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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## Extreme poverty and human rights

### Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, in accordance with Human Rights Council resolution [44/13](#).

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\* [A/78/150](#).



## **Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter**

### **The working poor: a human rights approach to wages**

#### *Summary*

In the present report, the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, observes that more than one in five workers in the world live in poverty. Productivity gains often do not result in better wages for workers, in particular because of the expansion of non-standard forms of work and the weakening of union rights. The Special Rapporteur assesses the human rights implications of the “working poor” phenomenon, in a context in which the cost-of-living crisis has worsened the situation of people living on low incomes. He submits recommendations to both States and corporations on the implementation of the right to a living wage and the right to a fair remuneration.

## I. Introduction<sup>1</sup>

1. Most of the world's poor people work, yet they do not earn a wage sufficient to afford an adequate standard of living for themselves and their families. Even before the coronavirus disease (COVID-19) pandemic, more than one in five workers (21 per cent) lived in poverty (living on less than \$3.10 per day), including 8 per cent who were in extreme poverty (living on less than \$1.90 per day): for approximately 712 million people, a job did not guarantee a life in dignity for themselves and their families.<sup>2</sup> In low-income and low-middle-income countries, 44 per cent and 52 per cent of workers were either moderately or extremely poor, respectively:<sup>3</sup> in Africa, 54.8 per cent of workers were in poverty, in Asia and the Pacific, 21.3 per cent, and in the Arab States, 15.8 per cent.<sup>4</sup>

2. Other figures, based on national measures of poverty, illustrate the scope of the problem. In the United States of America, the working poor are defined as those who have spent at least 27 weeks working or looking for work during a year but have incomes below the national poverty line (\$14,580 for individuals and \$19,720 for a family of two).<sup>5</sup> According to this definition, there are around 6.3 million working poor in the country, representing 4.1 per cent of the workers.<sup>6</sup> In the European Union, the working poor are defined as people who had a job for at least 7 months during the reference year but whose incomes are below 60 per cent of the national median equivalized disposable income.<sup>7</sup> In 2017, the working poor in the European Union constituted 10 per cent of the active working population (nearly 20.5 million), up from 8 per cent ten years before.<sup>8</sup> In China, the working poor are defined as those who work at least one hour per week and live in a household with a disposable income below 50 per cent of the median income: 28.6 per cent of the urban population fall within that category.<sup>9</sup>

3. However one counts the working poor, the general trend is clear: even where work is formalized, having a job does not always protect the worker and his or her family from poverty. Workers can be poor for a range of reasons, including household composition and work intensity within the household (the ratio between the number of working adults and the number of dependants in the household), a lack of social protection against certain life risks, the breakdown of informal solidarity networks and low wages. In the present report, the Special Rapporteur focuses on this last

<sup>1</sup> The Special Rapporteur is grateful to the Columbia Law School Human Rights Clinic for outstanding research, and to Prof. Nicolas Bueno for advice on the right to a fair remuneration.

<sup>2</sup> Rosina Gammarano, "The working poor or how job is no guarantee of decent living conditions", ILOSTAT Spotlight on Work Statistics, No. 6 (Geneva, International Labour Organization, 2019), p. 2. Available at [https://ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/publication/wcms\\_696387.pdf](https://ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/publication/wcms_696387.pdf).

<sup>3</sup> Ibid., p. 7.

<sup>4</sup> Ibid., p. 5.

<sup>5</sup> United States Department of Health and Human Services, Health Insurance Marketplace, "Federal poverty level", 2023. Available at [www.healthcare.gov/glossary/federal-poverty-level-fpl/](http://www.healthcare.gov/glossary/federal-poverty-level-fpl/).

<sup>6</sup> Ibid.

<sup>7</sup> Eurofound, "Working poor", 29 November 2022. The equivalized disposable income represents the amount of money that an individual or household earns after taxes and other deductions have been taken out, adjusted for the size and composition of the household.

<sup>8</sup> Daphne Ahrendt and others, *In work-poverty in the EU*, Eurofound Research Report (Luxembourg, Publications Office of the European Union, 2017), p. 3. Available at [www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1725en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1725en.pdf).

<sup>9</sup> Wu Xiaofang, "Structural causes of urban working poverty: an empirical study based on the China Labor Force Dynamics Survey (CLDS)", *City Watch Journal* (2022); Tu Li and Yue Zhang, "Research on urban working poverty and its influencing factors: empirical study from CFPS data", *Population and Economy* (2018), pp. 20–30.

factor: he examines low wages as one major explanation for the growth of the category of “working poor”.

## II. The rise of the “working poor”

### A. The stagnation of real wages

4. The failure to translate productivity gains into increased real wages is not a new phenomenon. However, the COVID-19 pandemic in 2020 and 2021 and the cost-of-living crisis that shook the world in 2022, following sharp increases in the prices of food and energy, further worsened the situation. In 2020, the share of the world’s workers living in extreme poverty increased for the first time in two decades, rising to 7.2 per cent from 6.7 per cent in 2019, with an additional 8 million workers falling into poverty – disproportionately affecting young people and women, as well as informal workers.<sup>10</sup> The high rate of inflation since 2022, triggered in part by the conflict in Ukraine, shed light in particular on the vulnerability of workers whose wages remain fixed and are not adjusted to increased costs of living: global monthly wages fell in real terms by 0.9 per cent in the first half of 2022, the first negative global wage growth this century.<sup>11</sup>

### B. The decline of the share of wages in gross domestic product

5. Across all regions, the share of labour as a percentage of gross domestic product (GDP) has been declining since the 1980s. It fell from 66.1 per cent to 61.7 per cent between 1990 and 2009 in countries in the Organisation for Economic Co-operation and Development (OECD), reaching its lowest level before the global financial crisis of 2008, and has yet to recover.<sup>12</sup> In the United States, the decline of the share of labour in income has accelerated since 2000, accounting for three quarters of the decrease since 1947; 11 per cent of the decline is attributable to the impacts of globalization and automation on the reduced bargaining power of workers.<sup>13</sup>

6. The decline of the labour income share was even more significant in emerging and developing countries, with pronounced declines in North Africa and Asia and more stable but still decreasing wage shares in Latin America.<sup>14</sup> In China, the share of labour in national income has fallen by almost 3 percentage points since the early 1990s.<sup>15</sup>

### C. The lower remuneration of women

7. Women are less likely than men to receive a living wage which guarantees a decent standard of living for themselves and their families. A comparison of the incomes of women and men shows a persistent gap: in 2019, women in employment earned 73 cents per dollar earned by men in high-income countries, 71 cents per dollar

<sup>10</sup> *The Sustainable Development Goals Report 2022* (United Nations publication, 2022), p. 26.

<sup>11</sup> International Labour Organization (ILO), *Global Wage Report 2022–2023: The Impact of COVID-19 and Inflation on Wages and Purchasing Power* (Geneva, 2022), p. 36.

<sup>12</sup> Organisation for Economic Co-operation and Development (OECD), *OECD Employment Outlook 2012* (Paris, 2013), chap. 3, p. 113.

<sup>13</sup> James Manyika and others, *A New Look at the Declining Labor Share of Income in the United States* (n.p., McKinsey Global Institute, 2019), p. 2.

<sup>14</sup> ILO, *World of Work Report 2011: Making Markets Work for Jobs* (Geneva, International Institute for Labour Studies, 2011).

<sup>15</sup> IMF, *World Economic Outlook: Gaining Momentum?* (Washington D.C., April 2017), p. 126.

in upper-middle-income countries, 61 cents per dollar in lower-middle-income countries and just 43 cents per dollar in low-income countries.<sup>16</sup>

8. The labour income gap is even larger when the unequal participation in employment of men and women is taken into account. Women are often less likely to be in paid work in the first place, and they are overrepresented in certain sectors such as care work that are undervalued – in part precisely because they are feminized and include tasks that have traditionally been performed by women without remuneration. This is the result of differentiated access to education, of women being less likely to be in leadership positions, and of the impact of caring responsibilities on hours worked and on pay progression after taking time out of the labour market.<sup>17</sup> In sum, women earn less because they mostly do jobs that women usually do and because they are more often second earners in the household and tend to limit their working time in order to take care of children or older family members.

