



## Using International Law and Regional Legal Systems and Rights Documents in Advocacy for Workers in the Informal Economy

**Megan Corrarino<sup>1</sup>**

International and regional human rights principles can be powerful advocacy tools for informal workers. They may serve as persuasive authority in domestic courts, support normative arguments about the values that laws should reflect, and prove useful in public debates about informal workers' rights. In some countries, some international or regional human rights treaties may also be incorporated as enforceable domestic law.

This brief summarizes human rights instruments and systems that may be particularly useful for informal workers. It first provides a general overview of how human rights law can be used, next it describes major international legal documents, and concludes by describing regional human rights systems in Africa, the Americas, and Europe.

### Advocacy through Human Rights Instruments

International human rights law has powerful normative and persuasive weight. In many countries, however, the international documents cited in table 1 *may not be controlling legal authority*. Depending on how international laws are incorporated into a country's own legal system, international legal agreements may be binding in the same way that a national law or constitutional principle would be. National sovereignty remains an important principle in the international legal system. As a result, countries are not usually bound by interna-



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<sup>1</sup> Megan Corrarino is a research consultant on law and the informal economy for WIEGO; she received her JD from Yale Law School in 2013.



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tional legal instruments unless they have agreed to be. A country generally does this by signing the relevant treaty and then by ratifying it through domestic processes. In some countries, ratification automatically makes a legal document a binding part of the national laws, in which case advocates can use it in the same way they would use international law. In other countries, a ratified international legal instrument only becomes binding if it is incorporated into international law through independent legislation. Even where international legal instruments do not carry the force of binding law, however, they are still extremely powerful tools in public advocacy for multiple reasons.

First, in many countries, courts have held that international law has powerful *persuasive authority*. When there are ambiguities in the national law, courts in these countries may give significant weight to resolving such ambiguities in ways that are consistent with any international legal agreements to which the country is party.

Second, international law can be useful in arguments about what the *law should look like*. Many of the international legal documents described below come from international human rights law, which maintains that there are certain principles of human rights and human dignity to which *all* laws should conform. These international legal instruments can provide a normative basis for arguing that laws sometimes must be changed, even if they have been approved through formal, legal channels. In countries with strong constitutional protections for individual rights, international legal arguments may often be paired with national constitutional arguments. And when there are not strong individual rights guarantees under the national constitution, informal workers may appeal to these international legal principles to argue that national protections must be strengthened.

Third, international law can be a powerful rhetorical tool in *public advocacy*. Informal workers and their advocates can point to international norms and best practices in order to argue that national laws should be reformed to align to emerging international trends or consensus on workers' rights. When national or local laws are insufficient to protect workers' rights, informal workers can appeal to these international legal instruments to demonstrate recognition of their rights on a global level.

## **International Legal Instruments Relevant to the Rights of Workers in the Informal Economy**

Table 1 reflects major international legal instruments with provisions that are particularly relevant to informal workers' rights. The table summarizes the key provisions for each legal document. It also provides a link to a list of *states parties* to the legal instrument. If a country has signed and ratified a document, that document will carry greater weight within that country. However, even if a country has not signed a document, workers in the country may be able to use the document for advocacy purposes if its acceptance is so widespread as to represent an international norm. For example, the United States has not ratified ILO Convention 29 concerning Forced or Compulsory Labour, and India has not ratified ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Yet the ILO recognizes both as fundamental conventions, and the international consensus against slavery and child labour in dangerous or exploitative industries is by now so strong as to constitute a recognized in-

ternational norm. Thus, even in countries where these conventions have not been ratified, advocates might still refer to them (ideally alongside other legal authorities such as national laws) in order to support their case that such activities are inconsistent with participation in the modern global economic and legal system.

