

Workers in Small Business: The Forgotten People (1994) 15 ILJ 954

A Comparative Overview of the Agenda for Labour Law Reform *

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The present-day concentration by government, private sector organizations and academics on the small and informal business sectors is undoubtedly a sign of the times.

Until some 20 years ago small business attracted little attention, the term 'informal sector' had hardly been heard of. ¹ The limits to growth experienced in the industrialized countries from the mid-1970's onwards, however, and the deepening malaise of what had previously been regarded as the 'developing' world, brought about a sea-change in attitudes. It became obvious that corporate investment, local or foreign, was providing jobs for only a minute fraction of the destitute workseekers flooding third world cities. Even in the developed countries full employment was a thing of the past. In this climate policy-makers came to pin their hope on growth of the informal sector as a means of absorbing the millions of people whom the formal sector could not accommodate.

A seminal role was played by the International Labour Office (ILO) with its celebrated but controversial study of unemployment in Kenya in the early 1970's ² - controversial, in that the result has been described as a 'a tendency to glamorize the informal sector and overestimate the role it can play'. ³

South and Southern Africa have been no exceptions to the trend. In this region, indeed, the role of small and informal business has been accentuated even more by the collapse of Portuguese colonialism, the demise of white rule in Rhodesia and

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the failure of apartheid in South Africa. The accumulated demands of long oppressed populations unleashed much pressure for solutions to social problems. In South Africa particularly large-scale urbanization presented the question with burning urgency.

The corporate world, metaphorically speaking, threw its hands into the air. Would the small and informal sectors be able to offer a way out? ⁴

Against this background the focus of policy-making and research has fallen overwhelmingly on possibilities of assisting small, struggling entrepreneurs to make a success of their businesses. Internationally, the main areas of concentration have been the relaxation of legal restrictions ('deregulation'), the provision of working capital and training to entrepreneurs, the provision of premises and studies to identify trends and modify assistance. ⁵ Analysis of these policies falls beyond the scope of the present study although it should be noted that serious questions have been raised concerning the relationship between the formal and informal sectors ⁶ - in, essence, the feasibility of sponsoring healthy growth of the informal sector in the absence of general economic growth.

Throughout the mass of published work, however there is general silence about a question that should surely have been central - what the Director-General of the ILO has described as 'the non-compliance of the informal sector with *labour legislation and basic labour*

standards'.⁷ To this should perhaps be added, given the pressures for more comprehensive deregulation, the position of workers in small business generally.

It cannot be denied that the informal sector is 'a major employer, and inherently more labour intensive than formal enterprises'.⁸ The nature of its employment relations, however, is frequently glossed over. The evidence suggests that most of those 'employed' in the sector are, in fact, 'one-person shows' and merely reproducing the means of their subsistence - in other words, barely surviving.⁹ A minority only are employers of wage

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labour, typically in very small numbers.¹⁰ Yet, as Leys points out, there is a 'vital contradiction' between employer and employee.¹¹ The informal sector is characterized by 'intense exploitation of labour, with very low wages and often very long hours underpinned by the constant pressure for work from the 'reserves army' of job seekers'.¹² The policies proposed by the ILO for promoting informal business in Kenya, he concludes, would primarily 'enable a new stratum of the African petty-bourgeoisie to transcend the limits of the competitive market and achieve a measure of protection among the ranks of the auxiliary bourgeoisie'.

Against this background Dewar, Postlethwayt and Watson argue that 'employment creation is not a sufficient objective in its own right', that 'the creation of jobs by no means guarantees the alleviation from [sic] poverty' and that the real aim should be 'to improve the quality of life for all'.¹³ It has also been observed that promotion of the informal sector 'excuses the state from providing more adequate social-welfare services and creating jobs in the formal sector'.¹⁴

But such criticism has by and large been incidental to the main political and academic theme - the feasibility or otherwise of small business development and job creation. The unspoken assumption appears to be that any job is better than no job and that, unfortunately but unavoidably, the interests of employees are secondary to those of the prospective creators of employment.