9. The overrepresentation of women in informal jobs makes their situation worse. In most countries, and especially in low-income countries, women are more likely to be in informal work.<sup>18</sup> This has an impact on their earnings: on average, women in informal employment earn just 47 per cent of what a formally employed man would earn.<sup>19</sup> The informal work of women is often in roles such as domestic workers or doing piecework at the lower tiers of supply chains characterized by low pay and other forms of exploitation.<sup>20</sup>

10. Women are paid lower wages, and less of their work is remunerated: many of their contributions are still provided outside market relationships and unrecognized in statistics. Unpaid care work reduces the time that women have to devote to paid work, and longer periods spent out of the workforce affect savings and retirement – reinforcing patriarchal gender roles.

11. Living with an additional income earner can partly compensate for this, and men who earn a low wage are more likely to live in households for which they are the only wage earner: in Europe, for instance, men are slightly more likely to be recorded as being in in-work poverty than women because men are more likely to be sole earners and to have a partner who is not working.<sup>21</sup> This assumes, however, an equal distribution of the total income of the household. Where this does not happen – where women receive less than half of the total household income – women may be disadvantaged within households that may not appear to be poor.<sup>22</sup> Moreover, whereas in some countries, the lower wages that women receive may be compensated for by the income of another adult in the household, this is not necessarily the case: women in the United States are far more likely than men to be among the working poor (5.3 per cent and 3.7 per cent, respectively)<sup>23</sup> both because they account for 60 per

<sup>16</sup> ILO, “New data shine light on gender gaps in the labour market”, Spotlight on Work Statistics, No. 12, (March 2023), figure 5.

<sup>17</sup> Chidi King, “Take five: at the current rate of progress, no equal pay until 2069”, United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), 24 February 2017; and ILO, *Women in Business and Management: The Business Case for Change* (Geneva, 2019).

<sup>18</sup> ILO, *Women and Men in the Informal Economy: A Statistical Update* (Geneva, 2023), p. 18.

<sup>19</sup> ILO, *Global Wage Report 2020–21: Wages and Minimum Wages in the Time of COVID-19* (Geneva, 2020), p. 96.

<sup>20</sup> Emanuela Pozzan, Florence Bonnet and Umberto Cattaneo, “Building back better for women: women’s dire situation in the informal economy” (Geneva, International Labour Organization, 2020).

<sup>21</sup> European Institute for Gender Equality, Gender Statistics database, “In-work at-risk-of-poverty rate by age and sex”. Available at [https://eige.europa.eu/gender-statistics/dgs/indicator/ta\\_livcond\\_inwrkpov\\_\\_ilc\\_iw01](https://eige.europa.eu/gender-statistics/dgs/indicator/ta_livcond_inwrkpov__ilc_iw01) (last accessed 6 June 2023).

<sup>22</sup> Fran Bennett, “Rethinking low pay and in-work poverty”, Women’s Budget Group, 20 September 2018.

<sup>23</sup> United States, Bureau of Labor Statistics, “A profile of the working poor, 2018”, Report No. 1087 (July 2020).

cent of the nation's lowest-paid workers<sup>24</sup> and dominate 18 of the 25 lowest paid jobs in the country (including those paying at or below the poverty line)<sup>25</sup> and because single-parent households with children (80 per cent of which are headed by women<sup>26</sup>) are at a higher risk of poverty.<sup>27</sup>

### III. Explaining low wages

12. A number of factors explain why wages are insufficient to keep workers out of poverty. Structural evolutions affecting the labour market play a role. Globalization and automation have made the situation of the least qualified workers in rich countries precarious, and work has been rendered flexible in a desperate quest to create jobs. In developing countries, wages are repressed in the search for cost-competitiveness: in the most labour-intensive segments of global supply chains, keeping workers poor is still seen as the source of a comparative advantage, and global value chains have thrived because lead firms have been able to outsource production to regions that have high productivity with low (often poverty) wages.<sup>28</sup> Another major factor is the weakening of unions, which is caused partly by these structural evolutions but also by violations of union rights.

#### A. Non-typical forms of work

13. The search for competitiveness has led to the increase of atypical (or non-standard) employment contracts, often leading to low wages and to wage insecurity. Non-standard work (in particular a reliance on temporary or casual workers) has grown recently, including in segments previously associated with standard jobs.<sup>29</sup> In countries such as Bangladesh and India, nearly two thirds of waged employment is casual, but the phenomenon is not limited to developing countries: approximately 10 per cent of workers in the United States have irregular and on-call work schedules, with low-income workers the most affected.<sup>30</sup>

14. Like informal workers, workers in non-standard forms of employment are not provided with the full set of protections and benefits that workers in regular, full-time, year-round employment usually enjoy. Indeed, corporate strategies associated with post-Fordist economic restructuring (externalizing, downsizing, outsourcing and subcontracting) have sometimes been referred to as “informalization from above”: starting in the 1980s, production has been increasingly decentralized towards smaller-scale and more flexible economic units, with many more menial tasks (such as cleaning or transportation) outsourced to subcontractors, leading to the growth of non-standard or atypical jobs characterized by hourly wages but few benefits, or even

<sup>24</sup> United States, National Women's Law Center, “Interactive map: women and men in the low-wage workforce”, 20 July 2018.

<sup>25</sup> Grant Suneson, “What are the 25 lowest paying jobs in the US? Women usually hold them”, USA Today, 4 April 2019.

<sup>26</sup> United States Census Bureau, “Census Bureau releases new estimates on America's families and living arrangements”, 17 November 2022.

<sup>27</sup> Sarah Javaid and Jasmine Tucker, “National snapshot: poverty among women and families”, National Women's Law Center (September 2021).

<sup>28</sup> Benjamin Selwyn, “Poverty chains and global capitalism”, *Competition and Change*, vol. 23, No. 1 (February 2019), pp. 71–97; and Lowell Bryan, “Globalization's critical imbalances”, *McKinsey Quarterly* (2010), pp. 7–15.

<sup>29</sup> ILO, *Non-Standard Employment around the World: Understanding Challenges, Shaping Prospects* (Geneva, 2016), p. 2.

<sup>30</sup> *Ibid.*, p. xxiii.

piece-rate jobs with no benefits.<sup>31</sup> Such strategies lead to a deterioration of work conditions and, in particular, greater insecurity.<sup>32</sup>

15. The casualization of work is a major source of in-work poverty in industrialized countries. In the United States, 10.2 per cent of part-time workers were classified as working poor in 2020 compared with just 2.6 per cent of full-time workers.<sup>33</sup> Not only do these workers work fewer hours, their hourly wage is also lower than for full-time workers.<sup>34</sup> Such a situation constitutes indirect discrimination against women, who are overrepresented among part-time workers.<sup>35</sup> Other categories of workers are particularly at risk. Among them are tipped workers, of whom there were estimated to be 4.3 million in the United States<sup>36</sup>; in a 2021 report, the poverty rate of tipped workers was indicated to be 14.18 per cent in the states that had adopted the federal tipped minimum wage of \$2.13 per hour (a rate that has remained unchanged since 2000),<sup>37</sup> despite an obligation on employers to make up the difference if, with the employee's tips, their total wage is not at least the minimum hourly wage for non-tipped workers.<sup>38</sup> Similarly, in the European Union, temporary and part-time workers are at a higher risk of in-work poverty than workers with indefinite and full-time contracts: since the access of part-time workers to social benefits may be lower when eligibility is based on the number of hours effectively worked, low wages and low access to social protection compound their impacts on the individual worker.<sup>39</sup>

16. Non-standard forms of employment often entail unpredictable<sup>40</sup> and/or inflexible schedules<sup>41</sup> as well as a lack of benefits including paid sick leave or family leave,<sup>42</sup> further contributing to in-work poverty. The unpredictability and/or inflexibility of working schedules worsen the impacts of poverty-induced time deficits. Individuals with such schedules cannot combine multiple jobs, especially when they commute long distances; nor can they perform other tasks, such as taking care of other family members, or seek training. Poverty-induced time deficits perpetuate the cycle of poverty, as individuals have limited opportunities to improve their economic situation owing to time constraints.

<sup>31</sup> Martha Alter Chen, *The Informal Economy: Definitions, Theories and Policies*, Women in Informal Employment: Globalizing and Organizing (WIEGO) Working Paper No. 1 (2012).

<sup>32</sup> Supriya Routh and Vando Borghi, "The idea of form, informality and aspirations of workers", in *Workers and the Global Informal Economy: Interdisciplinary Perspectives*, Supriya Routh and Vando Borghi, eds., (Abingdon, United Kingdom of Great Britain and Northern Ireland; New York, Routledge, 2016), p. 9.

<sup>33</sup> United States, Bureau of Labor Statistics, "A profile of the working poor, 2020", Report No. 1099 (September 2022).

