employers' organisations must formulate a coherent policy aimed at the safety and health of agricultural workers.

Exercise 3.5

1. Look up which conventions your country has ratified

(www.ilo.org/ilolex/english/index.htm) and check which conventions can be used to improve the situation of the informal economy workers in your sector.

2. How are these conventions being applied in practice?

3.6 Other instruments

- *National laws and regulations*

As has been said before, labour rights not only emanate from international treaties and conventions, but also from national laws and regulations. The Constitution of a country, its Labour Code, Labour Decrees and Social Security legislation contain numerous provisions in the field of minimum

wage, working hours, holidays, safety and health at work, social security, etc. Those committed to improving the working circumstances of the informal economy workers can derive from them the necessary starting points.

Rights and obligations do not only change in time, but differ also from

country to country, region to region and occupational group to occupational group. In the textile sector other arrangements will apply than in the transport sector, in Bolivia other than in Bangladesh. Moreover, equality and social justice do not have the same meaning everywhere. A good knowledge of the national law and practise is therefore essential in the preparation of a legal action. In the next chapter we give a few examples of this.

- *Collective agreements*
Collective agreements between employers and workers contain arrangements in the field of wage, working hours, social security, workers' participation, etc. They are concluded between representative workers' and employers' organisations in a given sector. The arrangements are in force for the duration of the agreement and are legally binding upon the parties.
- *Trade agreements*
International trade agreements contain in many cases arrangements in the

field of labour law. A example of this is the trade agreement between the United States and Cambodia, in which the export of textile products is conditional upon respect for the core labour standards. This is a big stick in the hands of the government and the employers.

- *OECD guidelines*
Finally we draw attention to the guidelines for multinational companies of the Organisation for Economic Co-operation and Development (OECD).¹² The so-called Code of Conduct dates back from 21 June 1976 and was modified in June 2000. It is aimed to help prevent conflicts on the basis of a number of accepted principles and to create an atmosphere of trust between multinational companies and the societies in which they operate.¹³ The guidelines have moral authority but are not legally binding. In some cases the OECD's reports play a role in national debates on the social policy.

Exercise 3.6

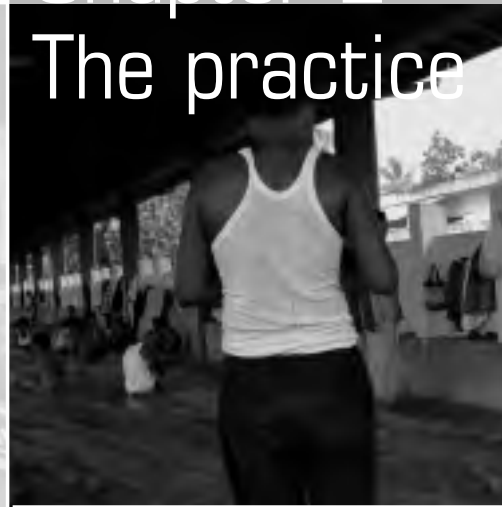
Are you familiar with these instruments? Check to what extent they exist and can be used for the informal economy workers of your sector in your country.

12. See www.oecd.org/daf/investement/guidelines/mnetext.htm.

13. W. Van Eeckhoutte, *Arbeidsrecht*, Antwerp: Kluwer 2002, p. 14.

2

Chapter 2 The practice





1 Introduction

In this practical part we are going into the legal status of informal economy workers in three participating countries: Ghana, Colombia and Sri Lanka. This information is going to be supplemented and corrected in the course of the programme.

The data below largely come from the participants in the programme. During the Informal Economy seminars questionnaires (see Annex 3) were used to map out the situation of the informal economy workers. A number of recent country studies are available on the website of the ILO.¹⁴

2 Ghana

Ghana has a large and growing working population and a relatively low official rate of unemployment. The formal sector accounts for roughly a mere 14% of the total employment. The informal economy is by far the **most important source of employment**. Nearly 90% of all working Ghanaians earn a living in this sector¹⁵. According to the statistics there are four times more wage earning men than women. On the other hand, twice as many women as men work self-employed or as unpaid domestic staff. In urban areas one out of three runs a 'business'. No less than 49% of the women in the cities work in 'business'.¹⁶

na, the Danish Trade Union Council for International Development Cooperation (DTUC) states that **incomes** in agriculture, mining & quarries and in production sectors are particularly low. These three sectors employ about 65% of the total working population and contribute very much to the export earnings. A wage increase in one of these sectors would mean a considerable improvement for a large part of the Ghanaian workers.¹⁷

Workers in the formal sector earn on average four times more than informal economy workers. According to a national labour market assessment, carried out in 2000, there are even huge differences within these formal and informal sectors.

In a recent report on trade unions in Gha-

14. See: <http://www.ilo.org/public/english/dialogue/ifpdial/publ/mewnp/mewnp.htm>.

15. *Profile of the Labour Market and Trade Unions in Ghana*, Copenhagen 2003, p. 8 en 32.

16. DTUC 2003, p 33 and p 34.

17. DTUC 2003, p 38.

A male worker in the formal services sector earns most, whereas a female agricultural worker has almost no income. In the informal economy workers in transport and communication sectors earn most, workers in commercial sectors least.¹⁸

In Ghana, sixty-five companies employing in all about 8,700 workers (March 2002), operate under the **Free Zones Scheme**. This number is expected to rise in the coming years. The Free Zones Act 1995 (FZA) recognises labour rights, including the freedom of association. On the recommendation of the Free Zones Board the Chairman can declare any area or building a free trade zone by publishing a message in the Commercial and Industrial Bulletin.

