



Sociedad Internacional de Derecho del Trabajo y de la Seguridad Social

XXIII Congreso Mundial

7 - 10 de Septiembre de 2021 - Lima, Perú

RETOS DE LOS SISTEMAS DE LEGISLACIÓN LABORAL Y SEGURIDAD SOCIAL

- Transformación del trabajo: desafíos para el Derecho del Trabajo
- Comercio internacional y trabajo
- Nuevos retos de la Seguridad Social
- Trabajadores migrantes
- Trabajadores atípicos e informales
- Igualdad en el trabajo
- El Estado y las nuevas formas de voz colectiva

SPDTSS

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AUSPICIADORES



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**TRABAJADORES ATÍPICOS
E INFORMALES**

**NON-STANDARD AND
INFORMAL WORKERS**

NON-STANDARD AND INFORMAL WORKERS

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SUMMARY: 1. Context. 2. Concepts. 3. Problematizing Informality. 3.1. Organizing Informal Workers. 3.2. A Gendered Problem. 3.3. Domestic Workers. 4. Problematizing Non-standard Workers. 5. Covid-19: Impact on Non-standard and Informal Workers. 6. Conclusion: A Debate for the Future

1. CONTEXT

Elaborating a report embraces a long process of discussions and interactions, especially when it is supposed to come from a collective construction. This was indeed the idea when we were invited to coordinate the study group on non-standard and informal workers by the International Society for Labour and Social Security Law (ISLSSL) back in September 2019. We had timidly started this process by the beginning of 2020, when the Covid-19 pandemic was announced and recommendations for social distance were enforced. Many countries adopted a lockdown policy, preventing congresses, seminars, and academic meetings from happening. Academic socialization was badly damaged and it took months before it could be resumed and yet it was done on an online basis. As life became uncertain, our efforts to put together a collective construction were severely affected and we were incapable of overcoming sanitary restrictions to continue with our original idea of voicing up a collective perception of non-standard and informal workers. This report is therefore an isolated effort from its writers and is the expression of what was possible to achieve in pandemic conditions. It is not what we desired for, but instead what was possible to do. Furthermore, we decided to take a more essayistic approach, trying to get away from the academic formalities which are expected to be seen in this kind of report. As a consequence, footnotes were avoided. We wanted to provide for a smooth and continuous reading without the up and down inscribed in the footnote logic (or back and forth of the endnotes' presentation). This essayistic approach allowed us to take risks with a more personal writing expressing our impressions on where we stand on non-standard and informal workers. Accountability for the report is only on us and we openly take responsibility for its contents. We hope the reader will not be disappointed.

2. CONCEPTS

INFORMALITY is a concept extremely difficult to define. It is most commonly perceived for what is not than for what it indeed is. Consequently, informality refers to relationships that are not formalized or that take place outside formal contexts, *i.e.*, it is used to describe practices that are not State legally driven, constitute grey areas and form a variety of shadow, second or covert economies. Differently conceptualized according to its study field, informality constitutes an ideal type based on face to face, intimate relationships, personal modes of social control, tacit knowledge, private and communal ties, while formality refers to an ideal type which is impersonal, transparent and explicit, with social distance and clear structures of power, reliant on official and legal roles, and public and contractual relations. INFORMAL WORKERS are therefore excluded from formality and policy usually seeks to bring them up to formality.

STANDARD is also a concept extremely difficult to define. Despite different possible approaches, it basically works as a reference for a system. While labour standards, as they establish basic worker rights, working conditions, and wages to be paid, set up a minimum level of social protection, standard labour is apprehended, especially in accounting, as the amount of labour time that is expected for the completion of a task. Put differently, a minimum reference for the former, and an average reference for the latter. A reference that comprises the desired pattern for a worker legal status, standard workers basically relate to those who benefit from an unlimited term labor contract, the paradigmatic employment contract type. NON-STANDARD WORKERS are therefore defined by opposition as they are delineated for what they are not: standard workers. As a general trend, non-standard workers do not enjoy job-stability, fringe benefits and the social security safety net which is accorded to full-time, standard employees.

Our report focuses consequently on those who are totally excluded – informal workers who are not formally integrated in the labour legal system – and those who are not totally included – non-standard workers whose formal integration does not grant full protection and hardly grants the minimum level of social protection. It is a report about exclusion and precariousness. It is about those who are eager to fit in and about a legal system that needs to reinvent itself (or at least be more porous) in order to be more inclusive or, to put on a fundamental labour rights perspective, to provide for decent work for everyone.

