Voice Regulation on the Informal Economy and New Forms of Work

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Voice regulation is characterised by Guy Standing in "Global Labour Flexibility: Seeking Distributive Justice" as one of three forms of labour regulation, the other two forms being statutory regulation and market regulation. The term "voice regulation" derived by Albert Hirschman, "implies that labour relations, practices and changes are managed through bargaining between representatives of potentially conflicting interests". This system of regulation recognises that there are conflicts of interest in any workplace, creates collective bargaining institutions which recognise and legitimise the conflicts and makes them a starting point for negotiations aimed at constructing mutually acceptable regulations and practices with which conflicting parties which are party to the system are all willing to comply.

The South African experience: evolution of voice regulation in the 20ᵗʰ century

In South Africa, a system of voice regulation was established by means of the Industrial Conciliation Act of 1924. This Act provided the framework for trade unions and employer associations to set up industrial councils with powers to negotiate minimum wages and working conditions for entire industries – which would then be gazetted as statutory laws and regulations for those industries. However, only registered trade unions could use this system, and the South African laws of racial segregation prevented African workers from joining registered unions. African workers were legally able to organise and join trade unions, but their unions could not qualify for registration, and therefore could not participate in the industrial councils. In other words, African workers had the right to organise and join trade unions, but they had no voice in the industrial councils which determined their wages and working conditions.

African workers nevertheless continued to organise and join trade unions, and were able to effectively exert collective pressure to win countless victories throughout the decades from 1924 to the 1980s, despite their voice remaining legally excluded from the official voice regulation system. In 1924 a large general union of African workers, the Industrial and Commercial Union (ICU) had been formed, only to collapse by 1930. Friedman argues that the ICU's

inability to engage recalcitrant employers in collective bargaining or engage in legal strike action created weaknesses and inability to solve many of its members' problems which, along with repressive measures against the union and its militant leadership, contributed to the eventual demise of the union.

In the 1930s African workers organised in industrial unions. In the absence of representation at industrial council level, some of them made use of Wage Boards, a statutory mechanism for setting minimum wage levels in industries not covered by industrial councils. The Wage Boards sought stakeholder participation by means of *public hearings* rather than *negotiation*, after which they would formulate statutory regulation. Many African unions were able to use the Wage Board hearings very strategically in order to address their members' wages and working conditions, sometimes succeeding in influencing the outcome, strengthening their membership and building union organisation. However, the platform given to the unions by the Wage Boards was "no substitute for negotiation" and the trade unions of the 1930s were not able to sustain their strength in the absence of worker-backed collective agreements.

The 1940s saw an upsurge in African worker militancy and the development of a new African trade union federation, CNETU (Council of Non-European Trade Unions). The Second World War created a great demand for African labour to produce for the war effort in the absence of white workers who had left to fight in the war, and as a result "the demand for African labour was so great that the pass laws were relaxed or not applied at all. Most of the barriers to African worker organisation were removed and workers gained new strength." During this period, as a result of widespread and co-ordinated worker militancy, the government promulgated "War Measure 145" which gave African workers some voice in setting wages. However, after the war and the defeat of a massive strike by the African Mine Workers Union (CNETU's biggest affiliate) in 1946, very few of the gains were sustained. Friedman argues that the CNETU unions were content to accept verbal "gentlemen's agreements" where they won bargaining rights, instead of demanding "permanent written agreements which would have bound employers to deal with them when their strength waned". Still African workers remained outside of the framework of the Industrial Conciliation Act which was the official system of voice regulation in South Africa.

In 1948 the National Party was elected into power by the white electorate, ushering in the official policy of Apartheid. The 1950s saw the formation of the South African Congress of Trade Unions (SACTU) which played a political role from the outset. SACTU joined the Congress Alliance led by the African National Congress (ANC). In 1955 the Wage Act was changed to close the loophole which allowed unions to request the Wage Board to investigate wages, and in 1956 the Industrial Conciliation Act was changed to close loopholes allowing African workers to join racially mixed unions or any registered unions. This meant that unions to which African workers belonged could no longer use any part of the official channels they had started using during the 1930s and the 1940s. This naturally sparked debated within SACTU whether unions should de-register and work totally outside the system, and some of them did. SACTU's main rival, the Trade Union Council of South Africa (TUCSA) used a system of "parallel unionism" whereby African unions relied on parallel registered sponsor unions (with no African worker members) in the same industry to take up demands for them. The price they paid for this was to have to submit to the control of their registered sponsor unions. SACTU made many important gains for its members through a combination of

calculated shop-floor strategies in industries where their organisational base was strong, and mass campaigns for better wages (e.g. the "Pound a Day" campaign for one pound minimum daily wage) and against the National Party and its Apartheid policies. However, SACTU did not survive the banning of the ANC in 1960. When the state cracked down on ANC leadership, who were also SACTU's leadership, the organisation on the ground was not well enough established to continue without this leadership – and SACTU (although not banned with the ANC) went into exile with the banned ANC.

During the 1960s trade unionism all but faded out for black workers in South Africa. "The job colour bar tightened, the pass laws became ever harsher, but workers did not resist – strikes were so rare that each was a major event. Employers were free to run their factories as they chose and to pay Africans what they pleased; cheap, docile, African labour helped industry grow as never before."

The complacency of the South African employers and government was rudely interrupted by a massive rolling wave of wild-cat strikes which started in Durban and Pietermaritzburg in 1973 and continued in 1974, spreading to Johannesburg and the Witwatersrand area. The strikers were not unionised, and employers were taken by surprise. Wages of black workers were so low that it was not difficult for employers to agree to grant increases just to get their workers back to work. This showed workers that being united and withholding their labour brought results, and the strike wave swelled and continued rolling.

After this, the thousands of workers who had participated in the strikes saw the need to start rebuilding strong independent trade unions, to consolidate their gains. All around the country, with the help of political activists from Universities, from within some of the registered unions as well as from old SACTU unions, structures started being set up to build an independent trade union movement, learning from the experiences and mistakes of the 1920s to the 1950s. Attempts by the government to get black workers to adopt the TUCSA system of parallel unionism had limited success, as workers now joined independent democratic worker-controlled unions in large numbers, despite the political risk this entailed for them. Despite having no voice in the official labour relations system, the independent unions offered the possibility for workers to speak for themselves and bargain on their own behalf with individual employers who could be persuaded to negotiate with the union once it had showed that it represented the whole or a large percentage of the workforce. The independent unions offered the possibility of direct voice representation (albeit limited) to black workers, which TUCSA did not. Twice, in 1974 and in 1976, the government imposed five-year restriction orders upon leading trade union organisers and activists working with or in the independent unions in the hope of stemming the growth of this movement. However, new levels of leadership being built in these unions on the shop floor, and the willingness of other activists on the periphery of the independent trade union movement to become more directly involved, ensured continued growth in membership and consolidation of the democratic structures in these unions.

The 1973 strikes were followed by the Soweto student uprisings of 1976, a militant protest by black school pupils against the discriminatory education system forced upon them. The Apartheid government feared the development of a political alliance between workers and militant students. To pre-empt this, the labour laws were reformed in 1979, allowing African trade unions to register. However, the reformed law still envisaged racially separate unions.

This was successfully challenged in the supreme court by the Metal and Allied Workers Union (MAWU – the first national industrial union to be formed from Durban, arising from the 1973 strikes) in 1983. After this the doors were open for the first time for the unions to which African workers belonged, to participate fully in the industrial relations system of the country.

Through the decades from 1924 to 1979, the "protectionist" white workers' unions which had enjoyed the exclusive privileges of voice and representation at the expense of black workers, went into decline. "Their numbers had dropped as whites left the factories and mines for better jobs and their militancy had been sapped by years of privilege: they had too great a stake in the system to confront the government and the reforms did not threaten them enough to spur them into workplace resistance." Even though the labour law reforms of 1979 removed the position of privilege which white workers had been enjoying for so many decades, their unions no longer had the teeth to fight to preserve those privileges. Their "privilege was also their undoing" and the feeble protests of these weakened unions against the labour law reforms were dismissed by militant but disappointed right-wing unionists, who charged that "their bark is worse than their bite. They take a different attitude when a cabinet minister talks to them privately."

