



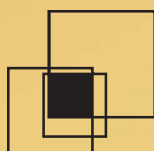
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# Extending Labour Law to All Workers:

Promoting Decent Work in the Informal Economy in  
Cambodia, Thailand and Mongolia

**David Tajgman, Editor**



Informal Economy, Poverty and Employment

**Cambodia • Mongolia • Thailand**



**Informal Economy, Poverty and Employment**

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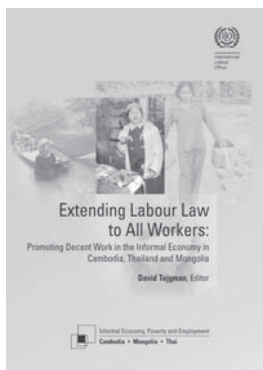
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David Tajgman, Editor  
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# Foreword

The informal economy in many countries constitutes a substantial portion of the labour force. In Thailand, it accounts for approximately 50 percent of the working population and an estimated 45 percent of the gross domestic product (GDP).

In other countries, including Mongolia and Cambodia, the informal economy makes up an even bigger proportion of workers and the economy. The private sector in Cambodia is dominated by the informal economy, which accounts for 80 percent of GDP and close to 90 percent of employment. In Mongolia, total employment in the informal economy, including employment in small-scale agricultural activities, is close to 60 percent.

In 2002, the International Labour Conference adopted a resolution concerning Decent Work and the Informal Economy. The resolution endorsed an approach based on a comprehensive strategy to reducing decent work deficits—involving the promotion of rights, decent employment, social protection and social dialogue. The Conference also stressed that decent work deficits could be traced to problems of good governance, involving not only laws and policies but also institutions, rules and procedures and political will. One of the factors identified during the Conference discussions as contributing to informality is labour legislation. Labour legislation governs employment relationships and upholds labour rights and social protection of workers. It also provides enforcement mechanisms, such as labour advisory services, access to legal aid, dispute resolution and contract enforcement. Where the law excludes certain types of workers, these workers are left vulnerable and unprotected.

This report, *Extending Labour Law to All Workers: Promoting Decent Work in the Informal Economy in Cambodia, Thailand and Mongolia*, looks at the labour law and labour administration in Cambodia, Thailand and Mongolia, and considers their relevance to the informal economy. Country studies featured in these reports have taken a decent work approach in their analysis and in identifying policy and institutional handles to address decent work deficits. They illustrate conditions found among specific groups of unprotected workers and examine how laws and institutions can extend their reach to all workers wherever they work. These studies were carried out under the UK's Department of International Development (DFID)-funded Informal Economy, Poverty and Employment Project (IE Project) implemented by the ILO Subregional Office for East Asia.

Many people have contributed to the preparation of these reports. Mr. Deline Sieng of the Economic Institute of Cambodia prepared the Cambodia country report; Mr. Bundit Thanachaisethavut and Mr. Voravit Charoenlert of the Arompongpan Foundation drafted the Thailand country report and Mr. D. Narmandakh prepared the Mongolian country study. Mr. David Tajgman oversaw the preparation of these documents, beginning from the initial workshop held in Bangkok in December 2004 which convened all the national consultants to establish the framework of the study, up to the technical editing and finalisation of the country reports for publication.

We are grateful to Mr. Tim de Meyer, Specialist on International Labour Standards, who provided valuable technical input in key stages in the preparation of these papers. ILO DIALOGUE in Geneva supported this endeavour in many key stages: Ms. Jane Hodges contributed to the finalisation of the terms of reference; Mr. Arturo Bronstein supplied important references which established the framework of these studies and anchored them on previous ILO initiatives; Mr. Alagandram Sivananthiram opened the opportunity for the project to participate in and contribute to experts meetings and regional discussions on labour law and administration.

The country studies were prepared with the strong follow-up support of the National Project Coordinators of the IE Project in Cambodia, Thailand and Mongolia; namely: Mr. Tun Sophorn, Ms. Z. Shurenchimeg, and Ms. Rakawin Leechanavanichpan. They were the hub of communication and source of supplementary information during the finalisation of the country studies. Ms. Sandra O. Yu, Chief Technical Adviser of the project, initiated the study and coordinated the subregional components of the work. Ms. Ginette Forgues, Senior Specialist on Local Strategies for Decent Work, provided valuable inputs all throughout this endeavour and technical support to many aspects of the IE Project's work.

Finally, the publication of this report was made possible through the support of the DFID-funded ILO Project on Knowledge Sharing on Decent Work and the Informal Economy in the Context of Poverty Reduction, implemented by the Policy Integration Department of ILO Geneva.

We hope that these papers will contribute to the ongoing deliberations on this issue and help shape policies that will benefit workers who do not currently enjoy the rights and protection accorded by laws and regulations.



**Christine Evans-Klock**

Director

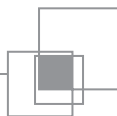
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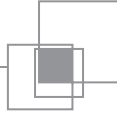


## List of Abbreviations

AC	Arbitration Council
ACILS	American Centre for International Labour Solidarity
ADB	Asian Development Bank
AIAS	Amsterdam Institute for Advanced Labour Studies
APFLRC	Arom Pongpangan Foundation—Labour Resource Centre
ASSR	Amsterdam School for Social Science Research
CAID	Cambodian Association for Informal Development
CCFTU	Cambodian Construction Federation of Trade Union
CDRI	Cambodian Development Resource Institute
CMTU	Confederation of Mongolian Trade Unions
CUFBWW	Cambodian Union Federation of Building and Wood Workers
EIC	Economic Institute of Cambodia
EU	European Union
FES	Friedrich Ebert Stiftung
GSP	Generalised System of Preferences
ICLS	International Conference of Labour Statisticians
ILC	International Labour Conference
IPEC	International Programme on the Elimination of Child Labour
LAC	Legal Advisory Committee
LDC	least developed country
LMI	Labour Medical Inspection
LPA	Labour Protection Act
LRA	Labour Relations Act
MONEF	Mongolian Employers' Federation
MSME	micro, small and medium enterprise
NESDB	National Economic and Social Development Board
NGO	non-governmental organization
NIS	National Institute of Statistics
OSH	occupational safety and health
OTOP	One Tambon One Product
SME	small and medium enterprise



SSA	Social Security Act
SSF	Social Security Fund
UN	United Nations
USG	Urban Sector Group
WCA	Workmen Compensation Act



# Extending labour protection to the informal economy: Bringing together three country experiences

**David Tajgman**

Consultant<sup>1</sup>

Århus, Denmark

*How can the rights and protections afforded by labour law be extended to workers in the informal economy? The papers in this book take up this question in the national contexts of Cambodia, Mongolia and Thailand. This paper gives an introduction and comparative overview of the issues discussed in the country papers, and offers some paradigms based on them.*

## 1. Introduction

A large and growing number of people in the world today work in the informal economy. They may, in fact, be the majority of today's economically active population. They work in enterprises engaged in a wide range of activities, each manifesting in varying degrees the characteristics associated with a formality-informality continuum. Some work on their own account without an employer. Others work in small enterprises under varying degrees of supervision and control of an entrepreneur. They work under vastly different conditions, sometimes intolerable, often inefficient, but rarely on par with conditions required for workers in the formal economy. Consistent with this and despite the predominance of work in the informal economy, most labour laws are written with workers in the formal economy in mind. Indeed, a typical feature of work in the informal economy is that it is not recognised or protected under legal or regulatory frameworks. As the delegates at the 90<sup>th</sup> International Labour Conference (ILC), held in 2002, concluded:

<sup>1</sup> Labour in Development Consultant; external lecturer in international and comparative labour law, School of Law, Århus University, Århus, Denmark. The author would like to express appreciation to Sandra Yu, Tim de Meyer and Ginette Forgues for their comments on drafts of this paper.

*“The term ‘informal economy’ refers to all economic activities by workers and economic units that are—in law or in practice—not covered or insufficiently covered by formal arrangements. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that—although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs.”<sup>2</sup>*

This publication presents the results of three country studies dealing with the challenge to formal economy-oriented labour law posed by the informal economy.<sup>3</sup> How can the rights laid down in labour laws be extended into the informal economy? What are the dimensions of the challenge in each of the national contexts? What efforts are being made to actually extend into the informal economy, either in law or in practice, the rights given to workers in the formal economy? Although the legal traditions and labour markets in each of the countries involved—Cambodia, Mongolia, and Thailand—are very different, common themes are raised in the papers. This paper establishes and explains basic concepts common to them. It goes on to compare and contrast these themes in the hope of both elucidating issues for decision-making and action, and of enticing the reader to study the detailed country reports.<sup>4</sup>

### **Social protection through labour law and administration**

For centuries, now normative protective regulations with the state’s authority behind them have impacted on people engaged in productive activities. A search through history everywhere reveals a multitude of examples of rules concerning the treatment of slaves and serfs; arrangements for the provision, use and ownership of productive resources such as land, capital, and productive tools; methods of resolving disputes between craftsmen and their apprentices; a full list is far beyond the scope of this paper. Since the advent of industrial production, states have made and enforced laws designed to control the behaviour of individuals in the conduct of their work relationships, where sharper distinctions had developed between the owners of capital and the providers of labour resources. It may be

- 
- 2 *Resolution concerning decent work and the informal economy*, paragraph 3 (adopted on 19 June 2002), International Labour Conference, 90<sup>th</sup> Session (2002).
- 3 The papers from Mongolia and Thailand were written originally in the national language of each country. The papers appearing in this publication are edited versions of the originals. The original studies were vetted in national workshops on the subject of extension of national labour law to the informal economy, held between April 2005 and March 2006.
- 4 As it is based on the analysis and conclusions of the three country papers, this paper does not aim to round out comprehensive theoretical justifications for its conclusions; interested readers are referred to the academic writings cited in the endnotes that quite skillfully do this job.

suggested that the maintenance of social order was a driving motivation in the early days, aiming to give protection in matters which, if left unattended, might lead to conflict between individual productive actors or between groups of actors at the societal level. In more recent times, providing social protection per se has been a driving motivation behind laws regulating labour relationships. The need for workers' protection has become a *sine qua non* for legislative activity. Workers need protection from persons unwilling to pay adequate or agreed wages, insisting on inhumane periods of work or working environments, or ignoring concepts of common decency in the relations between civil persons. Labour law has thus been seen as a transmission belt for conveying social protection to workers.

Of course laws seldom automatically control human behaviour. Methods are needed to administer, enforce, and in the best of circumstances, promote understanding of the law. States have established institutions with these functions in respect of national labour laws and policies. These institutions, or if you will, mechanisms of labour administration, work hand in hand with law and regulation in helping to assure social protection. They include, for example, civil servants who are employed to inspect workplaces for compliance with labour laws; statisticians who work to collect data on the actual conditions under which people work so that enforcement mechanisms and labour laws can be improved; offices staffed with personnel who help resolve conflicts involving workers and those who employ them; consultative bodies that authorise and bring together representatives of employers, workers, and civil society to find solutions to issues facing people in the world of work; public and private agencies that help place workers in jobs; vocational training programmes and institutions that help prepare workers for productive employment for others or on their own account. The operations of these institutions have a real-life effect on how labour services are bought and sold in a national labour market, and thus can be seen as tools for affecting people's behaviour in the workplace.

Even the most casual observation of today's world of work exposes the fact that there are groups of workers who do not get adequate social protection. If labour law and administration is to continue to play their role in providing social protection, it would be logical to take steps to extend their reach to these groups of workers.

### **What is meant by social protection?**

According to the Asian Development Bank (ADB), "social protection consists of policies and programmes designed to reduce poverty and vulnerability by promoting efficient labour markets, diminishing people's exposure to risks, enhancing their capacity to protect themselves against hazards and interruption/loss of income".<sup>5</sup> The ADB recognises five main areas in social protection:

---

<sup>5</sup> Asian Development Bank website: [www.adb.org/socialprotection/](http://www.adb.org/socialprotection/)

- Labour market policies and programmes designed to promote employment, the efficient operation of labour markets and the protection of workers
- Social insurance programmes to cushion the risks associated with unemployment, ill health, disability, work-related injury and old age
- Social assistance and welfare service programmes for the most vulnerable groups with no other means of adequate support, including single mothers, the homeless, or physically or mentally challenged people
- Micro- and area-based schemes to address vulnerability at the community level, including microinsurance, agricultural insurance, social funds and programmes to manage natural disasters
- Child protection to ensure the healthy and productive development of children

The ILO complements these ideas by suggesting that workers have rights at work and that these rights encompass the idea of social protection as, for example, mapped out above by the ADB. The call for “decent work” put out by the ILO in 1999 is a further simplification of these ideas, intended to establish an overarching and intuitively appealing objective for policies, programmes and law in the world of work in a manner that can be adapted to individual national circumstances.

### **What is “decent work”?**

In explaining what decent work is, the ILO’s Director General has said that...

*[t]he goal of decent work is best expressed through the eyes of people. It is about your job and future prospects; about your working conditions; about balancing work and family life, putting your kids through school or getting them out of child labour. It is about gender equality, equal recognition, and enabling women to make choices and take control of their lives. It is about your personal abilities to compete in the marketplace, keep up with new technological skills and remain healthy. It is about developing your entrepreneurial skills, about receiving a fair share of the wealth that you have helped to create and not being discriminated against; it is about having a voice in your workplace and your community. In the most extreme situations it is about moving from subsistence to existence. For many, it is the primary route out of poverty. For many more, it is about realising personal aspirations in their daily existence and about solidarity with others. And everywhere, and for everybody, decent work is about securing human dignity.<sup>6</sup>*

6 *Reducing the decent work deficit: A global challenge*, Report IA, page 7, International Labour Conference, 89<sup>th</sup> Session (Geneva, 2001).

Since 1999 the ILO has arranged its thinking and activities about the world of work in terms of four “pillars” which, taken together, amount to decent work. As noted further below, this arrangement figures in the three country studies. The pillars are:

- *Rights* – Based on the idea that all those who work have rights at work, the ILO calls for improvement of the “conditions of labour”, whether organized or not, and wherever work might occur, whether in the formal or the informal economy, whether at home, in the community or in the voluntary sector.
- *Employment* – The defence of rights at work carries with it the responsibility to promote personal capabilities and to expand the opportunities for people to find productive work and earn a decent livelihood.
- *Protection against vulnerabilities* – As it is concerned with the human condition of work, the ILO has the responsibility to address the vulnerabilities and contingencies that take people out of work, whether these arise from unemployment, loss of livelihood, sickness or old age.
- *Social dialogue* – In order for rights to be defended, employment promoted and work secured, participation, freedom of association, social dialogue, and conflict resolution need to be promoted both as a means to decent work and an end in itself.<sup>7</sup>

Lastly, the idea of decent work deficit can be introduced and defined as “the absence of sufficient employment opportunities, inadequate social protection, the denial of rights at work and shortcomings in social dialogue. It is a measure of the gap between the world that we work in and the hopes that people have for a better life, characterised by decent work”<sup>8</sup>.

When the ILC in 2002 raised the challenge of applying labour law to the informal economy, it reaffirmed that all workers—whether in the informal or formal economy, working on their own account or for an employer—have the right to obtain decent and productive work, in conditions of freedom, security and human dignity. This calls for recognition of the fact that “all those who work have rights at work, irrespective of where they work”<sup>9</sup>, meaning that labour law, as the worn transmission belt of social protection, needs inspection for repair.

<sup>7</sup> *Decent work*, Report IA, page 6, International Labour Conference, 87<sup>th</sup> Session (1999).

<sup>8</sup> *Reducing the decent work deficit: A global challenge*, Report IA, page 8, International Labour Conference, 89<sup>th</sup> Session (Geneva, 2001).

<sup>9</sup> *Decent work and the informal economy*, Report VI, page 4, International Labour Conference, 90<sup>th</sup> Session (Geneva, 2002).

### **What rights and practices make for decent work?**

A main purpose of labour law is to clearly lay out rights at work. These rights should assure social protection in the national context. What fundamental rights or minimum social protection would labour laws prescribe if they were to be framed to focus on workers in the informal economy?

There is broad international support for unequivocally insisting first upon the set of four fundamental rights established in the ILO's Declaration on Fundamental Principles and Rights at Work. As discussed in the country papers, ways need to be found to give practical effect, for informal economy workers, to:

- the freedom of association and the right to collective bargaining;
- the elimination of all forms of forced or compulsory labour;
- the effective abolition of child labour; and
- the elimination of discrimination in employment and occupation.

In addition to these fundamental rights, there would likely be broad agreement that laws should require that informal economy workers be promptly paid what they are due for work performed, work in conditions that do not jeopardise safety or health, and enjoy a modicum of rest from work.

The essential point, returning to the idea of social protection, is that people are working in circumstances of poverty and vulnerability, outside the reach of policies and programmes aimed to reduce these circumstances. These deficits can thus be seen as the result of either intentional or practical exclusion from arrangements for social protection, including that established in labour law.

An essential but insufficient first step to extending social protection is extending labour law to the informal economy. Yet resistance to the type of formalisation that aims to merely extend existing labour laws to all workers suggests that such an approach would, in most cases, not meet the challenge faced by labour law in today's de-formalising world of work. The test for modern labour law is its ability to actually reduce the decent work deficit faced by today's most vulnerable working population: workers in the informal economy. Any lesser benchmark ignores the gap between the requirements set in labour law and those actually faced by workers—a gap that undermines the rule of law in the field.

Using this benchmark—the potential for legal approaches to actually reduce the decent work deficit by including informal economy workers within social protection policies and programmes—the papers in this publication examine what might be done to frame labour law with a focus on informal economy workers. Each paper begins by briefly describing the informal economy in the country. The decent work deficit in several selected informal economy sectors and/or occupations is then described with this benchmark in mind and with a view to analysing laws and arrangements, including those not traditionally associated with labour administration systems, put in place to promote standards' application and reduce the decent work deficit. Each paper culminates with observations, conclusions and concrete recommendations.

## 2. Elements compared and contrasted

### Searching first for decent work deficits

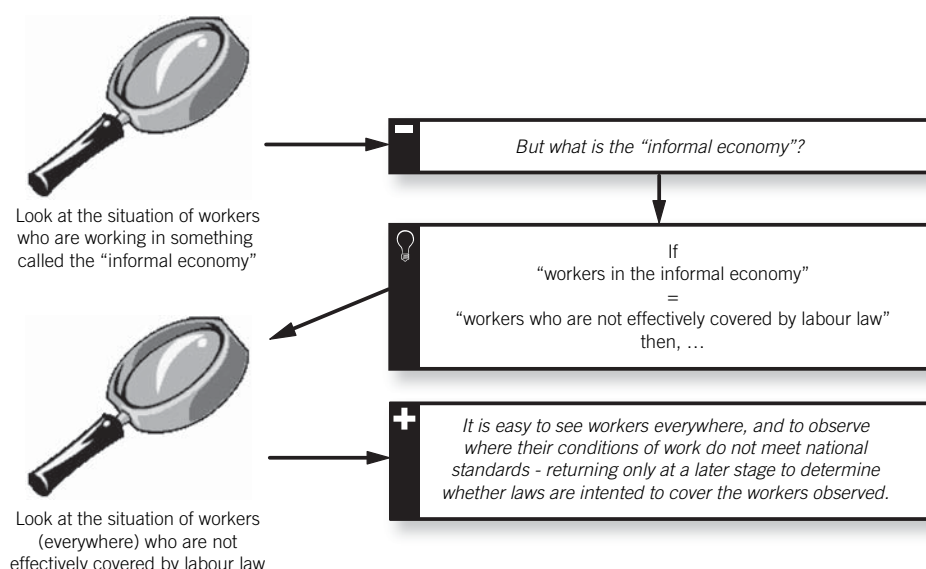
Each of the country papers attempts to characterise the informal economy; in each the proportion of workers in the informal economy is quantified, sometimes using a variety of methods. Depending on the definitions used, in Mongolia between 13 percent and 66 percent of the working population are employed in the informal economy. The figure is 85 percent in Cambodia and 68 percent in Thailand. In light of these large numbers, it can be argued that labour law has a marginal significance for these countries' working populations. This is particularly so if those working in what is seen as the informal economy are by definition unprotected either in law or in practice; in this case we are specifically saying that labour law has little legal or practical effect.

The importance of the conclusions reached by the 2002 ILC mentioned above cannot be undervalued in this discussion. Those conclusions shift the focus of attention to the effectiveness of formal arrangements for ensuring that working people have elements of decency in their work. This approach puts the spotlight first on actual working conditions of the entire working population. It then moves to illuminate the relationship between formal arrangements—including the law—and those working conditions.<sup>10</sup> Following this logic, the distribution of rights and benefits in labour laws of modern vintage take into account the characteristics of today's labour markets. The approach taken in the country papers—based on the idea in the 2002 ILC conclusions—is recommended for situation analysis aimed at policy change and law reform.

<sup>10</sup> Starting the analysis the other way around—putting the spotlight on the rights and benefits granted or denied, and the application of those rights and benefits—has two bad effects. First, it circumscribes the inquiry to working populations already defined by the laws. These definitions—typically old in origins and operating in economies where labour markets were once more clearly segmented into a modern or industrial one on the one hand, and a traditional or indigenous one on the other—may themselves be wrongly or clumsily drawn up in terms of today's world, failing to accurately take into account the groups of workers who arguably ought to be granted rights and benefits. This failure causes the analysis to overlook the essential point: Which workers are suffering under indecent working conditions? Second, the analysis and discussion of the problem may stop with, become bogged down in, or be diverted by the effort to make sense of provisions of the law in light of today's economies. See, for example the excellent paper by José Luis Daza, *Informal economy, undeclared work and labour administration*, DIALOGUE Working Paper No. 9, ILO (Geneva) April 2005, where section 3 methodically catalogues the ways labour laws include, exclude and exempt groups of workers.



**Figure 1: Looking for decent work as a proxy for the “informal economy”**



### Who suffers decent work deficits?

Groups named in the three national papers as suffering decent work deficits have several broad characteristics in common.

#### ***Groups vulnerable to erratic work***

Whether they are the self-employed in Mongolia, casual construction workers in Cambodia, or dependent home workers in Thailand, the insecurity of continuous, income-generating work leads to long hours when work is available and there is downward pressure on wages because of workers who are willing to take any work that is available. The challenge is derived from the precariousness of the entity which workers directly face—be it the product market or the supervising employer. Where the particular workers involved are dependent workers, the potentially volatile product market is removed from the worker, i.e. the supervising employer directly faces the market, not the dependent worker. Their vulnerability in this case is derived from the conditions set by the employer. Where these workers are more independent, or working on their own account, the product market is faced head-on. They are more directly affected by the conditions in the product market. Worker-focused remedial measures, whether they are legal or programme interventions, need to take this distinction into account.

#### ***Workers in vulnerable conditions***

Other workers are vulnerable because of the work situations they find themselves in. For example, vendors who pay bribes to officials in order to have a place to work, women who face harsh working conditions in order to sell beer, contract farmers who face low incomes on account of imperfect knowledge of

the markets their customers operate in, migrant workers illegally present in the country having to accept any conditions as long as they can have work and children unable to assert themselves doing domestic work. Each of these is an example of decent work deficits grounded in problems of status (i.e. legal, social or gender). Changes in law and enforcement mechanisms can be fundamentally important in beginning to meet some of these challenges.

### ***Groups affected by globalisation and transition***

Globalisation's effects on local labour markets have been cited in all three papers as a cause of certain groups of workers' decent work deficit. In Mongolia, it is argued that the transition to a market economy has thrown many once-formal economy workers into the informal economy. In Thailand, the availability of export markets seeking low-cost products and hence low-wage production has put pressure on production processes, throwing groups who impliedly could be working in the formal economy into the informal. And in Cambodia, the garment export sector—along with tourism and public administration—has not been creating enough formal employment, thus obliging remaining participants in the active population to seek work in the informal economy.

The World Commission on the Social Dimension of Globalisation made it clear that globalisation has benefits and costs, and that national policies need to be put in place in order to maximise the former and minimise the latter.<sup>11</sup> The same applies to the transition from a centrally controlled to a market economy. The way labour laws are conceived and extended is important in this light.

### **The diverse nature of indecent work validates a review of the four-pillar framework**

The decent work deficits faced by workers in the informal economy vary, stemming from different problems at work. The Cambodia paper specifically notes this.

In light of this diversity, it would be useful to have a method for organizing situation assessments of different groups of workers. In this study, the national researchers chose to arrange their assessments within the ILO's four-pillar decent work framework.<sup>12</sup> The framework provided a sufficiently concrete organizational methodology and at the same time permitted a great deal of latitude for describing particular issues.

For example, in some cases, the problems are very similar to those faced by employers. This is no surprise where there is discussion of own-account workers—own-account operators could become employers with greater volumes of work. A number of examples from the three papers can be summarised.

11 *A fair globalisation: Creating opportunities for all*, Report of the World Commission on the Social Dimension of Globalisation, ILO (2004).

12 A meeting of the researchers and authors of these papers was held in December 2004. There, several methodologies were discussed and the common approach discussed here selected.

- For some workers in the informal economy, access to markets and to credit can be of critical importance for improving working conditions. Thai textile producers need access to credit to invest in making higher value-added product. In Cambodia micro-vendors need to be able to secure a space at the marketplace; moto-drivers need to be able to secure space at pick-up parking areas.
- Regulation and costs are important to vehicle-owning taxi drivers in Cambodia.
- Security of land tenure is reported to be a major concern among Cambodian own-account farmers, leading to under-investment in this all-important resource.
- Contracting arrangements between home workers and their customers in Thailand attempt to shift the duty to establish decent working conditions to the home workers themselves, as if it were a risk assigned through bargaining between commercial partners with similar bargaining strength.

But, some workers suffer from decent work deficits that are more akin to those of ordinary formal economy workers who are dependent on an employer to provide them with supervision, materials, location and tools for their work.

- Cambodian casual construction workers are clearly dependent workers who suffer from low incomes arising from crowded labour markets.
- Entertainment and restaurant workers in Cambodia are similarly dependent, and more vulnerable because of their workplace and the products they sell.

We look now at common themes within this four-pillar decent work framework.

### **The decent work deficits**

#### ***Rights at work***

The three papers first catalogue issues related to the poor enforcement of the rights held by informal economy workers and ask whether something can be done to give better practical effect to the rights that are granted. For example, the Thai paper notes that the workers engaged in a small enterprise making mulberry paper products are covered by the Labour Protection Act, but nevertheless do not receive the wages, hours, and other benefits that are called for by the legislation. In Cambodia, regular agricultural workers are covered by protective legislation, but suffering under inadequate enforcement.

The papers identify the absence of rights among informal economy workers. The definition of workers intended to be included and excluded by the relevant laws comes up repeatedly in this connection. The papers broadly argue that with the economically active populations as they are today, the definitions exclude large numbers of workers from the coverage of labour laws' standards on working conditions, wages, hours of work, and similar issues. For example, the Thai paper

names three broad groups of workers excluded from the Labour Protection Act. In Mongolia, the Labour Law protects only persons with written labour contracts. Although an employment contract is also a condition for rights in Cambodia, a verbal contract is sufficient. Even so, certain groups (civil servants, diplomatic workers, transport workers, and domestic workers) are excluded, or in some cases, covered by special legislation.

The *de jure* extension of the rights and benefits established in labour law to a broader population of workers was an aim of each paper's discussion. Yet the papers are careful to distinguish solutions calling for extension that can be made simply by broadening inclusions and minimising or eliminating exclusions.

- Current Cambodian legislation is applauded for being broadly inclusive of all employee-employer relationships regardless of enterprise size, sector of economic activity, or casualness of work.
- This idea can be seen in the paper from Thailand, where rights and benefits were extended to agricultural workers and home workers by way of two separate regulations that remedied the limited coverage of the labour law. According to the paper on Thailand, the approaches taken to extending the regulations were different because agricultural work is easier to characterise in law and identify in practice than home work. The characteristics of the type of work and worker the home work regulation sought to tend to had to be elaborated, taking on particular importance in the regulation.
- The paper from Cambodia also recognises different interests among groups of informal economy workers. On this basis, consideration should be given to extension via specific regulations aimed at different groups.
- In Mongolia, trade unions put forward the idea to reject regulating labour relations only where there is an employee-employer relationship based on a written contract of employment in 2003. The paper not only describes why basic concepts in the laws need to be reassessed, but how this had not been done in time for amendments made to the law that year.

A third issue raised in the three country papers—although to a limited extent—has to do with which rights are extended to workers in the informal economy. All rights held by formal economy workers could be used as a normative starting point; the paper from Mongolia calls for an outright end to discrimination between workers in the formal and informal economies as to the social rights and benefits each group enjoys in law. The Cambodian paper alludes broadly to the need for law targeted specifically to particular informal economy workers' decent work deficits, arguing differences in the groups' interests. Details are given of the rights and benefits—and underlying logic in both cases—granted to Thai home workers under the special regulations in that country.

### ***Access to productive work***

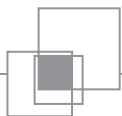
The extension of (protective) labour law per se has marginally little to do with increasing access to productive work. Indeed, according to the popular conception of labour law, its extension is associated with reducing access to productive work. This idea is based on the assumption that protection measures increase the cost of labour or require additional investments, thereby discouraging employment. This is overly simplistic and has been the subject of much debate and scholarly examination.<sup>13</sup> There are nevertheless two points to be made here.

The first is that the extension of labour laws—including laws implementing the full range of labour administration policies—can play both a positive and negative role in improving access to productive work; it is important to specifically target the former. The second is that the decent work model actually helps focus attention on the issue of developing labour laws so that it is consistent with both the protection of rights and promotion of employment.

The papers have explored, only in a limited way, how existing labour laws may have negative impacts on access to productive employment. This is understandable since such an inquiry would focus on work that is effectively protected under labour laws while the focus here has been on unprotected work. Yet each of the papers speaks about the transformation of informal economy activities to formal. If the informal economy is defined by the fact that workers there are either literally or practically unprotected, then the very laws that are not applied are those that place these workers in the informal economy. Since it could be argued that employment opportunities might be reduced by transformation, it would have been good to have learnt how laws need to be changed in order to both bring workers into the formal economy, that is to say, extend the legal and practical reach of labour law, and maintain their employment.

The paper from Mongolia emphasises transformation as a desirable goal and a matter that has been discussed and acted upon by the social partners. Yet it is noted that most job creation in recent years has been in the informal economy, and that the de-formalisation of jobs previously in the formal economy has contributed to this. This suggests a positive correlation between employment opportunities and the limited reach of labour law. Perhaps most interestingly, the paper notes that the government and local bodies have been obliged to recognise and support informal economic activities on account of the jobs they create. However, since the line between illegal shadow economy activities and legal activities in Mongolia's informal economy is sometimes fine, officials have difficulty supporting such activities and are tempted to suppress them.

<sup>13</sup> See, for example, “Labour Market Flexibility”, *Labour and Society*, Vol. 12, No. 1, January 1987, for an older but still representative review of the issues involved from an comparative legal and economic standpoint.



The paper from Cambodia takes a pragmatic approach, calling for close study of possible employment impacts of regulation on informal economy activities.

The papers discuss non-legal interventions that can help informal economy workers access productive work. Marketing and credit interventions are noted in the papers from Thailand (textile production, contract farming) and Cambodia (micro-vendors). The economic support needed for both countries to make training possible for informal economy workers is also discussed.

What of mechanisms to help the more dependent informal economy workers find work with small enterprises? There is sparse information on this for quite understandable reasons: Work in the informal economy is something that is not endorsed—workers are told to look for jobs in the formal economy. Existing mechanisms designed to put people in jobs therefore aim to put them in formal jobs. In short, laws and regulations mentioned in the papers from Mongolia and Cambodia have not set up job or apprenticeship placement services for micro and small enterprises associated with the informal economy.

There are, of course, other labour administration mechanisms, with associated laws and regulations, which are relevant to putting workers in a position for jobs in the informal economy. As noted above, vocational training and educational opportunities offered by public authorities do, in fact, enable workers to do or make more productive work through self-employment (or in the informal economy).

### ***Social protection***

Protection from physical and economic risks is the focus of this area of decent work. The country papers discuss both.

Social security protections are discussed at length in each of the papers, including the possibility to participate in social security programmes, the effective coverage of such programmes, and who should pay for participation.

In Cambodia, the law excludes important numbers of workers since social security protections are coextensive with legal protection of labour rights, i.e. the self-employed are not covered. Interestingly, the paper points out that although dependent workers of small enterprises are covered by the law, the failure of these enterprises to register them make these workers no better than the explicitly excluded self-employed. There has been consistent movement in Thailand to bring the self-employed and workers employed in small enterprises within the protection of social security programmes. The movement is deliberate, but practical challenges remain in actually bringing these workers into the system. The situation is similar in Mongolia. There, systems for social protection are open to all on at least a voluntary basis, including the self-employed.

Where coverage is available to independent self-employed workers, these workers are required to pay higher premiums than others working as dependent workers in the formal economy. This effectively keeps participation

of the self-employed low. Both the Mongolian and Thai papers argue that the self-employed—who are eligible for voluntary participation—should not bear both employer and worker portions of relevant premiums. Considering the numbers of persons involved, the reality is that someone will have to cover both contributions if benefits are to be funded. Alternatively, more affordable packages covering fewer yet more immediate contingencies can be developed. This is currently being explored in Thailand.

It can safely be assumed that the physical risks involved in informal economy activities are at least as great, if not greater than those facing workers in the formal economy. In fact, legislation excludes significant numbers of workers in Cambodia, where occupational safety law does not cover self-employed workers and others outside the defined employer-employee relationship. In Thailand, the government is said to have no occupational safety and health policy for informal economy workers; the recent home workers regulation nevertheless clearly places safety obligations on employers who order work from home workers, a fact that suggests a policy does exist, at least with respect to these workers.

### ***Voice and representation***

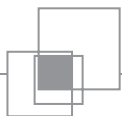
The question of voice and representation turns up to be critically important in virtually all of the case studies. First, each paper cites cases illustrating the distinction between dependent informal economy workers who need the means to organize with a view to collectively bargain, and independent informal economy workers (own-account workers) who need to be able to associate to negotiate with government officials and leverage bargaining power with customers, amongst other things.

Looking at the group of dependent workers, the papers from Mongolia and Cambodia call out to existing trade unions to organize dependent workers in the informal economy. Each of these papers remark on both the potential importance of organizing these groups of workers for the improvement of their conditions of work and the difficulties existing organizations have in doing so.

Considering the second group, all three papers acknowledge the potential importance of other types of organizations for creating more decent work in the informal economy. These organizations either work in the interest of more independent informal economy workers (non-representative NGOs), or consist of such workers (membership organizations). The paper from Cambodia interestingly gives several examples of instances where the former type of organization was successful in pursuing the interests of individuals and groups working in the informal economy.

Secondly, the papers discuss legal and practical constraints faced by workers in the informal economy organizing or being organized into trade unions or other forms of organizations or engaging within associations in programmes or activities in pursuit of occupational interests. While the broad freedom to associate is recognised in each of these countries, some hindrances were nevertheless noted.





- In Cambodia, trade union representatives need to be involved in collective bargaining; an attempt to collectively bargain cannot legally take place where they are not present.
- Also in Cambodia, the purposes for which an interest group organization can legally form are narrower than those permitted to trade unions. This may inhibit associations of small-scale entrepreneurs since the benefits in their organizing are derived from the ability to speak in unison, not at the bargaining table with employees, but in the marketplace with buyers of their products or with public officials who have great practical influence over the conditions in which they work.
- In Mongolia, the general decline of workers' organizations in the wake of the transition to a market economy seems to be at least partially to blame for its foundering efforts to organize dependent workers in the informal economy. This, along with the intentional continuing focus of some organizations on only formal enterprise workers, needs to be changed, according to the paper.

The discussion of the legal situation in Mongolia is important because of the distinct legal recognition given to citizens' organizations "in the service of society" and "in the service of members". Both are lawful and independent informal economy workers there have established numerous member-servicing organizations (that are neither cooperatives nor trade unions, both of which are organized under their own laws) to represent their interests. This arrangement fills the gap seen to exist in Cambodia, where such organizations are uncertain of their right to negotiate or advocate where there is no provision in the law recognising organizations working for members' interests.

Another noteworthy development in Mongolia is the organization of informal economy workers within employers' organizations. In this case, examples are given of informal economy operators' organizations finding a voice in negotiating social cohesion agreements with public authorities. While it is not odd to observe employers' organizations giving support to informal economy entrepreneurship, it is rare to see an example where formal economy employers' organizations involve informal economy organizations in the ways described in the paper.

It is interesting to wonder why the paper from Thailand appears to be less than enthusiastic about the usefulness of organizations of formal economy social partners as a channel for promoting decent work in the informal economy. There, emphasis seems placed on the need for self-organization as the relevant method for improving the day-to-day situation of these groups of workers. Perhaps the position of the paper from Thailand throws a pragmatic light on the otherwise marginally optimistic tones heard from Mongolia and Cambodia.



### **Enforcement and extension**

Since informal economy workers include workers who have rights under the law, but are insufficiently covered by formal arrangements set up to make those rights effective, the three country papers discuss the question of enforcement and practical extension efforts.

The problem of labour inspection is acknowledged in all three papers. The paper from Mongolia estimates that each labour inspector is responsible for inspecting 354 legally registered enterprises; it is estimated that approximately 10 percent of the total labour force is reached by labour protection enforcement mechanisms in Cambodia; and in Thailand, the inaccessibility of home workers is cited as a reason for few inspection visits at home workplaces—although new regulation aims specifically to improve the situation for this group of workers.

The Thai paper unconventionally concludes that the effectiveness of law enforcement does not depend on the number of inspectors or budget, but on the participation of those concerned. The paper recommends that the ministry responsible for labour incorporate multi-stakeholder participation into inspection processes, and reflect this in law. This idea is also found in the paper from Cambodia, which argues further that stakeholders should be targeted for intensified education in labour rights, inspection, and enforcement methods. Capacity and institution building are also suggested. Both the Mongolian and Cambodian papers suggest decentralisation of enforcement institutions and capacities, and emphasis is placed on developing and using preventative and advisory functions and tactics in Mongolia.

