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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Advancing the rights of freedom of peaceful assembly and of association of workers in the informal economy

**Report of the Special Rapporteur on the rights to freedom of peaceful
assembly and of association, Clément Nyaletsossi Voule***

* Reproduced as received, in the language of submission only.



I. Introduction

1. Workers' rights to freedom of peaceful assembly and of association are neither well-respected, protected or fulfilled in the world today. As the International Trade Union Confederation ('ITUC's') 2022 Global Rights Index Report observes, as of 2020 "Eighty-seven per cent of countries violated the right to strike;" "seventy-nine per cent of countries violated the right to collective bargaining;" and "seventy-four per cent of countries excluded workers from the right to establish and join a trade union."¹

2. These numbers are alarming, indicating how little respected the core, essential rights to freedom of peaceful assembly and of association are when it comes to their enjoyment in relation to work. Things are even worse for workers in the informal economy. As the previous Special Rapporteur, Maina Kiai, observed in his 2016 report,

Informal work is often characterized by poor employment conditions, low wages and lack of protection against non-payment of wages, layoffs without notice or compensation, compulsory overtime, unsafe and unhealthy working conditions, and the absence of social benefits such as health insurance, sick leave, pensions or social security. Because they are generally outside the framework of labour law protection, informal workers have little access to justice and less opportunity to assemble, form or join unions, or bargain for higher wages or better working conditions. Their lack of fundamental rights leaves them with little ability to hold accountable those who have power over them and strips them of the power to change their conditions. States, working with employers, are choosing who is or is not covered by union rights.²

3. Full enjoyment of the rights to freedom of peaceful assembly and association is, however, essential for informal economy workers. As the Director-General of the International Labour Organization ('ILO') noted in 1991,

Freedom of association is particularly important in this respect, because it is only through forming and joining organizations of their own choosing that those in the informal sector will be able to generate sufficient pressure to bring about the necessary changes in policies, attitudes and procedures that hamper the development of the sector and the improvement of working conditions in it.³

4. As the ILO's Committee of Experts on the Application of Conventions and Recommendations ('CEACR') observed in 2012 "informal economy ... workers have the right to organize and to collective bargaining, without distinction whatsoever, to establish and join organizations freely and to represent their members in relation to the public authorities in structures established for the purpose of social dialogue."⁴

II. Recent Developments

5. In many ways, it does not appear things have been moving in the right direction. This is both due to restrictions on the rights to freedom of peaceful assembly and of association in relation to work, and due to steps taken by several states that increase, rather than diminish, the number of workers in the informal economy. At the same time, over the last decade there has been increasing recognition by United Nations bodies and mechanisms that violations of worker rights, including the rights of formal and informal workers to associate and assemble, constitute human rights violations. There has also been greater recognition of laws and policies which harm and make life worse for individuals on the grounds of poverty, class and/or socio-economic, and of the discriminatory nature of such measures.

6. The increased informalization of work is noted in the ILO's 2012 General Survey, in which the Committee of Experts on the Fundamental Conventions on Labour Rights echoed

¹ Global Rights Index, ITUC (2022).

² Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc A/71/385 (14 September 2016), para. 21.

³ Report of the Director-General to the 78th Session of the ILC (1991), 39.

⁴ Giving Globalization a Human Face, ILO (2012), para. 75.

trade unions' concern with "the negative impact of precarious forms of employment on trade union rights and labour protection, notably short-term temporary contracts repeatedly renewed; subcontracting, even by certain governments in their own public service to fulfil statutory permanent tasks; and the non-renewal of contracts for anti-union reasons."⁵ The Committee of Experts emphasized that in practice, such "modalities often deprive workers' access to freedom of association and collective bargaining rights," both due to legal restrictions and to the fact that "precariousness can dissuade workers from trade union membership."⁶

7. More recently, the COVID-19 pandemic has exacerbated and expanded, rather than contracted, workers' vulnerability. As the CEACR has observed, "[t]he COVID-19 crisis was particularly devastating for 2 billion workers in the informal economy who represent more than 60 per cent of the global workforce and are twice as likely to be living in poverty than formally employed workers."⁷ The situation is made worse by the underlying widening of global inequality and exploitation, and the increasing challenges posed by climate change and environmental degradation.

8. Where conflict takes place, as for instance in Ukraine and Sudan, the informal economy also often grows quickly and dramatically, as potentials for regularized work are diminished. Conflict also often leads to migration flows, underscoring the need to ensure that migrants too fully enjoy their rights to freedom of peaceful assembly and of association. In this context the Special Rapporteur recalls and would like to underscore the importance of the points made in ILO Recommendation 205, the Employment and Decent Work for Peace and Resilience Recommendation.

9. This report follows the ILO, the ITUC and the Special Rapporteur's previous work in highlighting the importance of ensuring the rights to freedom of peaceful assembly and of association of informal economy workers are fully respected. The ILO has been a leader in this area for decades. Too often, however, workers' rights and human rights have been seen as categorically distinct. At the same time, UN and other human rights-related bodies have begun to take stronger steps to close this gap. For example, the Committee on Economic, Social and Cultural Rights ('CESCR') has recognized that the right to just and favorable conditions at work applies to everyone, including self-employed workers, workers in the informal economy, agricultural workers, refugee workers and unpaid workers.⁸ It has acknowledged, moreover, that "women are often overrepresented in the informal economy," and has underscored that laws and policies providing for workers' rights and protections should extend to workers in the informal economy.⁹

10. For its part, the Committee on the Elimination of Discrimination Against Women ('CEDAW Committee') has found that Article 11 of the Convention on the Elimination of Discrimination Against Women does not only apply to employees, but *inter alia* to self-employed workers as well. The Committee on the Elimination of Racial Discrimination ('CERD Committee') meanwhile has found that, where a particular racial minority or discriminated against group is overrepresented in the informal economy, the exclusion of workers in that particular area from labor law protection amounts to racial discrimination under the Convention on the Elimination of Racial Discrimination.

11. African national and supranational bodies have also developed important jurisprudence in related areas. In the 2020 case of *Mahlangu and Another v. Minister of Labour and Others* the South African Constitutional Court found that the exclusion of domestic workers from the Compensation for Occupational Illness and Injuries Act constituted both direct and indirect discrimination on the basis of race, class and gender.¹⁰ The same year, the African Court on Human and Peoples' Rights (ACtHPR) found that

⁵ Giving Globalization a Human Face, ILO (2012), para. 935.

⁶ Id.

⁷ Application of International Labour Standards 2023, Report of the CEACR, International Labour Conference 111th Session (2023), para. 56.

⁸ CESCR, General Comment No. 23, paras. 4-5.

⁹ CESCR, General Comment, para. 47(d).

¹⁰ See *Mahlangu and Another v Minister of Labour and Others* [2020] ZACC 24, available at: <http://www.saflii.org/za/cases/ZACC/2020/24.html>.

vagrancy laws—including measures which penalize ‘idleness,’ participation in the informal economy as such, activities deemed immoral and simply incurring the suspicion of the authorities¹¹—violate numerous human rights.¹²

12. The UN Special Rapporteur on Extreme Poverty and Human Rights, meanwhile, has called for states to adopt and strengthen measures that recognize discrimination based on poverty, observing that “strengthening the prohibition of discrimination on grounds of socio-economic disadvantage is a key tool towards poverty eradication.”¹³

13. This report aims to further underscore the unity of workers’ rights and human rights. Three essential facts must be borne in mind in this context. First, that workers’ rights are human rights. Second, that workers’ rights to freedom of peaceful assembly and of association are essential to the achievement of other work-related rights, including economic and social rights. Third, that full enjoyment of workers’ rights is essential to the enjoyment of human rights generally, as unions and strikes play a key role in the achievement of rights-based societies. To put the third point another way, the existence of democratic workplaces is essential to the existence of democratic societies.

III. The Informal Economy

14. Studying the informal economy is challenging for several reasons, including due to the fact the informal economy covers a wide range of workers in differing situations, and due to the fact the informal economy can be defined with reference to multiple different criteria. The first time that the term “informal sector” was used by the ILO was in 1972, in the framework of a strategy to increase productive employment in Kenya.¹⁴ Connected issues were more extensively addressed in a dedicated report in 1991.¹⁵ Another important report was issued in 2002, in which ‘informal economy’ was preferred,¹⁶ following important work by the Expert Group on Informal Sector Statistics, the ILO and Women in Informal Employment: Globalising and Organizing.¹⁷ Since then, informal economy has generally been the preferred language, as reflected for example in its use in ILO Recommendation 204 of 2015, due to the general understanding it is a more encompassive term than ‘informal sector,’ which has been understood as having more limited coverage.

15. The informal economy is defined in ILO Recommendation 204 as referring to “all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements.”¹⁸ By nature, formality and informality constitute a spectrum, as the reference to ‘insufficient coverage’ in the ILO’s

¹¹ For more on such laws, *see* Christopher Roberts, Discretion and the Rule of Law: The Significance and Endurance of Vagrancy and Vagrancy-Type Laws in England, the British Empire and the British Colonial World, 33 *Duke Journal of Comparative and International Law* 181 (2023).

¹² See ACtHPR, Advisory Opinion No 001/2018, available at: http://www.african-court.org/en/images/Cases/Advisory%20Opinion/Advisory%20Opinions/001-2018_-_PALU-Advisory_Opinion.pdf.

¹³ Report of the United Nations Special Rapporteur on Extreme Poverty and Human Rights, UN Doc. A/77/157 (July 13, 2022), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/423/82/PDF/N2242382.pdf?OpenElement>.

¹⁴ *See* ILO, Employment, incomes and equality: A strategy for increasing productive employment in Kenya (1972).