<sup>34</sup> Lonnie Golden, "Part-time workers pay a big-time penalty", (Washington D.C., Economic Policy Institute 2020).

<sup>35</sup> This is implicit in ILO Part-Time Work Convention, 1994 (No. 175), art. 5; see also Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016), para. 13.

<sup>36</sup> United States, National Employment Law Project, "Minimum Wage Basics: overview of the tipped minimum wage" (April 2015).

<sup>37</sup> Justin Schweitzer, "Ending the tipped minimum wage will reduce poverty and inequality", Center for American Progress (March 2021).

<sup>38</sup> United States, Department of Labor, "Tips". Available at [www.dol.gov/general/topic/wages/wagestips](http://www.dol.gov/general/topic/wages/wagestips).

<sup>39</sup> Jeroen Horemans and Ive Marx, "In-work poverty in times of crisis: do part-timers fare worse?", ImPRovE Discussion Paper, No. 13/14 (Antwerp, Belgium, 2013).

<sup>40</sup> Katherine Guyot and Richard V. Reeves, "Unpredictable work hours and volatile incomes are long-term risks for American workers", Brookings Institute, 18 August 2020.

<sup>41</sup> Stephanie Bornstein, "Work, family, and discrimination at the bottom of the ladder", *Georgetown Journal on Poverty Law and Policy*, vol. XIX, No. 1 (2012).

<sup>42</sup> Usha Ranji, Michelle Long and Alina Salganicoff, "Coronavirus puts a spotlight on paid leave policies", Kaiser Family Foundation, 14 December 2020; and Oxfam America and Economic Policy Institute, "Few rewards: an agenda to give America's working poor a raise" (Washington D.C., 2016), p. 10.

## B. Platform workers

17. Information and communications technologies allowed the emergence of a “gig economy” relying on digital platforms that link the worker to the client. Globally, the number of online platforms rose from 142 in 2010 to over 777 in 2020.<sup>43</sup> While 70 per cent of the revenue created is concentrated in the United States and China,<sup>44</sup> the revenues of the platform economy increased sixfold in the European Union between 2015 and 2020, with over 28 million people employed in the EU, a number expected to reach 43 million by 2025.<sup>45</sup>

18. The digital platforms can be one of two categories: they either “outsource” work to a dispersed crowd or allocate work to individuals in specific geographical areas through location-based apps, such as Taskrabbit, Uber and Deliveroo.<sup>46</sup> While the two forms of “platform work” are distinct, both rely on a “just-in-time” workforce, usually compensated by means of “pay-as-you-go” remuneration of work.<sup>47</sup>

19. As regards the impacts on wages, the challenges are twofold. Firstly, platforms of the first category allow the outsourcing of services such as accounting, translation, editing, data entry, survey completion, photo tagging or business consulting to workers operating from countries where wages are low and who can compete with workers with low levels of qualification from high-wage jurisdictions. In effect, this results in the export of labour without the migration of those providing it: it is as if the labour supply in rich countries were to suddenly expand dramatically.<sup>48</sup> The downward pressure on wages in the country to which services are provided can be significant: the average hourly wage of the workers on web-based platforms is \$3.40, and half of them earn less than \$2.10 per hour.<sup>49</sup>

20. The second challenge is common to all digital platforms. The business models of such companies rely on having a limited number of employees and a much larger number of “outsourced workers”: in 2021, the freelance platform PeoplePerHour had about 50 employees while mediating work for 2.4 million skilled workers.<sup>50</sup> As these “outsourced workers” are classified as independent contractors, however, this may create the conditions for disguised employment (or bogus self-employment), with substantial effects on the incomes and legal protection of the workers. In the United States, for instance, 14 per cent of gig workers earned below the federal minimum wage of \$7.25 per hour, and a survey showed that one in five gig workers could not even afford enough to eat: 30 per cent of those workers had therefore used the Supplemental Nutrition Assistance Program, better known as food stamps, within one month of the survey – a rate fully twice that of employees in the service sector.<sup>51</sup> The misclassification of platform workers as “self-employed” can also threaten the

<sup>43</sup> ILO, *2021 World Employment and Social Outlook: The Role of Digital Labour Platforms in Transforming the World of Work* (Geneva, 2021), p. 19. Available at [www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_771749.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_771749.pdf).

<sup>44</sup> *Ibid.*, p. 20.

<sup>45</sup> Proposal for a directive of the European Parliament and the Council on improving working conditions in platform work, document COM(2021)762 final, p. 1. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0762>.

<sup>46</sup> Janine Berg and others, *Digital Labour Platforms and the Future of Work: Towards Decent Work in the Online World* (Geneva, International Labour Organization, 2018), p. xv.

<sup>47</sup> Valerio De Stefano, “The rise of the ‘just-in-time workforce’: on-demand work, crowdwork, and labor protection in the ‘gig-economy’”, *Comparative Labor Law and Policy Journal*, vol. 37, No. 3 (2016), pp. 471–503, 475 and 476.

<sup>48</sup> Guy Standing, *The Precariat: The New Dangerous Class* (London, I.B. Tauris, 2021), pp. viii–ix.

<sup>49</sup> ILO, *2021 World Employment and Social Outlook*, p. 23.

<sup>50</sup> *Ibid.*, p. 19.

<sup>51</sup> Ben Zipperer and others, “National survey of gig workers paints a picture of poor working conditions, low pay” (Washington D.C., Economic Policy Institute, 2022).

financial viability of social security systems. And it can result in unfair competition between employers relying on such bogus self-employment and other employers.

21. The determination of the existence of an employment relationship should depend not on how the parties define the relationship but primarily on the facts relating, for instance, to whether the work is carried out according to the instructions and under the control of another party or to whether the work involves the integration of the worker in the organization of the enterprise.<sup>52</sup> As noted by the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization (ILO), “the use of technological means to distribute tasks to an indeterminate workforce cannot justify these activities being considered forms of work separate from the rest of the labour market”.<sup>53</sup>

22. At the domestic level however, considerable legal uncertainty remains. In the United Kingdom of Great Britain and Northern Ireland, for instance, while the Supreme Court found that Uber drivers had so little control over contractual terms and work conditions that they were workers (not independent contractors),<sup>54</sup> that approach may be revised, since the lower courts found that marginally more control (e.g., a right to subcontract) sufficed for self-employment.<sup>55</sup> In Australia, while the Fair Work Commission found that a delivery rider was an employee,<sup>56</sup> it also took the view that an Uber driver could be considered an independent contractor.<sup>57</sup> The same approach towards Uber was adopted by the Superior Labour Court in Brazil<sup>58</sup> and the Labour Court in South Africa,<sup>59</sup> although Uber faces a new class action in South Africa<sup>60</sup> aimed at overturning that ruling. In South Korea, where Uber and similar taxi platforms are banned in principle as impermissible uses of private vehicles for commerce, a taxi-platform driver was found to be an employee because (unlike typical platform drivers) he could not refuse trips and was paid hourly rather than per trip.<sup>61</sup>

23. Some jurisdictions have established clear presumptions in order both to put an end to this uncertainty and to avoid the misclassification by employers of platform workers as “self-employed”.<sup>62</sup> Californian legislation, for instance, provides that businesses that seek to treat workers as independent contractors must prove that the worker is in fact not under the supervision of the hiring entity and operates independently outside that entity’s business.<sup>63</sup> Although this test has been superseded

<sup>52</sup> ILO Employment Relationship Recommendation, 2006 (No. 198), para. 13 (a).

<sup>53</sup> ILO, Committee of Experts on the Application of Conventions and Recommendations, *Promoting Employment and Decent Work in a Changing Landscape* (Geneva, 2020), para. 327, p. 142.

<sup>54</sup> Supreme Court of the United Kingdom, *Uber v. Aslam*, UKSC 2019/0029, Judgment, 19 February 2021. Available at [www.supremecourt.uk/cases/docs/uksc-2019-0029-judgment.pdf](http://www.supremecourt.uk/cases/docs/uksc-2019-0029-judgment.pdf).

<sup>55</sup> Supreme Court of the United Kingdom, *IWGB v. CAC*, UKSC 2021/0155, Summary of Pending Case, 25 April 2023. Available at [www.supremecourt.uk/cases/uksc-2021-0155.html](http://www.supremecourt.uk/cases/uksc-2021-0155.html).

<sup>56</sup> Australia, Fair Work Commission, *Klooger v. Foodora*, [2018] FWC 6836, Decision, 16 November 2018. Available at [www.fwc.gov.au/documents/decisionssigned/html/2018fwc6836.htm](http://www.fwc.gov.au/documents/decisionssigned/html/2018fwc6836.htm).