In the early 1980s, the African trade unions started using the organising space created by the labour law reforms, both for mobilising membership and for actively engaging in collective bargaining. Being unaccustomed to the industrial councils, they initially insisted on plant-level bargaining at companies where they enjoyed majority membership. Some employers dodged them by refusing to bargain at plant level and insisting that they would only bargain at the Industrial Council – thinking that these unions, with their history of struggling for justice and equality, would never register with Industrial Councils with such a bad reputation for legislating very unequal wage levels. Other employers could not dodge the emerging unions when they found that nearly their entire workforce had joined up. Unions started to make major gains in wages and working conditions, significantly better than the legislated minimum levels, at those companies where they did successfully engage in collective bargaining. Successful negotiations also saw workers winning more political demands such as May Day (1 May) as a holiday at certain workplaces – as part of a nation-wide campaign to fight for May Day as a public holiday. However, it was not long before the emerging unions saw that they would be able to have a greater impact on wages and working conditions if they could bargain at industry-level. Some of them registered with the Industrial Councils, and were soon transforming the way in which these Industrial Councils operated. The Industrial Councils had grown accustomed to making deals with weak unions representing mainly skilled white artisans, who were a small minority of the workforce and more than willing to agree to unacceptably low wages for unskilled workers. Now they were facing massive unions representing all workers, including those unskilled workers, who were willing to down tools for decent minimum wages, shorter working hours and other improvements to working conditions and employee benefits which were long overdue. In some industries, employers reacted by trying (sometimes successfully) to disband the Industrial Councils which had served them so well for so many years, in order to go back to plant-level bargaining.

In 1981 another wave of strikes swept the country – this time a smaller and less dramatic wave – after an announcement that the government was investigating ways to preserve black workers' pensions so that they could keep

their pension money invested even when they changed jobs, until retirement age. This caused panic among workers who feared that the government would help itself to their invested pension money, and resulted in a spate of demands from workers for all their pension money contributions to be refunded to them. Where employers refused, workers went on strike. Emerging unions were caught flat-footed by this strike wave, which appeared to be driven by mistrust and ignorance. The determination of workers forced trade unions to really look into the pension funds and how they worked. It emerged that the existing long-established pension funds were operating to the benefit of white and managerial workers with long service and good prospects of job security, at the expense of black and unskilled workers with low job security and prospects of internal promotion – something which had gone relatively unnoticed during the years of focussing on black workers' low wages. The wealthy were being cross-subsidised by the poor, something which the trade unions clearly had to address. In the short term, many workers got their pension money refunded – but in the longer term, negotiations about better and more viable retirement benefits, including new industry provident funds part-controlled by unions, were initiated with successful and lasting results. These strikes had dramatically and irreversibly added social security to the voice regulation agenda of black South African workers.

During the 1980s and into the 1990s, the unions launched national campaigns for further labour law reform, including better systems of centralised bargaining. The government had now realised that the system of unilateral regulation had not worked, and was never going to work, and agreed to establish tripartite forums (consisting of government, employers and trade unions) to get consensus on policy and legislation. The new Labour Relations Act (LRA) replaced the Industrial Conciliation Act of 1956 which was amended in 1979, and the LRA has been amended several times to give force to improvements to the collective bargaining system, the right to strike, put in place a new dispute-resolution mechanism and Labour Court. Since the late 1980s the voice of the organised workers in South Africa has been central to all these changes and developments – the active realisation of a well-established system of Voice Regulation in practice. In addition to national industry-based Bargaining Forums, there is now a national labour market institution, the National Economic, Development and Labour Council (NEDLAC) where social partners debate and discuss draft legislation and economic policies being considered by government.

The challenge now facing NEDLAC and the Bargaining Forums (which have replaced the old Industrial Councils) is that their composition is such that they still exclude the workers in the informal economy. Employers are represented by large corporate employers' associations, and workers are represented by unions and national centres representing mainly permanent full-time workers employed in the formal economy. NEDLAC succumbed to pressure from community organisations, and introduced a fourth partner, the Community Constituency, into its structures. However, the Community Constituency has its own representational and other capacity problems, is constantly marginalised and has therefore been ineffective in bringing the labour market concerns of workers in the informal economy to the negotiating table for systematic consideration in policy–making and legislating.

In 1994 the workers of South Africa were able once more to be represented at the International Labour Conference after South Africa was readmitted to the ILO after having been expelled from the United Nations because of its

Apartheid policies. This completed the struggles of black workers in South Africa for their organisational and representational rights as they now attained direct representation in the international arena of voice regulation.

Voice regulation – the basics

Standing asserts: "To be effective, institutions of voice regulation must be inclusive in character and the bargaining environment must be balanced." He goes on to say: "To be effective as instruments of distributive justice and instruments of *dynamic efficiency* agencies of voice regulation must be able to ensure that all bargainers have sustainable strength. The agents must believe that they will have to deal with each other again and again. There must be **the shadow of the future** lingering over their deliberations." He identifies three disadvantages of voice regulation, i.e. the fact that it is time-consuming, the difficulties of effective co-ordination, and the fact that "voice regulation may intensify labour market inequalities and insecurity if the institutions exclude the interests of more vulnerable groups." This last point is clearly borne out in the South African experience, where the whites-only voice regulation system of the 1920s to the 1970s served to intensify the racial inequalities in the South African labour market.

Considerable potential advantages of a system of voice regulation are enumerated by Standing, and summarised as: "voice regulation can provide monitoring so as to reduce opportunism". But he poses the question: "is the institutional bargaining and decision-making sufficiently representative and responsive ?"

> *"To be effective, voice regulation must be based on incorporating those on the margins of the labour market and on the margins of society. They too must be part of the **shadow of the future**. They must be given voice in the institutions of labour market regulation and social policy, and they must be taken into account in regulatory and redistributive decisions. Today's insiders must understand that in flexible systems tomorrow they may be outsiders. What this means, in short, is that in the emerging flexible economies, multi-partite structures must displace atavistic institutions better suited to the early days of industrial society."*

In today's world of global labour flexibility, statutory labour regulation has become more and more unable to keep up with the constantly changing labour market, which has led to the hope that "de-regulation" would be the answer. However, as Standing points out, "de-regulation" is merely a naïve way of thinking about market regulation which also has major disadvantages and instabilities. It would seem that voice regulation, which relies on the participation of affected parties and interest groups – who are best placed to express their changing interests in a dynamic and changing labour market – does hold some potential for being an appropriate form of labour regulation for new forms of "non-standard" work in the informal economy. But then – how do the existing voice regulation systems need to be transformed to become sufficiently inclusive for global labour markets characterised by new forms of work and increasing informal economies ?

Lessons from the South African experience for workers in the informal economy and new forms of work

At first sight, the history of how black workers in South Africa successfully fought for equal rights over the decades of the 20th century does not really seem to have much to do with workers in the informal economy – particularly since workers in South Africa's informal economy today are every bit as marginalized and excluded from the protection of the law as workers in the informal economy and new forms of non-standard work in the rest of the world. But a closer examination reveals an analogous situation. One of the main obstacles to the organisation of workers in the informal economy and in new forms of non-standard work is the fact that they are not part of the labour force recognised by law (especially "own-account" or self-employed workers) just like black South African workers for all those decades until 1979. The analogy suggests that, contrary to popular belief that such workers cannot be organised, there are real possibilities for workers in the informal economy and new forms of work to organise themselves (whether or not the laws recognise them as workers) and fight for their legal recognition as workers, and for new laws and policies which eventually grant them all the basic rights and core labour standards to which other workers are entitled. Let us take this analogy further by looking at some key areas of comparison.

