



International
Labour
Office
Geneva

Report V (1)

Transitioning from the informal to the formal economy



**International
Labour
Conference**

103rd Session 2014

ATTENTION

This report contains a questionnaire which, in accordance with article 38 of the Standing Orders of the International Labour Conference, calls for a reply from your Government, after consultation with the most representative organizations of employers and workers. The replies to this questionnaire **must reach the Office no later than 31 December 2013**.

International Labour Conference, 103rd Session, 2014

Report V(1)

Transitioning from the informal to the formal economy

Fifth item on the agenda

ISBN 978-92-2-127754-5 (print)
ISBN 978-92-2-127755-2 (Web pdf)
ISSN 0074-6681

First edition 2013

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Introduction

At its 317th Session in March 2013, the ILO Governing Body decided to place a standard-setting item on the agenda of the 103rd Session (June 2014) of the International Labour Conference (ILC) on facilitating transitions from the informal to the formal economy (standard-setting double discussion) with a view to the elaboration of a Recommendation. In accordance with article 39(5) of the Standing Orders of the Conference, it also approved a programme of reduced intervals for the preparatory stages of the discussion.¹

This standard-setting item, initially proposed by the Employers' group of the Governing Body, builds on the conclusions concerning decent work and the informal economy adopted by the ILC in 2002 (hereinafter the "2002 Conclusions"),² the outcome of the ILO Tripartite Interregional Symposium on the Informal Economy (2007)³ and the Conclusions concerning the recurrent discussion on fundamental principles and rights at work (2012), which call for the convening of a meeting of experts on advancing fundamental principles and rights at work in the informal economy.⁴ There was broad support for this standard-setting item from the Workers' group and from a number of governments, and particularly the Africa group. The Governing Body also agreed to the holding of a Tripartite Meeting of Experts on Facilitating Transitions from the Informal Economy to the Formal Economy, which is scheduled to be held from 16 to 20 September 2013 and will serve as part of the preparatory work for this item.⁵

The present report is divided into three chapters. Chapter 1 provides an overview of the phenomenon of the informal economy, its impact on the attainment of decent work for all workers and employers and the ILO's approach to the transition to formality, as set out in the 2002 Conclusions. Chapter 2 provides information on the regulatory environment relating to the informal economy at the international and national levels, with examples of existing laws and practice from different regions, legal systems, traditions and circumstances adopted by ILO constituents to ensure a progressive transition to the formal economy. Chapter 3 examines the need for an integrated policy framework, encompassing the ILO's four strategic objectives (fundamental principles and rights at work, employment, social protection and social dialogue) adapted to the national context of each member State for a progressive transition to the formal economy

¹ GB.317/INS/2(Rev.) and Record of Decisions, 25 March 2013.

² The conclusions are reproduced in Appendix I to this report.

³ ILO: *Decent work and the transition to formalization: Recent trends, policy debates and good practices*, Report of the tripartite Interregional Symposium on the Informal Economy: Enabling transition to formalization, 27–29 November 2007 (Geneva, 2008).

⁴ ILO: *Provisional Record* No. 15, International Labour Conference, 101st Session, 2012, para. 13(c).

⁵ GB.317/INS/2(Rev.) and Record of Decisions, op. cit.

and decent work. The report analyses the innovative approaches adopted by member States in this regard.

It should be noted that the present report does not seek to provide a comprehensive and detailed analysis of the subject, but rather to highlight some of the key elements that may be relevant for the discussion of a possible Recommendation, as identified in the 2002 Conclusions. The report has been prepared by an inter-departmental team with members from both headquarters and the regions.

The report is accompanied by a questionnaire, as provided for in article 39 of the Standing Orders, which has been drawn up with a view to preparing a Recommendation on facilitating transitions from the informal to the formal economy. In accordance with article 39(5) of the Standing Orders of the Conference and the decision made by the Governing Body for a programme of reduced intervals, the Office is required to communicate the final preparatory report for the first discussion of the proposed Recommendation to governments no later than March 2014. In order to allow time for the preparation of that report, governments are requested to send their replies to the questionnaire so that they reach the Office no later than 31 December 2013. In this respect, the Office draws attention to article 39(1) of the Standing Orders of the Conference, under which governments are asked to consult the most representative organizations of employers and workers before finalizing their replies, which should reflect the results of that consultation, and to indicate which organizations have been so consulted. In addition, in view of the broad scope of the subject, it would be advisable for ministries of labour to consult other relevant national ministries and institutions which deal with the informal economy when preparing their replies to the questionnaire. It might also be desirable to consult other relevant organizations, including organizations representing people in the informal economy.

Chapter 1

The informal economy and transitions to formality: A decent work challenge

1.1. Work in the informal economy

1. The informal economy thrives in a context of high unemployment, underemployment, poverty, gender inequality and precarious work. It plays a significant role in such circumstances, especially in income generation, because of the relative ease of entry and low requirements for education, skills, technology and capital. But most people enter the informal economy not by choice, but out of a need to survive and to have access to basic income-generating activities.¹

2. The informal economy is marked by acute decent work deficits and a disproportionate share of the working poor. Ample empirical research has shown that workers in the informal economy face higher risks of poverty than those in the formal economy.² As a result of these and other factors, there is a significant, but not complete, overlap between working informally and being poor and vulnerable. While some activities offer reasonable livelihoods and incomes, most people engaged in the informal economy: are exposed to inadequate and unsafe working conditions, and have high illiteracy levels, low skill levels and inadequate training opportunities; have less certain, less regular and lower incomes than those in the formal economy, suffer longer working hours, an absence of collective bargaining and representation rights and, often, an ambiguous or disguised employment status; and are physically and financially more vulnerable because work in the informal economy is either excluded from, or effectively beyond, the reach of social security schemes and safety and health, maternity and other labour protection legislation.³

3. As indicated in the 2002 Conclusions (paragraph 3), “[a]lthough there is no universally accurate or accepted description or definition, there is a broad understanding that the term ‘informal economy’ accommodates considerable diversity in terms of workers, enterprises and entrepreneurs with identifiable characteristics. They experience specific disadvantages and problems that vary in intensity across national, rural, and urban contexts”. Policy-makers and legislators therefore need to take into account the

¹ ILO: *Conclusions concerning decent work and the informal economy*, International Labour Conference, 90th Session (Geneva, 2002), para. 6, as reproduced in Appendix I.

² ILO: *Decent work and the informal economy*, Report VI, International Labour Conference, 90th Session (Geneva, 2002); ILO: *Efficient growth, employment and decent work in Africa: Time for a new vision* (Pretoria, 2011); UNRISD: *Combating poverty and inequality: Structural change, social policy and politics* (Geneva, 2010); World Bank: *World Development Report: Jobs* (Washington, DC, 2013).

³ ILO: *The informal economy in Africa: Promoting transition to formality: Challenges and strategies* (Geneva, 2009).

conceptual and policy difficulties arising from this considerable diversity of situations and profiles in the informal economy.

4. The 2002 Conclusions add that the term “informal economy” refers to “all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that – although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs”.

5. As the large majority of workers in the informal economy and their families do not benefit from social protection, they are particularly vulnerable to various risks and contingencies. The prevalence of informal employment in many parts of the world, and a pervasive trend towards higher levels of precarious and informal employment, which has worsened as a result of the global crisis, not only affects the current living standards of the population but is also, as shown by a range of evidence, a severe constraint that prevents households and economic units trapped in the informal economy from increasing productivity and finding a route out of poverty. It is therefore necessary to facilitate transitions from the informal economy to the formal economy.

1.1.1. A multifaceted and diverse phenomenon

6. The informal economy refers to different situations with different causes, posing different problems that require different solutions. The first step towards designing effective interventions to facilitate transitions to formality is to recognize the heterogeneity of the informal economy, the many different categories of work involved and the various drivers that are leading to both the growth of the informal economy and the informalization of the formal economy.⁴ Workers in the informal economy differ widely in terms of income (level, regularity, seasonality), status in employment (employees, employers, own-account workers, casual workers, domestic workers), sector (trade, agriculture, industry), type and size of enterprise, location (urban or rural), social protection (social security contributions) and employment protection (type and duration of contract, annual leave protection). Extending coverage to such a heterogeneous set of workers and economic units requires the implementation of several (coordinated) instruments adapted to the specific characteristics of the different groups, the contingencies to be covered and the national context.⁵

7. Beyond statistics, the heterogeneity of the informal economy needs to be analysed in terms of the specific processes that generate and/or maintain informality. It is important to distinguish between, on the one hand, recent informalization processes linked to trends in the global economy or to past structural adjustment policies and, on the other, the resilience of informal petty production of goods and services for local markets, which is still an important feature of everyday life for a large number of people. The majority of workers and enterprises in the informal economy produce legal goods and services, although they are sometimes not in conformity with procedural requirements, such as registration or immigration formalities. These activities should be distinguished from criminal and illegal activities, such as the production and smuggling

⁴ ILO: *Decent work and the transition to formalization: Recent trends, policy debates and good practices* (Geneva, 2008).

⁵ ILO: *Extending social security to all: A guide through challenges and options* (Geneva, 2010).

of illegal drugs, which are covered by criminal law and are not appropriate for regulation or protection under labour or commercial law.

8. Although the informal economy covers many different realities, there is global consensus that inclusive development is not possible unless rights and opportunities are extended to workers in the informal economy. The persistence of a large informal economy is incompatible with substantial progress in achieving decent work and undermines the ability of enterprises to become more productive.

1.1.2. The extent of the informal economy: Global and regional trends

9. Determining the size of the informal economy, and documenting trends in informal employment, is no easy task. The literature has not yet reached consensus on how to define “informality”. However, consensus does exist that the world of work across developing countries is characterized by a high prevalence of informality, whether defined by the lack of registration of firms, social security coverage or an employment contract.⁶

10. In 1993, the Fifteenth International Conference of Labour Statisticians (15th ICLS) adopted a Resolution concerning statistics of employment in the informal sector to assist national statistical offices develop definitions, classifications and methods of data collection for the informal sector. The Resolution covers issues relating to the definition of the informal sector as such, and the design, content and conduct of informal sector surveys. It represents the first – and so far the only – set of international statistical standards on the topic.

11. Over the past decade, important advances have been made in the availability of data on informal employment. Since the 2002 ILC discussion, labour statisticians have agreed on the value of supplementing statistics on employment in the formal sector with statistics on informal employment. Employment in the informal sector and informal employment are concepts which refer to different aspects of the “informalization” of employment and to different targets for policy-making. While the informal sector refers to informal enterprises, informal employment refers to informal jobs. Employment in the informal economy can be defined as the sum of employment in the informal sector and of informal employment found outside the informal sector. The two concepts are not interchangeable, but they are both useful for descriptive and analytical purposes and are hence complementary.

12. In 2003, the Seventeenth International Conference of Labour Statisticians (17th ICLS) adopted “Guidelines concerning a statistical definition of informal employment” (hereinafter the “ICLS Guidelines”). Paragraph 3 of the ICLS Guidelines defines “informal employment” as the total number of informal jobs, whether carried out in formal sector enterprises, informal sector enterprises or households, during a given reference period. These comprise: own-account workers and employers employed in their own informal sector enterprises; contributing family workers, irrespective of whether they work in formal or informal sector enterprises; employees holding informal jobs, whether employed by formal sector enterprises, informal sector enterprises or as domestic workers employed by households; members of informal producers’ cooperatives; and own-account workers engaged in the production of goods exclusively

⁶ ILO: *Women and men in the informal economy: A statistical picture* (Geneva, ILO–WEIGO, 2002 and 2012); J. Jütting and J.R. de Laiglesia: *Is informal normal? Towards more and better jobs in developing countries* (Paris, OECD, 2009); M. Bacchetta, E. Ernst and J.P. Bustamante: *Globalization and informal jobs in developing countries* (Geneva, ILO–WTO, 2009); World Bank: op. cit., 2013.

for own final use by their household. However, given the large diversity of informal employment situations found in different countries, the ICLS Guidelines leave the operational criteria for defining informal jobs to be determined in accordance with national circumstances and with the possibility of actually collecting relevant information.

13. Although consensus is starting to emerge on how to measure informality, relatively few countries produce regular statistics because labour market information systems are inadequate in many countries to estimate and monitor the informal economy. Indeed, this is one of the biggest challenges in addressing the informal economy and formulating relevant policy frameworks. While much progress has been made over the past five years, it is still necessary to increase the number of countries collecting and disseminating data on the size and composition of the informal economy.

14. In 2012, the ILO published a manual on methodological issues for undertaking surveys of the informal economy at the country level.⁷ In addition, detailed statistics are now available on employment in the informal economy for 47 developing countries/territories and economies in transition. Nevertheless, in view of the paucity of comparative and reliable statistical data on the informal economy, the available statistics must be treated only as a preliminary estimate of its extent and characteristics.

15. According to the most recent estimates, non-agricultural employment in the informal economy represents 82 per cent of total employment in South Asia, 66 per cent in sub-Saharan Africa, 65 per cent in East and South-East Asia (excluding China), 51 per cent in Latin America and 10 per cent in Eastern Europe and Central Asia.⁸ These averages hide great disparities between countries. According to recent ILO statistics for 47 countries and territories, the percentage of persons in informal employment (non-agricultural) ranges in Latin America and the Caribbean from 40 per cent in Uruguay to 75 per cent in the Plurinational State of Bolivia; in sub-Saharan Africa from 33 per cent in South Africa to 82 per cent in Mali; in southern and eastern Asia (excluding China) from 42 per cent in Thailand to 83.5 per cent in India; in northern Africa and the Middle East, from 30.5 per cent in Turkey to 58.5 per cent in the West Bank and Gaza.⁹

16. If subsistence agriculture is considered, the percentage of employment in the informal economy is even larger than the figures presented above. The prevalence of agricultural employment varies between regions. For example, it is lower in Latin America and the Caribbean (18 per cent of total employment) and Eastern Europe and Central Asia (17 per cent), than in South Asia and sub-Saharan Africa, where over half of total employment is in agriculture (54 and 57 per cent, respectively).¹⁰

17. In most countries for which data disaggregated by sex are available, the share of women in informal employment in non-agricultural activities outnumbers that of men. In sub-Saharan Africa, 74 per cent of women's employment (non-agricultural) is informal, in contrast with 61 per cent for men; in Latin America and the Caribbean the figures are 54 and 48 per cent;¹¹ in South Asia, 83 and 82 per cent; and in urban China, 36 and

⁷ ILO: *Measuring informality: A statistical manual on the informal sector and informal employment* (Geneva, 2012).

⁸ ILO: *Women and men in the informal economy: A statistical picture*, op. cit.

⁹ See: http://laborsta.ilo.org/informal_economy_E.html.

¹⁰ ILO: *Women and men in the informal economy: A statistical picture*, op. cit.

¹¹ No direct estimates of informal employment are available for the Caribbean countries. However, indirect estimates have been included for some of the countries in the subregion.

30 per cent.¹² The feminization of poverty, combined with discrimination by gender, age, ethnicity or disability, also means that the most vulnerable and marginalized groups tend to end up in the informal economy.

18. In all developing regions, self-employment constitutes a greater share of informal employment (non-agriculture) than wage employment.¹³ It represents nearly one-third of total non-agricultural employment worldwide, and accounts for as much as 53 per cent of non-agricultural employment in sub-Saharan Africa, 44 per cent in Latin America, 32 per cent in Asia and 31 per cent in North Africa.¹⁴ The share of own-account and contributing family workers in total employment was 81 per cent in the least developed countries in 2008, compared with 59 per cent in developing countries.¹⁵ The latest estimates for the Latin America and Caribbean (LAC) region show that, of the total number of informal employees, 38.6 per cent are salaried workers in companies, 10.9 per cent are salaried household workers and 41.4 per cent are self-employed workers.¹⁶

1.1.3. Growth, globalization and the informal economy

19. Informality is principally a governance issue. The growth of the informal economy can often be traced to: inappropriate, ineffective, misguided or badly implemented macroeconomic and social policies, frequently developed without tripartite consultation; the lack of appropriate legal and institutional frameworks; the lack of good governance for the proper and effective implementation of policies and laws; and a lack of trust in institutions and administrative procedures. Macroeconomic policies, including structural adjustment, economic restructuring and privatization policies, where not sufficiently employment focused, have reduced jobs or failed to create sufficient numbers of new jobs in the formal economy.

¹² ILO: *Women and men in the informal economy: A statistical picture*, op. cit.

¹³ According to the Resolution concerning the International Classification by Status of Employment (ICSE), adopted by the 15th ICLS in 1993, “*Self-employment jobs* are those jobs where the remuneration is directly dependent upon the profits (or the potential for profits) derived from the goods and services produced (where own consumption is considered to be part of profits). The incumbents make the operational decisions affecting the enterprise, or delegate such decisions while retaining responsibility for the welfare of the enterprise.” (para. 7). They include the following categories: “*Employers* are those workers who, working on their own account or with one or a few partners, hold the type of job defined as a ‘self-employment job’ ... , and, in this capacity, on a continuous basis ... have engaged one or more persons to work for them in their business as ‘employee(s)’”; “*Own-account workers* are those workers who, working on their own account or with one or more partners, hold the type of job defined as ‘a self-employment job’ ... , and have not engaged on a continuous basis any ‘employees’ ... to work for them during the reference period. It should be noted that during the reference period the members of this group may have engaged ‘employees’, provided that this is on a non-continuous basis. (The partners may or may not be members of the same family or household)”; “*Members of producers’ cooperatives* who are workers who hold a ‘self-employment’ job ... in a cooperative producing goods and services, in which each member takes part on an equal footing with other members in determining the organization of production, sales and/or other work of the establishment, the investments and the distribution of the proceeds of the establishment amongst their members”; and “*Contributing family workers* are those workers who hold a ‘self-employment’ job ... in a market-oriented establishment operated by a related person living in the same household, who cannot be regarded as a partner, because their degree of commitment to the operation of the establishment, in terms of working time or other factors to be determined by national circumstances, is not at a level comparable to that of the head of the establishment. (Where it is customary for young persons, in particular, to work without pay in an economic enterprise operated by a related person who does not live in the same household, the requirement of ‘living in the same household’ may be eliminated.)” <http://laborsta.ilo.org/apply8/data/icsee.html>.

¹⁴ ILO: op. cit., 2009.

¹⁵ UNCTAD: *The least developed countries report 2010: Towards a new international development architecture for LDCs* (Geneva, 2010), p. 10.

¹⁶ ILO: *2012 Labour Overview: Latin America and the Caribbean* (Lima, 2012).

20. Analysis of the relationship between economic growth, employment and poverty reduction has gone through various phases during the debate on development. An important premise of the pioneers of development studies in the 1950s was that the benefits of economic growth would trickle down to the poor. This was still a central assumption underlying mainstream thinking in designing structural adjustment programmes in the 1980s and Poverty Reduction Strategy Papers in the early 2000s. However, the last 70 years of development strategies in developing countries provide strong evidence that, without employment-oriented policies, growth by itself cannot be relied upon to translate spontaneously into better incomes and productive jobs.¹⁷ The pattern and sources of growth, and the manner in which its benefits are distributed, are equally important in achieving the goal of poverty reduction and social justice.

21. Over the past decade, many developing countries have experienced a growth revival, some with exceptionally high growth rates. Yet the record of decent employment creation has been very disappointing, and the impact of growth on unemployment, underemployment and informal employment has been very limited in many cases. For example, despite international turbulence, Latin America and the Caribbean experienced average growth of 3.5 per cent a year between 2000 and 2012. There is evidence that in some countries, such as Brazil¹⁸ and Argentina,¹⁹ this macroeconomic scenario has increased the demand for formal employment. According to the ILO's *2012 Labour Overview*, the extent of informal employment in Latin America and the Caribbean was 47.7 per cent in 2011, representing a fall from 49.9 per cent in 2009.²⁰ However, even in such cases it is important to note that economic growth is not sufficient to respond to the formalization challenge. Indeed, the ILO estimates that, if the region continues to grow in the same way as it has over the past decade (an exceptional period), it will take up to 55 years to halve informality rates.

22. Strong empirical evidence based on the growth experience of many developing and transition economies shows that sizeable informal economies can coexist and be sustained in parallel with the expansion of the formal economy and good growth performance. Growth resulting from accelerated integration into the global economy is not necessarily conducive to the transition to formality. In addition, it is important to note that informality also exists in the developed world and is estimated at 18.4 per cent of GDP in 2013 in the European Union (EU-27)²¹ and 8.6 per cent on average in Australia, Canada, Japan, New Zealand and the United States.²²

23. The informal sector is not the only driver of informal employment, as informality is gaining ground in the formal sector in many countries. Globalization has given it new importance through outsourcing and global value chains, while the current international financial and economic crisis poses additional challenges for reducing decent work deficits in the formal economy. Global economic integration has resulted in many

¹⁷ World Bank: *op. cit.*, 2013. ILO: *A fair globalization: Creating opportunities for all*, World Commission on the Social Dimension of Globalization (Geneva, 2004).

¹⁸ J. Berg: *Laws or luck? Understanding rising formality in Brazil in the 2000s* (Brasilia, ILO, 2010).

¹⁹ F. Bertranou, L. Casanova and M. Sarabia: *How, Why and in What Sectors Employment Informality Decreased in Argentina from 2003 to 2012*, paper presented at the Third ILO Conference on Regulating for Decent Work: "Regulating for Equitable and Job-Rich Growth", 3–5 July 2013.

²⁰ *2012 Labour Overview*, *op. cit.* The informal employment series began in 2009 at the regional level. Before then, the *Labour Overview* used an informal sector indicator, which was discontinued in 2005.