### **The special situation of own-account workers**

Own-account workers—those workers in the informal economy who do not have a controlling and supervising employer—seem to be a group with many members who experience a decent work deficit. Yet action to help close the gap for this group is especially outside of the scope of traditional labour law precisely because they work in the absence of a controlling and supervising employer. These workers are typically seen to warrant freedom from regulations that might hinder their occupational or entrepreneurial opportunities. The legal approaches discussed by the three papers confirm this and common sense suggests that policy and programme interventions should be emphasised over traditional protective legislation.

However, fast conclusions need to be carefully avoided. For example, legislating the hours of work for own-account workers would seem far less useful than practical efforts to increase productivity, and thus ease pressures for longer work hours. Legislated work hour limits may even be counter-productive if a basis was thereby created for corrupting law enforcers. Yet reasonable physical safety requirements that reduce the likelihood of productivity decline in the long-term could be argued before lawmakers, particularly where law reform efforts are accompanied by productivity enhancing extension programmes and training initiatives. In sum, as argued in the three papers, there is certainly scope for

legislative and programmatic action targeting the self-employed—care simply must be taken to determine what types of interventions are most appropriate and likely to be the most effective.<sup>14</sup>

### 3. Conclusions and recommendations

What conclusions can be drawn from the three country studies found in this publication? What recommendations can be made to those who want to extend national labour laws' rights and benefits to workers who currently do not enjoy them?

Best practices are not apparent in the three country studies; no paper was really able to present evidence that change made in laws have had a demonstrable effect in reducing the decent work deficit of groups of workers in the informal economy. However, having said that, there are some noteworthy experiences that are likely to prove their worth for spreading decent work in the coming years.

#### Focus on groups of workers

Is group- or sector-specific legislation more effective (or likely to be more effective) than law reforms operating simply to open wider the existing umbrellas of protection? In Thailand, for example, regulations specific to home workers and agricultural workers have recently come into force. Both regulations aim to close the decent work deficit for the relevant worker groups. The Thai examples reflect important evidence from the country studies suggesting that group-focused legislation would seem particularly effective or appropriate in certain circumstances.

<sup>14</sup> See, Shinya Ouchi, Professor, Kobe University, Japan, who captures the point with regard to own-account workers in his paper “Labour law coverage and the concept of ‘worker’”, published in the *Bulletin of Comparative Labour Law*, Vol. 53, Labour Law In Motion (2004):

“According to recent research I conducted, many franchisees proved to be in the midst of a harsh economic climate and working conditions were severe, even if, legally speaking, they are considered to be company owners. The owners of franchises usually are proprietors or leaseholders of their shops and pay a license fee to their franchisers. The franchiser provides the franchisee with know-how and other information and at the same time controls the franchisee’s business. Of course, the franchise owners are not employees, on the contrary they employ people. However, they run a high risk, while on the whole receiving low remuneration. Such a “high risk and low return” situation may in fact need more protection than the “low risk and low return” situation typical of normal employees. But through my research I discovered that many franchise owners prefer working without restrictions than working under paternalistic protection. Therefore, legal intervention in this case may be unnecessary, even if the working conditions are very harsh and economic situation miserable. This is an example that the needs of workers are various and complex, and the expansion of the total labour protective laws towards economic dependent and legally independent workers is not always welcomed by such workers. Nevertheless, the coverage of labour laws needs to be expanded, even if the scope and the provisions depend on the individual and the type of worker.”

The evidence has to do with the distinctive interests held by groups of informal economy workers. Apart from those workers who are clearly dependent on an employer for day-to-day supervision and management of work, the interests of other groups (such as own-account workers, small entrepreneurs employing only family members, members of cooperatives, contract workers who are operationally independent but economically dependent, etc.) may be so distinct with respect to certain areas of rights that they warrant using particular formal arrangements if decent work is to be effectively promoted. Some examples can be given:

- The dispersion and relative invisibility of Thai home workers' workplaces called for a particular approach to make workplaces visible. It involves registration, and reporting contracting and work orders. Combined with an assignment of responsibility for safety to the benefiting employer and an arrangement of labour inspection based on community surveying, the Thai regulation takes a quite specific approach to labour inspection that is reasonable and appropriate to this group of workers. The same approach would not be appropriate for other workers.
- The challenges of access to local, national and international markets faced by producers of rurally-based handicrafts such as handwoven textiles, wood and processed food products in Thailand make the "one tambon (village), one product" programme properly suited to supporting employment opportunities of small-scale rural producers. Different types of programmes with similar objectives would probably be appropriate for different products like, for example, raw agricultural commodities destined for local markets (which might benefit from a programme assuring restricted use of pesticides), personal or professional services (which might benefit from a quality assurance certification programme), or manufactured products destined for international markets (which might benefit from a social standard certification programme).
- Small-scale family farmers in Cambodia would benefit from land tenure law reform that would help them achieve productivity improvements that, in turn, could increase their chances of having more decent work. Such an intervention is to be differentiated, for example, from the tenure-related issues faced by urban micro-vendors in the country's capital city who seek allocation of urban space for vending.
- For the Cambodian micro-vendors, a clarification of their right to be in a marketplace combined with a campaign against corruption among low-level public officials would be important for their decent work opportunities. This would be inappropriate for other workers.
- In Mongolia, efforts to retool vocational training opportunities to work done by workers in small enterprises could help improve productivity in those enterprises and, in turn, the availability of decent work to those working there. Other efforts would have to be made if herders were the targeted beneficiaries.

This being said, there is also evidence that broader changes can be meaningful for extending decent work.

- Although the offer of social security cover has not been taken up enthusiastically by the self-employed in Thailand and Mongolia, at least the opportunities are available than as compared to Cambodia. Slow subscription to these programmes may be part of the usual challenge of extending the coverage of social security protection in practice; this is a quintessential aspect of the development of any national social security programme, not only in countries with large informal economies.
- Protection could be better extended by removing a basic definitional limitation to the coverage of labour legislation—for example, the requirement in Mongolia of a written contract. This is particularly so for those who are dependent workers in small enterprises where written contracts and fulfilment of other technical requirements are likely to be the exception rather than the rule.

These sets of examples could be seen as appropriate interventions taken at micro- (viz. enterprise or household), meso- (viz. institutional) and macro- (viz. policy) levels. Nevertheless, the point from the papers is that there is no “one size fits all” solution in law to the decent work deficits suffered by large segments of today’s working populations.

### **Care in collecting the basket of rights to be promoted**

The papers present some evidence related to the subject discussed immediately above to suggest that the wholesale extension of rights, while in some cases essential, is not always sufficient. In other cases, it can be expected that rights that are extended will not have an appreciable impact on the decent work deficit of particular groups of informal economy workers. The cumulative lesson is that care needs to be taken in collecting and extending in law the basket of rights targeted for promotion. Taken together with preceding observations, a push-pull/demand-supply paradigm can be suggested which recommends systematic checking to ensure that new arrangements meet the particular demands of the informal economy workers concerned and are appropriate in character to satisfy those demands.

Take, for example, the broad basket of rights and benefits given in Cambodia to all persons in an employee-employer relationship. The country study suggests that the actual delivery of this basket is hampered—a case of necessary but not sufficient action being taken. A similar situation exists with the right to organize in Mongolia, where trade unions have apparently continued to focus on workers in the formal economy; the result being that dependent informal economy workers remain unorganized. (Happily, it appears that own-account workers are beginning to use their associational rights.)

These examples can be contrasted with the situation where the extension of rights in law is not expected to have a practical impact on the workers concerned. While the granting of associational rights, protection from forced labour and

prohibition of discrimination would potentially be important for closing the decent work deficits of own-account workers, the extension of, for example, statutory minimum wages or hours of work limitations to the same groups of workers—be they micro-vendors in Cambodia, contract farmers in Thailand, or herders in Mongolia—would do little to affect the behaviour or incomes of these groups. Although child labour prohibitions would set an important normative backdrop for other interventions, such obligations imposed on persons working in these same areas would have little impact without other interventions.

### Drafting of laws

The country papers did not explicitly discuss how best to word the policy intent in draft laws. It might be argued that this is absolutely critical since the essential question is how the language that grants rights is cast to ensure that it is properly understood and implemented.

A problem is that important elements of labour law are traditionally cast in terms of the employment relationship. As the country papers argue, legislative definitions either belie the reality of work relationships these days or quite effectively cut out large segments of the population from rights and benefits that are essential for developing conditions for decent work. In this sense, drafting could be seen to be at the heart of the problem.

This paper argues that drafting should be seen as the last step in the process of extending labour law to workers who “—in law or in practice—are not covered or insufficiently covered by formal arrangements”, including the law.

The question of drafting has been discussed extensively elsewhere in recent ILO research.<sup>15</sup> Seen from the perspective of trying to be all-inclusive, laws granting workers’ rights could, for argument’s sake, be framed to cover “all real persons who are occupied in the production of goods or services of any kind”. These words should be effective in conveying the idea that “all those who work” are covered by laws that grant rights and benefits.

Of course, the matter is not so simple. Even if one wanted to be all-inclusive it would be necessary to draw lines between groups of workers at the very least to accommodate existing laws and institutional arrangements and perhaps also to recognise distinctions in different types of work. A first common segregation is of persons who are engaged in the production of goods and services in the employment of the state. A question could arise even at this starting point: What is meant by “employ”? The further dissection of “all those who work” into groups—an exercise necessary for the proper allocation of rights and benefits or the methods for enforcing them—would require country-level analysis and drafting that is beyond the scope of this paper. Yet, at least, three recommendations are offered here, in addition to those already made:

<sup>15</sup> See, for example, José Luis Daza, *Informal economy, undeclared work and labour administration*, DIALOGUE Working Paper No. 9, ILO (Geneva) April 2005. This Working Paper discusses several matters taken up in this paper, but in a broader context. It is highly recommended to the interested reader.

- First, start from the very beginning without reflecting on current labour law or labour administration institutions. Although this is likely to be extremely difficult in practice, doing so would probably give the best results in terms of framing the most accurate descriptive terminologies for groups of workers and for properly allocating rights and benefits. If it is impossible to really start from the very beginning, the “very beginning” can be used as a theoretical reference point from which appropriate amendments can be derived.
- Second, avoid descriptions of relationships; make and describe categories based on concrete and observable realities. For example, it is easier to know whether a person works in the agricultural or manufacturing sector, or whether work is performed at a location decided upon by another, or performed with equipment owned by another, than it is to know whether she or he works under the “subordination of another”.<sup>16</sup> Although facts that lead to a conclusion of work being done under the supervision and direction of another can ultimately be illuminated for a judgment maker, i.e. a judge, labour inspector, or arbitrator, it is best to avoid as far as possible the need for interpretation.
- Third, harmonise the division of rights and benefits. It is best to strive to cast rights common to groups of workers in language that is exactly the same regardless of whether the provisions are placed in different laws or not. This is done to promote consistent interpretation of these rights. Where the basket of rights granted to a group of workers is different from others, the differences in language should be marked.

16 In line with this, paragraph 9 of the ILO’s draft Employment Relationship Recommendation suggests that “[m]embers should consider the possibility of defining in their laws and regulations, or by other means, specific indicators of the existence of an employment relationship. Those indicators might include: (a) the fact that the work is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the workers; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; or requires the worker’s availability; (b) the provision of tools, materials and machinery by the party requesting the work; (c) periodic payment of remuneration to the worker; the fact that said remuneration constitutes the worker’s sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the workers in order to carry out the work; or absence of financial risk for the worker.”

The question could be posed: How should reference be made to own-account workers as compared to dependent workers? Surely the relationship of the dependent worker has to be described in legislation—it is these people who are in an “employment relationship”. But does it? Labour legislation would have a fresh start if it granted rights to “all those who work” as opposed to persons falling into one of the multitude of definitions of dependent workers, i.e. “workers under an employment contract”, “persons under the control and supervision of another”, etc. Such a change would recognise that in the world today it is not only dependent workers who are vulnerable and suffer from decent work deficits that the law can be useful in giving.<sup>17</sup>

17 It may be interesting to reflect on the vulnerabilities faced by workers that led to the development of labour laws at the dawn of industrialisation. Large numbers of workers were moving into waged employment in factories, leaving cottage industries or agricultural endeavors. Important productive inputs were placed outside the reach of individual workers. Dependency and vulnerability began to be perceived. Workers in factories were granted rights and benefits because they were perceived to be vulnerable at the hands of employers. Compare this with the situation today. Are today’s own-account workers—consider those described in the country papers—any less vulnerable than today’s dependent workers? How might they compare to the cottage industries and small-scale agricultural undertakings of the newly industrialising world of the early 1800’s?

See, Alan Hyde, Professor, Rutgers University School of Law, New Jersey, USA, captures the point in “What is labour law?” forthcoming in *Boundaries and Frontiers of Labour Law: Goals and Means in the Regulation of Work* (Guy Davidov & Brian Langille eds.)(Oxford: Hart Publishing, 2006).

“The question, ‘why is the employment relationship deserving of special legal treatment’, would not have occurred to the generation that founded the subject. Labour and employment law grew up against a universal assumption that the relationship of work or [dependent] employment was simultaneously the site of: (1) the greatest social oppression, (2) the greatest inequality of bargaining power, (3) the most revolting excesses of power, and (4) the greatest social conflict. On these four assumptions, special legal institutions, to provide floors of protection, permit collectivised bargaining, restrict employer power, and mediate conflict, obviously are well-targeted at the employment relationship, though of course the forms and force of such legal interventions will always be controversial. On the assumption that the employment relationship is the site of the greatest need for legal intervention, it became a logical site to administer educational programmes, savings for retirement, access to health, and the other aspects of the welfare apparatus of modern states.

Our problem today is that none of these four foundational assumptions of labour law is still true. The employment relationship is no longer the site of the greatest oppression, or the greatest inequality of bargaining power, or the most revolting excesses of power, or the greatest social conflict. In every country, the employed have it quite a bit better than the unemployed, or those excluded from the labour market by age or gender or immigration status or lack of skills. In every country, serious oppression, inequality, and conflict are found among these individuals outside the labour market, perhaps recipients of public assistance, perhaps working in relationships that are difficult to characterise as employment: for example, genuinely self-employed marginal labourers who work for many different people, or self-employed tenant farmers....”



The subject of the employment relationship will be discussed at the ILC in June 2006. The discussion will be held with a view to adopting an international labour standard in the form of a Recommendation on the subject. The preamble of the draft Recommendation contains a number of observations that concur with positions taken in this paper and the papers in this collection.<sup>18</sup> The text of the draft supports the idea that persons in an employment relationship—persons working in conditions characterised by dependency as outlined in the Recommendation—should be the primary focus of labour laws’ granting of rights and benefits.<sup>19</sup> In this sense, the Recommendation is consistent with the traditional premise in labour laws, i.e. dependent workers are vulnerable workers.<sup>20</sup> This would be correct to the extent that rights granted to workers in law need to be met with obligations imposed on employers. Yet without overstating the difference, this paper suggests that all who work have rights that should be the subject of societal concern taken up in policies and actions that are potentially reflected in law.<sup>21</sup>

18 *The employment relationship*, Report V (2B), International Labour Conference, 95<sup>th</sup> Session (Geneva, 2006):

“Considering the *difficulties of establishing whether or not an employment relationship exists* in situations where the respective rights and obligations of the parties concerned are not clear, where there has been an attempt to disguise the employment relationship, or where inadequacies or limitations exist in the legal framework, or in its interpretation or application, and

Considering that these *difficulties are arising more frequently*, in particular, because of the extensive changes taking place in the labour market and in the organization of work, and

Considering also that, in situations in which employed workers provide services for the benefit of a third party, difficulties may exist in establishing who the employer is, what rights the worker has, and who is accountable for those rights, and

Considering that the difficulties in establishing the existence of an employment relationship may create serious problems for those workers concerned, and for their families and communities, and may negatively affect productivity and the financial performance of enterprises, and

Considering that the uncertainty as to the existence of an employment relationship should be the subject of sustained action by Members with a view to providing effective protection in a manner appropriate to their national conditions, and...” (Emphasis added)

19 Paragraph 1 recommends that “[m]embers should formulate and apply, or continue to apply, a national policy for reviewing at appropriate intervals and, if necessary, clarifying and adapting the scope of laws and regulations, *in order to guarantee effective protection for workers who perform work in the context of an employment relationship.*” (Emphasis added)

20 Paragraphs 7, 8 and 9 of the draft Recommendation.

21 Paragraph 4 of the draft Recommendation does suggest that “[m]embers should take particular account in national policy to ensure equal protection to workers especially affected by the uncertainty as to the existence of an employment relationship, including women workers, young workers, older workers, *workers in the informal economy*, migrant workers and, in general, the most vulnerable workers.” (Emphasis added)



### **Voice**

Conclusions affecting arrangements for giving worker voice need to be based on the divergent interests of informal economy workers. These differences run along the dependent-independent worker spectrum. This idea has been presented above, and is reiterated in the papers that follow.

It is worth highlighting that even in an environment with liberal associational rights the scope of action of own-account informal economy operator associations is structurally limited since such operators work independently, without a supervising and controlling employer. Collective bargaining, where the term is used to signify the process of negotiation aimed at concluding terms and conditions of employment, is out of the question. Yet bargaining with authorities over things like law reforms is exactly what these operators need to do. As a result, emphasis should be placed on honing associational rights in countries where informal economy workers are predominantly own-account workers or business operators. This might be done in line with the model described in the Mongolia paper, where many types of organizations are legal and broadly authorised to work in the interest of members or the represented interest group. Where the informal economy is made up of dependent workers in small enterprises, additional emphasis is needed to develop the possibility of collective bargaining.

The role of trade unions in organizing workers in the informal economy is discussed in each of the papers. Furthermore, the difficulty of the proposition is confirmed in each. In both Mongolia and Cambodia, some organizations have tried to organize particular groups of informal economy workers in cases only where the reason to do so seemed particularly compelling (e.g. when facing harassment); there has not been success in broadly organizing informal economy workers. Where these workers are most clearly dependent and working in small enterprises, it would only be feasible for a trade union to attempt to negotiate terms of employment with a small enterprise employers' association whose many different members employ workers across a given location. There is no evidence that these exist, although prototypes of such organizations might exist in the form of organizations of own-account workers who also have employees. In sum however, the meaningful development of worker representation actively engaging in collective bargaining in the informal economy—even in countries where labour law provides an effective right to form trade union associations—continues to be a development for the future.

### **Closing remarks**

Figure 2 below (read from its bottom) is a rough illustration of the inadequacy of labour laws that focus on workers in dependent employment relationships. It is drawn up as an amalgamation of the three country reports and current general tendencies in labour and social security law; there are vast and important differences from country to country, as shown in the three country studies that follow. The figure shows that although there may be broad guarantees of fundamental rights, which are typically placed in the national constitution, labour and social security law and policy depart from there on the basis of workers being

### Figure 2: Rights and benefits based on a dependent employment relationship

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Figure 2 can be compared with Figure 3, which is offered to demonstrate a hypothetical remedial situation where, as a starting point, rights and benefits under labour and social security law are given to all workers. The critical difference between the two approaches is the point of departure for assigning rights and benefits, and the absence of a requirement of a dependent employment relationship. To be clear, the idea illustrated in Figure 3 does not intend to ignore

**Figure 3: As a starting point, rights and benefits granted to all who work**

12	Special regulations for worker group D		
9	Special regulations for worker group A	10	Special regulations for worker group B
		11	Special regulations for worker group C
8	Enforceable obligation to engage in collective bargaining over terms and conditions of employment, and arrangements to enable collective bargaining and dispute resolution	8	Policies and activities designed to promote the involvement of associations in civic decision making with a view to improving access to work and the conditions under which work is done
7	Enforceable obligation to end a work agreement/contract only with valid reason and never on unlawful discriminatory basis; establish procedure for resolving disputes	7	Policies and activities designed to promote and expand market access with a view to promoting security in employment
6	Enforceable obligation to suspend work (provide leave) and protect future work in the event of maternity	6	Social security fund to provide benefit to those on maternity leave
5	Enforceable obligations on persons controlling the work of others to provide a quantity of rest; enforceable obligations to limit daily hours of work	5	Extension activities designed to increase productivity with a view to reducing hours of work and permitting weekly rest
4	Enforceable obligations to pay for work done, in accordance with certain parameters, regardless of the status of the person doing the work and the person receiving the benefit of the work.		
3	Right to a healthful work environment; enforceable obligations placed on persons who have control over the work environment; inspection services/duties adjusted to enforce and advise.		
2	Universal access to social security on an equal basis (contingencies include sickness, occupational injury/death, pension, maternity, etc.)		
1	Right to associate for protection and promotion of interests Right to be free from forced or compulsory labour, at the hands of the state or private individuals Right to be free from discrimination, at the hands of the state or private individuals Right to be free from work as a child; prohibition of using/benefiting from work done by persons under a minimum age		

<<<<<<< Entire active population - all who work, wherever they work >>>>>>>

the fact that rights typically need to be matched by obligations, and that mechanisms need to be put in place to ensure that employers of dependent employees can be identified in order to fulfil such obligations.<sup>22</sup> It is also not intended to reject the possibility for particular rights to be accompanied by specific arrangements for particular groups of workers.<sup>23</sup> Boxes 9, 10, 11, and 12 reflect the idea of complementary regulation for special groups of workers. Their substance might, for example, be particular mechanisms for implementing rights set out in the main body of legislation. Furthermore, under an arrangement like that illustrated in Figure 3, great attention would need to be paid to non-legal action, probably by a range of stakeholders, to give effect to a policy that tries to extend decent work to all workers—even those working for themselves, where rights alone may be insufficient to have an impact in particular areas.<sup>24</sup> Intervention boxes 5, 6, 7, and 8, which complement law boxes 5, 6, 7 and 8, illustrate this.

The idea of moving the dependent worker in an employment relationship off-centre as the target for labour laws' help might seem heretical, but legal scholars have in recent years raised and supported the idea, and it seems that the time may be drawing nigh for its wider acceptance.<sup>25</sup> Indeed, the paper from Mongolia mentions that this was proposed by trade unions there in the context

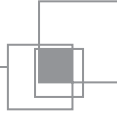
22 An example found in the home work regulation in Thailand.

23 The objective of this arrangement of labour law would be to minimise the establishment of special arrangements for groups of workers by casting the law applicable to all workers in a way that adequately addresses the differences among workers. The distinguishing characteristics of the group of workers ought to be truly significant and the subjects of special arrangements should be circumscribed just to those matters that distinguish the particular group of workers from other. National circumstances would determine what groups these might be. Examples are workers whose interruption of work would endanger the life, personal safety or health of the whole or part of the population; workers emigrating for employment; workers who exercise authority in the name of the state; persons working in cooperative arrangements.

24 Such actions might include, for example, extension work by government and non-governmental organizations, including workers' and employers' organizations, designed to change work methods with a view to improving productivity; educating about work safety and health; promoting the availability and responsible use of credit to develop income-generating work; to implement liberalised rights to association; etc. Knowledge and experience exists in these areas and interventions. A change is needed to see these types of targeted non-legal interventions as the critically important—not secondary or subsidiary—way to extend and give effect to broader rights established in law, and the linkage between non-legal and legal action needs to be made more widely understood and accepted as a policy approach to the challenge of extending decent work.

25 See Workshop Proposal presented to the conference "The Future of Labour Law: Expanding the Boundaries of Protection", Bellagio, Italy, 24-26 May 2005 at <http://bellagio.haifa.ac.il/proposal.htm> and citations found there. See also: [http://www.jil.go.jp/english/events\\_and\\_information/0309\\_report.htm](http://www.jil.go.jp/english/events_and_information/0309_report.htm) and papers found there, also published in *Bulletin of Comparative Labour Law*, Vol. 53, Labour Law in Motion (Leuven, 2004).

of discussions of labour law reform. This paper and those that follow in this publication are more or less a field-based elaboration of this idea, based on a simple proposition that all who “work have rights at work” and that this should be reflected in law. A full elaboration of labour law based on this premise is not to be found in this publication; such a detailed and complex task would require great political will from government and the social partners. It is hoped that the ideas presented in this publication help decision-makers come closer to taking the necessary action to effectively extend labour law to workers in the informal economy.



# Extending labour protection to the informal economy in Cambodia

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*In a country where protective labour law and labour administration institutions are focused on workers in an employer-employee relationship, the vast majority of working persons—self-employed and family workers—are without legislated protection. Even workers covered by legislation working as employees in very small enterprises suffer from decent work deficits because of the lack of law enforcement. The authors argue that reducing the decent work deficit for the bulk of Cambodia’s working population requires the extension of elements of labour law to the self-employed, family and domestic workers, and that enforcement of labour laws in micro, small and medium-sized enterprises with employees needs to be strengthened.*

## 1. Profile of the informal economy in Cambodia

### Definition

The term “informal economy” has been defined differently from one country to another. Some countries do not even have an official definition of the informal economy, which is the main component of some countries’ economies and provides a wide range of employment to people, in particular, the poor. An international and uniform definition of the term has not yet been adopted and agreed upon, though the informal economy has existed for decades. Many authors have used different words to signify this unprotected economy. The term “informal sector” was widely used in the 1970s to denote the activities of the working poor who are not recognised, recorded, protected or regulated by the

public authorities.<sup>1</sup> Despite these efforts, the absence of a consensus about the definition of the term in question has sometimes led to terminological confusion amongst scholars. There are instances where some authors confused the “informal economy or sector” with illegal activities by referring to the “bazaar-economy or black market or criminal underworld or the-world-turned-upside-down, underground economy and so on”.<sup>2</sup> Many attempts have therefore been made by various international organizations to draw up a generally acceptable definition of the informal economy or sector. For instance, the International Conference of Labour Statisticians (ICLS) adopted a definition of the informal sector for statistical purposes in 1993. The new trend, however, is that the term “informal economy” has been found to be a better term to sketch the contours of the expanding and increasingly diverse groups of workers and enterprises in both rural and urban areas operating informally.<sup>3</sup>

In Cambodia, the terms “informal sector” and “informal economy”<sup>4</sup> are still used interchangeably to identify this unprotected and unregulated economy. The ILO contributed a country definition—although not very sophisticated—in the context of an important, Asia-focused study. The term “informal sector”, which has been broadly and officially used, is characterised by: any activities which do not have a firm, identifiable postal address where workers are self-employed, such as roadside vendors; where data on such businesses is not available through census surveys; labour intensive operations; quick turnover; part-time or full-time workers; the use of energy input from human or animal sources; activities that are not legally recognised; work which takes place in non-structured premises, not under any regulations, licence, or insurance and where taxes are not paid.<sup>5</sup>

1 ILO, *Decent work and the informal economy*, report VI (Geneva, 2002), p. 1.

2 Tinbergen Institute & Amsterdam Institute for Advanced Labour Studies (AIAS)/Amsterdam School for Social Science Research (ASSR), University of Amsterdam, “The informal sector in developed and less developed countries (discussion paper),” 1999, p. 3.

3 ILO, *Decent work and the informal economy*, report VI (Geneva, 2002), p. 2.

4 The ILO report VI entitled “Decent work and the informal economy” of the 2002 International Labour Conference, 90th session spells out that the term “sector” is inadequate, if not misleading, to reflect the dynamic, heterogeneous and complex aspects of a phenomenon which is not, in fact, a sector in the sense of a specific industry group or economic activities. However, the use of the term “informal economy” does not mean to eliminate the term informal sector.

5 ILO, *The informal sector in Asia from the decent work perspective* (Geneva, 2002), p. 10.

### General characteristics of the informal economy

The above definition implies that the Cambodian informal economy makes up a huge proportion of the economy. Informal participants have been found in the vast majority of economic sectors, if not all. This general impression is underpinned by the fact that the existing economic sectors that offer formal work can be specified as mainly garment, tourism and public administration. The Economic Institute of Cambodia (EIC) follows the lead of the Tax Department in defining the “formal sector” as those enterprises that pay taxes to the Department under some form of licence. The figures are based on data derived from the EIC database and are consistent with widely-held views of the scale of employment in these three key formal economy sectors. The garment and tourism sectors are part of the private sector, which has absorbed lots of workers due to the recent economic boom in both of these sectors. It was against the backdrop of Cambodia’s entry into the US quota and European Union (EU) Generalised System of Preferences (GSP) systems that the garment industry has, to date, expanded and developed. For the tourism industry, the number of tourists has significantly increased to a remarkable figure. It has been estimated that the number of tourists visiting Cambodia will reach more than one million people at the end of 2005. Hotels, guesthouses and other tourism-related services have created employment for many people.

These two sectors—tourism and the garment industry—together with public administration do not provide ample room for every Cambodian for formal employment. According to the data of the EIC, the garment industry provides about 230,000 jobs; the tourism industry provides about 70,000 jobs, and the public administration sector, about 350,000 jobs. The total labour force is estimated to consist of approximately 6.2 million workers. Therefore, 85 percent of the entire workforce are employed in the informal economy. Interestingly, this figure has remained unchanged from 1998 to 2003 (Table 1).

**Table 1: Size of informal sector in the economy (%)**

	1998	2000	2003
Workforce	85	85	85
GDP	70	64	62

Source: EIC, Decent work in the informal economy in Cambodia: A literature review, 2006.

But the informal economy does not only generate employment for people. Its contribution to the economy is of vital importance as well. As seen in Table 1, its contribution to GDP was 70 percent in 1998, 64 percent in 2000, and 62 percent in 2003. The socio-economic significance of the informal economy is a good reason for all stakeholders including the government, donor communities, civil society, and trade unions to intervene in the economy in a concerted attempt to improve the conditions of informal workers and entrepreneurs for economic development and sustainable poverty reduction.



One reason why Cambodia's informal economy is so large is that as a 'least developed country' (LDC), many Cambodians live in poverty, and economic growth is not commensurate with the increase of new entrants into the labour market. In addition, the official institutions and bureaucracy are still too weak to cope with the problems of red tape and corruption, and the costs of business registration and licensing procedures are high.<sup>6</sup>

As the magnitude of the informal economy is so great, its activities are assorted and complicated depending on locations, or urban versus rural areas. Informal activities in urban areas seem to be more diverse as compared to rural areas. To take a glance at economic activities in urban areas, we may very often find informal occupations such as transportation operators, street vendors, shoe-shiners, garbage collectors, street-level vehicle mechanics, curb side gasoline sellers, masons, construction workers and domestic workers. Informal activities in rural areas appear to concentrate on agriculture, but we may sometimes find industries/non-farm activities as well. In general, informal activities are engaged in fishing, fish processing, mining, spinning and weaving, food processing, home-based apparel making, furniture manufacture, vehicle maintenance/repair, handicraft manufacture, electricity generation, retail trade, construction and land/water transport.<sup>7</sup>

The broad picture of the informal economy is that it is made up of a large number of self-employed and unpaid family workers. According to Table 2, which gives economy-wide data, the number of dependent workers working for an employer is not significant. The figure of unpaid family workers, which is 44 percent of the total number of workers as compared to 40 percent of own-account workers, presumably reveals that many self-operators need to employ or be assisted by their family members or relatives without pay to operate their businesses. It happens in practice where the husband operates the business and his wife assists him in the business and does some housework. Taking the remaining 16 percent and deducting the 10.5 percent known to be working in the formal economy (garment, tourism, public administration) a remaining 5.5 percent or 341,000 workers are employed by others in the informal economy.

6 Economic Institute of Cambodia (EIC), *Decent work and the informal economy in Cambodia: A literature review* (Thailand, 2006).

7 Cambodian Development Resource Institute (CDRI), *Off-farm and non-farm employment in South-east Asian transitional economies and Thailand*, 2003, p. 9.

**Table 2: Estimated workforce in Cambodia (2001)**

	Own-account worker		Unpaid family workers		Other workers		Total workers (000's)
	(000's)	% of Total	(000's)	% of Total	(000's)	% of Total	
Cambodia	2,440	40	2,747	44	988	16	6,175
Urban	306	42	197	27	231	31	734
Rural areas	2,134	39	2,550	47	757	14	5,441

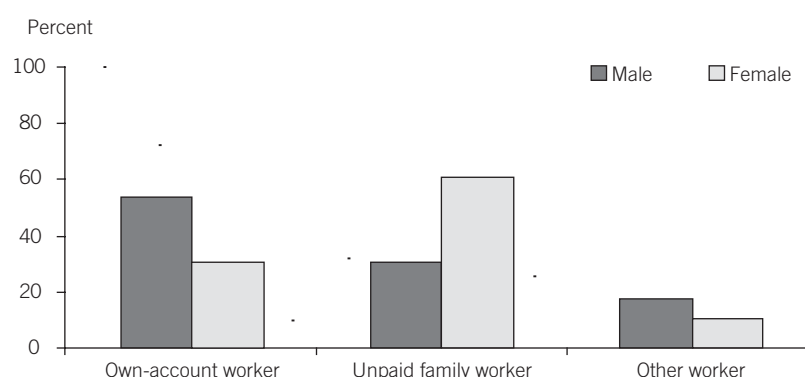
Source: Cambodia Statistical Yearbook 2003, National Institute of Statistics.

### Gender gap in the informal economy

In Cambodia, notwithstanding some improvements, ancient culture and tradition still influence people's perceptions in their daily lives and economic activities. Therefore, there are stereotypes that influence the kind of jobs men and women do. For example, many feel that drivers should be men rather than women and people often find it strange to see a female driver. This traditional practice determines to a large extent the choice of work among men and women. Thus, in the informal economy, some sectors are dominated by women and other are dominated by men. Market stall vending would be a good example of an activity involving a large number of women.

Due to the fact that informal participants have been excluded from detailed business, employment statistics or census/surveys, the precise numbers of women and men in different sectors of the informal economy are not yet available. Fortunately, a recent survey conducted by the National Institute of Statistics presents interesting figures showing men and women in different categories of work, most of which are assumed to take part in the informal economy. These categories of work are own-account worker, unpaid family worker and paid worker.

### Percentage distribution of employed males and females by employment status, 2004



Source: NIS.

The result of the survey indicates that women take a huge proportion of unpaid non-domestic work while men are dominant in a better position, the category of self-operator earning income for families. Besides, there are more men than women in other categories, which are likely to be paid work categories.

The discrepancy between men and women in terms of income generation in the informal economy is larger than that in the formal economy. We may infer from the data that in the informal economy women are economically more reliant on men. From this, we may draw attention to the fact that in the informal economy, women are disproportionately vulnerable compared to men in economic terms. Limited access to resources precludes women from a variety of opportunities to get access to education, training, land ownership, medical care, leadership and so on. This economic condition of women, in association with other social, cultural and political factors, results in a huge gap of inequality between women and men. The limited resources and opportunities of women have excluded women from participating in the political, cultural and social activities of the country. The phenomenon of this serious disparity leads women to lives of injustice, suffering and abuse by men, including physical and sexual violence. According to various sources, it has been reliably estimated that a quarter of Cambodian women are exposed to domestic violence. To conclude, there is a much larger gender gap in the informal economy than in the formal economy.

### **Migrant workers**

The large number of informal participants in urban areas can be partly explained by large-scale migration to cities and crowded areas. The migration rate from rural to urban areas is high, at 13.9 percent in 2004.<sup>8</sup> The high urban migration rate is influenced by several factors. Poverty, low income and productivity, better access to public infrastructure, job opportunities, education, business environment, etc. are all likely to strongly influence the high migration rate. Apart from Cambodian informal workers, we may find other informal migrant workers of different nationalities. These nationals are mainly Vietnamese, Chinese and Indian. Nevertheless, no study or survey has been conducted to find out the exact number of these migrant workers. Their working conditions have not been studied.

<sup>8</sup> National Institute of Statistics (NIS), *Cambodia inter-censal population survey 2004 (general report)*, p. 31.

## 2. Decent work deficit, spotlighting informal economy sectors

The information regarding decent work deficit in some significant sectors of the Cambodian informal economy, is jointly based on a survey conducted by EIC researchers and reports of other studies previously conducted by other institutions.

### Methodology

The main purpose of the survey is to assess the quality of work in the informal economy in Cambodia. It has been noticed that the formal sector in Cambodia exists primarily in three sectors—garments, tourism and public administration. The informal economy, therefore, represents a huge share of the economy, comprising a wide variety of occupations. Trying to understand comprehensively the quality of work of workers of all occupations in the informal economy is not an easy task. This study focused only on certain selected occupations. These occupations are: agricultural workers, micro-vendors (including street vendors), transport operators, casual construction workers, workers in restaurant and entertainment, and domestic and home-based workers.

The research used qualitative methods where researchers personally conducted interviews with different key informants. Different locations for interviews were selected on the basis of the abundance of economic activities of the above-mentioned occupations. For instance, subcontracting workers exist mainly in the garment and construction sectors. These sectors are booming in Phnom Penh and Siem Reap. So, these two locations were chosen for interviews. Following the same logic, the survey was conducted in Phnom Penh and three provinces, Kandal, Kampong Cham and Siem Reap.

With regard to the assessment of the work quality in the informal economy, a measurement of decent work articulated in the Report of the Director-General during the 87th Session (1999) of the International Labour Conference was referred to. This decent work dimension has four constituents: rights at work, employment promotion, social protection and social dialogue. These main constituents were further broken up into more areas: remuneration, working conditions, job security, social protection, safety and health, equality at work, freedom of association and collective bargaining, child labour, human resource development, management and organization, and freely chosen labour.

In the survey process, researchers first gathered information related to the working conditions of those informal workers with reference to collected data and surveys previously conducted by other institutions. Then, face-to-face interviews with different key informants were conducted. The key informants selected for interviews were associations or organisations working with workers. Researchers then interviewed informal workers individually, or in focus group discussions of generally around three people. Each interview session took approximately 45 minutes. At the time of interview, researchers took some time to observe the quality of the workplace and physical working conditions, as well as the employment practices of those informal workers.

