

Chapter
THREE

Towards a Global
Social Contract:
Labour Rights for
Legal Empowerment
of The Poor

EXECUTIVE SUMMARY

Purpose of this chapter

Chapter 3 is about labour rights for the fight against poverty. Based on our review of employment and working conditions in the informal economy, we present two essential messages.

The first is that governments and international organisations must address the decent work deficits of those who work informally, since the informal economy, characterised by low productivity, low earnings and high risks, has been growing worldwide, emerging in many new guises and in unexpected places. The second message is one of hope. It is about the new departure in international development strategies, in which we find broad coalitions being formed among governments, international organisations, trade unions, employers and non-governmental organisations that are willing to take on the challenge of creating and implementing policies for decent work and empowerment of the poor.

We describe this new departure in international development strategies as an emerging ‘Global Social Contract’ and propose that the Commission on Legal Empowerment of the Poor (sometimes referred to by its acronym, CLEP) further develop the concept into a framework integrating access to justice, property rights, labour rights and business rights.

Labour rights, informal economy, empowerment and decent work: what do we mean?

In Section 2, we define concepts used in this report. **Labour rights** include internationally agreed fundamental principles and rights at work, as well as rights to social protection, income protection, workplace safety, decent working conditions and participation through representative organisations of workers, in national policy fora. This concept also takes into account and supports commitments and policies for the creation of full, productive and freely-chosen employment and training. **Informal economy** refers to economic activities by workers and economic units that are — in law or in practice — not covered or insufficiently covered by formal arrangements governing both enterprise and employment relationships.

Legal empowerment is that process through which people are provided rights in an appropriate legal framework, which they can claim and understand, and which they can find useful in improving income and employment opportunities. It is a process recognised both formally (legally) and informally (legitimately). We define **decent work** as that available to all men and women,

and grounded in conditions of freedom, security and dignity. It has four pillars (a) fundamental principles and rights at work under international labour standards; (b) employment and income opportunities; (c) social protection and social security, and (d) social dialogue and tripartism.

Informal workforce: who are we talking about?

The vast majority of the poor earn their living in the informal economy where average earnings are low, productivity poor, working conditions hazardous, and risks high. Section 3 provides a global picture of the informal economy, highlighting its size, segmentation, and vulnerabilities. Women dominate the most-disadvantaged categories of informal work, notably industrial outwork and home-based production. It is also in the informal economy where child labour and bonded labour are most prevalent, and where indigenous and tribal peoples are marginalized largely by discrimination. Despite early predictions of its eventual demise, the informal economy continues to grow.

Poverty and labour rights: Towards a Global Social Contract

Section 4 describes a new departure in the international community regarding labour rights and the informal economy; it features three noteworthy elements: the Fundamental Principles and Rights at Work from 1998; the Decent Work Agenda, first introduced in 1999, and the 2002 Strategy for Labour Rights in the informal economy. These elements are gaining increasing support from a broad coalition of governments, international organisations, various employers and trade unions, as well as from non-governmental organisations.

As part of efforts to achieve the Millennium Development Goals (MDGs), the 2005 World

Summit of Heads of States agreed to make full and productive employment and decent work for all a central objective of both national and international policies and national development and poverty reduction strategies. In 2006 this was followed by the UN Economic and Social Council's Ministerial Declaration, which emphasised full and productive employment and decent work for all as an end in itself and a means to achieve the MDGs. The Decent Work Agenda has therefore been accepted as a global aim; it no longer remains an ILO agenda alone. Decent work has been declared a goal not only for the formal wage sector, but also for the informal economy. Growing recognition of the need for labour rights to catalyse employment creation in the informal economy, while protecting its workers, has led to an emerging global social contract, creating a broad agenda for reform and for empowerment.

The economics of informality and the debate on labour regulations

For the working poor, it is not the absence of economic activity that is the source of their poverty, but the nature of their economic activities. The link between work of low quality, or productivity, and poverty is clear: if people earned more, poverty would decline. In Section 5, we review research on the role of labour regulation in setting economic and social goals, and we draw two major conclusions. First, we suggest caution in interpreting this research, particularly the cross-country studies. Caution should also be exercised before translating the findings into country-level policy interventions without first considering country-specific conditions, the heterogeneity in the regulatory environment and employment arrangements. Secondly, as a policy conclusion, we suggest a shift of focus from the prevailing ideological question on regulation-versus-deregulation to questions about how regula-

tion can be used to promote decent work for the working poor. The debate, we suggest, should focus on the quality of regulation, and determining the right balance between security, supportive structures, and flexibility in both the formal and informal economy.

Principles and practices of labour rights and legal empowerment

Our proposed strategy for legal empowerment, introduced in Section 6, is based on common core principles, while remaining flexible to fit different economic, social and political conditions. It is participatory, inclusive and gender-sensitive. Some of the principles are basic: they include the need to combine promotion of change with management of change, labour rights with property rights, and flexibility with security. Examples are presented to show that reform is underway; they illustrate how different policies can be used to provide working people with legal identity (India, the Philippines and Thailand), voice and representation (India), social protection (Brazil, Chile, Ghana, India, Mexico, the Philippines), and new ways to resolve disputes (Tajikistan). They also show how different policies can be used to improve the functioning of labour market institutions (Chile and Thailand), and to strike a balance between protection and flexibility in response to changing realities (Spain). Implications are drawn for other countries.

Our recommendations

We propose that the Commission accepts the following recommendations:

Policy recommendations

Strengthen identity, voice, representation and dialogue: For the poor, labour and human capital are the greatest assets, and these must be effec-

tively recognised and supported to help the poor work their way out of poverty. First and foremost, the State must recognise their legal identity as workers — the initial condition through which they can engage in legal reforms. Rights to freedom of association and collective bargaining are also essential to strengthen the voice of the working poor and to facilitate their dialogue with formal economy operators and public authorities.

Improve the quality of labour regulation and the function of institutions: There is also need to improve the quality of labour regulation and to enforce fundamental principles and rights at work. The aim is to create synergies between protection and productivity of the working poor and their assets. Critical and self-critical reviews of the quality of institutions and regulations should examine impacts on prosperity and labour protection.

Support application of a minimum package of labour rights for the informal economy: Rights should be established in the informal economy that upholds the Declaration on Fundamental Principles and Rights at Work and the three crucial aspects related to working conditions: health and safety at work, hours of work, and minimum income. Such a minimum floor for empowerment should be realistic and enforceable. Progressive compliance — towards a fuller set of labour rights building upon this minimum floor - would be expected.

Strengthen access to opportunities: Key to the legal empowerment process is the promotion of change and dynamism. This may be achieved by forging links between private initiative and public policy to encourage expansion of employment in a growing and inclusive economy. Opportunities for decent work are also advanced by provision for education, training and retraining, as well as by efforts to combat discrimination and promote efficient labour markets.

Support inclusive social protection: Universally accepted instruments, such as the Universal Declaration on Human Rights, recognise social security as a fundamental societal right for all. Laws, institutions and responsive mechanisms protecting the poor from economic shocks, as well as guaranteed access to medical care, health insurance, old age pensions, and social services, must be upheld. Social protection mechanisms must be open to all types of workers and not solely on the basis of formal evidence of employment. From a systemic perspective, rights to pensions and health protection should be granted on the principle of universality to people as citizens rather than as workers.

Promote legal empowerment as driver for gender equality: A key challenge is to ensure that ILO labour standards, promoting equality of opportunity and treatment, are effectively extended to all working poor, especially women, in the informal economy. This requires knowledge of where working poor women are concentrated in the labour force, how they are inserted into the global production and with what consequences. There is a growing international movement, inspired by the Self-Employed Women's Association (SEWA) of India, to increase the visibility and voice of female informal workers and to address their particular disadvantages, in terms of opportunities, rights, protection and voice.

Support legal empowerment for indigenous peoples: Although indigenous peoples are disproportionately represented among the poor, their needs and priorities are generally not reflected in efforts to combat poverty. ILO's Indigenous and Tribal Peoples Convention provides guidance and strategies for legal empowerment with respect to labour rights and protection of employment.

Process recommendations

Promote national development frameworks for legal empowerment and decent work: The decent work agenda is best defined at national level through social dialogue. Its aim is to make employment a central goal of economic policies, recognising that progressive improvement in the quality of work, including labour rights and returns to labour, is a main route out of poverty and of informality. Decent Work Country Programmes (DWCPs) are major tools for driving this reform process forward in partnership with relevant national and international institutions.

Mobilise the regional levels to support national reform programmes: Reform strategies addressing employment and labour rights will need to be adapted to regional and local priorities. Regional Development Banks, regional organisations, like the African Union, as well as the UN and its agencies, funds and programmes can be tapped as institutional champions for an integrated reform agenda on legal empowerment for the poor.

Mobilise the principal actors of the global system, particularly the World Bank and the ILO, to work better together for decent work: The World Bank's Poverty Reduction Strategies and ILO's DWCPs are crucial instruments for reform. Legal empowerment through labour rights requires close cooperation between governments, employers and workers, both nationally and locally. Capacity building support from the leading global institutions will strengthen the ability of traditional social partners to reach out to workers in the informal economy. A key to a successful reform process at national level is better policy coherence at global level.

Support voluntary initiatives for legal empowerment through labour rights: The ILO's Fundamental Principles and Rights at Work inspires many

voluntary code-of-conduct initiatives. They are pursuing important strategies for motivating improvements in the performance of multinational corporations, and in encouraging businesses to become more sensitive to ethical consumer reactions. Such initiatives should be strengthened and coherence between them promoted so as to avoid dangers of proliferation. Voluntary initiatives should be seen as stepping stones for legal empowerment, rather than a means to avoid legal obligations.

Mobilise donor countries to promote legal empowerment and decent work: Donor countries have many opportunities to support legal empowerment and the inclusion of a decent work agenda in regional and national strategies.

Promote better understanding of costs and benefits of legal empowerment through decent work: Expected benefits of reform from legal empowerment through decent work require further study, particularly their effects on productivity and prosperity. The costs of policy initiatives to start and sustain reform processes also need to be better understood.

Strengthen the statistical base for legal empowerment: Better national statistics and indicators on size, composition, and contribution of the informal economy would improve visibility and facilitate planning, particularly for formulating policies promoting Legal Empowerment of the Poor.

Recommendations to further develop the Global Social Contract

There is a tripartite consensus from employer, worker and government representatives on the need for a formal and effective legal system which guarantees all citizens and enterprises that contracts are honoured and upheld, the rule of law is respected and property rights are secured.

This is a key condition not only for attracting investment, but also for generating certainty and nurturing trust and fairness in society.¹ The growing recognition of the need for labour rights to catalyse employment creation in the informal economy, while protecting its workers, has led to an emerging global social contract; effectively, it is a broad agenda for reform and for empowerment. Labour rights, business rights, property rights and business rights, taken together, can form the basis of this new social contract.

Five fundamental areas of action could underpin the new social contract: (1) Strengthen identity, voice, representation and dialogue; (2) Strengthen quality of labour regulation and effective enforcement of fundamental principles and rights at work; (3) Support application of a minimum package of labour rights for the informal economy; (4) Strengthen access to opportunities for decent work, education, training and retraining, while combating discrimination to ensure efficient labour markets, and (5) Support inclusive social protection.

We describe the new departure in international development strategies, centred on the Decent Work Agenda, as a *Global Social Contract* and propose that the Commission (or CLEP) further develop the concept by integrating access to justice, property rights, labour rights and business rights into a framework for Legal Empowerment of the Poor. Our proposals are firmly based in the international human rights tradition, which the State, as primary duty bearer, is obliged to protect and promote.

Finally, we reflect on the words that form the concept Global Social Contract. 'Contract' suggests an emphasis on mutual responsibility. The state, for example, has a duty to protect, and citizens have the right to protection. But there are obliga-

tions that follow from this, and employers and employees are also tied by mutual obligations. Similarly, large businesses have a duty not to exploit smaller ones with which they have production or distribution ties. Our inclusion of the word 'global' places a focus on the role and responsibility of the actors at international, regional, national and local levels, while 'social' calls attention to the aim of this initiative, which is to improve the social conditions of people in poor countries. Importantly, we have placed the word 'towards' before 'a global social contract' in the title of our chapter to emphasise development, process and time horizons.

1. Introduction: Purpose of our focus on Labour Rights

The Commission has identified the issue of labour rights as one of four elements of Legal Empowerment of the Poor. Almost half the world's population of 6 billion lives on less than US\$2 a day, while a fifth survives on US\$1 a day or less. For most people mired in poverty, the only asset they own is their own labour. The World Bank estimates that for over 70 percent of the poor, finding work — either wage work or self-employment — is the main pathway out of poverty;² but the stark reality, according to the ILO, is that some 500 million of the working poor are currently unable to achieve this goal.

Informality in the workforce has always been predominant in developing countries — but it is also growing in developed economies. For the poor, informal employment is the predominant form of employment, in which they have no legal identity as entrepreneurs or as workers. Also, the wider policy environment and institutional landscape, including systems of legal and social protection, are biased towards formal incorporated firms and formal organised workers. Often, the poor are shut out of the legally recognised systems that would allow them to benefit from their hard work. They are mostly excluded from the legal mechanisms that protect their assets related to property or labour. They lack access to a fully-functioning justice system that protects their rights regardless of status in life.

The ILO notes that informality is mainly a governance issue;³ it is traced to laws and institutional frameworks that are not responsive to the conditions in which the working poor have always been or are increasingly found. The boundaries of laws and institutional frameworks remain unyielding to the growing number of poor who are found

outside their protective reach. The World Bank has shown that, while informality is strongly correlated with low productivity and a high degree of poverty,⁴ governance and quality of regulation can play an important role in engendering prosperity and protection for the informal workforce.

Our aim is to suggest how to address the vicious circle of informality, lack of legal protection, and poverty. Our point of departure is that poverty is both a market failure and a public policy failure, which the international community has begun to recognise. Within the past 10 years, for example, attempts have been made to obtain global consensus on the Fundamental Principles and Rights of Work, and to gain widespread endorsement of the Decent Work Agenda. Furthermore, there is evidence of growing recognition of the need to extend labour rights to the workforce in the informal economy.

These are strategic priorities and they constitute the three pillars of an emerging global social contract with wide support in the international community, including governments in rich and poor countries, the UN family, international financial institutions, employers, trade unions, and NGOs.

Our recommendations are aimed at taking this agenda forward in a manner coordinated with the other working groups of the Commission on Legal Empowerment that are focused on access to justice, property rights and business rights. We argue that it is important to merge the free market approach with a human rights approach by combining: (a) **promotion of economic growth** to improve productivity and job creation stimulated by competition, specialisation and free trade, and (b) **management of economic growth** to obtain widely-shared prosperity through the advancement of decent work, social dialogue, inclusion, and social protection of all workers.

This chapter contains seven sections. Section 2 defines labour rights, informal economy, empowerment and decent work, while Section 3 explains who we are talking about — the size and composition of the informal workforce and the many segments found therein. Next, Section 4 highlights new initiatives for labour rights in the fight against poverty and describes the international consensus that has developed around this new agenda — Legal Empowerment of the Poor through labour rights. Following this, Section 5 examines the economic rationale for legal empowerment through labour rights, and summarizes the economic debates surrounding labour regulations. In Section 6 we provide recommendations on the principles and practices of reform, as well as case materials on selected country experiences reflecting appropriate responses to the extension of labour rights and standards to all forms of employment or work arrangements. Finally, Section 7 sets out our recommendations on policies and processes needed to carry out the proposed plan of action.

2. Labour Rights, Informal Economy, Empowerment and Decent Work: What do we mean?

In this section we define the key terms and concepts that underpin our discussions; namely, labour rights, informal economy, legal empowerment and decent work.

Labour Rights

The concept of labour rights includes the internationally agreed-upon Fundamental Principles and Rights at Work⁵ as well as rights to social protection and income protection, workplace safety, decent working conditions and the participation through representative organisations in national policy forums. This concept also takes into account and supports commitments and policies for the creation of full, productive and freely chosen employment as well as workforce development. These rights can be expressed through different mechanisms at the international, national and local levels, such as those relating to international labour standards, national labour law, national and local regulations and labour agreements between employers and workers. Socially responsible corporations and other organisations may also express them in a voluntary way.

Informal Economy

The informal economy is defined as comprising *'all economic activities by workers and economic units that are — in law or in practice — not covered or insufficiently covered by formal arrangements'* regulating both enterprise and employment relationships.⁶ Informal employment⁷ consists of two broad categories, the self-employed in informal (small unregistered) enter-

prises and wagedworkers in informal (unprotected) jobs, including disguised wagedworkers. Under this expanded international statistical framework, the specific criteria used for determining what is (or is not) an informal enterprise and what is (or is not) an informal job are set by countries, including: what size of enterprise and what type of registration should be used for determining what is an informal enterprise; and what type of contract or social protection coverage should be used for determining what is an informal job.

Legal Empowerment

Legal empowerment is defined as a process through which people are provided rights in an appropriate legal framework, which they understand, can claim, find useful in improving their income and livelihoods, and which are recognised both formally (legally) and informally (legitimately). Thus, legal empowerment requires that information is available and appropriate institutions are established to ensure that commercial and employment contracts are respected, property titles and businesses are registered, and access to social protection and justice is at hand. By this, people are able to engage public and private sector agents and participate in fully functioning market institutions.

All too often, the poor do not know of, or are not able to understand regulations. Moreover, they do not have contracts, and lack resort to dispute mediation. The absence of information and of appropriate institutions curtails the exercise of choice. Yet, the existence of choice, the exercise of choice, and the achievement of choice in the different domains of a person's life (including work) lie at the heart of legal empowerment.⁸

It is important to emphasise that empowerment is both a process and a goal. It is a process whereby key stakeholders are involved in framing coherent

and sustainable solutions and people are engaged in a continuous effort to find responses to evolving issues. However, it is a goal in that social dialogue and participation is an objective in and of itself — one of the four pillars of decent work as defined below.

According to one definition, empowerment is based on four conditions, namely, access to information, systems of accountability, venues for inclusion/participation and local organisational capacity.⁹

In the domain of *labour rights*, empowerment is secured when the fundamental principles and rights at work are respected. These so-called 'enabling rights' can be considered avenues to empowerment.¹⁰ They constitute the basic right to participation and freedom of choice in the arena of work that everyone should enjoy.

Decent Work

The International Labour Organisation introduced the notion of *decent work* in 1999.¹¹ Its premise: *opportunities for all women and men to work in conditions of freedom, security and dignity*, has become a global goal endorsed by the international community. Decent work rests on four pillars: (a) fundamental principles and rights at work and international labour standards; (b) employment and income opportunities; (c) social protection and social security; and (d) social dialogue and tripartism.

