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International
Labour
Office

UNACCEPTABLE FORMS OF WORK

A global and comparative study

Judy Fudge | Deirdre McCann

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INTERNATIONAL LABOUR OFFICE GENEVA

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Foreword

In June 2013, the ILO identified "Protecting workers from unacceptable forms of work" as one of the eight areas of critical importance (hereinafter ACI 8) for priority action by the Organization during 2014–15. Unacceptable forms of work are described as comprising conditions that deny fundamental principles and rights at work, put at risk the lives, health, freedom, human dignity and security of workers or keep households in conditions of poverty.*

ACI 8 is intended to strengthen the effectiveness and impact of the ILO's action to promote respect for the fundamental principles and rights at work by eliminating egregious labour practices and to make sustainable changes to the conditions that produce and perpetuate such practices. This ACI seeks to accelerate the transition to decent work by bolstering the synergies between the ILO Declaration on Fundamental Principles and Rights at Work (1998) and the ILO Declaration on Social Justice for a Fair Globalization (2008).

While the concept of unacceptable forms of work is relatively new in ILO discussions, the multiple and interrelated policy areas that address it are not new. These include measures relating to the promotion of freedom of association and the right to effective collective bargaining, the abolition of child labour and forced labour, the promotion of non-discrimination and equality, as well as occupational safety and health measures and working time arrangements that protect workers' health and safety, and well-structured minimum wage regulation coupled with effective wage protection measures that shield workers and their families from income insecurity.

* ILO: *The Director-General's Programme and Budget proposals for 2014–15,* Report II (Supplement), International Labour Conference, 102nd Session, Geneva, 2013, para. 49.

ACI 8 has tried to help develop a shared understanding of what constitutes unacceptable forms of work, what causes them, how to address them, and what is the concept's added value. The present study is an important part of this effort. It compares the concept of unacceptable forms of work to relevant concepts developed by academia and selected international organizations. It also proposes a model to capture the multidimensional nature of unacceptable forms of work in different socio-economic and cultural contexts, and suggests effective approaches to labour market regulation in addressing these forms of work.

Manuela Tomei
Director, Conditions of Work and Equality Department
(WORKQUALITY)

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Executive summary

Unacceptable forms of work (UFW) have been identified by the International Labour Organization (ILO) as work in conditions that deny fundamental principles and rights at work, put at risk the lives, health, freedom, human dignity and security of workers or keep households in conditions of poverty (ILO, 2013a, para. 49). This notion of UFW has emerged as an area of critical importance for the Organization just prior to the ILO's centenary.

The attempt to identify UFW – and to eliminate them – is a recognition of the complexity of improving contemporary working life in the early twenty-first century. It has become apparent to both researchers and policy-makers that in countries around the world there are cohorts of working people that are profoundly adrift from decent work. These working lives are singled out in the national and international debates through a range of terminology: precarious work, vulnerable workers, informal employment, etc. The diverse terminology betrays a degree of confusion about how to identify, categorize, and improve these working relations. Each of the relevant debates, however, conveys a set of guiding insights: that certain workers are labouring in unacceptable conditions; that these working relationships are growing in many countries both in the global South and in the advanced industrialized economies; that these forms of work are centred among groups who are already at risk of social and economic disadvantage and exclusion – for example, women, the young, ethnic minorities, migrant workers; and that policies to improve these forms of work are both urgently needed and potentially an entry point for a broader social and economic upgrading.

Yet, there is an evolving awareness among researchers and policy-makers that one of the central tools for the improvement of working life – labour market regulation – is both intricate and challenging. Recent work recognizes that regulation is essential to equitable and prosperous societies, yet complex

and unpredictable in its effects. Policy bodies once suspicious of labour market regulation have emerged from the global economic crisis with a new-found appreciation of its worth. The World Bank, for example, accepts the need for labour markets to be regulated in the interests of prosperity and equity: central dimensions of regulatory frameworks are no longer portrayed as inevitable inhibitors of jobs and growth (see, in particular, World Bank, 2012). Yet a rapidly evolving academic literature highlights and explores regulatory indeterminacy (Deakin and Sarkar, 2008) – the tendency of regulatory interventions to generate divergent results in different socio-economic settings. This insight has birthed a literature that is identifying and examining the facets of this complexity: fragmentation that propels certain working relationships beyond legal frameworks, de jure or de facto, flawed enforcement mechanisms, etc. (see Lee and McCann, 2011; McCann et al., 2014).

At this key juncture in its history, then, the ILO faces an urgent challenge. In 1998, the Organization identified a set of fundamental rights and principles: universal demands that must be respected in all working relations. A decade later, the 2008 Declaration on Social Justice for a Fair Globalization stressed the indivisibility of the Organization's objectives, confirming a sustained loyalty to the long-standing concerns of wages, working hours, safety and health, etc. As the ILO approaches its centenary, it is compelled to face a complex, yet inescapable, challenge: to secure the objectives of the twin Declarations it must identify and eliminate the most unacceptable forms of work. The notion of UFW, then, does not replace the Decent Work Agenda. It enhances the Agenda, sharpening its strategic focus and demanding prioritization of efforts and resources.

Yet the Organization recognizes that there is presently a need for further refining the key dimensions of UFW and for better understanding the causes of this phenomenon and how it manifests itself in different economic or regulatory contexts (ILO, 2014a, p. 19). To bridge these knowledge gaps, the ILO has called for "a more refined understanding concerning the dimensions and descriptors of [unacceptable forms of work] to guide practical action by the ILO and its constituency" (ILO, 2014b, p. 2).

This study contends that to fully realize the potential of the concept of UFW it is essential to engage with academic and policy discourses that pursue similar objectives (for more detail, see Chapter 1). A range of policy and academic work – drawing on diverse concepts and methodologies – considers how to identify and eliminate forms of work that are unacceptable. The study assesses the most significant of these discourses as a basis for developing a meaningful model of UFW. The report takes as the central purpose of identifying UFW to devise targeted social and economic policies that aim to eliminate or transform jobs that are entirely unacceptable. The aim is therefore to construct a robust conception of UFW that can be operationalized

for research and policy intervention. Among the relevant discourses, further, the study has a particular focus on renditions of unacceptability in legal and regulatory spheres and therefore regulatory concepts, mechanisms, and outcomes.

Chapter 1 reviews the most important concepts in modern academic and policy literatures that designate certain forms of work as either desirable or unacceptable. The chapter argues that these existing models (e.g. Decent Work, Vulnerability, Forced Labour) are crucial to developing a robust concept of UFW. Chapters 2 and 3 propose a novel multidimensional model of UFW. Only a multidimensional concept, it is argued, can capture the complexity of unacceptability in contemporary working life. Chapter 2 outlines the substantive facet of this model by elaborating 12 dimensions of unacceptability. These dimensions are designed to be globally relevant and to map to existing labour law schema, in particular to those embedded in the ILO's international labour standards. Each dimension is categorized into a set of indicators that can be used to identify UFW. The indicators are intended to be used at local levels by researchers and policy-makers, including the social partners, to construct models of UFW that are suited to distinct regional, national, sectoral, or occupational contexts. Chapter 3 identifies criteria for determining which forms of UFW are the priority for regulatory intervention in a particular context. It then proposes a strategic approach for regulation of UFW that is designed to ensure that regulatory interventions will have system-wide and sustainable impacts. The chapter incorporates examples of regulatory interventions that have successfully targeted and transformed UFW in order to provide actual illustrations of a strategic approach. As a contrast, it also recounts a regulatory effort that is likely to be less successful in transforming UFW. The goal for policy-makers, the study concludes, is to design and implement regulatory interventions that are integrated and dynamic, and that therefore will have the broadest and most sustainable effect.

Discourses of unacceptability

1

Introduction

This chapter assesses the most significant regulatory discourses that designate certain forms of work as "unacceptable". Each of these discourses has a central concept (Decent work, Good jobs, Precarious work, Vulnerable workers, Informal work, and Forced labour) that helps in identifying what makes work unacceptable. Some (like Decent work and Good jobs) provide an imagery of working life that is the antithesis of unacceptable work. The others explicitly identify forms of work of concern for policy-makers or ripe for regulatory intervention. This chapter analyses the merits and limitations of these concepts as a basis for developing a meaningful concept of UFW.

Three criteria were used to select the discourses evaluated in this chapter: relevance to identifying unacceptable work; take-up by policy-makers or key policy institutions; and currency within the relevant (legal, regulatory, and sociological) academic literature. The first two discourses, Decent work and Good jobs, reflect the international debate about core development issues, namely the creation of employment and the quality of work. As such, they provide an overarching imagery of desirable work (see figure 1.1). The next four discourses, Precarious work, Vulnerable workers, Informal work, and Forced labour (see figure 1.2), centre on specific and interrelated manifestations of unacceptable work that have salience at the transnational levels – European Union (EU), International Labour Organization (ILO), World Bank, Asian Development Bank (ADB) – and across countries from a broad range of economies, from least developed to most advanced. These concepts are the most significant to the global debates on the emergence and endurance of unacceptable forms of work.

Figure 1.1 Key discourses of the quality of work

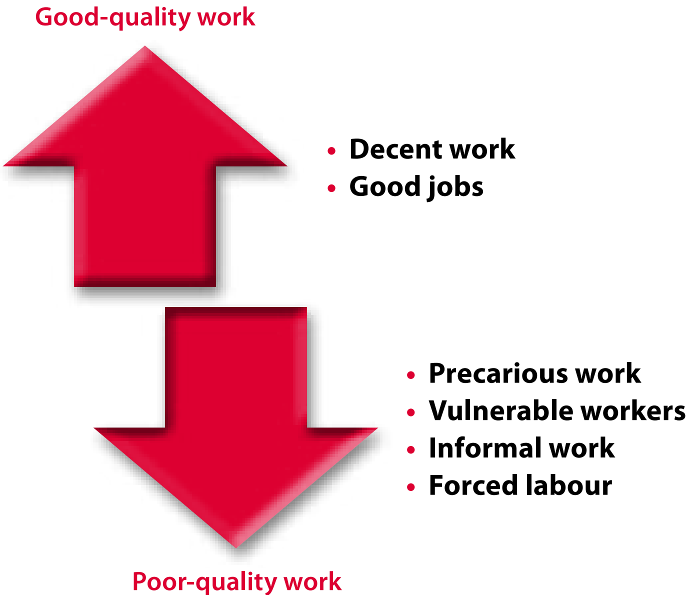
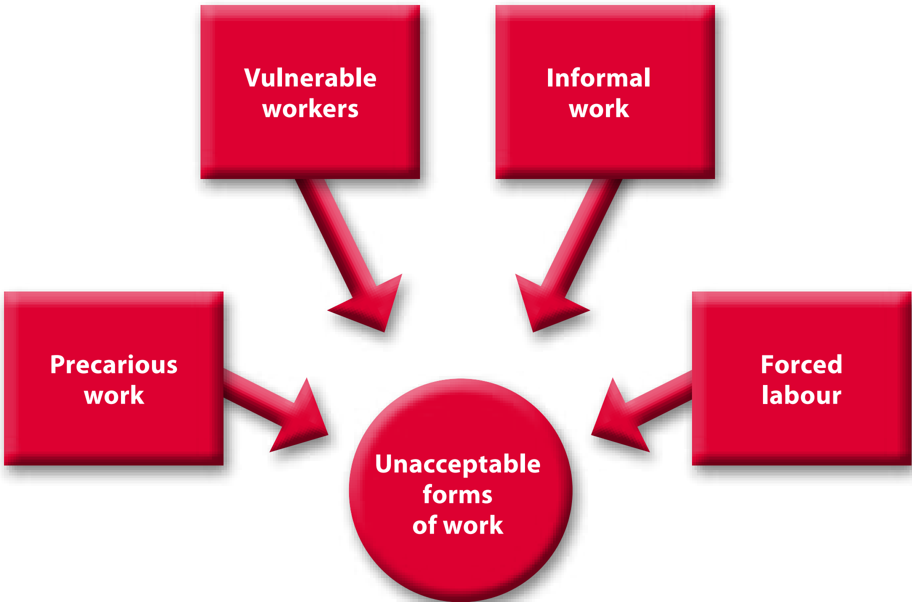


Figure 1.2 Key discourses of unacceptability



1.1. Decent work

"Decent work" has become the guiding contemporary image of an acceptable working life. Initially articulated by the Director-General of the International Labour Office in his report to the 1999 International Labour Conference (ILO, 1999), decent work embodies a commitment to "promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equality, security and human dignity" (ibid.). The concept was situated at the convergence of four principles – also singled out as the "strategic objectives" of the ILO: the promotion of rights at work, employment, social protection, and social dialogue (ibid.).[1]

The Decent Work Agenda (DWA) was part of the ILO's broader efforts to refashion its policy concerns, objectives, and functions in response to a set of socio-economic trends that had transformed the international policy landscape (most prominently intensifying economic globalization, the end of the Cold War, the growing hegemony of neoliberal economics, and the spread of various forms of non-standard or informal work) (ibid.; Rodgers et al., 2009; Vosko, 2000 and 2002; Helfer, 2006).

Subsequently, decent work, which can be understood as an aspiration for working life or as a route out of poverty, has become a prominent theme of broader global labour, social, and development policy agendas. The DWA highlighted the links between the work of the ILO and of other development actors (Rodgers et al., 2009; Trebilcock, 2005). As a result, its influence on related policy agendas steadily heightened, culminating in 2007 in an endorsement by the United Nations General Assembly in the revision of the Millennium Development Goals (MDGs) (see further MacNaughton and Frey, 2010). The revision of the MDG framework added under Goal 1 ("Eradicate extreme poverty and hunger") a new "decent work target" (Target 1.B), which calls on the relevant actors to "achieve full and productive employment and decent work for all, including women and young people".[2] This target marked recognition of the role of decent work in the alleviation of poverty while confirming the relevance of the ILO as a development actor (Rodgers et al., 2009; MacNaughton and Frey, 2010).

Other supranational policy actors have either formally endorsed the DWA or borrowed its language. ECOSOC's Committee on Economic, Social and Cultural Rights (CESCR) has interpreted the right to work in Article 6 of the International Covenant as a right to decent work.[3] In 2006, the European Commission made a formal commitment to promote decent work (CEC, 2006), which has since featured across the work of EU institutions both internally, in social and employment policies, and externally as part of the Union's trade and development agendas (see further CEC, 2008). More recently, decent work has been integrated into the evolving debates on "green jobs" in

sustainable development, including as the subject of a General Discussion at the 2013 International Labour Conference (ILO, 2013c; see also UNEP et al., 2008; United Nations, 2012). In addition, the DWA has influenced the work of the UN Country Teams and the UN Development Assistance Frameworks. For instance, there has been a Decent Work Pillar in UNDAFs, agreed with the UNCT (e.g. Albania).

At the country level, the DWA has been implemented by the ILO through the design and monitoring of Decent Work Country Programmes (DWCPs).[4] The programmes were first introduced in 2004 as a tool for mainstreaming decent work in national development strategies and have since been deployed in countries that include Bangladesh, Brazil, Cambodia, Indonesia, Nicaragua, and the United Republic of Tanzania (see further ILO, 2011a). The DWCPs are informed by international and national development agendas and by the priorities of national constituents. In each country, the DWCP establishes policies and identifies the strategies that are required to realize these objectives, and agreed with the government and with employers' and workers' organizations. Although the content of each DWCP varies, the programmes identify a number of priorities, specify intended outcomes, and outline an implementation plan that establishes outputs, activities, and allocated resources (ibid.). Performance under the DWCP is subject to a review and evaluation process that gauges the relevance of the ILO's work to national constituents, the alignment of this work with the priorities of the United Nations, the coherence and effectiveness of the strategies used, and their likelihood to generate long-term sustainable development.

The ILO has also designed indicators to monitor progress towards decent work. A Tripartite Meeting of Experts held in September 2008 adopted a set of decent work indicators. The ILO then launched *Monitoring and Assessing Progress on Decent Work* (MAP) (2009–2012), an EU-funded project to identify decent work indicators at the national level, based on the Tripartite Meeting indicators, and to collect data for use in analyses of decent work relevant to national policy-making. The MAP project covered nine countries (Bangladesh, Brazil, Cambodia, Indonesia, Niger, Peru, Philippines, Ukraine and Zambia) and involved government agencies, National Statistical Offices, workers' and employers' organizations, and research institutions. In-depth country studies are prepared that examine decent work according to the indicators, assess national progress towards decent work, and formulate recommendations on how decent work statistics could be improved. Draft profiles are discussed and endorsed by tripartite constituents. The results are used as inputs into the design of national policies and programmes, including Decent Work Country Programmes.

The concept of decent work has also galvanized scholarly work. In this context, it has had a particular influence on the academic literature on labour regulation, where it is regularly used to evaluate the strength and scope of

domestic regulatory frameworks and policy discourses (e.g. Owens, 2002; Hepple, 2001; Boulin et al., 2006; Bletsas and Charlesworth, 2013).

Unacceptability in the decent work paradigm

The ILO's conception of decent work can be taken to denote the antithesis of unacceptable work. As such, decent work illuminates the project of mapping the forms and locations of unacceptability. In this regard, the notion of unacceptability derived from decent work can be understood to have a substantive and a functional dimension.

A multidimensional model and the international floor of rights

On the substantive level, the notion of unacceptable work derived from the decent work model is work that is unproductive, unfree, performed in conditions of inequality, insecure, or in violation of human dignity. The strategic objectives add regulatory detail: unacceptable working relationships do not respect work-related rights, are excluded from social protection regimes, and do not offer opportunities for social dialogue.

This elaboration of unacceptable work enriches the other versions identified in this chapter by placing social dialogue at the heart of decent work:

> [T]he best solutions arise through social dialogue in its many forms and levels, from national tripartite consultations and cooperation to plant-level collective bargaining. Engaging in dialogue, the social partners also fortify democratic governance, building vigorous and resilient labour market institutions that contribute to long-term social and economy stability and peace (ILO, 1999, p. 16).

Jobs in which workers have no access to voice mechanisms, then, are excluded from the ambit of decent work. The prominence of social dialogue in decent work is an important corrective to other elaborations of unacceptable work, which tend to neglect the collective dimensions of decency.

More broadly, the influence of decent work on labour and development agendas is in part attributable to the elasticity of this concept. Decent work is applicable to countries across the range of levels of economic development. In this regard, the concept is abstract and subjective:

> Decent work is not defined in terms of any fixed standard or monetary level. It varies from country to country. But everybody, everywhere, has a sense of what decent work means in terms of their own lives, in relation to their own society. … The immediate objective is to put in place a social floor for the global economy… (Somavia, 2000, pp. 2–3, quoted in Vosko, 2002, pp. 26–27).

These observations suggest that notions of unacceptable work should allow for a degree of variation to respond to socio-economic and cultural contexts. This insight informs the conception of UFW elaborated in Chapter 2.

Yet, its association with the ILO's "core rights" strategy initially threatened the breadth of the decent work concept. The identification of certain principles and rights as fundamental in the 1998 Declaration on Fundamental Principles and Rights at Work tied the DWA to the core labour standards on freedom of association and collective bargaining,[5] forced labour,[6] child labour,[7] and discrimination[8] (see further Alston and Heenan, 2004; Alston, 2005; Fudge, 2007). This compression of the normative dimension of decent work exposed the ILO to the charge of having curbed the domain of international legal policy to the most egregiously exploitative conditions (Alston and Heenan, 2004; Alston, 2005). A related criticism, advanced most forcefully by Alston (2005), was that the Declaration bifurcated an indivisible international labour (and human) rights corpus by privileging certain of its elements (see also Langille, 2004; Fudge, 2007).

As a consequence, the DWA was criticized for neglecting labour rights beyond the core. It was thought to be unresponsive to many of the urgent social problems encountered in the rapidly globalizing economies of the early twenty-first century (see in particular Rittich, 2006). The report of the World Commission on the Social Dimension of Globalization was singled out as conspicuously centred on the core standards and less attentive to international and domestic legal frameworks on conditions of work: health and safety, wages, working time, and work/family reconciliation (Alston and Heenan, 2004; Rittich, 2006; McCann, 2012). In response, an argument was advanced that non-core protections were effectively sustained by the core standards, as an outcome of the "procedural" right to collectively bargain (Langille, 2004), while the promotion of social dialogue was observed to provide protection against vulnerability and contingency (Sen, 1999).

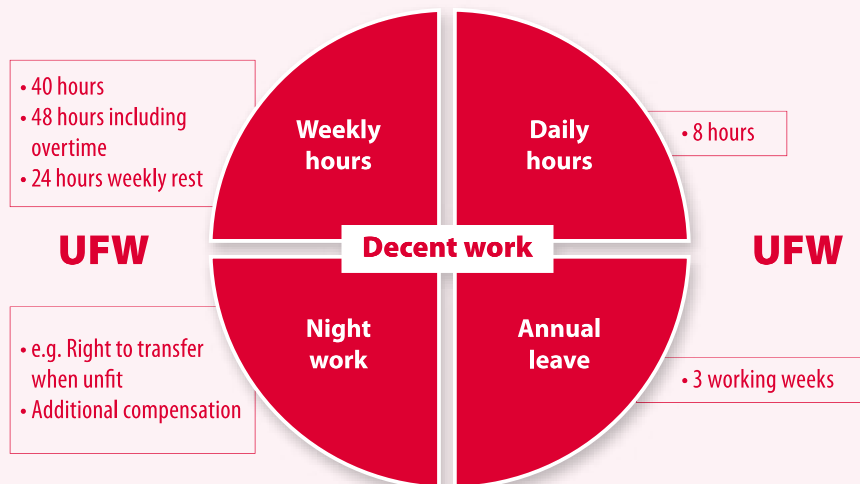
Subsequently, the ILO ultimately stressed the interdependency of the four pillars of decent work. The 2008 Declaration on Social Justice for a Fair Globalization, while reframing the Organization's objectives, was characterized as "drawing on and reaffirming" the 1998 Declaration.[9] In the 2008 Declaration, the strategic objectives are emphasized to be "equally important" (I.A) and "inseparable" (I.B). Further, the Declaration sharpens the strikingly narrow conception of social protection in the *Decent Work* report, which had equated it primarily with social security systems and, to a lesser degree, safety and health (ILO, 1999; McCann, 2012). The 2008 Declaration explicitly situates working conditions within the domain of social protection. In this regard, it reverts to the language of the Declaration of Philadelphia, in a call for "policies in regard to wages and earnings, hours, and other conditions of

work calculated to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection"[10] (see further McCann, 2012).

The 2008 Declaration confirmed that decent work embraces a broad range of policy fields. This breadth is reflected in the decent work indicators agreed at the 2008 Tripartite Meeting of Experts.[11] The indicators integrate ten statistical and legal dimensions of decent work: employment opportunities; adequate earnings and productive work; decent working time; combining work, family, and personal life; work that should be abolished (forced labour, hazardous child labour, and other worst forms of child labour); stability and security of work; equal opportunity and treatment in employment; safe work environment; social security; and social dialogue and employers' and workers' representation. Key elements of the indicators are captured in the multidimensional model of UFW outlined in Chapter 2.

The 2008 Declaration also confirmed that decent work is associated with the range of international labour standards. As such, unacceptable forms of work can be understood as working relations that exist either below or outside this normative floor. Decent work may therefore be conceived of as subject to a defined set of parameters.[12] International labour standards establish the

Figure 1.3 Working time dimensions of decent work



Note: Entitlements drawn from Conventions Nos 1, 14, 30, 47, 106, 132. Conventions classified by the ILO as revised, outdated, shelved or withdrawn are excluded. See further http://www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-creation/lang--en/index.htm.

parameters of decent work. Conversely, the boundaries of unacceptable work can be drawn in part by reference to the minimum requirements of these standards. The relationship between decent and unacceptable work hinges on the content of the relevant standards. Certain of the international norms contain entitlements that are concrete and specific. The right to a weekly rest period of 24 hours is one illustration.[13] Others are procedural or programmatic: the right to be subject to a minimum-wage setting mechanism,[14] for example, to the progressive realization of the 40-hour week,[15] or to a national work/family policy that counters discrimination and work/family conflict.[16] Figure 1.3 above provides an illustration of decent work/UFW in the working time dimension. This elaboration of unacceptable forms of work is returned to in Chapter 2.

Decent work beyond the employment relationship

The functional dimension of decent work extended international labour policy beyond both the conventional employment relationship and the formal labour market. The concept was fashioned to encompass a broad range of workers (ILO, 1999) and its expansive scope was recognized (Sen, 2000). Decent work embraces working lives beyond those of wage workers in formal enterprises. Further:

> *All those who work have rights at work*. The ILO Constitution calls for the improvement of the "conditions of labour", whether organized or not, and wherever work might occur, whether in the formal or the informal economy, whether at home, in the community or in the voluntary sector (ILO, 1999, p. 3).

This dimension of the decent work concept is critical for investigating both where unacceptable forms of work are to be found and the policy and regulatory interventions that are required to ameliorate or eliminate these working relationships.

Decent work in the informal economy

The breadth of the decent work concept in part reflected a contemporary trend towards extending protections beyond the employment relationships conventionally recognized by labour law systems. This objective had previously been pursued in the stalled efforts to adopt an international instrument on "contract labour" (see ILO, 2003a). The expansive concept of decent work also confirmed the ILO's evolving preoccupation with workers in the informal economy (see further Vosko, 2002):

> *The ILO is concerned with all workers.* Because of its origins, the ILO has paid most attention to the needs of wage workers – the majority of them men – in formal enterprises. But this is only part of its mandate, and only part of the world of work. Almost everyone works, but not everyone is employed. Moreover, the world is full of overworked and unemployed people. The ILO must be concerned with workers beyond the formal labour market – with unregulated wage workers, the self-employed, and homeworkers (ILO, 1999, p. 3).

