

The informal economy in the Philippines: Perspectives, challenges and strategies on transitions to formality

A research report

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The informal economy in the Philippines: Perspectives, challenges and strategies on transitions to formality

Introduction

Since its ‘discovery’ in Africa in the early 1970s, the informal sector has had acquired a new term - informal economy - and expanded definition as a result of increasing interest and significant rethinking of the concept. Today, the informal economy includes not only enterprises that are not legally regulated but also employment relationships that are not legally regulated or protected. As Chen emphasizes, the new definition of the ‘informal economy’ takes into account not only the characteristics of enterprises but also the nature of employment, and includes informal employment both within and outside agriculture (2007: 1). Thus, “the informal economy is comprised of all forms of ‘informal employment’ – that is, employment without labour and social protection – both inside and outside informal enterprises, including both self-employment in small unregistered enterprises and wage employment in unprotected jobs” (ibid: 2).

In the Conclusions of the International Labour Conference in 2002 (ILC 2002 Conclusions) of the International Labour Organization (ILO), the lack of a universally accurate and accepted definition of the informal economy was recognized. Nonetheless, in recognition of the scale, dimensions and heterogeneity of the phenomenon, it adopted the term ‘informal economy’ as referring to “all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that – although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs” (ILO, 2013: 4). Thus, it was in the 2002 ILC Conclusions where the new term “informal economy” was coined with a broader concept of informality.

The old view of the informal economy is that it is the traditional economy that will wither away with industrial growth (Chen, 2007). However, there is now a global recognition of the significance and permanence of the informal economy – that it is a growing, permanent, not a short-term phenomenon; and “is a feature of modern capitalist development, associated with both growth and global integration” (ibid: 2).

The significance and permanence of the informal economy poses challenges to the promotion of decent work for informal workers. According to the ILO, the informal economy is “marked by acute decent work deficits and a disproportionate share of the working poor” (2013: 3). Most people engaged in the informal economy:

are exposed to inadequate and unsafe working conditions, and have high illiteracy levels, low skill levels and inadequate training opportunities; have less certain, less regular and

lower incomes than those in the formal economy, suffer longer working hours, an absence of collective bargaining and representation rights and, often, an ambiguous or disguised employment status; and are physically and financially more vulnerable because work in the informal economy is either excluded from, or effectively beyond, the reach of social security schemes and safety and health, maternity and other labour protection legislation. (ILO, 2007: 3)

The ILO (2007: 9-10) further elaborates on the social and economic costs of informality. Most economic units in the informal economy do not enjoy secure property rights. This deprives them of access to both capital and credit. Also, they face difficulty accessing the legal and judicial system to enforce contracts. Unregistered and unregulated enterprises often do not pay taxes or benefits, or entitlements to workers, which deny protection of workers. Finally, as informality is often associated with weak institutional arrangements and poor governance structures, the informal economy is susceptible to corrupt practices.

In short, the characteristics of the informal economy are largely negative.

In view of the decent work deficits in the informal economy, the ILO sees that breaking out of informality is central to realizing decent work as a global development goal. Therefore, the debate concerning the informal economy and the transition towards formalization is gaining momentum. In the 103rd Session of the ILC in 2014, facilitating transitions from the informal to the formal economy was among the top agenda with a view to the elaboration of a Recommendation.

This report presents the results and findings of a small research cooperation project between the School of Labor and Industrial Relations of the University of the Philippines (U.P. SOLAIR) and the Friedrich Ebert Stiftung (FES) Philippine Office. The research was undertaken by a team of researchers in U.P. SOLAIR. Overall, the project aimed to provide evidence-based research to support the campaign, led by HomeNet Philippines and the Magna Carta for the Informal Sector Alliance (MAGCAISA), for the legislation of the Magna Carta for Workers in the Informal Economy (MACWIE).

The researchers utilized several methodologies in the conduct of the research. These are review and analyses of existing literature, conduct of focus group discussions, in-depth individual interviews with select informal workers, participation in the public hearings organized by the Senate and the House of Representatives on the MACWIE and other related bills filed in both houses of Congress, and participation in meetings and workshops organized by HomeNet and MAGCAISA.

The report is divided into seven chapters. Chapter 1 provides an overview of the key features of the informal economy. Chapter 2 presents how the informal economy is defined in the Philippines and its categories and characteristics. Trends in the informal economy are also discussed and analyzed. Chapter 3 elaborates on the legal and regulatory framework dealing with informal sector enterprises and informal workers in the Philippines. Gaps and limitations of these frameworks in terms of according protection to informal workers are identified. Chapter 4 identifies existing employment arrangements and working conditions, as well as the labour and social protection needs, of several groups of workers in the informal economy in the Philippines.

Chapter 5 highlights and analyzes the critical issues and challenges of formalization processes and how various segments of the informal economy view the formalization process. The chapter also identifies the emerging formalization demands of informal workers.

Chapter 6 provides brief descriptions of approaches and initiatives undertaken in several countries that are aimed at formalizing informal work. Finally, Chapter 7 concludes the report and lists several policy considerations, measures and strategies on transitions from the informal to the formal economy in the Philippines. The aim of the final chapter is to provide important evidence-based inputs to the further elaboration and strengthening of the MACWIE, in particular, and in coming up with a comprehensive, integrated and multi-dimensional policy approach for transitions to formality in the Philippines, in general.

Chapter 1

Concepts and key features of the informal economy

From the above-cited definition of the informal economy, we can identify two conceptual components, namely (1) informal sector, and (2) informal employment. These two concepts are not interchangeable but are complementary. The informal sector refers to informal enterprises while informal employment refers to informal jobs. Thus, employment in the informal economy can be defined as “the sum of employment in the informal sector and of informal employment found outside the informal sector” (ILO, 2007: 5).

According to Chen (2007), there are three key features of the informal economy: its significance and permanence, the continuum of employment relations within it, and its segmented structure.

Significance and permanence

Chen stresses that the informal economy is not a short-term but rather a permanent phenomenon. As such, “the informal economy should be viewed not as a marginal or peripheral sector but as a basic component – the base, if you will – of the economy” (Chen, 2007: 2). According to ILO, strong empirical evidence based on the growth experience of many developing and transition economies show that “sizeable informal economies can coexist and be sustained in parallel with the expansion of the formal economy and good growth performance” as a result of global economic integration (ILO, 2013: 8). This means that growth resulting from accelerated integration into the global economy have facilitated the expansion of the informal economy and may have constrained the transition to formality. Globalization has given the informal sector new importance through outsourcing and global value chains (ibid). In many countries, global economic integration has resulted in increasing income inequality and continuing high levels of unemployment and poverty. Many new entrants to the labour market and many of those who lose their jobs in the formal economy find difficulty in accessing formal employment. Therefore, in many parts of the world, these workers are pushed into informal activities, resulting in the rise in informal employment in both the informal and formal sectors.

Informality also exists in the developed world. In 2013, the informal economy accounted 18.4 per cent of GDP in the European Union (EU-27) and 8.6 per cent on average in Australia, Canada, Japan, New Zealand and the United States (Schneider, 2011; cited in ILO, 2007: 8).

Continuum of economic relations

The link between the formal and informal economy emanates from the Structural Articulation Theory. This theory is also called the ‘Structuralist School’ because it is concerned with the structure of formal-informal relationships as part of a unified economic system. The theory recognizes both the heterogeneity of the informal sector and the intrinsic link between the formal and informal economies (Portes and Schauffler, 1993). It describes the functions played by the informal sector in support of modern capitalist accumulation, particularly how the informal sector is able to lower the cost of consumption (by offering inexpensive goods and services) and

labour costs (through the supply of unprotected labour) within the formal sector. By offering inexpensive goods and services, the informal economy in a way ‘subsidizes’ formal capitalist enterprises which, in turn, allows them to keep wage costs lower than it would be if consumption took place entirely within formal markets.

The Structuralist School posits that capitalists promote informal production and employment relationships to increase competitiveness, and informal enterprises and informal wage workers are subordinated to the interest of capitalist development (Chen, 2007).

According to Chen, there is a continuum of economic relations between pure ‘formal’ relations (i.e., regulated and protected) at one pole and pure ‘informal’ relations (i.e., unregulated and unprotected) at the other, with many categories in between (2007: 2). Workers and economic units tend to move with varying ease and speed along the continuum and may operate simultaneously at different points of the continuum. She cites the example of a self-employed garment maker who augments her earnings by sewing clothes under a subcontract, or shifts to working on a subcontract for a firm when her customers decide they prefer ready-made garments rather than tailor-made ones (ibid).

Chen also points out that the formal and the informal ends of the economic continuum are often dynamically linked. She provides the example of informal enterprises having production and distribution relations with formal enterprises, in terms of supplying inputs, finished goods or services through direct transactions or subcontracting arrangements. In addition, informal employment relations also exist in formal enterprises. For example, many part-time, temporary or casual workers work for formal enterprises through contracting or subcontracting arrangements. Portes and Sassen-Koob (1987) identifies several common linkages between the informal and formal economies (Table 1).

Table 1: Common linkages between the formal and informal economies

Informal marketing chains, e.g. street vendors and merchants that are well coordinated by a group of middlemen dependent on formal firms
Informal supply chains with informal workers serving as suppliers of inputs to local buyers who, in turn, sell the product to the central wholesaler, the final link to the formal industry
Construction and repair services that allow formal firms to maintain a relatively small regular workforce
Subcontracting in manufacturing which relies on individuals who are defined as industrial outworkers and who are under the illusion of self-employment

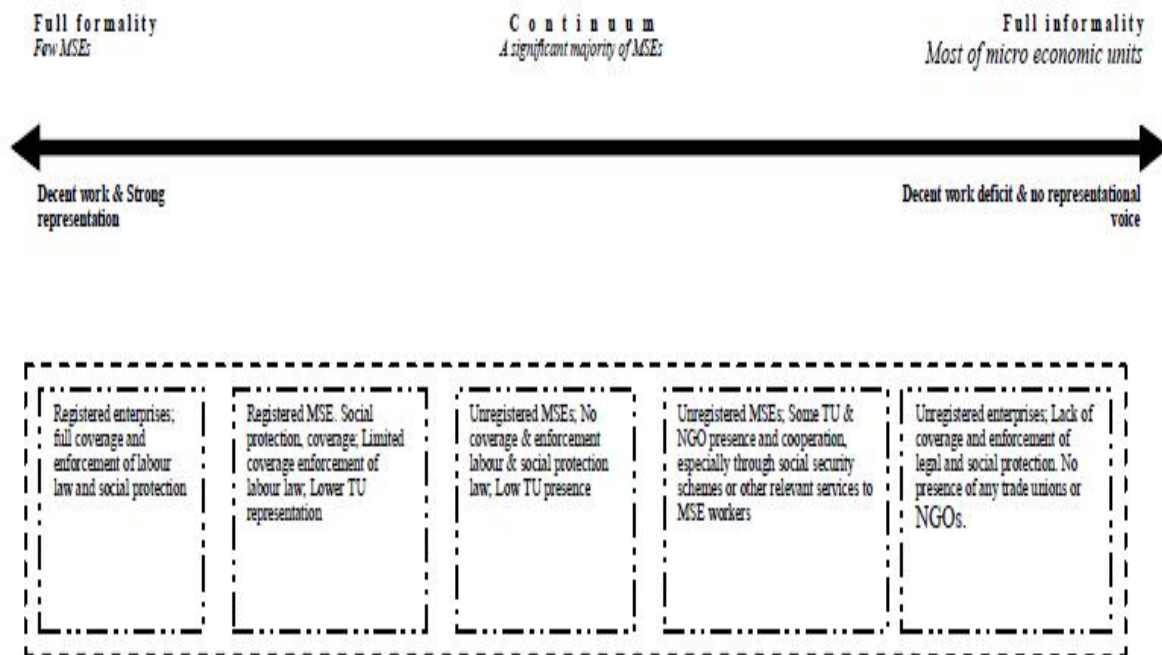
Source: Portes and Sassen-Koob (1987).

It is also important to note that the formal-informal link goes beyond national borders. As the ILO succinctly explains: “The informal economy operates in a complex environment of linkages between the formal and informal economies, with workers and producers in the informal economy being linked to the global economy in various ways (global production networks, migration, global economic cycles and variations in global commodity and food prices” (ILO, 2013: 9).

In the context of decent work, Xhafa (2007) posits a formality-informality continuum among a significant majority of micro and small enterprises. At one pole is full formality where decent work is fully embedded and there is strong representation of workers. Registered enterprises with

full coverage and enforcement of labour law and social protection are located along this pole. The opposite pole is full informality characterized by decent work deficit and lack of representation voice of workers. Most micro economic units fall along this pole. Figure 1 illustrates Xhafa's formality/informality continuum in the micro and small enterprise sector.

Figure 1: The formality/informality continuum



Source: Xhafa (2007: 14).

Segmentation

According to Chen, the informal economy consists of a range of informal enterprises and informal jobs. She classifies the various segments in Table 2.

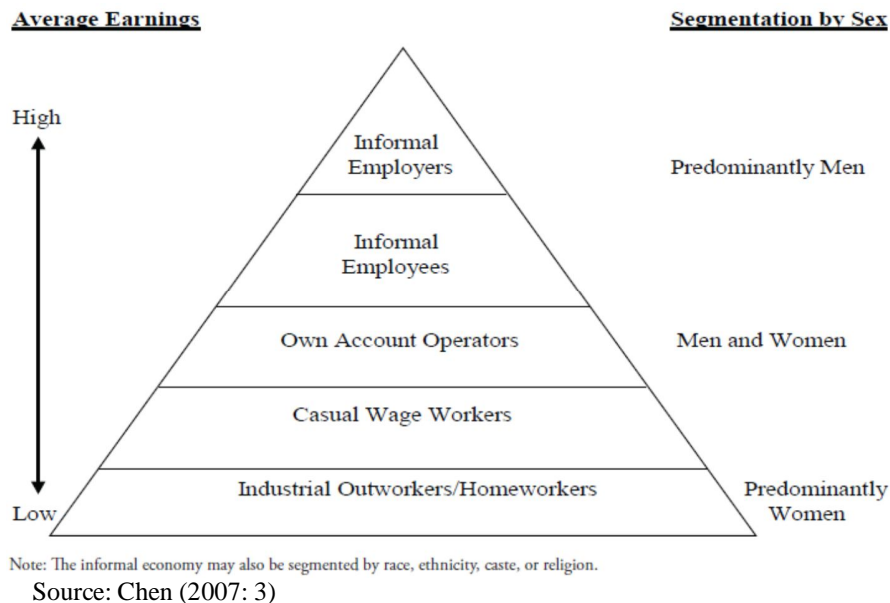
Table 2: Various segments of the informal economy

<i>Self-employment in informal enterprises</i>	Workers in small unregistered or unincorporated enterprises, including: <ul style="list-style-type: none"> • Employers • own account operators (both heads of family enterprises and single person operators) • unpaid family workers
<i>Wage employment in informal jobs</i>	Workers without worker benefits or social protection who work for formal or informal firms, for households or with no fixed employer, including: <ul style="list-style-type: none"> • employees of informal enterprises • other informal workers such as casual or day labourers, domestic workers, unregistered or undeclared workers, some temporary or part-time workers • industrial outworkers (also called homeworkers)

Source: Chen (2007: 2-3).

Chen also highlights two stylized global facts about the segmented informal economy (2007:3). The first fact is the existence of significant gaps in earnings within the informal economy: on average, employers have the highest earnings and the industrial workers the lowest. The second is that men tend to be over-represented in the top segment, while women tend to be over-represented in the lower segments. Chen depicts in Figure 2 depicts these twin facts.

Figure 2: Segmentation of the informal economy



From Chen's conceptualization of segmentation of the informal economy, the other key features of the informal economy are as follows (2007: 3-4):

- There is a significant gender gap in earnings within the informal economy, with women earning less on average than men.
- Women tend to work in a variety of activities, associated with different levels of earnings, than men. This can be partly explained by several factors: men tend to possess more human capital due to educational discrimination against girls; men tend to have better tools of the trade, operate from better work sites/spaces and have greater access to productive assets and financial capital.

There is also the question of legality or semi-legality in the informal economy. While one part of the informal economy – the criminal economy – operates illegally and deals in illegal goods and services, most informal workers and enterprises produce and/or distribute legal goods and services (Chen, 2007: 4). Also, production or employment arrangements in the informal economy are often semi-legal or illegal. Nonetheless, many operators of informal enterprises operate semi-legally or illegally because the regulatory environment is too cumbersome, too punitive or simply non-existent (ibid). Many owner operators may be willing to pay registration fees and taxes if they were to receive the benefits of formality (i.e. security). In the case of informal wage work in formal and informal enterprises, it is important to emphasize that it is usually the employers, not the workers, who are avoiding registration and taxation (ibid).

Related to Chen's segmentation of the informal economy is the ILO's recognition of the heterogeneity of the informal economy. According to the ILO (2013: 4), there are many different categories of work in the informal economy. In paragraph 3 of the "Guidelines concerning a statistical definition of informal employment" adopted in the 17th International Conference of Labour Statisticians (ICLS), informal employment is defined as "the total number of informal jobs, whether carried out in formal sector enterprises, informal sector enterprises or households, during a given reference period" (ILO, 2013: 5). The ICLS Guidelines mention that the informal economy is comprised of the following types of workers (ibid: 5-6):

- own-account workers and employers employed in their own informal sector enterprises;
- contributing family workers, irrespective of whether they work in formal or informal sector enterprises;
- employees holding informal jobs, whether employed by formal sector enterprises, informal sector enterprises or as domestic workers employed by households;
- members of informal producers' cooperatives; and
- own-account workers engaged in the production of goods exclusively for own final use by their household.

Cognizant of the large diversity of informal employment situations in different countries, the ICLS Guidelines note that the operational criteria for defining informal jobs may be determined in accordance with national circumstances.

The heterogeneity of the informal economy also means different situations among informal workers.