Paragraph 34 (i) of the **Free Zones Act** provides what follows: 'Developers and companies in free zones are free to bargain over and conclude employment contracts with workers, which contain agreements on wage scales, minimum working hours, suspension and dismissal of workers, settlement of disputes between employers and workers, and other working conditions that are consistent with ILO conventions on workers' rights and working conditions.' Some companies employ a large number of temporary staff, trying that way to escape the pressure to improve the usually very bad working conditions in the free zones.¹⁹

Ghana has been a member of the ILO since 1957 and it has ratified 46 conventions.

In October 2003, the Parliament of the Republic of Ghana adopted a new **Labour Act** (Act 651). The Act applies to all the workers and all the employers, except for the army, the police, the prison system and the security and intelligence services (art. 1). The Labour Act recognises the **fundamental principles and rights** as embedded in the ILO Declaration on the Fundamental Principles and Rights at Work (1998).

- **Freedom of association**

Every worker has the right to form or join a trade union of his or her choice for the promotion and protection of the worker's economic and social interests (art. 79 (1)). Two or more workers of a same company can create a trade union (art. 80 (1)). Trade unions must turn to the Chief Labour Officer to register and to obtain a certificate for collective bargaining. In practice, this can be an obstacle to the principle of freedom of association and collective bargaining.

- **Elimination of forced labour**

A person shall not be required to perform forced labour (art. 116 (1)). Though forced labour is not very widespread, slavery practices occur in several ethnic groups along the coast of Ghana (DTUC, p. 68).

- **Elimination of child labour**

Child labour is regulated by the Children's Act, 1998 (Act 560). This Act provides that children must not be employed for exploiting work that

18. DTUC 2003, p 37 and p 38.

19. DTUC 2003, p. 30.

harms their health, education or development (paragraph 87). Though education is free and compulsory until the age of 14, quite a lot of children, particularly girls, leave school under economic pressure. UNICEF reports that 80% of the girls employed as domestic workers are between 10 and 14 years old (DTUC, p. 67). Child prostitution and trafficking occur as well, even if they are prohibited.

• **Elimination of discrimination**

Art. 10 (b) of the new Labour Act recognises the right to equal remuneration for equal work. Anti-union discrimination is prohibited by law (art. 14 and 127), but in practice lots of companies keep discriminating trade unions and the government cannot stop this (DTUC, p. 66).

According to Art. 10 of the Labour Act the **workers' rights** include:

- the right to work insatisfactory, safe and healthy conditions;
- the right to receive equal pay for equal work without any distinction of any kind;
- the right to have rest, leisure and an reasonable limitation of working hours and period of holidays with pay as well as remuneration for public holidays;
- the right to form or join a trade union;
- the right to be trained and retrained for the development of his of her skills; and
- the right to receive information relevant to his or her work.

There are a few **special provisions** on the employment of disabled people (art. 45-54), the employment of women (art. 55-57) and the employment of young persons (art. 58-61). The Labour Act prohibits the employment of young persons (between 18 and 21 years of age) in hazardous work (i.e. work that could expose them to physical or psychological dangers).

Developing a legal strategy for informal economy workers on the basis of the new Labour Act requires the examination of the **field of application** of the Act. Article 1 of the Act provides that it applies to all workers and all employers, but who are these workers?

A **'worker'** is a person employed under a contract of employment whether on a continuous, part-time, temporary or casual basis (Art. 175). This implies that -in theory- dependent informal economy workers can demand the application of the rights embedded in the Labour Code.

Yet, the Labour Code contains some serious **restrictions**: the provisions related to working and rest hours, for instance, do not apply to piece-workers and domestic staff (art. 44). And the special provisions on temporary and occasional workers do not apply to piece-workers, part-time workers, tenants, apprentices, wage-earners in the fishing industry and all persons who work less than 24 hours a week (art. 73).

As a consequence, informal economy

workers are in many cases excluded from legal protection.

The improvement of the living standard of all the workers, and not only of those under an employment contract, must be considered the basic aim in the planning of the economic development (art. 2 of the Social Policy (Basic Aims and Standards) Convention, 1962). Ghana ratified the **Social Policy Convention** in 1964. Forty years later, the informal economy (which employes 90% of all the workers) has become one of the main stakeholders in the development of Ghana. The government, however, makes little efforts to protect these workers. The low incomes, an insufficient level of training and gloomy prospects limit the ability of the informal economy workers to contribute to economic growth.

Improving the situation of the informal economy workers requires more than just legal action. **Other strategies** must be taken into consideration:

- to stress the importance of education and vocational training for men and women;
- to improve the access to credit facilities for small farmers and entrepreneurs;
- to pay special attention to women and their role in the economic and social development;

- to create decent jobs;
- to improve the access to ICT and adapted technologies;
- to promote the core labour standards and full-fledged work for all;
- to improve the access to social security;
- to create an environment of democracy, flexibility and creativeness.

Participants in the WCL seminar in Togo (February 2004) pointed out the necessity of adequate protection for the workers in their respective sectors, particularly car mechanics, batik producers, tailors and vendors of lottery tickets.

The **main obstacles** to the application of the labour standards and rights in the informal economy are according to the participants: ignorance, lack of money to take legal proceedings and distrust of the public bodies involved. Workers must have an employment contract, enjoy protection against dismissal and fall under the social security system to have a 'decent' job.

The participants stress the need for **effective sanctions** to promote the application of the Labour Act. Informal economy workers must be recognised by law, so that they can enforce their rights.

3 Colombia

In Colombia 50 to 65% of the active population is reckoned to work in the informal economy. We find there workers for their own account, subcontractors, workers in small and medium-sized companies, etc. Women account for 60% of the informal economy workers, and there is a high percentage of child workers. An average working day in the informal economy varies between twelve and sixteen hours.

