

LEGAL MECHANISMS TO EMPOWER INFORMAL BUSINESS – BANGLADESH PERSPECTIVE

Work in progress¹

January 2007

¹ This work in progress highlights some of the key issues that will be addressed in an eventual working paper. The current draft is intended as a discussion note for Dr Shahdeen Malik and Mr. Fazle Hasan Abed. The eventual working paper will possibly incorporate most of the current outline and will be supplemented by additional materials and research, input from Dr. Malik and Mr. Abed as well as case/field studies which are being undertaken at present.

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Abbreviations

ADB	Asian Development Bank
BOI	Board of Investment
BSCIC	Bangladesh Small and Cottage Industries Corporation
CIS	Commission on Informal Sector (proposed in this working paper)
Commission	Commission on Legal Empowerment of the Poor
DFID	Department for International Development
NCC	National Consultation Conference
NCEUS	(Indian) National Commission for Enterprises in the Unorganised Sector
NCP	National Consultation Processes
NPIS	National Policy on the Informal Sector (proposed in this working paper)
PLAGE	Policy Leadership and Advocacy for Gender Equality
PRSP	National Strategy for Accelerated Poverty Reduction
RJSC	Registrar of Joint Stock Companies and Firms
SME Policy	Policy Strategy for Small & Medium Enterprises (SME) Development in Bangladesh
SMEs	Small and Medium Enterprises
TIN	Tax identification number
TOR	Terms of Reference for Working Papers Prepared for National Consultations

I. Introduction

This working paper on “Legal mechanisms to empower informal business – Bangladesh perspective” is prepared as part of the National Consultation Processes (NCP) undertaken under the auspices of the Commission on Legal Empowerment of the Poor (the Commission). The working paper is prepared in accordance with the “Terms of Reference for Working Papers Prepared for National Consultations” (TOR) issued by the Commission. The TOR envisages that the working paper would be the first step in the national consultation process and would establish a basis for discussion among key stakeholders at the national level. The working paper will be followed by a National Consultation Conference (NCC) which would bring together participants from the government, academia and the research community, private sector, civil society, and the media. The final draft of the working paper will incorporate inputs from the NCC.

As part of the preparation of the working paper, some filed/case studies were undertaken.² These field/case studies assessed the perception of the most concerned stakeholders, i.e. poor entrepreneurs in the informal sector, about the means and mechanisms to enable informal businesses to benefit from full participation in the formal economy and/or enhance their transition to the formal economy.³ The studies were prepared on the basis of interviews of poor

² These studies are yet to be completed. Dr. Sharif Bhuiyan, Advocate, Supreme Court is responsible for the preparation of the first draft and final version of the working paper. The National Consultation Conference will be organized by Dr. Shahdeen Malik and BRAC University.

³ The timeline for activities noted above are as follows:
Completion of field/case studies – 21 January 2007

entrepreneurs to assess how they perceive the threats and security issues concerning their business (e.g. insecurities about eviction, threats and extortions by local musclemen/*mastans*, police and others), factors that prevent them from upscaling their business and investment and acquiring assets and loans, problems faced by them in selling goods and buying inputs, concerns regarding social security issues, including care during illness and old age, education of their children, marriage of their daughters etc. The studies also sought to elicit responses regarding the expectations of poor entrepreneurs from the Government, including whether they feel that the Government should issue them any permit/identity card to conduct their business and whether such permits/cards would reduce the risk of extortion by the police and *mastans*, whether they would be willing to pay for such permits/cards, if so, how much they would be able to pay. The interviewees of the case studies were also asked, if they would like to or have plans to change their occupation/business, if so, why and what help they expect from the Government in that regard. This working paper takes into account the findings of the case/field studies.

II. Formalizing the informal economy – a new agenda for Bangladesh

Commensurate with the aims and objectives of the Commission, the working paper makes recommendations regarding legal tools, institutions, organizations and mechanisms for transition from the informal to the formal sector. As explained below, unlike some developing countries, including neighbouring India, Bangladesh is yet to adopt any legal tools or mechanisms with the intention to encourage gradual transition from the informal to the formal sector. Given that nothing has been tried in this respect, a rethinking of the operation of the informal economy as well as its future directions is necessary. For this purpose it is to be borne in mind that the informal sector is comprised of micro-entrepreneurs who choose to operate

First draft of the working paper – 4 February 2007

National Consultation Conference – 11 February 2007

Final draft of the working paper – 18 February 2007

These are tentatively proposed dates. The final dates will be fixed by Dr. Shahdeen Malik.

informally in order to avoid the costs, time and effort of formalization including incorporation, tax registration, obtaining licences and fulfilling other regulatory requirements or because of lack of literacy, skills and entrepreneurship education. Many informal entrepreneurs would be willing to shift to formality if the costs, time and effort of formalization are reduced.

However, as opposed to the view noted above, sometimes it is argued that informal sector should rather be seen as subordinated economic units/micro firms and workers that serve to reduce input and labour costs and, thereby, increase the competitiveness of larger firms. Accordingly, formal and informal modes and forms of production are seen not only to co-exist but also to be inextricably connected and interdependent. Thus, capitalist development and competitiveness (rather than lack of economic growth) are seen to be the reason for the persistence and flourishing of the informal production relationship.

In Bangladesh where a predominant part of the economy operates informally,⁴ it is essential to adequately take into account the interconnectedness of the formal and informal economy before making any recommendations for transition from formal to informal modes of production. Like many other countries, informal sector in Bangladesh does not exist in a vacuum. There are clear interconnectedness, partnership and continuity with the formal sector – maintaining a two way flow of labour, goods, finances etc between the two sectors. In Bangladesh rapid transformation of the informal sector may not be possible, feasible and/or sustainable. Policy initiatives to formalize the informal sector should therefore adopt a gradualist approach.

It is equally important to have due regard to views expressed in various academic and other forums that informal mode of production would not wither away. The Commission has recommended that criticisms against formalization should be addressed as early as possible. The Commission, in particular, Working

⁴ Statistics on the size of the informal economy in Bangladesh are difficult to find, but it is commonly understood that it is bigger than the size of the formal economy.