The researchers analysed the data collected from both interviews and personal observation. The observation served dual purposes. On one hand, it provided additional information about decent work in the informal economy. On the other hand, it could be used to make sure that interviewees provided factually accurate information. Finally, a validation workshop was organized to ensure that all facts mentioned in the paper are true and do not deviate from the reality.<sup>9</sup>

### **Agricultural workers**

In the agricultural sector, there are both unpaid and paid workers. Apart from unpaid own-account workers who are excluded from the coverage of Labour Law, paid workers here—both workers in formal agricultural enterprises and informal economy workers—lack sufficient legal protection in practice.<sup>10</sup> Unpaid workers here refers to those farmers who work on their own account and use their family workforce or occasionally hire a few casual paid workers when there are excessive tasks to perform. From the paid workers' side, there exist two types of labourers: full-time formal economy workers, who perform work for any agricultural company on a permanent basis in the field (eg. rubber plantation fields), and casual or seasonal informal economy labourers whose work is not stable and is dependent on the particular needs of others.

### ***Own-account agricultural farmers***

In general, the working situation of own-account farmers is relatively better than that of wage workers for they possess their own land and work based on the actual ability of their family's workforce. Based on the interviews conducted by the EIC, their work activities vary from season to season. Sometimes they have too much work to do, and at other times—due to natural conditions—they have nothing to do on the farm and are obliged to seek supplementary work to do at home or find some work in other provinces or towns. The average working hours are around eight per day (from 7 am to 11 am and 1 pm to 5 pm), during which they work under the hot sun in the dry season and often in the rain during the wet season. In some specific activities and seasons, there are some periods where farmers work day and night.

On tobacco plantations, farmers (generally male workers of the family), need to work round-the-clock to dry their tobacco leaves for a period of about two weeks. Both men and women work in the field but men generally perform harder work while women have additional daily work to perform inside the house. In general, children help their parents do some light work both in the field and at home. Some children regularly attend school and give help to their parents only in their spare time, but others cannot go to school due to their families' poor financial situation and need for workers.

<sup>9</sup> See quantitative details regarding the survey and validation workshop in Annex 1-2.

<sup>10</sup> More details on the coverage of the Labour Law are discussed in Section 4 in this report.

These workers do not seem concerned about health issues. The hygiene standard of their latrines is low. The main issue regarding the farmers' health during their work is the use of poisonous or chemical substances to protect their plants from insects. These pesticides are frequently used without protective clothing or equipment, and the farmers learn to use them from one another. According to a group discussion of three farmers in Kampong Cham province, they never care about the instructions provided with pesticides as they are unable to read those instructions, which are normally written in a foreign language (as the pesticides are generally imported from neighbouring countries). Therefore, they just get some information on the use of pesticides from vendors selling those substances at the market; and, in practice, they rarely follow everything they have learnt, as revealed during the group discussion.

Agricultural own-account workers earn their incomes on a seasonal basis. Their earnings are not stable and depend on crop productivity. In general, they save a part of the money earned from the sale of their crop production at the end of the high season of work for when they have no work. However, the situation is terrible for those who possess little land, few funds and too many children in the family, as they do not gain as much during the working season. To make extra money, they are obliged to borrow from their neighbours, look for other work, or send their children to work outside as casual constructors, domestic servants or waiters/waitresses in restaurants, etc. Regarding land tenure, the problem of security is a serious one. Even farmers who own land often have no legal titles to the land they cultivate. This not only causes land disputes but also discourages farmers from investing in the long-term quality of their land as their tenure is insecure. To date, there is no comprehensive data on land concentration in Cambodia. Based on some surveys, it is indicated that a minority of about 20 to 30 percent of the total population who had more land than one ha/household occupied nearly 70 percent of the total agricultural land, therefore leaving about 10 percent of farmland for the majority, who had less than 0.5 ha/household.<sup>11</sup>

### ***Casual agricultural workers***

As mentioned above, casual workers in agricultural employment generally perform work on an unstable basis. They work for a short period or for a given season and normally without any written contract. Employment termination may practically occur at any moment from both contracting parties. Their working conditions are generally similar to those of unpaid workers' but, despite their subordinate relationship to these latter groups, they receive no benefits other than a sum of money provided on a daily basis. Their average income is around 4,000 to 5,000 riel per day, jointly based on the day's work and the results of the work.

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<sup>11</sup> CDRI, "Cambodia 1999-2000: Land, labour and rural livelihood in focus," *Working Paper* 21, p. 34-35.

***Regular agricultural workers***

The survey of this kind of workers was conducted in a rubber plantation field in Kampong Cham province. In this sector, there are many workers who perform work and live permanently in the field, where housing allowances, water and electricity are provided. In terms of working environment, these workers work in formal enterprises where their rights at work are protected by Labour Law. According to the survey's results, however, there are noteworthy problems with their working conditions, where labour protection should be strengthened. Apart from other working conditions which are common for all the agricultural activities stated above, there are some significant aspects to be particularly noted here.

At first glance, the presence of child labour seems to be the most apparent in these workplaces. According to interviews, the existence of child labour results from the manner of calculating remuneration. Due to the fact that wages are calculated on the basis of the production of work that each labourer completes, most of the workers, who live in very poor conditions, are in need of their children's help in their work. A woman worker told us in an interview that there are four people (her husband, her 16-year-old daughter, her 13-year-old son, and herself) who come to the field in her family. However, these four people work under the single name of her husband; and, in general, they can earn about 160,000 riel per month, based on the production made by their whole family. Owing to the need for workforce in their family, her daughter and son cannot attend school. The working conditions can be dangerous, especially when it rains, due to the use of high rolling or slide ladders. Potential hazards include the possibility of falling from ladders, exposure to chemical substances, being hit in the eyes with branches, the presence of insects and snakes, etc. Faced with these potential work-related accidents or diseases, the workers have to take their own responsibility for medical treatment. Furthermore, if a worker falls sick, he or she must find someone else to replace them at work; otherwise, they will be fined 5,000 riel per day.

**Micro-vendors**

Micro-vending activities in Cambodia refer to activities involving selling goods (fruit, vegetables, clothes, food, etc.) or providing small services (such as motorcycle repair, hairdressing, etc.). These usually take place around markets, on street sides or in other available public places in the cities, especially in Phnom Penh. Most people involved in these activities are women. Micro-vendors usually sit on the pavement or on the ground around the markets or by the street side and sell their goods to passing customers. The selling spaces are normally small, congested and dirty. Being poor and having no other choices are the most common reasons for working as micro-vendors.

The types of goods micro-vendors sell are various (vegetables, meat, fish, rice, ice-cream, bottled water, shoes, used clothes, newspapers) but the most popular item is fresh vegetables as this requires the least capital to start with and the demand is high. In general, the vendors get their goods from different sources and in different ways. The majority of vendors get what they sell by buying them from wholesalers at a lower price. In this case, finding places to buy cheap goods

is a key issue dealing with the level of profit they could make. According to a research made by Urban Sector Group (USG),<sup>12</sup> most micro-vendors buy goods on credit or by paying half immediately and half after selling them; and, only 5 percent of interviewed people buy goods in bulk by grouping with others in order to lower the cost. Some other vendors, on the other hand, are farmers who come to sell their products around some markets to passing customers or wholesale to other vendors. Another way of selling is that the vendor is given the goods he or she sells by someone who will take the remaining goods and money from sales back at the end of the day, giving the vendor a percentage of what was sold. This latter method is seen only in a small number of activities, especially dealing with those mobile vendors of newspapers or magazines at some public places. However, no matter from which source the goods may come, micro-vendors seem to be independent in terms of working hours and places.

The most common problem faced by these micro-vendors is finding a place to sell their goods. As public order laws prohibit them from trading in such places, the vendors are frequently harassed and chased by security guards and police. However, they may sell their products in these places if they give them money. In general, they must pay, with and without invoices, many kinds of fees and taxes to security guards, police, and/or other local authorities. In spite of this payment, their vending space is still temporary and uncertain. The police sometimes confiscate their materials and justify this by referring to the need to keep public order. The payment for selling space is the biggest expense for these vendors, considering their tiny daily profit (a vegetable micro-vendor at Prek Leap market, in a suburb of Phnom Penh, told researchers she may take home 4,000 riel per day after payment for market fees). Another problem relating to selling spaces is the reconstruction of the market buildings, whereby the authority never leaves places to accommodate the actual activity and/or financial situation of the micro-vendors who have been selling there for a long time.

Apart from the vending space issue, micro-vendors meet many other problems such as physical insecurity (especially for those vending at night), health problems resulting from a dirty working environment, and absence from children and the effects of this on their schooling and well-being.

Working hours in these types of activities vary from one vendor to another, depending on the type of goods they sell and the distance from their homes to the marketplace. However, these micro-vendors can be seen selling their goods 24 hours a day around some markets (e.g. Deum Kor market, also in a Phnom Penh suburb) as there are some groups who work from 6 am to 6 pm, some from 6 pm to 12 am, and others from 12 am to 6 am. A place therefore belongs to three different vendors, said Mr Neup Ly, Programme Assistant for the USG. People who live far from the marketplace—especially farmers coming from surrounding areas to sell their crops in Phnom Penh—need to wake up early in the morning, sometimes at 3 or 4 am, to take a boat or moto-taxi to the market

<sup>12</sup> Urban Sector Group (USG), “Women micro entrepreneurs and their business needs, Phnom Penh, Cambodia,” August 2004, p. 23.



and look for a place. It is not uncommon for these vendors to be unable to find a place in one market and have to look for another in other markets, before going home in the late evening. Sometimes they go home without any profit as they had to sell their goods (such as fruits and vegetables) at very low prices due to time constraints.

The presence of child labour is visibly considerable within this kind of activity. They can be seen everywhere, helping their parents or relatives or selling goods such as bottled water, fruit, books and food alone at marketplaces, along the streets, at taxi parking areas, or at resorts.

### **Transport operators**

The survey focuses on four groups of transport operators, including motorbike (moto) taxi drivers, cyclo drivers, moto-remarque (motorcycle with trailer) drivers, and car taxi drivers. The first three groups are in a similar situation and may thus be classified into a single category.

#### ***Moto-taxi, cyclo and moto-remarque operators***

The most common means of transport in towns is moto-taxis (driven by moto dops). These can commonly be seen in Phnom Penh, Siem Reap and Sihanoukville. Some moto-taxi drivers work on a full-time basis while others on a part-time basis. Most full-time drivers come to the towns from other provinces to do this job permanently, or only during a period when there is nothing to do on the farm. Most part-time drivers are local public servants or university students who do this work only during their free time from work or school. They work in very poor conditions, toiling under the sun during the dry season and drenched by the rain during the wet season. In general, full-time drivers start work at about 6 am and finish by 6 pm or 7 pm, with a lunch break inside or outside the house in return for an average income of around 10,000 riel a day. Apart from these usual hours of work, a group discussion of moto-taxi drivers in Phnom Penh revealed that some prefer to start working in the early morning, by 4 or 5 am, and finish earlier in the evening; some others prefer to start at noon and finish driving late at night, at 1 or 2 am, as they find this more beneficial in terms of income.

The moto-drivers face various problems. Threats from security guards or police seem to be the most common problem drivers have experienced, as they usually park in groups and in a disorderly way to wait for customers. They also encounter security problems such as robbery or traffic accidents. Some days, they do not even have enough money to refuel their motorcycle after driving around alone to look for customers. Some drivers do not earn enough money to support their living conditions, owing to an increase in the price of gasoline, maintenance of old motorcycles or health problems.

It is particularly noted that a large number of moto-taxi and moto-remarque drivers in Siem Reap province are better off as compared to those in Phnom Penh and other cities in terms of earnings and security. This is largely due to the number of tourists in these cities and the knowledge of foreign languages among these transport operators. According to two group discussions in Siem Reap province,

the average income of moto-taxi drivers there is between \$6 and \$10 per day when they have customers, while for moto-remarque drivers it is between \$10 and \$20. Their average income per month is between \$100 and \$200, which the interviewees felt was reasonably favourable considering their actual capacity.

Another popular means of transport in towns is the cyclo. The working situations of cyclo drivers are very similar to those of moto-taxi drivers but they are mostly concentrated in Phnom Penh. The majority of cyclo drivers rent the vehicle from a cyclo renter. With a rental of around 2,000 riel a day, the drivers are independent in terms of working hours and places. Among those who come from other provinces, some cyclo drivers stay in the house of the owner of the cyclo while others stay along the street. Consuming physical energy, cyclo drivers work much harder than moto-taxi drivers but earn less money. Their average income is around 4,000 riel a day. Cyclos used to be the most popular means of transport in Phnom Penh, but they have become less popular due to the rapid increase in the number of moto-taxis.

### ***Taxi drivers***

For journeys from the capital to the provinces, or from province to province, taxis are currently the most practical means of transport for the large majority of Cambodian people. Taxi drivers are grouped around different stations depending on their destinations. A focus group discussion was conducted with three taxi drivers at Olympic market station in Phnom Penh, where taxies going in the direction of Svay Rieng are parked. At the time of the interview, it was their second day staying there as they were waiting for customers to travel back to Svay Rieng province. In general, after driving one way from Svay Rieng to Phnom Penh, they have to stay for about three days at the taxi station as there are few customers in contrast with the large number of taxies; otherwise, they are obliged to go back without customers. During this period, they eat and sleep in their taxies or on the sidewalk, visibly dirty, near Olympic market.

For every departure from the taxi station, they have to pay several kinds of fees (totaling around 30,000 riel) for the parking place, the Ministry of Transportation, an intermediary agent who finds and brings customers for them, security, etc. Their income is unstable and varies from around 30,000 riel to 60,000 riel for a return journey, excluding all payments at the station and along the road. Generally possessing their own vehicle, taxi drivers are independent regarding hours of work but are usually compelled to start work early in the morning to find customers and frequently finish work late in the evening. They find their current occupation very hard work and say the actual income cannot support their families, especially when they fall sick.

### **Casual construction workers**

Construction workers are concentrated in the urban areas but most of them are from rural areas. They generally work as casual workers for an independent constructor who contracts with an entrepreneur to complete a construction project.

As casual workers, normally with a verbal contract, their employment status is very uncertain and they may be fired by the constructor at any time without compensation. In general, they work an average of eight hours a day and the income they make is sometimes dependent on the amount of work they complete, which is generally calculated by the square metre (2,000 riel per square meter), or sometimes calculated on a daily basis of around 7,000 riel a day. They usually get paid twice a month. When there is urgent work to finish, the workers are often compelled to work around-the-clock for a few days and the payment is generally doubled, as experienced by Thay, a 17-year-old casual construction labourer in Siem Reap province.

Construction workers fear being cheated by the constructor and not being paid when they complete the work. “The day I came to get money, I could not find him,” said a worker in Siem Reap province. In this case, the entrepreneurs take practically no responsibility vis-à-vis workers, arguing that they have no direct contact with them. Another serious problem is that of work-related accidents and whose responsibility it is to pay medical costs. “It’s dependent on each constructor,” said the Siem Reap worker. “If the constructor is kind, he gives us some money; otherwise, we have to spend our own money for all treatment fees.”

### **Entertainment and restaurant workers**

In the entertainment sector, workers are usually women. They work as beer promotion girls, masseuses, and karaoke bar girls<sup>13</sup> in very similar working conditions, usually at night. When asked why they chose this kind of job, basic answers related to the lack of education, poverty, and the absence of other choices.

These activities lie outside labour protection. Massage activities can be seen in two forms: informal settings such as small/home-based massage cum coining parlours found everywhere in the country, and formal settings such as those operating in hotels and registered night clubs. These forms are both unprotected under labour legislation in practice. Karaoke girls, too, are not covered nor protected by the legal framework. Several years ago, the Prime Minister ordered the shutdown of all karaoke establishments. Six months later, several karaoke activities operated covertly while the order was still in effect, and now thousands are in business ignoring the existing order. Regarding the situation of beer promotion girls, there are only a small number of workers who work directly for formal beer companies while most of them work for beer distributors, who generally are subcontractors to beer companies. In both activities, the working conditions of beer promotion girls are far from that required by labour protection laws.

<sup>13</sup> The information on these activities is principally based on a “Research report on beer promotion girls in Phnom Penh” (ILO-IPEC, September 2004) and some face-to-face group discussions conducted by EIC researchers with three massage girls, three karaoke girls, three beer promotion girls, and two key informants working as cashiers in a massage parlour in Phnom Penh.

Karaoke and massage girls work an average of around 10 to 12 hours per day, generally between 12 noon and 12 midnight. Beer promotion girls work for around eight hours per day, from 4 pm to 12 pm. During this period, they may have spare time at work, depending on whether they have customers or not; the busy period of the day is from 6 pm to 12 pm. For beer promotion girls, their working hours are fixed by the beer distributors while for the karaoke girls and masseuses, the hotel or nightclub owner. Masseuses and karaoke girls usually perform work at a permanent place whereas beer promotion girls move frequently from one restaurant to another.

In terms of income, employers pay the women in various ways. According to a group discussion with three beer promotion girls in Phnom Penh, their monthly income is calculated based on the quantity of beer they serve to clients (\$3 per tank). In this case they are compelled to drink with clients every day to increase their income. However, they said some companies pay a fixed salary per month, of around \$40. Another source of income is tips from clients. The most common health problems experienced by the women are fever, dizziness, headaches, stomach aches and ulcers; the latter two problems may result from irregular meals or perhaps, excessive alcohol consumption.<sup>14</sup>

Similarly, the karaoke girls' incomes are based on a fixed wage per month, on hours of work when entertaining clients, and/or on the quantity of beer they serve to clients. The interviewed karaoke girls were paid a fixed salary of \$50 per month and may earn extra money from clients. Being physically touched by clients while performing their services was a regular occurrence for these karaoke girls, and the beer promotion girls accept that such things are inevitable in their work. Some of the masseuses, whose job is to give massages to clients, revealed that those clients come to their massage parlours principally to have sex with them. Their job does not involve alcohol consumption and their income is cumulatively based on a fixed salary, hours of work when they have clients, and tips provided by clients. The employment relationship is fragile in these kinds of activities. "Here, we have no voice with the boss," said a cashier working in a massage parlour in Phnom Penh, who claimed the most common sanction for mistakes or breaching regulations was a reduction in salary. "If we are not happy with this, we just go away."

### **Home-based workers and domestic servants**

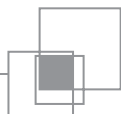
The term "home-based worker" refers to all people who carry out work at home whether as self-employed or paid workers. On these activities, interviews were conducted with two families who sew clothes in their houses near Olympic Market in Phnom Penh. One of the two families located near Olympic Market employs 10 women workers while the other one operates using their own family workforce. The 10 women workers, some of whom are minors, work as apprentices for eight to 10 hours a day, in return for a monthly wage of 50,000

<sup>14</sup> ILO-IPEC, "Research report on beer promotion girls in Phnom Penh," September 2004, p.32.

riel (approximately US\$12.50), excluding food allowances and accommodation. These workers are generally distant relatives or people coming from the home district of the owner of the house. These girls change frequently, as revealed by the house's owner that they usually leave for other jobs in some garment factories when they have enough experience in sewing. The working place is small and congested. With fabric provided, the families return the completed products for a price calculated on a piece-rate basis. In general, the price seems to be unilaterally determined by the other party, who is generally a wholesaler of clothes in some important markets. "Before, the price was higher but for now it is quite low as there are too many people who do the same job; so, if we do not accept it, the others will," said one of the families. The two families find their occupation hard work but they have no other choice. They find it quite difficult to estimate their income as the level of earnings depends on the quantity of work provided and sometimes, on their health condition. What they know is that their financial situation is still the same as compared to about 20 years ago, when they first started on this job.

Another specific type of work at home is domestic or household servants. These may include maids, guards, chauffeurs, gardeners, etc. Based on the results of a survey conducted by the ILO,<sup>15</sup> most of the people who perform these jobs are women and a large majority, children. Due to poor living conditions, many families, especially those who live in rural areas, think their children will find a better life if they live with another family. Contrary to what they think, ILO considers child domestic labour high-risk as it happens behind the closed doors of a private home and no one can really know what is happening in such circumstances. Estimating the minimum working age for children as 15 years old, the ILO's survey shows that 27,950 children between the ages of seven and 17 are in child domestic labour in Phnom Penh alone, which represents almost 10 percent of all the children aged between seven and 17 in Phnom Penh. It is also found that most children in domestic labour in Phnom Penh work seven days a week while the number of working hours per day is between six and 13 hours. Instead of studying, the children have to do a range of jobs in the house and sometimes in the employer's business. They may or may not get the care they need when they fall sick, depending on each house owner. In general, domestic workers earn around 40,000 to 60,000 riel. With these situations, it should be noted that the children who were interviewed were those who were allowed to talk about their situation but there are many other children who are not allowed to talk about their actual lives or even, to leave the house.

<sup>15</sup> This section is based on two main documents: ILO, *Child domestic labour in Cambodia: Why it has to stop and how we can stop it*, 2004, and ILO-Ministry of Planning, *Child domestic worker survey, Phnom Penh*, 2003."



### **3. Labour legislation and administration**

#### **Statutory provisions**

After the adoption of the Paris Peace Agreement on October 23, 1991, and the formation of a democratic government in 1993, Cambodia has made remarkable progress in the area of the legal framework relating to employment. Starting with the 1993 Constitution, where fundamental principles relevant to labour law and a free market economy are recognised, a series of employment conventions and covenants has been ratified and a large number of laws and regulations promulgated in the country.

#### ***Cambodia's Constitution***

The Constitution, adopted in 1993, is the supreme source of law of the Kingdom of Cambodia. As stipulated in its Article 31, the Constitution recognises human rights as stated in the United Nations (UN) Charter, the Universal Declaration of Human Rights, and the covenants and conventions related to human rights, women's and children's rights.

In addition to those rights stated in the above covenants and conventions it refers to, this norm explicitly acknowledges a number of fundamental principles relating to employment, including the equality of Khmer citizens before the law regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status (Article 31); the right to choose any employment, the right to enjoy equal pay for equal work, equality of work inside and outside the home, the right to obtain social security and other social benefits as determined by law and the right to form and to be a member of trade unions (Article 36); the right to strike and non-violent demonstration (Article 37); the right to establish association and political parties (Article 42); the abolition of all forms of discrimination against women and the prohibition of the exploitation of women in employment (Article 45); the guarantee of women's job security during pregnancy and their right to maternity leave (Article 46); the protection of children from acts that are injurious to their educational opportunities, health and welfare (Article 48); the obligation of the state to provide free primary and secondary education to all citizens in public schools (Articles 66 and 68); and the establishment of a social security system for workers and employees (Article 751).

Under the Constitution, the Cambodian state bears three particular obligations with regard to economic development and productivity. In its Article 61, the state is required to promote economic development in all sectors and remote areas, especially in agriculture, handicrafts, industry, with particular attention to policies regarding water, electricity, roads and means of transport, modern technology and a system of credit. Article 62 focuses the state's attention on helping to solve production matters, protecting the price of products for farmers and craftmakers, and finding a marketplace for them to sell their products. Another duty of the state is to guarantee a better standard of living for the people (Article 63).

### ***UN-ILO Conventions***

Cambodia has ratified the UN Charter on Human Rights, the UN Convention on the Rights of the Child and 12 ILO conventions, of which seven are fundamental conventions pertaining to fundamental principles and rights at work.

Of the eight fundamental ILO conventions, Cambodia has until now ratified seven—the Forced Labour Convention, Abolition of Forced Labour Convention, Freedom of Association and Protection of the Right to Organize Convention, Right to Organize and Collective Bargaining Convention, Equal Remuneration Convention, Discrimination Convention and Minimum Age Convention, and is now discussing the remaining fundamental convention on the worst forms of child labour.

The other five ILO conventions ratified by Cambodia are: Night Work (Women) Convention, Night Work of Young Persons (Industry) Convention, White Lead (Painting) Convention, Employment Policy Convention and Labour Administration Convention.

### ***Law and executive regulations: Legislature-adopted laws***

The principal legislation with regard to employment in Cambodia is the Labour Law. In 1997, the Cambodian National Assembly adopted a highly detailed and progressive Labour Law to cover, with several exceptions, all kinds of work where there is an employer-employee relationship. The establishment of the present law is based upon the 1992 Labour Law it replaced, but contains a number of important additional provisions which guarantee freedom of association and the right to strike, sets a minimum age, and provides for free registration of labour unions, collective bargaining and a detailed system for resolving disputes.

Apart from this key text, some other legislation also directly or indirectly affects labour affairs. The main relevant texts are: Law on the Export of Cambodian Labour to Foreign Countries; Law on Social Security Regime for those set under the Provisions of the Labour Law (15 August 2002); law on Commercial Registrations and the Commercial Register (26 June, 1995), some provisions of which are amended by Law of 18 November, 1999; Law on the Press Regime (18 July 1995); Law on Demonstration (27 December 1991); and, more generally, Decree-Law No. 38 on Contract and Other Liabilities.

All laws adopted by the Parliament (National Assembly and Senate) shall be enforced and implemented by the Government, which in turn may promulgate a series of implementing regulations.

### ***Executive regulations***

In implementing the laws of the country, the Government is empowered to set out a range of executive regulations in a way to detail broad provisions of the law in response to actual situations in practice. This regulatory power results in diverse forms of regulations, including Royal Decree (Kret) rendered by the King, Sub-Decree (Anouk-Kret) by the Prime Minister, Proclamation (Prakas) by Ministers, Deika by Governors of municipalities or provinces, and other texts such as Decisions, Circulars and so on.



The most important regulations related to labour are the Prakas of the Ministry of Labour and Vocational Training<sup>16</sup> in its capacity as a technical institution in the field of employment. To date, the Ministry has promulgated a great number of Prakas with regard to labour affairs but none of them has intentionally referred to the informal economy. In addition, the Ministry has also rendered specific regulations, taking the form of Circulars (i.e., Circular 21, dated 22 September, 1999, regarding disputes arising in the garment, textiles and footwear sectors, and the appointment of liaison officers in enterprises).

Aside from the Prakas of the Ministry of Labour, other governmental regulations visibly seem to be too general to be directly involved in the study context. However, some of those may partly but closely contribute to our study, i.e. the Sub-Decree dated 10 September, 1994, on the Maintenance of Social Order in Phnom Penh, in the Provinces and Municipalities.

### **Intended applicability of labour law**

The Cambodian labour law covers all labour situations where there is an employer-employee relationship, with several exceptions explicitly mentioned by the law itself.

#### ***General coverage of labour law: Employer-employee relationship and scope of application***

In principle, the Labour Law applies to all employers and employees who are in a situation where there is an employment contract. Article 1 of the Law states, in part, that: “The present law governs relations between employers and workers resulting from employment contracts to be performed within the territory of the Kingdom of Cambodia...”

Under the Law, the term “worker” refers to “employee”, which means—according to its Article 3—every natural person who contracts to perform work for and under the direction and management of another person in return for remuneration. “Employer”, on the other hand, indicates all natural persons or legal entities who hire one or more workers to perform work for them under a contract of employment (Article 2). The present definition of “employee” implicitly excludes independent contractors and leaves out the own-account or self-employed workers from the scope of application of the Law.

However, although the Labour Law clearly refers to employer-employee relationships resulting from an employment contract which can be made orally or in writing,<sup>17</sup> not one article of the Law defines what exactly is or constitutes an employment contract. In the absence of such a definition, the understanding of employment relation or employment contract will be solely derived from the definitions of “employee” and “employer” provided above. Based on Articles 2

<sup>16</sup> The Ministry of Labour and Vocational Training was originally known as Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation until the formation of Government in August 2004.

<sup>17</sup> Labour Law, Article 65.



and 3 of the Law, the employment relationship is very likely to be characterised by a contractual situation in which a person—called employee—contracts to provide services under the direction and management (1) of another person, called employer, in return for remuneration (2). The first point, which requires employee to perform work under the direction and management of an employer, leaves out of legislative scope some disguised workers (home-workers or outsourced workers), whose duty is apparently to provide goods to another person in a commercial relationship while in reality the main task of the goods seller solely depends on commercial activity of the buyer's enterprise. The phrase “under the direction and management” seems to be very important to determine the linkage of subordination or dependency between employers and workers. However, the phrase can just be read and understood in a broad way and nothing is defined in detail to characterise its existence. The second point, referring to remuneration to be obtained by workers, also keeps unpaid family workers out of labour protection.

### ***Dimensions of employer-employee relationship***

Referring to the employment contract situation, the Labour Law applies to employers and employees in a very broad way. Under Article 2, “enterprise”, subject of Labour Law provisions, is a very general term used by the Law to indicate any organization, unit or even individual who does any form of legal business and employs one or more persons, even discontinuously. This definition of enterprise seems to be very wide, compared to those defined in some other countries.

By the word “discontinuously” stated above, the Law implicitly recognises part-time jobs and later explicitly mentions casual work in Article 9. Distinguished from regular workers who work on a permanent basis, casual workers are engaged to perform an unstable job, which means that they are contracted to perform a specific work that shall normally be completed within a short period of time or to perform work temporarily, intermittently and seasonally. Furthermore, while there are no specific regulations with respect to piece-rate employment, Article 108 states that the wage of such work, whether it is done in a workshop or at home, must be calculated in an amount at least equal to the guaranteed minimum wage as determined for a regular employee. However, it should be clear that none of these several categories of work remove the relevant workers from the scope of the labour law; the only significance is that only relatively small differences in rights follow from these categories.

In terms of contract formation, the Labour Law recognises both verbal and written contracts of employment. The employment contract can be for a fixed or unfixed duration. The Law requires a fixed-duration contract to be in writing; otherwise, it becomes an unfixed-duration contract, which generally may be established in writing or orally. Cambodian Labour Law thus considers a contract without a fixed duration as a regular or typical contract while a fixed-duration contract is treated as a particular one. In addition, the Law is also intended to govern situations resulting from subcontracting work, provided in its Article 48

that in case of insolvency or default by the independent labour contractor,<sup>18</sup> the entrepreneur or manager of the enterprise shall substitute for the contractor to fulfil his obligations vis-à-vis workers employed by the labour contractor; thereby the harmed workers may file a case directly against the entrepreneur or manager.

It should be particularly noted that, beside general provisions set out in the Law, specific working conditions for agricultural works are provided within a particular chapter of the Law.

### ***Activities explicitly excluded from the Labour Law framework***

Despite the presence of a clear employment relationship, a large number of labour situations are explicitly excluded from the scope of the application of the Labour Law. Based on Article 1 of the Law, the excluded activities may be classified into four categories:

- all state servants—including judges, civil and military servants, and police—who are governed by separate laws;
- workers covered by diplomatic statutes;
- personnel serving in the air and maritime transportation sector, who are subject to special legislation; and
- domestic or household servants who may enjoy some specific rights only where they are specified under the Labour Law.

Among the four categories of workers, domestic or household servants are in the poorest situation in terms of labour protection as they are covered by no other specific legislation.

### **Labour administration mechanisms**

Labour Administration Mechanism resides in the sole jurisdiction of the Ministry of Labour and Vocational Training, previously known as Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation until the formation of Government in August 2004. By this competency, the Ministry may render administrative regulations and set administrative procedures to implement the Labour Law and to guide employers and employees.<sup>19</sup>

To date, only those formal employer-employee situations mentioned by the Labour Law are subject to the existing administrative mechanism of the Ministry; and, no specific administrative mechanisms have been established for informal economy workers. Apart from the general jurisdiction of the Ministry, the current administrative mechanism is also assigned by the Labour Law to other four administrative agents subordinate to the Ministry of Labour, including the Labour Inspection, Legal Advisory Committee, Labour Medical Inspection, and Arbitration Council.

<sup>18</sup> Labour Law, Article 45: *“The labour contractor is a subcontractor who contracts with an entrepreneur or manager and who, himself, recruits the necessary work force or workmen for the execution of certain work or the provision of certain services for an all-inclusive price”.*

<sup>19</sup> Labour Law, Article 338.

### ***Labour inspection***

Labour Inspectors and Labour Controllers assume the tasks of labour inspection. The main missions of labour inspection are to ensure enforcement of the Labour Law and regulations relating to labour affairs; provide information and technical advice to employers and employees on the effective ways of observing the laws; to bring to the attention of the competent authority any impropriety or abuses that are not specifically covered by the existing laws; to give advice on issues relating to the arrangement or restructuring of enterprises and organizations that have been authorised by the administrative authorities; and to monitor the enforcement of the legal provisions regarding the living conditions of employees and their family.<sup>20</sup>

The Labour Inspectors and Labour Controllers cannot have any interest whatsoever in the enterprises within the jurisdiction of their inspection. They must keep the source of any complaint referred to them regarding any default in the facility, or a violation of law, strictly confidential and must not reveal to the employer or his representative that the inspection was the result of a complaint.<sup>21</sup>

### ***Legal Advisory Committee (LAC)***

The LAC comprises of the Minister of Labour, representatives of relevant ministries, and an equal number of representatives of the workers' unions that are the most representative at the national level, and the representatives from employers' associations that are the most representative at the national level.<sup>22</sup> The purpose of the LAC is to study and make recommendations on labour related issues, and to provide inputs regarding labour policy but the LAC may not issue any regulations.

### ***Labour Medical Inspection (LMI)***

The LMI operates for the purpose of protecting the health of employees at the workplace. The task of medical inspection is assigned to Labour Medical Inspectors who place great emphasis on the organization and operation of labour medical services. The Labour Medical Inspectors work in conjunction with Labour Inspectors and cooperate with them in enforcing regulations regarding the health of employees.<sup>23</sup>

### ***Arbitration Council (AC)***

The AC is made up of at least 15 members. They include tripartite members: one-third nominated by the Ministry of Labour and Vocational Training, one-third nominated by Labour Unions that are full members of

20 Labour Law, Article 344.

21 Labour Law, Article 348.

22 Labour Law, Article 352.

23 Labour Law, Article 349.

the Labour Advisory Committee, and one-third nominated by Employers' Associations that are full members of the Labour Advisory Committee.<sup>24</sup> The main duties of the AC are to examine issues relating to collective labour disputes as stated in the Labour Law and to decide on dispute concerning the interpretation and enforcement of laws or of a collective agreement.<sup>25</sup>

The Labour Law sets a period for the AC to hear a case and issue an award. In the case of a failed conciliation by the Labour Inspector, the collective labour dispute may be referred to any arbitration procedure set forth in the collective agreement or to any other means determined by both conflicting parties or to arbitration procedure provided for in the Labour Law. For the last case, the Minister of Labour will refer the disputes to the AC within three days after the receipt of the report from the conciliator. Following the receipt of the case, the AC has to decide on the dispute and issue an award within 15 days. The parties are allowed to make the challenge to the court within eight days following the notification of the decision. The report on conciliation agreement and arbitral decisions, which have not been appealed, would be posted in the workplace of the enterprise involved and in the office of the relevant provincial or municipal Labour Inspectorate.

It should be clearly noted that the AC has no duty to examine issues other than those specified in the non-conciliation report made by the conciliator of the Labour Inspection.<sup>26</sup> Therefore, in a collective labour dispute, access to dispute resolution mechanisms for workers is dependent on their being in an employer-employee relationship recognised and recognisable, in practice, by the Labour Inspection. Most informal economy workers are often excluded from the mechanism as they not have clear employer-employee relationships, although they sometimes find themselves in situations where they could use dispute resolution.

### **Labour Law and administration: Cases of application**

#### ***Practical use of labour legislation to informal workers***

As mentioned earlier, informal economy workers in the Cambodian context generally refers to two types of workers: those who are literally excluded and those practically excluded from the legal framework. In practice, only the second group of workers may enjoy some rights from labour protection as they are at least literally included by the Labour Law. Any protection of the second group would be based on some other legislation that is somehow relevant to their particular situation. Thus, the actual application of the labour legislations to protect workers in the informal economy should be seen with this difference in mind.

<sup>24</sup> Prakas 99-2004 on the Arbitration Council, Article 3.

<sup>25</sup> Labour Law, Article 312.

<sup>26</sup> Labour Law, Article 312.

### **Relevance**

In spite of the restrictions of the Cambodian labour legislation's application to the employer-employee relationship, it is to some extent quite impressive for many reasons. First, it applies to enterprises employing just one or more workers, even on a discontinuous basis.<sup>27</sup> In other words, notwithstanding the scale of enterprise or establishment, workers in the enterprise or establishment are subject to the labour protection enshrined in the legislation. This is meant to extend the labour protection to a wider array of enterprises and people including sweatshop production. It recognises that the Cambodian private sector is comprised of a large number of micro, small and medium enterprises (MSMEs), which are small in size.

In addition, Cambodian legislation applies, with the exception of the four abovementioned categories of excluded activities,<sup>28</sup> to every type of enterprise or establishment ranging from small to large—industry, mining, commerce, crafts, agriculture, services, land or water transportation regardless of whether they are public, semi-public or private, non-religious or religious; or are of professional education or charitable characteristic as well as the liberal profession of associations or groups of any nature whatsoever.<sup>29</sup>

Moreover, the legislation does not discriminate against casual, temporary and part-time workers. Casual workers are entitled to the same rules and obligations and enjoy the same rights as regular workers, except for the clauses stipulated separately.<sup>30</sup> Likewise, subcontractors are under the same obligation as ordinary employers to take the same responsibility and observe the provision of the labour code.<sup>31</sup> Apprenticeship is subject to the provisions stipulated in Chapter III of the code as well. All these provisions provide machinery for protecting the rights of casual workers, subcontracting workers and apprentices who are not covered by the labour law in some other countries and therefore considered as informal workers.

Despite the generosity of the labour legislation, the actual application seems far from the legal text. Many enterprises do not register their businesses with the Ministry of Commerce or declare the presence of their employees to the Ministry of Labour and Vocational Training. This is because of the time-consuming and complicated registration procedure, bureaucracy as well as corruption.<sup>32</sup> It is estimated that there are about 27,000 enterprises of SME size in the informal

27 Article 2 of the Labour Law defines enterprises, which are under the coverage of the code, as: "All natural persons or legal entities, public or private, are considered to be employers who constitute an enterprise, in the sense of this law, provided that they employ one or more workers, even discontinuously."

