



UN SECRETARY-GENERAL'S
HIGH-LEVEL PANEL ON
WOMEN'S ECONOMIC EMPOWERMENT

ELIMINATING LEGAL BARRIERS FROM THE PERSPECTIVE OF THE INFORMAL ECONOMY

September 2016

Marlese Von Broembsen & Martha Chen
WIEGO

A POLICY BRIEF FOR THE UN
SECRETARY-GENERAL'S HIGH-LEVEL
PANEL ON **WOMEN'S ECONOMIC
EMPOWERMENT**

The HLP Full Report, additional policy briefs, case studies and papers can be found at: www.WomensEconomicEmpowerment.org

@UNHLP #HLP #WomensEconomicEmpowerment

Copyright © Secretariat, UN Secretary-General's High-Level Panel on Women's Economic Empowerment 2016.

I. Introduction

WIEGO has been asked to write a technical brief on the legal barriers to economic empowerment that women in the informal economy typically face. This technical brief supplements the World Bank's background paper, which draws on its *Women, Business and the Law (WBL)* survey and reports.

Two key points need to be made in relation to the 2016 WBL report.¹ First, the study treats women as a homogeneous group. Yet, class fundamentally impacts the ability of women to access courts, credit, and even work. The vast majority of women who work in the informal economy are poor women, who face a set of constraints and burdens that are shared by poor men, but are not experienced by middle class women. And, the majority of working women in South Asia, South East Asia, Sub-Saharan Africa and Latin American work in the informal economy.

Second, the WBL survey and reports focus primarily on legal constraints faced by women relative to men, and the effect of *Private Law* (Property Law, Marriage Law, and Inheritance Law) on intra-household relations between men and women. The 2016 report argues, for example, that property rights strengthen women's intra-household bargaining power, which translates into their participating in decisions on how money is to be spent. Women typically spend more money on children's education and nutrition, and on the infrastructural needs of the household, such as toilets. Their economic empowerment therefore has poverty alleviation implications for the household. However, in addition to legal barriers that are based on their sex or gender roles and relationships in their household and communities, poor women who work in the informal economy face legal barriers and constraints *in the market*.

In the context of the market, it is widely assumed that informal workers, businesses and activities operate outside of the ambit of the law. Yet informal workers, businesses and activities are regulated by a complex range of national, sector-specific and city-level laws and regulations that are punitive in their effect, compromising livelihoods and often violating human rights. Police harassment of informal traders is ubiquitous, contravention of (often inappropriate) legislation by informal workers is most often treated as a criminal offence and informal workers are denied basic due process protections under rule of law.

From the perspective of women who work in the informal economy, the legal barriers and burdens that Public Law places on women are often far more onerous than the Private Law legal barriers that affect their intra-household relations. *Public Law* (law that governs the relations between the state and its citizens/denizens) is therefore a key site of analysis to determine the legal barriers to economic empowerment for women who work in the informal economy. A Public Law focus would include analyzing zoning and housing regulations; regulations that govern the use of public space; public procurement legislation; and sector-specific legislation, such as legislation that governs construction workers, domestic workers, street vendors, waste pickers—and their implications for women.

¹ World Bank, 2016, available online at:
<http://www.upm.es/sfs/Rectorado/Gerencia/Igualdad/Documentos/Informe%20Women%20Business%20and%20the%20Law%202016.%20Getting%20to%20EQUAL.pdf>.

The brief is set out as follows: Section II defines the informal economy and provides statistics on informal employment as a percentage of non- agricultural employment, disaggregated by sex. Section III outlines the legal barriers and legally imposed burdens that women who work in the informal economy face/carry. Section IV details best practice examples of legislative innovation. Section V concludes the paper with a summary and recommendations.

II. Definition & Statistics in the Informal Economy

Since its founding in 1923, the International Conference of Labour Statisticians (ICLS) has met roughly every five years to formulate and adopt resolutions and guidelines on selected topics of labor statistics. Once approved by the Governing Body of the International Labour Organization (ILO), these become part of international standards on labor statistics under the UN Statistical Commission. Participants in the ICLS include experts from governments, mostly appointed from ministries responsible for labour and national statistical offices, as well as from employers' and workers' organizations. Observers come from regional and international organizations and other interest groups.

In 1993, the 15th ICLS adopted a resolution setting out the statistical definition and measurement of the "informal sector." This definition is based on economic units and refers to employment and production that takes place in unincorporated enterprises that may also be unregistered or small (i.e. fewer than 5 employees).²

Ten years later, in 2003, the 17th ICLS introduced a broader concept: informal employment.³ Informal employment refers to employment arrangements that do not provide individuals with social protection through their work and, hence, leaves these individuals more exposed to economic risk than others. Under this definition, individuals can be in informal employment whether or not the economic units they are working for (or which they own) are formal enterprises, informal enterprises or households.

Using the employment status categories of the International Classification of Status in Employment (ICSE-93), also adopted by the ICLS, the categories of informal employment inside and outside the informal sector are listed in Figure 1 below.

Figure 1: Informal Employment Inside and Outside the Informal Sector: By Employment Status

² For the full definition see International Labour Office, 1993 *Report of the Fifteenth International Conference of Labour Statisticians*, Geneva, 19-28 January 2003.

³ For the full definition see International Labour Office, 2003 *Report of the Seventeenth International Conference of Labour Statisticians*, Geneva 24 November -3 December 2003, Geneva: ILO. A discussion of the conceptual change and its implications for survey design is given in R. Hussmanns, *Measuring the informal economy: From employment in the informal sector to informal employment*, Geneva: ILO, 2004.

Informal employment in the informal sector:

- Own-account (self-employed) workers in their own informal enterprises;
- Employers in informal enterprises;
- Employees of informal enterprises;
- Contributing family workers working in informal enterprises; and
- Members of informal producers' cooperatives.

Informal employment outside the informal sector:

- Employees in formal enterprises not covered by social protection through work;
- Paid domestic workers not covered by social protection through work; and
- Contributing family workers working in formal enterprises.

Source: ICLS 2003

This expanded definition extends the focus from *enterprises* that are not legally incorporated and regulated to include *employment relationships* that are not legally regulated or socially protected.

For purposes of analysis and policymaking it is useful first to sub-divide informal employment into self-employment and wage employment, and then within these broad categories, into more homogeneous sub-categories according to status in employment, as follows:

Informal self-employment including:

- Employers in informal enterprises;
- Own-account workers in informal enterprises;
- Contributing family workers (in informal and formal enterprises); and
- Members of informal producers' cooperatives (where these exist).

Informal wage employment includes employees hired without social protection provided by formal enterprises, informal enterprises or by households (in the case of paid domestic workers). Certain types of wage work are more likely than others to be informal. These include:

- Employees of informal enterprises;
- Casual or day labourers;
- Temporary or part-time workers;
- Paid domestic workers;
- Contract workers;
- Unregistered or undeclared workers; and
- Industrial outworkers (also called homeworkers).