In his report on the informal economy in Colombia, Cristobal Camargo of the *Federación Nacional de Trabajadores del Comercio* (FENATRAC, CGTD) writes that there are no legal rights protecting the informal economy workers and that the government has developed no policy to stimulate the **economic and social development** of Colombia. The wages in the informal economy fluctuate between 40 and 50% of the legal minimum wage, and 32% of the workers are outside the scope of social security. The government regularly seizes the merchandise of street vendors, and agreements with the local authorities to compensate the vendors are not observed.

In Colombia the **core labour standards** are recognised, but not always respected. One of the participants speaks



of a 'culture of exploitation'. It is true that the Colombian labour law contains special provisions for homeworkers, domestic staff and agricultural workers, but these provisions are not applied. The same goes for the protection of the public service workers. The *Nueva Reforma Laboral* (December 2002) means for the Colombian workers a 'great leap backward'.

For a targeted legal action to be successful it is important to have a possibly complete picture of the legal status of the workers one wants to protect. Thus, art. 89 of the *Código del Trabajo (Labour Code)* provides: 'There is an employment contract with the person who supplies at home, whether alone or with the help of family members, paid services on a regular basis and for the account of an employer'.

According to the Colombian Labour Code, **homeworkers** have the same rights as other workers. The condition for concluding an employment contract with a home worker is that the employer has the prior consent of the labour inspector or the mayor of his domicile (art. 90). The government probably hopes to supervise that way a form of work that otherwise easily remains hidden. If the homework-

ers organised themselves, they could also claim their rights themselves.

There is, for instance, the right to a **minimum wage**, about which art. 145 provides: 'The minimum wage is the wage to which every worker has a right so to satisfy the basic needs of himself and his family, and this at the material, the moral as well as the cultural level'. The Labour Code supplies some relevant instruments to stand up for better working conditions for the informal economy workers.

In the **agrarian sector** there is need for an adequate protection of the workers. Social security, education and job security are basic requirements for decent work. According to the participants, the legal status of the informal economy workers can be improved by training and organis-

ing them and by supplying means to exercise their rights. More supervision and support from international organisations can result in a better application of these rights.

In the **public sector** there is need for an adequate protection of workers under a contract of limited duration or under a contract for supplying services. For the time being, their rights are very limited. Before we can speak of decent work, the employees must at least be entitled to a fair and decent salary and to social security in the field of health care and pensions. The participants suggest that the Labour Code should be adapted to protect workers in the informal economy. In the view of the participants, unionisation and training are the best means to guarantee decent work.



4 Sri Lanka

In an inquiry into the active population of Sri Lanka, carried out in 2000, the economically active population was estimated at 6.7 million, 6.17 million of whom working and 0.53 million unemployed. Nearly 57% of the workforce was employed and 28.6% was self-employed.²⁰

This means that the majority of the active population are dependent (employed) workers. Workers in the private and the semipublic sector are covered by the Labour Code. In practice the application of the **Labour Code** leaves much to be desired, for lack of staff, instruments and government control. The employers can be classified in a formal category and an informal category of small entrepreneurs. By and large, the formal category observes the Labour Code with a great sense of responsibility. This is often not the case in the second category (Suresh Chandra 2001, p. 4 and 14).

As far as the dependent workers are concerned, some employers try to **disguise** such relations by using common law concepts such as 'contract labour', 'hiring of labour', etc. Yet, such concepts have proved to be unsuccessful before the courts. Courts in Sri Lanka look at the

reality and pass judgment in favour of the worker. The most recent trend in this respect is the outsourcing concept, under which activities are put out to third persons on the basis of a contractual agreement (Suresh Chandra 2001, p. 4 and 7).

Sri Lanka has no laws on **self-employment**, though there have been occasional attempts to introduce welfare regulations for this group. The Labour Code does not apply to self-employed workers because they are 'their own boss'. The law offers them **no protection**, except in cases where the contract with their employers gives some protection, but strictly speaking this comes under the law of contract, for which the ordinary civil court is competent. There are no legal instruments for the self-employed (Suresh Chandra 2001, p. 4 and 19).

The report contends, further, that the lack of legal instruments regulating self-employed work makes it impossible to a 'discussion on working conditions, wages, safety and health at work, social security, freedom of association, collective bargaining, access to the court, etc.' (Suresh Chandra 2001, p. 19).

In our view this is not true, because most of these points are relevant for self-

20. RKS Suresh Chandra, *The Employment Relationship (scope) in Sri Lanka*, Sri Lanka 2001, p. 3. This document can also be found on the website of the ILO: www.ilo.org.

employed workers as well. The question is how this can be organised and how these rights can be guaranteed if there is no direct employer to turn to.

A field that needs clarification is that of *'contract labour'*. Many employers resort to this concept in order to avoid permanent employment (Surech Chandra 2001, p. 21). According to one of the participants, temporary workers can claim their rights before the court if they can prove that they have supplied services.

In the **transport sector** (trucks, taxis and rickshaws) the taxi or tricycle owner and the driver have in many cases reached an agreement on profit-sharing. The expenses are deducted from the daily incomes, and the driver receives part of the net balance, usually one third. The rest is for the owner of the vehicle. In some cases the driver must pay the owner a fixed amount at the end of the day, regardless his earning on that day. According to the report, there is a trend to create labour relations by which the application of the Labour Code becomes possible. If this happens, many owners of vehicles will stop their activities (Surech Chandra 2001, p. 11).