Decent work, then, should be pursued not only in formal employment relationships; it should also be expected in work arrangements that are, owing to their exclusion – de jure or de facto – from the lattice of regulatory regimes that encircle labour market participation, considered to be informal (on the definition of informal work, see further ILO, 2002). This embrace of the informal sector propelled the ILO more firmly into the priorities and forums of development policy. It was applauded as a novel commitment to marginalized workers and the heightened influence of the NGOs that represent them (Vosko, 2002*;* Sen, 2000). (On the interface of labour law and development, see further Teklè, 2010; Sankaran, 2012.) The ILO has continued to focus on informal work, both in the 2002 Conclusions concerning decent work and the informal economy (ILO, 2002) and in current efforts towards standard-setting (see further section 1.5). The concept of decent work has also been used in vigorous academic projects to develop strategies for informal workers (Carr and Chen, 2004). Informality is considered in more depth in section 1.5 below).

The regulatory demands of decent work

This functional aspect of decent work has also inspired efforts to clarify the regulatory determinants of unacceptable work: to determine how regulation generates, or fails to quell, unacceptable work. The DWA, which is regarded as a "soft" law approach, has been criticized as either timid or uncertain in its prescriptions on implementation mechanisms (Mundlak, 2007; MacNaughton and Frey, 2010). MacNaughton and Frey (2010), for example, lament that "[b]y turning to soft promotional approaches, the ILO appears to transform binding legal obligations into mere policy or programmatic goals" (p. 348). Most pertinent for present purposes is decent work's regulatory "message" to domestic social and development policy frameworks, and in particular its demands for mechanisms to regulate labour markets.

The achievement of decent work depends to a substantial extent on policy regimes that operate beyond the conventional boundaries of labour law and even of legal regulation. At the outset, Sen (2000) noted that the concept of decent work situates working life "within a broad economic, political and social framework" (p. 125) and that "[p]rotection against vulnerability and

contingency is … to a great extent, conditional on the working of democratic participation and the operation of political incentives" (ibid.). Yet labour market regulation, broadly defined, inevitably plays a pivotal role (for arguments towards a broad conception of the field of labour regulation, see Mitchell, 1995; Arup et al., 2010).

The regulatory demands of decent work have been explored in scholarly work (e.g. Owens, 2002; Boulin et al., 2006; Bletsas and Charlesworth, 2013). Most recently, they have been central to the research agenda of *Regulating for Decent Work*, an international network of researchers and policy-makers who investigate contemporary labour regulation from multiple disciplinary perspectives (economics, law, industrial relations, development studies, political science) (see Lee and McCann, 2011; McCann et al., 2014). The recent work of the network has built on innovations in empirical research that have confirmed that the impacts of labour regulations are difficult to predict a priori. This work has most recently drawn on Deakin and Sarkar's (2008) notion of "regulatory indeterminacy" to capture uncertainty in the protective capacities of labour law, and to elaborate the pressures that drive and underpin regulatory indeterminacy in contemporary labour markets. Three key variables have been identified: (1) the accelerating fragmentation of labour markets into diverse forms of employment; (2) complex interactions between labour market institutions; and (3) impediments to effective implementation of labour norms (McCann et al., 2014). These insights are returned to in Chapter 3.

1.2. Good jobs

Employment in advanced economies is increasingly portrayed as a disjuncture between "good" and "bad" jobs. This project has been driven by the recognition that Western labour markets have become increasingly polarized since the 1970s into poor-quality, insecure and low-wage employment, on the one hand, and more secure and rewarding forms of employment, on the other. In the United States, for example, 25 per cent of the workforce was employed in low-wage jobs by 2005 (Mason and Salverda, 2010). This outcome has been associated with a "hollowing out" of the occupational structure through the expansion of good jobs in managerial, professional and technical occupations, a disproportionate expansion of bad jobs, in sales and services occupations, and a decline in middle-level jobs (clerical, skilled and semi-skilled manual occupations) (Kalleberg, 2011). Researchers have ascribed these changes to a set of intersecting pressures that are shaping industrialized societies. These pressures include declining unionization, deregulation, internationalization, intensified competition and financialization, employer strategies towards seeking greater flexibility in work relationships, and the increased labour market

participation of women and of migrant workers (e.g. Appelbaum and Schmitt, 2009; Kalleberg, 2011).

This good jobs/bad jobs classification increasingly features in scholarly literatures and influences policy discourses. The investigation of employment polarization initially exposed a "conceptualization deficit" (Findlay, Kalleberg and Warhurst, 2013, p. 442) that demanded more elaborate typologies of good and bad jobs (see Muñoz de Bustillo et al., 2009). This good/bad jobs discourse is associated with a literature that has revived the investigation of job quality since the mid-2000s (e.g. Green, 2006; Grimshaw, Lloyd and Warhurst, 2008; Kalleberg, 2011; Osterman and Shulman, 2011; Findlay, Kalleberg and Warhurst, 2013; for earlier scholarship on job quality, see e.g. Davis and Taylor, 1972; Terkel, 1972; Donaldson, 1975; Oldham and Miller, 1979; Westley, 1979). Researchers have been prompted to elaborate the characteristics of good jobs and bad jobs, in the process generating sophisticated typologies of each. These efforts are a crucial contribution towards conceptualizing UFW.

Towards multidimensional models of good jobs

In its origins, the good jobs literature reflected disciplinary diversity: the economic literature highlighted wages and fringe benefits, psychologists focused on job satisfaction, etc. (Kalleberg, 2011; Findlay, Kalleberg and Warhurst, 2013). Modern analyses tend to reflect on the nature of good/bad jobs from an interdisciplinary perspective. As a result, the literature has evolved to offer richer models of objectionable and desirable jobs. It now embodies a multidimensional ethos: "[j]obs are made up of bundles of rewards, and the multidimensionality of job quality is reflected in definitions that recognize the diverse aspects of what constitutes a 'good' job" (Kalleberg, 2011, p. 5).

Modern typologies capture objective features of jobs. Most indices, for example, include wages, measuring either hourly wages, annual earnings, or both (e.g. Tilly, 1997; Clark, 2005; Davoine, Erkel and Guergoat, 2008). Working time tends to feature in these classifications, to embrace both the duration of working hours and, increasingly, their flexibility (e.g. Tilly, 1997; Clark, 2005). More recent academic literature, however, has been directed towards identifying dimensions of job quality beyond the field's traditional preoccupation with wages and hours (Brown et al., 2007). Some researchers within the "good jobs" tradition focus on skills development: Holman (2013), for example, includes opportunities to develop or deploy skills commensurate with the demands of the job. Job content, worker autonomy, the rhythm of work, and work intensification have also become the subject of vigorous efforts to design indicators capable of capturing these dimensions of working life (e.g. Green, 2006 and 2008; Gallie, Felstead and Green, 2004).

Modern typologies also increasingly capture subjective components of jobs, through attentiveness to workers' choices, values, and constraints (see in particular Cooke, Donaghey and Zeytinoglu, 2013). There is a growing interest in measuring subjective elements of job quality, in particular job satisfaction (Clark, 2005; Tsitsianis and Green, 2005). Subjectivist models focus on employee work preferences and perceived fulfilment (Brown et al., 2007; Muñoz de Bustillo et al., 2009). The broadest typologies therefore capture job quality in relation to individuals' life stages, values, and job opportunities. As Findlay, Kalleberg and Warhurst note, these dimensions are capable of objective definition, but how they align with individual circumstances and preferences is subjective and relative: "determined by the individual in the socio-economic context" (Findlay, Kalleberg and Warhurst, 2013, p. 445). Cooke, Donaghey and Zeytinoglu, for example, have constructed a typology of worker-types among which the definition of a "good job" varies: workers who fit their work around their lifestyle, their lifestyle around their work, or who "make do on both or either count" (Cooke, Donaghey and Zeytinoglu, 2013).

As a result of these advances in the research, in recent typologies good jobs are expansively defined to embrace a range of aspects of job quality. This expansion is captured in Kalleberg's influential classification of good and bad jobs (synthesized in Kalleberg, 2011). This classification identifies "characteristics that most people would agree are necessary for a job to be considered a good job (or, at least, not a bad job)" (ibid., p. 9) (see table 1.1).

Table 1.1 Good jobs: A multidimensional typology

A good job:

- provides wages high enough to satisfy a person's basic needs;
- provides fringe benefits to accommodate those needs;
- pays relatively high earnings and provides opportunities for increased earnings over time;
- provides fringe benefits (e.g. health insurance, retirement benefits);
- allows the worker opportunities for autonomy and control over work activities;
- gives the worker some flexibility and control over scheduling and terms of employment;
- provides the worker with some control over termination of the job.

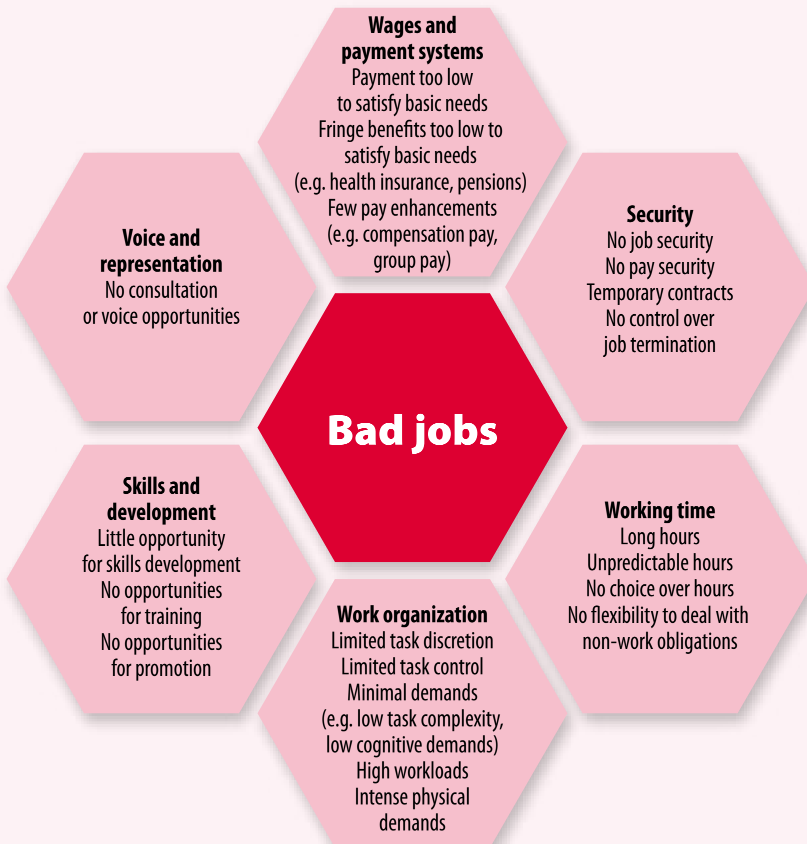
Source: Kalleberg (2011), p. 9.

These criteria are not exclusive: Kalleberg (2011) stresses that the absence of one does not produce a bad job and that all are not necessarily present in a good job. He also highlights the long-term benefits of good jobs:

> Good jobs provide a foundation for a high quality of life, healthier workers, and stronger families and communities. Workers who have job security and who have reasonable expectations regarding future job opportunities are more likely to be able to put down roots in a community, conceive and raise children, buy a house, and invest in family lives and futures. The amount of control that a person is able to exercise in the workplace has far-reaching effects on one's psychological functioning and non-work life (ibid., p. 2).

The broadened approach to the notion of "bad jobs" is reflected in figure 1.4, which also reflects the collective dimension.

Figure 1.4 Bad jobs: A multidimensional model



Notes: These job dimensions are derived, with slight adaptation, from Holman (2013). The factors identified under each dimension are derived from Parker and Wall (1999); Bryson, Cappellari and Lucifora (2004); Wooden (2004); Williams, McDaniel and Nguyen (2006); Humphrey, Nahrgang and Morgeson (2007); Parent-Thirion et al. (2007); Podsakoff, LePine and LePine (2007); Gallie (2013); Holman (2013).

The World Bank's "good jobs for development": A global model?

Although increasingly expansive, good/bad jobs typologies are subject to a number of constraints. These models do not tend, for example, to incorporate the capacity of workers to enforce their legal rights. The good jobs literature does not attend to the insights of legal doctrinal-theoretical scholarship and can overstate the promise of regulatory interventions.[17] This literature has not strongly integrated the social location of the worker or the social context of the job, although there is increasing recognition of both dimensions. Findlay, Kalleberg and Warhurst (2013), for example, recognize that job quality "[i]s a contextual phenomenon, differing among persons, occupations and labour market segments, societies and historical periods". Taxonomies of good jobs, further, have been criticized for valorizing the "standard" model of employment associated with post-Fordist manufacturing (Loughlin and Murray, 2013).

A key question is whether models of unacceptable jobs generated by the good/bad jobs literature are suited to low-income settings. This line of research has tended to focus on advanced industrialized economies, and therefore to highlight job dimensions of most relevance to more affluent settings. Typologies of "good jobs" are therefore ripe to be extended to low-income countries.

In this regard, the World Bank has recently offered a contribution that implicitly extends the good jobs discourse to the global context.[18] Its *World Development Report 2013* (WDR2013) – entitled *Jobs* – marked a significant advance in the policy discourses of the Bank, by acknowledging that growth does not inevitably translate into employment (see Bakvis, 2012; see generally McCann, 2015). WDR2013 configures the Bank's central objective as developing private employment creation: "[j]obs are the cornerstone of development, and development policies are needed for jobs" (World Bank, 2012, p. 3).

In elaborating on this objective, WDR2013 acknowledges a broad set of social objectives for employment: for the individual, earnings, benefits, self-esteem, and happiness; for society, raised living standards, productivity, and social cohesion. To build on these insights, the Report introduced the novel concept of "good jobs for development" (GJD), defined as those jobs that have "the highest payoff to society":

> [S]ome jobs also have spillovers on the living standards of others, on aggregate productivity, or on social cohesion. When spillovers are positive, the job has a greater value to society than it has to the person who holds it (ibid., p. 159).

The concept of GJD offers a more expansive imagery of contemporary labour relations than the Bank has previously recognized. Centrally, it

is linked to international norms that embody "basic human rights" (ibid., p. 125). Most strikingly, the notion of GJD explicitly demands that jobs that infringe universal rights should not be treated as jobs at all: "All countries have subscribed to a set of universal rights … Thus, some work activities are widely viewed as unacceptable and should not be treated as jobs" (ibid., p. 155).

The human rights instruments that shape GJD are identified in WDR 2013 to embrace a wide range of international conventions, and regional regimes that include the European Convention on Human Rights, European Social Charter, and Inter-American Convention on Human Rights (ibid., p. 179). As a result, the Bank's notion of GJD includes criteria familiar from standard good jobs taxonomies. Drawing on Article 23 of the Universal Declaration of Human Rights, for example, GJD incorporates "just and favourable" working conditions, protection against unemployment, and remuneration that ensures an existence worthy of human dignity for workers and their families. WDR 2013 also refers to ILO standards that include those on working time, social security, health and safety, and labour inspection (ibid., p. 156). A reference to the ILO Declaration on Fundamental Principles and Rights at Work extends the concept of GJD to freedom of association and collective bargaining. The Bank highlights, for example, the spread of collective bargaining in China, in the wake of recent legislative reforms (ibid., p. 266, box 8.3).

The Bank's notion of good jobs, however, is more expansive. GJD embraces risks that the existing typologies of good/bad jobs tend to overlook, which are towards the harsher end of the spectrum of mistreatment. The pursuit of GJD precludes "activities that exploit workers, expose them to dangerous environments, or threaten their physical and mental well-being" (ibid., p. 14). It therefore precludes child prostitution, forced labour, hazardous work, and discrimination. These dimensions of contemporary working relations are returned to in the remainder of this chapter in the discussion of research and policy discourses in which these risks are more central.

1.3. Precarious work

Precarious work in the European Union

Precarious employment has become a central focus in European Union (EU) employment policy. The European Employment Strategy (EES) establishes a framework for EU countries to coordinate their employment policies, and it incorporates *Guidelines for the employment policies of the Member States* – proposed by the European Commission, agreed by national governments

and adopted by the EU Council – that set common priorities and targets for national employment policies (European Council, 2010).[19] The current *Guidelines* are aligned with the broader Europe 2020 Strategy for "smart, sustainable and inclusive growth", which has set a target of 75 per cent of 20–64 year olds in employment by 2020 (CEC, 2010). The *Guidelines* expect EU Member States to increase labour market participation, reduce structural unemployment, and enhance job quality. To this end, national policy-makers are called on to "tackle labour market segmentation with measures addressing precarious employment, underemployment and undeclared work".[20]

Most recently, the risks of precarious employment have been emphasized in EU-level efforts to accelerate job creation in the wake of the crisis. The "*Employment Package*", launched in April 2012, is a set of policy documents that are intended to complement the *Europe 2020* employment objectives and the *Employment Guidelines*.[21] The European Commission's guidance document, *Towards a job-rich recovery*, identifies actions that demand particular emphasis in the post-crisis context. These include "restoring the dynamics of labour markets" by reforms that embrace "reducing the labour market segmentation between those in precarious employment and those on more stable employment".[22] The Commission suggests:

> There is … a need for measured and balanced reforms in employment protection legislation in order to … halt the excessive use of non-standard contracts and the abuse of bogus self-employment. More generally, all types of contractual arrangements should give jobholders access to a core set of rights (including pension rights) from the signature of the contract, including access to lifelong learning, social protection, and monetary protection in the case of termination without fault (CEC, 2012, pp. 10–11).

EU institutions are concerned that precarious work does not provide individuals with the rights and protections that have traditionally been a feature of employment in EU Member States.

Precarious, non-standard, atypical and contingent work

While it is clear that key EU institutions consider precarious employment work to be unacceptable, the scope and substance of the concept have been open to debate. The meaning of the term "precarious work" has evolved in relation to a network of allied concepts, such as "non-standard", "atypical", and "contingent", which have been used in part to denote jobs of dubious quality. Each concept tends to emphasize different features of the work arrangement, and different terms have greater currency in specific institutions and countries, and at specific times (Fudge, 1997; ESOPE, 2005; Fudge

and Owens, 2006). In Canada, initially "nonstandard employment" was the preferred term (Economic Council of Canada, 1990), although subsequently "vulnerable workers" predominated (Law Commission of Canada, 2004; Law Commission of Ontario, 2012). In the European Union, "atypical" or "non-standard" forms of employment have been the conventional nomenclature (Countouris, 2007; Broughton, Biletta and Kullander, 2010), although the term "precarious" is increasingly prominent (ESOPE, 2005). "Contingent work", the term preferred in the United States, emphasizes the conditional, transitory, and insecure nature of certain kinds of work, including part-time, temporary, employee leasing, self-employment, contracted out, and home-based employment (Polivka and Nardone, 1989). "Non-standard" work tends to be used in countries with advanced or emerging economies to refer to poor jobs; it is rarely used in lower-middle income and the least developed countries, where "informal employment" is preferred (Carré and Heintz, 2013, p. 2; Hewison and Kalleberg, 2013, p. 397).

There is a great deal of overlap between non-standard, atypical, contingent, and precarious employment. All of these kinds of work tend to be low-paid, insecure, and relatively unprotected (Bernier, 2005; Gomez and Gunderson, 2005). The term "precarious work" is becoming increasingly prominent at the international level because it emphasizes the uncertainty, insecurity, and instability associated with an increasing proportion of work (Kalleberg, 2009 and 2012; Vosko, 2010; Standing, 2011). It is precisely these features that make some forms of work unacceptable.

As researchers in Europe have noted, understanding precarious employment entails an analysis of standards of acceptability since the notion of "precarious" employment implies a normative evaluation of different forms of employment (ESOPE, 2005, pp. 38, 44). Moreover, there are three main difficulties in developing a rigorous theoretical and empirical concept of precarious employment that can be operationalized (ibid., p. 45). First, there is no official statistical measure of precarious work. Second, existing categories of atypical work, such as part-time and temporary work, are not necessarily precarious even though they contain substantial amounts of precarious employment. Third, there are significant cross-national differences in precarious work even in countries with the same level of development (Rubery, 1989; Broughton, Biletta and Kullander, 2010; Campbell, 2010). In part, the difficulty in achieving a common definition stems from the extent to which the form and nature of precarious work are context specific; what forms of work are precarious and in which ways depends upon the economic and social structures of the political systems and labour markets in which it is embedded (Vosko, Macdonald and Campbell, 2009; Arnold and Bongiovi, 2013; Kalleberg, 2012; Lee and Kofman, 2012). Social actors and strategic action also influence the extent to which specific forms of work are precarious.

A multidimensional approach to precarious work

Some researchers regard the lack of a universally accepted definition of precarious work to be a problem (ILO, 2011b; Working Lives Research Institute, 2012; Kountouris, 2012).[23] However, it has been possible to develop an approach to precarious work that both encapsulates the insecurity and instability associated with contemporary forms of work arrangements and is broad enough to capture precarious work across a wide range of economies. Although a multidimensional approach makes precarious work difficult to measure statistically, it provides:

> … a wider theoretical understanding of the phenomenon, as it clearly links precarious employment with a very asymmetrical distribution of insecurity and risks among the economic actors and makes this process dependent upon both systemic and agency factors, i.e. upon structural conditions and strategic actions. Power relations, which are surely fundamental from an explanatory stand point, are thus brought to the core of the process of unequal insecurity and risk distribution (ESOPE, 2005, p. 48).

The benefits of a multidimensional dimensional approach outweigh the difficulty in devising precise statistical measures.

A major step towards developing a comprehensive approach to precarious employment was made by Gerry Rodgers, who identified the need to look at the different forms of employment in terms of multiple dimensions of insecurity. He focused on: (1) the degree of certainty of continuing employment; (2) control over the labour process, which is linked to the presence or absence of trade unions and professional associations and relates to control over working conditions, wages and the pace of work; (3) the degree of regulatory protection; and (4) income level (Rodgers, 1989). Subsequent researchers added variability as a component of income insecurity (Fuller, 2009), and health as a fifth dimension of insecurity (Vosko, 2006). Since employment is often a requirement for entitlement to many forms of labour and social protection many researchers have moved beyond employment to look at other statuses, such as own-account (or solo) self-employment (Fudge, 2006; Vosko, 2006).

It is possible to build upon Rodgers' multidimensional approach to insecurity to develop a "legal conceptual framework for … precariousness in work relations", which has five key legal determinants: (1) immigration status precariousness; (2) employment status precariousness; (3) temporal precariousness; (4) income precariousness; and (5) organizational control precariousness (Kountouris, 2012, pp. 21, 27). The first refers to the vulnerability that workers face on the basis of precarious migrant statuses, which include refugees, irregular migrants, rural migrants who are not registered, and workers who are

part of managed temporary migration programme (Fudge, 2012). Employment status, which includes informal, voluntary, undeclared work, and self-employment, is very important as the initial legal classification has a range of ramifications for the worker in terms of access or entitlement to labour and social protection (McCann, 2008; Kountouris, 2012, p. 28). Although labour protection has traditionally been limited to employees under an employment contract and other workers have been excluded, research demonstrates that many self-employed workers, especially those who are own-account, are precarious (Fudge, 2006; Cranford and Vosko, 2006; Benjamin, 2011). Temporal precariousness refers to the uncertainty in obtaining and scheduling work, such as experienced by day labourers, and workers on zero hours or casual contracts, as well as to time limits on the duration of employment, such as fixed-term and seasonal work, or work through an employment agency (McCann, 2008; Kountouris, 2012, p. 30). Income precariousness is multidimensional (including amount, frequency of payment, security of payment, and whether or not it is continuing), and context specific (Vosko, 2006). Organizational precariousness refers to the extent to which the legal system provides mandatory norms that workers can use to control employer requests to make their schedules, working relations, and income more flexible (Kountouris, 2012, p. 34).

These legal markers of precarious work are very helpful also in identifying unacceptable forms of work. However, they are not definitive, since the effectiveness of legal claims depends upon the institutional, including legal, framework in which they are lodged and the availability of social actors to assist in claims making.

Towards a predictive model: Social location and social context

These multidimensional approaches to precarious work highlight the broad range of labour market insecurities associated with different forms of work arrangements and the legal determinants of precarious work. However, they do not account for the social processes and relationships that influence who becomes a precarious worker and the nature of the work. In order to illuminate these broader social processes, Leah Vosko integrated social context and social location into a multidimensional approach to precarious employment. She defines precarious employment:

> … as work for remuneration characterized by uncertainty, low income, and limited social benefits and statutory entitlements. Precarious employment is shaped by the relationship between employment status (i.e. self-employed or paid employment), form of employment (e.g. temporary or permanent, part-time or full-time) and dimensions of labour market insecurity, as well as social context

> (e.g. occupation, industry, and geography) and social location (or the interaction of social relations, such as gender, and legal and political categories, such as citizenship) (Vosko, 2010, p. 2).

The dimensions of insecurity that Vosko identifies overlap with the typology of work security identified by the ILO and further developed by Guy Standing (ILO, 2005a; Standing, 2008). But the distinctive contribution of her conception is its attention to how characteristics of workers interact in specific labour and product markets to produce precarious work outcomes.

Social location refers to the demographic characteristics of workers who research has identified as disproportionately found in precarious work (Lamphere, Zavella and Gonzales, 1993). Social location is linked to processes of marginalization that undermine social cohesion. Key worker attributes, often identified as vulnerabilities, linked to precarious work include sex, age, family status, youth, ethnicity, caste, race, immigration status, linguistic group, and skill and ability levels (ESOPE, 2005, p. 32; Arnold and Bongiovi, 2013). These attributes take on significance in specific labour markets, which are, in turn, shaped by the broader social context. Ascriptive characteristics such as sex, race, ethnicity, and place of origin are used to channel people into precarious work. For example, women workers are disproportionately found in precarious work, often as a consequence of their care and household responsibilities (Fudge and Owens, 2006). Migrant status is also a marker used to match people to jobs, and migrant workers are disproportionately found in work that is considered dirty, dangerous, and demeaning (Anderson, 2010; Fudge, 2012). A recent study of precarious work in the EU found that undocumented migrants generally were found in the most precarious work and female migrants, in particular, are seen as at high risk of being in precarious work (Working Lives Research Institute, 2012, pp. 49–63). Temporary or new migrants are recruited into jobs in the agricultural, hospitality, and food-processing sectors in the global North and West, while in the Gulf States construction is dependent upon temporary migrant workers (Anderson, 2010).

