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Theme 2: Social Security: Which way forward? (The extension of social security rights into the realms of informal sphere)

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Exploring innovative solutions to extend social protection to vulnerable workers in the informal economy

Introduction

Employment and its fundamental design, purpose and coverage have changed to the detriment of many workers. Non-standard work is increasing and new forms of work have emerged. Legislation was often drafted to protect employees in the traditional full-time employment paradigm and is currently inadequate to provide protection to workers in forms of non-standard employment. In South Africa and other developing countries, informal economy workers do not enjoy sufficient protection in terms of labour and social protection measures. The ILO World Social Protection 2014 -2015 Report indicated that 73% of the world's population continue to live without adequate social protection coverage and their fundamental rights are often only partially realised or not at all. These workers are vulnerable, face great insecurities and are denied social justice. Extending social protection to these workers is vital in realizing the fundamental right to social security. This paper will specifically consider the precarious position of female workers in the informal economy in respect of social protection.

It is important to define the informal economy for purposes of this paper. Reference to the informal economy refers to all economic activities by workers in economic units that are in law or in practice not covered or insufficiently covered by formal arrangements.¹ Excluded from the scope of this definition are illicit activities.

When considering the protection of these workers it is also of the utmost importance to explore the design and implementation of innovative and tailor made solutions, considering for example the nature of their work and their workplace. The importance of voice and representation in the provision of protection to these workers must be highlighted and the Workers' Organisations for informal economy workers do exist, both at national and international levels. These organisations include member based organisations (MBO), cooperatives, NGOs and community-based organisations. Linking these networks at both national and international levels can ensure political pressure in promoting the interests of workers. Through innovative approaches and diverse structures these organisations are making their voices heard and improving working conditions of their members. Through group membership, members can obtain social benefits, solidarity and support.

The precarious position of female workers in the informal economy

In 2004, the following key assumptions were published in respect of the linkage between informality gender and poverty, namely that i) the poor are more likely to work in the informal economy, ii) more poor women than non-poor women work in the informal economy and iii) that there is a gender gap in the earnings in the informal economy as women were earning less than their male counterparts.²

According to Women in Informal Employment: Globalising and Organising (WIEGO), women are often disadvantaged due to market relationships within the informal

¹ Recommendation 204 of 2015.

² Chen, Vanek & Carr *Mainstreaming the Informal Employment and Gender in Poverty Reduction* 30. The observation in iii) is, of course, also true for women working in the formal economy.

economy, as members of groups defined by race, class, ethnicity or caste and as women due to gender norms in their societies.³

Feminization of poverty and gender discrimination such as a lack of access to education, training and economic resources mean that female workers are amongst the most vulnerable workers in the informal economy.⁴ In addition to this women often have to balance various responsibilities such as responsibilities of sole provider and childcare and often also care of the elder.⁵ Strategies must be developed to address discrimination to which these workers are often exposed.

Policies aimed at reducing poverty of female workers should introduce measures to value the work of women, such as minimum wages, safe working conditions, including a workplace safe from violence and harassment and the necessary social protection measures.⁶ Social protection measures should include issues such as maternal health. In 2013, 300, 00 women died globally from causes related to pregnancy and childbirth.⁷ Governments should endeavour to provide universal access to maternal health care, specifically for those most vulnerable.

When considering these issues both values and rights are relevant. In South Africa section 1 of the Constitution of 1996 provides for the values of human dignity, the achievement of equality and the advancement of rights and freedoms. Section 9 provides that everyone is equal before the law and has the right to equal protection and benefit of the law. It has been confirmed by the Constitutional Court⁸ that apart from formal equality our Constitution supports the notion of substantive equality.⁹ The transformative nature of the South African Constitutions is illustrated by its commitment to equality and the fact that our Constitution supports notion of

³ WIEGO <http://www.wiego.org/>

⁴ ILO *Resolution on Decent Work and the Informal Economy* 2002 Conclusion 20.

⁵ *Ibid.*

⁶ In Brazil the increase of minimum wages for female workers resulted in a decrease in the gender pay gap. See UM WOMEN Progress of the World's Women 2015-2016 [http:// www. Progress.unwoen.org/](http://www.Progress.unwoen.org/)

⁷ United Nations *The Millennium Development Goals Report* 2014

⁸ *President of the Republic of South Africa v Hugo* 1997 (4) SA 1 (CC).

⁹ *Ibid.*: "We need to develop a concept of unfair discrimination which recognises that although a society which affords each human being equal treatment on the basis of equal worth . . . we cannot achieve that goal by insisting upon identical treatment in all circumstances before that goal is achieved."

substantive equality.¹⁰ According to Le Roux transformative constitutionalism means social change through law, thus fundamental social change can be achieved through legal reforms, backed by proper mobilisation and enforced through litigation.¹¹ Workers in South Africa should be able to achieve decent work through the enforcement of their fundamental rights.