<sup>57</sup> Australia, Fair Work Commission, *Suliman v. Rasier Pacific*, [2019] FWC 4807, Decision, 12 July 2019. Available at [www.fwc.gov.au/documents/decisionssigned/html/2019fwc4807.htm](http://www.fwc.gov.au/documents/decisionssigned/html/2019fwc4807.htm).

<sup>58</sup> Superior Labour Court of Brazil, *Jacob v. Uber*, TST-E-ED-RR-1000123-89.2017.5.02.0038, Judgment, 31 May 2021.

<sup>59</sup> Labour Court of South Africa, *Uber SA v. NUPSAW*, C 449/17, Judgment, 12 January 2018. [www.saflii.org/za/cases/ZALCCT/2018/1.html](http://www.saflii.org/za/cases/ZALCCT/2018/1.html).

<sup>60</sup> Leigh Day, “Prominent human rights lawyers launch class action for South African Uber drivers”, 22 February 2021. Available at [www.leighday.co.uk/news/news/2021-news/prominent-human-rights-lawyers-launch-class-action-for-south-african-uber-drivers/](http://www.leighday.co.uk/news/news/2021-news/prominent-human-rights-lawyers-launch-class-action-for-south-african-uber-drivers/).

<sup>61</sup> Labour Relations Commission of South Korea, *Kwak v. SoCar*, 2020–170, Judgment, 28 May 2020.

<sup>62</sup> Valerio De Stefano and others, *Platform Work and the Employment Relationship*, ILO Working Paper, No. 27 (Geneva, International Labour Organization, 2021).

<sup>63</sup> California Labour Code, sect. 2750.3 (a).

by the result of a 2020 referendum,<sup>64</sup> it can serve as a source of inspiration for combating abuses by online platforms. Similarly, the European Commission has proposed legislation in the European Union establishing a rebuttable presumption that the platform worker is in an employment relationship if at least two of the following criteria are met: the platform determines the level of remuneration or sets upper limits thereon; it supervises the performance of work using electronic means; it restricts the freedom to choose one's working hours or periods of absence, to accept or refuse tasks or to use subcontractors or substitutes; it sets specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work; or it restricts the possibility of building a client base or performing work for any third party.<sup>65</sup> Such approaches can help to combat the abuse by platform companies of "bogus" self-employment status by misclassifying their workers, thus depriving them from essential protections, including the right to a minimum wage.

### C. The weakening of unions

24. The rate of union membership has stagnated or fallen in recent years. Globally, union density (i.e. the rate of membership as a share of the employed) fell from 12.3 to 11.2 per cent between 2008 and 2019.<sup>66</sup> The decline is spectacular in OECD: while 30 per cent of employees belonged to trade unions in 1985, the figure had almost halved (falling to 17 per cent) by 2017;<sup>67</sup> in the United States, private sector union membership declined from 35 per cent in the 1950s to just 6.2 per cent in 2019.<sup>68</sup> This is the general pattern, although there are exceptions: union membership rose slightly in North Africa and Latin America between 2000 and 2016.<sup>69</sup>

25. The weakening of the bargaining power of workers is in part attributable to automation, which may lead to up to 890 million jobs being lost by 2030 and to 1.1 billion jobs, about a third of total employment, changing radically as individual tasks are automated.<sup>70</sup> It has been estimated that, as a result, wage growth will be lower by approximately 2 percentage points between 2015 and 2025.<sup>71</sup>

26. The main challenge to unions, however, comes from the increase in non-standard employment contracts.<sup>72</sup> Unionization rates, indeed, are much higher for full-time workers (34.0 per cent compared with 18.0 per cent of part-time workers), for workers on open-ended contracts (25.9 per cent compared with 14.4 per cent of those on temporary contracts) and for older age groups (33.4 per cent of the 55–64 year age group compared with 10.9 per cent of those aged 16–24 years).<sup>73</sup> Unionization

<sup>64</sup> The referendum was on Proposition 22, titled "Protect App-based Drivers and Services Act", which exempts most platform workers from the test while providing them with a limited set of protections.

<sup>65</sup> Proposal for a directive, document COM(2021)267 final, art. 4 (see footnote 45).

<sup>66</sup> ILO, *Social Dialogue Report 2022: Collective Bargaining for an Inclusive, Sustainable and Resilient Recovery* (Geneva, 2022), table 4.2. These figures cover 142 of the 187 member countries of ILO.

<sup>67</sup> OECD, *OECD Employment Outlook 2017* (Paris, 2017), chap. 4.

<sup>68</sup> Lawrence Mishel, Lynn Rhinehart and Lane Windham, *Explaining the Erosion of Private-Sector Unions: How Corporate Practices and Legal Changes Have Undercut the Ability of Workers to Organize and Bargain* (Washington D.C., Economic Policy Institute, 2020).

<sup>69</sup> See ILO, InfoStories, Trade unions in transition: what will be their role in the future of work? Where do trade unions stand now, "Decline in trade union membership". Available at [www.ilo.org/infostories/en-GB/Stories/Labour-Relations/trade-unions#where/decline](http://www.ilo.org/infostories/en-GB/Stories/Labour-Relations/trade-unions#where/decline).

<sup>70</sup> OECD, *OECD Employment Outlook 2019: The Future of Work* (Paris, 2019), p. 3.

<sup>71</sup> Daron Acemoglu and Pascual Restrepo, "Robots and jobs: evidence from US labor markets", *Journal of Political Economy*, vol. 128, No. 6 (June 2020), p. 54.

<sup>72</sup> ILO, *World Employment and Social Outlook: Trends 2022* (Geneva, 2022), p. 91.

<sup>73</sup> ILO, *Social Dialogue Report 2022*, figure 4.5.

is also higher for employees (16.8 per cent) than for own-account workers (2.2 per cent according to the most recent statistics, although it has increased in recent years), and for public sector employees (43.0 per cent) than for private sector workers (18.7 per cent). The decline in public sector or manufacturing jobs therefore provides a major explanation for lower unionization rates:<sup>74</sup> although the representation of unions has fallen even within the manufacturing sector,<sup>75</sup> privatization, deindustrialization in rich countries, and the practice of outsourcing to external contractors certain tasks that in the past were performed within the firm make it even more difficult for unions to act as representatives of workers in defence of their rights.

27. De-unionization is not simply the result of such structural factors, however. It also can be explained by a regulatory environment around unions which has become more restrictive in some countries,<sup>76</sup> reducing the role of unions in many workplaces. States have a duty to protect the right of each worker to form and join trade unions, both under human rights law and under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) of ILO. Under article 22 of the International Covenant on Civil and Political Rights and article 8 of the International Covenant on Economic, Social and Cultural Rights, trade unionists should be protected from all forms of intimidation and reprisals.<sup>77</sup> The refusal to hire or promote workers who are affiliated to a trade union,<sup>78</sup> the dismissal of workers who have engaged in trade union activities,<sup>79</sup> the discriminatory use of fixed-term contracts for trade union activists<sup>80</sup> or the deportation of migrant workers engaging in union activities<sup>81</sup> would therefore be a violation of these provisions.<sup>82</sup> Subjecting an individual to adverse treatment on the basis of union membership or activities, including by denying bonuses, would also be discrimination under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights,<sup>83</sup> as well as under ILO Convention No. 98.<sup>84</sup>

28. The regulatory framework should serve to define the right to engage in union activities, including the right to strike, with sufficient clarity, so that workers do not refrain from engaging in such activities out of fear of reprisals.<sup>85</sup> Such a “chilling effect” may be particularly important where broadly worded criminal provisions, referring for instance to terrorist activities or to the “obstruction of business”, are used to prosecute trade unionists or workers participating in strikes.<sup>86</sup>

29. In addition, States should facilitate and promote collective bargaining, to allow workers and employers to reach an agreement through their respective organizations, in particular on wages. They should avoid interfering with the right to collective bargaining, for instance by imposing excessive requirements concerning the

<sup>74</sup> OECD, *OECD Employment Outlook 2017*, chap. 4.

<sup>75</sup> ILO, *Social Dialogue Report 2022*, table 4.3.

<sup>76</sup> International Trade Union Confederation, “The future of work” (2017), p. 11.

<sup>77</sup> E/C.12/ARG/CO/4, paras. 33 and 34.

<sup>78</sup> E/C.12/ROU/CO/3-5, para. 14.

<sup>79</sup> CCPR/C/CHL/CO/5, para. 14.

