

Extending Labour Protection to the Informal Economy in Cambodia

Informal economy workers are not entitled to labour protection under the current legal framework.

Labour laws need to be extended to improve their working conditions.

In Cambodia, the informal economy is where a large majority of the population find their employment opportunities and also where legal and social problems are most pronounced. One feature which characterizes informal economy workers is that they are not recognized or protected under the legal or regulatory framework. The Cambodian labour law guarantor of labour protection, is intended to cover only workers working in the formal economy, leaving a great number of Cambodian informal participants unprotected and thereby exposed to a wider range of potential problems and social abuses. In this regard, extending labour protection to those who work in the informal economy is an indispensable means of labour condition improvement and poverty reduction.

So, what should we do to extend labour protection to these informal economy workers?

To examine the prospects of appropriately extending labour protection to those workers in the informal sectors, an initial focus on the existing labour laws and their enforcement in practice will show the way to see how informal economy workers are excluded from labour protection and what might be done to address those problems and issues involved in the context of legal reform.

How Informal Economy Workers are Excluded from Labour Protection?

In terms of labour protection, the informal economy workers are discriminated against in two dif-

ferent ways. One category of workers is explicitly or implicitly excluded from legal coverage and thereby is not entitled to legally enjoy labour protection; whereas the second category is literally covered by the formal reach of the labour law but is, in practice, unprotected.

Uncovered and Unprotected Activities

In principle, the Cambodian Labour Law is intended to cover only workers working under employer-employee relationships, with the exception of domestic servants who may enjoy some specific rights only where they are expressly specified under the law. For this purpose,

Article 3 of the law defines the term worker as every employee who performs work *under the direction and management* of an employer in exchange for *remuneration*. This requirement for employer-employee linkage implicitly excludes two important groups of workers from the legislation scope: self-employed persons and unpaid family workers.

However, aside from the reference made in the above article, the law provides no criteria for determining the subordination linkage between workers and employers. This deficiency has in many cases clouded the distinction between the self-employed and the employed person and therefore leaves some groups

Box 1: Extracts of Articles 1, 2, 3, 45 and 65 from the Cambodian Labour Law

Article 1: This law governs relations between employers and workers resulting from employment contracts to be performed within the territory of the Kingdom of Cambodia, regardless of where the contract was made and what the nationality and residences of the contracted parties are.

Article 2: All natural persons or legal entities, public or private, are considered to be employers who constitute an enterprise, within the meaning of this law, provided that they employ one or more workers, even discontinuously.

Article 3: Workers, within the meaning of this law, are every person of all sex and nationality, who has contracted to perform work in return for remuneration, under the direction and management of another person, whether that person is a natural person or legal entity, public or private.

Article 45: The labor contractor is a sub-contractor who contracts with an entrepreneur and who himself recruits the necessary work force or workmen for the execution of certain work or the provision of certain services for an all-inclusive price. Such a contract must be in writing.

Article 65: A labor contract establishes working relations between the worker and the employer. It is subject to common law and can be made in a form that is agreed upon by the contracting parties. It can be written or verbal. It can be drawn up and signed according to local custom. If it needs registering, this shall be done at no cost. The verbal contract is considered to be a tacit agreement between the employer and the worker under the conditions laid down by the labor regulations, even if it is not expressly defined.

Source: Cambodian Labour Law, 1997

of workers unfairly outside labour protection. This is especially true for home-workers whose task is to provide goods to another person in a commercial relationship. The main labour of the home-worker/goods seller depends solely on the commercial activity of the buyer's enterprise. The job providers treat them as if they were self-employed and therefore do not contribute to their social protection but, in reality, these workers are often totally dependent on a single enterprise of the job providers for their raw materials and orders.

Covered and Unprotected Activities

Among employment activities included in the legal coverage of the labour law, several work situations are not or are insufficiently protected in actual practice. There are two main reasons for this. The first one is the situation of a small number of employees who work in small, unregistered, low productivity, informal economy enterprises where workers lack labour protection due to the informality of the working environment. Another reason pertains to the particular nature of some works where general provisions of labour legislation are too broad to protect those employees in practice. This is especially true of casual, seasonal or part-time jobs to which no specific and adequate provisions are provided.

Prospect for Labour Protection Extension

Thus, labour protection extension would need both legal text reform and greater law enforcement. Particular attention needs to be paid to some significant characteristics of the informal sector considering its important share in the economy and

the diverse forms of activities and particularities of problems workers face. Appropriate actions will need to be taken through capacity building and institutional development in order to help improve law enforcement in practice.

