



Thus far, country papers in East Africa (Kenya, Tanzania, Uganda, Ethiopia) and in South Asia (Sri Lanka and Nepal) have been prepared. Those in Southeast Asia (Philippines and Indonesia) are in process while those in Latin America and other parts of Africa are forthcoming.

4. The Work Plan of the Group

The Working Group was set up in the beginning of the autumn and became operational in October. The Group had a first meeting 23-24 October in Geneva, where Naresh Singh informed the members about the mandate of the Commission on Legal Empowerment and the specific mandate of Working Group #3 (WG 3) The Working Group agreed on

- a timetable for the preparation of input to the Commission,
- an outline of a draft report
- and a division of labor between the members of the Working Group on contribution to the report.

This progress report will be delivered by *December 15* for presentation at the Commission meeting *January 11-12*.

WG3 plans to hold a second meeting between *April 19-20* together with WG 4, which meets 18-19 April in Geneva. The WG will have a third meeting between *October 1-5* (tbc):

- the April meeting will be used to deepen the discussion on the issues and to begin a discussion on policy recommendations and to coordinate work between WG 3 and WG 4.
- the October meeting will be used to finalise the report and to agree on recommendations.

The meetings of the WG are important, but most of the work is done in the form of internet consultations with members and stakeholders. Members and advisors are contributing to the drafting of the report and a lot of substance has already been delivered.

5. Issues addressed by the Group

The Group is addressing the following questions:

5.1 Definitions of informal employment

The informal economy, broadly defined, refers to all economic activities, units and employment relationships, which – in law or in practice- are not covered or are insufficiently covered by formal legal arrangements. Informal activities, units and relationships operate or fall outside the formal reach of the law for various reasons, either because the law does not cover them, the law is

not applied or not enforced, or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs.

Thus, the informal economy is comprised of all forms of “informal employment” both inside and outside informal enterprises. It includes both self employment in informal enterprises (i.e. small and/or unregistered) and wage employment in informal jobs (i.e. without secure contracts, worker benefits or social protection).

This definition is based on the 2002 International Labor Conference Conclusions and Resolution concerning Decent Work and the Informal economy and further developed and officially endorsed by the 2003 International Conference of Labor statisticians.

5.2 Size and composition of the informal economy

The group has collected information on informal employment and will present an updated picture of the size and structure of informality:

- Informal employment comprises one-half to three-quarters of non-agricultural employment in developing countries and represents a significant trend in many transitional and industrialized countries
- Some countries include informal employment in agriculture in their estimates. This significantly increases the proportion of informal employment
- Informal employment is generally a larger source of employment for women than for men in the developing world
- In all developing regions, self-employment comprises a greater share of informal employment (outside of agriculture) than wage employment. Self-employment, however, includes a growing number of workers involved in and dependent on disguised employment relationships
- Informal wage employment is also significant in the developing world, comprising 30 to 40 per cent of informal employment (outside of agriculture). Informal wage employment is comprised of employees of informal enterprises as well as various types of informal wage workers who work for formal enterprises, households or no fixed employer (see definition above)
- In most countries for which data are available, women in informal employment are more likely to be in self-employment than in wage employment

In sum, there is a significant range of average earnings and poverty risk within the informal economy by employment status with a small entrepreneurial class (comprised of most informal employers and a few own account operators) and a large working class (comprised of most informal employees, most own account operators, all casual workers, and all industrial outworkers). There is also gender segmentation within informal labor markets resulting in a

gender gap in average earnings with women over-represented in the lowest-paid segments and earning less on average than men in most segments.

5.3 The economics of informality: “The poverty trap”

The group has discussed the economics of informality based on a framework from the World Bank (“*The Impact of Regulation on Growth and the Informal Sector: Cross Country Evidence*” by Norman V. Loayza, Ana Maria Oviedo and Luis Serven, World Bank 2005). The WB paper shows that informality is strongly correlated with low productivity and high degree of poverty.

- The World Bank paper also argues that prosperity is strongly connected with good governance and flexible markets for goods and services
- Labor market regulations do not significantly affect either income or the rate of growth – or, in the latter case, its relationship is less significant compared to product market regulations
- It has also been empirically sustained that labor stability has a positive relation with investment in human capital and on productivity (*World Employment Report 2004-2005*).

The economics of informality will be subject to discussion at the Commission meeting in January and a research programme is under preparation. WG 3 is prepared to contribute to this work and the issue will be put on the agenda of the meetings of the WG 3 in April and October.

5.4 The role of labor rights for empowerment

Since labor is not a commodity, the Working Group believes that labor markets need to be considered differently from markets for goods and services. The assumed trade-off between efficiency/growth and labor market regulations needs to be “unpacked” and re-examined. The starting premise is that all workers and producers, whether in the informal or formal economy, are entitled to legal recognition and protection and access to the resources and services required to obtain decent work. The challenge is to promote an adequate legal environment that

- supports/upgrades the job creation and income generation potential of the informal economy
- while providing labor and social protection.

Labor rights are but one component of the overall legal environment and given the diversity of situations of different segments of the informal economy and circumstances at the country level, examining the coherence and positive synergies with other laws discussed by other WGs (such as those on business registration, taxation, access to finance, property rights), is essential to meet the above-mentioned twin objective.