In this article it is proposed to follow a different approach. Given that (a) large masses of people have no option but to engage in informal activities and (b) this trend is being encouraged on an international scale, conditions of employment in this sector and in the adjacent formal and semi-formal areas of small business should be of concern not only to labour lawyers but to society in general.

This opens up at least three areas of inquiry: firstly, the conditions of employment actually prevailing in these sectors;

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secondly, the implications for workers of the policies referred to above; and, finally, the possibilities of improving employment conditions within the existing framework of economic and social realities. The remainder of this article will focus on the third of these issues and, in particular, on the scope for legal reform.

Some Clarification of Concepts

Thus far the terms 'small' and 'informal' sectors have been used in conjunction with each other. At a purely descriptive level, 'formal' business refers to enterprises which, by and large, operate within the framework of applicable laws while 'informal' business refers to

those which operate, by and large, in disregard of the law. In practice, however, it is debatable to what extent any rigid dividing line can be drawn. Many businesses comply with certain laws but not with others. More importantly, even the least formal of businesses is fastened to the formal sector by the economic cement of markets and supply lines. Thus the concept of a spectrum of economic activity, ranging from highly formal to highly informal, has come to prevail over the 'dual economy' notion.

'Small' business is defined in different ways for different purposes, usually with reference to number of employees and/or turnover. It is obvious, however, that the spectrum of small business covers huge numbers of enterprises¹⁵ and wide extremes of poverty and wealth - on the one hand, prosperous companies offering affluent lifestyles to their employees; on the other hand, backyard workshops in bleak, violence-torn shantytowns. At the upper end of the scale there is little or no intrinsic reason for differentiating these enterprises from business in general. At the other end of the scale the differences are immense and certain formal requirements may have to be prescribed for owners who are illiterate.

Much of the attention directed at small business is focused around the interface between the formal and informal spheres. Institutions such as the Small Business Development Corporation (SBDC) in South Africa operate on the assumption that informal businesses could prosper, and the economy would benefit, if they

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were assisted to enter the greener pastures of the formal sector.¹⁶ To encourage them to cross the threshold, it is argued that the degree of legal regulation to which they would be subjected must be limited - in other words, that the formal sector should be deformalized at least as far as specified categories of small business are concerned. This applies not only to bureaucratic requirements but also to laws for the protection of workers, from rules enshrining basic rights to safety regulations which (so it is argued) impose unreasonable economic burdens on employers.¹⁷

In South Africa, despite its relatively developed infrastructure, the machinery for the enforcement of wage-regulating measures and health and safety regulations in the small business sector is woefully insufficient and often non-existent.¹⁸ Thus much of formal small business is, to a greater or lesser degree, informal in fact if not in name.

Merely to combat deregulation, or to promulgate new regulations, will not solve the underlying problem.

This dilemma defines the subject-matter of the present study more closely: the need for a framework of labour rights *appropriate* to the small business sector as well as *adequate* - 'appropriate' in the sense of being compatible with the operation and development of small, struggling enterprises; 'adequate' in the sense being enforceable. This article will examine, at least in outline, thinking on the subject internationally.

The ILO Perspective Today

Given its pioneering role in policy development towards the informal sector, it is fitting to take the views of the ILO 20 years on as our starting-point.

A major report on the subject published in 1991¹⁹ makes it clear that the contradictions identified above have not yet been resolved. Existing ILO policy is succinctly stated in paragraph 29 of the Employment Policy (Supplementary Provisions) Recommendation of 1984:

'(1) While taking measures to increase employment opportunities and improve conditions of work in the informal sector, members should seek to facilitate its progressive integration in the national economy.

(2) Members should take into account that integration of the informal sector into the formal sector may reduce its ability to absorb labour and generate income. Nevertheless, they should seek progressively to extend measures of regulation to the informal sector.'

In a nutshell, the ILO is concerned with the potential of the informal sector 'to offer more, and more secure, employment'. ²⁰ Its concern is with both the quality and quantity of employment. It sees a gradual formalization as the basic mechanism for achieving this transformation.

