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**Working Paper**

## Applying labour law to micro, small and medium-sized enterprises: A comparative study of 16 countries

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► **Applying labour law to micro, small  
and medium-sized enterprises:**  
A comparative study of 16 countries

**Author** / Ana María Vargas





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## ► Abstract

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The self-employed and micro, small and medium-sized enterprises (MSMEs) account for the greatest share of employment and make up the largest number of economic units worldwide. However, some countries exclude these economic units from certain obligations under their national labour laws in the belief that such obligations may impair enterprise growth and prosperity. This study considers the ways in which different countries regulate labour rights for MSME workers, its main purpose being to improve understanding of current trends and developments in this area. The 16 countries covered by the study are Brazil, China, Colombia, Costa Rica, Egypt, Germany, Mexico, Nepal, Peru, the Russian Federation, South Africa, Spain, Sri Lanka, Sweden, Turkey and the United Republic of Tanzania.

Drawing on comparative analysis of labour law coverage for MSMEs in the above countries, this study identifies a general trend towards the extension of equal protection to all workers regardless of the enterprise size, including those in the informal economy and in self-employment. To achieve that, governments are relying not only on labour laws but also on other frameworks and policies. This study did not find any country that completely excluded MSMEs from the application of labour laws. Where selective exclusions or special regimes are in place, these apply mainly to micro and small enterprises, while workers in medium-sized enterprises are often fully covered. Invoking the concept of “social control”, this study highlights a number of innovative approaches used to achieve enforcement of, and compliance with, labour laws among MSMEs – ranging from targeted inspections to wider campaigns designed to raise awareness and change social norms and perceptions.

On the whole, the findings presented in this working paper tie in with those of other studies, showing how labour legislation as such is neither a major obstacle nor a panacea when it comes to promoting enterprise growth and sustainability. It would be worth undertaking further research to explore the ways in which recent labour law reforms in a number of countries have had an impact on the day-to-day experience of MSME workers.

## ► About the author

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**Ana Maria Vargas** is a researcher in the field of law and society with a focus on the regulation of workers in the informal economy. Her PhD thesis about the formalization of street vendors was awarded the prize for best dissertation in Sweden on the theme of Working Life in 2017. Ana Maria is from Colombia where she studied law. She migrated to Sweden where she conducted a PhD in Sociology of Law at Lund University and the University of Milan. Her current research is on resistance to law and other forms of social control.

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## ► Acronyms

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AFD	Agence française de développement (French Development Agency)
BAFA	Bundesamt für Wirtschaft und Ausfuhrkontrolle (Federal Office for Economic Affairs and Export Control) [Germany]
CAF	Corporación Andina de Fomento (Andean Development Corporation)
CSO	Consejo de Salud Ocupacional (Occupational Health Council) [Costa Rica]
DGIPYME	Dirección General de Industria y de la Pequeña y Mediana Empresa (Directorate General for Industry and Small and Medium-sized Enterprises) [Spain]
FAO	Food and Agriculture Organization of the United Nations
ICLS	International Conference of Labour Statisticians
ICSE	International Classification of Status in Employment
INADEM	Instituto Nacional del Emprendedor (National Entrepreneurship Institute) [Mexico]
INEGI	Instituto Nacional de Estadística, Geografía e Informática (National Institute of Statistics, Geography and Informatics) [Mexico]
IOM	International Organization for Migration
ITUC	International Trade Union Confederation
MEI	Microempreendedor Individual (Individual Micro-Entrepreneur [programme]) [Brazil]
MSEs	micro and small enterprises
MSMEs	micro, small and medium-sized enterprises
OECD	Organisation for Economic Co-operation and Development
NGO	non-governmental organization
OSH	occupational safety and health
PNCP	Política Nacional de Competitividad y Productividad (National Competitiveness and Productivity Policy) [Peru]
PRODAME	Programa de Autoempleo y Microempresa (Self-Employment and Microenterprise Programme) [Peru]
SDG	Sustainable Development Goal
SEBRAE	Serviço Brasileiro de Apoio às Micro e Pequenas Empresas (Brazilian Micro and Small Business Support Service)

SIMPLES	Sistema Integrado de Pagamento de Impostos e Contribuições das Microempresas e Empresas de Pequeno Porte (Integrated System for the Payment of Taxes and Social Security Contributions by Micro and Small Enterprises) [Brazil]
SMEs	small and medium-sized enterprises
UNICEF	United Nations Children's Fund



## ► Introduction

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The present study is concerned with the application of labour law to workers at micro, small and medium-sized enterprises, including the self-employed (hereafter collectively referred to as “smaller enterprises” or MSMEs). The purpose is to improve understanding of the approaches used by different countries to regulate employment and working conditions in smaller enterprises, which account for more than two thirds (70 per cent) of employment globally (ILO 2019; 2015). Based on the comparative analysis of 16 countries, this study identifies new developments and trends in the coverage of labour laws (including employment protection) for MSME workers.

This introductory chapter provides a brief review of the literature on the regulation of work in MSMEs, presents the study’s aims and underlying research questions, and outlines its key findings.

### **Applying labour law to MSMEs: A review of the literature**

Self-employment and employment in microenterprises represent over 80 per cent of employment in South Asia and sub-Saharan Africa, 70 per cent in the Middle East and North Africa, and 60 per cent in Latin America and the Caribbean (ILO 2019, 11). However, some countries exclude MSMEs from the purview of certain parts of their labour legislation as a way of promoting enterprise growth and the creation of employment (Edwards, Ram and Black 2004; Fenwick et al. 2007). In general, workers at smaller enterprises in many countries tend to enjoy less protection than those in large enterprises (Reinecke and White 2004; Fenwick et al. 2007).

The question of how to regulate work and employment in MSMEs to support enterprise growth and achieve decent work is a highly complex one. Historically, labour law, designed to uphold the “standard” employment relationship between employers and employees, has played a key role in the protection of workers (Williams and Lapeyre 2017). However, many workers are employed in MSMEs and in self-employment without being protected in law or in practice by labour laws. In countries with equal protection for workers of all enterprise sizes, companies may not grant employees the enjoyment of all their rights out of ignorance or to avoid higher costs (Atkinson and Curtis 2004, 486). In some countries, MSME workers are excluded from the full protection of labour laws owing to exceptions that are intended to support the growth of smaller enterprises (Fenwick et al. 2007). Moreover, low- and middle-income countries have a large informal economy, and legislative provisions to protect workers in smaller enterprises may exist only on paper because of a weak enforcement environment or an ineffective legal system (Mukherjee 2016, 21).

Those in favour of deregulation argue that labour legislation hinders enterprise growth and undermines productivity (Besley and Burgess 2004; Almeida and Carneiro 2009; Xie 2016; Van Landuyt, Dewaelheyns and Van Hulle 2017). This argument has been advanced in particular by the World Bank (2013) and by some scholars (such as De Soto 2000), who consider a reduction in the regulatory burden of labour laws necessary if enterprise growth is to be fostered. Moreover, the restriction of labour rights has often been mentioned in policy debates during economic downturns, such as those following the global financial crisis of 2007–08 or the COVID-19 crisis of 2020. In a study on China, Xie (2016, 178) argues that small enterprises “find it hard to operate in strict compliance with labor laws in the way larger businesses do”. Another study finds that small and medium-sized enterprises (SMEs) perform better when they have lower recruitment and dismissal costs (Van Landuyt, Dewaelheyns and Van Hulle 2017). Similarly, a study on Brazil concludes that “stricter enforcement of labor regulation constrains firm size, and leads to higher unemployment” (Almeida and Carneiro 2009, 28).

While smaller enterprises require flexibility to adapt, there is not much support in the literature for the notion that labour laws are an obstacle to enterprise growth or that lowering labour standards leads to an increase in formal employment (Edwards, Ram and Black 2004; Fenwick et al. 2007; Robertson et al. 2016, 25; Brookes, James and Rizov 2016; Reinecke 2002; Bhaumik and Dimova 2014).

For instance, a study by Besley and Burgess (2004) looking at the impact of labour legislation on small enterprises in India concluded that pro-worker labour regulation in that country was associated with a larger informal economy, lower labour force participation and higher unemployment. However, many researchers have criticized that study (see, for example, Bhandari and Sudarsan 2016; Sapkal 2016; Deakin and Haldar 2015; Deakin 2016; Deakin and Sarkar 2011). A more recent study suggests that,

contrary to the conclusion of Besley and Burgess (2004), labour regulation has in fact improved employment rates in India (Bhandari and Sudarsan 2016). Another study on India indicates that labour regulation has not decreased employment; rather, employers are using temporary contracts to circumvent the law. This suggests that strict employment regulation is not stopping job growth but undermining job quality (Sapkal 2016).

The opposite view is that labour market regulation plays a crucial role in protecting workers but can also promote productivity by leading to the emergence of a better-trained labour force and by linking job quality to higher productivity (Edwards, Ram and Black 2004; Brookes, James and Rizov 2016; Deakin and Haldar 2015). A resource-view approach emphasizes that employees are valuable assets, and that improved working conditions are therefore beneficial to the enterprise (Croucher et al. 2013, 11). A study using cross-country, firm-level data from nine developing countries finds that “certain restrictive institutions like greater protection of employee rights, which are believed to have negative implications for macro-variables like employment growth, may actually enhance production efficiency” (Bhaumik and Dimova 2014, 123). Thus, employment regulation as such does not necessarily harm smaller enterprises (Reinecke 2002; Edwards, Ram and Black 2004; Fenwick et al. 2007; Croucher et al. 2013; Deakin and Haldar 2015).

An important finding is the positive correlation between social dialogue and enterprise growth. A review study shows that social dialogue mechanisms, including trade union presence, works councils and board representation, can increase firm-level productivity (Grimshaw, Koukiadaki and Tavora 2017). Another study found that trade unions did not have a negative effect on firm-level productivity: on the contrary, although there are variations between countries, there is a small positive effect overall (Doucouliagos, Freeman and Laroche 2017). Focusing on small enterprises in particular, a study of small cleaning and catering businesses concludes that social dialogue enhances customer relations and improves workers’ well-being (Ramioul and Kirov 2017).

Lack of knowledge and time to deal with bureaucratic procedures is an important barrier preventing smaller enterprises from complying with labour laws. An empirical study of business regulation in the Niger and Swaziland found that microenterprises did not register mainly because of lack of knowledge about the procedures involved (Joumard, Liedholm and Mead 1992). In some cases, compliance is not feasible because enterprises are located far away from the country’s administrative centre. It is, therefore, too simplistic to say that employers will always try to minimize employment costs and evade or circumvent labour protection obligations (Croucher et al. 2013, 11). Instead, a literature review by Reinecke (2002) found that smaller enterprises were not necessarily affected by regulations as such but by a lack of transparency and clarity in their implementation. The same study pointed out, moreover, that “managers of small enterprises do not mention government regulations, but rather low demand and lack of credit as the key constraints for running and expanding their business” (Reinecke 2002, 31).

An additional challenge to employment and work regulation in smaller enterprises is that most of them operate informally. Low- and middle-income countries have the highest rates of informal employment: in Africa, in particular, 92.4 per cent of economic units are informal (ILO 2018a). The situation is similar in Latin America, where most smaller enterprises tend to operate informally (OECD and CAF 2019, 54).

Although compliance with complex labour regulations can be a problem for smaller enterprises, some researchers argue that the best way to deal with this is not to deregulate or to exclude smaller enterprises from the application of labour laws (Fenwick et al. 2007). In this regard, a landmark study by Fenwick et al. (2007) on States’ practices in the regulation of labour in micro and small enterprises concluded that excluding MSMEs from the purview of labour laws did not lead to significant economic benefits, and that it was important to take a broader approach to regulation, based on combining state enforcement with innovative practices aimed at increasing compliance. The present study builds on the findings of Fenwick et al. (2007) and explores new trends and developments in the labour law coverage of MSMEs (see table 1).

### **Aims and research questions**

The main objective of this study is to identify current developments, trends and innovative approaches in the application of labour laws to MSMEs. To that end, labour laws and policies affecting MSMEs have been reviewed for 16 countries: Brazil, China, Colombia, Costa Rica, Egypt, Germany, Mexico, Nepal,

Peru, the Russian Federation, South Africa, Spain, Sri Lanka, Sweden, Turkey and the United Republic of Tanzania. The review was concerned with the following questions in particular:

- How are labour laws applied to MSME workers?
- To what extent do the selected countries exclude MSMEs from the application of labour laws?
- What recent trends are there with regard to the regulation of employment and work relations in MSMEs?
- What innovative efforts have been undertaken to achieve compliance with labour laws in smaller enterprises?

The application of labour laws to MSME workers is often considered from the perspective of economic policies to support enterprise growth, but in fact it also has important implications for achieving the ILO's Decent Work Agenda and United Nations Sustainable Development Goal (SDG) 8 on decent work and economic growth – that is, for improving the situation of the overwhelming majority of workers worldwide.

### Key findings

- None of the countries studied completely exempts MSMEs from the application of labour laws.
- Medium-sized enterprises are rarely excluded from the application of labour laws. Most selective exclusions or special regimes apply to micro and small enterprises. This study found just two such provisions (one in Egypt and one in South Africa) for medium-sized enterprises (see Chapter 2, sections on Freedom of association and collective bargaining and Consultation of employees).
- The most common approach, regardless of the country income level, is the equal application of labour laws to all enterprises, with selective exclusion from some obligations.
- In all the countries studied, there is equal application of the law with regard to the prohibition of forced labour and child labour, the setting of a minimum wage, working hours, occupational safety and health, and sick leave.
- Special regimes for social security are common among Latin American countries, where they are normally part of broader policies to formalize the informal economy (as in Brazil, Colombia, Costa Rica and Peru).
- There has been a general trend over the past 15 years to extend the coverage of labour laws to MSMEs. Reforms aimed at extending coverage to workers at smaller enterprises were identified in Brazil (2006), Germany (2015, 2017), Nepal (2017), Spain (2019), Egypt (2019) and Colombia (2019). The only reduction of coverage for MSME workers occurred in Egypt (2017) (see Chapter 3).
- There is a general trend in many of the countries studied to shift the responsibility for compensating workers during sickness and maternity leave from employers to national insurance schemes (as in Germany and Nepal – see Chapter 3, section on Providing security for workers through national insurance).
- In Latin America, one commonly finds special simplified tax regimes to promote smaller enterprises' compliance with labour laws.

Table 1 summarizes recent developments in the application of labour laws to MSMEs, juxtaposed with the earlier findings by Fenwick et al. (2007). The table shows that the complete exemption of smaller enterprises from the application of labour laws is not an approach currently used in any of the countries studied. In Nepal, a legislative reform in 2017 extended labour rights to previously excluded enterprises, namely those with fewer than ten workers. The present study also found that special regimes providing a “parallel” set of rules outside the regular labour law are often used to regulate smaller enterprises in Latin American countries. Equal application with selective exclusions is the most common approach regardless of the income level of the countries studied. Thus, countries such as Germany and Nepal appear in the same group, even though they have very different income and development levels. However, the extent of enforcement of the laws is probably quite different in the two countries, given the disparity between them in terms of institutional capacity to monitor compliance and exercise control.

► **Table 1. Different approaches in the application of labour laws to MSMEs**

Application of labour laws to MSMEs	Fenwick et al. (2007)	Present study (Vargas 2020)
Equal application	China	China
Complete exemption	Nepal*	-
Special regimes	Brazil Peru	Brazil Colombia Costa Rica Peru
Equal application with selective exclusions	Chile Denmark Hungary Indonesia Kenya Namibia Philippines South Africa Thailand United Republic of Tanzania Viet Nam	Egypt Germany Mexico Nepal Russian Federation South Africa Spain Sri Lanka Sweden Turkey United Republic of Tanzania

**Note:** \* Before a legislative reform in 2017, labour laws in Nepal covered only enterprises with more than ten employees. However, there were some universal provisions that were applicable to enterprises with fewer than ten workers, such as a minimum wage requirement, the prohibition of child labour and the protection of children and women (Bajracharya and Shrestha 2014).

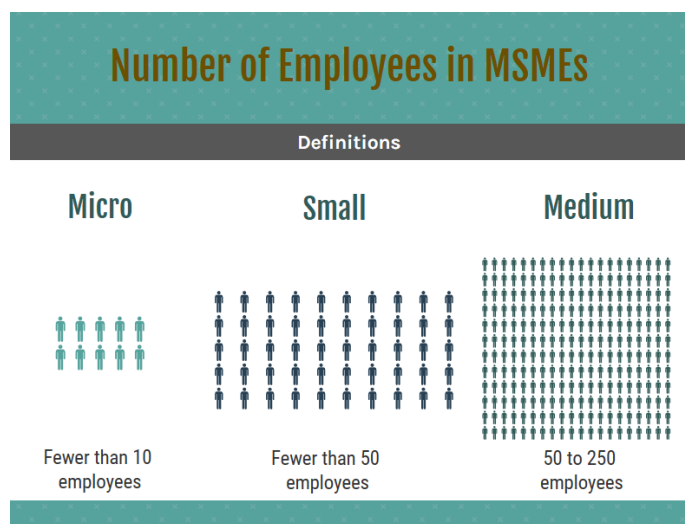
The subsequent chapters of this working paper are structured as follows. Chapter 1 outlines the methodological approach, including the scope of the study and the definitions used. Chapter 2 provides a descriptive analysis of the main findings on the labour law coverage of MSMEs. Chapter 3 discusses the main trends observed in the application of labour laws to MSMEs. Chapter 4 gives examples of the policies and programmes used by governments to improve the working conditions and rights of MSME workers. Chapter 5 uses the concept of “social control” to consider innovative approaches for achieving compliance with, and enforcement of, labour laws at MSMEs. Finally, the last part presents the main conclusions of the study.