Group 4 of the Commission has underscored that policy recommendations regarding transition from informal to formal entrepreneurship should strike a balance between formality and informality. Furthermore, a fundamental objective of various efforts undertaken by the Commission is to initiate national, regional and international debate that can lead to the formulation of viable policies for legal empowerment of the poor that ensures participation of the stakeholders in policy formulation. Therefore, a prime objective of the National Consultation Conference which will follow this working paper will be to test the recommendations of the working paper regarding legal tools, institutions, organizations and mechanisms for transition from informal to formal sector from a multi-disciplinary (legal, economic, sociological, environmental), stake-holder's (micro entrepreneurs) and policy maker's perspective.

III. Linkages: property rights, labour rights and access to justice and rule of law

Present working paper makes recommendations regarding legal tools, institutions, organizations and mechanisms to enable informal entrepreneurs to benefit from full participation in the formal economy and/or enhance their transition to the formal economy. The issue of empowerment of the poor regarding entrepreneurship leading to their involvement in the formal sector is closely interlinked with issues of legal empowerment in relation to property rights, labour rights and access to justice and rule of law. For instance, lack of guarantees of property rights results in insecurity concerning land and business (including insecurity concerning eviction, threats and extortion by local musclemen and police etc) as well as absence of stable business identity and address. These factors thwart opportunities of informal businesses regarding access to finance and clients and act as a restraint on informal entrepreneurs regarding further investment to expand their business. Lack of affordable access to justice and guarantees of rule of law also leads to business insecurity. People in the informal sector comprises of both self-employed and workers under different types of employment relationships. The employees in the

informal sector do not have any protection of labour law. They also do not have formal contracts of employment and are prone to exploitation. Both the self-employed and the employees in the informal sector have no formal social security cover which increases their vulnerability during times of illness, old age, unemployment and untimely death. The absence of social security mechanisms is a critical factor in downturns in the condition of the households of those surviving by work in the informal sector, many of whom are already very poor. Thus, improved business opportunities in the informal sector, capacity for informal businesses to provide better protections and provisions for their workers, increasing labour productivity, extending social security coverage to both self-employed and the workers in the informal sector are closely related to legal framework concerning labour rights.

The present working paper takes note that as part of the National Consultation Processes in Bangladesh undertaken under the auspices of the Commission three other working papers are being prepared on "Property Rights", "Access to Justice and Rule of Law", and "Labour Rights". Given the interconnectedness of all these issues for the legal empowerment of the poor, all four working papers prepared for the NCP are to be read in conjunction. The four working papers need to present a coordinated and cohesive set of recommendations. It is hoped that the National Consultation Conference would help in achieving appropriate coordination and synergy so that the four working papers and the recommendations contained therein complement each other.

IV. Lack of statistics and research gap

There is a lack of adequate data and research regarding the informal sector in Bangladesh on which to base policy recommendations. To strengthen the voice of informal entrepreneurs and workers in the policy process, their contributions to the economy and the nature of their work need to be visible to policy-makers. In recognition of the fact that sufficient statistics and other information on informal enterprises and labour markets are of vital importance for drawing up feasible plans

for transition to formal economy, an appropriate body needs to be created within the government of Bangladesh that can be a focal point, *inter alia*, for collection and compilation of statistics and research. This body would need to act in cooperation with non-government agencies and international development partners of Bangladesh for the collection and compilation of data on the full range of entrepreneurs and workers in the informal economy.

V. Overview of the Bangladesh legal framework regarding entrepreneurship

Informal entrepreneurship and employment needs to be understood in relation to the legal framework in any given country. There is a distinction between illegal processes or arrangements and illegal goods and services. While production or employment arrangements in the informal economy are often semi-legal or illegal (e.g. because of absence of required licence, tax registration etc), most informal enterprises and workers produce and/or distribute legal goods and services. Admittedly, one part of the informal economy – the criminal economy – not only operates illegally but also deals in illegal goods and services. But it is only a small part of a larger whole that is, for the most part, not illegal or criminal. Many informal entrepreneurs operate semi-legally or illegally because the regulatory environment is too costly, too cumbersome or simply non-existent. Also, many activities in the informal economy do not generate enough output, employment or income to fall into existing tax brackets.

(a) Business laws and regulations in general

The Commission's as well as this working paper's targeted constituents in the informal sector comprise mainly tiny, micro and household businesses. Currently there does not exist a legal framework that could gradually lead to formalization of such businesses. In the absence of such a legal framework, this working paper makes recommendations regarding new legal tools, institutions, organizations and mechanisms for transition from informal to formal sector.

A survey of current business laws and regulations makes it evident that poor informal entrepreneurs cannot easily be brought within the existing legal framework. Instead, a feasible way to afford legal protection to such entrepreneurs would be to put in place a new regulatory regime. As noted below, the current business laws and regulations place a special strain on small businesses, and they are prohibitively expensive and burdensome for tiny and micro businesses, which are the targeted constituents of the Commission and this working paper. The legal framework that applies to businesses in Bangladesh is burdensome, *inter alia*, because of lack of public information about relevant laws and regulations, the fragmentation of legal and regulatory requirements among different ministries and offices, and the delays and demands for informal payments that plague virtually every registration or certification requirement.

All businesses need to obtain a trade licence from the relevant city or municipal corporation or other local authority. Depending on the circumstances, a small business may also need to register as a company with the Registrar of Joint Stock Companies, or as a cooperative society with the Directorate of Cooperatives. Businesses need to obtain a tax identification number (TIN) from the National Board of Revenue (for incorporated companies this requirement is compulsory), obtain registration for purposes of Value Added Tax and register with the Department of Inspection of the Ministry of Labour and Employment. Industrial enterprises also need to obtain an environmental clearance certificate from the Department of Environment of the Ministry of Environment and Forests. To take advantage of certain industrial incentives, such as tax exemptions or access to land in an industrial estate, businesses need to register with the Board of Investment (BOI) or Bangladesh Small and Cottage Industries Corporation (BSCIC), in the case of a small or cottage business. Businesses engaged in any import or export activity also need to obtain an import or export registration certificate, respectively. Depending on the nature of the business, other regulatory requirements may apply. The time and expense involved in complying with these multiple requirements place a special strain on small businesses, especially at the start-up phase and for micro entrepreneurs in the informal sector, who are the targeted constituents of the

Commission these requirements are prohibitively burdensome. Various donors are currently supporting projects to simplify and automate some of the regulatory requirements, and to publicize the requirements through brochures, toolkits and websites.⁵

(b) Trade licence

Legislation relating to city corporations and municipalities (*paurashava*) prohibits any person from carrying on or maintaining within the local limits of city corporations or municipalities any trade or business without obtaining a trade licence from the city corporation or municipality concerned.⁶ Informal enterprises operating within the local limits of city corporations or municipalities violate this legal requirement. However, there is no similar requirement for trade licence for enterprises operating outside the local limits of city corporations or municipalities, e.g. rural enterprises.