Informal employment comprises more than half of non-agricultural employment⁴ in most

⁴ There is as yet no official statistical definition of informal employment in agriculture. Therefore, most estimates of informal employment are presented as a share of non-agricultural employment.

developing regions. Informal employment is as high as 82 per cent of non-agricultural employment in South Asia and over 80 per cent in some countries in sub-Saharan Africa. Regional statistics, represented in Table 1 below, show that in South Asia, 82 per cent of the workforce is informal, followed by 66 per cent in Sub-Saharan Africa, 65 percent in East and South East Asia, and 51 per cent in Latin America. In the Middle East and North Africa, the figure is 45 per cent, as is the case in Eastern Europe and Central Asia, in which only 10 per cent of the workforce is informal. Even in a planned economy like China, data from six cities suggest that informal work constitutes 33 per cent of the non-agricultural workforce.⁵

Table 1: Informal Employment as a Percentage of Non-Agricultural Employment (2004–2010)

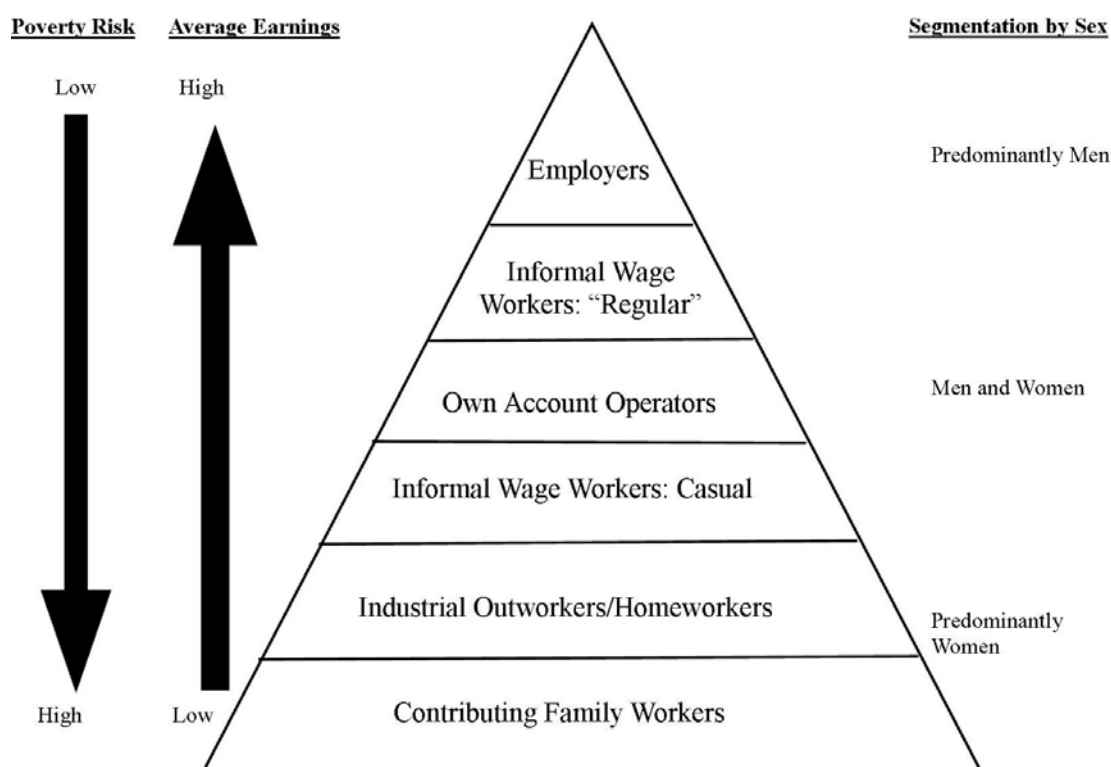
South Asia: 82%	Range: 62% in Sri Lanka to 84% in India
Sub-Saharan Africa: 66%	Range: 33% in South Africa to 52% in Zimbabwe to 82% in Mali
East and South East Asia: 65%	Range: 42% in Thailand to 73% in Indonesia
Latin America: 51%	Range: 40% in Uruguay to 75% in Bolivia
Middle East and North Africa: 45%	Range: 31% in Turkey to 57% in West Bank & Gaza
Eastern Europe & Central Asia: 10%	Range: 6% in Serbia to 16% in Moldova

Source: Vanek et al. 2014, also available at <http://wiego.org/informal-economy/statistical-picture>

In the developing world, therefore, the majority of working women work in the informal economy. A 2014 ILO/WIEGO publication analyzes sex-disaggregated data on the informal economy in 41 countries. The data shows that, in thirty of the 41 countries, women are concentrated in informal wage employment, rather than in informal self-employment (Vanek et al. 2014). Figure 2 shows the hierarchy, in terms of earnings, of the different segments of the informal economy. Women are concentrated in the bottom four segments namely: own-account operators; informal wage workers; industrial outworkers; and contributing family workers.

Figure 2: The informal economy disaggregated by sex and earnings

⁵ This data was collected through the project “Informal Economy, Poverty and Growth in India and China” by the Chinese Academy of Social Sciences working with the city offices of the National Bureau of Statistics in China in 2010.



Source: Chen 2012

III. Legal Barriers & Legally Imposed Burdens

Women who work in the informal economy face significant legal burdens and barriers to economic empowerment. We have grouped these legal barriers into six categories: lack of, or inappropriate, legal frameworks; lack of social protection; lack of labour rights (that regulate minimum wages, and rights to representation and collective bargaining); lack of property rights; lack of commercial/business rights; and lack of access to institutions.

1. No Legal Framework or Inappropriate Legal Frameworks

Women engaged in informal waged-employment suffer from a *lack of legal recognition* of their status as workers. Labour law regimes in most countries give legal recognition to only two categories of workers: “employees” and “self-employed workers.” In general, the term “employee” refers to someone who has a contract of employment, is employed full-time in a permanent position, and enjoys the social security protection and benefits that accompany an employment contract. Informal- waged workers are most often not covered by legislation that regulates employment relations.⁶ This means a denial of basic employment rights, a lack of access to social and legal protection, and no representation in the workplace – or politically – as working women.

⁶ For a discussion of the difference between non-standard and informal employment see Françoise Carre and James Heintz “Toward a Common Framework for Informal Employment across Developed and Developing Countries” WIEGO Working Paper (Statistics) No. 26. May 2009 (revised 2013) at <http://wiego.org/sites/wiego.org/files/publications/files/Carre-Common-Framework-Informal-Employment-WIEGO-WP26.pdf>.

Economist Ravi Kanbur uses the thorny issues of street vending and urban planning laws to illustrate “the disconnect between the economic lives of policy makers and those for whom they make policy,” as follows:

Loitering and vagrancy laws are often used by the police, at the behest of local residents, to clear away street vendors from public spaces. Street vendors are seen as dirtying clean spaces and obstructing living spaces in various urban neighbourhoods. But street vending is the major form of livelihood for many in the informal economy. Thus we see the almost daily drama of groups of informal traders being moved on from one place, only to congregate in another and perhaps eventually cycling back to the same place when the attention of the police is elsewhere. In the process an entire class of economic activity is criminalized.

The daily drama is turned into a mega crisis when nations and cities host major international events, like the Commonwealth Games in Delhi, the World Cup in South Africa, or the World Cup and the Olympics in Brazil. ‘Beautification’ programs in preparation for an event that lasts a few weeks lead to the displacement of thousands of informal sector workers from their normal place of trading and work. A different but conceptually similar crisis occurs when the work of garbage pickers is displaced by formalized mechanisms in terms of contracts given to big companies. The policy mind-set is such as to always view this move favourably, as being towards modernity and formality (Kanbur 2014: 9-10).

2. Lack of Social Protection

In most countries, social protection contributions – including for health insurance, old age pensions/provident funds, unemployment insurance, and compensation for injuries associated with work – are tied to a contract of employment and are not available for informal wage workers or the self-employed. Moreover, most of those who work in the informal economy, both women and men—whether waged workers or self-employed—cannot afford to purchase private forms of social protection on an individual basis.

Without social protection, the low average earnings and savings of most informal workers, especially women, can be suddenly depleted when an illness, accident, birth, or death happens to them or to members of their family. Also, without social protection and legal protection, informal workers are reluctant to invest their savings in improved technology, increased stock or improved housing.

3. No Labour Rights: Lack of minimum wages, representation and collective bargaining

Waged-work in the informal economy is generally excluded from labour legislation that regulates minimum wages and protects workers’ rights to freedom of association and collective bargaining.