²¹ "EU-27" is the European Union of 27 Member States.

²² F. Schneider: *Size and development of the shadow economy of 31 European and 5 other OECD countries from 2003 to 2012: Some new facts*.

countries and sectors facing major challenges of income inequality, continuing high levels of unemployment and poverty, the vulnerability of economies to external shocks and the growth of both unprotected work and the informal economy. These in turn have impacted on the employment relationship and the protections that it offers. Many new entrants to the labour market, and many of those who lose their jobs in the formal economy, have increasing problems in accessing formal employment. In many parts of the world, they have no choice but to move into informal activities, leading to a rise in informal employment in both the informal and formal sectors.

24. The informal economy operates in a complex environment of linkages between the formal and informal economies, with workers and producers in the informal economy being linked to the global economy in various ways (global production networks, migration, global economic cycles and variations in global commodity and food prices) which affect: the level of vulnerability of economic units and workers in the informal economy; the functioning and capacities of actors in the informal economy; transition paths to formality; and the possibility for the effective monitoring and enforcement of regulations on globalized enterprises operating in different jurisdictions. Informal economy activities, like others, are therefore strongly affected by changes in domestic aggregate demand, reductions in the flow of credit, the downturn in international trade and other dimensions of the economic crisis. Yet informal economy workers have very few means to cope with the decline in household income generated by the crisis, and need urgent support and social protection benefits.

1.1.4. The social and economic costs of informality

25. By its very nature, the characteristics of the informal economy are largely negative. It can trap individuals and enterprises in a spiral of low productivity and poverty. A coherent national strategy to facilitate transitions to formality needs to recognize that the costs of working informally are high for businesses, workers and the community. From the perspective of unprotected workers, the negative aspects of work in the informal economy far outweigh its positive aspects. They are not recognized, registered, regulated or protected under labour and social protection legislation, and are not therefore able to enjoy, exercise or defend their fundamental rights. Since they are not normally organized, they have little or no collective representation in relation to employers or the public authorities.

26. Workers in the informal economy are characterized by varying degrees of dependency and vulnerability. Women, young persons, migrants and older workers are especially vulnerable to the most serious decent work deficits in the informal economy. They are vulnerable to violence, including sexual harassment, and other forms of exploitation and abuse, including corruption and bribery. Child workers and bonded labourers are also found in the informal economy.

27. Most economic units in the informal economy do not enjoy secure property rights, which deprives them of access to both capital and credit. They have difficulty accessing the legal and judicial system to enforce contracts, and have limited or no access to public infrastructure and public markets. Informality may also inhibit investment in bigger businesses and impede trade because informal firms often lack the necessary size to exploit economies of scale fully. Company size, productivity growth and export opportunities are closely linked. Not only can large firms benefit from economies of scale, they also have easier access to high-skilled labour and banking (including trade) credit. They tend to be more reliable than smaller firms in fulfilling contracts on time, which is valuable for establishing long-term client relationships. Micro and small enterprises (MSEs) in the informal economy lack the capacity to generate sufficient

profits to reward innovation and risk taking, which are two essential ingredients for long-term economic success. Studies show that high rates of informality drive countries towards the lower, more vulnerable end of global production chains and attract capital flows related to the existence of a large low-wage labour pool.²³

28. Unregistered and unregulated enterprises often do not pay taxes or benefits, or entitlements to workers, which not only denies the protection of workers, but also means that they compete unfairly with other enterprises. The shortfall in tax and contribution payments, which is sometimes very significant, places an unfair burden on registered businesses. Moreover, when they are deprived of public revenue, governments are limited in their fiscal space and ability to extend social protection schemes and other systems which are vital to national development, such as infrastructure and education and health systems.

29. Moreover, informality is often associated with weak institutional arrangements and poor governance structures, and therefore with susceptibility to corrupt practices. However, the absence of law does not mean the absence of rules and rule enforcers. Private means of imposing order in the informal economy are often very costly for businesses and workers, and sometimes rely on threats of violence and corruption. If the costs of moving to formality can be eased, many businesses may volunteer to come above ground, pay their taxes, observe labour laws and benefit from the security that access to the judicial system can give to property and contracts.

1.1.5. Transitions to formality: A growing policy concern

30. In view of the decent work deficits in the informal economy, breaking out of informality is increasingly seen as the principal development challenge across regions and as being central to realizing decent work as a global development goal, and to a fair globalization. The debate concerning the informal economy and possible strategies towards formalization is therefore gaining new momentum at all levels and in various circles. In recent years, many countries have devoted considerable attention to informal employment, and attempts have been made to understand the mechanisms through which the benefits of growth may or may not be transmitted to the poor. A new consensus has emerged around the belief that if economic growth is not associated with formal job creation, a shift towards better employment opportunities in the formal economy and an improvement in the conditions of employment in informal activities, it will continue to generate inequality, poverty and vulnerability.

31. Since the 2002 ILC discussion, considerable momentum has been gained in international policy debates and discussions at the regional level. The 2007 Tripartite Symposium reviewed a number of good practices and innovative approaches developed by governments, the social partners and other actors. The informal economy was a central focus of the 11th ILO African Regional Meeting in 2007, and was the main theme of the African Union–ILO workshop on the informal economy held in 2008. The Arab Employment Forum in 2009 highlighted the expansion of the informal economy and the lack of control mechanisms as a threat to the attainment of decent work. It was also one of the main concerns of the recurrent discussion on employment at the ILC in 2010. Finally, decent work is at the heart of the global discussion on the post-2015 Development Agenda, which aims to help define the future global development framework. These meetings emphasized the need to implement a range of integrated and

²³ Bacchetta et al., *op. cit.*

coherent policies aimed at moving economic units into the formal economy, including policies for employment generation, the extension of social protection, a favourable regulatory environment, the promotion of labour rights, support for entrepreneurship and skills, local development and strengthened social dialogue.

32. The “Arab Spring” emphasized the failure to link economic growth and investment with appropriate labour and social policies which ensure a fair redistribution of the gains of growth. As a response to strong demands for social justice, including decent work, mainly from young people, facilitating transitions to formality is now increasingly considered as a core component of national development strategies, and also a major issue for social cohesion and peace building. The meeting of African Union Heads of State and Government in 2011 reaffirmed the commitment to accelerate efforts to reduce unemployment and underemployment among Africa’s youth and women, and to develop a youth employment pact.

33. The new generation of Poverty Reduction Strategies is increasingly based on integrated policy frameworks in which growth is better articulated with the creation of productive jobs, the improvement of working and living conditions, the extension of workers’ rights, a fairer distribution of income and the building of social protection floors. Productive employment is being seen as a cross-cutting objective in growth strategies and national development plans. The 2008 global crisis has created a window of opportunity to focus on the centrality of employment goals in economic strategies, rehabilitate pro-employment macroeconomic policy instruments, rebalance demand management (and increase domestic demand) and develop pro-employment sectoral policy.²⁴ More recently, skills development in the informal economy has increasingly been considered a strategic element in increasing the employability of workers and the productivity of enterprises, alleviating poverty and using new skills to help workers move into decent formal work.

1.2. The ILO and transitions to formality

1.2.1. The ILO, a pioneer in tackling informality

34. It is now four decades since the ILO launched the concept of the “informal sector” in development policy debate in a report published in 1972 following a multidisciplinary employment mission to Kenya.²⁵ That report played a seminal role in analysis of the employment situation and development challenges in developing countries. Since then, the ILO has played a leading role in analysing the conceptual, as well as the underlying social and economic problems related to the informal economy.

35. In 1991, the ILC emphasized that the dilemma of the informal sector should be addressed by attacking the underlying causes and not just the symptoms through a comprehensive and multifaceted strategy.²⁶ In 2001, the Director-General’s Report to the Conference on the reduction of the decent work deficit returned to the theme of informality, indicating that, although the majority of the world’s workers are employed in the informal economy, almost all of them lack adequate social security protection, organization and a voice at work. Considering that the principles of decent work are as

²⁴ ILO: *Guide for the formulation of national employment policies* (Geneva, 2012).

²⁵ ILO: *Employment, incomes and equity: A strategy for increasing productive employment in Kenya* (Geneva, 1972).

²⁶ ILO: *The dilemma of the informal sector*, Report of the Director-General (Part 1), International Labour Conference, 78th Session (Geneva, 1991).

important in the informal as in the formal economy, he called for a way to be found to extend rights to everyone.²⁷

36. The 2002 ILC general discussion on decent work and the informal economy is now widely recognized as a breakthrough in analysis which broadened understanding of and provided a comprehensive framework for addressing informality across the Decent Work Agenda. While recognizing the resilience and dynamism of workers and entrepreneurs in the informal economy, the ILO's tripartite constituents reached a broad consensus on the need to address their vulnerabilities.

37. The 2002 Conclusions were a milestone in the ILO's approach to informality. In recognition of the scale, dimensions and heterogeneity of the phenomenon, they marked a significant move away from the narrower terminology of "informal sector" and coined the new term "informal economy". In view of the enormous diversity of actors, economic activities and sectors, and the very country-specific manifestations of informality, the tripartite constituents were careful to avoid trying to provide a single definition, and instead outlined broad parameters for understanding the situation and the challenges. Perhaps most importantly, the 2002 Conclusions marked an historic tripartite consensus on the objective of the transition out of informality. As long as it persists, the informal economy will remain the most serious obstacle to the goal of decent work for all. The 2002 Conclusions call for a comprehensive approach across the Decent Work Agenda to address its negative aspects through protection and incorporation into the mainstream economy, while preserving its job creation and income-generating potential.

38. As a result of the 2002 Conclusions, the ILO has played a central role in global efforts relating to the informal economy. The 2002 Conclusions call on the ILO to "work with other international organizations, including the United Nations and the Bretton Woods Institutions, promoting dialogue to avoid duplication, identify and share expertise, while the ILO itself takes the lead role" (paragraph 37(q) and (r)). Today, the ILO remains at the forefront of international organizations in providing an integrated policy framework and effective tools to facilitate transitions to formality.

1.2.2. The ILO's support strategy and tools: A multidimensional approach

39. Transition from the informal economy to the formal economy is clearly an important target for the Decent Work Agenda, as the ILO's four strategic objectives are valid for all workers, women and men, in both the formal and informal economies. The Decent Work Agenda therefore helps to build a common framework at the national level to address the diversity of the informal economy.

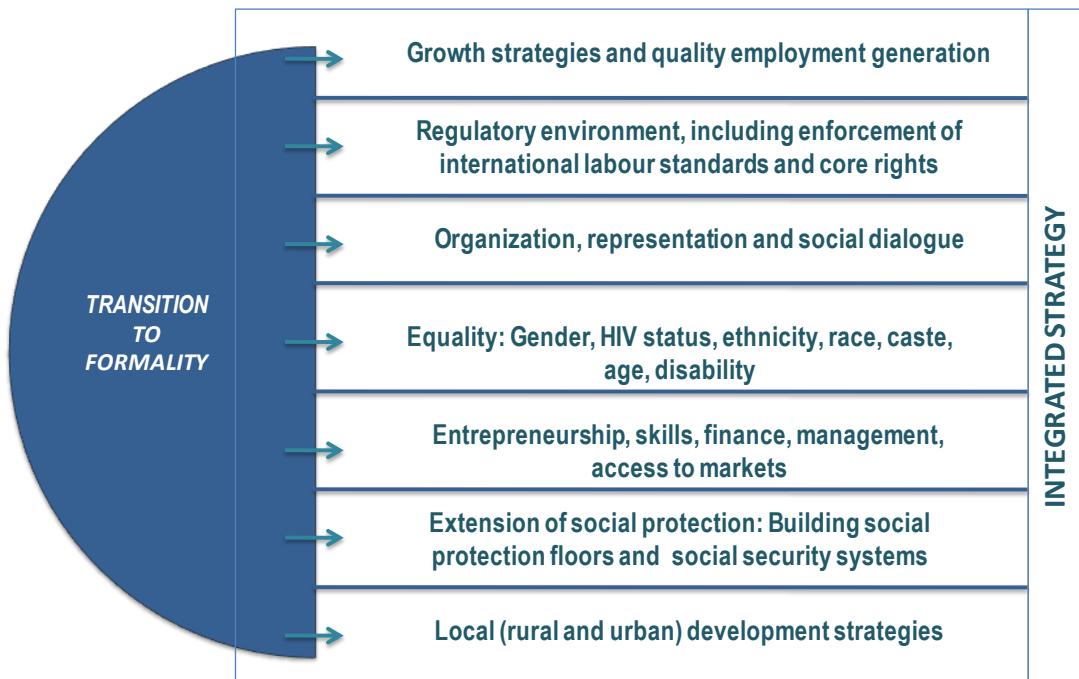
40. The issue of the informal economy has taken on added urgency in the current context of the global economic crisis, which has led to renewed interest by policy-makers, the social partners, development practitioners and researchers in developing effective policies for transitions to formality. However, few countries have yet developed a comprehensive and integrated approach to curb the spread of informality. Recognition of the many avenues available to prevent informalization and promote formalization through coherence between the different policy measures therefore remains a challenge at the national level. Policy responses still tend to be uncoordinated, ad hoc or limited to certain categories of workers. In cases where a comprehensive

²⁷ ILO: *Reducing the decent work deficit: A global challenge*, Report of the Director-General, Report 1(A), International Labour Conference, 89th Session (Geneva, 2001).

approach has been adopted, there has been a significant reduction in informality and a growth in formal job creation.

41. Since 2002, the comprehensive policy approach across the Decent Work Agenda has been further fine-tuned in policy discussions, resulting in a policy and diagnostic framework based on seven key avenues towards formalization (see the figure below). This framework emphasizes the importance of vertical integration and coherence across the range of policies to curb informality, while the horizontal dimension focuses on intensifying action in each policy area. These policy areas are: quality employment generation and growth strategies; the regulatory environment; social dialogue, organization and representation; promoting equality and addressing discrimination; measures to support entrepreneurship, skills and finance; the extension of social protection; and local development strategies.

Decent work strategies for the informal economy



Chapter 2

The regulatory environment relating to the informal economy

2.1. The regulatory environment at the international level

42. The ILO's instruments provide one of the main sources of an international regulatory framework for the informal economy. This section focuses on international labour standards (ILS) and the related comments of the ILO supervisory bodies with reference to the informal economy.

2.1.1. ILO standards: A mapping by strategic objective

43. The report prepared by the Office for the 2002 ILC general discussion on decent work and the informal economy emphasized that:¹

- ILO Conventions often have a provision to the effect that standards should be implemented in a way appropriate to national circumstances and capabilities;
- it is untrue that ILO standards are only for those in the formal economy where there is a clear employer–employee relationship;
- when a standard initially applies only to workers in the formal economy, there is sometimes explicit provision for its extension to other categories of workers;²
- there are instruments which focus on specific categories of workers who are often found in the informal economy; and
- even when informal workers are not explicitly referred to in the text, indications of the applicability of a particular instrument can be sought within the framework of the ILO supervisory system.

¹ ILO: *Decent work and the informal economy*, Report VI, International Labour Conference, 90th Session (Geneva, 2002), pp. 44–47.

² For example, the *Labour Administration Convention, 1978 (No. 150)*, states that the system of labour administration, when required by national conditions, must be extended to groups not traditionally included in such systems, by gradual stages where necessary. The *Labour Inspection Convention, 1947 (No. 81)*, limits the requirement to establish a labour inspection system aimed at ensuring the application of labour legislation to industrial and commercial undertakings. But its Protocol of 1995 extends, in principle, the coverage of labour inspection to all the risks to which workers in the non-commercial services sector may be exposed, and to activities in all categories of workplaces that are not considered as industrial or commercial.

44. While there is broad acceptance that the ILO's eight fundamental Conventions apply to the informal economy,³ other instruments also make *explicit* reference to it. There are also instruments which contain only *implicit* provisions, while others are particularly pertinent as they apply to specific categories of workers who are often present in the informal economy. Moreover, a number of ILO instruments apply explicitly to "workers" rather than the legally narrower term "employees", or do not contain wording limiting their application to the formal economy.

(i) *Standards and fundamental principles and rights at work*

Freedom of association and collective bargaining

45. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), provide that *all* workers, without distinction whatsoever, enjoy the fundamental rights which flow from freedom of association (Article 2 of Convention No. 87). Informal economy workers therefore have the right to organize and to engage in collective bargaining (where there is an employer). They can freely establish and join trade unions of their own choosing for the furtherance of their occupational interests, and carry out trade union activities (elections, administration, the formulation of programmes) without interference from the public authorities. Most importantly, they have the right to represent their members in tripartite bodies and social dialogue structures.

46. The right to freedom of association enshrined in ILO Conventions is equally applicable to employers and workers. Those who work in the informal economy may therefore wish to create organizations of their own choosing as employers rather than workers.

47. The 2002 Conclusions emphasize the practical significance of freedom of association for improving conditions of workers in the informal economy, especially for women and youth: "Without organization and representation, those in the informal economy generally do not have access to a range of other rights at work. They are not able to pursue their employment interests through collective bargaining or to lobby policy-makers on issues such as access to infrastructure, property rights, taxation and social security. Women and youth, who make up the bulk of workers in the informal economy, are especially without representation and voice." (Paragraph 17.)

48. The Committee of Experts, in its examination of the application of ratified Conventions, has commented on the scope of application of these instruments. For example, in its general observation of 2009 on Convention No. 87, it referred to the particular challenges faced by workers in the informal economy in relation to organizational rights.⁴ Following the Governing Body's discussions on export processing zones (EPZs) and the 2002 Conclusions, the Committee of Experts has regularly requested information on the nature and extent of the informal economy at the national level, including the percentage of women and migrants, and on any initiatives taken to ensure in law or practice the realization of their rights under the freedom of

³ The eight fundamental Conventions are the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182).

⁴ The comments of the Committee of Experts and the other supervisory bodies are available on the NORMLEX website.

association Conventions. The Committee of Experts considers that certain categories of workers who are regularly denied the right to establish trade unions are covered by the principles of freedom of association and has emphasized the need to ensure in law and practice that they benefit from the guarantees set forth in the Conventions.⁵ These categories include domestic workers,⁶ workers in the informal economy and in EPZs, self-employed workers,⁷ workers without employment contracts⁸ and agricultural workers.⁹

49. In this connection, the Committee of Experts has noted with satisfaction the innovative approaches adopted in certain countries to enable workers in the informal economy to organize. For example, in Uganda¹⁰ and Mauritius,¹¹ the amendment of the legislation and the efforts made by the authorities have contributed to a significant improvement in the exercise of trade union rights by all categories of workers, and the right to organize of domestic workers has been recognized in Swaziland.¹² The Committee of Experts has also recalled that the rights and safeguards set out in the Conventions apply to all workers irrespective of the type of employment contract, and regardless of whether their employment relationship is based on a written contract or a contract for an indefinite term.¹³ For example, it noted that, under the terms of sections L6 to L29 of the Labour Code of Senegal, which apply to all workers and employers in the private sector, autonomous or independent workers, especially in the informal economy and agriculture, also enjoy the trade union rights guaranteed by the Convention.¹⁴ Similarly, in its comments under the Right of Association (Agriculture) Convention, 1921 (No. 11), it noted the registration of a union for the informal economy in 2004 in Malawi.¹⁵

50. The Governing Body Committee on Freedom of Association (CFA) has examined several complaints relating to issues linked to the informal economy. For instance, in a case concerning Argentina, in which a trade union of newspaper and magazine vendors alleged that its right to organize had been removed as a result of a legislative change classifying the work of its members as a commercial activity not regulated by labour

⁵ ILO: *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008: Giving globalization a human face*, Report III (Part 1B), (hereinafter the “2012 General Survey”), International Labour Conference, 101st Session (Geneva, 2012), paras 71–76.

⁶ See, for example, Convention No. 87: Canada (Ontario) – CEACR, observation 2010; Convention No. 98: Gambia – CEACR, direct request, 2010; Kuwait – CEACR, observation, 2011; Mexico – CEACR, observation, 2004; Swaziland – CEACR, observation, 2010; Yemen – CEACR, observation, 2011; Convention No. 98: Eritrea – CEACR, observation, 2011.

⁷ See, for example, Convention No. 87: Central African Republic – CEACR, direct request, 2010; Turkey – CEACR, observation, 2010.

⁸ Convention No. 87: Poland – CEACR, observation, 2011.

⁹ Convention No. 87, for workers in EPZs: Bangladesh – CEACR, observation, 2010; Pakistan – CEACR, observation, 2010; and for agricultural workers: Canada (Alberta, Ontario and New Brunswick) – CEACR, observation, 2010; Honduras – CEACR, observation, 2010.

¹⁰ Convention No. 98: CEACR, observation, 2009.

¹¹ Convention No. 98: CEACR, observation, 2011.

¹² Convention No. 87: CEACR, observation, 2011.

¹³ Convention No. 98: Belarus – CEACR, observation, 2011; Gambia – CEACR, observation, 2010.

¹⁴ Convention No. 98: CEACR, direct request, 2012.

¹⁵ Convention No. 11: CEACR, observation, 2010.

legislation, with their status changing from “workers” to “traders”,¹⁶ the CFA recalled that “[b]y virtue of the principles of freedom of association, all workers – with the sole exception of members of the armed forces and the police – should have the right to establish and to join organizations of their own choosing. The criterion for determining the persons covered by that right, therefore, is not based on the existence of an employment relationship, which is often non-existent, for example, in the case of agricultural workers, self-employed workers in general or those who practice liberal professions, who should nevertheless enjoy the right to organize.”¹⁷ In a case concerning Peru relating to the alleged refusal to register a trade union of cleaning workers in the public sector because the application for registration had not specified the labour law system governing the workers (public or private) and because the members of the trade union had been recruited under non-personal service contracts governed by the provisions of the Civil Code,¹⁸ the CFA recalled that all workers, without distinction whatsoever, whether they are employed on a permanent basis, for a fixed term or as contract employees, should have the right to establish and join organizations of their own choosing.