The social context, especially regional and local product markets, as well as governance regimes, shapes how different groups of workers are positioned in local labour markets in ways that increase the risk of precariousness in work (see figure 1.5). Sectors such as hospitality, construction, agriculture, retail, personal care, and cleaning are associated with job instability, low income, the absence of trade union representation, the absence of job-related benefits, and ineffective or non-existent labour regulation (Evans and Gibb, 2009, p. 12; Working Lives Research Institute, 2012, p. 44). Some forms of work arrangement predominate in certain sectors: for example, bogus self-employment in construction and seasonal and casual work in agriculture and hospitality (Working Lives Research Institute, 2012, pp. 26–27). Small firms with few

employees are more likely than large firms to provide jobs with low wages, fewer benefits, and no union representation (Vosko, 2006). Unions face real challenges in representing workers in small and medium-sized enterprises (Serrano et al., 2010).

Figure 1.5 Social context, social location and precarious work

Research in Europe discovered that “the incidence of precarious employment or low quality jobs” was higher than one-quarter in the five countries (France, Germany, Italy, Spain, and the United Kingdom) they studied, and that it was closer to one-third in Spain (ESOPE, 2005, p. 68). Other advanced economies, such as Canada and the United States, have witnessed the growth in precarious employment (Vosko, 2006; Kalleberg, 2009). Since the financial crisis in 1997, the Republic of Korea has experienced an increase in precarious work, which has accelerated since 2000 (Shin, 2013). While the research on precarious work has tended to focus on countries with advanced economies, recently the lens of precarious work has been used to examine work in several South and South-East Asian countries (Indonesia, Thailand, the Philippines, Viet Nam, Sri Lanka, and India) with different historical

trajectories, cultural traditions, and levels of development (Hewison and Kalleberg, 2013, pp. 396–397).[24] Although the focus in these countries has been on the informal sector, which ranges from more than 60 per cent to 90 per cent, these researchers found that precarious work was spreading throughout the small formal sector (ibid., p. 397).

Labour market and social welfare institutions influence whether work is precarious, what forms precarious work takes, and how it can be best addressed. In some cases, the broader social context can alleviate work-related precarity (Working Lives Research Institute, 2012, p. 83). Using data from the 2006 Eurobarometer survey, together with country-level data from a variety of sources, Fullerton, Robertson and Dixon (2011) found that "insecurity is higher in those countries with high unemployment, low union density, low levels of part-time and temporary employment, relatively little social spending on unemployment benefits as well as in the post-socialist countries" (Working Lives Research Institute, 2012, p. 83). This finding suggests that "flexible employment practices", such as casual and part-time work, "do not necessarily cause workers to feel insecure in their jobs" (ibid.). Similarly, the negative consequences of precarious work can be exacerbated by the social status of the workers. Viet Nam and China, countries in which rural–urban migration is mediated by the household registration system, highlight this connection. A range of significant social goods and entitlements, from access to housing and health care to contract type and union organizing, are dependent upon this system, which is a means of exercising control over internal migrants (Lee and Kofman, 2012, p. 395; Hewison and Kalleberg, 2013, p. 400).

In a Precarious Work and Social Rights (PWSR) survey across 12 Member States of the European Union, over 260 labour law and relations experts were asked to indicate the extent to which different forms of contract were seen as precarious and the degree of precariousness associated with them (Working Lives Research Institute, 2012).[25] The strongest perceptions of precariousness were associated with informal or undeclared work, followed by bogus self-employment and then casual employment and zero hours contracts. Part-time work and fixed-term work, by contrast, were rarely considered to be very precarious (ibid., p. 77).

Precarious work and unacceptable work

The multifaceted approach to precarious work identifies a spectrum of work arrangements in terms of the security of the work and the adequacy of the income generated. There are a number of negative consequences of precarious work for individual workers, their families, their communities, and social cohesion more generally since a cohesive society works towards the well-being of all its members, fights exclusion and marginalization, creates a sense of

belonging, promotes trust, and offers its members the opportunity of upward mobility. Either singly or combined, some of these consequences make many forms of precarious work unacceptable. Thus, although it has tended to be used primarily in countries with advanced economies, the concept can be applied across countries with different levels of development and contexts in order to identify unacceptable forms of work.

Precarious work arrangements are associated with unsafe and unhealthy conditions at work. Temporary workers are less likely than permanent employees to receive adequate work-related training, more likely to be occupied in lower-skilled jobs that are associated with poor health outcomes, and their occupational safety and health is poorly monitored by inspection systems (Lewchuk, Clarke and de Wolff, 2011; Benach and Muntaner, 2007; Lewchuk et al., 2003; Quinlan, 1999; Bohle et al., 2004). Sectors of employment identified with insufficient health and safety protection include: domestic care work, the cleaning sector, kitchen work, retail and supermarket staff (particularly in relation to psychological stress), and construction (Working Lives Research Institute, 2012, p. 105). As well, workers in precarious forms of work tend to experience poor emotional and mental health as a result of the insecurity and instability associated with their work. They also enjoy less autonomy and control over the labour process and work schedules than their more secure counterparts, features of jobs that are associated with more work-related stress (Lewchuk, Clarke and De Wolff, 2011).

Precarious work is associated with several short-term and long-term costs when it comes to an individual's ability to establish and maintain stable families and households. Low income and job insecurity make it more difficult for people to form households and have children. Precarious work also "deprives people of the stability required to take long-term decisions and plan their lives" (ILO, 2011b, p. 14). Certain forms of precarious work, especially part-time work, enable women workers to accommodate family and household responsibilities with earning an income, while other forms, such as zero hours, casual, and on-call work, make it harder for women to balance these competing demands.[26]

Precarious employment status has the effect of hollowing out employment and labour laws, lowering the floor of employment entitlements, and shifting risks from employers to workers. Bogus self-employment and truly ambiguous employment relationships tend to disenfranchise workers "from any protection afforded by labor or employment law" (Kountouris, 2012, p. 28). These forms of precarious work are likely to increase as firms externalize many activities to contractors and the solo (own-account) self-employed (Casale, 2011). Many workers on casual and zero hours contracts are unable to qualify for a range of work-related entitlements that depend upon continuous service. In most jurisdictions, self-employed workers are not entitled to

use collective bargaining legislation to assist them in unionizing or to bargain collectively.

Instead of being a stepping-stone to better work, increasingly young and other workers are confined to low wage and insecure jobs (ESOPE, 2005, p. 32; Working Lives Research Institute, 2012, p. 100). There are few routes out of precarious work for the majority of workers caught in it; training and job ladders are rare in this kind of work. In some countries, such as Tunisia and Egypt, precarious work "is not primarily a job or job quality issue, but rather a political concern that speaks to the crisis of social reproduction and the ability of people to manage their everyday lives" (Lee and Kofman, 2012, pp. 390–391).[27]

A broad understanding of precarious work is helpful for discerning the dimensions that make work unacceptable. The notion of vulnerability, which is examined in the immediately following section, can, when linked with the idea of precariousness, assist in developing a predictive model of unacceptable forms of work.

1.4. Vulnerability

The language of "vulnerability" has intensified in the research and policy literatures over the last decade. This concept now accompanies – and often parallels – the range of notions of precariousness. As mentioned in section 1.3 above, the terminology of "vulnerability", "vulnerable workers" and "vulnerable employment" has had most resonance in the market-oriented regimes of the advanced industrialized economies. In the United Kingdom,, the notion of vulnerable work began to emerge in the policy debates in the mid-2000s: its earliest appearance was in a Department of Trade and Industry policy statement in March 2006, *Success at work: Protecting vulnerable workers, supporting good employers* (DTI, 2006). Notions of vulnerability began to emerge in the same era in Canada: as the subject of a series of studies by a prominent social policy think tank, the Canadian Policy Research Network (CPRN) (see, in particular, Saunders, 2003); in a report by the Law Commission of Canada, the federal law reform advisory body (Law Commission of Canada, 2004; see also Rittich, 2004); and in judgments of the Supreme Court of Canada (Fudge, 2005). Vulnerable work has since become a regular topic of the policy debates on labour market restructuring and regulatory reform in Canada, most recently in an assessment by the Law Commission of Ontario (2012) of the protections available to vulnerable workers under provincial employment laws.

Vulnerable work has only more recently began to feature in the research and policy debates in lower-income countries. Bocquier, Nordman and Vescovo (2009), for example, have developed indicators of "vulnerability in

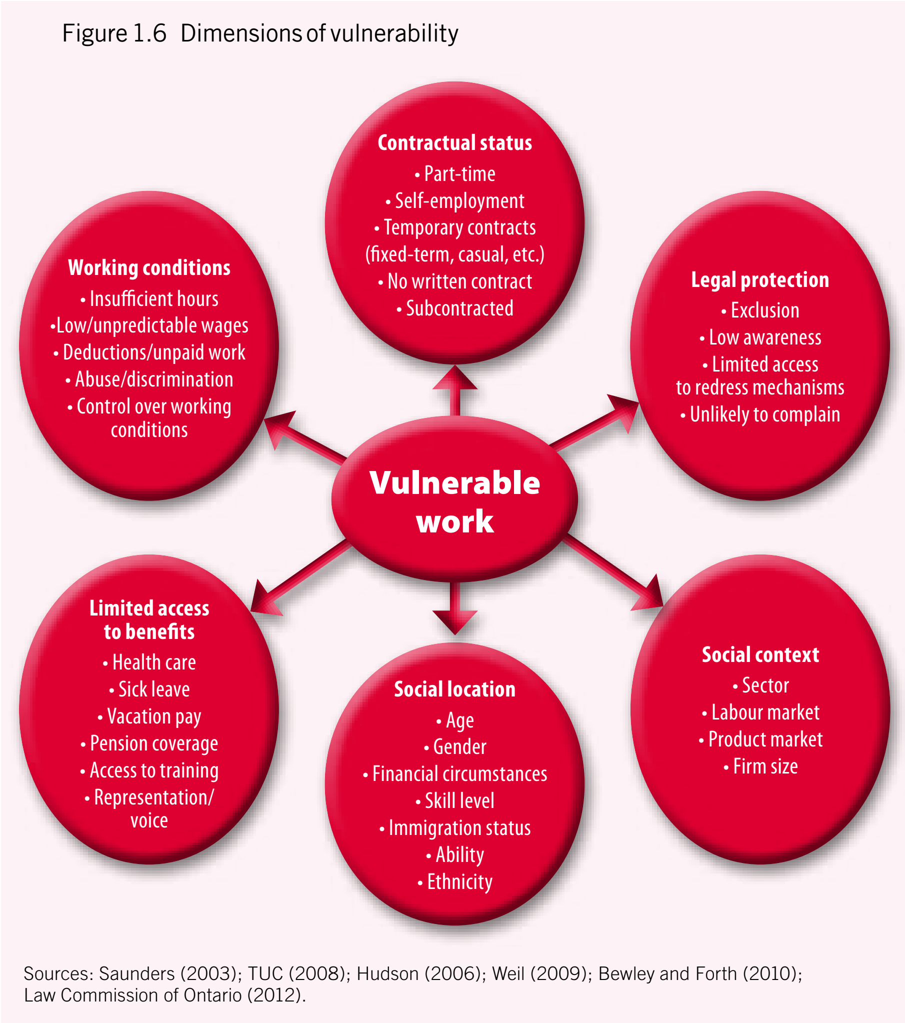
employment" to investigate the links between these indicators and wage income in the economic capitals of West Africa. More recently, Mowla (2011) has examined the determinants of vulnerable employment in Egypt. At the policy level, the ILO has proposed a notion of "vulnerable employment" (ILO, 2009a and 2010) that is included as one of the four indicators of the "decent work target" in the Millennium Development Goals (Target 1.7 – see section 1.1 above) (on the ILO definition, see further below). The term has also become increasingly prominent in the debates on the Asian region in the wake of the global financial crisis, including a series of studies issued by the Asian Development Bank (e.g. Édes, 2009; Hurst, Buttle and Sandars, 2010; Huynh et al., 2010; ILO and ADB, 2011). Édes (2009), for example, has singled out vulnerable employment as a major challenge in the region.

Defining vulnerable work: Towards a continuum of vulnerability

Research on vulnerability has mirrored the evolution of the precarious work literature by progressing from constrained models – centred on a narrow set of characteristics – to more expansive typologies that recognize a continuum of vulnerability (see, in particular, Bewley and Forth, 2010). Notions of vulnerability have always been more expansive than concepts that are grounded exclusively in the form of the employment relationship, such as "non-standard" or "contingent" work (Fudge, 2005; see further section 1.3 above). Most notably, models of vulnerable work explicitly recognized the power relations inherent in the wage-work bargain. The UK Commission on Vulnerable Employment definition refers to "precarious work that places people at risk of continuing poverty and injustice resulting from an imbalance of power in the employer-worker relationship" (TUC, 2008, p. 12);[28] Bewley and Forth (2010) view adverse treatment as "one possible (although not inevitable) consequence of the power imbalances which may exist within the employment relationship" (p. 1); and Fudge has noted that the term has been used by the Canadian Supreme Court to emphasize the dependency of the employee (Fudge, 2005).[29]

Yet the early classifications of vulnerable work tended to hinge on a small set of discrete job characteristics, centrally wages, union representation, and the duration of the employment contract. Hudson (2006), for example, identified the vulnerable as those earning below one-third of median hourly wages who do not have their terms and conditions negotiated by a trade union. Pollert has used a similar definition (ibid.).[30] The ILO definition contrasts with these models, since it was designed to capture vulnerability in lower-income settings (ILO, 2009a). Yet, it is also fairly narrow as it relies on employment statuses drawn from the *International Classification by Status in Employment* (ICSE)[31] to define vulnerable workers as (1) own-account workers[32]

Figure 1.6 Dimensions of vulnerability



Sources: Saunders (2003); TUC (2008); Hudson (2006); Weil (2009); Bewley and Forth (2010); Law Commission of Ontario (2012).

and (2) contributing family workers[33] (see e.g. ILO, 2009a and 2010).[34] The ILO model has been influential on the work of a range of international agencies. Research produced by the Asian Development Bank (ADB), for example, adopted the ILO's definition to reveal a shift to vulnerable employment in developing Asia in the wake of the global economic crisis (Huynh et al., 2010; see also ADB, 2013).

These earlier concepts of vulnerability have the merit of being relatively easy to operationalize for measurement, and have been used in efforts to estimate the size of the vulnerable workforce. The findings suggest that a fairly substantial segment of the global workforce is in a position of vulnerability. In

the United Kingdom, the Policy Studies Institute (PSI) estimated 7.4 million people, or one-third of all employees to be encompassed by Pollert's definition of vulnerable work, and one-fifth of employees (5.3 million) by its own (narrower) definition (Hudson, 2006, p. 7).[35] The TUC has produced a lower estimate, of around 2 million workers (TUC, 2008, p. 3).[36] The ILO has estimated that vulnerable work accounts for half of global employment (50.1 per cent), or around 1.53 billion workers (ILO, 2012).

Conceptions of vulnerable work have since become more elaborate (and more complex). The early models were criticized for neglecting crucial dimensions of vulnerability (Bewley and Forth, 2010). As Bewley and Forth have commented, "[i]t is apparent that vulnerability should be considered a continuum, rather than a discrete state and that an individual's position on that continuum is likely to be determined by a wide range of factors, both within and outside the workplace" (2010, p. 5).

In response to such criticisms, more expansive conceptions of vulnerable employment have been developed. The more refined of the available models are capacious and therefore able to embrace a range of substantive job factors, worker characteristics, and dimensions of the broader social context.

Figure 1.6 above illustrates a range of dimensions of vulnerability that have been identified in the recent research literature.

Dimensions of unacceptability in concepts of vulnerable work

Research and policy elaborations of vulnerable work offer useful insights for the investigation of unacceptable work and the factors that generate it. Key aspects of vulnerability distinguish it from the other accounts of unacceptability that are reviewed in this chapter. Notions of vulnerability are particularly revealing in their capacity to encompass social context and social location and to capture the complexity of contemporary modes of informalization.

Social location, social context and a predictive model

At the core of the vulnerability literature is a quest to capture the potential for poor employment outcomes. Definitions of vulnerable work are tailored to this objective. Thus the UK Department of Trade and Industry defines a vulnerable worker as "someone working in an environment *where the risk of being denied employment rights is high* and who does not have the capacity or means to protect themselves from that abuse" (DTI, 2006, p. 25, italics ours; see also Bewley and Forth, 2010, p. 1; TUC, 2008, p. 12). Animated by these definitions, the more sophisticated models of vulnerability are instructive for the design of research and policy interventions on UFW. These models suggest predictive methodologies for identifying demographic characteristics and

labour market locations that are at risk of generating unacceptable forms of work. The more refined of the available typologies of vulnerability account for both the social location of the worker and the social context of the labour relation (see section 1.3 above). Thus Bewley and Forth identify five features that "may be expected to make the adverse treatment of employees by their employers either more or less likely" (Bewley and Forth, 2010, p. 5):[37] (1) the external labour market; (2) the external product market; (3) the employer or firm; (4) the job; and (5) the employee (ibid.).

The literature on vulnerability, like the literature on precarious work, makes a distinctive contribution by accounting for worker characteristics and status. It reveals the vulnerable to be disproportionately located among low-skilled workers and members of historically disadvantaged groups (including women, recent immigrants, ethnic minorities, aboriginal peoples, young workers, and the disabled) (Fudge, 2005; Hurst, Buttle and Sandars, 2010; Law Commission of Ontario, 2012). Through statistical analysis of nationally representative survey data drawn from the 2008 Fair Treatment at Work Survey (FTWS), Bewley and Forth found conventional measurements of vulnerability based on job characteristics to be less informative about vulnerability to adverse treatment than the characteristics of the worker. Particularly at risk were individuals experiencing financial difficulties, younger workers, workers with disabilities, and non-heterosexuals. These factors also feature in the research that is emerging from lower-income settings. The Asian Development Bank has highlighted that vulnerability in the wake of the global crisis is centred among young urban workers, migrants, and informal workers (Édes, 2009). Édes also highlights that in Cambodia, workers who lost their jobs in the garment industry after the crisis were typically single females in their twenties who subsequently found work in the entertainment industry, risking exploitation and abuse. The ADB has also found that women migrant workers across the region are disproportionally represented in vulnerable employment (ADB, 2013). In Egypt, Mowla (2011) has found the primary determinants of vulnerability[38] to include gender and education: female workers and those with low levels of education were found to be more likely to be in vulnerable employment. Similarly, Sparreboom and de Gier (2008), in their comparative study of Pakistan, Namibia, and Brazil, found the determinants of vulnerable employment to include gender (female), youth, and low educational attainment.

The vulnerability literature has been criticized, particularly when juxtaposed with models of precariousness, for overemphasizing such supply-side factors among the determinants that impede workers from accessing better jobs. In evaluating early incarnations of vulnerability, Fudge (2005) highlighted the potential for supply-side bias. Although vulnerability models are analytically useful, Fudge cautions about the potential for perverse policy outcomes (ibid.). As she notes, vulnerability appears to offer a route to a particular

genre of policy intervention: those targeted directly (and perhaps exclusively) at workers in most need of protection. Definitions of vulnerability weighted towards worker demographics, she suggests, have resonance with historical reform efforts to protect groups of particularly vulnerable workers, archetypically women and children (Fudge, 2005, citing Fudge and Vosko, 2001, p. 160). However, these strategies are not self-evidently the most effective for preventing or reducing unacceptable work. More sophisticated accounts of vulnerability recognize these risks. Thus Rittich has observed that "being or becoming a vulnerable worker is not simply a matter of the characteristics of the individual worker" (Rittich, 2004, pp. 1–2, quoted in Fudge, 2005, p. 164), and the recent report of the Ontario Law Commission stresses that "vulnerability" refers "not to the workers themselves but to their circumstances in the working environment and other aspects of their lives" (Law Commission of Ontario, 2012, p. 11).

Notions of vulnerability also integrate social context by embracing the characteristics of the product and labour markets in which a job is located. Weil (2009) has investigated the sectoral distribution of workplace vulnerability in the United States, finding it to be concentrated in a small number of sectors: retail; food and drinking services; accommodation (hotel and motel); agriculture; retail and leisure; and hospitality. Weil argues that the complex constellations of firms in these sectors help to shape the dynamics of vulnerability. Vulnerability is also attributable to the growing use of arrangements that distance the worker from the hirer of his or her labour: subcontracting, temporary employment, self-employment, and third-party management (ibid.). Similarly, in the Asian region, Hurst, Buttle and Sandars (2010) have found vulnerable workers in value chain sectors to be particularly likely to be hired through temporary agencies.

Vulnerability and informality

The more expansive conceptions of vulnerability have potential to capture the contemporary dynamics of informal employment as it is evolving in high- and low-income countries (see further section 1.5 below). Some of the available typologies explicitly adopt narrower definitions of informal work, in particular those that equate informality with irregular employment. The UK Department of Trade and Industry definition, for example, includes undocumented migrant labour (DTI, 2006, pp. 30–31). More expansive models of vulnerability capture complex notions of labour market informality through their attention to the enforcement or implementation of regulatory frameworks.

Regulatory determinants of unacceptable work are particularly prominent in the literature on vulnerability. In this regard, vulnerable work has

been elaborated to embrace circumstances in which the worker is (1) unaware of his or her legal entitlements; (2) unable to enforce those entitlements due, for example, to limited access to legal fora; or (3) unlikely to enforce legal entitlements or to complain if rules are violated (e.g. Saunders, 2003; DTI, 2006; Weil, 2009). This approach chimes with recent research efforts that reveal the significance of enforcement mechanisms to the effective functioning of regulatory frameworks (Piore and Schrank, 2008; Pires, 2011; Weil, 2008; Howe, Hardy and Cooney, 2013). These models also have the capacity to capture the modes of informalization dominant in the advanced industrialized economies, and in particular the ineffective enforcement of statutory labour standards. These observations are reflected in the suggestions on regulatory interventions outlined in Chapter 3.

1.5. Informal work

Defining informal employment

Labour economists and development specialists have linked informal work with poverty, low job quality, and insecurity (Kucera and Xenogiani, 2009; Chen, 2007). In many countries, particularly those with developing and transitional economies, the informal economy has been the main source of employment growth (Bacchetta, Ernst and Bustamante, 2009). However, how to define informal employment has a long and contentious history (Carré and Heintz, 2013; Hill, 2010; Routh, 2011; Chen, 2012; Williams and Lansky, 2013). Not only is the concept of informality treated differently under different theories,[39] it is used to capture different things, primarily enterprises, jobs, or activities (Williams and Lansky, 2013). In part, the different definitions were designed to serve different goals.

The ILO's original definition was developed in the context of assisting national statistical offices to collect data on employment within the informal sector (ILO, 2012). The Resolution concerning statistics of employment in the informal sector, adopted by the 15th International Conference of Labour Statisticians (ICLS) in 1993 (ILO, 1993b), set out guidelines for defining the informal sector, and classifying employment within it. It focused on the type of enterprise and its legal status (Williams and Lansky, 2013, p. 356). The scope of the Resolution's conception of the informal sector is captured in Paragraph 5(1):

> The informal sector may be broadly characterised as consisting of units engaged in the production of goods or services with the primary objective of generating employment and incomes to the persons concerned. These units typically operate at a low level of organization, with little or no division between labour and

capital as factors of production and on a small scale. Labour relations – where they exist – are based mostly on casual employment, kinship or personal and social relations rather than contractual arrangements with formal guarantees.

Paragraph 6 provides a more precise definition:

1. For statistical purposes, the informal sector is regarded as a group of production units which … form part of the household sector as household enterprises or, equivalently, unincorporated enterprises owned by households…
2. Within the household sector, the informal sector comprises (i) "informal own-account enterprises"…; and (ii) the additional component consisting of "enterprises of informal employers"…
3. The informal sector is defined irrespective of the kind of workplace where the productive activities are carried out, the extent of fixed capital asset used, the duration of the operation of the enterprise (perennial, seasonal or casual), and its operation as a main or secondary activity of the owner.

This definition is sensitive to establishment size and type. But the problem with it is that by excluding the formal sector it misses forms of informal employment, such as zero hours contracts or bogus self-employment, that are not confined to the informal sector (ILO, 2012, p. 20). Nor does it capture work within a private household or subsistence activities such as farming and fishing (Williams and Lansky, 2013, p. 357).

The International Labour Office (ILO), the International Expert Group on Informal Sector Statistics, and the global network Women in Informal Employment: Globalizing and Organizing (WIEGO) worked together to develop a job-centred approach to informal employment, which they regarded as complementing the 1993 definition of employment in the informal sector. In 2003, the 17th International Conference of Labour Statisticians adopted *Guidelines concerning a statistical definition of informal employment* (ILO, 2003b; see Chen, 2012, p. 7; ILO, 2012). The *Guidelines* offer the following definition:

3. (1) *Informal employment* comprises the total number of informal jobs …. whether carried out in formal sector enterprises, informal sector enterprises, or households, during a given reference period.

(2) … informal employment includes the following types of jobs:
- (i) own-account workers employed in their own informal sector enterprises;
- (ii) employers employed in their own informal sector enterprises;
- (iii) contributing family workers, irrespective of whether they work in formal or informal sector enterprises;
- (iv) members of informal producers' cooperatives;

(v) employees holding informal jobs … in formal sector enterprises, informal sector enterprises, or as paid domestic workers employed by households;
(vi) own-account workers engaged the production of goods exclusively for own final use by their household…

Under these guidelines, informal employment includes self-employment in the informal sector, which is based on the ICLS's earlier definition of informal enterprises, plus employees in informal jobs, which are generally defined as jobs that lack a core set of legal or social protections, regardless of whether those jobs are located in the formal or informal sector.