<u>Workers in the "inside" cannot properly represent workers on the "outside</u>". Workers who were members of the registered unions which had privileged access to the voice regulation system in South Africa, were not able to properly represent the black workers who were not allowed to belong to registered unions. Similarly, workers in the formal economy and their trade unions are not suitable representatives for workers in the informal economy and non-standard work. The only acceptable voice regulation mechanisms for workers in the informal economy, including new forms of non-standard work, are trade unions and workers' organisations which have organised **these workers** as their members, and in which informal economy and non-standard workers regularly elect their **own representatives**. Formal sector unions can properly represent informal and non-standard workers only when they too start actually organising them and having them elect their own leadership in their unions.

The analogy with the South African history further suggests that, unless workers in the informal economy and new forms of non-standard work are brought into the system of voice regulation, labour market inequalities between workers in the formal and informal economy, and between workers in increasingly varied forms of work, would deepen. In all likelihood, workers in the formal economy would also eventually be "undone by their privilege" as happened to South African white workers in relation to black workers, unless they form alliances with organised workers in the informal economy and new forms of work, and engage jointly with them in new inclusive and integrated voice regulation systems.

<u>Democratic worker-controlled organisations</u>: The decades-long struggle for trade union rights and representation in the national system of voice regulation was achieved by many decades of organisation. Finally it was through independent, democratic worker-controlled organisations that the

current system of voice regulation at all levels (from local to national) was achieved. For workers in new forms of work and the informal economy to be able to participate in – and sustain – an appropriate system of voice regulation, they will also need to be organised in independent, democratic organisations controlled by and accountable to themselves. These workers' organisations may need to have some different characteristics from traditional trade unions, and they will definitely have to have different organising strategies – and they will need to be democratically run by and accountable to the workers in the informal economy and new forms of non-standard work who are their members, who will need to elect their own spokespeople to represent them in collective bargaining and social dialogue.

Organising in the context of an inadequate legal framework:

Over the years, when the definition of "employees" in South African labour legislation still excluded black workers, this did not stop black workers from organising and successfully fighting for their rights. Workers organised outside of the legal framework, and their struggle included a struggle for the establishment of a legal framework which would include them. This result was finally only achieved in the 1980s and the 1990s. However, during the years leading up to this, many other gains were won on the way, bringing about short-term improvements in their wages and working conditions. The short-term victories were also important for helping to continue to strengthen their organisation and build alliances to fight for their rights to be properly represented in the national (and eventually international) voice regulation system.

Workers worldwide in the informal economy and in new forms of non-standard work are facing an analogous situation, where they are not recognised as workers in terms of labour legislation. Even trade unions perpetuate the myth that "they are not defined as workers in law – therefore we cannot organise them". An excuse of trade unions in the formal economy for not organising workers in new forms of non-standard work and, even more so, in the informal economy, is that they do not fall within the ambit of labour legislation, and that it is therefore difficult to define who they are. Many trade unions feel that they can only organise workers who have been defined as workers in labour legislation. However, the South African experience shows that workers can organise themselves whether or not they have been recognised as workers in the labour legislation – as long as they recognise themselves as workers. When they organise, they therefore need to organise not only for improvements in their working and living conditions, but they need to shape new laws which will recognise and protect workers in the informal economy and new forms of work. They will also need to develop laws ushering in an appropriate voice regulation framework within which workers in the informal economy and new forms of work can be represented through their own directly elected representatives in the mainstream of the system.

Workers take the initiative – don't wait for policy-makers:

Workers in South Africa were fighting against an unjust system which the rest of the world also found to be unjust. However, it was the struggles of black workers themselves which pressurised the government into making concessions with regard to labour legislation and representation of black workers in the national voice regulation system, and which dictated what the reformed labour legislation should look like. The 1973 strikes jolted the government and employers into realising how much they were underpaying black workers and doing something about it – not the figures showing dramatic

wage gaps between workers of different races, which had been readily available for some time without apparently making any significant impression. The labour law reforms of 1979 resulted from the fears of the government that black workers and militant black students would stop being politically complacent and form a political alliance after the events of 1973 and 1976, not because of internationally publicised facts about the lack of access of black workers to the basic labour rights enshrined by the ILO.

Many governments do not see the writing on the wall about the need to make policies and legislation to deal with the challenges of promoting decent work in the informal economy and in new labour markets. Some of them do see the need to attend to this, in theory, but somehow this task seldom makes its way to the top of the priorities in the political or developmental agenda. Where this has happened, there is invariably a strong organisation which has been putting pressure on government and policy-makers. For example, a government which had a lot of living examples and new initiatives (especially in the area of social security) they were able to bring into the discussion on Decent Work in the Informal Economy at the 90th session of the International Labour Conference in June 2002, was the government of India – and they have had the Self-Employed Women's Association (SEWA) in their country since 1972, actively lobbying for policies and measures to address the needs of workers in the informal economy. For workers in the informal economy and new forms of non-standard work in other countries, the lesson should be clear – do not wait for legislators and policy-makers, but get organised and start pressurising them to introduce appropriate laws and policies. Another lesson is that this does not happen in a day, or even in a decade. In South Africa it took a full six to seven decades' struggle before black workers finally achieved equal rights and representation. Workers in the informal economy and new forms of work need to have a long-term view and strategy as well as simultaneous struggles for short-term victories.

Start occupying ground in small steps: During the 1920s, 1930s, 1940s and 1950s, the organisations of black workers in South Africa took strides forward in winning rights and better conditions, and each time they had to take a few steps back again when their organisation was smashed or failed to sustain itself. Nevertheless, each time the next organising drive built on the previous one(s), and by the time the independent unions of the 1970s emerged, they were very mindful of the factors which had weakened the unions in previous decades. This certainly helped to build the movement which burst its way irreversibly into the 1980s and 1990s. Winning small victories along the way was a crucial part of sustaining and increasing union membership among ordinary workers. For example, the political demand for May Day was won by first winning it as a holiday in individual plant level negotiations throughout the early 1980s – until it was being so widely celebrated that the Apartheid government recognised it as a *fait accompli* and introduced it as a public holiday in 1986 (calling it "Workers' Day" instead of "May Day" in an attempt to dilute the focus it had attracted as a political rallying point for workers' organisation). There was an attempt by the outgoing government to emulate the approach of the USA and shift the date away from 1 May – to a Friday or Monday on the first week-end in May – but even this did not succeed as workers continued anyway to take 1 May as a holiday until Workers' Day was officially proclaimed by 1990 to be on 1 May every year.

The struggles to win small victories help organisations to strengthen their capacity to work together and develop their organisational and collective

bargaining skills. It helps each campaign to guard in a more informed manner against repeating the mistakes of the previous ones. It helps organisations to pre-empt the same old divisive strategies used by those who have an interest in dividing their struggles, and to develop a battery of tactics in response to a wide range of strategies and tactics employed by those who have interests which conflict with their own. Workers in the informal economy and new forms of non-standard work need to be engaging in alliances with traditional formal sector workers and their trade unions, learning what works and what does not, learning what causes divisions between them and how best to address these causes. Learning how to effectively work together and run joint campaigns for small victories would be an important step on the way to building towards the longer-term vision of full organisational and representational rights for all workers, including those in new forms of work and the informal economy.

Following the example of the struggles of black workers in South Africa for their organisational and representational rights, workers in the informal economy and non-standard work worldwide could identify loopholes to be used in the short term as stepping stones to their final goals (such as the successful way South African black workers used the Wage Boards in the 1930s, and the space created in the 1940s when white men were fighting in the Second World War). However, the gains achieved by means of using such loopholes still have to be consolidated by eventually securing statutory bargaining rights and institutions which can be sustained in the longer term – failing which they could be easily reversed, as happened in South Africa after the Apartheid government came in and started blocking loopholes in the laws and implementation of racial segregation in the 1950s and 1960s.

From established interests to the margins of society – new systems of voice regulation appropriate for the informal economy and new forms of work

Attempts have been made in some countries to address the increasing vulnerability of workers in the changing labour market. A comparative study based on the contributions of the European Industrial Relations Observatory (EIRO) national centres in European Union member states and Norway, on collective bargaining for non-standard work in Europe, has looked at how non-permanent employment is dealt with by the industrial relations systems of different European countries. In France, for example, special pay provisions apply to non-permanent employees who receive financial compensation for the precarious nature of their employment status. However, all these attempts try to approximate standard work relationships as far as possible – and therefore are not able to deal with self-employed, own account or "independent" workers.