Moreover, there is no right to collective bargaining for self-employed workers because it is assumed that collective bargaining requires an employer. But collective bargaining does not require an employer and is critical for all informal workers—whether as a union, a cooperative, or any other legal form—because it aggregates individuals’ power to negotiate collectively. Informal workers, particularly women, need to negotiate collectively with suppliers to reduce the transaction costs of buying inputs for their business (if they are self-employed); with buyers in domestic and global value chains (in the case of industrial outworkers); and with the state for recognition and for access to social protection, public

space (street vendors), public waste (waste pickers), as well as to tender collectively for public contracts.

4. Lack of private, public and intellectual property rights

The World Bank Report on *Women, Business and Law* (2016) argues that control over property confers greater intra-household bargaining power on women, which means that they participate in decision-making on issues such as how money is spent, and on the income generation strategies that the household deploys. In addition, the ILO argues that property rights are important for access to capital and credit (ILO 2014).

Beyond these reasons, property rights can secure livelihoods and are fundamentally critical for the economic empowerment of women located at the bottom of the pyramid (see Figure 2). Most informal workers, men and women, live and work in slums or squatter settlements where tenure is insecure and evictions/relocations are frequent. For many of those who work in the informal economy, such as homeworkers (a sub- category of industrial outworkers) and street vendors, property rights to land/houses are critical for productive purposes. Homeworkers' homes are sites of production for global and domestic value chains in respect of a range of goods. For street vendors, their homes are often the place where they store their goods overnight. Lack of secure tenure means that informal workers are vulnerable to evictions, relocations and forced removals (both from homes and from public land), all of which have significant livelihood implications. Legislation that determines access to public resources and services is often biased against the urban working poor, who are not considered to be productive.

For poor women who live in slum or squatter settlements where tenure for all residents is insecure, ownership of immovable property is not necessarily an available option. For women who work in the informal economy, other property rights, besides ownership, are also important. The discourse on property rights for economic empowerment must therefore include:

- *Private* property rights: women need property ownership, as well as rights to secure tenure (e.g., 99 year leases, and other forms of secure tenure).
- Rights to access *public* property, including public land and housing (for industrial outworkers), public space (for street and market vendors, and for waste pickers to sort the waste) and access to waste (in the case of waste pickers).
- *Intellectual* property rights (e.g. in the case of rural farmers of medicinal plants or strains of seeds).

A broader discourse on property rights (*including access to public property*) requires a focus not only on private law, but also on whether public law fosters women's economic empowerment, as well as an analysis of the barriers and burdens that it creates for women. These areas include:

- Zoning regulations;
- Regulations that govern the use of public space;
- Housing regulations and policies regarding slum and squatter settlements;
- Public procurement (e.g. for solid waste management contracts); and
- Sector specific legislation (e.g. regulation of street vending).

The use of public space and resources (including state budgets) is a politically charged issue, since different stakeholders' interests often compete. The right to freedom of association and collective bargaining for women who work in the informal economy are important as enabling rights in this context. They need representation to voice their interests and concerns, and to participate in decision-making processes regarding the distribution of public space and other public resources.

Finally, a study of the informal economy in ten cities notes that while most of the informal workers in the study's sample pay taxes and levies (such as market fees, commission fees, loading and unloading charges), they do not enjoy basic infrastructure and services that they need to be productive (Chen 2014, Roeber 2014, Dias and Samson 2015). Formal businesses cannot operate without infrastructure development, and neither can informal businesses. If they are home-based workers, they need electricity and transport (to fetch raw materials and deliver completed goods) for production. If they are street vendors, they need secure vending sites, electricity for night markets, sanitation, storage facilities and public transport.

The World Bank's 2015 *Women, Law and Business* report recognises that women need to be safe from violence to be optimally economically productive. Historically, domestic violence was a private concern, whereas now it is one of the seven themes in the *Women, Law and Business* Report, and countries are assessed in terms of legislative interventions to prevent domestic violence. The same kind of attention must be brought to bear on workplace or work-related violence and also on state provisioning of infrastructure to informal workers, as a matter of economic development and empowerment of women.

5. Lack of “Business rights” for self-employed women in the informal economy

The Commission for the Legal Empowerment of the Poor (CLEP)'s report on 'business rights' (2008) introduced the concept of 'business rights' for the urban poor. These rights include the right to work, the right to a work space (which includes use rights for public land, particularly in central business districts), and the right to related infrastructure (CLEP 2008: 201). In this report we have disaggregated these rights into property rights (discussed above) and rights that are typically enjoyed by formal businesses. This section discusses two “rights” that formal sector businesses typically enjoy, which are denied to self-employed women in the informal economy—the ability to protect their personal assets from business liability, and the right to a written, negotiated, fair and enforceable contract.

5.1. Protecting personal assets from business liability

Women who own formal businesses are able to incorporate their businesses as companies, or depending on the jurisdiction, as other legal entities. The main reasons for the invention of these legal forms are (i) to enable business people to raise capital through issuing or selling shares in their companies, which could be sold to future buyers without selling the company; and (ii) to limit exposure to liabilities in respect of the business, so that poor business decisions do not result in individuals losing their private assets, such as their homes. Limiting the liability for the business is thought to enable entrepreneurs to take risks that are necessary for the growth of their businesses, without fearing a loss of personal assets. In the informal economy, such legal mechanisms are not available, and the self-employed poor may lose their household and other assets due to claims arising from their

businesses. In Ghana for example, some of the poorest women are headloaders, who carry goods on their heads for market vendors. State officials levy a tax on headloaders who carry goods for traders and customers (and are not, therefore, independent workers). If they are unable to pay the tax, their shoes are confiscated.

5.2. *Contract law*

Another problem that is prevalent for informal male and female workers that are both wage employed and self-employed is related to contracts and, specifically, the inability to enforce contracts. For instance, homeworkers (most of whom are women who sell to domestic and global supply chains) seldom have written contracts. Even if they have a written contract, and a contractor is in breach of the contract, the working poor are unable to enforce the contract because courts are too expensive, time-consuming and inaccessible. Moreover, homeworkers report that most often they are asked to sign pre-prepared contracts (with egregious terms) and are unable to negotiate the terms. An additional problem is that contractors often do not give workers copies of their contracts; therefore, workers may not know if or when a contractor is in breach of the contract.⁷

6. **Lack of access to institutions:**

Men and women in the informal economy lack access to institutions (such as banks for both savings and for loans), and to adjudication fora (such as administrative tribunals, courts (labour courts, small claims courts, ordinary courts), and ombudsmen).

IV. Best Practice Examples of Legislative Innovation

The International Labour Conference adopted the Recommendation concerning the Transition from the Informal to the Formal Economy, (No 204) in June 2015. This is the first international labour standard that specifically targets the informal economy as a whole. Although it is non-binding on the ILO member states, it provides them with practical guidelines. Many of the demands made by informal worker organisations are reflected in the text, which:

- Provides for rights, protection and incentives for informal workers and recognizes the importance of an enabling legal and policy environment for *all* workers and economic units in the informal economy;
- Recognizes public space as a workplace and provides that informal workers should have regulated access to public space, and access to public natural resources;
- Provides for freedom of association and collective bargaining;
- Provides for social protection, including extension of social insurance coverage, and occupational health and safety; acknowledges that membership-based organizations of informal workers should be represented in tri-partite negotiations/consultations on issues affecting them;
- Acknowledges the need to preserve informal livelihoods during the transition to formality;
- Provides that states must collect statistics on the informal workforce as part of their

⁷ Discussions with homeworkers at a regional meeting of homeworkers from Asia in Delhi, India in March 2016. These discussions were captured in Decent Work for Homeworkers in Global Supply Chains Platform of Demands, available at <http://wiego.org/resources/decent-work-homeworkers-global-supply-chains-platform-demands>.

- labour force surveys—this is an important step in recognising informal workers as workers who make valuable contributions to the economy; and
- Provides for gender equality and elimination of all forms of discrimination and violence, including gender-based violence (WIEGO, 2015).

It is important to note that there is no one-size fits all legal framework that would be appropriate for all the different sectors and segments in the informal economy.