Section 9 of the Bill of Rights provides protection against unfair discrimination on certain grounds. Article 3(2) of the ILO Convention on Domestic Work affirms the right of elimination of discrimination in the workplace. Although the rights in the convention only applies through incorporation in national legislation, section 9 of the South African Constitution has both direct and indirect application. Other fundamental rights such as the right to human dignity, the right to fair labour practices, socio economic rights, property rights and the protection of ethnic, religious and linguistic minorities may play a vital role in the achievement of social justice and the goal of decent work for all. Social change could be achieved through the law and could be enforced through litigation.

Although Le Roux argues that social justice within the sphere of domestic workers must address issues of recognition, redistribution and representation, we argue that this principle should also be extended to all precarious workers in the informal

¹⁰ Van Heerden: [23] For good reason, the achievement of equality preoccupies our constitutional thinking. When our Constitution took root a decade ago our society was deeply divided, vastly unequal and uncaring of human worth. Many of these stark social and economic disparities will persist for a long time to come. In effect the commitment of the Preamble is to restore and protect the equal worth of everyone, to heal the divisions of the past and to establish a caring and socially just society. ... [24] Our supreme law says more about equality than do comparable constitutions. Like other constitutions, it confers the right to equal protection and benefit of the law and the right to non-discrimination. But it also imposes a positive duty on all organs of state to protect and promote the achievement of equality – a duty which binds the judiciary too. [25] Of course, democratic values and fundamental human rights espoused by our Constitution are foundational. But just as crucial is the commitment to strive for a society based on social justice. In this way, our Constitution heralds not only equal protection of the law and non-discrimination but also the start of a credible and abiding process of reparation for past exclusion, dispossession, and indignity within the discipline of our constitutional framework. . . . [31] The achievement of equality goes to the bedrock of our constitutional architecture. . . . Thus the achievement of equality is not only a guaranteed and justifiable right in our Bill of Rights, but also a core and fundamental value; a standard that must inform all law and against which all law must be tested for constitutional consonance.

¹¹ Le Roux "Advancing Domestic Workers' Rights in a Context of Transformative Constitutionalism" in Du Toit eds *Exploited, Undervalued –and Essential Domestic Workers and the Realization of their Rights* 2013 PULP 39.

economy.¹² If we accept that the South African constitution supports substantive equality¹³ and our courts view our constitution as transformative,¹⁴ then it is of the utmost importance to recognise the fundamental values of freedom, human dignity, social justice and non-discrimination when considering the protection of poor female workers in the informal economy.

Proper recognition and regulation of sectors in the informal economy dominated by female workers would assist in the eradication of poverty amongst female workers, the promotion of substantive equality and the achievement of social justice in line with the notion of transformation. UN Women highlights three important factors to consider when addressing the achievement of substantive equality for female workers, namely, resources,¹⁵ respect¹⁶ and voice.¹⁷ The law on its own cannot achieve decent work, however inclusive labour laws can be seen as a precondition for the achievement of decent work.¹⁸

Legal and economic empowerment of female workers in the informal economy

The process of legal empowerment means that the poor has the ability to exercise their human rights as individuals within a community and live and work with dignity.¹⁹ Legal empowerment includes the concept of decent work and the empowerment of these workers through knowledge of their legal rights. When considering the extension of social protection measures, legal empowerment is a vital process for vulnerable precarious workers in the informal economy. Role players in any legal empowerment strategy must include the role of government and should consider

¹² Le Roux "Advancing Domestic Workers' Rights in a Context of Transformative Constitutionalism" in Du Toit *ed Exploited, Undervalued –and Essential Domestic Workers and the Realization of their Rights* 2013 PULP 64.

¹³ *President of the Republic of South Africa v Hugo* 1997 (4) SA 1, *Minister of Finance v van Heerden* (2004) 12 BLLR 1181(CC).

¹⁴ *S v Makwanyane* 1995 3 SA 391 (CC). See Langa "Transformative Constitutionalism" STELL LR 2006 3.

¹⁵ Resources refers to the redressing of socio- economic disadvantages.

¹⁶ Respect can only be achieved through measures addressing stereotyping, stigma and violence towards women.

¹⁷ Voice refer to representation and participation. See UN WOMEN Progress of the World's Women 2015-2106 <http://www.unwomen.org>.

¹⁸ ILO Report 2012 *Decent Work Indicators: Concepts and Definitions*.

¹⁹ *Ibid*.

legal reform.²⁰ Civil society organisations can play a vital role in creating an awareness amongst these workers about their legal rights. Through legal empowerment, vulnerable and precarious workers should gain an opportunity to participate and compete on equal terms.²¹ The achievement of social justice and long term social change, require that these workers are aware of their rights and can actively campaign for legal reform, however to achieve this these workers require the necessary skills. Through a framework of legal empowerment they can achieve this.