<sup>80</sup> CCPR/C/BLR/CO/5, paras. 54 and 55.

<sup>81</sup> CCPR/C/DOM/CO/6, para. 32.

<sup>82</sup> E/C.12/MLI/CO/1, paras. 28 and 29; and E/C.12/LKA/CO/5, paras. 33 and 34.

<sup>83</sup> Human Rights Committee, general comment No. 18 (1989), para. 12; and Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 10.

<sup>84</sup> ILO, *Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association*, 6th ed. (Geneva, 2018), para. 1099.

<sup>85</sup> E/C.12/TKM/CO/2, paras. 25 and 26.

<sup>86</sup> E/C.12/ESP/CO/6, paras. 28 and 29; E/C.12/KOR/CO/4, paras. 38 and 39; E/C.12/AUS/CO/5, paras. 29 and 30; CCPR/C/GTM/CO/4, paras. 36 and 37; and CCPR/C/KAZ/CO/2, para. 54 (a).

representativity of the unions allowed to enter into collective bargaining<sup>87</sup> or by requiring that unions operate with collective bargaining “licences”,<sup>88</sup> or through other means.<sup>89</sup> States can expect both parties to negotiate in good faith, which implies a commitment of the parties not to postpone negotiations unreasonably and to enter into negotiations with a view to reaching an agreement. They should refrain from imposing arbitration if the parties do not reach agreement, as this would be contrary to the principle of voluntary negotiation contained in article 4 of ILO Convention No. 98: compulsory arbitration should only be allowable in the context of essential services, understood as services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.<sup>90</sup>

30. Governments are expected to “encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations”, including by giving effect to collective agreements.<sup>91</sup> They should also ensure that the parties do not unilaterally modify the agreement reached, at least for the duration of the agreement.<sup>92</sup> States should ensure that all categories of workers have access to collective bargaining processes, including domestic workers,<sup>93</sup> farmworkers, and workers in precarious employment,<sup>94</sup> including platform workers.<sup>95</sup> Relying on anti-trust legislation to prohibit the unionization of gig workers, therefore, is a clear violation of human rights law.

31. Despite these requirements, union rights are routinely violated, making it difficult for unions to defend workers’ rights and to strengthen their bargaining position in wage-setting. In 2023, the International Trade Union Confederation reported extensive union rights violations: workers were denied the ability to form and join a union in 77 per cent of countries, union registration was impeded in 73 per cent of countries, and 79 per cent of countries violated the right to collective bargaining.<sup>96</sup> Bangladesh, Belarus, Ecuador, Egypt, Eswatini, Guatemala, Myanmar, Tunisia, the Philippines and Türkiye are the 10 worst countries for workers.

32. Such retrogression may significantly reduce the ability of workers to obtain decent wages: the weakening of unions over the past 30 years and the decentralization of collective bargaining (from the sector level to the level of the individual undertaking) have been major factors in the growth of inequalities.<sup>97</sup> This is not only a failure to deliver on the 2030 Agenda for Sustainable Development, which commits Governments to protecting labour rights (target 8.8) and reducing inequalities (target 10.1); it is also poor development calculus. Strategies based on low labour costs to attract investment in job creation based on foreign investment are bound to fail in the long term: low wages limit household consumption, thus lowering overall demand and putting job growth at risk.<sup>98</sup>

<sup>87</sup> E/C.12/DOM/CO/4, para. 39.

<sup>88</sup> E/C.12/IRL/CO/3, para. 19.

<sup>89</sup> E/C.12/LBN/CO/2, para. 40.

<sup>90</sup> ILO, *Freedom of Association: Compilation of Decisions*, para. 1417.

<sup>91</sup> ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98), art. 4; and E/C.12/NAM/CO/1, para. 34.

<sup>92</sup> ILO, *Freedom of Association: Compilation of Decisions*, paras. 1327–1341.

<sup>93</sup> See ILO Domestic Workers Convention, 2011 (No. 189), art. 3.

<sup>94</sup> E/C.12/ZAF/CO/1, paras. 45 and 46.

<sup>95</sup> E/C.12/PRT/CO/4, para. 10.

<sup>96</sup> International Trade Union Confederation, *2023 ITUC Global Rights Index: The World’s Worst Countries for Workers – Executive Summary* (Brussels, 2023), pp. 40–43.

<sup>97</sup> Florence Jaumotte and Carolina Osorio Buitron, “Power from the people”, *Finance and Development*, vol. 52, No. 1 (March 2015); and Florence Jaumotte and Carolina Osorio Buitron, *Inequality and Labor Market Institutions*, IMF Staff Discussion Note 15/14 (July 2015).

<sup>98</sup> International Trade Union Confederation, *Winning a Pay Rise: Union Strategies for Securing Minimum Living Wages* (Brussels, 2023), p. 9. Available at [www.ituc-csi.org/IMG/pdf/winning\\_a\\_pay\\_rise\\_en\\_v2.pdf](http://www.ituc-csi.org/IMG/pdf/winning_a_pay_rise_en_v2.pdf).

## IV. A normative assessment: living wages and a fair remuneration

33. Under article 23 of the Universal Declaration of Human Rights and article 7 (a) of the International Covenant on Economic, Social and Cultural Rights, all workers have the right to a remuneration which provides them, as a minimum, with fair wages and a decent living for themselves and their families. In many cases, the persistence of in-work poverty can be attributed to violations of these guarantees. The Special Rapporteur identifies the most significant threats that these rights currently face and proposes an interpretation of the rights that can better meet the challenges of the times. He also assesses the significance of these rights for corporate actors.

### A. The right to a living wage

34. The right to a remuneration ensuring a decent standard of living for the worker and his or her family requires that the level of wages take into account the cost of living to ensure that it is “sufficient to enable the worker and his or her family to enjoy other rights in the Covenant, such as social security, health care, education and an adequate standard of living, including food, water and sanitation, housing, clothing and additional expenses such as commuting costs”.<sup>99</sup>

35. In other words, workers should be provided, at a minimum, with a "living wage", regularly adapted in accordance with costs of living. In the preamble of its Constitution, ILO calls for “an adequate living wage”, and in the Declaration concerning the aims and purposes of the International Labour Organization, ILO affirms its “solemn obligation” to promote “policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection”. In article 3 of the Minimum Wage Fixing Convention, 1970 (No. 131), ILO requires that minimum wage setting take into consideration “the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; [and] economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment”.

36. Some 90 per cent of ILO member countries report having a minimum wage in place.<sup>100</sup> While minimum wage systems vary widely (from a single rate to many different rates, varying by sector and geography or by individual characteristics such as skill level or age), a minimum wage can support increases across the wage distribution spectrum through its spillover effect on other wages in the labour market, including for informal or non-registered workers, and by providing a benchmark for collective bargaining negotiations.<sup>101</sup>

37. Major challenges remain, however. First, the level of the minimum wage is often inadequate. In China, while the minimum monthly wage ranges from \$240 to \$380,<sup>102</sup> it is estimated that the living wage for a single Chinese adult would range from \$360 to \$585.<sup>103</sup> Even in advanced economies, statutory minimum wages can be too low to

<sup>99</sup> Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016), para. 18.

<sup>100</sup> ILO, *Global Wage Report 2022–2023*, p. 15 (see footnote 11).

<sup>101</sup> International Trade Union Confederation, *Winning a Pay Rise*, p. 10.

<sup>102</sup> China, Ministry of Human Resources and Social Security, “Minimum wage standards in different areas”, 2 January 2023.

<sup>103</sup> WageIndicator, Salaries, Living Wages, Living wages archive, “Living wage series: China – September 2019 – In CNY, per month” (2023). Available at <https://wageindicator.org/salary/living-wage/archive-no-index/china-living-wage-series-september-2019-country-overview>.

allow a worker and his or her family a decent standard of living. In the United States, the federal minimum wage (set out in the Fair Labor Standards Act) is \$7.25 per hour.<sup>104</sup> This was last updated in 2009 and is not automatically adjusted for inflation. Even though, as of August 2022, 30 states had passed minimum wage laws higher than the federal minimum,<sup>105</sup> the federal minimum wage still applies in 20 states.<sup>106</sup> As a result, the United States offers some of the lowest wages in the industrialized world, and workers with a high school diploma actually made 2.7 per cent less in 2017 than they would have in 1979 when adjusted for inflation.<sup>107</sup> The minimum wage is often inadequate to afford the cost of living: in most locations, a one-bedroom rental home is not affordable for a full-time minimum wage worker making even the highest state minimum wage of \$15 an hour.<sup>108</sup> In addition, many workers are in fact paid below the minimum wage.<sup>109</sup> Moreover, the threadbare social support system means that workers are highly dependent on their wages and may be reluctant to leave even poorly paid jobs, further entrenching in-work poverty.