Using this measure, the Department of Statistics at the ILO (2012) found that in 15 out of 47 medium- and low-income countries, informal employment represents at least two-thirds of non-agricultural employment. Informal employment is particularly widespread in Africa, the Asian regions and Latin America and the Caribbean, with a cross-country average of between 40 and 50 per cent. Estimates for Central and South-Eastern Europe (non-EU) and CIS and the Middle East are relatively lower, but still hover between 15 and 30 per cent. Estimates of informal employment in China range between 46 and 68 per cent (Lee and Kofman, 2012, p. 393), whereas informal employment is estimated to be as high as 73 per cent in Viet Nam and 86 per cent in Cambodia (Arnold and Aung, 2011). Informal employment is also very high in India, at over 80 per cent (Kalleberg and Hewison, 2013, p. 281).

The enterprise- and jobs-centred definitions dominate the literature on informality in developing and emerging economies. In developed countries, where informal employment typically occurs in the "underground economy", an activity-centred definition has been more common (Williams and Lansky, 2013, p. 357). The activity-oriented definition centres on "unobserved" activities and comes from the Handbook on measuring the non-observed economy.[40] The Handbook's definition of informal employment is based, in turn, on the System of National Accounts 1993 definition of "underground production", which is "all legal production activities that are deliberately concealed from public authorities for the following kinds of reasons: to avoid payment of income, value added or other taxes; to avoid payment of social security contributions; to avoid having to meet certain legal standards such as minimum wages, maximum hours, safety or health standards, etc…" (OECD et al., 2002, p. 139). The chief characteristic of this activity-based conception of informal employment is that it is "hidden from or unregistered with the authorities for tax, social security and/or labour law purposes" (Williams and Lansky, 2013, p. 357). However, if the activity itself is illegal, then it is treated as criminal, and not as informal employment.

Since the International Labour Conference adopted its Resolution concerning decent work and the informal economy in 2002, the ILO has been

using the term "informal economy" to refer to "all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements" (Williams and Lansky, 2013, p. 359). The benefit of this approach is that it captures the wide diversity of informal employment across countries of every level of development.

Unacceptable informal work

In its "White Report" for the ongoing standard-setting exercise on *Transitioning from the informal to the formal economy*, the ILO acknowledged that workers in the informal economy differ widely in terms of factors such as income, employment status, type and size of enterprise, urban/rural location, etc. (ILO, 2013e). In part, this heterogeneity can be explained by the various, and sometimes incommensurable, approaches to the concept of informality, which were reviewed in the preceding discussion. Despite this variety, it is possible to identify some features that render certain forms of informal work unacceptable. Chen (2012, p. 8) provides a typology, reproduced in table 1.2, that breaks down informal work arrangements by type and degree of economic risk (job and earnings) and of authority (over the establishment and other workers). High levels of risk combined with little authority are likely to result in unacceptable work. In its *World of Work Report 2014*, the ILO reported that "[m]ore than half of the developing world's workers, a total of 1.45 billion", work in vulnerable employment, which is defined as "own account or as contributing (unpaid) family workers in a family enterprise" (ILO, 2014c, p. 9). These two groups are "are more likely than workers in formal wage employment to be trapped in a vicious circle of low-productivity employment, poor remuneration and limited ability to invest in their families'

Table 1.2 Employment statuses of informal work arrangements

Informal self-employment	**Informal wage employment***
• Employers in informal enterprises	• Employees of informal enterprises
• Own-account workers in informal enterprises	• Casual or day labourers
• Contributing family workers (in informal and formal enterprises)	• Temporary or part-time workers
• Members of informal producers' cooperatives (where these exist)	• Paid domestic workers
	• Contract workers
	• Unregistered or undeclared workers
	• Industrial outworkers (also called homeworkers)

* Employees hired without social protection contributions by formal or informal enterprises or as paid domestic workers by households. Certain types of wage work are more likely than others to be informal.

health and education, which, in turn, reduces the likelihood that current and subsequent generations will be able to move up the productivity and income ladders" (ibid.).

Women in Informal Employment: Globalizing and Organizing (WIEGO) has begun to develop markers for informal employment, which are designed to help identify which forms have a high degree of exposure to economic risk. They were developed "to apply to all types of work arrangement in the full range of enterprises (small, large, formal/informal)" (Carré and Heintz, 2013, p. 9). A provisional list of markers of informal work includes: unemployment insurance/income replacement (for wage workers, at this point not for the self-employed); health insurance; pension coverage (with subsidy from employer, from the State); rights under employment and labour law (coverage); paid time off (e.g. vacation days, sick days, holiday pay); medical leave eligibility (unpaid or paid); periodicity of pay (hourly, daily, monthly); and volatility of hours (ibid.).

By combining these markers with a notion of vulnerability that incorporates social location and social context, it is possible to identify unacceptable forms of informal work. In its discussion of the recent trends in global employment trends, the ILO recounted that "women continue to face a higher risk of informal employment than men, as they often have less legal and social protection. Being young in the labour market also increases the risk of informality. Finally, self-employed people face much higher risk of informality in developing countries, in part because the legal framework is weak in many such countries and also due to their engagement in low-productivity activities (e.g. street vending)" (ILO, 2014d, p. 24).

In their review of the literature on informal employment in Africa, Heintz and Valodia found that in those countries that disaggregate statistics by sex, a larger share of women's employment was in the informal sector (Heintz and Valodia, 2008, p. 8). Moreover, in the majority of sub-Saharan African countries most workers in the informal economy earned extremely low incomes (ibid., p. 17).

In India, rural workers who migrate to urban areas are overrepresented amongst own-account workers, such as street vendors and waste pickers where they have no access to labour and social protection (Sankaran, Sinha and Madhav, undated). Women, who are often intra- or inter-national migrants and who are drawn from groups that are subordinated on the basis of race, ethnicity, caste, or language, predominate within domestic work where they are profoundly isolated since they are required to live in their employer's home and work excessive hours (Razavi, 2007).

Child labour tends to predominate in the informal economy. Child labour is the subset of children's work that is injurious, negative, or undesirable to children and, as such, constitutes an unacceptable form of work.[41] It is more extensive in some regions than others. Although the largest absolute

number of child labourers is found in Asia and the Pacific, sub-Saharan Africa has the highest rate of child labour (ILO, 2013g).[42] Agriculture accounts for 59 per cent of all those in child labour and over 98 million children in absolute terms, and it is one of the three most dangerous sectors measured in terms of work-related fatalities, non-fatal accidents, and occupational diseases. Child labour in agriculture consists primarily of work on smallholder family farms, although it also includes livestock production, fishing, and aquaculture. The ILO estimates that in 2012, a total of 54 million child labourers were working in the services sector, with another 12 million in industry. Domestic work, which involves a total of 11.5 million children, is the primary location of child labour in the services sector, which also includes primarily informal work in hotels and restaurants, in street selling and other forms of commerce, in car repair shops, and in transport (ibid., p. 23). Child labour in industry is concentrated in informal settings in construction and manufacturing. Child labourers are primarily unpaid family workers, a category that accounts for more than two-thirds of child labourers (68 per cent). Less than a quarter are in paid employment (23 per cent), with only 8 per cent of child labourers in self-employment (ibid.). With the exception of domestic work, which takes place in private homes and, typically, outside the reach of workplace inspections, boys outnumber girls in child labour in all sectors.

Informalization and unacceptable forms of work

Informalization is “the process by which employment is increasingly unregulated and workers are not protected by labour law” (Benjamin, 2011, p. 99). Initially observed by Castells and Portes, the link between informalization and labour market flexibility was taken up by Guy Standing (1999, p. 585), who argued that there has been an “informalization” of employment in developed countries, such that “a growing proportion of jobs possess what may be called informal characteristics, i.e. without regular wages, benefits, employment protection, and so on”. Later he expanded the concept to include three forms of informalization. The first predominates in low-middle income and the least developed countries, especially in Latin America and South Asia, and “it consists of the movement of petty production activities in the slums, into low productivity, low income livelihoods to achieve survival” (Arnold and Bongiovi, 2013, pp. 295–296, referring to Standing, 2008). The second type is when firms use arrangements that distance, fragment, or fissure employment relations by, for example, using subcontractors or bogus self-employed workers who are disguised employees. The third refers to contracting for work in ways that “avoid tax and social contributions” in order “to achieve systematic evasion of regulatory safeguards” (ibid.). These different forms of informalization reach across countries with different levels of economic development,

although some tend to predominate more in some economies than others. For example, the second type has been much more common in advanced economies than other two forms (Arnold and Bongiovi, 2013, p. 296).

Across Latin American countries, informalization has led to a growing reliance on precarious forms of survival "particularly for the poorest households but also affecting other sectors. Household survival strategies include very unstable links with the labor market, combining, often within short time periods, wage labor and self-employment as well as temporary migration (domestic and international)" (Benería, 2001, pp. 35–36). Informalization has made work in India and in Africa, which have very small formal sectors, even more precarious, as growing numbers of workers are not protected by labour law (Sankaran, 2012; Benjamin, 2011; Maiti, 2013; Heintz and Valodia, 2008; Chen and Doane, 2008). As well, countries with lower-middle incomes or that are the least developed continue to experience the growth of subsistence activities generated by the inability of their economies to absorb the unemployed and underemployed (Benería and Floro, 2005; Tsikata, 2011).

The most unacceptable forms of work are in the informal economy (Marshall, 2013; Freije, 2001; ILO, 2002). Child labour, which is an unacceptable form of work, predominates in the informal sector. Moreover, there is also a significant overlap between informal employment and forced labour (ILO, 2013h), which is the focus of the next section.

1.6. Forced labour

Forced labour as unacceptable work

The global struggle to eliminate forced labour is fundamental to the protection of workers from unacceptable forms of work (ILO, 2013j, para. 4). Not only are all forms of forced labour unacceptable, the indicators that have been developed to identify forced labour can also be used to discern forms of work that are unacceptable despite the fact that they might not meet the legal standard of forced labour.

The principles embodied in the ILO forced labour Conventions are almost universally accepted and endorsed, and they are a key part of the fundamental rights of human beings (ILO, 2007).[43] In 2014, the International Labour Conference adopted a Protocol to the Convention on Forced Labour, as well as Recommendation No. 203 on Supplementary Procedures for the Suppression of Forced Labour.[44] The definition of, and indicators for, forced labour provide a great deal of assistance in identifying unacceptable forms of work. Not only is work that meets the legal threshold of forced labour clearly unacceptable, the approach to forced labour that conceptualizes it

as a continuum offers important lessons for how to identify unacceptable forms of work.

The Forced Labour Convention overlaps with other international instruments that prohibit exploitative and coercive practices that are considered to be violations of international human rights. Slavery was defined in the first international instrument on the subject in 1926 as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.[45] Slavery is an extreme form of forced labour, and it was of particular concern in 1930, when forced labour was still prevalent in large parts of the colonized world (ILO, 2005b, p. 8). The use of forced labour by States during the Second World War and its aftermath led to the adoption of Convention No. 105, which was aimed at the abolition of compulsory mobilization and use of labour for economic purposes, as well as at the abolition of forced labour as a means of political coercion or punishment in various circumstances (ibid.). In the meantime, "the United Nations adopted its Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, which focuses more on structural issues such as debt bondage and serfdom, then widely prevalent in developing countries, but which many States were determined to eradicate through land, tenancy and other social reforms" (ibid.). While some of these "older" forms of forced labour persist, some, like bonded labour, which hinge on debt, have been adapted to new populations and sectors, and other distinctive forms have emerged. Forced labour overlaps with trafficking, which, since 2000, has its own international Protocol.[46]

Forced labour is defined in Article 2(1) of Convention No. 29 as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". This broad definition was recently reaffirmed in the Protocol of 2014 to the Forced Labour Convention, 1930 (Article 1(3)). Over the past 80 years, ILO supervisory bodies have elaborated the definition in response to the different ways in which workers are coerced to work, and in doing so they have provided guidance on the two key elements of the definition: menace of penalty and freedom of choice (ILO, 2007, pp. 19–20). Menace of penalty includes penal sanctions, threat of violence and death, the denial of rights and privileges, denunciation to state officials, nonpayment of wages, enforcement of debt, and dismissal.[47] Freedom of choice involves both the form and subject matter of consent as well as the role of external constraints or indirect coercion (ibid., p. 20). A common misunderstanding is that those in forced labour had to be *forced* to work. When deception or fraud about the conditions or nature of the work is present, the initial consent of a person to do the work is rendered irrelevant (ibid., p. 20). The crucial question is whether or not the worker is free to leave work without repercussions. The Committee of Experts

has also addressed the specific issue of consent regarding children (ibid., p. 21, para. 41).[48] The Worst Forms of Child Labour Convention, 1999 (No. 182), specifically covers forced labour of children aged less than 18. Although forced labour takes a wide variety of different forms:

> … it displays many common features: perpetrators prey on vulnerable people who are unorganized and unable to defend and protect themselves; the means of coercion used may be overt in the form of physical restrictions or violence, but are often more subtle, involving deception and threats; and manipulation of wages, advance payments and debts for illegal job-related costs is widespread. Unclear or disguised employment relationships, particularly in the informal economy, represent a particular risk factor. Gaps in national legislation and law enforcement, and in coordination between countries, facilitate the crime (ILO, 2013h, p. 2).

The Protocol to the Forced Labour Convention explicitly recognizes the evolution in the context and forms of forced labour, and it regards trafficking as a contemporary form of forced labour.[49]

In the report *Strengthening action to end forced labou*r, the ILO emphasized the link between forced labour and multiple simultaneous violations of labour law, identifying, in particular, the importance of the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129); the Employment Policy Convention, 1964 (No. 122); the Private Employment Agencies Convention, 1997 (No. 181); and the Employment Relationship Recommendation, 2006 (No. 198) (ILO, 2013h, pp. 9–10).[50] The Protocol and its attendant Recommendation, as well as the related reports and discussions, recognize the need to mobilize labour market institutions in order to fight forced labour.

Forced labour indicators and a continuum of forced labour

The ILO has provided greater precision in the application of the concept of forced labour by developing indicators for forced labour and treating it as a spectrum of activities ranging from more or less coercive and exploitive.[51] The ILO's 2009 report *The cost of coercion* identified a continuum of exploitation "including both what can clearly be identified as forced labour and other forms of labour exploitation and abuse" (ILO, 2009b, pp. 8–9). It suggested the utility of considering slavery and slavery-like practices as one end of the spectrum and situations of freely chosen employment at the other end, with "a variety of employment relationships in which the element of free choice by the worker begins at least to be mitigated or constrained, and can eventually be cast into doubt" in between (ibid., p. 9).

The continuum approach to exploitation for identifying forced labour was also adopted in a report commissioned by the Joseph Rowntree Foundation into forced labour. Klara Skrivankova (2010, p. 19) argued that:

> … the continuum of exploitation captures not only the complex combination of situations that exist between decent work and forced labour (an environment that permits the existence of sub-standard working conditions), but also an individual work situation, as it evolves over time. The continuum of exploitation aids understanding of the persistent problem of the changing reality of work, captures various forms of exploitation up to forced labour and assists in identifying ways of addressing it.

An advantage of the continuum approach is that it appreciates the extent to which individual work profiles and labour markets are not static, but dynamic. Another benefit is that it is compatible with drawing distinctions regarding degrees of unacceptability, and it can be used to evaluate work across a range of different political economies.

Coercion, control, and deception are the distinguishing features of forced labour. Coercion and control refer to specific employer practices, such as restrictions on freedom of movement, violence, retention of identity documents, threats and intimidation, and the manipulation of debt. These forms of coercion can also be involved in the recruitment process, which is often organized by recruitment agencies or labour brokers. Deception over the nature and terms of the job and fraudulent documentation are most likely to pertain to the process of recruitment, and here migrants (both inter- and intra-national) are especially vulnerable to forced labour. However, deception can also arise at the place of employment when contracts are substituted, wages are not paid, or fraudulent deductions are made. Coercion and deception in the context of forced labour ranges along a continuum from chattel slavery through debt bondage and excessive working hours in an employer's private home with no time off for leisure, privacy, or wages to recruitment practices in which identity papers and wages are withheld.

Vulnerability to forced labour

Notions of vulnerability that embrace characteristics of the product and labour markets in which work is situated assist in identifying the groups of workers who find themselves in forced labour and the sectors in which forced labour prevails. In the Preamble to the 2014 Protocol to the Forced Labour Convention, the International Labour Conference recognized that the number of workers who are in forced or compulsory labour in the private economy has increased, "that certain sectors of the economy are particularly vulnerable,

and that certain groups of workers have a higher risk of becoming victims of forced or compulsory labour". Although anyone can be a victim of forced labour, members of the most vulnerable groups (such as children, migrant workers, domestic workers, agricultural workers, workers in informal employment, and members of indigenous communities) are the worst affected (ILO, 2013h). There are a number of factors that increase vulnerability to forced labour, including "discrimination and social exclusion, the lack or loss of assets (including land) and of local jobs or alternative livelihoods, and inadequate skills or access to formal credit and social protection systems, which may be related to gender or indigenous status" (ibid., p. 26).

Several ILO standards explicitly prohibit forced labour or related practices among specific categories of vulnerable workers. These include:

- The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), which calls for measures to suppress clandestine movements of migrants in abusive conditions (Article 3) and provides that one of the purposes of those measures is to enable the prosecution of labour trafficking (Article 5);
- The Indigenous and Tribal Peoples Convention, 1989 (No. 169), which prohibits the exaction of compulsory personal services (Article 11) and requires ratifying States to ensure that indigenous peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude (Article 20(3)(c));
- The Worst Forms of Child Labour Convention, 1999 (No. 182), which prohibits "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict" (Article 3(a)) as worst forms of child labour against which Members have to take immediate and effective measures to secure their prohibition and elimination; and
- The Domestic Workers Convention, 2011 (No. 189), which, in relation to domestic workers, calls for measures to respect, promote, and realize the fundamental principles and rights at work, including the elimination of all forms of forced or compulsory labour (Article 3(2)) (ibid., p. 9).

Migration, both within a country and across national borders, has exacerbated vulnerability to forced labour: "Almost half of all victims end up in forced labour following movement within their country (15 per cent) or across international borders (29 per cent)" (ILO, 2013i, pp. 2–3). Several factors, either individually or combined, that make migrants vulnerable to forced labour include: dependency on recruiters for information and access to migration channels; immigration status and ability to obtain lawful residence; and

physical as well as psychological isolation (Anderson and Rogaly, 2005, p. 43; ILO, 2013i).

Vulnerability to forced labour increases when workers, such as domestic workers, are subject to multiple forms of dependency on employers (including for housing, food, and work permits). Specific factors affecting children include the practice of sending them to live with relatives in urban centres, the lack of local schools, and low educational expectations for girls. The manipulation of credit and debt, either by employers or recruiting agents, is a key factor in entrapping vulnerable workers in forced labour situations (ILO, 2009b, para. 40).

Forced labour is particularly widespread in domestic work, agriculture and horticulture, construction, garments and textiles under sweatshop conditions, catering and restaurants, entertainment, and the sex industry – industries that lend themselves to abusive recruitment and employment practices (ILO, 2005b, para. 250). It is also associated with certain business models and practices in these sectors (Allain et al., 2013). Long and complex supply chains involving multiple subcontractors or spanning several locations or countries present challenges to enforcing labour law and thus provide a fertile ground for forced labour to take root. Business practices that "include: excessive pressure on employers to cut costs, especially in labour-intensive industries, or unrealistic production deadlines or targets imposed by buyers; …" contribute to forced labour (ILO, 2013h, p. 26).

Forced labour is an unacceptable form of work; it undermines a person's human dignity and violates fundamental human rights. The forced labour indicators can be used to identify the kinds of conditions and features that make work unacceptable, and the continuum approach appreciates the range of different types of forced labour that persist and UFW on the margins of forced labour. Effective enforcement of key labour standards and the mobilization of key labour market actors, such as labour inspectorates, employers' and workers' organizations, would help to eradicate forced labour (ibid., pp. 29–32). The connection between enforcing crucial labour law standards and eliminating forced labour will be taken up in the next chapter.

Conclusion

This chapter has reviewed the most significant academic and policy discourses pertaining to the quality of jobs in order to identify unacceptable forms of work, which deny fundamental principles and rights at work, put at risk the lives, health, freedom, human dignity and security of workers or keep households in conditions of poverty (ILO, 2013a, para. 49). Beginning with a discussion of discourses that create an imagery of decent and good jobs,

the focus of the chapter then shifted to discourses that identified features and dimensions of work that make it unacceptable. While some of the discourses that can be used to identify deleterious aspects of work tend to be taken up in countries with specific levels of development and by different organizations (for example, precarious work is more frequently used to refer to work in advanced economies whereas informal work has broader application in low- and middle-income countries), the common features that make work unacceptable across countries with widely diverging levels of economic development have been emphasized. The chapter has also identified where, and the extent to which, the different discourses that pertain to unacceptable forms of work overlap. Thus, this analysis provides a robust and comprehensive review of the conditions and features that make work unacceptable, and furnishes the basis of the multidimensional model of UFW developed in Chapter 2.

2 Towards a multidimensional model of UFW: The substantive dimensions of unacceptability

Introduction

Chapter 1 of this study investigated the academic and policy literatures that – according to diverging criteria – identify and categorize central dimensions of working life as either desirable or unacceptable. These discourses were examined with the specific aim of identifying their conceptions of unacceptability. Chapters 2 and 3 draw on these typologies, with significant adjustments, to generate a novel model of unacceptable forms of work (UFW).

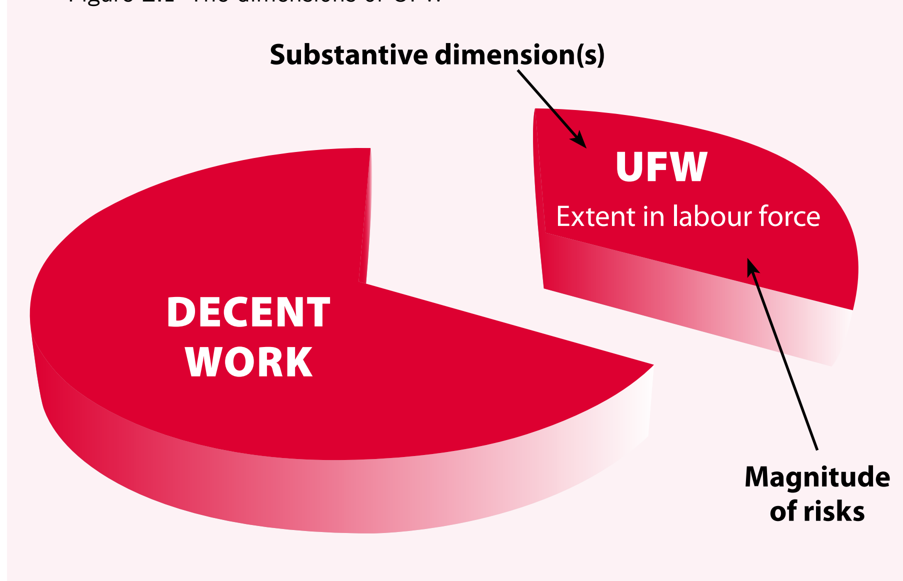
The central feature of this model, outlined in detail in the following sections and in Chapter 3, is that it presents UFW as a multidimensional concept. The model is therefore designed to capture the multifaceted nature – and the complexity – of unacceptability in contemporary working life.

Unacceptable forms of work are configured along two axes (figure 2.1). The first comprises the substantive dimensions that make work unacceptable, which are the subject of this chapter. The second refers to a spectrum of unacceptability encompassing the set and magnitude of risks to which a worker is exposed, as well as violations of a worker's human rights, and is examined in Chapter 3.

This multidimensional framework of UFW is meant to provide a common system of coordinates, similar to latitude, longitude, and elevation in physical geography, which can be used to map the extent, depth, and contours of UFW across a wide variety of terrain. In effect, it is a diagnostic tool for evaluating whether or not a particular form of work is unacceptable. It can also be used to discern patterns and practices that are common to UFW, such as the groups of people involved in it or markets in which it is found, as discussed in more detail in Chapter 3.

This framework is also meant to be flexible enough to take into account the contingent nature of unacceptability. What is perceived as unacceptable

Figure 2.1 The dimensions of UFW



work can vary according to socio-economic and cultural context, although it is important to recognize a core of basic and universal human rights, such as the prohibitions against forced labour, discrimination, child labour, and denial of freedom of association, for all working people. Moreover, the incidence and magnitude of unacceptable work differ from country to country, and often depend upon the level of economic development, the political governance structures, and the health of civil society, as well as specific labour market institutions and social actors, especially the social partners. In light of this complexity, it is crucial to activate local knowledge and involve key labour market actors in mapping both the incidence and magnitude of unacceptable forms of work.

With regard to the substantive dimensions of unacceptability, the multidimensional model of UFW diverges from the typologies assessed in Chapter 1 in that it is explicitly designed to be globally applicable. The model is intended to be used in research and policy interventions in countries at a range of levels of development. To this end, it identifies a set of dimensions of unacceptability and related indicators. These dimensions and indicators are intended for use by local policy actors to identify UFW in the local context.

