

ENGLISH VERSION

# TRADE UNION PERSPECTIVES ON THE INFORMALITY



Oficina Regional para América Latina y el Caribe  
Centro Internacional de Formación de OIT - CIF



**TRADE UNION  
PERSPECTIVES ON  
THE INFORMALITY**

Production

**TUCA**  
TRADE UNION  
CONFEDERATION OF  
AMERICAS

**ITC**  
INTERNATIONAL  
TRAINING CENTRE

**ITUC**  
INTERNATIONAL TRADE  
UNION CONFEDERATION

• **Executive Secretariat**

President **Hassan Yussuff**

Deputy President **Julio Roberto Gomez Esguerra**

Secretary General **Víctor Báez Mosqueira**

Secretary of Trade Union Policy and Education **Amanda Claribel Villatoro**

Secretary of Social Policies **Laerte Teixeira da Costa**

Secretary of Economic Policy and Sustainable Development **Rafael Freire Neto**

• **Trade union Perspectives on the Informality**

Political coordinator

**Iván González Alvarado**

Communications Coordinator

**Stella Bonilha Borzilo**

• **Processes of Trade Union Self-Reform in the Americas**

Redaction

**Guillermo Zuccotti**

Collaboration

**Alvaro Orsatti and Isamar Escalona**

Graphic Project and Layout Design

HP Design • [cesarphp@gmail.com](mailto:cesarphp@gmail.com)

**BRAZIL**

Rua Formosa, 367, 4º andar, Cjto. 450, Centro, São-Paulo/SP, Brasil

Zip Code **01049-000**

Fone + 55 11 2104 0750 • Fax + 55 11 2104 0751

[sede@csa-csi.org](mailto:sede@csa-csi.org) • [www.csa-csi.org](http://www.csa-csi.org)

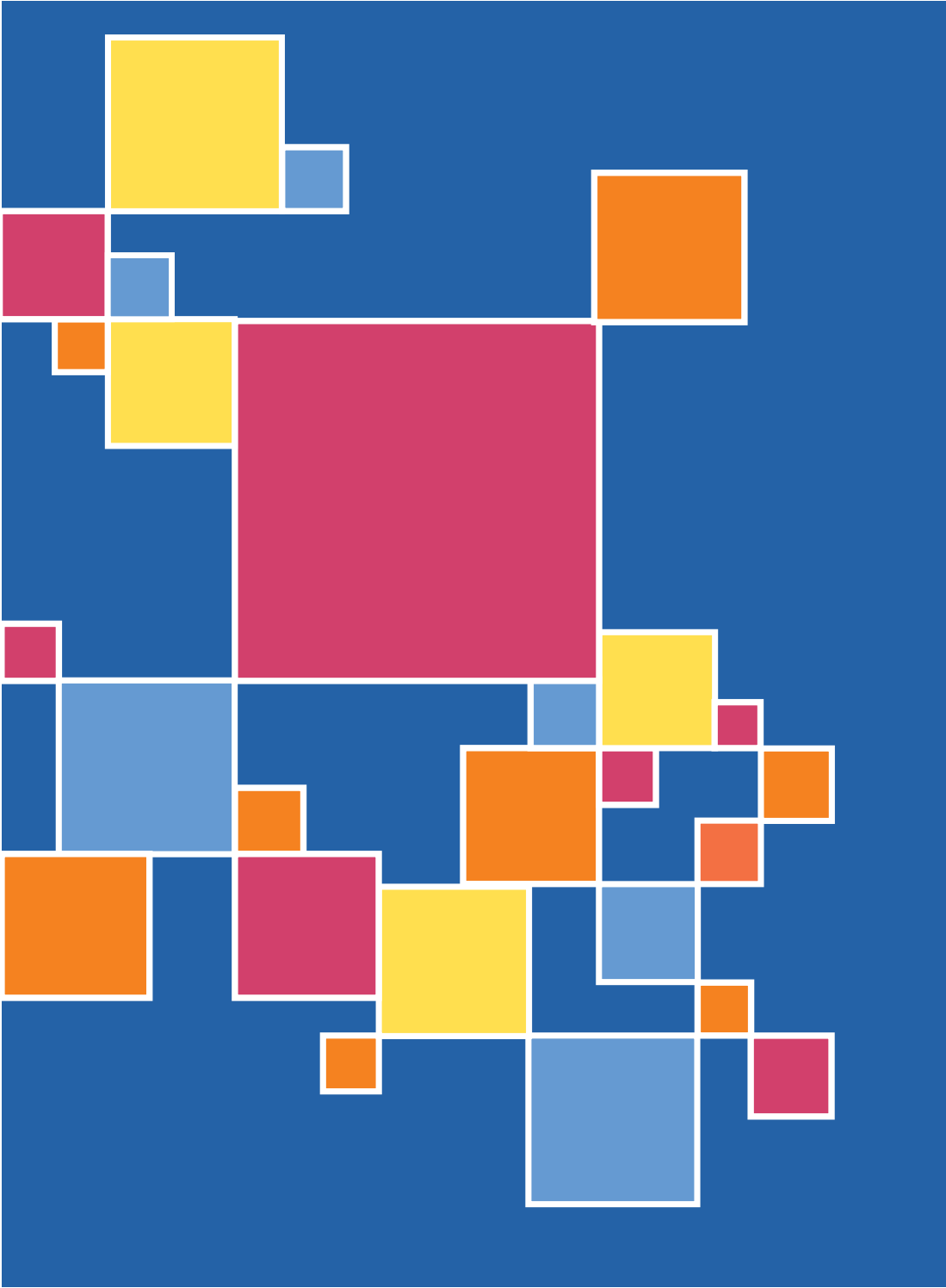
**COSTA RICA**

Sabana Norte, del Restaurant El Chicote, 100 mts., Norte y 75 mts. Oeste.

San José, Costa Rica Zip Code 1577-2050

Fone 506 2291 7900/ 506 2291-790 • Fax 506 2291 7898

[csacen@csa-csi.org](mailto:csacen@csa-csi.org) • [www.csa-csi.org](http://www.csa-csi.org)



## CONTENTS

---

10	<b>Chapter 1</b> Informal economy and its transition to a formal economy: the challenge of decent work
18	<b>Chapter 2</b> The regulatory environment at an international level
25	<b>Chapter 3</b> Transition to the formal economy: the role of integrated policy frameworks

---

# PRESENTATION

In the Americas, economic and social structural problems and the new forms of production and work organization, have generated a reduction in the scope of protection of labour rights and ambiguity in employment relations and job creating more job insecurity, precariousness and informality, which means a clear unsatisfactory situation regarding the paradigm of decent work.