Workers in the informal economy differ widely in terms of income (level, regularity, seasonality), status in employment (employees, employers, own-account workers, casual workers, domestic workers), sector (trade, agriculture, industry), type and size of enterprise, location (urban or rural), social protection (social security contributions) and employment protection (type and duration of contract, annual leave protection). (ILO, 2013: 4)

Being a multi-faceted and diverse phenomenon, the informal economy poses a big challenge in designing effective interventions to facilitate transitions to formality. For example, extending social security coverage "to such a heterogeneous set of workers and economic units requires the implementation of several (coordinated) instruments adapted to the specific characteristics of the different groups, the contingencies to be covered and the national context" (ILO, 2013: 4).

In the light of the above, the 2002 ILC general discussions on decent work and the informal economy has broadened understanding of and provided a comprehensive framework for addressing informality across the Decent Work Agenda of the ILO. Also, the 2002 Conclusions marked an historic tripartite consensus on the objective of the transition out of informality: "As long as it persists, the informal economy will remain the most serious obstacle to the goal of decent work for all" (ILO, 2013: 12).

In view of the 2002 Conclusions and the successive meetings and policy discussions tackling the informal economy, the ILO's comprehensive policy approach across the Decent Work Agenda

underwent a series of fine-tuning, resulting in a policy and diagnostic framework based on seven policy areas or key avenues towards formalization (Figure 3): quality employment generation and growth strategies; the regulatory environment; social dialogue, organization and representation; promoting equality and addressing discrimination; measures to support entrepreneurship, skills and finance; the extension of social protection; and local development strategies (ILO, 2013: 13).

Figure 3: Decent work policy areas and strategies for the informal economy



Source: ILO (2013: 13)

The ILO underscores that the above policy framework “emphasizes the importance of vertical integration and coherence across the range of policies to curb informality, while the horizontal dimension focuses on intensifying action in each policy area” (ibid). At the same time, the ILO recognizes that successful strategies for transitions to formality are associated with enabling macroeconomic, social, legal and political frameworks that are embedded within national development strategies (ibid: 36).

The need for an enabling macroeconomic, social, legal and political frameworks means that governments have a key role in facilitating transitions to formality. Political will and commitment is essential in bringing workers in the informal economy under the protection of the law (i.e. labour and social protection). For informal enterprises, the legal and regulatory environment for business should be conducive to assisting transitions to the formal economy by reducing the cost of formalization and/or increasing productivity. The ILO provides several examples (2013: 31-32).

- Colombia’s Act No. 1429 provides MSMEs with incentives (e.g. tax reductions) to formalize their structures and to create new employment, particularly for vulnerable groups such as young workers under the age of 28 (ILO, 2013: 31).
- In Brazil, the General Act on SMEs in created the legal concept of “individual micro-entrepreneur” and simplified registration, with a single contribution giving access to social security, medical care and maternity leave. A certificate issued to formal individual

micro-entrepreneurs facilitates their access to markets and credit. It is estimated that 3 million workers have been formalized in this way.

- In Chile, the 2006 SME Act constitutes an important step towards a more enabling environment for the formalization of MSEs and introduces a series of changes in the regulatory framework and in SME support services.

Measures to increase the productivity of informal enterprises may include improving their access to financial markets, providing assistance for technological development, and providing skills and technical training to upgrade their production processes and/or service provisions.

In some countries, formalization of and extending legal protection to specific categories of vulnerable workers is done by amending existing laws and introducing special laws. Again, the ILO provides several examples (2013: 33).

- In South Africa, the Basic Conditions of Employment Act of 1997 was amended to establish conditions of employment and minimum wages for domestic work.
- In the Philippines, the Domestic Workers Act of 2013 defines such terms as “domestic work” and “domestic worker”, for whom it establishes rights and protections.
- In Thailand, the Home Workers Protection Act of 2010 requires written contracts between hirers and homeworkers containing certain minimum information and establishes a fine of 10,000 Thai baht for failure to comply. Homeworkers producing outputs of the same nature, quality and quantity may not be paid less than the minimum wage. The Act established a Home Work Protection Committee to advise on remuneration, safety and other policies, and labour inspectors are permitted to enter the workplace of homeworkers.

All the above examples point to the critical role of the regulatory framework and the structures and mechanisms for proper governance in facilitating transitions from informality to formality. But does formalization automatically lead to decent work? What should formalization mean to workers in the informal economy and the informal sector? These questions are addressed later in this report.

Chapter 2

The informal economy in the Philippines: Definition, categories, characteristics and trends

Defining the informal economy

In the Philippines, there is no official definition of the terms ‘informal economy’, although there is an unofficial recognition of the ILO definition. What is officially defined is the term ‘informal sector’. The National Statistical Coordination Board (NSCB), under NSCB Resolution No. 15 Series of 2002, adopted the statistical definition of the term ‘informal sector’ proposed by the ICLS in 1993.

[The informal sector] consists of “units” engaged in the production of goods and services with the primary objective of generating employment and incomes to the persons concerned in order to earn a living. These units typically operate at a low level of organization with little or no division between labor and capital as factors of production. It consists of household unincorporated enterprises that are market and nonmarket producers of goods as well as market producers of services. This means that these are owned or operated by households engaged in the production of goods and/or services that are not constituted as legal entities independent of the households or household members that own them.

Labor relations, where they exist, are based on casual employment, kinship or personal and social relations rather than formal or contractual arrangements. (BLES, 2008a: 2)

For statistical purposes, the term ‘informal sector’ refers to “household unincorporated enterprises which consist of both informal own-account enterprises and enterprises of informal employers” (BLES website). Also officially defined, mainly for statistical purposes, are the terms ‘informal employment’ and ‘informal own-account enterprises’. The term ‘informal employment’ is defined as “the total number of informal jobs whether carried out in formal sector enterprises, informal sector enterprises or households during a given reference period” (ibid). The term ‘informal own-account enterprises’ refers to “household unincorporated enterprises owned and operated by own-account workers, either alone or in partnership with members of the same or any other households which may employ unpaid family members as well as occasionally/seasonally hired workers but do not employ employees on a continuous basis” (ibid).

General categories of informal workers

Following the NSCB definition of the informal sector and informal employment, the categories of workers in the informal economy in the Philippines are listed in Table 3.

Table 3: Categories of workers in the informal economy in the Philippines

Workers in the informal sector	Informal/non-regular workers in the formal sector
Self-employed workers without any employee (including some home-based workers)	Casual workers
Unpaid family workers	Contractual/project-based workers
Employees of employers/owners of informal enterprises	Seasonal workers
Domestic workers and other workers in private households	Agency-hired workers
	Some probationary workers
	Some apprentices/learners
	Home-based workers working for formal enterprises through contracting and subcontracting arrangements

Source: The authors

A recent study by Ofreneo (2014) identifies nine major segments or categories of informal workers (Table 4). Two criteria were used to come up with the segments or categories, namely: 1) the large number of workers involved in a segment or sub-sector, and 2) the similarity or commonality of work and labour protection problems workers are facing within each identified segment (ibid: 22).

Table 4: Major segments of informal workers in the Philippines

Segment	Description/Type of worker
Landless rural poor	Rural-based workers without land or land rights and without access to any farm; they move from place to place in search of odd jobs such as seasonal agricultural work, gold panning, construction work, etc.
Home-based workers	<ol style="list-style-type: none"> (1) The “entrepreneurial”: they transform their home into mini-factories and produce varied products such as processed meat and delicacies, handicrafts and bags, etc. (2) The “industrial workers”: home-based workers that produce goods for formal enterprises through job contracting or subcontracting, often based on piece-rate work (3) The “combined industrial/entrepreneurial workers”: combination of types 1 and 2
Street vendors	<ol style="list-style-type: none"> (1) Vendors and (movable) stall holders occupying sidewalks and parts of the streets: these workers set up movable stalls and vending tables in the streets and sidewalks (2) Ambulant vendors: vendors selling few and small items like cigarettes, candies, nuts, bottled water, etc. during traffic jams and in crowded street corners; they also go from street to street selling household and food items (3) Long-haul vendors: vendors who board provincial buses selling small snack items; they board provincial passenger buses in one town or stopover and alight in the next stopover and return. Another group of long haul vendors are those pulling ox-driven carts selling household items and native furniture in different towns
Informal construction workers	They have seasonal demand for their services; they don’t have any clear employment contract in doing short-term projects

Table 4 (Continued): Major segments of informal workers in the Philippines

Segment	Description/Type of worker
Domestic workers	Despite the enactment of Republic Act 10361 in 2013 mandating the protection and enhancing the welfare of domestic workers, informality of employment arrangements persists. Many local employers are low wage earners themselves and thus are unable to meet all the labour standards required by the new law. The weak enforcement of the law erodes its progressive content.
Informal transport workers	Non-registered transport operators and workers who utilized mainly non-motorized bikes with side-cars called <i>trisykad</i> (tricycle moved by pedalling) and motorcycles called <i>habal-habals</i> (motorcycles with elongated boards on top to accommodate as many passengers). Also considered are operators and drivers of jeepneys, taxis and motorized three-wheeled tricycles as they are not “sufficiently” formalized (i.e., they are not registered with the social security system, most do not report on incomes and pay taxes, most do not have employment contracts, etc.)
Semi-skilled general laborers	Unskilled or semi-skilled labourers who accept and do varied manual jobs such as serving as porters in ports, aids in construction projects, messengers, personal bodyguards, all-around assistants of informal stall holders, etc. Those that work in construction are usually recruited and organized by labour gang leaders.
Unregistered home and personal services	Workers that provide varied home and personal services, ranging from laundry and cleaning to manicure and home service massage, appliance repairs to home repainting, from private tutoring to dog handling, etc.
Special segment: Casualized formals	Casual workers who work in formal enterprises

Source: Ofreneo (2014: 22-28)

Ofreneo’s classification of informal workers in the Philippines indeed highlights the heterogeneity of the informal economy. The more segmented the informal economy is, the more challenge it poses in developing interventions to promote decent work. Moreover, due to the existence of various segments with diverse interests and issues, not to mention the varied causes and processes of informalization in each segment, a one-size-fits-all policy framework may prove counterproductive.

Also, it is possible that there may be overlaps in the classification of informal workers presented by Ofreneo. For example, there are street vendors among the landless rural poor and semi-skilled general labourers among the informal construction workers. Moreover, as pointed out by Chen, an informal worker may hold two or more informal jobs. For example, a home-based worker can at the same time be a street vendor. An informal construction worker can be an informal transport worker between construction projects. The ease of entry and exit within the informal economy allows workers to operate simultaneously within the various segments of the informal economy.

Characteristics of and trends in the informal economy

The first initiative to capture the magnitude of workers in the informal economy in the Philippines was done in 2008 in the April 2008 Informal Sector (IS) Survey of the National

Statistics Office (NSO). The survey covered the period 2001-2006. The “crude” estimates on the size of employment in the informal sector in 2001-2006 made by the Bureau of Labor and Employment Statistics (BLES) of the Department of Labor and Employment (DOLE) was culled from the public use files (PUFs) of the Labor Force Survey (LFS) of the NSO. In the said survey, informal sector workers were identified as those self-employed workers and unpaid family members.

The 2008 IS Survey revealed the following characteristics of the informal sector in the Philippines (BLES, 2008b):

- Almost half (44.6%) of total employed persons from 2001-2006 were informal sector workers.
- 5 in 10 informal sector workers were employed in agriculture (47.9%), while 3 in 10 were found in wholesale and retail trade (27.3%).
- Informal sector workers were mostly employed as farmers, forestry workers and fishermen (35.2%) and labourers and unskilled workers (29.0%).
- Male workers (58.7%) outnumber female workers (41.3%) in the informal sector.
- 6 in 10 informal sector workers were of prime working age of 25-54 years old.
- More than half (51.1%) of informal sector workers were formally educated, reaching high school and being high school graduates (35.6%) and college level, college graduates and higher (15.5%).

In terms of informal (i.e., non-standard/non-regular) jobs in the formal economy, Serrano (2014) observes an increasing trend – from one in four rank-and-file regular workers in 2008 to one in three in 2010. She points out that non-standard employment is most often characterized by the following: fixed or short-duration employment contracts, lower wages vis-à-vis regular workers’ wages, limited or absence of social security benefits, lack of career prospect, over-representation of women and young workers, and lack of organization (2014: 168).

According to the 2007/2008 BLES Integrated Survey, there were 731,548 non-regular workers employed in non-agricultural establishments (with 20 or more workers) in 2008. Of the total employed persons in 2008, it was estimated that 25 per cent (1 in 4) of all workers in these establishments comprised non-regular workers. Thus, if we were to add the proportion of workers in the informal sector (44.6%) and the share of non-regular workers to total employment in 2008 (25%), we could crudely estimate the share of informal employment in the Philippines between 2006 and 2008 at 69.6 per cent. This may suggest that more than two-thirds of all workers in the country during the said period were workers in the informal economy.

Using more recent data from BLES on the share of the self-employed without any paid employee and the unpaid family workers (the informal sector workers), which we estimate at 39.3 per cent in 2012, and the share of non-regular workers (i.e., casual workers, contractual/project-based workers, seasonal workers, probationary workers and apprentices/learners) to total employment in establishments with 20 or more workers, which was 30.5 per cent in June 2012, we could roughly estimate the share of informal employment in 2012 at 69.8 per cent, about the same proportion in 2006-2008. This suggests that informal employment in the Philippines has remained stagnantly high and that most jobs in the country are found in the informal economy.

Chapter 3

The role of governance in according protection to informal workers in the Philippines: Potentials, limitations and gaps

In the Philippines, labor standards are statutory minimum terms and conditions of employment. Laws on normal hours of work, overtime, premium, holiday and night shift differential pay, service incentive leave, service charges, 13th month pay, minimum wages, and employment conditions of women, minors, househelpers and homeworkers form part of labor standards. Occupational safety and health (OSH) are also part of labor standards. Notably, OSH together with the Employees Compensation and State Insurance Fund (ECSIF), Social Security (SS) and Government Service Insurance System (GSIS) laws constitute social protection measures or social safety nets. OSH imposes duties on employers, employees/workers and others to ensure compliance with the standards. While OSH is preventive, the ECSIF, SS and GSIS laws are compensatory. ECSIF compensates work-related injury, illness or death. The SS and GSIS laws compensate even if injury, illness or death is not work-related. The SS law applies to the private sector while the GSIS law covers the public sector.

Labor and social protection laws and policies and workers in the informal economy¹

What about the informal sector? Are labor standards enforced in the sector? In recent years, the term “informal economy” has been used in place of “informal sector.”² The notion of the informal economy, says the International Labour Organization (ILO), includes small-scale income generating activities outside the official regulatory framework, excluding “underground” activities that may be profitable but deliberately evade taxes and regulations.³ Based on the International Conference of Labour Statisticians, the informal sector consists of household enterprises, which include own-account workers (without paid employees on a permanent basis) and employers of informal enterprises (employing one or more on a continuous basis).⁴

¹ See Sale, Jonathan. 2009. Labor and Social Security Laws in the Philippines: Emerging Enforcement Approaches in the Informal Sector. Paper presented at the 19th World Congress of the International Society for Labour and Social Security Law (2009 World Labour Law Congress), September 1 to 4, 2009, Sofitel Sydney Wentworth Hotel, Sydney, Australia. See also Sale, Jonathan P. and Bool, Arlene C., Recent Developments in Philippine Labor Market Governance: Shifting Methods from Command to Collaboration? (September 5, 2010). OIDA International Journal of Sustainable Development, Vol. 1, No. 6, pp. 79-88, 2010. Available at SSRN: <http://ssrn.com/abstract=1672324>; and Sale, Jonathan. 2011. The Governance of Decision Making and Labor Dispute Settlement in the Philippines: Shifting Methods from Command to Collaboration or Vice-Versa? Unpublished Doctoral Dissertation. UP National College of Public Administration and Governance, 08 March 2011.

² See House Bill No. 1955 (“AN ACT PROVIDING FOR A MAGNA CARTA FOR WORKERS IN THE INFORMAL ECONOMY, INSTITUTIONALIZING MECHANISMS FOR IMPLEMENTATION THEREOF AND FOR OTHER PURPOSES”), Explanatory Note, 1st Regular Session, 14th Congress, House of Representatives, Republic of the Philippines.

³ See International Labour Office. (2000). Your Voice at Work, Geneva, Switzerland.

⁴ Id.

The informal economy is growing. de Soto (2000) points out that US\$132.9 billion of informal capital is owned by 65% of the population in the Philippines.⁵ This is “dead capital”, he explains, as it cannot produce more capital. Recently, Ofreneo (2009) argued that the informal sector now comprises more than 76% of the country’s total employed.⁶ Those in the informal sector operate outside the purview of law. Thus, property held informally cannot be mortgaged with a bank to get a loan. The problem of the poor, de Soto adds, is access to the legal or formal mechanisms that could fix the economic potential of their assets to attain greater value in the market.

Albeit, an important role carried out by the informal economy is that of being an “escape hatch,” according to de Soto. Michael Todaro uses the term “catch basin.”⁷ Those not absorbed by the formal sector go to the informal sector where they somehow eke out a living. Is work in the informal sector “decent”? The aim of labor and social security laws is social justice. But if a big majority of the population or workforce lives outside the formal system, is there social justice? de Soto suggests the formalization of the informal. How does one formalize the informal?

According to Birchall (2004), cooperatives are an ideal instrument for “working out of poverty.”⁸ He notes two areas in particular where cooperatives can contribute: the gradual improvement of conditions in, and formalizing of, the informal economy; and increasing the incomes of rural workers.⁹ In the 2005 Report on “Cooperatives in social development” of the Secretary-General to the United Nations General Assembly, it was noted that cooperatives can help to formalize informal economic activities.¹⁰ Citing ILO, the report notes that many cooperatives start out as informal group enterprises but grow to become viable organizations, which eventually register as legal business entities and join the ranks of the formal economy.¹¹

Based on the neo-classical school of thought, however, State and other interventions in the free functioning of market forces, unless intended to correct market failures, lead to inefficiencies in resource allocation and to slower growth, wage and employment expansion.¹²

But under the institutional approach, apart from correcting market failures, State interventions that establish rights at work, collective bargaining, consultations with stakeholders, minimum

⁵ See de Soto, Hernando. (2000). *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, Basic Books: U.S.A.