It seems clear that, instead of merely approximating established forms of collective bargaining originally created for permanent employees, new forms need to be developed which can be applied even to workers who have not been able to be represented in the more established collective bargaining systems. However, the dynamics of **power and control** would need to be

clearly understood in the development of new forms of collective bargaining. What follows below is an attempt to identify the key elements of a collective bargaining system.

Identifying the appropriate negotiating partner: An oft-quoted objection to the concept of collective bargaining in the informal economy is: "There is no employer to negotiate with." In many new forms of work, even where there is an employer, it is often difficult to identify who the employer is, where there are many intermediaries along the production chain as a result of subcontracting and sub-subcontracting and so on. This looms as an enormous obstacle in most thinking conditioned within the confines of the employer-employee relationship. However, workers in the informal economy and new forms of work, having defined their needs and transformed these into negotiating demands, could then identify the **modes (or aspects) of control** over these issues, and who is exercising this control. This would help to identify the entity or authority most responsible for the issues they wish to negotiate about – and that entity or authority must then naturally be approached as the negotiating partner for the demand(s) in question. The negotiating partner is usually an institution which has been identified as exerting one or more forms of control over the workers who now approach them with demands for negotiation. Unlike established collective bargaining systems, where workers confront those authorities exercising **internal control** over them, collective bargaining systems for workers in the informal economy and new forms of work may have to also confront authorities or entities exercising **external control** over them.

 In Chapter *??* on "*Reconceptualising Controls: Autonomy or Mutual Obligations*?" different "institutions that control" are described. For the purposes of identifying such institutions who would be suitable negotiating partners, the following range of institutions would all have to be considered:
- **individual transactions or contracts** (e.g. a wholesaler supplying a number of workers and operators with goods for retail);
- **economic governance systems** – which would need correct identification of production and distribution chains, sub-contracting chains and sub-sector chains;
- **state structures** (e.g. general and sector-specific policies and policy-makers, and government officials responsible for these)
- **social structures** (e.g. family, clan, caste and traditional leaders – here the form of collective bargaining engaged in would have to be less formal and blend in with custom and tradition, without surrendering control of the process).

This will often mean that workers in the informal economy and in some forms of non-standard work have to approach a range of negotiating partners (unlike formal workers, who usually approach the same employer each time to negotiate any issue) to bargain collectively on different formulated demands. This then means that informal economy and non-standard workers' organisations need to develop the flexibility and diverse tactics to deal with different negotiating partners, either separately, or together in one bargaining forum. In the case of street vendors, they usually need to negotiate with municipalities. However, many municipalities are not well organised to deal with street vendors through one dedicated department, and often street vendors have to negotiate with different municipal departments on their different demands. Where certain local government functions have been privatised (an increasing occurrence these days) they may have to negotiate

with private companies who have taken over certain management and marketing functions. They may have to conduct separate negotiations with police private security companies (or even the army in some countries) on enforcement, safety and security demands. Then on their demands for social security, negotiations with government departments of labour or welfare will be required (at state or national level, whichever is responsible for social security).

Ad-hoc negotiations often take place in crisis situations (especially between municipalities and street vendors). The most common problem experienced by workers in the informal economy is that when the crisis has passed, agreements reached in these situations are often breached or reneged upon – and there is no real compulsion on either side later to stick to agreements made in the heat of the moment. For this reason, organised workers in the informal economy and new forms of non-standard work need to press for the establishment of statutory bargaining forums consisting of the relevant role-players, to take this kind of collective bargaining to a more consistent and sustainable level – and to obtain stronger commitment to the implementation of agreements.

Recognition/accreditation of representative worker organisations: A more substantial problem facing the project of establishing collective bargaining forums is the paucity of organisations of workers in the informal economy and new forms of non-standard work with the capacity to engage in a representative and consistent manner. No matter how well-intentioned the negotiating authority, it is impossible to achieve meaningful negotiation, or even dialogue, with leaders who are unrepresentative or organisations which have very limited negotiating skills. On the other hand, the poor capacity of organisations and associations of workers in these work sectors is also one of the most common excuses used by authorities to justify their failure to consult or negotiate, and instead make unilateral decisions on behalf of workers and operators in the informal economy and new forms of non-standard work.

Clearly there would have to be certain basic criteria for the recognition and accreditation of representative organisations of workers in these work sectors, to make such voice regulation credible and viable. The same criteria as those applied to unions of workers in the formal economy may not be quite appropriate. Further, the criteria should not be so onerous that it is impossible for even the most genuinely representative organisations to comply. The nature and general characteristics of organisations of workers in the informal economy and new forms of non-standard work need to be taken into account when developing such criteria. For example, such workers' organisations are often less centralised in their structures than standard formal sector trade unions. Their membership recording systems are usually different from trade unions who record paid-up membership by means of check-off receipts from employers. The proportion of workers within a certain workplace or area represented by a particular organisation is less clear where even the workplace boundaries of the area itself are not so clear.

However, it is reasonable to require that an organisation must be genuinely representative of the workers it purports to represent, in order to participate in collective bargaining on their behalf. For this, an organisation should at least have a constitution which would show its scope of membership and representation, and it should be able to produce membership records in some form to verify its membership claims. It is also reasonable to require that the

organisation informs its negotiating partners of significant changes in its membership from time to time, such as new members joining or resignations of former members – and that updated membership records be provided annually or bi-annually. In this way, there is an informed understanding during negotiations as to who each organisation directly represents.

Independence/autonomy of representative organisations: In the South African experience, when the independent black workers' trade union movement emerged in the 1970s, one of the responses by employers was to set up "sweetheart unions" which they were able to control, in a desperate attempt to avoid dealing with the independent unions. In the long run, this did not work. Workers did not see such unions as operating in their best interests, as they were there to do the bidding of employers – and shunned them in favour of the independent unions. Employers eventually had no option but to deal with the independent unions as they increasingly represented most of their employees. Where workers did join the sweetheart unions because they wanted to avoid conflict, this was usually short-lived, and today few of those unions remain on the South African trade union landscape. Basically, sweetheart unions generally have limited capacity to properly represent their members' interests, especially where these conflict with those of the controllers.

However, many organisations of workers in the informal economy and non-standard work lack capacity, and look to authorities or big business to assist them with capacity-building. Such assistance does not easily come without impacting on the autonomy and independence of the organisation, and ultimately on its ability to properly represent the interests of its members (particularly when their interests eventually conflict with those of their benefactors). As Standing says, "the more representation is *autonomous*, the more meaningful the voice. ….. Difficulties with (independent local unions) and unaffiliated unions include their financial *vulnerability*, and a tendency to suffer from the 'golden handcuffs' technique of management."   Often local government structures, wishing to engage with street vendors but unable to identify representative organisations, go about establishing some sort of organisation with which they can engage. In fact, most development consultants advise authorities to help vulnerable workers to establish organisations and build their capacity – without thinking through the contradictory logic of asking somebody to create and sustain an organisation which, if it is going to be truly representative and give voice to conflicting interests wherever these arise, may at some stage have to be in opposition or even dispute with the authority which created it. Even with the most noble intentions, the "tendency for 'good employers' to turn into 'paternalistic employers' and into more Orwellian creatures of 2004" to which Standing refers would also operate in the case of authorities such as municipalities, where the relationship with street vendors seems to constantly vacillate between harassment (on bad days) and paternalism (on good days).

If an organisation is not autonomous, it does not necessarily mean that it is not representative of its constituency – but it will not be able to provide meaningful voice for that constituency. Only representative organisations which enjoy full autonomy in relation to the institutions with which they negotiate, are in a position to exercise the voice representation needed for effective voice regulation for their constituencies. There is a clear control issue here. As long as the authority which controls the street vendors is also managing its representative organisations, any collective bargaining in which it engages with

that organisation is a sham. There is certainly no "level playing field" (a necessary condition for proper collective bargaining) in a situation where the organisation you are negotiating with is dependent on you for its very existence.