## Major International Human Rights Instruments\*

LEGAL INSTRUMENT
<b>International Covenant on Economic, Social and Cultural Rights (ICESCR)</b>
<p><b>Cite as:</b> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.</p>
<p><b>KEY RIGHTS</b></p> <p>Work, decent working conditions, a decent living, formation of trade unions, collective bargaining, social security, adequate food, adequate clothing, adequate housing</p>
<p><b>NOTES</b></p> <p>ICESCR rights are to be progressively realized, with each state party taking appropriate means to implement, including the adoption of domestic legislation (Article 2(1)).</p> <p>“Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the [ICESCR] to non-nationals” (Article 2(3)).</p> <p>Rights apply equally to men and women (Article 3).</p>
<p><b>LIST OF STATES PARTIES*</b></p> <p><a href="http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-3&amp;chapter=4&amp;lang=en">http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-3&amp;chapter=4&amp;lang=en</a></p>
<p><b>RELEVANT PROVISIONS</b></p> <ul style="list-style-type: none"> <li>• The right to work, “which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts” (Article 6).</li> <li>• The right “of everyone to the enjoyment of just and favorable conditions of work,” including equal pay for equal work for women and men and the right to a decent living for workers and their families (Article 7).</li> <li>• The right to form trade unions and to engage in concerted activities (Article 8).</li> <li>• The right to social security, including social insurance (Article 9).</li> <li>• The right to family life, and protection of children from social and economic exploitation, including the most hazardous forms of work (Article 10).</li> <li>• The right to the highest attainable standard of living for workers and their families, “including adequate food, clothing and housing and ... the continuous improvement of living conditions” (Article 11).</li> <li>• The right to health (Article 12), including a state obligation to take progressive steps to eliminate health hazards in the workplace (Article 12(2)).</li> </ul>

\*Please note that many state parties have also adopted declarations or reservations qualifying their ratification; these are generally listed on the same web page, following the list of ratifications. To search ratifications of major treaties by country, see <http://www1.umn.edu/humanrts/research/ratification-index.html>. However, this site is not updated as regularly as the official UN treaty links listed in the spreadsheet.

## LEGAL INSTRUMENT

### Committee on Economic, Social and Cultural Rights General Comments

#### KEY RIGHTS

A domestic legal regime consistent with ICESCR rights, access to culturally appropriate food, dignified working conditions and social security for informal workers

#### NOTES

The General Comments do not have the same authoritative force of international law as treaties or other international legal instruments, but these commentaries on the rights enumerated in the ICESCR are considered significant persuasive authority when deciding how to interpret and implement those rights.<sup>2</sup>

#### LIST OF STATES PARTIES\*

Commentary on the ICESCR rights; list of ICESCR signatories available at: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en)

#### RELEVANT PROVISIONS

- States parties have an obligation to implement ICESCR provisions in domestic law.
- **CESCR General Comment No. 3 on the nature of States parties obligations (Article 2, para. 1)** recognizes that Article 2 requires states to undertake a combination of legislative and other measures (including access to judicial remedies) as is appropriate for each specific right. Further recognizes that, for the rights outlined in Articles 6-9 (which include many of the rights to work relevant to workers in the informal economy), “legislation may be an indispensable element” (para. 3), recognizing a state obligation to enact enabling legislation to support realization of relevant rights.
- **CESCR General Comment No. 9 on the domestic application of the Covenant** requires states to implement the Covenant’s rights with an appropriate combination of legislative and judicial remedies in domestic law (para. 9) and, recognizing that incompatibility with domestic law is not an excuse for treaty non-compliance under article 27 of the Vienna Convention on the Law of Treaties of 1996, calls upon states to update domestic law so that it is compatible with Covenant obligations (para. 3).
- **CESCR General Comment No. 12 on the right to adequate food (Article 11)** recognizes that *availability* and accessibility of food are major impediments to full realization of this right (paras. 5-6, 8, 12-13), and that a definition of “adequate” food includes cultural acceptability (paras. 8, 11), which may be particularly useful for street vendor legislation that recognizes not only vendors’ rights, but also the cultural rights of consumers.
- **CESCR General Comment No. 18 on the right to work (Article 6)** confirms that the rights of the ICESCR extend to workers in the informal sector, and that any legislation governing the informal sector “must reflect the fact that people living in an informal economy do so for the most part because of the need to survive, rather than as a matter of choice” (para. 10). It affirms that “the right of access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity” is a core state obligation (para. 33(a)). And it calls on states parties to “take positive measures to enable and assist individuals to enjoy the right to work and to implement technical and vocational education plans to facilitate access to employment” (para. 27).
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- **CESCR General Comment No. 19 on the right to social security (Article 9)** notes that informal and other vulnerable workers must be considered with special care in the enactment of a social security regime (paras. 16, 28, 31, 34).

<sup>2</sup> Henry J. Steiner, *Individual Claims in a World of Massive Violations: What Role for the Human Rights Committee?*, in *The Future of UN Human Rights Treaty Monitoring* (Philip Alston & James Crawford eds.) 15, 52 (2000).