⁶ Ofreneo, Rosalinda Pineda. (2009). *Towards Fair Trade and Sustainable Livelihood for Women Informal Workers in Globalizing ASEAN*, in *Solidarity Economy and the Cooperative Experience*, Rosa C. Mercado (ed.), Center for Labor and Grassroots Initiative, UP SOLAIR, pp. 34-47.

⁷ See Todaro, Michael P. and Smith, Stephen C. (2006). *Economic Development A Comprehensive Approach*, United Kingdom: Pearson Education Limited [9th Edition].

⁸ Birchall, Johnston. (2004). *Cooperatives and the Millennium Development Goals*, International Labour Organization, www.ilo.org.

⁹ Id.

¹⁰ *Cooperatives in social development*, Report of the Secretary-General to the United Nations General Assembly, July 21, 2005, www.ilo.org.

¹¹ Id.

¹² Ghai, Dharam (ed.). (2006). *Decent Work: Objectives and Strategies*, Geneva: International Labour Organization, p. 24.

wages and social security, contribute to political and social stability, among others.¹³ This is so because of labor market institutions that encourage trust and partnership.¹⁴

Generally, such government actions may be referred to as labor administration, which is defined in the ILO's 1978 Labour Administration Convention (No. 150) as public administration activities in the field of national labor policy.¹⁵ The key functions of labor administration include labor inspection, labor relations, employment, and labor research.¹⁶ Labor inspection is concerned with the protection of workers through law enforcement and related activities.¹⁷ Labor relations refer to the interactions between workers and employers at work and arising from the work situation, as influenced by government intervention.¹⁸ Employment activities involve the formulation of policy guidelines for employment promotion and creation, and provision of a range of services to implement the guidelines.¹⁹ Research on labor matters entails collecting and analyzing data and ideas for the formulation of new labor policies and strategies.²⁰

Of late, the term labor market governance has been employed by the International Labor Organization (ILO) particularly as an aspect of its Decent Work Agenda.²¹ "(T)he ILO defined labour market governance as referring to those public and private institutions, structures of authority and means of collaboration that coordinate or control activity at the workplace and in the labour market. In other words, labour market governance refers to the totality of policies, norms, laws, regulations, institutions, machinery and processes that influence the demand and supply of labour in an economy."²² Labor market governance encompasses labor regulation, industrial relations and labor administration, and their interplay.²³ In fine, the term includes collective bargaining and labor dispute prevention and settlement as main components of industrial relations.²⁴ A recent significant development is the ILO Declaration on Social Justice for a Fair Globalization adopted in June 2008. Considering that "global economic integration has caused many countries and sectors to face major challenges of income inequality, continuing high levels of unemployment and poverty, vulnerability of economies to external shocks, and the growth of both unprotected work and the informal economy, which impact on the employment relationship and the protections it can offer," the Declaration calls for, among others, developing new partnerships with non-state entities and economic actors, such as multinational enterprises and trade unions operating at the global sectoral level, in order to enhance the effectiveness of ILO programs and activities.²⁵

¹³ Id.

¹⁴ Id.

¹⁵ Heron, Robert. (1998). *Labour Administration An Introduction*, Geneva and Bangkok: International Labour Organization, p. 3.

¹⁶ Id., at 13.

¹⁷ Id.

¹⁸ Id., at 14.

¹⁹ Id., at 15.

²⁰ Id., at 16.

²¹ Ghosh, Abhik. (2008). *Labour Market Governance in Asia and the Pacific*. Presentation at the International Labour Organization, RCBC Plaza, Makati City, Philippines.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Preface and page 5, ILO Declaration on Social Justice for a Fair Globalization (2008).

Emerging enforcement approaches and their potentials²⁶

Some emerging approaches to the enforcement of labor and social security laws in the informal sector, which includes the most vulnerable workers, may be broadly categorized into congressional, administrative and judicial interventions.

Congressional interventions

Under **Republic Act 8282**, the **SS Act of 1997**, coverage in the SSS shall be compulsory upon all employees not over sixty (60) years of age and their employers: provided, that in the case of domestic helpers, their monthly income shall not be less than One thousand pesos (P1,000.00) a month. Spouses who devote full time to managing the household and family affairs, unless they are also engaged in other vocation or employment which is subject to mandatory coverage, may be covered by the SSS on a voluntary basis. Filipinos recruited by foreign-based employers for employment abroad may be covered by the SSS on a voluntary basis. Coverage in the SSS shall also be compulsory upon such self-employed persons as may be determined by the SS Commission. Compulsory coverage of the employer shall take effect on the first day of his operation and that of the employee on the day of his employment: provided, that the compulsory coverage of the self-employed person shall take effect upon his registration with the SSS. When an employee under compulsory coverage is separated from employment, his employer's contribution on his account and his obligation to pay contributions arising from that employment shall cease at the end of the month of separation, but said employee shall be credited with all contributions paid on his behalf and entitled to benefits. He may, however, continue to pay the total contributions to maintain his right to full benefit. If the self-employed realizes no income in any given month, he shall not be required to pay contributions for that month. He may, however, be allowed to continue paying contributions under the same rules and regulations applicable to a separated employee member. The benefits under the SSS include the monthly and dependents' pensions and retirement, death, permanent disability, funeral, sickness and maternity leave benefits, all of which are exempt from taxes, legal processes and liens.

Based on **Republic Act 7875**,²⁷ the National Health Insurance Program shall provide health insurance coverage and ensure affordable, acceptable, available and accessible health care services for all citizens of the Philippines, including the vulnerable and informal workers. This social insurance program shall serve as the means for the healthy to help pay for the care of the sick and for those who can afford medical care to subsidize those who cannot. It shall initially consist of Programs I and II of Medicare and be expanded progressively to constitute one universal health insurance program for the entire population. The Program shall include a sustainable system of funds constitution, collection, management and disbursement for financing the availment of a basic minimum package and supplementary packages of health insurance benefits by a progressively expanding proportion of the population. The Program shall be limited

²⁶ See Sale, Jonathan. 2009. Labor and Social Security Laws in the Philippines: Emerging Enforcement Approaches in the Informal Sector. Paper presented at the 19th World Congress of the International Society for Labour and Social Security Law (2009 World Labour Law Congress), September 1 to 4, 2009, Sofitel Sydney Wentworth Hotel, Sydney, Australia.

²⁷ AN ACT INSTITUTING A NATIONAL HEALTH INSURANCE PROGRAM FOR ALL FILIPINOS AND ESTABLISHING THE PHILIPPINE HEALTH INSURANCE CORPORATION FOR THE PURPOSE.

to paying for the utilization of health services by covered beneficiaries or to purchasing health services in behalf of such beneficiaries. Direct provision of health care, buying and dispensing of drugs and pharmaceuticals, employment of physicians and other professionals for the purpose of directly rendering care, and owning or investing in health care facilities are beyond the scope of the Program. Under the law universality means that the Program shall provide all citizens with the mechanism to gain financial access to health services, in combination with other government health programs. The Program shall give the highest priority to achieving coverage of the entire population with at least a basic minimum package of health insurance benefits.

Republic Act 7875 was recently amended by **Republic Act 10606**.²⁸ One of the important changes introduced is the specific inclusion of the informal sector within its scope and the provision defining the term –

“(pp) *Informal Sector* – Units engaged in the production of goods and services with the primary objective of generating employment and income for the persons concerned. It consists of households, unincorporated enterprises that are market and nonmarket producers of goods, as well as market producers of services.

“These enterprises are operated by own-account workers, which may employ unpaid family workers as well as occasional, seasonally hired workers.

“To this sector belong, among others, street hawkers, market vendors, pedicab and tricycle drivers, small construction workers and home-based industries and services.”

Republic Act 9231²⁹ provides that children below fifteen (15) years of age shall not be employed except:

1) When a child works directly under the sole responsibility of his/her parents or legal guardian and where only members of his/her family are employed: provided, however, that his/her employment neither endangers his/her life, safety, health, and morals, nor impairs his/her normal development: provided, further, that the parent or legal guardian shall provide the said child with the prescribed primary and/or secondary education; or

2) Where a child’s employment or participation in public entertainment or information through cinema, theater, radio, television or other forms of media is essential: provided, that the employment contract is concluded by the child’s parents or legal guardian, with the express agreement of the child concerned, if possible, and the approval of the Department of Labor and Employment (DoLE): provided, further, that the following requirements in all instances are strictly complied with:

(a) The employer shall ensure the protection, health, safety, morals and normal development of the child;

²⁸ AN ACT AMENDING REPUBLIC ACT NO. 7875, OTHERWISE KNOWN AS THE “NATIONAL HEALTH INSURANCE ACT OF 1995”, AS AMENDED, AND FOR OTHER PURPOSES.

²⁹ AN ACT PROVIDING FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOR AND AFFORDING STRONGER PROTECTION FOR THE WORKING CHILD, AMENDING FOR THIS PURPOSE REPUBLIC ACT NO. 7610, AS AMENDED, OTHERWISE KNOWN AS THE "SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT".

(b) The employer shall institute measures to prevent the child's exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and

(c) The employer shall formulate and implement, subject to the approval and supervision of competent authorities, a continuing program for training and skills acquisition of the child.

In the above-exceptional cases where any such child may be employed, the employer shall first secure, before engaging such child, a work permit from the DoLE which shall ensure observance of the above requirements.

Moreover, the hours of work of a working child shall conform to the following:

(1) A child below fifteen (15) years of age may be allowed to work for not more than twenty (20) hours a week: provided, that the work shall not be more than four (4) hours at any given day;

(2) A child fifteen (15) years of age but below eighteen (18) shall not be allowed to work for more than eight (8) hours a day, and in no case beyond forty (40) hours a week; and

(3) No child below fifteen (15) years of age shall be allowed to work between eight o'clock in the evening and six o'clock in the morning of the following day and no child fifteen (15) years of age but below eighteen (18) shall be allowed to work between ten o'clock in the evening and six o'clock in the morning of the following day.

No child shall be engaged in the worst forms of child labor. The phrase "worst forms of child labor" shall refer to any of the following:

(1) All forms of slavery, as defined under the "Anti-trafficking in Persons Act of 2003", or practices similar to slavery such as sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including recruitment of children for use in armed conflict; or

(2) The use, procuring, offering or exposing of a child for prostitution, for the production of pornography or for pornographic performances; or

(3) The use, procuring or offering of a child for illegal or illicit activities, including the production and trafficking of dangerous drugs and volatile substances prohibited under existing laws; or

(4) Work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children, such that it:

a) Debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; or

b) Exposes the child to physical, emotional or sexual abuse, or is found to be highly stressful psychologically or may prejudice morals; or

- c) Is performed underground, underwater or at dangerous heights; or
- d) Involves the use of dangerous machinery, equipment and tools such as power-driven or explosive power-actuated tools; or
- e) Exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortion, or which requires the manual transport of heavy loads; or
- f) Is performed in an unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels, or vibrations; or
- g) Is performed under particularly difficult conditions: or
- h) Exposes the child to biological agents such as bacteria, fungi, viruses, protozoans, nematodes and other parasites; or
- i) Involves the manufacture or handling of explosives and other pyrotechnic products.

No child shall be deprived of formal or non-formal education. In all cases of employment allowed in this law, the employer shall provide a working child with access to at least primary and secondary education.

No child shall be employed as a model in any advertisement directly or indirectly promoting alcoholic beverage, intoxicating drinks, tobacco and its byproducts, gambling or any form of violence or pornography.

In 2007, a law on labor relations came into effect – **Republic Act 9481**³⁰ – to strengthen the workers’ right to self-organization. Among the major features of the law are the relaxation of requirements on charter registration of union locals or chapters, the eligibility of the unions of rank and file and supervisors in an establishment to join the same national union or federation, the shorter list of grounds for cancellation of union registration (failure to comply with reportorial requirements is no longer a ground while voluntary cancellation of registration is allowed), and the applicability of the “employer bystander rule” during representation disputes.

Republic Act 6938, the Cooperative of 1990, has been amended by **Republic Act 9520**, the Philippine Cooperative Code of 2008. Under the new law, a cooperative is an autonomous and duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve their social, economic, and cultural needs and aspirations by making equitable contributions to the capital required, patronizing their products and services and accepting a fair share of the risks and benefits of the undertaking in accordance with universally

³⁰ This lapsed into law on 25 May 2007 without the signature of the President, in accordance with Article VI, Section 27 (1) of the Constitution.

accepted cooperative principles. Fifteen (15) or more natural persons who are Filipino citizens, of legal age, having a common bond of interest and are actually residing or working in the intended area of operation, may organize a primary cooperative: provided, that a prospective member of a primary cooperative must have completed a Pre-Membership Education Seminar (PMES). Any newly organized primary cooperative may be registered as multipurpose cooperative only after compliance with the minimum requirements for multipurpose cooperatives to be set by the Cooperative Development Authority (CDA). A single-purpose cooperative may transform into a multipurpose or may create subsidiaries only after at least two (2) years of operations. The P2,000 required minimum paid-up share capital has been increased to P15,000. The new law also provides that the general assembly may by three-fourths (3/4) vote of all its members with voting rights, present and constituting a quorum, delegate some of its powers to a smaller body of the cooperative. The board of directors shall elect from among themselves the chairperson and vice-chairperson, and elect or appoint other officers of the cooperative from outside of the board in accordance with their bylaws. All officers shall serve during good behavior and shall not be removed except for cause after due hearing. Loss of confidence shall not be a valid ground for removal unless evidenced by acts or omission causing loss of confidence in the honesty and integrity of such officer. No two (2) or more persons with relationships up to the third civil degree of consanguinity or affinity nor shall any person engaged in a business similar to that of the cooperative nor who in any other manner has interests in conflict with the cooperative shall serve as an appointive officer. Duly registered cooperatives under the new law which do not transact any business with non-members or the general public shall not be subject to any taxes and fees imposed under the internal revenue laws and other tax laws. No member of primary cooperative other than cooperative itself shall own or hold more than ten per centum (10%) of the share capital of the cooperative. Significantly, under Article 135 of the new law, the Labor Code and all other labor laws, the Social Security Act, the Medical Care Act, and all other social legislations, and all other laws and executive orders shall apply to cooperatives duly registered under the new law. This used to be Article 119 of the old Code.

Under **Republic Act 9442**,³¹ persons with disability are entitled to other privileges (e.g., at least 20% discount from all establishments relative to the utilization of all services in hotels and similar lodging establishments; restaurants and recreation centers for the exclusive use or enjoyment of persons with disability; to the extent practicable and feasible, the continuance of the same benefits and privileges given by the GSIS, SSS, and PAG-IBIG, as the case may be, as are enjoyed by those in actual service; etc.), while those caring for and living with a person with disability are granted certain incentives (e.g., persons with disability shall be treated as dependents under the National Internal Revenue Code and as such, individual taxpayers caring for them shall be accorded the privileges granted by the code insofar as having dependents under the same section are concerned; etc.).

Another recent law is the *Batas Kasambahay*, **Republic Act 10361**.³² One significant feature of the new law is the increase in minimum wage of domestic workers:

³¹ AN ACT AMENDING REPUBLIC ACT NO. 7277, OTHERWISE KNOWN AS THE "MAGNA CARTA FOR DISABLED PERSONS, AND FOR OTHER PURPOSES."

³² AN ACT INSTITUTING POLICIES FOR THE PROTECTION AND WELFARE OF DOMESTIC WORKERS.

“SEC 24. *Minimum Wage.* – The minimum wage of domestic workers shall not be less than the following:

- (a) Two thousand five hundred pesos (P2,500.00) a month for those employed in the National Capital Region (NCR);
- (b) Two thousand pesos (P2,000.00) a month for those employed in chartered cities and first class municipalities; and
- (c) One thousand five hundred pesos (P1,500.00) a month for those employed in other municipalities.

After one (1) year from the effectivity of this Act, and periodically thereafter, the Regional Tripartite and Productivity Wage Boards (RTPWBs) shall review, and if proper, determine and adjust the minimum wage rates of domestic workers.”

Another area of public policy that requires amendments is the employment of homeworkers.

The "employer" of homeworkers under the Philippine **Labor Code** includes any person, natural or artificial who, for his account or benefit, or on behalf of any person residing outside the country, directly or indirectly, or through an employee, agent, contractor, sub-contractor or any other person:

1. Delivers, or causes to be delivered, any goods, articles or materials to be processed or fabricated in or about a home and thereafter to be returned or to be disposed of or distributed in accordance with his directions; or
2. Sells any goods, articles or materials to be processed or fabricated in or about a home and then rebuys them after such processing or fabrication, either by himself or through some other person.

The employment terms and conditions of homeworkers are not spelled out in the Code.

Administrative interventions

Under the **Implementing Rules of Book V, Labor Code promulgated by DoLE (Dept. Order 40-03, Series of 2003)**, a "workers' association" refers to an association of workers organized for the mutual aid and protection of its members or for any legitimate purpose other than collective bargaining. On the other hand, a "legitimate workers' association" refers to an association of workers organized for mutual aid and protection of its members or for any legitimate purpose other than collective bargaining registered with the DoLE. Workers in the informal sector can organize into workers' associations for mutual aid and protection and have such associations registered. These include ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers.³³

³³ LABOR CODE, art. 243.

In 2004, the **Labor Standard Enforcement Framework (LSEF)**³⁴ was introduced by the DoLE as a self-enforcement mechanism based on cooperation among employers and their employees. Under the LSEF, self-assessment was undertaken by employers of establishments employing at least two hundred (200) workers and unionized establishments with certified collective bargaining agreements regardless of the number of workers employed. In 2013, LSEF was replaced by the new **Rules on Labor Laws Compliance System**,³⁵ which involve Joint Assessment (for private establishments), Compliance Visit (for those with complaints) and Occupational Safety and Health Standards (OSHS) Inspection (for those with imminent danger, dangerous occurrences, accident resulting in disabling injury, and OSHS violations in plain view).