3. Informality and Poverty: Whom are we talking about? What is their identity?

This section presents an overview of the informal economy, including its size and structure as well as the workers in it. The Commission (CLEP) has chosen to focus on the informal economy because of the strong link between informality and poverty. Also, as the World Bank has found in a study of 75 countries, informality is correlated with low productivity and low GDP growth.¹²

According to ILO estimates, there are some 500 million working people living in households that earn less than US\$1 per capita per day. The vast majority of these 'working poor' earn their living in the informal economy. The informal economy is associated not only with low productivity but also low earnings, poor working conditions, high risks, and little (if any) legal or social protections. While there is not a complete overlap between working in the informal economy and being poor, or working in the formal economy and escaping poverty, the link between informality and poverty is quite significant and stark.

What follows is a summary of recent estimates of the size of the informal economy in 25 developing countries¹³ and recent analyses of changes in informal employment over time in 20 of these countries.¹⁴ Official national data were used to estimate informal employment in each of the countries.¹⁵

Size and significance in developing countries

Informal employment, broadly defined, comprises one-half to three-quarters of *non-agricultural* em-

ployment in developing countries: specifically, 47 percent in the Middle East and North Africa; 51 percent in Latin America; 71 percent in Asia, and 72 percent in sub-Saharan Africa. If South Africa is excluded, the share of informal employment in non-agricultural employment rises to 78 percent in sub-Saharan Africa; and if comparable data were available for countries (other than India), in South Asia, the regional average for Asia would likely be much higher.

Some countries include informal employment in *agriculture* in their estimates. This significantly increases the proportion of informal employment: from 83 percent of *non-agricultural* employment to 93 percent of *total* employment in India; from 55 to 62 percent in Mexico, and from 28 to 34 percent in South Africa.¹⁶

The two main segments of informal employment, classified by employment status, are the **self-employed** and the **wageworkers**. The **self-employed** include *employers*, or owner-operators of informal enterprises who hire others; *own-account workers*, or owner-operators in single-person units or family businesses/farms who do not hire others, and *unpaid contributing family workers*, who are family workers in family businesses or farms without pay.

The **wageworker** segment consists largely of *informal employees* — those who are unprotected in their work with a known employer that could be an informal or formal enterprise, a contracting agency, or a household; *casual wage worker*, or those wage workers with no fixed employer who sell their labour on a daily or seasonal basis, and *industrial outworkers*, who are sub-contracted to produce for a piece-rate from their homes or small workshops.

Composition of the Informal Economy

In all developing regions, self-employment comprises a greater share of informal employment (outside of agriculture) than wage employment: specifically, self-employment represents 70 percent of informal employment in sub-Saharan Africa, 62 percent in North Africa, 60 percent in Latin America, and 59 percent in Asia. In China, it is estimated that between 1990 and 2004, urban informal employment increased by 125.55 million people, which was 133 percent of all increased employment.¹⁷ Excluding South Africa, where black-owned businesses were prohibited during the apartheid era and have only recently begun to be recognised and reported, the share of self-employment in informal employment increased to 81 percent in sub-Saharan Africa.

Self-employment represents nearly one-third of *total* non-agricultural employment worldwide. It is less important in developed countries (12 percent of total non-agricultural employment) than in developing countries where it comprises as much as 53 percent of non-agricultural employment in sub-Saharan Africa, 44 percent in Latin America, 32 percent in Asia, and 31 percent in North Africa.

Informal wage employment, including disguised wage employment, is also significant in the developing world: comprising 30 to 40 percent of informal employment (outside of agriculture).¹⁸

Home-based workers and street vendors are two of the largest sub-groups of the informal workforce: with home-based workers being the more numerous but street vendors the more visible of the two. Together they represent 10-25 percent of the non-agricultural workforce in developing countries and over five percent of the total workforce in developed countries.

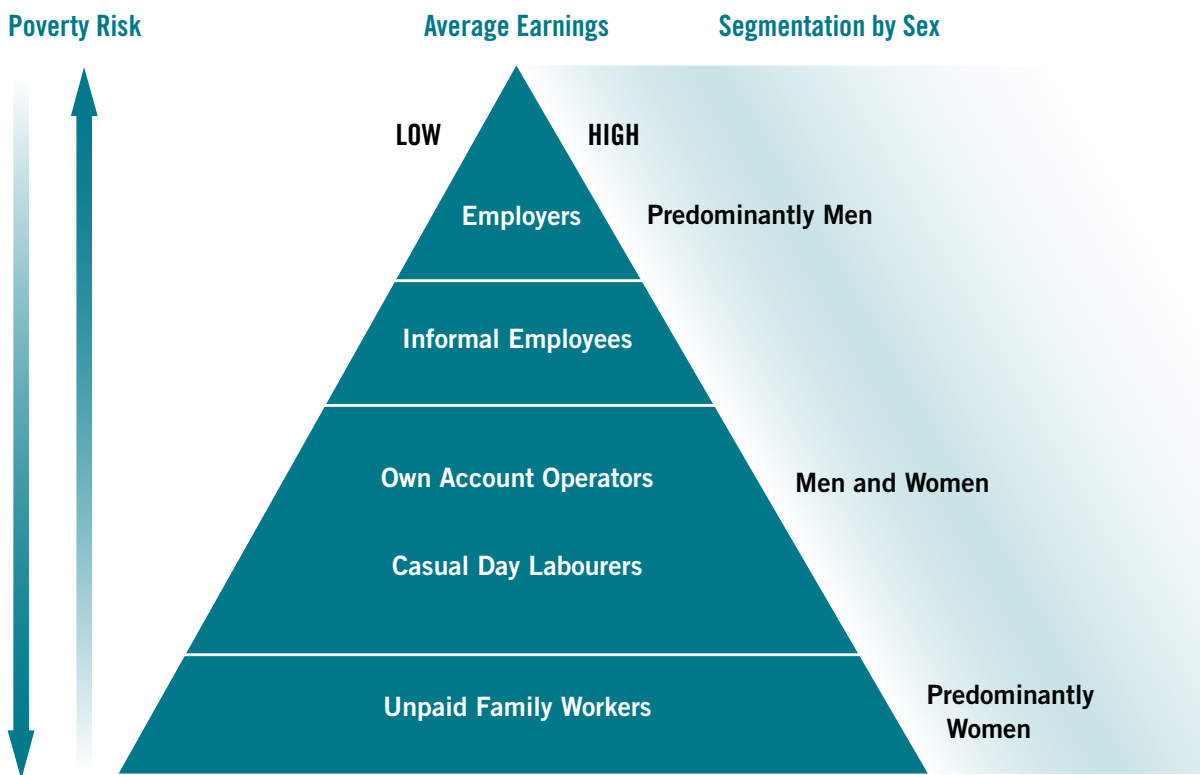
Segmentation in the Informal Labour Market¹⁹

Available evidence suggests that there is marked segmentation within informal labour markets in terms of average earnings across the different employment statuses. Specifically, informal employers have the highest earnings on average; followed by their employees and informal employees of formal firms; then own account operators followed by casual wage workers, and industrial outworkers: see Figure 1. An inverse hierarchy is observed for the risk of being from a poor household: employers are least likely to be from poor households and, especially if they are the primary breadwinners, industrial outworkers are the most likely to be from poor households.

In Tunisia, for example, informal employers earn four times the minimum wage and over two times (2.2) the formal wage. Their employees earn roughly the minimum wage, while industrial outworkers — mostly women home-workers — earn less than one-third (30 percent) of the minimum wage. In Columbia and India, informal employers earn four-to-five times the minimum wage, while own account operators earn only one-and-a-half times the minimum wage.²⁰

Research findings suggest that it is difficult to move up these segments due to structural barriers (state, market, and social) and/or cumulative disadvantages. Many workers, especially women, remain trapped in the lower-earning and more risky segments.

Figure 1 Segmentation of the Informal Economy: By Sex, Average Earnings and Poverty Risk



Note: The informal economy may also be segmented by race, ethnicity, caste or religion.
 Source: Chen et al 2004, 2005.

Box 1 Different Categories of Informal Workers and Corresponding Challenges

Categories of Workers	Conceptual/Practical Challenges
Employees of informal enterprises	Ability of employers to comply Cost of compliance Zero-cost of non-compliance
Casual day labourers	Episodic/seasonal work No fixed employer
Homeworkers or Home-based producers	Ambiguous employment status: neither dependent nor independent Ambiguous relationship with contractor: commercial vs. employment Uncertainty as to who is principally responsible: contractor or lead firm?
Domestic workers	Household as employer Multiple employers
Contract labour for formal firms	Uncertainty re who is principally responsible: contractor or formal firm?
Migrant labourers	Intersection of immigration status/regime and labour status/ regime

Source: Martha Chen, 'Labour standards and informal workers: The nature of the challenge.' Paper prepared for the Commission on Legal Empowerment of the Poor, November 2006.

Another type of segmentation is based on differences between women and men within the informal economy reflecting gender norms which influence both the supply of and the demand for labour. As a general rule in developing countries, men tend to be over-represented in the top segments of the informal economy; women tend to be over-represented in the bottom segment.

More specifically, relatively high shares of informal employers are men and relatively high shares of industrial outworkers are women. In India, for example, 6 percent of informal employers, 19 percent of own account operators, 16 percent of informal wage workers, and 59 percent of indus-

trial outworkers are women.²¹ These stylised facts are depicted graphically in Figure 1.

A legal empowerment agenda for workers in the informal economy must take into account the different categories of informal workers and the specific realities of their work arrangements. In Box 1, below, there are illustrations of the conceptual and practical challenges in considering labour rights and protections for the different categories of informal workers. A proper understanding of the nuances and challenges should lead not only to appropriate legal responses but also to a wider set of policy tools and institutional strategies.²²

Informalisation of Labour Markets

There is a widespread assumption that the informal economy is counter-cyclical: that is, it expands during economic down turns and contracts during periods of economic growth. To be sure, empirical evidence from a set of developed and developing countries indicates that the level of informal employment, taking self-employment as a proxy indicator, decreases when GDP per capita goes up and vice versa.²³ However, as shown above, the informal economy is made up of both self-employed and wage workers, thereby demonstrating limitations to the use of self-employment alone as a proxy indicator. Furthermore, the co-relationship between informal employment and growth is not straightforward. Recent analyses of data over time from different developing countries suggest a more complex and dynamic relationship between informality and economic growth. While economic downturns are almost invariably associated with an expansion of employment in the informal economy (due to the growth in survival activities), steady rates of economic growth may be accompanied, *not* by a reduction, but actually an expansion of employment in the informal economy. This is because during economic upswings, certain forms of informal employment may expand, such as the more entrepreneurial small firms as well as sub-contracted and outsourced activities linked to the global production system.²⁴ This may well demonstrate that increasingly the formal economy is entering into a symbiotic relationship with the informal, where the former makes use of the latter to improve profits and growth strategies, perhaps even to avoid respecting labour standards and regulations. In these countries, it was only after a sustained period of higher levels of growth that aggregate informalisation declined.²⁵ This important finding is further elaborated in Box 2.

Box 2 Relationship between informality and growth: Cross-country evidence

Consider the findings from 20 countries in Asia, Africa, and Latin America at two points in time — generally in the 1980s and the 1990s. For each of the countries, the rate of change in informalisation is compared to the average per capita GDP growth (Heintz and Pollin 2003). Most of the countries (14 out of 20) experienced growth in informalisation, while four experienced a decline and two experienced little, if any, change. What is interesting to note is that informalisation increased in three countries with respectable per capita growth rates (>2 percent) and declined in two countries with poor per capita growth rates (<1percent).

Based on these patterns, the authors stated that, contrary to common assumptions that informal employment results from underdevelopment and poor economic performance:

- ‘Informal employment has been increasing faster than formal employment, even in countries with strong rates of growth.’
- ‘Higher rates of growth are generally associated with smaller increases in the rate of informalisation.’
- ‘At very high levels of growth, informalisation may decline.’ (Heintz, 2006.)

This pattern could be explained by the fact that high levels of growth driven by export production may increase certain types of informal employment: notably, industrial outwork for global supply chains (as in Tunisia during the 1990s). Sub-contracted work linked to the global production system — expands during periods of economic growth, especially when growth is driven by trade and financial liberalisation. 2007

In North American, European Union, and other OECD countries, available evidence suggests that non-standard employment is on the rise. The term ‘non-standard work’ as commonly used, includes: a) jobs entailing an employment arrangement that diverges from regular, year-round, full-time employment with a single employer but without security; and b) self-employment, with or without employees. (Carré and Herranz 2002.) The common categories of non-standard wage work are temporary, fixed-term and part-time. Increasingly, inter-firm sub-contracted work in the service sector (for example, janitorial services and home care) and the manufacturing sector (garment making, electronic assembly) is also included.

What follows is a brief summary of trends in three categories of non-standard work — part-time work, temporary work, and self-employment — in Europe, including differences by sex. (Carré and Herranz 2002, Carré 2006.)

Part-Time Work: Since the early 1970s, there has been a marked growth in the proportion of part-time workers in total employment. By 1998, part-time workers accounted for 16 percent of total employment in EU countries and 14 percent of total employment in OECD countries.

Temporary Employment: For the EU as a whole, and in a majority of EU nations, the share of workers in temporary employment, including both direct hire and agency hire, increased from the mid-1980s to the late 1990s. By 1998, temporary employment accounted for around 10 percent of total employment in EU countries.

Self-Employment: Self-employment, including both employers and own account workers, has increased in many OECD countries over the past 25 years.²⁶ Indeed, outside of agriculture, self-employment has grown at a faster rate than total em-

ployment in 14 (out of 24) OECD countries where data were available. Also, as self-employment has been growing, so has the share of own account self-employment within total self-employment. As a result, in OECD countries today, more self-employed persons are own account workers, rather than employers.

In addition to these common forms of non-standard work in OECD countries, there are other forms of non-standard work — notably, casual day labour, industrial outwork, and other forms of sub-contracted work — for which data are not so readily available.

In sum, the purely counter-cyclical model of informality does not hold. At least in the short term, countries demonstrate significant variation in their patterns of informalisation even under conditions of steady economic growth. Also, different segments of the informal economy demonstrate substantial variation in their cyclical patterns. Certain segments of the informal economy expand during downturns in the economy: particularly survival activities and sub-contracted activities for firms trying to cope with the downturn. Certain other segments of the informal economy expand during upturns in the economy: notably, dynamic independent enterprises and sub-contracted activities linked to global value chains.

Gendered patterns

Informalisation of Labour Markets by Sex

The last two decades have seen a marked increase in women’s labour force participation: most significantly in the Americas and Western Europe and more modestly in Sub-Saharan Africa, Southeast Asia, and East Asia.²⁷ Only in two regions — Eastern Europe and South Asia — has the women’s labour force participation rate actually fallen. The marked increase in women’s labour force partici-

pation worldwide has given rise to the notion of the 'feminisation of the labour force'. But this notion has been defined and used in two distinct ways. First, to refer to the situation in which the ratio of women's labour force participation rate to men's labour force participation rate increases over time. Second, to refer to a situation in which the structure of the labour force itself is 'feminised': that is, when jobs take on features associated with women's work such as low pay, drudgery, uncertainty, and precariousness.²⁸

Whether or not there is a causal link between the increase in women's labour force participation and the growing precariousness or informality of work is not clear — and has been hotly debated. The pervasive segmentation of labour markets by gender, which we discussed above, suggests that women's labour did not simply substitute for men's labour. Rather, that there has been some parallel process at work creating low-paid and poor quality informal employment opportunities for (primarily) women.²⁹

Estimates of changes over time in the degree of informalisation within the female and male labour force are not available. However, we have seen above that growth in certain forms of informal employment — notably, sub-contracted work linked to the global production system — expands during periods of economic growth, especially when growth is driven by trade and financial liberalisation. What is important to note here is that women workers tend to be overrepresented in global production systems, at least in the early stages of trade liberalisation when a premium is placed on export-oriented light manufacturing and low-skilled (and low-paid) workers.³⁰

Informal Employment in Developing Countries

Informal employment is generally a larger source of employment for women than for men in the

developing world. Other than in the Middle East and North Africa, where 42 percent of women workers (and 48 percent of male workers) are in informal employment, 60 percent or more of women non-agricultural workers in the developing world are informally employed. Among non-agricultural workers, in sub-Saharan Africa, 84 percent of women workers are informally employed compared to 63 percent of male workers; in Latin America, 58 percent of women workers compared to 48 percent of men; and in Asia, 73 percent of women workers compared to 70 percent of male workers.

Non-Standard Employment in Developed Countries

In virtually all EU and OECD countries, the incidence of part-time work is much higher among women than men: in some countries it is twice as high. By 1998, women represented 82 percent of all part-time workers in EU countries. Further, rates of part-time work are high for women, but not men, in their prime working years.

Temporary employment, like part-time work, is primarily a female phenomenon, although there is wide variation among EU countries. In all countries except Austria, the incidence of temporary employment among females is higher than among all workers. And, like part-time work, temporary employment is concentrated in the service-producing industries. Interestingly, women account for the majority of agency temps in countries where such employment concentrates in services, while men account for the majority of agency temps in countries where such employment concentrates in manufacturing and construction. Effectively, 'the gender composition of employment mirrors that of the sectors in which temporary agency assignments take place.'³¹

In 1997, women comprised one in three of

self-employed persons in OECD countries and their proportion is growing. For EU countries as a whole, the incidence of own-account work is greater for men (11 percent) than for women (7 percent). But, in some countries, a higher proportion of women than men are own-account workers. Age is a factor in own-account work: those aged 45 and above are more likely than younger persons to be working on their own account.³²

Indigenous and Tribal Peoples

Finally, one specific group in society that has often suffered from abject poverty and profound discrimination consists of indigenous and tribal peoples. It is estimated that there are 350 million indigenous and tribal peoples (ITPs) representing 5000 ethnic groups. While they represent five percent of the world's population, they account for 15 percent of the world's poor. Poverty, inequality, and various types of injustices have plagued ethnic societies around the world.³³

The ILO has defined indigenous and tribal peoples as those who have (a) traditional lifestyles,

(b) culture, economic conditions and way of life that is different from the other segments of the national population (e.g., in their ways of making a living, language and customs), and (c) their own social organisation and traditional customs and laws. Indigenous peoples are, furthermore, distinguished from tribal peoples by the fact that they live in historical continuity in a certain area, or before others occupied or came to their area.³⁴

The definition of 'indigenous' as provided by the United Nations shares features with that provided by ILO: it highlights the 'historical continuity of these peoples with pre-colonial societies; their strong attachment to their traditional territories; their distinct social, economic and political institutions as well as distinct languages and beliefs; their non-dominant position in national societies and their wish to identify themselves as different from the rest of society.'³⁵

At the root of the poverty and social exclusion facing ITPs everywhere is discrimination. Whether implicitly or explicitly, ITPs have faced discrimination aimed at wiping out their cultural identity

Box 3 ILO's Convention on Indigenous and Tribal Peoples 1989 (No. 169)

ILO adopted the Indigenous and Tribal Peoples Convention (No. 169) to include the fundamental concept that the ways of life of indigenous and tribal peoples should and will survive. It also stressed that these peoples and their traditional organisations must be closely involved in the planning, design and implementation of development policies that affect them. It sets the minimum international standards while opening the ground for higher standards in countries that can go further. Convention No. 169 adopts a general attitude of respect for the cultures and ways of life of indigenous and tribal peoples, placing emphasis on their right to a continued existence and to development according to their own priorities.