## LEGAL INSTRUMENT

### International Covenant on Civil and Political Rights (ICCPR)

**Cite as:** International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171.

#### KEY RIGHTS

Self-determination, economic development, life, due process, equality before the law, freedom of association

#### NOTES

States parties must recognize these rights “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”, and domestic legal remedies must be made available for violations of these rights (Article 2).

Rights apply equally to men and women (Article 3).

#### LIST OF STATES PARTIES\*

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

#### RELEVANT PROVISIONS

- The right to self-determination, through which people “freely determine their political status and freely pursue their economic, social and cultural development” (Article 1).
- Right to life (Article 6).
- Right to be free from “forced or compulsory labor” (Article 8).
- Liberty and security of the personal and procedural rights, including: no arbitrary arrest or detention; the right to know, at the time of arrest, the reasons for that arrest; the right to a speedy trial; and the right to compensation for unjust arrest or detention (Article 9). Persons arrested or detained have the right to dignity and the right to be detained apart from convicted persons (Article 10). The right to due process in criminal proceedings (Articles 14). Persons cannot be punished for actions that were criminalized after the fact (Article 15).
- Individual liberties, including freedom of movement (Article 12), the right to privacy (Article 17), freedom of religion (Article 18) and expression (Article 19). Freedom of assembly and association, including the right to form and join trade unions (Articles 21-22).
- The rights of linguistic, ethnic, and religious minorities to use their language and practice their culture and religion (Article 27).
- Equality before the law, including freedom from discrimination “on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Article 26).

## LEGAL INSTRUMENT

### Human Rights Committee General Comments

#### KEY RIGHTS

Life (broadly understood), freedom from discrimination in the law and in fact

#### NOTES

The General Comments do not have the same force of international law as treaties or other international legal instruments, but these commentaries on the rights enumerated in the ICCPR may be useful persuasive authority in deciding how to interpret and implement those rights.<sup>3</sup>

#### LIST OF STATES PARTIES\*

Commentary on the ICCPR rights; list of ICCPR signatories available at: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

#### RELEVANT PROVISIONS

- CCPR General Comment No. 6 on the right to life (Article 6) notes that “the right to life has been too often narrowly interpreted. The expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures”, including those designed to increase life expectancy, reduce infant mortality and combat malnutrition (para 5).
- CCPR General Comment No. 18 on non-discrimination defines the term “discrimination” to include “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms” (para. 7). States must take measures to eliminate not only discrimination as written into the law, but also “discrimination in fact ... by public authorities, by the community, or by private persons or bodies” (para. 9).

## LEGAL INSTRUMENT

### Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

*Cite as:* Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

#### KEY RIGHTS

Equal working conditions and compensation for men and women, women's full access to financial tools (credit, etc.)

#### LIST OF STATES PARTIES\*

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)

#### RELEVANT PROVISIONS

- Women are guaranteed “the same rights [as men] ... in the field of employment”, including the right to work, equal access to employment opportunities, the right to free choice of profession, equal professional development and promotion opportunities, equal job security, equal pay for equal work, social security, and the right to healthy and safe working conditions (Article 11(1)).
- Women are guaranteed the right to fully participate in other areas of economic and cultural life, including the right to bank loans, mortgages and other forms of financial credit (Article 13(b)).

<sup>3</sup> *Id.*

## LEGAL INSTRUMENT

### Convention on the Rights of the Child (CRC)

*Cite as:* Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

#### KEY RIGHTS

Children's freedom from hazardous or exploitative work

#### LIST OF STATES PARTIES\*

[http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)

#### RELEVANT PROVISIONS

Minors in the workplace must be protected from "economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or ... development" (Article 32). This will be useful for any occupational sector in which children regularly work out of necessity and do not see their rights protected (and is likely to be especially useful when children are routinely employed as domestic workers without sufficient regulatory protections).

## LEGAL INSTRUMENT

### International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

*Cite as:* International Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1969, 660 U.N.T.S. 195.

#### KEY RIGHTS

States parties must work to actively eliminate all forms of racial discrimination and promote understanding among all races

#### LIST OF STATES PARTIES\*

[http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-2&chapter=4&lang=en)

#### RELEVANT PROVISIONS

States must review laws and policies to ensure they do not promote racial discrimination, and engage in any necessary legal reform. States parties must eradicate racial segregation (Article 3) and ensure access to a judicial remedy for acts of racial discrimination (Article 6). States must act affirmatively by engaging in public education to promote understanding and tolerance (Article 7). Establishes the Committee on the Elimination of Racial Discrimination (CERD) to hear complaints from individuals or groups when the relevant state party has recognized the competence of the Committee to do so (Article 14).