Rather than an overall framework, the goal is to extend the same rights and entitlements that wage-employed / self-employed workers in the formal economy enjoy to wage workers / self-employed workers in the informal economy. This might look quite different in different national contexts, for different occupational groups, and for different types of informal work.

1. Toward Appropriate Legal Frameworks

In the section below, we highlight four different ways in which legal recognition has been accorded to informal wage-workers and then suggest a framework shift for how (public law) regulations that govern informal workers might be conceived—a shift from a criminal to an administrative law framework.

1.1. *Legal recognition of a new category of worker: dependent contractor*

There are two basic categories of home-based workers: independent self-employed workers who take entrepreneurial risks; and sub-contracted workers who depend on a firm or its contractors for work orders, supply of raw materials and sale of finished goods. This second category of home-based workers, the sub-contracted workers, is officially referred to as "homeworkers."⁸ Since homeworkers are not directly supervised by an employer, provide their own workspace and equipment, and cover many of the non-wage costs of production including power and transport, homeworkers are often classified as self-employed. However, because they are dependent on a firm or its contractor for work orders, raw materials, and sale of finished goods, they are sometimes classified as wage workers. In reality, sub- contracted home-based workers (homeworkers) occupy an intermediate status in employment between fully independent self-employed and fully dependent employees (Raveendran et al, 2013: 2). Also, many self-employed home-based workers are not fully independent as they have limited access to capital, knowledge of markets, bargaining power, and control in commercial transactions.

Labour law scholars⁹ and the ILO are engaged in classifying a new category of worker—“dependent” contractors—that recognises that many workers fall in an intermediate category between fully independent self-employed and fully dependent wage and salaried workers. For instance, many so-called informal self-employed do not produce for a variety of customers, but supply goods or services to specific domestic or global value chains.

⁸ Contributing family members are a separate category of workers to homeworkers. Family members are generally not paid any wages for their work.

⁹ See Harry Arthurs ‘The Dependent Contractor: A Study of the Legal Problems of Countervailing Power’ *University of Toronto Law Journal*. Volume 16 (1965), p. 89-117.

Also, the relationship of the homeworker and contractor is more of an employment relationship than of two independent firms contracting with one another, yet the homeworker covers many of the non-wage costs of production that standard employees do not have to cover.

Classification as an employee would be first prize, as it would imply access to the full range of employment rights. However, this is often politically impossible. The intermediate classification as a “dependent contractor” opens a political space to create a new category of worker, facilitating the progressive realisation of rights associated with employment.

1.2. Inclusion of homeworkers in national employment legislation

Labour, employment and occupational health and safety laws usually apply only to “employees.” Different strategies have been deployed in different countries to argue that informal waged-employed workers (such as contract workers, casual workers, workers employed through brokers/intermediaries, and temporary workers) should be defined as “employees” and thereby be entitled to rights, benefits, and protections associated with formal wage employment.

In South Africa, for example, homeworkers are included in the Labour Relations Act of 1995. Section 200A creates a rebuttable presumption that someone is an employee if she earns less than a minimum amount stipulated in the Basic Conditions of Employment Act, works for more than 24 hours a month, and if just one of seven further factors is present, including whether:

- She is economically dependent on the other person/business for whom he or she works or renders services;
- She is provided with tools of trade or work equipment by the other person/business; and
- She only works for, or renders services to, one person/business.

If an “employer” fails to rebut all of these assumptions, the worker qualifies as an employee and such a finding triggers employment rights and protections found in the Basic Conditions of Employment Act and other employment laws, including social security and occupational health and safety.

In Ghana, the Labour Act No. 651 of 2003 applies to all workers employed under a contract of employment, whether employed on a permanent, part-time, temporary or casual basis. Thailand’s Labour Protection Act B. E. 2541 (A.D. 1998), applies to most employees in Thailand. Domestic workers, however, were excluded until Ministerial Regulation No. 14 of 2012 extended the weekly rest, public holiday, sick leave, unused leave and child labour provisions of the Labour Protection Act to domestic workers. However, domestic workers in Thailand were excluded from the protection of other provisions.

1.3 Supply chain legislation

Examples of supply-chain legislation can be seen across a range of countries. Australia and Brazil both have supply-chain legislation that extends to homeworkers. Australia has promulgated supply chain legislation for particular sectors—textile, clothing and

footwear—whereas Brazil’s national labour law arguably regulates the entire manufacturing chain, from homemaker to retailer.

Prolonged union pressure led to the introduction of supply chain regulation in South Australia in New South Wales (2001), Victoria (2003), Queensland and South Australia (2005) and, finally, at the Federal level (2011) to protect migrant women engaged as outworkers in the textile, clothing and footwear industries from exploitation (Rawling 2006).¹⁰ The legislation provides that outworkers are ‘deemed’ to be employees (i.e. they don’t have to assert that they are dependent in any way) In addition, the legislation allows outworkers to exercise a “right of recovery” from several parties in the supply chain, which means that an outworker does not have to identify any particular person as an employer, and can claim from any contractor in the chain. A 2011 amendment extends “deemed employees” status to homeworkers. And, retailers are obliged to disclose to unions the details of all their contractors throughout the chain. Employment benefits (including health and safety) and social security apply to outworkers too (Nossar 2007).

In Brazil, traditional unions in the textile sector have attempted to “move home-based workers into the formal sector of the garment production” (Tilly et al 2013:7). In the case of the homeworkers, the union either puts pressure on the lead firm or on labour inspectors to realize the employment rights and benefits of homeworkers, including social protection. Unions are supported by the National Labour Law (1943), which states that companies that outsource production share the responsibility for the rights of workers in their supply chain (Tilly et al 2013).

Several other countries have extended rights and protections contained in their employment and/or labour relations to homeworkers. These countries include Belgium (Act on Employment Contracts 1978); Morocco (Labour Code 2004); and New Zealand (Employment Relations Act No. 24 of 2000). Some countries, such as the Netherlands, have a legal presumption that all work relations are employment relations and workers are not required to produce evidence of a formal worker-employer relationship (ILO p 27). Other countries that have amended their Labour Relations Act to include presumptions that indicate economic dependence include South Africa (Section 200 of the Labour Relations Act) and Argentina (Section 62 of the Labour Code). Canada and Tanzania and have different criteria to show dependency (ILO date unknown) .

1.4. Sector specific legislation

In many countries, workers have organised to struggle for legislation that regulates a particular sector. For example, HomeNet Thailand, which has three thousand paid up members, struggled successfully for the Homemaker Protection Act. The Act provides for men and women to be paid the same, outlines occupational health and safety responsibilities of employers to homeworkers and established a Committee for the Protection of Homeworkers on which both men and women will serve, which ensures that women have a role in policy decision-making. This legislation impacts between five hundred thousand and two million workers.

HomeNet Thailand – together with other organizations – also successfully advocated for a

¹⁰ Personal communication with Igor Nossar, the architect of this legislation, and study of the Fair Work Act.

Ministerial Regulation (No. 14), adopted in November 2012, that mandates worker rights for domestic workers in Thailand. This Regulation embeds many of the protections for domestic workers mandated in the ILO Convention on Decent Work and Domestic Workers (No. 189), which was adopted by the International Labour Conference in June 2011.

Several countries have promulgated sector-specific legislation. For example, India has promulgated legislation that protects and regulates street traders (discussed under section four) and in 2009, Peru passed Law 29419 (or the “Waste Pickers Act”) that establishes a legal framework for the development of waste pickers’ activities and provides protection, training and promotion of social and labour development. The Act also promotes the formalization of the sector by recognising its contribution to improving environmental management of solid waste.

1.5 Access to public space: Reconceptualising Public Law from a criminal to an administrative law framework

Building on Ostrom and Hess’ famous work on communal rights and the commons in rural areas, Brown (2015) argues that urban public space should be conceptualized not as a state asset, but rather as an urban ‘common property resource’ in which there are competing rights. She argues that the role of public policy is to clarify the nature and extent of different stakeholders’ rights, and to mediate conflicts among different rights holders.