WIEGO defines economic empowerment as increased access to and control over resources and markets, increased agency and improvements in and control over specific outcomes.²² Decent work plays a vital role in the reduction of poverty amongst female workers and contributes their economic empowerment. Economic empowerment symbolises change whereby vulnerable female workers have the ability to gain access to resources, but at the same time they have the ability to influence wider policies.²³ This is a more sustainable approach and workers organisations play a vital role in the achievement of empowerment. Stakeholders should aim to support workers' organisations, thereby strengthening the voice of these female workers.²⁴

The context to women workers in the informal economy include that these forms of work, including, domestic work, caring, cross-border trading and other instances of under-recognised work, are mainly made up of female workers. Women often find themselves in dependent relationships, both at home and at work. The nature of their work, such as care work, domestic work and other home-based work often result in a lack of worker identity as their work is seen as their everyday duties.²⁵ They are also particularly vulnerable to career-breaks, limited educational opportunities and discrimination.

²⁰ Banik *The Legal Empowerment Agenda Poverty Labour and the Informal Economy* 46.

²¹ *Ibid* 112.

²² These outcomes include improved wellbeing and dignity, better work-life balance and improved economic opportunities. WIEGO <http://www.wiego.org/>

²³ *Ibid*.

²⁴ WIEGO [http:// www.wiego.org](http://www.wiego.org). Voice symbolizes organizational strength, solidarity, bargaining power and involvement in decision making processes.

²⁵ Bonner & Spooner D "Organising the Informal Economy: A challenge for Trade Unions" 2011 *International Politics and Society Journal* 89.

When considering the challenges in providing decent work and adequate social protection²⁶ to these precarious female workers, role players must consider an integrated approach. Globally, 748 million people still rely on unsafe drinking water from different sources. Water is often not easily accessible and women and young girls often have to queue or walk long distances to gain access to safe water.²⁷ An integrated approach would consider factors such as access to water, maternal health, improved sanitation and addressing the disparities in school enrolment between boys and girls. It is of the utmost importance to provide these women with the ability to gain access to resources, the means to influence the wider policy and thereby enabling them to shape their livelihood and lives.

The international legal framework

Over the last century the ILO has played a very important role in developing labour standards and conventions. New forms of work have been recognised by the ILO, and in its standard-setting it covers employees outside the traditional employment relationship. The changes in the traditional concept of work have not escaped the attention of the ILO and since 1990 this topic has been receiving attention at annual conferences. The ILO has acknowledged the increase in non-standard work and the need for labour and social protection of non-standard work in the following ways:

- (a) conventions and recommendations pertaining to particular categories of non-standard workers, such as part-time workers and homeworkers;
- (b) support for micro-enterprises in the informal economy;
- (c) programmes like Strategies and Tools against Social Exclusion and Poverty (STEP) to promote the extension of social protection to informal workers;
- (d) support for mutual health insurance schemes; and
- (e) the continuance of work at its social security department, commissioning research and investigating the extension of social security protection to nonstandard workers.

²⁶ Social protection includes social security and covers access to assets, asset replacements, and services such as water, energy, health and education. See Banik *The Legal Empowerment Agenda Poverty Labour and the Informal Economy* 23.

²⁷ United Nations *The Millennium Development Goals Report* 2014 45.

Most core labour standards apply to all workers or contain provisions for extension to other categories of workers. Furthermore, the ILO has adopted the *Declaration on Fundamental Principles and Rights at Work* (1998). In terms of this declaration, member states are required to adopt at least the core conventions containing certain core rights. Internationally the trend is to extend coverage to include non-standard workers, but the number of countries that have ratified relevant conventions remains low. Therefore the effectiveness of these conventions in protecting the position of non-standard workers is limited.

The normative framework of the ILO in respect of social protection includes 8 Conventions and Recommendations.²⁸ Recommendation 202 of 2012 attempts to provide all with a basic level of social security to ensure health and dignity. States are required to provide minimum levels of protection through social protection floors. Basic social security guarantees, such as health care and income security during illness, unemployment and maternity can ensure some protection for informal economy workers. The Recommendation also highlights the value of cooperation of all stakeholders in realising minimum levels of protection.

The implementation of ILO standards for workers may be more problematic in developing countries as they may be unable to fulfil the obligations placed on them. In Zambia, social security consist mainly of social insurance and vulnerable workers in the informal economy, such as women and children are excluded. The scope of coverage in Zambia does not comply with convention 102 of 1952.²⁹ However, governments can start by removing all obstacles to the free organisation of these workers. The participation of these workers in the planning and implementation of programmes to extend protection is vital for the success of such programmes. Certain ILO conventions allow ratifying countries to enact standards in manner applicable to national conditions. The ILO extends coverage to non-standard workers through specific conventions for the general acceptance, promotion and extension of protection to these workers. The ILO should prioritise a campaign focusing on

²⁸ Important conventions and recommendations include the Social Security Convention 102 of 1952 and the Social Protection Recommendation 202 of 2012.

²⁹ Banik *The Legal Empowerment Agenda Poverty Labour and the Informal Economy* 24.6

ratification related to the protection of non-standard workers. The international standards set by the ILO could serve as a roadmap to direct policy and legislative responses.