In fact, the situation which has developed over the past 20 years is at odds with this vision in almost every respect. Those engaged in the informal sector 'are almost invariably beyond the pale of social protection, labour legislation and protective measures. . . . Being unorganised, beyond the protection of the law, and working at very low levels of productivity and income, they generally live and work in appalling, often dangerous and unhealthy conditions, even without basic sanitary facilities, in the shanty-towns of urban areas'. ²¹

Underlying this conflict between policy aims and results is the contradiction between employer and employee interests. While the report acknowledges that there cannot be a 'single blueprint', the goal remains 'a more dynamic informal sector capable of generating more jobs, higher income, better conditions and more widespread protection for those attempting to earn a livelihood in it'. ²² No less vital than such 'protection', however, is the need to 'remove the constraints which hamper [the informal sector's] development'; specifically, to recognize that informal sector producers are 'not in a position to comply with the full range of legal requirements'. ²³ Compliance with 'the full range of labour regulations', it is argued, 'would more than fully absorb the very low profits made by such enterprises, and wipe them out of business altogether'. ²⁴

The task thus becomes more clearly defined: to identify the range of 'labour regulations' with which emergent informal enterprises and small business generally *can* and should be expected to comply, and, secondly, to identify a method by which such regulations could effectively be implemented.

(a) Appropriate regulations

The ILO report identified three types of 'core standards' which, it suggests, are 'so fundamental that their non-observance should not be tolerated'. ²⁵ First and foremost there are 'basic human rights such as freedom of association, freedom from forced labour and freedom from discrimination'. Freedom of association, it points out, is particularly important 'because it is only through forming and joining organisations of their own choosing that those employed in the informal sector will be able to generate sufficient pressure to bring about the necessary changes in policies, attitudes and procedures that hamper the development of the sector and the improvement of working conditions in it'.

A second aim should be to eliminate 'the most abusive forms of exploitation in the informal sector' - for example, child labour. A third priority area should be occupational safety and health - if not requiring compliance with the 'full range' of government regulations, then at least focusing on particularly serious risks that workers are exposed to and offering information and guidance on measures to reduce such risks.

(b) Means of implementation

Recognizing the limitations of labour inspectorates in most third world countries, the ILO report suggests two possible alternatives: firstly, 'more informal types of labour inspection and health and safety counselling . . . through community-based action, aided and stimulated by NGOs, voluntary agencies or by the government itself'; and secondly, 'a system of labour inspection auxiliaries (recruited, for instance, from retired craftsmen)'.

'Unless and until some innovative arrangements such as this [sic] are made, and the workers and the self-employed are motivated to improve the conditions in which they work', the ILO report concludes, 'it is difficult to see how substantial progress can be made'.

All the suggestions outlined above, it is submitted, deserve serious consideration in the Southern African context. Yet there appears to be a certain contradiction in the overall approach. *Freedom of association* is stressed as a dynamic force in the informal sector but mainly as a means of compelling policy change. Beyond this point the role of labour organization does not seem to be considered. Instead, new official or semi-official structures are suggested to perform the crucial function of monitoring and promoting the implementation of basic rights. Is this not an area where labour needs to be involved? Elsewhere, indeed, the report concludes:

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'The encouragement of the growth of genuine organisations capable of mobilising solidarity among those who live and work in the informal sector, and of voicing their needs and aspirations, must surely be at the centre of efforts to improve the economic and social conditions of the informal sector. National organisations of employers and workers could have a major role to play in this respect. ²⁶

This line of reasoning points towards some interesting possibilities which are not explored further in the ILO report. While not necessarily contradicting the proposals noted above, it suggests an additional area of policy development: the encouragement of worker organization in the largely unorganized small and informal business sectors, not only as a mouthpiece of worker aspirations but also as an active agent in creating an appropriate regulatory framework and implementing such regulations.

