

OHCHR call for input on the role of workers' organisations in preventing and addressing contemporary forms of slavery

Submission by:

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The British Institute of International Law welcomes the opportunity to make submissions to the Special Rapporteur's efforts on the role of workers' organisations in preventing and addressing contemporary forms of slavery. This is a critical issue at a time when spaces for participation are shrinking and vulnerabilities to exploitation increasing. This submission builds primarily on the emerging findings from the [Platform for Organising by Workers for Empowerment and Recognition \(GLP-POWER\)](#) project which BIICL is implementing in partnership with Solidar Suisse (lead partner) and Pragma and operating in Southeast and South Asia respectively. It is also informed by our other work including:

- a) A project on labour exploitation in the context of [Cuban foreign medical missions](#);
- b) A project focused on the protection of labour and human rights standards in the [Cuban hospitality sector](#); and
- c) A project on the [determinants of anti-trafficking efforts](#).

BIICL is open to providing more detailed information about any of the submissions below, if this is helpful for the work of the Special Rapporteur.

A. Certain groups of workers which are at higher risk of contemporary forms of slavery see their vulnerability increased by the lack of support or limited support from large-scale trade unions or workers' organisations

Certain groups of workers are at a higher risk of exploitation and contemporary forms of slavery. These include informal workers across various economic sectors including the platform economy.. As such, the support of trade unions is particularly essential to them, to inform them of their rights, to support them with their claims, strengthen their representation and bargaining and to amplify their voices. Yet, these groups struggle to be represented by trade unions, regularly facing difficulties in receiving support. Especially when such Unions are (perceived to be) politicised by national authorities and political elites, informal workers do not feel they can be represented and included in such unions.

For **informal economy workers** and for many **platform economy workers**, the main reason for that lack of protection is that they are not legally recognized as 'workers' and therefore they fall outside the scope of operation of those trade unions. Despite calls from the ILO to protect the rights of workers in the informal sector, including freedom of association, the effective recognition of the right to collective bargaining,¹ and to prevent misclassification of platform economy workers as independent contractors,² and despite their recognition in some domestic

¹ [ILO Recommendation No. 204](#), 2015, Transition from the Informal to the Formal Economy Recommendation, para 16.

² ILO, ISSA, OECD, [Providing adequate and sustainable social protection for workers in the gig and platform economy](#). Technical paper prepared for the 1st meeting of the Employment Working Group under the

systems (often as a result of litigation), many domestic legal frameworks still show a gap in the protection of those workers' rights, including in their representation by trade unions.³

Many of those informal economy and platform economy workers are international **migrants**⁴ facing additional risks and often experiencing abuses related to their condition of migrants, including tied visas, confiscation of passports, threats of deportation or protracted detention.⁵ Internal migrants often face vulnerabilities in accessible social services, decent wage and poor working and living conditions. Further factors increasing their vulnerability affect **women**,⁶ **children and young people**, **members of the LGBT+ community**, **minorities**, and **racialized workers**⁷ amongst others. An intersectional approach to their protection and representation is therefore essential, as in practice they face significant challenges in having their rights protected by trade unions either due to membership requirements or due to practical or institutional challenges.

Those limitations in workers' representation are particularly serious as freedom of association and the right to organise are instrumental for the prevention and protection of all other labour rights. Those rights are enshrined in the ILO Constitution and protected by ILO Convention C087 on Freedom of Association and Protection of the Right to Organise (1948), considered one of the core ILO conventions, and their relevance for informal and platform economy workers has been recognised by the ILO as part of its Decent Work agenda and in its Recommendation 204 (2015), where it calls member States to 'take measures to respect, promote and realize the fundamental principles and rights at work for those in the informal economy, including freedom of association and the effective recognition of the right to collective bargaining'.⁸

Indian Presidency, January 2023, p. 6; ILO Recommendation No. 198, Employment Relationship Recommendation, 2006.

³ ILO, [Providing adequate and sustainable social protection for workers in the gig and platform economy](#), Ibid, pp. 7-8, mentioning positive developments in Spain, Italy, Belgium and the State of California. Promising cases have also been decided, inter alia, in the UK (Uber BV v Aslam, [2021] UKSC 5), the Netherlands (Deliveroo v Federation of the Dutch Trade Movement (Amsterdam Court of Appeal, Case No 200.261.051/01, 16 February 2021), and Argentina (Itatí Laura Lucía Cáceres c/ Repartos Ya SA (Case No CNT 26535/2020/1/CA1, National Chamber of Labor Appeals, 24 September 2021). At the EU level, a 2021 EU legislative proposal aims to secure employment status for all platform workers, and to enforce minimum standards in areas like pay, conditions and social protections (European Commission, Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work (9 December 2021) COM(2021) 762). This proposal is now [close to adoption](#).