Forced labour

51. Under Article 2(1) of the Forced Labour Convention, 1930 (No. 29), the term “forced labour” is defined as “*all* work or service which is exacted from *any* person” (emphasis added). This definition therefore includes all types of work, service and employment, regardless of the industry or sector in which they are performed, including the informal economy. The forced labour Conventions do not contain any provisions limiting the scope of their application to certain categories of workers, and are designed to protect the population as a whole.

52. Numerous situations have been identified by the Committee of Experts as cases of forced labour in the informal economy. Several of its comments relate to: trafficking in persons for sexual or labour exploitation; cases of forced labour imposed on vulnerable categories of workers, such as migrant workers, domestic workers or indigenous workers; and forced labour imposed within the framework of a relationship of dependency, such as slavery or debt bondage, which often occur in the informal economy.¹⁹ In addition to criminalizing and prosecuting these practices, which are criminal offences, the Committee of Experts has called for the adoption of an integrated approach to combat and prevent them. In highlighting the importance of prevention, the Committee of Experts has emphasized that national plans or strategies to combat forced labour should include awareness-raising activities for the general population, and particularly for vulnerable groups, as well as measures to combat poverty, with a view to ensuring the economic independence of potential victims and improving the economic situation of the most vulnerable categories of the population.²⁰

53. Poor coverage and enforcement of laws and regulations, especially in the informal economy, provide an environment in which forced labour practices can emerge and go

¹⁶ CFA, Case No. 2221, 332nd Report, paras 214–227.

¹⁷ ILO: *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, fifth (revised) edition (Geneva, 2006), para. 222.

¹⁸ CFA, Case No. 2687, 357th Report, para. 891.

¹⁹ ILO: *Extending the scope of application of labour laws to the informal economy: Digest of comments of the ILO’s supervisory bodies related to the informal economy* (hereinafter “*Digest on the informal economy*”), (Geneva, 2010), p. 14.

²⁰ See, for example, Convention No. 29: Mauritania – CEACR, observation, 2013.

undetected. For example, in the case of migrant domestic workers, the Committee of Experts has requested the governments concerned to adopt legislative provisions specifically tailored to the difficult circumstances faced by this category of workers and to protect them from abusive practices.²¹ It has also called for the protection of migrant workers through the monitoring of private recruitment agencies, the prohibition of employers from withholding workers' passports and the elimination of all other restrictions on the fundamental rights of domestic and other migrant workers.²² It has pointed out that the penalization of unlawful migration further increases the vulnerability of migrants in an irregular situation and has requested the governments concerned to adopt the necessary measures to protect migrant workers from the exaction of forced labour, regardless of their legal status.²³ As the application in practice of a sound legislative framework is sometimes hampered by the inadequacy of enforcement, the Committee of Experts often calls for the strengthening of labour inspection and law enforcement machinery,²⁴ including the provision of adequate human and material resources to allow labour inspectors to move quickly, efficiently and safely throughout the country, thereby giving them access to remote areas and hidden forms of work, particularly in the informal economy.

54. When identified, victims of forced labour should be provided with the necessary assistance to enable them to assert their rights and denounce any abuses of which they may be victims.²⁵ Supplementary measures of economic assistance and rehabilitation help to ensure that they do not fall back into forced labour, and it is very important to adopt measures for their integration into the formal economy, including: employment-related services, material assistance (in cash or kind) and education or vocational training.²⁶

Child labour

55. The Minimum Age Convention, 1973 (No. 138), which was adopted with a view to achieving the total abolition of child labour, applies to *all* children employed in *any* occupation (Article 2). Similarly, the Worst Forms of Child Labour Convention, 1999 (No. 182), covers *all* children under the age of 18 years (Article 2) and its definition of the worst forms of child labour (Article 3) implicitly includes those occurring in the informal economy.

56. With regard to child labour, the Committee of Experts has systematically emphasized that the situation of children working in the informal economy deserves special attention and, in cases where general labour legislation excludes workers in the

²¹ See, for example, Convention No. 29: Saudi Arabia – CEACR, observation, 2009.

²² See, for example, Convention No. 29: Indonesia – CEACR, observation, 2009.

²³ See, for example, Convention No. 29: Italy – CEACR, direct request, 2010.

²⁴ See, for example, Convention No. 29: Brazil – CEACR, observation, 2012; Peru – CEACR, observation, 2013; Spain – CEACR, direct request, 2013. These countries have set up labour inspection units specialized in combating forced labour.

²⁵ See, for example, Convention No. 29: Lebanon – CEACR, observation, 2011; Peru – CEACR, observation, 2011 (2012 General Survey, para. 295).

²⁶ In Brazil, workers released from forced labour are provided with unemployment benefits for three months and access to literacy programmes. In Nepal, vocational training and related programmes have been organized to enable liberated *kamaiyas* to set up micro-enterprises and other income-generating activities.

informal economy from its scope, has called for its amendment.²⁷ Accordingly, it has noted with satisfaction the legislative measures adopted by certain countries to remedy this situation.²⁸ With a view to addressing the issue of child labour in the informal economy through monitoring mechanisms, including labour inspection, the Committee of Experts has called for the necessary measures to be adopted to strengthen the capacity and expand the reach of labour inspection in the informal economy. Some countries have adapted and reinforced their labour inspectorate in this regard through links with governmental and non-governmental organizations, particularly in Latin America.²⁹ Togo has produced a practical training manual for labour inspectors on child labour jointly with ILO–IPEC. The Committee of Experts has also noted the development of certain non-traditional monitoring mechanisms, such as the child labour monitoring systems (CLMS) developed by ILO–IPEC,³⁰ which participate with labour inspectors through local teams of monitors.³¹ The Committee of Experts has also recognized the success in several countries of specific measures to combat child labour in the informal economy.³² Moreover, ILO–IPEC is collaborating with several governments on projects to protect children working in the informal economy and to withdraw them from such work.³³

57. In view of the very high proportion of child workers worldwide engaged in the agricultural sector in both the formal and informal economies, the Committee of Experts has emphasized the importance of the effective application of the two Conventions in that sector. In this respect, it noted the amendment in 2008 to the legislation in Jordan to extend its scope to include “all workers”.³⁴ It has also noted the establishment in Egypt of a separate unit within the Ministry of Manpower and Migration for child labour investigations in the agricultural sector, the recruitment of additional labour inspectors for banana plantations in Belize and the intense supervisory and inspection activities carried out in El Salvador in the sugar cane sector.³⁵ In Brazil, the Special Mobile Inspection Group (GEFM) has been modified and the action of labour inspectors extended to reinforce inspections in both the formal and informal economies, with

²⁷ Convention No. 138: Algeria – CEACR, observation, 2009; Nigeria – CEACR, observation, 2012; Russian Federation – CEACR, observation, 2008; Swaziland – CEACR, observation, 2011; and Convention No. 182: Bahrain – CEACR, observation, 2011; Nepal – CEACR, direct request, 2010; New Zealand – CEACR, observation, 2010; Niger – CEACR, observation, 2011.

²⁸ Convention No. 138: Argentina – CEACR, observation, 2009; Kenya – CEACR, observation, 2009; Spain – CEACR, observation, 2010; and Convention No. 182: Costa Rica – CEACR, observation, 2011; Mongolia – CEACR, direct request, 2010; Poland – CEACR, direct request, 2010.

²⁹ Argentina, Brazil, Nicaragua, as well as Benin, Bosnia and Herzegovina.

³⁰ In Albania, Kenya, Malawi, Sri Lanka, Turkey, Ukraine.

³¹ 2012 General Survey, para. 344.

³² For example: in Viet Nam, where policies for children under 15 years of age working on their own account include referring them to social centres and encouraging their families to support their attendance at school or vocational training; in Chile, where the bridge programme addresses the needs of children engaged in, or at risk of becoming engaged in the informal economy; and in Namibia, where the Action Programme to Eliminate Child Labour (2008–12) has mainstreamed the issue of children working in the informal economy, 2012 General Survey, para. 347.

³³ Including in Bangladesh, Ghana, Kenya, Senegal, United Republic of Tanzania, Uganda, 2012 General Survey, para. 347.

³⁴ 2012 General Survey, para. 349.

³⁵ *ibid.*, para. 352.

children and young persons being removed from illegal work and orientated towards a social protection network.³⁶

58. The Committee of Experts has also called for the amendment of national legislation giving effect to the Conventions, which explicitly excludes from its scope family work and domestic work. For example, following requests to that effect, it has noted with satisfaction the amendments made to the respective laws in Kenya and Zambia to extend protection to children working in family enterprises and those engaged in unpaid work.³⁷ Similarly, it noted with interest the order adopted in Kuwait establishing the minimum age for domestic workers at 20 years of age and the amendment to Order No. 4 of 1999 in the Philippines to apply minimum age provisions to the domestic and household service sectors. In countries such as Indonesia, Lesotho and Swaziland, draft legislation under discussion would apply the minimum age provisions to domestic workers.³⁸

59. The Conference Committee on the Application of Standards (hereinafter the “Conference Committee”), in its examination of individual cases, has frequently emphasized the need to address the lack of protection of labour rights in the informal economy.³⁹ For example, in 2004, when examining the application of Convention No. 138 in Ukraine, it expressed the hope that the technical cooperation programme launched by the Government with ILO–IPEC would address the situation of children below the age of 16 working in the informal economy, including by enhancing the capacity of the labour inspectorate concerning the informal economy. In 2008, with regard to the application of Convention No. 138 by Zambia, the Conference Committee noted the absence of compulsory schooling for children, as well as the large number of children under the minimum age working in the informal economy. The Conference Committee has also called for the capacity and reach of labour inspection to be reinforced to ensure protection against child labour for all children, including those working on their own account or in the informal economy.⁴⁰

Discrimination

60. Equality and non-discrimination in employment and occupation is a fundamental principle and human right to which *all* men and women are entitled.⁴¹ No exclusions are allowed under the Equal Remuneration Convention, 1951 (No. 100), or the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which apply to all sectors of activity, the public and private sectors, and implicitly to the formal and informal economies. No provision in either Conventions Nos 100 or 111 limits their scope as regards individuals or branches of activity. However, their application in both law and practice remains a challenge in the informal economy.

³⁶ Convention No. 138: Brazil – CEACR, direct request, 2011.

³⁷ 2012 General Survey, para. 357.

³⁸ *ibid.*, para. 359.

³⁹ The records of the discussions and the conclusions of the Conference Committee are available on the NORMLEX website.

⁴⁰ See, for example, the conclusions of the Conference Committee concerning: Azerbaijan (2011, Convention No. 138); Central African Republic (2010, Convention No. 138); China (2008, Convention No. 182); Ukraine (2004, Convention No. 138); Uzbekistan (2010, Convention No. 182).

⁴¹ 2012 General Survey, para. 649.

61. Although, in relation to the application of Conventions Nos 100 and 111, the Committee of Experts has only made explicit reference to the informal economy in a few countries, it has addressed issues relating to the informal economy indirectly in the context of national equality policies. In this respect, it has emphasized the need for measures to improve the general employment situation and status of women and of certain ethnic minorities, especially by addressing stereotypes that lead to occupational segregation and a concentration of women, ethnic minorities and certain categories of vulnerable workers (particularly migrant workers, domestic workers and persons with disabilities) in low-paid activities or unpaid family work.

62. Convention No. 111 clearly covers non-wage work, including people who work on their own account, as employers or as unpaid family workers. The term “occupation” means the trade, profession or type of work performed, irrespective of the branch of economic activity or professional status. Traditional occupations, such as those pursued by indigenous peoples, including subsistence farming, handicraft production and hunting, are also “occupations” within the meaning of the Convention.⁴² The Committee of Experts has noted progress in several countries in the adoption of measures, sometimes as part of national equality plans, to improve access by certain ethnic or social groups, as well as women, to self-employment (women’s entrepreneurship), and to credit, land and other goods and services.⁴³ The Committee of Experts has also drawn attention to the vulnerability of migrant domestic workers to multiple forms of discrimination due to the nature of their employment relationship, the lack of legislative protection, stereotyped views regarding gender roles and the undervaluing of this type of employment.⁴⁴ In Haiti, the adoption of the Domestic Work Act has brought these workers within the scope of the provisions of the Labour Code, including those prohibiting discrimination.⁴⁵

63. This approach has been reinforced by the Conference Committee. For example, in 2009, with regard to the application of Convention No. 100 in Mauritania, it urged the Government to take the necessary measures, including through broader opportunities for education and training, in consultation with employers’ and workers’ organizations, to reduce the very high remuneration gap between men and women, including in the informal economy, and to increase women’s opportunities to gain access to a wider range of jobs and occupations.

(ii) *Employment*

64. The Employment Policy Convention, 1964 (No. 122), calls for the adoption of active policies designed to promote full, productive and freely chosen employment with the aim of ensuring “work for all who are available for and seeking work” (Article 1). It also requires governments, when formulating and implementing employment policies, to consult the representatives of employers and workers with a view to taking into account their views and experience (Article 3).

⁴² 2012 General Survey, para. 752.

⁴³ See, for example, Convention No. 111: Dominica – CEACR, direct request, 2010; Gambia – CEACR, direct request, 2011; India – CEACR, observation, 2008; Lesotho – CEACR, direct request, 2011; Morocco – CEACR, observation, 2009; Nicaragua – CEACR, direct request, 2008.

⁴⁴ Convention No. 100: Lebanon – CEACR, direct request, 2011; Convention No. 111: Syrian Arab Republic – CEACR, direct request, 2011. See also the 2012 General Survey, paras 756 and 795.

⁴⁵ 2012 General Survey, para. 796.

65. The Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), calls for measures to be taken for the progressive transfer of workers from the informal economy, where it exists, to the formal sector (Paragraph 9). It adds that national employment policy should recognize the importance of the informal economy as a provider of jobs in economic activities carried on outside institutionalized economic structures. Employment promotion programmes should be elaborated and implemented to encourage family work and independent work in individual workshops, in both urban and rural areas. Measures should also be taken to promote complementary relationships between the formal and informal economies, and to provide greater access for undertakings in the informal economy to resources, product markets, credit, infrastructure, training facilities, technical expertise and improved technologies so as to facilitate their progressive integration into the national economy (Paragraphs 27–29).

66. Other employment-related standards, including the Human Resources Development Convention, 1975 (No. 142), and the Human Resources Development Recommendation, 2004 (No. 195),⁴⁶ the Employment Service Convention, 1948 (No. 88),⁴⁷ the Private Employment Agencies Convention, 1997 (No. 181),⁴⁸ and the Employment Relationship Recommendation, 2006 (No. 198),⁴⁹ also contain provisions that are particularly relevant to informal economy workers.

67. The Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), calls for the consideration of policies that include specific measures and incentives aimed at assisting and upgrading the informal economy to become part of the organized sector (Paragraph 6(3)). The Promotion of Cooperatives Recommendation, 2002 (No. 193), adds that governments should promote the important role of cooperatives in transforming what are often marginal survival activities into legally protected work, fully integrated into mainstream economic life (Paragraph 9).

68. In its 2010 General Survey concerning employment instruments, the Committee of Experts highlighted the importance of the informal economy. While acknowledging that a progressive mainstreaming of workers into the formal economy is the ultimate goal, the Committee of Experts has emphasized that this goal should be achieved through sustained economic and social development, during which the assistance provided to the informal economy, as part of policies to achieve full and productive employment and reduce poverty, should include measures to extend access to justice, property rights, labour rights and business rights to informal economy workers and businesses.⁵⁰ It has encouraged governments to make efforts to integrate unregistered workers into the formal economy, and noted in the case of Brazil the significant reduction of informal work and the increase of 6.5 per cent in the number of registered employees in major urban centres.⁵¹ In Mongolia, it noted the adoption of an action plan for the informal economy for the period of 2010–12 and the establishment by non-governmental organizations (NGOs) of an organization for informal workers.⁵²

⁴⁶ See, in particular, Paragraphs 3(d), 5(h) and 11(1).

⁴⁷ Article 1(2).

⁴⁸ Article 2(3).

⁴⁹ Paragraph 5.

⁵⁰ ILO: *General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B), International Labour Conference, 99th Session (Geneva, 2010), paras 695–697.

⁵¹ Convention No. 122: Brazil – CEACR, observation, 2012.

⁵² Convention No. 122: Mongolia – CEACR, observation, 2011.

69. In many of its comments on the application of Convention No. 122, the Committee of Experts has reviewed measures adopted concerning the informal economy, particularly in relation to the issues of productive employment and poverty reduction,⁵³ undeclared work,⁵⁴ the reduction of informal work,⁵⁵ micro-enterprises and cooperatives,⁵⁶ data collection,⁵⁷ participation of the social partners⁵⁸ and ILO technical assistance (for example, in Mongolia, Senegal⁵⁹ and Zambia). The Committee of Experts also regularly emphasizes that employment policy measures need to take fully into account the experience and views of the social partners, including the opinions of those working in the rural sector and the informal economy.⁶⁰

70. With reference to the application of Convention No. 88 by Ecuador, the Committee of Experts noted that the provision of incentives through social security and taxation is contributing to formalizing the status of workers and that it is planned to establish a centre to make the public employment service available to workers in the informal economy.⁶¹ It also noted in a comment on the application of Convention No. 181 by Uruguay the new approach adopted in a collective agreement, in which “the parties declare that the supply of workers through companies registered with the National Employment Directorate (DINAE) constitutes a means of combating informal employment, as well as contributing to decent work”.⁶²

71. In 2010, the Conference Committee, when examining the application of Convention No. 122 in Thailand, after noting the measures taken to revive the economy and to protect the poorest in the country, requested further information on the results achieved and on the measures taken to include the most vulnerable categories of workers in the labour market, such as workers with disabilities and rural women, as well as workers in the informal economy.

⁵³ Convention No. 122: Plurinational State of Bolivia – CEACR, direct request, 2012; Cameroon – CEACR, direct request, 2011; China – CEACR, observation, 2008; El Salvador – CEACR, observation, 2012; Mongolia – CEACR, observation, 2011; Nicaragua – CEACR, direct request, 2011; Senegal – CEACR, observation, 2012; Tajikistan – CEACR, direct request, 2012; Thailand – CEACR, observation, 2012; Uganda – CEACR, observation, 2012.

⁵⁴ Convention No. 122: Bosnia and Herzegovina – CEACR, direct request, 2011; Bulgaria – CEACR, direct request, 2011; Greece – CEACR, observation, 2012; Latvia – CEACR, direct request, 2011; Poland – CEACR, observation, 2012; Turkey – CEACR, direct request, 2012.

⁵⁵ Convention No. 122: Brazil – CEACR, observation, 2012; India – CEACR, observation, 2012; Mongolia – CEACR, observation, 2011.

⁵⁶ Convention No. 122: Costa Rica – CEACR, observation, 2011; Ecuador – CEACR, observation, 2012; Mozambique – CEACR, direct request, 2011.

⁵⁷ Convention No. 122: Iraq – CEACR, direct request, 2012; Tunisia – CEACR, observation, 2012.

⁵⁸ Convention No. 122: Algeria – CEACR, observation, 2012; Azerbaijan – CEACR, direct request, 2012; Barbados – CEACR, observation, 2012; Cameroon – CEACR, direct request, 2011; Chile – CEACR, observation, 2012; Costa Rica – CEACR, observation, 2011; Gabon – CEACR, direct request, 2011; Guatemala – CEACR, observation, 2012; Honduras – CEACR, observation, 2010; Jordan – CEACR, observation, 2012; Lebanon – CEACR, direct request, 2012; Madagascar – CEACR, observation, 2012; Mongolia – CEACR, observation, 2011; Morocco – CEACR, observation, 2011; Papua New Guinea – CEACR, direct request, 2012; Sudan – CEACR, observation, 2012; Tajikistan – CEACR, direct request, 2012; Tunisia – CEACR, observation, 2012; Yemen – CEACR, direct request, 2012; Zambia – CEACR, observation, 2010.

⁵⁹ Convention No. 122: Senegal – CEACR, observation, 2012.

⁶⁰ Digest on the informal economy, op. cit., p. 14.

⁶¹ Convention No. 88: Ecuador – CEACR, direct request, 2010.

⁶² Convention No. 181: Uruguay – CEACR, observation, 2010.

(iii) *Social protection*

Social security

72. The Social Security (Minimum Standards) Convention, 1952 (No. 102), is aimed at achieving a socially acceptable minimum level of protection for the coverage of the population by social security, with a view to attaining gradually the objective of broad coverage in harmony with national economic development. The Social Protection Floors Recommendation, 2012 (No. 202), offers a new tool to assist countries in extending social protection to all in need, in recognition that the establishment of a sustainable social security system is an important contributing factor to transitions to formal employment. It provides guidance on the establishment and maintenance of social protection floors as a fundamental element of national social security systems, as part of strategies addressing both the horizontal and vertical dimensions of the extension of social security. While the vertical dimension is based on the model set out in Convention No. 102, and the higher standards adopted subsequently, and mostly concerns coverage of the structured economy, the horizontal dimension aims at the progressive extension of some basic health services and income security to those in need. Most of those concerned are in the informal economy and the objective is, firstly, to lift them out of acute poverty, and then progressively to enable them to obtain access to more productive employment. To contribute efficiently to the process of transition from informal to formal employment, basic social protection guarantees therefore need to be provided as part of overall, comprehensive and coherent public policies, based on efficient coordination between policy in the fields of education, health, social security, employment and labour, as well as economic and fiscal policy.