The case for the development of trade unionism and collective bargaining in small and informal business needs to be studied further. The difficulties are considerable, and it is unlikely that any degree of effort could achieve rapid, universal success. Yet, with serious efforts in this direction by governments as well as national employer and labour organizations, it is possible that significant progress could be made.

Towards a Legal Framework

In a more recent overview by a Deputy Director of the ILO, ²⁷ the central question that we are concerned with is examined more closely: 'the kind of legislative policy that should be adopted and implemented [in the informal sector]'. ²⁸

Servais criticizes the familiar 'all or nothing' approach ('either' apply existing labour standards universally 'or' exempt small/informal business altogether) and suggests that neither alternative offers a solution to the problem. Instead he suggests a number of possible mechanisms for establishing labour rights in the informal sector: 'progressive extension of the labour legislation; adoption of specific rules or regulations; or the conclusion of collective agreements which either extend or adjust the guarantees provided to new categories of workers'. ²⁹

Which labour standards should be so extended? In a survey of existing ILO instruments, Servais identifies a number which are in principle applicable to all workers. First and foremost among these are the conventions relating to the right to organize and collective bargaining. ³⁰ Also relevant are conventions relating to:

(a) employment policy (including the abolition of forced labour, vocational training and termination of employment); and

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(b) working conditions (including occupational safety and health, equality of men and women, maternity rights and the establishment of minimum wage-fixing machinery). ³¹

But, as Servais emphasizes, the 'actual implementation of any labour standards adopted remains the major problem in the informal sector'. ³² This is, indeed, implicitly recognized by the conventions and recommendations in question. While formulated in general terms, many of them provide for exceptions that include forms of labour which are typical of the informal sector - for example, temporary or casual labour. Among the reasons for their exclusion are the difficulty of integrating such workers into national legal and social security structures, the fact that their periods of employment are often irregular and brief, and problems of proof in a sector where records are seldom kept. ³³

Even where conventions might formally apply, many 'have not been designed with the informal sector in mind, and their application seems especially difficult in that area'. ³⁴

What can be done to address these problems? In general, Servais believes that the aim is 'not to exclude the informal sector from all kinds of protection, but to integrate it step by step, with any necessary adjustments'; 'specific legislation, rather than references to the common rules' is needed. ³⁵ Among the objects of such legislation to be gleaned from the article in general, the following may be noted:

- providing protection against victimization for workers who complain;
- establishing efficient administrative and judicial procedures with credibility among those they are supposed to serve;
- establishing a workable system of inspection. ³⁶

Servais, too, recognizes the need for worker organization and the 'essential role' of employers' and workers' organizations, together with NGOs, in reorganizing the institutional framework. Significantly, he notes that '[t]rade unions and employers' associations may also participate in the supervisory machinery, once their organisational capacities have been sufficiently strengthened'. These organizations he argues, 'have a role in the voluntary application of promotional [sic] legislation, and, indeed, their support and co-operation would constitute an important factor for the successful implementation of such legislation'. ³⁷

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Unfortunately Servais does not elaborate on these very important observations. By which means could trade unions and employers' organizations participate in supervising the implementation of labour law in the informal sector? Essentially, it is submitted, this can only be done through the creation of appropriate systems of collective bargaining. A major thrust of legal reform, accordingly, should be to address the difficulties which have up to now obstructed collective bargaining and seek to overcome them; some useful starting-points are to be found among the policy objectives identified by Servais (as summarized above).

Collective Bargaining and Trade Union Organization in the Informal and Small Business Sectors

Possible models of collective bargaining and the extension of trade union organization as an essential means of enforcing legal rules have been suggested in the context of South Africa's existing industrial council framework. ³⁸ By way of comparison it is interesting to examine the approaches that have been adopted in a number of European countries. ³⁹ These countries, of course, do not experience the same conditions of mass poverty, nor do they rely on small and informal sector development to sustain substantial sections of their populations. Nevertheless, similar contrasts between small and medium enterprises (SMEs) on the one hand and big enterprises on the other have merged and have led, in a number of countries, to legislative responses which offer food for thought.