Collective bargaining procedures: There are certain democratic procedures which form part of negotiations irrespective of the nature of the work, the demands or the structure of the collective bargaining forum. Firstly, negotiators have to collect clear mandates from those they represent, in order to formulate demands and plan their collective bargaining strategies. Secondly, they have to do research beforehand and collect information to back up their demands, if they hope to convince their negotiating partners to give serious consideration to the demands. The skills, strategies and tactics employed during negotiation meetings are only one part of the larger collective bargaining process. Then, after obtaining some responses, counter-proposals or indications from the negotiating partner(s), report-back to members needs to be thoroughly done to collect fresh mandates, or to decide whether to agree or not. Failing to agree would result in a dispute – and mandates are also needed for democratic dispute-management. Obtaining consensus from the constituency at this stage is even more difficult that obtaining agreement about what to ask for in the first place – it is difficult (but necessary) to reach consensus on exactly what compromises are acceptable and what compromises are unacceptable. Finally, when agreement is reached, it needs to be reduced to writing and widely publicised, to lessen the possibilities or opportunities for avoiding compliance with what has been agreed. The best way to ensure compliance is when the entire constituency is familiar with exactly what has been agreed and ready to object to any breaches noticed at any level. This is also the most empowering way to involve workers in collective bargaining – in the actual implementation and monitoring of the product of collective bargaining.

For these basic democratic procedures to be followed in collective bargaining, it is important that the workers' organisation(s) concerned are able and free to exercise all these functions: i.e. collect mandates from members, collect research and information (under conditions of full disclosure), receive training in negotiations strategy and tactics, conduct extensive report-back meetings with members, sign agreements, print, distribute and publicise the contents of the agreements in whichever way is most appropriate to the particular constituency of workers, and play a role in monitoring implementation of agreements. The procedures, and the conditions necessary for implementing them, may differ according to different work situations – but basically all the above functions are basic components for meaningful collective bargaining.

Collective bargaining conducted according to agreed procedures such as these, gives the possibility for addressing the hierarchy of controllers from a "level playing field" i.e. even the controlled have the space and opportunity to freely and democratically engage in the process according to rules which are not unilaterally determined by those in control. The collective bargaining system is like a refuge (or equaliser) from the normal systems of control which exist in the work situation. It is almost an artificial arrangement which allows the controlled to be temporarily free of controls while negotiating with their controllers, from a point of equal advantage, some more lasting changes.

Agreed organisational rights and responsibilities: Workers in the informal economy and new forms of non-standard work have to first and

foremost be able to enjoy the right to organise and join the organisation of their own choosing without fearing victimisation. This may involve challenging syndicates or protection racketeers who are interfering in the freedom of association of operators or workers in areas of the informal or unregulated economy they have taken control of. Or it may involve educating ignorant sub-contractors or intermediaries in control who are mainly in the business of dodging labour standards, employment law or trade unions. Or overcoming any other obstacle, however complex or unusual, which prevents a conducive environment to the exercise of their rights of freedom of association by workers in these parts of the economy.

Exercising organisational rights and responsibilities for the purposes of collective bargaining to change things would in itself be a challenge to a well-established system of labour controls, particularly in situations where autonomous democratic organisations are relatively new or unheard-of. Of the many controls in existence in a particular situation, those which are there merely to enforce acquiescence would become redundant in a situation where collective bargaining is now going to operate. Consequently, the elimination of such negative controls or replacing them with those more positive controls needed in the enforcement of the collective bargaining system could provoke resistance, giving rise to a struggle for the exercise of organisational rights and responsibilities – just as trade unionists in the formal economy have experienced through the ages.

To properly undertake the procedures of mandate-collecting, reporting-back, etc. referred to above, could be primarily a challenge to the methods the workers' organisation itself uses to access members who are difficult to reach collectively, or it could involve a negotiation with authorities in charge of the workplaces of the workers – such as the owner of a sweatshop, the head of a household, a temporary employer or intermediary, the owner of land on which somebody is working – or a combination of both factors. The organisation has to establish, if necessary through negotiation of agreed procedures, the **right** to freely exercise these functions – and it also has to take on the **responsibility** to properly carry out the function of collecting mandates, reporting back, obtaining fresh mandates, and ensuring that any agreement accurately reflects what the members have agreed and are willing to abide by, in order to properly represent its members in collective bargaining.

<u>Disputes and dispute-resolution</u>: In any collective bargaining process there lurks the possibility of reaching deadlock, or agreement cannot be attained for any other reason, and a dispute arises. In traditional trade union dispute procedures the parties to the dispute are quite predictable, i.e. employees *versus* employer(s). Now we are talking about something not quite so simple or predictable. Furthermore, disputes between various actors in the informal economy and new forms of non-standard work can be very complex and difficult to understand. However, a correct identification of the "institutions that control" would mean that precisely these institutions could be involved to resolve disputes. In particular, external controls, which would take precedence over internal controls in a hierarchy of controllers, for the larger good of the system as a whole (rather than the more minor objective of internal controls of keeping the controlled in their place) could be harnessed in dispute-resolution mechanisms. For example, the policy and regulatory institutions which govern individual commercial and labour contracts could play a role as a last resort in dispute-resolution, when negotiations break down or fail to produce results with institutions at the levels of internal control.

There is no reason why a very basic dispute procedure along these lines could not be designed for any party to invoke in the event that agreement cannot be reached in any negotiation. The first step would be for the party declaring the dispute to put it down in writing (or have it put down in writing by the organisation, in the case of illiterate workers) and notify the party with whom it considers itself to be in dispute, stating what that party would like to see as the resolution of the dispute. Putting it in writing is a way of formalising the existence of a dispute, defining it and guarding against later shifting the goal-posts. The second step would be for the respondent party to make a written response setting out their position on the matter. This would be followed by a meeting to attempt to resolve the described dispute, within a stipulated time-frame. This meeting would have to either reach an agreement (which would have to be reduced to writing and signed by both parties) or adjourn for an agreed period of time to meet again if there is prospect of success, or agree on another means of resolving the dispute, such as mediation or arbitration by a third party. Failure to resolve the dispute by means of these mechanisms should be dealt with by formally acknowledging that deadlock has been reached, leaving both parties free to reassess their options, exercise their legal rights or resort to other lawful unilateral measures to resolve the matter to their satisfaction.

The labour controls in non-standard work and in the informal economy are more multi-faceted than the formal economy, so even small disputes can seem more complex and impossible to resolve than the traditional straightforward employer-employee disputes in the formal economy. However, understanding the different forms and nuances of control would be a key to the resolution of many conflicts and disputes. Many disputes and conflicts that arise between non-standard or informal economy organisations and authorities are issues which could be resolved relatively easily if there were a fair and just way available to do so, with both parties on a level playing field. The majority of disputes which arise could be settled by means of such procedures or dispute-resolution mechanisms as long as all parties to a dispute see the procedure or mechanism as a better option than unilateralism or anarchy.

Negotiated agreements and their status: One of the key differences between casual or ad-hoc consultation, on the one hand, and collective bargaining, on the other, is that consultation is merely a process, while proper collective bargaining is a process which is intended to result in agreements (which should be reduced to writing and signed by all parties to the agreement). This brings with it an obligation to abide by and implement agreements, and the possibility of taking legal action against anybody who defaults or breaches agreements. In statutory bargaining forums, agreements can be gazetted and become law. This is the essence of what is meant by voice regulation – when the result of a collective bargaining process is converted to legislation.

Implementation and monitoring of agreements: Agreements, even written ones, are meaningless unless they are enforced. Workers' organisations have always found that they have to remain sufficiently strong to ensure that their agreements are properly implemented. If the other party notices weaknesses or chinks in their armour, they are quick to take advantage and opportunistically ignore parts of agreements which do not really suit them. With workers in the informal economy and new forms of non-standard work, this is a common problem – which means that for organisations of these

workers, building the capacity for participating in voice regulation would have to include building the capacity to monitor and implement agreements. The monitoring, by the controlled, of agreements between themselves and the institutions normally exercising control over them, is an important leveller. It protects the product of collective bargaining, and empowers the controlled by giving them an avenue to (re)assert positive control over certain aspects of their working lives in a more sustainable way than ad-hoc acts of resistance do.