It is a comprehensive instrument covering a range of issues pertaining to indigenous and tribal peoples, including land rights, recruitment and conditions of employment, access to natural resources, social security and health, education and means of communication, vocational training, conditions of employment and cooperation and contacts across borders. Protection is still the main objective but it is based on respect for indigenous and tribal people's cultures, their distinct ways of life and their traditions and customs. It is also based on the belief that indigenous and tribal peoples have the right to continue to exist with their own identities and the right to determine their own way and pace of development.

through a variety of legal instruments and policies. They have ranged from outright exclusion to inclusion at very inferior conditions.

The typical outcomes involved are dispossession of their traditional lands, relocation without compensation and basic support services; under-investment in education and health; ill-adapted educational systems and materials — all of which translate, among others, into disadvantageous status in labour markets. ITPs expelled from their ancestral domains become seasonal, migrant, bonded or home-based labourers; they are exposed to various forms of exploitation. Discrimination in wage is common practice and there is high incidence of forced labour. Unemployment, especially youth unemployment, is higher among ITPs compared to the national average.³⁶

The challenge lies in how to improve living and working conditions among ITPs so that they can continue to exist as distinct peoples, if they wish to do so. Specific efforts for legal empowerment of indigenous people have to be made. The ILO's Indigenous and Tribal Peoples Convention (see Box 3) provides guidance and strategies for legal empowerment with respect not only to labour rights and protection of employment, but also to land and property rights.

Special efforts for their legal empowerment are demonstrated in an 'ethnic audit' of 14 Poverty Reduction Strategy Papers (PRSPs) as well as case studies of country processes in Bolivia, Cambodia, Cameroon, Guatemala and Nepal. The research clearly showed that while indigenous peoples are disproportionately represented among the poor, their needs and priorities are generally not reflected in the strategies employed to combat poverty.

Legal empowerment of indigenous and tribal peoples must address the structural causes of

their disenfranchisement and social exclusion through:

- Legal frameworks that recognise individual and group rights.
- Institutions and policies that respect and accommodate cultural diversity.
- Organisation and mobilisation of indigenous people for participation and political change.³⁷

Conclusions

The vast majority of the working poor earn their living in the informal economy where average earnings are low, productivity is poor, working conditions are hazardous, and risks are high. Any attempt to formulate policies and approaches for the informal economy must understand its characteristics, including the deep segmentation found in it. This section provided a global picture of the informal economy, highlighting its size, segmentation, and the vulnerabilities of its particular segments. Women dominate the most-disadvantaged categories of informal work,³⁸ notably industrial outwork and home-based production. It is also in the informal economy that child labour and bonded labour are most prevalent and most difficult to address. Indigenous and tribal peoples are marginalized largely due to discrimination. Their cultural identity is suppressed and they are excluded from social services that should prepare them for the labour market; furthermore, when at work, they face many forms of discrimination.

Despite early predictions of its eventual demise, the informal economy has not only grown worldwide but also emerged in new guises and unexpected places. Though understood to be counter-cyclical, different segments of the informal economy are seen to have different cyclical patterns leading to different patterns of informalisation across countries. In virtually

all cases, the informal economy expands during economic slumps or downturns, as expected. In some cases, the informal economy expands during periods of economic growth. Economic growth has been accompanied by an increase in the more dynamic micro-enterprise activities and subcontracted work for larger supply chains especially those linked to the global economy. Thus, the growing significance of the informal economy — and its apparent endurance as a feature of the labour market — leads us to examine how labour rights can be applicable to the workers found in it and what role legal empowerment of the informal workforce can play in breaking the vicious cycle of low productivity and poverty.

4. Poverty and Labour Rights: a new departure

Poverty: A market failure and a public policy failure

There is a broad consensus around the notion that labour is not a commodity³⁹ and, therefore, that labour markets are different from other markets. The labour market has a double function: it is a mechanism for both the creation of new resources and for the distribution of income and prosperity. While enterprises should be subject to competition, which means that some will succeed and grow while others will disappear, people or workers have to be treated in a completely different way. Public policies for workers and their families have to be focused on inclusion, on new opportunities for decent work and on shared prosperity (See Box 4 for an elaboration of the social case for labour regulation).

In addition to their intrinsic value for the working poor, labour rights standards are *fundamental* to upholding the human rights obligations of states and other 'organs of society' as set out in the Universal Declaration of Human Rights and many other international covenants, conventions, and treaties, as well as set out in national legislation around the globe. From the perspective of this Commission, labour rights and regulations are also *fundamental* to achieving legal employment of the poor.

Labour rights and labour standards have been an issue for international promotion and regulation for almost a hundred years. All countries, including the poorest countries, in principle provide their workforce with labour rights. Labour laws and labour protection models are traditionally designed with the presumption of a formal employer-employee relationship. This relation-

Box 4 Social case for labour regulation

The social case for labour market regulations emanates, first and foremost, from the principle that labour is not a commodity. The distinction lies in the human aspect of labour. As such, its behaviour is affected by the work environment and by the incentives that are given. While machines operate according to technical specifications, labour has to be motivated based on what they care about. They are contracted to perform a certain job and are paid when they complete the job. The completion of the contract is not as straightforward as it would be for non-human means of production as this requires a complex range of information on both sides and incentives to ensure compliance.⁴²

ship has been the cornerstone around which labour law, collective bargaining agreements and social security systems are framed. Whatever its precise definition in different national contexts, the employment relationship 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 labour or services under certain conditions in return for remuneration.’⁴⁰

Despite the long-standing and wide-spread commitment to labour rights, a large majority of workers are excluded from labour rights and social protection. Thus, informality and poverty is not only a market failure, it is also a failure of public policies. Several factors, in the form of historic traditions, structural failures and conflicting political interests, help explain the persistence and growth of informality.

- One explanation is the history of labour law and regulation. Labour rights were historically designed with the presumption of a formal

employment relationship thus excluding those without a formal employment relationship.

- Another explanation is a lack of confidence in laws and law enforcement. Some political regimes have further undermined public confidence due to poor governance, causing many enterprises to operate in the informal economy.
- A third explanation is a lack of public policy attention. Governments, employers, and workers — the three social partners in the ILO standard-setting systems — have focused on the formal economy and the formal organised labour force. The informal sector and informal employment have been studied and discussed since the 1970s. A first discussion of the informal sector took place at the International Labour Conference in 1991 and subsequently the International Labour Conference reached policy conclusions regarding informal employment in 2002.⁴¹
- Another factor is weak and poorly-designed enforcement mechanisms. Countries that have improved the design and reach of their enforcement mechanisms to match the circumstances of workers and units in the informal economy have been able to reduce informality.

The relationship between informal employment and poverty had not, until recently, received the attention they deserve, much less reached the top of the development policy agenda. The interest to bring about reform is quite new and the reform strategies, discussed by the ILO, World Bank, the international trade union movement and others, and the efforts to develop feasible solutions by countries with large informal economies, are still in their early stages of development.

A New Departure: Fundamental Principles and Rights at Work, the Decent Work Agenda, and Legal Empowerment of the Working Poor

The recognition that productive employment and decent work are key pathways to poverty reduction, and that informality represents both a market failure and a public policy failure, have led to a reassessment of development strategies of the 20th century, including the ILO labour standard strategy. Over the past decade, tripartite discussions on key related themes at the annual international labour conferences have contributed to this review process, as have the activism, scholarship, and policy analysis of other stakeholders. What has emerged from this rethinking is an international consensus around an agenda of fundamental principles and rights at work, also known as core labour standards, decent work and legal empowerment of the working poor in the informal economy.

The First Step: Fundamental Principles and Rights at Work: A first step in the development of new international strategies to fight poverty and social injustice through labour rights was the establishment by the International Labour Conference in 1998 of a set of fundamental principles and rights at work; they include:

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

Endorsed by the international community, these core labour standards constitute a ‘minimum floor’, necessary both for the respect of fundamental human rights and for the effective func-

tioning of labour markets. They are applicable to all workers and economic units.

The Second Step: The Decent Work Agenda: A second step in the rethinking of traditional approaches was the introduction at the International Labour Conference in 1999 of the Decent Work Agenda. Decent work is central to efforts to fight poverty. It is captured in four strategic objectives: fundamental principles and rights at work and international labour standards; employment and income opportunities; social protection and social security; and social dialogue and tripartism. These objectives hold for all workers, women and men, in both formal and informal economies; engaged in wage employment or working on their own account; and working on the streets or in fields, factories, small workshops, or offices; in their homes or in their neighbourhoods.

Legal empowerment through labour rights is not only a means for preventing a race to the bottom. Such legal empowerment can also be designed to create confidence, to facilitate change and to maintain cohesion, as shown by many of the more prosperous countries. Labour standards, collective agreements and social protection in these countries contribute to defining minimum levels of income and productivity. In other words, effective application of labour standards can contribute to giving a positive incentive for enterprises in the informal economy to increase their productivity and incomes and to formal firms to extend labour rights to all of their workers: both core and peripheral, both direct and contracted hires, up and down their supply chains.

Labour standards are not only about the protection of worker rights. They also include promotional measures, such as access to skills upgrading, life long learning and productive employment.

Box 5 ILO Conventions and Recommendations Pertinent to the Informal Economy

Human capabilities and empowerment	Labour market policy frameworks for better governance	Protection of people
<p>Core labour standards</p> <ul style="list-style-type: none"> • Freedom of association and collective bargaining (C87 and 98) • Equality (C 100 and 111) • Forced Labour (C 29 and 105) • Child Labour (C 138 and 182) <p>(The Indigenous and Tribal Peoples Convention, C 169, must also be mentioned, in view of its provisions on educational measures to eliminate prejudices and to combat discrimination and full realisation of their rights.)</p>	<p>Employment policy</p> <ul style="list-style-type: none"> • Employment Policy (C 122 and R169) • Job Creation in SMEs (C 189) • Human Resource Development (C 142 and R 195) <p>Institutions of governance</p> <ul style="list-style-type: none"> • LabourAdministration Convention (C 150) • Protection of Wages (C 95 and R 85) • Right to Organise and Collective Bargaining (C 98 and 154) • Consultation (Industrial, National, and Tripartite (C 113 and 114) 	<p>Social security instruments</p> <ul style="list-style-type: none"> • Social Security (Minimum Standards) (C 102) • Indigenous and Tribal Peoples Convention (C 169) • Maternity Protection (C 183) <p>Safety and health instruments</p> <ul style="list-style-type: none"> • Occupational Safety and Health (C 155 and R 164) • Guarding of Machinery (C 119) and Working Environment (Air, Pollution, Noise and Vibration; C 148) • Safety and Health in Agriculture (C 184) • Rural Workers' Organisation (C 141) • Various safety and health conventions in specific sectors such as mining, construction, work involving asbestos and benzene.

Source: Anne Trebilcock 2004.

The Third Step: Empower People in the Informal Economy: This step was taken in 2002 when the International Labour Conference discussed and adopted a resolution on Decent Work and the Informal Economy, representing a new departure in addressing the topic. The new conceptual framework depicts a continuum of production and employment relations. It does away with the idea that there are distinct formal and informal 'sectors' without direct links and instead stresses that there are 'linkages, grey areas and interdependencies between formal and informal activities.' The framework views formal and informal enterprises and workers as co-existing along a

continuum, with decent work deficits most serious at the bottom, unprotected, unregulated, survivalist end, but also existing in some formal jobs as well, and with increasingly decent conditions moving up towards the formal protected end. By highlighting the dynamic linkages between formal and informal activities, the policy issue can more realistically be framed: the issue is not whether informal workers or informal units have direct ties with the informal economy but whether those ties are benign, exploitative or mutually beneficial. The policy concern must enhance the positive linkages and ensure that there is decent work all along the continuum.⁴³

The conclusions stressed the need to ‘eliminate the negative aspects of informality while at the same time ensuring that opportunities for livelihood and entrepreneurship are not destroyed, and promoting the protection and incorporation of workers and economic units in the informal economy into the mainstream economy.’ With a special focus on countries struggling with abject poverty and with a rapidly growing labour force, the ILO resolution urged that measures taken ‘should not restrict opportunities for those who have no other means of livelihood. However, it should not be a job at any price or under any circumstances.’ A clear challenge for follow-up is to demonstrate how job quantity and quality can go together and how respect for basic labour rights might promote productivity growth. A related challenge is to ensure that activities targeting the informal economy do not lead to the growth of poor quality employment, but rather to the upgrading of working conditions. The conclusions also call for an upward transition, not a downward pull along the continuum of decent work.

Beyond the four core labour standards there is a range of standards, including minimum wages, occupational safety and health, working hours, and maternity protection, which directly impact working conditions. These are determined nationally and their application varies with the level of development of the country and its capacity to enforce these standards.⁴⁴ One convention of direct relevance to the informal economy is the ILO Home Work Convention, adopted in 1996, which works to extend legal empowerment to home workers (industrial outworkers who work from their homes), who are predominantly women.

Compliance with these standards can be viewed as progressive, where different segments of the labour market experience different degrees of protection. In reality, ‘the formal shades into the

informal’ and people move between work opportunities with different degrees of protection.⁴⁵ The goal is to progressively achieve compliance with a broader range of standards throughout the whole economy, leading to gradual formalisation of the informal economy.

It is instructive to highlight provisions in ILO Conventions and Recommendations that may be applicable to the informal economy. These international labour standards provide guidance to national economic and social policies, including how such policies can be applied to decent work and the informal economy. These Conventions and Recommendations may be understood under the following broad objectives: (a) human capabilities and empowerment, which relate to the core labour standards, (b) labour market policy frameworks for better governance, and (c) protection of people.⁴⁶ These standards form the backbone of ILO’s Decent Work agenda, and cover not only the formal sector but also, most importantly, the informal economy. For it is in the informal economy where decent work deficits are found to be most challenging and disturbing.

Towards a Global Social Contract

As noted above, the international community has endorsed three outcomes of the ILO’s international labour conferences over the past decade, which, taken together, provide a strategic framework for advancing the realisation of labour rights, reducing poverty, and expanding equity worldwide. The 1998 Declaration of Fundamental Principles and Rights at Work, the 1999 Decent Work Agenda, and the 2002 Resolution on the Informal Economy have made significant contributions to what is now a widely-shared commitment to universally ensure a minimum floor of fundamental labour rights; they have also recognised that the final objective should be the

provision of full, productive, freely-chosen and protected employment in a democratic context of freedom of voice, organisation and social dialogue. Furthermore, the extension of this commitment to include the informal workforce provides a comprehensive framework for inclusion of those among the poorer segments of the population who are employed but register significant deficits in regard to decent work.

The 2005 World Summit of Heads of States strongly supported the goal of fair globalization and ‘resolved to make the goals of full and productive employment and decent work for all, including for women and young people, a central objective of our relevant national and international policies as well as our national development strategies, including poverty reduction strategies, as part of our efforts to achieve the Millennium Development Goals.’⁴⁷ This was followed by the UN Economic and Social Council (ECOSOC) 2006 Ministerial Declaration, which emphasised full and productive employment and decent work for all as an end in itself and as a means to achieve the Millennium Development Goals (MDGs), including poverty eradication. On this occasion, the multilateral system⁴⁸ was enjoined to mainstream the goals of full and productive employment and decent work in all their policies, programmes and activities.⁴⁹

The Decent Work agenda has therefore been accepted as a global goal and is no longer an ILO agenda alone. Decent work has been declared as a goal not only for the formal wage sector, but also for the informal economy. A decade-long process of rethinking international labour standards has now led to an emerging global social contract, a broad agenda for reform and for empowerment.

The Working Group on Labour Rights, in prepar-

ing this chapter, saw an opportunity to move one step further and provide additional elements to this emerging global social contract. We suggest advancing simultaneously on labour rights, job creation and social protection, focusing particularly on the working poor in the informal economy.

Labour rights for informal workers: what is an achievable minimum floor?

All workers in the informal economy should be covered at least by a ‘minimum floor’ as contained in the 1998 Declaration of Principles and Rights at Work. This Declaration established the application of core human rights to the arena of labour or work; included in its provisions are calls for no use of forced or child labour, no discrimination, and the freedom of voice, organisation and bargaining. The Declaration also constitutes the foundations for implementing other labour rights and providing enabling conditions to exercise them and, thus, achieving the objective of providing employment opportunities while ensuring protection.⁵⁰ This minimum floor could include three additional labour standards for determinants of working conditions: hours of work, diseases and accidents at work, and minimum wage.⁵¹

What we are proposing here — an enlarged minimum floor — has already gained international acceptance, notably during the last generation of free trade agreements of the United States and countries of Asia and Latin America. The adoption of such a minimum floor would ensure the rights to rest, to health coverage of work-related risks, and to fair remuneration — all according to standards established by national legislation. Enforcement of such rights and provisions should be required for all workers in the informal economy, independently of the size or form of the economic unit in which they work. This would justify rein-

forcement and, eventually, a redesign of labour inspection institutions.

For informal workers outside formal enterprises, full compliance of labour rights as established by national legislation needs to be enforced. This should go beyond the minimum floor, requiring eventually reforms to the labour legislation for the facilitation of compliance. Advances in this direction would lead to full achievement of the Decent Work objectives.

Unfortunately, not all employment relationships are explicit, where rights and obligations can be clearly identified. Many workers are employed under diffuse employment relations where the relation is hidden or where there are problems in the application or interpretation of the law. There is need for additional policies to determine if an employment relation exists and to clarify the responsibilities for compliance among those enterprises involving multi-parties.⁵² The latter kinds of arrangements are continuing to expand and are serving to decentralise the labour system in efforts, apparently, to reduce labour costs. In the process, however, they are often bypassing labour regulations and collective bargaining agreements and eroding the power of unions.

Interpretation of existing laws as well as new legislation will be needed to regulate these disguised employment arrangements, and to determine whether an employment relationship exists and who is primarily responsible for obligations to workers. This essential first step in moving towards compliance should be followed by appropriately adapting labour laws and the labour inspection system.⁵³

The situation of workers in informal enterprises poses additional challenges, since the capacity of many informal enterprises to absorb the cost of compliance is restricted by low productivity and

income.⁵⁴ As employment opportunities could be destroyed in such cases, a strategy is needed for increasing compliance and promoting progressive enforcement without legally adopting a dual system. An expanded minimum floor should, however, be enforced even in these enterprises, since cost concern cannot be accepted as an argument for non-compliance given the nature of the rights involved and the fact that compliance does not necessarily involve significant costs.