For poor entrepreneurs in the informal sector the procedure for obtaining trade licence is both too cumbersome and too costly. Applications for a trade licence are required to be accompanied by copies of rent receipt or rental agreement and holding tax payment receipt. Informal enterprises which do not have any legal title to the occupied land or premises cannot fulfil this requirement. There are also additional requirements for incorporated entities and for entities in specific sectors. The cost of obtaining a trade licence may vary depending on where the licence is obtained. The cost of obtaining a trade licence from the Dhaka City Corporation could be upto BDT 5,000, of which governmental fee is BDT 2,000.

⁵ For example, AusAID is supporting simplification of the Dhaka City Corporation's procedures for issuing trade licences, and DFID is assisting the National Board of Revenue to streamline and computerize tax procedures and to make tax information and forms available on its website.

⁶ See e.g., the Dhaka City Corporation Ordinance 1983, sections 67, 70; the Chittagong City Corporation Ordinance 1982, sections 66, 69, 160; the Khulna City Corporation Ordinance 1984, sections 64, 67, 159; the Rajshahi City Corporation Act 1987, sections 66, 69, 159; the Sylhet City Corporation Act 2001, sections 74, 77, 167; the Barisal City Corporation Act 2001, sections 74, 77, 167; the Paurashava Ordinance, 1977, sections 54, 57, 151.

(c) Incorporation

Incorporation is not essential to formally operate a small business. Thus it may be possible to operate formally by obtaining necessary tax and VAT registrations and trade licence but without incorporation. Yet, it is recognized that incorporation – whether in the form of company, society or partnership – does provide certain business advantages. For poor informal entrepreneurs existing procedures for different modes of incorporation are prohibitively cumbersome and expensive.

For instance, to incorporate a company the following requirements must be fulfilled: verification of the uniqueness of the proposed company name from the Registrar of Joint Stock Companies and Firms (RJSC); obtaining forms for incorporation; submitting to the RJSC an application in plain paper along with a resolution approved by the promoters/sponsors of the proposed company regarding proposed name of the company to be formed, authorized share capital of the proposed company and the names of the proposed chairman/director(s)/shareholders who have agreed to subscribe shares of the proposed company; preparing the memorandum and articles of association of the company; paying stamp duty; filing required documents with the RJSC for registration. The cost of incorporation (excluding legal fees) could be upto BDT 10,000.

(d) SME Policy

As already noted, the Commission's as well as this working paper's targeted constituents in the informal sector comprise mainly tiny, micro and household businesses. Accordingly, the targeted constituents are referred to as "informal businesses" rather than as Small and Medium Enterprises (SMEs). Yet, it may be useful to briefly discuss the policy framework regarding SME development in Bangladesh, because the Government has attached particular importance to SME development as a means of poverty reduction. The *Bangladesh Poverty Reduction*

Strategy Paper (PRSP) approved by the Government in October 2005⁷ attaches importance to SME development and the Government has also adopted an SME Policy.⁸ At the institutional side a National Task Force and an Advisory Panel have been established. Recommendations regarding legal tools for transition from informality to formality need to duly take into account these SME development strategies because, *inter alia*, some micro entrepreneurs operating informally can possibly make a transition to the formal economy as SMEs. Furthermore, in formulating policies for the informal sector, the SME Policy and experience gained under that Policy can be of some help.

The PRSP provides a policy framework for reducing poverty and pursuing equitable development. It synthesizes a wide range of law and policy initiatives and aims to reduce poverty through four strategic channels: (1) economic growth initiatives including private sector investment, employment generation and trade; (2) pro-poor sector initiatives including agriculture and rural development, SME development, infrastructure development and development of information and communication technologies (ICT); (3) strengthening of social safety net programs; and (4) human development programs related to education and vocational training, health care and food safety, water and sanitation. To ensure that these initiatives produce equitable and sustainable results, the PRSP also includes several supporting strategies, including women's rights and advancement.

Key elements of the SME Policy include: (1) surveying SMEs to identify industries with growth potential; (2) strengthening the role of public agencies such as BSCIC to provide more effective support to SMEs; (3) providing tax incentives to SMEs; (4) simplifying relevant laws and regulations; (5) fostering subcontracting and other linkages between SMEs and larger enterprises; (6) promoting e-commerce to

⁷ Government of Bangladesh, General Economics Division, Planning Commission, *Unlocking the Potential: National Strategy for Accelerated Poverty Reduction*, 16 October 2005.

⁸ Government of Bangladesh, Ministry of Industries, *Policy Strategies for Small & Medium Enterprises (SME) Development in Bangladesh*, January 2005, available at www.moind.gov.bd/html/SME_INDEX.htm (hereinafter SME Policy).

support SME production and marketing; and (7) establishing an information bank to improve marketing and trade opportunities. External agencies such as ADB, the World Bank, AusAID and DFID are supporting elements of the new policy through various project and programs. For example, ADB and the World Bank have provided loans to the Government for onlending to SMEs through a Small Enterprise Fund. The SME Sector Development Program supported by ADB also includes a gender action plan, which provides for (a) representation of women entrepreneurs in the preparation and implementation of the SME policy; (b) inclusion of sex-disaggregated data in the SME information bank; (c) earmarking of at least 10% of the Small Enterprise Fund for women borrowers; and (d) targeted training programs designed to meet the specific needs of women entrepreneurs.

VI. Impediments faced by poor entrepreneurs

Operating outside the statutory legal framework has considerable costs. Most self-employed and wage workers in the informal sector are deprived of secure work, social protection, workers' benefits and representation or voice. The self-employed have to take care of themselves and their enterprises as well as their employees (if they hire others) or unpaid contributing family members (if they run a family business). They often face competitive disadvantage vis-à-vis larger formal firms in capital and product markets. Informal wage workers also have to take care of themselves as they receive few (if any) employer-sponsored benefits. In addition, both groups receive no legal protection from the Government. As a result of these and other factors, a higher percentage of people working in the informal economy, compared to those working in the formal economy, are poor.

