

Applying International Labour Standards to the Informal Economy

Introduction

The ILO has estimated that over 60 percent of the global workforce, or 2 billion people, laboured in the informal economy before the COVID-19 pandemic, with 64 percent of that being self-employed¹. Globally, informal work has been growing and significantly outstrips formal employment. Even in countries with robust economic growth, informal employment has been growing more rapidly than formal employment. Workers from marginalised groups tend to be disproportionately represented in the informal economy, whether women, racial, ethnic or caste minorities, LGBTQ+ workers, migrants, persons with disabilities and others. This is very often the result of deliberate public policy choices that serve to exclude these workers from formal jobs with legal recognition and protection of their labour rights (at least on paper).

In 2002, the International Labour Conference (ILC) commenced a two-year General Discussion on Decent Work, which resulted in the 2003 *Resolution Concerning Decent Work and the Informal Economy*.² The Resolution attributed decent work deficits to a lack of enabling legal and institutional frameworks and identified several ways in which member states needed to reform their laws and policies. Firstly, it stated that obstacles to the exercise of freedom of association should be removed, and that legislation should ‘guarantee and defend the freedom of all workers and employees, irrespective of where

and how they work to form and join organizations of their own choosing’. Secondly, it provided that social protection should be extended to all workers. Thirdly, the resolution focused on enforcement mechanisms and access to justice, including improving labour inspection, dispute resolution, and addressing corruption.

Despite this, ILO Conventions and Recommendations have for the most part ignored this vast workforce. It was only with the adoption of Recommendation 204³ in 2015 (hereafter R204) that the ILO attempted to provide comprehensive guidance in this area.⁴ Chapter III on ‘Legal and Policy Frameworks’ states that member states should “adopt, review and enforce national laws and regulations or other measures to ensure appropriate coverage and protection of all categories of workers” (Article 9) and introduce ‘an appropriate legislative and regulatory framework’ (paragraph 11 (b)) that realise the rights contained in ILO Conventions and other UN instruments.⁵ Chapter V of R204 on ‘Rights and Social Protection’, provides that states should “respect, promote and realize the fundamental principles and rights at work for those in the informal economy” (paragraph 16). Yet, few member states have amended their labour laws to realise the fundamental conventions, or other conventions, for workers in the informal economy.

³ Recommendation 204 (Transition from the Informal to the Formal Economy Recommendation, 2015), online at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204

⁴ Other instruments which regulate specific categories of workers whose jobs are often informal include, for example, the Right of Association (Agriculture) Convention, 1921 (No. 11), Migration for Employment Convention, 1949 (No. 97), the Domestic Workers Convention, 2011 (No. 189) and the Violence and Harassment Convention, 2019 (No. 190).

⁵ See Annex of R204.

¹ ILO ‘Women and men in the informal economy: A statistical update’ (2023), available at https://www.ilo.org/global/topics/employment-promotion/informal-economy/publications/WCMS_869188/lang-en/index.htm

² ILC (90th Session, 2002) Resolution Concerning Decent Work and the Informal Economy <https://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/pr-25res.pdf>

R204 defines the informal economy as “all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements” (article 2). The use of the term “activity” here is important as it serves to de-centre the employment relationship, through which a worker is subordinated to an employer, as the [sole] basis for the recognition and regulation of work. If informal employment is defined as work that is not recognised or protected by legal and regulatory frameworks, from a legal perspective then, the informal economy is inclusive of self-employed workers such as street vendors, and self-employed fisherfolk and waste reclaimers. Others, such as (overwhelmingly) women performing unpaid care work also fall within the scope of this legal definition.⁶ In this series, our focus is on (a) non-standard workers⁷ who may be employed by formal or informal enterprises, and (b) informal, own account workers (such as street vendors and waste pickers) who do the work themselves and do not employ others.

The supervisory system has been slow to develop observations, conclusions or recommendations which would provide guidance to states, employers, and workers as to how to apply these rights and principles in practice to address practical needs. This must change if the body of existing labour standards is to be relevant to *all workers*, including those in the informal economy.

In order to provide workers and workers' organizations, including unions, the tools to use existing ILO conventions and recommendations creatively to elicit new interpretations from the ILO supervisory system which broaden their scope to the obstacles confronting workers in the informal economy,

⁶ For a full discussion of definitions see Marlese von Broembsen & Jeffrey Vogt (2022) 4 ‘Why the Struggle of the 2 Billion Workers in the Informal Economy Matters to Us All’ The Global Rights Reporter: Protection of Rights in the Informal Economy. See also, Florence Bonnet, Joann Vanek and Martha Chen ‘Women and Men in the Informal Economy: A Statistical Brief’ (2019), available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_711798.pdf

⁷ The ILO defined non-standard work as ‘temporary, part-time/on-call, a multi-party employment relationship, or disguised employment/dependent self-employment’. See, International Labour Organization *Non-Standard Employment around the World: Understanding Challenges, Shaping Prospects* (2016) at 8, available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_534326.pdf

the *International Lawyers Assisting Workers (ILAW) Network* and *Women in Informal Employment: Globalizing and Organizing (WIEGO)* are producing a series of guidelines on a convention-by-convention basis. These guidelines identify the specific issues that workers in the informal economy face that are relevant to that convention and provide; existing ILO jurisprudence on point; and provide recommendations as to how workers and the organizations should frame their comments or complaints to obtain a favourable outcome from the supervisory system. It is our hope that workers and organizations, through consistent use of these guides, will help to develop a robust set of jurisprudence, which can be used to advocate for legal and institutional reforms at the national and regional levels.

The series will begin with guides on the ILO fundamental conventions and will be published on the ILAW (www.ilawnetwork.com) and WIEGO (www.wiego.org) websites as each one becomes available. Subsequent guides will focus on the governance and technical conventions and recommendations. We do not intend to cover every convention and recommendation; rather, we will focus on those with the greatest relevance for workers in the informal economy.

The following three ILO supervisory mechanisms are available for you to use:

Committee of Experts

Every country must report on its compliance with the conventions it has ratified. They must report every three years in the case of fundamental conventions and every six in the case of technical conventions. Trade unions can also submit reports, which must be considered together with reports from the government and employer representatives. These reports are normally due every September 1, and are submitted to normes@ilo.org. You can find the reporting cycle of your country [here](#).

Committee on Freedom of Association

For violations of the right to freedom of association and the right to collectively bargain, a “complaint” can be filed with the Committee on Freedom of Association. This is true regardless as to whether your government has ratified the relevant conventions (including conventions 11, 87, 98, 141, 151 and 154).

Once received, the tripartite Committee on Freedom of Association will review the complaint and the government's response and will issue conclusions and recommendations as to how the government can comply with its obligations. You can find more information on filing a complaint [here](#).

Representations

For violations in law or in practice concerning a convention (or conventions) that a government has ratified (other than those concerning freedom of association and collective bargaining), a trade union can file a "representation" at any time. If accepted by the ILO Governing Body, a tripartite committee will be established to review the representation and the government response and will issue conclusions and recommendations as to how the government can comply with its obligations under the convention(s). You can find more information on filing a representation [here](#).

We of course invite your feedback on these guides,⁸ which we will update to address new and emerging issues, and to account for any observations, conclusions and recommendations from the ILO supervisory system which comes as a result of the use of these guides.

⁸ Feedback on these guides can be sent to admin@ilawnetwork.com