¹⁵ *See* Report of the Director-General, The dilemma of the informal sector, International Labour Conference, 78th Session (1991).

¹⁶ *See* ILO, Decent work and the informal economy, International Labour Conference, 90th Session (2002).

¹⁷ For more, including a more detailed account of the history of the relevant terms, *see* Marlese Von Broembsen & Jeffrey Vogt, Why the Struggle of the 2 Billion Workers in the Informal Economy Matters to Us All, 2 *ILAW* 4 (2022).

¹⁸ ILO Recommendation 204 meanwhile defines the informal economy as ILO, Transition from the Informal to the Formal Economy, 2015 (No. 204), Art. 2(a). Elsewhere, informal work is defined as “employment without labour or social protection.” *See* MA Chen, Rethinking the Informal Economy: Linkages with the Formal Economy and the Formal Regulatory Environment, Working Paper 46, DESA (2007).

definition suggests. In addition, the borderline between workers in the formal and informal economies is often tenuous, not least due to job insecurity and state policies and business practices which drive informalization.

16. This report is not primarily concerned with matters of definition as such. Rather, the Special Rapporteur emphasizes that all persons, including all workers, whether in the formal or informal economy, should fully enjoy their rights to freedom of peaceful assembly and of association, as well as all other civil, political, social, economic, and other rights. This report does not limit its coverage to those most centrally within the informal economy, therefore, rather employing a more expansive scope. At the same time, the informal economy is the report's central area of concern. To the extent other areas are addressed, it is because workers falling into those categories may in law and/or practice face similar forms of rights violations to workers in the informal economy, and because ensuring maximum coverage of the rights concerned across the categories covered is the optimal way to ensure maximum rights protection and fulfillment for all, including all those in the informal and formal economies.

IV. Rights Obligations and Violations

A. Right to Form Unions

17. The ability to associate, including in the form of unions, is a key civil and political right, essential to individuals' participation in their societies more broadly as well as in terms of shaping the structures that affect their lives, and essential to the establishment of democratic societies. All individuals enjoy the right, regardless of whether they work in the formal or the informal economy. All measures which restrict the right on the basis of formality of work, therefore, constitute violations of individuals' and groups' right to freedom of association.

18. While numerous national constitutions recognize the right to freedom of association, and often the right to form unions as well, these fundamental rights recognitions are often not recognized in labor laws. In numerous countries, national labor laws limit the right to form unions to 'employees,' a term which is restrictive as such and often defined in restrictive ways, with reference for instance to contracts of work and supervisors, or to those who have a labor contract as such.¹⁹ All such measures should be amended, to ensure engagement in work as such is all that is necessary in order to form a union.

19. In order to exercise their right to freedom of association, where laws prevent workers from forming a union workers often take advantage of other laws that are less restrictive to form different types of associations, including limited liability partnerships, private companies, trusts and cooperatives. Workers should generally be free to associate in whatever form they choose. In no circumstances should States limit individuals' ability to form such associations, as they often provide the only legal means available through which particular workers can associate. In addition, States should ensure that workers organized in such a manner are able to engage in collective bargaining. At the same time, it should be reiterated that states must ensure the right to form unions is in no way restricted, including for workers in the informal economy.

20. In this context, the Special Rapporteur would like to underscore and echo the work done by the ILO's Committee on Freedom of Association ('CFA'), which has been clear that "[a]ll workers must be able to enjoy the right to freedom of association regardless of the type of contract by which the employment relationship has been formalized."²⁰ The size of a

¹⁹ Such provisions are overtly in violation of the right to freedom of association as such. In addition, they at the very least recall—and may in some ways be understood as a legacy of—deeply problematic former ways of conceiving of labor relationships, including for instance the 'master-servant' framework that once prevailed in the common law. For more on the latter, see Douglas Hay & Paul Craven, eds., *MASTERS, SERVANTS, AND MAGISTRATES IN BRITAIN & THE EMPIRE* (2005).

²⁰ Compilation of Decisions of the CFA, ILO (6th ed., 2018), para. 327. See also paras. 328-31.

business should not be determinative in this regards.²¹ As the CFA has further observed, moreover, enjoyment of the right to freedom of association “is not based on the existence of an employment relationship.”²² Among the workers who enjoy the right to freedom of association are agricultural workers,²³ plantation workers,²⁴ self-employed workers,²⁵ temporary workers,²⁶ workers undergoing probation and on training contracts,²⁷ unemployed persons,²⁸ persons engaged in community programs designed to combat unemployment,²⁹ cooperative workers,³⁰ subcontracted workers,³¹ workers in export processing zones,³² domestic workers,³³ migrant workers, home-based workers,³⁴ dismissed workers,³⁵ retired workers,³⁶ workers in small businesses³⁷ and minors.³⁸ This is not to say all such workers are always part of the informal economy; that varies by category and depending on the national laws in place. All have, at times, had their right to freedom of association improperly restricted, however, in violation of states’ obligation to guarantee the right.

21. The CEACR has on various occasions emphasized the need to ensure full enjoyment of the right to freedom of association in the informal economy generally as well. In 2022, for instance, the CEACR called on Pakistan to “take all necessary measures, including legislative measures at the federal and provincial levels, with a view to guaranteeing the rights of informal economy workers under the [Freedom of Association and Protection of the Right to Organise] Convention.”³⁹ The CEACR has similarly called on the Philippines to “ensure that all workers,” including “self-employed and temporary workers, outsourced or contract workers, non-resident workers, part-time workers, agricultural workers and domestic and migrant workers,” with “the only possible exception of the armed forces, the police, and public servants engaged in the administration of the State ... can effectively benefit from the rights enshrined in the [Right to Organise and Collective Bargaining] Convention, including the right to collective bargaining.”⁴⁰ The CEACR has emphasized similarly relative to Uganda.⁴¹ In 2022, in response to a communication concerning Cuba, the CFA emphasized

²¹ *See id.*, paras. 415-6. *See also* CFA Report 346 (2007), Case 2473, para. 1541; CFA Report 371 (2014), Case 2988, para. 845.

²² Compilation of Decisions of the CFA, para. 387. *See also* CFA Report 342 (2006), Case 2423, para. 479; CFA Report 359 (2011), Case 2602, para. 365; CFA Report 360 (2011), Case 2757, para. 990; CFA Report 363 (2012), Case 2602, para. 461;

²³ CFA Report 363 (2012), Case 2868, para. 1005; CFA Report 363 (2012), Case 2888, para. 1084; CFA Report 376 (2015), Case 2786, para. 349; CFA Report 376 (2015), Case 3042, para. 532.

See Compilation of Decisions of the CFA, paras. 374-5; Giving globalization a human face, International Labour Conference 101st Session (2012), ILO, para. 71.

²⁴ *See* Compilation of Decisions of the CFA, para. 376.

²⁵ *See* Compilation of Decisions of the CFA, paras. 387-9; Giving globalization a human face, International Labour Conference 101st Session (2012), ILO, para. 71.

²⁶ *See* Compilation of Decisions of the CFA, para. 390.

²⁷ *See* Compilation of Decisions of the CFA, paras. 391-4; Giving globalization a human face, International Labour Conference 101st Session (2012), ILO, para. 71.

²⁸ *See* Compilation of Decisions of the CFA, para. 395.

²⁹ *See* Compilation of Decisions of the CFA, para. 396.

³⁰ *See* Compilation of Decisions of the CFA, paras. 397-400.

³¹ *See* Compilation of Decisions of the CFA, paras. 401-2.

³² *See* Compilation of Decisions of the CFA, paras. 403-5; Giving globalization a human face, International Labour Conference 101st Session (2012), ILO, para. 71.

³³ *See* Compilation of Decisions of the CFA, paras. 406-7; Giving globalization a human face, International Labour Conference 101st Session (2012), ILO, para. 71.

³⁴ *See* Compilation of Decisions of the CFA, paras. 408-9.

³⁵ *See* Compilation of Decisions of the CFA, paras. 410-11.

³⁶ *See* Compilation of Decisions of the CFA, paras. 412-13; Giving globalization a human face, International Labour Conference 101st Session (2012), ILO, para. 71.

³⁷ *See* Compilation of Decisions of the CFA, paras. 415-16.

³⁸ *See* Compilation of Decisions of the CFA, para. 417.

³⁹ Direct Request (CEACR) – adopted 2022, published 111st ILC session (2023), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Pakistan.

⁴⁰ Observation (CEACR) – adopted 2022, published 111st ILC session (2023), Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Philippines.

⁴¹ Direct Request (CEACR) – adopted 2022, published 111st ILC session (2023), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Uganda.

that “the criterion for determining the persons covered by the right to organize is not based on the existence of an employment relationship” and that “[w]orkers who do not have employment contracts should have the right to form the organizations of their choosing if they so wish.”⁴²

22. It is essential that the law not bar workers from union membership merely because they have been dismissed from their job, as such a provision would make it far easier for employers to violate workers’ right to unionize. In a 1998 decision concerning Djibouti, the CFA emphasized that “loss of a person’s trade union status as a result of dismissal for strike activities is contrary to the principles of freedom of association.”⁴³ In a 2006 communication, multiple Korean unions challenged various aspects of Korean labor law. Among other findings, the CFA underscored that laws “depriving workers of the right to union membership [are] incompatible with the principles of freedom of association.”⁴⁴

23. It is also essential that temporary workers fully enjoy the right to freedom of association, not least in order to ensure states and employers may not circumscribe the right by placing workers on shorter term contracts. The CFA has previously emphasized this point in relation to Canada, India, El Salvador, Colombia, the Republic of Korea, the United States, Malaysia, Peru and Qatar.⁴⁵

24. Self-employed workers, including for instance many street vendors, also enjoy the right to freedom of association. Unfortunately, not every state has recognized this right. Among other results, this has led to some cases where employers have sought for employed workers to be classified as self-employed, in order to limit the rights to which those workers may have access. In the United Kingdom, for instance, Deliveroo riders have been denied the right to form a union on the basis that they are self-employed.⁴⁶ This is wrong as a matter of classification. Even should particular workers more reasonably be classified as self-employed, moreover, it should not impact on their enjoyment of their rights as workers, including their right to freedom of association.