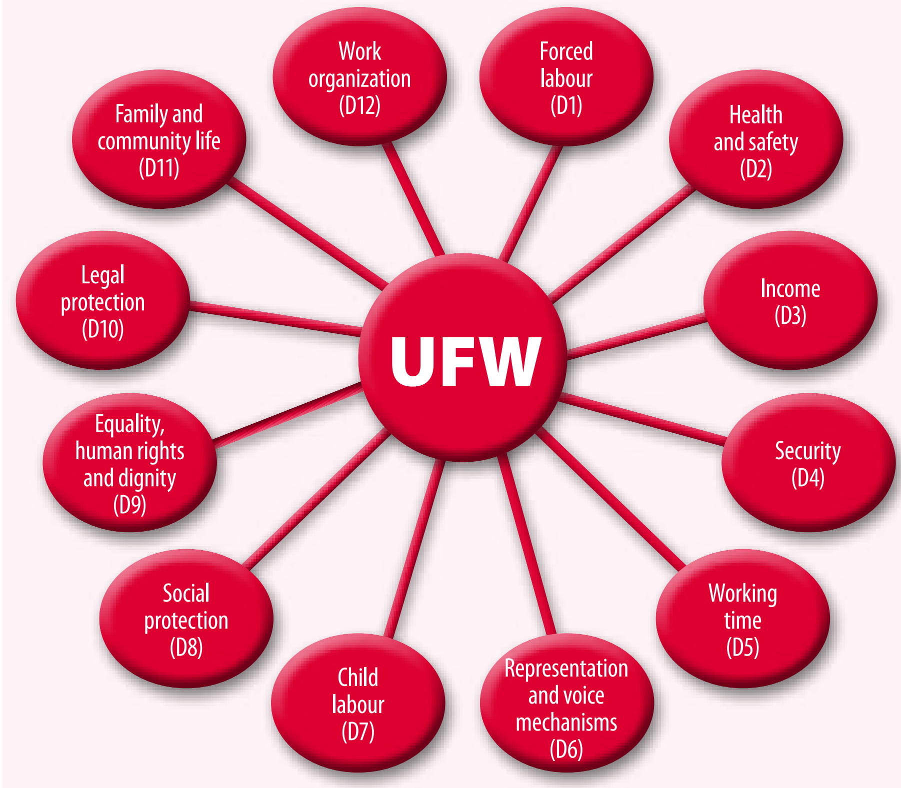
The model is also a normative model, in that it can readily be mapped to existing regulatory schema, including the international labour standards (ILS). It includes both participatory and protective standards (Sengenberger, 1991). This facet of the model harks back to section 1.1, in which the implications

of decent work as a normative model tied to the ILS were elaborated. Finally, the assumption that underpins this model is that the purpose of identifying UFW is to devise targeted social and economic policies that aim to eliminate, replace, or improve jobs that are entirely unacceptable. The aim is therefore to construct a robust conception of UFW that can be operationalized for research and for policy intervention.

2.1. The substantive dimensions of UFW

The model of UFW outlined in this chapter contains 12 dimensions of unacceptability. These dimensions have been selected from the academic and policy discourses that were reviewed in Chapter 1, with significant refinements, to develop a globally applicable depiction of unacceptable work.[52] The outcome is the model of UFW in figure 2.2.

Figure 2.2 The substantive dimensions of UFW



The 12 dimensions of UFW elaborate and expand upon on the models examined in Chapter 1. In this regard, the multidimensional model reflects the evolution of a number of these discourses (notably on precariousness, vulnerability, and informality), from a relatively narrow focus – centred on a limited range of characteristics – to more expansive typologies that recognize continuums of unacceptability (see in particular section 1.6). These dimensions of UFW, further, construct a broader model than the earlier conceptions of UFW that are focused exclusively at the level of the job. The model captures the range of dimensions of working life, including the nexus of work and family, social protection, collective and individual aspects, job content, and the degree of legal protection afforded to workers to identify and enforce their entitlements. It also encompasses the four fundamental principles and rights at work.

The various typologies of precariousness inform the Security dimension (D4 below) by encompassing, e.g., casualized forms of work. The multidimensional model, however, does not assume any contractual or temporal form of employment inevitably to generate precarious outcomes (the exception is day labour in Dimension 4 (D4)). It therefore recognizes that not all forms of employment that deviate from the standard employment relationship are unacceptable (see further section 1.2). The model also captures precariousness that is encased in a standard-form job. A similar observation can be made about the treatment of "informal work", which is not assumed in this model of UFW to be inevitably or uniformly deleterious. In consequence, informality is not identified as a distinct dimension, to recognize that informalization is a dynamic process, rather than a static outcome (see further section 1.5). This approach recognizes that informal work can be a valid source of growth, and acknowledges that sophisticated formalization strategies can recognize and embrace the positive aspects of at least certain forms of informal work. Recent efforts to regulate domestic work, for example, recognize that it is both frequently informal work, in at least some dimensions, and a highly significant source of female employment. These efforts also recognize the capacity for flexibility in the working hours of domestic workers that have the potential to accommodate their caring responsibilities. Specific legal frameworks are being devised, then, that aim to support compatible flexibilities for domestic workers and their employers (see further McCann and Murray, 2014; see also Fenwick et al., 2007).

Certain elements of the multidimensional model are found across the pre-existing discourses of unacceptability. Regulatory protection (D10), for example, is emphasized in both the precariousness and vulnerability literatures. Elements of Work organization (D12) are found most prominently in the good jobs/bad jobs and flexibility literatures. Certain elements of the multidimensional model, in contrast, are neglected in the existing typologies. The prominence of social dialogue in the decent work literature, for example,

is recognized in the inclusion of the collective dimensions of UFW in Representation and voice mechanisms (D6).

A number of aspects of the model are worth highlighting. First, it is centred on outcomes, rather than processes. As an illustration, the Health and safety dimension (D2) captures work that presents a risk to well-being, rather than the absence of risk assessment mechanisms. The dimensions are also elaborated irrespective of organizational or institutional origins. In certain settings, for example, health care (D8) is a contractual entitlement of employment, while in others it is a universal state entitlement. More broadly, no particular institutional arrangements are assumed to generate UFW (except for the absence of effective enforcement and implementation of legal standards, in Legal protection (D10)).

2.2. An indicators-based model of UFW

Each dimension of UFW is categorized into a set of indicators, indicated in the typology below.

These indicators are intended to be taken into account by researchers and policy-makers in constructing models of UFW that are suited to distinct regional, national, sectoral or occupational contexts. This model also accommodates the inclusion of additional indicators. This elaboration of UFW is therefore designed to be applied to countries at all levels of development.

Some of the indicators are absolute (or fundamental), while others are supplementary. Broadly, they tend towards a preference for objective elaborations of unacceptability (the exceptions are psychological risks (D2) and intense mental demands (D12) – see further the discussion of job quality in section 1.2).

Two features of the UFW indicators are worth highlighting:

A dynamic model: The fundamental and supplementary indicators

It has already been noted that the multidimensional model of UFW is designed for policy-makers and researchers to elaborate typologies of UFW tailored to the relevant socio-economic context. Certain indicators, however, are designated as fundamental. These indicators identify work that is unacceptable and, therefore, they are an essential feature of all models of UFW. These indicators are starred in the following typology (*). Notably, these include the fundamental principles and rights at work.

The fundamental indicators should therefore feature in all national and sectoral typologies of UFW, and they often indicate where the most urgent policy interventions are required. Other indicators are assumed to be context-specific, and linked to levels of development. Models of UFW tailored

to the advanced industrialized countries, for example, would be expected to include all of the indicators. UFW is therefore a contextual model. It is also dynamic. The inclusion of fundamental and supplementary indicators presents a path for national policy actors incrementally to refine their economic and labour strategies towards the phased elimination of UFW.

UFW as a normative model

These dimensions of UFW are generated in part by the notion of decent work. In consequence, most dimensions can be linked to related international labour standards (ILS). The 2008 Declaration on Social Justice for a Fair Globalization clarified that the realm of decent work is subject to boundaries set by the ILS. In this analysis, then, UFW are working relations that exist beyond the normative floor of the international standards (see section 1.1). For this reason, where ILO Conventions relate to the dimensions of UFW they are cited in the typology below.[53]

It should be noted, however, that the multidimensional model does not exclusively parallel the ILS. UFW, in this iteration, is a more elaborate concept. The multidimensional model is applicable to countries in which the relevant ILO standards have not been ratified. It is also applicable to regulatory levels below those on which the ILS commonly operate: at the levels of sector, industry, and employer.

The model of UFW elaborated in this chapter also responds to certain gaps in the body of the international standards. Most significantly for the identification of UFW in contemporary labour markets, the ILS do not at present provide a comprehensive framework for conceptualizing and addressing "non-standard" forms of employment, in particular, profoundly casualized forms of work, and informal work. The indicators respond to these limitations (see, e.g. "insufficient hours to satisfy basic needs" (D5)). More broadly, the indicators do not assume the worker to be an employee (although some of the indicators are suited to conventional definitions of wage work). Thus the indicators on income extend beyond wage earners to payments that take a different form (D2). This approach responds to the functional dimension of decent work (see section 1.1) by extending the ambit of the multidimensional model beyond both the conventional employment relationship and the formal labour market. As the ILO has observed:

> In developing effective strategies, a number of international labour standards should provide the reference point and a benchmark for comprehensively addressing unacceptable forms of work. In addition to the eight fundamental and four governance Conventions, relevant up-to-date international labour standards concerning social security, occupational safety and health, wages,

> working time and the employment relationship are among the most relevant. These standards and others should guide national action on measures to be taken to address unacceptable forms of work including through the promotion of their ratification and effective implementation (ILO, 2014b, p. 6).

It should be noted that this typology – and the distinction between the fundamental and supplementary indicators – is not intended to reclassify the international standards according to a novel hierarchy. The intention is rather to sequence policy and regulatory engagements with the demands of each standard.

Dimensions of UFW

Dimension 1 Forced labour

*Worker subject to forced labour (including slavery, debt bondage, trafficking in persons, forced prostitution, forced overtime, etc.).[54]

Dimension 2 Health and safety

*Risk to health and well-being (physical and mental).[55]

Dimension 3 Income

*Inadequate payment (too low to satisfy basic needs);[56]

*Insecure payments (e.g. wage arrears, irregular payments, unjustified deductions, performance of unpaid work, illegitimate/excessive recruitment fees, etc.).[57]

Dimension 4 Security

*Day labour (casual contracts, zero hours contracts, etc.);

Insecure employment (no certainty of continuing employment, termination is possible without a valid reason[58] or without procedural[59] or other[60] protections);

No prospects for promotion;

No opportunities for skills development or training.[61]

Dimension 5 Working time

*Excessive weekly hours;[62]

*Weekly rest of less than 24 hours;[63]

*Insufficient daily rest/family/community time;[64]

*Forced overtime;[65]

*Insufficient hours (too few to satisfy basic needs);

*Unprotected night work (no health assessments, no capacity to transfer in essential circumstances, no additional compensation, etc.);[66]

*Paid annual vacation of less than three working weeks;[67]

Unpredictable schedules;[68]

Lack of influence over working hours (including the flexibility to deal with family and community obligations;[69]

Insufficient rest breaks during the working day.[70]

Dimension Representation and voice mechanisms

*The right to freedom of association, the right to organize and the right to collective bargaining are not respected;[71]

Lack of consultation, denial of participation, or failure to provide voice mechanisms.[72]

Dimension 7 Child labour

*Child labour.[73]

Dimension 8 Social protection (health care, pension coverage, paid sick leave, unemployment insurance, etc.)

*Social protection inadequate to satisfy basic needs.[74]

Dimension 9 Equality, human rights and dignity (irrespective of gender, ethnicity, race, nationality, caste, family status, age, disability, religion, sexual orientation, indigenous identity, HIV-status, trade union affiliation and activities, political opinion, contractual status/working arrangements, etc.)

*Discrimination in working life (including access to education and vocational training);[75]

*Unequal pay for work of equal value;[76]

*Abuse, violence and harassment;[77]

*Lack of respect for human rights,[78] including the lack of respect for privacy (e.g. restrictions on transfer of earnings, privacy violated in employer-provided housing, confiscation of possessions, etc.);[79]

Lack of respect for national, ethnic and social identities and cultures.[80]

Dimension 10 Legal protection

*Exclusion from legal protections;[81]

*Inadequate implementation/enforcement of legal protections (ineffective inspection systems, unspecified allocation of responsibilities in multilateral relationships, etc.);[82]

*Inadequate regulation of the recruitment or placement of workers by employment agencies, labour providers, etc.;[83]

Lack of information on legal rights;[84]

No express contract.

Dimension 11 Family and community life

*No entitlement to paid maternity leave of at least 14 weeks;[85]

*No maternity protection;[86]

No parental leave;[87]

Work inhibits family or community life (e.g. engagements terminated because a worker has family responsibilities,[88] no flexibility to deal with family or community obligations[89]).

Dimension 12 Work organization

Lack of control over the work process (task, decision, timing, method, etc.);

Excessive workload;

Intense physical and mental demands.

This indicators-based model, then, elaborates in detail the range of outcomes to be tackled by policy-makers in the design and testing of regulatory interventions on UFW. As mentioned earlier, the classification of these indicators as either fundamental or supplementary offers a dynamic model, which prompts policy-makers to sequence economic and labour strategies towards the phased elimination of UFW. In D10, for example, institutional deficiencies – legislative exclusions and flaws in implementation and enforcement mechanisms – are expected to be remedied before information deficits are tackled (lack of information on legal rights, absence of express contracts). Similarly, under D11, the expectation is that the most urgent protections on the birth of a child (maternity leave and protection) will be introduced prior to the entitlements that underpin broader elements of family and community life. This programmatic approach is further developed in the following chapter at the level of regulatory design and implementation.

Conclusion

This chapter has built on the study's earlier analysis of the relevance of contemporary policy and regulatory discourses to UFW. Drawing on the most useful of the concepts and typologies highlighted in Chapter 1, it has proposed a "multidimensional model" of UFW and outlined its substantive dimensions. The central feature of this model is that it presents UFW as a multifaceted concept. Only such a model, it is suggested, is capable of capturing the diversity and complexity of UFW as they emerge in different settings and of being applicable to countries at a range of levels of development. The chapter has identified 12 dimensions under which unacceptability can emerge: forced labour; health and safety; income; security; working time; representation and voice mechanisms; child labour; social protection; equality, human rights and dignity; legal protection; family and community life; and work organization. These dimensions are designed to capture the range of facets of working life: the collective and individual; the intersection of paid work and family life; the content and quality of a job; and the legal protection available to a worker whose rights have been infringed, etc.

Each of the 12 dimensions is captured in a set of indicators of unacceptability, which are designated as either fundamental or supplementary. This classification renders the multidimensional model flexible and with the capacity to be adjusted to be relevant to a range of countries and sub-national settings. The fundamental indicators (e.g. coercion, risks to safety, health, and well-being, inadequate or insecure payments) denote unacceptability in all settings. They can therefore be taken to indicate where the most urgent policy interventions are required. The supplementary indicators are context-specific and expected to be contingent on levels of development. The multidimensional model of UFW is therefore contextual and dynamic. The inclusion of fundamental and supplementary indicators presents a path for national policy actors incrementally to refine their economic and labour strategies towards the phased elimination of UFW. The chapter has also highlighted that the multidimensional model is a normative concept that can, in many of its elements, be mapped to existing regulatory schema including the ILS. Regulatory standards and strategies are therefore available to be adopted and refined by policy actors at local level. The final chapter of this study further elaborates the dimensions of this model and considers the strategies of regulatory design and implementation that can curb or eliminate UFW.

3 Tackling unacceptable forms of work: The spectrum of unacceptability and strategic regulation

Introduction

This chapter develops a programmatic approach to answering the question of how to tackle UFW. Across this study, this task has been broken into three lines of inquiry. The first involved surveying the relevant academic and policy literature in order to identify the specific kinds of conditions, practices, and arrangements that make work unacceptable, which was the focus of Chapters 1 and 2. Chapter 2 identified the set of substantive dimensions of unacceptability. Yet the incidence, form and magnitude of UFW differ from country to country, and depend upon factors such as the level of economic development, regulatory and institutional frameworks, and the presence and strategies of social actors. Chapter 2 explained that the indicators are intended to be used in the construction of models of UFW that are suited to local settings. This chapter explains how the multidimensional model can be used to identify UFW across a range of work arrangements and social and economic contexts. It identifies criteria for the second enquiry, to determine which forms of UFW are the priority for regulatory intervention in a particular context. This predictive model is discussed in section 3.1.

The third line of enquiry concerns regulatory design and implementation, which is part of broader debates about the modes of regulation best suited to contemporary labour markets. The goal is to design and implement regulatory interventions that are integrated and dynamic, and that will have the broadest and most sustainable effect. The broader literature about designing effective labour regulation is relevant to developing a programmatic approach to

tackling UFW (Lee and McCann, 2011; McCann et al., 2014; Marshall and Deakin, 2010; Deakin, 2011). The argument that labour law in general hinders economic growth is not well founded; labour laws can play an important development role by, among other things, providing insurance against labour market risks, assisting market access, and overcoming information asymmetries and collective action problems (Deakin, 2011). Section 3.2 outlines a comprehensive framework for development-friendly labour law reform devised by Marshall and Deakin, and emphasizes how it can be adapted to focus on UFW. This discussion serves as a bridge to section 3.3, which outlines the components of a strategic approach to eliminating UFW. Section 3.4 provides some examples of dynamic, integrated, and strategic approaches to combating UFW.

3.1. Social location and social context: A predictive model

Chapter 2 outlined that UFW are configured along two axes. The first is the dimensions that make work unacceptable. The second axis comprises a spectrum of unacceptability, which encompasses the set and magnitude of risks to which a worker is exposed as well as violations of a worker's human rights. The multidimensional model of UFW introduced in the previous chapter captures both axes and was represented in figure 2.1 (see Chapter 2, Introduction).

The multidimensional model has already been explained to be a diagnostic tool that can be used to evaluate whether or not a particular form of work is unacceptable and to discern patterns and practices that are common to UFW. For instance, as discussed in Chapter 1, people who are members of groups that are differentiated along status markers such as sex and caste or migration status are more likely to be found in unacceptable forms of work, and certain types of work – such as forced labour and informal work – are more likely to be unacceptable. Moreover, some markets are structured in ways that increase the vulnerability of workers to poor outcomes and labour market risks (Weil, 2014); for example, transnational value chains involving goods and people can be used to shift risks down the chain and on to workers (Anner, Bair and Blasi, 2013). De facto and de jure exclusion from labour and social protection also contributes to making certain forms of work, such as domestic work, unacceptable (Mantouvalou, 2012; Mullally and Murphy, 2014). Multiple labour law violations are correlated with forced labour (ILO, 2013h, p. 57).

It was also noted in Chapter 2 that the incidence and magnitude of unacceptable work differs from country to country, and depends upon factors such as the level of economic development, governance structures, etc.

The presence of UFW also depends on the social actors, especially the social partners. It is therefore essential to involve labour market actors in mapping the incidence and also the magnitude of UFW.[90] It is perhaps even more important to mobilize local actors in order to eradicate unacceptable forms of work.

The multidimensional model of UFW developed in Chapter 2 is attentive to the identities of working populations, to labour markets, and to the ways in which they interact to produce UFW. It draws upon the conceptions of precarious and informal work, forced labour, and vulnerable working populations to develop predictive methodologies that identify demographic characteristics and labour market locations that are at risk of generating unacceptable forms of work (see section 1.4). It focuses on "the specific vulnerabilities and unfreedoms ... that form part of the socio-economic background to the structure of labour markets" and that make some forms of work unacceptable (Marshall and Deakin, 2010, p. 15).

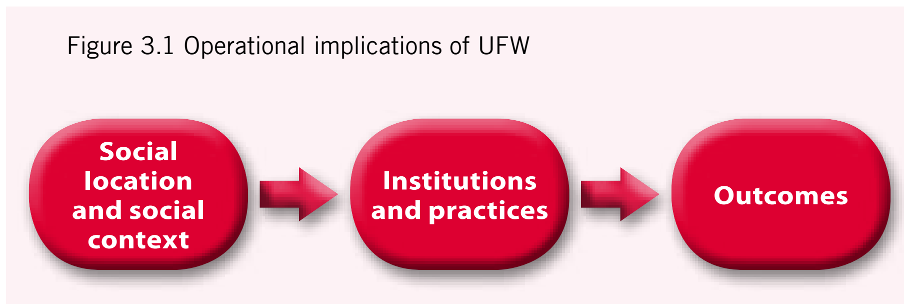
The typology outlined in table 3.1 is intended to capture both elements. As with the substantive dimensions outlined in section 2.1, these categories are intended to be indicative and to vary according to local circumstances.

Table 3.1 Dimensions of social location and social context

Social location: The interaction of social relations (e.g. gender, ethnicity, social class) and legal and political categories (e.g. citizenship) that shape the likelihood of workers to be involved in UFW	**Social context:** The labour market and social welfare institutions and features of the political economy that determine whether work is precarious and the forms that precarious work takes
• Gender • Ethnicity • National origin • Citizenship and immigration status • Social class • Age • Sexual orientation • Family status • Care obligations • Ability • Religion • Caste • Linguistic group	• Sector • Occupation • Industry • Labour market • Product market • Firm size • Contractual form (e.g. temporary, part-time) • Labour market institutions (e.g. regulatory regime, union density) • Social welfare institutions (e.g. social spending) • Geographical region • Levels of atypical employment • Levels of informality

The operational implications of this model are depicted in figure 3.1. Moreover, as we discuss in the next section, a range – if not an unlimitedly diverse range – of institutional arrangements can be used to address UFW.

Figure 3.1 Operational implications of UFW



3.2. Designing effective labour regulation: Development-friendly legal reform

In a recent review of issues that impact upon the design of labour market regulation in poor countries, Marshall and Deakin (2010) emphasized that "proposals for law reform and institutional redesign should be compatible with local regulatory styles, as well as being politically viable" (p. 20). Marshall and Deakin's (2010) framework for development-friendly labour law reform can be adapted for UFW.

Marshall and Deakin developed a comprehensive list of factors to consider as a starting point for labour law and policy, which is provided below in table 3.2. The general factors, which comprise the top half of the list, reflect the significance of considering path dependency, the institutional mix, and roles and resources of labour market actors in designing effective labour regulation. They also draw attention to the need to consider the interaction of contiguous and overlapping policy domains such as labour, social, and tax in order to develop an integrated, systemic, and coherent policy approach (see also Jütting and de Laiglesia, 2009, p. 150).

The second half of Marshall and Deakin's (2010) list refers to the specific criteria for labour law reform, which correspond to the functions of labour market regulation. These criteria overlap to a significant extent with the substantive dimensions of UFW identified in Chapter 2. Economic coordination, risk distribution, and empowerment are ways of categorizing some of the dimensions that make work unacceptable, such as the separation of control/profit from responsibility/risk in value chains, the shifting of risks to vulnerable workers, and the exclusion of workers from institutional support for voice and economic security.

Table 3.2 Checklist for developing and reforming development-friendly labour market regulation

Generic criteria

Incentive compatibility

- Is the law compatible with the economic incentives of private parties?
- Does the law invite destabilization through, for example, incentives for avoidance or evasion of rules, free-riding, or destructive competition?

Systemic fit

- How far does the law work in conjunction with other regulatory mechanisms present in the country in question, including, for example:
  - collective bargaining
  - diversity and discrimination laws
  - occupational regulation
  - activities of employers' associations
  - the corporate governance and financial framework
  - competition law
  - tax law

Context dependence

- Is the law compatible with the level of industrialization?
- Does it match the extent of wage dependency, and the mix of informal and formal workers?
- Does the law take into account the range of different working arrangements in the State, including dependent, semi-dependent, triangular and own account, as well as periods of unpaid work?

Inclusivity of governance

- Does the law encourage participative decision-making, and broader social and civil dialogue, in the formulation of rules?
- Will the design of the law further its take-up, effectiveness and impact?

Institutional capacity

- Does the State have the capacity to monitor and enforce the law?
- Do businesses have the capacity to observe the obligations imposed by this law?
- Do business and employer representative organizations have the capacity to inform members about the law and assist with its enforcement?
- Do labour organizations have the capacity to inform members about the law and assist with its enforcement?
- Is there a place for the involvement of other bodies with an interest in poverty alleviation?
- Are there processes in place which will contribute to building the institutional capacity of each of these players?
- How can the capacity of these parties be improved through the design of institutions?
- Is there a mechanism for continual review of the effectiveness of rules, which contributes to institutional learning and allows parties to share information about what works and what doesn't?
- What links are there with international bodies, so that norms set at the international level can be implemented at the local level, and complaints can be made to international or regional bodies?

Specific criteria

Economic coordination

- Does the law provide for appropriate allocation of decision-making powers within and between organizations?
- Does the law provide mechanisms for the internalization of external costs arising from the decisions and activities of individual organizations?
- Does the law provide a basis upon which coordination problems can be overcome in the provision of collective or public goods concerning matters such as training, occupational licensing and dispute resolution?
- Does the law encourage technological upgrading and improvements in job quality? Are there any additional incentives for compliance and "going beyond the law"?

Risk distribution

- Does the law recognize the unequal bargaining power of parties to work relationships?
- Does the law redistribute risk away from vulnerable parties, or does it compound their vulnerability?
- Does the law distribute risk in such a way that will create incentives to formality or, to the contrary, to avoid the law because risks are better dealt with by informal means?

Demand management

- Does the law contribute to a level of income which will allow workers to meet basic household needs and to participate meaningfully in society?
- Is the income level of the workers set by the law at a level which will stimulate local demand for goods and services?

Democratization

- Does the law provide for the involvement of all workers and employers, either directly in workplace governance or through their representatives, in the formulation of rules governing work relationships?

Empowerment

- How far does the law promote access to and participation in stable and well-remunerated work relationships?
- How far does the law provide for economic security in the event of limits on the availability of stable and well-remunerated work?

Source: Marshall and Deakin (2010).

These criteria can be adapted for developing regulation that targets the most unacceptable forms of work. Regulation that addresses vulnerability, coercion, and deception is especially helpful in the context of combating the most unacceptable forms of work. So, too, is regulation that addresses breaches of fundamental rights such as hazardous forms of child labour and forced labour. The evaluation tool for identifying UFW both complements and supplements the more general framework for labour law reform; what it does is provide a specific focus on UFW, while at the same time ensuring that action targeting UFW is compatible with development.

3.3. A strategic approach to UFW

What forms of unacceptable work should be targeted? The dimensions of unacceptability that were outlined in Chapter 2 can be used by local labour market actors, including workers, workers' representatives, employers, and employer associations in tandem with regulators and policy-makers as objective indicators to determine whether or not work is unacceptable. The indicators were divided into those that are fundamental to any understanding of UFW, and those that should be tackled, if they are relevant, once the fundamental dimensions of unacceptability have been addressed. This distinction between fundamental and supplementary indicators reflects the fact that unacceptable work is located across a spectrum, and that its incidence varies from country to country. Thus, as was explained in Chapter 2, this distinction is designed to assist policy-makers in developing a dynamic strategy that allows for the sequencing of interventions to address UFW. The margins of what constitutes UFW, as well as the means available to tackle UFW, vary depending upon socio-economic and regulatory contexts, and this variance may compel decision-makers to define clear priorities in respect of combating UFW.