The legal and regulatory framework in Bangladesh is such that it is impossible for most informal entrepreneurs to operate formally. Virtually all regulatory requirements for businesses including small businesses, such as registration with the RJSC or the BSCIC, obtaining of a TIN, trade license or other permit and payment of taxes, entail considerable costs. Given the level of literacy and entrepreneurship skill and education, most of the poor entrepreneurs would need assistance if they were

to satisfy the currently applicable regulatory formalities. Furthermore, frequent trips to the relevant government offices (sometimes requiring travel to Dhaka or another urban centre) and either the use of influence or informal payments are often required to satisfy regulatory requirements. Also, in order to obtain various regulatory registrations/licences, a business typically needs to have business premises that are identified as such. Poor entrepreneurs targeted by the Commission or in this working paper are unlikely to have legal title to land or premises.

In order to conduct their business and survive, the self-employed in the informal sector need to bribe not only local extorters but also government officials (e.g. the police, officials of the city corporation etc). They have to offer rents (bribes) to the authorities to safeguard them (e.g. by warding off eviction drives or forewarning them of impending drives). There are other forms of extracting rents. In some cases local musclemen, more often than not with the backing of local political leaders, collect protection fees through threats. Despite the payment of such rents/bribes, their conduct of business is not guaranteed and they lack the protection of law.

Limited access to formal credit is another major constraint on informal businesses. Credit is crucial for the self-employed in the informal sector, both to sustain existing activity and to upscale it. The only source of formal credit extended to informal businesses is NGOs, who extend micro loans. However, the micro credit outreach needs to be expanded much more if credit were to be made readily available to poor entrepreneurs.⁹ In addition, other difficulties with micro credit have also been identified in some studies, e.g. repeat borrowing, dependency of borrowers on credit for household expenditure, marriage of children and other business unrelated purposes instead of making (capital) investments, women acting

⁹ Cf. Muhammad Uunus, "Expanding Microcredit Outreach to Reach the Millennium Development Goal – Some Issues for Attention" Paper presented at the International Seminar on Attacking Poverty with Microcredit, organized by PKSF in Dhaka, 8-9 January 2003, available at www.grameen-info.org/bank/ExpandingMicrocredit.html.

as collection agents for male family members, interest rates etc.¹⁰ Although many informal entrepreneurs have repayment capacity, absence of collateral and firm domiciliary status usually debars them from obtaining institutional credit other than micro credit from NGOs. Therefore informal entrepreneurs often obtain credit at high interest rates from non-institutional sources.

Lack of necessary utility services is a further disadvantage faced by informal business. Even where such services are available they are disadvantageous for poor and small entrepreneurs. For instance, home-based businesses are charged higher commercial utility rates, regardless of the size or revenue of the business. Frequent changes in utility charges can disrupt the business plans of the poor as well as small entrepreneurs.

VII. Challenges for women entrepreneurs

Several studies have been undertaken in recent years to understand the particular challenges facing women-owned businesses in Bangladesh. For example, the Policy Leadership and Advocacy for Gender Equality Project (PLAGE project) reviewed business policies, laws and regulations in Bangladesh from the perspective of women entrepreneurs, and conducted surveys, focus groups discussions and interviews to better understand the impact of these and other factors on women-owned businesses.¹¹ A recent study of rural women entrepreneurs commissioned by CARE identified social constraints at the family, business/market and community levels.¹²

¹⁰ See e.g., Gina Neff, "Microcredit, microresults", *Left Business Observer*, No 74, October 1996, available at www.leftbusinessobserver.com/Micro.html.

¹¹ Ministry of Women and Children Affairs, *Assessment of the Implications of Policies and Measures for Women Entrepreneurship Development in Bangladesh* – Report of the Policy Leadership and Advocacy for Gender Equality Project supported by CIDA (2002). This study appears to have influenced the formulation of the latest Bangladesh Industrial Policy, portions of the NSAPR, as well as the SME development policy.

¹² Social Initiatives Ltd., *Women's Access to Markets: Vulnerabilities and Constraints* – Study on the Social Vulnerability Analysis of Women to Assess their Market Access and Constraints from Selected Sites of BUILD, RMP and SHOW Project of CARE Bangladesh (2003).

While these studies relate to women entrepreneurs in general,¹³ many issues identified in the studies are relevant for poor entrepreneurs.

A major constraint, which also underlies the discrimination and harassment that women entrepreneurs experience in their business and in dealing with regulatory authorities, landlords, lenders/banks, clients and others is the strong social disapproval of women in business. Women entrepreneurs often rely on their husbands and family members for financial and other assistance in establishing their businesses. However, family members may prefer that the women work from home and limit their travel and interaction with unrelated men. Family members will generally expect women to carry out childcare and other household duties in addition to their businesses. At the business/market level, women business owners may become dependent on middlemen because of their limited mobility and lack of information and connections. Because of unwillingness of men to work under a woman entrepreneur, she has limited claim to unpaid male family labour and while she has to undertake responsibility for such unpaid labour. Women entrepreneurs often experience bias and harassment in dealing with landlords, lenders/banks, regulatory authorities as well as clients. Women entrepreneurs may experience harassment when travelling or transacting business in public places. At the community level, traditional norms favouring women's seclusion continue to dominate, especially in rural areas. Discrimination in access to education and training, gender-stereotyped training and education that devalues women, lack of opportunities for women for apprenticeship in vocational work and other similar impediments, hinder women's ability to enter new areas of activity.

The difficulties and impediments faced by poor entrepreneurs in general in fulfilling applicable legal and regulatory requirements have been noted in the preceding section. For poor women entrepreneurs fulfilling those requirements are even more burdensome. Furthermore, unequal inheritance laws and inequality in marriage contract result in male appropriation of household and family property.

¹³ The PLAGE study defined "women entrepreneurs" as women who not only are self-employed, but also generate employment and income for others.

Lack of ownership of land and property seriously impairs the ability of women to start, run or upscale any business, have access to financial system and credit. Credit obtained by women is also often appropriated by male family members.