Judicial intervention

Are cooperatives subject to labor administration? In a 2007 decision, the Philippine Supreme Court answered the question affirmatively –

“In determining the existence of an employer-employee relationship, the following elements are considered: (1) the selection and engagement of the workers; (2) the payment of wages by whatever means; (3) the power of dismissal; and (4) the power to control the worker’s conduct, with the latter assuming primacy in the overall consideration.[25] The most important element is the employer’s control of the employee’s conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish it.[26] The power of control refers to the existence of the power and not necessarily to the actual exercise thereof. It is not essential for the employer to actually supervise the performance of duties of the employee; it is enough that the employer has the right to wield that power.[27] All the aforesaid elements are present in this case.

First. It is expressly provided in the Service Contracts that it is the respondent cooperative which has the exclusive discretion in the selection and engagement of the owners-members as well as its team leaders who will be assigned at Stanfilco.[28] *Second.* Wages are defined as “remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained, on a time, task, piece or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for service rendered or to be rendered.”[29] In this case, the weekly stipends or the so-called shares in the service surplus given by the respondent cooperative to its owners-members were in reality wages, as the same were equivalent to an amount not lower than that prescribed by existing labor laws, rules and regulations, including the wage order applicable to the area and industry; or the same shall not be lower than the prevailing rates of wages.[30] It cannot be doubted then that those stipends or shares in the service surplus are indeed wages, because these are given to the owners-members as compensation in rendering services to respondent cooperative’s client, Stanfilco. *Third.* It is also stated in the above-mentioned Service Contracts that it is the respondent cooperative which has the power to investigate, discipline and remove the owners-members and its team leaders

³⁴ See Manual on Labor Standards, Department of Labor and Employment, 2004.

³⁵ DoLE Dept. Order No. 131-13, Series of 2013.

who were rendering services at Stanfilco.[31] *Fourth.* As earlier opined, of the four elements of the employer-employee relationship, the “control test” is the most important. In the case at bar, it is the respondent cooperative which has the sole control over the manner and means of performing the services under the Service Contracts with Stanfilco as well as the means and methods of work.[32] Also, the respondent cooperative is solely and entirely responsible for its owners-members, team leaders and other representatives at Stanfilco.[33] All these clearly prove that, indeed, there is an employer-employee relationship between the respondent cooperative and its owners-members.

It is true that the Service Contracts executed between the respondent cooperative and Stanfilco expressly provide that there shall be no employer-employee relationship between the respondent cooperative and its owners-members.[34] This Court, however, cannot give the said provision force and effect.

As previously pointed out by this Court, an employee-employer relationship actually exists between the respondent cooperative and its owners-members. The four elements in the four-fold test for the existence of an employment relationship have been complied with. The respondent cooperative must not be allowed to deny its employment relationship with its owners-members by invoking the questionable Service Contracts provision, when in actuality, it does exist. The existence of an employer-employee relationship cannot be negated by expressly repudiating it in a contract, when the terms and surrounding circumstances show otherwise. The employment status of a person is defined and prescribed by law and not by what the parties say it should be.[35]

It is settled that the contracting parties may establish such stipulations, clauses, terms and conditions as they want, and their agreement would have the force of law between them. However, the agreed terms and conditions must not be contrary to law, morals, customs, public policy or public order.[36] The Service Contract provision in question must be struck down for being contrary to law and public policy since it is apparently being used by the respondent cooperative merely to circumvent the compulsory coverage of its employees, who are also its owners-members, by the Social Security Law.

This Court is not unmindful of the pronouncement it made in *Cooperative Rural Bank of Davao City, Inc. v. Ferrer-Calleja* [37] wherein it held that:

A cooperative, therefore, is by its nature different from an ordinary business concern, being run either by persons, partnerships, or corporations. Its owners and/or members are the ones who run and operate the business while the others are its employees x x x.

An employee therefore of such a cooperative who is a member and co-owner thereof cannot invoke the right to collective bargaining for certainly an owner cannot bargain with himself or his co-owners. In the opinion of August 14, 1981 of the Solicitor General he correctly opined that employees of cooperatives who are themselves members of the cooperative have no right to form or join labor organizations for purposes of collective bargaining for being themselves co-owners of the cooperative.

However, in so far as it involves cooperatives with employees who are not members or co-owners thereof, certainly such employees are entitled to exercise the rights of all workers to organization, collective bargaining, negotiations and others as are enshrined in the Constitution and existing laws of the country.

The situation in the aforesaid case is very much different from the present case. The declaration made by the Court in the aforesaid case was made in the context of whether an employee who is also an owner-member of a cooperative can exercise the right to bargain collectively with the employer who is the cooperative wherein he is an owner-member. Obviously, an owner-member cannot bargain collectively with the cooperative of which he is also the owner because an owner cannot bargain with himself. In the instant case, there is no issue regarding an owner-member's right to bargain collectively with the cooperative. The question involved here is whether an employer-employee relationship can exist between the cooperative and an owner-member. In fact, a closer look at *Cooperative Rural Bank of Davao City, Inc.* will show that it actually recognized that an owner-member of a cooperative can be its own employee.

It bears stressing, too, that a cooperative acquires juridical personality upon its registration with the Cooperative Development Authority.[38] It has its Board of Directors, which directs and supervises its business; meaning, its Board of Directors is the one in charge in the conduct and management of its affairs.[39] With that, a cooperative can be likened to a corporation with a personality separate and distinct from its owners-members. Consequently, an owner-member of a cooperative can be an employee of the latter and an employer-employee relationship can exist between them.

In the present case, it is not disputed that the respondent cooperative had registered itself with the Cooperative Development Authority, as evidenced by its Certificate of Registration No. 0-623-2460.[40] In its by-laws, [41] its Board of Directors directs, controls, and supervises the business and manages the property of the respondent cooperative. Clearly then, the management of the affairs of the respondent cooperative is vested in its Board of Directors and not in its owners-members as a whole. Therefore, it is completely logical that the respondent cooperative, as a juridical person represented by its Board of Directors, can enter into an employment contract with its owners-members.

In sum, having declared that there is an employer-employee relationship between the respondent cooperative and its owners-member, we conclude that the petitioner SSC has jurisdiction over the petition-complaint filed before it by the petitioner SSS. This being our conclusion, it is no longer necessary to discuss the issue of whether the respondent cooperative was estopped from assailing the jurisdiction of the petitioner SSC when it filed its Answer with Motion to Dismiss."³⁶ (Citations omitted.)

The Supreme Court's ruling is consistent with the Philippine Cooperative Code of 2008, particularly Article 135 thereof. What is more, the doctrine may be applied or extended to labor standards other than those on social security in proper cases.

³⁶ Republic v. Asiapro Cooperative, G.R. No. 172101, November 23, 2007.

The Magna Carta of Workers in the Informal Economy

Another emerging approach is the consolidation and codification by Congress of rules that would apply specifically to informal workers, through the adoption of a *magna carta* of such workers. The modality suggested in the pending bills is also registration but the scope is larger. There are different versions pending in Congress.

Basic limits and gaps of legal frameworks³⁷

Under the Philippine Constitution, “all workers” have the right to: self-organization, collective bargaining and negotiations, peaceful concerted activities including the right to strike, a living wage, security of tenure, humane work conditions, and participation in policy and decision-making processes affecting rights and benefits.³⁸

But the Labor Code of the Philippines has a limited definition of “worker.” A “worker” is “any member of the labor force, whether employed or unemployed,”³⁹ while “employ includes to suffer or permit to work.”⁴⁰ Thus, the rights stated in the Labor Code are based on employer-employee relationship. Absent that relationship, the rights are inaccessible. But employment is just one type of work. There are others, e.g., volunteer work, civic service, subsistence farming, housework, elder and child care, and that insidious kind of work called slavery (Budd 2011). The Labor Code and its Implementing Rules mention “work” and its derivatives like “worker,” “workplace,” and so on, more than 2,000 times yet there is no statutory definition of “work.”

The same may be said of most of the laws and policies discussed above.

Although social security coverage has been expanded and employment conditions of vulnerable workers like minors, househelpers and persons with disability have been enhanced through legislation, still much has to be done especially for homeworkers.

And policy reforms should make it easier for the informal worker to join the formal economy or sector (de Soto 2000).

³⁷ See Sale, Jonathan P. 2014. Interdisciplinarity, heterogeneity and precarity of work in the Philippines: The context and possibilities of defining work via legislation. Paper presented at the How Class Works – 2014 Conference, State University of New York, Stony Brook, New York, USA, June 5-7. See also Sale, Jonathan. 2009. Labor and Social Security Laws in the Philippines: Emerging Enforcement Approaches in the Informal Sector. Paper presented at the 19th World Congress of the International Society for Labour and Social Security Law (2009 World Labour Law Congress), September 1 to 4, 2009, Sofitel Sydney Wentworth Hotel, Sydney, Australia.

³⁸ CONST., art. XIII, sec. 3.

³⁹ LABOR CODE, art. 13 (a).

⁴⁰ LABOR CODE, art. 97 (e).

Recommendations⁴¹

According to Budd (2011), work is purposeful human activity involving physical or mental exertion that is not done solely for pleasure and that has economic or symbolic value. In other words, work involves the production of something of value, whether paid or unpaid, for a living or not.

If work is defined in the Labor Code as the production of something of value, whether paid or unpaid, for a living or not, as Budd puts it, and this definition of work is made the basis for self-organization, collective bargaining, social security, and social protection coverage, among others, perhaps more workers would have voice, equity, security, and human dignity or what the ILO refers to as decent work.

In this regard, the proposed *Magna Carta* of workers in the informal economy is a significant approach. Some key provisions of House Bills 2295, 2307 and 3400 (different versions of the proposed *Magna Carta* of workers in the informal economy in the present House of Representatives) are –

“(c) **Workers in the Informal Economy** – hereinafter referred to as WIE include but are not limited to the following:

- c.1. small farmers owning land not more than three (3) hectares;
- c.2. rural and agricultural workers who are tenants, sharecroppers, or laborers;
- c.3. small fisherfolk/operators owning boats of three (3) gross tons or less and other fishing equipment;
- c.4. fisherfolk who are without fishing equipment and who market their catch;
- c.5. on-call fish workers, porters and *batillo*;
- c.6. home-based workers who are independent producers of goods or services;
- c.7. industrial homeworkers – workers involved in a system of production under which work is carried out at their homes and where materials may or may not be furnished by the employer or contractor;
- c.8. self-employed who are engaged by other enterprises through subcontracting arrangements;
- c.9. ambulant vendors or peddlers refer to vendors who ply their trades in search of buyers;
- c.10. street vendors refer to vendors who sell their merchandise on streets and sidewalks;
- c.11. vendors with stalls in public and private markets and those engaged in sari-sari stores with operating capitalization of not more than one million pesos (P1,000,000.00) excluding land and building;

⁴¹ See Sale, Jonathan P. 2014. Interdisciplinarity, heterogeneity and precarity of work in the Philippines: The context and possibilities of defining work via legislation. Paper presented at the How Class Works – 2014 Conference, State University of New York, Stony Brook, New York, USA, June 5-7.

- c.12. drivers and workers of modes of transportation on land and sea whether motorized or not, including: two (2) wheels such as calesa; three (3) wheels such as pedicabs, tricycles; four (4) wheels such as jeepneys and buses; and boats one (1) ton and below; ‘barkers’; fare collectors; dispatchers; and other workers who share income with self-employed or unincorporated operators;
- c.13. operators of jeepneys, tricycles, pedicabs, taxi, and other vehicles or transportation whose capitalization is not more than one million pesos (P1,000,000.00) excluding land and building;
- c.14. all unregistered and unprotected domestic workers who are generally not covered by social protection such as maids, cooks, family drivers, gardeners and baby sitters.
- c.15. non-corporate construction workers;
- c.16. small scale miners doing their own product processing; including those involved in small scale mining and quarrying with capitalization of below one million pesos (P1,000,000.00);
- c.17. workers of Barangay Micro Business Enterprises (BMBEs);
- c.18. non-corporate cargo handlers and allied workers;
- c.19. waste pickers and recyclers;
- c.20. workers engaged in producing seasonal products;
- c.21. own account workers including but not limited to those engaged in the maintenance and repair of equipment and appliances, clothing and footwear, as well as those providing services such as beauticians, barbers, masseuses;
- c.22. “on-call” workers in the entertainment, movie, and media industries such as but not limited to bit players, stuntmen and women, crew, make-up artists, etc.;
- c.23. volunteer workers in government and non-government entities who only receive allowances or honoraria, including but not limited to: barangay health workers (BHW), barangay tanod, barangay nutrition scholars (BNS), barangay daycare workers, and volunteers in non-government or people’s organizations;
- c.24. unpaid family members, or workers receiving allowances and seasonally hired workers who are engaged in micro-enterprises or assist unincorporated household enterprises; and
- c.25. other similar economic activities that are not illegal, criminal or life-threatening in nature.

(d) **Worker** is a general term that refers to both self-employed and paid employee covered under the provisions of this Act.

(e) **Self-employed Worker** refers to any person who has no employer and who works for himself/herself by producing goods or services for the market.

(f) **Worker of Minor Age** refers to a child fifteen (15) to seventeen (17) years of age who is engaged in productive employment under a valid contract of employment.

- (g) **Employer** refers to a natural person or group or partnership of people or a corporation for whom a paid worker renders productive employment or service.
- (h) **Security in the Workplace** refers to the right of every worker to an enabling environment that guarantees and protects the spaces for WIE to undertake their work, including the right to feel safe in one's own work space, legal security of tenure and freedom from discrimination, risk, danger, doubt, anxiety, or fear of being removed, evicted or prevented to work. Towards this end, the State shall take measures that will ensure legal security of tenure of workplaces, taking into account and including the physical environment, services, processes and systems needed to enable workers to productively and safely perform their work.
- (i) **Hazardous Work Condition** refers to any activity or circumstance where a worker is exposed to any risk which constitutes imminent danger to his or her health or safety. This includes potential risks of disability, injury, illness or death due to the presence of biologic agents, radiation, chemicals, substances, hazardous materials; physical hazards in the work environment; or the nature of work, processes performed, or equipment used therein.”⁴²

These proposed provisions evince the legislative intent to protect these vulnerable workers through security of tenure and health, safety and welfare at the workplace, among others.

However, these proposed provisions also reflect how the proponents conceptualize work in the informal economy as an essentially economic activity.

The right to work is a human right.⁴³ The present Philippine Labor Code is inadequate as it limits coverage to workers within the employment relationship.

Yet the different versions of the proposed *Magna Carta* of workers in the informal economy or sector seem to limit the meaning of "work" and "worker" to mainly activities of economic value. Such a perspective might exclude other types of work which are unpaid, like work as a social relation and caring for others. Customs, social norms and socially constructed hierarchies apply to such work in the absence of formal labor regulation. A regulatory framework that encompasses work not limited to that which has economic value may be a step in the right direction.

⁴² Proposed *Magna Carta* of Workers in the Informal Economy (different versions of proposed legislation in the House of Representatives, Republic of the Philippines – House Bills 2295, 2307 and 3400).

⁴³ See Universal Declaration of Human Rights, art. 23.

Chapter 4

Workers in the informal economy in the Philippines: Employment arrangements and labour and social protection needs

Most workers in the informal economy suffer from job instability and, often, an ambiguous or disguised employment status. They have less certain, less regular and lower incomes than workers in the formal economy. They suffer from longer working hours, often without additional compensation. They have inadequate training opportunities and thus they have limited, if any, prospects for career advancement. They are exposed to inadequate and unsafe working conditions. Most informal workers are denied of representation and collective bargaining rights and thus are more likely to suffer from arbitrary dismissal by employers.

Workers in the informal economy experience varying degrees of dependency and vulnerability because work in the informal economy is either excluded from, or effectively beyond, the reach of labour and social protection legislation. Therefore, they are not able to exercise, enjoy and defend their fundamental rights. As the ILO (2007) stresses, there exists an acute decent work deficit in the informal economy.

Employment arrangements, working conditions, and labour and social protection demands of workers in the informal economy in the Philippines

Our study focused on six groups of informal workers, namely: domestic workers, tricycle drivers, tricycle owners/drivers (own-account workers), informal construction workers, street vendors and home-based workers. These groups of informal workers represent the two major categories of workers in the informal economy, namely, the self-employed or own-account workers (tricycle owners/drivers, vendors/street traders, and to a lesser extent home-based workers) and the wage workers (domestic workers, tricycle drivers, and informal construction workers). Focus group discussions (FGD) were organized for these groups and individual in-depth interviews were done to determine the employment/work arrangements, working conditions, and the labour and social protection needs of these groups of informal workers. The FGDs and interviews were conducted from April to November 2014.

1. Domestic workers

Work arrangement and working conditions

Save for one, all of the participants in our FGD for domestic workers were on a live-out working arrangement. The day-to-day work that most of them normally does were: washing and ironing of clothes of their employer and his/her family, cooking for the household, and cleaning the house. One participant did a variety of work in the house, including cleaning, taking care of pets, and sending and fetching her employer's children to and from the school. One domestic worker lamented that her job is really hard work:

Sometimes it makes me cry to think that even cleaning the feces off the body of the elderly is still part of the job. With the implementation of the waste segregation policy in the community, even segregating the degradable wastes from the biodegradables is a regular task of mine.

One participant, a live-out *kasambahay*, detailed her daily routine tasks. At 6:30 in the morning, she goes to her employer's house. She accompanies the children to school carrying their bags. After this, she goes directly to the market to buy food to cook. Then she prepares the food for cooking while washing clothes. At 11 in the morning, she brings food to school and fetches one of the children of her employer. After lunch, she washes the dishes and takes a brief nap afterwards. At 1 in the afternoon, she prepares to iron some clothes including the uniforms of her employer and the children's school uniforms. Then at 3 in the afternoon, she prepares snacks and then cleans the house. Late in the afternoon, she segregates the garbage and brings it to the material recovery facility of the subdivision for disposal. Before leaving her employer's house, she prepares their food for dinner.

The wages of the *kasambahays* varied from weekly to monthly. The highest was P3,000 per month while the lowest was P700 per week. Most of the participants said they worked eight hours a day. For the live-in, their daily work-time exceeded eight hours because, even when late at night, their employer often called on them if there was a need. Most of them worked for six days a week, with one day as rest day. They spent their rest day going to church, going out with friends, or going home to their families. All of them did not have social protection benefits as they are not contributing members of SSS, Philhealth and Pag-ibig.