Pre-condition for Legal Reform

In the context of labour protection extension, the main objective

of the legal reform is to improve working conditions and living standards of people in the country and not only to establish formal rules for informal economy workers. Considering the importance of the informal sector in the economy, more surveys and impact studies will be a precondition for effective and appropriate legal reform. Detailed and vigilant studies should be conducted in a way to avoid a negative effect of the

Box 2: Working conditions spotlighted in some significant informal economy sectors

Thay, 17 years olds, works as casual construction labourer without contract in Siem-Reap Province: *Actually I do find my current work too hard but I can just tolerate because I don't know what else to do. What I fear the most is to be cheated by the constructor. Sometimes, the constructor doesn't pay us money when the works are completed. The day I come to get money, I cannot find him.*

Mrs. Say Oum, 48 years olds, living in Koh Ou Gna Tey (an islet near Phnom Penh), come to sell, as micro mobile vendor, her vegetables in some markets in Phnom Penh every morning: *I usually get up at 3h00 in the morning to take boat to Phnom Penh with my 5 year-old son. I start in the early morning because I have to find place in some markets to sell my vegetables. There, at the market, I'm required to pay many kinds of taxes and place fees to be able to have place for my vending. Sometimes, as there are too many vendors, I have to wait for the place and I just can come back home in late evening. Basically, I can earn about 3,000 to 6,000 riels per day.*

Leak, 23 years old, works as a beer promotion girl in a restaurant in Phnom Penh: *Here, our monthly salary is based on the quantity of beer we serve to clients. So, normally, we are compelled to drink with clients every day to increase our salaries but today I cannot drink very much because I am sick.*

Mr. Lous Seyha, President of Cambodian Association for Informal Economy CAID: *What we need the most is to have legal text which clearly defines the rights of informal workers so that we can have enough legal basis when negotiating with market authorities or other public authorities involved.*

Mrs. Chap Chantha, Executive Director of People's Association for Development: *Yet, providing technical skills and fund to those who work on the farm is the major key point in the development for better productivity of their activities but this alone is not enough; it is most important that we regularly follow up their activities both technically and financially. Otherwise, we train them for nothing.*

Mr. Ngin Bunrith, Executive Director of Human Resource and Rural Economic Development Organisation (HURREDO), is currently implementing a project regarding the development of quality and productive vegetable farming in Siem Reap province: *We provide technical assistances and trainings to those farmers, lend some money to them and then find markets for their crops. The result is positive but it can just support local market as we have too little funding. We plan to do many things to expand productivity toward national and international markets but we lack funds.*

Source: EC's survey, February 2005

reform on economic growth and employment opportunities and to identify actual problems and issues of workers in each particular type of informal economy sector so that adequate and appropriate legal provisions could be established.

Broadening Labour Legislation Scope

Broadening the scope of labour legislation means to incorporate all the existing, uncovered activities into the legal framework. This incorporation will require some modifications to the existing labour law.

In the process of incorporating self-employed or own-account workers, only several chapters of the existing labour laws will be specifically concerned, especially related to occupational health and safety, social security, trade union freedom and right to collective bargaining etc, where both self-employed and dependent workers would enjoy benefits from labour protection. All other provisions regulating the relationships between workers and their employers will not apply to self-employed persons. A clear reference must be made mentioning which chapters of the laws shall apply to self-employed work, making the whole text of the law compatible with the incorporation of this kind of worker.

Later on, a clear and refined definition of employee and employer-employee relationship would be added to the current legal text in a way to possibly govern unpaid workers and other workers whose dependency on the employer presents ambiguity. This definition should be broad enough so that the employer-employee relationship is not limited merely to remuneration. The definition should be clear enough to exactly define the criteria under which

workers are subordinate to employers.

The last thing to be modified in the legal text is the extension of labour protection to domestic or household servants. It seems quite easy to add this group of workers into the legal framework by simply removing the existing exclusion made in the present labour law. This should be done with particular recognition of the distinctiveness of the workplace (a private house), and with recognition that most of these jobs are done by women and children. Therefore, additional detailed provisions should be promulgated, with more surveys and studies on the actual problems they face, to specifically deal with this kind of work.

Recognizing Differences in Workers Interest

The informal economy is very diverse and problems there are very specific. Once all types of employment are recognised in the labour law, more detailed provisions can be specifically promulgated in response to actual problems and varied interests of the various employ-

ment groups. Some differences of interests will be discussed below to show how and where the labour law extension can be focused.