25. The ILO has previously found that the principles of freedom of association are not violated where a law grants retired workers and the unemployed solely the right to join a trade union and participate in its functioning subject to the rules of the organization concerned.⁴⁷ The Special Rapporteur emphasizes that the right to freedom of association guarantees unemployed persons, just like employed persons, the ability to form associations to represent their interests, and that those associations must have full freedom to choose and undertake the activities desired by their members.

26. It is important that special economic arrangements of one sort or another not be taken as grounds to restrict workers’ right to freedom of association. Thus the establishment of special economic zones in no way justifies limitations on full enjoyment of the right to freedom of association. The CFA has emphasized this point in the context of communications concerning the Philippines, Mauritius, Bangladesh and El Salvador, among other states.⁴⁸

⁴² CFA Report 397 (2022), Case 3271, para. 350.

⁴³ CFA Report 309 (1998), Cases 1851 & 1922, para. 238.

⁴⁴ CFA Report 346 (2007), Case 1865, para. 761; *see also* CFA Report 353 (2009), Case 1865, para. 720; CFA Report 365 (2012), Case 2829, para. 575.

⁴⁵ *See* CFA Report 324 (2001), Case 2083, para. 253; CFA Report 330 (2003), Case 2158, para. 846; CFA Report 342 (2006), Case 2423, para. 479; CFA Report 343 (2006), Case 2430, para. 360; CFA Report 349 (2008), Case 2556, para. 754; CFA Report 350 (2008), Case 2602, para. 671; CFA Report 350 (2008), Case No. 2547, para. 801; CFA Report 351 (2008), Case 2556, para. 34; CFA Report 351 (2008), Case 2600, para. 572; CFA Report 353 (2009), Case 2637, para. 1051; CFA Report 355 (2009), Case 2600, para. 477; CFA Report 355 (2009), Case 2602, para. 654; CFA Report 356 (2010), Case 2637, para. 84; CFA Report 357 (2010), Case 2687, para. 891; CFA Report 371 (2014), Case 2988, para. 841.

⁴⁶ *See* UK Court of Appeals confirms Deliveroo riders are self-employed, Reuters (June 24, 2021).

⁴⁷ *See* CFA Report 363 (2012), Case 2888, para. 1085.

⁴⁸ *See* CFA Report 302 (1996), Case 1826, para. 411; CFA Report 333 (2004), Case 2281, para. 636; CFA Report 337 (2005), Case 2327, para. 195; CFA Report 346 (2007), Case 2528, para. 1446; CFA Report 360 (2011), Case 2745, para. 1056; CFA Report 364 (2012), Case 2745, para. 995; CFA Report 370 (2013), Case 2745, para. 675; CFA Report 371 (2014), Case 2908, para. 290.

The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy emphasizes the same point.⁴⁹

27. In addition, workers in cooperatives enjoy the right to freedom of association, and cooperatives should not be used as a means of preventing workers from enjoying and exercising their ability to form and take part in trade unions. The CFA has previously emphasized this point in relation, *inter alia*, to Indonesia.⁵⁰

28. Law and practice must also ensure agricultural and plantation workers are able to fully enjoy their right to freedom of association. The CFA has emphasized the rights of such workers in the context of communications concerning Sri Lanka (Ceylon), Guatemala, Costa Rica, the Democratic Republic of Congo (Congo Leopoldville), the Dominican Republic, Chile and Qatar.⁵¹

29. Domestic workers also enjoy the right to freedom of association, as recognized *inter alia* in ILO Convention 189, the Domestic Workers Convention. Unfortunately, domestic workers are often excluded from labor laws, including for example in Bangladesh, and prevented from forming trade unions.⁵² In a 1996 communication, the Canadian Labour Congress alleged violations of the right to freedom of association due to the fact that Ontario law did not recognize domestic workers, *inter alia*, among the categories of workers protected by its labor legislation. In response, the CFA called on the government to ensure domestic workers were covered by the relevant legal protections.⁵³ In 2013, a communication by the ITUC highlighted violations of the right to freedom of association in Cambodia, including relative to domestic workers. In its concluding observations, the CFA underscored that “all workers, with the sole exception of members of the armed forces and the police, should have the right to establish and join organizations of their own choosing,” and called on “the Government [to] take all necessary steps to” amend its law in compliance with that obligation.⁵⁴ Positively, domestic workers’ right to freedom of association has been recognized at times, including by the 1995 Labour Relations Act in South Africa. The CFA has called on the government of Jordan to “take the necessary measures to ensure that domestic workers can freely establish or join the organization of their own choosing and not be restricted to joining an existing and registered trade union” as well.⁵⁵ The CEACR has also emphasized the need to ensure the right to freedom of association of domestic workers, including relative to Bangladesh,⁵⁶ Italy⁵⁷ and Jordan.⁵⁸

30. Migrant workers often face particular challenges to organizing and to enjoyment of their human rights generally. The CFA has previously considered various allegations of migrant workers’ right to organize. In 2012 the ITUC submitted a communication concerning the violation of migrant workers’ rights in Qatar. The communication noted various rights violations faced by migrant workers in Qatar, including the violation of their right to freedom of association imposed by Qatar’s restrictive laws in the area, and various other rights violations that are enabled by that limitation, including work conditions so poor that many have died, squalid housing conditions and frequent underpayment of workers. In its

⁴⁹ Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, ILO (6th ed., 2022). *See also* CEACR, General Observation, Convention No. 87 (2009).

⁵⁰ *See* CFA Report 350 (2008), Case 2589, para. 948.

⁵¹ *See* CFA Report 4 (1953), Case 34, para. 168; CFA Report 24 (1956), Case 144, para. 237; CFA Report 52 (1961), Case 239, paras. 180-1; CFA Report 76 (1964), Case 327, paras. 308-9; CFA Report 76 (1964), Case 379, para. 375; CFA Report 89 (1966), Case 444, para. 95; CFA Report 119 (1970), Case 611, para. 93; CFA Report 211 (1981), Case 1053, para. 163; CFA Report 241 (1985), Case 1285, para. 213; CFA Report 241 (1985), Case 1293, para. 273; CFA Report 371 (2014), Case 2988, para. 841.

⁵² *See* Submission, Homenet South Asia.

⁵³ *See* CFA Report 308 (1997), Case 1900.

⁵⁴ CFA Report 377 (2016), Case 3064, para. 210.

⁵⁵ CFA Report 397 (2016), Case 3337, para. 479.

⁵⁶ *See* Observation (CEACR) – adopted 2022, published 111st ILC session (2023), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Bangladesh.

⁵⁷ *See* Direct Request (CEACR) – adopted 2022, published 111st ILC session (2023), Domestic Workers Convention, 2011 (No. 189) – Italy.

⁵⁸ *See* Observation (CEACR) – adopted 2022, published 111st ILC session (2023), Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Jordan.

concluding observations, the Committee called on Qatar to “take the necessary measures in order to ensure that ... all workers ... may enjoy freedom of association and collective bargaining rights.”⁵⁹ While at times migrant workers’ organizing efforts have led to palpable reforms, locking in the gains is often a challenge.⁶⁰

31. Migrant domestic workers are among the groups most likely to face restrictions on their right to freedom of association, as well as other forms of harsh condition and rights violations while at work. The CFA has previously considered various allegations of domestic workers’ right to organize. In 2008 the Malaysian Trades Union Congress submitted a communication concerning the situation of migrant domestic workers in Malaysia. The communication observed the poor work conditions, common state of isolation, vulnerability and frequent abuses against migrant domestic workers. The communication noted that migrant domestic workers had attempted to form a union, but that the union was denied registration by the government without reason. In response, the Committee recommended that Malaysia “take the necessary measures, including legislative if necessary, to ensure in law and in practice that domestic workers, including contract workers, whether foreign or local, may all effectively enjoy the right to establish and join organizations of their own choosing,” and “further request[ed] the Government to take the necessary steps to ensure the immediate registration of the association of migrant domestic workers so that they may fully exercise their freedom of association rights.”⁶¹ In a 2022 follow-up, the CFA re-emphasized that “domestic workers, like all other workers, should benefit from the right to freedom of association,” and again called on the government “to ensure that domestic workers, whether foreign or local, including contract workers, will all effectively enjoy the right to establish and join organizations of their own choosing, in law and in practice, so as to be able to defend their occupational interests.”⁶²

32. Not only domestic workers but all home-based workers have the right to unionize. As the CFA put in in response to a communication concerning Poland, “home-based workers are not excluded from the application of Convention No. 87 and should therefore be governed by the guarantees it affords and have the right to establish and join occupational organizations.”⁶³ Elsewhere, in a communication concerning Canada, the CFA underscored that persons working from home, including “in the social services, health and childcare sectors,” fully enjoy the right to freedom of association, such that any state restrictions on their ability to form and join unions constitute violations.⁶⁴ The Special Rapporteur is pleased by reports that positive progress has been made in terms of legal recognition of the ability of home-based workers to form unions and engage in related activities, and to receive various forms of workplace and social protections, in several States.