The ILO Recommendation 204 of 2015 concerning the transition from the informal economy to the formal economy provides for the important strategies to be considered when facilitating the transition such as:

- i. diversity of characteristics,
- ii. the circumstances and the needs of specific workers in the informal economy,
- iii. the necessity to address diversity through tailored approaches,
- iv. the effective promotion and protection of human rights,
- v. the fulfilment of decent work for all,
- vi. the promotion of gender equality and non-discrimination and the need to pay special attention to specific vulnerable groups such as women, young, migrants and older people.³⁰

The Recommendation recognises the diverse nature of the informal economy and the importance of innovative and tailor-made solutions when considering the extension of protection to these workers, including during the transition process. It recognises that member states should pay particular attention to the needs and circumstances of those in the informal economy when building and maintaining national social protection floors. An important theme highlighted by the recommendation is the precarious position of women in the informal economy. In order to promote gender equality member states should encourage the provision and access to affordable quality childcare and other care services.

Decent work

³⁰ *Ibid.*

In his state of the Capital Address, earlier this year, the Mayor of Tshwane stated the following:

"without decent employment, the wishes of those who gathered in 1955 and declared that, in the South Africa of their dreams, there shall be work, security and comfort, will ring hollow!"³¹

The ILO has adopted the concept of 'decent work', which has set four objectives for all, namely: employment opportunities, workers' rights, social protection and representation. This concept of decent work could be used to provide impetus to the improvement of the precarious position of workers in the informal economy. It is important to link decent work initiatives with other labour and social protection initiatives. The ILO is committed to make decent work a reality for all and this is clearly illustrated by recent adoption of the ILO *Convention on Domestic Workers* (189) and the supporting *Recommendation*.

The ILO has developed an integrated framework to facilitate transition to formality and decent work. The decent work strategies for the informal economy are as follows:

Adapted to local conditions, integrated policies that address:

- (i) growth strategies and quality employment generation;
- (ii) regulatory environment, including ILS and core rights;
- (iii) organisation, representation and social dialogue;
- (iv) gender equality and the informal economy;
- (v) entrepreneurship, skills, finance, management, access to markets;
- (vi) extending social protection, including social security and
- (vii) local (rural and urban) development strategies.

³¹ *State of the Capital Address, City of Tshwane* (2015).

(ILO 2011 *Growth, Employment and Decent Work in the Least Developed Countries ILO Report 4th Conference on Least Developed Countries* http://ilo.org/wcmsp5/groups/public/@dgreports/..wcms_153868 [date of use 10 April 2014]).

Previously four important aspects relating to the informal economy and decent work deficits have been noted:

- (a) the employment deficit: this means that people cannot find work or business opportunities in the formal economy;
- (b) the representational deficit: owing to the fact that they are not organised, informal workers are excluded from (or under-represented) in social dialogue institutions and processes;
- (c) the rights deficit: workers' rights relating to freedom of association, collective bargaining, absence of forced labour and discrimination are insufficient or non-existent; and
- (d) the social protection deficit: it is clear that even though the workers in the informal sector are most in need of social protection, they are unable to access formal schemes owing to membership and contribution issues.³²

As it is clear that vulnerable groups (including women, children and migrants) are often found working in the informal economy, it seems that reducing decent work deficits in the informal economy will definitely improve the conditions of these workers.

In South Africa, constitutional provisions has ensured the internationalisation of our law.³³ In *S v Makwanyane* the court provides that both binding and non-binding public international law may be used when interpreting the Bill of Rights and that the ILO can provide guidance as to the correct interpretation of particular provisions.³⁴ Section 39(1)(c) and section 233 creates a duty to interpret international law, such as

³² ILO 2011 *Report of the Director-General: Reducing the Decent Work Deficit – a Global Challenge* <http://www.ilo.org/public/english/standards/relm/ilc89/rep-i-a.htm> [date of use 10 May 2015]).

³³ See sections 39(1) (c) and 233 of the Constitution of the Republic of South Africa of 1996.

³⁴ *S v Makwanyane* 1995 (3) SA 391 (CC).

the applicable ILO conventions and through these provisions the rights of precarious workers should be enforced and protected.

Voice and representation

The 2002 ILO Resolution on Decent Work and the Informal Economy recognises that these workers have the same rights as formal economy workers to decent work and representation and that governments must provide an enabling framework at national and local levels to support their right to representation. Workers in the informal economy also have the right to protect themselves through collective action. Reaching the workers in the informal economy poses a major challenge to unions; however it is a pressing challenge that cannot be ignored. We need unions to engage in social and political bargaining with public authorities and legislative bodies. Retaining their credibility as the voice and true representation of the working class should compel unions to endeavour to organise the informal economy.