Employment relationship and arrangements

All of the *kasambahays* in our FGD had no contracts; they were not aware that an employment contract is required in accordance with the *Kasambahay* law. The usual arrangement was only verbal, wherein the *kasambahay* can leave whenever she wanted. But for some of the participants, leaving work was not an option, especially for those who came from far-flung provinces.

In terms of working hours, the employers were mostly strict. One *kasambahay* lamented:

In most cases, even though you stayed already for eight hours work, whenever my employer wished me to stay, I need to stay, especially when there is an occasion.

When asked about what their employer did when the *kasambahays* committed some mistakes in their work, most of the participants said their employers did not do anything. In some cases, the employer just scolded them. One *kasambahay* narrated that when she accidentally broke a valuable item her employer castigated her with offensive language and asked her to pay for the damaged item.

Almost all of the participants said they didn't have other work aside from being a domestic worker for an employer. One said she had another work but it was also related to domestic work, like doing laundry for other households. When asked if they have other choices of work, the *kasambahays* replied differently. Some said they have no other choice as domestic work is their

only option. Others reasoned out that with their little education they find it difficult to look for a better job.

Perception of being employed in the informal economy

When asked about the benefits or advantages of being employed in an informal setting, most of the participants said that at least they have a source of income. Moreover, they see beneficial the ease of entry into this type of job compared to looking for work in a formal arrangement. As one participant said:

At least here we do not need to secure requirements like NBI, Police Clearance, Medical, etc. It is just a matter of whom you know to refer you to the right and good employer.

The participants' offered different views on how they see their job. Some said it is better to have a job and have income than having no job at all. Others said they do not like this kind of work and given a chance they would prefer to leave and look for another job.

When asked about the most difficult part or risk of working into this kind of informal arrangement, most of the *kasambahays* shared common answers such as: there are no benefits (e.g. pension, sickness benefit), the risk of being abused or accused of a wrong-doing, the high risk of falling ill or acquiring diseases.

The participants offered mixed responses when asked if they wanted to stay being employed as domestic workers under an informal arrangement. While there are those who said they wanted to stay because of income security and the absence of deductions from their salary, others felt pity for themselves especially when they get old.

Mechanisms for the improvement of their working conditions

Asked about what they think on how to best to address their current situation, the *kasambahays* mentioned education and the availability of alternative sources of livelihood. Most of them were elated to hear about the Social Security System (SSS) and the mandate of the *Kasambahay Law* to get them enrolled in the program. They acknowledged the benefits of being a member of SSS and they expressed willingness to pay voluntarily. One participant said that the SSS contribution would reduce her already meagre income and thus suggested that the employer should shoulder all the SSS contributions. The same view was shared by most of the participants on the Pag-IBIG and PhilHealth program as contributing to these schemes will also reduce their income. In short, while the *kasambahays* were all willing to become members of SSS, they preferred that all the contributions be shouldered by their employers.

It is interesting to note that half of the participants were members of a domestic workers' organization named *Sandigan ng Manggagawang Kasambahay sa Nazareth (SAMAKANA)*. SAMAKANA is a local organization of domestic workers in a particular community in Bacoor, Cavite, organized to provide mutual aid and protection to *kasambahays*. It is registered as a workers' organization with the DOLE. SAMAKANA establishes alliances and networks with other like-minded organizations that may possibly extend support for their cause. It maintains linkage with the DOLE Cavite Office to avail of the *Project Angel Tree* which extends assistance

to its members' children who are in school. The DOLE project also distributes gifts to these children during Christmas season.

SAMAKANA also aims to build its financial capacity to assist its members during emergency. Funds collected from monthly dues are pooled and serve as seed money to be rolled out for those who are in need of small capital for livelihood undertakings. Though the funds are not substantial, this program could be a starting point in building solidarity among the members. At the moment, SAMAKANA is initiating a livelihood activity with possible support from DOLE and a partner organization from Japan. This undertaking intends to augment the meagre income of SAMAKANA members and provide support for their social protection needs.

The association has also started providing information to its members on the rights of domestic workers under the *Batas Kasambahay* or the Republic Act 10361. Information materials and leaflets are provided to members through the assistance of the local government unit.

In our FGD with domestic workers, the participants acknowledged that being a member of an organization like SAMAKANA has, in any way, protected them from being abused. Others said it was just a waste of time joining an organization because they did not have time to engage. Most of the participants pointed to the need for a law or regulation that will protect and secure their rights as workers. None of them was aware of the *Kasambahay* Law. Further, they perceived that even if there are already laws, these will not be effective as they perceived that the government is indifferent to their situation.

2. Tricycle drivers and tricycle owners/drivers

2.1 Tricycle drivers

Work arrangement and working conditions

The tricycle drivers shared common characteristics of their work. They either plied their daily route and pick-up passengers or service students to and from the school. They normally spent six hours to 16 hours a day working, depending on the time when there are a lot of passengers in the streets, six days a week. All of them were not members of SSS. They paid "boundary" to the owner of the tricycle on a daily basis, ranging from P100 to P120 pesos a day. They earned on the average a pittance P200 to 250 a day⁴⁴. Some had an arrangement of equal sharing of income: 50 per cent for the owner and 50 per cent for the driver. They had no contract with the owner of the tricycle; they can ply whenever they wanted provided the owner agreed. When a tricycle broke down, both the driver and the owner shared the costs of repair. In some cases, the owner shouldered all the repair costs.

For the own-account or the owner-driver of the tricycle, their net income ranged from P250 to 400 per day. They also plied their route six days a week and spent more hours, from six hours to 12 hours a day. Surprisingly, even though that they were the owner of the tricycle, not all of

⁴⁴ The minimum wage in Bacoor City per the latest minimum wage order in Region IVA in December 2014 is P362.50 per day.

them are members of SSS. For those who were SSS members, they failed to sustain their membership through voluntary payment because of their small income and the lack of time to go to SSS and other accredited payment centers to pay their contributions.

Tricycle drivers' perception of being employed in the informal economy

All the tricycle drivers said they did not have other work. They chose being tricycle drivers because of their age (i.e., over-age to look for another job) and having no other choice.

I am already retired and no company would hire me with my age. Being a tricycle driver is the only option for me considering that my wife does not have work.

What should I do, can the government provide me with our daily needs?

Almost all the FGD participants said they preferred having an informal arrangement as tricycle drivers as this is their only means of income. When asked about the risks they faced being in an informal arrangement, all shared the lack of benefits (e.g., pension, sickness benefit, health and accident insurance). As tricycle drivers, they are prone to accidents. Two tricycle drivers lamented:

When I got sick, I couldn't work. That meant I wasn't able to make a living for the day. What I did is to borrow money from the tricycle owner to buy medicine and food.

We cannot stay being a driver for long. If given a chance, I will leave being a tricycle driver.

Others said being a tricycle driver is where they got their income, so they had no choice but to stay.

Mechanisms for the improvement of working conditions

Most of the tricycle drivers wanted to become members of SSS. Those who were already members said they wished they could continue to pay their regular contribution as they being in the road exposes them to a lot of risks such as accidents, diseases, sickness, fatigue, stress, etc. They said they needed to prepare for their future.

All of the participants were members of the Molino Shell Tricycle Owners and Drivers Association (MOSITODA). The MOSITODA is registered with the Securities and Exchange Commission and was organized to protect and serve the interest of small transport workers. It is affiliated to the Federation of Transport Operators and Drivers Association of Bacoor (FETODAB).

The primary service of MOSITODA is to secure a terminal for tricycle drivers and implement rules and regulations among its members. The association, through its officers, represents its membership at the federation body. It also assists its members in dealing with regulatory bodies governing the operations of tricycles in the community and city. In addition, MOSITODA extends loan assistance to its members according to their needs. Previously, the association

attempted to enter into a social protection activity by partnering with the SSS for its voluntary contribution program. This initiative did not prosper due to the distance of centers for payment of remittances, lack of or insufficient income of some members, and other reasons.

Our FGD participants said their membership to MOSITODA has protected them from being harassed by the local traffic police. As members, each of them pay daily dues of P20.00.

2.2 Tricycle owners/drivers

Work conditions of tricycle owners/drivers (own-account workers)

The tricycle owners/drivers who participated in our FGD identified the licenses and permits they needed to acquire for operating their tricycle service. These are listed in Table 5.

Table 5: Permits and licences required of tricycle owners/drivers

Permit/License	Office issuing licenses or permits	Amount paid (PhP)	Frequency to secure license/permit
Driver's License	Land Transportation Office (LTO)	900	Every 3 years
Mayor's Permit	City Hall	1,100	Yearly
Franchise	TFRU	1,100	Yearly
Motor Renewal	LTO	P900	Yearly

Mechanisms for the improvement of working conditions

When asked about the mechanisms and/or regulations that will improve the way they operate their business, most of the tricycle owners wanted to have more regulations on having a secure terminal where tricycles can queue and take passengers. This arrangement will secure their income and avoid "colorum" tricycles. They also wanted the local government to grant them a yearly increase of the tariff fare.

Perceptions on ways to formalize their business

All of the participants said that the procedure for registration for small tricycle owner-drivers should be made simple and payment should not be too exorbitant. Having a one-stop shop for registration is also needed.

Most of participants experienced harassment from local enforcers who obviously were trying to extort something, often monetary, from them. One owner/driver lamented:

Even for very minor infractions, whenever the enforcer wants to ask you for something, they will charge you for violations you have not committed in the first place.

Tricycle terminals are important for the tricycle owners and member-drivers of the association. Two drivers-owners said:

Sometimes, we feel like squatters in our terminal. We rented this from a private individual owner. Whenever the owner wants to raise the rental fee, he asks us to leave the terminal. We do not have a choice but to pay for the increased rental fee for the terminal or else we and the commuters will suffer.

There seems no protection from the government for us small transport groups.

3. Construction workers

Work arrangement and working conditions

Nearly all the construction workers-participants in our FGD were under contractual work arrangement, either as helper/mason in a construction project or doing carpentry work for a home building work by an individual contractor. Most of them have had work experience in construction firms. Their current work, at the time of the FGD, was concentrated in the development of subdivisions in Imus City in Cavite. Their income ranged from P300 to 450⁴⁵ pesos a day depending on the type of work assigned to them. They typically worked for eight hours a day, six days a week, depending on the work. Sometimes they worked based on “pakyawan”, particularly in house repair or electrical installation work in individual households. All of them acknowledged the absence of a written contract between them and their immediate employer. What they had was an informal work arrangement with their foreman and an employer/client. The only verbal agreement they had was to finish their assignment/task for the day and get paid by the day. Sometimes, wage payment was done weekly, often every Saturday. When there were errors in their work, these were treated as back job and their foreman scolded and asked them to re-do or repeat the job without pay. As one mason stated:

You cannot make repeated mistakes otherwise the foreman will not get you on the next project.

When asked if they have other jobs aside from doing construction work, many answered negatively. A few said they “side-line” as drivers. All of them said they had no other option but to do construction work because of their low level of education, the limited or lack of opportunities for other work, and their limited skills level.

Perception on informal work

While all of them did not really want the kind of work they were doing as it is considered dangerous and difficult, they said they were left with no other option. Nonetheless, the thing they liked about their job is they have no “amo” or employer. They also welcome the absence of formal entry requirements to this job and the freedom to leave the job whenever they like. On the other hand, when asked about the risks of being informally employed, the participants identified the following: lack of benefits, no security of tenure, insecure and unstable income, lack of safety and health protection, and exposure to accidents and other health risks with no

⁴⁵ The minimum wage in Bacoor City per the latest minimum wage order in Region IVA in December 2014 is P362.50 per day.

assurance who will shoulder the cost if someone gets hurt at the workplace. As one construction worker testified:

When one of my fingers got cut, my employer just gave me a small amount to buy alcohol and band-aid.

The group admitted that their job is really insecure and dangerous. As one participant said:

You have to toil with your sweat and blood to get a meagre income.

All of the construction workers who participated in our FGD concertedly answered they do not want to stay in their present job if they had a chance.

Mechanisms for the improvement of working conditions

All the construction workers in our FDG acknowledged the benefits they would get from being contributing members of SSS.

Though they were all members of the *Sandigan ng Manggagawang sa Konstruksyon at Alyadong Sektor (SAMA-AKO)*, a local worker association for informal construction workers organized by the Confederation of Labor and Allied Social Services (CLASS), they would yet to see an organization that will dynamically represent them to gain access to government programs and services.

SAMA-AKO is registered with the DOLE. It aims to address the concerns of workers in the construction industry, such as job insecurity, problems in safety and health, low wage, lack of benefits and lack of social protection (e.g. SSS, Philhealth and Pag-Ibig), through dialogue and negotiations with concerned official and organizations. As a newly organized workers' association, it has been seeking partnership with the local government on the possibility of entering into an agreement or contract of work for local identified projects. It also seeks to build the skills and capacity of its members through training and certification, in partnership with the Technical Education and Skills Development Authority (TESDA).

From our FGD with informal construction workers, most of the participants expressed they would want the (local) government to provide livelihood assistance for them as a buffer for income losses whenever they do not have contracts or projects. One worker emphasized that the local government should also have a policy embedded in its public works contact with private contractors guaranteeing a decent pay, social protection and health and safety at work for all construction workers, including the informal ones. Further, the construction workers see the need for skills training and re-skilling to enable them to have more opportunities to find a better job.

4. Vendors

Rolly Revuelta, President of *Samahan ng Nagkakaisang Manininda sa Intramuros (SANAMAI)*, an association of vendors in Intramuros, Manila, engages in a micro-scale home-based food processing informal business and he sells his products, among others, in a moveable eatery stall in Intramuros. According to Rolly, the main problem of vendors is the lack of adequate capital.

When vendors borrow from informal sources of credit, which usually charge usurious rates, almost all the proceeds from daily sales would go to paying off the loan when sales are down.

Nonetheless, for vendors like Rolly, being informal has its advantages. Rolly emphasized that if a vendor is industrious, he/she can earn unlimited income. In his case, Rolly intimated that it was when he decided to leave his formal job and work in the informal economy that he was able to send his children to college. In addition, vendors, as own-account workers, own their time and have no bosses.

When asked if he wanted to remain as a vendor, Rolly replied positively. However, he raised issue about the discrimination being experienced by micro businesses like his. He lamented the fact that the government favors the big capitalists over micro and small entrepreneurs like him. In addition, he mentioned the exorbitant fees for permits and licenses that vendors are required to secure. For example, the fee for securing a Mayor's Permit from the City Hall of Manila has increased 100 per cent. Apart from securing this permit, vendors in Intramuros are also required to get other permits from the Intramuros Administration (IA).

Rolly narrated how governance issues could make vendors life more difficult. Earlier, there were two organizations of informal workers in Intramuros – one for “pedicab” drivers and the other for vendors. With two barangays, there were 25 slots given to the “pedicab” drivers. The IA turned over the administration of the “pedicab” operations to the barangay. But when a new barangay administration took over, it dismantled the “pedicab” operations resulting eventually in the break-up of the “pedicab” organization. According to Rolly, this was also the plan for the vendors' organization. SANAMAY made manifestation to the IA objecting the administration of vendors' businesses at the barangay level. This objection stems from the fact that, as practiced, SANAMAI endorses vendors to the IA and such endorsement is required for a vendor to do business in the Intramuros area. SANAMAI has also been clamouring the IA for the organizations involvement in the development plan of Intramuros.

Rolly acknowledged the benefits of having an organization of vendors. Through SANAMAI, the vendors were able to have a collective voice and strength to negotiate with the IA in terms of allocating and designating spaces for their stalls. By being organized, they were able to fend off the machinations of some Intramuros and local government officials to transfer the administration of their vending operations to the barangay level which would have resulted in the demise of their organization and the possible loss of their vending areas.

Editha Simagala, another vendor and President of Binangonan Ondoy Solidarity Alliance, used to have a moveable 2 x 2 stall/tent in the “tiyanggehan” (public market) on Sundays in the Centris complex in Quezon City. She sold food items like hamburgers, footlong hotdog, etc. Whether she sells or not in the “tiyangge”, she had to pay a yearly rent of P5,000 for the 2 x 2 stall/tent and pay the “tiyangge” organizer P670 every Sunday. In addition, she had to secure permits from the City Hall and the barangay to be able to sell in the “tiyangge”. Edith's family is a family of informals. They own and operate a tricycle. Her eldest son works as a small-scale fisherman in Binangonan where Edith and her family live.

As a “tiyangge” vendor, Edith is responsible for hauling up all the goods. She pointed out the necessity of having a vehicle to facilitate the travel from her house in Binangonan to the

“tiyangge” in Quezon City in order to get a space for her stall/tent. Vendors in a “tiyangge” are not assured of the same spot or area of their stall/tent as this is determined through a “first come-first served” basis.

Another problem faced by vendors is the occurrence of typhoons and other calamities. They don't earn or they earn very little when there is a typhoon or other calamities.

Despite these problems, Edith, like Rolly, preferred to stay informal. The potential of higher or unlimited income and autonomy over one's working time are her main motivations to remain as an informal vendor.

5. Home-based workers

Josephine “Olive” Parilla, President of Marketing Association of Groups and Individuals in the Small Scale Industry (MAGISSI), is a self-employed home-based worker. Most of the time, she alone produces her goods namely soap, dishwashing liquid and candles. At times, when orders are big, she engages once a week one or two members of PATAMABA to help in the production, for example, of soap. She pays her co-workers by piece. This however is seasonal in nature.

As a self-employed home-based worker, Olive earns income from producing home care products such as soap and dish washing liquid. At the same time, she receives some income in the form of royalty (i.e., P1 for every pair of slippers made) from their organization's group enterprise of making slippers. According to Olive, PATAMABA also produces bags using different materials.

The disadvantages of staying informal

Being an informal business, Olive lamented that there were times her products were “pirated” or copied because she doesn't have patent rights over her products. She cited the case of *Pinangga* which produces embroidered native blouses for women. A former customer “pirated” one of *Pinangga's* staff so now *Pinangga* has a competitor.