38. On the basis of the Anker methodology, the Global Living Wage Coalition defines the living wage as the remuneration which, in the conditions prevailing in a particular place, is sufficient to afford a decent standard of living for the worker and her or his family. The decent standard of living in turn includes “food, water, housing, education, health care, transportation, clothing, and other essential needs including provision for unexpected events”.<sup>110</sup>

39. While this approach has gained wide acceptance, it presents a major weakness: it is based on an absolute rather than a relative measure of what constitutes an adequate standard of living. Social exclusion may result not only from a lack of sufficient income allowing an adequate standard of living but also from an income that is low relative to the median income in a particular country, making it impossible for the low-income earners to keep up with social expectations. The minimum wage should therefore be set at a level that is sufficient not only in absolute terms but also as a percentage of the median income.

40. This would be consistent with ILO Convention No. 131, and it is not unrealistic: in developed countries, minimum wages are around 55 per cent of the median wage; in developing countries, they are around 67 per cent, although with significant variations from country to country – from just 16 per cent in Bangladesh to 147 per cent in Honduras.<sup>111</sup> In the European Union, the member States will be expected to set, and regularly update, minimum wages on the basis of four criteria: purchasing power; the general level of wages and their distribution; the growth rate of wages; and long-term national productivity levels and developments. Member States are thus encouraged to define minimum wages not only in absolute terms, on the basis of the cost of living, but also in relative terms, relying in that regard on reference values

<sup>104</sup> United States, Department of Labor, “Minimum wage”. Available at [www.dol.gov/general/topic/wages/minimumwage](http://www.dol.gov/general/topic/wages/minimumwage).

<sup>105</sup> United States, National Conference of State Legislatures, “State minimum wages”, 30 August 2022.

<sup>106</sup> Economic Policy Institute, “Minimum wage tracker” (values as of 1 July 2023). Available at [www.epi.org/minimum-wage-tracker](http://www.epi.org/minimum-wage-tracker).

<sup>107</sup> Matthew Desmond, *Poverty, By America* (New York, Crown, 2023), p. 51.

<sup>108</sup> United States, National Low Income Housing Coalition, *Out of Reach: The High Cost of Housing* (Washington D.C., 2020).

<sup>109</sup> Minimum-wage.org, “Federal tipped minimum wage laws for 2022, 2023”. Available at [www.minimum-wage.org/federal/tipped-employee-minimum-wage](http://www.minimum-wage.org/federal/tipped-employee-minimum-wage); and Jennifer J. Lee, “Redefining the legality of undocumented work”, *California Law Review*, vol. 106, No. 5 (October 2018). Available at <https://lawcat.berkeley.edu/record/1128587/files/fulltext.pdf>.

<sup>110</sup> See [www.globallivingwage.org/about/what-is-a-living-wage](http://www.globallivingwage.org/about/what-is-a-living-wage).

<sup>111</sup> ILO, *Global Wage Report 2020–21*, p. 110 (see footnote 19).

commonly used at the international level, such as 60 per cent of the gross median wage and 50 per cent of the gross average wage.<sup>112</sup>

41. Secondly, even where minimum wage laws exist, the level of minimum wages may not be regularly updated, so the real wages received by workers who are paid the minimum wage decline over time: while at least 80 countries mandate that officials revisit the minimum wage every year, this is still not a universal practice.<sup>113</sup> And even if minimum wages are increased regularly, this may still be insufficient to keep up with the rise in costs of living: an ILO assessment covering 10 countries showed that, while most increased the cash minimum wage rate between 2015 and 2022, in all but two, concurrent inflation (especially after 2020) meant that the real minimum wage was worth less by 2022 than it had been in 2015.<sup>114</sup> Not only is this a violation of the rights of the workers concerned, it also has an impact across the entire economy, since the level of the statutory minimum wage is often used as a reference point for all sectors in collective bargaining.

42. To protect the purchasing power of low-wage earners, a number of countries have put in place a system of indexation of wages to the consumer price index.<sup>115</sup> This supports the purchasing power of the middle classes, improving the resilience of the economy in times of crisis. While fears of a wage-price spiral and job destruction are sometimes expressed, comparative studies have shown such a scenario to be unlikely, especially under circumstances of imported inflation.<sup>116</sup> This conclusion is further supported by the International Monetary Fund, which examined 22 situations in advanced economies over the past 50 years with conditions similar to 2021, when price inflation was rising.<sup>117</sup>

43. Thirdly, the enforcement of minimum wage legislation is highly uneven. In 2021, 266 million waged employees (15 per cent) earned less than the minimum wage owing either to a lack of coverage or to non-compliance: 21 per cent of workers in Africa were paid less than the minimum wage, as were 16 per cent in Asia and the Pacific, 17 per cent in the Americas and 13 per cent in Europe and Central Asia.<sup>118</sup> In the United States, tipped workers, independent contractors, informal workers, some young workers and other low-income workers often make less than the federal minimum wage owing to legal loopholes or poor enforcement.<sup>119</sup> Labour inspectorates routinely fail to enforce minimum wage requirements in the informal sector; this is equivalent to allowing a driver to ignore traffic rules because she does not possess a driver's licence.<sup>120</sup>

<sup>112</sup> Directive (EU) 2022/2041 of the European Parliament and of the Council on adequate minimum wages in the European Union (*Official Journal of the European Union*, L 275, 25 October 2022), art. 5, para. 4.

<sup>113</sup> See Wageindicator.org, Salaries, Minimum wages, "When was the minimum wage last updated in your country?" Available at <https://wageindicator.org/salary/minimum-wage/minimum-wage-updates-around-the-world> (last accessed 6 June 2023).

<sup>114</sup> ILO, *Global Wage Report 2022–2023*, pp. 64–65.

<sup>115</sup> Belgium and Cyprus rely on the national consumer price index; in Luxembourg, the Health Index is used, thus excluding alcohol, tobacco and petrol (but including heating fuel, gas and electricity).

<sup>116</sup> Jorge Alvarez and others, "Wage-Price Spirals: What is the Historical Evidence?", IMF Working Paper, No. 22/221 (Washington D.C., 2022) (based on a review of 79 episodes of "wage-price spirals" in advanced economies between 1973 and 2017, and 100 episodes in the manufacturing sector using a narrower wage concept).

<sup>117</sup> IMF, *World Economic Outlook 2022: Countering the Cost-of-Living Crisis* (Washington D.C., 2022), chap. 2.

<sup>118</sup> ILO, *Global Wage Report 2020–21*, p. 90.

<sup>119</sup> United States, Independent Contractor Status Under the Fair Labor Standards Act, *Federal Register*, vol. 86, No. 4 (7 January 2021).

<sup>120</sup> Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016), para. 47 (d).

44. Finally, coverage of minimum wage legislation can be incomplete. In their competition to attract investment, countries have routinely exempted free trade zones and strategic export-oriented sectors from minimum wage requirements. Some categories of workers are also excluded from the protection of minimum wage legislation. The exclusion can be stated in legislation: for instance, 18 per cent of countries with a minimum wage actually exclude agricultural and/or domestic workers from minimum wage regulations, often in addition to apprentices, trainees, and workers with disabilities.<sup>121</sup>

45. More frequent however, is de facto exclusion from minimum wage coverage. Those working for small businesses or family enterprises are typically excluded, as are informal workers; as a result, these workers (61 per cent of the global workforce) earn on average 38 per cent less than those in formal jobs<sup>122</sup> – a “wage penalty” that is especially high for the lowest-income earners.<sup>123</sup> Informal workers are generally not unionized, and they are particularly vulnerable to abuse, since they fear the consequences of becoming visible to the authorities by filing complaints.