In view of this scenario, the Trade Union Confederation of Americas (TUCA) in its 2nd Congress, in March 2012, TUCA established guidelines for the sociopolitical and trade union action through the Resolutions “Work in precarious and informality conditions” and “Trade Union Organization and Self-reform”. With these resolutions, the TUCA articulates its action with the International Trade Union Confederation (ITUC) and strengthens the participation of its affiliates in the tripartite forums of International Labour Organization (ILO) whereby, the informality is present both in the informal sector (mainly autonomous workers), as in the formal one (unregistered employment). The latest policy document formulated by TUCA, the Development Platform of the Americas (PLADA in Spanish), joined the contained in the overall strategy.

For TUCA the transition to formality is central to achieving a sustainable and inclusive development centered on decent work for all workers. This is expressed in the whole working class, including the ones who are in the informal economy are effectively able to exercise their fundamental rights, including freedom association and the collective bargaining, as enabling rights that facilitate access to other rights such as social security, security and health, protection to the maternity, decent wages, etc.

Therefore, it is essential to reference the comprehensive set of guidelines and standards that the ILO has worked since its founding as the Declaration of Philadelphia (1944), the Declaration on Fundamental Principles and Rights at work (1998), the Global Jobs Pact (2009); as the Resolution concerning Decent Work and Informal Economy (2002), among other: a) the Recommendation 198 of ILO concerning employment relation (2006); b) the Convention 189 about decent work to domestic workers (2011) and that consider, for the first time, that the domestic work shall always be paid; c) the Recommendation 193 about the promotion of cooperatives (2002).

Furthermore it is necessary to improve the policy coherence in the national field around the four strategic objectives of employment, social protection, social dialogue and fundamental principles and rights at work, with gender mainstreaming and equality, and to guarantee that they take into account the wide range of atypical modalities of working relations and informal work, those sectorial and gender dimensions and to redirect the global policy to focus on decent work as an engine of economic and social development.

For TUCA the formalization improves economic efficiency and the well-being, contributing, thereby, to social justice, sustainable growth and development. As regards the PLADA: "The concept of Sustainable Development is listed as one of the alternatives to the neoliberal matrix, it is a way of understand and organizing the essential aspects of social life with a new logic [...] it is built based on our trade union strategy reaffirming the pillars of decent work..."

"The new Aureliano was a year old when the tension of the people broke with no forewarning. José Arcadio Segundo and other union leaders who had remained underground until then suddenly appeared one weekend and organized demonstrations in towns throughout the banana region. The police merely maintained public order. But on Monday night the leaders were taken from their homes and sent to jail in the capital of the province with two-pound irons on their legs. [...] However, they were set free within three months because of the fact that the gov-



ernment and the banana company could not reach an agreement as to who should feed them in jail. The inconformity of the workers this time were based on the lack of sanitary facilities in their living quarters, the nonexistence of medical services, and terrible working conditions. They stated, furthermore, that they were not being paid in real money but in scrip, which was good only to buy Virginia ham in the company commissaries.

[...]The decrepit lawyers dressed in black who during other times had besieged Colonel Aureliano Buendía and who now were controlled by the banana company dismissed those demands with decisions that seemed like acts of magic. When the workers drew up a list of unanimous petitions, a long time passed before they were able to notify the banana company officially. [...]Tired of that hermeneutical delirium, the workers turned away from the authorities in Macondo and brought their complaints up to the higher courts. It was there that the sleight-of-hand lawyers proved that the demands lacked all validity for the simple reason that the banana company did not have, never had had, and never would have any workers in its service because they were all hired on a temporary and occasional basis. So that the fable of the Virginia ham was nonsense, the same as that of the miraculous pills and the Yuletide toilets, and by a decision of the court it was established and set down in solemn decrees that the workers did not exist.”

Gabriel García Márquez, *One Hundred Years of Solitude*.

---

## **CHAPTER 1 INFORMAL ECONOMY AND ITS TRANSITION TO A FORMAL ECONOMY: THE CHALLENGE OF DECENT WORK**

**W**ork in an informal economy is contrary to ILO's constitutional tenets, which establish that work is not an item that can replace the nature of an employment relationship by treating it in the same manner as the business of buying and selling commodities, because it generates a dual and inequitable environment.

An informal economy prevents workers from being employed in the decent working conditions of the formal economy sector. At the same time, it obstructs the formalization of micro and small enterprises by creating a disloyal competition that generates heterogeneous structures of inequality, and likewise weakens public institutions, as well as labor and employer organizations. Therefore, they undermine governance and social justice at a global level.

Aside from classical or disguised labor relations, the informal economy also plays an important role in independent or autonomous work. In this regard, trade union action also addresses the formalization of the economic activities of those male and female workers. It is also interested in the formalization of cooperatives and other production units participating in a social and fair economy, to incorporate them into decent work standards.

The global predatory competition environment has generated structural changes in the labor market, such as a labor flexibility that often divides it in segments, thus preventing workers from being employed in the formal sector with established decent work benefits; creating obstructions that impede micro- and small enterprises from crossing the line into formality; and encouraging the proliferation enterprises that operate with a partial informality in order to reduce production costs, including labor costs; and generating a social dumping by violating the fundamental rights that ILO holds as universal rights.

Therefore, work in the informal economy is characterized by persistent decent work deficits. In the case of the informal economy and informal work, it is necessary to provide tangible aspects that are visible and measurable to facilitate a determination of which work qualities do or do not follow decent work standards, where do deficits occur, and which are the concrete measures that need to be implemented to promote decent work as a whole.

The operating criteria to define informal jobs must be established on the basis of the concept of universally decent work, and it is especially important to promote statistics on freedom of association and collective bargaining.

There is a rise in unemployment, poverty, gender inequality, and precarious work rates in the informal economy as result from the lack of decent work.

The respect for labor rights is therefore a necessary condition to establish uniform rules of the game for everyone. Thus, a respect for freedom of association and collective bargaining as set forth in Conventions 87, 98, 151, 154, 135 and 141 cannot be separated from concepts such as productivity and competitiveness. There is no competitiveness without decent work, but only social dumping.

The first step in conceiving effective measures to facilitate the transition to formalization is, then, to recognize the heterogeneity of the informal economy, as well the different work categories it comprises, and the various factors that give rise to the growth of the informal economy and the informalization of the formal economy.

The informal economy develops in an environment of complex links between the formal economy and the informal economy. Although the informal economy develops mainly in the internal market, connections between workers and producers in the informal economy are currently linked to the global economy in various ways (the global production networks, migration, global economic cycles, and variations in the global price of basic commodities and foods), and have repercussions on the level of vulnerability of economic units and informal economy workers; the activity and capacity of informal economy actors; the transition paths to formalization; and the possibility of controlling and effectively enforcing the regulation of global enterprises operating in different jurisdictions. As many others, the activities of the informal economy are greatly affected by the changes in aggregate internal demand, credit flow reductions, the slowdown of international commerce, and other aspects of the economic crisis.