# ► 1 Methodological approach

This study uses a comparative approach to identify and analyse different legislative approaches to the regulation of labour in MSMEs. It reviews labour laws and policies in 16 countries. While its main focus is on state regulation, the study also explores other potentially complementary forms of control, such as social norms and organizational control. This chapter presents the definitions used, the criteria for the selection of countries, the scope of the labour laws reviewed, and the limitations of the study.

## ► Definitions

► Figure 1. Categorization of enterprises by number of employees



There are different ways to define smaller enterprises, and most countries have developed definitions that are tailored to their specific situation. This working paper uses national definitions when referring to specific countries (see Annex) and the following definitions in the general parts of the text.

### *Micro, small and medium-sized enterprises*

The categories covered by the term “micro, small and medium-sized enterprises” are used to designate economic units that are under a certain threshold in terms of the number of workers, the annual turnover or the capital invested. These thresholds vary from country to country. A common definition sets an upper limit of 250 employees for medium-sized enterprises, with small enterprises being those that have fewer than 50 employees and microenterprises those with fewer than 10 employees (see figure 1).<sup>1</sup> For the purposes of this paper, the term MSMEs, or “smaller enterprises”, is considered to include the self-employed and own-account workers employed in the formal or informal sector.

### *Enterprise*

Since MSMEs are defined as enterprises under a certain threshold, it is important to note that in this paper the term “enterprise” is used in a comprehensive sense to include economic units regardless of

<sup>1</sup> These are the thresholds used by the European Union (see the [Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises](#)). However, the same definition is also used by many non-EU countries

their legal status (formal or informal/officially registered or not). It also includes the self-employed, family enterprises and agricultural units.

### *Self-employed*

Most countries covered by this study defined microenterprises as those having fewer than ten employees. This raises the question of whether the self-employed should be counted as microenterprises. A recent study by the ILO (2019) differentiated between microenterprises and the self-employed, defining microenterprises as those with two to nine employees. In this paper, the term “self-employed” is defined as “independent workers without employees” following the Resolution concerning statistics on work relationships adopted by the 20th International Conference of Labour Statisticians (ICLS) in 2018. Thus, the self-employed are considered to be microenterprises. However, in some of the countries studied, national legislation provides for situations in which self-employed workers have employees: these countries will be specifically mentioned further down.

The term “own-account worker” is used interchangeably with the term “self-employed” in accordance with the Resolution concerning the International Classification of Status in Employment (ICSE), adopted by the 15th ICLS in 1993.

### *Workers and owners*

This study uses the term “workers” in a broader sense, inspired by the principles underlying the ILO’s Decent Work Agenda, particularly the principle that “all those who work have rights at work”. Given that in many smaller enterprises the distinction between workers and owners is more nuanced than in larger ones, the term “worker” is also used for own-account workers, while the term “employer” is used for owners of smaller enterprises that hire workers. The term “worker” also refers in this paper to members of producers’ cooperatives and workers using online platforms to provide services or products. Consequently, neither “worker” nor “employee” is used here in the sense of the standard employment relationship, which refers mainly to dependent employment.

### *Informal employment and informal enterprises*

This paper pays special attention to workers in informal employment, whether in the formal or the informal economy. The term “informal economy” is used in the sense of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), where it is defined as “all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements”, with illicit activities explicitly excluded.

Informal employment includes: (a) the self-employed (with or without employees) in their own informal sector enterprises; (b) contributing family workers; and (c) employees (in formal and informal enterprises) not covered by labour laws (ILO 2003).

Although the term “informal economy” will be used throughout this paper, it is important to mention that there is a significant body of literature criticizing the categories “formal” and “informal” to describe employment and enterprises because the latter often find themselves in a situation of “semi-formality”, where they comply with some but not all of the regulations (Maldonado 1995; Williams, Round and Rodgers 2007; ILO 2018a).

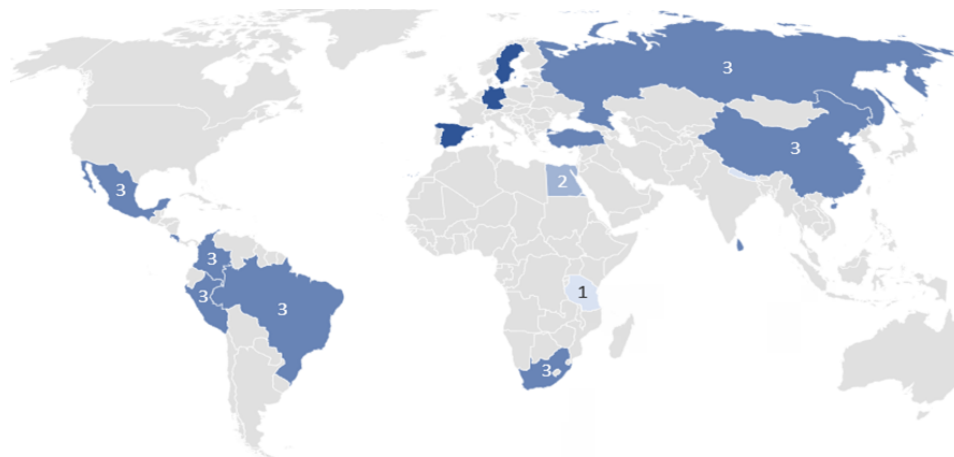
### *Labour laws*

This study is concerned with the scope, coverage and application of labour laws in relation to MSMEs. Labour laws may be defined broadly as rules set by the State that regulate the conditions of work. As such, they are an important means to attain the goal of decent work (Bronstein 2009, 2). The specific areas covered by the labour laws reviewed in this study are presented further down (see figure 4).

## ► Countries

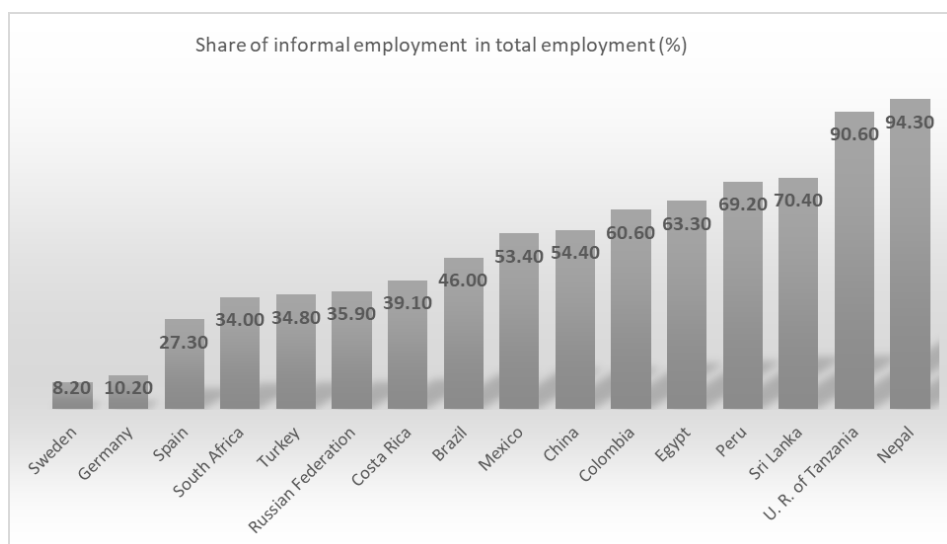
The countries selected for this study are shown in different shades of blue in the map in figure 2 below. The sample of countries covers different geographical regions, levels of economic development, shares of informal employment and legal systems. While the selection of countries was not random, it was carried out with a view to including different regions and income levels.

► **Figure 2. Countries included in the study**



**Note:** 1 = low income; 2 = lower-middle income; 3 = upper-middle income; 4 = high income. These categories are in line with the definitions used by the World Bank.

► **Figure 3. Share of informal employment in the countries studied**



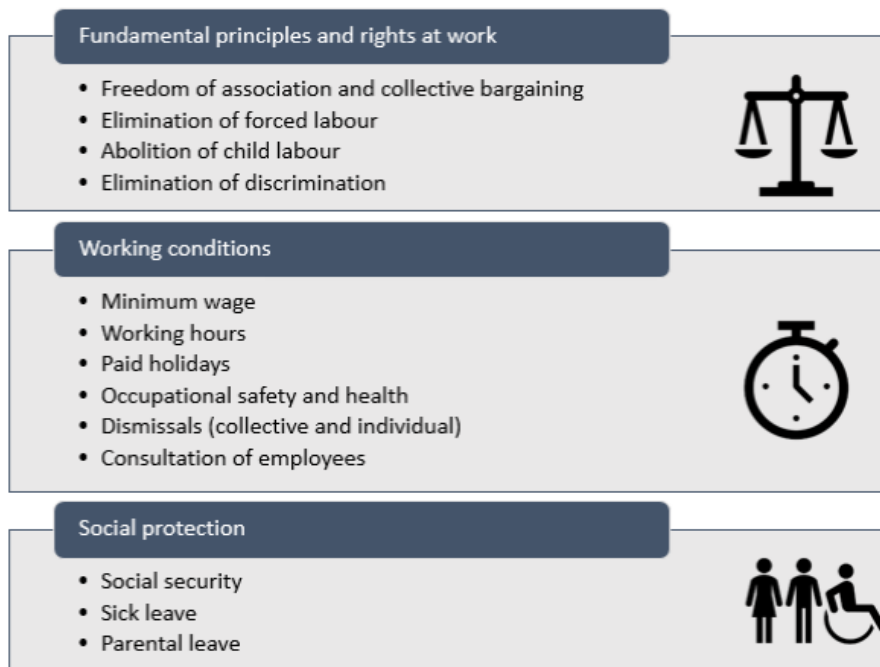
**Source:** Author's figure based on ILO (2018a, Appendix B).

## ► Scope of labour laws

The scope of the labour laws reviewed in this study reflects international labour standards that support the principles of decent work, and gives a comprehensive picture of the legal protection of MSME workers. Although additional areas of labour law could have been included, a selection was necessary to make the collection of data feasible. The laws reviewed also provide relevant information on some of the targets under SDG 8 on decent work and economic growth. These include the eradication of forced

labour, the prohibition and elimination of the worst forms of child labour, the protection of labour rights and the promotion of safe and secure working environments for all workers. The areas covered by the labour laws reviewed in this study are listed in figure 4 below, where they have been divided into three main groups: fundamental principles and rights at work; working conditions; and social protection.

► **Figure 4. Scope of labour laws included in the study**





## ▶ 2 Labour law coverage of MSMEs

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Achieving decent work for MSME workers remains a major challenge for many countries around the world. As noted in a report prepared at the request of the ILO Committee on Employment and Social Policy, a key obstacle to the achievement of decent work is the lack of legal coverage for workers in smaller enterprises, which are often excluded from the application of labour law (ILO 2006). This chapter presents the results of a comparative study on the application of employment and labour laws to MSME workers.

### ▶ Different approaches to labour law coverage

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Fenwick et al. (2007) identified the following four approaches to labour law coverage for enterprises below a certain size:

- Equal (or full) application: all labour laws apply equally to enterprises of all sizes (as in China).
- Selective exclusions: special provisions in general labour laws exclude enterprises below a certain threshold size from some requirements (the most common approach).
- Special regimes (parallel labour laws): enterprises below a certain threshold size are excluded from the general application of labour laws and, instead, there is a special legal regime with lower standards that applies to them (as in Brazil and Peru).
- Complete exemption: enterprises below a certain threshold size are excluded entirely from the application of labour laws (as in Nepal until 2017).

#### Equal application

The first approach listed above is to apply equally all the provisions of labour laws to MSME workers. The only country in the sample that currently follows such an approach is China.<sup>2</sup>

#### Selective exclusions

The most frequent approach in the regulation of MSMEs is equal application but with the exemption of such enterprises from some of the requirements through special provisions in general labour laws. Thus, the applicability of certain sections of labour laws and employment protection legislation varies according to the size of the enterprise. The most common exclusion in the countries studied concerns the requirement to set up an occupational safety and health (OSH) committee or to appoint OSH delegates. Twelve countries in this study exempt enterprises below a certain threshold size from the requirement to set up an OSH committee.

Some countries have only a few exclusions (one or two), while others have several (three to six). For example, South Africa has comprehensive coverage for MSMEs and there are only two exclusions in the application of the law: these concern the election of OSH representatives in enterprises with fewer than 20 employees and the composition of workplace forums for enterprises with more than 100 employees. The country with the highest number of exclusions is Turkey. Nevertheless, what is important is not so much the number of exclusions as the way in which these affect the promotion of fundamental rights and the enhancement of basic working conditions.

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<sup>2</sup> In practice, workers at smaller firms in China are more likely not to have written contracts. It has been found that labour law is weakly enforced at such enterprises. Moreover, inspectors are stricter in monitoring the enforcement of laws at foreign and larger enterprises than in the case of economic units owned by Chinese nationals (Li and Freeman 2015, 717).

### Special regimes

An intermediate approach is the creation of special regimes for smaller enterprises. Special regimes are used to establish lower standards for workers at micro and small enterprises in Brazil, Colombia, Costa Rica and Peru. Instead of providing for exclusions from the general labour law, these countries have special laws covering some aspects of labour for MSME workers. These regimes usually have to do with social security contributions, but they may also cover wider issues related to working conditions, such as rules for dismissals, working hours and holidays. Such special regimes, which are particularly common in Latin America, are often part of broader policies aimed at promoting the formalization of smaller enterprises.

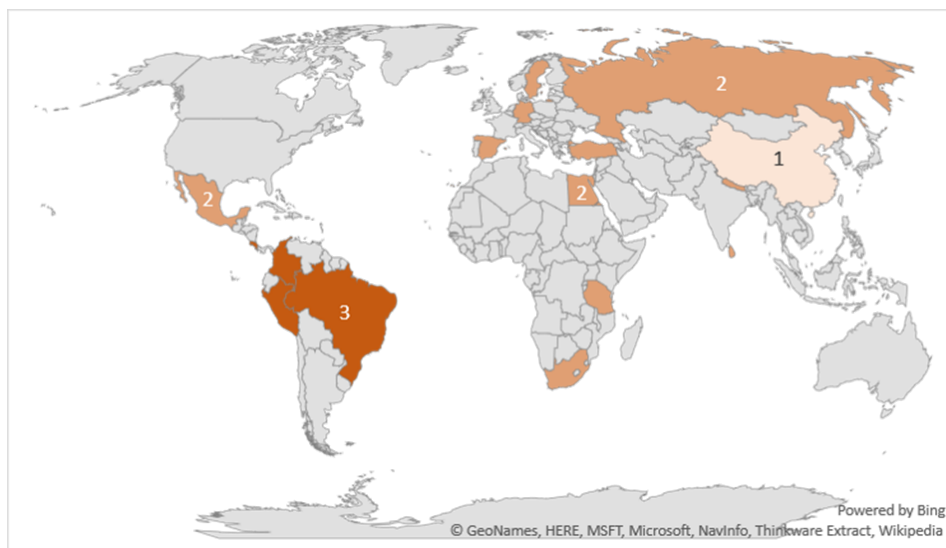
For example, Peru has a special legal framework for micro and small enterprises that includes a chapter containing labour regulations.<sup>3</sup> Workers at microenterprises are not covered by workers' pension insurance but they do have access to a social pension. They are also not covered by life insurance or the scheme known as the Supplementary Insurance for Risks at Work (SCTR).

### Complete exemption

The opposite approach to equal application is total exemption, which existed in Nepal until 2017. The previous law – the Labour Act, 2048 (1992) – was applicable only to enterprises with ten or more employees or workers. Excluding smaller enterprises from the full application of labour law leaves workers without the protection of fundamental rights, and one would expect only very few countries to retain this approach. While this study did not find any country currently using complete exemption, there are still some countries that exclude certain categories of workers (namely, agricultural workers, family workers and the self-employed) from specific parts of their employment protection laws.

Figure 5 shows, using different shades of colour, the type of application of labour laws to MSMEs that pertains in the countries studied.