What happens when the legal *persona* of either party changes ?

The flexibility of the informal economy and new forms of work and the instability of organisations of the operators and workers, often results in organisations splitting or dividing. Sometimes municipalities re-structure after elections. Changes of this nature (or some other event) after signing an agreement could cause the legal *persona* of any of the parties to an agreement to undergo some change. This would throw into question the legal status of any agreement – even if the same individuals were working in the same work or the same workplace, on the one side, or for the authority involved on the other side, of the agreement. To avoid negotiated agreements in such flexible and unregulated work situations being constantly sabotaged in this way by institutional instabilities, there is a need to develop some mechanism – to be written in as a clause of the agreement – to cater for such eventualities and ensure continuity.

With reference to the concept of controls in Chapter *??* on "*Reconceptualising Controls: Autonomy or Mutual Obligations*?" this also raises questions about controls that are not static, but change their forms and institutions over time.

What kind of power is available as a last resort in the informal economy ?

Workers in the formal economy usually have recourse to the strike weapon as a last resort if negotiations fail, provided of course that they are sufficiently united and well organised. This possibility does not exist in most cases for workers in the informal economy, or for workers in many new forms of non-standard work – often the other party would be only too glad if workers in the informal economy were to withdraw their labour – especially in instances where they are popularly perceived as being a nuisance and efforts are made to evict them from the places where they work, or where their competitors are only too happy to step in and take over their work opportunities. It then rests with organisations of workers in the informal economy and new forms of work to think of other creative ways of putting the other negotiating party under sufficient pressure to bow to their demands. Sometimes media publicity works, particularly with municipalities and other government structures who are sensitive to public opinion. Solidarity action by other organised interest groups could also be effective - this would require effective alliance-building to be able to call up allies and sustain alliance relationships. It is a greater challenge for organisations of workers in the informal economy and new forms of work to think of appropriate strategies to effectively pressurise the opposition, than in the formal economy where employers are entirely dependent upon the labour of employees. The shift which takes place between negotiation and the strike (in the formal economy) is a shift from **engagement** to one of **unilateral action** with the intention of pressurising the party with which it has not been possible to reach agreement under the rules of negotiation on a level playing-field. For workers in the informal economy, particularly own-account or self-employed workers, withholding their labour is often not an effective unilateral action – so they have to consider other forms of unilateral action such as legal action or

public demonstration with a well-worked-out media strategy for maximum publicity, as a way of pressurising the other party in the negotiations.

Different types or levels of negotiation or collective bargaining institutions

<u>Negotiation as opposed to consultation</u>: The government of South Africa, having been elected on an election ticket promising "a better life for all" and being mindful of the mistakes of the previous government in ignoring the voice of the masses, is acutely aware of the need to consult with the masses on just about everything. Most new legislation in South Africa makes consultation a mandatory part of law-making and policy-making. However, there is a big difference between **consultation** and **negotiation**.

Consultation gives an opportunity for people's voice to be heard, but does not carry any obligation to reach agreement – or even have any necessary link with what is implemented after the consultation. Consultation does not necessarily imply any continuity – it can be a once-off exercise. It is essentially a hearing, and does not necessarily empower those consulted or alter power relations in any other way.

Collective bargaining or negotiation, on the other hand, involves engaging with another party with a view to reaching mutually acceptable agreements. A certain level of organisation is necessary for collective bargaining to be possible and sustainable, for people to elect and mandate their representatives and the constituency to be able to meaningfully influence the outcome of negotiations. In negotiations, the controlled use their collective strength to exert some level of control to determine a suitable outcome. In consultations, on the other hand, there may be no more than an opportunity to voice out issues and hope this makes a difference. The party initiating consultations has complete control over the process, the outcome, and the extent to which they will take into account anything they have heard.

<u>Bi-lateral or multi-lateral negotiations</u> ?
The most direct form of negotiations would be bi-lateral negotiations between two parties. However, sometimes it is appropriate for a number of parties with a common agenda to negotiate jointly with a particular authority. For example, in the case of street vendors there are often many associations active in the same city or even area. Then the municipality may not want to have separate bi-lateral negotiations with all of them. If they did, the agreements made in such separate negotiations may not be consistent with one another, and could lead to confusion and even conflict. The best and most consistent way to influence policy decisions relating to street vending, in such circumstances, would probably be by multi-lateral negotiations between the municipality and all the different organisations representing street vendors in the city or particular area under discussion.

Also from the point of view of controls, informal traders typically face multiple controllers (e.g. municipality, suppliers, enforcement agencies, etc.) exerting control over their work and lives. Under such circumstances it often makes sense to enter into multi-lateral negotiations in a joint collective bargaining forum where multiple layers of controls can be simultaneously addressed.

In multi-lateral negotiations, the biggest challenge for the different worker organisations is to be able to put aside their differences and focus on common issues, and presenting a common front in relation to the negotiating partner(s). Divisions between similar organisations give the other negotiating party or parties the opportunity to play off organisations against each other and avoid the issues they do not want to confront. Regular workers' caucuses held prior to meetings and during adjournments are the best way of preparing and consolidating the joint positions of organisations facing the same negotiating partner(s). Organisations of workers in the informal economy need to build this capacity in order not to be completely outnumbered and overrun, but to be able to participate effectively in multi-forum collective bargaining.

Centralised or de-centralised ?

Collective bargaining forums in the formal economy are often highly centralised. In most developed industrial countries, collective bargaining takes place for whole national industries in centralised bargaining forums. The organisation of trade unions in the formal economy usually allows for very centralised collective bargaining systems. However, the character of the informal economy and new forms of work, and the organisations which operate within this context, is often very different. The informal economy does not have the highly-organised industries which are in the formal economy. It is much more de-centralised, as is the operational organisation of many of the new forms of work. New forms of work are often located on the periphery of large centralised industries. Grass-roots organisations of workers in the informal economy and non-standard work, while they may have some level of central co-ordination, have to operate at a relatively de-centralised level in order to democratically engage the participation of their members. Relatively de-centralised collective bargaining structures are often better placed to involve the participation of workers in the informal economy and non-standard work and their representatives, than the centralised collective bargaining structures of workers in the formal economy.

The locus of collective bargaining has to be determined by where the **controlling institutions** are. In informal, non-standard and non-regulated work, direct control tends to be de-centralised (e.g. in local government, local intermediaries, etc.) even though these individuals/institutions are ultimately controlled higher up (e.g. by national government, big multinational corporations, etc.) For this reason, the **first** level of engagement has to be at the de-centralised level – but de-centralised systems then have to be **connected** in order not to remain isolated and marginalized. This presents a major challenge for organisations of workers in the informal economy and new forms of work – i.e. how to maintain de-centralised highly participatory engagement, along with highly effective connections and communications – to match the strength of the hierarchy of multiple controllers.

Permanent collective bargaining forums needed at all levels:

As mentioned before, for meaningful voice regulation, there have to be appropriate statutory collective bargaining structures with simple clear rules of engagement, whose agreements are ultimately adopted as regulations or legislation. This can, and should, happen at all levels.

LOCAL: Where laws and regulations are determined at local level, collective bargaining forums are indicated at this level. For example, street vending

regulation is often by means of local government bylaws. It is therefore appropriate for statutory collective bargaining forums of street vendors' organisations and municipalities to be the means by which such bylaws and local regulations are determined.

PROVINCIAL: In federal countries where labour and other policy matters are regulated by the provinces (or states) rather than at federal level, voice regulation would need statutory structures at province or state level, with participation by the representative organisations of workers in non-standard work and the informal economy and other new forms of work.

NATIONAL: Many countries have national tripartite bodies as voice regulation mechanisms at national level. However, most of these (such as NEDLAC in South Africa) do not include the voice of workers (or employers) in the informal economy or new forms of non-standard work. At best, some of them make some space for a general category called the "SMME" or "small business" sector, as if the interests of employers and workers in this sector were homogenous. Such national tripartite forums need to be restructured so that the respective voice of workers and employers in the informal economy and new forms of work is not only heard, but also plays a meaningful part in shaping policies and determining agreements – not merely as an "add-on" to the agreements between workers and employers in the formal economy.