33. The CFA has also emphasized that the right of freedom of association extends to workers who are minors just as it does to others.⁶⁵ The Special Rapporteur echoes this point in relation to the right as covered by his mandate as well.

B. Freedom to Form Unions in Practice and to Undertake Union Activities

34. In order for an association to be able to form in practice, it is essential not only that the group of individuals in question have the legal right to form an organization of that sort, but also that their ability to do so not be constrained by executive discretion. The Special Rapporteur has previously repeatedly emphasized on several occasions that the right to freedom of association requires that individuals be able to form associations freely, without requiring state authorization or being subject to a discretionary process. The CFA has

⁵⁹ CFA Report 371 (2014), Case 2988, para. 844.

⁶⁰ For a case study on the *sans papiers* protests in France, see Natasha Iskander, *Informal Work and Protest: Undocumented Immigrant Activism in France, 1996-2000*, 45 *British Journal of Industrial Relations* 309 (2007).

⁶¹ CFA Report 353 (2009), Case 2637, para. 1053; see also CFA Report 356 (2010), Case 2637, para. 84; CFA Report 362 (2011), Case 2637, para. 90.

⁶² CFA Report 397 (2022), Case 2637, para. 31.

⁶³ CFA Report 363 (2012), Case 2888, para. 1085.

⁶⁴ CFA Report 340 (2006), Cases 2314 & 2333, paras. 420-3.

⁶⁵ See CFA Report 342 (2006), Case 2448, para. 405.

emphasized a similar point in the context of unions and other workers' organizations, in cases concerning Algeria, Malaysia, Cameroon, Fiji, Panama, Lebanon and Zimbabwe.⁶⁶

35. In addition, even where legal frameworks allow workers in the informal economy to form unions, they are often constrained by barriers in their access to information concerning the procedures through which they may develop unions, high costs involved in registration, bureaucratic complexities in the processes that must be followed, and/or restrictions imposed by the fact that legislators and government officials did not have unions composed by workers in the informal economy in mind when the laws and regulations in question were initially drafted. Among the issues that may arise in the latter case, for instance, are the requirement that workers seeking to form a union note the name and address of their employer, which imagines a traditional single employer-employee relationship; the requirement that workers state the address of their union, which may be impossible if workers lack the resources to acquire an address; the requirement that workers include copies of their ID cards, which may be impossible for some workers in the informal economy; and/or the requirement of literacy or a certain level of educational attainment. In addition, laws or regulations may require that those registering an association have no criminal record. This too can be difficult for workers in the informal economy, as many states maintain rights-violating vagrancy and vagrancy-type laws that criminally penalize work in the informal economy workers. States should take steps to ensure the relevant information is disseminated widely, and that procedures are accessible, straightforward and timely.

36. To the extent certain formalities are necessary to establish a trade union in practice, the process of working through those formalities should be as prompt as possible, and such formalities should not be applied in a manner that delays or prevents the establishment of trade unions. The CFA has underscored this point relative to Cameroon, Equatorial Guinea, Indonesia, Tunisia, Colombia, Algeria, Panama, Hungary, the Republic of Korea and Guatemala.⁶⁷ As both the Special Rapporteur and the CFA have previously emphasized, moreover, minimum member requirements should not be imposed which have the effect of unduly infringing workers' ability to form unions in practice.⁶⁸ This is especially important in the context of the informal economy, where individual workplaces are often quite small. In this context the Special Rapporteur would like to call attention to the fact much lower minimum numbers of participants are often needed to form employers' unions, in contrast to workers' unions, suggesting a discriminatory approach and the absence of legitimate cause.

37. The ability of workers in the informal economy to form unions freely may also be impacted on by the fact that the space is occupied by preexisting bodies, which may not be entirely free and independent, however, but rather linked to particular State or non-State interests, and which do not prioritize the interests of workers in the relevant sector as a whole. More broadly, some States improperly occupy civil society space by establishing official unions or supporting some unions over others, sharply limiting freedom of association in practice. In such contexts, it is not uncommon for unions perceived as oppositional to face attacks, criminal charges, lawsuits, a hostile administrative climate and harassment both by the authorities and non-State actors.

38. In many contexts, even where laws regulating the formation of unions are relatively unrestrictive, employers, state authorities or others may intimidate and retaliate against workers who seek to form independent unions, imposing further barriers to union formation

⁶⁶ See CFA Report 357 (2010), Case 2701, para. 137; CFA Report 360 (2011), Case 2301, para. 70; CFA Report 362 (2011), Case 2812, para 388; CFA Report 362 (2011), Case 2723, para 842; CFA Report 363 (2012), Case 2868, para 1005; CFA Report 365 (2012), Case 2723, para 778; CFA Report 367 (2013), Case 2944, para 138; CFA Report 367 (2013), Case 2952, para 876; CFA Report 370 (2013), Case 2961, para 489; CFA Report 377 (2016), Case 3128, para. 466.

⁶⁷ See CFA Report 340 (2006), Case 2439, para. 360; CFA Report 340 (2006), Case 2431, para. 923; CFA Report 342 (2006), Case 2441, para. 624; CFA Report 354 (2009), Case 2672, para. 1137; CFA Report 356 (2010), Case 2672, para. 1275; CFA Report 357 (2010), Case 2701, para. 137; Report 357 (2010), Case 2677, para. 298; CFA Report 359 (2011), Case 2751, para. 1043; CFA Report 360 (2011), Case 2777, para. 779; CFA Report 363 (2012), Case 1865, para. 125; CFA Report 365 (2012), Case 2840, para. 1057; CFA Report 367 (2013), Case 2944, para. 1057; CFA Report 375 (2015), Case 2777, para. 39; CFA Report 376 (2015), Case 3042, para. 535.

⁶⁸ See Compilation of Decisions of the CFA, ILO (6th ed., 2018), paras. 435-447.

in practice. The situation is particularly challenging for several of the categories of workers mentioned above, including:

- workers who face barriers to community formation and to their access to information, for instance due to the fact they work in individuals homes’;
- workers who work and/or live on others’ property, including domestic workers and many agricultural workers, who are potentially subject to expulsion from their homes and their jobs should their employer disfavor they pro-union activities, who may well be more readily and aggressively targeted by law enforcement authorities on the grounds they are present on others’ private property, and who are often particularly vulnerable to abuse and exploitation by the individuals for whom they work;
- workers who are vulnerable or part of marginalized or discriminated against groups, including women, minors, persons from discriminated-against races or ethnicities, and others.

39. The situation is particularly dire for workers whose work is criminalized, including sex workers in particular, as the criminal frame in which such workers operate makes it particularly challenging for such workers to openly associate and attempt to obtain greater rights. Street vending, too, often remains criminalized in national laws; while it may be possible to obtain a license, procedures to access licenses are often hard to access and overly discretionary.

40. The isolation of and attacks against the most marginalized informal economy workers often lead to a negative, self-reinforcing cycle, moreover, by compounding the initial state of vulnerability in which such workers find themselves.

41. Even when unions of workers in the informal economy are able to form, it may be the case that State policy restricts that formation to the local, city or state level, preventing the formation of more universal unions. Such obstacles were encountered for instance by waste-pickers in Karnataka, who were prevented from registering a union at the state level.⁶⁹ This can impose costs in terms of time and resources of union organizing efforts, and can reduce the ultimate bargaining power of those in the sector in question. For these reasons, such limitations should not apply; rather, workers should be free to determine the scale at which they seek to organize, including by organizing at the transnational level, should they so desire.

42. Positive developments include the development by States of structures through which unions are given greater voice in national policy, including tripartite fora and the like, or other institutions designed to promote collective bargaining. Workers in the informal economy are often excluded from such spaces, however, including due to the fact that existing legal and institutional frameworks are often poorly geared to address the specific contexts, needs and challenges faced by different sorts of workers in the informal economy. Inter alia, the ability of workers in the informal economy to engage in effective collective bargaining is often limited by the fact that such workers must bargain with multiple different entities in order to obtain better conditions of work. It is important that these shortcomings be addressed in law and practice.

43. Among other things, States should take positive steps to create and support appropriate, independent and adequately resourced collective bargaining fora and other mechanisms through which workers in the informal economy may effectively advance their interests and perspectives. Workers in the informal economy should be included in the discussions leading to the creation of such bodies. Mechanisms should also be created through which workers in the informal economy can be regularly included in the formation of law and policy affecting them. On the local level, workers in the informal economy, including street vendors and waste pickers, for instance, should have a meaningful role and voice in the regulation of the spaces in which they operate. More generally, workers in the informal economy should be meaningfully consulted whenever infrastructure or city planning projects are undertaken that might affect their livelihoods. More broadly still, the state should do everything possible to create an enabling environment for civil society.

⁶⁹ See Submission, Homenet South Asia.

C. Restrictions on Strikes and Attacks on Strikers

44. The right to strike is inadequately recognized around the world for formal and informal economy workers alike. Even where a legal process exists through which a strike can be entered into, States often improperly restrict the right, failing to recognize many lawful strikes. On other occasions, States fail to comply with their obligation to protect the right, including by allowing non-state actors to attack and intimidate potential strikers.

45. The CFA has emphasized the fundamental importance of workers' right to strike in defense of their economic and social interests.⁷⁰ While in this context the CFA has emphasized that strikes of a "purely political nature do not fall within the protection of Conventions Nos. 87 and 98," it is worth noting the limitation here must be read very narrowly, as strikes may take place with a view to protesting or impacting on "a government's economic and social policies," or as part of a "general protest."⁷¹ The Special Rapporteur further emphasizes that the right to freedom of peaceful assembly more broadly, as covered by his mandate, unquestionably extends to political expression, which in fact should benefit from particular protection.