46. In addition, homeworkers typically are not protected under minimum wage legislation. Under the most common arrangement, homeworkers are subcontracted workers who receive orders, specifications and raw materials from contractors while bearing the costs of their own equipment. The Home Work Convention, 1996 (No. 177) of ILO provides that homeworkers should be treated like other wage earners, in particular as regards remuneration (art. 4 (2) (d)). In practice, however, the subcontracting of homeworkers allows enterprises to pay workers only when demand is sufficiently high, protecting corporations from market fluctuations by reallocating their economic risks to the home-based workers.<sup>124</sup> Especially in the case of multinational enterprises, pressure for lower prices, quick turnaround and rapid delivery of orders cause suppliers and contractors to pass risks and costs on to workers, who become the “shock absorbers” while capturing only a small portion of the end value of the product: in India, home-based workers earn as low as 2 per cent to 5 per cent of the selling price of the goods that they produce, while contractors can earn up to 40 per cent.<sup>125</sup> To avoid such abuses, Thailand passed the Homeworkers Protection Act of 2010, which provides that, where contracts with homeworkers give the hirer an “undue advantage”, courts may order that the terms of the contract be enforced only insofar as they are “reasonable”.<sup>126</sup> To strengthen their bargaining position, homeworkers should be encouraged to form unions or, as done in India through the Self-Employed Women’s Association, cooperatives.

47. Minimum wage legislation is also weakly enforced in the context of domestic work. In 2013, there were at least 67.1 million domestic workers globally, of whom

<sup>121</sup> ILO, *Global Wage Report 2020–21*, pp. 92–95.

<sup>122</sup> Ibid.

<sup>123</sup> ILO, *Women and Men in the Informal Economy: A Statistical Picture*, 3rd ed. (Geneva, 2018); and Olivier Bargain and Prudence Kwenda, “The informal sector wage gap: new evidence using quantile estimations on panel data”, Institute of Labor Economics Discussion Paper, No. 4286 (Bonn, Germany, 2009), available at <https://docs.iza.org/dp4286.pdf>.

<sup>124</sup> Marlese von Broembse and Jenna Harvey, *Decent Work for Homeworkers in Global Supply Chains: Existing and Potential Mechanisms for Worker-centred Governance*, Global Labour University Working Paper, No. 54 (Geneva, International Labour Organization, 2019), p. 4. Available at [https://global-labour-university.org/wp-content/uploads/2022/03/GLU\\_WP\\_No.54.pdf](https://global-labour-university.org/wp-content/uploads/2022/03/GLU_WP_No.54.pdf).

<sup>125</sup> Shalini Sinha, “Supporting women home-based workers: the approach of the self-employed women’s association in India”, WIEGO Policy Brief (Urban Policies), No.13 (March 2013), p. 3. Available at [www.wiego.org/sites/default/files/publications/files/Sinha-Home-Based-Workers-SEWA-India-WIEGO-PB13.pdf](http://www.wiego.org/sites/default/files/publications/files/Sinha-Home-Based-Workers-SEWA-India-WIEGO-PB13.pdf).

<sup>126</sup> Von Broembse and Harvey, *Decent Work for Homeworkers in Global Supply Chains*, p. 28.

80 per cent are women<sup>127</sup> and 11.5 million are migrant workers.<sup>128</sup> The Domestic Workers Convention, 2011 (No. 189) of ILO provides that domestic workers should “enjoy minimum wage coverage, where such coverage exists” (art. 11). However, 42.6 per cent of domestic workers are not protected by minimum wage legislation,<sup>129</sup> while another 3.1 million find their minimum wages fixed below the statutory minimum wage for other workers. This calls to mind the admonition of the Committee on Economic, Social and Cultural Rights, who warned that “the work performed in sectors predominantly employing women, minorities or foreign workers should not be undervalued compared with work in sectors predominantly employing men or nationals”.<sup>130</sup>

48. Undocumented migrant workers are particularly vulnerable to exploitation and unfair wages.<sup>131</sup> A 2008 survey of over 4,000 low-wage workers in the United States found, for instance, that nearly half of female and 30 per cent of male unauthorized workers had experienced wage theft in the previous week<sup>132</sup> and that 85 per cent of unauthorized individuals who worked overtime for a single employer had not received the legally mandated overtime pay.<sup>133</sup> The fear of retaliation, and the risks of deportation if they are reported to law enforcement authorities, as well as their lack of awareness of their rights, places undocumented migrant workers in a particularly vulnerable situation. The Committee on Economic, Social and Cultural Rights therefore states that “specific measures of protection may have to be adopted...to ensure that any abuse of their situation of vulnerability is effectively addressed and that they do not fear filing complaints with the competent authorities”.<sup>134</sup>

## B. The right to fair wages

49. In addition to having a right to a “living wage”, workers have a right to “fair wages”.<sup>135</sup> This means that wages should reflect “not only the output of the work but also the responsibilities of the worker, the level of skill and education required to perform the work, the impact of the work on the health and safety of the worker, specific hardships related to the work and the impact on the worker’s personal and family life”.<sup>136</sup> In practice, however, the levels of wages are the result of bargaining processes in which most workers, or the unions representing them in collective bargaining, are in a weak position to negotiate better wages. This is the result of the constellation of structural factors described above. Only by strengthening unions and protecting the right to collective bargaining will it be possible to uphold the right to a fair remuneration.

50. Another, more fundamental problem is that the bargaining position of workers depends in part on what the end purchaser of the good or service provided will pay.

<sup>127</sup> ILO, *Social Protection for Domestic Workers: Key Policy Trends and Statistics*, Social Protection Policy Papers, Paper No. 16 (Geneva, 2016), p. 3.

<sup>128</sup> ILO, “Implementation of international labour standards for domestic workers”, What Works Research Brief, No. 9 (2017), p. 1.

<sup>129</sup> ILO, *Minimum Wage Policy Guide* (Geneva, 2016), chap. 8. Available at [www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_508566.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_508566.pdf).

<sup>130</sup> Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016), para. 23.

<sup>131</sup> *Ibid.*, para. 47 (e).

<sup>132</sup> Annette Bernhardt and others, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities* (2008), p. 43. Available at <https://escholarship.org/content/qt1vn389nh/qt1vn389nh.pdf>.

<sup>133</sup> *Ibid.*, p. 45.

<sup>134</sup> E/C.12/2017/1, para. 13.

<sup>135</sup> International Covenant on Economic, Social and Cultural Rights, art. 7 (a) (i).

<sup>136</sup> Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016), para. 10.

However, as illustrated by the case of unpaid care workers,<sup>137</sup> the most important contributions of work to overall well-being are not necessarily in the added monetary value that it creates. Workers performing essential functions on which society depends are typically underpaid because their contributions are insufficiently valued and because the services that they provide have the nature of a public good, for which the beneficiaries are unwilling or unable to pay. These workers, moreover, provide services that serve communities, including people living in poverty who cannot afford to pay for such services: as a result of how work is currently valued in the labour market, the more the work serves the needs of the poor, the least well it will be remunerated.

51. The low remuneration of workers providing care can also be attributed to the fact that many of their tasks were traditionally performed by women within households and communities, without remuneration; even once the tasks were remunerated, the wages were set at a low level, reflecting a lack of recognition of the value to society of reproductive labour (as contrasted with productive labour).<sup>138</sup> The activities of domestic workers, for instance – such as cooking, cleaning, washing and caregiving – are undervalued both because they are often considered “unproductive”<sup>139</sup> and because they have traditionally been assumed by women – whereas they are a form of valuable and necessary labour on which the functioning of communities and entire economies depends.<sup>140</sup>

52. This should not be allowed to continue. In order to be “fair”, the remuneration should reflect not only the economic value created by the worker but also the contribution to society of the work performed.<sup>141</sup> Prospective workers will otherwise seek the kind of training, and workers will provide the goods and services, that serve not the needs of the community, and in particular those of low-income groups, but those of the most affluent only. Thus, instead of designing schemes to help people in poverty, economists will become traders; instead of producing food for the community, farmers will produce cash crops for which there is a demand on the high-value markets of rich countries; instead of building low-cost social housing, architects will aim to build mansions for the ultra-rich; and so on. The result is not only that the incentives are distorted against serving the needs of the poorest groups within society and that enormous human potential that could serve societal needs is wasted, it is also that, as goods or services for these groups are undersupplied, their prices may increase, resulting in an artificial scarcity.

53. To remedy this, work that is of higher societal value should be better remunerated. In a study on the jobs that the coronavirus disease (COVID-19) pandemic showed to be “essential”, ILO found that “essential workers” earned an average of 26 per cent less than other workers and that only two thirds of the gap could be explained by differences in education and experience.<sup>142</sup> In other terms, the

<sup>137</sup> See A/68/293.

<sup>138</sup> Bruno Palier, “Pourquoi les personnes occupant un emploi ‘essentiel’ sont-elles si mal payées?”, Sciences Po LIEPP Working Paper, No. 116 (2020). Available at <https://sciencespo.hal.science/hal-03102794v1/document>.

<sup>139</sup> ILO, *Social Protection for Domestic Workers*, p. 5 (see footnote 127).