28 Under the heading above, Activities explicitly excluded from the Labour Law framework.

29 Labour Law, Article 1.

30 Labour Law, Article 10.

31 Labour Law, Article 47.

32 See also, *Decent work and the informal economy in Cambodia: A literature review*, (Thailand, 2006).

economy that have actively chosen not to register with the Ministry of Commerce. Although the figure of enterprises that do not register their workers with the Ministry of Labour and Vocational Training is unknown, we have extrapolated that perhaps, almost 341,000 employees work for MSMEs.<sup>33</sup> The feeble capacity of the labour administration is another factor that renders the enforcement of labour legislation ineffective, even in certain formal enterprises. The contours of the labour protection have so far reached only a minimal number of workers, estimated to be approximately 10 percent of the total labour force.<sup>34</sup>

### ***Limitation***

Nonetheless, the phrase “employer-employee relationship” required by the labour code leaves many self-employed or own-account workers outside the scope of legislation,<sup>35</sup> and their basic rights have been deprived. For instance, their rights to organize and to bargain collectively<sup>36</sup> have been restrained owing to the fact that they are not able to form trade unions.<sup>37</sup> More specifically, they cannot negotiate a collective agreement since the presence of a trade union organization representative of workers is required to do so (Article 96 of the labour code).

It is true that even without rights to form trade unions, these own-account workers/informal workers are still entitled to freedom of association, expression, assembly, to strike and non-violent demonstration under the protection of the constitution.<sup>38</sup> However, nuances between the right to association and the right to establish and join trade unions apparently exist. The exercise of their rights to join or form associations seems to be more restrictive. On one hand, it requires a process through the Ministry of Interior while the formation of trade unions is with the Ministry in charge of Labour. On the other hand, absence of text mentioning the exact period within which the Ministry of Interior has to reply to the declaration on the formation of an association makes the procedure more complicated and ambiguous; whereas the Ministry in charge of Labour is explicitly required to reply within two months after receipt of registration form, otherwise, the trade union is considered registered. Furthermore, recently after the anti-Thai riots, public authorities have interpreted any organization or demonstration as an act against public order or security. The ban based on the reason of public security

33 See text accompanying Table 2: Estimated workforce in Cambodia (2001), on page 40.

34 See the report of the U.S. Department of Labour, Bureau of International Labour Affairs and U.S. Embassy in Phnom Penh: Foreign Labour Trends - Cambodia, 2003, available also at: <http://www.dol.gov/ILAB/media/reports/flt/cambodia-2003.htm>

35 40 percent of the total workforce are self-employed, as mentioned in Table 2, page 40.

36 The term “right to collective bargaining” is hereby meant more broadly to signify the right used by all workers to “collectively bargain” with all parties that have a role to play in establishing their “working conditions” whether or not they are in an “undertaking” and whether or not the other party is an “employer” in relation to the worker.

37 Labour Law, Article 266 allows only workers and employers having employer-employee relationship to form professional organization, called workers’ union.

38 See Article 37, 41 and 42 of the Cambodian Constitution.

and order has been, de jure, in conformity with the law on demonstration and the Constitution.<sup>39</sup>

Besides, the role played by an association in protecting informal workers seems to lack legal arrangement unlike a trade union. The association depends thoroughly upon their status to protect the interests of their members. In the case of ambiguity regarding its status, the association may not be able to intervene. It is not adequately empowered due to the absence of the legal provision to bargain or negotiate with other stakeholders to consider the interests of informal workers as important. In general, the association uses its informal technique and negotiation and advocacy skills to persuade those stakeholders.

The lack of employer-employee relationship has also excluded informal participants from social protection. The Cambodian social security law (Article 1) makes the social security regime applicable only to those who are covered by the labour legislation of the Kingdom. Therefore, informal participants are not entitled to benefits of the social security scheme, namely, elderly, sick, or the victims of work-related accidents, and work-related diseases. It is not too late, however, as this law has not been effectively enforced.

However, the use of legal standards to protect informal workers' rights has been restricted in practice in all areas of informal economy activities. Many people who work in the informal economy are not aware of their rights. Even when they are aware of them, most lack the confidence to enforce their rights when in conflict with employers or public authorities.

### **Limited function of associations and trade unions**

Apparently, the union movement in Cambodia has grown rapidly since the adoption of the 1997 Labour Law. Since then, the number of labour unions has increased quickly. Among these, there are two major trade unions whose sectors of activity are relevant to the informal economy: the Cambodian Union Federation of Building and Wood Workers (CUFBWW) and the Cambodian Construction Federation of Trade Union (CCFTU). Apart from these two trade unions, which are registered with the Ministry in charge of Labour, some other organizations are closely involved in the informal sector, especially in self-employed activities. These organizations take the form of associations, which are registered under a more complicated procedure with the Ministry of Interior. Two examples of these associations are the Cambodian Association for Informal Development (CAID) and the USG.

<sup>39</sup> Article 41 of the Constitution states: "No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security." Article 1 of the law on demonstration says: "Organisation as groups and assembly to make demonstration is possible. However, organisation as groups in public areas, in public streets....which may affect the public order or security is prohibited."



Established under Labour Law procedure, trade unions operate in a wider scope of intervention as compared to associations. However, their activities remain minor in terms of effectiveness and quantity. This limited scope of activities may be explained by a number of things, including negligible practical development of law and rights at work and a low level of confidence in collective bargaining as a system in the informal work environment, lack of human resources, absence of specific provisions upon which to be based, and so on. With these constraints, the sole means to be used for protecting workers' rights is to negotiate with those employers, based on broad provisions of Labour Law. To date, Mr. Say Sam On, Director of CUFBWW, revealed that no written agreement has been established.

For the associations, the overriding concern is commonly the absence of appropriate texts to be based in their collective bargaining process. In this absence, Constitution, International Conventions and Declarations, or some other relevant laws may all serve as practical basis of negotiations, in addition to their own advocacy skills to persuade those stakeholders. The result thus depends heavily on actual strategies developed by each association.

### **Dispute settlement processes involving workers in the informal economy**

As earlier mentioned, informal economy workers are not entitled to any special dispute settlement mechanism other than common procedure in judicial courts. However, in their work, those workers have turned to some trade unions or associations to get help in resolving their disputes through forms of negotiation with parties involved in the disputes or interventions from authorities concerned.

Found in the EIC's surveys through key informant interviews, a range of steps is followed in dispute settlement processes in the informal economy. First, following complaints made by workers, an association or trade union shall initiate a face-to-face negotiation between the conflicting parties in order to reach a verbal or written agreement. If an agreement is not reached, a second procedure may be turned to, using a superior, who might be the manager of a company, an upper local authority or market authority or governor of municipality to help resolve the dispute. It should be noted that stakeholders might at any stage use other means to reach an agreement or result; this could be in the form of a demonstration or article written in the newspaper, for instance. The final stage would involve judicial procedure in courts.

However, these procedures are not followed in the same way by all associations or trade unions at every stage.<sup>40</sup> In particular, CAID—which has experienced these stages mentioned—has achieved positive results affecting many workers; especially transport operators, farm and fishery workers, and micro-vendors. Some examples of their successes are:<sup>41</sup>

<sup>40</sup> All stages of this process are totally followed by CAID—according to Mr. Lous Seyha, President of CAID—while, in some other interviewed associations and trade unions, they are found partly used.

<sup>41</sup> This information is based on an interview with CAID President and CAID report 2001-2002.



- In 2001, CAID led a group of about 200 truck and taxi drivers in a collective complaint against a highway toll charged by a private company, Veng Sreng. CAID succeeded in persuading the company to reduce its fee after some discussions with the management of the company.
- A market security guard working for the public authority hit a street vendor while moving street vendors from a sidewalk. CAID assisted its member, who had been injured, in seeking compensation. Intervention was successful as the guard agreed to pay a compensation of US\$200.
- Municipal authorities barred tri-motor taxis from entering the city. At the request of 120 tri-motor operators, CAID held negotiations with the municipality and convinced it to reverse its decision.
- In a land dispute of over 95,648 hectares between thousands of farming families and Kim Svill Corp. Co. Ltd, CAID was chosen by 1,387 families to be their representative. The CAID intervention led to the release of six persons imprisoned in connection to the land dispute and the return of the land to the families. Those farmers have since joined CAID as members.
- A municipality banned motor-taxis from carrying passengers at the Phnom Penh International Airport. CAID followed up on the request of a group of 31 moto-taxi operators, leading to a reversal of the municipality's decision.

#### 4. Conclusions and recommendations

As in other countries around the world, decent work deficits in Cambodia should be regarded as a legal problem. The absence or insufficiency of labour protection and/or its enforcement leaves a huge number of Cambodians working with a decent work deficit in or on the edge of the informal economy. In this regard, extending labour protection to currently uncovered or unprotected groups presents an indispensable means of reducing decent work deficits in the country.

On paper, however, Cambodia has demonstrated its strong commitment in ratifying most of the core ILO Conventions. In addition, the current Cambodian Labour Law is a highly detailed and progressive text compared to those of many other countries. However, the present law only covers the formal employment sector. The first reason that the informal economy is left out in the cold when it comes to labour protection is the fact that the law itself is explicitly intended to cover only those situations where there are employment relationships. The second relates closely to the practical weakness of law enforcement in some sectors. Therefore, extending labour protection to the informal economy would need both textual legal reform and greater enforcement of the law.

## **Legal text reform**

### ***Pre-condition for legal reform***

As initially raised in the report, the main objective of the labour law extension is to create more decent work in the country and not only to establish formal rules for informal economy workers. Considering the importance of the informal sector in the economy, more surveys and impact studies thus seem to be a pre-condition for effective and appropriate legal reform. Detailed and vigilant studies would be conducted in a way to avoid a negative effect of the reform on economic growth and employment opportunities and, at the same time, to identify actual problems and issues of workers in each particular type of informal economy sector, so that adequate legal provisions would be established in response to their demands.

### ***Extension of the scope of labour legislation***

To integrate all kinds of workers into the labour legislation framework, the legal text reform would focus on three important tasks:

- including self-employed workers in the legal coverage;
- redefining employer-employee relationship in a way that possibly governs unpaid workers and other workers without clear employer-employee relationship; and
- removing the exclusion of domestic servants from the present labour law.

In the process of integrating self-employed or own-account workers—like some of those agricultural workers, micro-vendors, or transport operators in our study—there should be two main options: the first is to include these self-employed workers into the coverage of the existing Labour Law, and the second is to establish separate rules to specifically cover those self-employed workers. Choosing the first option would inevitably result in an amendment of the present Labour Law, which would need to be approved by Parliament, and this procedure may take a long time. But for the second option, a separate text may be promulgated either at the legislative level, taking the form of a separate law, or at the executive stage, taking the form of governmental regulations. The latter choice—using executive regulations—may take less time but the new text will probably repeat many of the provisions currently included the Labour Law; in other words, there shall be different texts mentioning the same or similar issues.

In the above process, it should be noted that the situation of these self-employed people will be the concern of several chapters of the existing labour laws, especially relating to occupational health and safety, social security, trade union freedom and right to collective bargaining, where both self-employed and dependent workers would enjoy benefits from labour protection. However, all other provisions regulating the relationships between workers and their employers will not apply to self-employed persons and own-account workers. So, in terms of procedures, there would not be many modifications to be made in

the existing labour laws, other than a clear reference mentioning which chapters of the laws shall apply to self-employed work, excluding some changes to make the whole text compatible with the incorporation of this kind of worker.

The notion of employer-employee relationship is restricted and ambiguous and thus leaves important groups, such as unpaid family members, outside the scope of legislation. A clear and refined definition of “employee” and “employer-employee relationship” needs to be added to the current legal text. This definition should be broad enough so that the employer-employee relationship is not limited merely to remuneration. The definition should be clear enough to exactly define the criteria under which workers are subordinate to employers.<sup>42</sup>

The last thing to be modified in the legal text is the extension of labour protection to domestic or household servants. It seems quite easy to add this group of workers into the legal framework by simply removing the existing exclusion made in the present labour law. In terms of substance, however, this should be done with much attention in particular recognition of the distinctiveness of the workplace (a private house) and the majority proportion of women and child labour in this job. Therefore, additional detailed provisions should be promulgated with more survey and studies on the actual problems they face, to specifically govern this kind of work.

### **Recognition of difference in workers’ interests**

As previously mentioned, the informal economy is very diverse and problems are very specific. Once all types of employment are recognised in the labour law, more detailed provisions can be specifically promulgated in response to actual problems and varied interests of the various employment groups. More surveys and studies need to be done on all of the areas of the informal economy. Some differences of interests will be discussed below to show how and where the labour extension law can be focused.

Among self-employed persons, certain differences seem to be apparent between rural and urban workers. The main problems the farmers face are related to low productivity and access to markets due to lack of funds, land tenure, low skills, whereas the biggest concerns of urban micro-vendors and transport operators are police harassment, selling or parking places and social

42 A new definition of “employee” has recently been provided within the amendment of labour legislation in South Africa by referring to *any person who earns under a certain income regardless of the form of contract the worker has with the work provider if the nature of the relationship meets one of seven criteria: 1. The way in which the person works is controlled or directed by another person; 2. Hours of work are controlled or directed by another person; 3. In the case of a person who works for an organization, the person forms part of that organization; 4. The person has worked for that other person for an average of at least 40 hours per month over the last three months; 5. The person is economically dependent on the other person for whom he or she works or renders services; 6. The person is provided with tools of trade or work equipment by the other person; or, 7. The person only works for or renders services to one person.* Tanya Goldman, *Organizing in South Africa’s Informal Economy: An Overview of Four Sectoral Case Studies*, Working Paper No. 60, Geneva, 2003. p. 44.

security issues. Therefore, promoting measures or policies on land tenure and skill training is a priority for rural agricultural workers; whereas the situation of urban self-employed workers calls for clear regulations determining their rights in relation with local and administrative authorities and with market authorities when conflicts arise.

As revealed in the report, the situation of unpaid family workers seems similar to that of self-employed persons. Compared to employer-employee situations where workers financially depend on another person (the employer), the self-employed and family workers rely solely on their own businesses and productivity. In recognition of this difference, policymakers may find that priorities are also different in terms of decent work improvement. Particular consideration should be given to the difference between promoting decent work through legislated protection, which seems more appropriate for workers in employer-employee relationships, and promoting it through other methods (i.e, productivity development), which seems more appropriate for own-account and family workers.

Dependent workers, on the other hand, lack labour protection because of weak law enforcement. In terms of working environments, the situation of real employees—some of our casual construction workers, restaurant and entertainment employees—working in MSMEs should be regarded as a critical problem in the context of the Cambodian informal economy. Concerning this, an enterprise's registration procedure should be simplified in compliance with the quantitative, financial and geographic situations of the various enterprises. However, no matter what the procedures are, enterprise registration should not be a burden on the enterprises, especially micro or very small ones, but rather a mechanism for making an environment of more decent work. Another reason for the lack of labour law enforcement can be explained by the absence of specific regulations in this particular area of work. The legal aspect of these works deals closely with the financial situations of enterprises where productivity development should also be regarded as an indispensable means of reducing decent work deficits. In particular, it is hard to imagine that the minimum wage in this type of work could be set at the same level of that in the formal enterprises.

### **Law enforcement**

Having adequate legal texts that provide disinterested labour protection to all types of workers is an asset. However, workers will not see their rights fully protected unless all provisions of the law are enforced. Enhancing law enforcement in the Cambodian informal economy thus deals closely with capacity building and institutional development.

A low level of awareness of the law and rights at work seems to be apparent within the informal economy. This should be a common concern calling for immediate intervention from other stakeholders, especially the government, the ILO, local non-government organizations (NGOs), trade unions, associations or local authorities through short-term training courses or seminars, television programmes, or all other means possible. The most important rights to be

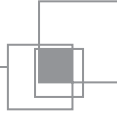
highlighted should be the freedom of association and the right to collective bargaining. Workers in the informal economy must learn how to make their voices heard so that their interests can be taken into account. However, consideration should also be paid to workplace health and safety, protection from exploitation and abuse, and access to social security and health insurance, recognising in particular that women are less likely to exercise these rights than men. In collaboration with donors and other social partners, lessons learned and best practices from other countries should be implemented in Cambodia.

From the administration's side, capacity building also seems to be a key issue in the context of law enforcement. One important problem currently faced by Labour Inspection deals with the human resources issue<sup>43</sup>, on which qualitative and quantitative capacity building seems to be in urgent need.

Regarding institutional development, specific administrative and judicial mechanisms should be extended to specially protect workers in the informal economy. Some aspects of access to administrative or judicial services should be reviewed to simplify the procedure where it is too complicated, or requires too much time and cost. The establishment of Labour Inspection Units in each *khan* (administrative territorial authority at the district level) in Phnom Penh is a good example of simplifying such procedures, making administrative services timelier and closer to work environments. It would be a great thing if the same mechanisms could be implemented, with appropriate quantities and quality, in some significant areas where decent work deficits seem to be most pronounced. All of these call for greater and more detailed surveys and active intervention from both Government and civil society, so that appropriate mechanisms would be established in accordance with real situations of each group of informal economy sectors.

However, extending labour protection to the informal economy alone will not effectively reduce decent work deficits unless the government's other social and economic policies tackle the same issues. In the garment sector, the application of labour legislation seems to be considerable, so why not in the informal sector? The period of time and the necessary strong commitment of the government remain key points in the context of the Cambodian informal economy.

43 According to Mr. Hout Chanthy, Director of Labour Inspection, Ministry of Labour and Vocational Training.



# Extending labour protection to the informal economy in Thailand

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*This paper argues that opportunities opened by globalisation of production chains has led to the growth of employment in the informal economy in blurred and hidden employment relationships that go unrecognised or unacknowledged under existing labour laws and social protection schemes. Three different case studies are offered to illustrate the point. The remaking and amending of laws and institutions—in ways that link workers' protection with employment opportunities—is argued to be the appropriate method for extending to workers in the informal economy protections on par with those who work in the formal economy.*

## 1. Review of the informal economy situation in Thailand

Globalisation and economic restructuring has led to the growth of informal economy all over the world. There are many factors contributing to the rapid growth of the informal economy. Increasing competition has led companies to seek and adopt employment flexibility in order to cut costs, and in turn, informal relations between employers and employees. Economic crisis and company restructuring have caused massive lay-offs; new employment is often found in the informal economy. Labour law, social protection and governmental institutions are outmoded and ineffective in coping either with flexible employment or production chains running across national boundaries or regions involving producers in a variety of employment relations.

In Thailand, attention needs to be paid to the informal economy because of its importance to the Thai economy and society. Furthermore, the majority of people working there are not protected. Although the informal economy makes up almost 50 percent of employment, the rights of workers in the informal economy are unequal to those in the formal economy.

### Definitions of the informal economy

The ILO defines informal economy as economic activities that have no protection or regulation under the law or having insufficient protection because these activities are conducted outside the legal framework. It can also refer to activities covered by laws that are scarcely or not enforced because of inappropriate regulation, the burden for those concerned, or the high cost of doing so.

The ILO divides persons in the informal economy into three groups.<sup>1</sup>

1. Employers of small enterprises having few workers;
2. Self-employed/own-account workers and unpaid employees;
3. Workers in small enterprises of informal activities or workers with no definite employer or employment contract such as home workers or producers under production contract.

The Social Security Bureau of the Ministry of Labour has concluded its preparatory activities on the extension of social protection to informal economy workers in 2006 and set the definition as follows.

Informal economy workers are those outside the protection of the social security law. This can be divided into two groups.

1. Those who are employed and receive income such as home workers, trade contract workers, seasonal agricultural labourers, etc.
2. Those who are self-employed with no hired labour such as drivers with their own or hired vehicles, farmers with their own cultivated or hired land, street vendors, petty traders or pharmacists, lawyers, doctors, dentists, etc.

According to the National Economic and Social Development Board (NESDB), “informal economy” refers to the production of goods or services that generate income and employment occurring outside of the management or supervision of governmental bodies. They are generally small production units run by the community or self-employed persons who may hire workers or use family labour. They may be legally registered or unregulated by law. According to the NESDB, the informal economy is composed of:

1. Non-formal production of goods and services. This refers to economic activities that while not illegal, are neither regulated by law nor taxed. There are no definite wage payments and no employment systems; production is in small units, vulnerable to volatile markets and uncertainty. These activities include:

<sup>1</sup> International Labour Organization, *Decent work. Report of the Director-General to the 87<sup>th</sup> Session of the International Labour Conference*. International Labour Office (Geneva, 1991).

- Those engaged in production including small farmers and agricultural labourers, home workers, small producers, small family businesses, row-house shops, community businesses, group businesses and self-employed groups.
- Those engaged in trade and services consisting of vendors, repairers of personal belongings or household equipment.
- Those engaged in transport, consisting of for-hire motorcyclists, van, taxi and boat drivers.
- Those engaged in domestic work, consisting of production for family consumption, remunerated domestic labourers, child care givers, and care giving for elderly and sick persons at home. Although these kinds of work are important for maintaining the family, they are neither paid for nor counted in the national income of the country.

2. Production of illegal goods and provision of illegal services. These refer to production, distribution and services in illegal activities such as illegal gambling, drug trafficking, smuggling (including illegal trading in war weapons, oil and pornography), sex and human trafficking (such as slave trading, child trafficking and prostitution), trading in wildlife and rare protected plants, corruption in the public and private sectors, money laundering and international crimes.

### **Overview of the informal economy in Thailand**

Studies conducted by the NESDB find that the informal economy is very large, contributing almost as much to GDP as the formal economy (not including illegal activities). In 2001, the informal economy generated value amounting to 2.33 billion baht or 45.6 percent of GDP. Part of this contribution, about 33.3 percent, is accounted for in the GDP while the remaining 12 percent is unaccounted for.

There are an estimated 34.67 million employed persons in Thailand. Around 23.5 million persons—67.8 percent of all employed persons—work in the informal economy and outside the protection of the social security law. Of these, 42.1 percent work in the agricultural sector and 31.2 percent are employed off-farm.

Ministry of Labour statistics report that there were 8.52 million workers employed in the country. The Social Security Fund (SSF) covers establishments with one or more workers. In January 2005, it had registered 7.84 million workers under its coverage.

A survey on the demand for social security for the year 2003 conducted by the National Statistical Office estimated that 24.9 million informal workers—about 70 percent of all employed persons—were outside social protection.

The legalised informal economy refers to the unregulated sector with limited protection; it is distinct from the illegal economy. The majority are small establishments such as household enterprises. Small farmers rely mainly on family labour and constitute a major source of employment and income for many of the underprivileged groups in society, especially those with less education, low skills and no capital.



Though these informal activities are not considered very productive, their numbers have recently swelled and are now growing rapidly. For example, the number of commuter motorcyclists in the Bangkok Metropolitan Area has increased over sevenfold in the past 20 years, i.e. the increase from 16,000 motorcycles and 1,570 stations in 1984 to 108,506 motorcycles and 4,440 stations in 2003. The number of street vendors has increased from 24,192 in 1986 to 25,653 in 1998. Entry into this business is quite easy as it does not require much capital. Between 1999 and 2001, the number of home workers has increased by about 80 percent, from 226,473 to 406,473 households. The majority of home workers are engaged in manufacturing, especially of textiles and garments. Community enterprises such as those the government supports through the One Tambon One Product (OTOP) policy generate employment and income for rural and urban communities.

Activities in the informal economy play an important role in the increase in production and employment for a large part of the population, around 50 percent of all employed persons. They are part of supply chains, providing labour, raw materials and intermediate products in the economic system, the starting ground of new entrepreneurs, and the provider of cheap, consumer products.

At the annual NESDB conference in 2004, there was a recommendation for the government to regulate the informal economy and to emphasise social protection over economic aspects of the phenomenon. According to this recommendation, the government should:

1. alleviate poverty and promote income distribution. This can be achieved through product and service development of the informal sector and promotion of secure employment and income.
2. provide those working in the informal sector rights and social protection equal to workers in the formal sector.
3. create transparency in society by suppressing the illegal economy and its negative impacts.

### **Government policy and the informal economy**

Since 2001, the government under the Thai Rak Thai party has adopted the “Dual Track Policy” of development. Under this policy, export-oriented industries continue to be promoted but at the same time importance is given to developing the domestic economy, for example, by providing village fund projects, debt rescheduling for small farmers, people’s bank projects, etc. Under this policy, GDP increased by 5.3 percent in 2002, household per capita income also increased and unemployment has declined. Household debt also increased.

**Table 1: OTOP product sales (2001-2004)**

Year	Revenue (million baht)
2001	245
2002	16,716
2003	33,276
2004	42,927

The OTOP policy has played a role in stimulating the domestic economy through product development and market expansion. This has been done by developing communities' potential and upgrading the production process relating to quality of the products; promoting marketing and access to consumers and target groups in a systematic way; promoting community enterprise, thus reinforcing the strength of the community; increasing project management efficiency to achieve objectives such as employment, occupation and income generation, development of community wisdom and creativity, product and quality development.

The government has reported impressive OTOP policy performance.<sup>2</sup> OTOP involved people in 26,000 communities, generating a total income of 92,919 million baht. It generated income from exports of 5,000 million baht, involving as many as 37,000 artisanal community groups countrywide. About 600 OTOP products received the quality-promoting 5 Stars Award; 30,000 entrepreneurs were created; 35,000 marketing outlets were established; and hundreds of supermarkets sell OTOP products, increasing sales from 245 million baht to 43 billion baht. All this has improved farmers' incomes derived from OTOP-related non-agricultural activity.

**Table 2: Number of actors involved in OTOP by type of products for 2004**

Type of product	Community	Small and medium enterprises (SMEs)
Textile and garment	7,446	1,779
Food	7,367	3,083
Furniture and objects for decoration	6,699	3,141
Souvenirs	1,886	1,220
Beverages	1,526	1,186

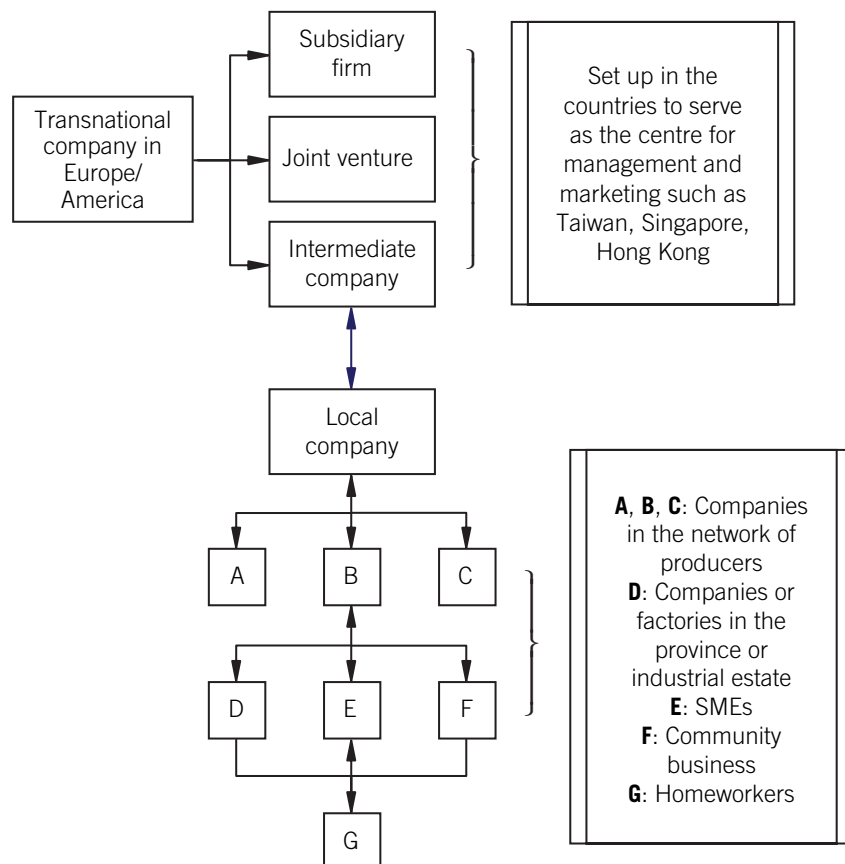
<sup>2</sup> Brochure distributed at OTOP Conference, 6-7 November 2004, Impact Convention Hall, Muang Thong Thani.

## 2. Case studies: The changing employment relation from globalisation to community

### Employment and workers' protection in employment networks under globalisation

Globalisation has an important impact on local patterns of production and employment relations. Production work takes place as part of a global subcontracting system; work is passed down to the household or small producer level in order to minimise costs and increase profits. As illustrated in Figure 1, by relying on commercial contracts to buy and sell, transnational companies and private investors have used subsidiary firms, joint-venture companies, and intermediate companies located in the producer countries to hide or disconnect employment relationships or relations between employees and the benefiting employer.

**Figure 1: International subcontracting**

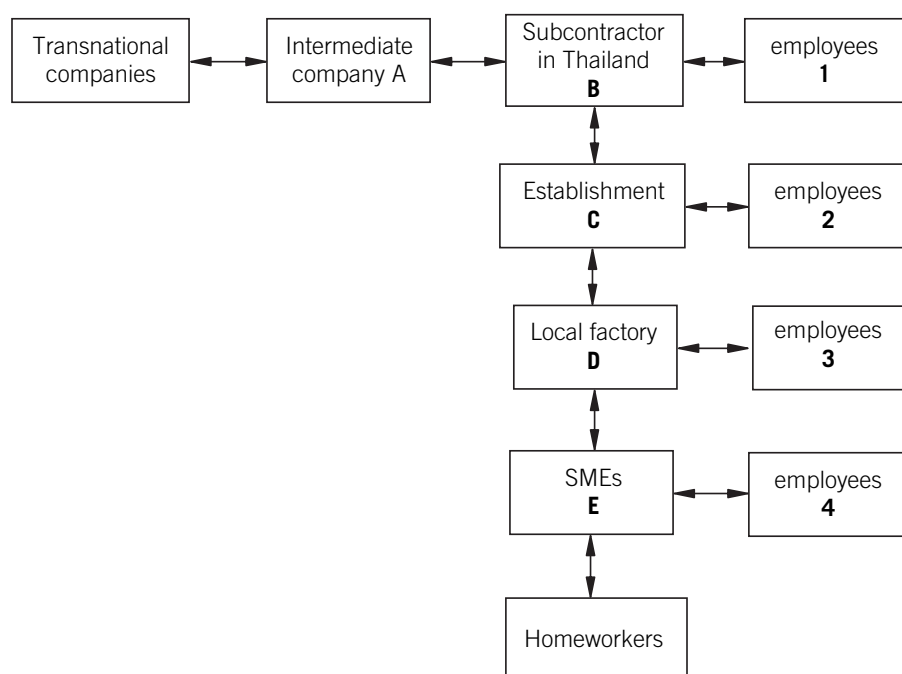


Article 12 of the 1998 Labour Protection Act (LPA) establishes joint liability between contractors and subcontractors on a number of issues including payment of wages, overtime, payment for work on holidays, compensation, special compensation, savings and contributions. Thus, if they choose, an employee or subcontractor can demand the fulfilment of financial obligations

from his or her employer or contractor, going up the line of responsibility to the primary contractor. When the subcontractor at each level has paid the debt, he or she has the right to claim payment from his or her employer.

Figure 2 shows the situation whereby transnational companies do not have any responsibility for the production chain. A is only responsible to B according to a work or commercial contract. A does not have any responsibility to employees of B. If a small enterprise in group E does not make a wage payment to employees 4, those employees could demand wages from E, D, C and B; B would be seen as the primary and ultimate subcontractor.

**Figure 2: The subcontracting system where products are outsourced from factories to rural areas**



### Workers' protections and employment relations at the community level: Three case studies

We present in this section three case studies showing the working conditions and related problems of informal sector workers, noting particularly the inaccessibility of labour protection accorded under labour law.

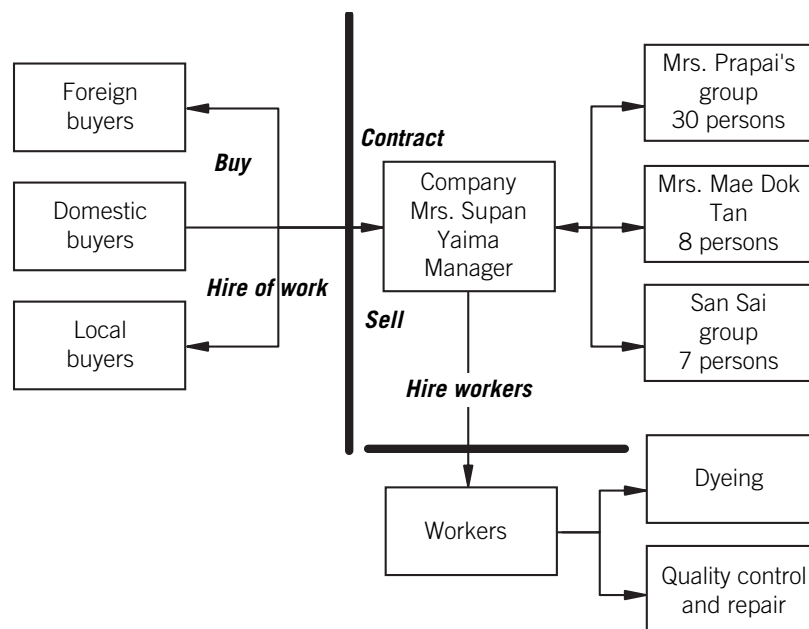
#### ■ *The case of a micro-enterprise producing mulberry paper products*

Mrs. Supan Yaima set up a company producing products from mulberry paper such as picture frames, notebooks, envelopes, boxes, etc. She became a manager in the company. This company has local, national and foreign buyers. The company employs eight workers in regular jobs dyeing, performing quality control and repairing. They are paid a daily wage of 80 baht. Actual production work is done under contract. According to this system, Mrs. Supan's company,

as contractor, has no power to control working hours or how work is performed. The method of payment for the work does, however, involve an incentive by using a piece-rate payment system of six baht per piece.

The rights of the eight workers employed under regular contract by the company are protected under the labour law, including the right to receive the minimum wage. In Chiangmai, the minimum wage is set at 140 baht a day but the company only pays workers 80 baht a day. However, these workers receive overtime payment and paid wage for work on holidays. They also have the right to sick leave of up to 30 paid working days a year, maternity leave of 90 days with paid wages not exceeding 45 days, and child allowance benefits equivalent to 45 days' wages from the SSF.

**Figure 3: Hire of work relationship and pattern of work at San Ton Mong mulberry paper micro-enterprise**



#### ***Challenges for the home workers, the entrepreneur and the community***

When business is going well, Mrs. Suphan, as employer, will pay the home workers immediately, since Mrs. Suphan receives 50 percent of the value of goods from buyers once a contract for purchase is made. But when business is not good, home workers' incomes are reduced. Mrs. Suphan will pay her workers only when she receives full payment for products actually sold. There are two reasons for this. First, she only has a small revolving fund to serve as the company's operating capital, and second, she is not certain that she will be paid for the work contracted. If home workers have an immediate need for money, they can ask for advance wages from Mrs. Suphan. This is akin to the patron-client relationship typical in the countryside.

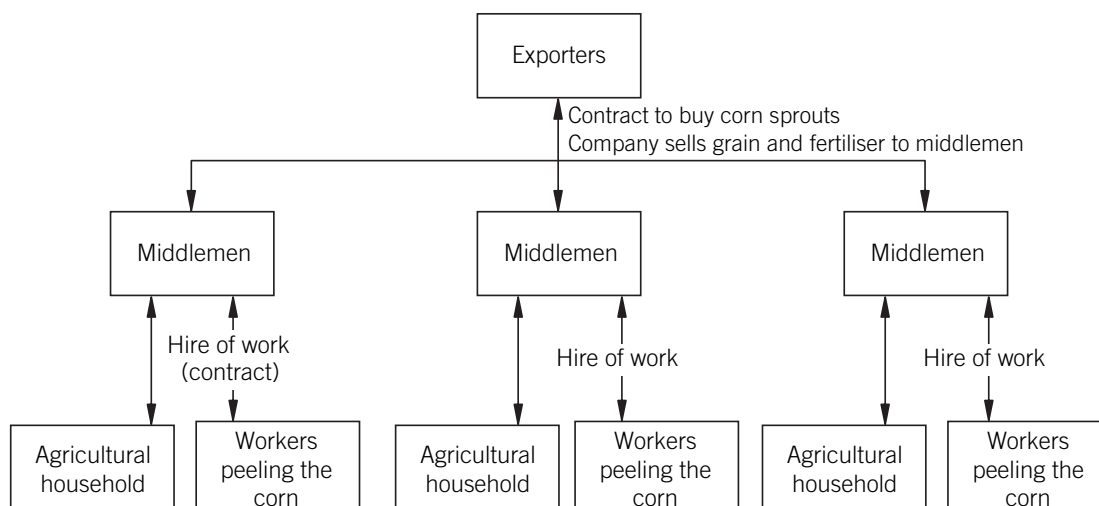
Competition grew such that more and more people are producing mulberry paper products. This has put downward pressure on the wages of workers and home workers. As the owner of the small enterprise, Mrs. Suphan must depend on herself for investment capital, market expansion and product quality maintenance or improvement. This is because the concerned government departments such as the provincial industry bureau or trade bureau have no policy to support SMEs comprehensively.

Furthermore, in the dyeing process of production, home workers are exposed to chemical substances. They have allergies and rashes. Once used, the chemical waste is disposed of in a canal, which pollutes a river, ultimately affecting the community.

#### ■ *The case of contract farming*

In 2004, in Mae Ta district, Chiangmai province, there were 1,295 agricultural households (over 4,000 persons) engaged in contract farming. They cultivate corn sprouts to be sold to a company. Members of the Provincial Council and village heads support contract farming because it prevents deforestation and provides villagers with a stable income.

**Figure 4: Contract farming in Chiangmai**



As illustrated in Figure 4, the company makes a buying contract with middlemen or village representatives. The roles of the parties are set out in the contract.

The company will sell seeds and fertiliser to the middlemen at 23 to 25 baht per kilogramme depending on the size of the corn sprouts. There are three grades—grade S (small), M (medium) and L (large). If the middlemen cannot deliver the promised quantity of corn sprouts by the agreed time, they will be fined one baht per kilogramme.

The middlemen will negotiate a guaranteed price with the farmer/cultivator of the corn sprouts, i.e. 20 baht a kilogramme. In selling corn sprouts to the company, the middlemen receive the difference of three to five baht a kilogramme. The middlemen are responsible for the cost of transportation in delivering the goods to the company. They must hire villagers to peel the corn sprouts, paying two baht per kilogramme for this work. These villagers are free to decide when to work and how many hours to work in the day as there is always work. In light of these factors, the villagers fall into the category of outworkers or subcontract workers according to the commercial law, as they are not employees according to the labour law.