The next step, then, is to adopt criteria to determine which forms of unacceptable work are the priority for regulatory intervention in a specific context. The dimensions of unacceptability allow for a degree of flexibility in the targeting of policy interventions in order for local actors to determine their own priorities. It is critical to engage workers and their representatives, employers and their organizations, and relevant civil society groups along with government officials not only in identifying unacceptable forms of work, but also where to target initiatives in light of available resources. Moreover, in targeting specific forms of unacceptable work in a local context it is important to develop a strategic approach. David Weil (2008) has provided four criteria for designing strategic enforcement policies for labour inspectorates. Although applicable across the labour market and focused on enforcement, Weil's criteria can be used to develop a strategic approach for tackling UFW. The four criteria are prioritization, deterrence, sustainability, and systemic effects.

Prioritization suggests that policy-makers should target the most unacceptable forms of work. The dimensions of, and indicators for, UFW developed in Chapter 2 assist in making this determination. Where forced labour is present, for example, it would be a clear target for regulatory intervention (see further Chapter 2, Dimension 1). Regulatory intervention should also target eliminating hazardous child labour (Dimension 7). But, it is also important to take into account the preponderance of different types of unacceptable work, as well as the types and magnitudes of risks and human rights violations involved in a specific form of work. Mobilizing local knowledge is critical in mapping the extent and severity of UFW in a specific context. *Deterrence* has

to do with influencing behaviour that results in unacceptable forms of work. Here the challenge is to develop techniques to achieve compliance that do not drain state resources. Hybrid forms of private–public co-regulation are critical in deterring conditions of work and work arrangements that lead to unacceptable outcomes (Lee and McCann, 2014, p. 24). *Sustainability* has a longer time horizon: it includes not only compliance with standards but also the adoption of practices that reduce the incidence and magnitude of UFW. Activating labour market actors, building the capacity of social partners, and incentivizing key players, like lead firms, is critical to developing sustainable forms of regulation. Weil's final criterion – the potential for *system-wide effects* – is particularly crucial for deciding which form of UFW to target. This criterion shifts the focus from the behaviour of individual employers to a broader level, whether defined by geography, industry, or product market. It recognizes that "[e]mployer practices in the workplace are an outgrowth of broader organizational policies and practices, often driven (implicitly or explicitly) by competitive strategies or forces" (Weil, 2008, p. 356). A strategic approach to targeting UFW needs to go beyond responding to particularly egregious examples to changing the conditions that produce it.

A strategic approach to tackling unacceptable forms of work involves identifying not only the most unacceptable forms of work, but also "the likelihood that an intervention can actually affect behaviour (deterrence) or have lasting effects on conditions (sustainability)" (ibid., p. 354). The goal is for interventions to have system-wide effects.

Drawing on these criteria, a strategic approach to tackling UFW requires careful attention to developing principled and effective policies and tools. Highly relevant in this regard are the principles that support innovative forms of regulation and preventative measures designed to support better enforcement. Regulatory strategies for UFW should not undermine the existing corpus of labour law (McCann and Murray, 2014, p. 330). Implementation has to be progressive, in the sense of evolutionary, incremental, and empirically tested. The broader goal is to build capacities and ensure that labour market actors internalize norms, thus ensuring the sustainability of regulatory interventions (Deakin and Sarkar, 2008). Since regulatory styles and labour market institutions differ across countries and are embedded in different networks and involve a range of different actors, it is critical to involve local labour market actors to develop effective intervention and regulatory mechanisms. Initiatives directed at UFW must be compatible with existing institutions and incentive structures.

Among the principles that underpin the strategic approach, two concepts – points of leverage and institutional dynamism – are central features of dynamic regulatory strategies directed at UFW. Both of these notions are targeted at achieving systemic effects.

Points of leverage

As outlined above, the systemic effects principle demands that policy-makers go beyond responding to particularly egregious labour practices. The focus should instead be on changing the conditions that produce deleterious forms of work. This insight can be developed for UFW to highlight the need to identify the targets of intervention. The aim for policy-makers is to identify points of leverage at which system-wide effects are most likely. These points of leverage may be found on various levels: at the level of geography, sector, product market, etc. Further, they are not possible to predict a priori but have to be identified within a particular country or sector with the input of local labour market actors. Finding effective points of leverage is particularly important in contexts in which resources for addressing labour market disadvantage are profoundly constrained in order to reap the maximum benefit from policy reforms.

Institutional dynamism

The notion of institutional dynamism has been proposed by Lee and McCann (2014) to account for the capacity of legal frameworks to operate beyond their formal parameters. Institutional dynamism captures the influence of labour law norms beyond their formal reach (external dynamism). In this form, it embraces the processes through which labour norms take effect in informal settings (building norms of social behaviour, promoting awareness of statutory standards, etc.). Institutional dynamism also captures the capacity of regulatory regimes to host interactions between a range of institutions (internal dynamism). In the context of UFW, it is suggested that policy actors should remain alert to the dynamic capacities of labour regulation and labour market actors in order to trigger and magnify systemic effects.

A focus by policy-makers on points of leverage and on institutional dynamism is most likely to be effective in eradicating UFW and generating substantial and sustained effects. The next section describes some examples of regulatory initiatives that address UFW in order to illustrate the types of interventions that are considered strategic in light of the criteria developed in this section.

3.4. Strategic regulation in action: Targeting unacceptable forms of work

To illustrate the strategic approach, this section evaluates four examples of regulatory initiatives that address UFW. The first three involve primarily regulatory interventions that have successfully targeted and transformed UFW.

The first two, in particular, illustrate that many of the most unacceptable forms of work are outside of the traditional employment relationship, and involve own-account self-employment, casual work, and informal employment. To be effective in tackling unacceptable forms of work, regulation must extend beyond conventional employment relationships and formal employment to protect workers from unacceptable risks and degrading treatment. Sometimes it is possible to extend existing labour legislation. Yet, in some cases it is not possible or effective simply to extend traditional or existing forms of labour law to these work arrangements. Different institutions may serve the function of labour law, although they might do so in different ways. The third form of regulation reviewed is a traditional technique of labour regulation – the establishment of mandatory minimum wages. The point of this example is to show how carefully crafted regulation can have broader system-wide effects. The final example is included to illustrate what happens when regulation fails to address the key factors that make a form of work unacceptable, as well as to suggest other options that may be more effective.

Informal employment – Casual and self-employed workers: The Mathadi workers

A good example of innovative and strategic form of regulation that was successful in ameliorating UFW is the Mathadi Act, 1969.[91] It targets Mathadi workers, head-load carriers, who carry loads on their heads in ports and on docks, in market yards and wholesale markets, and for transport companies and retail merchants in the state of Maharashtra in India. The work is physically demanding and takes place in challenging outdoor conditions. Prior to the introduction of the Mathadi Act, this work was profoundly insecure. A form of casual day labour, Mathadi work was irregular and without fixed wages, overtime payment, and holiday or leaves. It exemplified an unacceptable form of informal employment; the workers fell outside the scope of social protection, were poorly paid, and had very limited access to medical care.

The Mathadi Act regulates the engagement and conditions of employment of the workers as well as providing social protection and better access to medical services. It does so by establishing a tripartite (representation from workers, employers/users, and the government) Mathadi Board for each district. Each Board directly intervenes in the labour market by acting as the exclusive labour intermediary for the hiring of Mathadi workers, and it sets the relevant wage rate and social security/benefit levy (cess/tax) that the labour user must pay. The Act requires workers and users to register with the relevant Board, which receives the workers' wages and disperses them according to the hours worked by each worker within a set period. The Boards also administer pension funds and workers' compensation as well as providing medical care

and educational assistance for the workers and their families. By 2006, there were 150,000 registered workers (Agarwala, 2013, p. 160).

The Board limits the number of workers it registers so as to reduce unemployment, although it does not directly address the insecurity of what still remains a form of casual work. It also sets wages at a level that provides a living wage, and the workers and their families now have access to social protection and health care. The Act has been successful in formalizing this form of employment, increasing wages for the workers, lifting them and their families out of poverty, and providing insurance against a range of risks (Marshall, 2014, p. 310).

The success of the regulation is dependent upon having functioning boards, which, in turn, depends on the strength and unity of the trade unions that organize Mathadi workers. It was worker unrest that originally led to the development and implementation of the Mathadi Act (ibid., p. 306). Since 2006, union disunity and decline have weakened the effectiveness of some of the Boards (Agarwala, 2013, p. 160). As a result, a small proportion of Mathadi work is now outside the system and operates informally.[92]

What is distinctive about the Mathadi Act as a form of labour market regulation is that each board ensures "that compliance occurs by acting as an intermediary in the hire and payment of workers" (Marshall, 2014, p. 310). What the legislation did was leverage the ability of unions to organize Mathadi workers along with the desire of labour users for a less chaotic labour market to formalize Mathadi work and eradicate its most unacceptable features. Despite the inability of Mathadi workers' unions to institutionalize collective bargaining, they were strong enough politically and economically to obtain a new form of regulation that is tripartite in design and action. Effective worker representation, in this case by unions, has been critical to the Act's success. The involvement of the social partners in the Mathadi Boards has been a key part of the transformation of what was previously an unacceptable form of work.

The Mathadi Act provided a model of tripartite regulation of informal employment in sectors in which capital is not mobile but rooted, the work takes place in a fixed location, and the relationship between the workers and labour users is direct (ibid., p. 313). This model of regulation has been adapted for groups of informal self-employed workers as such as transport workers in Kerala (ibid., p. 311) and bidi workers, who roll bidis (cigarettes) and cigars, in Gujarat (Budlender, 2013) and Maharashtra (Agarwala, 2013, p. 53).[93] At a minimum, this regulatory model provides welfare funds for unorganized workers, and has been successful in providing these workers and their families with access to health and medical care, housing, and education (ibid.). Therefore, if designed properly, regulation that targets low-paid, unsafe, and insecure informal employment can contribute to the elimination

of unacceptable forms of labour by improving wages, increasing security, and providing access to social protection and medical assistance. Another benefit of this form of regulation is that it promotes social dialogue, mobilizes labour market actors as partners in regulation, and develops the capacity of workers to organize. Researchers with Women in Informal Employment: Globalizing and Organizing (WIEGO) have proposed similarly innovative regulation for informal workers as diverse as fish and forest workers and waste pickers (Sankaran and Madhav, 2013).

Expanding labour law and collective bargaining: Domestic workers in Uruguay

Sometimes expanding labour law to vulnerable groups of workers, like agricultural and domestic workers, can, especially when combined with worker self-organization or tripartist arrangements and innovative labour inspection initiatives, contribute to the elimination of unacceptable forms of work. The example of the regulation of domestic work by traditional techniques of labour law – minimum standards and collective bargaining – in Uruguay is a good example of how to target and transform unacceptable forms of work.[94]

Uruguay does not have a general labour law or labour code, and instead labour legislation consists of a series of laws referring to specific workers and topics.[95]

Although domestic workers in Uruguay were entitled to a range of social benefits, including disability, old-age and survivor pensions (since 1942), maternity benefits and family allowance (since 1980), and medical coverage and sick pay (since 1984), they were explicitly excluded from the minimum wage until 1990 when a minimum wage was set for them by an executive decree. It was only in 2006 that a specific law was passed declaring that domestic workers were entitled to the same general labour and social security rights as other workers. The Sindicato Único de Trabajadoras Domésticas (SUTD), which is the only union representing domestic workers,[96] played a crucial role in the campaign for equal legal rights for domestic workers.

The 2006 law defined domestic work "as that performed in a household by a person in a dependency relationship in order to provide care and housework to one or various persons or one or various families, without these tasks resulting in a direct economic profit for the employer".[97] It set a minimum work age of 18 years and recognized domestic workers' rights to an eight-hour work day, 44-hour work week, nine-hour rest period during the night for live-in workers, rest periods during the work day, a 36-hour weekly rest, tripartite negotiation both of wages and job categories, and severance pay after 90 days of work, additional compensation in the case of dismissal during pregnancy, the issuance of a pay slip, unemployment insurance, labour inspection,

and a choice between private and public health institutions for medical care. In 2007, a regulatory decree was issued, which provided for overtime pay, paid sick leave, the right of live-in workers to food and lodging, and the right of employers to deduct a maximum of 20 per cent from wages for room and board and a maximum of 10 per cent where only meals are offered.[98] Most significantly, the wage council for domestic service was created on 7 July 2008.

The tripartite group working on the Domestic Work Sector at the Wages Council of Uruguay consists of representatives from the Ministry of Labour and Social Security, the SUTD, and the employers' association Liga de Amas de Casa (LACCU). It negotiates collective agreements that cover domestic workers. Through the collective bargaining process, domestic workers have obtained: wage increases, work clothes and equipment, a seniority bonus, additional compensation for night work, a bonus for work done in a location other than the normal household, compensation for a reduction in work hours or work days, full payment of work days that are suspended by the employer, and an additional paid holiday, 19 August, designated as Domestic Workers' Day.[99] The parties also agreed to comply with ILO Conventions Nos 87, 98 and 154, which would promote and facilitate the union's activities (Goldsmith, 2013, pp. 10, 11). The most recent collective agreement is in force until December 2015, and it includes wage increases.[100]

In 2009, the Banco de Previsión Social (BPS, Social Security Institute) implemented an innovative publicity campaign to raise awareness about domestic workers' rights and to increase their registration for social security. Some inventive techniques in the campaign included information pamphlets (aimed at employers) in the form of tags to hang on the doorknobs of employers' homes, with the message "The domestic worker in this house is enrolled in the Social Security Institute", television spots, and socio-dramas on buses. In 2010 and 2011, labour inspectors visited over 9,000 homes to find out whether domestic workers were registered for social security.[101] The inspectors requested documents but did not enter into the households. Rather than utilizing inspection to sanction employers, the IGTSS officials use it as an opportunity to educate them about their obligations and workers' rights, thus encouraging them to comply with the law.

Since 2006, the number of domestic workers who make contributions to the BPS increased by 45.6 per cent, largely due to the BPS media campaign (Goldsmith, 2013, p. 3). However, the level of social security coverage is still only about 40 per cent. There are several strategies employers have adopted to avoid compliance with the law. Some employers order their domestic workers to tell labour inspectors that they are relatives. Others hire Bolivians and Peruvians through employment agencies in those countries. Although covered by the same laws and collective agreements as their Uruguayan counterparts, these workers are often unaware of their rights. Enhancing the levels of

formalization and social security coverage are among the main challenges for the promotion of decent work for domestic workers in Uruguay.

Between 2006 and 2010, the number of persons employed in domestic work increased from 105,572 to 120,164 (ibid., p. 2). Almost 99 per cent of all domestic workers are women, and they are disproportionately of African descent. Collective bargaining has contributed to the increase in wages and to registration in the BPS. Uruguay was the first country to ratify the Domestic Workers Convention, 2011 (No. 189), and it is among the countries with most advanced legislation in terms of protecting domestic workers.

What accounts for the success of the bringing domestic workers within the scope of labour law for improving these workers' wages and formalizing their work? A crucial factor is the tripartite wage council system, which was able to build upon and formalize the existing domestic workers' union and the organization representing the employers of domestic workers. Tripartite negotiations enabled the government and social partners to tailor general labour law provisions to domestic workers through collective agreements. In effect, the wage council for domestic service leveraged the social partners in the sector and the existing labour law framework in order to establish an effective form of regulation for vulnerable workers engaged in informal work. The significance of a single, strong membership-based organization of domestic workers, the SUTD, cannot be overemphasized. Moreover, institutions such as the BPS and the IGTSS, demonstrated a great deal of dynamism by adopting innovative regulatory techniques.

This example from Uruguay illustrates how extending and adapting labour law to domestic work can be an important method of "formalizing" informal forms of employment, or what McCann and Murray (2014) characterize as the "reconstructive" role of labour law.[102] The Domestic Workers Convention provides an important example of the continuing relevance of labour law for formalizing informal employment and eliminating some of the most unacceptable forms of work. Moreover, since child labour is an unacceptable form of work, the Domestic Workers Convention's emphasis on age restrictions for the employment of children as domestic workers is a critical component of any strategy to eliminate UFW.[103] In the proper context, the extension of labour law to previously excluded occupations and sectors can be used to tackle those features of work that make it unacceptable.

Institutional dynamism: The case of minimum wage regulation

It has been suggested above that the potential for "institutional dynamism" – the influence of regulatory norms beyond their formal parameters – should be integrated into policies to reduce UFW. Mainstream narratives on the economic impact of regulation have depicted labour law regimes as static and

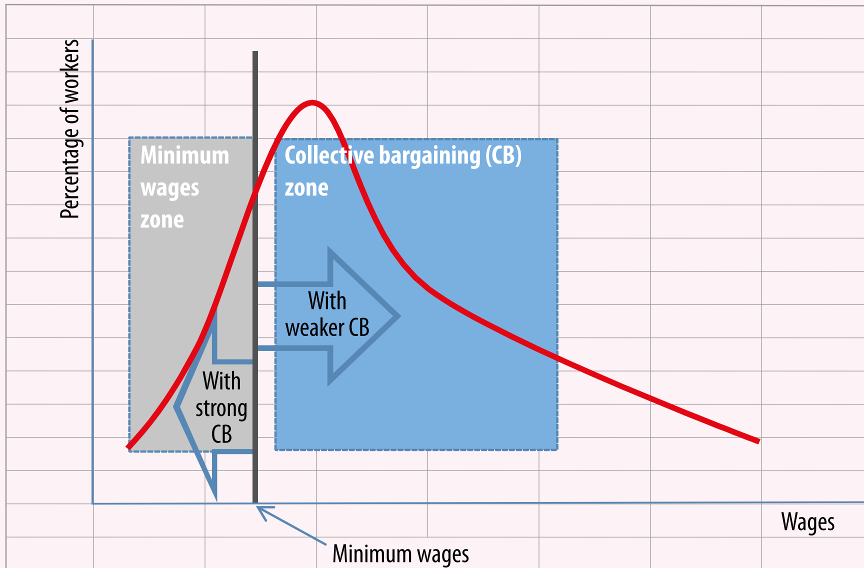
constrained (see Deakin, 2011; Lee and McCann, 2011). This literature has assumed that the influence of legal standards is determined by their formal boundaries, whether textual or institutional. Thus, for example, formal legal standards are routinely assumed to be irrelevant to workers across informal economies (see, e.g. World Bank, 2005). In contrast, the notion of institutional dynamism suggests that labour law norms can reach into informal settings (external dynamism) and host useful interactions between a range of regulatory frameworks (internal dynamism).

Minimum wage regulation provides a potent illustration of these twin dynamics in both advanced industrialized and low-income countries.[104] The regulation of wages meets Weil's criterion of prioritization in its focus on low-paid work. It advances Dimension 3 (Income) of the multidimensional model of UFW. Further, the regulatory target is one of the D3 fundamental indicators, inadequate remuneration.

The pertinence of the *external* dynamism of labour law norms is highlighted by the research that tracks the influence of the minimum wage in the informal economy. This work has found the minimum wage to exercise a significant influence in informal settings (see e.g. Lemos, 2009; Boeri, Garibaldi and Ribeiro, 2011; Dinkelman and Ranchhod, 2012; Groisman, 2014). Recently, for example, Groisman (2014) investigated the minimum wage in Argentina using data from the Argentinian Permanent Household Survey (EPH). Groisman found the minimum wage to have no significant impact on employment. Nor did he find that minimum wage laws propel workers into informal employment, as was until recently widely assumed in international policy discourses (e.g. World Bank, 2011). Further, Groisman found the Argentinian minimum wage to have had a substantial impact on the wages of informal workers. He concluded that the statutory standard operates as a reference wage in the informal sector, where it serves as a basis for wage determination. By illustrating the external dynamism of minimum wage regulation, then, this line of research also suggests a significant policy role for the minimum wage: it is available to integrate into formalization and poverty-alleviation strategies in low-income countries (see also Dinkelman and Ranchhod, 2012).

The potential of the *internal* dimension of institutional dynamism to reduce UFW is also emerging from the research on minimum wage regulation. This policy option emerges from the relationship between statutory minimum wages and collective bargaining regimes. It has been observed that where collective bargaining systems are stronger, less reliance is placed on the statutory minimum wage (Lee, 2012). The dynamic relationship between these two regulatory mechanisms is illustrated in figure 3.2, which shows how the relationship between minimum wages and collective bargaining systems can influence the minimum wage level in a hypothetical wage distribution.

Figure 3.2 The dynamic relationship between minimum wages and collective bargaining



Source: Lee and McCann (2014).

For regulatory policy on UFW, it is particularly significant that these institutional relations exhibit further dynamism depending on the strategies of the actors involved in wage determination. This aspect of internal dynamism has been explored in the work of Grimshaw, Rubery and Bosch (2014). They note the growing evidence that minimum wage laws improve pay equity through the impact of these laws on low-wage employment, gender pay inequality and wage compression in the lower half of the wage structure (on gender equity, see also Rubery and Grimshaw, 2011). Drawing on cross-national comparative research in Europe, Grimshaw, Rubery and Bosch (2014) found that strong (dual or inclusive, Gallie, 2007) industrial relations systems support the higher value minimum wages that enhance pay equity. Countries with strong collective bargaining coverage and a high-value minimum wage experienced the lowest incidence of low-wage employment. The authors suggest two routes to this goal: through the association of strong industrial relations models with more compressed wage distributions or through trade unions that are in a strong position to campaign for higher minimum wage levels.

Particularly significant in the recent research on minimum wages are the insights into "ripple effects" (or "spill-over effects"): the extent to which minimum wage increases affect wages above the minimum level. Empirical studies

have tended to relay the size of ripple effects as a function of the minimum wage level (Lee and Sobeck, 2012). With an awareness of institutional interactions, however, minimum wage effects become a function of the industrial relations system in which they are embedded. In Europe, Grimshaw, Rubery and Bosch (2014) found ripple effects to have a substantial effect in increasing wages in low-wage sectors. Again, they point to available strategies for policy actors: they conclude that strong unions with defined pay equity strategies can heighten these effects (see also Freeman, 1996). More specifically, strong ripple effects are triggered where bargaining outcomes peg either the sectoral minimum wage or the entire wage grid to the minimum wage.

Ripple effects are equally worth integrating into policy-making in low-income countries. Even where the relative level of the minimum wage is low, ripple effects can be substantial where the minimum wage – and especially the magnitude of an increase – is used by workers' organizations as a basis for wage negotiation. This strategy is evidenced in a number of Asian countries, including the Philippines, China and Viet Nam (Lee and Gerecke, 2013). In these countries, workers who already earn more than the new minimum wage rate have used it as a benchmark for wage demands, compensating for limited union strength.

These policy experiments suggest the relevance to the elimination of UFW of institutional dynamism in minimum wage regulation. Centrally, the minimum wage research raises a case for sustaining, developing, and extending collective bargaining institutions, in particular in low-income settings. Returning to Weil's criteria for strategic regulation, such strategies would fulfil the *deterrence* criterion. In particular, the goal of strengthening collective bargaining is a path to achieving compliance with statutory norms without exclusive reliance on state-led enforcement techniques. The collective frameworks thus alleviate some of the pressure on constrained state resources, and the interaction of statutory regulation and collective bargaining in minimum wage regulation is revealed as a form of hybrid public–private regulation. An awareness of the potential for institutional dynamism also integrates the s*ustainability* criterion by signalling the need for capacity building of social partner organizations. With regard to Weil's final criterion – the potential for *system-wide effects* – it can be suggested minimum wage regulation would be likely to be a meaningful point of leverage in many countries. This point of leverage is multilayered: initiatives are likely to be needed at both the national level (statutory minimum wages) and the primary bargaining levels, whether sectoral, industrial, etc. These entry points for improving low-wage work could be expected to have knock-on effects across the economy as a whole. More broadly, finally, it can be suggested that policy actors should remain alert to the potential for dynamic effects of labour regulation in other regulatory arenas (working time, maternity protection, etc.).

The resurgence of day labour in industrialized countries: "Zero hours contracts" in the United Kingdom

The casualization of working relations in industrialized countries and related resurgence of day labour are beginning to surface in policy debates on labour market regulation. The concern is working arrangements that are beyond the reach of labour law regimes, even those regimes that encompass non-standard work laws. A key illustration is the evolving debate in the United Kingdom on the specific regulation of "zero hours contracts" (see BIS, 2014).

The terminology of "zero hours contracts" (ZHC) is widely used in the United Kingdom to denote working relationships more often characterized as "casual work": arrangements in which workers are required to report for work as and when required by the hirer without any guaranteed hours or income (Burchell, Deakin and Honey, 1999). Casual work appears to have increased. Based on a survey of 5,000 businesses, the Office for National Statistics (ONS) has estimated that 1.4 million employees work under contracts that do not guarantee a minimum number of hours ("no guaranteed hours contracts", or NGHC) (ONS, 2014).[105] NGHC are particularly prevalent in certain sectors. In accommodation and food services, 45 per cent of businesses make some use of NGHC, as do more than 20 per cent of businesses in health and social work (ibid., p. 11, figure 4). NGHC are also more commonly used by large companies than small businesses: nearly half of businesses with 250 or more employees make some use of NGHC, as compared with 12 per cent of businesses with fewer than 20 employees (ibid., p. 10, figure 3). Labour Force Survey data show that individuals employed on zero hours contracts[106] are more likely to be women, in full-time education, and in the under-24 and over-65 age groups (ibid., pp. 14–15, figures 6 and 7).

The limited research evidence on the conditions of casual work in the United Kingdom suggests a profoundly disadvantageous working experience for many workers. Qualitative research reveals that unpredictable working hours and wages in casualized working relations, including ZHC, can inhibit access to education and training, and that the resulting financial and social uncertainty cause reduced psychological well-being by triggering anxiety and stress (Burchell and Wood, 2014). Casual workers who work unpredictable and often very long and unsocial hours, coupled with a fluctuating income, have also been found to encounter difficulties in building a meaningful private life (Bone, 2006).