The notion of rights and legal empowerment considered by WG 3 includes but goes beyond what is usually provided by the labor law, in terms of labor and social protection. It embraces the fundamental principles and rights, an obligation to promote an adequate policy environment for quality job creation and for building a level playing field for disadvantaged groups, in this case, the poor. It makes a special case for representational rights of informal economy workers. It also looks into the institutions and their adequacy for realizing labor rights and encouraging legal empowerment of the working poor.

The notion of rights and legal empowerment considered by WG3 should also go beyond the employer-employee relationship. Historically, around the world, the “employment relationship” has represented the cornerstone – the central legal concept - around which labor law and collective bargaining agreements have sought to recognize and protect the rights of workers. Whatever its precise definition in different national contexts, it has represented “a universal notion which creates a link between a person, called the employee (frequently referred to as ‘the worker’) with another person, called the employer to whom she or he provides labor or services under certain conditions in return for remuneration” (ILO 2003).

The concept of employment relationship has always excluded those workers who are self-employed. But, increasingly, some categories of dependent workers have found themselves to be, in effect, without labor protection because their employment relationship is either disguised, ambiguous, or not clearly defined. The net result is that a large and increasing share of workers worldwide are not protected under labor laws or collective bargaining agreements.

However, labor market regulation is subject to much debate regarding its perceived and actual impacts on employment creation which in turn feeds public pressure for reform. This section revisits empirical studies, including findings from the World Bank’s Cost of Doing Business Survey, and states that policy reform packages should not be seen as an either/or choice between, on the one hand, total deregulation, and, on the other, complete, comprehensive legislation. Rather, the policy reform processes may have to do with altering legislation and institutions *at the margin*. These processes may also focus on the quality and enabling characteristics of the regulations, rather than on their quantity. Particularly, within a developing country context where strong outside pressure exists to reform the labor market, it may be possible to establish some rough guidelines for a proposed reform programme. These may serve to identify not only the discrete and relevant issues, but may also act as potential policy sequencing processes.

5.5 The empowerment/transformation process

The concept of decent work, first proposed by the ILO and now endorsed as a global goal¹, provides a coherent and holistic framework to consider the qualitative and quantitative aspects of jobs, analyze the strong linkages between the formal and informal economies and to propose possible roadmaps that promote coherence of political, economic and social policies, including the legal frameworks and institutions. It is in recognition that “one size *does not* fit all”, and the

¹ UN Summit Outcome document (September 2005) and July 2006 ECOSOC Ministerial statement

diversity of situations and circumstances that countries are defining their own decent work agenda at the country level.² The Working Group is making a review of lessons learned from national reform strategies, including South Africa, Chile, India, Thailand, Philippines and Spain to identify successful policies and empowerment/transformation processes. Examples of such policies include:

- Employment policies (Spain) such as flexible contracts provided to new job entrants, long-term unemployed persons, and disabled persons, as a measure to increase employment and promote permanent contracts. These contracts carry fixed-term duration with lower restriction on dismissal – but with incentives that favour workers and their opportunities for permanent placement.
- Laws that regulate job placement services and subcontracting relationships (Chile) where such arrangements are promoted but with measures in place to guarantee compliance with labor obligations.
- Innovations in labor inspection strategies for small and medium enterprises (Chile) where employers erring for the first time in a year are obliged to attend a training course instead of paying a fine. It was found that those who attended the training had slightly higher levels of compliance than those who paid fines.
- Extension of national labor legislation to mandate an initial set of regulations and protection to specific types of workers. These are home-based workers (Thailand and the Philippines), construction workers (Philippines) and farmers (Thailand). The Thailand experience demonstrates attempts to reorient labor inspectors to home-based workers, and illustrates practical challenges; it also shows how other Ministries (such as those of health and agriculture) can play a role in extending the protective reach of the labor ministry down to the villages. The Philippine experience shows how trade unions can play an important role in encouraging government and employers to come together and collaborate in enforcing the law.
- Innovations in social security systems to improve access of self-employed persons to contributory, voluntary schemes (Philippines) and to mobilize public and private funds to meet the cost of covering wage workers in casual or seasonal employment who cannot afford a fully market-oriented, contributory social security (India).

In addition to national legislation and reform WG 3 will consider other instruments for applying labor standards, including international labor standards, private codes of conduct and collective bargaining agreements. A summary of the findings will be presented in the report from the Working group together with policy conclusions.

² Decent Work Country Programmes (DWCP) are being elaborated at the country level in all regions as ILO's technical cooperation programmes to support goals set at the country level



6. Policy Recommendations: A New Labor Rights Agenda for Empowerment

A discussion paper, A New Labor Rights Agenda, will be prepared for the April meeting of WG 3 including the following elements:

6.1 The principles: A platform for empowerment reform

- Labor markets are different from markets for goods and services
- A new approach: from regulation/deregulation to the quality of regulation for inclusive labor markets
- Both “negative empowerment” (deregulation of product markets for more business friendly and competitive markets etc) and “positive empowerment” as regards labor (skills, voice, rights) and property.

6.2 The practice: Lessons learned from national reform strategies

6.3 Our recommendations: Elements of an empowerment reform package

6.4 Implementation: Towards regional consensus