

IDRC FINAL REPORT

LEGAL EMPOWERMENT OF THE WORKING POOR

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1. Introduction

One of the defining features of informal employment is that it is unprotected and insecure, being excluded, in law or in practice, from rights, benefits and protections afforded to workers under “standard employment relationships” in labour legislation. The challenge is particularly acute with regard to own account workers, who fall outside the standard employer-employee relationship. In order to effect a transformation in the scope of labour legislation, there is a need to challenge current notions of who is a “worker”, what is a “workplace”, and what constitutes a “worker organization”. In addition, other sites of law, such as environmental laws, municipal laws and land laws have also been identified in this project as areas that significantly impact the conditions of self-employed workers. The project seeks to identify the extent to which the demands of informal workers for rights and protections can be turned into law; to develop technical know-how and strategies to effect legal reform and its implementation; and, most importantly, to build the capacity of informal workers to engage effectively in processes leading to legal reforms and their legal empowerment.

Recognizing this, in 2007 WIEGO instituted a global project on Law and the Informal Economy with a pro-poor and pro-women perspective, and in particular focusing on own account workers in the lowest segments of the informal economy. At the project’s inception, the outputs envisaged were:

- A global observatory of relevant laws and regulations affecting informal workers;
- Case studies from different countries on laws impinging on informal workers and the struggles of their organizations to obtain and implement new laws;
- A platform of demands and model laws or agreements that could be used by organizations of informal workers in advocacy and negotiating activities.

The specific objectives of the project, Legal Empowerment of the Working Poor, were as follows:

- a)** To document and analyze laws/regulations/policies that impinge on the work, working conditions and livelihoods of four different occupational groups of informal workers (street vendors, waste pickers, home-based workers and domestic workers);
- b)** To identify useful laws, regulations and judgments (“better practices”), and key legal strategies and struggles of these informal workers that can be widely shared;
- c)** To create a platform of demands and model clauses, laws, agreements that are useful for informal worker organizations in their engagement with authorities or employers;
- d)** To help build the capacity of informal worker organizations, and especially women leaders, to understand and engage with legal issues, through advocacy, negotiation and implementation of favourable legal change;
- e)** To contribute to conceptual change concerning notions of “work”, “worker” and “work organization”;
- f)** To transform research results into policy lessons and policy influence through i) building the capacity of member-based organizations of informal workers to do policy analysis and advocacy; ii) creating and leveraging policy space for the member-based organizations (MBOs) of informal

workers to voice their perspectives and demands to mainstream policy makers; and iii) using findings, lessons, and demands from the project in its own policy advocacy efforts at the international level.

2. The Research Methodology

The project selected three countries, Thailand, Peru and Ghana, for implementation. The choice of countries was determined on the basis of WIEGO's ongoing work among organizations of workers in the informal economy in these three countries, so that the project could draw upon these connections. The country teams were selected based on their experience and links with MBOs working in the project areas. Each country team was given the freedom to select the specific occupational groups in the informal economy where the team had links, bearing in mind the need to ensure that the selected groups included self-employed/own account workers and also had a significant number of women workers.

The country teams initially worked on the documentation and compilation of laws for their select occupational groups. This mapping exercise revealed the structure of the law with regard to informal workers, what the gaps in coverage with regard to laying down norms of conditions of work, hours, wages or social security were, and the kinds of remedies available under the law. In some instances, focus group discussions/consultations were held with organizations of the MBOs to sharpen understanding of the how the law worked and also to develop advocacy for fresh law/legal reform where required. The project went further in some instances to increase the capacity of workers to access the law. In Thailand, the research team selected specific instances where homeworkers had accessed their rights under the law to understand the obstacles encountered in implementing the law. The Peru team focused very strongly on capacity building of organizations and individual workers since laws already existed for many of the sectors selected in that country. Legal awareness building through preparation of materials and campaign activities was also undertaken in the project countries. The process of consultation or capacity building helped shape a better understanding of how the existing regulatory framework affects workers, and has helped sharpen the platform of legal demands for each occupational group.