73. Protection of the rights of migrant workers includes ensuring equal treatment with regard to social security coverage and entitlements, and the maintenance and portability of social security rights acquired by migrants, or in the course of acquisition, between receiving and sending countries, through bilateral or multilateral treaties. The Equality of Treatment (Social Security) Convention, 1962 (No. 118), and the Maintenance of Social Security Rights Convention, 1982 (No. 157), set out important principles in this regard.⁶³

74. The Committee of Experts has consistently taken the view that the informal nature of employment could not be invoked to refuse social security benefits to injured workers or to their dependants, for example, when examining the application of the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19).⁶⁴ It has also considered that countries with significant levels of social security fraud and evasion, and with large sections of the population engaged in informal employment, need to establish a comprehensive social security strategy aimed at extending protection to those categories of the population.⁶⁵

75. When examining the application of Convention No. 102, the Committee of Experts has considered that the objective of ensuring that the greatest number of workers receive the benefits provided for in the Convention for each of the recognized contingencies requires the introduction of more efficient programmes aimed at the informal economy

⁶³ Some countries have taken unilateral measures to remedy possible gaps in coverage in the form of voluntary insurance provided to their nationals working abroad (Jordan, Mexico) or by offering them the right to join the national social security programme on a voluntary basis (Philippines).

⁶⁴ Convention No. 19: Spain – CEACR, observation, 2007; Thailand – CEACR, observations, 2009 and 2010.

⁶⁵ Convention No. 102: Plurinational State of Bolivia – CEACR, observation, 2009, Peru – CEACR, observation, 2009.

and the most vulnerable categories of the population.⁶⁶ It has also considered that the implementation of Convention No. 102 and Recommendation No. 202 should be carried out in parallel, identifying and drawing upon synergies and complementarities, and that governments should therefore provide information specifying the way in which the new social protection mechanisms are harmonized with the existing social security system.

76. When examining the situation in Haiti in the framework of a number of Conventions on employment injury,⁶⁷ the Committee of Experts called on the Government to envisage, as a priority, the establishment of mechanisms to provide the population, including informal workers and their families, with access to essential health care and minimum income security.

Occupational safety and health

77. The Occupational Safety and Health Convention, 1981 (No. 155), applies to *all* branches of economic activity and *all* workers in those branches. Although it contains a number of flexibility clauses allowing for the exclusion, in part or in whole, of particular branches of economic activity (such as maritime shipping and fishing) in respect of which special problems of a substantial nature arise (Articles 1(2) and 2(2)), these exclusions are not intended to be permanent and it is expected that progress will be made towards the full application of the Convention, with coverage being expanded to embrace excluded categories of workers. Similarly, the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), provides that the national system for OSH shall cover micro-enterprises, small and medium-sized enterprises (SMEs) and the informal economy (Article 4(3)(h)).

78. Although Convention No. 155 permits the exclusion of limited categories of workers from its provisions, the Committee of Experts is of the view that member States and the social partners should review the continued appropriateness of such exclusions.⁶⁸ For example: in Brazil, efforts are being made to extend the application of the occupational safety and health (OSH) legislation to the informal economy; Cyprus is in the process of amending the Safety and Health Law to extend its coverage to domestic workers; in Singapore, new OSH legislation has been adopted to cover all branches of economic activity and all workplaces; and in Turkey, draft OSH legislation covering all activities and workplaces is in the process of being adopted.⁶⁹ While some countries, such as Austria, Czech Republic and Sweden, have adopted legislation regulating the working conditions of both domestic workers and homeworkers, which contains some provision for OSH protection, in other countries, including Colombia, Germany, Hungary, Italy, Singapore and United Kingdom, self-employed workers are covered by the national OSH provisions.⁷⁰

⁶⁶ Convention No. 102: Niger – CEACR, observation, 2012.

⁶⁷ The Workmen's Compensation (Agriculture) Convention, 1921 (No. 12), the Workmen's Compensation (Accidents) Convention, 1925 (No. 17), the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19).

⁶⁸ Occupational safety and health. ILO: *General Survey concerning the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981*, Report III (Part 1B), International Labour Conference, 98th Session (Geneva, 2009), para. 46.

⁶⁹ *ibid.*, paras 43 and 44.

⁷⁰ *ibid.*, para. 41.

79. The Committee of Experts endeavours to ensure that OSH provisions are applied in practice in the informal economy. For instance, in relation to the Occupational Health Services Convention, 1985 (No. 161), it noted that, in Burkina Faso, the action plan accompanying the national policy on occupational health services will also cover the informal economy and the agricultural sector.⁷¹ With reference to the Safety and Health in Construction Convention, 1988 (No. 167), the Committee of Experts requested information from the Government of the Dominican Republic on how it will be guaranteed that the Convention is applied to all construction activities and to all the workers concerned, whether they are registered, unregistered or self-employed, including information on construction workers who are not registered or who work in the informal economy.⁷² Also in relation to Convention No. 167, the Committee of Experts noted with interest the creation in 2011 in Brazil of an indicator of the “real unemployment rate”, which will take account in labour market statistics of workers in the informal economy and should contribute to the more accurate identification of unregistered workers in the construction sector and the application of the Convention to them.⁷³

(iv) *Social dialogue*

Labour administration and labour inspection

80. The Labour Administration Convention, 1987 (No. 150), envisages the extension of the functions of the system of labour administration to include the activities of appropriate categories of workers who are not, in law, employed persons, such as: “tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers [and] self-employed workers who do not engage outside help, occupied in the informal sector as understood in national practice” (Article 7). The Labour Inspection Convention, 1947 (No. 81), applies to industrial and commercial workplaces and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), covers commercial and non-commercial agricultural undertakings. Convention No. 129 contains important governance principles that are key to efforts to tackle the informal economy and poverty through the establishment and functioning of a labour inspection system for agricultural workers and their families. Furthermore, the Safety and Health in Agriculture Convention, 2001 (No. 184), expands the scope and need for labour inspection in agriculture.

81. In most countries, the scope of labour inspection is defined by the general labour legislation and the determining factor in law is often the existence of an employment or apprenticeship relationship.⁷⁴ The Committee of Experts has noted in this respect that, in Turkey, to extend the scope of inspection to establishments in the informal economy, inspection officers have to determine whether or not employees are insured and submit to the social security institution information on those who are employed without insurance. It has also noted the adoption of an action plan to combat the informal economy by raising awareness of the disadvantages of the informal economy, promoting

⁷¹ Convention No. 167: Burkina Faso – CEACR, observation, 2010.

⁷² Convention No. 167: Dominican Republic – CEACR, observation, 2011.

⁷³ Convention No. 167: Brazil – CEACR, observation, 2012.

⁷⁴ Labour inspection. ILO: *General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)*, Report III (Part 1B), International Labour Conference, 95th Session (Geneva, 2009), paras 21 and 22.

the registration of employment, simplifying the legislation and procedures, developing an effective monitoring system and sanctions, and strengthening the sharing of data and coordination among the institutions concerned.⁷⁵

82. Very few countries have made a formal declaration under Article 5(1) of Convention No. 129 concerning the extension of the labour inspection system to members of cooperatives.⁷⁶ In some European countries, labour inspectors provide OSH training to self-employed agricultural workers, farmers, sharecroppers and family members working on farms. In Norway, the application of the Work Environment Act has been extended to the many agricultural enterprises that do not employ workers.⁷⁷

83. The Committee of Experts has called on governments to consider the gradual extension of the labour administration system to cover workers who are not, in law, employed persons. In this regard, it noted with interest that in the Republic of Moldova enterprises and workers operating in the informal economy fall within the scope of the legislation on labour inspection and the employment and social protection of persons seeking employment. In this framework, the labour inspectorate has tracked and helped to legalize informal employment in enterprises operating in the formal sector.⁷⁸

(v) *Instruments cutting across strategic objectives and covering specific categories of workers*

84. Certain other standards cut across the ILO's four strategic objectives, such as the HIV and AIDS Recommendation, 2010 (No. 200). Others apply to categories of workers that are very present in the informal economy, such as the Plantations Convention, 1958 (No. 110), the Home Work Convention, 1996 (No. 177), the Rural Workers' Organisations Convention, 1975 (No. 141), the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Work in Fishing Convention, 2007 (No. 188), and the Domestic Workers Convention, 2011 (No. 189).

85. Other instruments that are implicitly relevant to the informal economy include the Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78), the Protection of Wages Convention, 1949 (No. 95), and Workers with Family Responsibilities Convention, 1981 (No. 156), which applies to *all* branches of economic activity and *all* categories of workers. The Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), requires ratifying States to take specific measures for independent producers and wage earners (Article 5). The Labour Statistics Convention, 1985 (No. 160), covers, among others, the economically active population (Article 1), while the Maternity Protection Convention, 2000 (No. 183), applies to *all* employed women, including those in atypical forms of dependent work (Article 2).

⁷⁵ Convention No. 81: Turkey – CEACR, observation, 2010.

⁷⁶ Albania, Czech Republic, Latvia, Slovakia.

⁷⁷ 2006 General Survey, para. 32.

⁷⁸ Convention No. 150: Republic of Moldova – CEACR, direct request, 2010.

2.2. The regulatory environment at the national level

2.2.1. The legal framework

86. Workers in the informal economy are not recognized, registered or regulated under labour legislation and social protection.⁷⁹ Other workers may be covered by such protection in theory, but in practice do not have access to the available social and labour protection. Bringing the millions of workers and enterprises within the informal economy under the protection of the law and out of informality would be a major step towards decent work for all.

87. Different approaches have been adopted to channelling these workers into formal employment and providing them with better social and labour protection, depending on the main challenges facing each country in this respect. In developed countries, the main legislative thrust is on the elimination of the informal economy through sanctions against illegal employment (and particularly the employment of irregular migrant workers) and undeclared work, combined with incentives to encourage employers to declare workers. In countries where the informal economy makes up a larger percentage of overall employment, the focus tends to be on extending the legislative framework to cover workers in the informal economy and adopting measures to facilitate their integration into the formal economy. Although, in the majority of countries, labour legislation applies to *workers in general*, in others it excludes certain categories of workers, who are often found in the informal economy.⁸⁰

88. While progress has been made in some countries in extending legal protection to informal economy workers, much remains to be done. For example, it is estimated that only 10 per cent of all domestic workers (or an estimated 5.3 million) are covered by general labour legislation to the same extent as other workers. In contrast, nearly 30 per cent, or some 15.7 million, are completely excluded from the scope of national labour legislation. Broad disparities exist in labour and social protection between domestic workers and other workers. Over half of all domestic workers have no legal limitation on their normal weekly hours of work, and approximately 45 per cent have no entitlement to weekly rest periods. Just over half of all domestic workers enjoy minimum wage protection on an equal basis with other workers, and some 5.9 per cent work for lower minimum wages.⁸¹

(i) Labour and social protection

Labour protection

89. In some countries the scope of application of labour legislation is very broad and, at least in theory, it applies to *all* workers, including those in the informal economy. In some cases, specific legislation has been adopted to protect certain categories of workers,

⁷⁹ 2012 Conclusions, para. 9.

⁸⁰ For example: rural workers in the Plurinational State of Bolivia and Honduras, domestic and homeworkers in Luxembourg and domestic workers in Lebanon.

⁸¹ ILO: *Domestic workers across the world: Global and regional statistics and the extent of legal protection* (Geneva, 2013).

such as domestic workers,⁸² homeworkers⁸³ and self-employed workers.⁸⁴ However, even when the informal economy is covered by legislation, its application may be impeded by a general lack of monitoring or enforcement capacity.⁸⁵ In addition, most informal economy workers may not be aware of their theoretical right to protection under general labour legislation. For this reason, there is a legal obligation in certain countries to inform specific categories of workers (such as migrant and domestic workers) of their labour rights in a language that they understand.⁸⁶

90. In certain countries, workers in the informal economy are excluded either in part⁸⁷ or entirely from the scope of application of labour legislation. In others, labour laws only apply to formal employment relationships, and may thus explicitly exclude certain categories of vulnerable workers, such as agricultural workers, domestic workers, the self-employed or owners of small or micro-enterprises.⁸⁸ Laws on child labour may be applicable to both the formal and informal economies.⁸⁹ Some countries, such as Spain, have adopted specific regulations governing the employment of children in the informal economy. In some cases, efforts have been made to extend the powers of labour inspectors to cover the informal economy.⁹⁰

Social protection

91. In some countries, workers in the informal economy are excluded from coverage by social benefits.⁹¹ In contrast, coverage is high in other cases. Although this might be

⁸² For example: Argentina, Act No. 26844 of 2013 establishing the special regime of labour contracts for domestic workers; Burkina Faso, Decree No. 807/PRES/PM/MTSS of 2010 determining the working conditions of domestic workers; Plurinational State of Bolivia, Act No. 2450 of 2003 regulating domestic workers; Brazil, Constitutional Amendment No. 72 of 2013 establishing equality of labour rights between domestic workers and other urban and rural workers; Nicaragua, Act No. 666 of 2008 amending the Labour Code concerning domestic work; Switzerland, the Order of 2010 issuing the model employment contract for domestic workers.

⁸³ Algeria, Executive Decree No. 97-474 of 1997, determining the specific regime of employment relations for domestic workers.

⁸⁴ Spain, Act No. 20/2007 on the status of self-employed workers.

⁸⁵ Convention No. 182: Angola – CEACR, observation, 2010; Convention No. 138: Angola – CEACR, direct request, 2010; Senegal – CEACR, observation, 2010; Convention No. 150: Republic of Moldova – CEACR, direct request, 2010.

⁸⁶ For example, France, Order of 30 November 2011 implementing Decree No. 2011-1693 protecting the social and financial rights of irregular migrants and suppressing illegal work.

⁸⁷ For example, in Rwanda the Labour Code specifically excludes workers in the informal economy from its scope of application, except from its provisions relating to social security, trade union organizations and health and safety. Convention No. 62: Rwanda – CEACR, observation, 2010.

⁸⁸ See, for example, Convention No. 138: Albania – CEACR, observation, 2010; Bahamas – CEACR, direct request, 2010; Burundi – CEACR, observation, 2010; Comoros – CEACR, direct request, 2010; Kazakhstan – CEACR, direct request, 2010; Bolivarian Republic of Venezuela – CEACR, observation, 2010; and Convention No. 182: Cambodia – CEACR, direct request, 2010; Rwanda – CEACR, observation, 2010; Sao Tome and Principe – CEACR, direct request, 2010; The former Yugoslav Republic of Macedonia – CEACR, direct request, 2010.

⁸⁹ For example, in Argentina, Act No. 26390 prohibits all forms of work by children under 16 years of age, whether or not there is a contractual employment relationship or the work is paid. In other countries, the application of labour legislation has been extended to ensure that all forms of child labour are prohibited in both the formal and informal economies. In Kenya, while the Employment Act, 2007, applies only to employees employed under a contract of service, and therefore to the formal sector, section 56 provides that no person shall employ a child who has not attained the age of 13 years, whether gainfully or otherwise, which effectively covers all children, including those in the informal economy.

⁹⁰ For example, in Argentina, Benin, Bosnia and Herzegovina, Brazil, Nicaragua.

⁹¹ ILO: *World Social Security Report 2010–11: Providing coverage in times of crisis and beyond* (Geneva, 2010).

considered a question of national capacity, some developing countries ensure coverage for all residents, particularly for pensions. In some cases, pension laws provide for non-contributory universal⁹² or means-tested pension schemes,⁹³ thereby ensuring the right of workers in both the formal and informal economies to receive old-age benefits. In certain other countries, specific legislation has been adopted extending pension and other benefits to informal economy workers.⁹⁴

(ii) *Entrepreneurship*

92. When assessing the reasons for the size of the informal economy in certain regions and countries, it is necessary to examine the legal and regulatory environment for business. The regulatory framework should be conducive to assisting transitions to the formal economy, and should be gender sensitive. When designing an enabling environment for formal sustainable enterprises, it is important to adopt or enforce laws setting out minimum labour standards and recognizing basic labour rights. Several countries have simplified their labour laws and procedures, for example by: reducing or eliminating the costs involved in registering enterprises with labour administrations and social security authorities; simplifying the requirements, forms and procedures for hiring workers through public employment offices; and recognizing contracts of employment, irrespective of their form, and accepting any means of evidence.

93. In many developing countries where the informal economy accounts for a large part of the economy, and particularly in Latin America, creative solutions have been developed in relation to micro, small and medium-sized enterprises (MSMEs). The main challenge is to include the huge masses working in the informal economy under some kind of social protection scheme. Two approaches have been adopted, which focus on reducing the cost of formalization and/or increasing productivity. For example, in Colombia, Act No. 1429 provides MSMEs with incentives to formalize their structures (for example, through tax reductions) and to create new employment, particularly for vulnerable groups such as young workers under the age of 28. Measures to increase productivity include modernizing the institutional framework for MSMEs, improving

⁹² For example, Plurinational State of Bolivia, Botswana, Lesotho, Mauritius, Namibia, Nepal.

⁹³ For example, Chile, Costa Rica, South Africa.

⁹⁴ For example, in India, the Unorganised Workers' Social Security Act, 2008, provides for the establishment of social security schemes (covering, for instance, provident funds, employment injury benefit, housing, educational schemes for children, skills upgrading for workers, funeral assistance and old-age homes) for unorganized workers. The Act covers the whole country and its broad definition of "unorganised worker" includes home-based workers, wage workers and self-employed workers in the unorganized sector, which ensures broad coverage of the informal economy. In Benin, the Social Security Code provides for the adoption of a specific law determining the organization and functioning of a special scheme for self-employed workers, agricultural workers and workers in the informal economy. The Social Security Mutual Benefit Society of Benin is a voluntary contributory social security scheme for workers in the informal economy providing sickness and old-age benefits. In Argentina, Decree No. 1602/2009 extends the provision of family benefits for children whose parents are unemployed or work in the informal or domestic sectors. In Jordan, a new Social Security Law has extended social security coverage to employers and own-account workers, and envisages the future coverage of agricultural workers and all firms, irrespective of size. Jordan is also the first Arab country to agree to introduce a social protection floor initiative.

their access to financial markets and providing assistance for technological development.⁹⁵

94. In 2010, the General Act on SMEs in Brazil created the legal concept of “individual micro-entrepreneur” and simplified registration, with a single contribution giving access to social security, medical care and maternity leave. A certificate issued to formal individual micro-entrepreneurs facilitates their access to markets and credit. It is estimated that 3 million workers have been formalized in this way. In Chile, the 2006 SME Act constitutes an important step towards a more enabling environment for the formalization of MSEs and introduces a series of changes in the regulatory framework and in SME support services.

(iii) *Undeclared workers and the informal economy*

95. Most developed countries seek to address illegal employment by combating the employment of irregular immigrants and of undeclared workers. Several countries have adopted laws punishing the failure to declare workers and illegal employment, particularly in relation to social security and tax fraud.⁹⁶ In some cases, workers who are in violation of these laws risk both civil and penal sanctions.

96. Part of the problem of undeclared workers may stem from employers wishing to avoid the complex and costly administrative measures sometimes required for their declaration. The European Parliament, in Resolution 2008/2035(INI) on stepping up the fight against undeclared work, has invited Member States to combat undeclared work and the underground economy by considering, in particular, improving incentives for regular work, which may include increasing the tax-free income band and, for employers, reducing the non-wage costs associated with legal employment. Some countries, such as Spain, have responded by adopting laws offering incentives for employers who regularize undeclared employees. Several countries, including Bulgaria, France, Germany and the Netherlands, have also concluded bilateral agreements on administrative cooperation to combat illegal employment.

97. Some countries, particularly in the European Union (EU), including Italy and Spain, have adopted legislation to regularize irregular migrant workers and allow them access to the formal economy. One of the main eligibility criteria is proof of employment, either through employer sponsorship, documentation of continuous employment over a designated period or a promise of future employment. In Argentina, the high level of formalization achieved since 2003 has been reinforced by Act No. 26.476 of 2008, which promotes and protects registered employment. A strategy has been adopted to formalize work, which includes reductions in social security contributions for new recruitment (a 50 per cent reduction in contributions for the first year, and 25 per cent for the second), and improvements in inspection procedures, including coordination between the various agencies and levels of government.

⁹⁵ Dominican Republic, Act No. 488-08. Similarly, Act No. 645 in Nicaragua and Act No. 28015 in Peru are intended to create an enabling, conducive and competitive business environment for MSMEs through similar measures, including incentives for employment creation for women, older workers, persons with disabilities and young persons. In Brazil, complementary Acts Nos 123 and 128 on micro and small enterprises (MSEs), in addition to general provisions for MSEs, also establish special conditions allowing informal workers to become legal individual entrepreneurs (MEI), who are exempt from tax, except for a fixed social security contribution allowing them to benefit from social security protection.

⁹⁶ For example, Belgium, Bulgaria, France, Germany, Italy, Slovakia, Switzerland.

(iv) *Specific categories of workers*

98. It is also important to extend existing legal protection to cover vulnerable categories of workers, such as those engaged in domestic work, homework and agriculture. For example, in South Africa, the Basic Conditions of Employment Act of 1997 was amended to establish conditions of employment and minimum wages for domestic work. In Asia and the Pacific, the extension and application of existing laws to vulnerable categories of workers has helped to ensure their health, safety and financial security. Several countries have extended social protection provisions to self-employed workers⁹⁷ and to particularly vulnerable groups of workers in the informal economy, such as market workers (Algeria) and small enterprises and handicraft workers (Mauritius and Peru).