Olive expressed the need for patenting their products as a way to formalize her and her organization's business and operations. She preferred to keep books of her income and welcomed paying taxes. However, she bemoaned the bases for securing business permits based on an ascending schedule of payment. For example, if she declared her gross sales this year at P5000, next year it shouldn't be just P10,000 but four times the previous year's sales. The Bureau of Internal Revenue (BIR) focuses on gross sales and does not consider a vendor's expenses. According to Olive, the BIR now goes to small sari-sari stores asking to implement the issuance of receipts.

Olive clarified that vendors have a lot of payables, both legal and illegal. They are exposed to harassment and extortion by local enforcers or the police and are often threatened with demolition. In short, most vendors do not have income security. Earning an income is based on the day-to-day selling and when a vendor gets sick, there is no income for her/him and his/her family. The lack of income security that goes with an unstable job or livelihood may explain why many workers in the informal economy engage in different types of job and economic activities.

According to Olive, the BIR is now very active in collecting taxes even from among micro entrepreneurs, vendors and social enterprises. The PATAMABA has a group enterprise with equipment provided by the Department of Labor and Employment (DOLE). Nonetheless, for BIR, being a social enterprise does not exempt it from paying the three percent of gross sales tax.

Olive argued that there are laws that constrain the productivity enterprises and workers in the informal economy. She cited the BIR policy of issuing receipts for all sales amounting to P25 and up. Even a small vendor selling two pots of viand and a pot of rice now needs to issue a receipt.

While Olive acknowledged the existence of laws favourable to the informal economy such as the Barangay Micro Business Enterprises (BMBE)⁴⁶, Magna Carta for Small Enterprises⁴⁷, Republic Act 7882 on Credit Window for Women⁴⁸, etc., she argued that there are many loopholes in these laws that somehow dilute their effectivity. The Department of Trade and Industry (DTI) provides an array of support ranging from skills and technical training to marketing to product development but they only cater to registered enterprises. Moreover, implementation and enforcement of laws is deficient. She points out the lack of political will and consistency in the implementation of laws; whenever leadership changes, policies tend to change too.

The advantages of staying informal

Like Rolly and Edith, Olive expressed preference to stay in the informal economy for the same reasons. However, she raised the need for policy changes, such as a progressive and graduated taxation system favorable to micro and small businesses and a simplified registration system. In designing a regulatory framework for transitions to formality, the first step should be to subsidize informal enterprises before customizing their needs. But at the same time, it is important to capacitate informal enterprises until such time that they can stand on their own and operate side by side with formal and big businesses.

From the information we gathered from our FGDs involving various groups of informal workers, we draw several observations and findings. First, we could confirm the ILO's argument that the informal economy is marked by acute decent work deficits. Secondly, while there are common problems experienced by most workers in the informal economy (i.e., income security, lack of social protection), there are significant variations in the motivations to formalize and the labour and social protection needs between the two major segments of the informal economy – the own-account/self-employed workers and the wage workers. In particular, the informal wage workers, who belong to the lower-tier segments, tend to view their engagement in the informal economy as involuntary, whereas the own-account/self-employed workers, who belong to the upper-tiers, participate in the informal economy as a matter of choice. This has serious implications on the

⁴⁶ For the provisions of the BMBE Law, see <http://www.bsp.gov.ph/downloads/laws/ra9178.pdf>.

⁴⁷ For the full version of the Magna Carta for Small Enterprises, see

<http://www.dticbu.net.ph/Library/Magna%20Carta%20for%20Small%20Enterprises%20-%20RA%206977.pdf>.

⁴⁸ For the full version of RA 7882, see

http://www.pcw.gov.ph/sites/default/files/documents/laws/republic_act_7882.pdf.

formalization process for certain segments in the informal economy. It could be that the own-account/self-employed workers are less motivated to move from the informal to the economy compared to the other categories of informal workers. Fourth, the proposals provided by the FDG participants point to the need for policies and approaches that are multi-dimensional, complementary and coordinated. Fifth, many informal workers are engaged simultaneously in a variety of informal and 'partially-formal' activities. In this regard, it is important to find out the possible transitions and flows that are also taking place between and within the upper-tier and lower-tier segments of the informal economy. Upskilling a group of informal workers may facilitate 'within-transitions' from the lower-tiers to the upper-tiers instead of transitioning to the formal economy. Sixth, organizing informal workers may be a stepping stone towards gradual formalization, mainly in terms of protecting and strengthening their rights, enhancing their welfare and accessing benefits from government and other organizations. As acknowledged by many of the FGD participants, being part of an organization of informal workers protected them from possible abuse and harassment by employers and/or local enforcers, provided them with a relatively secure location for the conduct of their business or economic activity, facilitated their coverage of and access to social security, provided them access to welfare and livelihood assistance offered by local governments and private organizations, and enabled them to have a collective voice in raising their concerns and proposals to local governments. Finally, for workers in the informal economy, decent work should be at the core of the formalization process.

Chapter 5

Transitions to formality: Current debates, challenges and demands

Why do people participate in the informal economy? There are two theories that explain this – the segmentation or exclusion theory and the self-selection or exit theory. The segmentation or exclusion theory focuses on the costs of registering. According to de Soto (1989), the burdensome entry regulations prevent small firms from becoming formal. Moreover, the exclusion theory suggests that informal employment is a response to involuntary employment. High entry barriers to formal jobs or the lack of qualifications exclude some people who, as a result, are constrained to find work in the informal sector. The self-selection or exit theory posits that firms rationally exit the formal sector when the costs of being formal outweigh the benefits it provides. The exit theory, in contrast to the exclusion theory, regards informal employment as a voluntary choice by workers because of the perceived advantages it offers: “autonomy, non-wage related benefits such as avoiding rules and regulations, better suitability to personal ambitions and characteristics, or financial profits” (de Beer et al., 2013: 7).

In coming up with a comprehensive policy framework for transitions from the informal to the formal economy, it is important to recognize the reasons why people participate and choose to remain in the informal economy. From Becker’s (2004) work, De Beer et al. (2013) list some of these reasons in Table 6.

Table 6: Reasons for participating in the informal economy

<i>Exclusion</i>
<ul style="list-style-type: none"> • Formal economy has limited capability to absorb surplus labor, especially when coupled with structural changes in a society • Economic hardship and poverty • Barriers to entry (e.g., high cost, burdensome regulations) into formal economy are high • Formal institutions fail to provide sufficient education, training and infrastructure • Globalization is a disadvantage to lower-skilled workers, who cannot migrate easily or at all • It is hard for undocumented individuals to formalize their businesses • Inability to secure formal employment • Growth in the number of women who have limited access and the right to control and own property or land entering the labor markets outside of agriculture
<i>Self-selection/Exit option</i>
<ul style="list-style-type: none"> • Demand exists for low-cost goods and services • Barriers to entry into the IE are low • The desire for undocumented income • Dissatisfaction with formal employment • Desire for independence and control • Competitive advantage. Many believe their success depends on being able to price below the formal market. • First stage in the pursuit of formal business • Desire to strengthen neighbourhood social support networks and economic conditions

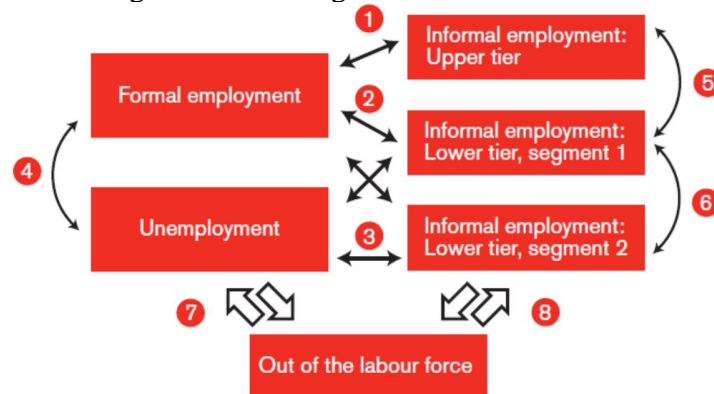
Source: de Beer et al. (2013: 7).

Corollary, there are entry barriers to the formal economy that informal workers face. These barriers constrain the adjustment process of workers who are able to move out of the informal economy. Bacchetta et al. (2009: 49-50) list some of these barriers:

- Workers in the informal economy may lack sufficient information regarding available job opportunities in other firms, sectors or geographical areas. They may not be well-informed about wages, required skills and professional expertise. Public or private infrastructure to support their job-search may not be available.
- Workers may lack (portable) skills. Skills gained in apprenticeship systems in the informal economy may only be accepted by a limited number of firms within a restricted geographical area. Even if skills are portable, professional experience gained in the informal economy may not be recognized by prospective future employers.
- Workers may lack the necessary financial and physical capital to move to the upper-tier informal economy (e.g. self-employed), the segment from which transition back into formal employment is easiest and where earning conditions are similar (or even better) than in the formal economy.
- Job-search is costly. In countries where no proper unemployment benefit system is in place, displaced workers from the formal segment may not be able to afford an extended search for alternative opportunities, but may rather switch to any immediately available vacant job, even in the informal economy.
- Displaced workers may lack the proper social capital and networking resources to access jobs with similar characteristics elsewhere. Transition from one network to another may be out of their reach, depending on community-level activities and political decisions. Even within their particular networks, they may be restricted in terms of the activities and job opportunities they can take up, depending on their own position within the network or their relationship with others.

As pointed out earlier and from the results of the FGDs conducted by the research team, workers in the informal economy experience acute decent work deficits. But while the goal of promoting decent work in the informal economy may be addressed by transitioning to the formal economy, it should not be overlooked that transitions do happen as well within the informal economy. Chen's idea of multi-segmented labour markets in the informal economy with an upper-tier segment and a lower-tier segment allows flows between and even within segments. According to Bacchetta et al. (2009: 46), the probability of moving from one segment to another depends on the characteristics of the individual worker (education level and skills, professional experience, age, gender) and country specificities (the quality of the legal environment, importance of social capital, the macroeconomic environment. Bacchetta et al. present in Figure 4 possible flows and transitions between the formal economy and the informal economy and within the informal economy.

Figure 4: Multi-segmented labour markets



Source: Adapted from Gagnon (2008) in Bachetta et. Al (2009: 47).

Bachetta et al. explains the different market flows in the multiple segments of the informal economy (2009: 47).

The following flows are represented: (1) transition between formal and upper-tier informal employment to avoid taxes and regulation; (2) transition between formal and lower-tier informal employment; (3) transition between lower-tier informal employment and unemployment to queue for formal jobs; (4) transition between formal employment and unemployment where appropriate benefit systems are in place; (5) transition between upper- and lower-tier informal employment, for instance due to upskilling; (6) transition between different lower-tier informal economy segments due to a switch in networks; (7) transition between inactivity and the formal labour market; (8) transition between inactivity and the informal economy.

The existence of multi-segmented labour markets in the informal economy has important implications on transitioning from the informal to the formal economy. First, the different segments have varied levels or capacities, needs and motivations to move out of the informal economy. ‘Within-transitions’ may likely occur between the upper-tier and lower-tier segments of the informal economy. Secondly, and in this light, it is crucial to identify processes of ‘semi-formalization’ that may be occurring in the transitions between segments in the informal economy, particularly between the upper- and lower-tier segments, with a view of identifying mechanisms toward full formalization of these processes. Finally, the transitions that are taking place within the informal economy should be taken into consideration in developing and implementing formalization strategies for the different segments of the informal economy. For example, transition back into formal employment may be easiest among workers in the upper-tier of the informal economy (e.g. self-employed), as suggested by Bacchetta et al (2009). Moreover, earning conditions in the upper-tier of the informal economy may be similar (or even better) than in the formal economy (ibid), thus discouraging the transition of upper-tier informal workers to the formal economy.

Sector-specific demands and proposals for formalization

How should the transition from the informal to the formal economy in the interests of workers in the informal economy look like? This section draws from the Platform of the Women in Informal Employment: Globalizing and Organizing (WIEGO) Network.

Despite the heterogeneity of the informal economy, the working poor in the informal economy have common core needs and demands as outlined by WIEGO (2014: 2).

- *Organizing/Labour Rights:* Workers in the informal economy must be able to effectively exercise their rights to organize and bargain collectively, as well as their other fundamental rights at work.
- *Voice and Bargaining Power:* The working poor in the informal economy need individual voice and bargaining power founded in an awareness of their rights. They must also have collective and representative voice that allows them to negotiate on a continuing basis with the dominant players in the sectors or value chains in which they operate. Collective voice comes through being organized in democratic membership-based organizations. Representative voice comes through having representatives of these organizations participate in relevant policymaking, rule-setting, collective bargaining, or negotiating processes – including by means of direct representation in tripartite forums. Ideally, the representation of membership-based organizations in the relevant processes should be ongoing and statutory.
- *Legal Identity and Standing:* The working poor want to be recognized as workers or as economic agents with a clear legal standing in all relevant policy-regulatory-legal domains. They do not want to be relegated, as the poor or vulnerable, to the social policy domain alone; they want to be recognized as legitimate contributing economic agents by policymakers who frame both macro-economic and sector-specific economic policies. This necessitates extending the scope of labour laws to categories of workers traditionally excluded (e.g. domestic workers, home-based workers, agricultural workers) and/or amending laws so they cover the full range of relationships under which work is performed.
- *Economic Rights:* The working poor in the informal economy need and demand a wide range of labour, commercial, and land-use rights in order to: improve their employment arrangements and secure their livelihoods; make their economic activities more productive; and use their representative voice to achieve appropriate changes to the wider institutional environment that affects their work and livelihoods.⁴⁹
- *Social Rights, including Social Protection:* Social protection coverage must be extended to all workers in the informal economy through social assistance and/or social insurance mechanisms, as part of universal social security. ILO Member States should commit to this by adopting clearly elaborated Social Protection Floors. This includes rights to housing, education, health, food security, water, sanitation and social protection against the core contingencies of illness, disability, old age, and death, and against work-related risks. Maternity and child care should be addressed as a priority due to the over-representation of women in the informal economy.

⁴⁹ It should be noted that labour rights are premised on the notion of an employer-employee relationship. But many of the working poor are self-employed. For them, traditional labour rights are not always relevant. Instead, the basic right to pursue a livelihood and commercial rights are of greater relevance and importance.

WIEGO emphasizes that formalization has different meanings and implications for different categories of informal workers. As pointed earlier, the informal economy includes economic units, self-employed workers, wage workers, and unpaid contributing family workers. WIEGO presents in Table 7 a summary of its proposed comprehensive approach for transitioning from the informal to the formal economy.

Table 7: Summary of a Comprehensive Approach for Transitioning from the Informal to the Formal Economy

<p>1. Formalization of Informal Work</p> <ul style="list-style-type: none"> • legalisation, legal recognition and protection as workers (for own-account and self-employed) • rights and benefits of being formally employed: <ul style="list-style-type: none"> ○ freedom from discrimination ○ minimum wage ○ occupational health and safety measures ○ employer/state contributions to health and pensions ○ right to organize and bargain collectively ○ membership in recognized worker organizations, including trade unions ○ inclusion in decision-making • benefits of operating formally for own-account workers: <ul style="list-style-type: none"> ○ simplified registration procedures and simple administration ○ progressive taxation system ○ protection from harassment ○ access to resources and facilities ○ workers' rights ○ support services, such as access to financial services and training ○ inclusion in participatory budgeting processes, including at local government level <p>2. Formalization of Informal Economic Units</p> <ul style="list-style-type: none"> • appropriate legal and regulatory frameworks, including: <ul style="list-style-type: none"> ○ enforceable contracts ○ land-use and property-use rights ○ use of public space ○ occupational health and safety regulation • benefits of operating formally: <ul style="list-style-type: none"> ○ work security and security of working space ○ access to finance and market information ○ access to public infrastructure and services ○ enforceable commercial contracts ○ limited liability ○ clear bankruptcy and default rules ○ access to government subsidies and incentives ○ membership in trade associations ○ access to a formal system of social security • registration and taxation: <ul style="list-style-type: none"> ○ simplified registration procedures ○ progressive taxation systems
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Source: WIEGO (2014: 3).

To complement its proposed comprehensive approach for formalization, WIEGO likewise lists common measures and strategies of formalization which go against the interest of workers and enterprises in the informal economy (Table 8).

Table 8: What formalization should *not* mean

<ul style="list-style-type: none"> • Costly registration and tax requirements without the rights, benefits or protections that should accompany formalization • Taxation or registration of informal enterprises without benefits, including: <ul style="list-style-type: none"> ○ a flat taxation system where own-account workers pay the same taxes as big businesses ○ an obligation to register with different departments in cumbersome procedures • Unilateral decisions made by authorities, especially to impose: <ul style="list-style-type: none"> ○ unrealistic educational requirements for informal workers ○ unrealistic legal requirements for informal workers ○ preconditions that are difficult to meet ○ costly requirements that are unaffordable for most informal workers • Formalization which criminalizes/persecutes those who cannot achieve prescribed levels • Discrimination against women, foreign nationals, people with disabilities, etc. • Fiscal and taxation schemes which privatize public goods • Registration as individual entrepreneurs, which denies access to collective workers' rights • formalization in which those with more resources have the same responsibilities as those who remain with no resources • Formalization which creates a "closed shop" system with a new elite "in-group" collaborating with authorities to keep out "outsiders" trying to claim/defend their rights • Generation of new exclusions, problems and costs • Preferential recognition of yellow unions in the informal economy • Abuse of child labour • Promotion of <i>pseudo</i>-cooperatives • Handling charges for migrant workers, leading to legalized racial discrimination
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Source: WIEGO (2014: 8).

Workers in each sector or segment in the informal economy have sector-specific demands about the kind of formalization they would want to see. WIEGO lists the sector-specific demands and proposals for formalization of four sectors in the informal economy (Table 9).