INTERNATIONAL: The chief international mechanism of voice regulation for workers and employers is the ILO (International Labour Organisation). For the ILO to become an institution more consistently suited to meaningful international voice regulation, the Workers Group of the ILO needs to become more consistently representative of workers in the informal economy and new forms of work than it currently is, and the Employers Group needs to become more representative of employers and employer intermediaries in the informal economy and new forms of work. The Workers Group addressed this to some extent during the International Labour Conference of 2002 in the committee on Decent Work in the Informal Economy. At that conference a concerted attempt was made by national centres in some countries to have representatives from the informal economy directly represented in this committee, and additional representatives from international organisations working with workers in the informal economy participated in the work of the committee – resulting in a good well-informed set of ILO Conclusions on Decent Work in the Informal Economy. However, this stronger participation by representatives of workers in the informal economy was something of an exception for this particular discussion, rather than the rule in ILO conferences. It showed that this kind of participation is **possible** with the existing structure of the ILO – not that it is the norm. Such broader worker participation now needs to become the norm in all ILO policy-making and regulation-setting, and extended to the Governing Body of the ILO. This will require an examination, particularly by the Workers' Group and the Employers' Group, of the internal dynamics which have traditionally kept them more exclusively representative of the formal economy, and some commitment to addressing those dynamics in the interests of achieving more sustained and significant levels of representation by workers and employers in the informal economy and new forms of work.

Different types of worker organisations and possible collective bargaining mechanisms and strategies for workers in the informal economy: Standing examines the declining appeal of

industrial unions and the emergence of "enterprise unions" as an "instrument for promoting functional flexibility and employment security for core workers", and concludes that what is needed is "institutions that can resist pressures of co-option, promote dynamic efficiency in production and have a redistributive effect beyond the confines of an individual firm." He then goes on to consider other types of organisations which might fit the bill as appropriate representative organisations of workers in the informal economy, such as *community unions*, *citizenship associations*, *social movement unionism* and *associational unionism*.

If we look what has become at the most common organisational forms among those membership-based organisations which are directly organising workers in the informal economy, we would find some of each if the following:

TRADE UNIONS: Trade unions have a tradition of collective bargaining, but in most cases their collective bargaining has been confined to formal economy bargaining units and issues. For them, once they succeed in extending their scope of organisation to workers in the informal economy and new non-standard forms of work, they have the necessary skills and capacity to extend their collective bargaining practices to these members. However, there may not be already-existing statutory collective bargaining infrastructure in place for these workers, and trade unions would then need to initiate the establishment of appropriate collective bargaining institutions. This would also be the task for the kinds of organisations considered (above) by Standing.

ASSOCIATIONS: Associations are often easier for un-unionised workers to join, but do not normally have a strong collective bargaining tradition. They do not even necessarily have strong traditions of accountable membership-controlled leaders. They are often characterised by leadership which negotiates on behalf of members, but not always able to separate their own self-interest from the collective interests of the constituency they purport to represent. Where they do successfully negotiate certain deals, these may be on an ad-hoc basis. Associations often lack the fighting spirit which is usually needed to defend gains, which trade unions have in their basic philosophy and practice. For membership-based associations to effectively participate in collective bargaining with lasting results, they need to develop some of the collective bargaining capacity which is more common to trade unions. A good way to do this is by forming alliances with trade union organisations and gaining access to trade union education and training on collective bargaining and negotiation skills.

CO-OPERATIVES: Co-operatives are also not organisations with a strong tradition of collective bargaining. However, they are usually built on the collective principles of mutual accountability which are compatible with democratic and accountable collective bargaining. Effective co-operatives would also normally be well-placed to monitor the implementation of agreements and enforce developmental plans and policies. An alliance between co-operatives and trade unions can assist co-operatives with the negotiating skills and fighting spirit which make collective bargaining with institutions of control effective, and assist trade unions to achieve some of their more developmental goals.

It is probably naïve and unrealistic to imagine that there is a correct organisational recipe which, if applied, then workers in the informal economy and new forms of work can just put all the ingredients together to make an

organisation that is automatically ready and equipped to participate in collective bargaining and voice regulation. It is more likely that those trade unions, co-operatives and associations already in the field are going to have to continue to adapt their organising strategies to the changing labour market and the informal economy. They will need to sharpen their understanding of the essential components of collective bargaining in the informal economy and new forms of non-standard work, and develop a precise understanding of the kinds of **controls** which operate in these sectors of the economy, in order to evolve the organisational form(s) most suited to effective systems of voice regulation for the informal economy and new labour markets.

Content: The substance of collective bargaining in non-standard work and the informal economy is necessarily different and more varied than the standard negotiation about wages and working conditions which takes place in the formal economy. The range of issues to be negotiated would be partly determined by the range of **controls** over workers in the informal economy, and would include:
- **policy and regulatory environment**
- **physical environment and work space**
- **prices and transaction costs**
- **market opportunities**
- **market information**

In addition, **social security** is an issue which invariably forms part of the substance of collective bargaining, because it is a factor which can improve the material position of workers who do not otherwise have any income security. It is therefore an important longer-term collective bargaining issue, as South African trade unionists discovered when they were surprised by the 1981 strikes for refund of pension contributions.

Mechanisms: There are as yet very few tried and tested collective bargaining mechanisms in place in the informal economy. In India, there are de-centralised *Tripartite Boards* in certain states regulating welfare and social security for certain types of informal work.

Case study – the Welfare Fund model of social security for workers in the informal economy:

"*The initiative for setting up a Welfare Fund usually comes through a political process where in the political parties and their unions make a public demand for it. Once the legislature comes out with an enactment, the executive wing of the government (in this case the Department of Labour) would set up a tripartite body, consisting of the representatives of the workers, employers and the government. Workers representation is usually in the form of nomination if the leaders of the main unions active in a particular occupation group. Employers representation is also through nominations either of the employers organisations or prominent employer in in a given occupation. Nomination of government representatives is often done bureaucratically, the concerned officials of the Labour Department and Finance Department are the usual nominees.*"

In Madhya Pradesh there are 6 functioning Welfare Funds (or social security funds), i.e. the Bidi Workers, Limestone and Dolomite Workers, and Iron Ore and Manganese Workers Welfare Funds (which are central

funds) and the Slate Pencil Workers, MP Workers and Construction Workers Welfare Funds (which are funds specific to the state of Madhya Pradesh). The following three further funds are under consideration: Agricultural Workers, Urban Unorganised, and Forest Workers Welfare Funds.

Boards are proposed for the administration of these funds both at district and state levels, to be composed as follows:

DISTRICT LEVEL:
- Chair – President of the District panchayat, or President of the Social Welfare Committee;
- Member Secretary (or CEO) assistant Labour Commissioner representative of district panchayat;
- 4 representatives of workers in the sector covered by the fund;
- 2 representatives of employers or equivalent (e.g. farmer, employer, contractor)

STATE LEVEL:
- Chair – State Labour Minister;
- Member Secretary (or CEO) Labour Commissioner;
- 4 representatives of workers who are also on the District Board;
- 2 representatives of employers who are also on the District Board;
- Representative from the Revenue Department;
- Chartered Accountant or expert in financial management.

The issue of de-centralisation has been an important factor in considering how these structures should work. It is proposed that the main working of the structure should be at the District level (presumably to optimise participation by workers and employers in the sector) with the expenditure of funds being decided at that level. At State level, the following functions would apply:
- identification and registration of workers with the Board;
- monitoring the District Board;
- a range of functions linked to the selection, administration and auditing of the social security schemes and investment of funds.

Although the structures discussed in this case study have been established for the specific purpose of administering social security funds, the tripartite structure of these funds would lend themselves to a wider range of functions, such as:
- establishment of basic work conditions and appropriate labour standards in the specific sector of work;
- policy-formulation, and preparation of recommendations from the particular work sector as input into broader labour and economic policy-formulation;
- dispute-resolution in the sector.