► Figure 5. Labour law coverage of MSMEs in the countries studied



**Note:** 1 = equal application; 2 = selective exclusions; 3 = special regime.

Table 2 summarizes this study's findings on the specific labour law provisions that apply to MSMEs. Countries are grouped according to their level of economic development (low, lower-middle, upper-middle

<sup>3</sup> First laid down in Act No. 28015 of 3 July 2003 on the Promotion and Formalization of Micro and Small Enterprises. The regulations were subsequently incorporated into the Promotion of Productive Development and Enterprise Growth Act (Supreme Decree No. 013-2013-PRODUCE of 27 December 2013), which is in force.

or high income).<sup>4</sup> As can be seen, a country's income level does not determine whether MSMEs are excluded from the application of labour laws. An interesting example is Germany: a high-income country that excludes companies with fewer than ten employees from the application of the law on unfair dismissals. However, this important limitation is compensated for by generous unemployment insurance. In contrast, the United Republic of Tanzania, a low-income country, and Sweden, a high-income country, have – at least on paper – almost equal protection for all workers regardless of the enterprise size.

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<sup>4</sup> Income levels are defined on the basis of the World Development Indicators, available at:  
<https://datatopics.worldbank.org/world-development-indicators/the-world-by-income-and-region.html>

► Table 2. Labour law coverage of MSMEs in the countries studied

Level of economic development	High			Upper middle								Lower middle	Low			
	Germany	Spain	Sweden	Brazil	China	Colombia	Costa Rica	Mexico	Peru	Russian Federation	South Africa	Sri Lanka	Turkey	Egypt	Nepal	United Republic of Tanzania
Fundamental freedoms and rights	Area of labour law	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Freedom of association and collective bargaining†	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Elimination of forced labour	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Abolition of child labour	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Working conditions	Protection against discrimination	*	*	*	✓	✓	✓	✓	*	✓	✓	✓	✓	✓	✓	✓
	Minimum wage	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Working hours and overtime	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Holiday	✓	✓	✓	✓	✓	✓	✓	S	✓	✓	✓	✓	✓	✓	✓
Social protection	Occupational safety and health (OSH)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Special OSH requirements (e.g. OSH committee)	*	*	*	*	✓	*	*	✓	✓	*	*	*	*	*	*
	Collective dismissal	*	*	✓	✓	✓	✓	✓	✓	*	✓	*	*	✓	*	✓
	Unjustified individual dismissal	*	✓	✓	✓	✓	✓	✓	S	✓	✓	*	*	✓	✓	✓
Social protection	Consultation of employees	*	*	✓	-	✓	-	-	-	✓	*	*	*	-	*	✓
	Social security	✓	✓	✓	S	✓	S	✓	S	✓	✓	✓	✓	✓	✓	✓
	Sick leave	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Parental leave	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	*	✓	✓

✓ = equal application to all enterprises regardless of size. \* = selective exclusions (obligations vary according to enterprise size). - = information not available. S = special regime with lower standards for MSMEs.

**Note:** (†) The legislation in some countries requires a minimum number of workers for the establishment of a trade union at the enterprise level – a requirement that is clearly relevant to MSMEs (see section 3.2.1).

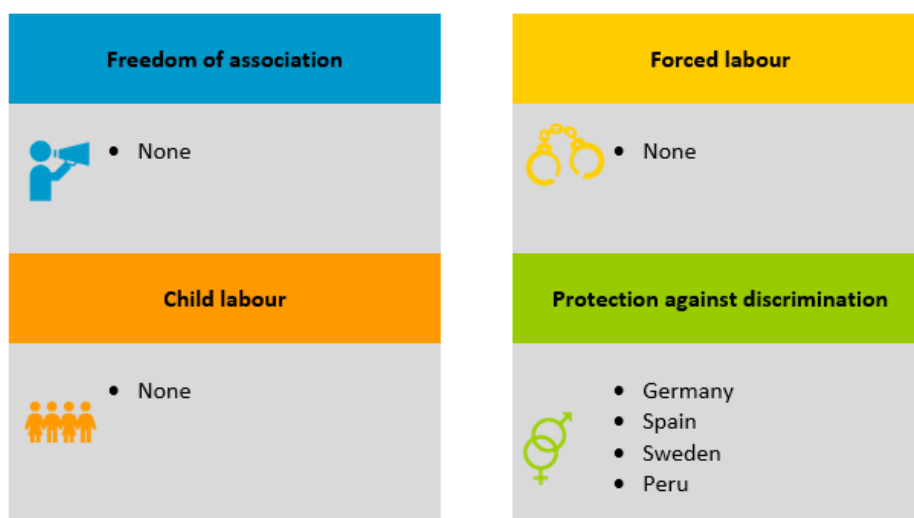
**Source:** Developed by the author on the basis of a compilation of labour laws.

The following sections look at each of the areas of labour law covered by this study, providing details on different approaches to the regulation of labour and employment conditions in MSMEs.

## ▶ Fundamental freedoms and rights at work

There is equal application of the prohibition of forced and child labour to MSMEs in all the countries selected for this study. However, MSMEs in Germany, Spain, Sweden and Peru are excluded from the application of special proactive obligations to reduce discrimination in practice, such as the obligation to draw up a non-discrimination plan.

▶ Figure 6. Selective exclusions concerning fundamental freedoms and rights at work



### Freedom of association and collective bargaining

All of the countries studied protect the fundamental rights of freedom of association and collective bargaining. However, in some of them, the law requires a minimum number of workers for the establishment of trade unions at the enterprise level. This requirement as such does not contradict the principles of freedom of association, but it can limit the exercise of this right in practice if the threshold is too high. Moreover, it can prevent workers from joining sectoral or general unions. Legislation should ideally provide MSME workers with the opportunity to join sectoral or regional unions and to be covered by broader collective agreements.

Table 3 shows whether workers in smaller enterprises in the countries studied are allowed to join trade unions and, where applicable, the minimum number of workers required to establish a trade union. As already mentioned, high thresholds for enterprise-level unions can impose unnecessary constraints. Eight of the countries covered by this study stipulate a minimum number of employees for establishing enterprise-level trade unions. In the United Republic of Tanzania, for example, the law requires at least 20 employees for the registration of a trade union.<sup>5</sup> In Egypt there has been backsliding on the right of freedom of association following the adoption of a new law in 2017, whereby a union committee inside a company may only be established with a minimum of 150 workers;<sup>6</sup> the previous law required just 50 workers. Out of the around 1,000 independent unions that had existed in Egypt until their dissolution in March 2018, only 122 were able to register their status under the new law (ITUC 2019, 13).

<sup>5</sup> United Republic of Tanzania, *Employment and Labour Relations Act, 2004*, art. 46(1).

<sup>6</sup> Egypt, *Act No. 213 of 2017 on promulgating the Trade Union Act*

► **Table 3. Applicability of freedom of association and collective bargaining laws to MSMEs in the countries studied**

Country	Applicable to MSMEs	Country	Applicable to MSMEs
Brazil	✓	<b>Peru</b>	$\diamond \geq 20$
China <sup>a</sup>	✓	<b>Russian Federation</b>	$\diamond > 3$
Colombia	$\diamond \geq 25$	<b>South Africa</b>	✓
Costa Rica	$\diamond \geq 12$	<b>Spain</b>	✓
Egypt	$\diamond > 150$	<b>Sri Lanka</b>	✓
Germany	✓	<b>Sweden</b>	✓
Mexico	$\diamond \geq 20$	<b>Turkey</b>	$\diamond > 7$
Nepal <sup>b</sup>	$\diamond > 10$	<b>United Republic of Tanzania</b>	✓

✓ = equal application to all enterprises regardless of size.  $\diamond$  = while there is freedom of association, there is a threshold for establishing unions at the enterprise level (i.e. a minimum number of workers as indicated).

**Notes:** <sup>a</sup> Some scholars consider that there is no real freedom of association in China, since all workers have to join the government-controlled All-China Federation of Trade Unions. <sup>b</sup> In Nepal, if ten or more employees are engaged in an entity, the employer is required to constitute a collective bargaining committee pursuant to section 116 of the [Labour Act, 2074 \(2017\)](#).

**Source:** Developed by the author on the basis of a compilation of labour laws.

A study by Webster and Bishoff (2011) has identified four strategies by trade unions in dealing with workers from micro and small enterprises (MSEs): (a) extending current forms of representation to MSE workers; (b) ignoring this group of workers because they are considered marginal; (c) resisting non-standard forms of employment and refusing to admit such workers as union members; and (d) adapting their structures to represent MSE workers. In Sweden, for instance, trade unions can influence wages in MSMEs that have no trade union members when the company is affiliated to an employers' organization covered by a wider sectoral agreement (Andersson and Thörnqvist 2007, 63). More generally, labour laws can play a role in enabling MSME workers to join sectoral trade unions that can enhance the ability of such workers to exercise their rights of association and collective bargaining.

In some countries, self-employed workers may join trade union organizations, as is currently the case in Spain, Sweden and Germany.<sup>7</sup>

For workers in non-standard forms of employment and in the informal economy, non-governmental organizations (NGOs) and member-based associations are also important, since such workers may experience greater difficulties in joining trade unions (Chen, Jhabvala and Lund 2002). Indeed, the widespread informal economy poses a challenge to traditional labour unions, and some scholars have argued that it is necessary to launch a new type of labour movement (Webster, Joynt and Sefalafala 2016).

Low union membership is common to many countries and there is, moreover, a "representation gap", as many workers are based in workplaces without trade union recognition (Webster and Bishoff 2011). In some countries, migrant workers are not entitled to join trade unions and are therefore excluded from representation (ITUC 2019, 12). In Brazil and Colombia, trade union leaders are constantly threatened and subjected to violence by armed groups. Ominously, 34 trade unionists were murdered in Colombia in 2018 and many more received death threats (ITUC 2019, 18).

While union membership is essential, an important way of ensuring that workers at smaller enterprises can enjoy the right of freedom of association and collective bargaining is the use of collective agreements that are negotiated centrally but extended to cover all workers in the same sector. In South Africa, collective agreements can be extended to non-parties within a sector or industry (Godfrey 2018).

<sup>7</sup> This is in line with the principles of freedom of association. See ILO (2018b), paras 387–389.

### Elimination of forced labour

The elimination of forced or compulsory labour is regulated through the ILO's most widely ratified instrument, the Forced Labour Convention, 1930 (No. 29), Article 2 of which defines forced labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". Significantly, SDG target 8.7 calls for "immediate and effective measures to eradicate forced labour".

Forced labour is prohibited in most countries. The estimates presented in ILO and Walk Free Foundation (2017) suggest that 25 million people worldwide are victims of forced labour, with 16 million in forced labour in the private economy, of whom 57.6 per cent are women. The same study also indicates that the largest share of adults in forced labour is accounted for by domestic workers (24 per cent), followed by construction (18 per cent), manufacturing (15 per cent), and agriculture and fishing (11 per cent). These are sectors with a large number of MSMEs (Phillips and Sakamoto 2012).

All the countries studied have laws prohibiting forced labour that are applicable to enterprises of all sizes. Nevertheless, forced labour affects a considerable proportion of the population in Turkey, the United Republic of Tanzania, Nepal and Egypt (Walk Free Foundation 2018).<sup>8</sup>

Two traditional systems of bonded labour in Nepal called *kamaiya* and *haliya* were abolished by the Government in 2000 and 2008, respectively, releasing thousands of people from slavery in the agricultural sector (Giri 2012). As a result of these very important reforms, the Government was faced with the need to provide alternative livelihoods and rehabilitation programmes for released workers, who would otherwise have been forced to take up bonded labour again or become homeless. A legal anthropological study of bonded labour in Nepal shows that legislative reform is not sufficient: the problem of bonded labour needs to be tackled through a holistic approach that takes into account its root causes (Acharya 2017).

Policies addressing bonded labour, or debt peonage, in MSMEs have been adopted and implemented in Brazil and Colombia, notably the use of mobile inspectors located in remote areas in both countries (Figueira and Esterici 2017; Moloney 2019). For instance, in Brazil, men are often promised work in the agricultural sector and then find themselves trapped in debt slavery as they are asked by their employers to pay exorbitantly high prices for board and lodging (Haddad 2017). In this case, the use of mobile inspectors<sup>9</sup> has been successful in promoting the enforcement of labour laws, though more still needs to be done to prosecute those who coerce people into forced labour (Figueira and Esterici 2017, 87).

### Abolition of child labour

All the countries included in this study officially regulate child labour, allowing children from the age of 14 to 16 years to work under special conditions and prohibiting work under a certain age. Most of them also prohibit the employment of adolescents in occupations that entail a high risk for their health and development. Global estimates indicate that there are 152 million victims of child labour worldwide, of which 73 million are in hazardous work. Child labour is most prevalent in the agricultural sector (71 per cent); it occurs to a lesser extent in services (17 per cent) and in the industrial sector, including mining (12 per cent) (ILO 2017a, 5). Moreover, child labour is also encountered at the household level in the form of unpaid domestic work.

In Costa Rica, the law places work carried out by children aged between 15 and 18 years under a special protection regime that ensures equal pay, opportunities and treatment.<sup>10</sup> The law specifically prohibits children from working in mining and bans the employment of children under 15 years in

<sup>8</sup> The Global Slavery Index estimates the number of persons who are victims of slavery per 1,000 population. For the countries included in this study, the reported values are (in descending order): Turkey: 6.50; United Republic of Tanzania: 6.24; Nepal: 5.95; Egypt: 5.52; Russian Federation: 5.52; South Africa: 2.80; China: 2.77; Colombia: 2.73; Mexico: 2.71; Peru: 2.56; Spain: 2.27; Sri Lanka: 2.12; Germany: 2.04; Brazil: 1.79; Sweden: 1.58; and Costa Rica: 1.25 (Walk Free Foundation 2018).

<sup>9</sup> The Grupo Especial de Fiscalização Móvel (Special Mobile Inspection Group) in Brazil was created in 1995

<sup>10</sup> Costa Rica, *Act No. 7739 of 6 January 1998 promulgating the Childhood and Adolescence Code*

domestic work.<sup>11</sup> In China and the Russian Federation, the minimum working age is 16, and the law in both countries similarly establishes a special protection regime for children under the age of 18.<sup>12</sup>

Although child labour occurs mainly in low-income countries, high-income countries and their enterprises are often criticized from the perspective of corporate social responsibility for not ensuring that their products have been manufactured without the use of child labour elsewhere. In this regard, there are numerous initiatives related to SDG target 8.7 that seek to eradicate child labour beyond the borders of a single State. For instance, France and the Netherlands have both adopted due diligence laws requiring large companies to determine whether child labour, among other human rights violations, occurs in their supply chains (ILO et al. 2019, 47).<sup>13</sup>

In Germany, children from the age of 13 are allowed to work for a limited number of hours per week and to work during holidays in light work such as babysitting or assisting with agricultural work (Palmer 2015).

Some studies (for example, Carter 2017) suggest that children's work over the age of 14, as long as it is regulated and combined with school activities, may be regarded as a means for families to overcome poverty. However, there is a risk of abuse and exploitation in families and smaller enterprises, particularly in low-income countries, where the State does not have the capacity to enforce the law and where there is a culture of acceptance of child labour.

In Turkey, as in various other jurisdictions analysed in this study, the worst forms of child labour are prohibited by criminal law. Thus, the Turkish Criminal Code (articles 80 and 117) specifically forbids forced labour, including the forced labour of children, and it also forbids commercial sexual exploitation and the employment of children in hazardous occupations. However, despite the strong legal framework, a number of children in the country are forced into sexual exploitation and are recruited by non-State armed groups. An even greater number are engaged in hazardous work in seasonal agricultural and in small and medium-sized manufacturing enterprises (United States 2018, 1154–1156). In South Africa, all work done by children under the age of 15 is prohibited.<sup>14</sup> However, a survey of activities of young people conducted in 2015 found that 81,000 children were involved in child labour prohibited by the law (South Africa 2018).

In Mexico, estimates from the national statistical office indicate that there are 2.3 million children aged between 5 and 17 years engaged in economic activities. Of these, 2.1 million children are working illegally, with 38.7 per cent of them being under the minimum working age and the rest being engaged in other prohibited work (INEGI 2019).<sup>15</sup> Prohibited work by children occurs mainly in the agricultural sector (34.5 per cent); commercial activities (22.3 per cent), with many children working as street vendors; and in the services sector (20.3 per cent). In the Russian Federation, children are involved in street work and in the worst forms of child labour, such as being exploited for the production of pornography (United States 2014, 709). In Peru, many children work as street vendors and car cleaners, or in small agricultural farms, mainly in micro and small enterprises (Mendoza 2019).<sup>16</sup>

Child labour, including its worst forms, is a recurring problem in Nepal (Kamei 2018). Hazardous work and trafficking affect many children in that country. A survey conducted in 2014 found that approximately 36 per cent of children aged between 7 and 14 years were engaged in some form of labour (UNICEF 2018). Although the Nepalese Government has been implementing important programmes to combat child labour since 2018, the results are yet to be seen because, among other reasons, the small number of labour inspectors means that it is very difficult to enforce the law (United States 2018, 852).

<sup>11</sup> Costa Rica, [Act No. 8726 of 2 July 2009 on Paid Domestic Work](#), art. 108.