There are substantial differences between informal economic workers by income (its level, regularity, seasonality), their employment situation (of salaried employees –both part-time as well as temporary, employers, autonomous working on their own account, domestic workers), sector (commerce, services, industries, agriculture), skill (unskilled, professionals, and technicians), registration in various government agencies (or not), business ownership (private, public, social), unit size (individual, micro, small, medium, and large), geographic location (external place or home based work), type of contract with employees (short range, part-time, tem-

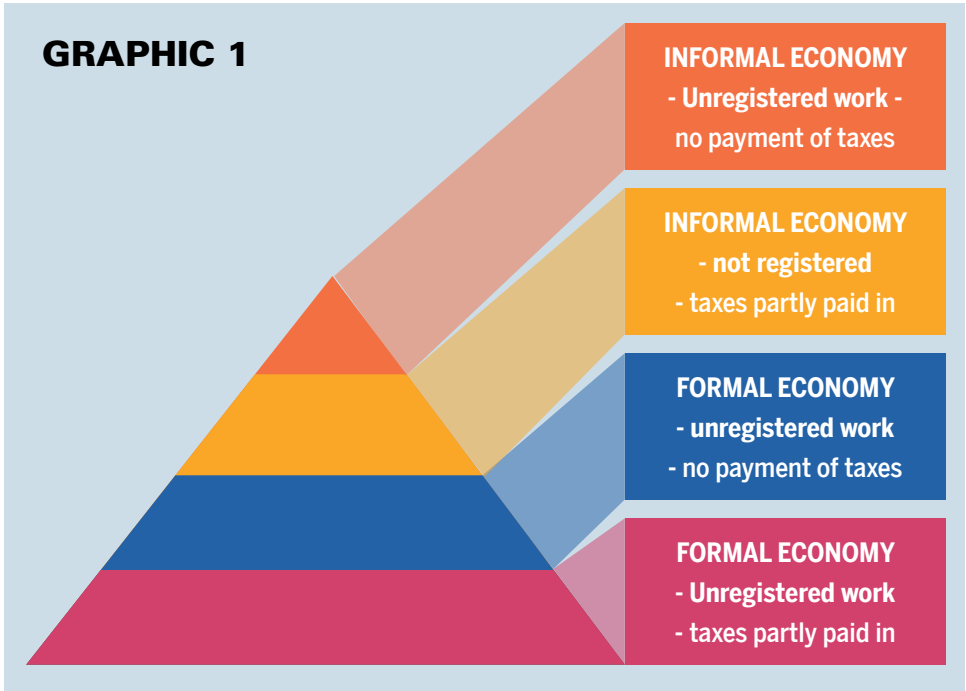
porary, permanent), number of employers connected with a salaried worker (two or more in the case of outsourcing).

To extend coverage to this very heterogeneous workers and economic units set the coordinate application of many tailored instruments to the specific characteristics of different groups is required the contingency have to cover itself and the national context.

From all mentioned anteriorly, within the informal economy there is a significant heterogeneity of activities, such as:

- Safe haven activities by persons own their own account and their family members of low productivity, unstable, and unskilled work performed as street vending or in fixed or semi-fixed stalls in public spaces. It is the genuinely autonomous work (called “simple” or “typical,” according to ILO), which is the main nucleus of the urban informal sector.
- Activities with the highest demand, performed by autonomous workers in an occupation requiring a certain skill, and by enterprises in charge of micro-employers located mostly in the outsourcing sector of the economy: small businesses, personal services, and home-based work. Some of these units may be linked with the informal economy as distributors or retailers.
- Subcontractor industrial micro-enterprise activities. In this case, they are induced by formal enterprises as suppliers of raw materials or manufacturers of components of the final product in value chains.
- Workers who are apparently autonomous, but are actually linked to formal sector enterprises, such as those “economically dependent” (trade) ones. It includes home-based workers. A portion of these workers may be disguised dependents.
- Employment under formal, flexible, and legal contracts, registered at formal establishments, if they do not have social security coverage. It includes work provided by temporary employment agencies, both at a national and at an international level.
- Self-production work at home-based units.
- Unregistered paid domestic work.

## GRAPHIC 1



Informal work should not be confused with precarious employment relationships, although the great majority of the informal modes of work are informal because they do not provide social security coverage. Precarious employment involves situations in which the employment relationship does not guarantee the provision of enough monetary and social benefits to achieve a decent standard of living, and working conditions are fraught with instability, uncertainty and do not ensure good working conditions beyond a limit marked as normal on the basis of a minimal objectivity.

In this regard, the various informal work schemes may be classified according to the degree of precariousness to which workers are exposed, that is, the deficit in the rights to which they have access.

Some elements that may assist in determining the degree of precarious work and the degree of institutional compliance by the production activity are:

- Registration of the work;
- Institutionalization of the enterprise as determined by the degree of its compliance with registration and legal requirements and;

- The degree of contribution and compliance with the rights of male and female workers.

The above pyramid's summit section shows the maximum degree of precariousness marked by the least access to labor rights and social protection. Male and female workers in this segment do not have an established employer or employment relationship, and consequently, have no access to collective bargaining. The lack of social security contributions translates into no social protection for any of the contingencies of life. This is the case of persons working in the informal economy without any degree of formality. The next layer is the typical employment in enterprises with some degree of formalization or with a full formalization of their activities, but unregistered; therefore, they do not make any taxes or contributions that would allow a full access to social security or legal and conventional labor benefits. The third segment consists of workers whose dependent relationship exists in formal enterprises that do meet the registration formalities, but fail to comply or evade their contribution or tax responsibilities, and thereby forfeit access to any rights. Lastly, the bottom layer of the pyramid represents those workers who work for an established and formal employer that even recognizes the employment contract and has registered it, but collects contributions and taxes but does not comply with the legal and conventional clauses in force.

The expansion of the informal economy is an issue created by a lack of policy response to the current economic accumulation model, proof of which is the fact that to date very few countries have developed a global and integrated approach to slow down the expansion of informality. The lack of domestic and global policies regarding this issue is the cause of the spread of this phenomenon.

The elements of a national policy could include the following aspects, as well as others: the dissemination of clear information to employers and workers regarding employment relationships and particularly, the distinction between dependent and autonomous workers; an effective protection of workers according to the legal regulatory framework, as well as an effective access to their rights and to the agencies responsible for auditing and enforcing such rights; enough provisions, actions, and resources to punish the concealment of the employment relationship, which produces the effect of depriving dependent workers of an adequate legal protection; access to adequate mechanisms for the solution of disputes to determine the judicial condition of the employment.