Most standards require abstinence from discriminatory or unlawful behaviour rather than financial expenditure. A strategy could, however, recognise constraints where they exist in addition to the obligation to comply with a minimum floor; basically, it should commit to gradual convergence to full compliance and to verification of progress towards this goal. This also requires adapting the labour inspection procedures and practices to move from sanctions to training in the early stages and to progressive compliance, as recommended by the ILO in a recent paper.⁵⁵

A broad category that deserves special treatment is that of home work (production or service work in a worker's home) and domestic work (house cleaning, cooking for others). Included in this category are significant numbers of workers. Work might involve producing for intermediaries in subcontracting arrangements as well as selling or producing directly for employers. There is also a concentration of women and use of family work that may involve children in these activities. National labour laws do not usually cover domestic workers; they have no rights and little capacity to organise. Most are poor and experience significant deficits of decent work. Employment relations, where they exist, justify the application of rules covering other workers in the informal economy. The convention (177) and a recommendation (184) adopted by the International

Labour Conference in 1996, in recognition and support of home workers, calls for their equal treatment with other workers: in particular, it calls for freedom of association in organisations of their own choosing and protection against discrimination, minimum age for work, remuneration and protection in safety and health at work, social security and maternity. This minimum floor for home workers, mandated in the 1996 Convention and Recommendation, coincides with what is proposed above for all workers of the informal economy, with the addition of social protection and maternity.

Business and labour rights at work

There are, in addition, a proportion of independent home workers that perform a double role of entrepreneur and worker and involve other family members in the production process. Independent workers are also found beyond those who work at home and constitute around half of employment in the informal economy. Their identity is unclear, since they are both employers and workers, and their ways of organising should be open to their preferences. Their voice and their claims are usually directed against local governments and their behaviour in a highly competitive environment is to operate in isolation to other producers or workers in similar situations. In spite of these characteristics, the minimum floor is relevant and could enable these independents to organise, empowering them to exercise both their labour and business rights. On the latter, improvements in the regulatory environment and in processing will result in increasing the opportunities to develop businesses and in diminishing the barriers to grow. This should result in higher productivity and incomes.

The International Labour Conference, in its 2007 discussion on Sustainable Enterprises,⁵⁶ argues

that ‘emphasis needs to be placed on the transition of informal economy operators to the formal economy and ensuring that laws and regulations cover all enterprises and workers.’ The ILO Resolution on the Promotion of Sustainable Enterprises, endorsed by employer, worker and government representatives, argues that ‘poorly designed and unnecessary bureaucratic burdens on businesses limit enterprise start-ups and the ongoing operations of existing companies, and lead to informality, corruption and efficiency costs.’ Well-designed transparent, accountable and well-communicated regulations, including those that uphold labour and environmental standards, are good for markets and society. They facilitate formalisation and boost systemic competitiveness. Regulatory reform and the removal of business contracts should not undermine such standards.

Social protection for informal workers

The extension of social protection — health and pensions, as well as maternity — to informal workers requires a strategy that considers different options, from expanding coverage of existing systems to the development of new mechanisms by the excluded, through pooling, of resources or insurances. Alternatives should be considered, while examples of different schemes for the provision of protection need to be evaluated. India recently introduced a bill to regulate employment and service conditions of unorganised workers and to provide for their safety, social security, health and welfare and introduced a Welfare Fund financed by government and registered employers with this purpose.⁵⁷ In the Philippines, the Statutory Social Security system and the health insurance plans have increased their coverage through voluntary schemes open to self-employed workers.⁵⁸

From a systemic perspective, these rights should

be granted to people as citizens rather than as workers, and they should be awarded on the principle of universality. This has already been reflected in Latin America, where some 'traditional models' have been redesigned, by the addition of a publicly-financed 'solidarity pillar' to private contribution pension systems. In its recently published report on informality in Latin America,⁵⁹ the World Bank fully supports this change for both health and pension coverage. In the case of health care, shocks that go uncovered impose significant costs to society. Therefore, there is a case for providing minimum essential health coverage, de-linked from the labour contract and financed through general taxation. Similarly, in the case of insufficient incomes in old age, there are social costs involved that justify minimum income support not linked to the labour contract.

Chile, which pioneered the privatisation of the pension and health systems, is taking the lead in introducing a non-contributory pillar that guarantees a solidarity pension to all citizens above 65 years old who receive a pension of 50 percent of the minimum wage. It will be universally granted, but efficiency is ensured by gradually reducing the subsidy for those who receive other pensions, thus reducing the need for public funds and providing incentives to contribute to the system. In fact, the resulting model establishes a mid-way for non-contributory pensions, since it is universal for all citizens, but it recovers partly the fiscal contribution from high-income pensioners. Bolivia is the only country in Latin America that has introduced a universal non-contributory pension (BONOSOL) and Brazil has a similar system for rural workers (FUNRURAL).⁶⁰ Health is covered to a larger extent than pensions and reaches universality by a combination of different systems: a social insurance system in Costa Rica that covers contributors and non-contribu-

tors; a public-funded system in Cuba, and a mix of public institutions, social security and private insurances in Uruguay, Brazil and Chile, among others. Chile has strengthened access to public health for all citizens by introducing an attention guarantee of 56 basic pathologies (AUGE) in addition to the existing national health insurance (FONASA).

De-linking health and pension coverage from the labour market would create opportunities to increase employment and improve businesses, while guaranteeing security. It will help decrease the existing protection deficits but it will require sound fiscal policies and, particularly, the adequate funding of decent health and pensions coverage. A similar approach should be used in the case of child care and maternity given the potential effect, respectively, on the early development of cognitive abilities in children and the participation of women, particularly those from poor households, in the labour market.

The Role and Limitations of Voluntary Codes of Conduct

Multinational corporations and non-government organisations have also taken forward the core labour standards and the decent work agenda by establishing voluntary codes of conduct, involving in some cases subcontractors and outworkers. Codes of conduct constitute a strategy for motivating improvements in the performance of multinational corporations. Among the many important initiatives are the Fair Labour Association, SA8000, the Clean Clothes Campaign Foundation and the Ethical Trading Initiative. While the codes advanced through these programmes vary, most of them tend to be based on ILO's core standards, particularly the prohibition of forced labour, child labour, and discrimination in the workplace. These organisations take

different paths to enforcement, with some taking a centralised approach in overseeing and controlling payments for monitoring, while others follow a 'consulting firm approach' which allows companies to choose and pay for their own monitors. There is a need to move towards unified codes in the interest of promoting good governance in the business sector.

Labour Rights, Social Protection, Employment Creation: trade-offs or complementarities?

The emerging global social contract should include the promotion of more and better employment opportunities and aim to reduce the existing gaps in protection, particularly concentrated in poorer population. It has to open opportunities as well as to provide protection. There are trade-offs involved, but there are also strong complementarities. The experience accumulated during the last decades could contribute to enhance the latter effects, without ignoring the lessons learnt to diminish unnecessary costs introduced by ill-designed policies. Security provides incentives for learning and innovation and both are requirements for growth and employment creation. There is also need to facilitate adaptation of firms to the new competitive conditions, and this is particularly relevant in matters involving labour contracts and regulations.

One of the lessons learnt is that the prescription for flexibility, through the introduction of temporary or atypical labour contracts, has serious drawbacks, affecting more than the lives of workers and their families. The rigidity of the permanent contract and, particularly, the costs involved in terminating this type of contract, could constitute a barrier in times of adjustment. On the other hand, such contracts also provide a simple way of protection in countries where other mechanisms, like unemployment insurance, do not exist or are

very limited. The erosion of the permanent contract can be changed by going back to a modified version; for example, by introducing longer trial periods, reducing or increasing the severance payments in case of termination of employment, etc. The availability of temporary and fixed-term contracts will still be needed, particularly to open wider opportunities for those more affected by unemployment and for those who wish to reconcile education or house-family care responsibilities. At the same time, temporary or fixed-term jobs should not replace permanent jobs and the limits of their use should be established through consultation and dialogue.

The legal recognition of hidden employment relations or those without contracts will provide identity to the affected workers and constitute enabling conditions for them to exercise their labour rights, particularly labour and social protection. At the same time, the formalisation of employment relations, even if gradually achieved, opens opportunities and provides incentives for improving business management. A cultural change in the management of micro-enterprises and, particularly, of family businesses is induced, since compliance with labour obligations requires the introduction of accountancy and cost benefits analysis to ensure viability of the enterprise. The right of association is also conducive to developing alliances between producers, thus reinforcing their voice and their ability to negotiate with local authorities; it is also enabling for potential price reduction of their inputs and for easier access to concentrated markets. This also represents a major cultural change since it means shifting from individualistic to collective behaviour. There has been international tripartite consensus on the need to combat disguised employment relationships. National policy could serve to ensure effective protection to workers especially affected by

uncertainty as to the existence of an employment relationship (workers in the informal economy, for example).⁶¹

Conclusions

This review of development strategies and of international labour standard setting shows that there is a growing political understanding of the fundamental importance of employment and work conditions for the fight against poverty. It also shows that there is a new departure in the international community regarding labour rights and that work in the informal economy now is addressed. The three elements of this new departure — Fundamental Principles and Rights at Work, the Decent Work Agenda and the rights in the informal economy — are now supported by a broad coalition of governments, international organisations, trade unions and employers and non-governmental organisations.

5. The economics of informality and the debate on Labour Regulations

There is now a broad recognition of a decent work deficit in the global labour market - from the absence of social protection to the absence of basic rights at work. A key economic indicator of that deficit, as explained by the ILO World Employment report of 2004/2005, is whether men and women can earn enough from their work to lift themselves and their families out of poverty. For the estimated 500 million working poor who live in households with daily incomes of less than US\$1 per capita, the answer is 'no'. In their case, it is not the absence of economic activity that is the source of their poverty, but the nature of their economic activities. The link between work of low quality or productivity and poverty is starkly clear: if people were able to earn more from their work, then poverty would decline. Thus, it is not just any work *per se* which can raise individuals out of poverty; but rather productive and decent work.

Taking this view as point of departure, the purpose of this section is to provide a brief overview of the role of labour regulations in economic performance. We examine, firstly, some broad cross-country evidence about the impact of labour regulations on growth and employment, making references to a number of individual country studies. We then proceed to what we would argue is an important addendum to reinterpreting prior assumptions regarding the nature, role and impact of labour market regulations for the working poor of the world. Our recommendations are presented at the end of this section.

Table 1 Mean Measures of Regulation, by Income Level

Area of Regulation	Low Income	LMI	UMI	HI - non OECD	HI - OECD	Total
Rigidity of Hiring	44.28	33.68	29.91	27.00	20.60	34.33
Rigidity of Hours	47.60	39.64	40.57	45.22	32.00	42.40
Rigidity of Firing	40.00	33.04	33.43	27.39	14.00	33.26
<i>Aggreg. Employment Index</i>	<i>43.96</i>	<i>35.45</i>	<i>34.64</i>	<i>33.20</i>	<i>22.20</i>	<i>36.66</i>
Hiring Costs	12.40	16.01	17.31	21.43	10.17	15.62
Firing Costs	65.32	50.91	44.63	31.32	54.64	51.34

Source: Doing Business, 2006 and authors' own calculations

1. 'LMI' refers to Lower Middle Income countries; UMI to Upper Middle Income countries and HI to High Income economies. These are standard classifications drawn from the World Bank's World Development Report (2005).
2. All indices are normalised to 100, with the italicised, composite indices the arithmetic mean of the preceding sub-indices.

The economic impact of Labour Regulation: an overview of key results

This section provides an overview of some of the key measures and results from the Investment Climate Assessment (ICA) surveys and the Doing Business Survey (DBS) both run under the auspices of the World Bank with a focus on summary measures of labour market regulation and worker protection.⁶² In turn, we raise some caution about the interpretative value and policy relevance of these results.

Most studies of labour regulation are based on the assumption that such regulations are, in one form or another, obstacles to business operation, and hence, to productivity and prosperity. These studies rarely address the intrinsic value of regulations, or the perceived need or political economic circumstances that gave rise to the regulations in the first place.⁶³ A first question is what role labour regulations play relative to other forms of regulation in hindering the growth of firms. This question was addressed recently in an ICA survey. The conclusion of this survey was that the top ten most frequently reported obstacles to growing business operation were: policy uncertainty, macro

instability, tax rates, corruption, cost and access to finance, crime, regulation and tax administration, skills, court and legal systems, and electricity.

Labour regulation came in at eleventh place, reported by 16 percent of the respondents. More pointed evidence from the Business Enterprise Survey Unit of the World Bank, which includes the ICA surveys, suggests that firms around the world do not necessarily view labour regulations as a dominant determinant of, nor obstacles to, growing their businesses. The evidence suggests that less than six percent of all firms, irrespective of size, view labour regulations as a 'severe' or 'major' obstacle to business expansion. This figure is between 2.5 and 5.5 percent for low income, lower middle-income and upper middle-income economies. In the case of high-income (OECD) economies, the estimate is about 10.5 percent (World Bank, 2007). No significantly different estimates are derived by size of the enterprise. Therefore, and notwithstanding their overall limited relevance to business growth, the perception of the relevance of labour regulations to business growth increases with the level of development. Therefore, in contrast to the DBS

surveys discussed below, the ICA surveys indicate that labour regulations appear to be of even more limited relevance to low-income countries

In contrast to the ICA surveys, the DBS is focused on a detailed assessment of the regulatory environment in individual economies. It has an extensive labour regulation module, which is based very closely on the methodology of the Botero *et al* (2004) study.⁶⁴ In addition, the DBS is the most recent, and indeed, possibly the most widely used measure of labour regulation and worker protection within an international context. Hence, despite some reservations expressed regarding the DBS, it continues to be a central information base for policymakers and investors alike. For this reason, our working group for Chapter 3 of this report has made review of the methodology of the DBS and the debate on the DBS the basis for policy recommendations.

The table above presents a snapshot of the key measures available to the public user, from the dataset. We present the data by country income level. All measures are converted to an index ranging between 0 and 100. Values closer to 100 indicate higher levels of rigidity or protection. The ‘difficulty-of-hiring’ index measures restrictions on part-time and temporary contracts, together with the wages of trainees relative to worker value-added. The rigidity of hours measures the various restrictions around weekend, Sunday public holiday work, as well as limits on overtime, and so on. The ‘firing’ index examines specific redundancy clauses within the relevant legislation in detail. What the DBS refers to as hiring costs, are in effect social protection costs, measuring all social security and health costs associated with hiring a worker. Finally, the cost of firing, measures the costs of terminating the employment of an individual in terms of legislated notice-period requirements, severance pay, and so on.

From the aggregate cross-country data, there is an interesting bifurcation in the regulation and protection measures. Hence, the data indicate that the highest measures for any area of regulation relating to rigidity in hiring, firing and hours of work are found in low income economies, with the lowest level of employment regulation amongst high income OECD economies. In addition, the data show that firing costs are also the highest amongst low income countries, although notably hiring costs are the highest in non-OECD high income economies.

The Consequences of Labour Market Regulation

There are two important questions on policy issues that are of relevance to the debate around labour regulation and worker protection. The first revolves around the consequences of labour regulation, in all its different manifestations, for economic growth: do we find evidence that labour market regulation hinders economic growth? The second issue is related, but more concerned with the specific outcomes in the labour market, as a consequence of this regulatory regime: does the evidence suggest for example, that higher levels of labour regulation are correlated with higher rates of youth unemployment, larger informal employment and so on?

A number of studies suggest that regulation in general, and labour regulation in particular, is negatively and significantly associated with growth in per capita GDP (Loayza *et al*, 2006; Forteza and Rama, 2001; Heckman and Pagés, 2003). On the other hand, Botero *et al* (2004) find that *‘There is no evidence that employment laws or collective relations laws vary with the level of economic development.’*⁶⁵ Loayza *et al* show that the effect of regulation is gradually mitigated as governance — and thus regulatory quality — improves.

However, a more detailed examination of the above literature suggests that the cross-country growth regressions often reflect either on the specific components of the labour regulatory regime that may be hindering growth, or indeed represent the entire gamut of labour legislation as one index. Both these approaches and subsequent results suggest that there is a heterogeneity in the labour regulatory regime that needs to be grasped, and furthermore that this heterogeneity can have a differential impact on economic growth. For example, Forteza and Rama (2001) find in one of their set of results, that over the period 1970-86, the number of ILO Conventions ratified is insignificantly related to GDP growth, but that the minimum wage indicator is negative and significant. Loayza *et al* (2006), in turn, find a significant and negative relationship between economic growth and the labour regulation index, but this index is represented as an aggregate measure, and is not expanded into the components noted in Table 1.

The evidence on the impact of the labour regulatory regime on specific labour market indicators, in addition, suggests similar outcomes and consequent concerns. Hence higher levels of labour regulation appear to be significantly associated with a larger informal economy, higher informal employment, reduced male participation rates and higher unemployment rates particularly amongst the youth (Botero *et al.* 2004; Loayza *et al.* 2006; Lazear 1990). However, once again, these results are either too aggregated in their measure of labour regulation, or indeed, do reflect on the heterogeneous impact of labour regulation on these labour market indicators. Specifically, then, it is not clear whether all components of labour regulation and worker protection encourage growth of informal employment, or some components do so more than

others. This would seem to be a critical avenue of enquiry — in order to better assist the current policy debate. In addition, where such specificity is isolated, as in the Botero *et al* (2004) study, one finds that certain components of the labour regime are more important than others in shaping labour market outcomes. Hence, protective collective relations laws, but no other components of the labour regulatory architecture, are shown to be associated with a larger informal economy.

A cross-country growth regression analysis (using the ordinary least squares approach) serves to illustrate the problem of aggregating across indices to arrive at firm conclusions. If such a regression is run on the DBS 2006 results, and simply includes most of the *individual* regulation indices — rather than the composite measures often utilised - the regulatory effects including those for the labour market are muted. Hence, of the individual labour regulatory measures in this admittedly very simplistic specification, two of the five (hiring costs and hours rigidity) are significant at the five percent level. Notably however, the signs on both these coefficients are *positive*, indicating, for example, that higher hiring costs (and hours of rigidity) are associated with higher GNI per capita economies. This does not mean, however, that regulation in general and labour regulation in particular, are not important in the growth debate. Instead, it does suggest some caution in our interpretation of the published results and, more importantly, their translation into country-level policy interventions without due consideration both to the heterogeneity in the regulatory environment, and to country-specific conditions.

Two additional caveats to the debate relating to the impact of labour regulation are worth noting. Firstly, that the absolute impact of labour regulation may, even when using composite measures,

be lower than that created by other regulatory indices. Hence, Loayza et al (2006) note that while GDP growth declines by 0.42 percentage points for every one standard deviation increase in an economy's (composite) labour regulation index, this estimate for product market regulations is over four times as large, at 1.86 percentage points. The fact is that the negative correlation of labour regulation with average income is not statistically significant.

Secondly, (and again drawing on Loayza *et al* [2006]), good governance and the quality of regulations, noted below, do make a difference. Hence, specifications controlling for quality of regulation, do appear to erode some of the negative impact of labour and product market regulations on growth. For labour market regulations, the threshold of governance quality required is relatively low and comparable to Ireland and Portugal. For product market regulations, the threshold is quite high and comparable to the quality of governance in Switzerland, United States and England. Hence, the notion that labour regulations can and do interact with the quality of their application in explaining growth outcomes and does so in a non-linear manner, is a nuance that should not be lost.