99. Some countries have adopted laws covering specific categories of workers in the informal economy. For example, in the Philippines, the Domestic Workers Act of 2013 defines such terms as “domestic work” and “domestic worker”, for whom it establishes rights and protections. In Thailand, the Home Workers Protection Act of 2010 requires written contracts between hirers and homeworkers containing certain minimum information and establishes a fine of 10,000 Thai baht for failure to comply. Homeworkers producing outputs of the same nature, quality and quantity may not be paid less than the minimum wage. The Act established a Home Work Protection Committee to advise on remuneration, safety and other policies, and labour inspectors are permitted to enter the workplace of homeworkers.

⁹⁷ For example, Austria, Bahrain, Croatia, Belgium and Singapore. In Austria, the self-employed are covered by social security provisions under two Acts respecting specific groups of workers (self-employed professionals (FSVG) and agricultural workers (BSVG)), as well as a general law on self-employed and independent entrepreneurs (GSVG), which covers all other categories of self-employed workers. In Belgium, the Labour Relations Act was amended in 2012 to introduce a rebuttable presumption that self-employed persons working in specific industries are in fact employees if at least five out of nine socio-economic criteria are met. The new legislation is expected to have a significant impact on existing and future self-employment relationships in targeted industries.

Chapter 3

Transitions to the formal economy: The role of integrated policy frameworks

100. Although transitions to the formal economy and decent work are desired goals, different views exist about what is meant by formalization and how it can be achieved. Some believe that it is about expanding the capacity and outreach of institutions primarily and historically designed to address the situation of wage employment in the formal sector. Formalization may sometimes be narrowly conceived only in terms of registration and punitive sanctions for non-compliance with the law. Such an approach is likely to be counter-productive, as it does not take into account the many avenues towards formalization, the limited choices facing most informal economy actors or the range of incentives which can encourage a genuine movement out of informality. Others believe that reform should go much further, by rethinking or reinventing policy frameworks, instruments and the culture of outreach to suit the specific conditions of the informal economy.¹

101. Current policy initiatives around the world show that there is no universal policy framework, but rather a set of multidimensional approaches that can be combined in integrated policy frameworks and adapted to each specific country context. The limits of one-size-fits-all policy responses suggest that a very diverse and rich array of responses are possible.² The policies adopted most often simultaneously target the following objectives:

- promoting formal employment through pro-employment macroeconomic and sectoral policies focusing especially on the development of sustainable MSMEs;
- reducing informal employment by lowering the cost of transitions to formality through the creation of an enabling policy and regulatory environment that reduces barriers to formalization, while protecting workers' rights and increasing the benefits of being formal by promoting a greater awareness of the advantages and protection that come with formalization (business development services for MSMEs, access to the market, productive resources, credit programmes, and training and promotional programmes to upgrade informal economy units); and
- increasing decent work in the informal economy by developing a national social protection floor for all, implementing a minimum wage and health and safety incentives, organizing workers from the informal economy and encouraging informal enterprises to join together in production conglomerates or cooperatives, and supporting the development of social economy enterprises and organizations.³

¹ ILO: op. cit., 2009.

² ILO: op. cit., 2008.

³ ILO: op. cit., 2011.

102. In view of its economic contribution, it is widely believed that policies should be developed that recognize the importance of the informal economy, restricting and regulating it when necessary, but mostly seeking to increase the productivity and improve the working conditions of those who work in it so as to facilitate transitions to formality. The goal is to make informal activities part of a growing formal economy, offering decent jobs, productivity gains and economic growth.

103. The challenge for policy-makers is to find the right balance of incentives for formality and of disincentives for remaining informal. Country experience shows that approaches anchored in social dialogue, based on capacity building and opening up access to a full range of resources, as well as tailoring taxation, financing and social security systems to the specific challenges faced by informal economy actors, can make formalization a much more attractive option and have a more sustained impact.

104. In the informal economy, working and living conditions are often intertwined. Improving working conditions therefore means improving the physical and psychosocial conditions and income security of workers, and the interface between their work and their personal, family and community lives. Issues such as wage regulation, working time, maternity protection and the work–family balance have traditionally been perceived as largely inapplicable in the informal economy. A priority area of action is therefore to demonstrate that this is not the case and what can be done.

105. Governments have a primary role to play in facilitating transitions to formality. Political will and commitment, and the structures and mechanisms for proper governance, are essential. Governments have a lead responsibility to provide an enabling environment for sustainable formal enterprises and to extend the coverage of social security, particularly to groups in the informal economy who are currently excluded.

106. Successful strategies for transitions to formality are associated with conducive macroeconomic, social, legal and political frameworks. They are embedded within national development strategies and are not stand-alone projects. Such strategies require strong social dialogue institutions with the participation of workers' and employers' organizations, alongside representative organizations from the informal economy. This new understanding leads to changes in the policy and regulatory framework for MSMEs and for working and employment conditions. Examples include the 2006 policy on informal employment in Mongolia which, referring specifically to decent work and fundamental principles and rights at work, sought to promote formalization through a range of economic and social development policies spanning all seven of the avenues identified by the ILO (see Chapter 1). Brazil, where a national integrated policy framework has been adopted to combat poverty, offers an example of a rapidly formalizing country. Over the past decade, job creation in the formal economy has been three times as rapid as in the informal economy. Non-contributory social protection programmes, such as the *Bolsa Família*, a simplification of tax rules for small businesses, increased incentives for firms to formalize their workers and improved enforcement of tax and labour regulations have all contributed to this success.⁴

107. Successful transitions to formality require a “new pact” between the people, enterprises and governments based on capacity building, productivity gains, an enabling business environment, empowerment and entitlements to social and economic rights.

⁴ World Bank: op. cit., 2013, p. 31.

3.1. Quality employment generation: Pro-employment macroeconomic and sectoral policies

108. The root cause of the informal economy is the inability to create sufficient numbers of formal jobs to absorb new entrants to the labour market and provide job opportunities for those who are trapped in the informal economy. Curbing the spread of informality therefore involves, first and foremost, making employment a central concern of economic and social policy by promoting employment-friendly macroeconomic frameworks and supporting productive sectors of the economy that have a high impact on employment and decent work. In 2010, the ILC emphasized the need to design and implement pro-employment macroeconomic policy frameworks that promote growth, investment, sustainable enterprises, decent work, employability and skills development and a fair distribution of income “to place full and productive employment and decent work at the centre of economic and social policies”.⁵

109. The explicit goals of a productive employment-oriented macroeconomic framework are to raise productivity, facilitate economic transformation and increase the availability of decent jobs, while improving the ability of workers to do those jobs. Macroeconomic policy managers need to act as agents of development, within a framework of price stability and fiscal sustainability.

110. Sectoral policy is a key aspect in this regard. The new generation of development strategies call for the expansion of sectors that generate high levels of added value and employment, and have large multiplier effects and linkages to the domestic economy. Restructuring the pattern of growth to ensure that it is inclusive and job rich requires policies that embrace all the sectors with the highest employment generation potential, directly or indirectly, as well as policies targeted at priority value chains. Targeted support for sectors with the potential to generate high levels of quality employment (such as ecotourism) or with a very high level of informality (agriculture) is a key dimension of formalization. For example, the multifaceted approach to job creation outlined in the 2012 National Human Resources and Employment Policy in Sri Lanka includes general employment creation measures alongside policies to promote growth in nine target sectors, including environmentally friendly (green) jobs. The support provided in this latter sector includes skills training, research on the labour market for green jobs and technical and financial support for the establishment or expansion of green businesses and/or business practices. Assistance has also been provided by an ILO project to transform waste recycling into green jobs.

111. Public works are among the sectoral policies that have been widely implemented in developing and transition countries to reduce unemployment and underemployment and improve prospects for disadvantaged workers, including the poor, the unskilled and the long-term unemployed. At the same time, the resulting infrastructure, assets and services promote social and economic development using local resources. Electrification, rural roads, health and education centres or local market places have a significant impact on private productivity, the earnings of small-scale producers and the security of the livelihoods of informal economy actors. Employment-intensive investments which are well targeted contribute to facilitating the transition to formality.

112. Examples include the very effective employment programmes undertaken in South Africa during the recent financial global crisis. In Central and Eastern Europe, employment schemes have been beneficial when combined with training to ensure a

⁵ ILO: *Conclusions concerning the recurrent discussion on employment*, International Labour Conference, 99th Session (Geneva, 2010), para. 25.

better transition to formal employment, rather than just being used as anti-poverty measures. An innovative approach has been adopted in India in the form of the Mahatma Gandhi National Rural Employment Guarantee Programme (MGNREGP), which guarantees 100 days of work to rural households, and in the fiscal year 2011–12 provided work for 49.9 million households. These and other Public Employment Programmes (PEPs)⁶ have the potential not only to reduce unemployment and contribute to social protection floors, but also to establish the right to work, develop basic infrastructure and promote formal employment in the rural economy.

113. This new approach to macroeconomic and sectoral policies is results-oriented and performance driven, with employment and decent work as core variables that can be monitored and reported on. However, it is necessary to establish explicit and quantitative employment targets in national development strategies and national employment policies, with a firm and measurable commitment to achieving these goals.⁷ This goes hand-in-hand with strengthening labour market information systems to track employment creation and assess the employment impact of the sectoral policies implemented.

3.2. Governance, sustainable enterprises and productivity

114. Informality is commonly understood in a legal context as activities that fall de facto or de jure out of the reach of the law. But it is also an issue of governance or, in other words, the capacity to implement existing laws. The institutional context and capacity of institutions are therefore of vital importance: good laws and regulations are useless in the absence of strong and effective institutions for their implementation. It is accordingly crucial to clarify the current institutional setting and to identify why some economic activities or categories of workers are not covered by formal arrangements, and the reforms or changes that could reverse this situation.

115. Labour market institutions exist everywhere, even though they differ widely between countries. They comprise the set of applicable labour laws and regulations, as well as the mechanisms and procedures for labour market governance and for the setting of policy parameters, such as collective bargaining and wage councils. They also include other regulations and mechanisms that have a bearing on labour market outcomes, including social protection and pension schemes.

116. Formal enterprises have to bear a series of costs originating from labour regulation. Employment protection legislation, in particular, generates costs when firms adjust their workforce. These costs are designed to internalize the social costs that lay-offs impose on society, for example, in terms of social protection measures for laid-off workers and the provision of training through public services. Responsive labour legislation balances low costs with incentives for compliance. The objective is to improve compliance with standards (tax, registration or labour) by generating or improving incentives for registration, both for businesses (access to credit, public markets, development programmes) and for labour (health insurance benefits), and by improving the capacity of the public authorities to enforce regulations, especially through inspection systems.

⁶ A PEP is any direct employment creation by governments through employment programmes rather than the expansion of the public service.

⁷ ILO: *Experiences and potential directions: A reflection on employment and decent work in poverty reduction strategies* (Geneva, 2009).

117. The more effective innovative regulatory approaches have succeeded precisely because they have gone beyond the prescriptive approach commonly associated with “command and control” regulation and have been inclusive and participatory in their design and implementation. A number of broad approaches have emerged for the creation of an enabling environment for MSEs, based on the responsive recognition and application of labour rights and standards.

118. The relation between informality and laws should not be understood as meaning that formalization has only, or even mainly a legal dimension. The causes of informality are manifold and are mostly unrelated to legality. It would therefore be ineffective to pursue formalization through legislative reform alone. The evidence suggests that employment protection legislation has a modest effect on aggregate formal employment, but does have redistributive effects and an impact on the composition of the formal workforce. Evasion of employment protection legislation is therefore unlikely to be a major cause of informal employment. Moreover, formal arrangements are not regulated solely by labour legislation, but also by a range of civil, commercial, administrative, fiscal and social security rules.

119. A mounting body of evidence suggests that labour market regulation is generally not among the key constraints preventing formal enterprises from creating formal jobs and informal enterprises from moving towards formality. Major disincentives which affect transitions to formality include taxation, corruption and the lack of skills and access to markets, infrastructure and finance.⁸ For example, in Cameroon, the Growth and Employment Strategy Paper envisages the promotion of migration towards the formal sector by supporting the organization of informal activities into very small enterprises through: flexible tax regulations; streamlined administrative registration, including social security; training to help actors monitor their activities better through basic accounting; and assistance in establishing and accessing funding.

120. Another significant constraint on transitions to formality is the lack of a coherent legal, judicial and financial framework for securing property rights, without which assets cannot be turned into productive capital through their sale, lease or use as collateral. Property rights are tools for empowerment and play a key role in helping entrepreneurs develop into fully fledged and growing enterprises, particularly in terms of collateral for lending. Moreover, when reforming property rights legislation special attention should be paid to gender inequality in the right to own and control property.

3.2.1. Working conditions and labour inspection

121. In view of the low share of formal employment in many countries, regulations and labour laws in such areas as minimum wages, social protection, health and safety and employment protection are only applicable to a minority of workers. Due to weak enforcement, stemming from poor governance and weak institutional capacity (including inadequate labour inspection), workers in the informal economy do not benefit from these types of protective legislation.

122. And yet informal economy workers, and particularly women, often work in the most hazardous jobs, conditions and circumstances. The rate of work-related accidents and diseases is much higher in small than in large-scale industry and, even without precise data, the preponderance of small enterprises in itself points to increased risks in the informal sector. This makes the prevention of work-related accidents and illnesses an essential aspect of efforts to address working conditions in the informal economy. The

⁸ World Bank: op. cit., 2009.

measures required include raising awareness of risks among informal economy workers and employers, as well as knowledge dissemination on the positive correlation between OSH (and other good working conditions), quality production, productivity and competitiveness, with a view to promoting an understanding that the necessary actions are not out of reach, either financially or technically.

123. A strategy of reducing the cost of transitions to formality and increasing the benefits of being formal goes hand-in-hand with increasing the cost of being informal. Core labour rights and standards are non-negotiable minima, and non-compliance should be subject to non-discretionary punishment. However, a pragmatic approach can be adopted, as regulations are more likely to be effective when different options are available for their enforcement, including innovations in workplace inspection, combined with the provision of advice, dispute settlement, the promotion of collective organization and action, and training programmes targeting informal enterprises.

124. An important reason for the failure to enforce labour law in many countries is the weakness of labour administrations, and particularly labour inspection. Despite the increasing complexity of enterprises, production systems and employment relationships, the resources allocated for labour inspection are often insufficient even for the adequate and regular inspection of medium-sized and large enterprises. Countries are responding to these challenges in many ways. Some countries, such as Chile, have introduced variable penalties, with fines increasing the higher the number of workers affected. Others have increased the number of labour inspectors, with their numbers being doubled in Guatemala and El Salvador, and tripled in the Dominican Republic and Honduras. To reach the informal economy, some countries have developed partnerships, for example, with ministries of health and agriculture, as well as mobilizing communities as monitoring partners, developing voluntary codes of conduct and establishing tripartite partnerships.

125. Rather than relying solely on sanctions, approaches that are educational, persuasive, transparent and participatory are particularly successful in reaching the informal economy. In Finland, France and the Netherlands, for example, labour inspection campaigns include education and awareness-raising activities for farmers, their employees and families, focusing on serious occupational hazards.⁹ In Chile, fines can be replaced by training for enterprises with fewer than nine workers. In China, under the grid-based management system, labour inspectors and assistants follow clear, traceable steps to promote awareness of laws, monitor compliance and carry out enforcement in specific areas.

3.2.2. Promoting an enabling environment for sustainable enterprises

126. Although most employment is provided by enterprises in the private sector, in developing countries many of these enterprises are in the informal economy, where the lack of compliance with legal and regulatory frameworks often means they are unable to access the support and services that they require. This affects their profitability, sustainability and the quality of the employment provided. Moreover, informality is generally associated with lower productivity. Policies aimed at providing an enabling environment for sustainable enterprises therefore need to include, as a priority, some measures to improve productivity through access to finance, skills, infrastructure, markets and technology transfers.

⁹ For further information, see ILO: *The informal economy and decent work: A policy resource guide: Supporting transitions to formality* (Geneva, 2013), Brief 4C2.

127. Many people working in the informal economy have real business acumen, creativity, dynamism and innovation, and their potential could flourish if certain obstacles were removed. There are many successful experiences of upgrading MSEs in the informal economy through the provision of training, business services and information, and the extension of hard and soft infrastructure, including shelters and drainage, as well as insurance, affordable credit and other financial services.¹⁰

128. Building on the 2007 ILC discussion on sustainable enterprises, the ILO has developed the Enabling Environment for Sustainable Enterprises (EESE) as a tool to provide guidance on the improvement of the business environment, which has been applied in most regions. The ILO has also developed a number of tools designed to build the capacity of smaller enterprises, including Start and Improve Your Business (SIYB), Work Improvements in Small Enterprises (WISE), Improve Your Work Environment and Business (I-WEB) and Work Improvement for Safe Home (WISH) for homeworkers and MSEs. In Cambodia these tools, which involve practical low cost and participatory measures, have helped MSEs to increase productivity through healthier and safer workplaces.¹¹

129. A conducive policy and legal environment supports entrepreneurship by lowering the costs of establishing and operating businesses, including simplified registration and licensing procedures, appropriate rules and regulations, and reasonable and fair taxation. It also increases the benefits of legal registration, which facilitates access to commercial buyers and ensures more favourable credit terms, legal protection, contract enforcement and access to technology, subsidies, foreign exchange and local and international markets. Such policies also discourage formal businesses from moving into the informal economy.

3.2.3. Access to finance

130. The limited access to finance of operators in the informal economy means that they have fewer opportunities for business expansion and productivity improvement. A lack of collateral often has the result that they are frozen out of formal credit institutions and have to resort to moneylenders or tontines for emergency loans. The reasons for this are numerous. Formal providers of finance cannot deal directly with home-based producers and micro-enterprises because of the very small scale of their operations, their absence of legal status, the high transaction costs, weak information on clients, the lack of a formal credit history and the small scale of the financial services required. In response, policy-makers in some countries have adopted financial inclusion regulations encouraging or requiring banks and insurers to serve the informal economy. For example, financial institutions in India are required to have a portion of their portfolios in the rural and social sectors. The voluntary approach adopted in South Africa, through which financial institutions were involved in setting targets under the Financial Sector Charter, has had quite an impressive effect.

131. One of the ILO's main messages in this regard is to promote a balanced approach that considers both the productive and the protective needs of operators in the informal economy. Their productive needs consist primarily of micro-enterprise loans to boost incomes and create jobs, while their protective needs include savings, emergency loans and insurance so that informal workers can cope with shocks and risks. In this respect,

¹⁰ UNCTAD: *Addressing key economic issues to advance sustainable development: Ideas for actions*, Second Report of the Panel of Eminent Persons, 2013, p. 17.

¹¹ ILO (2013), op. cit., Brief 7.1.

the ILO's Microinsurance Innovation Facility encourages the provision of better insurance products to low-income households.¹²

132. An innovative means of promoting formalization is through microfinance institutions. Microfinance loans, deposits and other service contracts contain elements of the formal economy, without being as sophisticated as mainstream banking services. Moreover, microfinance institutions which wish to grow encourage their clients to expand from livelihood activities to genuine micro-enterprises, and then to SMEs. Together with microfinance institutions (MFIs) in Burkina Faso and India, the ILO has piloted initiatives to test the impact of formalization on the well-being of clients, and the role that MFIs can play in this regard.¹³

3.2.4. Skills development

133. Skills gaps are the greatest in the informal economy. Informality decreases moving up the education pyramid, reaching its lowest levels for highly skilled workers, who enjoy greater job security and benefits in the formal economy. In many developing countries, the low level of education and vocational skills of informal economy workers results in a vicious circle of low productivity, low income and low investment in skills. Improving the skills of informal economy workers is therefore key to their ability to access gainful and productive jobs.¹⁴

134. Upgrading skills offers immediate benefits to informal economy entrepreneurs and workers by improving their productivity, earnings and product quality, reducing wastage, encouraging innovation, improving working conditions, enhancing literacy, numeracy, negotiation and communication abilities, and strengthening bargaining power. In addition, at the national level, higher skills levels can reduce labour shortages in high growth or priority sectors, encourage foreign direct investment, improve global competitiveness, stimulate innovation and economic growth, and facilitate productive transformation.¹⁵

135. Skills development programmes need to be accessible, flexible, practical and adapted to the diverse characteristics and educational levels of trainees, who are usually a heterogeneous group with accumulated layers of disadvantage. Training also needs to be demand-led to help poor workers, who are often at subsistence level, to gain access to more productive self-employment or job opportunities. The ILO's integrated methodology, Training for Rural Economic Empowerment (TREE), has demonstrated how limited opportunities for skills development in poor rural areas can be expanded and linked to employment by identifying potential economic opportunities and skills constraints, designing and delivering (or extending access to existing) community-based training and providing post-training services.

136. Another driver of informality is the mismatch between the output of educational and training institutions and the types of skills required on the labour market, which can lead to high levels of youth unemployment, informal employment and emigration, prompted by the failure to find decent work in the formal economy. In many cases formal training systems lack the necessary flexibility and accessibility to cater for the

¹² The Microinsurance Innovation Facility covers around 30 countries through innovation, research grants and capacity-building projects. See <http://www.microinsurancefacility.org/>.

¹³ See: www.ilo.org/socialfinance.

¹⁴ ILO: *Skills for improved productivity, employment growth and development*, Report V, International Labour Conference, 97th Session (Geneva, 2008).