Challenges that unions face, include, political and conceptual challenges, lack of resources, experience and perhaps the political will to organise informal economy workers. An important lesson to be learnt from the SEWA is that the lack of a distinct employer and employee relationship that is often evident in the informal economy means that formal workplace strategies will not be effective when organising workers in the informal economy.³⁵

Often the exclusion of these workers from legislative provisions serves as motivation for exclusion by trade unions as they believe that these workers fall outside the trade union scope.³⁶ The lack of a traditional employment relationship, unidentifiable relationships or small workplaces such as individual households, add to the reluctance of unions to organise these workers. The workplace of these workers, in particular, often poses difficulties as it is often widespread, remote (agricultural workers are often found in scattered workplaces) and mobile (such as the workplace

³⁵ Vryenhoek "Headstrong: A Profile of a Headloader in Ahmedabad, India" 2012 WIEGO Workers' Lives No 2.

³⁶ In Uganda, informal economy workers are often excluded from union membership, because they fall outside the scope of labour legislation and are unaware of their rights - Banik *The Legal Empowerment Agenda Poverty Labour and the Informal Economy* 160. See also Platform for Labour Action [http:// www.pla.uganda.org](http://www.pla.uganda.org).

of street hawkers/vendors and waste pickers) thereby hampering recruitment and contact.³⁷

A study in Uganda indicated that vulnerable informal economy workers lack toilet facilities, child care facilities and are often victims of criminal deeds. Their lack of voice and representation means that their situation remains unchanged.³⁸ These challenges require innovative solutions, such as new organising strategies, tailor made benefits, new structures, innovative communication tools and effective collective methods.

Women in informal employment: Globalizing and organizing (WIEGO) have identified the following difficulties faced by informal economy workers in their quest to create sustainable organisations.³⁹

- (a) Civil society organisations do not have the support of political structures.
- (b) Economic development policies such as neo-liberal economic policies promote larger enterprises, ignoring the important economic contribution of the working poor.
- (c) The legislative/policy “blind spot’ refers to a reluctance on the side of governments to deal with unregistered organisations when there is no procedure in place for registration of these organisations. This exacerbates the collection of accurate data and statistics in respect of the informal economy.
- (d) Current legislation and policies are based on traditional notions of worker, workplace and employer and inadequate to offer the necessary protection to workers in the informal economy. Apart from labour and social security legislation other regulations, laws and policies may impact on the informal workers for example municipal laws, restricting trade.

³⁷ Bonner & Spooner D "Organising the Informal Economy: A challenge for Trade Unions" 2011 *International Politics and Society Journal* 89.

³⁸ Platform for Labour Action [http:// www.pla.uganda](http://www.pla.uganda).

³⁹ Mather C *Informal worker’ organizing* Research report Women in the informal employment: Globalising and organizing (WIEGO) February 2012 p12.

The notion of solidarity and collective action can in certain instances be considered as a foreign concept to informal economy workers, as the very nature of the work is competitive; therefore it is of paramount importance to find common goals and objectives. Often survival is their only focus and time spent on organising can be seen as a threat to loss of wages.⁴⁰ The different categories of informal economy workers and their demands will also determine the manner in which they organise themselves. For example wage workers through organisation would want to improve terms and conditions of employment whereas the self-employed seeks to better their place in the market.⁴¹

Conclusion 17 of the ILO's 2002 Resolution concerning decent work and the informal economy, provides that specifically women and the youth in the informal economy are without voice and representation and therefore lack the necessary labour and social protection. Unions should provide specifically for female workers by adapting existing structures and strive to accommodate their specific needs. Women may be particularly difficult to organise as payment of membership fees can be problematic due to their low income. In a study amongst garment workers in India, union leaders indicated that the female workers resisted collective action, because of victimisation, fatigue due to work and the burden of family responsibilities, the fact that they were socially conditioned to be non-assertive, and due to their specific upbringing they resisted the concept of solidarity.⁴² This indicates how gender stereotyping and unequal, paternalistic societies can impact on union formation. Innovative approaches were required to organise this sector and the union realised traditional bargaining strategies would not be successful. A social movement was established and by addressing the social needs of these women through the establishment of micro-saving groups, a union, GATWU, was formed.⁴³

⁴⁰ Bonner & Spooner D "Organising the Informal Economy: A challenge for Trade Unions" 2011 *International Politics and Society Journal* 90.

⁴¹ WIEGO *Informal Workers' Organizing Research Report* <http://wiego.org/.../wiego-research-project-informal-workers%20>.

⁴² Jenkins " Organizing 'Spaces of Hope': Union Formation by Indian Garment Workers" 2013 BJIR 633. These workers represented the lowest end of the formal economy.

⁴³ *Ibid.*

Workers' organisations for informal economy workers do exist, both at national and international levels. These organisations include member based organisations (MBO), cooperatives, NGOs and community-based organisations. Linking these networks at both national and international levels can ensure political pressure in promoting the interests of workers. The Self-Employed Women's Association is an example of a trade union with cooperatives and a federation of cooperatives.⁴⁴ Through innovative approaches and diverse structures these organisations are making their voices heard and improving working conditions of their members. Through group membership, members can obtain social benefits, solidarity and support. It is important that local governments recognise and support these organisations. As the traditional concept of a trade union can prove ineffective in respect of organising the informal economy, alternatives such as "social movement" unionism can provide solutions.