In most countries, legal institutions for collective bargaining and/or consultation extend to enterprise level in the form of representative works councils. In a few cases (eg Portugal and Ireland) there is no differentiation based on company size. ⁴⁰ In general, however, two kinds of distinction are drawn. Firstly, in many countries the smallest enterprises are excluded altogether from provisions for employee representation. ⁴¹ Secondly, in a number of countries specialized rules apply to SMEs - ie enterprises with more than the minimum number of employees

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but fewer than a statutory upper limit. ⁴² The implication is that, due to the relatively small size of the business, the ordinary institutions of representation and bargaining are inappropriate and, therefore, structures specifically tailored to the small business environment are needed.

Two examples in particular bear examination: the arrangements for worker representation in certain categories of SMEs in France and Italy.

(a) France

In France the general rule is that a *conseil de'entreprise* (works council) is elected in firms with 50 or more employees. *Deleques du personnel* (workers' representatives) are elected on the basis of an 'independent establishment' employing at least 11 workers. If a company is divided into 'formally separate but practically integrated establishments', ⁴³ however, it will be regarded as a single unit for purposes of establishing a works council. In addition, a 'group committee' may be set up for companies which are administered as an entity.

A different provision has recently been enacted ⁴⁴ in respect of enterprises which are too small to qualify for the above form of representation. Employees in such companies are allowed to seek assistance from an external adviser of their own choosing ⁴⁵ during the statutory hearing that must precede collective dismissals. Although this measure is limited to a particular issue, Biagi comments, 'its originality lies in the setting aside of the question of representation by simply ensuring technical assistance' without reference to company size thresholds. ⁴⁶

(b) Italy

An even more original approach, 'based not on individual company units but rather on a given area', ⁴⁷ has been developed in Italy. In terms of the collective agreement of 21 July 1988 between trade unions and organizations representing employers in 'artisan' firms,

'representative trade union bodies shall be set up, recognised by the trade unions who are party to this agreement . . . on

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the basis of the wishes of the employees of artisan companies in a specific geographical area'. [48](#)

Practically, the agreement contemplates that the 'representative trade union bodies' shall consist either of workers from artisan firms with more than five employees or trade union officials. As Biagi points out, they will 'act as representatives of the trade unions rather than of workers in a particular area'. [49](#)

The system is still in its infancy and certain of its aspects are problematical. For example, the provision that employers shall finance this form of representation contravenes the prohibition in Italian law on the establishment or maintenance of trade unions by employers. [50](#) These and other of its technical features should be looked at in their context and may or may not be appropriate in other countries. In principle, however, it represents an interesting and novel experiment in establishing trade unionism in an area where traditional union structures are unlikely to take root. Biagi comments that '[c]ollective bargaining in Italy increasingly reflects the idea that territorial units, not company units, must represent workers employed in the smaller companies'. [51](#) This idea, it is submitted, could form an important starting-point for future legislation in South Africa and other countries aimed at bringing small and informal business into the ambit of collective labour law.

In Conclusion

This overview, of necessity selective, hopefully suggests some possibilities for extending legal protection in accordance with international standards to workers in the small and informal sectors. The fundamental point, perhaps, is that legislation should focus primarily on establishing a framework of basic rights for workers in these sectors, including the right to bargain collectively, rather than attempting to regulate wages and conditions. [52](#) Whatever merit there may be in the pleadings by the small business lobby of the need to be exempted from certain obligations towards their workers, the same objections will surely not apply to fair procedures in the workplace nor to collective bargaining as a means of establishing which demands can or cannot be afforded.

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In Britain, for example, a survey by the Policy Studies Institute found 'very little sign . . . that employment protection legislation was inhibiting industrial recovery or contributing to the high level of unemployment by discouraging employers from taking on new people'. [53](#)

But, as in bigger workplaces, a trade union presence is important not only to collective bargaining but also to ensuring compliance with whatever basic rights workers may nominally enjoy. Any reform initiative will need to address this problem - more specifically, to identify an appropriate collective bargaining model for small and informal business.