VIII. Initiatives taken in the South Asian region to empower informal business

In its Common Minimum Programme (CMP) the Government of India has expressed a firm commitment to ensure the welfare and well-being of those working in the unorganized/informal sector. In order to implement this commitment it has, among other measures, constituted a National Commission for Enterprises in the Unorganised Sector (NCEUS).¹⁴ The NCEUS is becoming a focal point in respect of policy initiatives for the empowerment of informal businesses. For instance, the NCEUS has constituted Task Forces on "Definitional and Statistical Issues relating to the Unorganized Sector",¹⁵ "Social Security for Workers in the Unorganised Sector"¹⁶ and "Skill Formation in the Unorganized Sector".¹⁷ The NCEUS has prepared two draft Bills, on which views have been sought from government and other stakeholders. These are the (1) Draft Unorganized Sector Workers (Conditions of Work and Livelihood Promotion) Bill, 2005 and (2) Draft Unorganized Sector Workers Social Security Bill, 2005.

The Bill on conditions of work and livelihood promotion recommends a number of measures for the protection and promotion of livelihood of self employed workers in the unorganised sector. It recommends that state governments should seek to safeguard and promote the livelihood of the self employed workers in the unorganised sector through the following measures: provision of credit, adequate raw material (input) supply and adequate marketing facilities for the goods and

¹⁴ See Government of India, Ministry of Small Scale Industries Resolution No. 5(2)/2004-ICC dated 20 September 2004, available at <http://nceus.gov.in>.

¹⁵ NCEUS, Order – File no A-25022/11/2005-NCEUS dated 10 May 2005, available at <http://nceus.gov.in>.

¹⁶ Ibid.

¹⁷ NCEUS, Order – File no A-25024/9/2005-NCEUS dated 9 June 2005, available at <http://nceus.gov.in>.

services produced; ensuring access to banking institutions, in the state or co-operative sector and/or such appropriate arrangement for the purpose of affordable credit facilities; ensuring the right to livelihood including the right over common properties and natural resources; ensuring the traditional rights of all types of unorganised sector entrepreneurs having traditional access to common property resources for their livelihood; ensuring the right of unorganised sector entrepreneurs to share public space to engage in economic activities; ensuring that city plans and rural development plans pay adequate regard to the concerns of self employed workers such as street vendors, and protection and promotion of their livelihood; encourage the promotion of associations of self employed workers with a view to articulation of their problems.¹⁸

The Bill also recommends the constitution of a State Advisory Committee by each state government of India for self-employed as well as wage workers in the unorganised sector. The functions of the State Advisory Committee would include advising the Government regarding the promotion of gainful employment opportunities for unorganised sector workers; developing plans for the promotion of livelihood options available for self employed workers in the unorganised sector; identifying skill and training requirements for both self employed and wage workers in the unorganised sector and advising the government accordingly; collecting, compiling and publishing statistics with the help of statistical organisations regarding the unorganised sector and the possibilities and challenges facing the unorganised sector in terms of employment opportunities; assessing and advising the government on the credit requirements and banking needs of this sector; carrying out periodic surveys on the condition of work in the unorganised sector and to make suitable recommendations to the government; encouraging the promotion of labour cooperation to secure gainful employment and dignified conditions of work; holding public hearings to entertain petitions submitted by the unorganised sector workers

¹⁸ See Unorganized Sector Workers (Conditions of Work and Livelihood Promotion) Bill, 2005, available at <http://nceus.gov.in>, section 9.

and their associations and explaining the efforts made to address the grievances of unorganised sector workers.¹⁹

The NCEUS has proposed a national minimum social security scheme for all unorganized workers consisting of health benefits to cover hospitalization, sickness allowance, and maternity benefit, life insurance to cover natural and accidental death, provident fund cum unemployment benefit and pension for old aged workers. All informal workers, who can not pay for their social security, will be eligible for the scheme. These would include marginal and small farmers and all non-agricultural informal workers whose monthly income is less than 6500 rupees per month. These workers will be registered under the scheme through district level committees and will be provided with ID cards for the worker/family bearing a unique ID number. The scheme will be contributory in nature. Workers, employers (subject to certain exceptions, e.g. where the workers concerned do not have identifiable employers) and government will pay per day one rupee each towards the scheme. The Commission has suggested an organizational structure for implementation of the scheme, with multi-stake holder participation at all levels and grassroots implementation through public bodies, NGOs or trade unions. According to the NCEUS the benefits from the social security scheme for informal workers will not be restricted to the beneficiary workers alone but will be shared by the entire economy and society in terms of better productivity and improved well-being. These benefits would be quite substantial in relation to the relatively small cost of the scheme, which can be met through reallocation of expenditures and/or through a social security tax.²⁰

Like Bangladesh, in India street vendors form a very important component of the urban informal sector. Street vendors are regarded as public nuisance and often aggressive arguments are made for the restoration of pavements as public space

¹⁹ Ibid. sections 10-11.

²⁰ See NCEUS, Press note on report and draft bill on social security for unorganized workers, 16 May 2006, available at <http://nceus.gov.in>.

when street vendors encroach on them. However, the Indian Supreme Court has held that:

“The right to carry on trade or business mentioned in Article 19(1)g of the Constitution, on street pavements, if properly regulated cannot be denied on the ground that the streets are meant exclusively for passing or re-passing and no other use.”²¹

The Supreme Court emphasized proper regulation of street vending to ensure that no vendor/hawker can claim a right to defeat the rights of other citizens, and noted that consistent with the rights of citizens, hawkers, squatters etc could be provided space under appropriate regulations. These regulations may, *inter alia*, carve out hawking and no hawking zones, determine in which zones no hawking activity can be permitted as well as what kind of goods can be sold by hawkers, squatters, etc so that cleanliness is maintained and at the same time free flow of traffic and movement of pedestrians is not obstructed.²²

Indian Government has prepared a “National Policy on Urban Street Vendors” and the NCEUS has issued a report and recommendations regarding the Policy.²³ This Policy proposes the following system of registration of street vendors. The power to register is to be vested with Town Vending Committees (TVCs) to be constituted on a ward-wise basis by the municipal authorities. All vendors in each city are to be registered at a nominal fee to be decided by the municipal authorities and registration should be renewed after every three years. Preferably no numerical restriction or quotas, or prior residential status requirements of any kind are to be set regarding registration and the registration process must be simple. Upon registration the vendor is to be issued an identity card which should contain: (i) name, address and photograph of the vendor; (ii) name of a nominee from the family; (iii) nature of business; and (iv) category (stationary/mobile).