Table 9: Sector-specific demands for formalization

Sector	Demands/proposals
Domestic workers	<ul style="list-style-type: none"> ○ freedom from harassment or abuse by recruiters or employers ○ freedom from exploitation by agencies and intermediaries ○ implementation of the Domestic Workers' Convention and accompanying Recommendations as a minimum set of conditions in every country ○ the right to a living wage and working conditions such as time off and leave, overtime pay, sick leave, health insurance, and pensions ○ the right to have workplaces taxed, inspected and controlled ○ decent living conditions where live-in arrangements are part of the employment contract ○ access to education, recreation and leisure time ○ no child labour (<i>albeit</i> disguised as family labour)

Table 9: (Continued): Sector-specific demands for formalization

Sector	Demands/proposals
Domestic workers (Continued)	<ul style="list-style-type: none"> ○ migrant workers' contracts concluded before leaving home countries ○ full and equal rights for migrant domestic workers
Home-based workers (<i>the demands differ, in part, for self-employed or sub-contracted workers</i>)	<ul style="list-style-type: none"> ○ freedom from forced relocations and zoning restrictions (all) ○ social protection, including maternity grants (all) ○ child care facilities to enable workers to work undisturbed (all) ○ protection from being subjected to poor quality raw materials, arbitrary cancellation of work orders, arbitrary rejection of goods, or delayed payments (sub-contracted) ○ the right to basic infrastructure services – water, electricity, sanitation – at their homes, which are their workplaces (all) ○ access to markets for their goods and services ○ the right to fair prices in markets (self-employed), and fair piece-rates (sub-contracted) ○ the right to secure, transparent contracts – work orders (sub-contracted) and commercial transactions (self-employed) ○ occupational health & safety training, business skills training (self-employed) ○ no double taxation (self-employed) ○ land/space/venues for working collectively (self-employed)
Street vendors	<ul style="list-style-type: none"> ○ freedom from harassment, confiscation of goods, evictions, arbitrary warrants and convictions, arbitrary relocations, unofficial payments and/or bribes ○ freedom from fear of authorities and <i>mafia</i> elements ○ freedom from exploitation by intermediaries who take high fees ○ the right to have natural markets of street vendors recognized and built into urban zoning and land allocation plans ○ the right to vend in public spaces under fair and reasonable conditions (which balance competing rights of different users of public spaces) and to maintain natural markets ○ the right to fair and transparent allocation of permits and licenses ○ the right to appropriate sites near customer traffic ○ if relocated, provision of suitable alternative sites near customer traffic ○ the right to better services and infrastructure at their vending sites, including shelter, water, sanitation, and storage facilities ○ provision of infrastructure, including special infrastructure for vendors with disabilities ○ provision of protection centres to keep children out of child labour ○ education on trading bylaws and local government systems ○ access to user-friendly service-providers ○ simplified taxation systems ○ simplified regulations for informal cross-border traders

Table 9 (Continued): Sector-specific demands for formalization

Sector	Demands/proposals
Waste pickers	<ul style="list-style-type: none"> ○ freedom from harassment, bribes, and evictions by city authorities ○ the right to access recyclable waste without restrictions ○ access to markets ○ provision of infrastructure ○ recognition for their economic contribution and environmental service to communities ○ the right to access recreational community facilities ○ provision of protection centres to keep children out of child labour ○ freedom from fear of authorities and <i>mafia</i> elements ○ freedom from exploitation by intermediaries who take high fees ○ the right to fair and transparent price-setting in the recycling chain ○ inclusion in modern waste management systems, and access to equipment and infrastructure for collecting, sorting and storage ○ the right of their organizations to bid for solid waste management contracts ○ cooperatives and Social Solidarity Economy system ○ recognition of their labour as service providers and right to be paid for their service ○ the right to ensure solid waste collection is not private but managed by mixed systems between governments and waste pickers' associations (cooperatives, associations, unions) ○ an end to the use of incineration and harmful landfill disposals technologies ○ promotion of segregation, recycling and composting as ways to secure workers' income

Source: WIEGO (2014: 8-10).

Many of the demands outlined in the table above reflect and approximate the issues and demands related to formalization expressed by the various groups of informal workers who participated in our FGDs. Of course, putting these demands and proposals into policies and strategies is a huge challenge. In this regard, pursuing gradual (step-by-step) or programmatic formalization processes, that take into account the heterogeneity of the informal economy, including the possibility of 'within-transitions' and 'semi-formalization' within the informal economy, might be a better way to tackle the formalization issue. As Horn (2014: 17-18) puts it, formalization "should be understood as a gradual, on-going process of incrementally incorporating informal workers and economic units into the informal economy through strengthening them and extending their rights, protection and benefits". Here, another crucial factor is stressed: that the core and aim of the formalization process should be the promotion of decent work.

Chapter 6

Formalizing informal work: Approaches and initiatives from other countries

There are different views about formalization. These views are typically grounded in the various perspectives or theories on the informal economy discussed earlier in this report. However, while there is a diversity of understanding on how formalization policies should be designed and implemented, there is consensus on a number of issues. First, there is a global recognition that there is no unique strategy that would apply in all situations and contexts. As pointed out earlier, there are a host of factors that may influence the success or failure of formalization measures. Secondly, in view of the heterogeneity of the informal economy, multi-dimensional approaches are required to support transitions from informal jobs to formal employment. Third, and this has been emphasized by the ILO, growth and stable macroeconomic conditions are key to formalization. Finally, governments play a key role in the formalization process.

Beyond registration and punitive sanctions for non-compliance with the law, there are many avenues towards formalization. Moving workers out of informality should take into account both the limited choices facing actors in the informal economy and the range of incentives which can encourage movement towards formalization (ILO, 2013: 35). However, there is no universal policy framework. Rather, policy initiatives undertaken around the world point to a set of multidimensional approaches that can be combined in integrated policy frameworks and adapted to country-specific contexts. The ILO enumerates these policies:

- promoting formal employment through pro-employment macroeconomic and sectoral policies focusing especially on the development of sustainable MSMEs [micro, small and medium enterprises];
- reducing informal employment by lowering the cost of transitions to formality through the creation of an enabling policy and regulatory environment that reduces barriers to formalization, while protecting workers' rights and increasing the benefits of being formal by promoting a greater awareness of the advantages and protection that come with formalization (business development services for MSMEs, access to the market, productive resources, credit programmes, and training and promotional programmes to upgrade informal economy units); and
- increasing decent work in the informal economy by developing a national social protection floor for all, implementing a minimum wage and health and safety incentives, organizing workers from the informal economy and encouraging informal enterprises to join together in production conglomerates or cooperatives, and supporting the development of social economy enterprises and organizations. (ILO, 2013: 35)

This section presents several approaches and initiatives (i.e., laws, policies and other strategies) from selected countries and organizations which were able to successfully enable and facilitate the transition of workers and enterprises from the informal to the formal economy. Where data is available, emphasis is given to initiatives that accorded decent work, as a form of formalization, to informal workers.

Macroeconomic and sectoral policies

To the extent that the magnitude of informality is large in the MSME sector, developing pro-employment macroeconomic and sectoral policies aimed at the development and sustainability of this sector may facilitate the process of transition to formality.

Targeted tax measures

In several countries in Europe, one way of encouraging businesses and consumers to use formal rather than informal production is to reduce VAT on specific goods and services where the informal economy is prevalent (e.g. household maintenance and repair. Williams (2004: 28) cites several examples. In *France*, a directive was issued in May 1999 which reduced VAT on services and goods related to the improvement and transformation of household maintenance work. Similarly, in *Italy*, the 2000 Finance Act decreased the VAT rate from 20 per cent to 10 per cent on rebuilding and restructuring services for residential buildings, including household repairs.

In other European countries, a range of targeted tax measures were adopted to encourage the employment of formal rather than informal labour. We take two examples from Williams (2004: 30). The first is the Home Service Scheme in *Denmark*. Under this scheme, businesses are required to register with the Danish Commerce and Companies Agency (DCCA) before they can provide services to household (e.g. cleaning, gardening, small jobs around the home). For these services, the government reimburses 40 per cent of the cost, but only on labour costs. Households find information about these companies at the town hall and are allowed to spend a maximum of 7,000 euros per year for such services.

Linking employment activation and generation with formalization

In *Germany*, the creation of a 'mini-jobs' category of employment was a move to encourage people to legitimize undeclared informal small jobs, especially for those who are formally employed who occasionally do work 'on the side' (Williams, 2004: 33). 'Minor employment' not exceeding 15 hours a week was allowed in Germany up to a certain income level until 1999. This type of employment exempted both employers and employees from payment of social security. However, employers had to pay a lump-sum tax of 23 per cent while employees paid no tax at all. According to Williams, this minor employment could be combined with regular or formal employment and still be exempt from tax and social security contributions (ibid: 34). In 1999, the German government reformed the minor jobs scheme to limit its growth and in 2002 introduced three types of 'mini job': (1) €400 jobs – the income limit was raised from DM 630 to 400 euros. Mini-jobs enjoyed reduced social security contributions of 23 per cent (12 per cent for the pension insurance system and 11 per cent for the health insurance system) and a lump-sum tax of 2 per cent. In addition, the 15 hours per week limit was lifted; (2) Mini jobs in the household sector – introduced to fight informal work in the household sector. The employer has to pay a levy of 12 per cent and pays reduced taxes; and (3) Midi jobs – to ease the transfer from minor to normal employment, a transition zone between 400 and 800 euros was introduced, with social security contributions for the employee rising gradually from around 4 per cent to the full 21 per cent (ibid).

Another measure adopted by Germany is the introduction of a new business entity – *Ich A.G.* or ‘Me-PLC’. This is aimed at helping unemployed people who wish to start their own self-employed business. Me-PLC entities receive a subsidy for the first three years of operation equivalent to a maximum of 50 per cent of unemployment benefits (Williams, 2004: 34). In effect, the objective of the Me-PLC scheme is to help ease the transition from unemployment benefits to being self-employed (Evans et al., 2004; cited in Williams, 2004). In 2003, the three-year subsidy for Me-PLC, along with *Familien AG* (family business), was amended as follows: 600 euros (50 per cent of the average unemployment benefit in 2002) for the first year; 360 euros (30 per cent of the same) for the second year; and 240 euros (20 per cent of the same) for the third year (ibid: 35).

The use of ‘formalization vouchers’

The use of ‘formalization vouchers’ has also been cited by the European Commission as a good practice in encouraging employers to employ formal rather than informal labour, particularly in the domestic services area. Williams (2004: 32) provides the example of *Belgium’s* ‘service vouchers’ scheme which was created to stem informal work in the household services sector. The companies certified under the scheme hire the unemployed, first on flexible contracts, but after six months, these companies are obliged to offer these workers a permanent contract of at least a 50 per cent full-time employment⁵⁰. How does the scheme work? A household purchases vouchers for 6.20 euros for an hour of work, which it then uses to purchase the services of certified companies. These services include housecleaning, washing and ironing, sewing, doing errands, and preparing meals. The household pays with the vouchers, the cost price of which is 19.47 euros (indexed from 2005). The difference is paid to the company by the federal government. Households can recover 30 per cent of the price of the voucher in their tax return, reducing the price of a voucher to 4.34 euros.

A similar undertaking is the ‘Cheque Emploi’ Service (CES) in *France*. To combat informal work in the domestic services sphere, the French government introduced the said service in 1994. According to Williams (2004: 32), under the scheme, anybody can legally employ a domestic worker without complying with extensive administrative procedures and labour contracts, by paying his or her salary with the cheques. These cheques can be purchased at local banks. The purchaser of these cheques can claim an income tax reduction of 50 per cent of the sum spent for these cheques. In 1996, a similar scheme, the ‘Titre Emploi’ Service (TES) was created. Under this scheme, work councils, regional and local authorities and welfare associations provide the vouchers to their employees and members to enable them to hire formal domestic help (Williams, 2004: 33).

Adopting a comprehensive SME development strategy

Kosovo’s SME Development Strategy for 2012-2016 aims at strengthening the legislative and regulatory framework for the establishment and development of SMEs by simplifying the existing legislative and regulatory framework, providing incentives to SMEs to enter the formal sector, and improving the facilitation of opening of businesses (Krasniqi and Topxhiu, 2012).

⁵⁰ In Belgium, 38 hours per week is the standard working hours.

Also, Kosovo's SME Development Strategy seeks to improve SMEs' access to finance and promote and develop entrepreneurial culture by expanding the entrepreneurship curricula in primary schools, vocational education centers, secondary schools and higher education institutions; encouraging and increasing business networks; and promoting and enhancing cooperation between schools and businesses. To reduce unemployment in the long term and integrate the informal economy into the formal economy, the government and policy-makers in Kosovo have been encouraging the development of new businesses, the expansion of existing ones, and the promotion of self-employment.

The same comprehensive strategy has been adopted in *Tunisia*. The Tunisian government recognizes that promoting the development and sustainability of the MSME sector is key to growth and poverty reduction. In this regard, Tunisia's enterprise-upgrading policies for the informal economy include the following: promoting a greater awareness of the benefits and protection that come in formalization; creating an enabling policy and regulatory environment that reduces, both at the national and local levels, the barriers to formalization while protecting workers' rights; a particular focus on women entrepreneurs; fostering linkages between enterprises of different sizes in value chains and clusters to improve market access; access to finance and business development services; and encouraging informal enterprises to join together in production conglomerates or cooperatives (ILO, 2009). Each of these components of the country's comprehensive strategy has been elaborated by the Tunisian government in terms of the identification of specific actions and activities (see Appendix 1).

Enabling policy and regulatory environment

Enacting laws and policies that lower the cost of transitions to formality and at the same time protecting workers' rights have also been pursued by several countries. These laws and policies are complemented with measures aimed at providing greater awareness among informal units of the advantages and protection that come with formalization.

Legalizing and protecting informal work

A recent example of an enabling policy and regulatory framework is *India's* Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act of 2014. This is landmark legislation for about 10 million street vendors operating in the different cities of India. According to the Act, a street vendor is -

a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, side walk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure or by moving from place to place and includes hawker, peddler, squatter and all other synonymous terms which may be local or region specific... (Bhowmik, 2014: 1).

According to Bhowmik (2014: 1), the Act recognizes that "every urban area has 'natural markets' for street vendors which need to be preserved". The presence of vendors in these natural markets serves an important function for the general public. Bhowmik explains the need for natural markets (2014: 1-2):

For instance, there would be street vendors selling fruits and cooked food outside public hospitals as the patients and visitors find it convenient. Similarly, street vendors can be found outside religious places selling flowers and other offerings, outside parks selling snacks, toys and balloons. Fruit and vegetable sellers as well as garment vendors and those selling household utensils can be found outside local railway stations or bus terminals. People who travel from their workplaces find it convenient to shop from these vendors before they return home.

The new law mandates that all existing vendors have to be provided with permits for their business. What is commendable about the Act is the creation of Town Vending Committees (TVCs). The TVCs comprise municipal authorities, representatives of vendors, the police, the health department and other stakeholders. Vendors' representatives will constitute 40 per cent of a TVCs membership with women comprising at least 33 per cent of the street vendors' representatives. The TVC serves as the main policy-making body on street vending and regulate street vending into hawking and non-hawking zones. Among its tasks are to supervise the activities of vendors, provide space for existing street vendors, make provisions for accommodating new entrants, and conduct regular programs to educate vendors about the new law and their rights.

The Act also stipulates that no existing vendor can be displaced until the local authorities have had conducted a census of street vendors in a particular urban center. In fact, the new law states that eviction should be the last resort. When relocation is inevitable, vendors have to be given alternative sites that are close to their original place of work. In case vendors refuse to be relocated, they should first be warned, and then fined. Should these methods fail evictions can be done after giving them notice. For the goods confiscated, the concerned vendor will have to be provided with a seizure list and he/she can reclaim the goods the same day if they are perishable or within 24 hours if the goods are non-perishable. The fine imposed should not be more than the value of goods confiscated.

Incentivizing voluntary disclosures of informal work

Another example of an enabling regulatory framework is the Regularization Law (L.383/01) in *Italy* implemented between 2001 and 2003. This law encourages employers and workers who operated informally to formalize their situation with respect to tax, labour safety, social security contributions, land use irregularities, etc. (Williams, 2004: 37) by reducing the costs of sanctions for employers (e.g. reduced taxes and social contributions) for three years. Workers, on their part, could pay reduced pension contributions for the period they failed to make such contributions, after which they have to pay regularly. According to Williams, under the Regularization Law, employers and employees involved in informal work had two options (ibid):

- declaration at once, in which the entrepreneur and his/her workers declare the irregularities and pay immediately all (reduced) taxes and contributions to be paid; or
- gradual regularisation, in which the entrepreneur submits a regularisation plan, including deadlines to solve an irregularity, to an ad hoc committee. If the deadlines are not met the entrepreneur is penalised by paying 100 per cent rather than the reduced tax and contributions.

Tunisia's comprehensive enterprise upgrading strategy for the informal economy also includes financial incentives to encourage informal enterprises to break out of informal arrangements. This is done through the grant of tax amnesties and loans with preferential interest rates and flexible payment periods for informal workers who formalize. Also, public spaces at the local level are allocated for the commercial activities of micro and small entrepreneurs and vendors who formalize.

Increasing awareness on the benefits of formalization and providing support services

In some countries, several approaches and initiatives have been adopted to raise greater awareness among informal units of the advantages and protection which come with formalization. In *Tunisia*, this is done through: public forums and engagement of the national media; improving outreach to key audiences, particularly youth; engagements with informal workers and enterprises on the importance of formalizing as a central component of Tunisian citizenship; simplification of legal texts, information and instructions regarding the formalization process; establishing technical and legal mechanisms for ensuring public access to data and information from government ministries; the strengthening the capacity of government to collect and analyze data on the informal economy⁵¹; and the establishment of a single database for the collection and sharing of data between government ministries

In *Italy*, the CUORE (Centri Operativi per la Riqualificazione Economica) Initiative in Naples, which started in 1998, offers information and advice for formalization and supports the development of micro and small businesses by providing business development strategies. According to Williams (2004: 38), the CUORE project consists of neighbourhood service centres for entrepreneurs and would-be entrepreneurs. Each local centre services a low-income neighbourhood and targets small and micro entrepreneurs with the potential for growth. CUORE project workers, who are familiar with the target neighbourhood, conduct fieldwork to identify these local firms, regardless of their formality. An entrepreneur can request a CUORE centre to devise regularisation and development paths specific to his/her needs and circumstances. The project workers closely monitor each step in the process to make sure that the entrepreneur follows the agreed path towards regularization and that the path still suits the entrepreneur's needs. Since its piloting in Naples in 1998, the CUORE initiative has spread to Apulia and other regions.