<sup>12</sup> See the [Labour Law of the People's Republic of China \(No. 28 of 1994\)](#), Chapter VII ("Special Protection for Female Staff and Workers and Juvenile Workers"); and the [Labour Code of the Russian Federation of 30 December 2001](#), art. 63

<sup>13</sup> The Netherlands falls outside the scope of this study. At the time of writing, the Child Labour Due Diligence Act (2019) had not yet come into force.

<sup>14</sup> South Africa, [Basic Conditions of Employment Act, 1997](#) (last amended in 2018), sections 43, 55 and 93. The Act makes it a criminal offence to employ a child under 15 years of age.

<sup>15</sup> Article 22 bis of the [Federal Labour Act](#) sets the minimum working age at 15 years. Prohibited work includes work that can be hazardous, affects children's development or is performed by a child under the minimum working age.

<sup>16</sup> Some statistics on child labour in Peru are available in INEI (2016).



## Elimination of discrimination in the workplace

Discrimination in the workplace is generally prohibited in most countries. Workers should not be discriminated against on the grounds of gender, race, sexual orientation, age, disability, trade union affiliation or religion, among other characteristics. Most countries included in this study have a legal framework against discrimination at work. Moreover, some countries have laws that not only prohibit discrimination but encourage employers to make workplaces more inclusive. In Sweden, for example, employers are required to work actively to prevent discrimination in the workplace. Specifically, employers with 25 or more employees must have a policy and contingency plan in place outlining specific actions and measures taken by the company.<sup>17</sup> Such a proactive approach could be worth considering for other countries: it implies going beyond mere prohibition, which is unlikely to eliminate discrimination unless specific actions are taken.

### *Gender discrimination*

Some of the countries covered by this study have introduced special requirements to advance equality between men and women in companies above a certain size. This is the case in Spain, Peru, Germany and Sweden. In 2019, Spain enacted Royal Decree-Law No. 6/2019, which set out urgent measures aimed at ensuring equal treatment and opportunities in employment and occupation for men and women. The new law amended some provisions of Organic Law No. 3/2007 on effective equality between men and women. The amendment mentions as part of its rationale a lack of effectiveness in achieving the Organic Law's aims. The main component of Royal Decree-Law No. 6/2019 – the obligation to have an equality plan in place, with concrete measures for removing obstacles to equality between women and men – applies to enterprises with 50 or more employees. Organic Law No. 3/2007 established this requirement only for enterprises with more than 250 employees. An innovation of the Royal Decree-Law is the requirement for employers to justify that differences in remuneration between male and female workers are not related to their sex if the average remuneration for workers of one sex is higher than the other by 25 per cent. The new law thus creates a mechanism for raising awareness of unjustified salary differences between men and women. Equal pay for work of equal value is one of the targets of SDG 8 on decent work and economic growth, and achieving that target is a challenge all over the world, even in high-income countries. An important indicator of discrimination is the gender pay gap: in 2019, the median salary of men was 21 per cent higher than that of women (PayScale 2019).

Another common area of discrimination relates to maternity protection and how it is managed in MSMEs (Stumbitz, Lewis and Rouse 2018).<sup>18</sup> Lewis et al. (2014) find that while maternity protection is regulated in both developed and developing countries, restrictions on its applicability to MSMEs may exist even in developed countries – for example, with regard to breastfeeding time and support. For instance, while breastfeeding time is protected in Germany, Spain and the United States, the US Patient Protection and Affordable Care Act (2009) establishes that only firms with 50 or more employees are obliged to provide breastfeeding support. A study of maternity discrimination in the United Kingdom of Great Britain and Northern Ireland – a country not covered by this paper – found that smaller workplaces were more prone to maternity leave discrimination and “were less likely to agree that [it] is in their interests to support pregnant women or those on maternity leave” (Adams et al. 2016, 79).

### *People with disabilities*

In Peru, a law from 2012 established a 10 per cent hiring quota for people with disabilities in the public sector, and a 3 per cent quota in the private sector (in companies that hire more than 50 workers).<sup>19</sup> In Germany, a business with more than 20 employees has to employ at least one severely disabled person or pay a monthly compensation to the State (Kock 2004, 1379). In China, there is a requirement for companies with more than 30 employees to reserve at least 1.5 per cent of job opportunities for people with disabilities (Schrader et al. 2018). However, in practice, “policy documents have already experimented with granting certain exemptions to small and micro-businesses with regard to the employment of people with disabilities” (Xie 2016, 189).

<sup>17</sup> On 1 January 2017, amendments were made to the [Discrimination Act](#) of 2008. These are summarized in Boesen, Kumpuniemi and Arntyr (2017).

<sup>18</sup> “Maternity management” can be defined as “workplace responses to the reproductive labour of pregnant women and new mothers” (Stumbitz, Lewis and Rouse 2018, 501).

<sup>19</sup> Peru, [Act No. 29973 \(General Law on Persons with Disabilities\)](#), adopted on 13 December 2012.

## ▶ Working conditions

None of the countries covered by this study excludes MSMEs from the application of laws setting a minimum wage or laws regulating working hours. However, selective exclusions are found in the case of laws dealing with dismissals (collective and individual) and the consultation of employees (see figure 7).

▶ Figure 7. Countries with selective exclusions or special regimes for MSMEs in relation to working conditions



### Minimum wage

There is equal application of minimum wage laws for all workers in all the countries included in this study. With the exception of Sweden, all countries in the sample have set minimum wages. Nevertheless, the great majority of workers in Sweden are covered by wages set in collective agreements that apply to non-union members, including MSME workers (Skedinger 2008). In Peru, micro and small enterprises have a special regime: although they are obliged to pay minimum wages,<sup>20</sup> they are fully or partially exempted from paying other benefits established in the general framework. For instance, microenterprises are fully exempted from paying biannual gratuities. Small enterprises, on the other hand, are obliged to pay workers half of their remuneration as a bonus twice a year in connection with national festivities and the end-of-the-year holiday season. While MSME workers are not excluded from a minimum wage, some countries have a different minimum wage for certain occupations, sectors and regions, which indirectly affects smaller enterprises. South Africa introduced a minimum wage in 2019, setting a lower level for agricultural and domestic workers.<sup>21</sup> In Nepal, tea garden workers and domestic workers have a lower minimum wage than the regular minimum wage. In the United Republic

<sup>20</sup> Peru, [Supreme Decree No. 013-2013-PRODUCE](#), art. 52 on “remuneration”, establishes that workers in these enterprises are entitled to receive at least the “minimum vital remuneration” (minimum wage).

<sup>21</sup> The [National Minimum Wage Act \(Act No. 9 of 2018\)](#) came into effect on 1 January 2019.

of Tanzania, there are sectoral minimum wages for workers in the health, domestic service, private security, mining and agricultural sectors. In other countries, the minimum wage is determined regionally, to be adjusted to the specific conditions of different areas. This is the case in China, Mexico and the Russian Federation.

Smaller enterprises can find it harder to pay a minimum wage. In Spain, there has been intensive debate in the media about the difficulties that smaller enterprises will face in paying the recently increased minimum wage (Cabirta 2019). An interesting example is Turkey, where the Government created a support fund for smaller enterprises to compensate for a large increase of the minimum wage in 2019.<sup>22</sup>

A recent study of the effects of introducing a minimum wage in Germany in 2015<sup>23</sup> showed that enterprises adapted to the wage increase by reducing hours and increasing work intensity (Bruttel 2019). Companies affected by the new minimum wage increased the prices of their products and accepted reduced profits in order to comply with the law. However, despite high levels of enforcement, non-compliance still causes problems (Bruttel 2019).

### Working hours

The countries studied have no selective exclusions on working hours for smaller enterprises, and maximum working hours vary between 40 and 48 hours per week. However, research on working conditions in MSMEs has found that employees often work more hours without pay (Smith and Zagelmeyer 2010). The importance of employee loyalty and a close employee–employer relationship creates a working culture in MSMEs characterized by longer working hours (Smith and Zagelmeyer 2010, 395). A study of working times in Europe shows an inverse relationship between average working hours and the size of the enterprise: smaller companies tend to have longer working hours in practice (Alves, Bouquin and Poças 2007). Longer working hours are associated with increased risk of injury and long-term health conditions such as depression, strokes and heart attacks (Croucher et al. 2013). Tackling long working hours in MSMEs is therefore essential to improve quality of life among workers.

An interesting example of a culture of long working hours without overtime payments is Spain, where a new regulation was recently introduced to tackle this problem. According to a study of 4,000 employees at Spanish SMEs, there is a culture of long hours at work in that country; workers who complete all their work in the regular hours and demand more flexibility are penalized (Fundación máshumano 2014). The same study found that 70 per cent of enterprises considered workers who stayed for longer than the regular working hours to be more productive. To improve the enforcement of working hours in smaller enterprises, the Spanish law was reformed in 2019, with the introduction of a requirement for MSMEs and self-employed workers with at least one employee to register daily the working hours of their workers. Employers failing to comply with this requirement are subject to a fine ranging from €600 to €6,000.<sup>24</sup>

### Annual holiday

In almost all of the countries studied, legislation on paid time off for holidays is applied equally to MSMEs. The only exception is Peru, where employees of micro and small enterprises have a special regime with a minimum statutory 15 days of paid holidays for every year of service, compared with 30 days under the regular labour regime.<sup>25</sup> In general, paid time off varies greatly from country to country. At the lower end of the spectrum are China (5 to 15 paid days off) and Mexico (initially 6 days, with the number increasing with seniority). Spain and Brazil offer the highest number of paid days off: a total of 30 days in both cases.

<sup>22</sup> Through provisional article 78 added to the [Social Insurance and General Health Insurance Act No. 5510](#) of 31 May 2006 by Act No. 7162/10, which was promulgated in the Official Gazette on 30 January 2019.

<sup>23</sup> Germany, [Minimum Wage Act of 11 August 2014](#)

<sup>24</sup> Spain, Royal Decree-Law No. 8/2019.

<sup>25</sup> Peru, [Supreme Decree No. 013-2013-PRODUCE](#), art. 55.

### Occupational safety and health

Laws on occupational safety and health (OSH) generally apply to all workers, regardless of the size of the enterprise. However, in some countries certain categories of workers are excluded. This is the case in Spain and Turkey,<sup>26</sup> which exclude domestic workers from the application of OSH laws. In Spain, although domestic workers are excluded from the OSH law, the household must ensure that the work of its employees is carried out in proper safety and hygiene conditions.<sup>27</sup> In Sri Lanka, OSH issues are regulated by Factories Ordinance No. 45 from 1942, which does not cover workers in agriculture, offices (public and private) and the transport sector, among others.

#### Special OSH requirements

Thirteen countries in this study exempt smaller enterprises from special OSH requirements, such as the establishment of a safety committee, conducting a risk assessment or appointing a safety officer. This is the case in Mexico, where assessing whether a “favourable organizational environment” pertains or not is mandatory only for work centres with more than 50 workers, as is the obligation to offer facilities for people with disabilities.<sup>28</sup> In the Russian Federation, all employees are covered by OSH laws, but the employer is not required to undertake assessments of occupational hazards and risks for home workers and remote workers.<sup>29</sup> In contrast, Colombia has a mandatory OSH management system for all enterprises regardless of the number of employees.<sup>30</sup>

Some countries require enterprises to have OSH specialists. This is the case in China, which in 2014 introduced a stipulation that enterprises with more than 100 workers must have a production safety committee or a full-time safety officer. This was a substantial change extending the application of safety laws to smaller enterprises, since under the previous law that requirement applied only to enterprises with more than 300 employees.<sup>31</sup>

Another common mechanism for improving OSH is the establishment of a workers’ representative body. Most countries define a certain threshold of workers for the establishment of OSH committees or representatives. Two interesting cases are the positions of occupational monitor (*vigía ocupacional*) in Colombia and safety and health supervisor (*supervisor de seguridad y salud*) in Peru, which are both mandatory for all enterprises regardless of size. In contrast, most countries have a threshold of 5 to 20 workers for the election of OSH representatives.

Table 4 shows the extent of application of OSH laws to smaller enterprises and also the minimum number of employees that enterprises must have for the establishment of OSH consultation mechanisms (such as elected committees, delegates or representatives drawn from among the workers) to become mandatory.

► **Table 4. Applicability of occupational safety and health laws and regulations to MSMEs in the countries studied**

Country	OSH laws and regulations	Threshold for special OSH consultation body	Country	OSH laws and regulations	Threshold for special OSH consultation body
Brazil	✓	–	<b>Peru</b>	✓	* > 1 > 20
China <sup>a</sup>	✓	–	<b>Russian Federation<sup>b</sup></b>	✓	–
Colombia	✓	* > 1 > 10	<b>South Africa</b>	✓	* > 20
Costa Rica	✓	* > 10	<b>Spain</b>	✓	* > 5 > 50
Egypt <sup>a</sup>	✓	–	<b>Sri Lanka</b>	✓	* > 25
Germany	✓	* > 20	<b>Sweden</b>	✓	* > 5

<sup>26</sup> For Turkey, see Act No. 6331 on Occupational Safety and Health (2012), art. 2.

<sup>27</sup> Spain, Act No. 31/1995 of 8 November 1995 on Occupational Risk Prevention, art. 3.4. See also art. 7(2) of Royal Decree No. 1620/2011 of 14 November 2011.

<sup>28</sup> Mexico, Federal Regulation of Safety and Health at Work, art. 55.

<sup>29</sup> Russian Federation, Federal Act No. 426-FZ of 28 December 2013 on Special Inspection of Working Conditions, art. 3.

<sup>30</sup> Colombia, Decree No. 1072 of 26 May 2015.

<sup>31</sup> Production Safety Law of the People’s Republic of China amended in 2014, art. 21. Moreover, if there are fewer than 100 employees, a part-time safety officer should be appointed.

Mexico	✓	-	Turkey	✓	* ≥ 50
Nepal	✓	* ≥ 20	United Republic of Tanzania	✓	* > 20

✓ = equal application regardless of enterprise size. \* = selective exclusions (obligations vary according to size of enterprise, > # of workers). — = information not available.

**Notes:** <sup>a</sup> OSH rules apply to all enterprises in Egypt, including the construction industry, commercial establishments and agriculture. Specific provisions apply to establishments with more than 15 to more than 50 workers. For instance, Ch. 5, art. 223 of the [Labour Code \(No. 12 of 2003\)](#) requires all establishments with more than 20 workers to contribute to a national fund for social, health and cultural services. Finally, art. 228 stipulates that all industrial establishments employing 15 workers or more, and all non-industrial establishments employing 50 workers or more, must provide the Ministry of Manpower with a semi-annual statistical report on diseases and injuries during the first half of the months of July and January. <sup>b</sup> According to the [Labour Code of the Russian Federation of 30 December 2001](#), art. 218, labour protection committees (commissions) can be created at the initiative of the employer and/or at the initiative of employees or their representative body.

**Source:** Developed by the author on the basis of a compilation of labour laws.

There seems to be a common understanding that protecting the safety and health of workers is essential, and that a certain degree of flexibility is needed with regard to the specific procedures used to achieve that (Croucher et al. 2013). Accordingly, some scholars have called for OSH measures to be promoted in MSMEs and at workplaces in the informal economy through easy-to-apply preventive tools and participatory approaches (Croucher et al. 2013).

### Dismissals

A dismissal is “collective” when it affects a significant number of workers in a company and is based on the same cause, such as retrenchment, redundancy, bankruptcy or technological change. A dismissal is “individual” if it concerns a specific worker and has to do with personal reasons. In some cases, the rules for collective or individual dismissals do not apply to smaller enterprises. Table 5 provides a summary of the worker thresholds used to determine whether laws on collective and individual dismissals are applicable.

► **Table 5. Applicability of laws on collective and individual dismissals to MSMEs in the countries studied**

Country	Collective dismissal	Individual dismissal	Country	Collective dismissal	Individual dismissal
Brazil	No	✓	Peru	✓	S
China	✓	✓	Russian Federation	* > 50	✓
Colombia	* > 10	✓	South Africa	✓	✓
Costa Rica	No	✓	Spain	* > 10	✓
Egypt	✓	✓	Sri Lanka	No	* > 15
Germany	* > 20	* > 10	Sweden	✓	✓
Mexico	✓	✓	Turkey	* ≥ 20	* > 30
Nepal	* > 10	✓	United Republic of Tanzania	✓	✓

✓ = equal application regardless of enterprise size. \* = selective exclusions (obligations vary according to size of enterprise, > # of workers). S = special regime. No = there are no special legal provisions regardless of the enterprise size.

**Source:** Developed by the author on the basis of a compilation of labour laws

#### Collective dismissals

There are countries that do not have special legislation for collective dismissals, such as Costa Rica, Brazil and Sri Lanka. Some significant backsliding occurred in Brazil in 2017, when a law was adopted that revoked the requirement to consult the relevant trade union on collective dismissals.<sup>32</sup> In other

<sup>32</sup> Brazil, Act No. 13429 of 2017.

countries, the procedures regarding collective dismissals apply only to enterprises that have a minimum threshold of workers ranging from 10 and 50 employees. For instance, in Germany, the procedure for collective dismissals applies only to enterprises with more than 20 employees.<sup>33</sup> Similarly, in Colombia, Nepal, Turkey and the Russian Federation, enterprises with a certain number of workers do not have to follow the special procedures for collective dismissals.