Ostrom and Hess (2010) identify the following three types of communal property regimes:

- ‘Common property’ regimes are regimes where members of a clearly defined group have access to a resource and are legally entitled to prevent non- members from using the resource;
- ‘Open access’ regimes permit all to use the resource, but in the absence of rules that govern the use of the property, individuals are unlikely to protect the resource from over consumption, which (as Brown points out) leads to the ‘tragedy of the commons’;
- ‘Common pool regimes’ reflect characteristics of both the above regimes. In this, the resource is commonly owned, but it is too costly to excluded non-members, which means the resource is vulnerable to over-use unless regulated in some way.

Brown argues that urban public space that is used for street trading could be conceptualized as a ‘common pool resource’. The question is how best to manage such a resource. Currently, in most jurisdictions, the use of space by street vendors is regulated either arbitrarily through unpredictable (and often violent) state removal of people and goods from the space. And, as stated previously, street traders are often regulated within a criminal law framework. Police therefore harass them, while the contravention of legislation (that often dates back to colonial era conceptions of public space) is treated as a criminal offence, resulting in goods being confiscated and vendors living in fear of police violence.

There is accumulating evidence that suggests two key principles would lead to better outcomes for street vendors and communities. First, is a governance regime that is arrived at by meaningful participation by all stakeholders in the public space, including representatives of street vendor organizations. Ideally public policy reflects the recognition that street vendors’ use of urban space contributes to the realization of public policy objectives, such

as employment and poverty reduction. Also, street vendors should partner with government in deciding on the rules for use – such as licensing fees, hours of operation, the formation of representative committees that engage with local government on policy affecting vendors procedures for transgression and other matters, and the state’s corresponding duties such as provision for storage and infrastructure (e.g., public restrooms).

Second, governance regimes should be administered within a progressive administrative law frame. Administrative law is a branch of public law and is the body of law that governs the activities of governmental administrative agencies, including the decisions by government officials who enforce regulations. It protects citizens from government officials’ exercising their power in an arbitrary way by ensuring *good process* for decision-making (even if the law for which the decision is made is unfair). The general principles of administrative justice include the following:

- Rules must be clear and transparent;
- The right to be heard before a state decision that may adversely affect the person is made;
- The state official who made the decision must be authorized by the law to make this decision (so if the law does not provide for confiscation of goods, even if the vendor has transgressed the law, the official is acting illegally if she/he confiscates goods);
- The decision must be reasonable; and
- In some jurisdictions, persons may be entitled to reasons for decisions, and access to information that was used in reaching a decision.

Progressive administrative law frameworks would mean that state officials provide vendors with training on food hygiene and other regulations, with a view to empower vendors to meet licensing requirements.

2. Access to Social Protection

Social protection is high on the development policy agenda, especially in the aftermath of the global economic crisis, which undermined the livelihoods of many working poor in the informal economy. Compared to the formal workforce, the informal workforce is more exposed to – and less protected against – common core contingencies such as illness, disability, and property loss. As self-employed and non- standard employees, they are also particularly vulnerable to market fluctuations, which are intensified by market liberalization and globalization. On a daily basis, they struggle with the shocks and stresses of working in hazardous conditions, without basic infrastructure, and social services; and without rights and inclusion as workers or citizens. Further, despite the commonly held notion that the informal economy provides a “cushion” during crises, informal enterprises and workers are affected in many of the same ways as formal firms and workers but have no safety net to fall back on (Horn 2009, 2010).

There is a growing consensus in development policy circles on the need to:

- Prioritize extension of social protection coverage to excluded groups; and
- Adapt both social and private insurance to incorporate informal workers by providing fiscal and other incentives for their affiliation.

A global coalition – that includes United Nations (UN) agencies, international non-governmental organizations (NGOs), development banks, bilateral organization and other development partners, and the Social Protection Floor - Initiative Coalition (SPF-I Coalition) – has been created to support countries with the establishment, expansion and edification of their national social protection floors. More specifically, there is a growing consensus around the need for universal pensions and health coverage.

2.1 Universal schemes

Some proponents make the case for universal pensions and health coverage on *economic principles*, including the argument that de-linking social protection from the labour market reduces potential distortions in the labour market. Others make the case based on *principles of social solidarity and state responsibility* and as a *right of citizenship*. There is also little agreement on the appropriate role of government, the degree of government responsibility and public expenditure, as well as the mix of private versus public insurance and provision. Nevertheless, several countries have introduced universal schemes for health insurance and/or health care coverage.

In Thailand, a civil society coalition including HomeNet Thailand advocated for and participated in the planning of a Universal Coverage Scheme (UCS). All citizens who are not in the civil service or military service or whose formal works status guarantees access to health insurance, have access to the UCS (Namsomboon 2011; Tangworamongkon and Tulaphan, 2014a). Research has shown that women informal workers have reacted very favourably to the UCS (Namsomboon 2011), drawing attention to their own improved productivity, and their ability to invest in better work equipment with the money saved from reduced health spending. However, later research with groups of women workers found two types barriers to access health services: the lack of time at the right time of day, and the costs of travel needed to access and use UCS services (Chen, and Lund et al 2015).

2.2 Employment-based protections

Other forms of targeted social protections that could be regulated by the state and financed by employers on an individual firm or industry-wide basis include:

- Paid sick leave;
- Unemployment insurance and disability insurance; and
- Occupational health and safety.

In India, worker welfare funds have been established as one way to provide a range of social protection benefits – education scholarships; maternity benefits; unemployment, disability, or retirement compensation; pensions; and more. These welfare funds are aimed at informal workers in specific industries and financed through a tax on the output of the industries (see Worker Welfare Funds in India (WIEGO)).

2.3 Insurance cooperative of informal workers

The Self-Employed Women's Association (SEWA) is well known internationally for VimoSEWA, a health insurance cooperative for SEWA members built up over some thirty

years (Chatterjee and Ranson 2003). VimoSEWA presently has just under one hundred thousand members. Although this is a small fraction of the 1.9 million members of SEWA, it is vast in comparison to any other insurance scheme that has been built by informal worker organizations. VimoSEWA has shown that it is possible for an organization of poor workers to build a scheme from the bottom up and then manage it and take it to scale in a flexible manner. Additionally, VimoSEWA has shown that women are more reliable savers and insurers than men are, and that claims for insurance can be contained. SEWA has paid a great deal of attention to developing insurance products in accordance with women workers' needs.

3. Representation and Collective Bargaining

Freedom of association and recognition of the right to collective bargaining form part of the ILO's Declaration on Fundamental Principles and Rights at Work, which was adopted by the International Labour Conference (at its Eighty-sixth Session, Geneva, 18 June 1998 (Annex revised 15 June 2010)) and ratified by almost every liberal democracy. Both the ILO's decent work agenda (which includes the informal economy) and Recommendation 204 on the Formalization of the Informal Economy state that these enabling rights must be enjoyed by informal workers too.

At the global level, informal workers (through WIEGO) participate in the annual tripartite discussions at the International Labour Conference, but are not officially recognized as unions in their own right, separate from male-dominated traditional unions. In most countries, neither self-employed nor wage-employed informal workers enjoy the right to form a union. One often cited objection to the idea is that no employer is identifiable. However, as argued earlier, unionization and collective bargaining do not need to rely on identifying an employer. Informal workers need organizations that aggregate their voices and interests; allow them to negotiate as collectives with suppliers, the state, and buyers; and represent their interests in policy and law-making fora at national and global levels.

In the section that follows, SEWA (a famous Indian union) is discussed to illustrate the importance for poor women to be able to form legally recognized collectives. Thereafter, three case studies are highlighted—street vendors in India, waste pickers in Columbia, and domestic workers at a global level—as further illustrations. All of these case studies are described in greater detail in the accompanying Compendium of WIEGO and SEWA Case Studies.