Informality is a structural problem and a governance issue that is the responsibility of various levels - from a world governance by the various agencies of the United

Nations System and other public and private agents that determines a favorable or less favorable global context for the creation of decent work - to a national and local governance that is proportionate to the quality of democracy. The growth of the informal economy may often be due to: inadequate, ineffective, wrong, or misapplied macroeconomic and social policies frequently formulated without tripartite consultations; the lack of the appropriate judicial and institutional frameworks; the lack of good governance for the correct and effective application of policies and laws, and the lack of confidence in administrative institutions and procedures. In the cases in which macroeconomic policies, including structural adjustment, economic restructuring, and privatization policies have not focused enough on employment, the formal economy has dropped or no adequate jobs have been created in it.

The recorded economic growth is not sufficient to meet the challenge of formalization, the same way a greater availability of a country's revenue may improve the environment but does not guarantee equity. Or what is the same, growth resulting from an accelerated integration in the global economy does not necessarily lead to a transition to formalization. Furthermore, due to globalization, informality has acquired a new importance through outsourcing and global value chains; at the same time, the current international financial and economic crisis poses additional challenges to reduce the deficits of decent work in the formal economy.

In fact, there is a relation between the production in informal units and scale economies when such a production is inserted in a value or subcontracting chain. Studies on this matter show that the high rates of informality draw countries to the lower and most vulnerable extreme in global production chains, and attract capital flows with the availability of a large offer of low wage labor.

The flexibility of contractual modes applied in outsourcing processes and the global value chains without a world governance that may guarantee respect for employment rights favors disloyal competition and an increase in informal labor relations. It is urgent to strengthen the ILO as well as the ratification and application of the International Labor Standards that have been adopted for such purpose, as well as a deeper agreement and collective bargaining processes to strengthen industrial democracy.

Support of macroeconomic policies focused on decent work that may allow the sustaining of consumption as the sum of maintaining employment and the access to benefits by the needy population will be of significant assistance in the work of stabilizing economic cycles. In this regard, the presence of the public sector is necessary with regulatory, provision, funding, and production policies that require

standards for intervention in economic relations as well as in public expenditure and revenue policies.

Informality deprives government of public revenues, limits its fiscal margin and its capacity to expand national social protection regimes and other systems that are vital for national development, as well as education and health, and the infrastructure.

Due to all the above, the costs of labor informality are high for enterprises, workers, and governments; institutional structures and tripartism become weak; and thus, policy and democracy values are questioned.

Nonetheless, a transition to formalization is not a matter of “cost,” since the causes of the informality are based on a global decentralization of production competing on the cost of the labor factor based on forcing the flexibility both of labor rights as well as wage costs. This violation of fundamental rights generates an international “social dumping” environment for which the global supply chains and multinational enterprises are basically responsible. A given economic model of globalizing concentration undemocratically decides the type of production and therefore employment in countries, with a central-peripheral logic that corresponds to the predefined added value in the chain where some countries export raw materials and other countries apply the technology.

This means that there must be a close link between appropriate democracy, economic growth, and investment, labor, social and environmental policies in order to guarantee a fair redistribution of growth benefits. Formalization is an essential matter for social cohesion and the achievement of peace.

It is necessary to apply a series of integrated and coherent policies directed at incorporating economic units into the formal economy by including policies for the generation of employment, industrial policies, minimum and living wage policies formulated through collective bargaining that will ensure that enterprises may not compete by reducing worker income, that social protection is expanded, labor rights are applied, and entrepreneurial initiative and professional skills, local development, and the strengthening of social dialogue are supported.

This integrated policy framework requires a regulatory framework for stable employment relations (for which C.122 is especially important) that may lead to a much better productivity performance than that of the flexible, precarious, and informal labor markets. Enterprises whose survival depends on the violation of the



fundamental rights of workers leaving them necessarily outside of the cost-benefit equation, should not exist.

The 2008 world crisis created an opportunity to focus attention on the fundamental importance of the objectives relative to employment in economic strategies, the macroeconomic policy instruments for the recovery and employment development, the management of rebalancing global demand (and the increase of internal demand), and the formulation of industrial sector policies that favor employment.

When speaking of productive employment, it should be stressed that the productive structure is the one responsible for the insufficient employment demand. At the base of this structure is the low coefficient investment on the GDP, and an investment composition with a very low labor absorption in the high productivity activity branches. The insufficient generation of formal labor in the productive sectors generates a wide, low productivity sector in commerce and urban personal services, generating also the paradox of coexisting sectors that have experienced an exponential increment of productivity with low wages and informality, as is the case of agricultural work.

Due to all the above, the responses to the issues posed by informality should be policies. An adequate formulation of policies requires a global, integrated, and coherent approach to stop the expansion of informality; the importance of the International Labor Standards among ILO support tools is fundamental.

Since 2002, the global and integrated approach within the Decent Work Programme framework has continued to develop and adjust in debates about policies, and is now expressed in a framework of policies and diagnoses based on the seven paths toward formalization (see the graph below). This framework highlights the importance of vertical integration and coherence between all policies to stop the expansion of informality, while the horizontal dimension focuses on intensifying the action at each policy sphere. These policy spheres are as follows: the generation of quality employment and growth strategies; a regulatory environment; social dialogue, organization, and representation; the development of equality and the fight against discrimination; measures to support entrepreneurial initiative, professional skills, and funding; the expansion of social protection and local development strategies to which fiscal policies and industrial sector policies must be added.

---

## CHAPTER 2 THE REGULATORY ENVIRONMENT AT AN INTERNATIONAL LEVEL

International labor regulations ratified by countries must be applied as a whole. As an exception, some regulations may allow exceptions or reservations as required by national circumstances and capacities.

### 1 FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING:

When analyzing the experiences of adopting public policies on informal workers, including the right of association and collective bargaining, in no case may the conceptualization of labor and the male or female worker be confused with that of the entrepreneur/employer. Both have different types of rights and obligations within the framework of labor relations, be they formal or informal, and thus, as subjects of rights and obligations with respect to the application of the International Labor Standards.

This possible confusion and the benefits of Collective Bargaining may arise when looking into the aspects of autonomous work. The lack of an employer, at least in the classical way, to act as a counterpart in an eventual negotiation makes its effectiveness difficult.

Even so, it is a fact that workers on their own account, to the extent that they use public spaces (squares, streets, markets, sports venues), frequently engage in negotiations with local authorities (municipal, mayors) regarding health and safety working conditions (to protect the use of the public space by pedestrians), and space distribution such as the Mexican tianguis or flea markets, directly in the charge of trade unions at certain times).