In sum, the country teams adopted differing methodologies and approaches, focusing on and leveraging their respective strengths, in carrying out the study. In brief:

- **Ghana** - Focused on a mixed approach building on its vast network of unions to bring various stakeholders to consultations, through which they could come to better understand the legal demands of the workers. It also opened up a new area of work by examining the legal concerns and needs of kayayeis (or women headloaders), a much-neglected category of workers. A review of court rulings was also undertaken to understand the dominant judicial attitudes towards informal workers.
- **Peru** – Focused on training and organizational skills of workers for legal empowerment. It also explored social media as a powerful tool for the dissemination of their demands and proposals. Consultations with various stakeholders, including the labour ministry and their officers, was an important tool in evolving action plans for future work for each occupational group.

- **Thailand** – Focused on policy and legislative interventions for legal empowerment of workers. The project also opened up an additional area of intervention, hitherto unexplored, for future work with regard to contract farmers in the country.

3. Research Findings

The Project responded to different circumstances and needs in each of the three countries. Partner organizations—Ghana Trade Union Congress, Home Net Thailand and ISCOD in Peru—worked with different groups of informal workers and with lawyers, academics, and worker education specialists, amongst others, in implementing the project.

All countries:

- Provided background information on the informal economy and the legal situation of informal workers;
- Reviewed and analyzed the specific laws and regulations affecting the occupational groups chosen for study under the project;
- Held consultations with workers/MBOs from the chosen occupational groups on their legal challenges and demands;
- Engaged with legal experts to help analyze laws, examine court rulings and develop alternatives;
- Engaged with authorities responsible for formulating policy and laws through consultations, dialogues or negotiations to highlight the legal demands and concerns of informal workers and those specific to the occupational groups;
- Helped build the capacity of informal workers, especially women workers, to understand the laws and regulations affecting them, to identify gaps, develop demands and strategies for legal change and to empower them to engage with authorities. In the case of Peru, formal courses were run for four occupational groups of workers.

During the course of these activities, several changes to laws and regulations took place or were in process. For example, in Thailand the Homeworkers Protection Act (2010) came into force in 2011; however, negotiations were necessary to put in place the required regulations and committees for implementation. Also, the Domestic Workers Ministerial Decree, outstanding for several years, was finally adopted. Two organizations, HomeNet Thailand with its home-based worker members and the newly formed domestic workers’ organization, played an important role in these developments.

In Peru, the review and analysis of existing legislation allowed the project team to identify the main gaps in Peruvian legislation, reinforcing the demand for a Law of the Self Employed Worker. A draft law prepared by ISCOD, with the involvement of CUT (trade union federation) and with WIEGO’s input, is currently being discussed by the Ministry of Labour; negotiations are expected to commence shortly. Also, a new Metropolitan Ordinance regulating street vending has been issued. In Ghana the project team and legal experts have been giving input to the Task Team on Domestic Workers that is reviewing legislation following the adoption of the Domestic

Workers' Convention in 2011 as well as engaging the Accra Municipal Authority on street vending regulations.

Individual narrative reports of the three countries are annexed. Although each country team chose different occupational groups for their study, some broad findings that emerge from the study are:

a) Legal Recognition and the Right to Work

The occupational groups in all three countries studied by the WIEGO project indicate the lack of recognition granted to workers in the informal economy. Street vendors, in many instances, are viewed by the administration as “illegal” and the lower courts, in handing out punishments to street vendors, were particularly harsh. A review of the lower court cases in Ghana also indicated a distinct bias against street vendors as under the law, both the vendors and the buyers can be booked for violations but only the vendors were targeted.