## LEGAL INSTRUMENT

### International Labour Organization (ILO) Conventions

#### KEY RIGHTS

Employment, formation of trade unions, concerted activities, a workplace free from discrimination, additional protections for child workers, a state labor system that coordinates fair labor conditions.

#### NOTES

Please note that most ILO Conventions do not specifically identify rights; instead, they commit ratifying member states to undertake certain programs (e.g., create a labor administration) or respect certain obligations (e.g., refrain from interfering with the creation of trade unions, or legislate minimum ages for work).

Conventions 87, 98, 111, 138, and 182 are among the ILO's eight fundamental conventions, meaning that the ILO's Governing Body has identified these as fundamental rights and principles in the workplace and is undertaking a campaign for universal ratification. Consequently, these fundamental conventions may carry stronger weight in international law, as they reflect growing international norms about basic conditions that should exist in all workplaces.

#### LIST OF STATES PARTIES\*

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312232:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312232:NO)

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312243:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312243:NO)

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312256:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312256:NO)

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312267:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312267:NO)

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312283:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283:NO)

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312295:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312295:NO)

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312327:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO)

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:2551460:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460:NO)

#### RELEVANT PROVISIONS

- **C87: Freedom of Association and Protection of the Right to Organize Convention, 1948:** The right to form workers' and employers' associations.
- **C98: Right to Organize and Collective Bargaining Convention, 1949:** The right to engage in collective bargaining and other concerted activities.
- **C111: Discrimination (Employment and Occupation) Convention, 1958:** Ratifying member states commit to undertaking policies to eliminate discrimination in employment.
- **C122: Employment Policy Convention, 1964:** The right to work, and a commitment from member states to pursue policies "designed to promote full, productive and freely chosen employment".
- **C138: Minimum Age Convention, 1973:**
  - Age 18 (or 16, under strict conditions) is the age at which a child may begin "any work which is likely to jeopardize children's physical, mental or moral health, safety or morals".
  - 15 is the minimum age at which a child should be allowed to begin regular work.
  - 13 is the minimum age at which a child should be allowed to begin light work and only in conjunction with regular schooling.
- **C150: Labour Administration Convention, 1979:** Ratifying states commit to enact a coordinated system of labour administration consistent with national conditions and that encourages collaboration between the public administration and employers' and workers' representatives.
- **C182: Worst Forms of Child Labour Convention, 1999:** States parties must take steps to prohibit and eliminate the worst forms of child labour, including slavery (in all forms, including debt bondage and forced or compulsory labour); commercial or sexual exploitation; use in the commission of illegal activities; or work likely to harm the "health, safety, or morals" of children. This may be particularly useful to argue for better protections for children working as domestic workers.
- **C189: Convention Concerning Decent Work for Domestic Workers** (enters into force 5 September 2013): Domestic workers entitled to daily and weekly rest hours, minimum wage, and respect for privacy. With respect to social protection, access to justice, and in-kind compensation for work, states must take steps to "ensure that domestic workers enjoy conditions that are not less favourable" than those enjoyed by workers in other sectors.

## LEGAL INSTRUMENT

### ILO Resolution Concerning Decent Work and the Informal Economy

(<http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/pr-25res.pdf>, adopted by the ILO General Conference in its 90th session, 2002: ILC90-PR25-292)

#### KEY RIGHTS

Decent work and dignified working conditions for informal workers, enabling domestic regulatory and policy framework, freedom from gender discrimination, social security, property rights, access to judicial remedies, additional protections for child workers, active role for trade unions

#### NOTES

ILO Resolutions do not carry the same force in international law as Conventions, which are ratified by individual states parties, but this Resolution is nevertheless useful in establishing an international norm toward decent work in the informal economy and may serve as persuasive authority in interpreting other rights.