3. PROBLEMATIZING INFORMALITY

To celebrate its 100th birthday, the *International Labour Review* is producing a Centenary Collection, whose first number is dedicated to informality. In its introduction, Ravi Kanbur proposes a framework matrix which encompasses four different ideal behaviors from economic actors as they deal with State regulation: compliers, evaders, avoiders and outsiders. While compliers correspond to the formal labour world, the three other ideal types express the heterogeneity of informality, *i.e.*, what is left out of the formal regulatory box. When one examines the proposed framework, three different aspects draw immediate attention: (a) the complexity of informality's diversity, (b) the need of empirical assessment, and (c) the long-lasting coloniality effect that conceives informality as something intrinsically problematical in need of being overcome.

As a matter of fact, although informality may be used to describe the non-formal three ideal types, they are not one and the same. There are subtleties to each circumstance which requires different approaches and analysis. Complexity is inherently to an almost catchall concept, which needs to be empirically tested and verified. Most of all, what is needed is the deconstruction of a reasoning that conceives formality as the right and only way of doing things. Definitely, such perception lies on a normative approach that reduces social regulation to State law and ignores the social richness inscribed in other normative orders.

The papers reunited for the first number of the Centenary Collection cover a period of 41 years from 1975 to 2016 and clearly deal with these aspects. Nevertheless their unity does not hide a timeline of research agenda contents that can be summarized in three periods: (a) in the early years, the big research question referred to conceptual issues inscribed in informality; (b) throughout the 1990's, policy and politics became a major issue as dealing with moving boundaries between formality and informality and estimating the impact of different actors were research questions that gained visibility; and, (c) over the last two decades, interdisciplinary approaches were introduced for measuring effects from informality. A research agenda is at last proposed by Kanbur as he draws attention to the impact of technology, which is expanding informality to the formal world on matters of employment quality – informality is nowadays affecting educated and skilled labour – as well as on geographical concerned areas – it is no longer restricted to underdeveloped areas –, and on informality's social organization whose complexity is enhanced by this very same technology.

Yet, such trajectory and prospective exams seem to be limited by an approach that overvalues State regulation, *i.e.*, that fails to embrace normativity outside the State legal system. Lack of formality does not necessarily mean lack of normativity or absence of regulation. An additional aspect to be thus integrated to this research agenda refers to legal pluralism and how it may provide analytical frames to understand how informal work is not necessarily an antonymous for decent work. Informality may be strongly regulated by other normative orders and comprehending how they operate may contribute to a more permeable labor law.

International Labour Organization (ILO) Recommendation 204 (2015) discusses the transition from informal to formal economies. As objectives, it guides ILO members to facilitate the transition from one to the other, promote a sustainable development of formal economies and prevent the informalization of formal economy jobs. Basically, it aims to limit formality's erosion and drawbacks while expanding it and simultaneously integrating informality into formality. R204 covers workers in the informal economy, including: (a) workers who own or operate informal economic units, for instance, own account workers and members of cooperatives; (b) workers in informal jobs in formal or informal economy economic units, including subcontracted workers and domestic workers; and (c) workers in unrecognized and unregulated employment relationships (which may include platform workers). Tailoring measures for such transition accordingly to context is important to deal with informality heterogeneity and national diversity and to offer social protection to the most vulnerable workers in the informal economy (including but not limited to women, young people, migrants, older people, persons living with HIV or affected by HIV or AIDS, persons with disabilities, domestic workers). Most of all, transition to the formal economy has to promote Human Rights and decent work for all through respect for the fundamental principles and rights at work.

Empirical data is absolutely necessary for designing and implementing policies and legal regulation for such transition which is supposed to promote fundamental principles and rights at work, social dialogue, equality and the elimination of all forms of discrimination and violence, including gender-based violence, at the workplace. Integration is to be accompanied by effective social security coverage and occupational safety and health policies. Income security and access to justice are also desired to enhance social ties and expand public participation in the national wealth.

3.1. Organizing Informal Workers

R204 establishes that those in the informal economy should enjoy freedom of association and the right to collective bargaining, and employers' and workers' organizations should, where appropriate, extend membership and services to workers and economic units in the informal economy.

Yet, organizing informal workers is not an easy task as it demands a conceptual review of trade unionism and an urgent revision of the concept of representation. Indeed, representation was previously inscribed in a classical logic of economic categories which is clearly challenged by informal workers' integration. Organizing informal workers is therefore simultaneously a challenge and an opportunity. A challenge as it requires a breakthrough movement regarding who is to be integrated and an opportunity as it provides the union movement with a chance to reinvent itself.

A defy and an opportunity which are not exempt of many challenges for trade unions as to: (a) who to organize; (b) how to organize individuals and associations; (c) constitution; (d) dues structure and collection; (e) services and benefits offered to informal workers; and (f) democratic structures and culture. The two possible perspectives for organization include: (i) the integration of individuals and/or associations to the existing representative structure, and (ii) the granting of an equivalent representation status to informal economy associations, including cooperatives.