Similarly, the waste pickers in Peru put forward the legal demand for recognition of their work. The Municipality of Lima registers waste pickers operating within its jurisdiction but it was acknowledged, both by the workers and the labour ministry representatives, that a Supreme Decree or legal norm that would clarify the legal status of waste pickers, defining them either as independent or dependent workers of the municipality is essential to strengthening worker rights.

b) Limited or Partial Regulatory Frameworks for Labour Rights Protection

Of the three countries, Ghana is the only country with a comprehensive labour code that provides protection for both the informal and formal workers. Yet, even this law does not recognize some informal workers such as the *kayayei*. The complexity and differing needs of the occupational groups within the informal economy pose a real challenge for evolving workable regulatory models that protect labour rights in the informal economy. Despite this, there are many efforts to evolve a comprehensive legislation that would apply to more than one category of worker. In the latest of such efforts, Peru is now ready with the Draft Bill of Self Employed Workers developed by the Ministry of Labour. A counter proposal from the unions is also ready; ISCOD, our partner organization in Peru, has been an active participant in developing the draft with learning and inputs from informal workers provided during this project period.

c) Multiple Sites of Legal Engagement for Informal Economy Workers

The demand for greater legal and social protection for informal economy workers for all occupational groups is a recurring theme for all three countries and the selected occupational groups. One of the reasons for looking at law is to focus on ways in which law can be used as a means of empowerment – both the instrumental capacity of law as a form of empowerment and through the exploration of how MBOs can leverage its capacity. The effort is also to look beyond labour law to focus on many other domains of law that impact informal economy workers. The realm of questioning about the impact of law requires a paradigm shift to explore the livelihoods approach.

While domestic workers have sought and received protection to varying extents under labour law, the other selected groups in the project have been own account workers, working alone or

operating in a cooperative or through an intermediary. The platform of demands raised by these groups of workers does not restrict itself to change in labour law alone but addresses concerns arising out of municipal laws, criminal laws, land and water laws, etc. For instance, street vendors have sought immunity from frequent arrest/detention/destruction of goods from the police. The reasons for these police actions could be on the grounds of occupying public spaces or hawking counterfeit goods/goods infringing intellectual property rights, or public hygiene. Protection of the vendors' livelihood appears to be a bigger challenge than the protection of hours/conditions of work of the workers. In other words, livelihood or income security appears to be a key factor as compared with social security or addressing other deficits in their working life usually addressed by labour law. Contract farming in Thailand also seems to pose a similar challenge. The impact of economic policies, pricing of inputs and product prices, and resisting the domination of large firms that purchase their products are seen as critical compared to protection of the traditional labour rights of these farmers.

The need to engage with multiple ministries or departments of the government/authorities instead of merely with the labour ministry or department has been underscored by the project partners. While traditionally, "worker" related matters have been dealt with by the labour ministry or department, in the case of informal workers, particularly self-employed or own account workers, who straddle qualities of a worker and entrepreneur simultaneously, a broader range of consultations and engagement is required. This is borne out by the India pilot project as well as the present three-country project.

d) Poor Implementation of the Available Regulatory Frameworks

Even where there are legislations, there is no effective implementation. A case in point is the Ghana Labour Code. Also, the cases of child kayayei and trafficking were noted to be adequately covered by the Children's Act and the Trafficking Act. Like many issues in Ghana, the challenge is weak enforcement.

There have been greater challenges with regard to extending labour law coverage to own account workers such as market porters, kayayeis, waste pickers, street vendors, home-based workers and contract farmers. For these categories of workers, the absence of an employer-employee relationship has meant that they are unable to access the more traditional protections associated with labour law. This includes regulation of hours of work, conditions of work and also regular contribution to social security benefit. The unpaid labour put in by other family members in their work is altogether invisible and uniformly in all three project countries, the extent of protection and the degrees of protection appears to be below that available to wage employees.

e) Organization and Voice for Informal Economy Workers

The legal demands of the informal economy workers found a voice in the various fora organized by the country teams. However, the lack of, or limited, collective organization to lend support and take forward legal reforms in each of the countries points to the need to build organizational capacities that would take forward the legal demands of the workers. The traditional forms of

collective bargaining between the organizations of workers and employers needs broadening to take into account negotiations between organizations of own account workers and the municipal/city/state authorities over access to public spaces and civic amenities.

f) Enable Legal Awareness and Capacity Building

One of the primary reasons for the lack of attention to various categories of informal workers is their poor visibility to policymakers and lawmakers. The reverse is also true. Poor awareness among workers of their legal rights contributes to the lack of collective efforts in raising legal demands and legal reforms.