The farmers must make investments such as taking a loan from the bank to buy seeds and fertiliser. The farmers do not have direct contact with the company and they have no knowledge of who buys the product, where it is exported, or what price is paid.

### ***The challenges faced by farmers in contract farming***

The first challenge has to do with prices. The guaranteed price of corn sprouts has been 20 baht a kilogramme for the last 20 years despite the fact that the costs of production and living have increased. The price of grain seed has gradually risen from 20 baht a kilogramme to 80 baht a kilogramme at present. The price of chemical fertiliser has risen from 180 baht a sack to 600 baht at present. If farmers want to irrigate their land, they have to pay for fuel as well.

Additional challenges have to do with incomes, resources, and market power. Some farmers are allergic to maize dust; if the head of household cannot go to work in the field, the income of the family will be affected. With respect to resources, there is often a lack of water as farmers cultivate their crops many times a year. The farmers also lack access to credit and support investments in the means of production. Finally, farmers have no bargaining power with the company because they are unorganized.

A number of suggestions has been made to deal with these challenges.

For example, the farmers proposed that the company set up a community welfare fund to be co-financed by the middlemen and the company. However, this demand has not been accepted. Since the farmers do not know the fair price or market price for corn sprouts, it was suggested that the guaranteed price be increased to 30 baht per kilogramme.

One might also recommend that the company provide social welfare for the cultivators specific to illnesses. The government needs to build irrigation canals and to provide village funds to set up revolving capital to support farmers in their investments.

### **■ *The case of textile production***

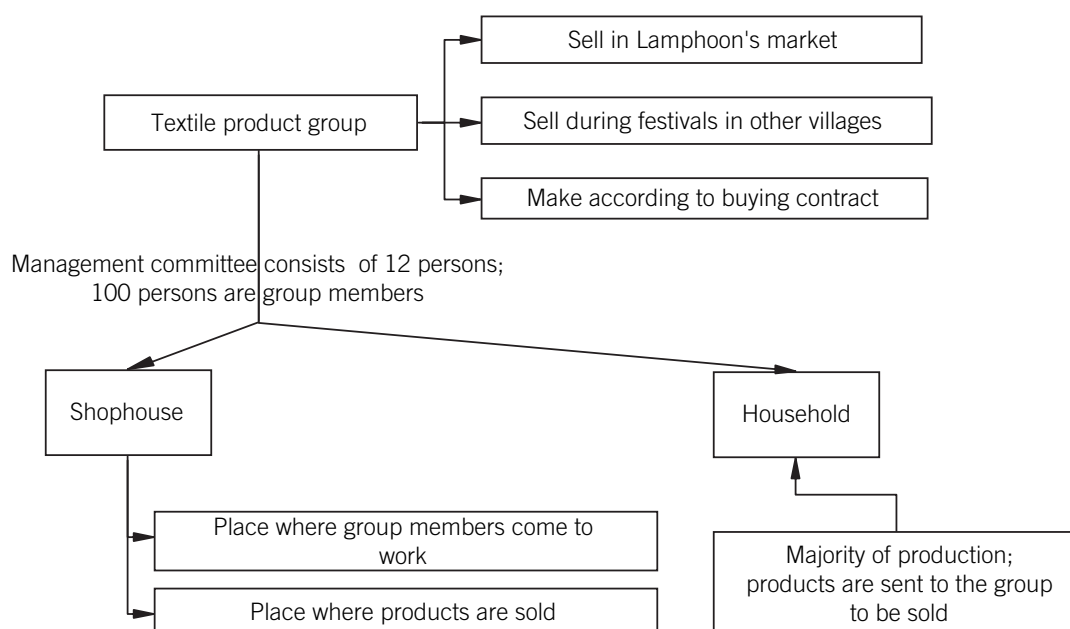
Mae Laoh Textile Product Group, Tambon Ban Ruan, Amphur Pa San, Lamphoon was formed in 1992. Today, it has over 100 members. The objective of the group is to assist members in producing and marketing textile products.

Products made by the group consist of curtain cloth, bags, tablecloth and student uniforms.

As illustrated in Figure 5, members of the group are individual persons who live in nearby villages and own at least one but not more than 10 shares. Each share costs 100 baht. Members can weave at home or at the shophouse. When a product is completed, the member can place the product for sale at the shophouse or sell it on his or her own at the market.

The group is run by elected members of 12 persons on four-year terms. The committee consists of a chairman, vice-chairman, designer, public relations section, marketing, inspection and two advisors.

**Figure 5: Textile production in Lamphoon Province**



It takes four to five days to weave one lot of textile, working five hours a day depending on the skill of the person and pattern of the cloth. Normally, one could produce four lots in a month with each lot valued at 450 baht when sold on the market. Thus, a worker would earn not less than 1,800 baht a month for his or her efforts.

At the end of the year, income earned by members of the Textile Product Group is distributed as follows: The group's Administrative Committee will receive a dividend of 30 percent of the profit. This money will be distributed to everyone equally. Members of the group will receive dividends based on the number of shares they hold. For example, in 2004, the total sales of the textile products amounted to 300,000 baht. After deducting operating costs of running the office and administration, the net income was 70,000 baht. This meant that the dividend paid for each share was 85 baht.



***Production management and product marketing***

The Textile Group committee designs the textile products. Members of the group can take orders from other groups. Members of the group can take products to sell in other villages, Lamphoon, or during festive periods. The price is set at 120 baht a piece. The seller benefits from any difference between the retail price and the wholesale price. Products left unsold will be returned to the group.

For those who take the order such as the housewives' group, for example, to make a student uniform, the customer would visit or call up the group. The order is registered and a delivery date is set. No advance money is demanded.

The group is not ready to take orders from factories because large quantities are needed and only a short time is given to complete the work. Group members do not come to work everyday since they have other chores to do such as household work, cultivation, or small construction work. Many members will be absent during the fruit-picking season.

The other group members buy their own raw materials and make their own products for sale. Usually they buy raw cotton from Chiangmai and hire labour to spin the cotton at 50-100 baht a lot. For weaving and dyeing, the payment is paid by piece. For marketing, the price is set at 110 baht a piece. Deducting production cost of 85 baht a piece, this leaves a profit of 25 baht a piece to the group.

***Challenges faced by the textile product group***

The group lacks a revolving fund. A revolving fund is very important for the group. The fixed capital accumulated from the shares of its members is insufficient to buy raw materials and equipment, or to make investments in production. Income derived from the textile sale is also not large. The government does not have a constant policy to support the group and financial support is usually very limited.

The group lacks knowledge of real market prices to set both retail and wholesale prices.

The group lacks fixed locations to sell products. The government does not have a policy for the provision of permanent places to sell the products. Moreover, the group does not sell everyday since most members are women who have household and cultivation responsibilities.

Group members have health problems associated with their work. The perceived illnesses include respiratory problems, back pain because of long hours of sitting and working, and rashes caused by chemicals. To protect themselves, the public health workers would advise them to use masks while working or wear long-sleeved shirts.

Finally, there are three members of the group who produce and sell products that compete with the group. This leads to price-cutting and declining product price.

### **A look at the cases in light of the principle of decent work**

ILO has been promoting the principle of decent work for all workers in all sectors of the formal and informal economy. This involves the strengthening of labour's fundamental rights, the promotion of employment, the extension of social protection and the right to form an association, representation and participation.

#### ***Labour rights at work***

Looking at labour rights, including fundamental rights, issues related to wages and incomes are easily seen.

In the case of mulberry paper products, two groups of workers are involved—the home workers who receive piece rates and low payment because prices are imposed by the buyer, and workers dyeing and repairing mulberry paper who receive a daily wage not related to the output each day. The labour protection law stipulates the daily minimum wage, working days and working hours, leaves and holidays. But these workers received less than that stated in the labour law. They receive payment only for the days they come to work but get no payment if they are sick or on leave.

Farmers doing contract farming receive a guaranteed price for their corn sprouts, but the price is very low, having remained unchanged for the last 20 years. The transaction is conducted through middlemen in the village. The prices at which the sprouts are sold to the company or for export are beyond the knowledge of farmers.

Farmers continue to cultivate corn even though they get low prices because this provides a stable income for their families. Farmers also send family members of the family to do factory work to earn money to support the parents.

The majority of the Textile Product Group members are home workers. They receive income from two sources: weaving, through which they can produce four lots a month, earning about 1,800 baht; and marketing of the products, on which information on monthly or yearly incomes is not available.

Forced or child labour were not seen in the cases covered; children have good opportunities to enter school or continue schooling. But there is the problem of old persons having to take care of children and having to cultivate the land at the same time. Once they complete school, many young men and women prefer to go to factories in the city or industrial estates, leaving older persons as child care givers.

From our case studies, there was no discrimination found at work. But there is a division of labour based on gender such that women would do the weaving and take care of children while men go to work in construction sites or sell products outside the villages. They would return to the village during the harvest season.

Most associations such as the sewing groups or environmental groups in the community have a common objective to assist one another. This was also confirmed in the case studies. But we found no group that had organized to bargain for just wages or rights to receive benefits from work.

***Productive and freely chosen employment***

Home workers producing mulberry paper have enjoyed continuous employment because there have been continuous order from the company. A fall in orders can be expected probably when the economy is in decline, adversely affecting their incomes.

Farmers cultivating corn sprouts will enter into a contract with the company and middlemen who buy the product at a guaranteed price. The quantity produced is not fixed. The farmers have employment all year. They use their own means of production and resources such as land, family labour, and water while the company provides seeds, chemical fertiliser and specialists to give advice about cultivation and how to attain the quality desired.

The Textile Product Group has received financial support. The Provincial Community Development provided working instruments when the group was set up. In 1999, through the Miyazawa programme, the group received 100,000 baht as support to a cooperative programme. It also received 35,000 baht from the District Administrative Organization. Members of the Textile Products Group rely much on themselves to get access to government funding. They cannot receive large production orders from companies if they have limited operational funds. Besides the funds, the government also provided skills training, but most of these do not correspond to their needs. A part of the income earned from selling the product would be set aside to buy raw materials and equipment.

Governmental organizations have funds to support occupational groups in the village but such initiatives—to support some group that could produce according to the standard set by the government—are sporadic and selective. Continuous support cannot be found for smaller groups such as the Textile Product Group, while the farmers cultivating corn sprouts and the group producing mulberry paper depend on bank credit or informal borrowing.

The Textile Product Group has also found support for product quality and marketing. In 2003, the group's textile product was selected as one of the best (given 3 stars) in the northern region. It also received an OTOP award for tablecloth (4 stars), curtain cloth (3 stars) and dress cloth (3 stars). The OTOP awards give the group access to markets in many of the provinces without having to pay rental for space or share profits with the government. In 2004, however, the government upgraded the criteria for OTOP awards to bring the products in line with international standards and promote exports. Under these conditions that put more emphasis on skills and better production time, the group could not compete with other private firms. The group did not receive the award as they took more time to complete production (three days for a piece).

The group has also found assistance in developing members' skills. The problem is that a long training period is required to do complicated patterns. Unskilled workers would need a month to do a piece. Most villagers do not have sufficient income to allow them the time to upgrade skills. They thus prefer to weave the same simple pattern that can be sold

quickly. Examples of sporadic help received are the Ministry of Labour's organization of training in weaving for 25 group members, and the Provincial Development Agency and District Administration's organization of a factory trip for the group to learn about management and marketing, although the latter was not directly relevant to their work.

The Textile Product Group does more work and can sell more when the products receive OTOP awards. The Ministry of Interior also invites the group to sell in OTOP festivals at the provincial level as well as in Bangkok. Other governmental organizations such as provincial community development organizations, district administrative council, and provincial administrative council are also involved in providing skills training. However, the group still faces limited resources to expand their work and training to boost their production capacity.

### ***Social protection***

In the Textile Product Group and among workers handling mulberry paper products, many workers develop rashes because of the chemicals used in dyeing of textile or corn dust.

Many farmers as well as textile product workers have to sit and work long hours using repetitive movements. They have backaches and may develop lung diseases because of dust inhalation.

The local public health officer comes to give advice on health care and protection. Health inspections are conducted on some of the occupational groups but not all the workers. Workers could use the 30 baht national health insurance scheme at the nearby health centre. In cases of serious sickness, they would go to the provincial hospital but have to pay for transport—which they cannot always afford.

The government has no occupational safety and health (OSH) policy for informal economy workers. No safety inspection is conducted because workers in the informal economy are treated as outside the labour law. Only recently have Ministerial Regulations given protection to the home workers against employers who contract them with hazardous work. But few home workers are aware of this law.

On a positive note, in all three cases non-government organizations (NGOs), along with local public health officers, were observed working with informal economy workers in promoting better health standards.

The social security system in Thailand provides seven types of coverage; namely, in case of sickness or accident, disability, death, maternity leave, child allowance, pension and unemployment. The law extends such rights to persons employed and receiving wages from an employer; the employer also has the duty to inform the registrar of the name of such employees. Some workers such as workers dyeing or repairing mulberry paper fall in the category of employees according to Social Security Act (SSA). But as the employer did not register them for social security, workers would not have access to the scheme.

The SSA (Article 40) gives persons without employee status the right to apply to be insured in exchange for payment of a relatively high periodic contribution. Workers in the informal economy with low income have no incentive to join the plan. This was confirmed from the case studies, which found that none of the workers in the seven groups took part in the social security system which is legally provided.

### ***Representation and participation***

When workers run into urgent financial problems, it is the employer or middlemen or local businessmen in the community who would provide a loan or advance wage payment. This creates patron-client relationships that prevent the worker from demanding a wage increase or better price for his or her product.

Workers in the informal economy have no bargaining power for better prices for their products or for wage increases, even though they may have worked for many years. Workers in the informal economy are unorganized, and some members of the group may even compete among themselves by reducing the price of their products. Or they may refuse to bargain collectively with other workers for fear of losing their job orders.

As seen from the case studies, groups of workers in the informal economy do not have their own representatives or participate in setting policies on labour protection or employment promotion. They do not participate in the management of funds for home workers and skills development under the Ministry of Labour.

Participation among informal economy representatives at the most involves attending meetings time and again to propose views on law and policy.

## **3. Thai labour laws and decent work in the informal economy**

The 87<sup>th</sup> International Labour Conference in 1997 upheld decent work in both the formal and informal economy as a goal and means of development. The International Labour Office supports policies and technical assistance to governments, employers' and workers' organizations to promote decent work and reduce decent work deficits.

The ILO Director General's report entitled *Decent Work in the Informal Economy* was presented at the annual International Labour Conference in 2002. It stated four fundamental areas of the ILO's efforts to promote decent work. They are: labour rights, productive employment, social protection and social dialogue. The report noted particularly that the working conditions relating to these four areas would improve if workers are organized and able to collectively bargain for improvements.

### **Labour rights protection**

ILO conventions provide protection to all who work, without discrimination based on birthplace, nationality, ethnic, sex, age, religion, race, working status, economic or social status.

Thai labour laws do not protect all kinds of employees. The LPA covers employees in the private sector but does not cover some groups of private employees. They can be placed in three categories.

The first group are employees protected under other special laws. These include persons “working for central administration, provincial administration, and local administration” and those working for “state enterprises under the law governing state enterprise labour relations”. Others protected under special laws include teachers in private schools, and particular groups exempted from the LPA, including employees of the Airport Authority of Thailand who are exempted from labour protection and relations acts by the 1989 Airport Authority of Thailand Act,<sup>3</sup> and directors, officials and employees in public transit organizations set up under the Public Organization Act of 1999, who are not covered by the labour protection and relations acts, social security law and workmen compensation fund.<sup>4</sup>

The second group are employees who receive limited protection on certain issues. One such example is domestic workers working in other peoples’ homes for non-commercial purposes such as domestic workers, child care, cooking, cleaning, washing, gardening, night watch or other work related to residential areas. Domestic workers receive some protection such as the requirement that the employer pays wages at least once a month and provide working facilities. Sexual harassment by the employer is prohibited as well as other types of discrimination against women and children. They must arrange for at least six days a year off for those working over one year.

Employees employed in non-profit organizations such as foundations also fall into this second group as they receive certain protection such as equal wage payment for women and men doing the same work. The Workmen Compensation Act (WCA) does not extend protection to workers in non-profit organizations.

The third group are employees who have protection different from the LPA. Employees can be the subject of government regulations concerning employment relations, thereby receiving protection that is potentially different from those determined by the LPA. For example, pregnant workers who are employees in managerial positions, doing professional or secretarial work as well as those in all forms of financial or accountancy work are protected against compulsory overtime work. As for employees in direct sales, employers must pay to these employees commission derived from the sale of commodities. These employees have no right to overtime work except when employers agree to pay for it. Special regulations are also made for employees in fisheries, home-based workers, and seasonal labour.

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<sup>3</sup> Article 6.

<sup>4</sup> Article 38.

***The right to organize and collectively bargain***

The 1976 Labour Relations Act (LRA) deals with setting up worker and employer associations, collective bargaining, and dispute settlement. After 30 years of implementation the legislation is outdated as compared to the labour protection and social security laws, which were the result of the reforms that the labour movement demanded of the Ministry of Labour.

The Act has a number of significant limitations. The LRA is not applicable to employees employed in government, and state enterprises, as well as other activities exempted by Royal Decree. Strikes are prohibited in the important economic sectors of the railway, post office, telephone and communication, electrical power distribution or water works, medical centres, cooperatives, land, water and air transport. The LRA gives employees with Thai nationality and older than 20 years the right to form trade unions and become union committee or sub-committee members. Thai workers younger than 20 years old and foreign workers have the right to become members of trade unions but may not form unions or be members of union committees.

***Right to social protection***

The objectives of the WCA are to pay compensation to employees who suffer from work-related injuries or diseases, or work-related death or disabilities. The Fund covers employees of contributing employers. Coverage is required of all private enterprises with one or more employees. The following groups are exempted from coverage: domestic workers; central, provincial and local governmental administrative bodies; state enterprises; employers in private school businesses; employers in not-for-profit ventures; employers who are ordinary citizens that employ workers in non-business venture; and employers in the vendor business.

As for social security funds, its objectives are to provide benefits to insured persons in cases of injury, disease or death that are not work-related, and includes maternity, invalidity, child allowance, old age pension and unemployment insurance. For employees of registered employers, the social security fund is pooled from a three-part contribution, which is to say, equal parts by employers, employees and the government. Covered enterprises include those with one or more employees, with a number of important exceptions.<sup>5</sup>

5 Domestic workers; government officials and regular employees of the central administration, provincial administration and local administration except for temporary employees; employees of foreign governments or international organizations; employees whose employers' office is in the country but being stationed abroad; teachers or headmasters of private schools under the Private School Law; students, nurse students, undergraduates, or apprentice doctors who are employees of schools, universities or hospitals; employees of Red Cross Society; employees of State Enterprises; employees of agriculture, forestry, fishing enterprises who are not employed all year and who are not engaged in other work; employees employed for temporary or seasonal work; employees of Chulaporn Research Institute; employers who are ordinary citizens that employ workers in non-business venture; vendor businesses.



The Social Security Act (SSA) permits employees who were previously covered by the social security law (but have since been removed from work) to become voluntarily insured. Article 39 sets the following qualifications and conditions for this coverage:

1. Being previously insured according to Article 33 (i.e. employee in a covered establishment) and having paid contributions for not less than 12 months
2. Not receiving invalidity benefits from the Fund
3. Must apply personally within six months after terminating employee status
4. Paying contributions, calculated on the basis of the monthly wage rate for all persons
5. Fulfilling a duty under Article 39 to send a monthly contribution by the 15<sup>th</sup> of every month<sup>6</sup>

Four reasons are found in Article 39 for terminating the status of an insured person. Contributions are not made in three successive months; leaving the job; death; and re-employment as an insured employee under Article 33.

In practice, contributions are based on a monthly minimum wage rate of 4,800 baht. Five benefits are set out in Article 39—sickness, invalidity, child birth, child allowance and retirement; unemployment insurance is not included. An insured person under Article 39 must pay a contribution of 9 percent of the monthly minimum wage (4,800 baht) or 432 baht a month. This is in contrast to employees benefitting from employers contribution and pay only 4-5 percent of his or her wage to be entitled to six benefits (Article 33). At present, the number of persons insured under this article has increased from 19,436 persons in 1996 to 179,512 persons in June 2004.

Labour organizations and the unemployed workers network have sought to have the Ministry of Labour revise Article 39 so that unemployed workers are required to pay only one part of the normal tripartite contribution, arguing that the unemployed already face economic hardships and have low income that barely make ends meets. Most of the unemployed workers had been insured, and had paid contributions for a long time; some may not have used their rights for sickness or maternity benefits. Therefore, they should be able to receive the benefit from their past contributions, which may be lost during a period of unemployment. It has also been argued that it is the government's duty to accommodate unemployed workers in the Social Security scheme in the name of equalising social benefits.

The Social Security Board decided in August 2004 to oppose a revision of the SSA that would have reduced the contribution of the unemployed to one part. The reason given was that the benefits paid to insured persons according to Article 39 are higher than the contributions and that the use of the service is increasing every year.

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<sup>6</sup> Contributions falling delinquent are subject to a charge of 2 percent per month.



The SSA allows self-employed persons to be voluntarily insured. This includes taxi drivers and street vendors among others. Article 40 of the Royal Decree (SSA) states that self-employed persons may pay the entire contribution at a high rate, without support from government budget or an employer. They are entitled to only three benefits: invalidity, death and maternity. Health benefit was not included. The reason given for not covering health at that time (prior to 2001) was that health care was made available through health cards which anyone could buy at the price of baht 500 for a family of five persons. Since 2001, health care was made available to everyone through the universal health insurance scheme, better known as the 30 baht scheme. In 2004, there were only seven insurers covered under Article 40.

### ***The definition of employer***

The definition of “employer” is the same in all the four labour laws discussed in this section. An employer is a person who agrees to accept an employee for work by paying him or her wages, including a person entrusted by the employer to act on his or her behalf and, where the employer is a juridical person, a person authorised to act on behalf of that juridical person and a person entrusted by an authorised person to act on its behalf.

Article 5(3) of the LPA, also defines employer to include labour contractors, that is, an entrepreneur who makes an arrangement, against payment of a lump sum, with a person entrusted to supervise the performance of work and to be responsible for the payment of wages to an employee. It also includes entrepreneurs who agree with a person, who is not in the employment service business, to procure employees on behalf of the entrepreneur, and such work is a part of or the whole of the production process or business under the responsibility of the entrepreneur.

Therefore, under the LPA, there are several types of employers, including those who recruit workers to work directly under them and/or recruit intermediaries as the employers’ representative. In conclusion, an employer can be a labour contractor, subcontractor or contractor.

**Table 3: Definition of employer and employee in four Thai labour laws**

<b>Name of the law</b>	<b>Definition of employees</b>
1998 Labour Protection Act	Accept to work for employer and receive wage payment in any kind
1975 Labour Relation Act	Accept to work for employer and receive wage payment
1994 Workmen Compensation Act	Employed to work for employer and receive wage payment in any kind but do not include domestic worker in house with no business operation
1990 Social Security Act	Employed by employer and receive wage payment but do not include domestic worker in house with no business operation

Another type of employment relationship, the “hire of service”, falls under the Civil and Commercial Codes. It can be summarised as a contract implicating the two sides—an employer and an employee, with the following characteristics:

1. The employment contract can be a written or verbal agreement, excluding trade contracts between employers and home-based workers.
2. The employer has the authority to contract and oversee how his or her employee works. The employee can be punished or discharged from the job if he or she does not comply with, for example, the employer’s setting the number of working or leave days, hours of work, how work is to be performed, etc.
3. The employee will receive payment according to duration of work or by piece rate. The employer has to pay the agreed wage even though work is unfinished.
4. The employer is required to provide tools to his employee and the employee must work in the employer’s establishment or a location provided by the employer.
5. An employer cannot send his or her employee to work for another employer without consent from the employee and the employee cannot ask another worker to work in his or her place without consent from the employer.
6. The employer is responsible for any damages caused to third persons by an employee working under the orders of the employer.

The main difference between *hire of services* and *hire of work* are:

1. *Hire of work* aims at the result of the performance of work while *hire of services* aims at the labour of the employee, not necessarily the work that is to be done.
2. *Hire of work* gives the contractor no power to interfere in the work process of the subcontractor. With *hire of services* employees work under the supervision of the employer.

On the basis of these principles, the authority of an employer to control the work of the employee is the most important element of an employment contract. If a worker works independently outside the control of the employer or contractor, can independently organize the work process, can choose working time, and must find raw materials or tools, he or she is not an employee under the existing labour protection law. Many of these workers are those found in the informal economy outside the scope of labour law. The problem is that at present many employers have changed employment contracts so as to avoid the responsibility of paying wages and welfare contributions according to the labour law without giving up real authority to supervise the work of the worker concerned.

In general, informal economy workers are workers who are under neither hire of services contracts nor employees of employers within the definitions of persons protected under the four main labour laws, that is, the Labour Protection Act, Labour Relations Act, Social Security Act and Workmen Compensation Act. These four laws have the same definition of “employee”, meaning those workers who are employed by employers and receive wage. The WCA and SSA do not include domestic workers.

### **Progress and limits of protection to informal economy workers**

Based on the specific authorisation in the LPA,<sup>7</sup> the Ministry of Labour has drawn up Ministerial Regulations to provide protection to home workers and agricultural workers, effective 8 August 2004 and 13 April 2005 respectively. The protection given to these two groups of workers will need a different approach to that taken by the LPA.

#### ***The case of home-based work***

The home workers to which the 2004 Ministerial Regulation refer to are:

1. Workers who receive work contracts from an employer to produce, assemble, repair or process;
2. Those who work at a location that is not the establishment of the employer;
3. Those who work to earn a wage;
4. Workers who use all or part of raw materials or production instruments of the employer;
5. Those who work, contracted to be performed at home, are a part or a whole of the production process or business in the responsibility of the employer.

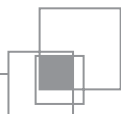
This Ministerial Regulation has divided home workers into two main groups. These are first, those who use raw materials or tools of the employer will be employees under protection of the ministerial decree, and second, home workers who buy raw material or tools on their own, who will not receive protection from the Ministerial Regulation.

The Ministerial Regulation establishes certain protection for home workers. Employers who contract work to be performed at home must make a declaration to the labour inspectorate according to the requirements set by the Director General of the Social Welfare and Labour Protection Department. The employer must report by sending a letter seven days before delivering work and every time work is delivered thereafter. The report must contain the names and number of employees, the types of work performed, the date of delivering work, the method of payment, the workplace of the employees, the raw materials or instruments provided.

An employer who contracts work to be performed at home must make a written employment contract that must be signed by both the employer and the employee, and a copy of the contract must be given to the employee. The work contract must contain at least eight specified items.<sup>8</sup> Any other items will

7 Article 22 which states “agricultural work, sea fishing, transport work or sea transportation, home-based work and other works stated in the royal decree will in the ministerial regulations provide the protection to workers in various cases different from this Act”.

8 1. Date, month, year and location where contract is done 2. Name and surname, age, address of employer and employee 3. Workplace of employer and employee 4. Types of work 5. Date, month, year and location where work is contracted 6. Wage 7. Date, month, year and location where work completed is delivered 8. Date, month, year and location where wage is paid.



depend on the agreement between the employer and employee and mentioned in the contract. The employer has the responsibility to pay the employee the wage according to time and location specified in the work contract within 15 days after the completed work is delivered.

The employer has the right to deduct money from an employee's wage in the following cases.

1. To pay personal income tax of the employee;
2. To pay debt to credit cooperative or welfare fund which benefits the employee, provided that the deduction is accepted by the employee;
3. To compensate for damages to machinery, equipment or raw materials of the employer caused by negligence of the employee, but with written agreement from the employee.

For 1 and 2, deduction cannot be over 10 percent for each item, and for all items must not be above 20 percent of wages unless with the agreement from employee.

Employers are prohibited from giving hazardous work to the employee, including work related to explosives or fireworks, dangerous chemicals or poisonous materials, or cancerous substances, including 13 items under the supervision of the Minister of Labour and Social Welfare, such as benzene, chromium, etc.

Employers have the duty to oversee safety of the workplace by providing safety equipment and setting safety standards for home workers.<sup>9</sup>

The Regulation also upholds home workers' rights according to the LPA. For example,

1. The employer must provide equal treatment of employment between men and women employees.
2. The employer must provide the same wage for the same work between men and women.
3. Sexual harassment of women and young workers by the employer, foreman, or supervisor is prohibited.
4. The employer has the duty to provide safety equipment as required by law.
5. The employment of children less than 15 years of age is prohibited.
6. The employee has the right to make a complaint with labour inspectors for disputes concerning wage payment or file a complaint in court.

### ***Analysis of the Ministerial Regulation on Home Workers and ILO Convention No. 177***

The ILO Home Workers Convention No. 177 and Recommendation No. 184, 1996, establish a definition for home workers and the perimeters for their protection. Home work is defined in the Convention, and can be summarised as:

<sup>9</sup> Such as safety equipment with the same standard as formal workers and providing employees with a safety manual which provides guidelines for the use of material or equipment to prevent accidents.

**Box 1**

**Guidelines for the protection of home workers**

Mr. Sathapom Jarupa, Director of the Labour Protection Bureau of the Department of Labour Protection, Ministry of Labour, outlined during an interview on 9 February 2005, a number of guidelines for the protection of home workers. They are summarised below.

1. To build a support network for the protection of home workers

The objective is to report to officials of the provincial employment bureau the location of home workers and the type of work they do. The home worker can register himself/herself to the labour inspectors if he or she is prepared to be protected under the Ministerial Regulations.

2. To disseminate knowledge and understanding

As home work is a new area of responsibility for the Ministry of Labour, there are challenges to be faced connected with the definition of home worker under the new Regulation, the proper way to conduct inspections, and the question of the dispersion of home workers' houses, which makes enforcement difficult. A brochure needs to be prepared to promote understanding of the law to be distributed to government officials and interested persons in general. Consultations had been conducted with labour inspectors on this matter.

3. Guidelines for labour inspection of home workers

- If home workers are employees in an establishment, and if many of them are employed in the same workplace, inspection can be conducted and orders could be given to comply with the law within a period of time. If unacceptable practices continue, the case will be brought to the courts.
- Home workers refer to informal labour outside a factory and thus, are very dispersed. The way to enforce and inspect is to conduct a community survey and base inspection visits on that survey; organize meetings to promote understanding of the law; receive complaints from home workers; and execute directives to comply with the law.

The Bureau has the role to disseminate information and organize consultations with home workers and agricultural workers who amount to about 40,000 and 180,000 persons respectively.

1. Work carried out by a person, where:

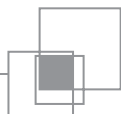
- the workplace is in the worker's home or a place chosen by the home worker, but not the workplace of employer; and
- payment is received.

No account is to be taken of who provides equipment, raw materials or other inputs for the work.

2. Home work does not include:

- employees who occasionally take work home rather than working at the factory or establishment of the employer.
- persons who have the degree of autonomy and economic independence necessary to be considered self-employed under national laws.

3. "Employer" refers to an ordinary or legal person who contracts out work, directly or through an intermediary.



The scope of Thai law has at least two shortcomings as compared with Convention No. 177.

First, it defines the employer as one who provides raw materials and working equipment; the ILO Convention does not set this requirement, specifically conveying home worker status “irrespective of who provides the equipment, materials or other inputs used”.<sup>10</sup>

Second, Thai law does not define the employer to include an intermediary; Convention No. 177 defines the term employer as “a person, natural or legal, who, *either directly or through an intermediary, whether or not intermediaries are provided for in national legislation*, gives out home work in pursuance of his or her business activity”.<sup>11</sup>

In order to protect the rights of home workers, Convention No. 177 proposes that a national policy on home work be formulated to promote equal treatment between home workers and other wage employment, especially with respect to:

- (a) the rights of home workers to establish or join organizations of their own choice and to participate in the activities of such organizations;
- (b) protection against discrimination in employment and occupation;
- (c) protection in the field of OSH;
- (d) remuneration;
- (e) statutory social security protection;
- (f) access to training;
- (g) minimum age for admission to employment or work; and
- (h) maternity protection.

An examination of the Ministerial Regulation and the SSA reveals that Thai law does not provide home workers with protection in the areas of remuneration, training, social security or maternity leave. Indeed, the bulk of the Ministerial Regulation’s content does not enhance the protection of home workers.

Discussions with home workers reveal a lack of understanding about the objective of the law, as some home workers see this law as a way to register home workers just so that taxes or social security contributions can be collected. This is perceived to be the overriding objective since in practice employees may not comply with the particular requirements under the written contract because it is complicated and the employer is not accustomed to the requirements. If the employer refuses to make written contracts, the employee or home worker may well not demand them, fearing that the employer will retaliate by reducing or ending work orders. Finally, most home workers cannot find their employer so that written contracts can be made, since most home workers get orders through an intermediary and not directly from the factory.

In December 2004, a training workshop for labour inspectors was organized by the Department of Labour Protection and Welfare to prepare for enforcement of the new Ministerial Regulations. The following problems and obstacles in labour inspection among home workers were identified at the training workshop:

10 Article 1(a)(iii).

11 Article 1(c). Emphasis added.

1. The labour inspector will potentially have a problem deciding whether he or she has the authority to act if an employee comes to file a complaint since authority is based on geographic jurisdiction to issue an order or bring a case to court.

2. Labour inspectors lack knowledge about and an understanding of home workers, and guidelines for enforcement are unclear. For example, it is unclear whether or not intermediaries are employers of the employee, or whether labour inspectors have the power to go and inspect the workplace since the residence and workplace are identical.

3. Home workers' workplaces are difficult to access. They are often very far away and widely dispersed; working hours are very irregular. These factors prevent labour inspectors from carrying out their duties effectively.

4. Employers do not cooperate. They prohibit their employees from revealing information on employment, suspecting that the authorities will use this information to collect taxes and/or social security contributions, or for trade competition.

5. Employers may feel that these provisions increase administrative burdens by, for example, requiring the preparation reports to inspectors or written work contracts. Employers are also obliged to have permission before sending hazardous work out to home workers.

6. Not wanting to be bound by written contracts which may be used in court, employees do not cooperate in preparing them. They wish to avoid having to pay taxes on the basis of such contracts.

7. Target groups do not understand the benefits found in labour protection rights and feel that a written contract puts them at a disadvantage.

8. There is currently no information on employees and employers. Individual employees have no information about their employer benefiting from their work, and home workers do not give information about their activities.

9. Inspection processes need to be conducted twice since employers and employees are situated in different locations and current inspection forms are inapplicable.

In 1997, the Ministry of Labour created a home workers' section within the Labour Protection and Welfare Department. It was then responsible for promoting the organization of home workers and exploring appropriate ways to protect them. This section was dismantled after the reform of the government structure in October 2002 and the work placed instead under the Job Promotion Section within the Employment Department, which plays the role of promoting employment for home workers. The role of protecting home workers falls on regular labour inspectors under the Bureau of Labour Protection. To this day, there continues to be no link between labour protection and employment promotion.

In 2003, the Employment Department established a policy to promote home work and to set up home workers' fund. The latter was intended to provide home workers access to credit. Both regulations are in force today.



Finally, the Labour Protection Bureau of the Labour and Social Welfare Department is responsible for the enforcement of the law. Without close cooperation with the Employment Department of the Ministry, the work of the Bureau protecting rights in line with the Ministerial Regulation may have an impact on home workers' employment security and organization; that is, employers and home workers might find it difficult to maintain the employment for fear that compliance with the Ministerial Regulation will increase the cost of labour (e.g. OSH equipment) as well as taxation. Therefore, the work on employment promotion e.g. orders, marketing, skills development and loans, will be necessary for both home workers and employers.

## Box 2

### Approach and procedures for the implementation of the measures to promote home workers

The following procedures were some of the concluded outcomes of the training workshop on the procedures in implementing the Ministerial Regulations on home workers held in December 2004.

1. Set up a registration bureau for home workers, in the official employment bureaus in the provinces and Bangkok.
2. Nominate the employment bureau and the director of the Bangkok Employment Bureau to become the registrar of home workers in order to give advice and suggestions to home workers, promote and support home workers to organize and to promote skills development.
3. Register home workers' organizations meeting the following qualifications.
  - 1) The group must have not less than 10 members.
  - 2) Members must not be under 15 years old.
  - 3) The group has clearly stated occupationally-related objectives.
  - 4) The group has named leadership.
4. Qualifications are needed for borrowing from the home workers' fund. They should include:
  - 1) being a home workers' group registered with the employment department;
  - 2) being a group with clear management;
  - 3) being a group organized for not less than six months;
  - 4) being a group owning assets or capital not less than 10,000 baht; and
  - 5) having a contact address.

### *The case of agricultural workers<sup>12</sup>*

The Ministerial Regulation for the Protection of Workers in the Agricultural Sector, 2004 covers agricultural work, including work related to cultivation, husbandry, forestry, salt farming and fishing, but not sea fishing. Employers covered by the Ministerial Regulation are those who neither hire workers year round, nor are engaged in agro-processing enterprises. (The LPA, on the other hand, covers agricultural enterprises that hire workers all year round or those

<sup>12</sup> Some of the information presented in this section is derived from the Workshop on Labour Protection for Workers in Informal Economy, Home Workers and Agricultural Workers, June 2005, in Khon Kaen province.



which process agricultural products such as canning pineapples or processing fish in a factory.)

Workers covered by the Ministerial Regulation have the following protection.

1. The right to at least three days of holidays after working 180 days continuously. Authorised holidays are included in the 180 days. In case the work is discontinued, the counting of the working day will also stop unless there is proof of the employers' intention to avoid application of the Regulation.

2. Double the usual wage must be paid if the employer demands his worker to work during a holiday or to have holidays of less than three days.

3. Employees have a right to be paid sick leave of not over 15 days.

4. The employment of children less than 15 years old is prohibited. Children between 13-15 years old can be employed during school vacation but not to do hazardous work which may have a bad impact on health or work that prevents the proper development of children. Parents must give permission for such work.

