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**Concept Note for Joint Webinar of African Commission Working Group on Economic, Social and Cultural Rights and Solidarity Center on:**

**Informal Economy Work and the Right to Work in Africa**

1. **Background:**
2. The International Labour Organization estimates that nearly 83% of employment in Africa and 85% in Sub-Saharan Africa is informal non-wage work, outside the purview of labor law protection, and characterized by the absence of social protection or entitlements to paid leave.[[1]](#footnote-2) Informality takes many forms and is understood to include own-account workers; workers holding informal jobs within formal enterprises, domestic workers; and workers in “unrecognized or unregulated employment relationships.”[[2]](#footnote-3) Particularly in low-income countries, women comprise 92.1% of informal workers, and are over-represented in informal economy work.[[3]](#footnote-4)
3. Historically, while colonial powers used slavery and forced labor to support enterprise and expansion, they also employed indirect measures such as vagrancy laws, pass laws and land restrictions to pressure the population to seek wage earning work.[[4]](#footnote-5) The privileging of “wage work” and the contractual relationship of employment as the only form of work recognized by the law, is a remaining British colonial legacy, designed to ensure a ready and cheap labor supply.[[5]](#footnote-6) These conceptions remain embedded in current labor laws, often carrying contemporary valences which include the impetus to create “world class cities” visually purged of the poor.[[6]](#footnote-7)
4. However, the non-recognition of informal work is textually at odds with the ILO and International human rights instruments which entrench both individual and collective rights to “all” workers without distinction, and which have been interpreted to apply to all workers including informal economy workers. [[7]](#footnote-8) It is also at odds with the African Charter which extends rights to individuals, and the Maputo Protocol, which explicitly addresses women working in the informal economy.
5. Specifically, exclusion from labor or analogous laws, deprive workers in the informal economy of rights to non-discrimination at work, to freedom of association and collective bargaining, the right to work in equitable and satisfactory conditions and the right to social protection:
6. **The right to non-discrimination at work.**
7. International human rights instruments widely prohibit both direct and indirect discrimination on prohibited grounds. [[8]](#footnote-9)The treaty bodies tasked with interpreting these Conventions have made strides in articulating the ways in which discrimination is aggravated when it occurs inter-sectionally, on more than one ground, and the ways in which poverty or socio-economic

disadvantage intersects and exacerbates such discrimination on prohibited grounds.[[9]](#footnote-10)