3.1 SEWA

Registered as a trade union in 1972, SEWA is today the largest trade union of informal workers in the world, not just in India, with nearly one million members, all of whom are working poor women in ten states of India. The members are drawn from multiple trades and occupations and from all religious and caste groups. SEWA is the most influential organization of informal workers worldwide: having influenced policies, norms, and practice at the local, national, regional, and international levels. SEWA has been a pioneering leader of three international movements: labor, women's movement and micro-finance. It is a member of the International Trade Union Confederation (ITUC).

The SEWA approach involves meeting with specific groups of working poor women,

understanding their struggles, and developing joint strategies. SEWA stresses self-reliance, both individual and collective, and promotes organizing around four sources of security: work, income, food, and social security. SEWA is primarily a trade union but engages in a wide range of interventions, including leadership development, collective bargaining, policy advocacy, financial services (savings, loans, and insurance), social services, housing and basic infrastructure services, and training and capacity building. In sum, together with its members, SEWA pursues a joint strategy of “struggle” (union-type collective bargaining, negotiations, campaigns, and advocacy) and “development” (direct interventions and services of various kinds).

3.2 Street vendors in India

Since 1998, when it was founded, the National Association of Street Vendors of India (NASVI) has dealt with the challenges to street vendors associated with urbanization, urban renewal, and economic reforms on a daily-basis. One of its first steps was to conduct a survey of street vending in six cities of India in 2002. The results of the report were used to raise awareness about the increasing harassment of street vendors by local authorities and the growing exclusion of street vendors in city plans. The advocacy efforts of NASVI ultimately led to the creation of a national policy with and for street vendors.

3.3 Waste pickers in Colombia

Over the past 10 years, with the increase in the privatization of public services across Colombia, *recicladores* have struggled to continue waste picking and have filed legal claims to preserve their occupation. Organizations such as the Asociación de Recicladores de Bogotá (ARB), an umbrella association of cooperatives representing over two thousand five hundred waste pickers in Bogotá, played a key role in aggregating claims and taking the legal cases forward.

The *recicladores* achieved a landmark victory in 2003 when the Constitutional Court ruled that the municipal government’s tendering process for sanitation services had violated the basic rights of the waste-picking community. In making its case, the association and its pro-bono lawyers appealed to the Constitution’s provision of the right to equality, arguing that waste pickers should be allowed preferential treatment and judicial affirmative action in the tendering and bidding process for government contracts to manage waste. In a subsequent legal victory in 2012, ARB won the opportunity to present the municipality with a concrete proposal for solid waste management inclusive of the waste picking community.

With the help of allies, the ARB prepared such a proposal, elements of which were adopted into the official proposal made by the district agency in charge of the city’s public service.

3.4 Domestic workers globally

Domestic workers have a long history of organization and advocacy to be recognized as workers and covered by the labour laws of their respective countries. In 2006, domestic worker organizations began to organize internationally with the support of international trade unions and NGOs. Their main demands were to be recognized as workers with the rights to workers’ rights and benefits. In 2008, after the ILO decided to place “Decent Work for Domestic Workers” on the agenda of the International Labour Conferences in

2010 and 2011, they began a campaign for an ILO Convention. The campaign was led by the newly formed International Domestic Workers' Network (IDWN) with its organizational base in the International Union of Food and Allied Workers (IUF). Their efforts ultimately led to the adoption of two new standards in June 2011: Domestic Workers Convention, 2011 (No. 189), and Domestic Workers Recommendation, 2011 (No. 201).

Following ratification of Convention 189, in March 2013, Argentina passed Law No. 26,844 that extends labor rights to domestic workers, including: maternity leave, paid holidays, special family and personal leave, a yearly bonus and compensation in case of layoffs or firing. It restricts working hours to eight per day and 48 per week; sets a minimum age of 16 for domestic work, limits the working hours of those between the ages of 16 and 18 to 36 hours per week, and prohibits domestic workers below the age of 18 from living in their employer's home. Live-in domestic workers now get eight hours of sleep at night and two hours of daily break. Paraguay also enacted a new law on domestic workers to implement Convention 189.¹¹ Other countries that have implemented Convention 189 include the Philippines (which enacted a comprehensive new law that regulates employment contracts, standards for accommodation, privacy, protection of migrant domestic workers) and South Africa (which ratified the Convention, and already had several legal provisions protecting domestic workers).

4. Property Rights

As noted earlier, property rights for women informal workers need to include rights to private property, to public space and other public resources and to intellectual property.

In regards to private property, also as noted earlier, most male and female informal workers live (and work) in slum or squatter settlements where tenure is most often insecure. Many housing activists and advocates argue that it is difficult to establish *de jure* tenure over land and housing in most slum and squatter settlements; and make the case for *in situ* upgradation. SEWA, through its housing trust, promotes slum upgradation and provides basic infrastructure services to its members and their families who live in slum/squatter settlements. Through its housing finance corporation, SEWA provides loans to women who have *de facto* claims on land or housing.

'Secure tenure for livelihoods deserves as much attention as land tenure for housing' (Brown 2015: 239). Legislation that seeks to promote the sustainable use of public resources may contribute to protecting urban informal livelihoods. For instance, regulatory choices to protect the environment through composting and recovery of recyclables can protect waste pickers' livelihoods. Similarly, regulatory choices to protect public green spaces might also support the livelihoods of street vendors by allowing them to vend around these spaces, as part of the cultural landscape. Also, regulatory choices to protect the environment might support home-based production, which leaves less of a carbon footprint than production in workshops and factories. Please see section 1.5 for a discussion on property rights to public space/property.

5. Business "Rights"

5.1. Limiting business liability to protect personal assets

¹¹ http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/newsitem/wcms_383877.pdf.

Previously we argued that women who work in the informal economy lack legal structures that serve to ring fence business liabilities and protect their personal assets. One legal form that protects the personal assets of informal self-employed women from business liability is the co-operative.¹²

Co-operatives are membership-based organizations (MBOs) that are also enterprises. Like any other enterprise, many co-operatives produce goods or services for sale in the market and make considerable profit. Others focus on providing business development services to their members. Profits may be ploughed back into the enterprise or distributed to members as a dividend, which is often in proportion to members' transactions.

Co-operatives are legal entities that have bylaws and a constitution (even for the smallest). They are set up to trade, and to have the capacity to enter into contracts. In many co-operatives, all members have the right to attend the General Assembly of Members held annually, which then elect the Board of Directors from amongst the membership. Each member has one vote regardless of the size of her investment in the co-operative. The position of a Director is normally held in a voluntary capacity without salary, though with payment of expenses. In some co-operatives, board members receive allowances for their time, but in others, board roles are voluntary.

The board determines the overall strategy of the co-operative, and board members in smaller co-operatives may well have a more hands-on role in the day-to-day management of the business. The paid management reports to the board. The board can determine the prices to be paid for members' products, when and where to sell them, the amount of dividends to be paid to members each year (sometimes called the patronage refund), how much to spend on education and training, and how much money to hold in reserves, etc. Many co-operatives, but not all, reward economic participation with a payment to members based on the amount of trading with the society (i.e. dividend or patronage refund) rather than the amount of capital invested. This, of course, is dependent on profits generated. Membership shares are not transferable and cannot be traded, so the ownership always remains with the local members. The value of shares always remains the same.

The co-operative model of enterprise can (and has been) applied in practically all branches of business activity. Co-operatives exist in traditional economic sectors such as agriculture, fisheries, consumer and financial services, housing, and production (workers' co-operatives). Co-operatives include large multi-billion pound enterprises, such as CIC insurance group, the largest provider of microfinance in Kenya, or the Indian Farmers' Fertilizer Co-operative, which runs several fertilizer factories. Perhaps because of this flexibility and diversity, the scale of the movement, which is larger and arguably more complex than the global trade union movement, is understood relatively little.