#### LIST OF STATES PARTIES\*

No states parties, but reference may be made to ILO member states: <http://www.ilo.org/public/english/standards/relm/country.htm>

#### RELEVANT PROVISIONS

Recognizes the right of informal workers, both men and women, to decent work (para. 2) and recognizes that informal employment cuts across sectors, comes from necessity, and serves important economic and social functions (paras. 3-11). Calls on member states to enact appropriate domestic legislation that considers the needs, rights, and special circumstances of informal workers (paras. 16-18, 21-22) and to provide an enabling regulatory framework that includes a conducive legislative and policy environment, appropriate economic and social frameworks, protection of property rights, social security, and access to judicial remedies (paras. 24-30). Recognizes need to prevent discrimination against women (para. 20) and reduce child labour (para. 23). Calls on member states to work with appropriate employers' and workers' organizations, including trade unions (paras. 31-34).

## LEGAL INSTRUMENT

ILO Decent Work Agenda (<http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm>)

#### KEY RIGHTS

Decent work and dignified working conditions

#### NOTES

The Decent Work Agenda is not a set of international legal principles, but instead represents a growing international consensus that there is a right to decent work and may serve as persuasive authority in establishing or interpreting that right.

#### LIST OF STATES PARTIES\*

No states parties, but reference may be made to ILO member states: <http://www.ilo.org/public/english/standards/relm/country.htm>

#### RELEVANT PROVISIONS

Four strategic objectives, with gender equality as a cross-cutting objective: creating jobs, guaranteeing rights at work, extending social protection, and promoting social dialogue.

Human rights advocates in some countries have successfully appealed to their regional court system to protect their rights after exhausting domestic legal remedies.

## Advocacy through Regional Legal Instruments: Key Regional Legal Instruments and Courts Relevant to the Rights of Workers in the Informal Economy

This section describes regional legal systems and rights documents. In some regions, these rights are also enforced through regional court systems. In some countries in Europe and Latin America, human rights advocates have sometimes successfully appealed to their regional court system to protect their rights after exhausting domestic legal remedies. Thus, depending on whether a country has agreed to be bound by a regional court system, the regional legal instruments and court systems may be useful both for advocacy purposes, and, occasionally, for legal appeal.

This list covers regional legal instruments in Africa, the Americas, and Europe. Asia and the Middle East do not have comparable intergovernmental human rights treaties or courts. In almost all cases, bringing a case before a regional human rights court requires considerable time, expense, and prior exhaustion of remedies in domestic law. However, the rights outlined in the regional documents have the force of international law in countries that have ratified them, and they therefore may be useful in domestic litigation and in developing a discourse that recognizes the multiple legal sources of informal workers' rights.



### Africa

The **African Charter on Human and Peoples' Rights** (the Banjul Charter) is the primary human rights instrument for states in the African Union. A list of ratifications is available <http://www.achpr.org/instruments/achpr/ratification/>. Rights guaranteed in the Banjul Charter include equality before the law (Article 3), the right to dignity and personal liberty (Articles 5-6), rights of due process (Article 7), the right to receive and disseminate information (Article 9), the right to association and assembly (Articles 10-11), freedom of movement within the borders of a state (Article 12(1)), equal rights of access to public property, government, and services (Article 13), and the right to economic, social, and cultural development, with a corresponding state duty "to ensure the exercise of the right to development" (Article 22).

The **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa** (the Maputo Protocol) identifies a comprehensive set of rights for women. A list of ratifications is available at <http://www.africa-union.org/root/au/Documents/Treaties/List/Protocol%20on%20the%20Rights%20of%20Women.pdf>. Rights for women guaranteed in the Maputo Protocol include freedom from discrimination (Article 2), the right to dignity (Article 3), the right to life (Article 4), access to justice and equal protection before the law (Article 8), full enjoyment of economic and social rights (Article 13), food security (Article 15), adequate housing (Article 16), and protection for "poor women and women heads of families ... suitable to their condition and their special physical, economic and social needs" (Article 24(a)).

The African Union's legal system is relatively new and still being developed. With the court system still in flux, much of the work is currently done by the **African Commission on Human and Peoples' Rights**, which performs a variety of monitoring and information-collecting duties and includes five working groups, including one on economic, social, and cultural rights, and six special rapporteurs, including one on the rights of women in Africa. Reports from bodies in this Commission may offer useful persuasive authority in interpreting rights of interest to workers in the informal economy.