The project partners engaged in several consultations and awareness programmes for workers in a bid to understand the workers' own legal needs and to build their capacities, with a view to building long term organization of workers into collectives/unions. In particular, Peru carried out intensive training programmes for the workers and also developed suitable training modules for the workers, under the aegis of the project.

4. Project Implementation and Management

The project partners selected occupational groups where women workers predominate (such as domestic workers, waste pickers, homeworkers and vendors) and identified a combination of desk studies, stakeholder consultations, training programmes and advocacy campaigns in the project to improve the utility and effectiveness of the project outcomes.

As pointed out earlier, all the project countries had selected domestic workers as one of the groups. This group of workers are in employment relationships, often waged employment relationships. The adoption of the ILO Convention on Domestic Workers served as a major fillip in the three project countries in extending/deepening the coverage of domestic workers under domestic law.

Very early on in the project, Thailand made significant progress in their work on two specific sectors—home-based workers and domestic workers. They held consultations with homeworkers focused on refining the new law for homeworkers. Additionally, a survey on the Homeworkers Protection Act and its implementation, along with a set of case studies, was presented to the Labour Ministry to provide insights into the implementation of the enactment. A stakeholder consultation with domestic workers to update them on the ILO Convention on Domestic Workers and to mobilize workers to discuss migrant domestic workers in the country was also held. A national level consultation with domestic workers organizations was also organized. Despite the flooding in large parts of Thailand and the consequent delays in the implementation of the project, work progressed steadily and a consultation with contract farmers was held as planned under the project.

Ghana chose the occupational groups of domestic workers, street vendors and head loaders (kayayeis). The Ghana team also had initial consultation workshops with all the selected occupational groups to identify and map the legal issues for each sector. A preliminary background paper for each occupational group was prepared based on these consultations. The country team also collated lower court rulings on these occupational groups to understand and evaluate the manner in which courts viewed informal workers.

Peru began the work with the compilation of laws for each sector and the outputs were made available on a dedicated site in Spanish at: <http://observatorio.mantenimiento-pc.com/>. Creative and user friendly material pertaining to the impact of law on the occupational groups were prepared and disseminated among the workers.

To enable learning among the project partners, a two-day consultation was organized in Bangalore, India. Project partners benefitted from the insights received through a process of sharing and learning. A field visit to the nascent waste pickers collective in Bangalore also threw light on the working conditions and organizational strategies being adopted by the waste picker groups in Bangalore. Their recounting of the use of the Lok Adalat (or people's courts) process to push for better policy with the Bangalore Municipal Authorities presented an interesting and new mode of engagement for workers.

All the outputs from the three country study (and the earlier pilot studies) will be hosted on a dedicated micro-site on the WIEGO website titled Law and Informal Economy. It is hoped that the web observatory will help strengthen the legal outputs beyond the project period. Additionally, it is acknowledged that the dissemination and updating of knowledge on the website needs to be tailored to multiple needs – workers, academics, judges, courts, policymakers – in the long term.

7. Impact

Thailand

The project partner in Thailand—HomeNet—had advocated for a legislation for homeworkers between 2002-2010, and in September 2010, the parliament issued the Home Workers Protection Act. It has since been enforced from May 2011. Under the law, homeworkers are entitled to minimum wage, Occupational Health and Safety protection and other fundamental labour rights. The law provides for the setting up of homeworker committees involving tripartite and labour experts.

The WIEGO law project has provided the impetus to track the implementation of this new legislation. As an initial task, HomeNet Thailand documented the experience of advocating for the Home Workers Protection Act. A survey, through case studies was initiated next to update the status of the home workers in Thailand. The survey revealed critical information, for instance, on wage rates it was found that the income from piece rate work has not changed in 10 years and in some cases is lower than it was 10 years ago (perhaps as a direct outcome of the Free Trade Agreements and factories moving to places such as Bangladesh, Cambodia, Laos). A concerted effort at educating and disseminating information on the content of the law to homeworker leaders and homeworkers through workshops with lawyers and government officials, posters, newsletters and other documents is also underway. Following the interaction with workers, HomeNet Thailand helped homeworker groups to register with Ministry of Labour to get the right to vote for representative on a homeworker committee. It has also lobbied with the Ministry of Labour about enforcement, met with the Legal Reform Commission and the Labour Commission of the House to accelerate the process.