In contrast, in South Africa there is equal application of the law regardless of the size of the enterprise, and employers must follow consultation procedures for any dismissal; there are additional rules for companies with more than 50 employees.<sup>34</sup> Although consultation with the trade union before collective dismissals is common in many countries, a large number of MSME workers are not unionized (Moore, Jefferys and Cours-Salies 2007; ILO 2018c), which means that in practice they are less protected than those benefiting from the mechanisms of social dialogue.

### *Individual dismissals*

Most of the countries studied have equal application of the law regarding compensation for individual dismissals. However, Peru has a special regime for micro and small enterprises involving a less onerous compensation.<sup>35</sup> Germany, Sri Lanka and Turkey exclude enterprises under a certain threshold from protection against individual dismissals. Germany excludes enterprises with fewer than ten employees from such protection.<sup>36</sup> The German system provides relatively low levels of employment protection for workers at small enterprises. However, low protection is compensated for through unemployment insurance and strong labour market and social policies (Herr and Nettekoven 2018). Exempting smaller enterprises from protection against unfair dismissals can affect trade union members negatively because employers can dismiss them for taking part in union activities. This is the case in Turkey, where there is no protection against unjustified dismissal in workplaces with fewer than 30 workers.

If dismissal occurs, a certain protective cushion can be provided by unemployment insurance, and so it is important that workers be eligible regardless of the size of the enterprise. However, unemployment protection currently covers only a small proportion of the global labour force (ILO 2017b, 40).

## **Consultation of employees**

Employee consultation mechanisms are essential to bring about social dialogue. However, in many countries the law excludes smaller enterprises from the obligation to set up works councils<sup>37</sup> or other representative mechanisms. Additionally, research shows that informal practices of employee consultation are more widespread in MSMEs than in larger enterprises (Sameer and Özbilgin 2014). In Europe, estimates indicate that only 34 per cent of employees have access to representation in small enterprises, compared with 88 per cent in large enterprises (de Kok et al. 2012, 14). Trade unions can also be appointed as consultative bodies and play an important role in enhancing the participation of employees in the management of the enterprise. Table 6 shows the extent to which employee consultation laws and regulations are applied to MSMEs in the countries studied. The table also indicates the thresholds that pertain in some countries for the establishment of consultation bodies.

<sup>33</sup> Germany, [Protection against Dismissal Act](#), adopted on 10 August 1951.

<sup>34</sup> See section 189A of the [Labour Relations Act, 1995](#). However, for enterprises with more than 50 employees intending to dismiss a certain number of employees, the Commission for Conciliation, Mediation and Arbitration must appoint a facilitator if so requested by the parties.

<sup>35</sup> Art. 56 of [Supreme Decree No. 013-2013-PRODUCE](#) reads (in English translation): “The compensation for unfair dismissal for the microenterprise worker will be equivalent to 10 daily salaries for each full year of services with a maximum of 90 daily wages.” For small enterprises, the compensation is equivalent to 20 daily wages for each year of services up to a maximum of 120 daily wages. On the other hand, according to art. 167 of the General Labour Law, compensation for dismissal without just cause consists of (a) 45 days of ordinary remuneration for each full year of services, with a minimum of 90 days, up to a maximum of 8 years; (b) 30 days of ordinary remuneration for each additional year up to a maximum of 8 years; and (c) 15 days each additional year up to a maximum of 8 years.

<sup>36</sup> This exclusion is based on the “small business clause” (Kleinbetriebsklausel) in section 23 of the [Protection against Dismissal Act](#)

<sup>37</sup> Works councils are a representative body for workers at the enterprise level.

► **Table 6. Applicability of employee consultation laws to MSMEs in the countries studied**

Country	Applicable to MSMEs	Country	Applicable to MSMEs
Brazil	-	Peru	-
China	✓	Russian Federation	* > 50
Colombia	-	South Africa	* > 100
Costa Rica	-	Spain	* > 5 > 50
Egypt	-	Sri Lanka	✓
Germany	* > 5	Sweden†	✓
Mexico	-	Turkey	-
Nepal	* > 10	United Republic of Tanzania	✓

✓ = equal application regardless of enterprise size. \* = selective exclusions (obligations vary according to size of enterprise, > # of workers). - = information not available.

**Note:** (†) In Sweden, the [Employment Protection Act \(1982:80\)](#) establishes, in section 2, that an employer with a maximum of ten employees may exempt two employees who are of importance to the business from the turnover rules. Otherwise, employees with longer periods of employment take precedence over workers with shorter periods of employment.

**Source:** Developed by the author on the basis of a compilation of labour laws.

In the European Union, Directive 2002/14/EC requires employers to inform and consult with workers on at least three important areas, regardless of the size of the enterprise: (a) company development and economic situation; (b) the development of employment; and (c) decisions leading to substantial changes in the organization of work. Sweden, Germany and Spain have different consultation mechanisms, which operate via trade unions or works councils.

Among the countries studied, works councils exist in Germany, Spain and Sri Lanka. However, employee consultation mechanisms can vary depending on the enterprise size. In Germany, works councils are constituted in enterprises with more than five employees. In Spain, there are company committees in workplaces with more than 50 employees and staff delegates in workplaces employing fewer than 50 but more than 5 workers.<sup>38</sup> In South Africa, workplace forums exist in companies with more than 100 employees.<sup>39</sup> No information could be found on employee consultation mechanisms in the Latin American countries in the sample.

In Sweden, there are several mechanisms for employee consultation and a long history of cooperation between workers and management. Since most workers are unionized, representation is mainly channelled through the unions, which must be consulted on important decisions affecting workers and the company. Moreover, each enterprise with more than 25 employees must have representatives from the union on its board.<sup>40</sup>

Employee consultation does not have to be a complicated procedure and can bring important benefits in terms of achieving decent work. Raising awareness of the importance of social dialogue in the workplace is essential to achieve change beyond legal regulation. A cultural shift is required, as many countries have hierarchical cultures that prevent employees from voicing their needs and concerns (Smith and Zagelmeyer 2010).

## ► Social protection

Most countries included in this study have equal social security coverage for MSME workers. However, there is a trend among Latin American countries towards special regimes with less onerous social security contributions for MSMEs, as is the case in Brazil, Colombia, Costa Rica and Peru.

<sup>38</sup> Spain, [Royal Legislative Decree No. 2/2015](#), arts 62 and 63.

<sup>39</sup> See section 79 of the [Labour Relations Act, 1995](#)

<sup>40</sup> Sweden, [Board Representation \(Private Sector Employees\) Act \(1987:1245\)](#)

### Social security

Brazil has had a simplified system of tax and social security contributions for micro and small enterprises since 1996. In Costa Rica, enterprises with up to five employees are part of a separate social security system. In Mexico, workers in family enterprises, employers and independent workers are exempted from mandatory social security contributions.<sup>41</sup> In Peru, workers at microenterprises are not obliged to register with, or contribute to, the pension system. In Brazil, micro-entrepreneurs and own-account workers with a gross annual revenue of less than 60,000 Brazilian reais (approximately €12,000) who hire no more than one employee and are registered in a special programme,<sup>42</sup> have to pay only 5 per cent of the minimum wage as a contribution. In Egypt, there is a selective exclusion: enterprises with fewer than 50 employees do not have to offer two years of unpaid maternity leave in addition to the regular 90 days of paid leave.

Table 7 shows the special regimes and selective exclusions that the countries studied have in place regarding social security contributions for workers at smaller enterprises.

► **Table 7. Applicability of mandatory social security contributions for MSMEs in the countries studied**

Country	Applicable to MSMEs	Country	Applicable to MSMEs
Brazil	S	Peru	S
China	√	Russian Federation	√
Colombia	S	South Africa	◊
Costa Rica	S	Spain	√
Egypt	* > 50	Sri Lanka	√
Germany	√	Sweden	√
Mexico	S ◊	Turkey	√
Nepal	√	United Republic of Tanzania	√

S = special regime with reduced contributions. √ = equal application regardless of enterprise size. \* = selective exclusions (obligations vary according to size of enterprise, > # of workers). ◊ = some workers are exempted from mandatory contributions, such as domestic workers or the self-employed.

**Source:** Developed by the author on the basis of a compilation of labour laws.

A major challenge in achieving universal social protection for workers from smaller enterprises (including the self-employed) is that many of them operate informally (ILO 2019, 6). In recent years, some countries have modified their labour laws to extend social security coverage to self-employed workers and those in the informal economy. In Colombia, a law adopted in 2019 established an obligation for independent workers with a contract for the provision of services to pay pension and health insurance contributions based on 40 per cent of the value of the contract.<sup>43</sup> In the Russian Federation, social security contributions are mandatory even for the self-employed, including individual entrepreneurs. In contrast, in Mexico, contributions by self-employed workers are purely voluntary.

It is also possible to establish discounts or incentives for social security contributions in smaller enterprises. In Turkey, employers with at least ten employees in regions prioritized by the Government receive a discount on their social security contributions.<sup>44</sup> In Colombia, Act No. 1429 of 2010 provides tax incentives for small enterprises (with fewer than 50 workers) to encourage them to formalize their employees by paying social security contributions.

Extending social security coverage to workers who have historically been excluded is an important trend that can be observed in many countries. In Egypt, a recent law from 2019 provides pension benefits to

<sup>41</sup> Mexico, Social Security Act 1995, last amended in 2019, art. 13.

<sup>42</sup> The Microempreendedor Individual (Individual Micro-Entrepreneur; MEI) programme discussed later on in section 4.1.2.

<sup>43</sup> This means that for pension contributions they must pay 16 per cent on 40 per cent of the gross invoiced value (that is, 6.4 per cent of the total value of the contract), and for health insurance, 12.5 per cent on 40 per cent (that is, 5 per cent of the total value of the contract). See Act No. 1955 of 2019, art. 244.

<sup>44</sup> Turkey, Act No. 6486, promulgated in the Official Gazette No. 28661 (29 May 2013).



workers traditionally excluded, such as temporary and seasonal workers, housekeepers, small-scale agricultural tenants, employers, entrepreneurs and one-person companies.<sup>45</sup>

### Sick leave

In almost all the countries studied, there is no special regulation for, or exclusion of, MSMEs as far as sick leave is concerned. Thus, the rules relating to paid sick leave apply to all enterprises regardless of their size. In many countries, sick leave is paid through a national insurance scheme. In Colombia, sick leave is paid by the national insurance fund regardless of the size of the enterprise. Although sick leave in Germany is paid by the employer, there is a rule that allows employers with fewer than 30 workers to recover sick pay from the employers' cost-sharing fund.<sup>46</sup>

### Maternity leave

With the exception of Egypt, all countries included in this study provide equal maternity leave benefits for MSME workers. In Egypt, women working in enterprises with more than 50 employees can take unpaid leave for up to two years to take care of a newborn child, while workers at smaller enterprises are entitled to the standard 90 days of maternity leave.<sup>47</sup> In Germany, before 2003, enterprises with fewer than 30 employees could apply for compensation to cover the payment of maternity leave. However, a decision of the Federal Constitutional Court declared this law to be unconstitutional and now all companies can apply for this benefit.<sup>48</sup> In most countries, maternity leave is provided mainly for women in formal employment, while women working in informal employment or self-employment are often excluded from this important right (Lewis et al. 2014, 20).

Another problem is the lack of enforcement for maternity leave rights. In countries with cumbersome bureaucratic procedures, mothers may find it difficult to exercise their rights after giving birth. In this regard, having a supportive workplace culture that enables both mothers and fathers to achieve a good work–life balance is essential. Paternity leave is also an important step towards gender equality, and many countries are already including some sort of leave arrangements for fathers in their labour laws. Finally, regulation for maternity and paternity leave entailing minimal or no additional cost for MSMEs is a key policy to enhance protection for workers with children (Lewis et al. 2014).

## ► Special categories of workers

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There are two categories of workers who have historically been excluded from the application of labour law: agricultural and domestic workers. The agricultural sector is composed mainly of the self-employed and MSME workers (ILO 2019, 18). In the case of domestic workers, they are employed by the household and many legislations treat them as a special category of workers. However, the traditional exclusion of these two occupational groups is now giving way to a trend towards full coverage (as in Mexico). Another category of workers who are sometimes excluded from the application of parts or the whole of the labour law are migrant workers (ITUC 2019). Owing to the scope of this study, the situation concerning workers in that category could not be examined further.

### Agricultural workers

Agricultural workers represent approximately 28 per cent of employment worldwide and the sector is predominantly informal (FAO 2019). Among the countries included in the present study, Peru has a special regime for agricultural workers, while in Egypt there is selective exclusion concerning maternity leave. Peru has introduced a separate labour regime with lower standards for agricultural workers.<sup>49</sup> This regime provides for a paid holiday of only 15 days. Unlike other worker categories, agricultural

<sup>45</sup> Egypt, Act No. 148 of 2019, promulgated in the Official Gazette on 19 August 2019.

<sup>46</sup> This is regulated in the [Act on the Compensation of Expenses of the Employer](#), which entered into force in 2006.

<sup>47</sup> Egypt, [Labour Code \(No. 12 of 2003\)](#), Ch. 2, art. 94.

<sup>48</sup> Constitutional Court of the Federal Republic of Germany, [Decision of 18 November 2003](#), 1 BvR 302/96.

<sup>49</sup> Peru, [Act No. 27360](#) of 2000 and [Supreme Decree No. 049-2002-AG](#) of 10 September 2002.

workers do not receive any bonuses in July and December, nor are they able to access annual deposits as compensation for time of service. In Egypt, women working in agriculture are not protected during maternity leave.<sup>50</sup>

In contrast, in countries such as Colombia there is only one labour law that also applies to agricultural workers, but there is widespread non-compliance and lack of enforcement, partly because of limited labour inspections in rural areas (Cañas 2018). In Europe, agricultural workers often face worse working conditions than workers in urban areas. In this regard, Spain has been criticized for not enforcing labour rights in the agricultural sector (Mas 2018).

### Domestic workers

Out of the 16 countries covered by this study, eight (Brazil, Colombia, Costa Rica, Mexico, Nepal,<sup>51</sup> Russian Federation, Sweden and United Republic of Tanzania) have equal application of labour laws to domestic workers. In 2019, the Mexican Parliament approved a reform of the federal labour and social security laws to improve the protection of domestic workers, who had previously been excluded from mandatory social security. This reform established that domestic workers would be entitled to legal benefits, such as holidays, holiday bonuses and rest days, making social security contributions compulsory. Equal protection by the law is an important step that can be accompanied by other measures such as simplified registers, economic incentives and spaces for social dialogue (Cerdas Sandí 2019, 15).

In Egypt, Germany, Peru, South Africa, Spain, Sri Lanka and Turkey, domestic workers are excluded from certain labour rights or are covered by a special legal regime. In Germany and Turkey,<sup>52</sup> domestic workers are excluded from the main occupational safety and health laws. Moreover, in Germany there is no working-time limit for round-the-clock care workers (Trebilcock 2018, 162). In South Africa, domestic workers have a lower minimum wage.<sup>53</sup> In Egypt, domestic workers are (like agricultural workers) excluded from maternity leave rights.<sup>54</sup> In Sri Lanka, the laws regulating domestic work date from 1936 and so, not surprisingly, they do not provide for many working rights.<sup>55</sup> As of February 2020, the Peruvian Parliament was discussing a bill to equalize the rights of domestic workers.<sup>56</sup>

Historically, a significant number of countries have excluded domestic workers wholly or partially from the application of labour laws (ILO 2013, 46). The ILO (2017b, 1) estimates that there are 67 million domestic workers worldwide, of which 80 per cent are women; employment is predominantly informal. However, in recent years, there have been significant improvements for domestic workers as a result of international efforts to ensure that the value of their work is recognized. Eight out of the 16 countries covered by this study have ratified the Domestic Workers Convention, 2011 (No. 189).<sup>57</sup>

Domestic workers working for different households are categorized as self-employed in some countries. In Brazil, Constitutional Amendment No. 72 from 2013 and Enabling Act No. 150 of 2015 established equal rights for domestic workers. However, domestic workers who work less than three days a week for the same household – referred to as *diaristas* (daily workers) – are not covered by the constitutional reform (Costa, Barbosa and Hirata 2016). In Spain, domestic workers who work less than 60 hours per month for a particular employer can pay their own social security contributions – that is, their status is similar to that of the self-employed.<sup>58</sup> In contrast, in Colombia<sup>59</sup> and Costa Rica<sup>60</sup> it is mandatory to pay daily or weekly social security contributions. Domestic workers engaged on a daily basis are therefore not considered self-employed and have the same rights under the law as other workers.

<sup>50</sup> Egypt, [Labour Code \(No. 12 of 2003\)](#), Ch. 2, art. 97.