In most developing countries, the most common co-operative is called a primary society, which operates at the village or local community level from which its membership is drawn. Primary societies can join together to set up a secondary level co-operative, usually called a co-operative union or area co-operative enterprise, which then provides consolidated marketing, transport, and/or financial services to its members. In these instances, the

¹² For a detailed discussion see WIEGO "Co-operatives and Workers in the Informal Economy: Possibilities and Challenges" available at http://wiego.org/sites/wiego.org/files/publications/files/Co-operative_College-Cooperatives_Informal_Workers_2014.pdf.

members of the secondary co-operative are the primary co-operatives. The basic principles remains constant: one member one vote; fixed share capital; and a share of profits based on the quantity of trade which the primary co-operative has with the secondary co-operative. Machakos Co-operative Union in Kenya is one such example, bringing together 79 primary societies with over sixty thousand members. The union supports its member co-operatives to produce a range of agricultural products and handicrafts. Some unions, on the other hand, focus on a single commodity such as coffee. This is the case with the Mzuzu Coffee Planters Co- operative Union based in northern Malawi, which has six primary societies as members, which themselves have two thousand nine hundred members.

Secondary co-operatives can also come together to form a third tier – often combining into a national federation that can represent a single sector or bringing together co- operatives from different sectors.

Most co-operatives draw their membership base from a relatively homogeneous group of people who share an activity, such as farming and waste picking, or who live in a specific area. Some new types of service provider co-operatives are developing that draw on a wider membership base, such as multi-stakeholder co-operatives or those targeted to a youth membership (Lund 2012; Hartley 2011). Like other types of co-operatives, service provider co-operatives carry out trading activities but with a more heterogeneous membership. Multi-stakeholder co-operatives are potentially of relevance for informal workers as these have a more heterogeneous membership, which can include a range of different stakeholders. One example is *Cooperativas sin Fronteras*, which brings together 18 co-operatives and producer associations from 11 countries to promote co-operative development and market its members' products internationally. *Cooperativas sin Fronteras'* products include honey, coffee, fruit juice, cocoa and sugar. Members are based in Latin America, Europe and North America. In addition, many financial co-operatives, such as credit unions, have a heterogeneous membership from different occupational groups, which helps them become more resilient (Borda-Rodriguez and Vicari 2013: 10).

Inappropriate and cumbersome laws hinder co-operative development. Setting up a new co-operative can be a complex, expensive and time-consuming process. Some countries, like Cameroon, are developing provisions for simplified co-operative legal structures, which require less strict rules on accountancy, audit and internal administration (WIEGO).

5.2 Negotiated, written, fair and enforceable contracts

The power asymmetries in global value chains are such that homeworkers are coerced by contractors to sign contracts that (i) stipulate payment by piece-rate that amounts, on average, to lower earnings than factory workers; (ii) leave homeworkers to bear production costs (such as electricity, and the provision and maintenance costs of machinery and the workplace); and (iii) leave homeworkers to bear the risks of fluctuating demand, prices and competition through irregular work orders, supply of poor raw materials and delayed payments.

In some countries, the state regulates contracts between businesses in contexts that are characterized by power asymmetries—such as consumer contracts and landlord/tenant contracts. Similarly, states need to regulate contracts between homeworkers and firms further up the value chain to ensure that they are written and fair. Furthermore, states need to provide mechanisms other than courts for contract terms to be contested, and breach of contract to be remedied.

V. Conclusion

As detailed in this brief, women informal workers face legal barriers and legally created burdens by reason of being poor, being informally employed, and being women. The legal barriers that they face as women, and that are associated with gender norms and gender relationships, relate primarily to Private Law, whereas the legal barriers and burdens they face as working poor in the informal economy relate primarily to Public Law.

In this policy brief, we have grouped the legal barriers and burdens that women informal workers face as working poor in the informal economy into six categories: lack of, or The organization, have overcome one or more of these barriers in different sectors and countries.

A review of the gaps and of the experience of women informal workers' suggests that the following directions would significantly improve the legal framework for informal workers, and especially for women:

1. Appropriate legal frameworks

Different types of informal workers face different legal challenges, and what constitutes an appropriate legal framework will vary. Here we focus on what is needed for homeworkers and street vendors.

Homeworkers should be recognised as employees and explicitly included in national legislation that applies to employees. In addition, they should be included in supply chain legislation, such as in Australia, or in legislated for specifically, as in Thailand's Homemaker Protection Act. The Thailand Act offers wide-ranging and practical protection for home workers. It is innovative in a number of respects: First, the Act stipulates that contracts must be written (which they often are not) and a copy must be given to the homemaker (a common complaint from homeworkers is that they sign a contract—the terms of which are unilaterally decided on by the contractor—and they are not given a copy).¹³ The Act has the unusual provision that where such a contract gives the hirer an “undue advantage”, the court has the power to order that the terms of the contract only be enforced in so far as the terms of the contract are reasonable(sec 8). Second, payment must be made within seven days of delivery of the finished products at the homeworkers' place of work and only limited deductions may be made from such payment (sec 19). Third, the homemaker must be informed that work is hazardous or involves toxic substances, if that is the case, and the hirer must provide safety equipment. Hirers have to pay for medical expenses, rehabilitation, funeral expenses where the Act 's provisions concerning hazardous work are contravened (sec 24). Fourth, a committee that is comprised of Director Generals from several Ministries; three homemaker representatives, and three “hirers” representatives manage oversight of the Act. Fifth, the Act facilitates litigation by home workers. Section 6 Provides that where it is believed that a particular case by a homemaker against a hirer is”

¹³ See Platform of Homeworkers' Demands (<http://wiego.org/resources/decent-work-homeworkers-global-supply-chains-platform-demands>) drafted by homemaker representatives from 12 countries in Ahmedabad in March 2016. One of the authors was in the working group that focused on contracts.

for the common good”, the State will appoint a legal representative to conduct the case on behalf of the home worker in the Labour Court.

In the absence of specific legislation, the state should recognise the power asymmetries that characterize contracts between homeworkers and contractors, and at the very least regulate the terms of these contracts in line with the type of provisions contained in the Thai Act.

Street vendors should participate in designing the governance regimes that regulate the use of public space, which is used by street vendors for their livelihoods. Moreover, street vendors should not be treated as criminals, nor regulated by nuisance or health laws. Rather, the state must recognize that vendor organisations should also participate in decisions about the allocation of public space, which should be regulated in accordance with principles of administrative law that holds state officials accountable to making decisions with reference to set of due process principles.

2. Social protection

In accordance with the ILO Social Protection Floors Recommendation 202, which builds on Social Security (Minimum Standards) Convention, 1952 (No. 102), states must recognise informal workers’ need for access to social protection – including occupational injury, disability insurance, paid sick leave, occupational health and safety, and health, pension, and unemployment provisioning. Social protection can take the form of universal provision or be targeted at specific sectors, which could be regulated by the state and financed by employers on an individual firm or industry-wide basis. In India, worker welfare funds have been established as one way to provide a range of social protection benefits (e.g., education scholarships; maternity benefits; unemployment, disability, or retirement compensation; and pensions). These funds are aimed at informal workers in specific industries and financed through a tax on the output of the industries (see Worker Welfare Funds in India).

3. Labour rights that regulate minimum wages, and rights to representation and collective bargaining.

To ensure that rights are appropriately framed and properly enforced, the working poor (especially women) in the informal economy need representative voice in the processes and institutions that determine economic policies and formulate the ‘rules of the (economic) game’. This requires building organizations of informal workers and extending membership in existing trade unions, cooperatives, and other worker organizations to informal workers; and recognising that collective bargaining does not require an employer (Carre, Horn and Bonner). This also requires making rule-setting and policy-making institutions more inclusive, and ensuring that representatives of the working poor have ‘a seat at the table’.