²¹ See *Sodhan Singh v. NDMC*, (1989) AIR SC 1988.

²² See *Sudhir Madan v. MCD*, (2006).

²³ See National Policy on Urban Street Vendors, Report and Recommendations, May 2006, available at <http://nceus.gov.in>.

The Policy notes that section 283 of the Penal Code, 1860 and section 34 of the Police Act, 1861 create contradiction between a legal “licensed” vendor and “illegal” obstruction or nuisance. Under these two provisions street vendors can be physically evicted and criminal penalties can be imposed on them for obstructing public way/space or causing nuisance. Accordingly, the Policy recommends that these two provisions should be amended to exempt street vendors from their purview with reasonable restrictions. The Policy also proposes measures for social security, access to credit, credit guarantees, insurance, training and skill upgradation for increased income and upward occupational movement, formation of organizations/trade unions, undertaking projects and studies relating to conditions of street vendors and implementation of promotional measures for them, etc.

This working paper notes that the current National Consultation Processes will be followed by regional consultations. These would provide opportunities for cross-fertilization as well as cooperation and coordination on policy making regarding the informal sector in the region.

IX. Recommendations

(a) In general

Policy initiatives to empower informal business should duly take into account issues of interlinkages. For instance, optimum results cannot be achieved in legal empowerment unless it is accompanied by other pro-poor policies including those envisaged in the PRSP. It has also been highlighted above that there should be a coordinated effort in legal empowerment in respect of property rights, labour rights, access to justice and rule of law as well as entrepreneurship. Policy initiatives to formalize the informal sector may adopt a gradualist approach. For instance, legal registration recommended in this working paper (see recommendation (e) below) can in the first instance be extended to a particular segment of the informal sector, say, the urban street vendors in a particular urban centre and can gradually be extended to other informal entrepreneurs. To formulate policies for appropriately targeted segments, adequate studies and statistics will be needed. Given that the

existing business regulation in Bangladesh is too burdensome and costly for poor entrepreneurs, this working paper advocates establishing a new legal framework for such entrepreneurs. This could be supplemented by parallel efforts to reduce the cost burden of and simplify the regulatory regime applicable to businesses including small businesses. Initiatives to help transition of micro enterprises owned by the poor to small enterprises within the policy framework applicable to SMEs can also be considered.

(b) Institutional

A Commission on Informal Sector (CIS) should be established within the Ministry of Local Government, Rural Development and Co-operatives. The CIS should act as a focal point in respect of policy initiatives regarding empowerment of informal businesses. The responsibility of the CIS should include undertaking and coordinating research, studies and projects (including on matters noted under recommendation (c) below), suggesting and coordinating legal and policy reforms in favour of and for the transition of the informal sector to the formal sector; designing social security system and identifying innovative financing instruments to empower informal entrepreneurs, etc. In addition to the CIS, other organization structures and grassroots level bodies would need to be put in place for the implementation of promotional measures concerning the informal sector. For instance, as proposed below in this working paper, those working in the informal sector should be brought within a legal framework of registration. The responsibility for such registration can be assigned to appropriate local bodies. Other necessary institutional mechanisms may include bodies to administer social security fund or informal enterprises fund, if these are established in pursuance of the recommendations of this working paper.

(c) Research, studies and statistical issues

As noted above adequate research and statistics are essential to formulate feasible policies and to ensure the voice of the stakeholders (in this case poor informal entrepreneurs) in policy making. Recall that the SME Policy includes provisions for studies and surveys as well as establishment of an information bank regarding SME

industries. Adequate research, studies and compilation of data regarding informal business would likewise be necessary to formulate feasible policies that ensure participation of stakeholders in policy making and implementation. The studies should examine the status of informal sector including the nature of enterprises, their size, spread and scope, and magnitude of self- and wage employment in the informal sector; identify constraints faced by micro enterprises with regard to freedom of carrying out the enterprise, access to raw materials, finance, skills, entrepreneurship development, infrastructure, technology and markets, examine the range of existing programmes that relate to employment generation in the informal sector, etc.

(d) National policy

A National Policy on the Informal Sector (NPIS) should be adopted setting out a policy framework for the empowerment of the informal sector and for its transition to the formal sector. Participation of all relevant stakeholders including poor and poor women entrepreneurs must be ensured in the formulation of the Policy. The CIS could be given the responsibility to formulate the Policy and for this purpose it should act in close cooperation with the Commission, NGOs, development partners of Bangladesh and others concerned. Among other things, the Policy should include provisions regarding recommendations (e) to (m) below.

(e) Registration and identity cards

A mechanism to register and issue identity cards to both the self-employed and the wage workers in the informal sector though appropriate local bodies should be adopted. Such registration and issuance of identity cards would bring those working in the informal sector within the formality of legal coverage. To start with, such registration may be extended to particular segments of the informal sector and can be gradually extended to the entire informal sector. In addition to attributing legal coverage to informal entrepreneurs, registration and issuance of identity cards can help in implementing promotional measures recommended in this working paper (e.g. social security, access to financial system and credit, organization, upgradation

of skills, entrepreneurship education etc), or to be recommended elsewhere (e.g. in the proposed NPIS) for the empowerment and transition of the informal sector.

(f) Social security

A social security scheme consisting of health benefit, unemployment benefit and/or provident fund, pension for old age and life insurance to cover natural and accidental death for the self-employed and the workers in the informal sector can be adopted. For this purpose a social security fund for the informal sector and an appropriate administering body may be established.

(g) Conditions of work

Appropriate measures need to be taken to improve the conditions of work and business security of those in the informal sector, including provision for supply of necessary inputs (raw material), marketing facilities, ensuring right over common properties and natural resources as well as right to share public space to engage in economic activities. City plans and rural development plans should pay due regard to the concerns of self employed in the informal sector and protection and promotion of their livelihood. Provisions for the availability of utility services at affordable cost should be made. Self regulation in the informal sector regarding hygiene, sanitation, waste disposal etc should be promoted.