The drawing of a constitution that provides for a balance between representation, voting rights and membership dues is necessary to avoid a second-class representation. Each and every represented worker, whether formal or informal, is to be adequately incorporated in the constitution. Dues structure and modes of collection are to be re-imagined to avoid excluding informal workers and these must be balanced against the level of benefits (full or partial) and the nature of services that they receive. As for services and benefits offered to informal workers, representation needs to surpass collective bargaining and offer empowerment to informal workers, for example, micro-credit and capacity-building to support negotiations with public administration. Finally, the development of democratic structures and culture is something necessary to enhance citizenship and to fight gender, racial and social inequality.

We consider examples of the organization of non-standard and self-employed workers and consider how trade unions can play a role in supporting the organization and representation of these workers.

Tanzania's commuter minibus (daladala) drivers and conductors provide local transport to the public. Daladalas are privately-owned and are the most available and cheapest form of public transport. Daladala operations are characterized by a clear class division between the bus owners and the transport workers. About 20,000 to 30,000 daladala workers work for bus owners, the majority without clear employment contracts. Daladala workers pay the owners a non-negotiable daily rent to operate their buses and earn their income only after subtracting all operating expenses, including fuel, traffic fines and police bribes. Daladala drivers could be characterized as disguised employees or dependent workers. Tanzania's daladala workers struggled for recognition and protection as employees for many years. In 1997, a handful of bus drivers and conductors united to form their own association called UWAMADAR (Association of Daladala Drivers and Conductors in Dar es Salaam). The association partnered with the Tanzania Communication and Transport Workers' Union (COTWUT). By April 2000, UWAMADAR was officially registered as an autonomous workers' association and as a branch of COTWUT.

The coalition then pushed for collective bargaining with DARCOBOA, the association of bus owners/employers and supported strikes and localized walkouts of workers. The coalition also appealed to government to persuade government to deal directly with DARCOBOA. Faced with the prospect of the disruption of the city's transportation, the government pressurized DARCOBOA to negotiate an agreement with the workers. A collective agreement was eventually concluded, and became legally binding in March 2004. The agreement governed the employer-employee relationship in the sector, including minimum wages, working hours and holiday entitlements. Despite the victory of securing a labour contract, the workers faced several challenges, including high qualification thresholds; lack of enforcement mechanisms; and a weakened organization due to rapid workers turnover. The coalition lobbied for the government's newly established Sea and Maritime Transport Regulating Authority to require bus owners to submit individual workers' contracts before issuing them with transport licenses. The government acceded to the coalition's demand in 2009.

Self-employed workers are largely excluded from joining trade unions, which typically organize employees only. As a result, they are often excluded from the trade union federations that represent workers in social dialogue forums where labour and economic development issues are discussed. This means that

often, the needs and interests of informal workers are not considered in law and policy-making processes that affect them.

There are different models for the representation of informal workers and their interests in social dialogue structures where the interests of formal workers are ordinarily represented. The first model is for informal workers' organizations to be registered as trade unions where national legislation allows for this. For example, the Malawi Union for the Informal Sector (MUFIS) in Malawi and the Self-Employed Workers' Association (SEWA) in India organize self-employed workers such as street vendors and waste pickers and are registered as trade unions. In both instances, the unions had to seek an exemption to be able to register as a union of self-employed workers. In Ghana, the Union for Informal Workers (UNIWA) is a trade union that serves as an umbrella body of various associations of self-employed informal workers.

The advantage of trade union status is that the informal workers' organizations can affiliate with national trade union federations and ensure that their interests are directly or indirectly represented. For example, by virtue of being an affiliate of the Ghana Congress of Trade Unions (GTUC), UNIWA was able to secure the inclusion of a special social insurance regime for self-employed workers in the Pensions Act of 2008. The Malawi Congress of Trade Unions (MCTU) has given its affiliate MUFIS a seat in the national Tripartite Labour Council, ensuring that the interests of informal workers are directly represented therein.

Another way in which trade unions can represent informal workers' interests is through collaboration and mutual support. An example is in Zimbabwe, where the Zimbabwe Trade Union Congress (ZCTU) spearheaded the establishment of the Zimbabwe Chamber of Informal Economy Associations (ZCIEA). ZCIEA was formally founded in 2002, bringing together a group of 22 informal traders' associations into an apex body representing their interests. ZCIEA has a Memorandum of Understanding with the ZCTU for recognition and coordination of activities on any issues relating to workers in the informal economy.