<sup>51</sup> Nepal, [Labour Act, 2074 \(2017\)](#)

<sup>52</sup> Turkey, [Act No. 6331 on Occupational Safety and Health \(2012\)](#), art. 2.

<sup>53</sup> South Africa, [National Minimum Wage Act \(Act No. 9 of 2018\)](#)

<sup>54</sup> Egypt, [Labour Code \(No. 12 of 2003\)](#), Ch. 1, art. 4.

<sup>55</sup> Sri Lanka, Domestic Servants Ordinance of 1871, amended in 1936.

<sup>56</sup> Bill No. 4087 of 2018. This bill states that domestic workers working on a daily basis have the same rights as those working for a single employer.

<sup>57</sup> These countries are Brazil, Colombia, Costa Rica, Germany, Mexico, Peru, South Africa and Sweden.

<sup>58</sup> Spain, [Royal Decree-Law No. 29 of 2012](#).

<sup>59</sup> Colombia, [Decree No. 2616 of 2013](#), adopted on 20 November 2013.

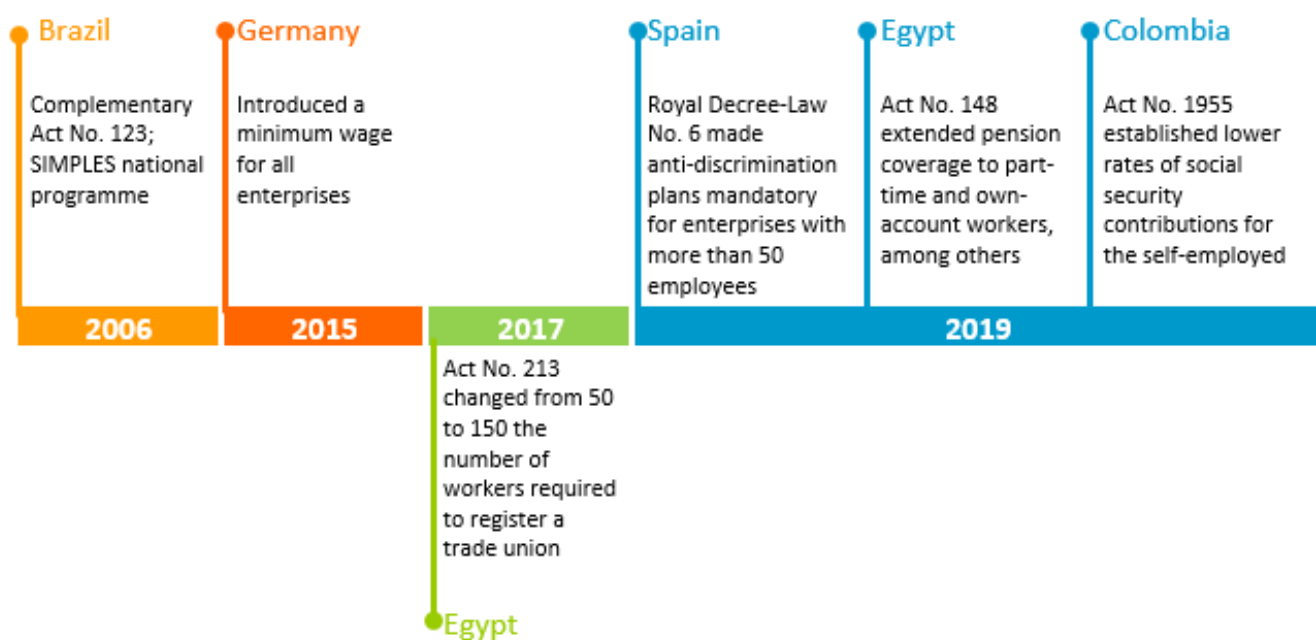
<sup>60</sup> Costa Rica, [Labour Code](#)

# ▶ 3 Trends in the application of labour law to MSMEs

The previous chapter discussed various legal reforms enacted over the past 15 years, identifying a general trend towards extending labour and employment rights to MSME workers. The most comprehensive reform to extend the coverage of labour laws to MSME workers was undertaken in 2017, namely in Nepal, which is classified as a low-income country. The previous labour law did not apply to enterprises with fewer than ten employees, and so this legal reform involved a far-reaching extension of labour rights for many workers. This example illustrates that developing economies, too, are trying to extend coverage to workers at smaller enterprises. Moreover, some countries, such as China, have maintained full application of the labour law to smaller enterprises.

This study identified a greater number of legal reforms to expand the labour law coverage of MSMEs than there were instances of backsliding over the same period. Figure 8 presents a timeline of reforms that have either expanded or reduced the labour law coverage of MSMEs since 2006. The only reduction of coverage for MSME workers occurred in Egypt; the overwhelming majority of legal changes were made to extend coverage.

▶ Figure 8. Timeline of labour law reforms affecting MSMEs in the countries studied



However, there remain some legal exclusions that leave certain groups of workers without equal protection. In particular, exclusions still exist for agricultural and domestic workers, who are excluded from the application of parts or the whole of the labour law in some countries. These exemptions currently pose a significant challenge to the achievement of decent work and of SDG target 8.3 on the formalization of MSMEs.

This chapter explores three trends in the extension of the labour law coverage of MSMEs: formalization programmes; extending national insurance; and providing rights for the self-employed.

## ► Formalizing informal workers at MSMEs through tax incentives

In the previous chapter it was pointed out that some countries are trying to implement formalization policies to improve employment conditions and tax compliance, particularly in MSMEs.<sup>61</sup> Informal employment is common among MSMEs seeking to hire workers “off the books” in order to reduce labour and tax costs, because, among other reasons, it is easier for smaller enterprises to avoid labour inspections (Williams and Horodnic 2016; Simon and Birch 1992; Meagher 2007). In Latin America, almost all countries have a special simplified tax regime for smaller enterprises (Cetrángolo et al. 2018, 108). Some exceptions include Panama, the Bolivarian Republic of Venezuela and El Salvador. Despite the multiple challenges associated with tax incentive programmes, they are a way of bringing closer the wider formalization of enterprises and employment (Cetrángolo et al. 2018). The cases of Colombia and Brazil illustrate the challenges of formalization programmes in MSMEs to improve employment and labour law enforcement, and are discussed in the following two sections.

### Formalization of small enterprises in Colombia

In Colombia, Act No. 1429 of 2010, or the Employment Formalization and Promotion Act, provides tax incentives to small enterprises that register and formalize their employees by paying social security contributions for them. This law applies to businesses set up after the enactment of the law that fall into the category of small enterprises, that is, those with fewer than 50 workers and assets totalling less than 5,000 minimum wages (approximately €1.1 million). Instead of paying the regular income tax, small businesses pay nothing during the first two years, 25 per cent of the regular tax in the third year, 50 per cent in the fourth year, 75 per cent in the fifth year, and 100 per cent in the sixth year. However, a study of the impact of this law on overall informal employment suggests that the results have not matched expectations (Farne, Baquero and Álvarez 2012). The national informality rate was 65.7 per cent in April–June 2010 and 65.6 per cent in April–June 2011. The same study also found that enterprises registered under this formalization programme paid social security contributions for just 1,584 employees out of the total of 11,599 employed (Farne, Baquero and Álvarez 2012). Thus, one can argue that tax incentives by themselves are not sufficient to promote substantial formalization of jobs. Other studies conducted several years after the enactment of the law found similar results and concluded that the new law had not had any noticeable impact on the formalization of employment and the reduction of informality rates (Espinell Pinzón 2016; Alvarez, Telles and Posada 2015).

There is a tendency to set up formalization programmes linked to tax incentives. However, the case of Colombia shows that formalizing employment is a complex undertaking that requires much more than just tax reductions.

### A single-tax regime for micro and small enterprises in Brazil

For many years, Brazil has tried out different policies and regulations to encourage the formalization of own-account workers and micro and small enterprises (Silas et al. 2019). One of the most relevant initiatives in this regard is the Integrated System for the Payment of Taxes and Social Security Contributions by Micro and Small Enterprises (SIMPLES) created by Act No. 123 of 2006. The single-tax regime introduced under SIMPLES harmonizes and lowers the rate of taxes and social security contributions for micro and small enterprises.<sup>62</sup> An important feature of this programme is that employers do not pay social security contributions based on the number of employees, but on their profits. The aim of this

<sup>61</sup> Estimates indicate that informal workers represent 61.2 per cent of the employed population, and that informal employment is the main source of employment in Africa (85.8 per cent), South Asia (68.2 per cent) and Latin America (53.1 per cent) (ILO 2018a). Because of the magnitude of informal employment, there is a growing interest worldwide in supporting informal workers to achieve the transition to formal employment (Silas et al. 2019). This is reflected in the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), and in SDG target 8.3 on the formalization of MSMEs. In particular, Recommendation No. 204 outlines various steps towards formalization, including the organization of workers, social dialogue, incentives, social protection and the adoption, review, and enforcement of national laws, regulations and other measures. It also emphasizes the need to prevent the informalization of formal jobs.

<sup>62</sup> Microenterprises have a gross annual income not exceeding 240,000 reais, while that of small enterprises is between 240,000 and 2.4 million reais.

provision was to stimulate enterprises to hire new employees and to formalize the ones employed informally. Additionally, in 2008, the Government added a special statutory regime for own-account workers and entrepreneurs with up to one employee: the Individual Micro-Entrepreneur (MEI) programme.

The SIMPLES fiscal regime, including the MEI programme, had covered approximately 12 million workers by 2017 (Cetrángolo et al. 2018, 123). Some of the positive results indicate that SIMPLES has reached enterprises that would otherwise be outside the law (Fajnzylber, Maloney and Montes-Rojas 2011) and helped to reduce informality among workers by extending social security rights (Silas et al. 2019). A recent study of SIMPLES found that 7.7 million enterprises registered for the MEI programme, while 5 million micro and small enterprises registered for the single-tax regime (Silas et al. 2019, 24). An important lesson from SIMPLES concerns the motivation for entrepreneurs to participate in formalization programmes. In this case, the main motivations were “access to social security, to be able to formalize the enterprise and to be able to issue formal invoices” (Silas et al. 2019, 24).

Critics point out that the Brazilian Government has failed to recover considerable fiscal revenue and has spent large amounts of taxpayers’ money on the administration of these programmes (Monteiro and Assunção 2012; Caio Piza 2016; Conceição et al. 2018). One scholar argues that SIMPLES was not effective in increasing formalization rates among smaller enterprises (Caio Piza 2016). Another study found that formalization rates increased among retail firms, but that there was no impact on the construction, transport, services and manufacturing sectors (Monteiro and Assunção 2012). Another criticism of the programme is that, at US\$1 million, it has a very high income ceiling in comparison to other countries (in the United Kingdom it is US\$114,000), and that the Brazilian Government is therefore forfeiting a large proportion of revenues (Conceição et al. 2018, 165).<sup>63</sup> Moreover, the MEI programme has been used by some employers to pay less for their workers, now registered as micro-entrepreneurs (Silas et al. 2019, 25).

## ► Providing security for workers through national insurance

There is a general trend in many of the countries studied to shift the responsibility for compensating workers during sickness and maternity leave from employers to the national insurance schemes. This relieves small businesses from a considerable burden because it is harder for them to afford such payments.<sup>64</sup> This trend may be observed in both high- and low-income countries. In Germany, the Federal Constitutional Court declared that maternity leave payments through the national insurance scheme should apply to all enterprises regardless of their size, so that neither small nor large companies face disincentives to hire women. In Nepal, a recent legal reform shifted the responsibility for providing compensation for work-related injury and disability from the employer to a national insurance scheme.

Since MSMEs employ the majority of women worldwide, having maternity leave benefits that cover smaller enterprises is essential (Stumbitz, Lewis and Rouse 2018). However, providing maternity leave in smaller enterprises may be more challenging as they have less flexibility to adapt their workforce. An important way of strengthening the rights of women and men to take time off from work to take care of their children is having parental leave paid for by insurance schemes (Lewis et al. 2014, 47). This also ensures that smaller enterprises do not have a financial disincentive to hire women. In Mexico, Colombia, Peru, Brazil, Sweden, the Russian Federation, South Africa and Spain, among others, the parental leave benefits are paid by a national insurance scheme. In South Africa, maternity leave is paid by the unemployment insurance scheme. In other countries, the salary during maternity leave is paid partly by the national insurance scheme and partly by the employer. This is the case in Costa Rica, where employers and the national insurance scheme each pay 50 per cent of the employee’s salary. By comparison, in the United Republic of Tanzania, China, Nepal and Sri Lanka, maternity leave is paid for by the employer. Consolidating maternity leave rights through national insurance can help MSMEs to promote gender equality.

<sup>63</sup> The current ceiling for eligibility to participate in SIMPLES is 4.8 million reais, approximately US\$1.2 million.

<sup>64</sup> As pointed out in ILO (2017b, 125), “Employer liability puts an unnecessarily high and unpredictable burden on small and medium-sized enterprises. It also adversely affects certain categories of workers in the labour market, for example by increasing the implicit cost of hiring women if maternity protection is directly financed by employers. For this reason, several countries have moved, or are considering moving, towards social insurance provision.”

Some analysts point to the need to change the paradigm that links access to social protection to traditional subordinated work, and advocate the creation of universal coverage (Cecchini et al. 2015; Dostal 2010). Since social security is essential for decent work and poverty reduction, covering all workers regardless of the size of the enterprise is an important goal.

## ► Extending rights to self-employed workers

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The number of self-employed, defined as independent workers without employees, is on the rise around the world (ILO 2019). Many of the countries included in this study have changed the law to extend employment and workers' rights to self-employed workers. In countries such as Spain, Sweden and Germany, self-employed workers can join trade unions and access the support of union representatives.

In the Russian Federation, Colombia, Sweden, Germany, Brazil and Peru, social security contributions are mandatory even for the self-employed, and in some cases, there are special regimes for these. In South Africa, on the other hand, the self-employed are still not covered by social security and must make their own arrangements for health and pension insurance. The rise of employment through digital labour platforms that connect service providers with clients makes it imperative to find new ways of extending social security coverage to this group of workers, who are often self-employed.<sup>65</sup>

Brazil also has a special regime for self-employed workers and micro-entrepreneurs with up to one employee: the Individual Micro-Entrepreneur (MEI) programme (see section 4.1.2). Social security contributions under this programme are just 5 per cent of the minimum wage, compared with 11 per cent under the SIMPLES programme for micro and small enterprises. The MEI programme has attracted many self-employed individuals as they can access a basic public pension, maternity benefits and health insurance, among other benefits (van Elk and de Kok 2014; Silas et al. 2019). A recent study of this programme concludes that one key to the formalization of the self-employed and micro and small enterprises is to provide access to social security as part of the associated benefits (Silas et al. 2019, 34). However, the authors of that study argue that subsidized systems for the self-employed and micro and small enterprises, such as the Brazilian MEI programme, need to target low-income groups "to avoid abuse by others with a higher payment capacity who are attracted to the regime due to the large difference in tax and social security payments" (Silas et al. 2019, 35).

Allowing self-employed workers to join trade unions is another trend that is being promoted in some countries to ensure consistency with the principles of freedom of association. In Spain, self-employed workers, unemployed workers and those who have ceased their work activity as a result of incapacity or retirement may join union organizations.<sup>66</sup> In Sweden, workers at small enterprises may join sectoral labour unions to ensure that their rights are represented.

Moreover, self-employed workers in Sweden may sign up for and obtain access to complementary unemployment insurance.<sup>67</sup> In Egypt, a legal reform in 2019 extended pension benefits for the self-employed (one-person enterprises).<sup>68</sup>

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<sup>65</sup> See the ILO web page "[Crowdwork and the Gig Economy](#)".

<sup>66</sup> Spain, Organic Law on Freedom of Association, No. 11 of August 1985.

<sup>67</sup> Sweden, Act (1976:580) on Co-Determination in the Workplace.

<sup>68</sup> Egypt, Act No. 148 of 2019.

# 4 Examples of programmes and policies for MSMEs

Many countries have programmes and policies that are specially designed for MSMEs. Most of these deal with simplified registration procedures, access to credit, vocational training and tax incentives. Only a few countries have implemented programmes and policies for smaller enterprises with a clear focus on improving compliance with labour laws. The most significant examples are the SCORE programme in China and the formalization laws in Peru, Colombia, and Brazil. Table 8 provides a list of selected programmes, policies and initiatives for smaller enterprises in some of the countries covered by this study.