(h) Access to financial system and credit

Appropriate measures to ensure access of informal entrepreneurs to financial system and affordable credit facilities including extending microcredit outreach should be adopted. As noted earlier, regarding SMEs, a Small Enterprise Fund has been established for lending to SMEs. The feasibility of establishing a fund for informal enterprises can be examined.

(i) Organization

To get the benefits of various measures recommended in this working paper, or elsewhere, in an effective manner, it is essential that those working in the informal sector form organizations. Trade unions and other voluntary organizations including NGOs should take active role and help informal entrepreneurs/workers to form organizations by providing counselling and guidance. There can also be opportunities for liaising with international organizations of informal entrepreneurs and those established in other countries, such as, StreetNet (an international alliance of street vendors), HomeNet (an international alliance of home-based workers), Self-Employed Women's Association (SEWA) and National Alliance for Street Vendors of India and the like.

(j) Upgradation of skills, entrepreneurship education

Poor micro entrepreneurs should be provided with training to upgrade their technical and business skills so as to increase their income and promote upward occupational movement. Human development programs related to education (including non-formal education) and vocational training, health care and food safety, water and sanitation, as recommended in the SME Policy for SMEs, can be adopted for the informal sector as well. There is also a need to assess existing level of skills and monitor skill generation and upgradation in the informal sector.

(k) Simplification and modification of business regulations

Measures recommended in this working paper directed specifically to the informal sector do not supplant the need for the simplification and modification of business regulations in general so as to make them friendlier for the informal sector. Various current initiatives, which are being undertaken under the auspices of international development partners or otherwise, should be examined with view to incorporate measures supportive of the informal sector. Any imbalances in policies that favour large enterprises over small and micro-enterprises in tax breaks, subsidies and other incentives, in licensing procedures, and in technical assistance for innovation and upgrading should be redressed. Any imbalances in policies that favour formal

workers over informal producers and workers in statutory benefits, such as unemployment insurance, pension funds or safety nets should be redressed.

(l) Women entrepreneurs

Measures directed towards poor women entrepreneurs may include the following: conducting a nationwide survey to collect current information on women-owned micro enterprises; setting up an exclusive desk to service women informal entrepreneurs, establishing mechanism to coordinate micro credit and other credit facilities for women entrepreneurs and giving preference to women-owned businesses in lending, modifying inheritance rules to remove gender discrimination (e.g., by enacting a uniform family code), encouraging the formation of women's business associations and the participation of women entrepreneurs in existing associations etc.

(m) Urban street vendors

The feasibility of adopting a policy on urban street vendors may be considered. Proper regulation of street vending may help in achieving a balance between the right of livelihood of street vendors and rights of citizens in respect of movement of pedestrians, traffic, cleanliness etc.

BIBLIOGRAPHY

- Abdul Awal Mintoo, "SMEs in Bangladesh", CACCI Journal, Vol.1, 2006
- African Studies Centre, University of Pennsylvania and United Nations Economic and Social Council, "Economic Empowerment of Women – Progress Report on the Proposed African Bank for Women and Promotion of Women Entrepreneurship", April-May 1995.
- Asian Development Bank, "Technical Assistance for Small- and Medium- Sized Enterprise Growth and Development in the South Asia Region, December 2002.
- Ayman H. R. Khoudeir, "The Informal Sector Impacts on the Environment – in Reference to Egypt".
- Centre for Institutional Reform and the Informal Sector/Allen Welsh, "Secured Credit for Jobs and Economic Growth", November 2000, available at, www.iris.umb.edu.
- CIF/Sebastian Galiani and Ernesto Scharfrodsky, "Property Rights for the Poor: Effects of Land Tilting", 9 August 2005, available at, (www.utdt.edu/departamentos/empresarial/cif/cif.htm).
- Commission on Legal Empowerment of the Poor, "Commission on Legal Empowerment of the Poor: Overview Paper", January 2006.
- Commission on Legal Empowerment of the Poor, "Progress Report: Working Group 4 – Legal Mechanisms to Empowerment of Informal Businesses".
- Commission on Legal Empowerment of the Poor, "Terms of Reference for Working Papers Prepared for National Consultations".
- Commission on Legal Empowerment of the Poor, "Working Group # 4: Outcomes Document".
- Commission on Legal Empowerment of the Poor/Allan Larsson, "Empowerment of the poor in informal employment", January 2006.
- Commission on Legal Empowerment of the Poor/Brian Honermann, "Egypt Tabulation Plan – Informal Employment as a Way out of Poverty" 15 November 2006.
- Commission on Legal Empowerment of the Poor/Camilla Toulmin, "Securing land rights for the poor in Africa – Key to growth, peace and sustainable development", January 2006.
- Commission on Legal Empowerment of the Poor/Michael R. Barth and Cesare Calari, "Financial Sector Development and Expanded Access to Credit", January 2006.
- Dibalok Singha, "Social Intermediation of the Urban Poor in Bangladesh", DFID Regional Livelihoods Workshop: Reaching the Poor in Asia, May 2001.
- Erica Field, Maximo Torero and International Food Policy Research Institute, "Do Property Titles Increase Credit Access Among the Urban Poor? Evidence from a Nationwide Titling Program", January 2004.
- Gina Neff, "Microcredit, microresults", LeftBusiness Observer, No. 74, October 1996, available at, www.leftbusinessobserver.com/Micro.html.