Such structures and arrangements would amount to new forms of voice regulation for workers in the informal economy and new forms of work.

Organisations of workers in the informal economy wanting to engage in a system of voice regulation are faced with two basic institutional alternatives:

(a) Extending existing voice regulation systems to include workers in the informal economy: Where existing bargaining forums are effectively acting to develop legislation and regulations arising from collectively bargained agreements, it is worth examining the collective bargaining structures and investigating the possibility of re-organising or re-structuring them in such a way as to include the informal economy and new forms of work centrally in the process. This means, firstly, putting the informal economy and new forms of work in the mainstream of the negotiating agenda, and secondly, including workers and employers from the informal economy and new kinds of work as negotiating partners. This does not only involve opening the doors to them and their organisations, but analysing the obstacles to their participation in the current system, and systematically dismantling those obstacles.

Case study – Uganda Public Employees Union (UPEU) inclusion of informal sector workers in existing statutory bargaining forum:

In 1999 UPEU was the second-largest affiliate of the National Organisation of Trade Unions (NOTU) of Uganda, with 17 000 members. Prior to this, the membership of UPEU had dropped to a mere 700 in a few years as a result of job losses in the public sector through economic liberalisation and privatisation programmes. UPEU and other affiliates of NOTU were faced with total collapse unless they could also adapt to the changes which were taking place around them. The obvious path was to start organising workers in the growing informal economy, and NOTU took a policy decision that each of its affiliates should identify workers in the informal economy in its own sector, and make the necessary adjustments to equip them to expand their organisation into the informal economy. UPEU re-defined the meaning of "public employees" to mean anybody working to serve the public. This was a radical shift from the previously very constrained definition of public employees as civil servants employed by the government. UPEU went further and amended their constitution to introduce seven different categories of union membership. The first category consists of the traditional members, i.e. employees of the government in the public sector, paying 3% of their salaries as union subscriptions. The third category consists of retired members of the union, who would now be able to continue to be members, paying a nominal flat-rate subscription to the union. The seventh category of union members consists of "self employed workers and or informal sector workers rendering service to the public" such as street and market vendors. These workers would be recruited through their associations, who would collect and pay to the union subscriptions at the same flat-rate membership subscription per member. There is an Assistant General Secretary in charge of the Informal Sector, who would lead negotiations in

the Joint Negotiating Committee (a statutory bargaining forum for all members of UPEU) on matters concerning the informal sector membership, who automatically have the right to be represented in collective bargaining at this forum once they are members of the union.

As yet, however, this case is still too new to judge the effectiveness of this strategy for involving workers in the informal economy in voice regulation.

(b) Creating new bargaining forums: In many instances, however, it may be that the existing bargaining forums just do not lend themselves to addressing the issues which workers in non-standard work and the informal economy want to address. If this is the considered opinion of workers' organisations in the informal economy and new forms of work, they are then faced with having to create appropriate new bargaining forums. This means designing the rules of participation, the criteria for determining the issues for negotiation, envisaging how such new forums will engage in the wider policy-making and regulatory frameworks to become a meaningful part of an effective system of voice regulation.

Cases of different forms of work

Case of street vendors:
Street vendors need to be represented by their own elected representatives in at least the following ways:
1. in urban planning and policy forums, including those which draft legislation for the regulation of street vending;
2. in municipal planning bodies that allocate and zone urban space, regulate urban activities and implement bylaws for the regulation of street vending;
3. in courts to settle summary arrest warrants, institute urgent interdicts or pre-planned test cases for establishment of good legal precedents, and other cases.

Case of home-based workers:
Home-based workers need to be represented by their own elected representatives in at least the following ways:
1. in fair trade and Code of Conduct campaigns;
2. in labour negotiations with lead firms as well as intermediaries in global value chains – to determine fair piece-rates, to formulate Codes of Conduct, to monitor compliance, and to pursue cases of infringement;
3. in courts to file cases of infringement against Codes of Conduct.

Case of non-standard contract workers:
Non-standard contract workers need to be represented by their own elected representatives in at least the following ways:
1. in existing bargaining forums in industries where casual and contract workers are habitually employed – to eliminate deepening inequality between permanent and temporary workers;

2. in committees and negotiations for the allocation of (government) tenders;
3. in tripartite bodies determining and monitoring labour standards for all workers.

Development/extrapolation of key concepts and variables

From the issues and factors considered in this chapter, it is possible to develop a checklist of criteria to be addressed by organisations putting in place new collective bargaining forums of transforming and extending existing bargaining forums. The following would be part of such a checklist of criteria:

(a) Relating to democratic representative organisations of workers and to collective bargaining and collective representation:

- membership-based organisations with accountable elected representatives are better placed to participate effectively in voice regulation;

- criteria for accreditation should be simply a working constitution and some form of verifiable membership records;

- organisations need ideally to be autonomous, at least independent of control by negotiating partners (who may control their members individually);

- organisational rights need to be established (i.e. freedom of association, no victimisation of members, rights to conduct meetings and elections, etc.)

- organisational capacity to engage in multi-lateral collective bargaining forums;

- organisations need to build and sustain alliances.

(b) <u>Regarding regulations and institutions that promote democratic and equitable policy-making and negotiation systems</u>:
- process is one of negotiation as opposed to only consultation or hearings;
- full and transparent disclosure of information;
- organisations have freedom to collect mandates;
- organisations have freedom to report back to members;
- recognition and institutionalisation of conflicts;
- formal dispute-resolution procedures;
- agreements reduced to writing and signed by all parties;
- involvement of all parties in implementation of agreements;
- involvement of all parties in monitoring implementation;
- last resort: shift from engagement to unilateral actions to pressurise other party/parties into settlement

(c) Building in sustainability:
- all negotiating partners have to become sustainable credible representative organisations, even if they represent transitory constituencies;
- capacity to monitor implementation of agreements;
- all agreements signed;
- certain agreements gazetted and converted into statutory regulation;
- where necessary, agreements to contain clauses ensuring continuity in the event of changes in *legal persona* of negotiating parties;
- collective bargaining forums to become statutory institutions of voice regulation with secretariat support (e.g. for proper convening of meetings, minute-taking, reducing agreements to writing, etc.)

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Standing 1999 Chap.2 pp.39 - 44

Ibid p.42

Friedman 1987 pp.12/13

Ibid p.12

Ibid p.17

Ibid. p.20

Influx control laws regulating the movement of African males,

designed to keep them out of the cities if they did not have formal employment there.

Friedman 1987 p.22

Ibid. p.26

Ibib. p.37

Ibid. p.166

Ibid. p.165

Ibid. p.175

Standing 1999 p.43

Ibid. p.44

Ibid. p.388

Ibid. p.39

The informal economy, as discussed in the Conclusions on Decent Work in the Informal Economy reached at the 90th session of International Labour Conference in June 2002, consists both of traditional activities associated with informal work as well as new forms of work which have come about as a result of globalisation and changes in the labour market. Such new forms of work are referred to as "non-standard" because of their variation from the norm of regular secure employment, but are becoming increasingly standard and typical of the modern globalised labour market.

On www.eiro.eurofound.ie/2002/02/study/index.html

p.8 of the controls chapter

p.15/16 of the controls chapter

See chapter on "Reconceptualising Controls: Autonomy or Mutual Obligations?"

Standing 1999 p.385

Ibid. p.386

Refer to concept of controls in chapter on "Reconceptualising Controls: Autonomy or Mutual Obligations?"

Refer to the concept of controls in the chapter on "Reconceptualising

Controls: Autonomy or Mutual Obligations?"

Ibid.

p.15 of the controls chapter

Ibid.

"Positive" versus "negative" controls – see p.6 of the controls chapter.

Ibid.

See p.11 of controls chapter.

Standing 1999 p.390

Ibid. pp.390/1

Unpublished paper by K.P. Kanan: *The Welfare Fund Model of Social Security for Informal Sector Workers: The Kerala Experience*

Notes on Discussion for the Welfare Fund

Ibid. pp. 6/7

UPEU Constitution p.7