In South Africa it has been argued that the existing framework of statutory collective bargaining could, without amendment, accommodate the negotiation of collective agreements specifically for small enterprises which at present tend to be exempted, or to seek exemption, from industrial council agreements. [54](#) As in other countries, however,

this would depend on a set of supplementary provisions to encourage the necessary representative organization of employers as well as workers.

Ensuring participation by employers, it is submitted, is crucial to the success of such a policy in that employer opposition tends to be one of the main barriers to trade union organization in the small business sector. ⁵⁵ The key to the problem may well lie in the small business lobby for special legislative treatment and state assistance. As argued by the United Nations Industrial Development Organization (Unido) as long ago as 1969, '[a] prerequisite of any special programme for the development of small-scale industry is that the group of enterprises justifying assistance should be identified'. ⁵⁶ Together with economic criteria, compliance by employers with a set of conditions including the recognition of basic rights and participation in collective bargaining structures could be one of the requirements to qualify for such assistance.

Far from imposing burdens on small and informal entrepreneurs, it is submitted, such an approach would be in accordance with all the tenets of public policy. In South Africa, as in many other countries, employment justice and collective bargaining are recognized objects of labour legislation. Requiring compliance

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with public policy as a precondition for public support is hardly anomalous; indeed, failure to require it would be incongruous. ⁵⁷

An additional form of state support to small business meriting public support could be the extension of state unemployment benefits and the right to compensation for injury suffered at work to workers employed in such businesses without requiring contributions from employers and employees. ⁵⁸ Tangible benefits of this nature could also encourage employees to take some initial steps towards organization, at least to the extent of ensuring that their employers submit the necessary information to the labour authorities, and thus offer a further growth point for trade unionism.

A range of legal reforms along these lines, it is submitted, could help to ensure that job creation in the small and informal business sectors serves to 'improve the quality of life for all' ⁵⁹ - in particular, by uplifting workers in those sectors rather than permitting their continued degradation. A dynamic response by the trade union movement, however, will ultimately be essential. The problems of organization in the small business sector are considerable but not insurmountable; even limited successes could serve as precedents for workers and unions elsewhere. ⁶⁰ It is to be hoped that the trade union movement throughout the region will respond to the challenge, carry forward the discussion about the measures that need to be taken and place these on the bargaining agenda with government and employers. The lives of millions of workers and their families could be improved as a result.