46. Law enforcement authorities and non-State actors frequently respond to strikes with dispersal, disproportionate force and criminalization, in violation of the right to strike, in numerous States around the world. Striking workers in the informal economy are particularly vulnerable, insofar as the organizations and work in which they take part often lack formal recognition. In India, multiple individuals were reported missing following mass farmers' strikes in 2021.⁷²

D. Attacks on Union Organizers and Members

47. Organizers and members of informal economy workers' unions, like other union organizers, have often been subjected to various forms of attack. The Special Rapporteur has received information suggesting that in many States the situation worsened during and in the wake of COVID, especially for those whose work takes place in or is linked to public spaces, including in particular due to the tightening of restrictive approaches to individuals' ability to associate in public spaces that developed alongside the spread of the virus. This was particularly concerning relative to street vendors, for instance, who often play a vital role in the distribution of food, yet who often faced worsening work conditions during the COVID pandemic. On the other side of the equation, some states took positive measures to recognize some workers in the informal economy as frontline workers deserving positive treatment during the COVID pandemic.⁷³ Benefits afforded were often limited and inclusion did not in general extend into greater rights and recognition in the pandemic recovery period, however.⁷⁴

48. In June 2019, the president of the Brazilian Sindicato dos Trabalhadores Rurais de Rio Maria was shot dead. Members of the Landless Rural Workers Movement have also frequently come under attack in the past, including when Márcio Matos was killed in January 2017. Other rural organizers, such as Francisca das Chagas Silva, who was also an activist on behalf of women's rights, have also been killed. In Colombia, informal economy union activists, including several representing rural and agricultural workers, have also come under frequent attack over the last several years, in which multiple union leaders have been killed. The Special Rapporteur is also highly concerned to have received reports that agricultural worker organizers have recently been detained in Cambodia.

49. In a 2022 decision, the CFA considered the situation of a group of dockworkers from Lima, Peru, which was retaliated against by a local enterprise, and the leaders of which were subjected to arrests, criminal charges and prison sentences. In response, the CFA emphasized

⁷⁰ See Compilation of Decisions of the CFA, ILO (6th ed., 2018), paras. 751-782.

⁷¹ Compilation of Decisions of the CFA, ILO (6th ed., 2018), paras. 761, 763, 782.

⁷² See Amnesty International, India: Government must stop crushing farmers' protests and demonizing dissenters (Feb. 9, 2021).

⁷³ See Submission, Homenet South Asia.

⁷⁴ See *id.*

that “no person should be prejudiced in employment by reason of legitimate trade union activities and cases of anti-union discrimination should be dealt with promptly and effectively by the competent institutions,” expressed its “trus[t] that the Government has taken the necessary steps to ensure that the trade union leaders subject to” arrest, charges and detention “have been able to return to their place of work,” and called on the government “to provide adequate compensation to the workers who had been imprisoned and who were released following the judgments of the Superior Court of Justice of Lima and the Supreme Court.”⁷⁵

50. Across the informal economy, workers are vulnerable to and often face violence and harassment. For domestic workers, this is often conducted by employers and their family members directly in their private homes. For workers in public places, harassment may be conducted by middlemen and or law enforcement agents. States should sign and comply with ILO Convention 190, the Violence and Harassment Convention, and take immediate, effective measures to address all such forms of violence and harassment.

E. Formalization and Informalization

51. As the previous sections have detailed, workers should fully enjoy their rights to freedom of peaceful assembly and of association regardless of the level of formalization of their employment. At the same time, given existing restrictive laws, as well as overlapping forms of discrimination and socio-economic challenges faced by those in the informal economy, workers often enjoy more protection the more formalized the sector in which they work. Formalization can mean many different things, however—at times it can represent a progressive expansion of rights and protections; at other times, a heavier hand of coercion and control. It is important that efforts be made to expand progressive formalization of the former sort, in line with the principles laid out in ILO Recommendation 204, as well as that States take measures to prevent workers being stripped of the rights and protections they already have through one modality or another. It is essential, moreover, that the processes in question constitute worker-led formalization, in which workers in the informal economy themselves play a key role within the processes in question.

52. In reality, the informal economy has grown and now encompasses the majority of workers in many States. This is the case, for instance, according to reports the Special Rapporteur has received, in Zimbabwe and Nigeria. The increasing size of the informal economy in relation to the formal economy has been driven by many factors, including global neoliberal policies, structural reforms that do not take account of workers’ needs, and the recognition by certain State and private sector actors that union strength may be diminished by policies that promote informalization. The growing scope of sanctions, too, has negatively impacted many economies, often further helping diminish the formal and expand the informal economy.

53. Not infrequently, moreover, laws theoretically designed to ‘regularize the informal economy’ in fact leave workers in increasingly vulnerable positions. This was the case, for instance, with Law 13,467, adopted in Brazil in July 2017. In India too, some recent labor sector reforms have weakened workers’ ability to enjoy secure contracts that come with the full range of worker protections and benefits.

54. Frequently, employers have attempted to avoid labor laws and to prevent the protections and benefits they require being afforded to workers by utilizing various approaches in which the employment relationship is disguised, including informal, limited hour or subcontracted relationships with workers.⁷⁶ This has been the case, for instance, in South Africa.⁷⁷ As the CEACR has relatedly emphasized, “the use of casual work on a regular basis, to carry on activities that concern the main business of the enterprise ... is a form of disguised employment relationship and contributes to the natural precariousness of this type

⁷⁵ See CFA Report 400 (2022), Case 3306, paras. 621-2.

⁷⁶ See CEACR, Promoting employment and decent work in a changing landscape, International Labour Conference, 109th Session (2020) (hereinafter ‘PEDWCL Report’), para. 191.

⁷⁷ See Paul Benjamin, Informal Work and Labour Rights in South Africa, 29 *Industrial Law Journal* 1579, 1582 (2008).

of work.”⁷⁸ Such practices deprive workers of their rights and must be avoided. States should take firm measures to close the legal loopholes that allow these strategies to be successful. Among other things, legal provisions that limit the ability of workers to bring complaints of unfair termination to those who have been employed for a particular period of time, or otherwise restrict the ability of shorter-term workers to access benefits, should be avoided, as such measures encourage employers to keep workers in short-term employment.

55. While often heralded as part of a brighter future, the rise of the ‘gig’ economy has often been linked to limitations on the formal economy, including through the misclassification of workers’ employment status and the movement of workers into increasingly insecure positions with less benefits and protections. Smart city initiatives, too, have at time been linked to attacks on workers in the informal economy, as for instance in Uganda where, according to information the Special Rapporteur has received, street vendors were kicked off the streets following the launch of Kampala’s smart city initiative.

56. In this regard, positive examples may be found in the labor legislation of several states. In Australia, labor legislation prohibits dismissing workers and rehiring them as independent contractors.⁷⁹ In Argentina and Gabon, labor legislation provides that fraudulent contracts will be null and void.⁸⁰ In Algeria, Armenia, Belgium, Colombia and Malta, legislation renders employers automatically liable to pay the full contributions due to persons employed under fraudulent contracts.⁸¹ In Chile, the Labour Code prohibits

57. recourse to any subterfuge, concealment, disguise or alteration of identity or ownership if it results in the avoidance of compliance with labour and social security obligations established by law or agreement ... Any alteration undertaken in bad faith through the establishment of different corporate names, the creation of legal identities, the division of the company or other means which result for the worker in a reduction or loss of individual or collective labour rights and, especially in relation to the former, bonuses or indemnities for years of service, and in relation to the latter, the right to organize and collective bargaining, shall be considered subterfuge.⁸²

58. Responsibility for reclassifying inappropriately designated labor relationships varies across countries.⁸³ ILO Recommendation 198 of 2006, the Employment Relationship Recommendation, suggests that States “allo[w] a broad range of means for determining the existence of an employment relationship,” and that States “provid[e] for a legal presumption that an employment relationship exists where one or more relevant indicators is present.”⁸⁴

F. Lack of Law and Practice Effectively Prohibiting Discrimination Against Union Organizers and Members

59. Many states lack strong laws limiting discrimination against union organizers and members. Workers’ rights to freedom of peaceful assembly and of association are generally restricted whenever they have reason to fear that pro-union activities or participation in strikes may lead to their employment being terminated, or worse. As such, respect for the rights requires strong legal measures limiting the ability of employers to engage in such activities, and penalizing them if they do.

60. The CFA has previously emphasized the importance of such measures, and the need to take rapid and effective action to ensure no discrimination in hiring, during employment or through dismissal of union members or those potentially interested in joining a union, to

⁷⁸ PEDWCL Report, para. 287.

⁷⁹ See Australia (Fair Work Act, Sections 357–359), *cited in* PEDWCL Report, para. 196.

⁸⁰ See Argentina (Act No. 20744 on Labour Contracts, Section 14) and Gabon (Labour Code, Sections 3–5), *cited in* PEDWCL Report, para. 196.

⁸¹ See Algeria, Armenia, Belgium (Programme Act (I) of 2006, section 340), Colombia (Substantive Labour Code, Section 198) and Malta (Employment Status National Standard Order (SL 452.108), *cited in* PEDWCL Report, para. 196.

⁸² Chile (Labor Code, Section 507), *cited in* PEDWCL Report, para. 196.

⁸³ See PEDWCL Report, para. 198.