1. The African Commission on Human and Peoples Rights (ACHPR) similarly understands non-discrimination to be prohibited on a wide range of grounds, including “ race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.”[[10]](#footnote-11) It includes “any conduct or omission” that has the “purpose or effect of nullifying or impairing the equal access to and enjoyment of economic, social, and cultural rights.”[[11]](#footnote-12) Further, the African Commission’s definition of discrimination “includes situations in which a law or a neutral or apparently non-discriminatory measure produces the effects of an unjustified distinction” and as such encompasses indirect discrimination[[12]](#footnote-13)”
2. Indeed, some of the most progressive analysis to date of socioeconomic status, poverty and intersecting forms of marginalization has come from the African Human Rights system, particularly the African Court of Human Rights. In 2020, the African Court issued an advisory opinion finding that vagrancy laws essentially criminalize poverty and violate rights to dignity, freedom from discrimination, the right to work and the right to freedom of movement under the of the African Charter, the Protocol to the African Charter and the Right and Welfare of the Child. [[13]](#footnote-14) The Court interpreted the expression ‘any other status’ in Article 2 of the Charter to be non-exhaustive and to include discrimination on the basis of economic status.[[14]](#footnote-15) As a consequence of this recognition, it concluded that vagrancy laws discriminated based on economic status.[[15]](#footnote-16)
3. In finding vagrancy laws to discriminate on the basis of economic status, the Court observed that those laws “effectively, punish the poor and underprivileged, including but not limited to [. . .] hawkers, street vendors, and individuals who otherwise use public spaces to earn a living.”[[16]](#footnote-17) The Court viewed the vagrancy laws as a “reflection of an outdated and largely Colonial perception of individuals without rights [which] dehumanizes and denigrates individuals with a perceived lower status.”[[17]](#footnote-18)
4. The Court also adopted an intersectional approach by looking at the impact of vagrancy laws on women, children and marginalized groups, and found, under the Maputo Protocol that states had an obligation “to create an environment where poor and marginalized women can fully enjoy all their human rights.”[[18]](#footnote-19) It found that vagrancy laws which target the poor, homeless and people living in settlements, disproportionately affect women and can lead to their arrest, detention and harassment by law enforcement. These measures can exacerbate discrimination based on gender, age, nationality and other marginalized identities, and violate the African Charter.
5. **The right to freely associate and collectively bargain**
6. Exclusions from labour legislation deprive workers in the informal economy of a collective voice, and the ability to collectively improve their work conditions or represent their economic interests. Ultimately, this contributes to the entrenchment of both poverty and inequality.
7. The United Nations (UN) treaty bodies such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee, have specifically recognized the need to ensure collective labour rights for workers in the informal economy. Similarly, the Committee on the Elimination of all Forms of Discrimination against Women and the Working Group on the Issue of Discrimination against Women and Girls in Law and Practice view collective action and organizing as essential to the realization of worker rights for women working in the informal economy.The African human rights system similarly entrenches the rights of “everyone” to form and join trade unions, and the right to collective bargaining under Articles 10 and 15 of the ACHPR.
8. **The right to work in equitable and satisfactory working conditions.**
9. The right of all workers to equitable and satisfactory conditions of work, including specifically workers in the informal economy, is well-established in international conventions, including General Comment 18 of ICESCR on The Right to Work and General Comment No.23 on the right to just and favourable conditions at work. General Comment 23 explicitly includes all workers, including “informal economy, agricultural workers, refugee workers and unpaid workers.” It recognizes that women are “often over-represented in the informal economy, which exacerbates inequalities in areas such as renumeration, health as safety, rest and leisure and paid leave”.[[19]](#footnote-20) It also stipulates that all workers should be free from physical, mental and sexual harassment, and is consistent with ILO Convention 190 which also extends the right to be free from violence and harassment to all workers.
10. Similarly,Article 15 of the African Charter similarly protects the right “every individual” to work under equitable and satisfactory conditions and receive equal pay for equal work. In terms of the Pretoria Declaration of 2004, the right to work under Article 15 includes, at a minimum, the rights to “freedom of association, including the rights to collective bargaining, strike and other related trade union rights.” [[20]](#footnote-21) The Pretoria Declaration expressly states that those working in the informal sector are covered under Article 15.[[21]](#footnote-22)
11. However informal economy work is frequently face penalties, and workers such as street vendors are subject to confiscation and destruction of their wares, fines, arrest, harassment and assault. Women working in the informal economy are often in precarious positions and face sexual harassment from municipalities, co-workers and customers.
12. **The right to social protection:**
13. The right to social protection is widely entrenched in international instruments including in Articles 15, 16 and 17 of the African Charter[[22]](#footnote-23) and the right to social protection of informal economy workers is explicitly recognized in Article 13 of the Maputo Protocol, which requires states to “establish a system of protection and social insurance for women working in the informal sector and sensitize them to adhere to it.” However, in reality workers in the informal economy lack social security. According to the ILO, 90% of domestic workers are excluded from social security systems.[[23]](#footnote-24)
14. Covid 19, made visible the low level of social protection and vulnerability of self-employed workers, but also their resilience. In February 2022, the African Union recently adopted a Protocol on Social Protection which sets out the right to social protection that is available, accessibly, affordable and transparent, and highlights the obligations of the State to take action to ensure that informal workers have access to social protection.
15. It is against the above background that the Secretariat of the Commission is organising a Webinar on the Right to Work.