Most **building workers** belong to the group of dependent workers. In this sector a triangular relationship is sometimes found, which is usually defined as 'sub-contracting', but here too it is easy to identify the employer by means of the definitions in several labour acts. If the subcontracting is a mere façade, the main contractor is regarded as the employer

of the workforce of the subcontractor (Surech Chandra 2001, p. 20).

Freedom of association is a basic right guaranteed by the Constitution of Sri Lanka. The Trade Unions Ordinance regulates the creation and registration of trade unions. In 1999, an amendment to the Industrial Disputes Act placed the employer under the obligation to recognise trade unions for purposes of **collective bargaining**. This Act has given rise to a lot of discontent, and the Commissioner of Labour is not in a hurry to apply the provisions of the amended Act (Surech Chandra 2001, p. 17).

The report points out that appropriate legal mechanisms must be introduced to ensure a faster application of the relevant legal provisions (on employment conditions, compensations, safety and health at work, etc.). Public **awareness** of the provisions would make the workers aware of their rights, which in turn would induce them to draw the competent authority's attention to the need to take action (Surech Chandra 2001, p. 17).

Since Sri Lanka has a strong trade union movement, the workers are fairly well aware of the advantages offered by the various labour statuses. **Ignorance** of such advantages occurs only in the non-organised sector of small companies. The only way to make them aware of such advantages are information campaigns, particularly in rural areas (Surech Chandra 2001, p. 22).

According to the participants, the **main obstacles** to the application of the labour rights of the informal economy workers are ignorance of their rights, lengthy and cumbersome legal proceedings, fear of harassment and fear of dismissal.

In the view of the participants, homeworkers, migrant workers and workers in the private transport sector are the most vulnerable groups and need adequate protection. In Sri Lanka the **transport trade** is a very temporary trade. The owners of vehicles expect regular transport assignments (as we have already seen). The owner can dismiss the driver in case of shortage. In many cases the traffic police harass the drivers. It is the driver who must pay the fines, even if the offence is attributable to owner of the vehicle (e.g. if the vehicle is badly serviced).

The **application** of the core labour standards and the introduction of a minimum wage are necessary to guarantee 'decent work' for all the workers. Improving the legal status of the informal economy workers requires that they are organised and enjoy trade union rights. The participants agree that the trade union movement must step up its struggle to guarantee that the granted rights are put into practice. The ILO can collect information through its local offices, so to see who is responsible for the Labour Code violation (employer, government or trade union). The transgressor must then account for his acts.

The **general conclusion** of the participants is that the employers do not seriously apply the ILO conventions and the laws based upon them. The government does not seem keen on supervising the observance of these laws.



Chapter 3
10 possible
actions

3



1 Foreword

Again: those who commit themselves to improving the working circumstances of the informal economy workers, can try to achieve this in several ways. In this manual we have drawn attention to the **legal strategy**, by which we understand:

- promote the application of existing national and international labour standards to the informal economy workers; and
- acquire new rights for workers in the various sectors of the informal economy.

With this strategy we try to strengthen the **legal status** of the informal economy workers. This status includes all the rights (and obligations) that apply to a given group of workers, regardless the source they emanate from. In Part 1, under 3, we gave a survey of the main sources in this field.

Recognition by law is insufficient to improve the working circumstances of the informal economy workers. If **rights** are not respected, they must be **claimed**

or enforced. After the seminars we note that a lot remains to be done in this field. Signing ILO conventions and participating in ILO programmes does not guarantee that basic labour rights are actually respected.

With the help of the trade union the informal economy workers can claim their rights. This means that they must have access to affordable legal assistance. That the labour inspection and the labour administration work efficiently. That judges are independent and pronounce judgment in the interest of the weaker party. That transgression of the right leads to sanctions. Trade union action will therefore have to focus on that.

It is necessary to take several factors into consideration when defining the right strategy: the social and economic situation of the country and sector one is employed in, the historical, cultural and religious backgrounds, the size and composition of the target group, the available resources, etc.

2 Actions

Action 1 Identify the target group

Before defining the right strategy, we have to identify the target group. In part 1, under 2, we distinguished between someone working for his or her own account and risk (self-employed) and someone working for the account and risk of another (employed). It is in many cases difficult to make this distinction, because we must consider sham contracts and triangular relationships.

Nevertheless, this is a necessary first step. The question if someone has an employment contract (implicit or explicit, written or unwritten) indeed determines if he or she is protected by the existing labour law and what further steps can be taken.

Exercise

Make a cross-section of your trade sector (transport, textile, agriculture, public services, building...).

Define who works self-employed (independent worker or entrepreneur), employed (dependent worker) under a sham contract or another contract.

Give a few characteristics of the working conditions in each of these groups. What are their needs and priorities, and what do they expect from the trade union?

Action 2 Map out the existing rights

If you want to commit yourself to improving the working circumstances of the informal economy workers, you will have to make a survey of the rights that currently apply in the sector. No matter how minimal these rights are, they constitute the starting point of our action.

Exercise

A textile union in Guinea receives the visit of a group of female homeworkers who want to do something about their living standard. Since their dismissal they have worked under a 'subcontract'. They do the same work for less money, must work longer to make ends meet, can be without work from one day to the other, are no longer affiliated to a trade union and no longer covered by social security.

Play a role play in which you try to convince the homeworkers of their existing rights. Make also use of the 'international' instruments.

Action 3 Investigate gaps in the protection

We know that protection by the law is deficient in many respects. Gaps in the protection can be attributable to a lot of causes: one operates outside the law, rights are not respected, social, cultural and religious factors throw obstacles, authorities ignore the workers' interests, corruption of the police and the law, etc.