¹⁵ ILO (2013), op. cit., Brief 7.2.

diverse needs of informal economy workers. In India, with a view to meeting the demand for technical skills, certification measures are being developed and linkages established between training systems and industry, services and agriculture. In many developing countries, and particularly in Africa, informal apprenticeship schemes have shown considerable potential to provide skills in the informal economy. Countries such as Benin, Cameroon, Ghana, Kenya and Zimbabwe are taking measures to upgrade the skills of both trainers and apprentices, and to standardize and recognize skills at the national level.¹⁶

137. The issue of the portability of skills is also important in transitions to formality, with a view to enhancing the employability of workers and facilitating their access to more productive jobs in the formal economy. The skills gained through experience, on-the-job training and apprenticeship in the informal economy are not usually recognized in formal labour markets or by training institutions. It is therefore necessary to develop institutions and mechanisms that assess the skills and competencies acquired by workers so that they can be validated and recognized through certification. Benin, Ghana, South Africa and the United Republic of Tanzania offer interesting examples of the recognition of prior learning. In Bangladesh, the recognition of skills attained in a variety of ways, including work in the informal economy, is being promoted through the establishment of the National Technical and Vocational Qualifications Framework, which provides benchmarks for skills attainment, alignment and recognition.

3.3. Organization, representation and social dialogue

138. Organizing workers and entrepreneurs in the informal economy is the first step towards social dialogue and the development of tripartite solutions that take into account the contextual factors and diversity within the informal economy. However, democratic and independent organizations of wage workers, own-account workers, the self-employed and employers in the informal economy are sometimes not allowed under local or national legislation, and are often excluded from or under-represented in social dialogue institutions and policy-making processes. Without organization and representation, those in the informal economy are not able to pursue their employment interests through collective bargaining, or to lobby policy-makers on issues such as access to infrastructure, property rights, taxation and social security.

139. The social partners can play a key role, among other areas, in finding ways to extend the coverage of the law to workers and economic units in the informal economy. In recent years, employers' and workers' organizations have been taking initiatives to engage informal economy workers and operators, either through existing organizational structures, or through the formation of informal economy associations. Both employers' and workers' organizations can play an important role in drawing attention to the underlying causes of informality, galvanizing action by all the tripartite partners to address them and removing barriers to entry into mainstream economic and social activities. The innovative and effective practices used by employers' organizations and trade unions in various countries to reach out to, organize and assist workers and enterprises in the informal economy should be more widely publicized and shared to facilitate transitions to formality.

¹⁶ ILO (2013), op. cit.

140. Employers' organizations, in collaboration with other relevant organizations or institutions, assist informal economy operators in several important ways, including through access to information, for example, on regulations or market opportunities, and access to finance, insurance, technology and other resources. They can extend business support services, for example, for productivity improvement, entrepreneurship development, personnel management, safety and health and accounting, and act as a conduit for the establishment of links between informal and formal enterprises.

141. Trade unions sensitize workers in the informal economy to the importance of collective representation and are making greater efforts to include them in collective agreements. They also focus on promoting the participation and representation of women, who are particularly numerous in the informal economy, and on accommodating their specific needs. In many countries, the special services provided by trade unions for informal economy workers include information on their legal rights, educational and advocacy projects, legal aid, medical insurance, credit and loan schemes and the establishment of cooperatives. There is also a need to develop positive strategies to combat all forms of discrimination, to which informal economy workers are particularly vulnerable.

142. In Peru, joint technical committees consisting of Worker and Government representatives discuss issues of importance for informal economy workers and are currently elaborating a legislative initiative to guarantee the rights of informal and self-employed workers and to promote capacity development and formalization. The SYNDICOOP programme, a joint International Co-operative Alliance (ICA), International Trade Union Confederation (ITUC) and ILO initiative in Africa (and particularly in Kenya, Rwanda, South Africa, United Republic of Tanzania and Uganda), has shown the positive impact that trade unions and cooperatives can have in the informal economy when they join forces. It has demonstrated that trade unions and cooperatives are natural partners in providing the services and support needed by workers in informal and unprotected situations.¹⁷

143. The Self Employed Women's Association (SEWA) in India is one of the best known examples of a successful initiative to organize and empower poor women in the informal economy. Adopting a multifaceted approach, as a union, cooperative and women's movement, SEWA provides a wide range of services, including training, assistance in establishing cooperatives, and financial, insurance and social security services. The SEWA model has inspired other initiatives, not only in Asia, but also in South Africa and Turkey.¹⁸ Several international networks have also played an important role in improving the lives and promoting the rights of informal economy workers. The most notable are Women in Informal Employment: Globalizing and Organizing (WIEGO), Homenet, Streetnet, the Global Alliance of Waste Pickers and the International Domestic Workers' Network (IDWN).

3.4. Local development strategies, cooperatives and the social economy

144. Although the local level is clearly crucial from a policy perspective, the question is how local development capacities can be strengthened, and how lessons can be scaled up and transferred. The valorization of local or informal economy actors in development

¹⁷ S. Smith: *Let's organize!* (Geneva, ILO, ICA and ICFTU, 2006).

¹⁸ *ibid.*

dynamics requires a redefinition of the role of the State, rather than its withdrawal. The action taken may need to go beyond the local level, but also to provide local actors with the means and skills to respond to the challenges that they are facing, which may include major global threats.

145. At the local level, the ability to adapt can be influenced by a whole series of factors, including infrastructure, the institutional environment within which adaptations occur (especially the extent of decentralization), political influence, kinship networks and skills. The measures that local authorities can take to support transitions include: supporting community-based management initiatives, strengthening social dialogue mechanisms, facilitating market access, increasing inward investment and local procurement, upgrading value chains, promoting employment-intensive methodologies for infrastructure development, streamlining business registration and regulation, providing business support services and strengthening public-private partnerships.¹⁹

146. A local development approach was crucial in mitigating some of the impacts of the 2001 economic crisis in Argentina. With ILO support, local actors designed local economic development strategies which strengthened public employment services, set up a labour market observatory, identified growth sectors and enhanced access to training and capacity building for ministries and local authorities. In Uganda, the management of public markets has been transferred from municipalities to a joint management coalition consisting of several stakeholders. A number of Asian cities, such as Bangkok, Chiang Mai and Singapore, have tapped into the productive potential of infrastructural support, space allocation and services for local entrepreneurs, resulting in thriving local markets and less informal operations.²⁰

147. The development of the social and solidarity economy is a promising path to facilitate transitions to formality at the local level. Cooperatives of various types and organizations from the social and solidarity economy play an important role in local development, especially in rural areas. In this respect, the Office has observed that, “[w]here there are major constraints to informal operators or workers joining existing employers’ organizations or trade unions or establishing their own organizations, the most effective membership-based organizational structure may be that of a cooperative. ... Organizing in cooperatives could also be seen as one step on the path towards formalization.”²¹

148. The cooperative approach to development offers a useful mechanism for linking local and national development needs and trajectories. Ranging from micro-scale organizations to multi-million dollar global enterprises, cooperatives represent a considerable asset for a Local Economic Development (LED) approach. They can fill the civil society vacuum that tends to exist at the local level by offering concrete solutions to challenges that arise during the LED process. For example, financial cooperatives are strategically placed to facilitate access to finance and to value the potential of local enterprises.²² Cooperatives have proved to constitute an important step in the path towards formality. Their members may start as informal units, which can grow to become business entities. As a result of their registration, cooperatives offer an

¹⁹ ILO (2013), op. cit., Brief 9.1.

²⁰ ibid.

²¹ ILO: *Decent work and the informal economy*, Report VI, International Labour Conference, 90th Session (Geneva, 2002), p. 92.

²² ILO: *Enhancing the role of business membership organizations in local economic development* (Geneva, 2008).

accessible means of gaining legal recognition, particularly since their capital requirements for registration are minimal. Moreover, by enhancing economic efficiency and security, they offer a basis for risk taking and gaining access to credit and other services.

149. In Peru, in the Ayacucho region, the ILO's creative, inclusive industries programme promotes formalized cooperatives through, in particular, the provision of training and assistance for the creation and administration of cooperatives, awareness-raising and the development of a single formalization process.

150. In the long term, the social and solidarity economy can provide complementary paths to development through the adoption of a coherent approach to the diverse concerns of economic sustainability, social justice, ecological balance, political stability, conflict resolution and gender equality.

3.5. Promoting equality and addressing discrimination

151. The same discrimination issues that plague the formal economy are mirrored and often intensified in the informal economy. Women tend to have lower incomes, less capital and skills and are less likely to be employers than men in the informal economy. They also tend to be clustered in certain vulnerable activities, including home work, street vending and domestic work.²³

152. Part of the explanation for the preponderance of women in the informal economy lies in their unequal burden of unpaid family responsibilities. In every society, the fact that women tend to spend far more hours in unpaid work than men constrains their choices concerning labour market participation, working hours and the location of their work. In view of the lack of public and private support for family responsibilities, the informal economy may offer the only paid work with sufficient flexibility, autonomy and geographical proximity to allow women to combine paid work with family responsibilities. Moreover, the scale of the informal economy in developing countries means that increasing the availability, affordability and quality of care services is likely to offer important returns in terms of opportunities for better paid and formal work. For example, in Chile, based on partnerships between local government and public and private actors, child-care centres have been set up for seasonal agricultural workers. In India, mobile pre-school services and cooperatives for social and child care, including family cooperatives, have been developed to respond to the needs of working parents in the informal economy.²⁴

153. Many countries have also established programmes to help women entrepreneurs move from marginal income generation to profitable businesses. At the micro level, this requires training in basic business development and other soft skills, often including literacy, in addition to support services such as legal awareness raising, support for unpaid family responsibilities and access to information, for example, on markets and microfinance opportunities. At the meso level, it is necessary to ensure that business development services and financial providers do not exclude women and, where necessary, develop targeted approaches for them. Another essential aspect is market access, which encompasses a series of strategies ranging from encouraging women's participation in trade fairs to e-commerce programmes, fair trade initiatives and the provision of support for women producers in the fields of design, quality control and

²³ UNIFEM: *Progress of the world's women* (New York, 2005).

²⁴ ILO (2013), op. cit., Brief 8.4.

marketing. In this context, the ILO's Women's Entrepreneurship Development (WED) and Women's Entrepreneurship Development and Gender Equality (WEDGE) projects, which adopt a tripartite approach to supporting the establishment and growth of enterprises by women, have been implemented in South-East Asia, including in the Lao People's Democratic Republic, where over 10,000 women entrepreneurs have benefited from the gender-sensitive basic business training package.

154. At the macro level, laws and policies to enhance women's access to productive resources, including land, property, inheritance, technology, skills development and credit, are a vital component of pro-poor growth strategies. It is also important for fiscal and trade policies to be designed so as to avoid distortions in favour of male producers and large-scale and foreign-owned businesses. Investments in infrastructure, roads, utilities, sanitation, health facilities, child care and labour-saving technologies in the home can significantly increase the amount of time that women are able to devote to income-generating activities.

155. Another group that is vulnerable to discrimination consists of both internal and international migrant workers, who account for an important segment of the informal economy in all regions. Although precise data are difficult to obtain, it is clear that migrant workers are disproportionately concentrated in low-skilled jobs in the informal economy, particularly in agriculture, construction, small manufacturing, domestic work and other services. These activities are often characterized by temporary, seasonal and casual work and subcontracting, and are often inadequately covered by labour regulation and labour inspection. Migrants in an irregular situation are often subject to abusive hiring and firing practices, poor working conditions and wages, the withholding of identity documents, employment below their qualifications or competencies, a lack of collective agreements and underemployment.²⁵ Regular migrant workers may be issued with contracts for fewer hours than they actually perform, or they may receive lower salaries than initially agreed.

156. Certain countries are endeavouring to improve the regulation of migration, and therefore to reduce the risk of informality through bilateral and multilateral agreements. For example, New Zealand has developed a seasonal worker scheme with the neighbouring Pacific Island States to address the demand for low-skilled workers in horticulture and to protect their rights. The scheme is monitored by an advisory group composed of representatives of the governments concerned, the social partners and migrant organizations. Several EU Member States have recently introduced measures to simplify registration procedures for migrant workers, for example, through the use of service vouchers for domestic service providers. These schemes simplify the procedures for calculating mandatory contributions and declaring workers who offer their services occasionally and regularly for several different employers in such areas as cleaning, gardening or child care.²⁶

²⁵ ILO (2013), *op. cit.*, Brief 6.2.

²⁶ *ibid.*

3.6. Extending social protection: The role of social security in the transition to formality and the importance of integrated strategies

157. Lack of access to social security is often a direct consequence of informality, and strategies to extend social security can play an important role in transitions to formality, particularly for women.²⁷ In the long term, by improving the living conditions of the most vulnerable, and of the population as a whole, the extension of social security coverage not only helps to achieve transitions to formality, but also to generate income and increase productivity and prosperity.

158. A growing body of evidence shows that the extension of social security coverage, by promoting access to health care and education, contributes to enhancing nutrition and health status and plays an important role in promoting productive employment, as well as economic and social development.²⁸ At the same time, the formalities required for social security coverage, such as the registration of households or individuals with the public authorities, can constitute a first step towards their formalization and the realization of their civil, economic and social rights (including the right to vote, to property and to education).

159. Informality is an obstacle to sustainable and equitable economic growth, and an important source of social security deficits. In this regard, the ILC observed in 2011 that “[t]he formalization of the economy is one of the crucial prerequisites for long-term growth and will increase the public revenue base necessary to finance higher levels of social security for contributors and taxpayers and non-contributory benefits to cover those without capacity to contribute”.²⁹ The ILC added that the strategies adopted in this respect should promote both the horizontal and vertical extension of social security, that is, building social protection floors as a fundamental element of comprehensive and adequate social security systems.

160. Extension strategies serve to include broader groups of workers in contributory social security schemes, such as the self-employed, domestic workers, workers in agriculture and workers in small and micro-enterprises. However, the heterogeneous nature of the circumstances of these groups needs to be taken into account to ensure that the means adopted are suited to their context, for example, in terms of the scope of benefits, financing mechanisms and administrative procedures. It is also essential to create incentives for the workers concerned to join formal schemes through flexible rules and procedures, and appropriate financing mechanisms. In addition, undeclared work and evasion has to be addressed to ensure that all the workers concerned contribute and receive the appropriate benefits.

161. In the case of unemployment, workers and their families can be protected from slipping into the informal economy through the provision of a wide range of benefits,

²⁷ The notion of social security referred to in the present report covers all measures to provide benefits, in cash or in kind, of a contributory or non-contributory nature, to secure protection, *inter alia*, from: lack of work-related income (or insufficient income) caused by sickness, disability, maternity, employment injury, unemployment, old age or death of a family member; lack of access or unaffordable access to health care; insufficient family support (for example, for children and adult dependants); and general poverty and social exclusion.

²⁸ See also ILO: *Extending social security to all: A guide through challenges and options* (Geneva, 2010); ILO: *Social security for social justice and a fair globalization*, Report VI, International Labour Conference, 100th Session (Geneva, 2011).

²⁹ ILO: *Conclusions concerning the recurrent discussion on social protection (social security)*, International Labour Conference, 100th Session (Geneva, 2011), para. 14.

including unemployment benefit, disability benefit, child benefit, income support and other cash transfers, as well as health care. Guaranteed access to social health protection ensures that loss of earned income is not associated with a loss of access to health care.

162. Extension of the coverage of contributory schemes needs to be accompanied by the establishment of non-contributory schemes, which play a key role in providing the basic guarantees of national social protection floors, in line with the Social Protection Floors Recommendation, 2012 (No. 202). These guarantees should include, at least, access to essential health care and basic income security, and access should be facilitated to nutrition, education and sanitation. National social protection floors are essential in contributing to a well-educated, healthy and therefore productive workforce, which is more likely to enter formal employment. Moreover, evidence from various countries has shown that cash transfers for the poorest households can facilitate job search and result in higher labour force participation.

163. Non-contributory, mostly tax-financed, cash transfer schemes and programmes include: universal or means-tested social pensions for the elderly; cash transfers to families with children, accompanied by education or health conditionalities; benefits for specific groups, such as persons with disabilities and orphans; and targeted social assistance programmes. Over 30 low- and middle-income countries have introduced or extended such schemes in recent years. Conditional or unconditional cash transfer programmes for poor families with children, for example, in Argentina, Brazil, Mexico and South Africa, play a key role in enhancing income security for vulnerable families and facilitating access to health care and education. They therefore make a key contribution to promoting formalization in both the short and the longer term.

164. Social pension schemes are essential in providing at least a minimum level of income security for older people and their families in a growing number of developing countries, including the Plurinational State of Bolivia, Cape Verde, Lesotho, Namibia, Nepal and South Africa. Employment guarantee schemes and other public employment programmes, for example, in Ethiopia, India and South Africa, can also play a key role in providing poor households in rural areas with a certain number of guaranteed days of employment.

165. The extension of social health protection to informal economy workers enhances the health status of the population and its ability to generate income. By providing financial protection against health-related impoverishment, it promotes the transition to formality and prevents people from being pushed into poverty in the event of ill health. A combination of different financing mechanisms is often found, including tax-based national health systems, social and national health insurance financed through contributions and/or premiums, community-based health insurance and private health insurance. Social health protection can be extended to informal sector workers through various financing mechanisms, including tax-funded health care (as in Thailand) or subsidized contributions to national health insurance schemes for the poor (for example, in Colombia, Ghana, Philippines and Rwanda).³⁰

166. Although a variety of different schemes and financing mechanisms coexist for social health protection, the main challenges are to increase coverage and improve

³⁰ See UNDP, Special Unit for South–South Cooperation, and ILO, 2011: *Sharing Innovative Experiences: Successful Social Protection Floor Experiences* (New York and Geneva: UNDP, Special Unit for South–South Cooperation and ILO), <http://www.socialsecurityextension.org/gimi/gess/RessFileDownload.do?ressourceId=20840>; Brief 8.1 “Extending social security coverage to the informal economy”, in ILO: *The Informal Economy and Decent Work: A Policy Resource Guide supporting transitions to formality* (Geneva, 2013).

equitable access to health care in well-regulated pluralistic health systems. In Rwanda, for example, where a policy has been adopted of compulsory health insurance for the entire population, the membership rate of mutual health organizations has risen sharply, from 7 per cent in 2003 to 85 per cent of the population in 2008.³¹ In particular, the expansion of women's access to health care before, during and after pregnancy, and the reduction of the economic risks associated with maternity, is in the interests not only of the women concerned and their families, but also of society as a whole and the national economy. In addition to medical care, including maternity care, maternity cash benefits play an important role in guaranteeing income security during their maternity leave and in shifting the cost of maternity from individual employers, thereby removing disincentives for the employment of young women.³²

167. Much evidence shows that the extension of social security into the informal economy is within the reach of countries at all levels of development, including low-income countries. Even where it is not feasible to implement all the components of a national social protection floor at once, a sequential approach can generate immediate benefits in terms of poverty reduction and transitions to formality. In this regard, the ILC has emphasized that social security extension strategies should be coordinated with fiscal, economic and employment policies in order to foster transitions to formality. Particular attention should be paid in this context "to building an economic and social framework that is conducive to sustainable enterprise creation and growth of decent and productive employment".³³ It is also essential to integrate the two dimensions of prevention and protection, including the prevention of occupational risks, the improvement of working conditions, income security and access to health care. The approaches adopted should be designed to link and combine social security measures with employment creation, the organization of workers and employers and the promotion of rights at work.

³¹ ILO (2009), op. cit.

³² ILO (2013), op. cit., Brief 8.3.

³³ ILO: *Conclusions concerning the recurrent discussion on social protection (social security)*, op. cit., para. 13.

Conclusion

Towards an integrated approach

168. This review has shown that, since the 2002 Conclusions and the 2007 Tripartite Symposium, innovative schemes have been introduced in a range of countries in all regions to gradually formalize the situation of “the multitude of workers and enterprises who are often not recognized and protected under the legal and regulatory frameworks and who are characterized by a high degree of vulnerability and poverty, and to redress these decent work deficits.”¹ The available evidence suggests that well-designed policies can facilitate transitions to formality and promote productive employment effectively in the formal economy in a manner that provides new opportunities for all workers and economic units, including opportunities to move to the formal economy.

169. However, few of these schemes have been formulated as part of a coherent, broad and integrated policy framework. As recalled in the 2002 Conclusions “[t]he promotion of decent work for all workers, women and men, irrespective of where they work, requires a broad strategy: realizing fundamental principles and rights at work; creating greater and better employment and income opportunities; extending social protection; and promoting social dialogue. These dimensions of decent work reinforce each other and comprise an integrated poverty reduction strategy.”²

170. By putting together the main lessons from the experience that has been acquired, important guidance can be provided on the wide range of policies that can be effective in facilitating transitions to formality in such areas as job-rich and inclusive growth strategies creating productive employment opportunities in the formal economy, fundamental principles and rights at work, social security, working conditions, OSH, income opportunities, education and skills development, access to finance and markets, law enforcement, industrial policy, infrastructure, enterprise registration, the promotion of cooperatives and other social economy enterprises, labour administration and labour inspection, transparent and democratic governance and social dialogue.

171. The added value of the proposed Recommendation would be to provide guidance to the ILO’s tripartite constituents on the formulation of comprehensive national policies that are simple, supportive and smart, aimed at facilitating the transition of economic units and workers into the formal economy. Such policies need to take into account the diversity of each national context and of the categories of workers and enterprises generally found in the informal economy, while ensuring that opportunities for livelihood and entrepreneurship are not ruined, as the informal economy absorbs workers and economic units which would otherwise be without work or income, particularly in developing countries. A new instrument would help to improve policy coherence at the national level between the four strategic objectives of employment, social protection,

¹ 2002 Conclusions, para. 1.