**B. Objectives of the Webinar on Informal Economy Work and the Right to Work in Africa**

1. The overall objective of the Webinar is to investigate the cause and consequences of informal economic work, in light of the respect, protection and realization of human and peoples’ rights on the African continent, and suggest solutions, with the aim to streamline these considerations within the work of the Commission.
2. The webinar will explore the consequence of widespread non-recognition of worker rights for the majority of workers in the African context, especially marginalized and vulnerable groups like women and children, who remain excluded from collective labor rights, the rights to non-discrimination at work, to work in just and favorable conditions and to social protection.
3. The webinar will also consider recent advances in both legislation and case law at the national and regional level on workers in the informal economy, and discuss a way forward within the African Human Rights instruments and institutions.

**C. Expected Outcomes & Outputs/Deliverables**

1. The overall expected output of the Webinar will be recommendations for actions to protect and promote human and peoples' rights in the context of the right to work under equitable and satisfactory conditions and receive equal pay for equal work, the right to social protection and the role of the Commission.
2. The Webinar Communique is intended to provide a comprehensive understanding by the Commission and its stakeholders of the far-reaching implications of informal economy work for the realization of human rights and the best cause of action, which can be used as a tool to streamline informal economy work concerns into the promotion and protection work of the Commission.
3. The Outcome documents would also be fundamental to the promotion of a human rights-based approaches to responding to informal economy work challenges in Africa.

**D. Methodology, Theme and Topics for Discussion**

1. The Webinar will be consultative as well as participatory, to facilitate exchange of information and experiences. There will be presentations by resource persons on selected topics, followed by discussions amongst participants.

**E. Webinar Participants**

1. The Webinar participants would comprise the Working group on ECOSOC; members of other Special Mechanisms dealing with thematic issues most affected by informal economy work, representatives of States parties to the African Charter, representatives of National Human Rights Institutions, the Solidarity Centre, selected independent experts and staff of the ACHPR Secretariat.

**F. Date & Language**

Date: 30 May, 2023

Time: 12:00hrs – 14:00hrs (GMT); 15:00hrs – 17:00hrs (EAT); 14:00hrs – 16:00hrs (SAT)

1. The Webinar will be conducted in Arabic, English, French, and Portuguese languages.

**G. DOCUMENTS**

1. African Charter on Human and Peoples’ Rights;
2. Declaration of the Pretoria Seminar on Economic, Social and Cultural Rights in Africa;
3. Draft Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Citizens to Social Protection and Social Security