SEWA in India: SEWA started by organising workers through traditional union strategies. This proved difficult, as it is a well-known fact that high waged workers and formal economy employees have the capacity and power to bargain. These women did not have the ability or power to bargain due to lack of employment security. By increasing local employment opportunities they were able to increase their bargaining power. SEWA has challenged the traditional trade union way of thinking by creating an association with the power to mobilise and empower large numbers of women in the informal economy.

The SEWA experience clearly shows that in order to empower workers and increase their bargaining power, rural organising must focus on the following:

- (a) increasing employment opportunities;
- (b) developing the assets of poor women;
- (c) capacity building and leadership development;
- (d) providing food and security;
- (e) enabling these workers to become self-reliant; and
- (f) collaborating with government's rural development programmes.

⁴⁴ SEWA <http://www.sewa.org>

In India, 95% of bidi workers are women and their earnings contribute 45-50% to the household income.⁴⁵ In 2012 SEWA's membership included 71 335 bidi workers.⁴⁶ Through innovative approaches and sensitivity to the specific needs of bidi workers were addressed.

SEWA through negotiations with public and private stakeholders achieved the following:

- (a) increase in price paid to workers for bidis;
- (b) regulation of work hours;
- (c) training on the significance of organisation and membership
- (d) the establishment of a cooperative society improving working conditions through negotiations with the Department of Labour;
- (e) access to various welfare schemes;
- (f) housing project;
- (g) provident fund payments to bidi workers; and
- (h) identity cards to provide access to various benefits.⁴⁷

SEWA faces the challenges of globalisation, liberalisation and other economic changes. Its members know that in order to build strength and meet challenges they must organise. Although there are still millions of women and informal workers who remain in poverty and are still exploited, this union serves as an example of what can be achieved by organizing workers. SEWA's success derives from the fact that it responds to the specific needs and priorities of its members as well as to immediate and future needs. The specific needs of these female workers often relates to social protection measures and by addressing these specific needs SEWA was able to meet the challenges in organising these women.

⁴⁵ Budlender "Informal Workers and Collective Bargaining: Five Case Studies" 2013 WIEGO Organizing Brief No 9.

⁴⁶ SEWA <http://sewa.org>.

⁴⁷ Budlender "Informal Workers and Collective Bargaining: Five Case Studies" 2013 WIEGO Organizing Brief No 9.

The long-term aim must be to bring about social and economic change. Trade unions and workers' organisations can play an important role in such change through the extended protection of these workers through existing legislative provisions and/or the design of innovative and tailor-made solutions. This requires that bargaining partners must be identified and that a relationship must be established with a long-term vision. This issue of voice and representation must be addressed as social insurance schemes and labour regulation that cover the needs of informal workers will in all likelihood only become feasible once this is in place. The poor workers in the informal economy seem to be the least able to make their voices heard by policy makers, governments and employers. These workers need to organise to change their lives. It is evident that for unions to successfully organise the informal economy they will have to support a holistic approach and their engagement with other stakeholders should also focus on other fundamental rights to ensure adequate protection. However, this means that the role of unions must evolve to cover not mainly wage negotiations with the employer but unions need also to engage in social and political bargaining with public authorities and legislative bodies as well. Although it has been submitted that in South Africa, NEDLAC with representatives of government, organised labour and business "provides an effective tripartite framework for the facilitation of the social dialogue process" this must be qualified with reference to the informal economy since union coverage is extremely low there.⁴⁸

The role of public and private institutions in creating an enabling environment to extend labour protection to workers in the informal economy

Even the most benevolent of governments are made up of people with all the propensities of human failings. The rule of law as we understand it consists in the set of conventions and arrangements that ensure that it is not left to the whims of individual rulers to decide on what is good for the populace. The administrative conduct of government and authorities are

⁴⁸ See Cohen and Moodley "Achieving 'decent work' in South Africa?" 2012 15/2 PER/PELJ 333-334.

subject to the scrutiny of independent organs. This is an essential element of good governance that we have sought to have built into our new constitutional order (President Nelson Rolihlahla Mandela – Address at the International Ombudsman Institute VIIth International Conference on Balancing the Exercise of Governmental Power and its Accountability, Durban 2000).

The responsibility placed on unions in respect of the informal economy does not relieve the state from providing social protection or the employer from providing work with conditions that will meet acceptable (inter)national standards. Governments should strive to create an enabling environment for organisation and representation. They should also provide an enabling framework at national and local level to support the informal economy and ensure basic rights, such as a healthy and safe workplace. Policies and programmes should focus on bringing these marginalised workers into the economic and social mainstream. Though certain regulatory policies seek to balance competing interests, these policies may impact on the livelihoods of informal economy workers, for example citizens have a right to free movement, including access of pavements, and this right competes with the rights of street vendors as the pavement is their workplace. Regulations need to be carefully chosen to accommodate these competing interests.