The **African Court on Human and Peoples' Rights**, established in 2004, was originally tasked with ensuring state compliance with the African Charter on Human and Peoples' Rights. Cases may be brought before the Court by the Commission, states parties, African intergovernmental organizations, individuals and NGOs. The Court issued its first decision at the end of 2009, and, as of the end of 2011, had published ruling on a total of nine petitions. In 2008, the African Union decided to merge the Court with the African Court of Justice, which will create the African Court of Justice and Human Rights. However, as of the end of 2011, only 2 countries had ratified the 2008 merger protocol, which requires 15 ratifications to come into force.

## Americas

The **American Convention on Human Rights** (the Pact of San José) is the primary human rights agreement for members of the Organization of American States (OAS). A list of ratifications, including reservations and declarations, is available at <http://www.oas.org/juridico/english/sigs/b-32.html>. It includes the right to life (Article 4), the right to personal liberty (Article 7), the right to a fair trial (Article 8), freedom from ex post facto laws (laws enacted after commission of the prohibited act) (Article 9), the right to compensation when rights are violated (Article 10), freedom of assembly and association (Articles 15-16), the right to property (Article 21), the rights to equal protection before the law and to judicial protection (Articles 24-25), and progress toward "the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires" (Article 26). Article 2 requires ratifying states to take legislative or other measures as necessary to ensure domestic compliance with the rights referred to in the Convention.

In the 12 of 35 OAS member states that have not ratified (or ratified but later denounced) the American Convention on Human Rights, the **American Declaration on the Rights and Duties of Man** is the primary source of binding regional law. The American Declaration, which was the founding rights document of the OAS, includes the rights to life, liberty, and personal security (Article 1), equality before the law (Article 2), the rights to work and to fair remuneration (Article 14), the right to social security (Article 16), the right of assembly and association (Articles 21-22), the right of petition (Article 24), and the right to due process (article 26). It also enumerates a number of individual duties, including the duty to pay taxes (Article 36) and the duty to work (Article 37).

Many of the rights that are especially relevant to workers in the informal economy were later outlined in the 1988 **Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights** (the Protocol of San Salvador). Only 14 of



Many of the rights that are especially relevant to workers in the informal economy [in the Americas] were later outlined in the 1988 Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (the Protocol of San Salvador).



**Individuals or NGOs [in the Americas] can file complaints about state human rights violations with the Inter-American Commission on Human Rights. Petitioners must have exhausted domestic remedies, and the state against which they are bringing the complaint must have signed the relevant human rights document.**

the OAS's 35 member states have ratified it; a list of ratifications, including reservations and declarations, is available at <http://www.oas.org/juridico/english/signs/a-52.html>. It includes the right to work (Article 6), to just, equitable and satisfactory conditions of work (Article 7), the right to join trade unions, and the right of trade unions to function freely (Article 8), the right to social security (Article 9), the right to food (Article 12), the rights of children, including "the right to the protection that [a child's] status as a minor requires from his family, society and the State" (Article 16), protection of the elderly, including suitable medical facilities, appropriate work programs, and social organizations aimed at improving their quality of life (Article 17), and protection of the handicapped (Article 18). Article 2 requires ratifying states to take legislative or other measures as necessary to ensure domestic compliance with the rights referred to in the Protocol, and Article 3 commits states to the obligation of non-discrimination.

Individuals or NGOs can file complaints about state human rights violations with the **Inter-American Commission on Human Rights**. Petitioners must have exhausted domestic remedies, and the state against which they are bringing the complaint must have signed the relevant human rights document. (This means, for example, that a petitioner bringing a complaint against the United States would need to refer to the American Declaration on the Rights and Duties of Man, since the United States did not ratify the other two agreements.) If the Commission rules that the petition is admissible, it first attempts to find an amicable solution. If this proves impossible, the Commission then accepts merits briefs from each side and issues a confidential report to the state, outlining how the state should resolve the issue. The state then has two months to comply with these recommendations, after which the petitioner has one month to request that the Commission send the case to the **Inter-American Court of Human Rights**. In the case of state inaction, the Commission may choose to send the case to the Court, to publicly release their report, or to continue monitoring the issue. Note that petitioners may not bring cases directly to the Inter-American Court, and that a state must have accepted the Court's jurisdiction in order for a case to be heard there. Countries can either recognize the jurisdiction of the Court over all relevant cases, or they can choose to recognize its jurisdiction on a case-by-case basis. A list of countries that have recognized the jurisdiction of the Court in all relevant cases is available at <http://www.cidh.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm> (under the column labeled "Recognition of the Jurisdiction of the Court").