At the regional level, regional trade union structures may encourage their affiliates to work with and support informal workers' organizations. For example, the International Trade Union Confederation (ITUC)'s regional branch in Africa (ITUC-Africa) called on its national affiliates to raise awareness of the needs of

informal workers, to help them to secure voice and representation during the pandemic and to raise public awareness of their economic contribution.

Trade unions that are represented on national Covid-19 task forces and committees have served as a conduit for informal traders' to place their issues on the agenda. The Liberian Labour Congress (LLC) successfully advocated for a Covid-19 Task Force to be established. In addition, the LLC advocated for the provision of material support for informal workers who were unable to work due to the lockdown. In addition, the Malawian MCTU demanded that the government pay informal traders an allowance to cover their basic needs under a lockdown.

A third way is that informal workers' organizations can be recognized as social dialogue partners through legislation. In South Africa, the National Economic Development and Labour Council (NEDLAC) was established in terms of the NEDLAC Act of 1994. It is a "tripartite plus" structure that comprises labour, business, government and a fourth constituency called the community and development constituency. Although nothing in the Act requires the appointment of informal workers' organizations, the constituency's members include representatives of these organizations. In terms of the NEDLAC Act and the NEDLAC Constitution, this constituency is allowed to participate in discussions that take place in one of four of the NEDLAC chambers - the Development Chamber.

In Kenya, the National Social Security Fund Act of 2008 established the National Social Security Fund (NSSF). In addition to formal employees, the Act allows self-employed workers to join the Fund and adapts the provisions in light of their circumstances. Importantly, Act allows for the representation of self-employed workers' organizations in the NSSF board. This ensures that the needs and interests of informal workers are directly represented in the design and implementation of the social insurance fund.

3.2. A Gendered Problem

Gender inequality is a major problem in the formal economy and much has been done to modify its circumstance. Yet, it is a much bigger problem in the informal economy. Indeed, informality touches women more profoundly than men. From the start, the paradigmatic employment contract went along

with a labour environment which was predominantly male. The sexual division of labour sent men to the plant floor while keeping women at home to take care of house chores and children. Men were supposed to be breadwinners for working families with very precise gender roles. Women's work is therefore invisible and unaccounted by labour and social protection law. Informality and gender intersect domestic work, whether it is paid or unpaid.

3.3. Domestic Workers

Domestic work is another example of informal work that largely affects women workers. Data shows there are 75.6 million domestic workers aged 15 years and over around the world. Women are disproportionately represented amongst domestic workers globally: women account for 76.2 % of these workers and the sector accounts for 8.8% of female employees or 4.5% of female employment worldwide. By contrast, male domestic workers account for only 0.9% of male employment. About 81.2% of workers in the sector work informally. Informality can be attributed to three issues: (i) exclusion from labour and social security laws; (ii) lack of implementation or compliance with labour and social security laws; and (iii) insufficient or inadequate levels of legal protection.

The adoption of ILO Convention n. 189 concerning Decent Work for Domestic Workers and its accompanying Recommendation n. 201 (2011) was a key milestone for bringing about desired change. On the one hand, the Convention aims to ensure that member states treat domestic work as “work like any other”. For example, member states must make sure that domestic workers' normal working hours, their overtime pay, their daily and weekly rest periods, and their paid annual leave are similar to those of workers in other sectors in their country. If there is a minimum wage in the country, it must also apply to domestic workers. C189 also extends the fundamental rights and principles at work to domestic workers: they should enjoy the right to freely associate and to bargain or negotiate with their employer; no child below the age of fifteen should work as a domestic worker; no one should be forced to be a domestic worker; and no domestic worker should be discriminated against at work. C189 also requires state parties to protect domestic workers against abuse, harassment and violence.

On the other hand, the Convention recognizes that domestic work is “work like no other”: the special conditions under which domestic work is

carried out require that general standards be supplemented with “standards specific to domestic workers so as to enable them to enjoy their rights fully.” Member states must ensure that workers can negotiate with the employer to live in the employer’s house or away from the household. As for live-in domestic workers, they must ensure decent living conditions that respect their privacy; freedom to be absent from the household when they have rest periods or leave; and protection from laws that regulate stand-by hours. Migrant domestic workers, who are usually more vulnerable than other workers, must have a written contract before traveling to their host country. Member states must regulate private employment agencies to prevent the exploitation of domestic workers. In addition, C189 requires governments to guarantee domestic workers’ right to be treated fairly, with dignity and respect and ensure that their terms of employment are reasonable. While such rights are often implied in the scope of international labour instruments that regulate other occupational groups, it is seldom expressed so directly. This suggests that this provision was necessary to ensure in light of the discriminatory, demeaning and exploitative treatment that many domestic workers are subjected to.