Other examples of negotiation have been observed in certain independent groups defined according to their occupation, in which the main element is the setting of rates. That is the case of stevedores in the Peruvian wholesale markets and construction and tourism workers in the Dominican Republic, with the participation of public organizations and the private sector itself. It is also the case of semi-autonomous workers such as the major small-scale carriers working for certain enterprises.

The CSA strategy on collective bargaining, as part of the Campaign for Freedom of Association, Collective Bargaining, and Self-Reform (2013), has included the following recommendation: “Promote the collective bargaining of autonomous workers,” with the following content: “this item refers mainly to economically dependent workers – Trade, in European terminology – who present varied collective bargaining experiences in the region, including those promoted by means of a specific legislation. The approach may be generalized toward the “simple” autonomous workers to include them in C154 and thus cover certain national negotiation practices at a local level between the authorities and persons using public spaces to work. In this case, we assist with regulatory modes based on administrative law, viewed as quasi-labor law.”

With regard to the disguised autonomy and the effectiveness in detecting interrelated productive processes which import economic and functional productive dependency –for external and internal subordination– a very important aspect is the sectoral negotiation throughout the entire value chain, strengthening the idea of trade co-responsibility for the defense of labor rights of those dependent workers of the organization of production decided by the main enterprise, who lack the possibility of electing direct representation either de facto or by means of a legal exclusion.

At the level of the informal salaried worker relations, it is noteworthy also for its future expansion the negotiation in Uruguay between the domestic workers union and a league of homemakers and consumers, in anticipation of a major aspect of Convention 189.

## **2 FORCED LABOR**

**T**he globalization of production, the inequalities between countries and internally, generate conditions that take advantage of current modes of forced labor being applied in view of the need for work, or when the need for income and the conditions to gain access to it force workers to accept unacceptable working conditions in terms of decent work. In this regard, the natural reference framework for the preservation of human rights is ILO Convention 29.

It is also important to stress the importance of work inspection in this regard, and of Conventions 81 and 129 as governance conventions.

### 3 CHILD LABOR

Taking into account the poor public authority capacity to audit work in the informal economy, it is necessary to focus on special actions for the case of minors, under the premise that child labor in the informal economy should be considered a priori as hazardous work.

Hazardous work consists of: work in which a child is exposed to physical, psychological, or sexual abuse; work performed underground, under water, at hazardous heights, or in confined spaces; work performed with hazardous machinery, equipment, or tools, or that involves the manipulation or manual transportation of heavy loads; work performed in an unhealthy environment to which the children may be exposed, such as hazardous substances, agents, or processes, or at temperatures or noise or vibration levels that are detrimental to their health; work implying especially difficult conditions such as prolonged or nighttime schedules, or work that retains the child at the employer's premises without justification. Under such factors, the impact of the work on children may go from a relatively minor injury to a disability or even death. Likewise, some of the physical or psychological problems resulting from the work may not be evident or may appear many years later, as in the case of heavy metal poisoning or alterations in their intellectual or social development.

At any rate, they are especially important to ensure that this and other fundamental rights are ensured, C.81 and 129 on work inspection.

### 4 DISCRIMINATION

Work in the informal economy is contrary to the principles established in Conventions 100 and 111, as workers are subjected to unequal treatment and employment opportunities.

On its part, Convention 169 of the International Labor Organization (ILO), as an international judicial instrument, compiles, promotes, and protects the rights of the indigenous peoples as collective subjects by recognizing their specific rights. Since the twenties, when ILO exposed the situation of forced labor of indigenous workers in the European colonies, a Convention on Forced Labor was adopted (no. 29), as well as Conventions 107 and 169 on Indigenous and Tribal Peoples.

Despite current international rules and standards, historical processes and struc-

tural causes have had a deep impact on the occupation and employment of these collectives. One of the factors is found in the lack of control of the land, territory, and resources. And it is so that most of these peoples depend on the means of access for their subsistence strategies and, in some cases, for their inclusion in rural labor markets relative to agricultural and non-agricultural activities.

## **5 EMPLOYMENT**

**C**122 allows the materialization of the right to work and implies a reduction of forms of precarious employment. This should be the most important line to follow for formalization. Thus, in order to open the path to a freely selected employment without discrimination, and productive in the widest sense, precarious modes of contracting, work outsourcing, underemployment, the extensive use of private employment agencies, or subcontracting need to be progressively reduced, as well as all modalities whose object is to create an individualizing, segmented, and low wage sector.

This and other ILO instruments also link growth with economic and social development with an integrating vision consistent with the mandate of decent work.

Other legal instruments that deserve highlighting are C158 for the protection against unfair dismissal, R.198 regarding the legal recognition of any de facto employment relationship, C175 on equal rights of part-time workers, or C94 on Labor Clauses undertaken by public authorities, since governments should be exemplary employers and use their role as contractors and suppliers of subsidies and credits to ensure fair working conditions.

On its part, the 2009 PME provides a framework to record a full tripartite response to the crisis focused on maintaining and creating employment. The PME addresses the structural issues of the crisis, demanding a reform of the global economic and finance system, and a more equitable distribution of income within societies.

## **6 SOCIAL PROTECTION**

**T**he application of Convention 102 and of Recommendation 202 should be done simultaneously by identifying and utilizing the possible synergies and complementing elements. Also, governments should consequently provide precise information on the manner in which the new social protection mechanisms shall be

harmonized with the existing social security system.

In this regard, for the purpose of effectively contributing to the process of transition from informal to formal employment, it is necessary to provide basic social protection guarantees within the framework of general public policies that are integral and consistent based on an effective coordination between state policies on education, health, social security, employment, and labor matters, as well as economic, industrial, and fiscal policies.

It is important to remember that both the payment of taxes as well as social security dues are associated with public expenditures and the provision of public benefits. The economies need to adjust to their revenue possibilities in order to define a fiscal system with a balanced distribution of the efforts and an honest application of expenditure policies.

Therefore, countries with a high rate of social security fraud, labor fraud, and tax evasion, and where a large ratio of their population is engaged in activities within the context of informal employment, must formulate an integrated strategy of evasion and fraud control, along with an expansion of coverage.

## **7 SOCIAL DIALOGUE**

Legislation and its interpretation must be consistent with decent work, which includes solving the uncertainty of the existence of an employment relationship in order to guarantee a loyal competition and the effective protection of the workers joined in an employment relationship.

The effective protection and the prevention of the abuse of workers affected by the uncertainty over the existence and conditions of an employment relationship must be based in efficacious, effective, and widely ranging laws that must apply to all forms of contractual agreements, including those between several parties. The agreement must stipulate who is responsible for the protection provided therein.