WORK IN PROGRESS

- Hernando De Soto, “The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else, ch. 6.
- High Level Commission on Legal Empowerment of the Poor, “Poverty Reduction through Improved Asset Security, Formalisation of Property Rights and Rule of Law”, 6 September 2005.
- High Level Commission on Legal Empowerment of the Poor, “South Asia National and Regional Consultations – Proposal”.
- International Labour Organization, “National Initiatives Concerning Human Resources Development in the Informal Economy – Bangladesh”, available at, www.ilo.org/public/english/employment/skills/hrdr/topic_n/t_37_ban.htm.
- International Monetary Fund, “Bangladesh: Joint Staff Advisory Note of the Poverty Reduction Strategy Paper”, February 2006, available at, www.imf.org.
- Ishtiaq Hossain, “An experiment in sustainable human development: The Grameen Bank of Bangladesh”, Journal of Third World Studies, Spring 1998.
- Martha Alter Chen, Joann Vanek and Marilyn Carr, “Mainstreaming Informal Employment and Gender in Poverty Reduction: A Handbook for Policy-makers and Other Stakeholders”, Commonwealth Secretariat, 2004.
- Martha Chen, “Rethinking the Informal Economy: Linkages with the Formal Economy and the Formal Regulatory Environment”, Paper prepared for EGDI-WIDER Conference “Unleashing Human Potential: Linking the Informal and Formal Sectors”, 17-18 September 2004.
- Marty Chen, “Informalization of Labour Markets: Is Formalization the answer?”, Draft for Use of the Commission/Working Groups/Technical Paper Writers, 25 November 2006.
- Momtaz Uddin Ahmed, “SME policymaking process: A digression on the real issues”, Daily Star, 15th Anniversary Special, 2006.
- Muhammad Yunus, “[Expanding Microcredit Outreach](http://www.grameen-info.org/bank/ExpandingMicrocredit.html) to Reach the Millennium Development Goal – Some Issues for Attention”, Paper presented at the International Seminar on Attacking Poverty with Microcredit, organized by PKSF in Dhaka, January 2003, available at, <http://www.grameen-info.org/bank/ExpandingMicrocredit.html>.
- Muhammad Yunus, “Social Business Entrepreneurs are the Solution”, available at, <http://www.grameen-info.org/bank/socialbusinessentrepreneurs.htm>.
- Muhammad Yunus, “We can put poverty into museums”, Nobel lecture presented at the Nobel Peace Prize ceremony on 10 December 2006, reproduced in the Daily Star, 11 December 2006, available at, www.thedalystar.net/supplements/2006/15thanniv/investment/invest27.htm.
- OECD Development Centre/Christian Morrisson, “What Institutional framework for the Informal Sector?” – Policy Brief No. 10.
- Robert E. Nelson, “Entrepreneurship in Education in Developing Countries”, Asian Survey, Vol. 17, No. 9, September 1977, pp. 880-885.
- Sharit K Bhowmik; “Street Vendors in Asia: A Review”, Economic and Political Weekly, 28 May – 4 June 2005.

WORK IN PROGRESS

Subhasish Roy, "Formal finance for informal sector", The Hindu Business Line, 19 December 2006, available at, www.thehindubusinessline.com/2006/12/19/stories/2006121900110900.htm.

Tony Avirgan, Josh L. Bivens and Sarah Gammage, "Good Jobs, Bad Jobs, No Jobs: Labor Markets and Informal Work in Egypt, El Salvador, India, Russia and South Africa", Economic Policy Institute, 2005.

WIEGO, "Addressing Informality, Reducing Poverty: A Policy Response to the Informal Economy".

LAWS, REGULATIONS AND POLICIES

Bangladesh

Bangladesh Small and Cottage Industries Corporation Act, 1957

Barisal City Corporation Act, 2001

Chittagong City Corporation Ordinance, 1982

City Corporation Taxation Rules, 1983

Companies Act, 1994

Contract Act, 1872

Cooperative Societies Act, 2001

Cooperative Societies Rules, 2004

Customs Act, 1969

Dhaka City Corporation Model Tax Schedule, 2002

Dhaka City Corporation Ordinance, 1983

Dhaka Metropolitan Police Ordinance, 1976

Government and Local Authority Lands and Buildings (Recovery of Possession) Ordinance,
1970

Income Tax Ordinance, 1984

Industrial Policy, 2005

Khulna City Corporation Ordinance, 1984

Labour Act, 2006

National Policy for the Advancement of Women, 1997

National Strategy for Accelerated Poverty Reduction, 2005

Paurashava Model Tax Schedule, 1985

Paurashava Ordinance, 1977

Penal Code, 1860

Police Act, 1861

Policy Strategies for Development of Small & Medium Enterprises (SME), 2005

Prudential Regulations for Small Enterprises Financing, 2004

Rajshahi City Corporation Act, 1987

Sylhet City Corporation Act, 2001

Trade Organization Rules, 1994

Trade Organizations Ordinance, 1961

VAT Act, 1991

VAT Rules, 1991

India

Ministry of Small Scale Industries, Government of India, “Resolution: Constitution of a National Commission on Enterprises in the Unorganised/Informal Sector”, 20 September 2004.

National Commission for Enterprises in the Unorganized Sector, Ministry of Small Scale Industries, Government of India, “Order - [Constitution of Task Force on Skill Formation in the Unorganised Sector](http://nceus.gov.in/TF%20Skill%20Formation.pdf)”, 9 June 2005, available at, <http://nceus.gov.in/TF%20Skill%20Formation.pdf>.

National Commission for Enterprises in the Unorganized Sector, Ministry of Small Scale Industries, Government of India, “Order - [Constitution of Task Force on Social Security for Workers in the Unorganised Sector](http://nceus.gov.in/TF%20Social%20Security.pdf)”, 10 May 2005. available at, <http://nceus.gov.in/TF%20Social%20Security.pdf>.

National Commission for Enterprises in the Unorganized Sector, Ministry of Small Scale Industries, Government of India, “Order - [Constitution of Task Force on Definitional and Statistical Issues relating to the Unorganised Sector](http://nceus.gov.in/TF%20Definitional%20issues.pdf)”, 10 May 2005. available at, <http://nceus.gov.in/TF%20Definitional%20issues.pdf>.

National Commission for Enterprises in the Unorganized Sector, Ministry of Small Scale Industries, Government of India, “Social Security Report”, 2006.

National Policy on Urban Street Vendors, Report and Recommendations, May 2006, available at <http://nceus.gov.in>.

Unorganised Sector Workers (Conditions of Work & Livelihood Promotion) Bill, 2005.

Unorganised Sector Workers Social Security Bill, 2005

Unorganised Workers Social Security Bill, 2006.

CASES

Bangladesh

Ain-o-Salish Kendra (ASK) and others v. Government of Bangladesh and others, (1999)
19 BLD (HCD) 488; 4 BLC (HCD) 590.

Modhumala v. Director, Housing and Building Research Institute & others, (2001) 53 DLR
(HCD) 540.

India

Sodhan Singh v. NDMC, (1989) AIR SC 1988.

Sudhir Madan v. MCD, (2006)