Thirdly, one of the indicators in the DBS, the 'employing workers indicator' (EWI), is now subject to a debate between the ILO and the World Bank. While the Bank recently has revised its policy to require that its contractors respect core labour standards, the ILO claims that recommendations based on EWI are contrary to that policy. In a review of the EWI the ILO states that the index does not take into account the reasons of labour legislation. The ILO in fact argues that 'the narrow and limited methodological foundations for the EWI are insufficient and possibly damaging as a guide to policy formulation.'⁶⁶

On the general aspect of regulation and informality some studies focus on the voluntary aspects of informality.⁶⁷ By avoiding taxes and regulatory obligations, it is believed that informal companies gain a substantial cost advantage that allows them to stay in business despite their small scale and low productivity. More productive, formal companies are prevented from gaining market share. The result is slower economic growth and job creation.⁶⁸

The International Organisation of Employers (IOE)⁶⁹ describes the informal economy as 'largely negative,' trapping individuals and enterprises in a spiral of low productivity and poverty. For governments it entails the loss of revenue, 'and for workers it can mean inferior working conditions, job insecurity, lack of access to state benefits and social security.'

The Impact of Labour Market Regulation: Country Studies

A recent OECD⁷⁰ study found that making firing more expensive for older workers will protect them against dismissal while severance payments allow workers to smooth consumption during unemployment periods. They also increase the incentive for longer-lasting employment relationships, which may increase worker satisfaction and productivity. At the aggregate level, more stable employment-relations foster technological progress and skill upgrading⁷¹ and, in an argument frequently used in Latin America, worker protection, they correct potential power asymmetries between employees and firms.⁷²

Yet, various studies have shown that firing costs can lead to greater informality. They increase costs by forcing firms to keep non-productive workers in the firm, or to remain overstaffed for significant periods of time. Thus it makes it more difficult for firms to fire, but also to hire. In developed

countries this translates into unemployment, and in Latin America (which, however, is often over-regulated), it translates into lower formal labour demand and larger informality. For instance:

- A recent study that explicitly models the impact of firing costs over labour demand in Peru shows that an increase in expected severance payments has a negative correlation with formal labour demand.⁷³
- Kugler et al.⁷⁴ found that in Spain a reduction in payroll taxes and firing costs increased the demand for permanent workers.
- Acemoglu and Angrist, in an interesting study about the effects of the American Disability Act, found that outlawing the firing of disabled workers actually reduced labour demand for disabled workers, precisely the opposite effect that the law intended.⁷⁵

The recent work on the Indian labour regulatory regime (Besley and Burgess, 2004; Ahsan and Pagés 2007) suggests that the clauses linked to firm size within the industrial disputes regulatory architecture may have had a deleterious impact on the growth of the economy's manufacturing industry (Ahmed and Devarajan, 2007). However, once again, these conclusions are incomplete: Firstly, the Indian experience indicates that while the regulations are a part of the problem, in some cases the operational and logistical inefficiencies as well complexities associated with settling disputes (Ahmed and Devarajan, 2007) are significant in explaining the lack of expansion within manufacturing. Secondly, while amending parts of the regulatory framework is necessary it is also true that active labour market programmes and policies, such as those recommended by the ILO for India, must be part of any attempt at encouraging secure employment creation and reducing poverty levels.

Towards a More Nuanced Understanding of Labour Regulations

The above has suggested that, on the basis of the assembled evidence, the labour regulatory environment is important in the debate around output expansion and employment growth in domestic economies. This fact however, should not translate into too blunt an interpretation, and consequent policy advice, on reforming the labour legislative environment at the individual country level.

Some caveats need to be introduced here if a more informed debate around labour regulation and policy reform in the developing world is to ensue. They may help to ensure progress in dealing appropriately and intelligibly with the labour market in the event that policy reform packages are tabled at country level. Perhaps economists, who are often at the forefront of such reform processes, should understand the most important of these cautionary notes. The caveat is that labour regulation as a reform issue, is not to be viewed as a binary variable. The choice within any policy reform package in most economies is never between no labour regulation at all and complete, comprehensive legislation. Undue focus by economists on extreme deregulation of the labour market often results in no reform at all. The notion that a labour market, like any product market, needs to be as deregulated as far as is theoretically possible, can result in contentious and not very productive policy debates. In the conclusions of the study on Impact of Regulation and Growth and Informality, Loayza et al. bring a similar message. They emphasise that their study 'does not intend to assess the impact of regulation on social goals that could be beyond the strict sphere of economic growth — broad goals such as social equity and peace, or narrow ones as worker safety, environmental conserva-

tion, and civil security, which typically motivates specific regulations. Thus, our conclusions on the role of regulation must necessarily be evaluated in a more comprehensive context before drawing definitive social welfare implications.'

One specific manifestation of this problematic paradigm lies in the area of union power. For economists, this is a standard sub-measure of rigidity in the labour market. Within the Botero *et al*/study (2004), for example, it is captured under the collective rights index. However, for many legal experts the right to join a union and the freedom of association are viewed as universal rights issues and not by any means as matters touching on labour market regulation. Such experts would also view positively the idea that the greater the number of unionised individuals in a society the stronger the indication of a thriving democratic society with enshrined individual rights and interests. The notion that union membership is somehow coupled with labour market rigidity is anathema to a significant proportion of the legal community. Indeed, policy consistency is required when stressing the importance of democracy and good governance to economic growth on the one hand, while reflecting on rigidity induced by high levels of union power on the other.

Interpretation of Regulations

The standard measures of regulation found in the DBS are, as noted above, numeric conversions of country-level legislative provisions. The DBS does not proclaim to do any more than this. However, it is worth reiterating the importance of how such legislation is interpreted by both the courts of law and the relevant institutions of authority (such as, for example, dispute resolution bodies). Legislative provisions are more often than not, subject to interpretation by the relevant legal authority. How judges, for example, interpret the notion of 'fair

dismissal' falls to a variety of different variables including the subjective opinion of the judge; the merits of the particular case; the evolution of jurisprudence on relevant issues raised in the case; the resources available to the parties and so on. The simultaneous impact of these variables would therefore then lead to a specific interpretation of the law. The outcome, as a consequence of these factors, may be an over-regulation or indeed under-regulation of specific labour market activities such as reasons for dismissal; unfair labour practices; probation rights and so on.

Simply put, the interpretation of labour legislation by the vested authorities may in fact yield a measure of regulation that is at odds with those produced by surveys such as the DBS and ICAs. The reality, however, is that attempting to extend the DBS measure into the realm of court judgments and their orientation is almost impossible. However, it is essential to note them in any discussion that measures labour regulation within a country. Implicitly, legislative provisions represent an incomplete and less than satisfying measure of labour regulation in an economy.

There is another layer to understanding the legislative environment in relation to the labour market: In many countries, its labour law architecture flows from, and is intricately and deliberately linked to, both its international and complementary domestic legal obligations. Hence, drastic policy interventions designed to deregulate an economy's labour market, may require due recognition of the ILO Conventions that a country has already ratified. In addition, rights of an individual enshrined in the country's constitution serve as the bedrock from which specific labour law provisions are made. Tampering with the latter in a substantive manner may indeed be unconstitutional. The generic point, however, is that should deregulating a labour market involve significant,

legislative changes, it will critically impact on the broader legal environment of most countries. In sum, the notion of deregulating a labour market may indeed have significant and possibly intractable legal outcomes.

The Institutional Environment

The extent to which the institutional environment reinforces or hinders legislative provisions is often under-appreciated in debates around labour market regulation. In most economies, institutions govern and manage the labour market. These include employer and employee organisations; the courts of law including specialist courts; institutions of dispute resolution; ministries of labour or employment; collective bargaining institutions; tripartite institutions and so on. These institutions will be differentially resourced in human and physical terms; will yield contrasting performances according to pre-set objectives; will have different governance structures, parameters of influence and ultimately power within the society and so on. Simply put, these range of factors, all of which are time and context-dependent, can and will fundamentally alter the manner in which labour regulatory provisions impact on the economy.

Two examples would suffice: Firstly, a sectoral minimum wage regulation mandated by government will have little impact on either wages or employment, if enforcement and oversight of this regulation through the relevant institutions is of a poor quality. In such a case, economic outcomes could potentially be relatively benign if the institutional oversight is weak and poor in quality. Secondly, in many developing countries, the court system is poorly resourced and inefficient. The rule of law takes a long time to be implemented in economies with an inefficient judicial system. For labour law cases, this could mean that rigidity

in the labour market is more about an inefficient judiciary than any aspect of wages, union power or indeed the labour legislation itself. Ultimately however, the almost obvious point is that institutions matter, and nowhere more so than within the labour regulatory environment.

Institutions should also matter to economists when examining the issue of labour regulation. Apart from the binary variable issue noted above, or the idea that perfectly competitive output and factor markets are the optimal outcomes, the importance of institutions is often overlooked in these debates. In our view, institutions that are efficient and complement the interaction between individuals are good for growth, and this fits within the classic understanding of an efficiently functioning labour market. Especially high quality institutions can help to ensure that this market functions efficiently and competitively. It is not clear that malfunctioning or non-existent, institutions are an appropriate and acceptable condition for an optimally functioning labour market.

Heterogeneity in the Regulatory Architecture

Perhaps one of the key elements of this debate around labour regulation, growth and informality is to acknowledge the distinction between grades, types and levels of labour regulation. This is an allusion to the key, albeit obvious, point that there is a distinction between the establishment and protection of core labour standards on the one hand, and the more detailed specifications around the nature of hiring and firing clauses for example. It is often around the latter that much useful debate is to be had. However, it is important that the protection and promotion of labour standards remains at the core of any in-country labour market policy programme. This is critical to ensuring that the labour rights agenda is *complementary* to a wider set of actions to improve both the quality of work

and the quantity of employment opportunities in the developing world. The securing of core labour standards we believe is at the core of promoting the Legal Empowerment of the Poor and indeed the kernel of a decent work agenda.

Some recognition, however, needs to be given to the possibility that labour regulation beyond core labour standards may, under certain conditions, exacerbate segmentation in the labour market. Aspects of labour regulation may reinforce the insider-outsider divide by promoting barriers to hiring and firing. While this can reduce turnover, it may also affect employment growth.

Conclusions

This review of the economic impact of labour regulation has led us to draw the following policy conclusions:

- First, a methodological conclusion: we suggest caution in interpretation of the published results, particularly from cross-country studies, and more importantly, their translation into country-level policy interventions without due consideration both to the heterogeneity in the regulatory environment, and country-specific conditions. This is confirmed both by the findings in the Investment Climate Assessment, presented in the beginning of this section, and of the conclusions in the cross country analysis made by Loayza et al.
- Secondly, we suggest a shift of focus from the ideological question on regulation or deregulation, to the question how such regulation can be used to promote decent work for the working poor. Thus, the debate on labour regulations should focus on what is the right balance between security, supportive structures, and flexibility for firms in both the formal and informal economy.

- Thirdly, we are of the opinion that more attention should be given to critical factors such as the nature and quality of legal institutions and the interpretation of the law. Better governance is strongly correlated with economic growth and prosperity.

6. Principles and practices of Labour Rights and Legal Empowerment

The task of the Commission for Legal Empowerment of the Poor is to identify how legal instruments can be used to empower the poor. In this chapter we address one of the key areas of legal empowerment, namely how international and national systems of labour standards and labour rights can become more inclusive and promote more productive and decent work in the fight against poverty. There is - in this arena as in other arenas of legal empowerment - no quick fix for shifting from informal and low productive employment to decent and productive employment. There is no single solution, which can be applied in all countries. A strategy for empowerment has to have common core principles but remain flexible enough in design to fit many different economic, social and political conditions. It has to be participatory, inclusive and gender sensitive. Some principles are basic for any reform strategy in this field and they are introduced in Section 6.1. There are many lessons to learn from recent national and local initiatives for empowerment, which will be presented in Section 6.2. Some conclusions are drawn in 6.3. On the basis of these principles and practices, policy recommendations are introduced in Section 7.

The basic principles for inclusive reform

Both promotion of change - and management of change

The most successful countries, in terms of productive employment, are using a mix of economic and social policies, implemented with flexibility and designed for security. Within the context of

competition, specialisation and free trade, this approach helps to promote change and productivity; it also helps in the management of change and in the creation of decent work opportunities, a sense of inclusion and a widely shared prosperity. The mix has varied from country to country, and the different policies are adjusted occasionally to improve the synergy between economic and social policies, decent work and inclusion.

Both property rights - and labour rights

The report from World Commission on the Social Dimension of Globalisation argued that informal activities should be transformed and integrated into a growing formal sector that provides decent jobs, incomes and protection. A balanced approach to upgrading the informal economy would require the systematic extension of property rights, accompanied by similar action on core labour rights for all persons engaged in informal activities. The report argues that such a transformation is an essential part of a national strategy to reduce poverty and promote inclusion. While it suggests that the key to empowering the poor through property rights is the provision of legal identity to their assets, it also advances the understanding that the key to their empowerment through labour rights lies in conferring upon them a legal identity as workers or entrepreneurs, thereby making disguised commercial or employment relationships visible.

Both protection - and flexibility

The World Development Report 2006, entitled *Equity and Development*, recognises the intrinsic value of equity and makes the case for investing in people, expanding access to justice, land, and infrastructure, and promoting fairness in markets. The report asks whether labour market institutions can be designed to be pro-growth and pro-

equity. The key to success is to link employment creation with protection. This requires building broad societal consensus for coordinated reforms across a variety of labour market institutions and provision for support to workers in re-entering the labour market following investments in education and training, in incentives that would encourage mobility, and in job creation, among other measures.

Lessons from national reform practice

There are lessons to be learned from countries which recently have introduced policies aimed at empowering workers and entrepreneurs in the informal economy.

Legal identity

Legal identity, as worker or entrepreneur, is of fundamental importance for legal empowerment. Some countries have tried to establish these identities and make the employment relationships explicit (in labour laws or in their extensions). Thailand provides an example of how the labour law has been extended to home workers through a ministerial regulation. In this case, home workers are considered ‘employees’ those who use raw materials and tools that come from the employer. The Ministerial Regulation also affirms the application of the Fundamental principles and rights at work to these workers (See Case 1, Annex 2). Employment relationships have also been determined through judicial decisions. In the Philippines, the Supreme Court has applied a four-fold test in determining the existence of an employer-employee relationship:⁷⁶ ‘(1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee’s conduct.’ Furthermore, the evidence of payment — through a pay slip — has been accepted as

proof of employer-employee relationship (See Case 2, Annex 2). India offers an example of a welfare fund where the trade unions provide a certification of the eligibility of the worker. The identity therefore comes from membership in a trade union (See Case 3).

Voice and representation

The right to voice and representation is as important as legal identity. Throughout the world, trade unions are launching and supporting campaigns for the representation and protection of informal workers. For example, the Inter-American Regional Organisation of Workers has issued guidelines and manuals to enhance organisation and representation of workers in the informal economy. The Alliance for Zambia Informal Economy Associations was launched in 2002 in partnership with the Zambia Congress of Trade Unions.⁷⁷

The Self-Employed Women’s Association (SEWA), India, is the well-known and very promising trade union of women informal workers who actively engage in collective bargaining and otherwise leverage influence over the environment in which they work (See Case 4). Over the past two decades, SEWA has co-founded and inspired a number of organisations of informal workers which individually and collectively are gaining voice and representation in relevant policymaking fora.

In **Ghana**, the ILO’s Decent Work programme has worked with local government to promote social dialogue by creating District Assembly Sub-Committees on Productive and Gainful Employment that include representatives of informal enterprises, informal workers, the private sector, and government. In **the Philippines**, local development councils are mandated on the regional, provincial, municipal and village-level where different interest groups, including registered and accredited local organisations, are represented.

The Homeless People's Federation Philippines, HPFP, participates in various municipal and village-level development councils, including a few local housing councils (See Case 5).

Social protection reform

Reform of the social protection system is a strategic way to empower people. In **India** in 2002, the National Commission on Labour proposed a national bill for workers in the unorganised (informal) sector with the objective of regulating 'the employment and conditions of service of unorganised sector workers and to provide for their safety, social security, health and welfare'. The bill provides for the establishment of Workers' Facilitation Centres to support and assist unorganised workers, provides for the setting up in the states of an Unorganised Sector Workers' Welfare Fund, with funds from government and contributions by employers and registered workers; and sets out minimum conditions of service, including hours of work and minimum wages (See Case 6). In **India** in 2007, the National Commission on Enterprises in the Unorganised Sector (NCEUS) has drafted and proposed two national bills on the conditions of work and social security of workers in the unorganised (informal) sector: one for agricultural workers, the other for non-agricultural workers. Both bills incorporate provisions for regulating the conditions of work and social security of informal workers. The statutory National Social Security Scheme proposed by the NCEUS consists of the following package of minimum benefits: illness, hospitalisation, maternity, disability and life insurance, and old age pension.

Other promising examples of extending social protection to informal workers are from Ghana and the Philippines. In **Ghana**, with joint support from the government and ILO's Decent Work programme, associations and individuals who have

joined local credit unions are encouraged to enrol in the National Health Insurance Programme.

In the **Philippines**, the statutory social security system (SSS) and the health insurance schemes have been progressively made universal through voluntary schemes that are open to self-employed workers through lower-priced packages and a wider network of collection units, including banks and organised groups (See Case 7). Notable examples are also found in Latin America; they include efforts in **Mexico** to extend social security coverage to the informal sector; innovations in social coverage of the Solidario programme in **Chile**; first rights-based health coverage in **Chile**, and conditional cash transfers in some 14 countries beginning with **Brazil** and **Mexico**.

Improvement of the quality of labour market institutions

Several countries have introduced reforms to improve the quality of labour market institutions. In 2006, **Chile** introduced a reform in subcontracting procedures to include more workers in formal labour rights arrangements. The objective is to promote subcontracting, while at the same time ensuring compliance with all the labour obligations. The law introduced a formal arrangement between subcontractors and the main firms to meet a set of labour obligations. Direct responsibility lies with the subcontractor, but the main firm has the right to demand from the subcontractor a certificate of compliance issued by the labour inspectorate agency and has the right to withhold payments from subcontractors in cases in which there are pending obligations vis-à-vis their workers (See Case 8).

Spain has over the last 20-25 years introduced a series of reforms of its once highly-regulated system in an attempt to better balance the demands of an open market economy with the needs of

works, first by allowing for an increase in the use of fixed-term contracts, then by reintroducing constraints in the use of temporary contracts while easing employment protection legislation for permanent workers. More recently Spanish trade unions, employer organisations and government signed an agreement to bring the use of fixed-term work contracts more in line with the European social model (See Case 9).