The South African constitution has tasked local government with the promotion of economic development at local level and municipalities interpreting their constitutional mandate have adopted different approaches with reference to the informal economy.⁴⁹ Other constitutional provisions applicable to informal economy workers, including informal traders are; section 22 of the Constitution that provides for the right of every citizen to choose freely his or her trade or occupation; section 152(1) of the Constitution, which provides for the involvement of communities in matters of local government; and sections 26 and 27 that provide for socio economic rights which informal economy workers are entitled to as vulnerable and poor members of our society.

It must be realised that municipal regulations have an effect on the workplace of informal workers. Street-trading laws can be very restrictive and can destroy

⁴⁹ Section 152 (1) of the Constitution of the Republic of South Africa of 1996.

livelihoods. In Durban, street-trading areas have been demarcated by signs and the legal framework that existed to govern street trading has been transformed from a criminal law system to that of a system governed by administrative law.⁵⁰ The informal policy of the eThekweni Municipality commits the city to establish an enabling environment for small enterprises through the issuing of trading permits and access to minimum social and support services.⁵¹ In Johannesburg, although the inner city was classified as a no-trading zone, markets were built to accommodate some of the traders. It is clear that government can fulfil a major role in creating a more secure and safe working environment and promoting opportunities for informal workers as it is generally mandated by the constitution to do so.⁵²

The World Bank estimated that 1% of the urban population in developing countries are waste pickers.⁵³ Lack of an enabling policy and regulatory environment contributes to the poor working conditions and exposure to an often hazardous environment. These workers would benefit from an enabling environment at both local and national level because legislation and by-laws often determine their access to resources or public spaces.⁵⁴ As illustrated by this example, the enforcement of legislation in other spheres (e.g. the treatment of hazardous waste) may also impact on certain informal work. Currently only 33.9% of the global labour force is covered by law for employment injuries through mandatory social insurance schemes.⁵⁵ This low coverage highlights the need to extend coverage to all workers, including workers in the informal economy.

⁵⁰ The World Bank *Local Government Innovations for the Informal Economy. Creating a positive climate. A World Bank Report.*

⁵¹ Such as skills training and business information. See Steyn I *Exploring the legal context of informal trade in South Africa.* A desktop study commissioned by the Ecumenical service for Socio Economic Transform (ESSET) April 2011 p 17.

⁵² The City of Johannesburg's Informal Trading Policy of 2006 is based on the following principles: the proactive absorption of the poor, balanced and shared growth, facilitated social security and mobility, settlement restructuring, sustainable and environmental justice and innovative governance solutions. In this policy, government highlights the importance of the informal economy's contribution towards job creation and poverty alleviation.

⁵³ Waste Picker Rights Global Alliance for Incinerator Alternatives accessed at <http://www.no-burn.org/section.php> on 14/06/2012. Waste Pickers are also referred to as reclaimers, scavengers and recyclers.

⁵⁴ Sankaran K & Madlav WIEGO Informal Economy: Law and policy demands. Lessons from the WIEGO India Pilot Study. February 2012 p2.

⁵⁵ ILO World Social Protection Report 2014/15.

Member based organisations (MBO), cooperatives, NGOs and community-based organisations can provide links at both national and international levels with government institutions and can ensure political pressure in promoting the interests of workers and extending social protection to these workers. These organisations, for example the South African Informal Traders Forum, can provide these workers with assistance when engaging with government departments to accommodate their specific needs.

In the City of Tshwane, as part of the Tshepo 10 000 programme, 405 cooperatives were registered through this programme. 193 Cooperatives were registered as vendors. Absa Bank in conjunction with the University of Pretoria provided training in financial management and entrepreneurial training.⁵⁶ This illustrates the valuable role that public and private institutions can play in creating an enabling environment for these workers. The Tshwane municipality has played a vital role to ensure decent work conditions for reclaimers through support and attempts to improve their conditions.⁵⁷

In a 2010 study commissioned by Trade and Industry Policy Strategies to analyse the role of intermediaries⁵⁸ in the facilitation of marginalised producers in craft an agri-business supply chains, it was found that most vulnerable female producers could not partake in supply chains without these intermediaries as they lacked the required skills and were often illiterate.⁵⁹ Intermediaries can play an important role in promoting the interests of these female workers, however the empowerment of these workers through the required skills training would provide a more sustainable solution.

Public and private institutions can play a vital role in creating an enabling framework for street vendors as these informal economy workers are often subject to harassment, bribery and adversarial relationships with authorities. In Bhubaneshwar, India, a Public-Private-Community Partnership model was designed to resolve the

⁵⁶ *State of the Capital Address, City of Tshwane* (2015).

⁵⁷ Samson "Organizing Reclaimers in Tshwane, South Africa 2010 WIEGO Brief no 5.

⁵⁸ The intermediaries that were interviewed were non-profit organisations, for profit hybrids and not for profit hybrids.