Another key disadvantage is the exclusion of casual workers from labour rights. Coverage of UK employment law extends primarily to "employees": workers recognized in law to have a "contract of employment".[107] Casual workers face limited coverage under labour law statutes because of a requirement imposed by the courts that a contract of employment must involve "mutuality

of obligation": an obligation on the hirer to offer work and on the worker to accept it (Brodie, 2005; Deakin and Wilkinson, 2005; Davies, 2007). When workers are formally entitled to refuse to work, the courts generally hold that a contract of employment exists only when these workers are engaged in a stint of labour. There is no mutuality of obligation – and therefore no contract of employment – between engagements (see Davies, 2007; McCann, 2008). This requirement excludes casual workers from key employment rights that are attached to qualifying periods, including protection from unfair dismissal, redundancy payments, parental leave, and the right to request "flexible working" (changes to hours or location of work). The legislation requires that employment during qualifying periods be continuous. Casual workers tend not to have continuity of employment, do not meet the qualifying periods, and are therefore excluded from protection. The outcome is that individuals whose working arrangements are designed to ensure that they take on a high degree of risk have been excluded from the protection of labour law (Deakin and Wilkinson, 2005), even where they have worked for their employers for substantial periods of time (McCann, 2008) and when their formal contractual terms do not reflect the reality of their working relationships (Pitt, 1985).

The material and legal disadvantages associated with casual work are beginning to be addressed by the UK courts and in specific legislation. The case law has recently shifted towards protecting certain enduring working relationships even when they are formally designated as casual. In 2011, the UK Supreme Court in *Autoclenz*[108] held that a group of car valeters, who were designated as self-employed in their written contracts, were in reality under continuing obligations to offer and personally to perform work, and were therefore employees (see further Davies, 2009; Bogg, 2010 and 2012). *Autoclenz* therefore protects workers whose arrangements are disguised as casual work. More broadly, the decision also signalled a more receptive stance on the part of the courts towards the policy objectives of protective labour legislation that takes into account "the relative bargaining power of the parties" (para. 35). However, the decision centrally targets disguised standard employment rather than genuinely casual work.

A framework for specific statutory regulation is also being introduced. This regulatory strategy has so far focused on one dimension of casual work: the "exclusivity" of the relationship (where the hirer requires the worker to perform services exclusively for the hirer). The objective is to prevent casual workers from being prevented from working for another hirer through the use of "exclusivity clauses" (BIS, 2014). Legislation presently before Parliament will prohibit employers from preventing "zero hours" workers from working for another hirer.[109] This legislative strategy fulfils Weil's prioritization criterion by targeting unacceptable working arrangements. Day labour is a fundamental indicator in the Security dimension (D4) of the multidimensional model

(see Chapter 2). The initiative responds to the increasing significance of casual work in this national setting and acknowledges one of the risks involved in this form of labour.

Yet Weil's other criteria – deterrence, sustainability, and system-wide effects – cannot be met by an approach focused solely on the exclusivity dimension of casual work. Centrally, this reform overlooks the broader dynamics of casualization. Freedland (2014) has pointed out that the legislation will neglect the long-standing problem of the employment status of casual workers, and therefore the exclusion of these workers from labour rights. Casual working relations, more broadly, are not exclusively a matter of contractual arrangements: they are also a function of the arrangement and predictability of working hours (McCann, 2012; McCann and Murray, 2014). A broader conception of casual work sustains strategies that would address casualization even where the working relationship is framed within an enduring contractual relationship (captured by the ONS notion of NGHC). Regulatory options include requiring that NGHC workers be guaranteed a set number of hours or income and a minimum period of notice of being required to work (Ewing, 1996, pp. 95–96). McCann and Murray (2014) have recently suggested mechanisms that would curb casualized work: prohibiting casual/ZHC in vulnerable work, such as domestic work, decent notice of work schedules and overtime; incentives for employers to arrange working hours on a continuous basis; and compensation for workers who are called out to work for very short periods. A consultation on legislation in Northern Ireland also has sought views on a right to request guaranteed hours or fixed-term working after a period of continuous employment; an entitlement to a minimum payment in lieu of work where no work is provided; and an entitlement to a set number of annual hours (DELNI, 2014).

Even in legislation centred on exclusivity, there are limitations on the regulatory model so far used in the United Kingdom. This conventional "command and control" model pairs statutory allocation of obligations with an individualized enforcement mechanism. It is therefore unlikely to have system-wide effects among a vulnerable segment of the labour force, who are unlikely to have the capacity effectively to enforce their legal rights. This limitation seems to be acknowledged in a second government consultation, which highlights concerns that employers could easily sidestep the exclusivity ban, including by offering contracts that guarantee as little as one hour of work (BIS, 2014). The government is currently seeking views on mechanisms for tackling avoidance of the exclusivity ban and routes of redress for the affected workers.

Yet, the second consultation hints at a more promising regulatory model for deterrence and system-wide effects. It is suggested that business representatives and trade unions should consider working together, with government

support, to develop autonomous sector-specific codes of practice on the fair use of zero hours contracts (ibid., pp. 15–16). The content of these codes could include clauses on when it is appropriate to use a zero hours contract; how to promote clarity, e.g. in job advertisements or contracts; the rights and responsibilities of the individual and the employer; best practice in work allocation; and notice of work schedules or cancellation of work. This model, then, incorporates social dialogue among interested stakeholders. Effectively designed, it may hold some promise towards Weil's model of effective regulation by targeting sectors in which casual work is high and potentially curbing the number of jobs offered on a zero hours basis.

General observations

As these examples illustrate, non-state actors also have a vital role to play in detecting and eliminating unacceptable forms of work. Membership-based organizations throughout the developing world represent individuals in a range of informal employment including street vending, transport (especially taxis and micro-buses), waste picking, and domestic work. Such organizations provide a public voice for individuals who find themselves in unacceptable forms of work. Firms also have an interest in identifying and eliminating unacceptable forms of labour as it not only provides competitors with an unfair advantage, it tarnishes the reputation of all the firms in sectors in which UFW predominate.

The unacceptable forms of work often involve several simultaneous violations of labour law relating, for example, to wages, hours of work, occupational safety and health, the payment of social security contributions, and the prohibitions against child and forced labour. Thus, labour inspection services play an indispensable role in combating unacceptable forms of work. Not only are they the government bodies with the authority to investigate breaches of labour regulations in workplaces, labour inspectors can also play an important educative role by working with firms and workers to encourage compliance. Developing effective models and techniques of enforcement in order both to ensure compliance with labour standards and to prevent the emergence of UFW in the first place is absolutely critical (Weil, 2014; Howe, Hardy and Cooney, 2014).

Eliminating and transforming unacceptable forms of work demands multifaceted responses that cut across ministerial boundaries, as well as close cooperation with the social partners and a wide range of civil society actors. The objective of the prevention, transformation, and elimination of UFW needs to be incorporated in different strands of government policy (including employment, social protection, poverty reduction, migration, and industrial relations), in addition to being the subject of specific national laws, policies,

or action plans. Labour market institutions have a vital role to play in developing and achieving sustainable and system-wide solutions. A clear national regulatory framework should set out an integrated approach that addresses the most unacceptable forms of work, the action required for their elimination or transformation, and the mechanisms for effective coordination between the many stakeholders. It is also imperative to involve the social partners in the coordination, design, implementation, and monitoring of strategies designed to target and combat the most unacceptable forms of work.

Conclusion

This chapter built upon the multidimensional model of UFW developed in Chapter 2, which links the dimensions of unacceptability to indicators developed from the relevant international labour standards in order to provide a common system of coordinates for identifying unacceptable work across a wide range of different social and economic contexts. The multidimensional model of UFW is designed to aid policy-makers, regulators, and social partners in diagnosing which forms of unacceptable work to target in a specific context, and the predictive model discussed in section 3.1 can be used to discern patterns and practices that are common to UFW. The remainder of the chapter focused on how to develop a programmatic approach to eliminating the most unacceptable forms of work, and it drew upon the wider literature concerning integrated and development-friendly labour regulation, which it adapted to eliminating UFW.

A strategic approach to tackling UFW, which emphasizes the importance of involving local labour market actors and institutions, entails identifying which forms of unacceptable work to earmark, and the techniques of regulation that are suitable and effective. Such an approach suggests that unacceptable forms of work should be targeted not only in terms of their severity, but also in light of whether intervention can affect behaviour in the long term and achieve system-wide effects. In developing regulatory strategies in light of these criteria, it is important to be attentive to existing points of leverage that enable interventions to change the conditions that produce UFW. Policy-makers are also advised to consider the dynamic capacities of labour and labour market actors in order to generate system-wide effects.

Three examples of regulatory initiatives that have been successful in addressing UFW and one that appears to be less promising were discussed in section 3.4 in order to illustrate the types of interventions that are considered strategic in light of the criteria developed in this chapter. The first two successful examples both involved informal work performed by vulnerable populations, although one example is from a lower-middle income country

(India) and the other from an emerging economy (Uruguay). Although they used different regulatory techniques (developing a unique form of regulation for Mathadi workers, and extending labour law to domestic workers), both initiatives leveraged existing institutions (especially social partners) and adopted a sector-wide approach. The third example, minimum wage legislation, illustrates how strategically calibrated statutory minimum wages can have ripple effects both beyond formal employment and in favour of pay equity for women workers. The less promising model, on day labour, is drawn from an advanced industrialized country (United Kingdom), although it also targets a vulnerable segment of the labour force. Yet the model depends on a conventional regulatory mechanism ("command and control") that is unlikely to have system-wide effects or much deterrence value. More compelling approaches are under discussion that would involve the social partners and potentially target sectors in which this form of UFW is prominent or particularly disadvantageous.

A focus by policy-makers on points of leverage and on institutional dynamism, it has been suggested, is most likely effectively to target UFW and to generate substantial and sustained effects. The aim of future research should therefore be to test these capacities in the context of concrete interventions on UFW in a range of settings.

Notes

Chapter 1 – Discourses of unacceptability

1. The ILO's work has been centred on the four strategic objectives since the Organization's March 1998 budget proposal (ILO, 1999). See most recently, ILO (2013b).

2. UN Statistics Division, "Official List of MDG Indicators", available at: http://mdgs.un.org/unsd/mdg/. Four "Indicators for Monitoring Progress" towards Target 1.B are identified: 1.4 Growth rate of GDP per person employed; 1.5 Employment-to-population ratio; 1.6 Proportion of employed people living below $1.25 (PPP) per day; 1.7 Proportion of own-account and contributing family workers in total employment.

3. United Nations Economic and Social Council (ECOSOC) Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work: Article 6 of the International Covenant on Economic, Social and Cultural Rights,* UN Doc. E/C.12/GC/18 (6 February 2006).

4. See further http://www.ilo.org/public/english/bureau/program/dwcp/.

5. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

6. Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105).

7. Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182).

8. Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

9. The 2008 Declaration follows its 1998 antecedent and the 1944 Declaration of Philadelphia as the third "major statement of principles and policies" since the founding of the ILO. On the 2008 Declaration generally, see Maupain (2009).

10. Declaration on Social Justice for a Fair Globalization, 2008, Part I.A(ii).

11. The indicators were subsequently endorsed by the 18th International Conference of Labour Statisticians in 2008.

12. A standards-based approach to identifying unacceptable forms of work has been adopted by the ILO/World Bank *Better Work* programme. The programme monitors and evaluates compliance with labour standards in global supply chains in the garment sector in select countries (Cambodia, Haiti, Indonesia, Jordan, Lesotho, Nicaragua and Viet Nam). The *Better Work* Compliance Assessment Tool (CAT) assesses factory compliance with (1) the core standards identified in the 1998 Declaration and (2) working conditions standards in a country's domestic labour law framework (on compensation, the employment contract, workplace relations, occupational safety and health, and working time). See further http://betterwork.org/global/.

13. Weekly Rest (Industry) Convention, 1921 (No. 14), Article 2(1); Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), Article 6(1).

14. Minimum Wage-Fixing Machinery Convention, 1928 (No. 26); Minimum Wage Fixing Convention, 1970 (No. 131).

15. Forty-Hour Week Convention, 1935 (No. 47).

16. Workers with Family Responsibilities Convention, 1981 (No. 156).

17. Thus Findlay, Kalleberg and Warhurst's (2013) suggestion that the EU Temporary Agency Work Directive can substantially mitigate the outsourcing of labour neglects a substantial scholarship.

18. See also Hasan and Jandoc (2010), Section 3.

19. Council Decision of 21 October 2010 on guidelines for the employment policies of the Member States (2010/707/EU).

20. Guideline 7. The guideline also requires that "[t]he quality of jobs and employment conditions" be addressed.

21. http://ec.europa.eu/social/main.jsp?catId=1039&langId=en.

22. Ibid.

23. Kountouris (2012, p. 24) identifies "three different, though not necessarily mutually exclusive, approaches to conceptualizing precarious work relations. A first one that sees precariousness as essentially dominating

particular sectors of the labour market. A second approach that associates precariousness with non-standard work. And a third one that focuses more on the dimensions and contexts of precariousness, and as potentially applying beyond atypical work relations."

24. Thailand, the Philippines, and Indonesia are middle-income economies; India and Viet Nam are rapidly developing; and in Sri Lanka sustained development was hampered by a lengthy civil war.

25. The countries studied were Bulgaria, France, Germany, Greece, Ireland, Italy, Latvia, the Netherlands, Poland, Spain, Sweden, and the United Kingdom.

26. Remuneration for part-time work is rarely high enough to enable a woman with dependent children to live independently (Fudge, 2005).

27. Social reproduction is a term typically used by feminist political economists to refer to the daily and generational reproduction of the working population (Fudge, 2011).

28. Precarious work is not further defined although it features throughout the report, often as a synonym for vulnerability.

29. Fudge cites *Dunmore v Ontario (Attorney General*) [2001] 3 R.C.S. 1016, at para. 117, quoting *Delisle v Canada (Deputy Attorney General*) [1999] 2 S.C.R. 989, at para. 67.

30. Pollert's definition of a "vulnerable worker" embraces employees who have:
1. earnings below median hourly pay; and
2. pay and conditions that are not directly affected by union agreements (Hudson, 2006, p. 7).

31. *International Classification by Status in Employment* (ICSE) as revised at the 15th International Conference of Labour Statisticians in 1993 (ILO, 1993a).

32. "Own account workers" are defined as "those workers who, working on their own account or with one or more partners, hold the type of jobs defined as "a self-employment job" … [i.e. jobs where the remuneration is directly dependent upon the profits derived from the goods and services produced], and have not engaged on a continuous basis any employees to work for them" (ibid.).

33. "Contributing family workers" are defined as "those workers who hold 'self-employment jobs' as own-account workers in a market-oriented establishment operated by a related person living in the same household" (ibid.).

34. The two statuses are drawn from among the six ICSE "status categories". The other employment statuses are: (1) wage and salary workers

(employees); (2) self-employed workers with employees (employers); (3) self-employed workers without employees (own-account workers); (4) members of producers' cooperatives; and (5) workers not classifiable by status (ibid.). The ILO has recognized the limitations of this definition: that some wage and salaried workers might also assume substantial economic risk and that some own-account workers may not be vulnerable (ILO, 2009a).

35. The PSI estimate of its own definition of vulnerability covers employees: (1) in the bottom third of the hourly income distribution; and (2) whose pay and conditions are not determined by a union agreement (Hudson, 2006, p. 6, table 1).

36. The TUC estimated the magnitude of "vulnerable employment" by first taking into account the number of workers identified by the UK Labour Force Survey (LFS) as low-paid workers who are low skilled or engaged in temporary or home work (1,546,643 in total): (1) workers with no qualifications who are paid less than GBP 6.50 per hour (942,157); (2) temporary workers who are paid less than GBP 6.50 per hour (excluding those with no qualifications) (551,562); (3) workers with home as a base who are paid less than GBP 6.50 per hour (excluding those with no qualifications and those who are temporary) (52,924) (TUC, 2008, pp. 23–24). On the assumption that a substantial number of workers are not included in the LFS figures, the TUC added a figure of 500,000 workers to account for: (1) undocumented migrant workers (430,000); and (2) the informal economy (1.75 per cent of GDP) (ibid., p. 24). The TUC suggested that its estimate is likely to under-represent vulnerable employment. It suggests that low-paid migrant workers who have a right to work in the United Kingdom are likely to be undercounted by the LFS and characterized its estimate of undocumented migrant and informal workers as "very conservative" (ibid., p. 23).

37. Bewley and Forth explain that "adverse treatment" is defined by reference to a range of legal and non-legal rules (statutory rights, company rules, moral standards). They approach "a broad concept of 'adverse treatment' which encompasses any contravention of the explicit or implicit rules of engagement under which the employment relationship has either been conceived or has developed" (2010, p. 3).

38. Mowla adopts the ILO definition of vulnerable employment (see note 31 above).

39. In the early 1970s, when the term was coined, the focus was on informal productive units or enterprises in the traditional sector in Ghana and Kenya, and what they contribute to the economy and growth, which

came to be known as the production approach (ILO, 1972; Hart, 1973). This approach was characterized as dualist as it separates the formal and informal sectors. In the mid-1980s, however, attention shifted to changes in the nature of work that were occurring in developed economies (Castells and Portes, 1989). Subsequently labelled the structuralist approach, it emphasized the links between informal and formal economic activities, and focused on changes in production and the ways in which firms pursue flexible forms of labour, such as casual labour, contract labour, outsourcing, home working, and other forms of subcontracting that offer the prospect of minimizing fixed non-wage costs. The legalist, or orthodox, view, typically associated with Hernando De Soto (1989), argued that the informal sector was a site of entrepreneurial activity and, as such, a vital and necessary part of the economy. Regulatory requirements imposed barriers to entry and imposed costs that were economically inefficient and resulted in their being ignored. More recently, an approach combining elements of the other approaches emerged (Bacchetta, Ernst and Bustamante, 2009; Chen, 2007; Fields, 2005). This view holds that different sectors and segments exist in various combinations, in accordance with the different realities and conditions of countries and regions (ILO, 2013d, pp. 3–4; Chen, 2012).

40. Co-published in 2002 by the OECD, IMF, ILO and CIS STAT (Interstate Statistical Committee of the Commonwealth of Independent States) as a supplement to the System of National Accounts, SNA 1993 (see OECD et al., 2002).

41. Children in child labour include those in the worst forms of child labour and children in employment below the minimum age, excluding children in permissible lightwork, if applicable. According to the ILO's report *Marking progress against child labour*, "child labour excludes those children who are working only a few hours a week in permitted light work and those above the minimum age whose work is not classified as a worst form of child labour, including 'hazardous work' in particular. Hazardous work by children is defined as any activity or occupation that, by its nature or type, has or leads to adverse effects on the child's safety, health, and moral development. In general, hazardous work may include night work and long hours of work; exposure to physical, psychological, or sexual abuse; work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; and work in an unhealthy environment which may, for example, expose children [to] hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging their health. Hazardous work by

children is often treated as a proxy for the Worst Forms of Child Labour" (ILO, 2013g, p. 16).

42. For the overall 5–17 years age group, child labourers amount to 77.7 million in Asia and the Pacific, 59.0 million in sub-Saharan Africa, 12.5 million in Latin America and the Caribbean, and 9.2 million in the Middle East and North Africa.

43. The ILO's mandate to combat forced labour began in 1930 with the adoption of the Forced Labour Convention, 1930 (No. 29), which prohibits all forms of forced or compulsory labour. In 1957, it was supplemented by Convention No. 105, which requires the abolition of any form of forced or compulsory labour in five specific cases listed in *Article 1*. As of August 2014, 177 countries had ratified Convention No. 29, while 174 had ratified Convention No. 105. These Conventions protect rights that are considered to be fundamental and are contained in the Declaration of Fundamental Principles and Rights at Work. In addition, the United Nations has adopted a number of human rights instruments that contain standards and principles related to forced labour. The Universal Declaration of Human Rights (1948) prohibits slavery and servitude (Article 4) and provides that everyone has the right to free choice of employment (Article 23(1)). The International Covenant on Civil and Political Rights (1966) also prohibits slavery and servitude (Article 8(1)), and specifically provides that no one "shall be required to perform forced or compulsory labour" (Article 8(3)(a)), subject to a series of exceptions (Article 8(3)(b) and (c)) that are similar to those provided for in Convention No. 29). The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) (Article 11(2)) and the Convention on the Rights of Persons with Disabilities (2006) (Article 27(2)), both include specific prohibitions of forced or compulsory labour. Moreover, the prohibition of forced or compulsory labour in all its forms is considered to be a peremptory norm of international human rights law, which is therefore absolutely binding and from which no derogation is permitted.

44. Protocol to Convention No. 29 – Protocol to The Forced Labour Convention, 1930, adopted by the International Labour Conference at its 103rd Session, Geneva, 11 June 2014; Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) – Recommendation on supplementary measures for the effective suppression of forced labour, adopted by the International Labour Conference at its 103rd Session, Geneva, 11 June 2014.

45. Slavery Convention, signed at Geneva on 25 September 1926 and amended by the Protocol, New York, 7 December 1953, Article 1(1).

46. UN General Assembly, Protocol to Suppress, Punish and Prevent Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000.

47. *Record of Proceedings*, International Labour Conference, 14th Session, Geneva, 1930, p. 691; see also *Forced labour*, General Survey of 1968, para. 27; *Abolition of forced labour*, General Survey of 1979, para. 21.

48. See, for example, Pakistan – RCE, 1996, p. 90; see also report of the Commission of Inquiry appointed under art. 26 of the Constitution of the ILO to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29) (ILO, *Official Bulletin*, Special Supplement, Vol. LXXXI, 1998, Series B, para. 206). Most national legislation has established a minimum age limit for concluding a labour contract, which may coincide with the age at which compulsory school attendance ends. However, employment that is likely to jeopardize health, safety, or morals is generally prohibited for persons below 18 years of age, in conformity with the relevant ILO Conventions Minimum Age Convention, 1973 (No. 138), Art. 3, para. 1; Worst Forms of Child Labour Convention, 1999 (No. 182), Arts 1, 2 and 3(d).

49. In the Trafficking Protocol (see note 46 above), trafficking is defined in Article 3 to consist of three basic elements: first, the action (of recruitment, etc.); second, the means (of the threat or use of force or other forms of coercion, etc.); and, third, the purpose of exploitation. The Committee of Experts (ILO, 2013h, p. 12) has observed that the definition of "trafficking in persons" in the Trafficking Protocol allows for a link to be established between the Protocol and the Forced Labour Convention, 1930 (No. 29), and emphasizes that trafficking in persons for the purpose of exploitation (which is specifically defined to include forced labour or services, slavery or similar practices, servitude and various forms of sexual exploitation) is encompassed by the definition of forced or compulsory labour in Article 2(1) of Convention No. 29. The Committee highlights that the definition found in the earlier standards requires "specific action against trafficking in persons for the purposes of forced or compulsory labour" (Article 1(3) of the Protocol).

50. See the ILO and EU's Operational indicators of trafficking in human beings, Results from a Delphi survey implemented by the ILO and the European Commission, March 2009, revised September 2009, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/ publication/wcms_105023.pdf. See also Resolution II concerning further work on statistics of forced labour, Report of the 19th International Conference of Labour Statisticians, ICLS/19/2013/3, p. 66.

51. The ILO's indicators include: abuse of vulnerability; deception; restriction of movement; isolation; physical and sexual violence; intimidation and threats; retention of identity documents; withholding of wages; debt bondage; abusive working and living conditions; and excessive overtime.

Chapter 2 – Towards a multidimensional model of UFW: The substantive dimensions of unacceptability

52. The model has also been informed by the valuable discussions at the Expert Workshop on the Possible Use of the Delphi Methodology to Identify Dimensions and Descriptors of Unacceptable Forms of Work, ILO, Geneva, 11–12 November 2013.

53. Conventions classified by the ILO as to be revised, outdated, shelved or withdrawn are excluded, as are three that are revised by later Conventions: the Maternity Protection Convention, 1919 (No. 3), revised by the Maternity Protection Convention, 2000 (No. 183); the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), revised by the Private Employment Agencies Convention, 1997 (No. 181); and the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), revised by the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117). Conventions that solely govern seafarers, the fishing industry and dockworkers are also excluded. For reasons of space, the ILO's (non-binding) Recommendations are not included. The Recommendations are highly relevant, however, in particular those whose content is not extensively reflected in a binding standard, such as the Social Protection Floors Recommendation, 2012 (No. 202) (Dimension 8), and the HIV and AIDS Recommendation, 2010 (No. 2000) (Dimension 9). For a review of the approach of the ILO supervisory bodies to the application of the ILO Conventions, see Roelandt (2014).

54. Workers are subject to forced labour in terms of the Forced Labour Convention, 1930 (No. 29), and its 2014 Protocol, and the Abolition of Forced Labour Convention, 1957 (No. 105). Also relevant are the Worst Forms of Child Labour Convention, 1999 (No. 182), Article 3; the Domestic Workers Convention, 2011 (No. 189), Article 3(2)(b); compulsory personal services exacted from members of indigenous and tribal peoples in terms of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), Articles 11 and 20(3)(c); and requirements on domestic workers to reside in the household of their employer or to remain in the household or with household members during periods of daily and weekly rest or annual leave, Domestic Workers Convention, 2011 (No. 189), Article 9(a), (b).