► **Table 8. Selected examples of programmes, policies and other initiatives directed at MSMEs in the countries studied**

Country	Programme, policy or other initiative	Objectives
Peru	“Formaliza Perú”	The programme seeks to promote the formalization of SMEs. It includes strategies for achieving compliance with labour laws through formalization.
	National Competitiveness and Productivity Policy (PNCP)	The policy includes strategies to formalize employment and youth employment.
	Self-Employment and Microenterprise Programme (PRODAME)	The programme seeks to formalize and legalize MSEs already in operation, reducing the time and cost required to register. It also provides training on how to uphold labour and social security rights.
Costa Rica	Website <a href="http://www.pyme.go.cr/">www.pyme.go.cr/</a>	The website aims to facilitate access to programmes for SMEs, with the aim of enhancing their growth and development.
	Manual for entrepreneurs issued by the Ministry of Economic Affairs, Industry and Trade	The manual provides practical and technical information and guidance on the main steps involved in consolidating and formalizing a business.
Colombia	Act No. 1429 of 2010, the Employment Formalization and Promotion Act	The law provides tax incentives to small enterprises that register and formalize their employees. Workers must be part of a target group defined by the Government that includes youth, internally displaced persons and people with disabilities, among others.
	National Labour Formalization Network	The Network aims to increase business formalization and reduce labour informality, facilitating contributions to the social security system.
	National System of Support for Micro, Small and Medium-sized Enterprises (of the Ministry of Trade, Industry and Tourism)	The system includes, among other features, a mobile app that outlines the procedures involved in paying social security contributions.
Brazil	SIMPLES programme for MSEs	Established by Act No. 123 of 2006, the SIMPLES programme provides an integrated system for the payment of taxes and contributions by MSEs. In particular, it harmonized and lowered the rate of taxes and social security contributions for MSEs.
	Individual Micro-Entrepreneur (MEI) programme (part of SIMPLES)	The MEI programme provides reduced social security contributions and taxes for workers who own their business and employ a maximum of one employee earning the minimum wage.
Mexico	National Entrepreneurship Institute (INADEM)	The Institute was established in 2013 to provide financial and other support for MSMEs. However, the Government closed INADEM down in 2019, announcing that it would channel the funds directly to the entrepreneurs instead.
	FONDO-PyME (a support fund for SMEs)	The Fund supports programmes aimed at fostering the creation, development, viability, productivity, competitiveness and sustainability of SMEs.
Spain	Labour guide for business creation and employment support prepared by the Ministry of Labour, Migration and Social Security	The guide outlines government measures aimed at helping unemployed workers to take up an activity on their own or in associated work.
	Programmes run by DGIPYME at the Ministry of Industry, Trade and Tourism	The programmes seek to facilitate access by entrepreneurs and SMEs to various sources of financing.
	Strategic Framework for SMEs of the Ministry of Industry, Trade and Tourism	This document sets out the framework for long-term action by the Spanish Government in relation to SMEs.
Germany	Innovation Fund	The Fund seeks to strengthen the competitiveness of SMEs.
	Federal Office for Economic Affairs and Export Control (BAFA)	BAFA is a central point of coordination promoted by the Federal Ministry of Economic Affairs and Energy; it develops training programmes in support of the development and competitiveness of SMEs.

Country	Programme, policy or other initiative	Objectives
South Africa	SA SME Fund	A collaborative fund managed by an executive management team, it seeks to strengthen the competitiveness of SMEs.
	Employment Tax Incentive	The South African Revenue Service provides a tax incentive for employers who provide work to young jobseekers.
China	SCORE programme	A joint programme of the ILO and the Chinese Government, it seeks to improve workplace cooperation in SMEs (both within companies and with safety inspectors) with a view to improving working conditions.
Turkey	SMEs financing programme	A financing programme has been launched by the Government together with several Turkish banks in order to foster the creation of small businesses.

Most of the SME programmes implemented by, or together with, governments focus on the financing and formalization of such enterprises. Some programmes also have the overarching goal of improving employment and generating jobs, but they often do not include specific actions to improve workers' rights.

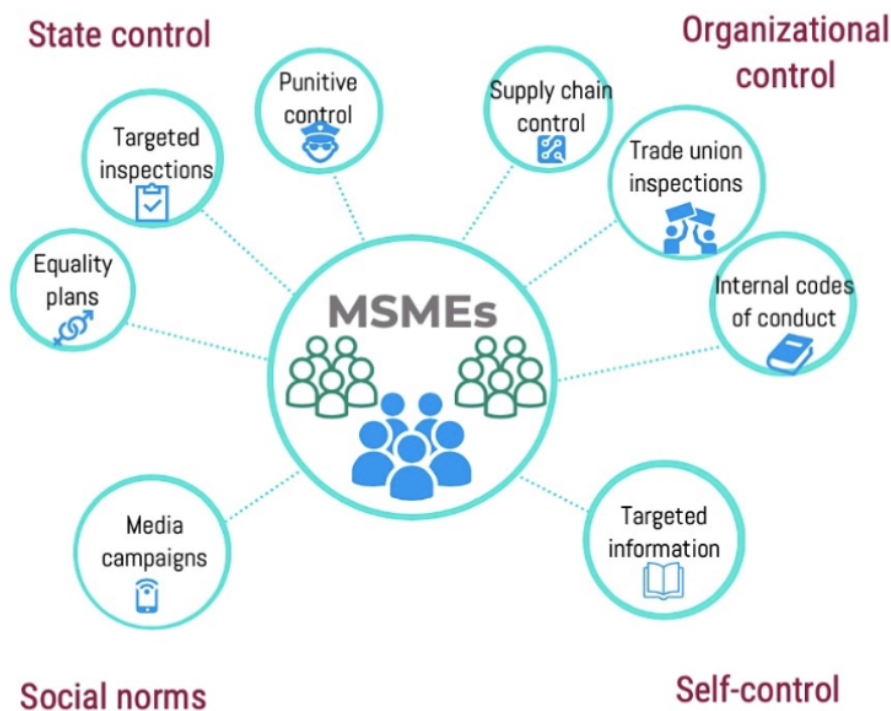


# ► 5 Achieving labour law compliance among MSMEs

The enforcement of labour laws has traditionally been accomplished through labour inspections. However, this form of control is particularly challenging in the case of smaller enterprises. It is harder for labour inspectors to cover MSMEs because there are so many of them and they often operate informally. In many cases, the State lacks the capacity to reach smaller enterprises that are scattered widely across its territory. A culture of lack of transparency in the application of the law among state officials can be a further obstacle to enforcement (García Villegas 2011). Thus, lack of compliance among smaller enterprises can easily become widespread.

In this chapter, the concept of “social control” is used to explore various approaches for achieving compliance with labour laws in smaller enterprises. This concept helps one to understand how state and non-state actors play a role in inducing people to comply with the law. Social control is defined by Reiss (1951, 196) as the “capacity of social groups or institutions to make norms effective”. The present study covers regulation based on legal norms, yet achieving the goal of decent work requires a wider perspective as many MSME owners and workers are not sufficiently aware of the law; owners may also lack the financial means to comply with it. In that respect, using other forms of social control to promote compliance with the law and thereby improve working conditions can be a useful strategy (see figure 9).

► Figure 9. Types of control used to achieve labour law compliance in MSMEs



An example of how the State can use other forms of control in addition to traditional labour inspections is the promotion of internal codes in smaller enterprises. Developing codes of conduct that are in line with national legislation can create an additional source of internal control in smaller enterprises, with managers acting as the enforcers. MSMEs are often described as governed by “personal and arbitrary” forms of control (Woods and Joyce 2003), and so influencing their internal culture is an important approach. Aktinson and Curtis (2004) argue that the paternal nature of small, often family-owned enterprises can prevent employees from asserting their rights. Thus, changing the enterprise culture

and using state programmes and policies to encourage smaller enterprises to adopt or update internal codes of conduct in line with national legislation can help to enhance not only legal knowledge among workers and managers but also compliance with the law.

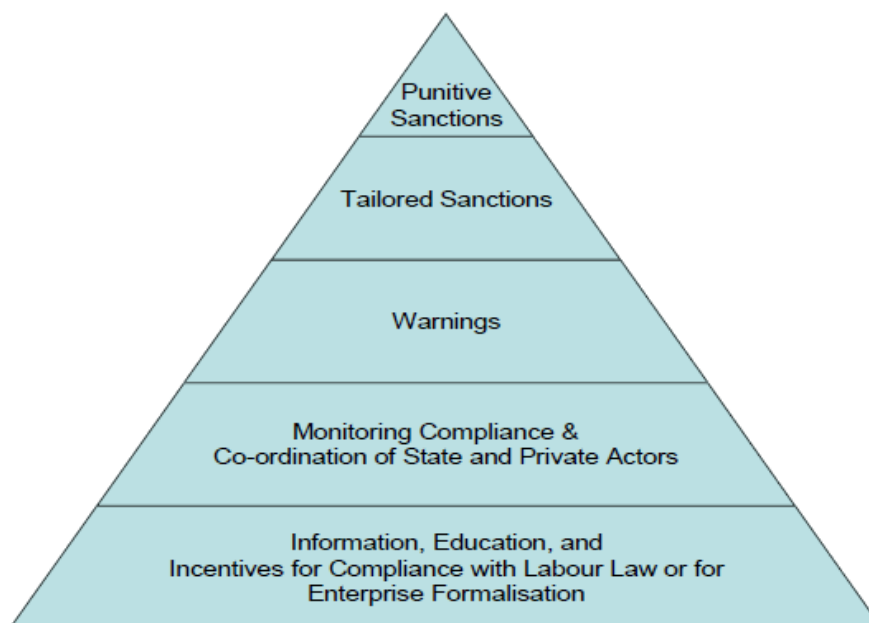
Social norms are also important in contributing to a culture of respect for workers' rights, regardless of their occupation. In many countries, occupations such as domestic or home-based work are perceived as less important, and many people believe that labour laws do not apply to them. In the past, such occupations were often excluded from some aspects of the labour law. Although this has now changed in many countries, the prevailing social norms still discriminate against certain occupations. Consequently, changing the social norms to create a culture of equality and protection for all workers is essential to achieve compliance with labour laws.

Finally, the personal beliefs that workers have about their rights can play a crucial role in achieving enforcement and compliance. It is therefore important to raise awareness of workers' rights among the general population through media campaigns and similar initiatives.

## ► Social control and the enforcement pyramid

Fenwick et al. (2007, 107) proposed a "labour regulation pyramid" to illustrate different regulatory approaches for MSEs. An important feature of the pyramid is that it helps policymakers to keep in mind the key role of "labour rights and standards as non-negotiable behavioural minimums, with non-compliance subject to non-discretionary punishment" (Fenwick et al. 2007, 106). The sanctions for non-compliance with these labour rights and standards are at the apex of the pyramid, as can be seen in figure 10 below.

► Figure 10. Pyramid of labour regulation strategies for micro and small enterprises



**Source:** Fenwick et al. (2007, 107).

The social control model proposed in this paper provides an alternative, possibly complementary way of looking at the process of enforcement by identifying the actors that exercise control. In the enforcement pyramid, the main actor is the State, which may act in cooperation with other regulatory actors. For instance, the pyramid recognizes the possibility of establishing mechanisms for monitoring and coordination together with other actors, such as trade union representatives and private actors. Social

control assumes that other actors (namely, managers, unions, individuals, social groups) are also relevant in the application of sanctions or rewards. The advantage of the social control model is that it enables policymakers to identify a variety of actors and normative systems beyond the realm of the State that are involved in daily efforts to achieve compliance with labour law. Considering that smaller enterprises are often off the radar as far as traditional state control mechanisms (such as labour inspections) are concerned, the involvement of non-state mechanisms of control offers an alternative approach.

## ► Innovative approaches to enforcement and compliance in MSMEs

This section uses the typology of social control developed by Ellickson (1991) to explore innovative approaches to compliance in MSMEs. In this study, we identified many different approaches to achieving compliance with labour laws governing working conditions in smaller enterprises. These range from traditional labour inspections to wider awareness-raising campaigns. Some approaches include economic incentives, while others focus on sanctions. Table 9 provides some examples from the countries analysed.

► **Table 9. Innovative approaches to labour law enforcement and compliance in MSMEs**

Type or style of control	State control	Organizational control	Informal control	Self-control
Penal	Prison (Nepal)			
Administrative	Inspections, with a target number (Peru)	Trade union inspection (Sweden)		
Persuasion	Technical assistance (South Africa)	NGOs – CSR (Sri Lanka and Nepal)	Awareness-raising campaigns (Costa Rica)	Booklet (Brazil)
Preventive	Inspections (Costa Rica)	OSH committees or representatives		

**Note:** CSR Sri Lanka and CSR Nepal are NGOs seeking to promote corporate social responsibility (CSR) in those two countries.

Table 9 also illustrates how compliance with labour law can be achieved through the combination of different types and styles of control. Each of these types of control is explored in detail in the following sections.

### State control

State control includes the efforts made by the government to enforce the law and achieve compliance. In the case of labour law, the State has different actors specialized in exercising control, such as the judiciary, the police, labour inspectors and other agents. MSMEs are not only in contact with labour inspectors but also with the civil servants working in taxation and registration offices. Most of the MSME policies analysed for this study included incentives to register and pay taxes, which means that state employees in these offices can act as promoters of labour rights.

To understand state control, it is necessary to look at the formal rules and the practices of state agents in exercising control. It is the “social working” of control in contrast with the legal centralist approach that helps to explain how state agents understand and use the law (Griffiths 2003, 60). In practice, state officials can apply the law differently to MSMEs. Table 9 gives various examples of innovative state control approaches used to enforce labour laws and achieve compliance in MSMEs. These include different styles of control, including penal, administrative, persuasive and preventive measures. Penal and administrative forms of control rely on sanctions (“sticks”), while persuasive and preventive measures focus on increasing awareness and voluntary compliance (“carrots”).

Penal control relies mainly on the use of imprisonment to punish violations. An example of a penal approach is the Labour Act in Nepal from 2017, which provides for the imprisonment of employers who

knowingly fail to make health and safety arrangements if, as a result, a worker dies or suffers physical or mental injury.<sup>69</sup> Given that OSH is a critical issue in many countries competing for cheap labour, this approach shows a strong commitment to improved safety. However, its application may be challenging in practice.

A traditional approach to the enforcement of labour law is the use of labour inspections, during which government officials verify and sanction acts of non-compliance. However, labour inspectors often lack the capacity to monitor and control the large number of MSMEs that may exist in a country. For example, in China there were 42 million SMEs in 2013, yet the country had only 29,000 safety inspectors at the time (ILO 2016). Countries can tailor the inspection procedure to MSMEs. Examples from Sri Lanka and Peru illustrate this approach. In Sri Lanka, the Government developed an online application called LISA (Labour Inspection System Application) to collect data from labour inspections. The labour inspector records information on a tablet computer, entering it into a system that simplifies the process of following up claims (Galazka 2015). However, inspections using technological innovations need to target MSMEs if they are to have a wider impact.

In Peru, the National Superintendency of Labour Inspections and the regional Governments must inspect at least 20 per cent of microenterprises to ensure that they comply with the special regime. In case of non-compliance, these enterprises can forfeit their benefits under the special regime, and the general regime may subsequently be applied to them instead. Information visits are also meant to take place to raise awareness of the legislation.<sup>70</sup>

However, these inspections cover only a small proportion of the already registered enterprises, and the challenges posed by informal enterprises continue.

Labour inspections can also play a preventive role. This is the case in Costa Rica, where labour inspectors allow the employer to correct their mistakes before imposing a sanction (Briones 2011). However, inspectors in many countries have very low salaries, and corruption is widespread. Many enterprises may therefore prefer to pay bribes rather than comply with the law. The use of online forms and the digitalization of inspections can help to tackle that problem.

The State can also use softer approaches to exercise control, including persuasive and supportive measures to improve compliance. In South Africa, the Government conducted an extensive campaign to make informal businesses aware of the new minimum wage. Moreover, small businesses employing fewer than ten workers were given 18 months to adjust to the new wage; during this time, the State provided technical assistance and did not apply any sanctions (AFD 2019). Another example is Turkey, which assists enterprises that are classified as hazardous and have fewer than ten employees with the provision of mandatory health and safety services.<sup>71</sup>

Formalization programmes with incentives for previously informal enterprises to register can also be used to encourage MSMEs to comply with labour laws. Such programmes are common in Latin American countries. Examples include the SIMPLES programme in Brazil and the formalization programmes in Peru and Colombia.

Making it easier to contribute to social security schemes is another important step that many countries have taken to improve compliance. Since social security benefits are important to improve workers' welfare, facilitating access to such schemes is a strong incentive for both workers and employers.

### Organizational control

Organizational control is about the norms that guide the behaviour of associations or social groups (Ellickson 1991). A business is a typical form of organization with a specific set of norms that influence the behaviour of its employees. Trade unions are organizations that can encourage their members to assert their rights and induce enterprises to comply with the law.

<sup>69</sup> Nepal, Labour Act, 2074 (2017).

<sup>70</sup> Peru, Supreme Decree No. 013-2013-PRODUCE, art. 57.

<sup>71</sup> Turkey, Act No. 6331 on Occupational Safety and Health (2012), art. 6.

In Sweden, in companies with fewer than five employees, the inspection can be performed by a regional safety representative designated by the trade unions. Since the Government often does not inspect enterprises of this kind, inspection by such a representative is an important mechanism for control and compliance. Trade unions also provide advice to their members on how to submit claims and ensure that labour laws are enforced.