These guarantees of compliance and the application of the legislation relative to the employment relationship must be implemented by means of work inspection services, in collaboration with the social security administration and fiscal authorities.

For the purposes of the national policy of protection for workers in an employ-

ment relationship, R198 establishes that “the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties.”

## **8 LABOR AND SOCIAL PROTECTION**

**L**abor protection is granted by means of the effective application of labor laws and therefore, of the rights of association, as enabling rights.

With regard to social protection, it is important to mention the Brazilian case as reference for a labor relationship model that expands collective bargaining as well as social security coverage in an integrated and balanced manner between member and non-member benefits, taking decent work as its axis and objective.

## **9 ENTREPRENEURIAL INITIATIVE**

**T**he minimum labor standards and basic labor rights may not be other than the fundamental rights defined in the 1998 Declaration.

Likewise, when speaking on the granting of social security, the regulatory framework is established in C102 and R202, which resulted from an international tripartite consensus coherent with the integrating concept of Decent Work established in the Declaration on Social Justice. It is in this space where possible solutions to the decent work deficits must be pursued on the matter of social protection.

It is necessary to pay special attention to the characterization of the micro-entrepreneur and the consequences of such conceptualization regarding the labor rights to be applied. In this sense, it would seem more adequate to speak about micro-enterprises as productive units with the given characteristic properties of entrepreneurial management independent from the means of production, and not as much of the ambiguous figure of an individual micro-entrepreneur that could be confused with that of the autonomous worker.

Recommendations 198 are relevant to the entrepreneurial initiatives on the employment relationship, 193 on the promotion of cooperatives, and 195 on human resource development, as regulatory instruments with a tripartite definition.

## 10 UNDECLARED WORKERS AND THE INFORMAL ECONOMY

When speaking about “undeclared workers,” it is an implicit reference to “labor fraud, fiscal fraud, and social security.” When analyzing the labor reality through this concept, the best definition of Labor Fraud is provided by ILO when referring to the disguised or concealed employment relationship it states that: “Disguising an employment relationship means to create an appearance different from the one actually held, for the purpose of annulling, impeding, or diminishing the protected granted by law.”<sup>1</sup>

With such a concealment an employer forfeits, impedes, or diminishes the protection laws grant to working persons, thinking that over the short range such a depriving of rights will derive in an increased benefit and less entrepreneurial responsibility. Nonetheless, as is globally considered, only an adequate regularization of labor relationships and the respect and protection of labor rights and of association will allow the sustainability of enterprises over a short or long range, using adequate levels of technology and productivity to achieve the enhancement of living and working conditions.

The same report continues to refer to these disguised labor relationships by stating that “...the most radical concealment consists of making an employment relationship appear with the aspect of one of a different juridical nature, whether it is a civil, commercial, cooperative, family-based, or any other one.”

---

1 ILO Report V: The Scope of the Employment Relationship, CT.91. Meeting 2003, page 27.



---

## CHAPTER 3 **TRANSITION TO THE FORMAL ECONOMY: THE ROLE OF INTEGRATED POLICY FRAMEWORKS**

**A**lthough formalization exclusively in terms of recording and imposing penalties to punish non-compliance of the law is not conceivable, these aspects are important. The legal deficit or vacuum must be covered with a legal scope that protects informal economy workers as subjects of rights within the decent work framework.

These laws must be conditioned to promoting decent work over any path to formalization, with the necessary support of public policies that may overcome the limited options available to most of the actors of the informal economy.

These policies simultaneously pursue the following objectives:

- The promotion of formal employment by means of macroeconomic and sectoral policies, focusing especially on the development of sustainable micro-enterprises as well as small and medium enterprises in full compliance with Decent Work tenets;
- The reduction of informal employment by means of a reduction in the administrative cost of the transitions to formalization by creating a regulatory environment that reduces administrative formalization restraints, and at the same time protects the rights of workers and the prioritization of wage protection;
- An increase in decent work in the informal economy by guaranteeing the fundamental labor rights, especially the freedom of association and collective bargaining in any of its forms, the establishment of a national social protection base for all, the existence of a minimum wage requirement and of respect for safe and healthy working conditions, the development of informal economy enterprise groups into production and/or distribution cooperatives, as well as support for the creation of enterprises and social economy organizations.

National and local governments, global supply chains, and multinational enterprises must work together to facilitate the transition to a formal economy with the

participation of worker and employer organizations, all within national and global development strategies that may integrate a grouping of macroeconomic, industrial, social, labor, and environmental policies to promote decent work and human development.

## **1 MACROECONOMIC AND SECTORAL POLICIES FOR THE PROMOTION OF EMPLOYMENT**

**S**topping the expansion of the informal economy requires, before anything else, achieving employment as a fundamental aspect of economic and social policy by promoting macroeconomic frameworks favorable for employment and supporting all the productive sectors of the economy that have a significant influence on employment and decent work, with an environmental sustainability.

Sectoral policy is a key aspect in this regard. A new generation of development strategies advocates an expansion of the sectors that will create high levels of added value and employment, and produce widespread multiplying effects and links with the national economy. In order to restructure the growth model to ensure it is inclusive and generates decent employment, it requires policies that encompass all sectors with the maximum potential of creating direct or indirect jobs, as well as laws specifically directed to priority value chains.

It is necessary to pay attention to sectoral industrial policies when the time comes to define the type of production a country needs for its development, addressing in the first place the needs for consumption and internal investment, and linking exports to a national development strategy already defined.

In this regard, the setting of export commodity prices in international markets has a direct effect on the income of the most vulnerable productive units, and therefore on the wages and on “decent work.” It may likewise affect food sovereignty, the evolution of internal prices, or the energy dependence of a country at a given time, and sectoral policies must foresee and establish strategies to address these phenomena. It is especially important in this respect to define nationally which type of exports are functional for the national development strategy and which are not, also taking into account the “idle capacity” of the industrial fabric in countries less favored by exchange relationships. To this end, the orientation of credit with the national central banks may play a fundamental role.

Likewise, the strengthening of the internal demand on the development of wages

and social benefits must serve for the productive and industrial development of the country, coherent with the national development strategy, taking into consideration the dysfunctionality that may be caused to this objective by a certain type of imports.

Electrification, rural roads, health and educational centers or the local markets have a considerable impact on the social development and productivity, the income of small producers, and the security of the means of livelihood of the informal economy actors. Organization of the production of these activities involve numerous connections, and it is therefore necessary that the States guarantee compliance with Decent Work throughout its entire productive process, including workers under any subcontracting modality.