⁸⁴ ILO, Employment Relationship Recommendation, 2006 (No. 198), para. 11(a-b); *see also* PEDWCL Report, paras. 233-5.

restore any unionists wrongly dismissed to their jobs, and to provide them with appropriate remedies.⁸⁵

61. The CFA has frequently called on states to ensure individuals may not be discriminated against in the context of their employment due to pro-union activities and engagement. In response to a communication concerning Qatar, the CFA called on Qatar to “ensure protection against ... making the employment of a worker subject to the conditions that he or she shall not join a union” and “causing the dismissal of, or otherwise prejudicing workers, by reason of union membership or because of participation in union activities.”⁸⁶ The CFA has in recent years emphasized a similar point relative to El Salvador, Turkey, Colombia, Guatemala, Argentina, Mexico, Poland, Paraguay, Peru, Bolivia, Comoros, Thailand, Georgia, Brazil, Montenegro, Hungary, the Dominican Republic, Honduras, Mauritius, Algeria and Myanmar, among other states, as well.⁸⁷

62. States should ratify ILO Convention 190, the Violence and Harassment Convention. Article 5 thereof states that States shall

63. promote and realize the fundamental principles and rights at work, namely freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation, as well as promote decent work.

64. While reiterated by ILO Convention 190, these principles flow from numerous other provisions of international human law as well, and should be recognized by all states.

65. Some positive practice on non-discriminatory measures is available from Italy, where a court in Bologna ruled that Deliveroo had indirectly discriminated against drivers exercising their right to strike, due to the manner in which the company’s algorithm penalized those drivers based on their unavailability during the strike.⁸⁸

G. The Need to Ensure Labor and Social Rights and Protections Are Extended to All

66. Many workers in the informal economy—who often come from minority, marginalized, and/or discriminated-against groups—almost inevitably enjoy less labor protection than those in the formal economy. The overlapping vulnerabilities of many workers in the informal economy make many particularly vulnerable to forms of labor exploitation, including forced labor, servitude and slavery. More broadly, workers in the

⁸⁵ See *Compilation of Decisions of the CFA*, ILO (6th ed., 2018), paras. 1072-1186.

⁸⁶ CFA Report 371 (2014), Case 2988, para. 858.

⁸⁷ CFA Report 340 (2006), Case 2418, para. 811; CFA Report 340 (2006), Case 2351, para. 1350; CFA Report 342 (2006), Case 2356, para. 364; CFA Report 342 (2006), Case 2390, para. 563; CFA Report 344 (2007), Case 2456, para. 278; CFA Report 344 (2007), Case 2479, para. 1051; CFA Report 344 (2007), Case 2474, para. 1153; CFA Report 346 (2007), Case 2487, para. 928; CFA Report 348 (2007), Case 2356, para. 372; CFA Report 348 (2007), Case 2526, para. 1046; CFA Report 349 (2008), Case 2498, para. 744; CFA Report 350 (2008), Case 2553, para. 1538; CFA Report 351 (2008), Case 2582, para. 240; CFA Report 351 (2008), Case 2594, para. 1177; CFA Report 353 (2009), Case 2619, para. 582; CFA Report 353 (2009), Case 2557, para. 840; CFA Report 353 (2009), Case 2634, para. 1303; CFA Report 354 (2009), Case 2594, para. 1080; CFA Report 355 (2009), Case 2609, para. 864; CFA Report 355 (2009), Case 2648, para. 960; CFA Report 356 (2010), Case 2663, para. 761; CFA Report 357 (2010), Case 2676, para. 299; CFA Report 359 (2011), Case 2773, para. 301; CFA Report 359 (2011), Case 2769, para. 483; CFA Report 359 (2011), Case 2752, para. 918; CFA Report 360 (2011), Case 2775, para. 728; CFA Report 363 (2012), Case 2819, para. 537; CFA Report 363 (2012), Case 2811, para. 658; CFA Report 363 (2012), Case 2875, para. 693; CFA Report 370 (2013), Case 2985, para. 423; CFA Report 371 (2014), Case 3010, para. 666; CFA Report 372 (2014), Case 2989, para. 316; CFA Report 374 (2015), Case 3052, para. 584; CFA Report 376 (2015), Case 3027, para. 297; CFA Report 376 (2015), Case 3042, para. 546; CFA Report 376 (2015), Case 3086, para. 783; CFA Report 377 (2016), Case 3104, para. 110; CFA Report 378 (2016), Case 3171, para. 488.

⁸⁸ See Business & Human Rights Resource Centre, “Italian court rules against ‘discriminatory’ rider-ranking algorithm” (Jan. 5, 2021).

informal economy often lack access to health care, sick leave, holidays, minimum wages, maximum hours, workplace health and safety standards, compensation, unemployment benefits and old age benefits. With unfortunate frequency, workers are denied such rights based on tenuous claims, however, for instance that they are operating under contracts of service rather than labor contracts. The double standards here are particularly clearly brought out by the fact many states include such workers in their labor statistics while failing to ensure they are provided their full set of rights, as well as by the fact that workers in the informal economy are heavily taxed in relation to the benefits they receive, often paying a greater percentage of their income in tax than those higher up the income ladder (including due to value-added taxes on essential goods and services in particular). The extension of workers' rights and social rights within existing systems should always be interpreted as broadly as possible, and legal reforms should be undertaken to ensure the rights as such extend as broadly as possible as well.

67. In addition, the Special Rapporteur underscores that it is essential in this context that labor and social rights generally are as strong as possible, as extending such rights to workers in the informal economy will naturally provide a benefit equivalent to the strength of the legal orders in question. At the same time, bringing in a broader base of supporters of such policies has a key role to play in generating political support of such measures, that can help to drive positive developments and to lock in those gains that are won.

68. ILO Convention 187, the Promotional Framework for Occupational Safety and Health Convention and accompanying Recommendation 197 both apply to workers in informal as well as formal employment. Among other things, Recommendation 197 calls for national health and safety programmes to “provide appropriate measures for the protection of all workers,” including in particular “workers in high-risk sectors, and vulnerable workers such as those in the informal economy.” States should ensure all measures they take are in compliance with these instruments. ILO Recommendation 204 of 2015, on the Transition from the Informal to the Formal Economy, calls on States to:

- take immediate measures to address the unsafe and unhealthy working conditions that often characterize work in the informal economy; and
- promote and extend occupational safety and health protection to employers and workers in the informal economy.⁸⁹

69. The Special Rapporteur endorses these recommendations, and calls on States to extend labor protections to casual and workers in the informal economy. Workplace safety standards should apply relative to any instance of work, and not be limited by its degree of formality. In this context it is important that States take fully into account the different circumstances of different workers, and craft the relevant laws and policies so as to ensure maximum protection. Like workers in the formal economy, workers in the informal economy should enjoy compensation when injured while working. South Africa's recently passed Compensation for Occupational Injuries and Diseases Amendment Act represents one positive example in such regards, insofar as it extends coverage over domestic workers in particular.⁹⁰ Minimum wage laws should cover workers in the informal economy just as they do workers in the formal economy. States should also ensure all workers are able to access clean water and appropriate sanitation services and to benefit from adequate lighting, which will require *inter alia* public provision of such services that those working in public spaces may access. Safe, reliable and affordable public transport is also often particularly important for workers in the informal economy.

70. In addition, States should establish strong and effective labor inspection systems, that cover informal as well as formal economy workers.⁹¹ Such programmes must be sufficiently resourced and their staff appropriately trained, moreover, to ensure they may undertake their role effectively. Among other issues, it is essential that modes of inspection are found in which informal economy workers need not fear that they will face retaliation for reporting on their conditions of work honestly. For its part, the CEACR has called on governments “to

⁸⁹ ILO, Transition from the Informal to the Formal Economy, 2015 (No. 204), para. 17.

⁹⁰ For more, see Socio-Economic Rights Institute of South Africa, COIDA Factsheet (June 4, 2021).

⁹¹ See ILO, Transition from the Informal to the Formal Economy, 2015 (No. 204), paras. 11(q), 27.

consider the gradual extension of the labour administration system to cover workers who are not, in law, employed persons.”⁹² In this context, the CEACR has praised Moldova for the fact that there “enterprises and workers operating in the informal economy fall within the scope of the legislation on labour inspection and the employment and social protection of persons seeking employment.”⁹³ Moreover, all workers, including informal economy workers, should have access to “efficient and accessible complaint and appeal procedures.”⁹⁴

71. States should also extend social benefits to all workers. In this regard, extensions of social protection programmes of all forms to the informal economy are extremely positive.⁹⁵ The Special Rapporteur is encouraged, for instance, by reports that some states have opened social security schemes to migrant workers. Public healthcare programmes and maternity support should be fully available for free to all persons.

72. The extension of such benefits is not only important in its own right, but also as a means to enhance workers’ bargaining power, and thereby to enhance their ability to exercise and enjoy their rights to freedom of peaceful assembly and of association. Frequently, workers in the informal economy may be dissuaded from exercising their rights in practice due to the precarity of their employment, and their awareness of the difficult circumstances they would face if they lost that employment. Social protection programmes as well as social welfare support can diminish these fears, by providing workers with greater access to their core social and economic rights. In addition, such support helps to address and limit the forms of indirect coercion informal economy workers often face.

V. The Importance of Recognizing Limitations on Informal Economy Workers’ Rights to Freedom of Peaceful Assembly and of Association as Discrimination, and of Taking Appropriate Remedial Measures to Rectify that Discrimination

73. States should recognize and remedy all of the discriminatory impacts of informality. In addition to constituting a violation of the right to freedom of association, limitation on the ability of workers in the informal economy to associate should be understood as direct discrimination on the basis of socioeconomic status, as well as indirect discrimination everywhere that discriminated against or marginalized groups are more likely to be in informal employment—which is currently the case in every State, as further detailed below.