Changing an enterprise's culture is difficult, but trade unions and social dialogue play an important role in prompting improvements. An example of how social dialogue can enhance workers' rights is the use of safety and health committees or representatives. Through social dialogue, employees can raise their concerns about safety and health at work and they can work together to improve the working environment. However, compliance with OSH laws is still a challenge in many countries. In Costa Rica, in 2017, there were 8,925 registered OSH commissions, but the total number of formal enterprises with more than ten workers was 12,329 (CSO 2018). This means that approximately 25 per cent (3,404) of the enterprises failed to comply with OSH regulations. In practice, the extent of lack of compliance is likely to be even greater, given that many enterprises operate informally.

Control inside smaller enterprises does not have to be reactive: indeed, some countries use proactive measures to improve working environments. For example, the Swedish anti-discrimination law requires businesses with more than 25 workers to have a plan for achieving equal rights and opportunities. The companies themselves are the ones setting targets and goals as they work proactively to eliminate discrimination and ensure equality.

In many countries, NGOs develop programmes to improve labour compliance, which may be seen as another type of organizational control. This is the case with "social label" campaigns in many Asian countries (Bair, Miller and Dickson 2013). In Sri Lanka, the "Garments without Guilt" campaign is an example of control exercised by NGOs seeking to improve labour rights (Ruwanpura 2016). NGOs have also worked together with governments, employers' associations, unions and the ILO to promote compliance with the law. A relevant example is the Better Work Programme conducted jointly by the ILO and the International Finance Corporation.

### **Informal control through social norms**

Creating a culture of compliance that uses social pressure as a control mechanism instead of relying merely on inspections is essential. The study by Williams and Horodnic (2016) shows that small businesses are more likely to fail to comply with state regulations on minimum wages in countries with a wider gap between the law and social norms.

Many countries use media campaigns to increase awareness of, and compliance with, labour laws. Raising awareness of labour rights is particularly important for smaller enterprises that do not have the resources to obtain advice on labour regulations. An example is the campaign for a minimum wage implemented in Costa Rica in 2010. A study measuring the impact of this campaign found that it had "led to the largest increases in the wages of women, younger workers and less-educated workers" (Gindling, Mossaad and Trejos 2015). In Ecuador, the "Salario Digno" ("Decent Salary") campaign used films showing people in real-life situations to raise awareness of the national minimum wage.

Social norms can also counteract labour rights. In many countries, there are social norms that discriminate against certain categories of workers, such as women, people with disabilities, and migrant workers. In the case of women, the traditional division of labour has entailed discriminatory consequences in the labour market (Deakin 2013, 4). While many countries have extended labour rights to domestic and agricultural workers, hearsay often suggests that these workers do not in fact enjoy the same rights as others. Thus, changing social norms so as to promote a culture of compliance with, and protection of, labour rights is essential.

### **Self-control**

While informal control focuses on creating social norms that support compliance with labour law, self-control is about individual awareness and consciousness of the importance of the law. An example of using self-control to improve compliance is the campaign launched by the Brazilian Ministry of Social Security in 2014, which sent out by post a booklet for self-employed workers informing them of their obligations relating to the payment of social security contributions. A study on the impact of this

campaign found that sending the booklet increased payments by 15 per cent and compliance rates by 7 percentage points (Bosch, Fernandes and Villa 2015). Thus, raising awareness of labour rights plays an important role in encouraging compliance. However, such awareness-raising has significant limitations in that a large number of workers worldwide lack the means to comply with the law even if they wanted to. In these cases, informality is not a choice but a strategy for survival (Maloney 2003), and many self-employed and smaller businesses are indeed “survival entrepreneurs” (Berner, Gomez and Knorrninga 2012).

## ► Resistance

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Individuals are free agents and they can often decide to resist or avoid control mechanisms. Vickers et al. (2005) developed a typology to understand the responses of small enterprises to regulation, including some forms of resistance. They proposed three types – avoiders, reactors and proactive learners – and concluded that “most small firms have a reactive stance towards regulation”, but also that “attitudes and motivations can range from overt avoidance to more positive and even proactive stances” (Vickers et al. 2005, 149). However, that study is premised on the assumption that small entrepreneurs have access to the law and can fully understand its implications and then make rational choices about compliance or resistance. However, this may not be the case for many entrepreneurs in low- and middle-income countries.

A study of the nature of the employment relationship in SMEs suggests that non-compliance with labour laws is not due to lack of awareness but to avoidance of the law (Atkinson and Curtis 2004; Reinecke 2002). A review of the literature found that “the very smallest enterprises may be able to avoid unwanted contact with authorities because of their limited visibility or a more indulgent attitude of authorities in their regard” (Reinecke 2002, 16). Smaller enterprises can declare a smaller number of employees in order to avoid social security payments (Reinecke and White 2004, 155). Thus, efforts to achieve compliance should not rely exclusively on enforcement mechanisms that punish those who resist the law. Punitive measures may trigger wider social movements and protest because many small enterprises lack the financial means to comply with the law. A notable example in this regard is the Tunisian street vendor who set himself on fire in December 2010 after police officers seized his goods when they found that he did not have a legal permit to operate his street business (Kristiansen, Brown and Raâch 2017, 205). Thus, a plural approach that combines various control mechanisms or other regulatory instruments can be more suitable for achieving compliance. As mentioned above, informal control through social norms that leads to awareness-raising is a viable first step in overcoming resistance based on cultural patterns.

This chapter has shown how many countries are using various control mechanisms to enforce labour laws and achieve compliance. While such efforts are important, governments should be aware that smaller enterprises may resist the law because of a lack of funds. In seeking to improve working conditions for MSME workers, it is essential not to leave them without the means to earn a livelihood.

## ► Conclusion

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This working paper has drawn on a comparative analysis of 16 countries to build on and test the findings of an earlier study (Fenwick et al. 2007) on the labour law coverage of MSMEs. The countries analysed are Brazil, China, Colombia, Costa Rica, Egypt, Germany, Mexico, Nepal, Peru, the Russian Federation, South Africa, Spain, Sri Lanka, Sweden, Turkey and the United Republic of Tanzania.

The present study found that the most common approach, regardless of a country's income level, is the equal application of labour laws to all enterprises, with selective exclusions from some obligations. None of the countries in the sample completely excludes MSMEs from the application of labour laws. Moreover, special regimes are common for social security matters in Latin American countries, usually as part of wider policies to formalize the informal economy.

There has been a general trend over the past 15 years to extend the coverage of labour laws to MSMEs. Reforms to improve coverage for workers at smaller enterprises were identified in Brazil, Colombia, Egypt, Germany, Nepal and Spain. The only reduction of coverage for MSME workers occurred in Egypt in 2017. The most relevant reform for small enterprises occurred in Nepal in 2017 with the enactment of a new labour law that extended coverage to enterprises with fewer than ten workers, which had previously been excluded. Another example of efforts to extend coverage for MSME workers are the multiple formalization programmes in Latin America providing incentives and special regimes for smaller enterprises.

A further trend is the increase in legal reforms and programmes designed to extend labour law coverage to own-account or self-employed workers. Examples of such legal reforms were found in Brazil, Colombia and Egypt. In contrast, countries such as Germany, Spain and Sweden have a longer history of coverage for self-employed workers. With the rise in employment through online platforms that connect service providers with clients (often referred to as the “gig economy”), it is expected that self-employment will continue to grow. More countries may therefore need to adjust their regulations to this new social reality.

As for universal access to social protection, a trend can be observed in many of the countries studied that consists in shifting the responsibility for compensating workers during sickness and maternity leave from employers to national insurance schemes. Moreover, in Latin America it is common to find special simplified tax regimes to promote the compliance of smaller enterprises with regulations on paying social security contributions.

This study found that many countries combine different “social control” mechanisms to enforce the law and achieve compliance. Punitive measures are still used, in particular to enforce fundamental rights such as the prohibition of forced and child labour. Traditional labour inspections may also be used to cover smaller enterprises (Peru), or such inspections may be delegated to trade unions (Sweden). Many countries are experimenting with more preventive strategies that aim to achieve voluntary compliance and increase awareness of the law among MSMEs. The provision of technical assistance (South Africa) and awareness-raising campaigns (Brazil and Costa Rica) are some examples. Particularly in low- and middle-income countries, NGOs and international organizations, including the ILO, have played a strong role in supporting national governments in their efforts to increase awareness of labour rights among MSMEs.

In addition to legal reforms to ensure that workers at smaller enterprises are covered by labour rights, in many countries it is necessary to change perceptions and beliefs that discriminate against certain occupations or groups of workers, such as domestic and agricultural workers, women and migrants. Further research could be carried out to explore how labour laws are enforced in specific historical and cultural contexts. Moreover, some aspects of labour law (such as parental benefits) have an impact on broader fundamental rights, and so in future studies it would be meaningful to apply an intersectoral approach to the study of labour law coverage.

In summary, there is an overall trend to extend labour law coverage to MSMEs. Excluding smaller enterprises from the application of labour law is a way of creating informality, and it is expected that few countries will wish to retain such arrangements. Since most employment worldwide is provided by smaller enterprises, the application of labour laws to the latter to the fullest possible extent is of cardinal importance in achieving the ILO's Decent Work Agenda and the Sustainable Development Goals.

## ► Classification of MSMEs used by each country in the study

COUNTRY	MSME CLASSIFICATION			
	Sector	Size	No. of employees	Annual turnover or income
Brazil <sup>a</sup>	Commerce and services	Micro	≤ 9	≤ BRL2.4 million
		Small	10 ≤ 49	BRL2.4 million ≤ BRL16 million
		Medium-sized	50 ≤ 99	BRL16 million ≤ BRL90 million
		Large	≥ 100	≥ BRL300 million
	Industry	Micro	≤ 19	≤ BRL2.4 million
		Small	20 ≤ 99	BRL2.4 million ≤ BRL16 million
		Medium-sized	100 ≤ 499	BRL16 million ≤ BRL90 million
		Large	≥ 500	≥ BRL300 million
China <sup>b</sup>	Agriculture	Micro	-	< RMB0.5 million
		Small	-	≥ RMB0.5 million
		Medium-sized	-	≥ RMB5 million
	Heavy industry	Micro	< 20	< RMB3 million
		Small	≥ 20	≥ RMB3 million
		Medium-sized	≥ 300	≥ RMB20 million
	Retail	Micro	< 10	< RMB1 million
		Small	≥ 10	≥ RMB1 million
		Medium-sized	≥ 50	≥ RMB5 million
	Transport	Micro	< 20	< RMB2 million
		Small	≥ 20	≥ RMB2 million
		Medium-sized	≥ 300	≥ RMB30 million
	Restaurant/catering	Micro	< 10	< RMB1 million
		Small	≥ 10	≥ RMB1 million
		Medium-sized	≥ 100	≥ RMB20 million
	Other unlisted	Micro	< 10	-
		Small	≥ 10	-
		Medium-sized	≥ 100	-
Colombia <sup>c</sup>	Manufacture	Micro	-	≤ 23,563 UVT
		Small	-	≤ 204,995 UVT
		Medium-sized	-	≤ 1,736,565 UVT
	Services	Micro	-	≤ 32,988 UVT
		Small	-	≤ 131,951 UVT
		Medium-sized	-	≤ 483,034 UVT
	Commerce	Micro	-	≤ 44,769 UVT
		Small	-	≤ 431,196 UVT
		Medium-sized	-	≤ 2,160,692 UVT
Costa Rica <sup>d</sup>	-	-	-	-
Egypt <sup>e</sup>	-	Micro	-	≤ EGP 50.000
	-	Small	< 50	> EGP 50.000 ≤ EGP1 million
	-	Medium-sized	-	-
Germany <sup>f</sup>	-	Micro	1 ≤ 9	≤ €2 million
	-	Small	10 ≤ 49	≤ €10 million
	-	Medium-sized	50 ≤ 249	≤ €50 million



Mexico <sup>g</sup>	All	Micro	≤ 10	≤ MXN4 million
	Commerce	Small	11 ≤ 30	≤ MXN100 million
		Medium-sized	31 ≤ 100	≤ MXN250 million
	Industry	Small	11 ≤ 50	≤ MXN100 million
		Medium-sized	51 ≤ 250	≤ MXN250 million
	Services	Small	11 ≤ 50	≤ MXN100 million
Medium-sized		51 ≤ 100	≤ MXN250 million	
Nepal <sup>h</sup>	-	Micro	< 10 and self-managed	≤ NPR200,000
	-	Small	-	≤ NPR50 million
	-	Medium-sized	-	> NPR50 million
	-	Large	-	≤ NPR150 million
Peru <sup>i</sup>	-	Micro	-	≤ 150 UIT
	-	Small	-	≤ 1,700 UIT
Russian Federation <sup>j</sup>	-	Micro	≤ 15	≤ RUB60 million
	-	Small	16 ≤ 100	≤ RUB400 million
	-	Medium-sized	101 ≤ 250	≤ RUB1 billion
South Africa <sup>k</sup>	-	Micro	5	≤ ZAR0.2 million
	-	Very small	10 ≤ 20	ZAR0.2 million ≤ ZAR6 million
	-	Small	50	ZAR3 million ≤ ZAR32 million
Spain <sup>f</sup>	-	Micro	1 ≤ 9	< €2 million
	-	Small	10 ≤ 49	< €10 million
	-	Medium-sized	50 ≤ 249	< €50 million
Sri Lanka <sup>l</sup>	Manufacturing	Micro	≤ 10	≤ LKR15 million
		Small	11 ≤ 50	LKR16 million ≤ LKR250 million
		Medium-sized	51 ≤ 300	LKR251 million ≤ LKR750 million
	Services	Micro	≤ 10	≤ LKR15 million
		Small	11 ≤ 50	LKR16 million ≤ LKR250 million
		Medium-sized	51 ≤ 200	LKR251 million ≤ LKR750 million
Sweden <sup>f</sup>	-	Micro	1 ≤ 9	< €2 million
	-	Small	10 ≤ 49	< €10 million
	-	Medium-sized	50 ≤ 249	< €50 million
Turkey <sup>m</sup>	-	Micro	< 10	< TRY1 million
	-	Small	< 50	< TRY5 million
	-	Medium-sized	< 250	< TRY25 million
United Republic of Tanzania <sup>n</sup>	-	Micro	1 ≤ 4	≤ TZS5 million
	-	Small	5 ≤ 49	TZS5 million ≤ TZS200 million
	-	Medium-sized	50 ≤ 99	TZS200 million ≤ TZS800 million
	-	Large	> 100	> TZS800 million

BRL = Brazilian real. EGP = Egyptian pound. LKR = Sri Lanka rupee. MXN = Mexican peso. NPR = Nepalese rupee. RMB = Chinese renminbi. RUB = Russian rouble. TRY = Turkish lira. TZS = Tanzanian shilling. UIT = Unidad Impositiva Tributaria (Tax Imposition Unit [Peru]). UVT = Unidad de Valor Tributario (Tax Value Unit [Colombia]). ZAR = South African rand. - = not applicable.

**Notes:** <sup>a</sup> SEBRAE (2015). <sup>b</sup> Law of the People's Republic of China on the Promotion of Small and Medium-sized Enterprises (2017). In line with this law, the financial information refers to the operating revenue of the enterprise. <sup>c</sup> Decree No. 957 of 5 June 2019 modified the classification of SMEs in Colombia: they are now classified only on the basis of annual income. <sup>d</sup> In Costa Rica, the size category is determined using a formula that classifies enterprises according to business activity, and which includes the average personnel hired in a fiscal period, the value of the assets, the value of net annual sales and the

value of the total net assets. A company is classified as a microenterprise if the result is  $\leq 10$ , as a small business if the result is  $> 10$  but  $\leq 35$ , and as a medium-sized company if the result is  $> 35$  but  $\leq 100$ . See <https://www.pyme.go.cr/cuadro5.php?id=1>.<sup>e</sup> Egypt, *Act No. 141 of 2004 concerning Micro and Small Enterprise Development*.<sup>f</sup> The definition of SMEs is set out in Annex I of *Commission Regulation (EU) No. 651/2014*. The financial information refers to the annual turnover of the enterprise.<sup>g</sup> Mexico, *Agreement establishing the Classification of Micro, Small and Medium-sized Enterprises* (2009). The financial information refers to the annual income of the enterprise.<sup>h</sup> Nepal, *Industrial Policy, 2010*. The financial information refers to the turnover of the enterprise.<sup>i</sup> Peru, *Supreme Decree No. 007-2008-TR*. The financial information refers to the annual revenue of the enterprise.<sup>j</sup> Russian Federation, *Act No. 209-FZ of 24 July 2007*. The financial information refers to the annual turnover of the enterprise.<sup>k</sup> South Africa, *National Small Business Act* (Act No. 102 of 1996). The financial information refers to the annual turnover of the enterprise.<sup>l</sup> Sri Lanka, *National Policy Framework for SME Development* (May 2016). The financial information refers to the annual turnover of the enterprise.<sup>m</sup> For Turkey, the financial information corresponds to the annual turnover of the enterprise.<sup>n</sup> United Republic of Tanzania, *SME Development Policy 2002*. The financial information refers to the capital investment in machinery.

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