55. The worker is not subject to a coherent and periodically reviewed national policy on occupational safety, occupational health and the working environment in terms of the Occupational Safety and Health Convention, 1981 (No 155), and its 2002 Protocol, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), or to a national system and national programme on occupational health services in terms of Convention No. 187 or to a coherent and periodically reviewed national policy on occupational health services in terms of the Occupational Health Services Convention, 1985 (No. 161). The worker does not benefit from the requirements of the Radiation Protection Convention, 1960 (No. 155); Hygiene (Commerce and Offices) Convention, 1964 (No. 120); Occupational Cancer Convention, 1974 (No. 139); Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148); Asbestos Convention, 1986 (No. 162); Safety and Health in Construction Convention, 1988 (No. 167); Chemicals Convention, 1990 (No. 170); Prevention of Major Industrial Accidents Convention, 1993 (No. 174); Safety and Health in Mines Convention, 1995 (No. 176); and Safety and Health in Agriculture Convention, 2001 (No. 184). Also relevant are the Labour Inspection Convention, 1947 (No. 81) and Protocol; Migration for Employment Convention (Revised), 1949 (No. 97), Articles 5 and 8; Labour Inspection (Agriculture) Convention, 1969 (No. 129); Nursing Personnel Convention, 1977 (No. 149), Article 7; Indigenous and Tribal Peoples Convention, 1989 (No. 169), Article 20(3)(b); Night Work Convention, 1990 (No. 171); Home Work Convention, 1996 (No. 177), Article 7; Private Employment Agencies Convention, 1997 (No. 181), Article 11(g), (h); Maternity Protection Convention, 2000 (No. 183); and Domestic Workers Convention, 2011 (No. 189), Article 13.

56. Workers do not receive an adequate living wage, Preamble to the ILO Constitution. Including that there is no minimum wage system in terms of the Minimum Wage Fixing Convention, 1970 (No. 131); Minimum Wage-Fixing Machinery Convention, 1928 (No. 26); and, as relevant, the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99); Plantations Convention, 1958 (No. 110), Articles 24 and 25; and Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), Article 10. Also, as relevant, public contracts do not include clauses to ensure that the workers concerned receive wages that are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried out in terms of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), Article 2; independent producers and wage earners are not subject to measures to secure conditions that give them scope to improve

their living standards by their own efforts or to measures that maintain minimum standards of living that take into account essential family needs including food and its nutritive value, housing, clothing, medical care and education, Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), Article 5; measures have not been considered for the promotion of the productive capacity of agricultural producers and the improvement of their standards of living and for the elimination of the causes of chronic indebtedness in terms of Convention No. 117, Article 4(a). Also relevant is that migrant workers may be granted, in addition to their wages, benefits in cash or in kind to meet any reasonable personal or family expenses resulting from employment away from their homes, Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), Article 14(3).

57. Workers are paid in an illegitimate form or through an illegitimate process in terms of the Protection of Wages Convention, 1949 (No. 95), Articles 3, 4, 5 and 13; Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), Article 11(2), (3), (4), (5), (6), (7); and, as relevant, the Private Employment Agencies Convention, 1997 (No. 181), Article 12; workers are subject to restrictions on how they dispose of their wages, Convention No. 95, Articles 6 and 7, or to illegitimate deductions, attachments or assignments, Articles 8–10, or workers are not informed of their conditions in respect of wages or of any changes in the particulars of their wages, Article 14; the maximum amounts and manner of repayment of wage advances are unregulated in terms of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), Article 12; workers are not protected on employer insolvency in terms of the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173); and, as relevant, the Private Employment Agencies Convention, 1997 (No. 181), Article 11(i). Also, as relevant, workers in hotels and restaurants do not receive basic remuneration that is paid at regular intervals, regardless of tips, Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172), Article 6(2), and the sale and purchase of the employment of these workers is not prohibited, Article 7; temporary agency workers are charged fees or costs by employment agencies in terms of the Private Employment Agencies Convention, 1997 (No. 181), Article 7, and are not subject to the necessary measures to ensure adequate protection in relation to minimum wages, Article 11(c); plantation workers are not subject to the provisions of Part IV of the Plantations Convention, 1958 (No. 110); and domestic workers are not subject to the provisions of the Domestic Workers Convention, 2011 (No. 189), Article 12, and fees charged by private employment agencies are deducted from domestic workers' remuneration, Article 15(1)(e).

58. Employment is terminated without a valid reason connected to the capacity or conduct of the worker or based on the operational requirements of the employer, Termination of Employment Convention, 1982 (No. 158), Division A; employment is terminated on the grounds that worker has family responsibilities in terms of the Workers with Family Responsibilities Convention, 1981 (No. 156), Article 8; or during pregnancy or while the worker is on maternity leave and following her return to work except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing, in terms of the Maternity Protection Convention, 2000 (No. 183), Article 8.

59. Employment is terminated before a worker has an opportunity to defend himself/herself against allegations, he or she does not have the opportunity to appeal to an impartial body, he or she alone bears the burden of proving that the termination was not justified, or there is no provision for suitable remedies in terms of the Termination of Employment Convention, 1982 (No. 158), Part II, Divisions B and C, or employment is terminated for reasons of an economic, technological, structural or similar nature without the employer having provided workers' representatives in good time with the relevant information or given them an opportunity for consultation on measures to avert or minimise the terminations and on measures to mitigate the adverse effects of the termination in terms of Part III, Division A.

60. Employment is terminated without a reasonable period of notice or compensation in lieu, unless the worker is guilty of serious misconduct, or without severance allowance or other separation benefits, benefits from employment insurance or assistance or other forms of social security or a combination of allowance and benefits in terms of Convention No. 158, Part II, Divisions D and E.

61. Including that there is no adequate provision for the progressive development of systems of education, vocational training and apprenticeship with a view to the effective preparation of young persons of both sexes for a useful occupation in terms of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), Article 15, or for training on new techniques of production in terms of Article 16; no policy promotes the granting of paid educational leave for training, general, social and civic education or trade union education in terms of the Paid Educational Leave Convention, 1974 (No. 140); workers are not subject to comprehensive and coordinated policies and programmes of vocational guidance and training in terms of the Human Resources Development Convention, 1975 (No. 142). Also, as relevant, workers with family responsibilities are not subject to measures in the field of vocational guidance and training compatible with

national conditions and possibilities to ensure that these workers become and remain integrated in the labour force and can re-enter the labour force after an absence due to their responsibilities in terms of the Workers with Family Responsibilities Convention, 1981 (No. 156), Article 7; members of indigenous and tribal peoples do not enjoy opportunities at least equal to those of other citizens in respect of vocational training measures, or that measures are not taken to promote their voluntary participation in these programmes in terms of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), Articles 21 and 22; temporary agency workers are not subject to measures that ensure adequate protection in relation to access to training, Private Employment Agencies Convention, 1997 (No. 181), Article 11(f); nursing personnel are not provided with education and training appropriate to the exercise of their functions or with career prospects likely to attract persons to the profession and to retain them in the profession in terms of the Nursing Personnel Convention, 1977 (No. 149), Articles 2 and 3, or with conditions at least equivalent to those of other workers in educational leave, Article 6(d).

62. Including that the State does not approve the principle of a 40-hour week and the taking or facilitating of measures to secure that end and, as relevant, that workers in industry, commerce and offices work for more than 48 hours a week in terms of the Hours of Work (Industry) Convention, 1919 (No. 1), and Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); that public contracts do not include clauses ensuring that hours of work are not less favourable than those established for work of the same character in the trade or industry in the district in terms of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), Article 2; that workers in hotels and restaurants are not entitled to reasonable normal hours or to overtime provisions, Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172), Article 4(2) or to reasonable minimum weekly rest periods, Article 4(3); that temporary agency workers are not subject to the necessary measures to ensure adequate protection in relation to working time and other working conditions in terms of the Private Employment Agencies Convention, 1997 (No. 181), Article 11(d); and that nursing personnel are not entitled to conditions at least equivalent to those of other workers in hours of work, including the regulation and compensation of overtime, inconvenient hours and shift work, weekly rest and paid annual holidays in terms of the Nursing Personnel Convention, 1977 (No. 149), Article 6(a), (b), (c).

63. The Weekly Rest (Industry) Convention, 1921 (No. 14); Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106); and, as relevant, the Domestic Workers Convention, 2011 (No. 189), Article 10(2). Also,

as relevant, domestic workers are obliged to remain in the household or with household members during periods of weekly rest, Domestic Workers Convention, 2011 (No. 189), Article 9(b).

64. Including, as relevant, that workers in industry, commerce and offices have fewer than eight hours' daily rest, Hours of Work (Industry) Convention, 1919 (No. 1) and Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); that workers in hotels and restaurants do not have reasonable minimum daily rest periods, Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172); and that domestic workers are obliged to remain in the household or with household members during periods of daily rest, Domestic Workers Convention, 2011 (No. 189), Article 9(b).

65. Committee of Experts on the Application of Conventions and Recommendations RCE – *General Report*, 1998, para. 107; *Eradication of forced labour, General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)*, Report III (Part 1B), International Labour Conference, 96th Session, 2007, paras 132–134.

66. Night work is performed by the worker without the protections required by the Night Work Convention, 1990 (No. 171), or the Night Work (Women) Convention (Revised), 1948 (No. 89), and Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948.

67. Holidays with Pay Convention (Revised), 1970 (No. 132), and, as relevant, the Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172), Article 5(2). Also, as relevant, workers in hotels and restaurants work on public holidays without appropriate compensation in time or remuneration, Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172), Article 5(1); and domestic workers are obliged to remain in the household or with household members during periods of annual leave, Domestic Workers Convention, 2011 (No. 189), Article 9(b).

68. Including, as relevant, that workers in hotels and restaurants have insufficient advance notice of their working schedules to enable them to organize their personal and family lives, Working Conditions (Hotel and Restaurants) Convention, 1991 (No. 172), Article 4(4).

69. Including Convention No. 172, Article 4(4), and that workers are not subject to policies and programmes of vocational guidance and vocational training that are designed to improve their ability to understand and, individually or collectively, to influence their working and social environment in terms of the Human Resources Development Convention, 1975 (No. 142), Article 1(4).

70. Including that breastfeeding workers have insufficient rest breaks, Maternity Protection Convention, 2000 (No. 183), Article 10.

71. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); and, as relevant, the Right of Association (Agriculture) Convention, 1921 (No. 11); Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84); Plantations Convention, 1958 (No. 110), Part IX; Workers' Representatives Convention, 1971 (No. 135); Rural Workers' Organisations Convention, 1975 (No. 141); Labour Relations (Public Service) Convention, 1978 (No. 151); Collective Bargaining Convention, 1981 (No. 154); Private Employment Agencies Convention, 1997 (No. 181), Articles 4 and 11(a), (b); and Domestic Workers Convention, 2011 (No. 189), Article 3(2)(a), (3).

72. Including that nurses are not involved in the planning of nursing services or in decisions that concern them in terms of the Nursing Personnel Convention, 1977 (No. 149), Article 5.

73. Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182).

74. Workers are not entitled to protection in terms of the Social Security (Minimum Standards) Convention, 1952 (No. 102); Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121); Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128); Medical Care and Sickness Benefits Convention, 1969 (No. 130); Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); and, as relevant, the Workmen's Compensation (Agriculture) Convention, 1921 (No. 12); Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); Equality of Treatment (Social Security) Convention, 1962 (No. 118); Nursing Personnel Convention, 1977 (No. 149), Article 6; Maintenance of Social Security Rights Convention, 1982 (No. 157); Indigenous and Tribal Peoples Convention, 1989 (No. 169), Articles 24 and 25; Private Employment Agencies Convention, 1997 (No. 181), Article 11; Maternity Protection Convention, 2000 (No. 183), Article 6; and Domestic Workers Convention, 2011 (No. 189), Article 14.

75. Workers are subject to discrimination in terms of the Migration for Employment Convention (Revised), 1949 (No. 97), Article 6, Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Article 1; Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Social Policy (Basic Aims and Standards) Convention, 1962, Article 14; Migrant Workers (Supplementary Provisions) Convention,

1975 (No. 143); Workers with Family Responsibilities Convention, 1981 (No. 156), Article 3; Indigenous and Tribal Peoples Convention, 1989 (No. 169); Home Work Convention, 1996 (No. 177), Article 4; Maternity Protection Convention, 2000 (No. 183), Article 9; and Domestic Workers Convention, 2011 (No. 189), Articles 10 and 14. Also, disabled workers are not subject to a national policy on vocational rehabilitation and employment in terms of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); part-time workers are not entitled to the same protection as full-time workers in respect of the right to organize, the right to bargain collectively, the right to act as workers' representatives, occupational safety and health, and discrimination in employment and occupation, or receive a basic wage lower than that of comparable full-time workers, or do not enjoy conditions equivalent to comparable full-time workers with respect to statutory social security schemes, maternity protection, termination of employment, paid annual leave and paid public holidays and sick leave in terms of the Part-Time Work Convention, 1994 (No. 175); temporary agency workers are subject to discrimination by private employment agencies, Private Employment Agencies Convention, 1997 (No. 181), Article 5, or migrant workers recruited or placed by private employment agencies do not receive adequate protection from abuses in terms of Article 8.

76. Equal Remuneration Convention, 1951 (No. 100). Also relevant are the Migration for Employment Convention (Revised), 1949 (No. 97), Article 6 (1)(a)(i); Social Policy (Basic Aims and Standards) Convention, 1962, Article 14 (2); Part-Time Work Convention, 1994 (No. 175), Article 5; Indigenous and Tribal Peoples Convention, 1989 (No. 169), Article 20(2 (b); and Domestic Workers Convention, 2011 (No. 189), Article 11.

77. Including that workers are not protected from sexual harassment, ILO Committee of Experts on the Application of Conventions and Recommendations *General Observation*, Convention No. 111, 2003, p. 463, and, as relevant, the Indigenous and Tribal Peoples Convention, 1989 (No. 169), Article 20(3)(d). Also, as relevant, domestic workers are not effectively protected from all forms of abuse, harassment and violence, Domestic Workers Convention, 2011 (No. 189), Article 5.

78. Including that the basic human rights of migrant workers are not protected, Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Article 1; and that indigenous and tribal peoples do not enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination, Indigenous and Tribal Peoples Convention, 1989 (No. 169), Article 3.

79. Including, as relevant, that restrictions are placed on the transfer of migrants' earnings and savings, Convention No. 97, Article 9; that workers' personal data are not protected by employment agencies in terms of the Private Employment Agencies Convention, 1997 (No. 181), Article 6; and that domestic workers are not entitled to decent living conditions that respect their privacy, Domestic Workers Convention, 2011 (No. 189), Article 6, and are not entitled to keep in their possession their travel and identity documents, Article 9(c).

80. Including that the efforts of migrant workers and their families to preserve their national and ethnic identity and cultural ties with their countries of origin, including the possibility for their children to be given some knowledge of their mother tongue, are not assisted and encouraged, Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Article 12(f); and that no action is taken to promote the full realization of social, economic and cultural rights with respect to the social and cultural identity, customs and traditions and institutions of indigenous and tribal peoples, Indigenous and Tribal Peoples Convention, 1989 (No. 169), Article 2(b).

81. Including, as relevant, that workers belonging to indigenous and tribal peoples, including seasonal, casual and migrant workers in agricultural and other employment and those employed by labour contractors, do not enjoy the protection afforded by national law and practice to other workers in the same sectors, Indigenous and Tribal Peoples Convention, 1989 (No. 169), Article 20(3)(a); that workers in hotels and restaurants are excluded from national-level minimum standards, including those relating to social security entitlements, Working Conditions (Hotels and Restaurants) Convention, 1991, Article 3; and that domestic workers do not enjoy minimum wage coverage, Domestic Workers Convention, 2011 (No. 189), Article 11.

82. Including that workers are not subject to a system of labour inspection in terms of the Labour Inspection Convention, 1947 (No. 81), and its Protocol of 1995, and, as relevant, the Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and Indigenous and Tribal Peoples Convention, 1989 (No. 169), Article 20(4). Also, workers are not subject to a system of labour administration in which a competent body draws attention to defects and abuses in conditions of work and working life and terms of employment and submits proposals on means to overcome them, in terms of the Labour Administration Convention, 1978 (No. 150), Article 6, or such systems do not include activities relating to the conditions of work and working life of categories of workers who are not, in law,

employed persons, such as e.g. self-employed workers who do not engage outside help, occupied in the informal sector in terms of Article 7; measures are not taken to prevent unauthorized deductions from wages and to restrict the amounts deductible from wages in respect of supplies and services forming part of remuneration to their proper cash value, Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), Article 8(b) and (c). Also, as relevant, the State does not systematically seek to determine whether there are on its territory migrants who are subject to conditions that contravene international multilateral or bilateral instruments or agreements or national laws or regulations in terms of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Articles 2 and 6; no coordinated and systematic government action is taken to protect the rights of indigenous and tribal peoples or to guarantee respect for their integrity in terms of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), Article 2, in applying laws and regulations to these peoples, no due regard is taken of their customs or customary laws in terms of Articles 8, 9 and 10, they are not safeguarded against the abuse of their rights or able to take legal proceedings for the effective protection of these rights in terms of Article 12, and they are not subject to special measures to ensure effective protection with regard to recruitment and conditions of employment in terms of Article 20; the respective responsibilities of employers and intermediaries in home work are not determined in terms of the Home Work Convention, 1996 (No. 177), Article 8, there is no system of inspection to ensure compliance with laws and regulations applicable to home work, Article 9, and adequate remedies, including penalties where appropriate, are not provided for and effectively applied where laws and regulations are violated, Article 9; plantation workers are not subject to the protections contained in Part XI of the Plantations Convention, 1958 (No. 110); migrant domestic workers who are recruited in one country for domestic work in another do not receive a written job offer or contract of employment that is enforceable in the country in which the work is performed prior to crossing national borders in terms of the Domestic Workers Convention, 2011 (No. 189), Article 8, domestic workers do not have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally, Article 16, and the State does not establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers or develop and implement measures for labour inspection, enforcement and penalties, Article 17.

83. Including that temporary agency workers are not subject to adequate machinery and procedures for the investigation of complaints, alleged

abuses and fraudulent practices concerning the activities of private employment agencies in terms of the Private Employment Agencies Convention, 1997 (No. 181), Article 10, temporary agency workers are not subject to necessary measures to ensure adequate protection in freedom of association, collective bargaining, minimum wages, working time and other working conditions, statutory social security benefits, access to training, occupational safety and health, compensation in cases of occupational accidents or diseases, compensation in cases of insolvency and protection of workers' claims, maternity protection and benefits, and parental protection and benefits in terms of Article 11, including by determining and allocating the respective responsibilities of private employment agencies and of user enterprises in relation to collective bargaining, minimum wages, working time and other working conditions, statutory social security benefits, access to training, protection in the field of occupational safety and health, compensation in case of occupational accidents or diseases, compensation in the case of insolvency and protection of workers' claims and maternity protection and benefits, and parental protection and benefits in terms of Article 12; and that there are no adequate machinery and procedures for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers in terms of the Domestic Workers Convention, 2011 (No. 189), Article 15(b), the State does not provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies, including by specifying the respective obligations of the agency and household or providing for penalties, including the prohibition of private employment agencies that engage in fraudulent practices and abuses, Article 15(c), and the State does not consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment, Article 15(d).

84. Including that no measures are taken to ensure that employers and workers are informed of minimum wages rates in terms of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), Article 10(3), that where workers are paid wages at less than these rates they are not entitled to recover the amount by which they have been underpaid in terms of Article 10(4); that employers are not required to keep registers of wage payments, to issue to workers statements of wage payments or to take other appropriate steps to facilitate the necessary supervision under Convention No. 117, Article 11(1), and measures are not taken to inform workers of their wage rights, Article 11(8)(a). Also, as relevant, workers belonging to indigenous and tribal peoples are not fully informed of their

rights under labour legislation and of the means of redress available to them in terms of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), Article 20(3)(a), and have not had made known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights under the Convention, Article 30; and domestic workers are not informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in terms of the Domestic Workers Convention, 2011 (No. 189), Article 7, and domestic workers who are recruited in one country for domestic work in another do not receive a written job offer or contract of employment that is enforceable in the country in which the work is to be performed prior to crossing national borders, Article 8.

85. Maternity Protection Convention, 2000 (No. 183).

86. Workers are not subject to maternity protection in terms of the Maternity Protection Convention, 2000 (No. 183), and, as relevant, the Private Employment Agencies Convention, 1997 (No. 181), Article 11(j), and Nursing Personnel Convention, 1977 (No. 149), Article 6(e).

87. Including, as relevant, that temporary agency workers do not receive adequate protection in relation to parental protection and benefits, Private Employment Agencies Convention, 1997 (No. 181), Article 11(j).

88. Workers with Family Responsibilities Convention, 1981 (No. 156), Article 8.

89. Including that workers with family responsibilities are not subject to a national policy that enables them to exercise their right to engage in employment without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities, Workers with Family Responsibilities Convention, 1981 (No. 156). Also, as relevant, workers in industry, commerce and offices are not entitled to weekly rest granted simultaneously to all staff that coincides with the days already established by the traditions or customs of the country or district and respecting the traditions and customs of religious minorities in terms of the Weekly Rest (Industry) Convention, 1921 (No. 14), and Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106); in the planning of economic development there is no effort to avoid the disruption of family life or of traditional social units in terms of Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), Article 3(2), and terms and conditions of employment do not take account of the normal family needs of workers in employment that involves living away from their homes, Article 6; that indigenous

and tribal peoples are not subject to special measures to safeguard the persons, institutions, property, labour, cultures and environment of these peoples in terms of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), Article 4, do not have the right to decide their own priorities for the process of development as it affects their lives, beliefs, situations and spiritual well-being and the lands they occupy or use or to exercise control over their own economic, social and cultural development in terms of Article 7, and the rights of ownership and possession of the lands they traditionally occupy are not respected in terms of Articles 14–19; and workers in hotels and restaurants are not subject to sufficient advance notice of working schedules to enable them to organize their personal and family lives, Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172), Article 4(4).

Chapter 3 – Tackling unacceptable forms of work: The spectrum of unacceptability and strategic regulation

90. This approach is reflected in the Worst Forms of Child Labour Convention, 1999 (No. 182). Article 4(1) requires governments to consult with organizations of employers and workers to identify "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children" (among the worst forms of child labour identified in Article 3(d)).

91. Maharashtra Mathadi Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969. Available at: http://mahakamgar.gov.in/MahLabour/lc-mathadi-boards.htm. The discussion of the regulation of Mathadi workers draws on Marshall (2014) and Agarwala (2013).

92. The Mathadi unions and workers continue to resort to strikes and industrial action in order to obtain wage increases and enforce their rights.

93. One focus of bidi workers' struggles has been to gain recognition as employees of the large formal sector bidi factories.

94. Uruguay is a middle-income country with lower poverty rates and less income inequality than most other countries in the region. In 2013, approximately 17 per cent of all employed women in Uruguay were domestic workers. This figure has remained fairly constant since the 1990s. This discussion draws upon Budlender (2013), Goldsmith (2013) and ILO (2013f).

95. Until 2008, there were two channels for setting wages in Uruguay: tripartite negotiation in the Consejos de Salarios (Wage Councils) and,

for those occupational groups that did not participate in the Wage Councils, presidential decrees.

96. It was founded in 1985, although it has roots in older domestic worker organizations that date to the mid-1960s, and it is the only membership-based organization that represents domestic workers in Uruguay.

97. Law 18.065.

98. In addition to defining the terms of Law 18.065, Decree 224/007 explicitly excluded rural domestic service personnel (referring basically to domestic workers who are employed by the owners of farms and ranches).

99. There are other provisions in both of the collective agreements that strengthen clauses in the 2006 labour law and the 2007 regulatory decree (such as overtime pay) or other recent laws that theoretically covered domestic workers (Law 18.345, special paid leaves for study, family deaths, adoption, marriage).

100. It set adjustment rates according to three salary bands, included a commitment to define the categories that are part of the sector until 2015, and created a premium for domestic workers who have not been unduly absent from work. See http://www.ilo.org/travail/areasofwork/domestic-workers/WCMS_212212/lang--en/index.htm.

101. During the first year, the Inspección General del Trabajo y de la Seguridad Social (IGTSS – General Inspectorate for Labour and Social Security) limited the campaign to Montevideo and Canelones and focused upon registration with and payment to the BPS. During the second year, it expanded the campaign to four other departments and covered other issues such as payment of wage increases, holiday pay, yearly bonus, and the availability of work clothes and equipment. The inspectors did not enter the households, so they did not require a judicial order. They asked the employer (and if he or she was unavailable, the worker) to answer a series of questions regarding work conditions and benefits and to show pay slips and documents from the BPS that would allow them to detect violations. They found that there was at least some degree of lack of compliance in 80 per cent of the cases, most frequently regarding some aspect of social security (Goldsmith, 2013, p. 20).

102. McCann and Murray develop a notion of "framed flexibility" for the regulation of the working time of domestic workers, which is "tendered as a resource for the design of measures at a range of regulatory levels, and in diverse national settings" (McCann and Murray, 2014, p. 336). These measures are particularly attuned to the "existing labour practices and embod[y] incentives towards regulation" (ibid., p. 337). The Framing Standards are designed to standardize (or formalize) hours of work in

order to prevent excessive hours and prohibit on-call work or zero hours contracts.

103. Domestic Workers Convention, 2011 (No. 189) – *Convention concerning decent work for domestic workers* (Entry into force: 5 Sep. 2013), Article 4: "1. Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally.
2. Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training."

104. The discussion in this section draws on Lee and McCann (2014).

105. The estimate was that around 1.4 million employee contracts do not guarantee a minimum number of hours that provided work in the survey reference period of the fortnight beginning 20 January 2014. The ONS also provided an initial estimate of a further 1.3 million employee contracts under which employees were not guaranteed a minimum number of hours that did not provide work in the survey reference period. The ONS intends to take further research into these contracts (ONS, 2014). These figures do not include workers classified as engaged on a self-employed basis. It therefore potentially fails to catch workers who could be designated as employees by the courts.

106. In the LFS, "zero-hours contracts" are defined as "where a person is not contracted to work a set number of hours and is only paid for the number of hours they do" (ONS, 2014, p. 3).

107. See e.g. the definition of "employee" in the Employment Rights Act 1996 (UK), s 230.

108. *Autoclenz v Belcher and others* [2011] UKSC41.

109. Zero hours contracts are defined as contracts under which "(a) the undertaking to do or perform work or services is an undertaking to do so conditionally on the employer making work or services available to the worker, and (b) there is no certainty that any such work or services will be made available to the worker", Small Business, Enterprise and Employment Bill, Section 139(2).

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