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- * My thanks to Clive Thompson for reading the draft of this article and for his helpful comments. Revised version of paper presented at the First Southern African Regional Labour Law Conference, Durban, July 1993.
- ¹ Senior Lecturer at the University of Western Cape and Researcher at the Labour Law Unit, University of Cape Town.
- ¹ See, for example, A Rainie & M Scott 'Industrial Relations in the Small Firm' in J Curran, J Stanworth & D Watkins (eds) *The Survival of the Small Firm* vol II (Gower 1986) at 42-3. An early exception was the series of symposia organized by the United Nations Industrial Development Organization between 1965 and 1967, focusing on the industrialization of developing countries and devoting part of its proceedings to what was then termed 'small-scale industry'.
- ² *Employment, Incomes and Inequality: A Strategy for Increasing Productive Employment in Kenya* (ILO 1972).
- ³ Cf P Wellings & M Sutcliffe 'Developing' the Urban Informal Sector in South Africa: The Reformist Paradigm and its Fallacies' 1984 *Development and Change* 527 and the writers referred to there. R Davies *The Informal Sector: A Solution to Unemployment?* (in the series *From Rhodesia to Zimbabwe*) (CIIR 1978) has coined the term 'informal sectorism' to describe this approach: see at 4-5 13-24.
- ⁴ Cf D du Toit *Workers in Small Business: The Need for Organisation* (UCT 1991) at 6-8.
- ⁵ Wellings & Sutcliffe at 524-6; Davies at 18-19.
- ⁶ Cf Wellings & Sutcliffe at 517; Davies at 20-4.
- ⁷ International Labour Conference 78th session 1991 *The Dilemma of Small Business* Report of the Director-General part I (ILO 1991) (*ILO Report*) at 37. In a study by South Africa's Human Sciences Research Council and National Training Board into training for the informal sector, for example, seven groups of 'key actors' were targeted. Workers were not one of them. R Hirschowitz & J Acutt *Training for the Informal Sector Executive Summary* (HSRC 1991) at 3.
- ⁸ Wellings & Sutcliffe at 522. However, as Davies points out, the much-vaunted 'labour-intensive' nature of informal business 'is more often than not a consequence of the restricted access to credit from which most informal operators suffer' (at 26) - like the 'simplicity' of the poor, a burden rather than a virtue
- ⁹ Wellings & Sutcliffe at 527 533-4.
- ¹⁰ A 1983 study in Clermont/Inanda, Natal, revealed employment per firm (including the proprietor) ranging from 1,1 among 35 knitting firms to 2,7 among 33 building firms surveyed: Wellings & Sutcliffe at 536.
- ¹¹ *Underdevelopment in Kenya: The Political Economy of Neo-colonialism 1964-1971* (Heinemann 1975) at 268-9, cited in Davies at 24.
- ¹² C Leys 'Interpreting African Underemployment: Reflections on the ILO Report on Employment, Incomes and Inequality in Kenya' 1974 *African Affairs* 426. Cf Du Toit *Workers in Small Business* at 8-9 and the writers referred to there. Various studies indicate a broad similarity between informal sector *incomes* and formal sector *wages*. A different picture may emerge, however, if like is compared with like. A survey in the Rhodesian town of Hartley in 1973, for example, revealed wages of \$3 per month paid by an informal sector employer compared with legal minimum wages of \$24-\$30 for less skilled workers: Davies at 8 23.
- ¹³ *Proposals for the Management and Administration Sector at the Local Authority Level: The Case of the Cape Town City Council* (University of Cape Town 1990) at 5.
- ¹⁴ Wellings & Sutcliffe at 517. Although the writers were referring to apartheid in South Africa in particular, the observation is clearly applicable on a far more general scale.
- ¹⁵ In South Africa it was calculated on the basis of the 1980 census that small business accounted for 90% of all formal enterprises and employed 25% of workers in the formal sector while between 1,7 million and 2,2 million people (up to 20% of the economically active population) survived in the informal sector: Report of the Committee for Economic Affairs of the President's Council *A Strategy for Small Business and for Deregulation* (PC 4/1985) tables 2.1, 2.2 and 2.4. Since that time urbanization has continued apace and the informal sector has swollen massively; it has been estimated that it will involve 4,7 million people by the year 2000. M Kirsten 'A Quantitative Assessment of the Informal Sector' in E Preston-Whyte & C Rogerson (eds) *South Africa's Informal Economy* (Oxford University Press 1991) at 158.
- ¹⁶ The benefits include gaining 'access to some institutional support, such as credit, or to the protection of the law in such matters as enforcement of contracts': *ILO Report* at 35. Studies in Latin America have shown that 'growth of the more successful informal sector firms has resulted in improved standards for their employees, including paid vacations and the payment of bonuses': at 38.
- ¹⁷ The most important experiment of this nature in South Africa has been the partial deregulation of a number of SBDC 'hives' (industrial parks) in terms of the Temporary Removal of Restrictions on Economic Activities Act 87 of 1986. For a discussion of its achievements and problems, see Du Toit *Workers in Small Business*.