Legal action is only meaningful if we have insight into the factors that cause and maintain the lack of protection. National and local trade unions are in the best position to get to the bottom of these factors and to find creative solutions.

Exercise

Draw up two lists: one of all possible impediments and obstacles, the other of creative solutions to deal with these problems.

If possible, you can do this exercise also in two groups.

Action 4 Insist on ratification and application of relevant conventions

Lots of conventions to protect, for instance, homeworkers, migrants and rural workers are lying ready for ratification and application by national authorities. The International Labour Code (see part 1 under 6) contains a lot of useful material. Urge the government to ratify relevant conventions.

Take action for the (gradual) application of national labour laws and international conventions to informal economy workers. Make sure that the existing protection is used in the best possible manner.

Exercise

Draw up a report for the WCL 'Standards' Department, in which you give an account of the extent to which the basic labour conventions of the ILO are applied to the informal economy workers.

Action 5 Look for partisans (network)

Those committing themselves to the protection or granting of rights to the informal economy workers will be able to count on (inter)national support. Cooperation with other people and bodies can help raise the impact of an action and the chance of success. So, seek allies in the ILO, the WCL Informal Economy network, NGOs, authorities, religious groups, media, etc. . . , who can help you prepare, implement or finance actions in favour of the informal economy workers.

So, when preparing a trade union action, it is important to examine what people and bodies are willing and able to cooperate on the improvement of the status of the informal economy workers. It may be useful to repeat this exercise after a while. Has the cooperation with local authorities, churches and non-governmental organisations been fruitful? With which people or bodies do we, or do we not, wish to continue the cooperation relations? Have new organisations become active in the field?

Also research institutes and universities can play a role in that they offer their knowledge and expertise.

Exercise		
Complete the chart below with the people and bodies who can help prepare or take legal action in favour of the informal economy workers.		
Trade union		
Employer/contractor		Family/neighbours
School/university	target group	Religious organisation
Local/national authority		NGOs
Interest organisation		Colleagues/co-workers
Media		

Action 6 Give information on labour rights

We see that informal economy workers are in many cases insufficiently informed of their rights and obligations. Here is an important task in store for the trade union. If we provide oral and written information, people grow aware of their situation. The best way to provide this information depends on the target group. The same goes for the best time and place to reach the informal economy workers.

Exercise

Design a campaign to make informal economy workers from your sector aware of their labour rights. Make sure that the result is perceptible at short notice.

Include in this campaign a street action in cooperation with various trade federations.

Action 7 Organise training for trade unionists

Not only informal economy workers, also trade unionists need correct information. By means of training and further training they remain informed of the developments in the legal field. Is there a social dialogue with the government to improve the legal status of building workers? Has the trade union in one of the neighbouring countries reached an agreement on working conditions in the textile sector? Has progress been made with the protection of workers in export processing zones? Information, education and training of trade unionists are essential for a trade union to function. At the same time, the leaders will have to listen very well to messages from the grass roots.

Exercise

Work out a programme for a two-day course for trade unionists at the grass roots level. Make a rough calculation of the costs and see who can give the course.

Is it possible to cooperate to advantage with universities or training centres?

Action 8 Strengthen the social dialogue

By social dialogue we mean that trade unions must enter upon a dialogue with local and national authorities, employers and employers' organisations in the interest of informal economy workers. To do so, the trade union will have to be sufficiently representative. In some countries the trade unions meet with strong opposition, in others there is no problem. The trade union will have to put forward concrete proposals to improve the status of the informal economy workers.

Exercise

Debate: Do you have experience with social dialogue in your country?

What went well? What went wrong? What can we learn from the experience of others?

Action 9 Organise actions in favour of young people and women

Because of their vulnerable position youths and women are overrepresented in the informal economy, but underrepresented in the trade union. Adequate action is necessary to improve their situation. Creative and family-friendly ideas are required to attract these groups of workers. Equal treatment is a basic legal principle, but in practice it is limited in countless ways.

Exercise

Look at and analyse all the existing trade union materials (documents, publications posters...).

Check (if possible together with youths and women) if the message appeals to them.

Design then together a means of action that is focused on youths / women.

Action 10 Give legal advice

Giving legal advice to trade union members is an important means to recruit new members. As setting up a legal service is costly, it is possible to choose in the initial stage for cooperation with a lawyer or a legally skilled person at a fee that is fixed in advance. The trade union can advise members on their legal status, but also on the possibility of market places, government subsidies, etc.

Exercise

Make a prime cost analysis of the legal service to informal economy workers.

Who can make use of these services? What is their contribution?



Chapter 4
Annexes

4

1 List of participants and collaborators



LATIN AMERICA

Argentina: CARLOS GAITAN

Brazil: VILSON BENEDITO, LUIS CARLOS VOLCAN

Bolivia: BASILIO FLORES VIDAURRE

Colombia: JOSE ANGEL PEÑA NIVIA, MARIELA EMPERATRIZ ESTRADA, ELIANA AMPARO RICO ARANGO, ALEJANDRO VERANO GÓMEZ

Chile: ALFREDO SEGUNDO ROJAS MUÑOZ

Costa Rica: OLMAN CHINCHILLA HERNANDEZ, CARLOS ALBERTO GUERRERO VARELA, MARÍA ESTHER ALPIZAR RODRÍGUEZ

Honduras: RANDOLFO VELASQUEZ BARAHONA, FANNY JACQUELINE ALVÁREZ MEJÍA, CARLOS ENRIQUE CASTILLO BULNES, FRANCISCA CANALES AMADOR