² *ibid.*, para. 2.

social dialogue and fundamental principles and rights at work, with gender as a cross-cutting issue. It would also contribute to ensuring that account is taken of the broad range of informal working arrangements and their gender and sectoral dimensions, and would help to shift global policy attention towards job quality as a driver of economic development. Transitions to formality enhance economic efficiency and welfare, thereby contributing to productivity, sustainable growth and development.

172. Through their responses to the attached questionnaire, it is hoped that ILO constituents, in accordance with article 39 of the Standing Orders of the Conference, will provide guidance to the Office for the preparation of a further report on the basis of the replies received, as well as draft conclusions for the discussion to be held at the 103rd Session of the Conference in June 2014.

173. Finally, it should be recalled that the Governing Body, at its 317th Session (March 2013), decided on a programme of reduced intervals for the preparation by the Office of the present law and practice report, as well as the responses from constituents to the attached questionnaire. The Governing Body also decided to convene a Tripartite Meeting of Experts on Facilitating Transitions from the Informal Economy to the Formal Economy, to be held in Geneva from 16 to 20 September 2013. The Meeting of Experts will contribute to the preparatory work for the discussion of this standard-setting item and assist in clarifying the issues to be addressed by and the focus of the proposed instrument. Building on the outcome of the Meeting of Experts, knowledge will be gathered on innovative solutions and up-to-date experience (legal, policy, institutional, governance and other interventions) which have proved successful in supporting the transition of informal workers and enterprises to formality, preventing others from entering the informal economy and enhancing rights and opportunities. There will also be a broad process of consultation with constituents, including with organizations representing people in the informal economy.

Questionnaire

Questionnaire concerning gradual transitions from the informal to the formal economy

The Governing Body at its 317th Session (March 2013) decided to include an item on facilitating transitions from the informal to the formal economy on the agenda of the 103rd Session of the International Labour Conference as a standard-setting item (double discussion) with a view to the adoption of a Recommendation. The questions included below are therefore framed taking this decision into account.

The purpose of the questionnaire is to request the views of member States on the scope and content of the proposed instrument, after consultation with the most representative organizations of employers and workers.

I. Preliminary questions

1. *Please indicate any legislation, measures or practice, including case law, of your country that are relevant to facilitate transitions from the informal to the formal economy.*

Comments:

2. *Please indicate programmes and policies of your country that are relevant to the subject of facilitating transitions from the informal to the formal economy.*

Comments:

II. Preamble

3. *Should the Preamble of the proposed instrument recall international labour standards and the United Nations instruments that are pertinent to the informal economy?*

Yes No

Comments:

4. *Should the Preamble of the proposed instrument recall that:*

- (a) *most people enter the informal economy not by choice but as a consequence of a lack of opportunities in the formal economy and have no other means of livelihood?*

Yes No

Comments:

(b) *workers and economic units in the informal economy can have a large entrepreneurial potential and their creativity, dynamism, skills and innovation could flourish if obstacles to transition to the formal economy could be removed?*

Yes No

Comments:

(c) *decent work deficits are most pronounced in the informal economy?*

Yes No

Comments:

(d) *informality is principally a governance issue?*

Yes No

Comments:

5. *Should the Preamble of the proposed instrument recognize the high incidence of informality and the urgency of measures to enable gradual transitions of workers and economic units from the informal economy to the formal economy?*

Yes No

Comments:

6. *Should the Preamble of the proposed instrument recognize the incidence of informal employment in formal establishments and the need to address it?*

Yes No

Comments:

III. Scope

7. *Should the proposed instrument describe the informal economy according to the resolution concerning decent work and the informal economy adopted by the International Labour Conference at its 90th Session in 2002 which states that:*

*The term “informal economy” refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that – although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs?*¹

Yes No

Comments:

IV. Objectives and principles

8. *Should the proposed instrument provide that Members should promote the creation of decent jobs in the formal economy and strengthen coherence of macroeconomic, employment, social protection and other social policies?*

Yes No

Comments:

¹ ILO: *Resolution concerning decent work and the informal economy*, International Labour Conference, 90th Session (Geneva, 2002), para. 3.

9. *Should the proposed instrument provide that it is necessary to promote transitions of workers and economic units from the informal economy to the formal economy while ensuring that opportunities for livelihood and entrepreneurship are not destroyed?*

Yes No

Comments:

10. *Should the proposed instrument provide that interventions to facilitate transitions from the informal to the formal economy should recognize the diversity of circumstances of workers and economic units in the informal economy and the need to address such diversity by tailored approaches?*

Yes No

Comments:

11. *Should the proposed instrument provide that there are multiple paths to transition from the informal to the formal economy according to specific country context and preference?*

Yes No

Comments:

V. Legal and policy frameworks

Legislative framework

12. *Should the proposed instrument provide that national laws and regulations or other measures ensure appropriate coverage of all categories of workers and economic units?*

Yes No

Comments:

If the answer is positive, please indicate what form these legislative provisions or other measures should take.

Comments:

If the answer is negative, how are these workers and economic units covered?

Comments:

Policy framework

13. *Should the proposed instrument provide that national development strategies include, where applicable, an integrated policy framework for the formalization of the informal economy?*

Yes No

Comments:

14. *Should the proposed instrument provide guidance to formulate and implement integrated policy frameworks through national tripartite action to:*

(a) reduce the cost of transition to formality, including those relating to registration, taxation, compliance with laws and regulations?

Yes No

Comments:

(b) increase the benefits of transition to formality, including with regard to access to business services, finance, infrastructure, markets, technology, skills programmes and property rights?

Yes No

Comments:

(c) address informal employment in formal establishments?

Yes No

Comments:

VI. Rights at work

15. *Should the proposed instrument provide that Members should:*

(a) *extend to all workers in the informal economy the benefit of fundamental principles and rights at work, namely freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect to employment and occupation?*

Yes No

Comments:

(b) *progressively extend to all workers in the informal economy, social security, safety and health, decent working hours and minimum wage, where such a protection exists?*

Yes No

Comments:

(c) *give special attention to women and vulnerable categories of workers, including children, young people, migrant workers and older workers?*

Yes No

Comments:

VII. Employment

16. *Should the proposed instrument recall that the Employment Policy Convention, 1964 (No. 122), and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), contain provisions relating to the formulation and implementation of a national employment policy in order to increase productive employment creation in the formal economy through pro-employment macroeconomic and sectoral policies, sustainable enterprises, development of cooperatives, employability and skills development in both rural and urban areas?*

Yes No

Comments:

VIII. Working conditions and social protection

17. *Should the proposed instrument recognize the necessity of progressively adopting preventive measures to address the unsafe and unhealthy working conditions that often characterize work in the informal economy?*

Yes No

Comments:

18. *Should the proposed instrument recognize that providing childcare and other affordable quality care services is a necessity for expanding women's employment opportunities and enabling them to transition from informal to formal work?*

Yes No

Comments:

19. *Should the proposed instrument provide that, in building and maintaining their national social protection floors within the social security system, Members should pay particular attention to the needs and circumstances of workers in the informal economy and their families with a view to ensuring adequate social security coverage and fostering transitions to formality?*

Yes No

Comments:

20. *Should the proposed instrument provides that Members should progressively extend the coverage of social insurance to additional categories of workers (such as own-account workers, domestic workers, workers in rural areas and workers in small and micro-enterprises) and, if necessary, adapt administrative procedures, the scope of benefits and contributions taking into account their contributory capacity?*

Yes No

Comments:

21. *Should the proposed instrument encourage Members to regularly review their social security systems with a view to ensuring that they operate in an effective and efficient manner, taking into account the importance of promoting the formalization of the informal economy?*

Yes No

Comments:

IX. Compliance and enforcement

22. *Should the proposed instrument provide that:*

(a) *each Member should establish and develop appropriate mechanisms for compliance with laws and regulations covering workers and economic units in the informal economy with a view to ensuring transition to formality?*

Yes No

Comments:

(b) *the mechanisms should include an adequate and appropriate system of inspection?*

Yes No

Comments:

(c) *the mechanisms should include information, guidance and capacity building for relevant actors and compliance assistance?*

Yes No

Comments:

23. *Should the proposed instrument provide that each Member should ensure that penalties (administrative, civil or penal) imposed by law are adequate and strictly enforced?*

Yes No

Comments:

X. Role of employers' and workers' organizations

24. *Should the proposed instrument provide that workers and entrepreneurs in the informal economy should be able to join existing workers' and employers' organizations or to create their own?*

Yes No

Comments:

25. *Should the proposed instrument provide that the employers' and workers' organizations, including organizations of workers and entrepreneurs in the informal economy, should be consulted while developing, implementing and evaluating policies and programmes of relevance to the informal economy, including its formalization?*

Yes No

Comments:

26. *Should the proposed instrument provide that employers' and workers' organizations should play a key role in facilitating transitions from the informal to the formal economy by extending membership and services to economic units and workers in the informal economy, and encouraging and supporting the creation and development of representative organizations?*

Yes No

Comments:

27. *Should the proposed instrument provide for the need to strengthen the capacity of employers' and workers' organizations and representative organizations of the informal economy to organize and assist workers and economic units in the informal economy with a view to facilitating transition to formality?*

Yes No

Comments:

XI. Data collection and monitoring

28. *Should the proposed instrument provide that Members should:*

(a) *collect, analyse and disseminate consistent, sex-disaggregated statistics on the size and composition of the informal economy and measure its contribution to the national economy?*

Yes No

Comments:

(b) *regularly monitor progress towards formalization?*

Yes No

Comments:

XII. Implementation and follow-up

29. *Should the proposed instrument provide that each Member should implement the provisions of this instrument, in consultation with the most representative employers' and workers' organizations, through laws and regulations, collective agreements or other measures consistent with national practice?*

Yes No

Comments:

30. *Should the proposed instrument provide for regular follow-up and review, at the national level, of policies for gradual transitions to formality?*

Yes No

Comments:

XIII. Other questions

31. *Should the proposed instrument contain a list of relevant international labour standards to the informal economy as an annex?*

Yes No

Comments:

Appendix I

Resolution concerning decent work and the informal economy

The General Conference of the International Labour Organization, meeting in its 90th Session, 2002,

Having undertaken a general discussion on the basis of Report VI, *Decent work and the informal economy*,

1. Adopts the following conclusions;

2. Invites the Governing Body to give due consideration to them in planning future action on reducing decent work deficits in the informal economy and to request the Director-General to take them into account both when preparing the Programme and Budget for the 2004–05 biennium and in allocating such resources as may be available during the 2002–03 biennium.

Conclusions concerning decent work and the informal economy

1. Recognizing the commitment of the ILO and its constituents to making decent work a reality for all workers and employers, the Governing Body of the International Labour Office invited the International Labour Conference to address the issue of the informal economy. The commitment to decent work is anchored in the Declaration of Philadelphia's affirmation of the right of everyone to "conditions of freedom and dignity, of economic security and equal opportunity". We now seek to address the multitude of workers and enterprises who are often not recognized and protected under legal and regulatory frameworks and who are characterized by a high degree of vulnerability and poverty, and to redress these decent work deficits.
2. The promotion of decent work for all workers, women and men, irrespective of where they work, requires a broad strategy: realizing fundamental principles and rights at work; creating greater and better employment and income opportunities; extending social protection; and promoting social dialogue. These dimensions of decent work reinforce each other and comprise an integrated poverty reduction strategy. The challenge of reducing decent work deficits is greatest where work is performed outside the scope or application of the legal and institutional frameworks. In the world today, a majority of people work in the informal economy – because most of them are unable to find other jobs or start businesses in the formal economy.
3. Although there is no universally accurate or accepted description or definition, there is a broad understanding that the term "informal economy" accommodates considerable diversity in terms of workers, enterprises and entrepreneurs with identifiable characteristics. They experience specific disadvantages and problems that vary in intensity across national, rural, and urban contexts. The term "informal economy" is preferable to "informal sector" because the workers and enterprises in question do not fall within any one sector of economic activity, but cut across many sectors. However, the term "informal economy" tends to downplay the linkages, grey areas and interdependencies between formal and informal activities. The term "informal economy" refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that – although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs. The ILO's work needs to take into account the conceptual difficulties arising from this considerable diversity.
4. Workers in the informal economy include both wage workers and own-account workers. Most own-account workers are as insecure and vulnerable as wage workers and move from one situation to the other. Because they lack protection, rights and representation, these workers often remain trapped in poverty.
5. In some countries, the term "informal economy" refers to the private sector. In some other countries, the term is considered synonymous with the "underground", "shadow" or "grey" economy. However, the majority of workers and enterprises in the informal economy produce legal goods and services, albeit sometimes not in conformity with procedural legal requirements, for example, where there is non-compliance with registration requirements or immigration formalities. These activities should be distinguished from criminal and illegal activities, such as production and smuggling of illegal drugs, as they are the subject of criminal law, and are not appropriate for regulation or protection under labour or commercial law. There also may be grey areas where the economic activity involves characteristics of both the formal and informal economy, for instance when formal workers are provided with undeclared remuneration, or when there are groups of workers in formal enterprises whose wages and working conditions are typical of those existing in informality.

6. The informal economy absorbs workers who would otherwise be without work or income, especially in developing countries that have a large and rapidly growing labour force, for example, in countries where workers are made redundant following structural adjustment programmes. Most people enter the informal economy not by choice but out of a need to survive. Especially in circumstances of high unemployment, underemployment and poverty, the informal economy has significant job and income generation potential because of the relative ease of entry and low requirements for education, skills, technology and capital, but the jobs thus created often fail to meet the criteria of decent work. The informal economy also helps to meet the needs of poor consumers by providing accessible and low-priced goods and services.
7. Workers and economic units in the informal economy can have a large entrepreneurial potential. Workers in the informal economy also have a reservoir of skills. Many people working in the informal economy have real business acumen, creativity, dynamism and innovation, and such potential could flourish if certain obstacles could be removed. The informal economy could also serve as an incubator for business potential and an opportunity for on-the-job skills acquisition. In this sense, it can be a transitional base for accessibility and graduation to the formal economy, if effective strategies are put in place.
8. In many countries, both developing and industrialized, there are linkages between changes in the organization of work and the growth of the informal economy. Workers and economic units are increasingly engaged in flexible work arrangements, including outsourcing and subcontracting; some are found at the periphery of the core enterprise or at the lowest end of the production chain, and have decent work deficits.
9. The decent work deficits are most pronounced in the informal economy. From the perspective of unprotected workers, the negative aspects of work in the informal economy far outweigh its positive aspects. Workers in the informal economy are not recognized, registered, regulated or protected under labour legislation and social protection, for example, when their employment status is ambiguous, and are therefore not able to enjoy, exercise or defend their fundamental rights. Since they are normally not organized, they have little or no collective representation vis-à-vis employers or public authorities. Work in the informal economy is often characterized by small or undefined workplaces, unsafe and unhealthy working conditions, low levels of skills and productivity, low or irregular incomes, long working hours and lack of access to information, markets, finance, training and technology. Workers in the informal economy may be characterized by varying degrees of dependency and vulnerability.
10. Although most at risk and therefore most in need, most workers in the informal economy have little or no social protection and receive little or no social security, either from their employer or from the government. Beyond traditional social security coverage, workers in the informal economy are without social protection in such areas as education, skill-building, training, health care and childcare, which are particularly important for women workers. The lack of social protection is a critical aspect of the social exclusion of workers in the informal economy.
11. While some people in the informal economy earn incomes that are higher than those of workers in the formal economy, workers and economic units in the informal economy are generally characterized by poverty, leading to powerlessness, exclusion, and vulnerability. Most workers and economic units in the informal economy do not enjoy secure property rights, which thus deprives them access to both capital and credit. They have difficulty accessing the legal and judicial system to enforce contracts, and have limited or no access to public infrastructure and benefits. They are vulnerable to harassment, including sexual harassment, and other forms of exploitation and abuse, including corruption and bribery. Women, young persons, migrants and older workers are especially vulnerable to the most serious decent work deficits in the informal economy. Characteristically, child workers and bonded labourers are found in the informal economy.

12. Unregistered and unregulated enterprises often do not pay taxes, and benefits and entitlements to workers, thus posing unfair competition to other enterprises. Also workers and economic units in the informal economy do not always contribute to the tax system, although often because of their poverty. These situations may deprive the government of public revenue thereby limiting government's ability to extend social services.
13. To promote decent work, it is necessary to eliminate the negative aspects of informality while at the same time ensuring that opportunities for livelihood and entrepreneurship are not destroyed, and promoting the protection and incorporation of workers and economic units in the informal economy into the mainstream economy. Continued progress towards recognized, protected decent work will only be possible by identifying and addressing the underlying causes of informality and the barriers to entry into the economic and social mainstream.
14. Informality is principally a governance issue. The growth of the informal economy can often be traced to inappropriate, ineffective, misguided or badly implemented macroeconomic and social policies, often developed without tripartite consultation; the lack of conducive legal and institutional frameworks; and the lack of good governance for proper and effective implementation of policies and laws. Macroeconomic policies, including structural adjustment, economic restructuring and privatization policies, where not sufficiently employment-focused, have reduced jobs or not created adequate new jobs in the formal economy. A lack of high and sustainable economic growth inhibits the capacity of governments to facilitate the transition from the informal to the formal economy, through the creation of more jobs in the mainstream economy. Many countries do not have explicit employment creation and business development policies; they treat job quantity and quality as a residual rather than as a necessary factor of economic development.
15. In appropriate circumstances, trade, investment and technology can offer developing and transition countries opportunities to reduce the gap that separates them from advanced industrialized countries, and can create good jobs. However, the problem is that the current globalization processes are not sufficiently inclusive or fair; the benefits are not reaching enough people, especially those most in need. Globalization lays bare poor governance. Trade, without export subsidies that distort the market, without unfair practices or the application of unilateral measures, would help living standards to be raised and conditions of employment to be improved in developing countries, and would reduce decent work deficits in the informal economy.
16. Since a defining characteristic of workers and enterprises in the informal economy is that they often are not recognized, regulated or protected by law, the legal and institutional frameworks of a country are key. The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up and the core labour standards are as applicable in the informal as in the formal economy. But some workers are in the informal economy because national labour legislation does not adequately cover them or is not effectively enforced, in part because of the practical difficulties of labour inspection. Labour legislation often does not take into account the realities of modern organization of work. Inappropriate definitions of employees and workers may have the adverse effect of treating a worker as self-employed and outside the protection of labour legislation.
17. Inappropriate legal and administrative frameworks that do not guarantee and protect freedom of association make it difficult for workers and employers to organize. Democratic, independent, membership-based organizations of wage workers, own-account workers, self-employed persons or employers in the informal economy are sometimes not allowed to operate under local or national legislation and are often unrecognized and excluded from or under-represented in social dialogue institutions and processes. Without organization and representation, those in the informal economy generally do not have access to a range of other rights at work. They are not able to pursue their employment interests through collective bargaining or to lobby policy-makers on issues such as access to infrastructure, property rights, taxation and social security. Women and youth, who

make up the bulk of workers in the informal economy, are especially without representation and voice.

18. Economic units operate in the informal economy mainly because inappropriate regulations and excessively high tax policies are responsible for excessive costs of formalization and because barriers to markets and the lack of access to market information, public services, insurance, technology and training exclude them from the benefits of formalization. High transaction and compliance costs are imposed on economic units by laws and regulations that are overly burdensome or involve dealing with corrupt or inefficient bureaucracies. The absence of an appropriate system of property rights and the titling of the assets of the poor prevents the generation of productive capital needed for business development.
19. Informality can also be traced to a number of other socio-economic factors. Poverty prevents real opportunities and choices for decent and protected work. Low and irregular incomes and often the absence of public policies prevent people from investing in their education and skills needed to boost their own employability and productivity, and from making sustained contributions to social security schemes. Lack of education (primary and secondary) to function effectively in the formal economy, in addition to a lack of recognition of skills garnered in the informal economy, act as another barrier to entering the formal economy. The lack of livelihood opportunities in rural areas drives migrants into informal activities in urban areas or other countries. The HIV/AIDS pandemic – by illness, discrimination or loss of adult breadwinners – pushes families and communities into poverty and survival through informal work.
20. The feminization of poverty and discrimination by gender, age, ethnicity or disability also mean that the most vulnerable and marginalized groups tend to end up in the informal economy. Women generally have to balance the triple responsibilities of breadwinning, domestic chores, and elder care and childcare. Women are also discriminated against in terms of access to education and training and other economic resources. Thus women are more likely than men to be in the informal economy.
21. Since decent work deficits are often traceable to good governance deficits, the government has a primary role to play. Political will and commitment and the structures and mechanisms for proper governance are essential. Specific laws, policies and programmes to deal with the factors responsible for informality, to extend protection to all workers and to remove the barriers to entry into the mainstream economy will vary by country and circumstance. Their formulation and implementation should involve the social partners and the intended beneficiaries in the informal economy. Especially in countries struggling with abject poverty and with a large and rapidly growing labour force, measures should not restrict opportunities for those who have no other means of livelihood. However, it should not be a job at any price or under any circumstances.
22. Legislation is an important instrument to address the all-important issue of recognition and protection for workers and employers in the informal economy. All workers, irrespective of employment status and place of work, should be able to enjoy, exercise and defend their rights as provided for in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up and the core labour standards. To ensure that labour legislation affords appropriate protection for all workers, governments should be encouraged to review how employment relationships have been evolving and to identify and adequately protect all workers. The elimination of child labour and bonded labour should be a priority goal.
23. The informal economy provides an environment that allows child labour to thrive. Child labour is a key component of the informal economy. It undermines strategies for employment creation and poverty reduction, as well as education and training programmes and the development prospects of countries. Child labour also exists in industrialized countries. The eradication of child labour requires poverty reduction, good governance, effective enforcement, improved access to universal education and social protection. It requires commitment and cooperation between the social partners as part of the promotion of fundamental rights and the programme to transfer jobs from the informal to the

economic mainstream. Key to the success of abolishing child labour is the creation of more quality jobs for adults.