## Europe

The **Convention for the Protection of Human Rights and Fundamental Freedoms** (the European Convention on Human Rights [ECHR]) is the primary human rights treaty of Europe. Relevant rights include the right to life (Article 2), due process rights (Articles 5-7), freedom of assembly and association, including the right to form and join trade unions (Article 11), freedom from discrimination (Article 14 and expanded in Protocol 12), and the right to property (Protocol 1, Article 1).

The **European Court of Human Rights** hears complaints that a state has violated the human rights outlined in the ECHR and its protocols. Individuals, NGOs, or groups of individuals may submit petitions against member states, which are then reviewed for admissibility by a three-judge panel (or, in cases where the petition obviously fails to meet the standards of admissibility, by a

single judge). To be admissible, a petitioner must raise an important question of human rights, name a state party to the ECHR as the rights violator, and have exhausted all available domestic remedies.

A full list of states parties to the ECHR is available at <http://conventions.coe.int/Treaty/Commun/ListeTableauCourt.asp?MA=3&CM=16&CL=ENG>, with reservations and declarations at <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=06/06/2011&CL=ENG&VL=1>. Nearly all European states are signatories, although many have ratified with reservations, and several of the subsequent protocols (including Protocol 12, on non-discrimination) have not been as widely ratified. Although all European Union (EU) members and applicants have signed the ECHR, the European Union itself is not bound by it, meaning that cases cannot be brought against EU institutions.

EU member states enacting EU law must adhere to the **Charter of Fundamental Rights of the European Union**, which is enforced by the European Union court system, the highest court of which is the **European Court of Justice**. The Charter of Fundamental Rights includes the right to human dignity (Article 1), the right to life (Article 2), freedom of assembly and association (Article 12), freedom to choose an occupation and the right to work (Article 15), freedom to conduct a business in accordance with national laws (Article 16), the right to property (Article 17), equality before the law (Article 20), non-discrimination (Article 21), equality between men and women (Article 23), workers' right to information (Article 27), the right to collective bargaining and action (Article 28), fair and just working conditions (Article 31), the prohibition of child labor and appropriate protections for juvenile workers (Article 32), and access to social security (Article 34). The Charter is only enforceable when states are administering European Union law and does not provide a cause of action for a citizen against a state applying its domestic law.

Additionally, the **European Social Charter** includes a number of rights relevant to informal workers. While 43 European states have ratified either the 1961 charter or the 1996 revised version, only 14 states have accepted the collective complaint procedure, which allows qualified employers' and workers' organizations and NGOs to bring complaints against states to the **European Committee of Social Rights**, a body of the Council of Europe. A list of ratifications is available at [http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/Overview\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/Overview_en.asp), and a list of organizations entitled to submit complaints (as well as instructions for qualifying) is available at [http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrganisationsIndex\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrganisationsIndex_en.asp). Specific rights are not enumerated in this Note, because nearly all of the Charter's provisions relate to workplace conditions, social security, access to vocational training, and other social and economic rights relevant to informal workers, but the full text of the Charter is available at <http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm> (1996 revised version) or <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm> (original 1961 charter, still in force in states parties that have not ratified the revised version).



**The European Social Charter includes a number of rights relevant to informal workers. The Charter's provisions relate to workplace conditions, social security, access to vocational training, and other social and economic rights.**

**WIEGO LEGAL BRIEFS** describe and analyze the legal environment facing informal workers, and the legal strategies and precedent-setting cases that may lead to more secure livelihoods.

**ABOUT WIEGO:** Women in Informal Employment: Globalizing and Organizing is a global research-policy-action network that seeks to improve the status of the working poor, especially women, in the informal economy. WIEGO builds alliances with, and draws its membership from, three constituencies: membership-based organizations of informal workers, researchers and statisticians working on the informal economy, and professionals from development agencies interested in the informal economy. For more information see [www.wiego.org](http://www.wiego.org).

**ABOUT INCLUSIVE CITIES:** Launched in 2008, the Inclusive Cities project aims to strengthen membership-based organizations (MBOs) of the working poor in the areas of organizing, policy analysis and advocacy, in order to ensure that urban informal workers have the tools necessary to make themselves heard within urban planning processes. Inclusive Cities is a collaboration between MBOs of the working poor, international alliances of MBOs and those supporting the work of MBOs. For more information see [www.inclusivecities.org](http://www.inclusivecities.org).



Women in Informal Employment  
Globalizing and Organizing