Legal empowerment through alternative dispute resolution

For poor people around the world, getting access to courts and legal support to protect their rights is often impossible. In many cases, the reason for this is straightforward — they cannot afford to pay the legal fees. In **Tajikistan**, the UK has helped to solve this problem by supporting Third Party Arbitration Courts. These courts are an alternative way of resolving disputes: two sides to a dispute agree to nominate a third party who they both trust to mediate their disagreement and come to a decision. Although they operate independently of the formal legal system, decisions are recognised by Tajikistan's official courts. Third Party Arbitration Courts provide poor people with a cheap, fair and accessible way of resolving disputes and protecting their rights. Third Party Arbitration has helped to make legal services available to 800,000 people in Tajikistan. The approach has also been used successfully in **Russia, Kyrgyzstan, Moldova, Ukraine and Georgia** (See Case 10).

There are also lessons to be learned from countries that have recently introduced policies aimed at empowering workers and entrepreneurs in the informal economy through business rights (See Chapter 4).

Improved business environment

The World Bank Investment Climate Survey illustrates the need to improve the business environment to encourage investment, entrepreneurship and workers rights. Many countries have found new ways to support SMEs through various initiatives with the aim of upgrading them into the formal economy (See Chapter 4 for examples).

Simplification of contracting procedures

The Senegalese Government provides an example of a pro-active policy of contracting out public infrastructure projects to small scale contractors. In this case, bidding procedures and documents have been substantially simplified in order to permit smaller contractors to participate in the bidding process. Bureaucratic documentation is also minimised and bidding documents contain official unit cost estimate in order to guide the less sophisticated contractor. A general session is held wherein contractors are told about the existence of the implementing agency and informed about procedures, from the bidding to the awarding and implementation. Simplification of the process goes as far as making the name of the winner very clear in the announcement so that even an illiterate contractor's representative can readily determine who was awarded the contract (See Case 11).

Conclusions for national strategies for legal empowerment

The examples noted above illustrate how different policies can be used to provide working people with: Identity (India, the Philippines, Thailand); Voice and representation (India); Social protection (Brazil, Chile, Ghana, India, Mexico, the Philippines), and New ways to resolve disputes (Tajikistan).

These examples also demonstrate how different policies can be used to improve the functioning of labour market institutions (Chile and Thailand), and how they can work to adjust the balance between protection and flexibility in response to changing realities (Spain).

These and many other illustrations show that reform is under way. Other countries can use the examples and principles presented can be used by other countries in their effort to design strategies for Legal Empowerment of the Poor. There is a need for global action to convert these 'good news' approaches into a global movement.

7. Towards a new social contract: Policies and Processes for Legal Empowerment

Policy recommendations

Building on an emerging global social contract — the broad support for the Fundamental Principles and Rights at Work and the Decent Work agenda — we recommend that the Commission endorse the following *priorities for legal empowerment* of those living and working in poverty:

- **Strengthen identity, voice, representation and dialogue.** The process of legal empowerment starts with identity. Just as property and physical assets of the poor are recognised, so also must the greatest asset of the poor, namely their labour and human capital, be effectively recognised. There is a particular need to ensure that workers and entrepreneurs in the informal economy have the right to freedom of association through organisations of their own choosing and to collective bargaining, particularly women and youth who are over-represented in the informal economy. Emphasis should be placed on building up representative organisations of the working poor, particularly wage workers and self-employed operating in the informal economy, to have voice, representation and dialogue with formal economy operators and with public authorities in order to defend their rights.
- **Strengthen the quality of labour regulation and the effective enforcement of fundamental principles and rights at work.** The purpose is to create synergies between protection and productivity of the working poor and of their assets. Reviewing the quality of institutions

and of regulations should involve a critical and self-critical review of legal instruments from the point of view of their impacts on productivity and on the protection of labour.

- **Support application of a minimum package of labour rights for the informal economy.** The aim should be that every country strives for a minimum floor for empowerment that is realistic and enforceable, as a basis to gradually strengthen and extend application of standards, taking into account productivity levels and other national circumstances. To this aim a package of labour rights is proposed for the informal economy that upholds the Declaration on Fundamental Principles and Rights at Work and three crucial aspects related to working conditions: (1) health and safety at work; (2) hours of work, and (3) minimum income. It must be recognised that labour standards at this minimum level constitute a basic floor for empowerment beyond which progressive, rather than full, compliance is expected. That is, we propose to build up progressively from this basic floor through institutional approaches that are feasible even for production units with limited capacity for compliance. Strategies can aim at progressive compliance and gradual convergence into a unified set of working conditions, as a goal. Some of the standards such as occupational safety and health can be improved immediately at a low cost. Others can be achieved gradually through a developmental process of awareness raising and capacity building.
- **Strengthen access to opportunities for decent work and to opportunities for education, training and retraining, as well as combating discrimination to ensure efficient labour markets.** This priority aims to promote change and dynamism, linking private initiative with

public policy so as to expand employment in a growing and inclusive economy. Labour rights, to be effective, should not exclude the working poor, nor constrain their creative and entrepreneurial potential. Opportunities for education and capacity building as well as measures for combating discrimination help increase legal recognition of the poor and bring them closer to such economic opportunities. The reorganisation of production and distribution through sub-contracting and outsourcing is associated with the expansion of informal employment in the supply chains. Private and public procurement represents, therefore, a practical yet strategic policy lever through which to upgrade the productivity, incomes and working conditions of the working poor. Integrating employment creation, labour rights and decent work into public and private procurement practices is therefore a key mechanism to legally empower the poor. Often solutions to poverty and informality can be found outside as well as within the informal economy. Policies to create and provide improved access of the poor to new opportunities for full, productive and freely chosen employment, as promoted in ILO Convention 122, can provide a key mechanism for empowering the poor in the informal economy and facilitating their transition to formality.

- **Support inclusive social protection.** The recognition of the rights to social security has been developed through universally accepted instruments, such as the Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights, which proclaim that social security is a fundamental societal right to which every human is entitled. This promise must be upheld by all countries through laws, institu-

tions and responsive mechanisms that could protect the poor from shocks and contingencies that can impoverish, and measures that guarantee access to medical care, health insurance, old age pensions, and social services. These mechanisms must not be solely dependent on the evidence of employment status but must be open to all types of workers. From a systemic perspective, rights to pensions and health protection should be granted to the people as citizens rather than as workers, and they should be awarded on universality principles.

We also recommend the following specific actions favouring legal empowerment:

- **Ensure that legal empowerment becomes a driver for gender equality.** Poverty has a gender dimension, and legal empowerment can help drive gender equality. A key challenge is to ensure that ILO labour standards which promote equality of opportunity and treatment are effectively extended to informal sector workers.⁷⁸ The starting point for this process may be found in the core labour standards on gender equality, namely, the Equal Remuneration Convention, no.100, 1951; the Convention on Discrimination (Employment and Occupation), no. 111, 1958. Much useful guidance can be found in the 1996 ILO Home Work Convention⁷⁹ which mandates the extension of legal protection and legal empowerment to home workers, who are predominantly women. Gender is already a mainstream priority in the integration of Decent Work in the PRSP work. Specific capacity-building efforts have in particular been made in Bolivia, Brazil, Ecuador, Ethiopia, Honduras, Paraguay, Peru, Uruguay and Yemen to influence Poverty Reduction Strategies (PRSPs) at the formulation stage. A more in-depth process has been recently launched to further consolidate gender and employment in three country PRSP processes, namely in Burkina Faso, Liberia and the United Republic of Tanzania. This integrated approach includes enhancing the capacity of constituents for mainstreaming gender equality in employment; facilitating gender budgeting of projected employment programmes in the PRSP action plans; building partnerships with other organisations at national and international levels, which are involved in promoting gender equality in PRSP.
- **Support legal empowerment for indigenous people.** The ILO Indigenous and Tribal Peoples Convention provides guidance and strategies for legal empowerment with respect not only to labour rights and protection of employment, but also with respect to land and property rights. Special efforts for their legal empowerment are demonstrated in an 'ethnic audit' undertaken of 14 PRSPs as well as case studies of country processes in Bolivia, Cambodia, Cameroon, Guatemala and Nepal. The research clearly showed that, although indigenous peoples are disproportionately represented among the poor, their needs and priorities are generally not reflected in the strategies employed to combat poverty. Another contribution is research produced by the ILO and debated at the United Nations Permanent Forum on Indigenous Issues and within the Inter-Agency Support Group. Subsequently, the World Bank organised an International Conference on Indigenous Peoples and Poverty Reduction (New York, May 2006) and committed to work towards the practical inclusion of indigenous peoples' concerns in the PRSPs in a selected number of pilot countries in Africa, Asia and Latin America.

Process recommendations

Our working group recommends that the Commission consider the following *policy processes and institutional champions* for the implementation of its recommendations on legal empowerment through labour rights.

- **Promote national development framework for legal empowerment and decent work.** National governments and parliaments are responsible for labour rights and social conditions and bear a major responsibility for the reform and effectiveness of national labour market institutions. The Decent Work Agenda proposes a value-based framework that is best defined at the national level through social dialogue. It does not propose a one-size-fits-all solution, nor imply conditionality of any type. The mix and sequencing of policy actions are to be defined locally, taking account of diversity in the level of development, including financial, human, and institutional capacities, and implemented through cooperation between government, business, workers and society. The intrinsic value of the Decent Work Agenda is to make employment a central goal of economic policies and progressive improvement in the quality of work, including labour rights and returns to labour as the main strategy for moving people out of poverty. Decent Work Country Programmes (DWCPs) are the main tool for driving this reform process forward in partnership with all national and international institutions. DWCPs contribute to international development frameworks such as poverty reduction strategies, national Millennium Development Goal strategies, the United Nations Development Assistance Framework (UNDAF), and other integrated development plans.
- **Mobilise the Development Banks to support national reform programmes.** Reform strate-

gies to include employment and labour rights will need to be adapted to regional and local priorities. Therefore the Regional Development Banks, Political Organisations and UN organisations can be tapped as institutional champions for the reform agenda on legal empowerment. Development Banks need to make legal empowerment a top priority, integrating access to justice, property rights, labour rights and business rights in one comprehensive strategy for good governance of markets, to support national reform processes. They need to seek the support from regional political authorities and from the UN regional organisations.

- **Mobilise the principal actors of the global system, particularly the World Bank and the ILO, to work better together for decent work.** Two of the main global actors in the field of work and development, the ILO and the World Bank, have both contributed by developing instruments for reform, the World Bank's PRSs and the ILO DWCPs. A key to a successful reform process at the national level is better policy coherence at the global level. Legal empowerment and reform of labour rights require close co-operation between governments, employers and workers, nationally and locally. They will need support in many forms from the leading global institutions to build capacity. The common goal should be to make labour markets work better — more efficient and more equitable — for both workers and small businesses.
- **Support voluntary initiatives for legal empowerment through labour rights.** Codes of conduct constitute a strategy for motivating improvements of the performance of multinational corporations. An increasing number of them, including that of the Ethical Trade Initiative, are based on ILO's core labour standards, par-

ticularly the prohibition of forced labour, child labour and discrimination in the work place. These codes of conduct initiatives are already playing an important role, as businesses have become more sensitive and responsive to the concerns of ethical consumers.

- **Mobilise donor countries to promote legal empowerment and decent work.** Donor countries could do a lot to support legal empowerment and the inclusion of a decent work agenda in regional and national strategies. For example, the EU is supporting the integration of decent work goals in national PRS processes in 60 countries.
- **Promote a better understanding of the costs and benefits of legal empowerment through decent work.** The costs and benefits of undertaking reforming legal empowerment through labour rights and decent work need to be addressed. The first basic question is what are the expected benefits of such reform on productivity and thereby on prosperity. The main purpose of reform is to improve the quality of labour market institutions and thereby the functioning of labour markets. Such reforms, provided they are well designed, should be seen as likely to enhance productivity. Non-action, or maintaining the status quo, should be seen as leaving a burden on the economy. With income inequality growing ever larger with worrying implications for sustainable societies, an ambitious reform programme integrating Legal Empowerment of the Poor should be seen as a necessity, not a luxury. The second basic question is the cost of starting and sustaining the reform process and the affordability of related policy initiatives. There is no simple answer to that question. There will be initial costs that have to be funded mainly through restructuring of public expen-

diture programmes. The amount of costs and the pay-back in the form of higher quality of labour market institutions will probably vary between states, depending on policy design and the success of the reform process. A successful strategy for integrating workers in the informal economy — through, for example, integrating employment creation programmes with social protection systems - will broaden the tax base and decrease unemployment, underemployment, decent work deficits, and other social costs, so that initial costs will soon be outweighed by benefits.

- **Strengthen the statistical base for legal empowerment.⁸⁰** Labour force and other economic statistics need to be improved to fully capture the size and contribution of the informal economy. Although estimates of the size and (less so) contribution of the informal economy are available in a growing number of countries, all forms of informal employment - especially women's home-based production and disguised wage employment - are not yet fully visible in the official national statistics used to inform national policies. The legal empowerment strategy must, therefore, include efforts to make visible all forms of informal employment. This should include making disguised employment relationships more explicit; it should also make more visible both the invisible supply chain and home-based production. Our working group recommends that improved labour force and economic statistics be a priority goal for national statistical services and be incorporated into the Millennium Development Indicators.

Towards a New Social Contract.

There is a tripartite consensus from employer, worker and government representatives on the need for a formal and effective legal system with guarantees for all citizens and enterprises that contracts are honoured and upheld, the rule of the law is respected and property rights are secure. Such a legal system is a key condition not only for attracting investment, but also for generating certainty, and nurturing trust and fairness in society.⁸¹ The growing recognition of the need for labour rights to catalyse employment creation in the informal economy, while protecting its workers, has now led to an emerging global social contract, a broad agenda for reform and for empowerment. Labour rights, business rights, property rights and business rights taken together can form the basis of this new social contract.

Our Working Group for Chapter 3 suggests that the underpinnings of the new social contract on labour rights include five fundamental areas of action, namely:

- Strengthen identity, voice, representation and dialogue.
- Strengthen the quality of labour regulation and the effective enforcement of fundamental principles and rights at work.
- Support application of a minimum package of labour rights for the informal economy.
- Strengthen access to opportunities for decent work and to opportunities for education, training and retraining, as well as combating discrimination to ensure efficient labour markets.
- Support inclusive social protection.

We recommend a new departure in international development strategies, centred on the Decent Work agenda as a Global Social Contract. Our

proposals are firmly based in the international human rights tradition. Human rights are the basis for the Social contract. It is the obligation of the state as the primary duty bearer to protect and promote these rights.

- We use the word ‘contract’ to emphasise mutual responsibility. The state has a duty to protect and the citizens have the right to protection — and obligations, which follow thereof. Employers and employees are also tied by mutual obligations. And large businesses have a duty not to exploit smaller businesses with which they have production or distribution ties.
- We use the word ‘global’ to emphasise the role and responsibility of the actors at the international, regional, national and local levels.
- We use the word ‘social’ to emphasise that the aim of this initiative is to improve the social conditions of people in poor countries, including: income, health, education, working conditions.
- We have put ‘Towards’ before a Global Social Contract in the title of this report to emphasise development, process and time horizons.

Annex 1:

Recent and current initiatives to improve statistics on the informal economy

What is clear from the statistics presented in this Report is that the informal economy is far larger than most people recognise. However, the informal economy is still undercounted and undervalued in most countries. Few countries collect the statistics needed to fully capture all forms of informal employment, both self-employment and wage employment. Reflecting the assumptions underlying labour regulations and labour economics, - notably, the presumption of an explicit employer-employee relationship — labour force and other economic statistics do not always reflect the full range of work arrangements and employment statuses.

To generate more accurate and comprehensive statistics on informal employment and labour markets more generally, it is necessary to improve statistical concepts and methods, including:

- An expanded set of **place of work indicators**, including work at home, on the street, in fields, in forests, in waterways, or in the open air;
- An expanded set of **employment status indicators**, including all types of self-employment, wage employment, and intermediary ambiguous categories (such as independent contractors and industrial outworkers);
- Data on the **socio-economic status** of different categories of workers, including: level of earnings; legal status: contract versus no contract, registered versus non-registered; working conditions; and social protection coverage by type and source (health insurance, old age pensions, disability insurance, unemployment insurance,

life insurance, maternity, child care);

Improved statistics would help to focus the attention of policymakers on the economic contributions of the informal economy and the linkages between informal employment and poverty. More specifically, improved labour-force statistics that capture all forms of informal employment would serve to:

- Increase the visibility of those who work in the informal economy, especially the least visible and most vulnerable workers;
- Advance understanding of the informal economy, including its contribution to economic growth and its links with poverty;
- Inform the design of appropriate legal reforms and policies for the working poor in the informal economy.

Ideally, a unified framework for data collection would be developed — one that allows for the classification, comparison, and analysis of the full set of employment statuses and work arrangements that exist in both developed and developing countries.

Fortunately, there are a number of recent and current initiatives to improve statistics on the informal economy. The 2002 International Labour Conference and the 2003 International Conference of Labour Statisticians have endorsed an expanded statistical definition of informal employment that includes self-employment in informal (small unregistered) enterprises and wage employment in informal (unprotected) jobs. The ILO Bureau of Statistics, the International Expert Group on Informal Sector Statistics (Delhi Group), and the global network Women in Informal Employment: Globalising and Organising (WIEGO) are jointly producing a manual on surveys of informal employment so defined (forthcoming in 2008). The Sub-Group

on Gender Indicators of the Inter-Agency and Expert Group (IAEG) on MDG Indicators and the Task Force on MDG #3 (Education and Gender Equality) have endorsed an indicator on the 'structure of employment by type and sex' developed by the ILO Bureau of Statistics and WIEGO and a growing number of countries are using this indicator to compile and present their national labour force data. The System of National Accounts is currently revising its chapter on measuring the informal sector contribution to GDP.

The donor community should support these initiatives to improve labour force and economic statistics and national governments should use the expanded statistical definition and related statistical methods in their collection of labour force and other economic statistics.

Annex 2: Country case experiences

Case 1: Extending Thailand's labour law through the Ministerial Regulation for home workers⁸²

In Thailand, in 2004-05, the Ministry of Labour took the initiative of drawing up ministerial regulations to extend the reach of the labour law to home workers and agricultural workers. Home-based workers are defined as having the following characteristics:

1. They receive contracts from an employer to produce, assemble, repair or process;
2. They work at a location that is not the establishment of the employer;
3. They work to earn a wage;
4. They use all or part of raw materials or production instruments of the employer;
5. They are contracted to work at home, and the work they do is a part or all of the production process or business of the employer.

Case 2: Judicial ruling on employment relationship in the Philippines

The Supreme Court in the Philippines, in landmark decisions, recognised an employer-employee relationship in situations where this is ambiguous. The said Supreme Court rulings upheld the status of workers on commission, boundary,⁸³ piece-rate or task base and workers hired through a third party such as a recruitment agency.

In determining the existence of an employer-employee relationship, the Supreme Court⁸⁴ applied

the following four-fold test: '(1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct.'

The Supreme Court insisted that, in the case of transport operators, the owner of the public vehicle has supervision and control over the driver. The management of the business is in the owner's hands. The owner as holder of the certificate of public convenience must see to it that the driver follows the route prescribed by the franchising authority and the rules promulgated as regards its operation. The fact that the drivers do not receive fixed wages but get only that in excess of the so-called 'boundary' they pay to the owner/operator is not sufficient to withdraw the relationship between them from that of employer and employee.