With the domestic workers, HomeNet cooperated with the ILO office in Bangkok, Friedrich Ebert Stiftung and civil society organizations to set up a task force to promote decent work for

domestic workers. A workshop was organized to discuss and comment on the Ministerial Regulation for domestic workers prepared by the Ministry of Labour. Monthly meetings and leadership training workshop with domestic and migrant workers is being held regularly. As a result of these efforts, the Network of Domestic Workers in Thailand Union (DO IT) has grown and strengthened.

Peru

At the request of CUT-Peru, ISCOD participated in the round tables to prepare a Draft Bill regarding Self Employed Workers. CUT-Peru is a union with ample experience working with self-employed workers; thus ISCOD provided technical assistance in reviewing the proposed Draft Bill of Self Employed Workers developed by the Ministry of Labor and developed a counter proposal for the unions.

The Draft Bill for Self Employed Men and Women Workers starts by recognizing the legal status of the self-employed worker by all and the obligation of the State to respect, promote, protect and ensure the worker's rights that derive from this status, as well as the creation of public policies that provide them with decent work. This was proposed by the Ministry and contains three legal areas of intervention which the members of the unions and civil society, predominantly the CUT-Peru, decided would be better dealt with if it was split into a new proposal of three Bills. As a result, CUT-Peru developed three draft Bills. The first one was related to the definition and recognition of the legal status of self-employed, independent, and autonomous workers; the second one was related to their access to social security and health and safety at work; and the third one was related to the promotion of the livelihoods of self-employed workers.

At present these three draft Bills are being discussed by CUT-Peru and members of the Board of EsSalud and the Ministry of Labor and Employment Promotion (MTPE).

If this proposal comes to fruition, the sector of Self Employed Workers could access rights that currently elude them and become part of integrated social protection systems.

Ghana

After the adoption of the Domestic Workers Convention, the Africa Region of the International Domestic Workers Network (IDWN) mapped out a programme to take it forward by advocating for its ratification and legislative change at the national level. Ghana was identified as one of the target countries. A multi-stakeholder Task Force on domestic work has already been set up. Ghana TUC is represented on the Task Force and the outputs of the study will feed into the deliberations within the taskforce.

Additionally, expert consultations along with inputs from member-based organizations led to meetings with the Accra Municipal Authority on protection of basic rights of street vendors. The legal experts agreed to develop a schedule to be attached to the AMA By-law on street vending; the schedule will provide vendors with alternatives, designating specific streets for specific days in the week for street vending.

The consultation also led to the Ghana TUC and the expert group critiquing the draft Regulation on Domestic Workers and the group suggesting amendments to two specific areas—standard working hours and the definition of domestic workers—to be presented to the National Taskforce on Domestic Workers. Interestingly, Ghana is the only country with a comprehensive labour legislation that includes informal workers. The Ghana Labour Act and its critical analysis has the potential to inform and educate similar such efforts at drafting a comprehensive labour legislation in other parts of the world. The existence of a single law for workers, as compared to sector specific laws, makes it easier for trade unions to mobilize and create legal awareness among their members. However, the law—though comprehensive—still ignores some groups of informal workers and own account workers. Although a critical review of the enactment was proposed during the course of this study, experts who could undertake such a review were unavailable during the project period.

In Conclusion

It is planned that the synthesis from the three-country study and the earlier pilots will aid in reframing and sharpening the research and policy questions on informal economy and the law. Through this project and feedback from MBOs, WIEGO Board and Team has determined that the topic of law and informality is so central to the lives and livelihoods of the working poor in the informal economy, that WIEGO should develop plans for an on-going expanded Law & Informality Programme. Such plans are currently being developed.