Mexico: AURELIO SERRANO MEZA

Panama: ALEX ANEL BOYES

Paraguay: CARMEN INES BAEZ DE MARTINEZ, JOSE MARCELINO BOWER AYALA, MIGUEL ZAYAS MARTINES

Dominican Republic: ANASTACIO GONZÁLEZ, WANDA BREA, RAFAEL ERNESTO LÓPEZ, ONESIMO LAZARO PAULINO, QUIRICO GUERRERO ZAPATA, HUGO NICOLAS GARCÍA MARCIAL, CHERYS TOMÁS MOREL

Venezuela: JUAN RUIZ BOLÍVAR, JESÚS ASDRÚBAL DÍAZ, JAIME CASTRO CONTRERAS, MARITZA CHIRENO

CLAT

AFRICA

Benin: ZACHARIE MITOKPE, VERONIQUE MICHLAFFO, ADOKOU AUGUSTIN, ILERE N'GONGANG

Burkina Faso: LINGANI SOUMAILA, GUIGMA EUGENIE, MAHAMADI SANA, LANKOANDE NANGA CHRISTINE

Cameroon: NGO BATOUM SYLVIE V., MEKANDA DONARD

Ivory Coast: KOUAME GUYNAND THIERRY

Gabon: ONDO EBANG ERTRAND

Ghana: KOFI FREMPONG, OKWAN JOHN, EMMANUEL ALLOTEY

Guinea: CAMARA ABDOULAYE, SOW KADIATOU

Namibia: KATJIJOVA REHABEAM, ADONIS COLIN FRANCOIS

Mauritania: OUILD YARG MOHAMED, OULD AHMED VALL A. YACOUB

Niger: BOUBAKAR SOUMANA, GARBA HADIZA

Democratic Republic of Congo: NKUANSAMBU NSEVA BRIGITTE

Senegal: DIOP NDOUMBE, ABDOU SY, ALIOUNE NDIONGUE

South Africa: HANS NICODEMUS KGOMOTSO

Togo: LOGOSSOU KPOTOR KOMLA, FOLY KANLE, GBANDJOU AYAO, AYEH AMAVI TUGBEWOFIA, ZOUNNADJALA KOFFI CHRYSANTHE, TOE JOSEPH, FRANK DEAN ADJEBENG

DOAWTU

ASIA

Bangladesh: S.K SHAMSUR RAHMAN,
KAZI RESAUL KARIM, MOYEN UDDIN
MONDAL, MOHAMMAD MOHSINUL KABIR

Cambodia: CHUM CHAM

India: P.K PANDEY, RAMAYAN PANDEY
ALONE, K.P NAIDU, KANKHA RAO

Indonesia: ELLY ROSITA, MARCUS
SIDAHURUK, ROHMIDI, VENTJE AREROS,
ZACHRIA SUBAGYO, SIANTURI PARULIAN

Malaysia: ISMAIL BIN YEM, ROKIAH Bte
MOHD ARSHAD

Pakistan: CHOUDHRY MOHAMMAD
SIDDIQ, SAEED ANWAR, KARAMAT
HUSSEIN, ABDUL KHALIQUE

Philippines: CLEMENTE FORTALEZA
ZEUS INTIA, VILLANUEVA CLAUDIO PARICA,
ANGAT MANUEL JR

Sri Lanka: KHRISHAMUNDA
P.H. GAMAGE, LILANI WIJERATNE,
N.K SILVA, A.M.M. HAMZA

BATU

EUROPE

Romania: ANDREÏ SAVINESCU

Bulgaria: MILA VELCHEVA

Belgium: STIJN SINTUBIN, ANNICK DE
RUYVER, FRANCINE MESTRUM

Netherlands: EVA SCHOLTE,
JAN RIDDER, SUZANNE JACOBS

WCL

2 Survey of conventions²¹



- | | | | |
|--------------|---|--------------|--|
| C1 | Hours of Work (Industry) Convention, 1919 | C16 | Medical Examination of Young Persons (Sea) Convention, 1921 |
| C2 | Unemployment Convention, 1919 | C17 | Workmen's Compensation (Accidents) Convention, 1925 |
| C3 | Maternity Protection Convention, 1919 | C18 | Workmen's Compensation (Occupational Diseases) Convention, 1925 |
| (C4) | Night Work (Women) Convention, 1919 | C19 | Equality of Treatment (Accident Compensation) Convention, 1925 |
| C5 | Minimum Age (Industry) Convention, 1919 | (C20) | Night Work (Bakeries) Convention, 1925 |
| C6 | Night Work of Young Persons (Industry) Convention, 1919 | (C21) | Inspection of Emigrants Convention, 1926 |
| C7 | Minimum Age (Sea) Convention, 1920 | C22 | Seamen's Articles of Agreement Convention, 1926 |
| C8 | Unemployment Indemnity (Shipwreck) Convention, 1920 | C23 | Repatriation of Seamen Convention, 1926 |
| C9 | Placing of Seamen Convention, 1920 | C24 | Sickness Insurance (Industry) Convention, 1927 |
| C10 | Minimum Age (Agriculture) Convention, 1921 | C25 | Sickness Insurance (Agriculture) Convention, 1927 |
| C11 | Right of Association (Agriculture) Convention, 1921 | C26 | Minimum Wage-Fixing Machinery Convention, 1928 |
| C12 | Workmen's Compensation (Agriculture) Convention, 1921 | C27 | Marking of Weight (Packages Transported by Vessels) Convention, 1929 |
| C13 | White Lead (Painting) Convention, 1921 | (C28) | Protection against Accidents (Dockers) Convention, 1929 |
| C14 | Weekly Rest (Industry) Convention, 1921 | C29 | Forced Labour Convention, 1930 |
| (C15) | Minimum Age (Trimmers and Stokers) Convention, 1921 | | |