5. Employer must provide clean drinking water.

6. In the case of employees staying with the employer, the employer must provide a clean and safe place for them.

7. The employer needs to provide other welfare benefits to his employees as required by the Director-General of the Department of Labour Protection and Welfare.

8. Covered agricultural workers receive certain rights under the LPA, mostly the same protection as home workers but with additional benefits such as rights to maternity leave, the exemption of pregnant women from dangerous work, and a prohibition on the termination of pregnant women. Maternity leave is provided to workers without pay.

9. Wages must be paid at least every 15 days, and wage deductions are prohibited, unless the employee agrees. No advance wage payment may be given for work to be done.

10. There is no requirement for a written agreement or contract.

11. In the case of subcontracting or contract farming, the principle contractor is held responsible for all workers in case the subcontractor fails to pay wages to its employees.

The OSH regulations in LPA (Regulation No. 103) are also applicable to agricultural workers covered by the Ministerial Regulation. Workers under the Ministerial Regulation are also eligible for the Workers Welfare Fund (Regulation No. 134).

### ***Analysis of the Regulation***

The Ministerial Regulation for agricultural workers is quite different from that for home workers. It was not designed to resolve issues arising from the nature of agricultural work—as was the case with home workers. With its focus on extending protection to agricultural enterprises excluded by the LPA, the Regulation has plainly targeted small-scale agricultural employers, and is

not aimed at resolving more complex relational issues associated with the employment in the informal economy.

Consistent with self-employment, there is no standard wage set for agricultural workers. Yet workers are dependent on the employers for their means of making an income. Despite there being no clear definition of “employer” in the Regulation, the burden to comply with it simply falls on small farmers who need to employ labour at certain times.

The Ministry of Labour organized a workshop on the Ministerial Regulations on 30 June 2005. Participating agricultural workers identified several problems and demands much in line with a view of them being ordinary employees entitled to benefits given to agricultural workers engaged by larger enterprises. They included:

- having holidays for every 60 days of work since there is no crop that lasts for 180 days;
- having social security benefits with the accident compensation fund from the employers.
- changing the regulation so as not to allow the employer to lay off women because of pregnancy;
- increasing publicity given to the Ministerial Regulations.

There are two things that workers in the informal economy most desire:

- representatives of agricultural workers at the village level to look after their interests, in coordination with the village council and local authorities; and
- a guaranteed market price for agricultural products.

## 4. Conclusions and recommendations

### **Thai labour law provides limited protection to informal economy workers**

From the discussion in the paper thus far, it can be concluded that despite important recent developments in employment relations, that is, companies moving to outsource production through subcontracting arrangements that involve many different types of employment relationships, the system of labour laws remains based on employment contract relations involving a supervising employer and subordinate employee. By means of this outdated approach, the use of subcontracting has developed at the expense of workers and their organizations. Applying these laws, the judiciary and labour courts cannot extend social justice to workers employed on the subcontracting chain.

Moreover, employers build production networks in provinces where they benefit the most by, for example, receiving cost-reducing incentives offered by the Board of Investment or locating in provinces where labour or community organisations are weak or, in the case of trade unions, non-existent.

Importantly, the National Development Plan and other elements of government policy are moving on to the issue of protection for informal economy workers. As it continues to significantly contribute to economic growth in the country and rapidly increases in size, the following several examples can be given of how the informal economy has been able to attract important policy attention.

■ The NESDB has seen fit to recommend to government the need for a policy and strategy to protect persons working in the informal economy. It needs to be mentioned in this connection that the 1997 Constitution, guideline to basic policy of the State, requires every government to have a policy on labourers' protection, the majority of whom are the poor and vulnerable in society, saying that "government must promote for the population in working age employment, labour protection especially for child and women workers, organize labour relations and social security including fair wage payment".<sup>13</sup>

Article 86 thus puts emphasis on the duty of the State towards those in the working age population, i.e. the State shall see that people of working age have security in their lives and that social security insurance is not limited only to those working in the context of an employee-employer relationship.

■ The 9<sup>th</sup> National Economic and Social Development Plan (2002-2006) places emphasis on human development and social protection. It laid the guidelines for reforming the administration of social security to extend the coverage and types of protection provided by the SSF to include informal as well as formal workers, including reform of the management of the pension fund, both voluntary and compulsory schemes, to be more efficient. The Plan also calls for increased efficiency in the management of human and social development funds as an important mechanism to promote education, health, skills and a social welfare system, and for the development of safety standards, occupational health and working environments in line with international standards. The plan also included reform of the labour protection law to include women workers and informal economy workers, and especially agricultural workers and home workers.

■ The Fourth National Plan for Social Welfare Development and Social Work (2002-2006) lays down guidelines to extend social protection to workers in the informal economy such as agricultural workers, home workers and the self-employed by promoting social insurance on a voluntary basis. The Plan also called on the SSF to provide more benefits to those it insures and their families.

■ The Labour and Skill Development Plan (2005-2008) fixes the extension of social protection to informal workers and agricultural workers. The guidelines to improve workers' quality of life are laid down, including bringing the level of labour protection law to international standards; improving labour inspection and extending it to cover all target groups by supporting employer, employee and NGO participation in labour inspection; and developing appropriate safety standards to protect all groups of workers.

■ The Strategic Plan of the Ministry of Labour 2006-2012 sets a strategy for extending protection to all occupational groups by drafting the labour protection laws to cover those not yet protected; setting up the social security

<sup>13</sup> Article 86.

system for workers in the informal economy and the self-employed; and studying guidelines to accommodate people under the protection of social security system.

■ The policy of the Thaksin administration (2001-2004) was “to promote appropriate measures on social security and extend its coverage to protect workers in the formal and informal sector”. To complement these initiatives, the government should ratify the ILO’s Home Work Convention, 1996 (No. 177) and move to fully implement it through appropriate amendment of law, regulation and practice.

### **Ministry of Labour and the improvement of labour law through its extension to workers in the informal economy**

To conform to the Development Plan and various policies of the government, the Ministry of Labour came out with the regulations on the labour protection of workers in the informal economy (2004) and on labour protection of agricultural workers (2004).

For the extension of social protection to workers in the informal economy, the Minister of Labour, Mr. Suwat Liptapunlop, convened a first important conference—involving over 2000 persons—on 28 September 2003 to brainstorm with workers from various occupations.

The Board of Social Security set up in 2004 a sub-committee on the extension of social security to workers in the informal economy. This sub-committee coordinates preparatory work towards extending social security to informal economy workers.

The Social Security Office has set up a unit to coordinate and prepare the groundwork for the extension of the social security system to cover workers in the informal sector.

### **Recommendations for reform of labour law and labour administration**

On the basis of the preceding discussion, the following recommendations for the reform of labour law and administration can be given with a view to protecting workers in the informal economy.

#### ***Rights at work***

■ Redefine the notion of “employee” in the labour law to have broader meaning or draft a special law for the protection of other workers who are not currently deemed to be employees.

■ Issue a new law to protect workers in the informal sector to comply with the principle of decent work.

As mentioned above, the scope of the ministerial provision for labour protection concerning the definition of “employee” and “employer” is very narrow and not sufficient to provide labour protection to all informal economy workers as conceived in the ILO’s fundamental principles and rights at work. Therefore, new legislation is needed.

In 2003, Homenet proposed a draft legislation on the Promotion, Development and Protection of Home Workers which provided clear principles and new guidelines to protect home workers. The proposed legislation is composed of three important elements:

1. It protects the fundamental rights of working people in accordance with the Home Work Convention, 1996 (No. 177) by requiring equal treatment between home workers and persons receiving other wage remuneration.
2. It links employment promotion and skills development for home workers with the right to receive protection by putting the two subjects in the same law.
3. It sets up participatory mechanisms in various governmental departments to set policy and establish measures for the effective enforcement of the law.

■ Redefinition of “employee” according to LRA to mean a person who works for an employer to earn wages including those with production contracts, those who are general wage workers, and those who by any other arrangements work for the benefit of an employer in exchange for wages or payment.

This change is needed to ensure that all people who work to earn a living have the right to organize and collectively bargain according to ILO Conventions Nos. 87 and 98. These Conventions promote the freedom to organize and collective bargaining in various forms. This would allow workers in the same establishment or nearby, the right to organize, i.e. workers and those who produce to sell, home workers and self-employed persons. After all if they work to benefit the same establishment, they should all have the right to organize.

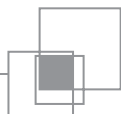
### ***Social protection***

Social protection should be effectively extended to workers in the informal economy so that it gives levels of protection on par with formal economy employees and at costs on par with formal economy employees.

The Social Security law empowers the Board of Social Security to propose or make suggestions to the government to extend social security schemes to workers in the formal and informal economy without the need to revise legislation. Thus the only thing needed for such an effective extension would be for the Minister of Labour to issue a Royal decree or Ministerial Regulation; Parliament need not adopt a new law or make a major amendment to existing law.

■ Article 40 of the SSA must be revised to provide a proper rate of contribution and benefits to insured persons other than those defined as an employee by law. Three types of contingencies must be covered: sickness, invalidity and death. Workers of all occupational categories working in the informal economy should be covered by the amendment of the social security law.

The SSF for workers in the informal economy should consist of contributions by the government and the contractors or those who receive part of the benefits from the products of workers.



Other forms of insurance such as group insurance, savings groups, occupational groups, home workers' groups, credit union groups or cooperatives need to be explored where a person can be insured.

Criteria and rates of contribution can take many different forms, e.g. if members of insured groups number 1,000 persons, they may pay a contribution at a lower rate than a group with 200 members. But it is necessary to fix the minimum benefit package and the minimum number of insured persons.

■ Social protection should be extended to include insured persons' family, e.g. to extend rights and certain benefits to dependents of the insured person who cannot work. These persons currently benefit from the 30 baht universal health care scheme.

■ Revision of the SSA, especially provisions which prevent certain types of workers from benefiting from the social security scheme. It is appropriate to extend the social security scheme to cover employees in state enterprises, employees of public organizations and agricultural workers. These groups currently fall under separate and different laws with their own welfare provisions which ought not provide benefits less than those provided in the LPA.

The following recommendations can be given to design the social security scheme benefit packages for workers in the informal economy:

1. Work with the existing social welfare schemes such as the 30 baht health insurance scheme and social security in connection with health and sickness benefits. Such efforts should be executed with cooperation between the Social Security Office, the Ministry of Labour, the National Health Security Office, and the Ministry of Public Health.

2. Social security benefits should be provided on two levels: A minimum benefit package for workers in every occupational group and additional benefits for specific groups of informal economy workers in ways that are suitable to work in that occupation. Examples would be additional health procedures allowable for workers particularly exposed to chemicals.

3. Social security benefits should emphasise other support or programmes in addition to monetary compensation. Examples might include:

- a programme for occupational health check-ups in line with risky work of different groups of workers in the informal economy;
- a programme to promote occupational safety training for the prevention of accidents or illness related to work;
- a programme to build management and marketing skills;
- a programme to promote skills training to informal workers in all occupations.

4. The criteria for paying on compensated contingencies to informal economy workers in each occupational category must be flexible because these workers change jobs very frequently.

**Employment and job promotion**

■ Government needs to have a “one-stop service” to promote job security for various groups of workers in the informal economy.

**Box 3****Demands on the Ministry of Labour**

In January 2004, a network of informal workers composed of HomeNet, the Child Development Foundation, the Foundation to Promote Opportunity for Women, and Street Vendor Groups came together and demanded the Ministry of Labour to act on three issues: to take action on legislation to protect home workers; to extend social protection to workers in the informal economy; and to set up an organization directly responsible for the concerns of informal economy workers. These were the main demands to the Ministry of Labour.

1. As workers in the informal economy are engaged in various activities, research is needed to clarify problems faced by these workers, their needs and forms of social protection that would be appropriate for them.

2. Basic needs must be managed by government, i.e. health (including occupational health), disabilities, maternity leave; child allowance, death and old age pension (including family members in case of sickness and death).

3. Other forms of insurance to cover risks faced by workers in the informal sector such as natural calamities, the prices for agricultural products, availability and pricing of housing, land redistribution, children's education, etc., should be examined.

4. Use community-based and existing community organizations to assist in the management and to conduct training on social security to workers in the informal economy.

5. Ministry of Labour must set up working committees to set guidelines for the extension of social security. The committee should be composed of representatives from various occupational groups and concerned organizations such as government, NGOs and academia.

6. The Ministry of Labour's draft law on social protection for informal economy workers should cover the promotion of employment and occupations, as well as skills development, and should cover all types of home workers.

7. A committee to promote, develop and protect home workers should be set up, with the Minister of Labour as Chair. The committee should be composed of specialists from various fields, government and private organizations.

8. An office of home workers should be set up to be the central organization to coordinate, promote, develop and protect home workers.

The government has supported community business or commodity production in the OTOP project by creating village funds, community funds, people's banks and projects to provide low-interest loans to people with low income. This will help in the development of small entrepreneurs. Apart from this, Best Products awards have been offered to encourage the design and quality improvements and expansion of domestic as well as export outlets for OTOP products.

However, many other producers cannot access sufficient operating funds. The reasons may be overly stringent regulations or the lack of a personal network that can be drawn upon for raising funds. As a result, some producers have to



depend on costly informal borrowing either from local businessmen, influential persons or middlemen. The government needs to have an integrated policy to support workers in the informal economy and to promote employment through a policy of credit support, occupational training and product development.

■ Projects need to be created to promote the organization of informal economy workers in various occupational groups.

The Ministry of Labour showed its regard for home workers by setting up the home workers fund. Although the Ministerial Regulation providing protection for home workers has recently been brought into force, the major trend is that labour protection continues to cover mostly employees in the private formal sector and not all types of workers. This is because of the limitations in labour laws and longstanding government policy. To be in line with the national economic and social plan and the government policy to extend social protection to workers in the informal economy in the future, efforts should be made to support the organization of informal economy workers into occupational groupings, and to promote skills training for various groups of workers in the informal economy.

The Ministry of Labour must coordinate with other government agencies to create projects for the development of workers in various occupations.

### ***Representation and participation***

■ The procedures for labour inspection need to be reformed to enable the incorporation and involvement of civil participation.

The effectiveness of law enforcement does not depend on the number of inspectors or budget, but on the participation of those concerned. The Ministry of Labour has an important role in incorporating participation into the law.

It is necessary to set up voluntary labour inspection, and create a network for law enforcement at different levels such as at the provincial, national and regional levels. There should be representation from six parties—the concerned ministry, local government, business organization, informal economy workers' groups, academic institutions and NGOs—all working in close cooperation.

■ Government should include the policy on protection of informal workers within the “national agenda” and establish within this context a National Committee to develop policies and laws to protect workers in the informal economy.

The objective of the National Committee would be the promotion of cooperation among the concerned organizations in setting integrated policies, revising laws and labour management of the informal economy. The Prime Minister or Deputy Prime Minister in charge of labour issues should chair the Committee.

The Committee would be composed of five parties:

1. Government—representatives from the Ministry of Labour, Ministry of Social Development and Human Security, Ministry of Public Health, Ministry of Interior, Ministry of Education, Ministry of Industry, Office of the Council of State, NESDB, etc.



2. Employers' organizations
3. Workers' organizations and networks of informal workers
4. NGOs such as the HomeNet Foundation to promote labour development and skills.
5. Professional organizations and academic institutions, such as representatives from the Labour and Management Development Center, Labour Law Association, Council of Lawyers, and ILO.

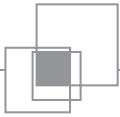
■ Government should ratify more ILO conventions, especially those on the freedom of organization and collective bargaining. The ratification of ILO conventions will help the government plan and adopt policies and labour laws that provide social protections consistent with internationally recognised aspirations.

The government should consider the ratifying the Home Work Convention, 1996 (No. 177). This would give the impetus to revise labour protection to cover workers in the informal economy and comply with international standards.

Finally, the government needs to ratify the ILO Fundamental Conventions on Freedom of Association and Protection of the Right to Organize, 1948 (No. 87), on the Right to Organize and Collective Bargaining, 1949 (No. 98), and on Discrimination (Employment and Occupation), 1958 (No. 111).

## References

- Bundit Thanachaisethavut, ed. (2002). *Enforcement of the Labour Protection Law*. Bangkok: Arom Pongpangan Foundation - Labour Resource Centre (APFLRC) and American Centre for International Labor Solidarity (ACILS).
- \_\_\_\_\_. (2003). "Comparative Studies on Workman's Compensation Fund and Social Security Fund." Studies on Social Security Related Royal Decrees and Ministerial Regulations. Bangkok: APFLRC/ACILS.
- \_\_\_\_\_. (2003). "Proposed Draft Labour Relation Law by Workers' Organisations in Thailand, APFLRC, Workers' Solidarity Committee and Federation of Electrical Appliance and Electronic in Thailand."
- \_\_\_\_\_. (2003). "Problem of Enforcement of Labour Laws under Globalisation." Paper prepared for the Labour Group's Meeting during the 4<sup>th</sup> National Law Conference on Legal Measures Concerning FTA Negotiation. Held at the U.N. Convention Center, Bangkok, 15-16 September 2003.
- \_\_\_\_\_. (2005). *Thai Labour Movement in 2004*. Bangkok: APFLRC-Friedrich Ebert Stiftung (FES).
- Chalit Meesith (2003). "Subcontracting and Impact on Law and Policy on Women Workers." Paper presented during the Seminar on Textile and Garment Industry under the Quota System. 21 December 2003, Bangkok.
- Chalit Meesith and Sitthisak Samri (2000). Preliminary Report on Labour Law and Home worker, HomeNet, supported by ILO.



International Labour Organization (2003). *Decent Work and Informal Economy*. Bangkok, International Labour Office.

National Economic and Social Development Board (2003). *Annual Report for 2003, Mid-Term, Ninth Economic and Social Development Plan, 2002-2006*. Bangkok: NESDB.

Social Security Office (2005). Preparatory Documents for the Extension of Social Security to the Informal Sector.

Institute for Health Research “OTOP and Health of the Thai People” article in *Health Knowledge* (January 2005).



# Extending labour protection to the informal economy in Mongolia

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*This study draws on Mongolian labour legislation and its implementation, national practice and experience and previous studies of the Mongolian informal economy. It makes clear the position of protective labour legislation in the country: It applies only to persons who have written labour contracts conforming to explicit content requirements. The official view of the informal economy is similarly conservative, prompting the author to call for reforms. However, current representational practices are accompanied by laws that give broad associational rights. This imparts optimism—at least in law—for the organization of informal economy workers and the expression of their voices in decisions affecting their livelihoods and incomes.*

## 1. The informal economy in Mongolia

### Concepts and definitions

Although the term “informal sector” was first used in official documents and literature of the ILO in 1972,<sup>1</sup> the term began to be broadly used in Mongolia only in the mid-1990s. This period of transition to a market economy started in 1990 when incomes of more than a third of the population fell below the poverty line and the informal sector emerged. The term “informal economy” remains unused in official documents in Mongolia.

In the past 10 years, the terms “informal sector”, “informal employment” and “informal entrepreneur” have been used in papers and documents prepared by the government, its ministries and agencies, the national statistical office, trade unions, employers’ organizations, research institutions and researchers. Based on these facts, it is possible to say that more attention is now being given to the problems of the informal economy.<sup>2</sup>

Specialised studies of the informal sector undertaken prior to 2005, including a first specialised study conducted with World Bank support in 1997,<sup>3</sup> have not resulted in a common concept and definition of the informal sector in the Mongolian context. The Labour Force Survey, published by the National Statistical Office in 2004, noted that “[i]t is necessary to further develop a definition of the informal sector using the data available from the survey”.<sup>4</sup>

Thus, since different methods have been used in surveying the size of the Mongolian informal sector, the resulting data is incomparable and drawing conclusions is very difficult. In this study, conclusions have been made on the basis of the 2004 Labour Force Survey.

1 ILO, *Employment, incomes and equality: A strategy for increasing productive employment in Kenya* (Geneva, 1972).

2 For example, a number of points regarding the informal sector are included in the employment part of the economic growth support and poverty reduction strategy adopted by the Government in September 2003. It calls for protection of workers’ interests, the improvement of labour relations and social security, and the provision of opportunities to move into the formal sector. (The Government of Mongolia, *Strategy on Promotion of Economic Growth and Poverty Reduction*, Ulaanbaatar, [September 2003] pp. 185-186.) In addition, a specific sub-objective that “state policy on informal employment will be developed and implemented” was reflected under objective 6 in Chapter II in the social policy of the government’s 2004 programme of action. “The goal of reducing poverty and unemployment will be achieved through increasing types and choices of social insurance, improving access to social assistance and services, ensuring a qualitative delivery of assistance and services to the vulnerable groups and increasing employment.” This was the first government action programme to address issues of direct relevance to the informal economy. In the “Chapter II. Social policy” of the Government programme of action approved by the resolution of Parliament of Mongolia No. 24 dated November 5th, 2004. Another example is the April 2005 programme on support of SMEs, as adopted by Government Resolution No. 64. It specified that the purpose of the programme is developing and increasing the competitiveness of SMEs, improving conditions for the formalisation of informal businesses, and the creation of new workplaces.

3 Anderson, James H, “The size, origins, and character of Mongolia’s informal sector during the transition”, World Bank, *Policy Research Working Paper* 1916 (1998).

4 National Statistical Office of Mongolia and Asian Development Bank, *Main report of labour force survey 2002-2003* (Ulaanbaatar, 2004), p. 78.

The 2004 Labour Force Survey was the first large-scale sample survey to measure economic activities in Mongolia using internationally recognised concepts, definitions and methodologies. Although the survey did not specifically focus on informal sector issues, an estimate of employment in the informal economy can be derived from the data it compiled.

The survey estimated the population of Mongolia to be 2,402,800. A total of 1,539,200 are aged 15 years and older and the dependency ratio<sup>5</sup> is 53.3 percent.<sup>6</sup>

**Table 1: Activity status of the population of Mongolia**

No	Activity status of the population	Number of persons
1	Total population	2,402,800
2	Population aged 15 years and over	1,539,200
3	Total economically active population aged 15 years and over	1,004,800
	Out of which: Employed	862,500
	Unemployed	142,300
4	Total economically inactive population aged 15 years and over	534,400
	Out of which: Students	207,000
	Retired from employment	152,000
	Engaged in housework	54,300
	Disabled persons	27,000
	Looked after children	24,500
	Who were temporary sick	15,300
	Not available for work	11,800
	Below age 15 years	5,900
	For other reasons	36,600

Source: 2004 Labour Force Survey.

5 Defined as the total of the population aged below 15 years old and the population aged 65 years old and over taken together as a percentage of population aged from 15 to 64 years old.

6 Although the labour law and the law on pensions and benefits provided by the social insurance fund fixes the working ages as 16 to 59, an age cut off of 15 years old was used in the extraction of tables on economic activity to comply with international methodology and permit comparability with estimates from other sources. A person who reaches 16 years of age has the right to conclude a labour contract according to Article 109.1 of the Labour law. Pension age is 60 years old (55 for women) according to Article 4.1 of the Law on Pensions and Benefits Provided by the Social Insurance Fund.

According to the Labour Force Survey, employment in the informal sector is made up of persons employed in non-agricultural economic activities and enterprises, being either self-employed or in private enterprises or partnerships with no paid employees or with one to four employees. Employment in second jobs was also included.

Out of the 862,500 employed persons, those working in shareholding companies, limited liability companies, cooperatives, state-owned enterprises, public organizations and non-governmental organizations (NGOs) were excluded from the possible informal sector. Also excluded are the 394,500 persons employed in the agricultural sector and the non-agricultural employed population, which amounted to 125,100. It should be emphasised that 402,200 persons or 46.6 percent of the total employed population in Mongolia are engaged in the agricultural sector.<sup>7</sup> Persons employed by private unincorporated enterprises, partnerships and the self-employed with five or more employees were excluded and 11,500 employed in secondary occupations were added to the remaining 114,500. Thus, the total employment in the informal sector was estimated at 126,000.<sup>8</sup>

For tax purposes, the government distinguishes between activities in the informal and formal sectors. The 1993 law on individual income tax applicable to those whose income is impossible to determine is important for informal activities. The law first covered 32 types of activities and services and a further 38 were added as a result of amendments to the law in 1997 and 2001. The 2001 additions were made up specifically of activities not regulated by contracts concluded between enterprises and citizens.<sup>9</sup>

7 National Statistical Office of Mongolia and Asian Development Bank, *Main report of labour force survey 2002-2003* (Ulaanbaatar, 2004), p. 79.

8 National Statistical Office of Mongolia and Asian Development Bank, *Main report of labour force survey 2002-2003* (Ulaanbaatar, 2004), pp. 75-79.

9 The list of the activities and services are seen in the annex.

**Table 2: Number of the employed population by sector**

Sector of employment	Number of the employed population	Distributed by number of employees		
		No regular employees	One to four employees	Five or more employees
Private unincorporated enterprise	33,100	22,600	6,600	3,900
Partnership	2,600	100	1,000	1,500
Cooperative	4,500	600	1,200	2,700
Shareholding company	39,000	400	2,500	36,100
Limited liability company	84,000	700	10,100	73,200
State-owned enterprise	32,200	0	1,300	30,900
Public organization	169,900	0	12,000	157,900
NGO	13,200	100	2,000	11,100
Self-employed	484,000	462,200	15,400	6,400
All sectors	862,500	486,700	52,100	323,700

Source: 2004 Labour Force Survey.

Based on the criteria mentioned above, the main characteristics of employment officially acknowledged as being in the informal sector are:

- The absence of organizational structure and non-registration;
- Business activities and services from which the taxable income is impossible to determine;
- Small-scale units with no or few (one to four) regular paid employees; and
- Non-agricultural activities.

This approach to defining the informal sector in terms of enterprises' organizational form and the possibility of determining income derived from the enterprise is extensively applied on account of the government's practical tax paying and record-keeping requirements.

Yet the narrowness of this approach limits its usefulness. A definition of the "informal economy" is needed to cover both production and employment relationships. This would also make a more useful method for regular data collection possible. When thinking of the informal economy it would thus be useful to refer to all economic activities by workers and economic units that are—in law or in practice—not covered or insufficiently covered by formal arrangements. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs. In this connection, the following alternative approach is offered.

- Adopt a criterion that informal enterprises are enterprises below a size in terms of employment—small-scale units with no regular or one to nine paid employees (including agricultural enterprises);
- All types and forms of informal employment should be defined, and they should be referred to as the “informal economy”. Thus it is necessary to consider the following types and forms of employment as being informal;
  - All types and forms of informal employment in the formal economy, in particular, temporary, casual, out work, part-time and contract work;
  - Herders except for those who are herder-employees or herder-employers;<sup>10</sup>
  - Domestic workers;
  - All groups of self-employed, in particular, self-employed in agricultural sector, home workers, street vendors, waste collectors, mobile self-employed;
  - Unpaid family workers.

Using this definitional approach, it is clear that the informal economy plays an important role in the transition economy. Even using the narrow approach, the government found in 2003 that the informally employed made up 10.2 percent of the labour resource and 13 percent of the economic structure.<sup>11</sup>

### **Criteria of the dependent employed in the informal economy**

A significant number of workers in the Mongolian informal economy—like those in many other countries—are in fact dependent for their livelihoods on others who are more like employers than they are like customers. The inherent vulnerability of this situation requires protection traditionally offered to employees under the labour law. For a definition of dependence of the persons employed in the informal economy,<sup>12</sup> see Table 3.

10 It would be necessary to distinguish the herders-members of cooperatives depending on activity of their cooperative societies.

11 The Government of Mongolia, *Strategy on Promotion of Economic Growth and Poverty Reduction* (Ulaanbaatar, September 2003), p. 185.

12 In spite of the fact that in Mongolia the term “informal sector” is usually used, for the purposes of this report the author will use henceforth the term “informal economy”.



**Table 3: Form of dependence and independence of persons employed in the informal economy**

Criteria	Status in employment				
	Self-employed			Out workers	Employee (including herder-employee)
	Own-account worker	Home worker	Street vendor, market vendor, mobile self-employed		
<b>Type of contract</b>	Sales contract		Sales contract, no contract, or collaboration contract	Labour contract, hired labour contract, or contract for works	Labour contract, hired labour contract, or contract for works
<b>Remuneration</b>	From the sale of goods/services			For work (typically piece-rate)	For work (time or piece-rate)
<b>Workplace</b>	Provided by themselves	Provided by themselves at home	Provided by themselves or rented in commercial centres or marketplaces	Provided by themselves at home	Provided by employer
<b>Supervision</b>	Autonomous	Autonomous	Autonomous or indirect (in the specially allocated place, within certain timeframe, with observance of the appropriate requirements)	Indirect (delivery deadlines or quality control of goods/services) or no supervision	Direct supervision
<b>Competition</b>	Market competition	Market competition	Competition for a place, etc.	Work under contract for a firm or intermediary	Regulated by employer
<b>Means of production/service</b>	Provided by themselves or rented				Provided by employer
<b>Bargaining</b>	With the appropriate administrative institutions, owners of premises or vehicles (i.e. owners of managers of private companies)				With the employer

**Table 4: A conceptual framework for the informal economy**

Production units by type	Jobs by status in employment								
	Own-account workers		Employers		Contributing family workers	Employees		Members of producers' cooperatives	
	Informal	Formal	Informal	Formal	Informal	Informal	Formal	Informal	Formal
Formal sector enterprises	0	X	0	X	☼	☼	X	0	X
Informal sector enterprises <sup>a)</sup>	☼	0	☼	0	☼	☼	(☼) X	☼	0
Households <sup>b)</sup>	☼	0	0	0	0	☼	X	0	0

**Explanation:**

Jobs that by definition do not exist in the type of production unit in question are marked with “0”. Cells with “X” refer to jobs which exist in the type of production unit in question but which are not relevant to our concerns. Cells with “☼” are the focus of our concern—they refer to types of jobs that represent the different segments of the informal economy.

Column “Own-account workers” (*informal*): who have their own informal enterprises (the informal nature of their jobs follows directly from the characteristics of the enterprise they own) or producers of goods for own final use by their households (for example, subsistence farming).

Column “Employers” (*informal*): who have their own informal enterprises. The informal nature of their jobs follows directly from the characteristics of the enterprise they own.

Column “Contributing family workers” (*informal*): No contract of employment and no legal or social protection arising from the job in formal enterprises or informal enterprises. (Contributing family workers with a contract of employment, wage, social protection, etc. would be considered employees in formal employment).

Column “Employees” (*informal*): who have informal jobs, whether employed by formal enterprises or informal enterprises, or as paid domestic workers by households.

Column “Employees” (*formal*): working in informal enterprises but having formal jobs (This may occur, for example, when enterprises are defined as informal using size as the only criterion).

Column “Members of producers’ cooperatives” (*informal*): Members of informal producers’ cooperatives.

**Notes:**

a) As defined by the 15<sup>th</sup> ICLS (1993), informal sector enterprises are private unincorporated enterprises, whose size in terms of employment is below a certain threshold to be determined according to national conditions (according to the 2004 Labour Force Survey, no regular employees and one to four employees), and/or which are not registered under specific forms of national legislation, such as factories or commercial acts, tax or social security laws, professional groups regulatory acts, or similar acts, laws or regulations established by national legislative bodies (as distinct from local regulations governing trade licences or business permits).

b) Households producing goods for their own final use and households employing domestic workers.

In applying indicators of dependence such as type of contract, remuneration, workplace, supervision, competition in product markets, means of production and bargaining, the self-employed can be defined as more independent, and the employee as fully dependent. Thus, the out worker has an intermediate status.

A further examination of this issue of dependence should be based on the international classification of the employed persons in the informal economy. A conceptual framework for the informal economy adopted by the 17<sup>th</sup> International Conference of Labour Statisticians (ICLS) in 2003 is shown in Table 4.<sup>13</sup> The focus of this paper is on groups marked with “⊗”.

In Table 2 above, 56.1 percent of the total employed population are self-employed. Out of these self-employed, 77.6 percent (or 375,000 persons) are engaged in agricultural activities. Yet, the self-employed engaged in non-agricultural activities make up 86.1 percent of the total 126,000 in informal sector employment, according to the narrow definition discussed above.

Dependence indicators for self-employed may include violations of human rights, no possibility of petition to the public authorities, and being subjected to corrupt practices in the sector or economic activity concerned. For defining the dependence of employers in informal enterprises or, in the Mongolian context, employers in informal private unincorporated enterprises, criteria similar to that applied to the self-employed may be used.

A main indicator of dependence in the case of contributing family workers and employees is existence of a legal employment relationship with their employers.

The dependence of informal producers' cooperative members arises with the erosion of individual members' autonomy stemming from the dominance of a single member, similar in effect to the domination of an owner in a private enterprise.

### Categories of the employed in the informal economy

The classification of the employed population in the informal economy by sector, number of employees in the employing unit, type of production unit, and their jobs by status in employment were described in the two previous parts of this chapter. Using the classification and data of the National Statistical Office, the resulting occupational distribution of persons employed in the informal economy is shown in the table below.<sup>14</sup>

According to the Labour Force Survey, 80 percent of employment in the informal economy is placed in three occupational groupings: “service, shop and market sales” (56,600 persons or 44.9 percent); “craft and related trade workers” and “plant and machinery operators and assemblers” (43,900 or 34.9 percent).

13 ILO, *International Labour Conference, 90<sup>th</sup> session 2002: Decent work and informal economy*, Report VI, International Labour Office, Geneva.

14 National Statistical Office of Mongolia and Asian Development Bank, *Main report of labour force survey 2002-2003* (Ulaanbaatar, 2004), pp. 80-81.

The first three classifications—legislators, senior officials and managers; professionals; technicians and associate professionals are not considered part of the informal economy.

**Table 5: Occupational distribution of employed persons in the informal economy**

Occupation group	Total employed		Of which:					
			In private unincorporated enterprise		In partnership		Self-employed	
	Number	%	Number	%	Number	%	Number	%
Legislators, senior officials and managers	1,200	1.0	300	2.7	0	0.0	900	0.8
Professionals	3,000	2.4	200	1.8	300	27.3	2,500	2.2
Technicians and associate professionals	3,800	3.0	300	2.7	100	9.1	3,400	3.0
Clerks	1,000	0.8	200	1.8	0	0.0	800	0.7
Service and shop and market sales workers	56,600	44.9	4,600	41.1	100	9.1	51,900	45.6
Skilled agricultural and fishery workers	3,100	2.5	500	4.5	0	0.0	2,600	2.3
Craft and related trade workers	22,900	18.2	2,600	23.2	200	18.2	20,100	17.7
Plant and machinery operators and assemblers	21,000	16.7	1,500	13.4	200	18.2	19,300	17.0
Elementary occupations	13,400	10.6	1,000	8.9	200	18.2	12,200	10.7
All occupational groups	126,000	100.0	11,200	100.0	1,100	100.0	113,700	100.0

Source: 2004 Labour Force Survey.

**Table 6: The employed population in the informal economy**

Sector	Primary or secondary occupation	Total	Of which:			
			Male		Female	
			Number	%	Number	%
Non-agricultural	Primary	114,500	62,500	54.6	52,000	45.4
	Secondary	11,500	7,100	61.5	4,400	38.5
Private unincorporated enterprise	Primary	10,600	5,200	49.6	5,400	50.4
	Secondary	600	400	69.0	200	31.0
Partnership	Primary	900	400	46.0	500	54.0
	Secondary	200	100	49.9	100	50.1
Self-employed	Primary	103,000	56,900	55.2	46,100	44.8
	Secondary	10,700	6,600	61.3	4,100	38.7
Total		126,000	69,600	55.2	56,400	44.8

Source: 2004 Labour Force Survey.

### Gender equality of the employed in the informal economy

Employment in the informal economy disaggregated by sector, its role as primary or secondary occupation, and sex is presented in Table 6 above.

The table shows that 55.2 percent of persons employed in the informal economy were male. It also shows the distribution of work opportunities by sector where 113,700 jobs (90.2 percent) were in self-employment, 11,200 jobs (8.9 percent) were in private unincorporated enterprises and the remaining 1,100 jobs (0.9 percent) being grouped under partnerships. Women made up 44.1 percent of the self-employed, 50 percent of employed persons in private unincorporated enterprises and 54.5 percent of employed persons in partnerships.

Informal economy occupations in the urban and rural sectors accounted for 70.9 percent and 29.1 percent, respectively.<sup>15</sup>

### Discrimination in the informal economy

The Mongolian Constitution declares that:

- “1. All persons lawfully residing within Mongolia are equal before the law and the courts.
2. No person shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, wealth, occupation and post, religion, opinion and education. Every person shall be a subject before the law.”<sup>16</sup>

<sup>15</sup> National Statistical Office of Mongolia and Asian Development Bank, *Main report of labour force survey 2002-2003* (Ulaanbaatar, 2004), p. 80.

<sup>16</sup> Chapter 2, Human Rights and Freedoms, Article 14.

Few studies have been done on discrimination in Mongolia, and in particular, the informal economy. The informal economy as a whole was formed in the context of the country's transition to a market economy; most of those now employed in the informal economy were laid off from state enterprises and public organizations under job cuts and are usually too old to be recruited back into the formal sector. New labour market entrants who cannot get a job in the formal economy make up the remaining part of the current informal economy. Finally, most retired persons who seek sources of additional income are pushed to work in the informal sector.<sup>17</sup>

Since informal enterprises are small-scale, things like obtaining permissions and licences, paying high custom duties and loan interest, and affording continuously rising rents for premises tend to be big problems. In this context, these problems may be seen as the main forms of economic pressure and discrimination against the informal economy as a whole and hence, those people who are working and earning their living in it.

The problems of discrimination against persons employed in the informal economy will be considered in more detail in sections of this paper entitled "Fundamental principles and rights at work", "Employment" and "Social protection".