4. Property rights that include rights to public property

For many women in the informal economy, their home is also their workplace. Women need to be able to acquire property on fair terms, without being excluded by social or legal norms. They also need to be able to protect their property from expropriation without compensation. Additionally, property rights should not be limited to private property. A comprehensive system of property rights for working poor women should include access to and use of public resources, including public land or space in urban areas and public forests, pastures, and waterways in rural areas.

5. Commercial/business rights

Owners of formal businesses typically enjoy limited liability to protect their private assets. and are able to enforce their commercial contracts, without fear that they might lose their private assets. These rights must be extended to informal businesses. One legal form that protects the personal assets of informal self-employed women from business liability is the co- operative. Additionally, we have argued that states need to regulate contracts between homeworkers and firms further up the supply chain to ensure that they are written and fair.

The majority of women workers in the developing world, and an increasing number of women in industrialized countries, work in the informal economy (Vanek 2014). The ‘mainstream economy’ in the developing world is therefore the informal economy, and the changing nature of work globally—the ‘informalisation’ of work (Standing 1999)—means that the informal economy is here to stay. The question—particularly for women in the global South—is less about ‘what are the barriers to inclusion/less marginalisation in the (formal) economy’, but rather how to extend legal and social protection to the women who work in the informal economy. The ILO’s Recommendation 204 on Transitioning from the Informal to the Formal Economy provides for rights and protection for informal workers. It recognizes public space as a workplace and recommends that informal workers have regulated access; provides for freedom of association and collective bargaining; and calls for social protection for informal workers. These are the domains for legal reform. And, women who work in the informal economy must, through their representative organizations, have a seat at the policy and law reform table.

This paper has argued that all women do not face the same legal barriers. Poor women who work in the informal economy face three sets of structural barriers—barriers associated with belonging to poor communities (with attendant poor housing, lack of tenure and basic infrastructure, and lack of healthcare and education); barriers associated with gender norms; and barriers that are specific to informal work. Economic empowerment of these women requires legal reform that addresses all three these aspects of their economic and social disadvantage.

References:

Brown, Alison. 2015. "Claiming the Streets: Property Rights and Legal Empowerment in the Urban Informal Economy" *World Development* Vol. 76, pp. 238– 248.

Chatterjee, M. and M.K. Ranson. 2003. "Livelihood security through community- based health insurance in India." In Lincoln Chen, Jennifer Leaning and Vasant Narasimhan (eds.), *Global Health Challenges to Human Security*, Global Equity Initiative, Asia Center, Harvard University, Cambridge MA.

Chen, Martha Alter. 2014. *Informal Economy Monitoring Study Sector Report: Home-Based Workers*. Cambridge, MA, USA: WIEGO. Available at <http://wiego.org/sites/wiego.org/files/publications/files/IEMS-Home-Based-Workers-Full-Report.pdf>

Chen, Martha Alter. 2012. "The Informal Economy: Definitions, Theories, & Policies." WIEGO Working Paper No. 1. Cambridge, MA, USA: WIEGO.

Chen, Martha and Frances Lund with Mirai Chatterjee, Susan Thomas, Poonsap Tulaphan and Chonticha Tangworamongkon. 2015. "Universal Health Care for Informal Workers: Lessons from India and Thailand for Overcoming Barriers, Addressing Gender Dimensions". Forthcoming in an Asian Development Bank edited volume.

Chetty, Mahendra and Caroline Skinner. 2012. *Defending the Rights of Street Vendors: The Case of Warwick Junction in Durban, South Africa*. Case Study for 2013 World Development Report. Cambridge, MA, USA: WIEGO. Available at http://wiego.org/sites/wiego.org/files/publications/files/WDR2013_Urban_Informal_Workers.pdf

Commission for the Legal Empowerment of the Poor (CLEP).2008 (Report on Business Rights)

Dias, Sonia and Melanie Samson. 2016. *Informal Economy Monitoring Study Sector Report: Waste Pickers*. Cambridge, USA: WIEGO. Available at <http://wiego.org/sites/wiego.org/files/publications/files/Dias-Samson-IEMS-Waste-Picker-Sector-Report.pdf>

Horn, Zoe Elena. 2011. "Coping with Crises: Lingering Recession, Rising Inflation, and the Informal Workforce". Cambridge, MA, USA: WIEGO and Inclusive Cities. Available at <http://wiego.org/sites/wiego.org/files/publications/files/Horn-Global-Economic-Crisis-2010.pdf>

Horn, Zoe Elena. 2009. "No Cushion to Fall Back On: The Global Economic Crisis and Informal Workers". Cambridge, MA, USA: WIEGO and Inclusive Cities. Available at http://wiego.org/sites/wiego.org/files/publications/files/Horn_GEC_Study_2009.pdf

International Labour Organization. 2003. *Report of the 17th International Conference of Labour Statisticians* Geneva: ILO.

International Labour Organisation(unknown date) The Regulatory Framework for the Informal Economy accessed on 22 October 2016 at http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_policy/documents/publication/wcms_210450.pdf

Kanbur, Ravi. 2014. "Mindsets, Trends, and the Informal Economy." Charles H. Dyson School of Applied Economics and Management Working Paper. Ithaca, NY: Cornell University. Available at <http://publications.dyson.cornell.edu/research/researchpdf/wp/2014/Cornell-Dyson-wp1406.pdf>

Raveendran, Govindan, Ratna M. Sudarshan and Joann Vanek. 2013. "Home-Based Workers in India: Statistics and Trends." WIEGO Statistical Brief No. 10. Cambridge, MA, USA: WIEGO. Available at <http://wiego.org/sites/wiego.org/files/publications/files/Raveendran-HBW-India-WIEGO-SB10.pdf>

Rawling, Michael J. 2006. "A generic model of regulating supply chain outsourcing." Anu College of Law Research Paper. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=982748

Roever, Sally. 2014. Informal Economy Monitoring Study Sector Report: Street Vending. Cambridge, USA: WIEGO. Available at <http://wiego.org/sites/wiego.org/files/publications/files/IEMS-Sector-Full-Report-Street-Vendors.pdf>

Standing, Guy. 1999. *Standing G Global labour flexibility: seeking distributive justice* London: McMillan Books

Tilly, Chris, Rina Agarwala, Sarah Mosoetsa, Pun Ngai, Carlos Salas, and Hina Sheikh. 2013. "Informal Worker Organizing as a Strategy for Improving Subcontracted Work in the Textile and Apparel Industries of Brazil, South Africa, India and China." Working Paper. Los Angeles: Institute for Research on Labor and Employment, UCLA. Available at <http://www.irle.ucla.edu/publications/documents/Informalworkerorganizingintextilesandgarments-UCLARreport-9-2013.pdf>

Vanek, Joann. 2013. "Men and Women in the Informal Economy: A Statistical Picture" ILO Publication. Available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/publication/wcms_234413.pdf

Vanek, Joann, Martha Chen, Françoise Carré, James Heintz and Ralf Hussmanns. 2014. *Statistics on the Informal Economy: Definitions, Regional Estimates and Challenges*. WIEGO Working Paper No. 2. Available at <http://wiego.org/sites/wiego.org/files/publications/files/Vanek-Statistics-IE-WIEGO-WP2.pdf>

WIEGO. 2015. "ILC Recommendation Concerning the Transition from the Informal to the Formal Economy, (No. 204)." Summary for MBOs. Cambridge, MA, USA: WIEGO. Available at <http://wiego.org/sites/wiego.org/files/resources/files/ILC-Recommendation-Summary-MBOs-English.pdf>

WIEGO *Worker Welfare Funds in India*. Available at <http://wiego.org/informal-economy/worker-welfare-funds-india>

WIEGO *Co-operatives and Workers in the Informal Economy: Possibilities and Challenges*
http://wiego.org/sites/wiego.org/files/publications/files/Co-operative_College-Cooperatives_Informal_Workers_2014.pdf

World Bank Group. 2015. *Women, Business and the Law 2016: Getting to Equal*
Washington DC, USA.