21. www.ilo.org/ilolex/english/index.htm

- C30** Hours of Work (Commerce and Offices) Convention, 1930
- (C31)** Hours of Work (Coal Mines) Convention, 1931
- C32** Protection against Accidents (Dockers) Convention (Revised), 1932
- C33** Minimum Age (Non-Industrial Employment) Convention, 1932
- (C34)** Fee-Charging Employment Agencies Convention, 1933
- (C35)** Old-Age Insurance (Industry, etc.) Convention, 1933
- (C36)** Old-Age Insurance (Agriculture) Convention, 1933
- (C37)** Invalidity Insurance (Industry, etc.) Convention, 1933
- (C38)** Invalidity Insurance (Agriculture) Convention, 1933
- (C39)** Survivors' Insurance (Industry, etc.) Convention, 1933
- (C40)** Survivors' Insurance (Agriculture) Convention, 1933
- C41** Night Work (Women) Convention (Revised), 1934
- C42** Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934
- (C43)** Sheet-Glass Works Convention, 1934
- C44** Unemployment Provision Convention, 1934
- C45** Underground Work (Women) Convention, 1935
- (C46)** Hours of Work (Coal Mines) Convention (Revised), 1935
- C47** Forty-Hour Week Convention, 1935
- (C48)** Maintenance of Migrants' Pension Rights Convention, 1935
- (C49)** Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935
- (C50)** Recruiting of Indigenous Workers Convention, 1936
- (C51)** Reduction of Hours of Work (Public Works) Convention, 1936
- C52** Holidays with Pay Convention, 1936
- C53** Officers' Competency Certificates Convention, 1936
- C54** Holidays with Pay (Sea) Convention, 1936
- C55** Shipowners' Liability (Sick and Injured Seamen) Convention, 1936
- C56** Sickness Insurance (Sea) Convention, 1936
- C57** Hours of Work and Manning (Sea) Convention, 1936
- C58** Minimum Age (Sea) Convention (Revised), 1936
- C59** Minimum Age (Industry) Convention (Revised), 1937
- (C60)** Minimum Age (Non-Industrial Employment) Convention (Revised), 1937
- (C61)** Reduction of Hours of Work (Textiles) Convention, 1937

- C62** Safety Provisions (Building) Convention, 1937
- C63** Convention concerning Statistics of Wages and Hours of Work, 1938
- (C64)** Contracts of Employment (Indigenous Workers) Convention, 1939
- (C65)** Penal Sanctions (Indigenous Workers) Convention, 1939
- (C66)** Migration for Employment Convention, 1939
- (C67)** Hours of Work and Rest Periods (Road Transport) Convention, 1939
- C68** Food and Catering (Ships' Crews) Convention, 1946
- C69** Certification of Ships' Cooks) Convention, 1946
- C70** Social Security (Seafarers) Convention, 1946
- C71** Seafarers' Pensions Convention, 1946
- C72** Paid Vacations (Seafarers) Convention, 1946
- C73** Medical Examination (Seafarers) Convention, 1946
- C74** Certification of Able Seamen Convention, 1946
- C75** Accommodation of Crews Convention, 1946
- C76** Wages, Hours of Work and Manning (Sea) Convention, 1946
- C77** Medical Examination of Young Persons (Industry) Convention, 1946
- C78** Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946
- C79** Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946
- C80** Final Articles Revision Convention, 1946
- C81** Labour Inspection Convention, 1947
- P81** Protocol of 1995 to the Labour Inspection Convention, 1947
- C82** Social Policy (Non-Metropolitan Territories) Convention, 1947
- C83** Labour Standards (Non-Metropolitan Territories) Convention, 1947
- C84** Right of Association (Non-Metropolitan Territories) Convention, 1947
- C85** Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947
- (C86)** Contracts of Employment (Indigenous Workers) Convention, 1947
- C87** Freedom of Association and Protection of the Right to Organise Convention, 1948
- C88** Employment Service Convention, 1948
- C89** Night Work (Women) Convention (Revised), 1948
- P89** Protocol to the Night Work (Women) Convention (Revised), 1948
- C90** Night Work of Young Persons (Industry) Convention (Revised), 1948
- (C91)** Paid Vacations (Seafarers) Convention (Revised), 1949

- C92** Accommodation of Crews Convention (Revised), 1949
- C93** Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949
- C94** Labour Clauses (Public Contracts) Convention, 1949
- C95** Protection of Wages Convention, 1949
- C96** Fee-Charging Employment Agencies Convention (Revised), 1949
- C97** Migration for Employment Convention (Revised), 1949
- C98** Right to Organise and Collective Bargaining Convention, 1949
- C99** Minimum Wage Fixing Machinery (Agriculture) Convention, 1951
- C100** Equal Remuneration Convention, 1951
- C101** Holidays with Pay (Agriculture) Convention, 1952
- C102** Social Security (Minimum Standards) Convention, 1952
- C103** Maternity Protection Convention (Revised), 1952
- (C104)** Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955
- C105** Abolition of Forced Labour Convention, 1957
- C106** Weekly Rest (Commerce and Offices) Convention, 1957
- C107** Indigenous and Tribal Populations Convention, 1957
- C108** Seafarers' Identity Documents Convention, 1958
- C109** Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958
- C110** Plantations Convention, 1958
- P110** Protocol to the Plantations Convention, 1958
- C111** Discrimination (Employment and Occupation) Convention, 1958
- C112** Minimum Age (Fishermen) Convention, 1959
- C113** Medical Examination (Fishermen) Convention, 1959
- C114** Fishermen's Articles of Agreement Convention, 1959
- C115** Radiation Protection Convention, 1960
- C116** Final Articles Revision Convention, 1961
- C117** Social Policy (Basic Aims and Standards) Convention, 1962
- C118** Equality of Treatment (Social Security) Convention, 1962
- C119** Guarding of Machinery Convention, 1963
- C120** Hygiene (Commerce and Offices) Convention, 1964
- C121** Employment Injury Benefits Convention, 1964
- C122** Employment Policy Convention, 1964
- C123** Minimum Age (Underground Work) Convention, 1965
- C124** Medical Examination of Young Persons (Underground Work) Convention, 1965
- C125** Fishermen's Competency Certificates Convention, 1966