⁴ International Labour Office, The Informal Economy and Decent Work: A Policy Resource Guide (International Labour Organization 2013) 304; van Doorn, N., Ferrari, F., & Graham, M. (2023). Migration and Migrant Labour in the Gig Economy: An Intervention. *Work, Employment and Society*, 37(4), 1099-1111. <https://doi.org/10.1177/09500170221096581>.

⁵ Human Rights Council, Report of the Special Rapporteur on the Human Rights of Migrants: Labour Exploitation of Migrants (UN Doc A/HRC/26/35, 3 April 2014) para 37. See, for example, Human Rights Council, Report of the Special Rapporteur on the Human Rights of Migrants, Addendum: Mission to Qatar (UN Doc A/HRC/26/35/Add.1, 23 April 2014) paras 25–28; Amnesty International, False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers (2011) 63–66.

⁶ International Labour Organization, 'Lessons Learned on Policy and Programme Responses to Unfree Labour in Destination Countries for Migrant Women Workers' (June 2022) <https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_849825/lang--en/index.htm>.

⁷ OECD/ILO (2019), *Tackling Vulnerability in the Informal Economy*, Development Centre Studies, OECD Publishing, Paris, <https://doi.org/10.1787/939b7bcd-en>.

⁸ [ILO Recommendation No. 204](#), 2015, Transition from the Informal to the Formal Economy Recommendation, supra note 1, para 16.

B. To overcome those limitations, workers' representation efforts increasingly occur at different levels, including smaller, more localised, and more informal platforms, and not simply through large-scale trade unions, as often assumed.

Our participatory action research in South Asia and South-East Asia, those 'less protected' workers have found in smaller trade unions and more informal platforms an effective way of organising. Such platforms provide a channel for receiving information and support. They can also be a critical tool in amplifying workers' voices and for the development of worker solidarity within and across sectors. The following are examples of organisations working in this space:

- IDEA, the Independent Democracy of Informal Economy Association is an organisation aiming at supporting informal workers in the protection of their rights and dignity in Cambodia. Its work has contributed to giving voice to these workers in negotiating and lobbying in the future of work.⁹
- In Thailand, the Just Economy and Labour Institute (JELI) helps informal workers organise and protect from abuse, particularly in the tourism sector, the home-based sector (cleaners, carers) and platform economy workers more generally.¹⁰
- In Indonesia, LIPS (Sedane Labour Resource Centre or Lembaga Informasi Perburuhan Sedane) supports migrants working as gig economy workers, and workers in the agricultural sector, particularly in the palm oil sector, within and outside the country (primarily in Malaysia).¹¹
- The Mekong Migration Network is a network of civil society organizations supporting migrant workers in Thailand, Myanmar, Cambodia, Vietnam, Laos and China, mainly in the agriculture, fisheries, construction and mining sectors, tailoring their protection to the specific needs of the sector.¹²
- The North South Initiative Malaysia supports plantation workers, who are for the most part migrant workers from Bangladesh, Nepal, India, Indonesia..

The GLP-Power project has engaged with these and other grassroots organisations empowering marginal, informal and precarious workers to increase their bargaining power and their access to fair and decent work. Various initiatives in this project facilitate organising by informal workers and enhances their agency and visibility. This includes mobilisation of informal workers, training of those workers using the CONNECT app, an app which provides access to relevant resources and information as well as psychosocial and legal services, capacity building, and multi-stakeholder consultation. The app supports informal workers of various sectors to connect with each other and share stories and approaches directly.

Some of the success stories shared by beneficiaries¹³ of the project illustrate the impact such action can have in their lives.

- In Khulna, Bangladesh, thanks to the GLP-POWER project, women workers were empowered to raise an issue of sanitation with their employer, achieving their employer's commitment to build a separate toilet for them.

⁹ <https://streetnet.org.za/organization/independent-democracy-of-informal-economy-associations-idea/>

¹⁰ <https://justeconomylabor.org/our-team/>

¹¹ <https://lips.or.id/lips/>.

¹² <https://mekongmigration.org/>.