<sup>140</sup> ILO, *Minimum Wage Policy Guide*, chap. 8, pp. 3 and 4, available at [www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/genericdocument/wcms\\_508533.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/genericdocument/wcms_508533.pdf); Pamhidzai H. Bamu-Chipunza, *Promoting Decent Work for Domestic Workers: Lessons from Five Countries*, WIEGO Resource Document, No. 8 (Manchester, United Kingdom, WIEGO, 2018).

<sup>141</sup> Nicolas Bueno, “From productive work to capability-enhancing work: implications for labour law and policy”, *Journal of Human Development and Capabilities*, vol. 23, No. 3 (2022), p. 366; and Elise Dermine and Daniel Dumont, “A renewed critical perspective on social law: disentangling its ambivalent relationship with productivism”, *International Journal of Comparative Labour Law and Industrial Relations*, vol. 38, No. 3 (2022), p. 267.

<sup>142</sup> ILO, *The Value of Essential Work: World Employment and Social Outlook 2023* (Geneva, 2023), p. 62.

workers providing the most vital services to society, in areas such as food production and retail, health care, cleaning and sanitation, and transport, are underpaid.

54. To combat this trend, States could draw up a list of goods and services whose provision is essential and of high societal value and ensure that the workers involved in providing them are paid fair wages (beyond the minimum wage allowing the meet basic needs); they could also, conversely, draw up a list of professions that are currently highly paid despite their negative externalities (such as those of traders encouraging speculation on financial markets and of workers involved in the extraction of fossil energy, in pesticides production, in plastic production, in the tobacco industry and in the advertising industry) and cap high remunerations in those sectors. In order for these mandates to be economically viable in the private for-profit sector, tax incentives and subsidies could be provided, compensating for the increased costs of labour in the sectors that society seeks to support, while at the same time higher income taxes would penalize the excessively high remuneration of professions causing high negative externalities.

### C. Corporate actors

55. The Guiding Principles on Business and Human Rights<sup>143</sup> and the Guiding Principles on Extreme Poverty and Human Rights<sup>144</sup> prohibit corporate actors from following cost minimization strategies that can lead to violations of the right to a living wage or the right to a fair remuneration.

56. This applies to the internal operations of the company. Corporations should avoid relying routinely on casual labour to carry on activities that concern the main business of the enterprise, as this encourages precariousness of work.<sup>145</sup> They should avoid using the threat of immigration enforcement to exploit undocumented migrant workers and pay them substandard wages.<sup>146</sup> They should register overtime work and pay workers what they are legally owed: in the United States, in 2019 alone, \$9.27 billion was stolen from workers who earned less than \$13 per hour.<sup>147</sup> They should refrain from hiring workers for a schedule that is just below what is considered a full-time job, for the sole purpose of depriving the workers of the benefits associated with the status of a full-time worker.<sup>148</sup> They should also refrain from actions aimed at discouraging unionization, such as firing workers, threatening to close worksites or reducing the hours or wages of unionized workers.<sup>149</sup>

57. The duty extends to the relationships of corporate actors to their business partners: the sourcing practices of buyers, in particular, should not result in encouraging suppliers to pay wages below what allows the worker and his or her family members an adequate standard of living (even when such wages would be

<sup>143</sup> Human Rights Council resolution [17/4](#).

<sup>144</sup> See paras. 100 and 101 of the Guiding Principles, endorsed in Human Rights Council resolution [21/11](#).

<sup>145</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, *Promoting Employment and Decent Work*, para. 287, p. 127 (see footnote 53).

<sup>146</sup> Zipperer and others, “National survey of gig workers” (see footnote 51).

<sup>147</sup> Ihna Mangundayao and others, “More than \$3 billion in stolen wages recovered for workers between 2017 and 2020” (Washington D.C., Economic Policy Institute, 2021).

<sup>148</sup> David Rolf, *The Fight for \$15: The Right Wage for a Working America* (New York, The New Press, 2016); and Gregory Acs and others, “Exploring the effects of a \$15 an hour federal minimum wage on poverty, earnings, and net family resources” (Washington D.C., Urban Institute, 2022).

<sup>149</sup> Josh Bivens and others, “How today’s unions help working people: giving workers the power to improve their jobs and unrig the economy” (Washington D.C., Economic Policy Institute, 2017).

above the statutory minimum wage) or to rely on forced labour.<sup>150</sup> This form of abuse remains widespread: a 2016 survey undertaken by ILO and the joint Ethical Trading Initiatives covering 1,454 suppliers across 87 countries found that 39 per cent of suppliers accepted orders below the costs of production and that only 25 per cent of buyers were willing to increase prices to accommodate minimum wage increases.<sup>151</sup> However, ensuring that their suppliers pay living wages is a way for the buyers to reduce their reputational risk. Moreover, it can contribute to the resilience of supply chains, since labour unrest will be more limited and the number of strikes reduced, and since worker turnover will be reduced. In addition, it will result in better nutrition, housing and health care for workers, which will reduce absenteeism due to illness.

## V. Conclusion and recommendations

**58. In order to address the cost-of-living crisis and protect the purchasing power of workers in poverty, States should address the widespread and ongoing violations of the rights to a living wage and to a fair remuneration. The following key recommendations emerge.**

**59. States should guarantee minimum wages through legislative or collective bargaining processes, setting the minimum wage at a level that either corresponds to the “living wage”, allowing the worker and his or her family to achieve an adequate standard of living, or corresponds to at least 60 per cent of the median wage in the country, whichever is highest. In line with the Minimum Wage Fixing Convention, 1970 (No. 131) of ILO, this would ensure that minimum wage legislation protects not only against absolute poverty but also against relative poverty, as a source of social exclusion. The level of the minimum wage should be regularly adapted to the cost of living in order to protect the purchasing power of the workers who depend on it.**

**60. Labour legislation, including minimum wage legislation, should protect all workers, including workers in non-standard forms of employment. The hourly wage should depend neither on whether the worker is employed on a full-time or part-time basis nor on whether the worker works at home, in the private home of the employer or through an online platform. Compliance with the minimum wage should be monitored and enforced in all sectors, including for informal workers, while the formalization of informal work should be further encouraged. In order to ensure that undocumented migrant workers benefit from the minimum wage, a firewall should be established between labour enforcement bodies and immigration law enforcement bodies: no worker should be threatened with arrest or deportation for filing a complaint against employer abuses.**

**61. States should protect the right to fair wages by ensuring that the wages of workers performing “essential” or socially useful work are raised and by imposing a cap on the remuneration of workers whose work causes negative social or environmental impacts. The levels of wages should not be based on misleading measures of “productivity” or on the willingness to pay of beneficiaries; nor should they reflect the fact that many socially useful tasks have traditionally been provided by women without remuneration.**

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<sup>150</sup> Geneviève LeBaron, “Wages: an overlooked dimension of business and human rights in global supply chains”, *Business and Human Rights Journal*, vol. 6, No. 1 (February 2021), pp. 1–20 (on tea and cocoa in India and Ghana).

<sup>151</sup> Daniel Vaughan-Whitehead and Luis Pinedo Caro, *Purchasing Practices and Working Conditions in Global Supply Chains: Global Survey Results*, INWORK Issue Brief, No. 10 (Geneva, International Labour Organization, 2017).

62. All workers should be guaranteed union rights, as stipulated in article 8 of the International Covenant on Economic, Social and Cultural Rights and article 22 of the International Covenant on Civil and Political Rights. States should encourage unionization and promote collective bargaining, including for homeworkers, domestic workers and informal workers.

63. The future instrument on platform workers to be negotiated under the auspices of the International Labour Organization should ensure that contracted workers are paid, at a minimum, either what domestic minimum wage legislation provides for or a living wage, whichever is highest, and are guaranteed the right to social security, protecting them in a life cycle perspective. In order to discourage abusive outsourcing practices, a tax could be imposed in cases where platform workers are relied upon to perform work online. The revenue from such a tax could finance the retraining of workers in the country to which the service is provided, workers whose opportunities may be reduced (and whose bargaining position may be weakened) as a result of such outsourcing.

64. Human rights due diligence by companies should include buyers monitoring their suppliers, to ensure that they pay their workers either what domestic minimum wage legislation provides for or a living wage, whichever is highest. Wherever a supplier is found not to comply with this requirement, the financing of the remediation plan to address this should be equitably shared between the buyer and the supplier. Buyers should also monitor the practice of subcontracting by suppliers, including subcontracting to homeworkers, to ensure that decent wages are paid.

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