**H. CONTACTS**

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1. Under ILO Recommendation 204 on the Transition from the Informal to the Formal Economy, which was adopted in 2015 to guide ILO member states, defines “informal economy” While definitions vary, work in the informal economy is generally understood to mean “all economic activities by workers and economic units that are in law or in practice not covered or insufficiently covered by formal arrangements.” See ILO, Women and Men in the Informal Economy: A Statistical Picture 13 (3d ed 2018). [↑](#footnote-ref-2)
2. ILO Recommendation 204 on the Transition from the Informal to the Formal Economy [↑](#footnote-ref-3)
3. ILO, Women and Men in the Informal Economy: A Statistical Picture 13 (3d ed 2018). [↑](#footnote-ref-4)
4. See Anneke Meerkotter, “Vagrancy Laws and International Labor Standards: African Reform on Criminal Laws”, International Labor Rights Case Law, Brill Online, 13 July 2021 [↑](#footnote-ref-5)
5. Kamala Sankaran, “Informal Employment and the Challenges for Labour Law” in The Idea of Labour Law (ed Guy Davidov and Brian Langille 2011) at 223 [↑](#footnote-ref-6)
6. Krithika Dinesh, Marlese van Broembsen, Roopa Madhav,, Pamhiszai Bamu, Teresa Marchiori, Re-examining Legal narratives on Vagrancy, Public Spaces and Colonial Constructs: A Commentary on the ACHPR’s Advisory Opinion on Vagrancy Laws IN Africa, Law & Informality Insights no 4, August 2021 [↑](#footnote-ref-7)
7. **F**or example, the right to freedom of association and the right to organize and bargain collectively are extended to all workers in the ILO Declaration on Fundamental Principles and Rights at Work, as well as ILO Conventions 11, 87 and 98. [↑](#footnote-ref-8)
8. the International Convention on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights, the International Convention on the Elimination of all forms of Racial Discrimination, and the Convention on the Elimination of all forms of Discrimination against Women all [↑](#footnote-ref-9)
9. For example, in a 2022 Concluding Observation, the Committee on the Elimination of Racial Discrimination, expressed concern that labour rights do not explicitly cover informal sector and domestic work, “both sectors in which Black women predominate and face low wages, poor working conditions and racist dehumanizing treatment from employers and customers of different racial or ethno-linguistic identities which is reminiscent of the pre-independence era.” [↑](#footnote-ref-10)
10. ACHPR Article 2 [↑](#footnote-ref-11)
11. Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe, Communication 284/03, Afr. Comm'n H.P.R. (3 Apr 2009) at ¶ 91. As a corollary to Article 2, Article 3 of the ACHPR provides that “every individual” shall be “equal before the law and entitled to equal protection of the law.” The Commission has indicated that Article 3 “contains a general guarantee of equality which supplements the ban on discrimination provided for in Article 2**.**  [↑](#footnote-ref-12)
12. *See* Open Society Justice Initiative v. Côte d’Ivoire, Communication 318/06, Afr. Comm'n H.P.R ¶ 144 (27 May 2016). [↑](#footnote-ref-13)
13. The Compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and Other Human Rights Instruments Applicable in Africa, Advisory Opinion No. 001, African Court on Human and Peoples’ Rights (December 4, 2020) [hereinafter “Afr. Ct. H.P.R. Vagrancy Opinion”], at ¶ 66, available at [http://www.african-court.org/en/images/Cases/Advisory%20Opinion/Advisory%20Opinions/001-2018\_-\_PALU-Advisory\_Opinion.pdf](http://www.african-court.org/en/images/Cases/Advisory%25252525252520Opinion/Advisory%25252525252520Opinions/001-2018_-_PALU-Advisory_Opinion.pdf) [↑](#footnote-ref-14)
14. Afr. Ct. H.P.R. Vagrancy Opinion at ¶ 66. [↑](#footnote-ref-15)
15. Afr. Ct. H.P.R. Vagrancy Opinion at ¶ 72; ¶¶ 64-75. [↑](#footnote-ref-16)
16. Afr. Ct. H.P.R. Vagrancy Opinion at ¶ 70 [↑](#footnote-ref-17)
17. Afr. Ct. H.P.R. Vagrancy Opinion at ¶ 79 [↑](#footnote-ref-18)
18. Afr. Ct. H.P.R. Vagrancy Opinion at ¶ 137 [↑](#footnote-ref-19)
19. General Comment No 23 (2016) at para 47. [↑](#footnote-ref-20)
20. Pretoria Declaration on Economic, Social and Cultural Rights in Africa, Dec. 7, 2004, ACHPR/Res.73(XXXVI) 04. [↑](#footnote-ref-21)
21. Pretoria Declaration on Economic, Social and Cultural Rights in Africa, Dec. 7, 2004, ACHPR/Res.73(XXXVI) 04. [↑](#footnote-ref-22)
22. under Articles 22 and 25 of the Universal Declaration of Human Rights, Article 9 of the International Covenant on Economic, Social and Cultural Rights, and ILO Convention 102 on Social Security. [↑](#footnote-ref-23)
23. ILO, Social Protection for Domestic Workers: Key Policy Trends and Statistics (2016) [↑](#footnote-ref-24)