Among self-employed persons, certain differences seem to be apparent between rural and urban workers. The main problems the farmers face are low productivity, access to markets due to lack of funds, land tenure problems, low skills etc whereas the biggest concern of urban micro vendors and transport operators is police harassment, selling of parking places and social security issues. Therefore, promoting measures or policies on land tenure and skill training is a priority of rural agricultural workers; whereas the situation of urban self-employed workers calls for clear regulations determining their rights in relations with local and administrative authorities and with market authorities when conflicts occur.

Like self-employed persons, unpaid-family workers rely solely on business activities and the productivity of their families while workers in employer-employee situations financially depend on another person an

Box 3: Definition of *Employee* in the labour law amendment of South Africa

A new definition of *employee* has recently been provided within the amendment of labour legislation in South Africa by referring to any person who earns under a certain income, regardless of the form of contract the worker has with the work provider if the nature of the relationship meets one of seven criteria:

1. The way in which the person works is controlled or directed by another person;
2. Hours of work are controlled or directed by another person;
3. In the case of a person who works for an organisation, the person forms part of that organisation;
4. The person has worked for that other person for an average of at least 40 hours per month over the last three months;
5. The person is economically dependent on the other person for whom he or she works or renders services;
6. The person is provided with tools of trade or work equipment by the other person; or,
7. The person only works for or renders services to one person.

Source: Tanya Goldman, *Organizing in South Africa's Informal Economy: An Overview of Four Sectoral Case Studies*, Working Paper No. 60, Geneva, p. 44

employer. In recognition of this difference, policy makers may find that priorities are also different in terms of decent work improvement. Particular consideration should be given to the difference in priority between promoting decent work through legislated protection, which seems more appropriate for workers in employer-employee relationships, and promoting it through other methods (i.e, productivity development), which seems more appropriate for own-account and family workers.

Paid workers, on the other hand, lack labour protection because of weak law enforcement. In terms of working environments, the situation of real employees working in micro, small and medium enterprises (MSMEs) should be regarded as a critical problem in the context of the Cambodian informal economy. Concerning this, an enterprise's registration procedure should be reduced and simplified in compliance with the quantitative, financial and geographic situations of the various enterprises.

However, no matter what the procedures are, enterprise registration should not be a burden on the enterprises, especially a micro or a very small one, but rather should be a mechanism for creating an environment of more decent work. The legal aspect of these types of work deals closely with the financial situations of enterprises where productivity development should also be regarded as an indispensable means of making these activities more secure and decent.

Raising Law Awareness

A low level of awareness of the law and rights at work seems to be apparent within the informal economy. This should be a common con-

cern calling for immediate intervention from other stakeholders, especially the government, the ILO, local NGOs, trade unions, associations, local authorities etc, through short-term training courses or seminars, television programmes, or all other means possible. The most important rights to be highlighted should be the freedom of association and the right to collective bargaining. Workers in the informal economy must learn how to make their voices heard so that their interests are taken into account.

However, consideration should also be paid to workplace health and safety, protection from exploitation and abuse, and access to social security and health insurance, recognizing in particular that women are less likely to exercise these rights than men. In collaboration with donors and other social partners, lessons learned and best practices from other countries should be implemented in the country.

Improving Labour Administration

The labour administrative mechanisms are indispensable machinery for labour law enforcement. In Cambodia, these mechanisms are not yet sufficiently staffed and equipped to effectively enforce labour standards in all areas covered by the present law. According to the Director of Labour Inspectorate, the main problem the Inspectorate currently faces is lack of capable human resources. Moreover, no specific labour administrations are seen established to specifically treat informal economy workers, considering the special nature of their work.

In this regard, capacity building and institutional development should be regarded as key issues in the process of labour administration

improvement. Some aspects of access to administration should be reviewed to simplify the procedure where it would appear to be too complicated or require too much time and cost etc.

However, the establishment of Labour Inspection Units in each *khan* (administrative territorial authority at the district level) in Phnom Penh is a good example of simplifying such procedures, making administrative services more timely and closer to work environments. It would be laudable if the same mechanisms could be implemented in some significant areas of informal sectors, especially where special situations are most pronounced.

Concluding Remarks

Extending labour protection to the informal economy is a reasonable mission which will be feasible if proper attention is paid. Sufficient surveys and impact studies would be conducted before any reforms get started. However, labour law extension alone will not effectively improve working conditions in these informal areas unless the government's other social and economic policies tackle the same issues.

In the garment sector, the application of labour legislation seems to be considerable. So why not in the informal sectors? The period of time and the necessary strong commitment by the government remain key points in the context of the Cambodian informal economy.

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*This article is compiled from a study report on **Extending Labour Protection to the Informal Economy**, commissioned by the International Labour Organisation (ILO).*