⁵⁹ Von Broembsen *The Role of Intermediaries in Facilitating the Participation of Marginalised Producers in Craft and Agri-Business Supply Chains* 2011 A Trade and Industry Report

abovementioned issues and the success of this model has received widespread attention from other cities.⁶⁰ The objectives were to bring all role players together for joint planning and to ensure implementation through the partnership. Vending zones were identified by all stakeholders and structures were erected. Street vendors were recognised as an integral part of Bhubaneshwar.⁶¹ This model of co-operation is an example of what can be achieved through joint decision making processes, social dialogue and a policy that is designed for a specific sector of informal economy workers. Street vendors can now trade in a conducive environment and this promotes the concept of decent work, non-discrimination and alleviates poverty.⁶²

In Botswana, the government with the support of the United Nations established a three year project on informal cross border trade to improve networking amongst female cross border traders.⁶³ This project aims to increase their visibility and highlights their contribution to employment and the economy and illustrates what can be achieved through co-operation between governments and international organisations. This programme recognizes that through their engagement in the informal economy, these women have been able to accumulate assets and educate their children. This is an example of how engagement in the informal economy can assist with the eradication of poverty. This is particularly important in respect of female workers, as studies in Botswana indicated that female headed households are highly vulnerable to poverty.⁶⁴

Current legislative provisions often provides structures and processes for collective bargaining based on the traditional employment relationship, however informal economy workers often face different bargaining counterparts, such as

⁶⁰ Kumar "The Regularization of Street Vending in Bhubaneshwar, India: A Policy Model" 2012 WIEGO Policy Brief No 7.

⁶¹ Kumar "The Regularization of Street Vending in Bhubaneshwar, India: A Policy Model" 2012 WIEGO Policy Brief No 7.

⁶² *Ibid.*

⁶³ TradeMark Southern Africa *Trade @ Work Botswana Government Facilitates Women's Cross Border Informal Trade* 2011 1. The majority of the female traders are between 31-35 years. Ama, Kagiso, Mangadi, Okurut & Helen A Ama "Profitability of Informal Cross-Border Trade: A Case study of Four Selected Borders of Botswana" 2013 African Journal of Business Management 4221.

⁶⁴ Botswana has the third highest recorded Gini coefficient of 0, 57,50 % of female headed households. (The Decent Work Country Programme for Botswana 2011-2015) The Botswana Informal Sector Survey 2007 estimated a total number of 44 277 informal traders, 63,7% were women. This is the last survey available on the informal economy in Botswana. Other studies available relates to formal employment indicated that the informal economy is the fastest growing economy and that 60,5% are female workers.

municipalities, government officials and other policymaking bodies that impact directly on their livelihood.⁶⁵ Statutory provisions could be extended to provide structures to accommodate the need of these workers and a dispute resolution process to cater for their specific needs.

Providing for fundamental rights is not enough: government should engage with these organisations and provide innovative measures to accommodate their specific needs. Governments should, for example, provide for simple, less expensive and speedy registration procedures of these organisations. Existing unions can strive to provide and accommodate workers in the rising informal economy, but independent unions formed by these workers will concentrate on issues most relevant to those individuals. Good governance, which excludes the practices of harassment,⁶⁶ bribery and extortion by corrupt officials, is essential to enable informal economy workers to access resources, information, markets, public infrastructure, technology and other social protection measures.

Conclusion

There is no instant solution to the extension of labour and social protection. Often when informal economy workers do enjoy minimum labour standards, their working conditions remain poor, as they face irregular working hours, poor working conditions and ill-defined working spaces.⁶⁷ This illustrates that in certain instances tailor-made solutions can be more effective. The plight of workers who work in the informal economy can easily seem so immense that one might be tempted to think that there is nothing to be done to improve their lives.

The informal economy is increasing and in developing countries a high participation rate in the informal economy is the norm. As indicated above, workers in the informal economy are vulnerable and without the legal protection that they deserve as they are often excluded from the scope and coverage of existing legislative provisions. Though the ILO recognises new forms of work in its standard setting,

⁶⁵ Sankaran & Madhav "Legal and Policy Tools to meet Informal Workers' Demands: Lessons from India" 2013 WIEGO Legal Brief No 1.

⁶⁶ In Uganda 49% of workers reported harassment by officials. Banik *The Legal Empowerment Agenda Poverty Labour and the Informal Economy* 2012 163.

⁶⁷ Sankaran K & Madhav WIEGO Informal Economy: Law and Policy Demands. Lessons from the WIEGO India Pilot Study. February 2012 p 2.

ratification of applicable conventions remain low and the implementation of ILO standards for workers in developing countries remain problematic. Workers in the informal economy need to organise to improve and change their lives; however unions face many challenges in organising the informal economy. These challenges often require innovative solutions and tailor-made structures. Public and private institutions can play an important role in the extension of existing measures and the design and implementation of new solutions in providing these workers with the necessary protection. Governments should create an enabling framework to support informal economy policies and programmes. Other institutions, such as MBO'S, cooperatives, NGO's and community based organisations can provide links at national and international level and can assist in promoting the interests of workers. For the provision of innovative and effective measures of protection the involvement of national, local levels and social partners are necessary.