It is necessary to establish explicit and quantitative objectives for Decent Work in the national development strategies and in the national employment policies with a firm and quantifiable commitment to achieve them. This must be accompanied with a strengthening of the information systems on the labor market for the purpose of observing the evolution of the creation of employment and assessing the impact on employment by the sectoral policies applied.

## **2 GOVERNANCE, SUSTAINABLE ENTERPRISES, AND PRODUCTIVITY**

Since the nineties there has been an evolution in the understanding of human development that overcame the unidimensional growth logic. Along this line, we have passed from the GDP to the Human Development Index (HDI) as a multivariable indicator, from poverty to exclusion as a relative composite indicator, and from income and wages, to Decent Work for a political and programmatic conceptualization that includes Standards and Tripartism as essential elements, and therefore, as a differentiating element of the ILO contribution.

In this regard, the tridimensional concept of productivity is especially important for:

- The productivity of the labor factor, which would require overcoming the concept of wage cost toward a wider sense of the cost that would integrate worker health and safety (the cost of accidents on the job and occupational illnesses), and the social cost of precariousness and lack of labor rights.
- The productivity of the capital factor, linking it to the investment-reinvestment and the technology component.

- The productivity derived from benefits/social and environmental costs, such as externalities.

On its part, the informalization of the economy is not only a matter applying laws but a structural problem derived from the current economic model that gives rise to an unfair and unbalanced globalization process that requires the active intervention of the States to redirect it, as was defined in the Declaration on Social Justice.

Therefore, the relationship between the informal economy and the legislation must not be interpreted in the sense that formalization only has, or mainly has, a juridical dimension. The causes of informality are multiple, and mostly are not related to legality. For this reason, it would be ineffective to proceed with formalization solely by means of a legislative reform. In addition, the definition of a set of laws that would encourage the formalization should refer to provisions of a civil, commercial, administrative, credit or fiscal nature, but in no case should such an adaptation involve a segmentation of these workers' labor rights or social protections.

On their part, limitations on collective bargaining and freedom of association constitute a suitable environment for informality, as they generate a juridical lack of security in the universal application of labor rights.

### **3 WORKING CONDITIONS AND WORK INSPECTION**

A strategy to reduce the cost of the transition to the formal economy and increase its advantages involves an increase in the costs of informality. The fundamental rights and standards of work are the basic minimum and are non-negotiable, and any breach should be met as a non-discretionary criminal liability. Nonetheless, regulation will be more effective if several alternatives are provided for its application, such as innovations in worksite inspection combined with counsel, dispute resolution, a promotion of the organization and collective actions, and training programs for informal sector enterprises.

An important cause of the deficiencies in the application of the labor legislation in many countries is the weakness of labor administrations, particularly in work inspections. Despite the growing complexity of enterprises, production systems, and employment relationships, the resources assigned to work inspections are usually insufficient, including for an adequate periodic inspection at medium and large size enterprises.

## **4 PROMOTION OF A SUITABLE ENVIRONMENT FOR SUSTAINABLE ENTERPRISES**

It must be pointed out that the concept of promoting a suitable environment for sustainable enterprises does not end with the protection and promotion of capital, because the seventeen dimensions identified by ILO in such regard include various social, economic, policies and environmental issues including cross-cutting ones such as the full compliance of decent work. In fact, in a recent study by ACTRAV not yet published, it has been found that countries with the highest levels of promotion of a suitable environment for sustainable enterprises are those with the highest standards in terms of decent work.

Policies to establish a suitable environment for sustainable enterprises should include, as a priority, the promotion of decent work and the enhancement of productivity by means of capital reinvestment, access to funding, infrastructures, markets, and technology and the exchange of knowledge, all of it within the framework of a national sustainable development strategy.

## **5 ACCESS TO FUNDING**

The definition of national development strategies with its main focus on the promotion of decent work should contemplate the inclusion of credit development policies for those productive sectors which are the most functional for the country's social development, and therefore are employment creators. Any intervention by the central banks to have a credit flow for small and very small enterprises is fundamental.

ILO is promoting a balanced approach that takes into consideration both production needs as well as the protection of informal economy workers, such as loans to micro-enterprises to increase their revenues and create jobs with decent work standards.

## **6 DEVELOPMENT OF PROFESSIONAL SKILLS**

It is evident that the previous conceptualization of productivity based solely on professional skills and employability falls short, because productivity also depends, among other things, on the reinvestment of the benefits of technology and innovation.

The lack of rights which is characteristic of work in the informal economy and in the precarious Jobs in the formal economy punishes the young especially. The development of employment policies to increase the employment demand is useful, yet insufficient: it is necessary to improve the quality of the jobs if the aim is to prioritize policies against informality and job precariousness. In this regard, and beyond the employer's responsibility and obligation to comply with the laws in force for contracting work, it becomes strategically indispensable to keep them connected with professional development, that is, the skills for the specific occupations and jobs to prepare the young with the knowledge and empowerment of their labor rights.

On the professional orientation and training for the development of human resources, Article 2 of ILO's Recommendation 150 states that the object of professional development is to uncover and develop human abilities for an active, productive, and satisfactory life and, in conjunction with the various instruction modalities, enhance individual skills to understand individually or collectively how much they are pertinent and have an influence in working conditions and the social milieu. More recently, in 2004, the Recommendation (No. 195), on human resources development explains in its Article One that "Members must, on the basis of social dialogue, formulate, apply, and revise some national human resource development policies to make them consistent with the policies adopted in the economic, fiscal and social areas." From this we can infer the implicit professional development and decent work link.

This integrated approach leads us to conclude that both educational policies as well as the activities relative to professional development should be accompanied with contents that contribute to generate awareness of the elements that constitute decent work, in order to achieve a sustainable consolidation of the development policies.

On its part, the development acquired from experience, training on the job, and apprenticeship in the informal economy is not usually recognized by the formal labor markets or official development institutions. Therefore, it is necessary to create tripartite institutions and mechanisms to evaluate professional qualifications and skills acquired by workers, so they may be approved and recognized with an appropriate certification. Recognition of skills is essential whether acquired through various channels and including work in the informal economy, to create a national framework to rate professional and technician skills that provides reference criteria for their acquisition, harmonization, and recognition. In this regard, trade action in terms of the certification of skills presents promising perspectives, as well as the incorporation of this matter into the collective bargaining framework.

## 7 ORGANIZATION, REPRESENTATION, AND SOCIAL DIALOGUE

The organization of workers and entrepreneurs in the informal economy is the first step toward social dialogue and the creation of tripartite solutions that may take into account the contextual factors and the heterogeneity within the informal economy. However, workers on their own, as well as informal precarious workers in the formal economy are sometimes not authorized to organize themselves by virtue of the local or national legislation, and are often excluded or are insufficiently represented in the social dialogue institutions and the processes of policy formulation. Without organization or representation, those working in the informal economy are unable to defend their labor rights through collective bargaining or influence those responsible for the policies.