## **2. Decent work in Mongolia and the employed in the informal economy**

In 1999 the Director-General of the ILO first set a goal of securing decent work for all, including those in wage employment, self-employment, home work, social service and employment in the informal economy.<sup>18</sup>

Countries need to develop and implement an integrated and comprehensive strategy to reduce the *decent work deficit*<sup>19</sup> in the informal economy. The strategy would:

- in the immediate term, give priority to reducing decent work deficits in the informal economy, importantly through ensuring that those who are currently in the informal economy are recognised in the law and have rights, legal and social protection, representation and voice;
- in the short- and medium-term, enable those currently in the informal economy to move upwards along the formal/informal continuum and at the same time, ensure that new jobseekers and potential entrepreneurs are able to enter the more formal, protected and decent parts of the continuum;

17 ILO, "Project on informal economy, employment and poverty: Highlights on informal economy in Mongolia," (Ulaanbaatar, 2004).

18 ILO, *Report of the Director-General, 87<sup>th</sup> session 1999: Decent work*, International Labour Office, Geneva.

19 The decent work deficit is the gap between current conditions of work and a situation of decent work.

- in the long-term, create enough employment opportunities that are formal, protected and decent for all workers and employers.<sup>20</sup>

### **Fundamental principles and rights at work**

In 1998 the ILO adopted its Declaration on Fundamental Principles and Rights at Work that covers freedom of association and the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

Concerning freedom of association and right to collective bargaining, the Constitution of Mongolia<sup>21</sup> gives citizens certain guarantees, saying:

“Every citizen has the right to freedom of association in political parties or other voluntary organizations on the basis of social and personal interests and opinion. Political parties and other mass organizations shall uphold public order and state security and abide by the law. Discrimination against or persecution of a person for joining a political party or other associations or for being a member thereof shall be prohibited.”

The four Laws on Political Parties, Trade Union Rights, Non-Governmental Organizations (NGOs) and State Registration of Legal Entities regulate citizens’ freedom of association.

At the end of 2004, there were 20 political parties, 2,180 NGOs, and 38 federations of trade unions. Although 1,820 trade unions had concluded collective agreements with their respective employers, none of them represent and protect the rights and interests of all workers in the informal economy. Some NGOs and trade union federations have been actively working to protect the interests of some groups of informal economy workers. Voluntary associations and trade unions have also been newly established to represent and protect certain groups in the informal economy such as informal miners, drivers and owners of microbuses and taxis, photographers, street vendors and market traders.

Among them the Association of Informal Miners has the potential to unite many people, but it needs to be officially established. The Mongolian Business Development Agency and Eco-Minex International Co. Ltd. have calculated that about 100,000 persons are engaged in informal gold mining.<sup>22</sup> Taking into account the informal miners of fluorite spar and other minerals, we can say there is almost the same number of actual workers as the officially estimated figures (126,000) who are engaged in the informal mining sub-sector.

20 ILO, *International Labour Conference, 90<sup>th</sup> session 2002: Decent work and informal economy, Report VI*, International Labour Office, Geneva.

21 Chapter II, Article 16.10.

22 ILO, MONEF, Population training and research centre, “Informal extraction of gold in Bornuur and Zaamar soums of Central aimag”, report (Ulaanbaatar, 2004).

The trade unions of the drivers of minibuses and taxis, photographers, and marketplace traders were created with assistance from the Federation of Private Sector Workers' Trade Unions and the Federation of Transport, Communication and Petroleum Workers Unions.

With respect to issues of forced labour, amendments made in 2003 to the Labour Law included a definition of forced labour as

“work or duties which are required or executed under the menace of penalties for participating in strikes or expressing one’s opinion on political, economic and social structure or for maintaining labour discipline, with the purpose of discriminating against someone on the basis of social origin, nationality, race and religion regardless of hazardous and dangerous circumstances for an employee’s life and health”.

Writing on the forced labour situation in Mongolia, Prof. Urantsetseg of the Academy of Management of Mongolia suggests that the following practices can be considered as forced labour in Mongolia.<sup>23</sup>

- An employee is required to work breaching labour law regulations on working on overtime, on weekends or on public holidays;
- An employee is not paid for the work performed by him/her;
- An employee is paid less than the minimum wage;
- An employee is only paid for one job or post despite he/she performing a number of additional duties or jobs beyond his/her basic one;
- An employee is not paid for the work performed by him/her during probation period;
- An employee is forced to perform work or duties that he/she does not want to do.

The above-mentioned forms of forced labour are prevalent in the informal economy, especially in small or micro production and service units. Quite often compulsory, forced work is applied for maintaining labour discipline or making employees work under hazardous conditions.

Children make up a large group in the informal economy; child labour has not yet been eliminated in Mongolia. In 1999, Mongolia joined the ILO’s International Programme on the Elimination of Child Labour (IPEC) and later ratified the ILO’s Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182).

According to the 2002 to 2003 National Survey on Child Labour, the total number of children in the age group of five to 17 years was estimated at 679,049. Out of them, 38,857 children (5.7 percent) were working.<sup>24</sup> Of these

23 B.Urantsetseg, *Forced labour situation in Mongolia*, 2003. (Ed.: These indications are without prejudice to the situation under international standards on forced labour.)

24 National Statistical Office of Mongolia and ILO, *Report on national child labour survey 2002-2003* (Ulaanbaatar, 2004), pp. 2, 42, 90-91.



38,857 working children, 25,445 (65.5 percent) were boys and 13,411 (34.5 percent) were girls.

According to the National Survey, of the identified child workers, 694 children had an approved contract of employment and 460 children were employed under civil law.<sup>25</sup>

According to the survey, 13,509 children were engaged outside of the household.<sup>26</sup> This means that only 8.5 percent of children working outside of a household have labour or civil contracts. Taking into account that such contracts are usually concluded in the formal economy, children without any contracts are most likely engaged in the informal economy.

According to the survey, the usual activities in which a relatively large number of children engage in include herding livestock, extracting minerals (gold, spar and coal) and working as porters. The 2003 National Human Rights Commission Report noted,

“There were over 1,000 child workers in 31 markets located in six districts of the capital city. Two to three hundred children permanently work in coal mines in the Nalaikh district. Many children from poor families are increasingly employed with or without pay by households owning a large number of livestock.”<sup>27</sup>

According to the information provided by 13,509 child workers concerning their working conditions, 41.4 percent worked on pasture/farmland, 29 percent in the employer’s home, 14 percent in shops and markets, 4 percent in mining sites, and 6 percent equally distributed among streets, factory premises and construction sites. The remaining 5 percent were found in other places. In addition, 13.9 percent of their workplaces were “non-standard”, that is to say, where conditions included exposure to heat, cold, dust and noise, etc.

With regard to the question of discrimination, the Law on the National Human Rights Commission, adopted on 7 December 2000, set a legal framework, competence and principles of action for the National Human Rights Commission. Since then, inspection activities aimed at stopping violations of human rights

25 National Statistical Office of Mongolia and ILO, *Report on national child labour survey 2002-2003* (Ulaanbaatar, 2004), p. 77. According to Article 109 of the Labour Law of Mongolia, a person who has reached 16 years of age has the right to conclude a labour contract. But if permitted by his/her parent or guardian, a person who has reached 15 years of age may conclude a labour contract to work in workplaces except for those where it is prohibited to employ children below the employment age. Moreover, a person of 14 years of age may become a party to a labour contract for the purpose of acquiring vocational orientation and work experience, with a consent of his/her parent or guardian and of the State administrative organ in charge of labour issues.

26 National Statistical Office of Mongolia and ILO, *Report on national child labour survey 2002-2003* (Ulaanbaatar, 2004), p. 93.

27 National Human Rights Commission, *Report on human rights and freedom in Mongolia, “State information”* 15 (Ulaanbaatar, 2003), pp. 352-353.

have been expanded. Some specialised surveys have been launched as well. For example, at the request of trade unions, the National Human Rights Commission reviewed application of the principle of non-discrimination in employment and occupation in its 2004 Report.

Article 7 of the Labour Law on Prohibition of Discrimination, Limitations or Privileges in Employment and Labour Relations contains the following provisions:

“(1) No one shall be forced to perform work.

(2) Discrimination or the establishment of limitations or privileges based on nationality, race, sex, social origin or status, wealth, religion, or opinion shall be prohibited.

(3) If, due to the nature and requirements of the work or duty to which an employee has been assigned, an employer has limited an employee’s rights and freedoms, he must justify the grounds for doing so.

(4) When hiring an employee, an employer shall not ask questions pertaining to private life, ideology, marital status, political party membership, religious beliefs, or pregnancy of the employee unless such questions are related to the work or duty to be performed.

(5) If Article 7(4) has been violated, and an employee has been asked an undue question, the employee shall not be obligated to respond.”

The National Human Rights Commission has reported that when hiring an employee, employers and their authorised representatives discriminate against citizens using criteria based on personal appearance and behaviour that are not related to the nature and requirements of the work or duty, restricting their rights to equal treatment provided by the Labour Law on Unlawfully Establishing Privileges.<sup>28</sup>

#### Box 1

#### **Difficulties faced by older women in the formal economy leading to entrance into the informal economy**

*The organization I used to work for was privatised and under the total control of a foreign investor. They reduced the staff to just two people. There was no way a woman such as myself, aged over 40, could have obtained employment. When I heard about the hiring of sales clerks and shop assistants elsewhere, I applied for a position only to be turned away because the employers were looking for tall young women aged 18 to 25 with good looks. So I started a canteen with my husband.*

Source: Excerpt from a case study interview, ILO/UNDP Support for Policy and Programme Development on the Informal Sector in Mongolia.

<sup>28</sup> National Human Rights Commission, *Report on human rights and freedom in Mongolia 2004* (Ulaanbaatar, 2004), pp. 100-104.

A review of job advertisements in the newspapers shows that employers set clearly discriminatory requirements based on personal appearance, or offered illegal privileges to some. Because of such discrimination in the formal economy, jobseekers are compelled to create a workplace for themselves in the informal economy.

Discrimination against employees on the basis of their political opinion or political party, as well as for union membership, action for protecting their rights and interests, age, sex, social status and wealth occurs predominantly in the formal economy. Some cases of discrimination against informal economy workers have been observed in connection with their efforts to actively protect their rights and interests; for example, organizing with a view to strengthen their position in negotiating arrangements affecting small business operations.

One of the unfair labour practices undertaken by employers is the unilateral cancellation of labour contracts with workers, only to replace them with civil law contracts. While permanent or regular workers are employed by enterprises on labour contracts, other categories of workers in the same enterprises work under civil law arrangements. This practice is not limited to the private sector and informal economy but also exists—and is on the rise—in the public sector.

### **Employment**

Most job creation in recent years in Mongolia, as in other developing and transition economies, has been in the informal economy. In order to illustrate the significance of this fact, the distribution of the employed population by industry, size of unemployment and underemployment will be examined.

The distribution of the total employed population by industry is presented in Table 7.<sup>29</sup>

<sup>29</sup> National Statistical Office of Mongolia and Asian Development Bank, *Main report of labour force survey 2002-2003*, Ulaanbaatar, 2004, p. 52.

**Table 7: The employed population in Mongolia (by industry)**

Industry	Number of employed persons	Percentage in all industries
Agriculture, hunting and forestry	402,200	46.6
Wholesale and retail trade, repair of home appliances	98,100	11.4
Education	63,300	7.3
Public administration, defence and mandatory social insurance	52,100	6.0
Transport, storage and communication	51,000	5.9
Manufacturing	46,200	5.4
Health and social welfare	38,000	4.4
Mining and quarrying	23,300	2.7
Other community and personal services	22,300	2.6
Construction	17,500	2.0
Electricity, gas and water supply	15,800	1.8
Hotels and restaurants	13,700	1.6
Real estate, renting and business activities	10,100	1.2
Financial intermediation	6,300	0.7
Fishing	500	0.1
Private households with paid employees	900	0.1
Extra-territorial organizations	1,200	0.1
All industries	862,500	100.0

Source: 2004 Labour Force Survey.

As noted previously, 114,500 persons (excluding those in their secondary occupations) have been officially counted as working in the informal economy, i.e. 13.3 percent of the total employed population. The informal economy has taken third place in job creation after two industry groups: agriculture, hunting and forestry; and public service (public administration, defence, mandatory social insurance, education, health and social welfare).

Taking the sum of the three employment status categories most closely associated with informal economy activities, namely, own-account workers, persons employed under civil law arrangements and unpaid family workers (see Table 8 below), it may be concluded that over 63 percent of all employed persons are working in the informal economy.

If criteria were adopted that stated informal enterprises are those with no regular or one to nine paid employees, the number of the persons employed in the informal economy would be 572,000<sup>30</sup> and it would make up 66.4 percent of all employed persons.

In Mongolia, underemployment exists both in the formal and informal economies. Officially counted underemployed persons (those working but

30 National Statistical Office of Mongolia and Asian Development Bank, *Main report of labour force survey 2002-2003* (Ulaanbaatar, 2004), p. 78, Table 65.

**Table 8: Employed population by status of employment, sex**

Employment status	Total		Male (%)	Female (%)
	Number	%		
Paid employee on labour contract	312,000	36.3	34.1	38.5
Own-account worker	301,500	34.9	43.4	25.7
Unpaid family worker	213,800	24.8	18.4	31.7
Paid employee under civil law	26,700	3.1	3.0	3.3
Employer	5,500	0.5	0.7	0.4
Member of cooperative	1,800	0.2	0.3	0.2
Other	1,200	0.1	0.1	0.2
Total		100.0	100.0	100.0
<b>Employed population</b>	<b>862,500</b>		<b>448,900</b>	<b>413,600</b>

Source: 2004 Labour Force Survey.

available for more work) have been estimated at 58,200.<sup>31</sup> This estimate includes those who had worked for more than 40 hours a week but sought additional work due to low income.

According to the Labour Force Survey, there were 142,300 unemployed persons. This means that the unemployment rate was 14.2 percent or far higher than the official unemployment rate of 3.5 percent.<sup>32</sup> This is explained by the fact that 76.6 percent of the unemployed had not registered with employment offices. The unemployed population was made up of 74,600 males and 67,700 females. The unemployment rate was 14.2 percent among males and 14.1 percent among females. The urban unemployed accounted for 60 percent of the total figure.<sup>33</sup> Some researchers<sup>34</sup> suggest that a certain proportion of the unemployed work in the informal economy and that this should be taken into account.

Moreover, employment in the informal economy will expand if it is taken to include increasing de-formalisation of employment in formal sector enterprises, work contracts concluded under civil law and various other types of flexible labour arrangements.

Migration is an important factor causing the growth of the informal economy, especially in Ulaanbaatar and Erdenet. In recent years, the reasons for migration have shifted from learning and meeting social and cultural needs to economic motivations like employment, better access to the market and improved livelihood.

31 National Statistical Office of Mongolia and Asian Development Bank, *Main report of labour force survey 2002-2003* (Ulaanbaatar, 2004), p. 55-56.

32 National Statistical Office of Mongolia, *Statistical Yearbook of Mongolia 2003* (Ulaanbaatar, 2004), p. 62.

33 National Statistical Office of Mongolia and Asian Development Bank, *Main report of labour force survey 2002-2003* (Ulaanbaatar, 2004), p. 59-60.

34 Anderson, James H, "The Size, Origins, and Character of Mongolia's Informal Sector During the Transition", World Bank, *Policy Research Working Paper* 1916, (1998).

The results of a survey of poverty and migration in Ulaanbaatar have shown that 35.8 percent of the population of the capital are engaged in informal economy activities.<sup>35</sup>

Government and local bodies should recognise the growth of the informal economy. Support from the government and local bodies have been insufficient to help informal economy activities become formal. And since there is no precise line between the informal economy and the illegal shadow economy, restrictions and suppression aimed at the latter impact on the former.

In 1991, ILO clearly stated that the informal economy must not grow or be advocated as a cheap means of employment generation. The policy objective should therefore aim to avoid the creation of new jobs in the informal economy. For Mongolia, it is important that the government act in ways to formalise the informal economy. First of all, it is necessary to increase the number of persons employed in the formal economy, especially in industrial branches. Productivity and incomes in the informal economy also need to be improved and fairly distributed. Ways need to be found to formalise the informal economy on these bases.

The 2003 Mongolian Human Development Report suggested in its section entitled Balanced Regional Development “to support an expansion of the informal sector through loans and improved provision of new technology, raw materials and equipment”.<sup>36</sup> The survey of poverty and migration in Ulaanbaatar made a policy suggestion that “projects and programmes on employment promotion in the capital city should be more focused on residents of ger districts, especially effective organization of the informal sector”.<sup>37</sup>

One strategic task is to increase the productivity and incomes of those employed in the informal economy. The following factors might have a positive influence on the productivity of informal economy workers:

- The law on allocation of land to Mongolian citizens for ownership entered into force in 2002 and this allowed citizens access to the land markets.
- The annual loan rates of banks have decreased and there have been improvements in access to non-banking financial institutions and savings and credit unions.
- In 2004 and 2005 important measures were taken to simplify access to information and new technology.
- The government has been implementing the Household Livelihood Capacity Support Programme since 2001.

35 National Statistical Office of Mongolia and Asian Development Bank, *Main report of labour force survey 2002-2003* (Ulaanbaatar, 2004), p. 116.

36 Government of Mongolia and UNDP, *Human Development Report of Mongolia 2003*, Ulaanbaatar, p. 2.

37 Government of Mongolia and UNDP, *Ulaanbaatar poverty and migration: Survey report*, (Ulaanbaatar, 2004), p. 116.

- The Government's Small and Medium Enterprises (SMEs) Support Programme was revised in 2005.
- The 2002 Law on Vocational Education and Training promotes the improvement of the quality and accessibility of technical and vocational schools and training organizations.

### Social protection

In Mongolia, persons employed in the informal economy are not protected in terms of their employment, incomes and occupational safety and health.

The current social insurance system consists of following programmes:

- Pensions, including retirement, invalidity, and survivors' pensions;
- Social insurance benefits covering contingencies of sickness and maternity, and providing a funeral grant;
- Health insurance;
- Industrial accident and occupational disease insurance; and
- Unemployment insurance.

The social insurance is either compulsory or voluntary, with persons employed on the basis of a labour contract<sup>38</sup> subject to compulsory insurance and those employed under other types of contracts, and the self-employed insured voluntarily.

Overall, 42 percent of Mongolia's population are currently said to be paying for pension insurance.<sup>39</sup> Only 4 percent of herders and the self-employed are covered by social insurance. As of August 2004, only 87.4 percent of the employees in the organized sector were covered by social insurance on a compulsory basis.<sup>40</sup>

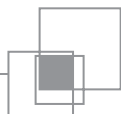
According to the 2002 revision of the Health Insurance Law, all Mongolian citizens are entitled to compulsory health insurance. At this time, if the number of persons whose contributions are borne by the state is counted, 84 percent of the total population has been covered by the health insurance. Coverage by member category is as follows:

- 90 percent of employees of economic entities;
- 100 percent of children under 16 (if schoolchildren, under 18);
- 100 percent of citizens without income other than pension;
- 100 percent of women or men taking care of children who have not turned two (three years old for twins);
- 70 percent of vulnerable population groups;
- 100 percent of persons doing regular military service;
- 24.6 percent of full-time students;
- 56.4 percent of herders;
- 81.2 percent of others.

<sup>38</sup> Law on social insurance, Article 4.2.

<sup>39</sup> "Unemployed, students, and herders may enter into pension system," *UB Post*, 29 September 2005.

<sup>40</sup> Government of Mongolia, "Main guidelines for economic and social development in Mongolia for 2005 and future development perspectives for 2006-2008" (Ulaanbaatar, 2004), p. 81.



The health insurance coverage of those employed in the informal economy is limited. According to a survey focusing on Ulaanbaatar, only 55.7 percent of the employed persons in the official informal economy were covered by health insurance as compared to 86.7 percent of the formal sector.<sup>41</sup>

Although persons other than those employed on the basis of a labour contract are eligible to participate on a voluntary basis in the current social insurance programmes, very few do. Three clear reasons can be given for this.

First, many workers in the informal economy earn very low incomes and find it expensive to contribute to the current social insurance schemes.

Second, the system is seen to have a complicated administrative procedure and inflexible contribution arrangements.

Third, services are seen to be of poor or inadequate quality or quantity, i.e. benefit levels are inadequate.

With respect to the cost of participation, minimum contributions for voluntary insurance must not be less than amounts that are calculated on the basis of the minimum wage fixed by the government. In 2005, the monthly minimum wage was 42,000 tugrik (approximately USD 37.50). Contributions fall entirely on the shoulders of the insured person where there is no employer to share the burden. For pension insurance, formal economy employees pay 5 percent of wages; persons without an employer would pay 9.5 percent of the established minimum wage. Social insurance contributions for formal economy employees are 7 percent of wages, as compared to 11.5 percent of the established minimum wage for insured persons without employers.

In Mongolia, only employers pay contributions to the industrial accident and occupational disease insurance scheme.

### **Social dialogue**

Since the mid-1990s the government, the Mongolian Employers' Federation (MONEF), some cooperative unions and the Confederation of Mongolian Trade Unions (CMTU) have paid more attention to the informal economy through social dialogue mechanisms, especially in tripartite negotiations. For instance, numerous issues have been agreed upon and reflected in national tripartite agreements.<sup>42</sup>

41 Government of Mongolia and UNDP, *Ulaanbaatar poverty and migration survey report* (Ulaanbaatar, 2004), p. 28.

42 The national tripartite agreements on labour and social consensus for 1999, 2000 to 2001 and 2002 to 2003. Issues such as determining the informal economy's share of GDP and assessing its role and importance in economic and social development, and reduction of poverty and unemployment; arrangements for the collection and production of statistics on the informal economy and informal employment; and extension of research work on the issue; ensuring fair competition in all spheres of social and economic life; and improving efficiency and productivity; were discussed.



The social partners and civil society have recognised that economic growth generated only in the formal sector is unsatisfactory, that poverty has not been reduced, and that violations of rights and interests of persons employed in the informal economy are prevalent. The most significant result of this recognition is the development and approval of the Economic Growth Support and Poverty Reduction Strategy in late 2003, which identifies the medium-term development policy of Mongolia and the Social Security Sector Strategy Paper. The government, in consultation with civil society, the private sector and social partners, developed these Strategy Papers.

A number of permanent national tripartite committees and councils are playing an essential role in promoting the effective realisation of tripartite partnerships for labour and social consensus. Some have begun to give significant attention to creating a deeper understanding of the work and needs for social protection of informal economy workers, with a view to developing national policies and recommendations. The Social Insurance National Council, for example, has developed proposals and recommendations for improving social protection for people working in the informal economy, particularly herders and the self-employed. The Employment National Council has developed recommendations to support and assist those employed in the informal economy and abroad. All these recommendations have been reflected in the Economic Growth Support and Poverty Reduction Strategy and the Social Security Sector Strategy Papers.

Within the framework of the system for social dialogue, the government is focusing its attention on extending statistics and research on the informal economy and developing policies on informal employment and economic activities. The MONEF is striving to cooperate with associations and organizations of self-employed persons, assisting them in labour and social security matters, conducting activities including the ILO's "Start and Improve Your Business" training, and encouraging formal enterprises to establish business links and partnerships with informal operators.

Some trade unions are taking measures to promote freedom of association among workers in the informal economy, addressing issues of common interest and lobbying to bring employees with informal jobs into formal sector enterprises—and within the scope of labour laws. A trade union manual on organizing in the informal economy was developed under the ILO Project on the Informal Economy, Poverty and Employment, and the CMTU has used it for the training of trainers. In this way it is hoped that the activities of industrial and provincial trade union federations are supported in organizing informal economy workers.

### 3. Labour legislation of Mongolia and the informal economy

Four groups of laws and related legal acts were looked into in this study. They regulate industrial relations,<sup>43</sup> labour standards,<sup>44</sup> employment<sup>45</sup> and social protection,<sup>46</sup> broadly following the four strategic objectives of the ILO's definition of decent work.

#### Statutory provisions

##### *Review of the current labour legislation*

Trade unions in Mongolia began to be organized in 1917. The first Labour Law, from 1925, began regulating industrial relations. This legislation, which consisted of two documents, “Rules about any hired workers” and “The instructions explaining rules about any hired workers”, recognised the rights of the employed in all forms of enterprises and types of organizations—in particular, in agricultural undertakings and of those employed in the informal sector (such as transportation of water, ice and people).<sup>47</sup>

Basic labour standards such as an eight-hour working day, rest on Sunday, annual leave, and a six-hour working day for minors under the age of 16 years were reflected in the Labour Law of 1925.

43 The laws, chapters, articles and paragraphs of the law, which regulate the industrial relations in Mongolia are: the Law on Trade Union Rights (1991); the Law on Political Parties (1990), Article 2: “The Party organizations can be organized only on a territorial basis. This applies also to political and mass organizations engaged in political activity, but not trade unions.”; Labour Law (1999), Chapter 2 on “Collective Agreements and Collective Bargaining” and Chapter 10 on “Regulation of Collective Labour Disputes”; the Law on State Service (2002) and other laws, which regulate the industrial relations in civil service; the Law on State Registration of the Legal Entity (2003).

44 Laws regulating labour standards in Mongolia: the Labour Law (1999); the Law on Minimum Wage (1998); the Law on Transition for Five-Day Week (1997).

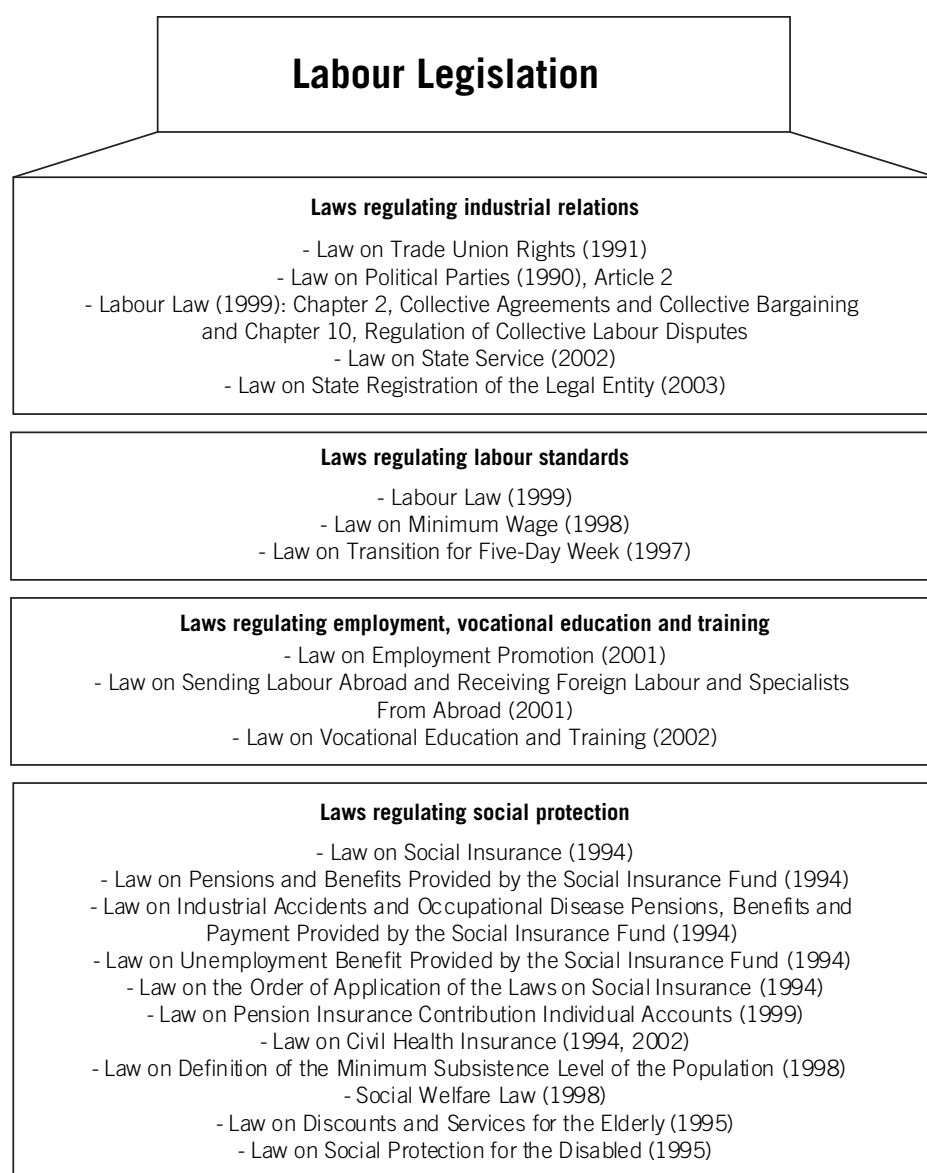
45 Laws of Mongolia on employment, vocational education and training: the Law on Employment Promotion (2001); the Law on Sending Labour Abroad and Receiving Foreign Labour and Specialists From Abroad (2001); and the Law on Vocational Education and Training (2002).

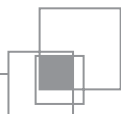
46 Laws of Mongolia on social protection: the Law on Social Insurance (1994); the Law on Pensions and Benefits Provided by the Social Insurance Fund (1994); the Law on Industrial Accidents and Occupational Disease Pensions, Benefits and Payment Provided by the Social Insurance Fund (1994); the Law on Unemployment Benefit Provided by the Social Insurance Fund (1994); the Law on the Order of Application of the Laws on Social Insurance (1994); the Law on Pension Insurance Contribution Individual Accounts (1999); the Law on Civil Health Insurance (1994, 2002); the Law on Definition of the Minimum Subsistence Level of the Population (1998); the Social Welfare Law (1998); the Law on Discounts and Services for the Elderly (1995); the Law on Social Protection for the Disabled (1995). The basic terms connected to the labour and social security relations and defined by Laws of Mongolia are attached in Annex A.

47 Rule about any hired workers, 1925, Article 4; The instructions explaining rules about any hired workers, Article 1, 2 and 5.

Eight labour laws were developed and applied in Mongolia in the 20<sup>th</sup> century. Only the Labour Law of 1973 covered all workers working both in state enterprises and workplaces. This was directly connected to the existence of two types of property ownership in Mongolia: state property and property of agricultural cooperatives. The labour relations of the members of agricultural cooperatives were regulated by their own rules, developed according to model by-laws for agricultural cooperatives, and legislation of the Mongolian People's Republic on agricultural cooperatives. It should be noted that at that time, private property did not exist and individual ownership of property had to be authorised. Therefore, the informal sector was almost non-existent under the centrally-planned economy system.

**Figure 1: Labour legislation in Mongolia**





The Labour Law was revised in 1991 in connection with the transition to the market economy. It began to regulate relations between management of enterprises and workplaces of various types of ownership, including private enterprises, and citizens working under labour contracts; it also regulates relations between the citizens on the basis of the labour contracts. The Labour Law of 1999 inherited this approach.

The right to strike is recognised in the Law on Trade Union Rights of 1991, and the right to lockout in the Labour Law of 1999. The official state registration of trade unions began only in 1994. All these laws are oriented basically to the formal sector.

### ***Applicability of labour legislation***

The general provisions in the first chapter of the current Labour Law (1999) make it clear that the Law is applicable only to those who enter labour relations on the basis of a labour contract. The purpose of the law is to “define the general rights and duties of an employee and an employer who are parties to a labour relationship based on a labour contract, collective contract or collective agreement...”.<sup>48</sup> For the purpose of the Law, an employer “is a party employing an employee on the basis of a labour contract”<sup>49</sup> and an “employee is a citizen employed by an employer on the basis of a labour contract”.<sup>50</sup> The Labour Law specifies that the parties should conclude a labour contract in written form<sup>51</sup> and that the labour contract becomes effective on the date it is signed.<sup>52</sup> Thus, the law does not cover relations if the labour contract was concluded verbally.

After the Labour Law was updated in 1999, some employers began to replace labour contracts with work performance contracts and leasing contracts, which are all subject to the Civil Code. This has the effect of evading regulations under the Labour Law. The development actually meant that many formal sector workers passed into the informal sector to the extent that they were no longer effectively provided coverage by the protections set in the Labour Law. To counter this undesirable development, the term “permanent position” was added to the Law in limited amendments made in 2003. With respect to these positions, the Law now prohibits the conclusion of contracts other than proper labour contracts. Thus, “a permanent position” means work and duties carried out in the workplace designed by the employer, with tools and facilities provided by the employer according to established rules, and for which the employee

48 The first article of the law.

49 Labour law, Article 3.1.1.

50 Labour law, Article 3.1.2.

51 Labour law, Article 24.1, First sentence: “An employer or his authorised official shall conclude a labour contract with a citizen employee in writing and deliver one copy of the contract to the citizen.”

52 Labour law, Article 21.7: “A labour contract shall become effective on the date it is signed.”

is paid wages according to labour norms, piece-rate and tariff scale, and by certain recurrence of working days and shifts under the direction of the employer or his representative.<sup>53</sup>

In spite of the fact that the protections for workers set out in the Labour Law ought to be provided in a non-discriminatory manner as between workers in the formal and informal economies, the Labour Law is basically applied according to the purposes of the regulation, that is to say, to employees working on the basis of a labour contract.

In sum, the Labour Law of 1999 does not cover the self-employed, members of cooperatives, persons working on the basis of the contracts subject to the Civil Code, persons working on the basis of informal contracts, or workers having verbal labour contract.

### ***Relevance and actual application of labour legislation to informal economy workers***

The first group of laws covers industrial relations, freedom of association, collective bargaining, and the organization of strikes and lockouts. The Law on Trade Union Rights<sup>54</sup> specifies that “[f]or the purpose of exercising their right to work and protect their legitimate interests, citizens have the right to freely and voluntarily join trade unions of their choice without any distinction and previous authorisation”. There are no restrictions in this law, such as granting the right to organize only to citizens working on the basis of a labour contract, or excluding persons employed on the basis of civil contracts,<sup>55</sup> or authorising creation of a trade union only with a minimum number of the workers. So, the right to organize trade unions is available for informal economy workers.

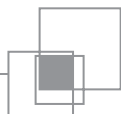
The difficulty is that trade unions organized in state and agricultural cooperative enterprises and their higher-level organizations—all of which worked until 1990 under the centralised government and command—have maintained their traditional position, having workers organized only in the formal economy. The number of citizens who neither pay membership fees nor participate in trade union activities has grown dramatically as a result of the creation of many SMEs in the course of privatisation, reorganization, and reform of State enterprises and economic units, and the falling of workers into the informal economy. Out of 36.3 percent of 862,000 working on the basis of a labour contract,<sup>56</sup> only

53 Labour Law of Mongolia, Articles 3.1.15, 24.1.

54 The first part of Article 3.

55 Civil law, Articles 287-342 (The obligations connected to the performance of various types of jobs and services), Articles 343-409 (The contractual obligations connected to the transfer of property in possession and use to another's).

56 National Statistical Office of Mongolia and Asian Development Bank, *Main report of labour force survey 2002-2003* (Ulaanbaatar, 2004), p. 116.



about 180,000-210,000 workers are active dues-paying trade union members.<sup>57</sup> Trade union members make up 20 to 25 percent of the economically active population, and 60 to 70 percent of employees working on the basis of a labour contract. Few herders and self-employed workers are members of trade unions.

The Report to the 16<sup>th</sup> Congress of the CMTU (1996) noted that “a strategic task of each trade union organization is to organize workers and continually expand membership, but today only about 60 percent of regularly employed persons are our members. However we should be critically aware of the fact that many hired workers of joint ventures with foreign investment, small enterprises, insurance, bank and financial organizations and the informal economy are... outside of the organizational efforts of trade unions”. The task was put forward to expand trade union membership by no less than 20 percent. After the 17<sup>th</sup> Congress in 2000, a campaign to maintain membership representing not less than 50 percent of all workers was started by the trade unions.<sup>58</sup> Nevertheless, the number of trade union members, especially in the informal economy, has not increased. This is explained by the country’s economic structure where self-employment and employment in small enterprises prevail.

The Labour Law regulates collective bargaining practices.<sup>59</sup> Collective agreements are established as a result of collective negotiations at the level of enterprises, economic units and organizations. Collective agreements are also established at other levels, for example:

- national, sector and inter-sectoral collective agreements at the national level;
- regional, provincial, capital city, soum, and district collective agreements at the level of administrative and territorial units;
- professional tariff collective agreements at the level of specific professions.

Among these, collective agreements reached at other levels can be used by the appropriate federations of trade unions for the resolution of problems connected to the rights and interests of the employed in the informal economy.

Despite the fact that informal economy workers have no special trade unions of their own, some existing trade union federations have included some issues related to their rights and general interests into national or territorial collective bargaining and agreements.<sup>60</sup>

57 International Labour Office and Ministry of Social Welfare and Labour of Mongolia: *Study on social partnership and development in Mongolia* (Ulaanbaatar, October 2003), p.18, and the reports of the internal account on 2003 to 2004 of Confederation of Mongolian Trade Unions.

58 The documents of 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup> congresses of Confederation of Mongolian Trade Unions.

59 Articles of Chapter 2, Collective Agreement and Collective Bargain.

60 For example, government, employers, cooperatives and trade unions have agreed on the following item 16 of the national agreement on social consensus for 2002 to 2003: “An integral labour market information network including informal sector employment database shall be established in 2003.”

If informal economy workers created their own trade union, they could conclude collective agreements and organize strikes because, as noted above, the right to establish a trade union is not limited to labour contract holders. Therefore, a way exists to protect the rights and interests of workers in the informal economy through collective bargaining and social dialogue.

Despite the importance of the existence of a labour contract for application of the Labour Law, its standards may nevertheless be applied to self-employed workers and members of cooperatives who do not have a labour contract and workers who work on the basis of civil contracts. Although Article 4 of the Labour Law was designed for members of livestock cooperatives as well as of other industrial and service cooperatives, it could have a broad application in the informal sector, saying that—

“[i]f individuals have contributed property or labour to an enterprise, but have not entered into an agreement with respect to labour relations, or have agreed to follow this law, the relevant provisions of this law shall be applicable”.

Yet many provisions of the Labour Law are actually tailored for application in regulated relations of the formal economy. If relations in the informal economy are to be covered, it would be necessary to broaden and redefine terms such as “employee”, “employer”, “representatives of an employer”, “representatives of an employee”, “individual labour dispute”, and “collective labour dispute”. Articles in many other chapters of the Labour Law would also have to be reconsidered.<sup>61</sup>

Several laws operating in the area of employment, vocational education and training entered into force in the early part of the decade.<sup>62</sup> Their objectives are to reduce poverty and unemployment, and to maintain skills held by technical and professional workers in branches of the economy. Since these laws can be considered to be based on the concept of full and productive employment, they are relevant in application to the informal economy.