Case 3:

Welfare fund in India

There are workers who would not be able to participate in a contributory, voluntary scheme, no matter how well designed such schemes are. Workers who earn very little income or have seasonal work would not likely be able to keep up with the required contributions.

Recognising this constraint, several states in India found a solution in taxing the revenue that the sector generates, rather than the employers or the workers. The funds raised from these levies, which are termed 'welfare funds', used on the welfare of the workers who produce the taxed products.

India uses this system for the benefit of those who produce *bidis* (hand-rolled cigarettes), mine workers, cine workers and workers in the building industry.

The Bidi Workers Welfare Act (1976), for instance, provides the national labour legislation that taxes

the revenue generated by the sector (but not employers) to create a welfare fund administered by government. There are estimated to be over four million *bidi* workers in India, 90 percent of whom are women. Most of them work under a sub-contract from their homes for a low piece rate and without access to health insurance or social security.

Taxes of 50 paise (or half a rupee) per 1,000 *bidis* are levied. The welfare fund operates hospitals and dispensaries, awards scholarships and provides school supplies and uniforms. Initially, the fund did not cover standard aspects of social protection such as sickness, occupational injury, maternity, disability, old age or survivors and unemployment coverage, but it has now been extended into group insurance for which the welfare fund pays half. The Life Insurance Corporation Insurance Scheme subsidises the other half.⁸⁵

Welfare funds have also been set up also for workers in building and construction. In Tamil Nadu, a tax of 0.1 to 0.3 percent is levied on the cost of all building or construction projects. This tax finances the Tamil Nadu Scheme issued in 1994 which prescribes the procedure for registering manual workers and the supply of identity cards. It also provides for crèches to look after the babies of women construction workers, a group accident insurance scheme, educational assistance for sons or daughters of registered workers, assistance for marriage of the son or daughter of the worker, assistance to meet expenses towards the delivery of a child, assistance to families of manual workers who died due to accident or natural causes, and pension to cover every worker who has reached 60 years and has been a member continuously for five years.

A bill is also now pending that seeks to create a similar welfare fund to cover the 'unorganised sector' more broadly.

Case 4:

Collective identity, collective bargaining and global impact

Industrial outworkers, whether in the garment, shoe, or electronic sectors, face a number of common problems, among them: low piece-rates and earnings; irregularity of work; irregular and (often) delayed payments and the costs of providing/maintaining workspace, utilities, and equipment.

In addition, some endure harsh or dangerous working conditions — for example, shoe makers are exposed to toxic glues and many other workers suffer sore backs and deteriorating eye sight from working in badly-equipped and poorly-lit workplaces (often their own homes).

SEWA has a long history of working with garment workers focusing primarily on negotiating higher piece-rates and fairer working conditions for garment *industrial outworkers*, many of whom are Muslim. These organizing efforts have involved negotiations with the Labour Commissioner — as well as rallies in front of his office — to demand minimum wage, identity cards, and welfare schemes (child-care, health care, and school scholarships) for sub-contracted garment workers.

In 1986, SEWA was able to get a minimum wage for garment stitching (89.60 rupees per day) included in the official Gujarat state Schedule of minimum wages under the Minimum Wages Act.⁸⁶ Over the years, SEWA has also helped ‘*own account*’ garment makers to acquire new skills, improved equipment, and market information to try to compete in the fast-changing local garment market. This has included loans for improved sewing machines and related gadgets, training at the National Institute of Fashion Technology (NIFT), and installing electricity in the homes of SEWA members (to avoid the high costs of tapping electricity illegally).

In recent years, as export-oriented, factory-based

garment production has expanded in Ahmadabad City, SEWA has begun to organise *waged workers* in garment factories as well.

During the 1980s, SEWA began establishing linkages with membership-based organisations of home-based workers and street vendors and NGOs working with these groups. In the mid-1990s, at two separate meetings in Europe, these organisations came together under SEWA's leadership to form two international alliances — one of organisations of home-based workers, the other of organisations of street vendors.

From its inception, the alliance of home-based worker organisations was centrally involved in the campaign to pass an International Labour Organization (ILO) convention on home work. To help with the campaign, SEWA and its allies promoted research efforts to compile and analyse existing data on home workers worldwide, and UNIFEM was asked to convene an Asia region policy dialogue on home workers that included government representatives. With the passage of the ILO Convention on Home Work in 1996, SEWA and HomeNet recognised the power of statistics and of ‘joint action’ of activists, researchers, and policymakers. This recognition led to the 1997 global action-research-policy network called WIEGO which serves as a think-tank for the growing global movement of informal workers.

In 1995, SEWA organised a meeting of representatives of street vendor organisations from a dozen of cities around the world as well as activists and lawyers working with them at the Rockefeller Foundation Study and Conference Centre in Bellagio, Italy. At that meeting, the participants drafted the Bellagio International Declaration of Street Vendors which calls for action by individual traders, traders’ associations, city governments, and international organisations including the United

Nations, the ILO and the World Bank. The participants also called for the establishment of an international network of street vendor organisations to be called StreetNet. In early 2000, a StreetNet office was set up in Durban, South Africa. In November 2002, after several regional meetings of street vendor organisations, StreetNet International was officially launched. The aim of StreetNet is to promote the exchange of information and ideas on critical issues facing street vendors, market vendors and hawkers (i.e. mobile vendors) and on practical organising and advocacy strategies.

Membership-based organisations (unions, co-operatives or associations) directly organising street vendors, market vendors and/or hawkers among their members, are entitled to become affiliated to StreetNet International. As of late 2007, StreetNet International had 34 affiliates in 30 countries, including: local associations or trade unions, national federations or associations, and regional alliances.

Over the past decade, SEWA has also co-founded or inspired national and regional branches of home workers and their allies (called HomeNets) in South-East and South Asia, and national alliances of street vendors in India and Kenya. It also serves on an international coordinating committee that has organised three regional and two international conferences of organisations of informal workers; and as advisor to an international steering committee that is planning the first international conference of organisations of waste collectors to be held in Columbia in early 2008.

Together, these organisations have helped foster a global movement of workers in the informal economy that now includes local trade unions and other membership-based organisations of informal workers, national and global trade union federations that have begun organising informal workers, several

national federations of workers' education associations, the International Federation of Workers' Education Associations (IFWEA), eight national and two regional HomeNets, StreetNet International, and the WIEGO network. Drawing inspiration and guidance from SEWA, this movement continues to identify and network with organisations of informal workers and to enlighten and influence policy debates on the informal economy.

Case 5:

Federation of urban poor participating in governance

The Homeless People's Federation Philippines (HPFP) is a self-help, community-based federation that promotes savings mobilisation in low-income communities as a way of building their financial capacity to invest in their own development. HPFP works towards securing land tenure, upgrading settlements and uplifting the economic status of its members. It uses savings mainly as a strategy, not only to finance community investments but also to bring people together to work towards their common goals. HPFP is thus not only a financial tool but also a social mechanism, which builds networks of communities that foster continuous learning and innovation, partnerships and support systems. This network of communities opens up new possibilities for negotiations with the state and, among other things, the realisation of new forms of partnership.

In relation to its partnerships with public institutions, the federation deems it important to be recognised as a partner of *barangays* — village level governance units that are the first line of engagement with communities — and to participate in one important mechanism available to people's organisations and NGOs, namely the *barangay* development council, where *barangay* physical, eco-

nomic and social development plans and budgets are prepared and approved. *Barangay* plans and projects have a palpable impact on communities. Road projects, for example, can lead to dislocation of some communities, and health-related projects may overlap rather than complement community-initiated facilities.

In general, local development councils are mandated at all levels, from the *barangays* up to the cities and provinces. They were created to encourage people's participation in governance and thereby to promote transparency in all local government transactions. The *barangay* development council, in particular, is a vehicle that ensures the participation of civil society groups in the choice of development projects and in the appropriation and use of funds, so that these are not the sole responsibility of *barangay* officials. HPFP leaders lobbied successfully for the activation of a *barangay* development council in Quezon City, on which there are as HPFP representatives, and HPFP leaders are also members of the city development council of General Santos City. However, the experience of the federation is that without local pressure, these councils may not operate effectively and may exist only in name.

Engaging government and private agencies did not come easily to the HPFP. Communities still struggle as they interact with government and private entities that are not accustomed to dealing with the poor on an equal footing. Below are some strategies that the HPFP has learned to adopt through years of engagement with public and private agencies.

Alignment with electoral cycles: One of the lessons from previous engagement experiences is that any projects or concessions approved by elected officials should be completed within the electoral period. Thus, planning must also be aligned with

electoral cycles.

Establishing relationships with career officials: Despite changes in elected officials, the HPFP can maintain relationships with career officials, who retain their positions even after changes in political leadership. The HPFP continues to receive support from career officials, some of whom endorse the officials.

Show of numbers and a broad network: The HPFP also uses its national and international network to obtain concessions from public agencies, and there have been instances where government officials and landowners have agreed to certain concessions when these were requested in the presence of large numbers of people. The federation has used its international connections and its membership in international groups (for example, the Shack/Slum Dwellers International) to force closer relationships with important public officials. It has also invited public officials to participate in multi-lateral projects and international exchanges, thus helping to consolidate individual relationships and identify win—win strategies.

Capitalising on its track record and the HPFP name to bolster local efforts: The HPFP has earned credibility with government and private organisations through its self-help efforts in mobilising savings and securing land tenure. Government functionaries and private agencies usually ignore HPFP communities until they find out about the financial stake members have invested in their work, the gains they have achieved through their own initiative and the networks that they have been able to establish.

Strengthening technical know-how. Needless to say, good technical know-how is critical to taking a principled and informed position when negotiating. Unless community associations know how to express their interests in operational terms, they will not be

able to go beyond general statements of intent, and may inevitably fall prey to unscrupulous parties who can conceal their intent behind complex terminology, legalese, mathematical formulae and unverified documents. Building technical skills is therefore an important component of successful engagement with the state. The HPFP makes it a point to share information and transfer their knowledge to a wide range of communities.⁸⁷

Case 6:

Legislative Initiatives for Unorganised Workers

Two legal initiatives in India are described below concerning Unorganised Workers.⁸⁸

Unorganised Sector Workers (Employment and Welfare) Bill, India

At present, the Government of India is actively reviewing a national bill on workers in the unorganised sector, which was drafted by the National Commission on Labour and submitted to Parliament in 2002. This Bill has the objectives of regulating ‘the employment and conditions of service of unorganised sector workers and to provide for their safety, social security, health and welfare.’⁸⁹ It defines a worker as ‘a person engaged in Scheduled Employment whether for any remuneration or otherwise.’ (Some 122 occupations are listed as Scheduled Employment.) The bill, furthermore, provides for the establishment of Workers’ Facilitation Centres to support and assist unorganised workers, who: 1) are responsible for registration of workers and for guidance on a range of issues, such as dispute resolution, self-help groups and schemes available for their benefit; 2) will maintain a register of workers and provide an identity card and social security number and 3) will be responsible for formulating safety and social security schemes, including health and medical care, employment injury ben-

efit, maternity benefit, old age pension and safety measures.

Additionally, the bill provides for the setting up, at state level, of an Unorganised Sector Workers’ Welfare Fund, supported with funds from government, employers and registered workers. It also sets out minimum conditions of service, including hours of work and minimum wages.

There is an attempt as well to safeguard the rights of women. Wage discrimination on the grounds of gender is prohibited and a female worker is entitled to ‘such maternity benefits with wages as prescribed.’ Employers are also liable to pay compensation for injury on duty. (Source: Government of India, 2003)

Unorganised Sector Workers’ Social Security Scheme, India

Over 90 percent of India’s workers are in the informal economy (including agricultural workers), with little, if any, statutory social security. Most are casual labourers, contract and piece-rate workers and self-employed own-account workers. The Government of India recently launched the Unorganised Sector Workers’ Social Security Scheme on a pilot basis in 50 districts. The scheme provides for three basic protections: old age pension, personal accident insurance, and medical insurance. It is compulsory for registered employees and voluntary for self-employed workers. Workers contribute to the scheme, as do employers. Where self-employed workers join the scheme, they pay worker and employer contributions. Government also contributes. Workers Facilitation Centres are being set up to assist workers (see above under Securing Rights of Informal Workers). The scheme will be administered through the already existing Employee Provident Fund Organisation offices around the country (Source: Government of India, 2004).

Case 7:

Social security for all in the Philippines

In the Philippines, two complementary facilities - the statutory social security system and the health insurance scheme — are being made progressively accessible to everyone through voluntary schemes that are open to self-employed workers, lower-priced packages and a wider network of collection units, including banks and organised groups.

The Philippines Social Security System (SSS) offers a comprehensive range of cash benefits as insurance for retirement, death, disability, maternity, sickness, old age, death and work-related injuries. In 1995, it extended membership to the informal sector under its self-employed and voluntary membership scheme. Under this scheme, the minimum monthly salary to qualify as an SSS member was lowered to P1,000 and the definition of self-employed was expanded to ‘all self-employed persons regardless of trade, business or occupation, with a monthly net income of at least P1,000.’ This definition would include household help, individual farmers, fisher folk and other small entrepreneurs who may join the scheme as voluntary members.⁹⁰

As of December 2002, SSS covered about 24.3 million members, of whom 4.5 million are self-employed or working in the informal economy. However, the scheme continues to have problems with compliance, and workers often blame non-membership on lack of time, lack of information, lack of regular employment, cost of contributions, and difficulties trying to contact SSS representatives.

The Philippine Health Insurance Corporation (Phil-Health) used to be integrated with the Social Security System, but was separated, in part, to lower the cost of medical insurance package for households that set their priorities for immediate rather

than the longer-term medical needs covered by the SSS. Phil-Health administers health insurance and provides hospitalisation as well as out-patient benefits to its members and their beneficiaries in times of need and illness.

Phil-Health has expanded its programme to include those working in the informal economy through the ‘Individually Paying Programme’ (IPP). In 2002, Phil-Health covered 54.6 million Filipinos, or 64 percent of the country’s projected population for December 2005. Of the total covered, 54 percent are employed; 15 percent are individual payers; sponsor 22 percent by third parties, and 0.6 are non-paying members. Individual payers include the self-employed (market vendors, farmers, fisherfolk), private practitioners and professionals (doctors, lawyers), and those separated from work. With 2.9 million members as of March 2006, it is calculated that IPP membership grows by an average of 30 percent each year.

Under the IPP, household heads pay a monthly contribution of only P100 (currently just over \$2) to have their families covered by health insurance. This entitles members and their dependents to limited hospital coverage for room and board, laboratory tests, medicines and doctors’ fees when confined in a hospital. Phil-Health has further pilot-tested a partnership with organised groups such as cooperatives to facilitate its reach to those who are difficult to reach individually.

Lowering the cost of insurance packages, allowing more frequent collection, and partnering with organised groups, could serve to make such voluntary schemes available to all.

Case 8:

Minimum Living Standard Security System in China

In 1993, the Chinese government began to reform the social relief system in cities, at the same time seeking to try out a minimum living standard security system. In 1999, this security system was established in all cities and county towns throughout the country. In the same year, the Chinese government officially promulgated the Regulations on Guaranteeing Urban Residents' Minimum Standard of Living to ensure the basic livelihood of all urban residents. This has been decided 'primarily on the basis of urban residents' average income and consumption level per capita, the price level of the previous year, the consumption price index, the local cost necessary for maintaining the basic livelihood, other connected social security standards, the materials for the basic needs of food, clothing and housing, and the expenditure on under-age children's compulsory education.'⁹¹

Funds for this purpose are included in the fiscal budgets of the local people's governments, which determine the minimum living standard according to the cost necessary for maintaining the basic livelihood of the local urbanites. Urban residents with an average family income lower than the minimum living standard can apply for the minimum living allowance. Investigation of the family's income shall be conducted before issuance of the minimum living allowance, the level of which is calculated in terms of the difference between the family per-capita income and the minimum living standard.

Case 9:

Labour protection for subcontracts in Chile

In 2006, a law regulating subcontracting was introduced in Chile. According to the Ministry of Labour, 35 percent of workers in Chile are not directly hired by large firms finding work instead through subcontractors or other providers of personnel. At present, responsibility for labour obligations rests with the hiring firm. Compliance is often low and capacity to pay limited, particularly in the case of personnel suppliers who can operate with little capital. In this way, labour obligations are thoroughly diluted. The situation is such that some hiring firms are themselves creations of the principal firms.

The law introduced in Chile regulates both types of arrangements, but the objective is to limit the supply of labour to only short-term replacement workers. In the case of subcontracting, the objective is to promote it but to ensure compliance with all the labour obligations, as follows:

- A deposit of a re-adjustable guarantee (nearly US\$9000 at recent exchange rates) is required for the providers of labour, and the deposit can be used in cases of non-compliance and a time limit of six months has been introduced for the contracts.
- In the case of subcontracting, provisions were introduced on responsibility for the labour obligations, which affect both subcontractors and the main firms regarding responsibility for the labour obligations. Direct responsibility lies with the subcontractors, but the main firms have the right to request from the subcontractor a certificate of compliance (issued by the labour inspectorate agency), and they also have the right to withhold payments for subcontractors in cases of obligations still pending. In fact, the law transforms the principal firm into an instrument of la-

bour inspection and sanction and it ensures that compliance will increase.⁹²

Case 10:

Spain: Flexibility at the margin⁹³

In Spain, a two-tiered hierarchy of standards was applied to different categories of workers — with flexibility allowed for new entrants and unemployed persons (to encourage firms to hire them) and a continued level of protection kept for permanent workers (to avoid threatening the entire workforce with job insecurity).

High unemployment rates during the first half of the 1980s in Spain triggered the adoption measures to regulate contracts of limited duration (or fixed term contracts) to ensure that they met minimum standards of employment contracts while leaving employment protection legislation for permanent workers untouched. These contracts have lower dismissal costs and offer social security rebates for the first two years of the contract. It is applicable only to workers below 30 years or over 45 years, long-term unemployed and disabled workers.

Overall, fixed-term contracts have been instrumental in increasing employment in Spain while maintaining a certain degree of labour rights. This has benefited some specific groups of workers, mainly low skilled, and is clearly a better option than remaining unemployed.⁹⁴

In 2006, Spanish trade unions, employers' organisations and government signed an agreement to provide additional safeguards within these contracts, and to bring contractual arrangements more into line with the European social model. The main points of the agreement are as follows:

- After more than 24 months on a fixed-term contract in the same enterprise and doing the same job, over a reference period of 30 months,

the worker's contract becomes one of indefinite duration;

- Employer bonuses for four years when target groups (women, youngsters, and longer-term unemployed) are offered an open-ended contract;
- Precise definition of and action against illegal posting of workers between firms;
- Cuts in employer social security contribution;
- Extended unemployment benefits for older workers, and measures to increase protection of flexible fixed-term workers.