The exercise of ILO's universal Principles and Rights should correspond exclusively to the sovereign and democratic decision of workers, which implies a full freedom of self-association, unionizing, and acting autonomously without any type of intervention, as they may be best suited for the purposes and interests of workers. That is, how, where, and when workers may freely and democratically decide.

If these principles and rights are so respected and complied with in all countries, outsourced or temporary workers and those working in the informal economy could organize in unions and affiliate themselves individually or collectively to the organizations they may freely choose, with the sole obligation of respecting trade union bylaws.

However, in most of the developing countries of the world, the dominant systems are based on company unions because this is what ordinary laws have so established, conditioning the rights of workers to constitute, organize and unionize themselves individually and collectively to the existence of prior requirements such as the types of unions that may be created, and a required minimum number of members in order to exist.

The requirement of minimums in order to organize unions, and thus the ability to unionize, means that more than two thirds of employed workers may not organize within the company, and they also experience difficulties in doing so outside it, because generally a direct membership in branch organizations and/or central unions is not recognized. Therefore, the great majority of workers are legally restrained from exercising this fundamental human right.

Likewise, union action is restricted and controlled by ordinary laws that limit

Collective Bargaining by foreshadowing processes, limiting or conditioning contents or terms or banning certain collectives from it, as well as in the case when the right to strike is stifled by establishing requirements that limit or explicitly forbid its use by certain collectives.

## **8 LOCAL STRATEGIES FOR DEVELOPMENT, COOPERATIVES, AND SOCIAL ECONOMY**

**M**asures that may be adopted by local authorities to support the transition to formalization include, among other: establishing complementary control mechanisms to respect the fundamental labor rights, supporting community-based management initiatives, strengthening social dialogue mechanisms, facilitating market access, increasing internal investments and local public contracting, improving value chains, promoting methodologies with a high decent employment coefficient for the development of infrastructures, rationalizing the registration and regulation of enterprises, providing support services to enterprises (entrepreneurs and workers), assuming an interlocutory role in the collective bargaining processes with street vendors, and establishing closer collaboration ties between the public and private sectors.

On their part, various types of cooperatives and social and solidary economy organizations committed to decent work principles can play an important role in the local development, especially in rural areas, and are especially important to develop a direct access to distribution and marketing channels.

## **9 PROMOTING EQUALITY AND FIGHTING DISCRIMINATION**

**T**he same discrimination problems affecting female workers in the formal economy (by sector, occupation, income, stability) reproduce and often become even worse in the informal economy. The trend in this sector is for women to have lower incomes and less capital gains and professional skills than men. Also, they are usually grouped in certain vulnerable activities, including home-based work, street vending, and domestic work.

At a macroeconomic level, laws and policies favoring the access of women to productive resources, including land ownership, equity, technology, the development of professional skills, and credit, constitute a fundamental factor for development strategies.



Women's greater need to raise unpaid homemaking activities to a level consistent with remunerated work is the result of a distribution of familial responsibilities which excessively befall upon them. Therefore, a more just distribution of unremunerated work at home and care duties is unavoidable in order to close the gender gap on opportunities for work. Care policies are, therefore, determinant for women to demand their rights and reject job offers that cut down rights and diminish their capacity to exercise citizenship, as it occurs in the informal economy.

On their part, migrant workers disproportionately concentrate in low skill jobs in the informal economy, particularly in agriculture, construction, small manufacturing, domestic work, and other services. These activities are often characterized as temporary, seasonal or part-time work, and subcontracting, and are usually not sufficiently protected by labor regulations or work inspections. Migrants in irregular situations are frequently victims of human trafficking, various modes of slavery and forced labor, or at least are subject to abusive hiring and firing practices, deficient working conditions and wages, the withholding of their identification papers, jobs that are below their qualifications or professional skills, a lack of national and international intervention (bilateral or multilateral) that guarantee the fundamental rights established in the 2008 Declaration.

## **10 THE GRANTING OF SOCIAL PROTECTION: THE FUNCTION OF SOCIAL SECURITY IN THE TRANSITION TO A FORMAL ECONOMY, AND THE IMPORTANCE OF INTEGRATED STRATEGIES**

Informality is an obstacle against sustainable and equitable economic growth, and an important source of social security deficiencies. In this regard, ILC observed in 2011 that “the formalization of the economy is one of the fundamental prior requisites for a long range growth, and shall contribute to increase the revenue base the States needs to fund higher levels of social security for members and contributors, as well as non-contributor benefits for persons unable to pay into it.» ILC added that the strategies adopted in this regard should promote horizontal and vertical dimensions for the expansion of social security, that is, to establish basic social protection levels as a fundamental element of integral and adequate social security systems consistent with the C102 minimum social security standard.

Also, undeclared work deriving from labor fraud and evasion of the payment of social security dues must be stopped with the object of ensuring that all workers contribute and receive the corresponding benefits, under the triple criterion of mandatory contributions, the ratio and sufficiency of the benefits, and the sustain-

ability of the system. The social security equation to extend the coverage within the member contribution regime should go from being responsible for the rights, passing through the obligation of contributing when persons have the ability to do so; otherwise, non-contribution will become the rule instead of the exception. The system's sustainability cannot be guaranteed on the basis of individual "incentives" and "interests."

In this regard, the application of Convention No. 102 and Recommendation No. 202 must be done simultaneously by identifying and utilizing the possible synergies and complements, and governments must consequently provide precise information about the manner in which the new social protection mechanisms are being harmonized with the existing social security system.

When speaking about informality as a survival strategy in view of the lack of formal employment, the existence or non-existence of unemployment protection is fundamental, meaning that under unemployment situations and without any benefits to substitute for wages, informality and income take over as adjustment variables. In the case of unemployment, workers and their families may be protected from falling into the informal economy by granting a wide range of benefits, including unemployment, disability, and dependent children benefits, the support of income and other cash transfers, as well as health care. Securing access to social health protection ensures that lost earnings will not be detrimental to the access to health care.

At any rate, income security, health, and education improve conditions, but formalization depends on a whole group of industrial, sectoral, employment, and fiscal policies and on production, marketing, and distribution models. In this regard, ILC has stressed that strategies to expand social security must be coordinated with fiscal, economic, and employment policies in order to promote such a transition. It is likewise essential to integrate the two dimensions of prevention and protection, including occupational risk prevention, an improvement of working conditions, income security, and the access to health care. The adopted approaches must link and combine social security measures with job creation, the organization of workers and employers, and the promotion of labor rights.



ENGLISH VERSION

# TRADE UNION PERSPECTIVES ON THE INFORMALITY