Despite the tremendous victory that C189 and R 201 presented for domestic workers, ten years later, domestic workers remain exploited and undervalued in national contexts. Out of 187 member states, only 34 have ratified C189, with half of them being in Latin America and the Caribbean. Legal coverage may have grown over the last decade, but effective coverage is a mirage for a large part of them.

Identified as the country with the largest domestic working force, Brazil is a good example of how these sources are intertwined and contribute to keep domestic work away from decent work. Before Brazil ratified C189, domestic work was explicitly excluded from the Labour Code regulation, although some rights were granted by the 1988 Federal Constitution. After the country ratified C189, a Constitutional Amendment incorporated domestic work in the mainstream regulation, but compliance remains a major problem. Resistance to State regulation comes from the law of the household, a normative order that conceives the household as an autonomous space regulated by social norms which refuse to grant a working status to domestic work. A lack of implementation came from Labour Courts, which issued a jurisprudential interpretation that domestic work may only be conceived as an employment relationship if it is performed at least three days per week at the same household. Finally, the

precarious levels of social protection granted to domestic workers, highlight insufficient or inadequate levels of legal protection. Brazil is therefore a good example of domestic workers' struggle for legal recognition.

South Africa is another country that has not fully implemented C189 despite having ratified it. The case of *Mahlangu and South African Domestic Service and Allied Workers' Union (SADSAWU) vs. Minister of Labour and Others* (CCT306/19, ZACC 24, 2020) arose after a domestic worker had drowned in a swimming pool, resulting in her family's loss of financial support on the death of their breadwinner. The late Ms. Mahlangu's daughter had failed to claim compensation in terms of the Compensation for Occupational Injuries and Diseases (COID) Act n. 130 of 1993 because Section 1(xix)(v) of that Act prohibited domestic workers from registering with the Compensation Fund. With support from SADSAWU, she applied to the courts for an order striking down this provision. Drawing on international and regional human rights instruments including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Southern African Development Community (SADC) Charter of Fundamental Rights and in South Africa's Constitution, the Constitutional Court held that the denial of domestic workers' access to this benefit violated their rights to social protection, to equality and to dignity. The Court held that the exclusion of domestic workers was irrational and could not be justified in an open and democratic society. The Court's order applies retrospectively meaning that Section 1(xix)(v) of the COID Act was invalid from the time that the Constitution came into force. This means that domestic workers or their families can potentially claim benefits for occupational injuries and diseases arising at any time after the Constitution's effective date in 1993.

C189 is also being implemented in countries that have not ratified it. Some countries only ratify a convention after bringing the national laws in line with that convention. ILO can ask these member countries to report and explain why they have not ratified. These countries can ratify C189 later, as part of the process of applying the standard. Uganda's government has committed to ratifying C189. The Government has decided to align the laws with the Convention before ratifying it. The Ministry of Labour is reviewing the occupational health and safety law, which does not protect domestic workers. It is also developing a minimum wage law, which will include domestic workers. The government is also proposing to amend the National Social Security Fund Act to extend

social security provision to workers who are currently excluded. The Uganda Hotels, Food, Tourism, Supermarkets and Allied Workers Union (UFTAWU) has been involved in the process and has been demanding that the revised laws should protect domestic workers.

Countries may decide not to ratify a certain convention, but may still bring their laws into line with the convention. In such countries, the convention provides guidelines to shape laws and policy. The Government of Zimbabwe has decided that it will not ratify C189 at this time, but has committed to reforming the Domestic Workers' Employment Regulations in line with C189. The Zimbabwe Domestic and Allied Workers' Union is working with the Ministry of Labour to regulate migrant domestic work and to provide for social protection and the privacy of live-in domestic workers. The union and government have agreed that they will monitor compliance with the regulations after they are revised. The government will then reconsider its position on ratification.

4. PROBLEMATIZING NON-STANDARD WORKERS

While fordist production methods have tailored the paradigmatic employment contract, more flexible production methods (referred to as toyotism) have favored the growth of non-standard employment, which has also been encouraged by multiple government economic policies that bet on contract diversity to increase positive results on employment rates. As a matter of fact, over recent years, part-time work, temporary work, fixed-term contracting and subcontracting, self-employment, and homework have indeed become more common and have contributed to a real labor contract balkanization. Although such contract diversity may not be inherently negative, it has contributed to a scenario tainted by non-standard, contingent, precarious or fissured work. In this fragmented reality, identifying an employer or who is responsible for what in a labor relationship has become a much more complex task that brings incertitude to the labor market.