74. UN treaty bodies and mechanisms, ILO supervisory mechanisms and national and regional courts have increasingly recognized that refusing to respect and protect the rights of workers in the informal economy entrenches inequality, and can constitute both direct and indirect discrimination on multiple and often intersecting bases. Worldwide, historically disadvantaged groups including women, migrants, LGBTIQ+ persons, people with disabilities, young people, members of minority or discriminated against racial groups, people living in poverty, people living in rural areas, and members of marginalized ethnic, religious and social groups are more likely to work in the informal economy. As such, these groups are disproportionately impacted by the lack of mechanisms to meaningfully realize their rights to freedom of association and collective bargaining. Exclusion from their rights to associate and engage in collective bargaining, moreover, exacerbates the social and economic disadvantages faced by such groups.

75. In many countries, workers in the informal economy are precluded by law from forming or joining unions, or are otherwise legally restricted from organizing on an equivalent basis to workers in a recognized employment relationship. State Parties to the International Covenant on Economic, Social and Cultural Rights (‘ICESCR’) have a duty to

⁹² ‘PEDWCL Report’, para. 429.

⁹³ Direct Request (CEACR) – adopted 2010, published 100th ILC session (2011), Labour Administration Convention, 1978 (No. 150) – Republic of Moldova.

⁹⁴ ILO, Transition from the Informal to the Formal Economy, 2015 (No. 204), para. 29.

⁹⁵ For some discussion, see ‘PEDWCL Report’, paras. 466-67.

eliminate both formal and substantive discrimination on the basis of social origin, which General Comment 20 of the CESCR indicates includes “economic and social status.”⁹⁶ State Parties to the International Covenant on Civil and Political Rights (‘ICCPR’) must ensure that all persons are equal before the law, and that they enjoy equal protection of the law without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁹⁷ Informal workers are generally excluded with no rational basis for their exclusion, and are manifestly not equal before the law.

76. In a recent decision of the Constitutional Court of South Africa, *Mahlangu and Another v Minister of Labour and Others*,⁹⁸ domestic workers successfully challenged their exclusion from legislation ensuring compensation for work-related injuries, illnesses and death. In considering direct discrimination, the Court found that the exclusion of domestic workers from workers compensation laws did not serve any rational government purpose, and that “the differentiation between domestic workers and other categories of workers is arbitrary and inconsistent with the right to equal protection and benefit of the law.”⁹⁹ In 2003, the Constitutional Court of Colombia recognized informal waste pickers as a vulnerable social group that faces discrimination and unequal opportunities,¹⁰⁰ and found regulations preventing waste picker associations from bidding on government contracts in violation of the State’s obligations to adopt measures in favor of marginalized groups and to promote substantive equality.

77. In 2020, the ACtHPR issued an advisory opinion holding that vagrancy laws violate several of the guarantees in the African Charter on Human and Peoples’ Rights, finding *inter alia* that such laws constitute discrimination on the basis of economic status, and that they violate the rights to be equal before the law and to equal protection of the law.¹⁰¹ In finding vagrancy laws to be discriminatory, the Court observed that those laws “effectively, punish the poor and underprivileged, including but not limited to ... hawkers, street vendors, and individuals who otherwise use public spaces to earn a living.”¹⁰² The Court observed that vagrancy laws in Africa “reflec[t] an outdated and largely Colonial perception of individuals without rights [which] dehumanizes and denigrates individuals with a perceived lower status.”¹⁰³

78. The CESCR has stressed that the mere elimination of direct state discrimination is not enough to ensure substantive equality. Instead, governments must pay “sufficient attention to groups of individuals which [have] suffer[ed] historical or persistent prejudice” and “adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination.”¹⁰⁴ The CESCR has also recognized “systemic discrimination” as existing where “legal rules, policies, practices or predominant cultural attitudes in either the public or private sector ... create disadvantages for some groups, and privileges for other[s].”¹⁰⁵

79. States have a duty to amend and regularly review their legislation to ensure that it does not discriminate or lead to discrimination, whether directly or indirectly, in relation to the right to freedom of association as well as all other rights.¹⁰⁶ Clear legal restrictions on the ability of workers in the informal economy to organize themselves, de facto restrictions

⁹⁶ CESCR, General Comment No. 20, UN Doc. E/C.12/GC/20 (2009), para. 24.

⁹⁷ See ICCPR, Article 26.

⁹⁸ *Mahlangu and Another v Minister of Labour and Others*.

⁹⁹ *Id.* at para. 72.

¹⁰⁰ Constitutional Court of Colombia, Sentencia T-724/03 (August 20, 2003).

¹⁰¹ See ACtHPR, Advisory Opinion No. 001, *The Compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and Other Human Rights Instruments Applicable in Africa*, (December 4, 2020), paras. 64-75, available at: http://www.african-court.org/en/images/Cases/Advisory%20Opinion/Advisory%20Opinions/001-2018_-_PALU-Advisory_Opinion.pdf

¹⁰² *Id.*, para. 70.

¹⁰³ *Id.*, para. 79.

¹⁰⁴ CESCR, General Comment No. 20, para. 8.

¹⁰⁵ CESCR, General Comment No. 20, para. 12.

¹⁰⁶ See CESCR, General Comment No. 20, para. 37.

through overly discretionary or bureaucratically impossible to access procedures, and failure to take sufficient steps to support the ability of workers in the informal economy to organize may all be understood as violating States' obligation to ensure equal, non-discriminatory systems.

80. Most universally, even where the laws in question are gender-neutral on their face—as they generally are—excluding informal workers from associational rights is discriminatory on the basis of gender, as such measures disproportionately impact on women, who are more likely to work in the informal economy. Under Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW'), States are required to take all appropriate measures to eliminate discrimination against women in the field of employment. *Inter alia*, the CEDAW Committee has held that Article 11 should apply “to self-employed women and not to female employees exclusively.”¹⁰⁷

81. The CESCR, meanwhile, has recognized both the fact that work in the informal economy is gendered and some of the impacts of that gendered distribution of work. The CESCR has noted that “women are overrepresented in the informal economy, for example as casual workers, home workers or own account workers, which in turn exacerbates inequalities in areas such as remuneration, health and safety, rest, leisure and paid leave.”¹⁰⁸ The discriminatory impact of excluding workers in the informal economy from the right to organize is hence multiply felt, as it both restricts such workers' ability to access their right to freedom of association as such, and prevents them from using that right from advocating for and hence improving their access to other social and economic rights.

82. For its part, the ACtHPR has found that States have an obligation under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa “to create an environment where poor and marginalised women can fully enjoy all their human rights,”¹⁰⁹ and that vagrancy laws that allow for “the arrest of poor and marginalised women” undermined women's rights to equal protection.¹¹⁰

83. Women everywhere face discriminatory impacts due to the operation of laws, regulations and practices that discriminate against workers in the informal economy. These discriminatory impacts are also often intersectional as well. The CESCR,¹¹¹ the CERD Committee,¹¹² the CEDAW Committee and the CEACR¹¹³ have all endorsed an intersectional approach. General Recommendation 25 of the CEDAW Committee, for instance, urges states to pay particular attention to complex forms of disadvantage in which racial discrimination is mixed with other forms of discrimination, such as age, gender, religion, disability, migration status and class.¹¹⁴

84. In its 2022 concluding observations concerning Zimbabwe, the CERD Committee expressed concern that legislation to protect labor rights and prevent discrimination does not explicitly cover workers in the informal economy and domestic work.¹¹⁵ The Committee called on the government to amend its labor laws and to “[t]ake measures to address discrimination on the intersecting grounds of race, class and gender in all areas of

¹⁰⁷ CEDAW Committee, *Elisabeth de Blok et al. v. the Netherlands*, Comm. No. 36/2012, UN Doc. CEDAW/C/57/D/36/2012 (March 24, 2014).

¹⁰⁸ CESCR, General Comment No. 23 on the right to just and favourable conditions of work (2016), para. 47(d), available at: <https://www.refworld.org/docid/5550a0b14.html>.

¹¹⁰ ACHPR, Advisory Opinion 001/2018, para. 137.

¹¹¹ CESCR has called on State Parties to recognize where individuals or groups face discrimination on more than one prohibited grounds, and has stressed that “[s]uch cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying.” CESCR, General Comment No. 20.

¹¹² *See, e.g.*, CERD Committee, General Recommendation No. 25, Gender Related Dimensions of Racial Discrimination, U.N. Doc. A/55/18, annex V at 152 (2000).

¹¹³ *See* Giving Globalization a Human Face, ILO (2012), para. 960.

¹¹⁴ CEDAW Committee, General Recommendation No. 25, on article 4, paragraph 1, of the CEDAW, on temporary special measures (2004), para. 12.

¹¹⁵ CERD Committee, Concluding observations on the combined 5th to 11th periodic reports of Zimbabwe, UN Doc. CERD/C/ZWE/CO/5-11 (16 Sept., 2021), para. 31.

employment.”¹¹⁶ The CERD Committee emphasized that the informal sector and domestic work are “both sectors in which Black women predominate and face low wages, poor working conditions and racist dehumanizing treatment from employers and customers of different racial or ethno-linguistic identities which is reminiscent of the pre-independence era.”¹¹⁷

85. National level jurisprudence points in a similar direction. The South African Constitutional Court has found that excluding domestic workers from accessing workers’ compensation constitutes both direct discrimination and indirect intersectional discrimination on the combined bases of class, race and gender.¹¹⁸ The Constitutional Court specifically concluded that the exclusion of the category of “domestic worker,” while ostensibly neutral, had a disproportionate impact on Black women who are disproportionately represented in such employment. Moreover, the court recognized the exclusion as a legacy from the colonial and apartheid system, and a mis-recognition of work in the private sphere, traditionally performed by women, as not proper work.