61 These would include chapters on Collective Agreement and Bargaining, Labour Contract, Wages and Compensation, Hours of Work and Rest, Working Conditions, Safety and Sanitation Standards, Regulation of Collective Labour Disputes, Regulation of Individual Labour Disputes, Management and Organization, Labour Inspection and other provisions. To deregulate participation in collective bargaining so as to enable broader involvement in it and in the relations regulated by collective agreements, the following changes would need to be considered: recognising the validity of verbal labour contracts; completing regulation through collective agreement of all relations involving the payment of wages; establishing a bipartite national commission on minimum wages; creating a system of tripartite arbitration for the settlement of collective and individual labour disputes; including representatives of persons working in the informal economy on the National Committee on Social Consensus; expanding the chapter “Labour inspection” and transforming labour inspection to an independent body, with the task of assuring basic rights and freedoms of individuals at work.

62 Laws such as Law on Employment Promotion, Law on Sending Labour Abroad and Receiving Foreign Labour and Experts, Law on Vocational Education and Training were implemented.



The following are considered employment promotion activities by the Law on Employment Promotion:

1. employment promotion services comprising of vocational orientation, counselling, information and referral to available jobs, vocational training and retraining
2. employment promotion measures including support for citizens beginning a business activity as self-employed and employed in partnerships and cooperatives, support to employers, support to arrangements for public works and other measures specified in the legislation
3. payment of unemployment benefits from the unemployment insurance fund.

The law sets out the following principles as essential parts of the employment promotion policy:

- Discrimination on the basis of nationality, language, race, age, sex, wealth, education, social origin or status, religion or ideology is prohibited.
- Employment promotion activities pursue conditions of equality, accessibility, openness of the information about workplaces and transparency.
- Citizens shall be involved in employment promotion measures on a voluntary basis.

Article 10 of the Law on Employment Promotion is titled “Support to the citizens engaged in private or in partnership and cooperative businesses”. It prescribes that:

- measures to support citizens engaged individually or in partnerships or cooperative businesses should be aimed at creating employment opportunities for citizens willing to run small production, service, household enterprises or interested in implementing small loan projects; and
- support will be provided to citizens engaged individually or in partnership or cooperative businesses by way of small loans from the Employment Promotion Fund for purchase of raw materials, tools and equipment and for other necessary investments.

The Tripartite Employment Council concluded that 80 percent of the resources in the Employment Promotion Fund should go to granting microcredit to enterprises and citizens for self-employment or creation of partnerships and cooperatives, vocational training and retraining of citizens, and organization of public works. But people who are in real need of microcredit often do not have access to it. Likewise, vocational training, retraining and public works satisfy neither the demand nor the needs of the provinces and labour market. This means that existing legal provisions concerning microcredit services for small entrepreneurs need to be implemented.



Employment offices organize vocational training<sup>63</sup> in six guureg (districts) using vouchers, and in the provinces through accredited training institutions. Five organizations<sup>64</sup> provide services as training and business incubators and seven organizations give business skill training and support to the unemployed and the poor. Business incubators are set up at the Labour and Social Welfare Service department of Nalaih district and 12 small businesses are now growing there.<sup>65</sup> Work is also underway to create business incubators at the Labour and Social Welfare Service department of Uvs, Dornod, Darkhan-Uul and Uburkhangaï aimag.<sup>66</sup>

### ***Labour administration and inspection mechanisms***

The Ministry of Internal Affairs was in charge of labour issues when the first labour laws were developed and implemented in 1925. Between 1930 and 1991, the central administrative organ responsible for labour matters was reorganized five times. In times when a labour ministry did not exist, its functions were shared among other ministries. This arrangement has continued after 1991.

According to the Labour Law, the system of labour administration consists of the state's ministry in charge of labour issues, the employment and labour inspection agencies, central and local employment offices and the labour inspector or officers.<sup>67</sup> The ministry in charge of labour issues and the implementing agencies are responsible to, and work under the guidance of the cabinet member in charge of labour issues. The local organizations are responsible to, and work under the guidance of their relevant governors. The state central administrative organ in charge of labour issues provides local organizations with professional and administrative guidance. Governors at all local levels have established labour administrations within the scope of their respective competences.

The Ministry of Social Welfare and Labour is the state central administrative organ in charge of labour issues. A Cabinet Member—the Minister for Social Welfare and Labour—heads the ministry.

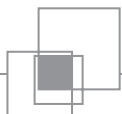
63 On the basis of the Law on Vocational Education and Training.

64 Chosen under the Joint Order of the Minister of Social Welfare and Labour and the Minister of Education, Culture and Sciences No 38/72 of 2004.

65 Business incubators are intended to help some micro entrepreneurs operating within informal economy to expand their businesses and grow into formal ones.

66 Government of Mongolia, "The basic directions of economic and social development of Mongolia for 2005 and tendencies of development from 2006 to 2008" (Ulaanbaatar, 2004), p. 13.

67 Labour law, Chapter 13, Article 137.1.



The following matters fall under the responsibility of the Ministry for Social Welfare and Labour:

- employment policy, reduction of unemployment and poverty alleviation;
- research and studies on labour conditions, employees' wages and living costs;
- protection of consumers' interests;
- issues of labour relations, social partnerships between the government, employer and trade unions, collective labour dispute regulations;
- social welfare policy;
- social insurance policy;
- population policy;
- social issues of children and youth;
- social issues of herders;
- employment of foreign citizens in Mongolia;
- employment of Mongolians abroad; and
- labour market regulations.

The State Professional Inspection Agency is in charge of all issues related to inspection and law enforcement, among which includes the implementation of the labour standards. The Labour and Social Welfare Service Office, established in 2004 by the merger of the State Social Welfare Agency and the Central Employment Office, is in charge of employment, vocational training and social welfare. The State Social Insurance General Office is in charge of social and health insurance. The National Board for Children is in charge of children's issues. The National Rehabilitation Centre for Disabled Persons operates under the jurisdiction of the Ministry of Social Welfare and Labour. All these agencies have local offices and officers.

The Ministry of Social Welfare and Labour and Ministry of Education, Culture and Science share responsibilities for vocational education and training. The Ministry of Education, Culture and Science is charged with establishing a uniform system of vocational education and training, and analysing statistical information on vocational education and training and the labour market.<sup>68</sup>

With regard to vocational education and training, the Ministry of Social Welfare and Labour studies labour market supply and demand and provides this information to organizations and citizens; creates a database about vocational training and analyses related data; establishes the training requirements of organizations, enterprises and citizens engaged in vocational training; and identifies, supervises, and informs the activities of organizations that organize short-term vocational training.

<sup>68</sup> According to Article 7 of the Law on Vocational Education and Training.

The National Committee of Labour and Social Consensus is a part-time tripartite body<sup>69</sup> set up as a component of labour administration and organization. The National Committee consists of 15 members, with five representing each of the social partners. The National Committee guides the development and implementation of labour policies and develops tripartite social consensus; settles collective disputes while protecting citizens' rights as workers and related legitimate economic and social interests; monitors implementation of the national agreements of the social partners; and consults on relevant economic and social policy issues.<sup>70</sup>

These national committees and councils are components in the system of labour administration. In addition to them, the National Council for Children, the National Council to Promote Gender Equity, and the National Youth Council are established to work on issues regarding demography, children, youth and gender equity. These councils include representatives of NGOs such as the MONEF, CMTU, Mongolian Veterans Union, National Association of Disabled People's Organizations of Mongolia, Mongolian Red Cross, Mongolian Labour Protection Movement, Mongolian Association for Protection of Consumers' Interests and NGOs for women, youth, children and human rights groups active in the sphere of labour and social security. Some of these organizations work with particular groups of people working in the informal economy.

Chapter 14 of the Labour Law arranges relations between labour inspection services as follows:

- State labour inspection shall be implemented by State Great Khural (national parliament), Cabinet, all level governors, authorities in charge of labour inspection, and other organizations or officials authorised by the law, within their respective jurisdictions;
- State labour inspection at the local level shall be implemented by governors and inspection offices in the provinces, capital city, communities and districts; and
- Organizations representing and protecting the rights and legitimate interests of employees, NGOs, and the public shall conduct public-labour inspection with a view to enforce labour legislation.

<sup>69</sup> Established in 1999 by the Government, MONEF and CMTU according to Article 138 of the Chapter 13 of the labour law.

<sup>70</sup> Other powers are set forth in the law.

**Table 9: Number of state labour inspectors**

Post of the inspector	In total in SPIA	Organizations at which the inspectors work			
		In the central office	In the capital office	In provincial offices	In special organizations
State labour inspector	40	7	8	21	4
State labour hygiene inspector	35	3	10	21	1
Sum	75	10	18	42	5

Until 2000, the State Labour and Social Protection Inspection Authority was an independent agency. At the end of 2000, the Inspection Authority was brought within the structure of the State Professional Inspection Authority.

At the end of March 2004, 26,552 legal units (enterprises and workplaces) had been registered as businesses and were operational in Mongolia. There are 21,704 small enterprises and workplaces with one to nine workers, making up 82 percent of operating entities.<sup>71</sup> The number of enterprises attributable to a labour inspector is rather large. If there are 75 inspectors, each inspector would be responsible for inspecting 354 or more enterprises.

Also, if one hypothesises that there are more violations of human rights at the workplace in newer SMEs than there are in large companies and organizations, then the supply of state labour inspection does not correspond to the demand, and in particular, for the informal economy. According to the State Professional Inspection Offices' own rules, they carry out inspection only at enterprises and workplaces. Some 2,599 violations were uncovered by state labour inspection in checks of 982 enterprises during 2000 and after, when the newly amended Labour Law entered into force.<sup>72</sup>

Enterprises and workplaces are obliged to establish a service (or appoint an employee) and a council consisting of representatives of the employer and employees in charge of occupational safety and health issues.<sup>73</sup> The Ministry in charge of labour issues adopts rules on occupational safety and health in the enterprises and other organizations.

### ***Collective activity of those employed in the informal economy***

Mongolian citizens have the right to associate. This right is also extended to informal economy workers. There are no legal restrictions and interdictions, yet the activities of many NGOs are sporadic. Many have limited resources and are dependent on both state support and assistance from international projects and programmes.

71 National Statistical Office of Mongolia, *Mongolian statistical yearbook 2003* (Ulaanbaatar, 2004), pp. 297-300.

72 National Human Rights Commission of Mongolia, *Report on human rights and freedoms in Mongolia 2002*, Ulaanbaatar, p. 65.

73 Labour Law, Article 93.1.

NGOs do exist in Mongolia today to protect the rights and interests of groups of informal economy workers. They work for established groups of informal economy workers and also try to organize new groups. These include, for example, the Mongolian Association of the Self-Employed, the Private Bus Service Association, the Association of Private Taxi Services, the Association of Herders, the Foundation for the Development of Women from Socially Vulnerable Groups, the Consulting Centre for Small Entrepreneurs, the Association for the Protection of Renters' Interests, the Association of the Photographers "Memory", the Union "Jargalan" of Citizens Engaged in the Private Production Fluoric Spar, the Association for the Protection of Peddlers, Association "Equality" for the Protection of Workers of the Joint Ventures and others.

The collective activity of informal economy workers has in recent years been carried out mainly in the context of the Law on NGOs. This Law covers NGOs other than political parties, trade unions and religious organizations. A NGO is a non-profit organization, which is voluntarily established by citizens and legal persons other than state legislative, executive and judicial organizations on the basis of social and personal interests and opinion. The organization is self-governing and works independently of the state. NGOs are classified into two types: organizations in the service of society and organizations in the service of members. NGOs that carry out activities for society work in areas such as culture, art, education, science, public health services, sports, ecology, environment, human rights, and protection of the interests of particular groups of the population. All other NGOs provide services to members and work to protect their legitimate interests. The informal economy workers' NGOs mentioned earlier are mostly member-based organizations.

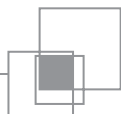
Cooperatives are an important form of association for persons employed in the informal economy, especially herders. To develop cooperatives, government must improve the Law on Cooperatives and to develop special laws on microcredit cooperatives, herders' or other types of cooperatives.

### **Cases of application**

#### ***Efforts for the development of the collective industrial relations among informal economy workers***

Informal economy workers can be categorised according to the contract under which they participate in labour relations. These categories could be:

- holders of labour contracts according to Article 21 of the Labour Law;
- holders of independent contracts according to Article 22 of the Labour Law;
- holders of rent contracts according to Article of 318 of the Civil Code;
- holders of contracts for work performance or service delivery, according to Article 343 of the Civil Code;
- holders of contracts for performance of single services and works according to Article 359 of the Civil Code;
- holders of cooperation contracts according to Article 476 of the Civil Code;



- self-employed; and
- unpaid family workers.

From these groups, the workers engaged in work on the basis of the labour law are traditionally organized in trade unions to protect their interests. Workers in the informal economy will have better opportunities to protect their common interests only when they organize their own trade unions.

The opportunity to create trade unions is noteworthy not only for the purpose of concluding collective agreements but for other important purposes as well. These include, for example, representation and protection of members' interests in labour disputes settlement bodies and organizations in charge of monitoring the implementation of laws connected to rights at work; demanding management to follow laws related to rights at work; suspending, modifying or cancelling management decisions that violate rights at work; demanding the termination of contracts; studying members' opinions and needs in connection with protection of rights at work; preparing and submitting claims to management and other appropriate bodies; referring claims to courts for the restoration of infringed rights of members.<sup>74</sup>

The Law on Trade Union Rights<sup>75</sup> provides a broad interpretation of the concept of "administration" or "management", meaning the government, central (ministries and agencies) and local executive bodies (governors), in addition to administration of enterprises and workplaces. This gives informal economy workers the above-mentioned representational opportunities. According to the Law on Trade Union Rights, some existing trade unions can arrange to provide services that help realise freedom of association among workers engaged on the basis of civil contracts and those who are self-employed, herders, and workers engaged in family business without wages. For example, the drivers of rented taxis, photographers and vendors at some markets joined trade unions.

Though trade union pluralism was recognised in the Law on Trade Union Rights, two attempts to create alternative trade unions have not been successful.<sup>76</sup> This is because while trade union pluralism is recognised as a legal prerogative, the political, economic, social and cultural environments are not favourable for setting up alternative trade unions in practice. Secondly, social partners, in particular, the government and the employers, have supported social consensus. The fact that existing trade unions started the reforms and recognised the economic transition of the country contributed to the development of this consensus. In such circumstances, the alternative trade unions were not able to compete with the existing ones.

<sup>74</sup> Law on trade union rights, Article 5.

<sup>75</sup> Law on trade union rights, Article 5.3.

<sup>76</sup> At the beginning of the 1990s, when the transition to a market economy began in Mongolia, the Confederation of Mongolian Free Trade Unions and "Blue Mongol" Trade Union were created. In time, the organizations became inactive and eventually disappeared.

***Actual use of labour legislation to protect workers in the informal economy***

Laws affecting the work and social problems of women, the elderly and disabled persons, a large number of whom work in the informal economy, are widely applied in practice. For example, persons insured under Mongolian social insurance can be eligible for retirement benefits if they have paid the premiums for pension insurance for a period of not less than 20 years, and an insured man has reached 60 years of age and an insured woman, 55 years of age. In 1999, however, the Law on Pensions and Benefits made an important change affecting the opportunity of women to realise the right to a pension. The award of a pension, which under previous practice occurred when the woman reached 55 years of age, was changed to.

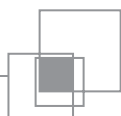
An elderly person who receives a pension may also work as an employee.<sup>77</sup> Furthermore, the receipt of a pension may not constitute grounds for limiting his or her wages. According to the Labour Force Survey, 30,200 persons above 60 years of age (or 3.6 percent of all employed) work as employees.<sup>78</sup> A further 152,000 retired persons were estimated to be economically inactive but the majority of them actually work in the informal economy.

In 2003, trade unions for the first time proposed the idea of rejecting regulation of labour relations only in cases where the employee-employer relationship is based on the existence of a labour contract. This was done in tripartite negotiations over amendments to labour laws. Changes of a conceptual character were nevertheless not made to the Labour Law. Amendments that were actually made dealt with provisions connected to practical activity, such as the definitions of “compulsory work” and “permanent position”, obligatory conclusion by the employer of permanent position contracts, and others. Other amendments dealing with regulation of the relations connected to elimination of child labour and immediate prohibition of its worst forms were considered in 2003, but not included in the finalised law. Two articles regulating the employment of minors—both characterised by an orientation to the formal economy—already exist in the current labour law.

The issue of the insufficient scope of labour and social security legislation continues to be included in negotiations and consultations between the social partners. The hope is that the strategies behind labour and social security law are reconsidered, changes made in legislation, and that new legislation is into force.

<sup>77</sup> Article 112 of the Labour Law.

<sup>78</sup> National Statistical Office of Mongolia and ILO: *Report on national child labour survey 2002-2003*, (Ulaanbaatar, 2004), p. 79.



Mongolia has ratified 16 ILO conventions; 15 are currently in force, including all of the fundamental instruments.<sup>79</sup> For Mongolia, wider application of these conventions is extremely important for the improvement of labour law and practical actions for the protection of human rights and freedom at work, especially the rights of workers in the informal economy, women, disabled persons and children. For this reason, trade unions have begun to recommend the improvement of the application of provisions of international treaties alongside of the improvement of application of national labour legislation. This approach is reinforced by the Labour Law itself, which provides that “[i]f an international treaty to which Mongolia is a party provides otherwise than in this law, the provisions of the international treaty shall prevail”.<sup>80</sup> Similar provisions exist in other laws. According to the Social Security Sector Strategy Paper<sup>81</sup> approved by the Government in November 2003, reforms are planned in three sub-sectors: social insurance, social welfare and employment services. Laws connected to the rights and interests of workers of the informal economy and members of their families will be modified in the course of these reforms.

Reform will consist of five elements in the area of employment services:

- refining the employment promotion programme;
- improving the quality and enhancing the accessibility of employment services;
- facilitating effective cooperation between employees and employers;
- increasing employment opportunities for vulnerable groups; and
- supporting employees and employers in improving occupational safety and health.

The problems of employment of informal economy workers are mentioned among those that require decision in this area. Three important conclusions were made in the strategic document:

- There is inadequate support and assistance for people working in the informal sector, creating employment for themselves;
- Business skills training for people working in the informal sector is still in its infancy; and

79 Forced Labour Convention, 1930 (No. 29); Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); Right to Organize and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Maternity Protection Convention (Revised), 1952 (No. 103); Abolition of Forced Labour Convention, 1957 (No. 105); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Employment Policy Convention, 1964 (No. 122); Minimum Age (Underground Work) Convention, 1965 (No. 123); Workers’ Representatives Convention, 1971 (No. 135); Minimum Age Convention, 1973 (No. 138); Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); Occupational Safety and Health Convention, 1981 (No. 155); Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); Worst Forms of Child Labour Convention, 1999 (No. 182).

80 Article 2.2 of the Labour Law.

81 Government of Mongolia, Ministry of Social Welfare and Labour, *Social security sector strategy paper* (Ulaanbaatar, November 2003), pp. 18-55.



- Micro loan services designed to support informal economy workers have yet to be developed in line with social targeting.

Thus, a number of tasks have been set, including the introduction of new forms of services that satisfy the needs of informal economy workers who are normally outside of employment services, delivery of these services through employment offices, revision of rules and regulations related with provision of the above-mentioned services and capacity building for employment offices' staff.<sup>82</sup>

Reform of the social insurance sub-sector will consist of four components:

- strengthening the financial capacity of the pension fund;
- expanding the coverage of social insurance by creating a new pension insurance scheme for herders and the self-employed;
- improving benefits and services; and
- promoting private supplementary benefits.

### ***Experience of labour contracts and collective agreements***

Chapter 3 of the Labour Law regulates the requirements for the conclusion of labour contracts and independent contracts. A labour contract is a mutual agreement to be bound, under which an employee agrees to perform certain work consistent with rules established by the employer, and the employer agrees to compensate the employee for the work and to ensure working conditions required by law, collective or other agreements.

The following basic conditions are required for a labour contract:

- name or title of the position;
- duties and tasks specified in the job description;
- basic wage or salary; and
- working conditions.

A labour contract is not considered valid unless the parties have reached an agreement with respect to each and every of the above-mentioned basic conditions, and placed that agreement in a written form.

Many informal economy workers often have labour contracts just to have "a job", though these jobs do not have written job descriptions or documents consistent with a formal employee-employer relationship. They often have many jobs simultaneously, receive low wages, and work in environments and under conditions that do not meet official standards. Concerning collective agreements, the Law on Trade Union Rights<sup>83</sup> specifies that if more than one trade union exists in an enterprise, these unions should mutually agree to conclude a single collective agreement with the employer. If no union exists at the enterprise, the workers' representatives may conclude a collective agreement with the employer.

82 Government of Mongolia, Ministry of Social Welfare and Labour, *Social security sector strategy paper* (Ulaanbaatar, November 2003), pp. 47, 50.

83 Law on trade union rights, Article 5.2.

## Box 2

### Relations regulated by collective bargaining

19.1. The following labour relations shall be regulated by collective bargaining:

19.1.1. general matters pertaining to labour relations policies, such as rights to social benefits, and citizens' labour rights and related legitimate interests shall be determined by a national collective bargaining;

19.1.2. general matters concerning wages, labour conditions, organization of the employees with special skills, shall be determined by bargaining at the industrial sector level;

19.1.3. general matters concerning minimum wages, citizens' right to work, and related legitimate interests shall be determined by bargaining at the regional level;

19.1.4. general matters concerning employment and labour relations of employees of administrative or territorial units shall be determined by bargaining at the aimag, capital city, soum or district level;

19.1.5. general matters concerning labour relations of persons employed in certain specialised occupations shall be regulated by professional tariff bargaining.

Source: Labour Law, Article 19.

Since 1992—just two years after its founding—the MONEF has participated in the conclusion of the tripartite agreement for social consensus at a national level. Representatives of cooperatives have been included in the collective bargaining team of the MONEF, which has had a positive influence on several important issues connected to the interests of the cooperatives' members. This shows that representatives of informal economy operators have an opportunity to participate in collective bargaining.

There exists, in practice, the national agreement for social consensus, collective agreements covering the capital city and all provinces, and collective agreements for some sectors, soums and districts. Just as an employer and representatives of its workers (for example, a trade union) can bargain for the conclusion of an enterprise-level collective agreement, representatives of NGOs—some of which cover groups of informal economy workers—can participate in collective negotiations for the conclusion of collective agreements of all types at levels other than that of the enterprise, on the basis of representation of their interests through the employers' delegation. This is shown by the fact that the MONEF is a NGO representing 51.8 percent of all employers in the private sector or 7,900 economic units.<sup>84</sup> It is important to emphasise the fact that more than half of them are SMEs.

Informal economy workers have an opportunity to participate in collective bargaining at appropriate levels if they have created their own independent trade union and/or joined existing federations of trade unions. Alternatively, after having created an independent trade union, they may enter into territorial and industrial federations of trade unions or the CMTU as a member organization and place their own representatives in trade union teams for collective bargaining.

<sup>84</sup> International Labour Office and Ministry of Social Welfare and Labour of Mongolia, *Study on social partnership and development in Mongolia* (Ulaanbaatar, October 2003), p. 14.

#### 4. Conclusions and recommendations

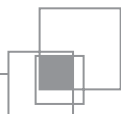
The existence of the informal economy in Mongolia is recognised at the national level, and the study of it began in 1997. The government developed a National Decent Work Action Plan following recommendations arising from discussions of the ILO Director-General's Report, *Decent work in Asia* at the 13<sup>th</sup> ILO Asian Regional Meeting in 2001. The plan included the development of a draft of a State Policy on Informal Employment and in 2004, the sub-task of development and realisation of the state policy in the sphere of informal employment was included in the government's action programme. In 2003, the task of protecting the rights of the workers in the informal economy, perfecting their labour relations, improving their social protection and creating appropriate conditions for their transition to the formal sector were put forward in the government's Strategy Paper on Promotion of Economic Growth and Poverty Reduction.

The system of regular statistical reporting on such basic parameters as the share of informal economy's activity within the whole economy, the number of workers of this economy and other matters has yet to be formed. The 2004 Labour Force Survey and other studies at first were based on analysis of data showing that 126,000 people were working in the informal economy. Calculated on this basis, the informal economy makes up 13.3 percent of the total working population. But, if calculations are made on the basis of employment, the informal economy includes more than 60 percent of all employed persons, proceeding from the sums of the self-employed, citizens employed on the basis of civil contracts and unpaid family workers. If one adopts the criteria that informal enterprises are enterprises with no regular or with one to nine paid employees, the number of persons employed in the informal economy will reach 66.4 percent of all employed.

There are no special NGOs or trade unions that protect the rights of informal economy workers as such. In recent years, existing NGOs and trade unions have actively worked to protect the rights and interests of those employed in the informal economy and their groups. New NGOs and trade unions with hopes of protecting the rights and interests of separate groups and sectors of informal economy workers such as informal miners, drivers and owners of minibuses and taxis, photographers, street vendors, market sellers and others, were created.

The social partners and civil society have begun to realise that reliance cannot be placed entirely on the success of the formal sector or economic growth in the country, because poverty in the last decade has not decreased, and the rights and interests of the informal economy workers are still being infringed.

This study shows that Mongolia's labour legislation covers workers participating in labour relations on the basis of a labour contract and has characteristic features of legislation in a state of transition and by that continues to remain focused largely on the formal sector.



## **Short- and medium-term recommendations**

### ***Legal reform***

- Labour law needs to be reconsidered with the participation of the social partners and civil society representatives. The following changes and initiatives should be considered:
  - expand the definitions of “employee”, “employer”, “representatives of an employer”, “representatives of an employee”, “individual labour dispute”, and “collective labour dispute” in order to include informal economy workers within the scope of labour laws;
  - develop new definitions connected with employee-employer relationships and informal employment;
  - give validity to verbal labour contracts;
  - study forced and compulsory labour situations within the informal economy;
  - define and end the worst forms of child labour within the informal economy;
  - prohibit discrimination on the basis of age, physical appearance (such as height and appearance) and membership in trade unions;
  - provide for the participation of representatives of persons employed in the informal economy in collective bargaining and remove limitations to the types of relations regulated by collective agreements;
  - create a system of tripartite arbitration for the settlement of individual and collective labour disputes with the involvement of informal economy workers;
  - create opportunities for workers in the informal economy to have all issues related with wage/salary structures, adjustments and forms (including minimum wages) regulated through collective bargaining and agreement;
  - establish a National Commission on Minimum Wages consisting of government, employers’ and workers’ representatives, including representatives of informal economy workers;
  - include the participation of informal economy workers in the National Committee on Social Consensus;
- The Civil Code should be revised with a goal of reducing the types of contracts related to performance of work.
- The Law on Cooperatives should be improved.
- Taking into account the fact that the Labour Law is focused on the formal sector, consideration should be given to developing and implementing new laws addressing informal economy interests. These might include those that have been under discussion, such as, among others, the Law on Artisanal Mining of Minerals, Law on Labour Inspection, Law on Occupational Safety and Health, Law on Small Enterprises, Laws on Credit and Saving Cooperatives, Housing Cooperatives and Herders’ Cooperatives.

- The scope of social insurance should be widened so as to make it compulsory for all working persons, without regard to labour contract status or status as a state employee. This implies developing and implementing new laws on pensions, benefits, industrial accident and occupational disease insurance for individual groups of persons employed in the informal economy and to include them in compulsory social insurance. Some form of government funding will be needed to support certain parts of contributions for the above-mentioned insurances so that all workers can make the same contribution regardless of whether work is being done on one's own account or for an employer.
- Consideration should be given to financing occupational safety and health training for entrepreneurs and workers in the informal economy from the industrial accident and occupational disease insurance fund.
- The Employment Promotion Law ought to include measures supporting employment and vocational training for persons employed in the informal economy.
- The Law on Vocational Education and Training should be improved so that it is oriented to meet the demands of informal economy workers. Related special government funds such as the State Training Fund and the Employment Promotion Fund should be reoriented to take gender considerations into account and to be more catered for the informal economy.

#### ***Capacity building interventions***

- The Ministry of Social Welfare and Labour needs to be reorganized as a Ministry of Labour and Social Welfare in order to prioritise the objectives of a decent work agenda and employment promotion. The capacity of local labour and social welfare offices should be developed and decentralised.
- Organizations and trade unions established by informal economy workers should be supported through contracting with government coordinating and implementing agencies to provide some social services such as training, information and consultancy.
- Labour inspection should be conducted in a preventive and advisory manner, by an independent professional body organized separately from the unified inspection system. The body should guarantee basic rights and freedoms of individuals at work and render accessible services based on public participation.

#### ***Institutional development***

- Services for both small and micro-enterprises and the self-employed should be improved, either by institutional structures specifically set up to provide them, or through services being made more accessible and affordable, or better targeted to informal economy workers. Coordination

and cooperation between existing service providers should also be improved.

- A Subcommittee on the Informal Economy of the National Committee for Social Consensus should be established and representatives of this subcommittee included in the structure of the National Committee for Social Consensus.

#### ***Development of the definition of the informal economy***

- Criteria should be adopted to define informal enterprises in terms of employment: Small-scale units with no regular employees or with one to nine paid employees.
- All types and forms of informal employment should be defined, and they should be referred to as the “informal economy”. Thus, the following types and forms of informal employment would need to be considered:
  - All types and forms of informal employment in the formal economy, in particular, temporary, casual, out work, part-time and contract work;
  - Herders except for those who are herder-employees or herder-employers;<sup>85</sup>
  - Domestic workers;
  - All groups of self-employed, in particular those self-employed in agricultural and home work, such as street vendors, waste collectors, mobile self-employed; and
  - Unpaid family workers.

#### **Roles of social partners and other organizations**

##### ***The employed in the informal economy***

- Workers engaged in informal workplaces associated with formal enterprises, and workers engaged on the basis of civil contracts, may organize trade unions at enterprises and workplaces to conclude collective agreements.
- On the basis of the Law on Trade Union Rights, persons employed in the informal economy may organize trade unions at the occupational or sectoral level as well as at the administrative and territorial unit or national level, in order to demand compliance by those bodies of legislation protecting their rights and interests.<sup>86</sup>

<sup>85</sup> It would be necessary to distinguish the herders-members of cooperatives depending on the activity of their cooperative societies.

<sup>86</sup> Article 5.3. This provision says that trade unions have the fundamental right to “supervise the implementation of legislation relating to the right to work and demand that management comply with such legislation”.

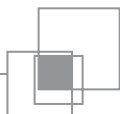
- Trade unions should be recognised even if set up with a purpose other than collective bargaining and conclusion of collective agreements, as long they are established within the framework of basic trade union rights referred to in Article 5 of the Law on Trade Union Rights. Some NGOs established by informal economy operators such as the Association of Self-Employed, Association of Herders and others can be reconstructed as trade unions and can be registered by the government.
- Persons working in the informal economy, in particular, the self-employed, may organize themselves into cooperatives, partnerships, self-help organizations or foundations.

### ***Trade unions***

- Trade unions should move to expand their membership by promoting the rights of individual groups of workers and specific parts of the informal economy. For this purpose, if necessary, they should adapt and amend their own charters and rules so as to remove provisions that can hinder the realisation of workers' right to organize, participate in collective bargaining, and be covered within the scope of collective agreements. Changes should be made to eliminate difficulties in the payment of membership fees. Provisions should also be made for the establishment of internal structures or special units for the organization of informal economy workers and for rendering these workers the specialised services and support they need.
- Trade unions should expand their sphere of activities in concluding collective agreements and to capture, as far as possible, more persons employed in the informal economy.
- To develop and deploy trade union training programmes which correspond to the demands and needs of various worker groups in the informal economy. Training on labour legislation and human rights should be organized regularly.

### ***Employers' organizations***

- Employers' organizations should promote small and micro-enterprise entrepreneurs and the self-employed in establishing their own associations for protecting their rights and interests. Existing organizations should support these groups of informal economy workers in lobbying, expanding their businesses, and in creating linkages with larger and more formal enterprises in order to gain access to new markets.
- Employers' organizations should expand the practice of involving representatives of cooperating NGOs of the small and micro-enterprise entrepreneurs, and the self-employed in the process of collective bargaining and include them, as far as possible, in the coverage of all types of collective agreements.



- Employers' organizations should promote small entrepreneurs' transition to the formal sector by encouraging the social initiative of large, formal sector companies.

#### ***Cooperative associations***

- Cooperatives should promote the transition of informal economy entrepreneurs, self-employed and workers to the formal sector based on the establishment of cooperative associations.
- They should support a type of insurance based on principles and methods of cooperation, covering certain groups and sectors of the informal economy.
- Cooperatives should lobby for the improvement of the Law on Cooperatives and in particular for the development and enforcement of the special Laws on Microcredit and Building Cooperatives and Cooperative Societies of Herders.

#### ***Government and local self-governing bodies***

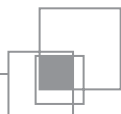
- Government and local self-governing bodies should create conditions for increasing the participation of employer organizations, trade unions, cooperatives and NGOs, which were established by employers, the self-employed and workers of informal economy, in national, industrial and local development. These organizations should be involved in the processes of policy development and acceptance of decisions.
- Government should form state and local systems for the reporting of industrial accidents and occupational diseases in the informal economy, and to pass services and maintain information on occupational safety and health to local employment and social welfare service centres.
- National labour legislation should be improved by bringing it into conformity with the core conventions of ILO and to arrange implementation of these conventions together with the National Human Rights Commission, law enforcement and labour inspection authorities, civil society and the social partners.
- Local self-governing bodies should establish urban and local structures for the informal economy, and coordinate activities of local state executive bodies and the organization of services provided on these bases.

#### ***State professional inspection authority***

- Labour inspection, which works within the structure of the unified state professional inspection authority, should take up two related tasks. On the one hand, it should help enterprises create and develop internal mechanisms for inspection and render effective services in prevention policy. On the other hand, it should work to guarantee the basic rights and freedom of individuals at work and to contribute to development of labour legislation, affecting both bilateral and tripartite relations.



- Realise a new strategy of labour inspection applying multilateral approaches and methods that correspond to the features of small enterprises and the informal economy, and make changes and additions to the functions of inspection bodies and state inspectors so that advice and promotion are their main tasks in relation to employers, workers and the self-employed.
- Increase the role of labour inspection in improving labour and social legislation.
- Prepare to ratify the ILO's Labour Inspection Convention, 1947 (No. 81) and expand social dialogue and cooperation with civil society and the social partners.



## **Annex**

List of business activities and services which was specified in the Law of 2001 on Income Tax from the Citizens Individually Engaged in Business Activities and Services Whose Income is Impossible to Determine Each Time of the Taxation

### **A. List of business activities and services from which income is impossible to determine each time of taxation (Article 5.1 of the Law)**

#### ***Types of business activities and services***

1. Production and sale of handmade paintings, sculpture, carvings, souvenirs, decorations and various toys  
Sale of decorative and house plants  
Carving memorial words on souvenirs and repair
2. Home appliance repair  
Radio and TV repair  
Watch repair
3. Smiting: - Gold and silver  
- Other
4. Teaching, training, typing, and photocopying of documents
5. Photo service, video and tape recording, videotape rental, video and movie performance  
Audio tape rental  
Video and audio tape copying and sale
6. Games (excluding billiard)
7. Shoe and clothes repair (repairing, painting, making and selling, shoe shining)
8. Car washing
9. Wrapping, loading, unloading and delivery services  
Transportation by camel, horse, or cow
10. Storage of goods and raw materials
11. Trading in kiosks called TUTs (TUTs means the fast-serving points that are usually located on streets and squares, by roads, and inside ger district)
12. Trading on counter
13. Currency exchange
14. Fortune telling
15. Selling of small items on the street (cedar nuts, fruit, milk, yogurt, airag/fermented mare's milk, ice-cream, books, newspapers, magazines, firewood, coal, car oil, and etc.)

Monthly sum of the tax from the citizens engaged in above-mentioned activities and services are defined by Article 5.1 of the Law.

**B. List of the business activities and services which are not regulated by any contracts, concluded with the enterprises and the citizens (Article 5.3 of the Law)**

***Types of business activities and services***

1. Car and other vehicle repair
2. Building repair and decoration, construction project
3. Billiards
4. Operating canteens, cafes and small eating places
5. Trading on container and other vehicles
6. Clinic and medical services, sale of medicines
7. Production and sale of food
8. Passenger and freight transportation by car and truck within city, town and soum
9. Passenger and freight transportation by car and truck for a long distance
10. Car parking
11. Collection and sale of animal skin, wool, and cashmere
12. Oxy-acetylene and electric welding
13. Timber cutting
14. Cellphone sale and repair
15. Sale of vehicles and spare parts
16. Internet services
17. Sale and repair of optical glasses

Amount of the taxable incomes of the citizens engaged in above-stated activities and services are defined by a method of comparison according to a technique authorised by the Minister for finance and economy.





## **Extending labour law to all workers:** Promoting decent work in the informal economy in Cambodia, Thailand and Mongolia

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**David Tajgman, Editor**

The largest portion of the economically active populations of Thailand, Cambodia, and Mongolia work in the informal economy. They operate outside of the formal reach of labour and other laws; or, if they are within the reach of the law, they are not covered in practice because the law is not applied or enforced. They work under vastly different conditions. Some work on their own account, others under the supervision and control of a micro- or small-enterprise operator; still others work autonomously but under the economic domination of a single buying client. Their working conditions are sometimes intolerable, often inefficient, but rarely on par with the minority of workers who are clearly covered by labour laws in the formal economy.

These studies look at the application and applicability of national labour laws to different groups of workers in the informal economies of these countries with a view to finding ways of extending labour laws' rights to all workers, wherever they work.

The International Labour Organization (ILO) hopes that this report will help shape future policies and laws to help workers who do not now benefit from rights given under national labour laws.

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