Nevertheless the changing environment, labor regulation remains attached to the paradigmatic employment contract, a juridical configuration generally associated with the employment relationship which has been object of ILO Recommendation 198 (2006). R198 recognizes the challenges of establishing the existence of an employment relationship in situations where the parties' respective rights and obligations are not clear, where there has been an attempt

to disguise the employment relationship, or where there are inadequacies or limitations in the legal framework, or in its interpretation or application. Furthermore, it recognizes that contractual arrangements can deprive workers of legal protection; and that such protection should be accessible to all, particularly vulnerable workers. As addressing the uncertainties of the employment relationship could promote fair competition and effective protection of workers, R198 provides guidance on establishing who is considered a worker in an employment relationship, what rights the worker has, and who the employer is.

Determination of the existence of an employment 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 that the parties may have agreed to. As judicial doctrine explains, this relates to the primacy of reality principle, which states that facts are to prevail over juridical forms. Today's economic realities may have modified labor conditions stimulating non-standard, contingent, precarious or fissured work, but primacy of reality still provides for the labor world with an empirical approach that reaffirms labor law importance. R198 recommends therefore that a legal presumption that an employment relationship exists where one or more relevant indicators are present must be forwarded to facilitate the determination of an employment relationship.

Relevant criteria for establishing the existence of an employment relationship is subordination or dependence, but also that the fact that the work is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker's availability; involves the provision of tools, materials and machinery by the party requesting the work; and includes periodic payment of remuneration to the worker. These circumstances indicate that an employment relationship is *intuitu personae* and involves continuity and remuneration. Recognizing the existence of an employment relationship is extremely important as it engages the parties in a legal frame that assures protection, another fundamental labor law principle. Accordingly, R198 exhorts State members to formulate and apply a national

policy to guarantee effective protection for workers who perform work in the context of an employment relationship.

As the employment relationship based on its paradigmatic unlimited term employment contract remains at the core of labor law, employees and employers emerge as two collective identities that define individual possibilities of social integration: the closest a worker is to the formal order and to a classical employment contract, the greater are his/her possibilities for social integration, while the risks of social exclusion are directly intensified by the distance workers stand from the formal order. This exclusion framework is strongly present in Latin American societies, where informality has always reached extremely high levels. Additionally, this traditional form of exclusion, whose presence is further reinforced by underemployment and low incomes, seems to expand with the appearance of new forms of exclusion: open unemployment, atypical occupations and precarious conditions and labour relations. Accordingly, a perverse exclusion deriving from the degrading job quality or just job absence overflows the labor market and unfortunately reaches the political level as such circumstances reduce unemployed and informal workers capabilities to exercise citizenship.

Indeed, labour insertion sets up the possibilities for exercising a plenty citizenship. Labour has historically functioned as a central element in identity construction and, consequently, as a central factor in guiding actions of participation in the life of the city and of the political community. Labour historical form, in modernity, is the employment relationship. Providing conditions for accessing a profession or economic activity constitutes the privileged way for participation at the city. Without these conditions, we move away from the city and the *polis* it constitutes. Employment relationship has contributed to the constitution of a wage society that promoted polity integration. In fact, citizenship and formal work overlap producing cleavages and differences in form and content of social actors' citizen actions. As non-standard workers increase, this societal arrangement becomes more fragile.

Non-standard workers are growingly present at digital labour platforms which are an important part of a rising digital economy. Essentially, they function as an intermediary to allocate workers who earn their income on a task basis. Platform workers are solely entitled to a yes or no answer to a task allocation as they are incapable of fixing their price. As a matter of fact, rules of platform governance are exclusively set by digital labour platforms who argue

that their relation with platform workers is of a consumer nature instead of an employment relationship. In other words, as they claim, technology – and not intermediating labour – is their business. Controversy over workers statute was already all over when digital labour platforms gained greater importance due to the Covid-19 pandemic. Indeed, social distance increased its use, but labour supply, which seemed to be already excessive, also enlarged placing substantial downward pressure on earnings.

Disputes over platform workers' juridical statute seem to point to three different solutions. Two of them reproduce the classical binary classification: employee or non-employee (in case, self-employed). While the employee statute would be extracted from the employment relationship characteristics, especially from an algorithmic subordination, the non-employee circumstance would derive from the classification of their relation as consumerist. A mitigated solution lies in the recognition of a different worker statute, which grants lesser rights, but does not leave workers totally excluded from labour regulation. Courts all over have been called upon to decide which of these three solutions should be applied and innumerable judicial decisions endorsing all three of them can easily be tracked. Meanwhile, platform workers remain dealing with faceless task commands (or bosses).