- [18](#) Cf D du Toit & D Bosch *Workers in Small Business: A Challenge for the Unions* (University of Cape Town 1992) at 13-15.
- [19](#) International Labour Conference 78th session 1991 *The Dilemma of Small Business* Report of the Director-General part I (ILO 1991) (*ILO Report*). See also C Rogerson 'Policies for South Africa's Urban Informal Economy: Lesson from the International Experience' in Preston-Whyte & Rogerson at 207 esp at 209-13.
- [20](#) *ILO Report* at 3.
- [21](#) at 4-5
- [22](#) at 18.
- [23](#) at 19.
- [24](#) at 37-8. But of the counter-argument that this approach is 'too simplistic': protective legal measures can save money (for example, by reducing the costs resulting from occupational diseases and injury), increase workers' motivation, improve productivity and in other ways assist economic development: Jean-Michel Servais 'The Informal Sector: Any Future for Labour Law?' (1992) 13 *International Journal of Comparative Labour Law and Industrial Relations* 299 at 317-18.
- [25](#) *ILO Report* at 39. The quotations below are from the same source at 39-41.
- [26](#) at 22.
- [27](#) Servais at 299.
- [28](#) at 305
- [29](#) at 308.
- [30](#) at 312
- [31](#) at 312-16; and see ns 22-42 for the conventions and recommendations referred to under these headings.
- [32](#) at 309.
- [33](#) Cf at 316
- [34](#) at 317.
- [35](#) at 317.
- [36](#) See in particular at 309.
- [37](#) at 309-10.
- [38](#) Du Toit & Bosch at 42-9; D du Toit 'Small Business: Deregulation or Collective Bargaining?' (1993) 14 *ILJ* 570 .
- [39](#) The discussion that follows is based on M Biagi 'Employer Representation in Small and Medium-sized Enterprises: A Comparative Overview' (1992) 13 *Comparative Labour Law Journal* 257.
- [40](#) This is, of course, the position in South Africa as well.
- [41](#) With minimum numbers of employees ranging from five in Germany and Austria to 100 in Belgium: Biagi at 258-64.
- [42](#) In Greece the situation is more complicated: 'outside' representation (usually by a trade union) is provided for only in enterprises with 50 or more workers. In enterprises with 20-50 employees, a works council may be elected. In addition, enterprises with 10-20 workers may establish a 'quasi-union body' subject to a number of restrictive conditions: Biagi at 360.
- [43](#) at 262.
- [44](#) Act of 18 January 1991: Biagi at 267.
- [45](#) from special lists of *conseillers du salarie* (wage advisers), whose services are paid for by the employer.
- [46](#) at 267.
- [47](#) at 267.
- [48](#) at 267.
- [49](#) at 267
- [50](#) A17 Law 300 of 20 May 1970; Biagi at 268. In certain cases such as the construction industry, however, this prohibition has apparently been circumvented by channeling finance obtained from employers into bodies jointly managed by employers and unions: Biagi at 268.
- [51](#) at 268.

- ⁵² But cf the reference by Servais at 300 to studies in Asia which 'have identified 'technical' standards which could be implemented in the informal sector. They have also shown how false is the assumption that labour standards . . . are inapplicable in the informal sector'.
- ⁵³ Quoted in Curran, Stanworth & Watkins at 187. The employment protection laws referred to are the protection against unfair dismissal contained in the Industrial Relations Act of 1971 and the Employment Protection Act of 1975. While the survey covered firms employing between 50 and 5 000 employees, 'managers at the smallest plants attributed the *least* impact to unfair dismissal' (at 188)
- ⁵⁴ Du Toit & Bosch at 39-44.
- ⁵⁵ Du Toit & Bosch at 28-32.
- ⁵⁶ Unido Monographs on Industrial Development Monograph No 11 *Small-Scale Industry* (United Nations 1969) at 13.
- ⁵⁷ An example of such an approach is the Bank of Zambia Act 24 of 1985 in which credit guarantees to small businesses are made dependent on compliance with state policy. See D Ailola 'Zambia's Credit Guarantee Scheme: Another Attempt at Alternative Securities' 1993 *Stellenbosch Law Review* (forthcoming).
- ⁵⁸ The cost, in other words, would be covered by the state as a form of subsidy for businesses meeting the abovementioned policy requirements. In addition, the possibility of obtaining international funding could be explored.
- ⁵⁹ Dewar, Postlethwayt & Watson at 5.
- ⁶⁰ For a discussion of some attempts at organizing workers in small businesses, see Du Toit & Bosch at 45-9.