The Scope of the Employment Relationship

Presentation to the
International Labour Conference
91st Session, 2003
Evolution of the discussion at the ILO
Evolution of the discussion at the ILO

1997/98

• Failure to adopt a standard on « contract labour »
Evolution of the discussion at the ILO

1997/98

• Failure to adopt a standard on « contract labour »

• Resolution adopted by the 1998 Conference

« …… invites the Governing Body of the ILO to place these issues on the agenda of a future session of the International Labour Conference…… »
Work undertaken by the Office
Work undertaken by the Office

39 national studies (1999/2001)
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« Help to identify and describe the principal situations in which workers lacked adequate protection, as well as the problems caused by the lack of protection, and to suggest measures to remedy such situations »
Work undertaken by the Office
Work undertaken by the Office

• Tripartite Meeting of Experts on Workers in Situations Needing Protection (May, 2000)

➢ Common Statement adopted by the experts
The Report
The Report

• Background and context (Chapter 1)
The Report

• Background and context (Chapter 1)
• Disguised and objectively ambiguous relationships (Chapter 2)
The Report

• Background and context (Chapter 1)
• Disguised and objectively ambiguous relationships (Chapter 2)
• ‘Triangular’ relationships (Chapter 3)
The Report

• Background and context (Chapter 1)
• Disguised and objectively ambiguous relationships (Chapter 2)
• ‘Triangular’ relationships (Chapter 3)
• Recent developments (Chapter 4)
The Report

• Background and context (Chapter 1)
• Disguised and objectively ambiguous relationships (Chapter 2)
• ‘Triangular’ relationships (Chapter 3)
• Recent developments (Chapter 4)
• Prospects for international/national action (Chapter 5)
The Report

Contains information on but does not evaluate:
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Contains information on but does not evaluate:

• different criteria for determining the existence of an employment relationship
The Report

Contains information on but does not evaluate:

- different criteria for determining the existence of an employment relationship
- the substantive content of the employment relationship
The Report

Contains information on but does not evaluate:

• different criteria for determining the existence of an employment relationship
• the substantive content of the employment relationship

It does not deal with civil or commercial contracts related to the provision of labour or services
New and old forms of work
New and old forms of work

• Within the framework of an employment relationship (e.g. indefinite, fixed-term, fixed-purpose, part-time, telework etc.)
New and old forms of work

• *Within* the framework of an employment relationship (e.g. indefinite, fixed-term, fixed-purpose, part-time, telework etc.)

• *Outside* the framework of an employment relationship: civil or commercial contracts under which the services of self-employed workers are procured
What is the problem?
What is the problem?

The growing phenomenon of dependent workers who lack labour protection
What is the problem?

The growing phenomenon of dependent workers who lack labour protection

• It has a gender dimension
What is the problem?

The growing phenomenon of dependent workers who lack labour protection

- It has a gender dimension
- Specific issues around the informal economy
What are the underlying causes?
What are the underlying causes?

One or a combination of the following:
What are the underlying causes?

One or a combination of the following:

• The law is too narrow or it is narrowly interpreted
What are the underlying causes?

One or a combination of the following:

• The law is too narrow or it is narrowly interpreted
• Law is poorly or ambiguously drafted
What are the underlying causes?

One or a combination of the following:

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• Law is poorly or ambiguously drafted
• Lack of compliance/enforcement
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One or a combination of the following:

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• Law is poorly or ambiguously drafted
• Lack of compliance/enforcement
• Objectively ambiguous relationship
What are the underlying causes?

One or a combination of the following:

- The law is too narrow or it is narrowly interpreted
- Law is poorly or ambiguously drafted
- Lack of compliance/enforcement
- Objectively ambiguous relationship
- Disguised employment relationship
What are the underlying causes?

One or a combination of the following:

• The law is too narrow or it is narrowly interpreted
• Law is poorly or ambiguously drafted
• Lack of compliance/enforcement
• Objectively ambiguous relationship
• Disguised employment relationship
• ‘Triangular’ employment relationship
Disguised and objectively ambiguous relationships
Disguised and objectively ambiguous relationships

• Does an employment relationship exist?
Disguised and objectively ambiguous relationships

• Does an employment relationship exist?

• Who is an employee?
Disguised and objectively ambiguous relationships

- Does an employment relationship exist?
- Who is an employee?
- Who is an employer?
‘Triangular’ employment relationships

Employer/Provider

Employee

User

employment relationship

civil/commercial contract

work/services
‘Triangular’ employment relationships
‘Triangular’ employment relationships

Who is the employer?
- need to distinguish between the employer (provider) and the user
‘Triangular’ employment relationships

Who is the employer?
- need to distinguish between the employer (provider) and the user

What are the worker’s rights?
- may be those of the employer, of the user or a combination of both
‘Triangular’ employment relationships

Who is the employer?
- need to distinguish between the employer (provider) and the user

What are the worker’s rights?
- may be those of the employer, of the user or a combination of both

Who is responsible?
- possible sharing of responsibilities between the employer and the user
Recent initiatives
Recent initiatives

• Laws
Recent initiatives

• Laws
• Case law
Recent initiatives

• Laws
• Case law
• Official reports
Recent initiatives

- Laws
- Case law
- Official reports
- Social dialogue initiatives
Recent initiatives

- Laws
- Case law
- Official reports
- Social dialogue initiatives
- Codes of conduct
Recent initiatives

- Laws
- Case law
- Official reports
- Social dialogue initiatives
- Codes of conduct
- Enforcement measures
Prospects for national and international action
Prospects for national and international action

« ...the ILO can play a major role in assisting countries to develop policies to ensure that laws regulating the employment relationship cover workers needing protection »

(Common statement by the experts, May 2000)