86. States should also adopt and strengthen measures that recognize and seek to remedy discrimination based on poverty. This has been emphasized in a report by the UN Special Rapporteur on Extreme Poverty and Human Rights, which found that “strengthening the prohibition of discrimination on grounds of socio-economic disadvantage is a key tool towards poverty eradication.”¹¹⁹ Informality is itself a driver of poverty, and a lack of associational rights leaves workers without a key mechanism to improve wages and working conditions.

87. Workers from discriminated against or marginalized communities are more likely to be unable to freely form and join unions and organize to demand better working conditions, compounding and enhancing the social and economic inequality and discrimination they face. States have a duty to recognize and remedy the discriminatory impact of exclusionary and inadequate legal frameworks that limit the ability of some groups to fully enjoy their right to freedom of association.

VI. Positive Practices Relative to Informal Economy Organizing

88. As the previous sections have detailed, restrictions on workers’ rights are widespread in the contemporary world. These restrictions are often both more severe relative to the informal economy, where they are also felt more acutely, given the frequent additional vulnerability, lack of access to resources and other challenges faced by informal economy workers.

89. Despite the challenges, tireless work by dedicated organizers has led to great successes in informal economy organizing in numerous countries around the world. Among notable successful organizing efforts are those that led to the formation and/or expansion of the Self-Employed Women’s Association and Anukatham in India, the Home-based Women Workers Federation in Pakistan and Griha Shramik Mahila Samaj Nepal in Nepal¹²⁰ as well as the Central de trabajadores de la Argentina-Autonoma, the Confederation of Informal Economy Workers in Argentina, the Union Nationale des Syndicats des Travailleurs du Benin, the Fiji Trade Union Congress, the Ghana Trades Union Congress, CIVIDEP in India, the Malawi Unions of the Informal Sector, the General Federation of Nepalese Trade Unions, the Peru Central Unitaria de Trabajadores del Peru, the Trade Union Congress of the Philippines and Alliance of Workers in the Informal Economy Sector, the Sierra Leone Labour Congress, the Tanzania Union of Industrial and Commercial Workers, the National Organisation of Trade Unions in Uganda, the Zambia Congress of Trade Unions and the

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Mahlangu and Another v Minister of Labour and Others.*

¹¹⁹ Report of the United Nations Special Rapporteur on Extreme Poverty and Human Rights, UN Doc. A/77/157 (2022), 5.

¹²⁰ *See* Submission, Homenet South Asia.

Zimbabwe Congress of Trade Unions,¹²¹ and the Amalgamated Transport and General Workers Union in Uganda, the National Confederation of Transport Union in the Philippines, the Independent Transport Workers Association in Nepal, the Sindicato Nacional de Trabajadores de Rama, Servicios de la Industria del Transporte y Logística in Colombia and the Syndicat National des Travailleurs Autonomes de l'Economie Informelle in Niger.¹²² In Ukraine, a union representing small entrepreneurs has been created and active for several years, and efforts to create organized representation for domestic workers have also had some success.

90. Unions of workers in the formal economy can adopt, and in different times have adopted, different attitudes towards the unionization of workers in the informal economy. The support of such unions, whether through sharing of expertise or the inclusion of broader categories of workers under their umbrellas, is incredibly valuable in terms of expanding access to the right to freedom of association for workers in the informal economy. The Special Rapporteur therefore encourages and commends the positive steps that have been taken in numerous jurisdictions around the world in such regards.

91. It is important to emphasize, moreover, that initiatives in support of the rights of workers in the informal economy should be led by those workers, who are given primacy of place to formulate and pursue their own demands. More broadly, workers in the informal economy should be included in discussions on various levels aimed at the formulation of policy, including any and all policies aimed at expanding enjoyment of workers' rights and the rights to freedom of peaceful assembly and of association in particular.

92. Organizing workers in the informal economy can often pose a problem in terms of with whom workers should negotiate for better conditions, given that circumstances and conditions vary widely across different forms of work in the informal economy. There is no one-size fits all solution to the challenges posed in this area; rather, workers should be free to develop their own policies and approaches.

93. Finally, it is important to recognize that workers in the informal economy are workers, that workers have rights, and that workers' rights are human rights. While law and practice may remain restrictive in many contexts, the Special Rapporteur is heartened by reports of increasing numbers of workers recognize their demands for better conditions and treatment as rights claims as such, as well as by the solidarity across groups and borders displayed by numerous individuals and groups in support of greater rights fulfillment.

VII. Recommendations

94. In light of the above findings, the Special Rapporteur recommends the following actions in order to ensure the rights to freedom of peaceful assembly and of association are fully respected.

A. States

95. States should:

- Ensure that all laws, including labor laws, do not restrict the right to associate to formal economy workers, including by limiting the right to form unions to 'employees' or to those in possession of formal labor contracts, or otherwise by employing definitions that directly or indirectly exclude any worker.
- Ensure the right to freedom of association is fully enjoyed not just in law but also in practice, including by eliminating all forms of excessive discretion and bureaucratic obstacle.

¹²¹ For more, see *Organizing Informal Economy Workers Into Trade Unions: A Trade Union Guide*, ILO (2019). See also Supriya RoyChowdhury, *Labour Activism and Women in the Unorganised Sector: Garment Export Industry in Bangalore*, 40 *Economic and Political Weekly* 2250 (2005).

¹²² See Submission, ITF Global.

- Ensure that workers in the informal economy are able to take part in institutions designed to promote workers' participation, including tri-partite structures and mechanisms designed to support collective bargaining.
- Take positive steps to create and support appropriate, independent and adequately resourced collective bargaining fora and other mechanisms specifically designed to address the needs of different sets of workers in the informal economy, and include informal economy workers in the processes of design and review of such bodies.
- Ensure that workers in the informal economy, like all other workers, fully enjoy their right to strike.
- Refrain from engaging in or supporting violence or harassment of any persons, including all workers in the formal economy, in the informal economy, and in the wider world of work, and fully comply with the terms of ILO Convention 190 and Recommendation 206.
- Protect all persons, including all workers in the formal economy, in the informal economy, and in the wider world of work, from all forms of violence or harassment by non-State actors.
- Ensure full investigations, accountability and comprehensive remedies when rights violations, including in particular violations involving unlawful force, take place.
- Ensure progressive inclusion in the formal economy in accordance with ILO Recommendation 204, that takes into account “the diversity of characteristics, circumstances and needs of workers and economic units in the informal economy, and the necessity to address such diversity with tailored approaches,” through measures that, *inter alia*, “progressively extend, in law and practice, to all workers in the informal economy, social security, maternity protection, decent working conditions and a minimum wage that takes into account the needs of workers and considers relevant factors, including but not limited to the cost of living and the general level of wages in their country.”¹²³
- Ensure that the above processes constitute worker-led formalization, in which workers in the informal economy play a key role within and are meaningfully consulted relative to all processes, policy decisions and practices impacting on their work.
- Prevent and roll-back any limitations on workers' rights imposed on the pretext that those workers do not qualify for those rights, for instance because they are part of the gig economy, because they are operating under limited-hours or temporary contracts, or because they are self-employed, while amending the underlying laws to ensure they cover all workers.
- Ensure, as a matter of both law and practice, that no worker may be discriminated against or face consequences, in terms of their access to employment or otherwise, on the basis of the exercise or attempted exercise of their rights to freedom of peaceful assembly and of association.
- Put in place strong legal measures sanctioning employers and/or state actors who retaliate against workers on the basis of their exercise of their rights to freedom of peaceful assembly and of association, including through layoffs and other forms of retaliation.
- Ensure that social protection provisions are not limited on the basis of participation in the formal economy.
- Recognize that exclusionary and inadequate legal frameworks with respect to the right to association have a discriminatory impact on workers from marginalized and discriminated-against communities, and take effective measures to promote substantive equality, including positive steps to ensure all workers in the informal economy fully enjoy their rights to freedom of peaceful assembly and of association.

¹²³ ILO Recommendation 204, paras. 7(a), 18.

- Ratify and comply with relevant human rights treaties and ILO Conventions, including all international human rights conventions as well as ILO Conventions 87, 98, 111, 150, 155, 187, 189 and 190, and comply with the provisions of relevant recommendations, including ILO Recommendations 197, 198, 204 and 205.

B. The International Community

96. The international community should:
- Compile more, clearer information concerning limitations imposed by States on the ability of workers in the informal economy to enjoy their rights to freedom of peaceful assembly and of association.
 - Compile more, clearer information concerning best practices in relation to the association and rights of workers in the informal economy.
 - Monitor and consistently call on States to take measures to address limitations on the rights of workers in the informal economy.
 - Ensure that workers in the informal economy can take part in international processes.
 - Include provisions in trade and investments agreements ensuring that all workers' rights, including migrant workers' rights, are fully protected.

C. The Private Sector

97. The private sector should:
- Fully respect workers' rights to freedom of peaceful assembly and of association, including as exercised by the formation of unions, participation in strikes and collective bargaining.
 - Ensure internal disciplinary measures are taken against any employees who retaliate against workers for exercising their rights to freedom of peaceful assembly and of association.
 - Recognize dependent relationships with workers throughout business operations and craft agreements that maximize the portion of the workforce employed through formal arrangements.

D. Civil Society

98. Civil society, including formal sector unions, should:
- Work to support the organization efforts of workers in the informal economy.
 - Work to build knowledge and skills among workers in the informal economy, to better enable them to fully and effectively assert their rights to freedom of peaceful assembly and of association.
-