The success of fixed-term contracts in Spain is still a matter of discussion. Given the strict regulations on permanent employment, the main attractiveness of fixed term contracts is the flexibility and low firing costs they entail. This kind of contracts allows for a quick adaptation of the staff to changing economic conditions.

An important element in the assessment of fixed-term contracts is whether workers with temporary arrangements are trapped in this situation for a long time or, on the contrary, can obtain a permanent job after a relatively short period. It is said that fixed-term contracts could serve as screening devices that allow employers to observe workers' performance. Skilful workers would thus obtain a permanent contract after a probation period holding a fixed-term contract.⁹⁵ However, this transition from a temporary to a permanent post in Spain is, in general, rather slow and takes longer at present than in the past.⁹⁶

The disadvantages of this measure must also be noted. There is, for example, little incentive as a result either for employers or workers to invest in human capital and reduced overall labour mobility, due to inherent uncertainty, lower remuneration and high housing costs.

Case 11:

China's positive responses to growing market economy

Since the founding of the People's Republic of China in 1949, a planned economic system has been adopted, whereby highly concentrated employment and wage and labour systems guaranteed the livelihood of employees, and also promoted social security.

However, this system has had to adapt with the changes in economic and social development, particularly since 1978, when China began its policy of reform and opening up. This period was marked by a focus on economic construction that swiftly moved towards what has been called a 'socialist market economy system.'

As a result, labour and social security structures underwent many changes. Most obviously, China experienced unprecedented economic growth of between eight to 12 percent, far exceeding the centralised and collective growth patterns. This in turn affected employment patterns in cities with large urban migration from rural areas, un-contracted hires, long working hours, and low wages, with little or no job security or safety protection. Meanwhile, rural unemployment was also on the increase and the gulf between classes was widening. It is estimated that there are more than 150 million redundant rural labourers, with an unemployment rate in urban areas and townships standing at over four percent.

However, the most far reaching efforts to change the law were announced in March 2006 by Premier Wen Jiabao in his annual speech at the National People's Congress. The wide ranging economic reform package includes a new labour law addressing working conditions in China. With some amendments, influenced to some extent by the ILO, the new labour ruling has become law taking effect 1

January 2008. The State is now declared to have obligations, good governance, better public institutions, protection clauses, contracts, regulations and legal arbitrations. The reform package indicates that the State will play a crucial role by re-thinking development strategies and having solid policies in place. The following features are the most important of the new labour initiatives:

- Most industrial employees, including migrant workers are covered;
- Provisions are clarified for collective contracts that apply to groups of workers and employers industry-wide or within a given region;
- The employer must account for any deviation from the labour standards imposed by law, which also includes a requirement for them to provide written contracts;
- The courts will take a more stringent approach to labour violations as per the new laws. In fact, should the employer be found in violation of either the law or even 'administrative regulations', the labour administration has the power to issue warnings or 'rectifications' depending on the severity of the violation. There are also provisions within the law for damages and even criminal liability in those cases where labour rights are grossly infringed. The law strictly limits tacking on probationary periods during which the employer can arbitrarily terminate an employee. This feature is designed to overcome an abusive practice that deprives employees of protections from arbitrary discharge and requires 'just cause' before an employee is dismissed;
- This proposed law regulates for the first time the new industry of labour brokers or 'labour dispatchers,' which has grown up to furnish export industries with 'just-in-time' workers who have dubious legal status as employees under

the law and therefore are often unprotected;

- If employers keep using a temporary employee for more than two fixed — term contracts, the contract has to be converted into an indefinite term contract, thus ending the practice of ‘casualising’ employment;
- This draft law regulates abuses of ‘non-compete’ clauses, whereby employers saddle skilled workers in IT and other sectors with excessive restrictions on who they can work for in the future and severely hamper future job mobility with legal entanglements.

To correct a predisposition in Chinese courts and among labour arbitrators to exalt form over substance and facts, the proposed changes make the facts and realities of the employment relationship the key. Employees would no longer be confronted with the dilemma of enforcing a contract where the employer has illegally withheld one.

Case 12:

Out-of-court dispute resolution as a practical tool for legal empowerment

For poor people around the world, getting access to courts and legal support to protect their rights is often impossible. In many cases, the reason for this is straightforward — they cannot afford to pay the legal fees. In Tajikistan, the UK has helped to solve this problem by supporting Third Party Arbitration Courts. These courts are an alternative way of resolving disputes: two sides of a dispute agree to nominate a third party who they both trust to mediate their disagreement and come to a decision. Although they operate independently of the formal legal system, decisions are recognised by Tajikistan’s official courts. This means that where parties do not comply with a decision, the state can step in to enforce it.

Third Party Arbitration Courts provide poor people with a cheap, fair and accessible way of resolving disputes and protecting their rights. They are particularly effective at protecting the rights of women to land and property.

Third Party Arbitration has helped to make legal services available to 800,000 people in Tajikistan (12 percent of the population). The approach has also been used successfully in Russia, Kyrgyzstan, Moldova, Ukraine and Georgia.¹⁰⁰

Case 13:

Revising bidding and procurement practices in Senegal

Government can have a direct role to play in expanding opportunities for the informal sector through affirmative action to purchase the goods and services of the sector. In view of the weaknesses of the sector, government must change contracting procedures, reduce barriers and make government purchases more accessible to the informal sector. There should also be improved channels of information between government and the informal sector so that the government would know what products are available while those in the informal sector would know what government is buying. With regard to simplifying requirements, the following actions are proposed:

- Break large requirements into smaller sizes that are more manageable by small suppliers.
- Simplify bidding procedures for smaller requirements.
- Reassess existing regulations with a view to giving priority to internal sourcing of products.
- Reassess procedures with a view to ensuring that payments are made promptly to the suppli-

er, perhaps even prepaid, to ease the financial requirements of the informal sector suppliers.

- Establish effective control systems to ensure that these affirmative actions do not compromise the need for a reasonable price, good quality and timeliness.¹⁰¹

The Senegalese Government provides an example of a proactive policy of contracting out public infrastructure projects to small scale contractors. Bidding procedures and documents have been substantially simplified to permit smaller contractors to participate in the bidding process. Bureaucratic documentation was also minimised while bidding documents now contain official unit cost estimates as a guide to the less sophisticated contractor. A general session is held wherein contractors are informed about the existence of the implementing agency and are apprised of the entire procedure, from the bidding to the awarding and implementation. Simplification of the process goes as far as making the name of the winner very clear in the announcement, so that even an illiterate contractor's representative can readily determine who was awarded the contract.

The contract that the successful bidder has to sign is basic and contains only essential elements, with superfluous or general content removed. The model contract used for all such projects is written in language that is understandable to the layperson, avoiding legal jargon and complicated terminology.

During the implementation of the contract, technical assistance is provided to the awarded contractor regarding productivity improvement and basic management. The technical assistance programme comprises the following components: 1) short courses on basic management covering recordkeeping, accounting, stock control, and sub-project management; 2) short courses and on-site technical assis-

tance for contractors' managers, site supervisors and foremen to improve technical management of the construction jobs to improve productivity; and 3) ad hoc training for foremen and construction workers on specific construction techniques related to the job on hand. By its second year of operation in 1992, the programme had reached approximately 720 individuals representing over 500 firms.¹²

Chapter 3 Endnotes

- 1 See Resolution concerning the promotion of sustainable enterprises, International Labour Conference, June 2007.
- 2 World Bank, 2002a.
- 3 Anne Trebilcock, 2005.
- 4 Loayza, 2007.
- 5 Declaration on Fundamental Principles and Rights at Work, ILO, 1998.
- 6 'Decent Work and the Informal Economy,' Report of the Director-General, International Labour Conference, ILO, Geneva, 2002.
- 7 In 2003, the International Conference of Labour Statisticians endorsed a statistical framework for measuring informal economy.
- 8 Alsop and Heinsohn, 2005.
- 9 World Bank 2002b.
- 10 Trebilcock, A., 2006.
- 11 ILO, 1999.
- 12 Loayza and Rigolini, 2006.
- 13 ILO, 2002b.
- 14 Heintz and Pollin, 2003.
- 15 This summary is based on recent analyses of available national data (using the indirect measure of estimating informal employment as the difference between total employment [estimated by labour force surveys or population censuses] and formal employment [estimated by enterprise surveys or economic censuses]) as well as earlier summaries of these analyses in Chen et al 2005. The authors of ILO 2002 as well as Heintz and Pollin (2003) analysed a common set of official national data collected and compiled by Jacques Charmes.
- 16 National labour force data do not capture all forms of informal employment for a variety of reasons. One reason is that some lawful paid activities are not declared to public authorities. The extent and characteristics of lawful but undeclared work differ widely between countries. A 2004 study for the European Commission found that undeclared work represented as much as 20 percent of GDP in some southern and eastern European countries ('Undeclared Work in an Enlarged Union' 2004.) Of course, criminal activities are also not declared to public authorities. But the definition of the informal economy used by the Commission and in this Report excludes criminal activities.
- 17 See, Hu, A., *The Emergence of Informal Sector and the Development of Informal Economy in China's Transition: A Historical Perspective (1952-2004)* —(pdf version, slide 4) Available: <http://ccs.tinghua.edu.cn> and http://siteresources.worldbank.org/INTDECABCTOK2006/Resources/H_Angang.ppt
- 18 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. These include casual day labourers, domestic workers, industrial outworkers (notably homeworkers), undeclared workers, and part-time or temporary workers without secure contracts, worker benefits, or social protection.
- 19 Chen et al., 2005.
- 20 Analysis of national data by Jacques Charmes, cited in Chen et al., 2005.
- 21 These figures were computed by Jeemol Unni using the individual records of the Employment and Unemployment Survey, 1999-2000, 55th Round of the National Sample Survey Organisation, New Delhi.
- 22 Heintz, 2006.
- 23 Loayza and Rigolini, 2006. For figures on China, also see Hu, Angang, *The Emergence of Informal Sector and the Development of Informal Economy in China's Transition: A Historical Perspective (1952-2004)*. Available: <http://ccs.tinghua.edu.cn> and at: http://siteresources.worldbank.org/INTDECABCTOK2006/Resources/H_Angang.ppt
- 24 Chen et al. 2005.
- 25 Heintz 2006. Blunch et al. 2001.
- 26 Statisticians distinguish three main sub-categories of self-employment: 1) 'employers', the self-employed who hire others; 2) 'own account workers', who do not hire others; 2'; and 3) 'unpaid contributing family workers'. However, many statistical analyses, such as those by the OECD reported by Carré 2006, exclude unpaid family members because they are considered 'assistants', not 'entrepreneurs'. Since the majority of unpaid family workers in most contexts are women, this exclusion understates the real level of women's labour force participation and entrepreneurship (Carré 2006).
- 27 UNRISD 2005, Heintz 2005
- 28 Heintz 2005.
- 29 *ibid.*
- 30 Chen et al 2005.
- 31 Carré 2006:13
- 32 *Ibid.*
- 33 Tomei 2005.
- 34 ILO 2003b.
- 35 Based on conception provided by the United Nations Rapporteur, Martínez-Cobo, in the Study on the Problem of Discrimination against Indigenous Populations. Cited in Tomei 2005.
- 36 Tomei, 2005.
- 37 *ibid.*
- 38 Chen 2006b.
- 39 Article I of the Declaration of Philadelphia, International Labour Conference, 1944, Annex to the Constitution of the International Labour Organisation.
- 40 ILO 2006.
- 41 Although a number of ILO labour standards addressed workers outside of the formal economy (e.g., indigenous and tribal peoples, rural workers, etc.) since the 1960s, these did not previously result in international policy conclusions on the informalisation as a growing global trend.
- 42 Stiglitz 2001.
- 43 ILO 2002b.
- 44 Freeman 1996.
- 45 Tokman 2007a.
- 46 Anne Trebilcock 2004.
- 47 Paragraph 47 of the 2005 Summit Outcome Document.

48 Including the UN funds, programmes and agencies, regional economic commissions and development banks, as well as the international financial institutions and the World Trade Organisation (WTO)

49 Summit Outcome Document, ECOSOC 2006 Declaration.

50 See Marty Chen, 'Legal Empowerment of the Poor: Process and Outcomes', Harvard, July 20, 2007.

51

52 This could be guided by the Employment Relationship Recommendations, 2006, adopted by the 91st session of the International Labour Conference.

53 Chile adopted a new law in 2006 to regulate these arrangements, allocating solidarity responsibilities to sub-contractor and subcontracting firms involved. It also introduced the right of the latter to control the compliance of the former and to convert its responsibility into subsidiary. It also adapted the Labour Inspection to be able to certify the degree of enforcement on line and up dated.

54 See V. Tokman, "Informality, insecurity and social cohesion in Latin America", *International Labour Review*, vol. 126 (2007), number 1-2, ILO, Geneva. In Bogota, Colombia a survey of micro enterprises indicates that 76 percent among them could not pay all the labour contributions required by law, and in Lima, Peru this percentage reached to 85 percent.

55 ILO, 'Business environment, labour law and micro and small enterprises', Committee on Employment and Social Policy, Governing Body 297th session, Geneva, 2006. Another specific experience is the change of pecuniary sanctions by using the resources for improving the knowledge of micro-entrepreneurs on their obligations in Chile. Although ignorance cannot be claimed as an excuse for lack of compliance, there is need for support when levels of education are low and access to costly professional services cannot be afforded.

56 See Resolution concerning the promotion of sustainable enterprises, 96th Session of the International Labour Conference, June 2007.

57 See Case 6, annexed to this chapter.

58 See Case 7.

59 World Bank, 'Informality: Exit and Exclusion', Washington, 2007.

60 The public funds involved are the highest in Bolivia (1,2percent of GNP) and are estimated for the quasi-universal pension of Chile at 1,0 percent compared to the focused pensions in the Region that are usually below 0,5 percent of GNP.

61 See International Labour Conference, Resolution on the employment relationship, Geneva, 2006.

62 The current, dominant rubric for understanding and analysing the impact of regulation on economic growth is through the use of multi-country surveys, whose core function is to provide measures of the costs of business regulation within an economy. These multi-country surveys have, over a fairly short space of time, come to dominate global, regional and country-level policy discussions around the potential economic consequences of labour market regulation. Two of these surveys loom large for analytical work on the developing world, namely the Investment Climate Assessment (ICA) surveys and the Doing Business Survey (DBS) — both run under the auspices of the World Bank. The ICA measures firms' perceptions of the investment climate in their country and are based on a standard core module (See <http://rru.worldbank.org/InvestmentClimate/About.aspx> for this

standard questionnaire). The questionnaire covers senior manager's perceptions of obstacles to growth and investment, as well as information on firm performance. The data is organised according to a series of topics including infrastructure and services; finance; government policies and services; labour relations and innovation (World Bank, 2007). Currently the ICA includes data on 58 countries (World Bank, 2007). The Doing Business Survey (DBS) has been ongoing since 2004, and in the most recent round in 2007, covered close to 180 countries. The DBS deals with issues such as contract enforcement; property rights regulation; business licensing and of particular interest to us here — labour market regulation. The method of data collection is a combination of studying individual country laws and regulations and surveys of local lawyers.

63 For further background on these questions, see Berg and Kucera (eds.), *In Defence of Labour Market Institutions: Cultivating Justice in the Developing World* (forthcoming).

64 Botero *et al* (2004) undertook a seminal study on the impact of labour regulation around the world. The data covers 85 countries and is very deliberate in its construction of indices of labour regulation ranging from, for example, laws on overtime and part-time work to those on dismissals, notice periods and the right to strike activity and collective bargaining. The information is representative of country-level information for the late 1990s, and in most cases reflects data for 1997. It was, as far as is known, the first exhaustive, comprehensive measure of labour regulation that is cross-country in nature and not perception-based.

65 Botero *et al* (2004), p. 1364, shows that of all the labour regulation measures, only dismissal procedures in their cross-country regressions are a significant and negative determinant of the log of GNP per capita, while social security provisions are positively associated with growth.

66 ILO Governing Body 'The United Nations and Reform' 300th Session Geneva, November 2007 GB.300/4/1

67 Maloney 2003.

68 McKinesey Quarterly, 'The hidden dangers of the informal economy.'

69 IOE 2006.

70 OECD 2006.

71 Nickell and Layard 1998; and Levine and Tyson 1990.

72 Gregg and Manning 1997.

73 Saavedra and Torero 2004.

74 Kugler *et al*. 2003.

75 Acemoglu and Angrist 2001

76 In the case of Sara, *et al.*, vs. Agarrado, *et al*. G.R. No. 73199, 26 October 1988.

77 See ILO, 'The informal economy: enabling transition to formalisation,' Tripartite Interregional Symposium on the Informal Economy, Geneva, November 2007.

78 See also Convention 156, Workers with Family Responsibilities.

79 No. 177, 1966.

80 See Annex 1 for more details.

81 See Resolution concerning the promotion of sustainable enterprises, International Labour Conference, June 2007.

82 Thanachaisethavut and Charoenlert 2006.

- 83 Boundary: a cab driver, for example, pays a fixed amount to the owner for the use of the vehicle, retaining the fares above this amount for his expenses and keeping the balance as his actual earnings.
- 84 In the case of Sara, et al., vs. Agarrado, et al. G.R. No. 73199, 26 October 1988.
- 85 Chen 2006c.
- 86 As in other minimum wage negotiations, SEWA seeks to have the minimum wage fixed in a tripartite negotiation with the Labour Commissioner's Office, the employer, and the workers so it will be acceptable to all concerned. Also, SEWA does not expect that the minimum wage will be enforced but uses it as a benchmark or target in on-going negotiations.
- 87 Yu, S. and Karaos, A. 2004; UN-Habitat 2006.
- 88 Chen 2006d.
- 89 As noted earlier, 'unorganised worker' is the term used in India for workers in informal employment and does not imply that such workers are not organised into unions or other organisations
- 90 Previously, the definition of the *regular self-employed* was limited only to 'all self-employed professionals, partners and single proprietors of businesses, actors and actresses, directors, scriptwriters and news correspondents, who do not fall within the definition of the term 'employee,' professional athletes, coaches, trainers and jockeys' (Section 9-A, Social Security Act of 1997). Under the new resolution, the definition of self-employed has now been expanded to include low income earners.
- 91 Government White Paper, 2004 at: <http://www.china.org.cn/e-white/20040907/8.htm>
- 92 Tokman 2006.
- 93 Larsson 2006.
- 94 Estrada, and Izquierdo 2002.
- 95 Guell-Rotllan and Petrongolo 2000.
- 96 Dorantes, 2000.
- 97 'China to train 60 million rural labourers before 2010' in *People's Daily* at : http://english.peopledaily.com.cn/200309/27/eng20030927_125088.shtml
- 98 Wen Jiabao, Report of the Work of the Government. Delivered at the Fourth Session of the Tenth National People's Congress. 5 March 2006. Available: http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/english/2006-03/14/content_4303943.htm
- 99 *ibid.*
- 100 DFID, 2006.
- 101 Grierson and Mead 1995.
- 102 Pean and Watson 1993.

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