There is a subjacent discussion to such controversy which is the use society wants for technology. Similarly to the way we once spoke of globalization and its impact on national economies and employment, technology is being presented as a disruptive process that will reshape the labour market and the way we think of work. Yet, there is nothing inherently disruptive in technology and it all comes down to the choices we make as a society. How do we want to share prosperity is a central question that we should answer as a global community that fosters Human Rights and decent work as fundamental aspects of our life.

5. COVID-19: IMPACT ON NON-STANDARD AND INFORMAL WORKERS

This section considers how Covid-19 has affected the work and livelihoods of non-standard and informal workers with a special consideration of domestic workers and street vendors. These workers have been affected in three broad ways. First, informal workers have experienced loss of income during the pandemic. Vulnerable workers who often lead a hand-to-mouth existence and whose work does not afford the luxury of remote working, many workers have been

faced with a difficult dilemma: to go out to work and earn a living while risking infection; or to stay at home to avoid infection while risking starvation. Second, national Covid-19 responses have largely failed to recognize non-standard and informal workers as workers, failing to address their specific circumstances and needs, particularly in relation to social protection, occupational health and safety and worker consultation or collective bargaining. Third, non-standard and informal workers faced discrimination at the hands of employers, customers and governments. The impact on the two sectors – domestic workers and street vendors – is indicated below.

Most countries did not recognize domestic workers as essential workers. This meant that live-out domestic workers were prohibited from commuting to and from work. Live-in workers were often forced to stay in their employers' house and could not leave the workplace or visit family and friends during the lockdowns. Many employers suspended or terminated domestic workers' services, often without pay for fear of infection or because they were unable to pay domestic workers due to job or income loss. Some domestic workers who continued to work reported the intensification of their work, an increase in tasks and reduced wages during the pandemic.

Domestic workers in most countries are not registered for unemployment insurance or for workers' compensation. They were therefore unable to claim benefits for loss of income as a result of the suspension of work, job or income loss and occupationally acquired Covid-19. South Africa proved to be an exception by allowing employees who were not previously registered with the Unemployment Insurance Fund to receive unemployment benefits for job and income loss as a result of Covid-19. Most national Covid-19 stimulus programs that aimed to enable employers to retain their employees were targeted at registered companies and excluded employers in private households. Only a few countries – especially in Latin America – expressly included domestic workers amongst targeted beneficiaries of special Covid-19 relief, leaving domestic workers in most developing countries to seek relief that was provided to citizens and residents in general.

Domestic workers are often excluded from occupational health and safety protection, either in law or in fact. The Covid-19 pandemic exposed domestic workers to Covid-19 infection due to the intimate nature of the work, which requires the workers to be in proximity to their employers, to take care of the

sick, and to clean clothing, bedding and surfaces that may be contaminated. Covid-19 response laws and regulations relating to health and safety and the prevention of the spread of the disease in the workplace (e.g. employers' responsibilities in relation to disinfection, provision of PPE, isolation of exposed or infected workers, and access to testing) were largely targeted at the public sector and commercial workplaces. Domestic workers in many countries reported that their employers did not provide them with PPE, and required them to clean and disinfect certain spaces such as toilets multiple times a day. They also reported having little control over the entry of guests and the observance of physical distancing protocols in the home.

Turning to street vending, several developing countries expressly recognized informal food vending as an essential service or implicitly allowed them to continue their work during lockdowns. Some countries prohibited this activity on the grounds that street vendors would spread the virus or be difficult to monitor for compliance with physical distancing and other regulations. Even where street vending was expressly recognized or implicitly allowed, some street vendors were unable to trade because police or local authorities evicted them from their trading areas or because they were unable to obtain the necessary permits or documents to trade. Restrictions on public transport also made it difficult for them to commute to work. Street vendors' incomes declined because of limited foot traffic, restricted working hours and reduced consumer demand. Their profit margins were also reduced by increased prices due to supply chain disruptions.

In many countries, street vendors who were unable to work could not rely on social insurance for unemployment, which often excludes self-employed workers who do not have an employer. Street vendors in most countries also did not qualify for stimulus measures including grants and tax relief, which were largely designed for registered companies as opposed to self-employed workers. A few countries – the majority being in Latin America, including Argentina, Brazil, Chile, Guatemala, Panama, Paraguay and Peru – established cash relief grants specifically for self-employed workers or street vendors. South Africa introduced the Social Relief of Distress benefit, which was targeted at workers who could not access existing social insurance or social assistance benefits, including self-employed workers. One economic measure that was especially designed for street vendors was the waiver of informal trading fees. Local authorities in a few countries including Guatemala, Colombia, Uruguay, Panama and Peru waived or lowered the fees for working on public and/or market space. In South Africa,

the President announced a nationwide waiver of street vending fees until the end of 2022.