24. It is the responsibility of governments to provide an enabling framework at national and local levels to support representational rights. National legislation must guarantee and defend the freedom of all workers and employers, irrespective of where and how they work, to form and join organizations of their own choosing without fear of reprisal or intimidation. Obstacles to the recognition of legitimate, democratic, accessible, transparent and accountable membership-based organizations of workers and employers in the informal economy must be removed, so that they are able to participate in social dialogue structures and processes. Public authorities should include such organizations in public policy debates, and provide them access to the services and infrastructure they need to operate effectively and efficiently and protect them from harassment or unjustified or discriminatory eviction.
25. Policies and programmes should focus on bringing marginalized workers and economic units into the economic and social mainstream, thereby reducing their vulnerability and exclusion. This means that programmes addressing the informal economy, such as provision of education, training, microfinance, etc., should be designed and implemented with the main objective of bringing workers or economic units in the informal economy into the mainstream, so that they are covered by the legal and institutional framework. Statistical and other research should be focused and designed to give effective support to these policies and programmes.
26. Governments must provide the conducive macroeconomic, social, legal and political frameworks for the large-scale creation of sustainable, decent jobs and business opportunities. Governments should adopt a dynamic approach to place decent employment at the centre of economic and social development policies and also to promote well-functioning labour markets and labour market institutions, including labour market information systems and credit institutions. To increase job quantity and quality, emphasis should be placed on investing in people, especially the most vulnerable – in their education, skills training, lifelong learning, health and safety – and encouraging their entrepreneurial initiative. Poverty reduction strategies, in particular the Poverty Reduction Strategy Papers (PRSPs), should specifically address the problems in the informal economy. The creation of decent jobs should be a measure of success for these strategies. In many developing countries, rural development and agricultural policies, including supportive legal frameworks for cooperatives, need to be enhanced and strengthened. Special attention should be given to the care responsibilities of women to enable them to make the transition from informal to formal employment more easily.
27. A conducive policy and legal environment lowers the costs to establish and operate a business, including simplified registration and licensing procedures, appropriate rules and regulations, reasonable and fair taxation. It also increases the benefits of legal registration, facilitating access to commercial buyers, more favourable credit terms, legal protection, contract enforcement, access to technology, subsidies, foreign exchange and local and international markets. Besides, such policies discourage businesses in the formal economy from shifting into the informal economy. This helps new businesses to start and smaller businesses to enter the formal economy and to create new jobs, without lowering labour standards. This also increases state revenues.
28. Another high priority is a coherent legal, judicial and financial framework for securing property rights to enable assets to be turned into productive capital through sale, lease or use as collateral. Reform of legislation regarding property rights should give special attention to gender inequalities in rights to own and control property.
29. To address the needs of the poor and vulnerable in the informal economy, the conclusions concerning social security adopted by the 89th Session of the International Labour Conference in 2001 should be supported and implemented. Governments have a lead responsibility to extend the coverage of social security, in particular to groups in the

informal economy which are currently excluded. Micro insurance and other community-based schemes are important but should be developed in ways that are consistent with the extension of national social security schemes. Policies and initiatives on the extension of coverage should be taken within the context of an integrated national social security strategy.

30. The implementation and enforcement of rights and protections should be supported by improved systems of labour inspection and easy and rapid access to legal aid and the judicial system. There should also be provisions for cost-effective dispute resolution and contract enforcement. National governments and local authorities should promote efficient bureaucracies that are corruption and harassment free, are transparent and consistent in the application of rules and regulations, and that protect and enforce contractual obligations and respect the rights of workers and employers.
31. An important objective for both employers' and workers' organizations is to extend representation throughout the informal economy. Workers and employers in informal activities may wish to join existing trade unions and employers' organizations, or they may want to form their own. Employers' and workers' organizations play a critical role in either strategy: extending membership and services to employers and workers in the informal economy, and encouraging and supporting the creation and development of new member-based, accessible, transparent, accountable and democratically managed representative organizations, including bringing them into social dialogue processes.
32. Both employers' and workers' organizations can play an important advocacy role to draw attention to the underlying causes of informality and to galvanize action on the part of all tripartite partners to address them, and to remove the barriers to entry into mainstream economic and social activities. They can also lobby the public authorities for the creation of transparent institutions and the establishment of mechanisms for delivering and linking services to the informal economy. The innovative and effective strategies and good practices that employers' organizations and trade unions in different parts of the world have used to reach out to, recruit, organize or assist workers and enterprises in the informal economy should be more widely publicized and shared.
33. Employers' organizations in collaboration with or through other relevant organizations or institutions could assist economic units operating in the informal economy in a number of important ways, including access to information which they would otherwise find difficult to obtain, such as on government regulations or market opportunities, and also access to finance, insurance, technology and other resources. They could extend business support and basic services for productivity improvement, entrepreneurship development, personnel management, accounting and the like. They could help develop a lobbying agenda specially geared to the needs of micro and small enterprises. Importantly, employers' organizations could act as the conduit for the establishment of links between informal enterprises and formal enterprises, the opportunities for which have increased due to globalization. They could also initiate activities adapted to the needs of the informal economy that can yield important results such as improved safety and health, improved labour-management cooperation or productivity enhancement.
34. Trade unions can sensitize workers in the informal economy to the importance of having collective representation through education and outreach programmes. They can also make efforts to include workers in the informal economy in collective agreements. With women accounting for a majority in the informal economy, trade unions should create or adapt internal structures to promote the participation and representation of women and also to accommodate their specific needs. Trade unions can provide special services to workers in the informal economy, including information on their legal rights, educational and advocacy projects, legal aid, provision of medical insurance, credit and loan schemes and the establishment of cooperatives. These services should not, however, be regarded as a substitute for collective bargaining or as a way to absolve governments from their responsibilities. There is also a need to develop and promote positive strategies to combat

discrimination of all forms, to which workers in the informal economy are particularly vulnerable.

35. The ILO should draw upon its mandate, tripartite structure and expertise to address the problems associated with the informal economy. An approach based on decent work deficits has considerable merit and should be pursued. The ILO approach should reflect the diversity of situations and their underlying causes found in the informal economy. The approach should be comprehensive involving the promotion of rights, decent employment, social protection and social dialogue. The approach should focus on assisting member States in addressing governance, employment-generation and poverty-reduction issues. The ILO should take into account the conceptual difficulties arising from the considerable diversity in the informal economy.

36. The efforts of the Office should:

- (a) better address the needs of workers and economic units in the informal economy and they should be addressed throughout the Organization, including already existing policies and programmes;
- (b) strengthen its tripartite approach to all activities in this area and especially to ensure close consultation and active involvement of the Bureau for Workers' Activities and Bureau for Employers' Activities in all aspects of the work programme, in particular their design;
- (c) include an identifiable and highly visible programme of work with dedicated resources that is able to draw together relevant expertise including experts in workers' and employers' activities;
- (d) be linked logically and integrally to the ILO's major strategic objectives and InFocus programmes, for example, the Decent Work Agenda, the Declaration on Fundamental Principles and Rights at Work and its Follow-up, the Global Employment Agenda, and upholding the overall goals of gender equality and poverty reduction; and be able to draw upon the multidisciplinary expertise and experience of all four technical sectors and operate effectively across all sectors and field structures. Linkages should also be made with major international initiatives, such as the Millennium Development Goals and the Youth Employment Network;
- (e) be organized in innovative and effective ways to focus the particular and/or combined expertise of specialists in labour law, eradication of the worst forms of child labour, equal opportunities, social aspects of globalization, labour inspection, social dialogue, social protection, micro and small enterprise development and employment policy, together with specialists in workers' and employers' activities, to deliver specifically designed strategies to address the identified causes and impacts of decent work deficits thus contributing to poverty reduction;
- (f) ensure that technical assistance activities seek to integrate workers and economic units in the informal economy into the mainstream economy and are designed to produce this result;
- (g) be reflected in the programme and regular budget and technical assistance priorities and supported by adequate regular budget and extra-budgetary resources.

37. Specific priority areas for the ILO's work programme and technical assistance should be to:

- (a) help member States to formulate and implement, in consultation with employers' and workers' organizations, national policies aimed at moving workers and economic units from the informal economy into the formal economy;
- (b) place special emphasis on removing obstacles to, including those in the legal and institutional framework, the realization of all the fundamental principles and rights at work;

- (c) identify the obstacles to application of the most relevant labour standards for workers in the informal economy and assist the tripartite constituents in developing laws, policies, and institutions that would implement these standards;
- (d) identify the legal and practical obstacles to formation of organizations of workers and employers in the informal economy and assist them to organize;
- (e) gather and disseminate examples and best-practice models of innovative and effective strategies used by employers' organizations and trade unions to reach out to, recruit and organize workers and economic units in the informal economy;
- (f) undertake programmes and policies aimed at creating decent jobs and education, skill-building and training opportunities to help workers and employers move into the formal economy;
- (g) target those areas of the informal economy where child labour is prevalent with the objective of assisting member States to design and implement policies and programmes to eradicate child labour;
- (h) apply the ILO's policies and programmes on enhancing employability, skills and training, productivity and entrepreneurship to help meet the massive demand for jobs and livelihoods in ways that respect labour standards and enable entry into the economic and social mainstream;
- (i) assist member States to develop appropriate and facilitating legal and regulatory frameworks to secure property rights and title assets, and to encourage and support the start-up and sustainable growth of enterprises and their transition from the informal to formal economy;
- (j) mainstream the issues concerning and solutions to the challenges often presented by the informal economy in poverty reduction strategies, in particular the Poverty Reduction Strategy Papers (PRSPs);
- (k) promote the renewed campaign agreed at the International Labour Conference in 2001 to improve and extend social security coverage to all those in need of social protection, especially those in the informal economy, *inter alia*, through the development and piloting of innovative ideas, such as the Global Social Trust;
- (l) address discrimination in the informal economy and ensure that policies and programmes specifically target the most vulnerable, in particular women, young first-time jobseekers, older retrenched workers, migrants and those afflicted with or affected by HIV/AIDS;
- (m) develop greater understanding of the relationship between the informal economy and the feminization of work, and identify and implement strategies to ensure that women have equal opportunities to enter and enjoy decent work;
- (n) assist member States to collect, analyse and disseminate consistent, disaggregated statistics on the size, composition and contribution of the informal economy that will help enable identification of specific groups of workers and economic units and their problems in the informal economy and that will inform the formulation of appropriate policies and programmes;
- (o) expand the knowledge base on governance issues in the informal economy and solutions and good practices for dealing with these issues;
- (p) collect and disseminate information on transitions made to the mainstream economy, how such transitions were facilitated, and key success factors;
- (q) take the lead role in working with other relevant institutions whose expertise could complement that of the ILO in addressing the issues in the informal economy;
- (r) include work with other international organizations including United Nations and Bretton Woods institutions, promoting dialogue to avoid duplication, identify and share expertise, while the ILO itself takes the lead role.

Appendix II

Selection of national laws and regulations related to the informal economy¹

Algeria

- Executive Decree No. 13-140 of 10 April 2013 determining the conditions for the exercise of itinerant commercial activities.
- Presidential Decree No. 11-133 of 22 March 2011 on the provision of microcredit.
- Executive Decree No. 10-101 of 29 March 2010 on the creation, organization and functioning of the National Employment Promotion Commission.
- Executive Decree No. 05-212 of 8 June 2005 on the creation, composition and functioning of the National Observatory of Employment and Poverty Alleviation.
- Executive Decree No. 97-474 of 8 December 1997 determining the special regime of employment relations for domestic workers.

Argentina

- Act No. 26844 of 13 March 2013 establishing the special regime of labour contracts for domestic workers.
- Decree No. 1602/2009 establishing the universal non-contributory subsystem of social protection for children.
- Act No. 26476 of 18 December 2008 on the fiscal regularization, promotion and protection of declared employment, particularly in SMSEs, and the repatriation of capital.
- Act No. 26390 of 4 June 2008 prohibiting child labour and protecting work by young persons.

Austria

- Federal Act on the statutory insurance of self-employed professionals (the Self-Employed Social Security Act – FSVG).
- Farmers' Social Insurance Act (BSVG) (No. 559/1978).
- Social Insurance (Small-Scale Industry) Act (GSVG) (No. 560/1978).

¹ The legislation enumerated in this appendix is available in full text in the original language on the NATLEX database on the ILO website.

Bahrain

- Order of the Council of Ministers No. 1 of 1995 to extend insurance to self-employed workers and employers.

Belgium

- Act of 23 March 1994 adopting certain measures with respect to labour laws to combat undeclared work.

Benin

- Act No. 98-019 of 21 March 2003 issuing the Social Security Code.
- By-Laws of 20 October 2009 of the Social Security Mutual Benefit Society of Benin (MSSB).
- Internal Regulations of 20 November 2009 of the Social Security Mutual Benefit Society of Benin.

Bolivia, Plurinational State of

- General Act No. 356 of 11 April 2013 on cooperatives.
- Act No. 2450 of 3 April of 2003 regulating domestic work.

Botswana

- Pension and Provident Funds Act (Cap. 27:03) (Act 18, 1987).

Brazil

- Complementary Act No. 123 of 14 December 2006 approving the national statute of micro and small enterprises.
- Complementary Act No. 128 of 19 December 2008 amending Complementary Act No. 123 of 14 December 2006 approving the national statute of micro and small enterprises.
- Constitutional Amendment No. 72 of 2 April 2013 establishing equality of labour rights between domestic workers and other urban and rural workers.
- Act No. 10836 of 9 of January 2004 creating the *Bolsa Família* (family allowance) programme.
- Decree No. 7492 of 2 June 2011 establishing the Brazil without Poverty Plan.

Bulgaria

- Law of 22 February 2012 amending the Penal Code.

Burkina Faso

- Decree No. 2008-240/PRES/PM/MJE/MEF of 8 May 2008 adopting specific statutes for the Informal Sector Support Fund (FASI).
- Decree No. 2010-807/PRES/PM/MTSS of 31 December 2010 determining the conditions of work of domestic workers.

Colombia

- Act No. 1429 of 29 December 2010 on the regularization and creation of employment.
- Decree No. 0933 of 9 May 2013 issuing provisions to formalize traditional mining activities.
- Decree No. 0604 of 2013 regulating access to and the functioning of the Supplementary Social Service for Periodical Cash Benefits.
- Act No. 1610 of 2013 regulating certain aspects of labour inspection and labour formalization agreements.

Croatia

- Act of 15 March 1996 on maternity leave for self-employed and unemployed mothers (No. 429).

Djibouti

- Decree No. 2012-219/PR/SESN of 3 October 2012 on the creation, organization and functioning of the National Micro-Finance Commission (CNMF).
- Act No. 203/AN/07/5th L of 22 December 2007 creating the National Employment, Vocational Training and Integration Agency.

Dominican Republic

- Act No. 488-08 establishing a regulatory regime for the development and competitiveness of micro, small and medium-sized enterprises.

Egypt

- Decree No. 213 of 2003 issuing regulations on employment in the informal sector.

France

- Decree No. 2011-1693 of 30 November 2011 protecting the social and financial rights of irregular migrants and suppressing illegal work.
- Order of 30 November 2011 implementing Decree No. 2011-1693 of 30 November 2011 protecting the social and financial rights of irregular migrants and suppressing illegal work.
- Decree No. 2005-455 of 12 May 2005 creating a Central Office to Combat Illegal Work.
- Act No. 97-210 of 11 March 1997 strengthening measures to combat illegal work.

Germany

- Act amending the Manpower Provision Act and the Act to intensify measures against illegal employment and tax evasion related to illegal employment.
- Act to intensify measures against illegal employment and tax evasion related to illegal employment (SchwarzArbG).

Honduras

- Decree No. 230-2010 establishing the National Programme of Hours of Employment.
- Agreement No. STSS-002-2011 issuing the Regulations respecting the National Program of Hours of Employment.

India

- Unorganised Workers' Social Security Act, 2008 (No. 33 of 2008).

Indonesia

- Law on poverty management (Law No. 13/2012).

Italy

- Decree of 29 August 2012 implementing section 5 of Legislative Decree No. 109/2012 on transitions from illegal work.
- Legislative Decree No. 109 of 16 July 2012 implementing Directive No. 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.
- Act No. 183 of 4 November 2010 adopting measures to combat illegal work and other provisions.
- Act No. 222 of 9 October 2002 implementing in law and amending Legislative Decree No. 195 of 9 September 2002 issuing emergency provisions for the regularization of the clandestine employment of nationals from non-European Union Member countries.

Jordan

- Regulation No. 90/2009 on domestic workers, cooks, gardeners and similar categories.

Kenya

- Employment Act, 2007 (No. 11 of 2007).

Lesotho

- Old Age Pensions Act (Act No. 3 of 2005).

Mauritius

- Small Enterprises and Handicraft Development Authority Act, 2005 (No. 20 of 2005).
- National Pensions Act, 1976 (Act No. 44 of 1976).

Morocco

- Act No. 18-97 of 5 February 1999 on microcredit.

Mozambique

- Decree No. 40/2008 approving the regulations on domestic work.

Namibia

- National Pensions Act, 1992 (No. 10 of 1992).

Nepal

- Poverty Alleviation Fund Act, 2063 (2006).
- Social Welfare Act, 2049 (1992).

Nicaragua

- Act No. 666 of 4 September 2008 amending and supplementing the Labour Code concerning domestic work.
- Act No. 645 of 2008 to promote and development micro, small and medium-sized enterprises.

Papua New Guinea

- Informal Sector Development and Control Act 2004 (No. 5 of 2004).

Peru

- Supreme Decree No. 012-2011-TR creating the Inclusive Social Employment Creation Programme “Peru Works”.
- Supreme Decree No. 013-2011-TR creating the National Young Persons Employment Programme “Youth at Work”.
- Act No. 28015 on the promotion and formalization of micro and small enterprises.

Philippines

- Domestic Workers Act (R.A. No. 10361 of 2013).
- Social Reform and Poverty Alleviation Act (No. 8425 of 1997).
- Act providing assistance to women engaging in micro and cottage business enterprises, and for other purposes, 1994 (R.A. No. 7882).

Portugal

- Act No. 101/2009 of 8 September establishing the legal regime for domestic work.

Rwanda

- Act No. 13/2009 regulating labour in Rwanda.

Saint Lucia

- Saint Lucia Social Development Fund Act (No. 7 of 1998).

San Marino

- Legislative Decree No. 130 of 9 August 2011 issuing urgent provisions for the simplification and efficiency of the labour market.

Saint Vincent and the Grenadines

- Wages Regulation (Domestic Workers) Order, 2008 (No. 31 of 2008).

Senegal

- Decree No. 2012-1223 of 5 November 2012 distributing State services and the supervision of public establishments, State corporations and the supervision of public establishments, national corporations and publicly-owned enterprises between the President of the Republic, the Office of the Prime Minister and Ministries.

Singapore

- Central Provident Fund (Self-Employed Persons) Regulations (1992) (G.N. No. S 303/1992).

Slovakia

- Act No. 82/2005 on illegal work and employment.

South Africa

- Social Assistance Act (No. 13 of 2004).
- Basic Conditions of Employment Act: Sectoral Determination 7: Domestic Worker Sector (No. R 1068).

Spain

- Act No. 13/2012 of 26 December to combat irregular employment and social security fraud.
- Royal Legislative Decree No. 5/2011 issuing measures for the regularization and control of illegal employment and to promote the restoration of housing.
- Act No. 20/2007 of 11 July on the status of self-employed workers.

Switzerland

- Federal Act of 17 June 2005 issuing measures to combat undeclared work (LTN).
- Order of 6 September 2006 issuing measures to combat undeclared work (OTN).
- Order of 20 October 2010 issuing the model contract for domestic workers (86956).

Thailand

- Home Workers Protection Act, B.E. 2553 (2010).

Togo

- Decree No. 024/PR of 15 February 2008 creating a delegation for the organization of the informal sector.

Turkmenistan

- Law No. 199-IV of 21 May 2011 on microfinance institutions and microfinance.

Zambia

- Minimum Wages and Conditions of Employment (Domestic Workers) Order, 2010 (S.I. No. 3 of 2011).

Selection of regional agreements and instruments related to the informal economy

European Union

- Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.
- European Parliament Resolution of 9 October 2008 on stepping up the fight against undeclared work (2008/2035(INI)).
- Council Resolution of 2003 on transforming undeclared work into regular Employment (2003/C 260/01).

- Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 22 April 1999 on a Code of Conduct for improved cooperation between authorities of the Member States concerning the combating of transnational social security benefit and contribution fraud and undeclared work, and concerning the transnational hiring-out of workers (1999/C 125/01).

France/Netherlands

- Agreement on Administrative Cooperation between the Government of the Republic of France and the Government of the Kingdom of the Netherlands concerning combating illegal employment and respect of social rights in case of transborder circulation of workers and services, signed in Paris on 15 May 2007.

Germany/Bulgaria

- Agreement of 12 November 2008 between the Federal Republic of Germany and the Republic of Bulgaria on cooperation in combating cross-border abuse of social security benefits and contributions due to undeclared employment, as well as illegal cross-border temporary labour.