¹³ GLP-POWER Project, *Yearbook 2022-23* (GLP-POWER, 2024)

- JSSKS, another grassroots organisation, helped the small farmers, who lease land from owners and cultivate them, to understand their rights and motivated them to take action.

Given these findings, we urge the Special Rapporteur to consider the important contribution of informal grassroots organising activities, alongside the important role that independent large-scale unions play in addressing exploitation and conditions likely to result in exploitation.

C. Informal unionisation remains challenging for those groups of workers. The following are identified as challenges facing workers' organisations in the prevention of contemporary forms of slavery and the protection of victims:

(Informal) unionisation remains challenging for workers in some countries in South Asia and South-East Asia, as any type of coordination between workers may lead to threats to those workers or to the worsening of their working conditions. This includes:

- **Threats, worsening of working conditions and discrimination.** In some countries in South Asia and South-East Asia, any type of coordination between workers may lead to threats to those workers or to the worsening of their working conditions. This affects, for example, domestic workers in South Asia and South-East Asia, who have reported that the algorithm offering them housework factors in negatively whether they have attempted to be represented by a trade union or made any attempt at organising, even informally, with other workers. Those threats are more common in certain sectors: domestic work, platform economy, and agriculture.
- **Fear related to potential consequences.** Aware of the potential reactions of their employers or of the authorities, many of those workers have developed fear and anxiety which leads to a paralysis in any attempts to unionise or organise informally.

In other parts of the world, **discrimination** is reported in relation to freedom of association,¹⁴ partly due to the non-recognition of certain trade unions or workers' organisations. In some contexts, public employment entails representation by a governmental trade union, which is the only recognised worker organisation. That is the case in the Cuban tourism sector, where workers employed to serve as waiters, chefs, receptionists, entertainers, or drivers in multinational hotel companies are employed by the Cuban State and represented by the Sindicato Nacional de Trabajo, Hostales y Turismo. Not only are other workers' organisations not recognized in law and in practice, but any other attempts to unionise may be subject to sanctions. In other countries, State authorities as well as some companies use violence, harassment or threats to constrain or suppress worker organising activities.¹⁵

The issues raised in this submission should be seen within the context of a broader phenomenon of **shrinking civil society space / shrinking democratic spaces** with actions and intimidations by governments and corporations against organising by workers. Trade union membership has been steadily declining over time for a variety of reasons, with some contributing factors including the shift from manufacturing to service jobs, the outsourcing of unionised jobs, automation, and the informalization of the economy and the consequential changing

¹⁴ 'Protection Against Acts of Anti-Union Discrimination: Evidence from the Updated IRLex Database' (International Labour Organization, October 2022) <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_862443.pdf> accessed 21 May 2023.

¹⁵ 2022 ITUC Global Rights Index (International Trade Union Confederation 2022) 43–45.

employment relationship.¹⁶ Trade union membership in Asia decreased from a rate of 20% in 2000 to a rate of 13% in 2016.¹⁷ This shrinking membership has led to the progressive marginalisation and fragmentation of unions, and has had serious impacts for their ability to organise and support workers. Trade union membership remains especially low for self-employed workers and people in non-standard or precarious types of employment, such as temporary workers or workers in the informal and gig economy.¹⁸ However, as illustrated in this submission, paradoxically it is often these workers that are most in need of the protections and benefits of union membership.

Based on our findings, we urge the Special Rapporteur to consider:

- emphasising the need to consider groups of workers that are peripheralized from traditional modes of organising and emphasizing the relevance of emerging, grassroots and innovating ways of organising as a tool towards solidarity, voice and representation.
- calling for the facilitation of more informal forms of support to those workers, including informal workers, tailored to their needs and circumstances and for governments and employers to recognise such forms of organising as part of the labour representation framework (including in the context of human rights due diligence); calling for a strong recognition of the rights of informal and platform economy workers, including their freedom of association;
- calling on trade unions and other traditional worker organizations to ensure that their practices are inclusive, recognising the important role they can play;
- adopting an intersectional approach that understands the realities and exclusions faced by different groups and in different contexts.

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¹⁶ 'Trade Unions in Transition: What Will be Their Role in the Future of Work?' (*International Labour Organization*, July 2021) <<https://www.ilo.org/infostories/en-GB/Stories/Labour-Relations/trade-unions>> accessed 18 May 2023.

¹⁷ Ibid.

¹⁸ *Social Dialogue Report 2022: Collective Bargaining for an Inclusive, Sustainable and Resilient Recovery* (International Labour Organization 2022) 127–128.