Occupational health and safety laws are designed to protect employees by requiring employers to take measures to ensure a healthy and safe working environment and safe work processes. These laws exclude self-employed workers because they do not have a notional employer who can assume responsibility for and incur the costs of health and safety measures. Covid-19 laws on conventional occupational health and safety mirrored existing Occupational Health and Safety (OHS) laws that require employers to assume responsibility. In addition, several countries introduced provisions to regulate health and safety measures in relation to street vending, particularly in markets. These included screening procedures such as temperature checks at market entrances, social distancing protocols, mask mandates, cleansing, disinfection and hand-washing protocols. Very few regulations specified who would be responsible for the health and safety requirements, including the provision of masks, water and disinfectant materials, implying that street vendors must bear the costs.

The laws in Gambia, Ghana, Malawi, Mali, Namibia, South Africa and South Sudan, Djibouti, Zimbabwe and recent guidelines in Nigeria impose this burden on ministries, local authorities or the owners or managers of markets. Lesotho's regulations require the government to clean and disinfect public places, which would arguably include markets and other trading areas. The Malawian provisions further require market supervisors to take special precautions in managing waste and waste bins in markets. The Gambian regulations require local councils, market managers and "stakeholders" to provide sanitary facilities, suggesting that this was a shared responsibility. In some countries, this work has been driven by civic initiatives. In Eritrea, youth volunteers organized the disinfection and spraying of some markets in collaboration with the Ministry of Health.

6. CONCLUSION: A DEBATE FOR THE FUTURE

As indicated in the introductory lines of context, this report was supposed to be a collective effort that suffered from the pandemic restrictions. It was impossible to carry out the intended public discussion that we dreamed of in the first months following the assignment we received. We probably could do better, but we ended up drafting this text out of our personal experiences and

views. It is true that we managed to fulfill the task, but the desired debate is still waiting to be done and we hope this report will contribute to deepen the discussion. Our contribution can be summarized in eight general conclusions:

- A. Labour has been up to now society's main pillar for social solidarity allowing for younger generations to finance older ones. Labour is not merchandise and has to be valued to deepen social ties and welfare. Labour connects people and enhances citizenship. Labour is a cornerstone to society that has to be value and praised for the improvements it brings to life. Labour is after all essential.
- B. Labour has been legally framed by a paradigmatic employment contract, which paradoxically remains structuring our legal reasoning despite its erosion due to a lack of integration of informality and the growing circumstance of non-standard employment. Rethinking informality and disconnecting it from illegality seems to be a necessary step to be taken to change the increasing precariousness of the labour market.
- C. Informality is to be detached from illegality and examined through legal pluralistic lens. Informality is part of social behavior and is to be apprehended for what it is: a way of doing things that may be differently legally framed to improve life conditions. Organizing informality may definitely contribute to improving decent work.
- D. Domestic work is deeply touched by informality and embraces strongly intersectionality. Domestic work embraces gender, race and class issues that are urgently to be confronted by inclusive public policies. C189 has contributed to an overall improvement on domestic work, but much is still to be done to bring a better protection for domestic workers.
- E. Precariousness is growing everywhere and the binary decoding inscribed in the legal framework just reinforces an in/out perspective. Reinventing the legal framework seems to be necessary to prevent workers from falling in a non-uniform pendulum movement between formality and informality, i.e., a long informality interrupted by short periods of formality. Displacing the question may be a good strategy to rethink labour: is it just about regulating labour or building new forms of social solidarity?

- F. Technology is not inherently good or evil, nor disruptive or soothing. Technology is reshaping the way we work and live, but the outcome of this process is not pre-established: it is a choice that we make as a society. Technology can improve job quality, contribute to social inclusion and make life better for all. Technology does not necessarily contribute to increase social inequality. It is a political societal decision and we are all accountable for it.
- G. Pandemic circumstances had a major impact on labour and forced us to revisit solidarity meanings. Covid-19 has affected labour around the world and introduced limitations that had a major impact on the future of labour. National responses to the pandemic have tried to maintain employment rates and have contributed to maintain social solidarity. Examining legal responses and public policies is a must to assure that precariousness does not become the social trend for labour.
- H. ILO standards set up important guidelines for labour around the world and need to be better integrated in national scenarios. As a matter of fact, ILO standards contribute to better shaping national policies and set out a legal frame that accounts for the essentiality of labour. ILO standards and the recognition of labour fundamental rights are an important tool to increase labour quality and to achieve the goals established by the 2030 Agenda.

Here we stand: eight general conclusions and a strong will to keep working to improve labour and to make the world a better place for all. Our lives depend on our societal choices and it is about time to realize that we all contribute to them. May we live long and prosper to see it all become real for each and every one, may one be an employee or not.