- C126** Accommodation of Crews (Fishermen) Convention, 1966
- C127** Maximum Weight Convention, 1967
- C128** Invalidity, Old-Age and Survivors' Benefits Convention, 1967
- C129** Labour Inspection (Agriculture) Convention, 1969
- C130** Medical Care and Sickness Benefits Convention, 1969
- C131** Minimum Wage Fixing Convention, 1970
- C132** Holidays with Pay Convention (Revised), 1970
- C133** Accommodation of Crews (Supplementary Provisions) Convention, 1970
- C134** Prevention of Accidents (Seafarers) Convention, 1970
- C135** Workers' Representatives Convention, 1971
- C136** Benzene Convention, 1971
- C137** Dock Work Convention, 1973
- C138** Minimum Age Convention, 1973
- C139** Occupational Cancer Convention, 1974
- C140** Paid Educational Leave Convention, 1974
- C141** Rural Workers' Organisations Convention, 1975
- C142** Human Resources Development Convention, 1975
- C143** Migrant Workers (Supplementary Provisions) Convention, 1975
- C144** Tripartite Consultation (International Labour Standards) Convention, 1976
- C145** Continuity of Employment (Seafarers) Convention, 1976
- C146** Seafarers' Annual Leave with Pay Convention, 1976
- C147** Merchant Shipping (Minimum Standards) Convention, 1976
- P147** Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976
- C148** Working Environment (Air Pollution, Noise and Vibration) Convention, 1977
- C149** Nursing Personnel Convention, 1977
- C150** Labour Administration Convention, 1978
- C151** Labour Relations (Public Service) Convention, 1978
- C152** Occupational Safety and Health (Dock Work) Convention, 1979
- C153** Hours of Work and Rest Periods (Road Transport) Convention, 1979
- C154** Collective Bargaining Convention, 1981
- C155** Occupational Safety and Health Convention, 1981
- P155** Protocol of 2002 to the Occupational Safety and Health Convention, 1981
- C156** Workers with Family Responsibilities Convention, 1981
- C157** Maintenance of Social Security Rights Convention, 1982
- C158** Termination of Employment Convention, 1982

- C159** Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983
- C160** Labour Statistics Convention, 1985
- C161** Occupational Health Services Convention, 1985
- C162** Asbestos Convention, 1986
- C163** Seafarers' Welfare Convention, 1987
- C164** Health Protection and Medical Care (Seafarers) Convention, 1987
- C165** Social Security (Seafarers) Convention (Revised), 1987
- C166** Repatriation of Seafarers Convention (Revised), 1987
- C167** Safety and Health in Construction Convention, 1988
- C168** Employment Promotion and Protection against Unemployment Convention, 1988
- C169** Indigenous and Tribal Peoples Convention, 1989
- C170** Chemicals Convention, 1990
- C171** Night Work Convention, 1990
- C172** Working Conditions (Hotels and Restaurants) Convention, 1991
- C173** Protection of Workers' Claims (Employer's Insolvency) Convention, 1992
- C174** Prevention of Major Industrial Accidents Convention, 1993
- C175** Part-Time Work Convention, 1994
- C176** Safety and Health in Mines Convention, 1995
- C177** Home Work Convention, 1996
- C178** Labour Inspection (Seafarers) Convention, 1996
- C179** Recruitment and Placement of Seafarers Convention, 1996
- C180** Seafarers' Hours of Work and the Manning of Ships Convention, 1996
- C181** Private Employment Agencies Convention, 1997
- C182** Worst Forms of Child Labour Convention, 1999
- C183** Maternity Protection Convention, 2000
- C184** Safety and Health in Agriculture Convention, 2001
- C185** Seafarers' Identity Documents Convention (Revised), 2003

3 Questionnaire for the participants in the seminars

1. The ILO Declaration on Fundamental Principles and Rights at Work (1998) provides that all workers have the right to:
 - freedom of association;
 - freedom of collective bargaining;
 - ban on each form of forced or bondage labour;
 - ban on child labour;
 - ban on discrimination at work.

Question:
in your view, are these rights recognised and applied in your country? (elaborate)
2. Many international conventions and treaties besides these basic rights apply to the informal economy workers.

Question:
What treaties and conventions were ratified by your country and are applied?
3. What rights are recognised in your country to protect the informal economy workers?
4. What is the general definition of an employment contract in your country?
5. Does the labour law in your country provide for a special clause on homework / agrarian workers / subcontracting / particular groups / ...?
6. What are in your experience the obstacles to the application of rights to the informal economy workers?
7. What workers are most vulnerable and need most an adequate protection in your trade sector?
8. What are in your opinion the minimum conditions to ensure 'decent work' for all the workers?
9. What can we do to improve the legal status of the informal economy workers?
10. What can we do to ensure that the granted rights are effectively applied?



World Confederation of Labour

33, Rue de Trèves - B-1040 Brussel

Phone: ++32 (0)2/285.47.00 - Fax: ++32 (0)2/230.87.22

e-mail: info@cmt-wcl.org - Website: www.cmt-wcl.org