Another initiative in *Italy* is the so-called 'Formalization Tutors', organized by the Committee for the Exposure of Undeclared Work (*Comitato per l'emersione del lavoro no regolare*). According to Williams (2004: 40), this initiative is comprised of a network of regional 'tutors' who provide technical support to enterprises that want to formalize. These tutors, who are temporarily hired on a freelance basis by the committee, are independent professionals who have backgrounds in socio-economic disciplines, such as law and economics, and who understand the labour market situation in the region. These tutors approach entrepreneurs by directly visiting their enterprises.

Akin to Italy's CUORE is Street (UK) in the UK. Street (UK) was established in 2000 to offer loans, advice and business support to self-employed individuals and micro-enterprises, especially

⁵¹ Stakeholders in Tunisia agreed to an annual national survey on the informal sector.

those wishing to formalize their business. According to Williams (2004: 39), the project's clients fall into two main categories: (1) people claiming benefits such as disability benefit, carers' allowance, and (2) people not claiming any benefit but who are either not declaring or under-declaring income from their enterprise activity. Street (UK) provides these clients with the tools to facilitate their transition into the formal economy. Street (UK)'s support cover three areas: (1) providing tailored financial services and business development support tools; (2) offering a back-office loan administration and systems support service for other community loan funds; and (3) undertaking research, policy recommendation and advocacy work (ibid).

Labour and social policies that promote decent work for all workers

As pointed out earlier in this paper, for many informal workers, formalization means increasing decent work in the informal economy. Social policies such as a national social protection floor for all, universal income floor, minimum wage, and health and safety incentives, as well as labour and economic policies that encourage the organization of informal workers and informal enterprises and support the development of social economy enterprises can facilitate the transition to decent work in the informal economy.

In recent years, particularly in the aftermath of the 2007/2008 global financial crisis, the idea of universal social protection coverage and universal income floor for all have increasingly been the subject of recent debates in international organizations, including the ILO and the World Bank, and in various global and national fora. In fact, in recent years, the concepts of universal social protection and universal income floor are high on the research and policy agenda of the ILO.

While the United Nations, through the ILO and the World Health Organization (WHO) launched in 2009 the Social Protection Floor Initiative⁵², what actually exist to date are country-specific policies, programs and strategies that address some of the components of social protection⁵³.

This section provides a brief discussion of several of these country-specific approaches and initiatives.

Minimum wage policy

A minimum wage policy, coupled with other social policies, has the potential to reduce poverty. According to Herr and Kazandziska (2011), empirical analyses show that statutory minimum wages influence wages in the informal economy. There seems to be a signalling effect from the

⁵² For a description of the Social Protection Floor Initiative, see <http://ilo.org/global/about-the-ilo/decent-work-agenda/social-protection/lang--en/index.htm>.

⁵³ According to the ILO, there are three major dimensions of social protection: "(1) Extending the coverage and effectiveness of social security schemes; (2) Promoting labour protection, which comprises decent conditions of work, including wages, working time and occupational safety and health, essential components of decent work; and (3) Working through dedicated programmes and activities to protect such vulnerable groups as migrant workers and their families; and workers in the informal economy. Moreover, the world of work's full potential will be used to respond to the AIDS pandemic, focusing on enhancing tripartite constituents' capacity." See the ILO website: <http://ilo.org/global/about-the-ilo/decent-work-agenda/social-protection/lang--en/index.htm>. Accessed on 15 December 2014.

formal to the informal economy. The same authors argue that minimum wages have other roles in the economy. It can prevent a deflationary wage-price spiral and it sets a floor for nominal wage cuts. A minimum wage policy serves as a substitute for weak unions and underdeveloped system of wage negotiations. Several studies have indicated that a minimum wage policy has the highest positive impact among low wage workers, particularly women (Flavin, Pacek and Radcliffe, 2010; Western and Rosenfeld, 2011). Thailand has recently adopted a single minimum wage all over the country. Also recently, Malaysia has adopted two minimum wage rates, one for Peninsular Malaysia and another for Sabah and Sarawak.

Herr and Kazandziska (2011) argue that minimum wages must affect a sufficient number of the lowest wage earners to be effective. It should allow a single worker to live a decent life. A basket of goods can be defined as a living wage and this can become the minimum wage

Social assistance through conditional cash transfer schemes

Set up in 1997, Mexico's '*Progresa/Oportunidades*' is a conditional cash transfer (CCT) program of the Mexican government that provides social assistance, in the form of cash payments, to poor and vulnerable families conditional on their children attending primary and secondary school and whose mothers and children receive regular preventive care at local health clinics. In addition, eligible households receive grants for better food consumption and nutritional supplements for young children and pregnant and lactating mothers. According to a 2011 UNDP report, *Oportunidades* has reached over 5.8 million families, or 20 per cent of the total population. In poorest regions such as Chiapas and Oaxaca, over 58 per cent of the population is covered by *Oportunidades*. This program has been credited in decreasing poverty and improving health and educational attainment in regions in Mexico which it has been implemented. According to the UNDP (2011: 1), the key successes among households covered by the initiative include: (1) consumption, mostly food intake, has increased by 22 per cent; (2) proportion of malnourished children decreased by 17.2 per cent; (3) enrolment in secondary school increased by 11 per cent among girls, and 7.5 per cent among boys; and (4) regular health visits have increased by 30–60 per cent among young children under five.

Following Mexico's example, the government of President Lula da Silva in *Brazil* launched the *Bolsa Familia* program in 2003. As a CCT scheme, a monthly allowance of 32 reais (about 19 USD in 2012) per child attending school, up to a maximum of five children, is provided to all families with a per capita income below 140 reais (about 82 USD in 2012) a month (the poverty line). In general, *Bolsa Familia* pays 70 reais per person to any family living below the poverty line of 140 reais a month. In exchange, families keep their children in school and take them for regular health checks. The allowance is given preferentially to a female head of a household. In the past 10 years, the number of beneficiaries has risen from 3.6 million to 13.8 million, which means *Bolsa Familia* covers about a quarter of Brazil's population of 199 million. Today, *Bolsa Familia* is considered the largest cash transfer programme in the developing world and has significantly contributed to the reduction of extreme poverty affecting about 36 million people in Brazil. According to Watts (2013), the proportion of Brazilians living in extreme poverty (defined as less than 70 reais a month) declined from 8.8 per cent to 3.6 per cent between 2002 and 2012. Though strong economic growth during this period and the introduction of the

minimum wage were the major reasons for the decline on the level of extreme poverty, the Brazilian government credits *Bolsa Familia* for more than a third of the improvement (ibid).

Unique and affordable social security and health care schemes for informal workers

In *Spain*, the Secretary of State for Social Security supported the legislation of Act 27/2009 which stipulates that the contribution of workers engaged in hawking in street markets and direct selling to households should be lower, that is, 55 per cent of the usual basic minimum contribution to social security. This act enables a large number of informal street vendors to join the Self-employed Workers Social Security Scheme (RETA) (Streetnet International, 2012).

Thailand's Universal Coverage Health Scheme (UCHS) is touted among the best practices in providing free health care to the broadest population. When the scheme was first introduced in 2002, patients paid no more than 30 Baht (about 1 USD at that time) per visit in accredited hospitals and health centres, for both in-patient and out-patient care, including drugs. In 2007, this co-payment scheme was abolished rendering UCHS free. As a result, Thailand was able to make healthcare free and accessible to 99 per cent of Thai nationals. However, while Thailand's health system achievements are remarkable, it is facing some challenges, namely rising costs, inequalities in the health system and inefficiencies in administrative systems (World Bank, 2012).

Organizing informal workers as a stepping stone to formalization

In many countries, workers in the informal economy are beyond the protective mantle of labour laws. Either they are outside the scope of labour laws or within its coverage most informal workers do not enjoy and exercise rights at work, particularly the right to organize or join associations of their own choosing.

As argued elsewhere in this paper (and from the results of our FGDs), organizing workers in the informal economy is a stepping stone towards formalization anchored on decent work. According to Bonner and Spooner (2011: 92), there are two main strategic issues for informal worker organizations: "labour rights and representation (employed and own-account) and economic/business development (more likely to be own-account workers)". The same authors emphasize that these two issues are combined in many informal economy organizations: for example, a trade union of informal workers may also set up a cooperative, and a cooperative may act like a trade union when negotiating with the authorities (ibid). Bonner and Spooner enumerate the various types of informal worker organizations: trade unions, cooperatives, NGOs and community-based organizations, and international and national networks (e.g. HomeNets, HomeNet South Asia, HomeNet Southeast Asia, StreetNet International, etc.).

This section highlights an initiative of how organizing informal workers may result in according more protection to informal workers and kick-start the gradual, oftentimes incremental, process of formalization.

The initiative and struggle of FAMATS-Senegal

This discussion of FAMAS's initiative is from Kamara (2012).

In 2010, about 26 associations of informal traders in Dakar, Senegal came together to establish the Federation of Informal Traders of Senegal (FAMATS) so they could better defend their interests and demand their rights. As of 2012, FAMATS had more than 40 associations spread across Dakar and other regions. In each market in Senegal, FAMATS has a representative whose task is to provide information to the federation's central office to enable them to make representation and lobby in government offices should informal traders encounter problems.

Senegal's Decree No. 76018 of 1976 criminalizes informal trading. The decree aims to avoid congestion in public areas of cities by beggars, lepers and informal traders. In December 2009, the new mayor of Dakar attempted to evict informal traders from the Thilene market using the police. What ensued were violent exchanges between the traders and the law enforcement agents. This incident proved that the use of force is not a solution to the problem of congestion of sidewalks in Dakar. Aware of the collective strength of the informal traders, the City authorities changed their strategy. A new team of the City Council sought consultations with informal traders in Dakar in the design and implementation of the City's first relocation project. All the 26 associations of FAMATS were represented in the initial meetings. Later, the number of representatives was reduced to eight people to render the meetings more efficient and decision-making faster. The choice of the number of representatives was made according to the representativeness of the informal traders' associations. From 2011, the eight representatives of informal traders associations organized weekly meetings with the City Council to track the progress made on the planned activities. These meetings enabled the City Council and the different traders' associations to draw up a program to improve the working conditions of informal traders. The City Council bought a plot of 2,747 square meters in the Dakar Plateau local municipality which could be the relocation site for more than 2,000 people. As part of its participatory strategy, the City Council also funded a seminar for the eight informal traders' representatives to enable them to define the criteria for the invitation to tender for the construction of the new site and the conditions for the distribution of canteens and stalls. The traders then analyzed the invitation to tender and chose the contractor who would build the new relocation site.

To support the project, the City Council also helped the traders set up a savings and credit cooperative in Dakar. Traders opened savings accounts in the cooperative to acquire a canteen or a stall. The City Council offered traders the possibility to save 25 per cent of the cost of the canteen or stalls, with the remaining 75 per cent payable over three years.

The relocation project, however, was not realized because the national government blocked the project of the City of Dakar by not providing the budget. It is to be noted that the City of Dakar was managed by the opposition. To gain votes of informal traders, the re-electionist President Abdoulaye Wade created at the end of 2011 the National Agency for the Settlement of Senegalese Informal Traders (ASMA). Though ASMA's creation was more political than social, its objective of creating better conditions for the growth of informal traders was welcomed.

Despite its limitations, the creation of ASMA has enabled the organized informal traders (FAMATS) to have at least one interlocutor at the level of public authorities to raise their problems and initiate real actions for the development of the informal trading sector. As Kamara (2012: 17) points out, “With ASMA being an agency attached to the Presidency of the Republic, it is certain that these multiple problems reach the Head of State who, despite the support of another political line, is very positive for the informal trading sector”.

By being organized into FAMATS, informal traders in Dakar and other regions have been able to achieve positive results from their participation in ASMA. These are:

- The surety support that ASMA has established at the level of the micro credit institutions of Dakar to facilitate the credit guarantee sought by traders. So far 450 traders’ cases have been supported. In addition, ASMA also subsidises 30% of the amount of each loan; more than 15 million francs have enabled some of them to acquire canteens or to strengthen their working capital. Although the number is still very small, it is already a form of partnership, of which the results are already very profitable for those who have never obtained such benefits from credit institutions despite their social nature.
- The capacity building component in managing and organising for traders which unfortunately was not implemented because of regime changes during elections.
- Identification and obtaining another site for the relocation of 4000 traders located in the city of Dakar. This site in addition to the one of the city council will enable relocation of a large number of traders. (Kamara, 2012: 18)

By being organized, the informal traders have been able to achieve the following from local authorities:

- Participatory mode of decision making on all aspects concerning the improvement of working conditions (occupational safety, facilitation for obtaining canteens and stalls, etc.) of informal traders.
- The assistance (credit line, democratic management for obtaining canteens and stalls, simplified modalities for obtaining canteens, etc.) received for the relocation of over 1000 traders in the inner city.
- The authorisation granted by the local municipality of HLM to market traders of the same municipality to install stalls with their own funding on free spaces of the municipal road surrounding the market.
- The agreement in principle between the local municipality of la Patte d’Oie and the coalition of traders for collaborative management of all the problems that can occur in their daily activities.
- The collaboration between the volunteers who work for Dakar city council in the context of urban mobility and traders who are at Petersen to avoid congestion on the public road.
- The determination of the amount of the annual levy to be paid by informal traders in Touba to the rural authority to support the institution to pay for its various expenses. (Kamara, 2012: 18)

The FAMATS struggle and initiative clearly show how being organized into a large and encompassing organization can capacitate informal workers to effectively negotiate many issues related to their working conditions. The formalization process, such as moving from being an

informal trader to a stationed trader owning canteens for a more secure and profitable business, has also been facilitated through the organization of informal traders. This has also assured the local governments of taxes and levies from the informal traders.

Chapter 7

Transitions from the informal to the formal economy: Some policy considerations and strategies for the Philippines

The informal economy is largely characterized by multi-segmented labour markets. Though in general there are two main segments in the informal economy – the own-account or self-employed workers and the wage workers – within these segments are various groups of workers with varying work situations and labour and social protection needs. However, what is common among all these segments or categories of workers in the informal economy is they suffer from acute decent work deficits. Formalizing, that is facilitating the transition from the informal to the formal economy, is seen as an effective way to accord decent work in the informal economy. At the same time, addressing decent work deficits in the informal economy accelerates the formalization process.

But given the heterogeneity of the informal economy, and the varied causes and processes of informalization in each of its segments, formalization means different to different categories of informal workers. In this regard, there is no universal or a one-size-fits-all approach to formalization. Cognizant of this, there is now an emerging global consensus that a comprehensive, multi-dimensional and integrated approach is needed to facilitate transitions from the informal to the formal economy.

With over two-thirds of all employed workers in the Philippines engaging in various types and degrees of informal work, this suggests that informality marks the economic and labour market landscape of the country.

To date (at the time the report is being prepared), there are several bills filed in the Philippine Congress related to the informal economy, particularly the different versions (at least three) of the Magna Carta for Workers in the Informal Economy (MACWIE). This proposed Magna Carta offers a broad definition of workers in the informal economy by identifying at least 24 groups of informal workers. By according to these groups the legal concept of ‘worker’, the MACWIE attempts to address the limitations of the Labour Code in terms of providing the rights emanating from an employment relationship. Nonetheless, the different bills on the MACWIE appear to limit the meaning of ‘work’ or ‘worker’ to mainly activities of economic value and this might exclude other types of work which are unpaid (e.g. caring for others).

The MACWIE is one important step to formalizing informal work that is anchored on the decent work agenda. But it is not enough. What is needed is a comprehensive and multi-dimensional policy framework that takes into account realities and peculiarities of the informal economy. This report has highlighted some of these. Here, we summarize our proposed policy and strategy considerations. Many of these considerations may be valuable as well in expanding and/or revising the MACWIE.

1. A serious recognition of the heterogeneity of the informal economy may render a one-size-fits-all transition policy and strategy ineffective and even counterproductive. Corollary, it is

important to identify the different causes of and factors influencing informalization of the various segments of the informal economy.

2. Transition flows do not only occur from the informal to the formal economy. There are also transitions within the informal economy in view of the existence of upper and lower tiers in the multi-segmented labour markets of the informal economy. Arguably, some level or degree of formalization or semi-formalization (e.g. enrolment in social security of own-account workers who were formerly informal wage workers) occur as informal workers move from the lower to the upper tiers. It is thus important, policy-wise, to identify these 'formalization' processes and outcomes that are taking place within the informal economy. What is key is to identify indicators of formalization or 'formalization-in-process'.
3. Chen (2007) emphasizes the continuum of economic relations between the formal and the informal economy. This suggests that the informal economy and the formal economy are intrinsically linked. There are economic arrangements in the formal economy that give rise to informal jobs and informal economic units. Contracting and chain subcontracting are examples of these economic arrangements that may result in bogus informal self-employment which, to the OECD (2004: 239), are "relationships which are in fact dependent employment and thus normally carry certain responsibilities for the employer (including deduction of taxes and social security contributions at source), but are declared as a purchase of services from a self-employed person". The OECD further argues that chain subcontracting can also obscure the link between the principal employer and the employee.

At the bottom of the chain, recipients may be declared as self-employed and then escape taxation on earnings through disappearance or simply because tax authorities lack the time to cross-check individual returns systematically. Also, individuals who are declared as employees of a very small enterprise may claim to have already had social security contributions and tax deducted from their pay, while the very small enterprise has disappeared without handing the money over to the tax authorities. (ibid)

Many of informal micro enterprises, self-employed workers and home-based workers/industrial outworkers are enmeshed in chain subcontracting arrangements. Following the OECD's point above, we argue that in reality there exists a dependent employment relationship between these informal workers and their main or principal contractors. How to tackle this issue? In many European countries, the chief contractor is made legally responsible for compliance with regulations, including tax liabilities, by subcontractors (i.e., self-employed workers or home-based workers/industrial outworkers in the informal economy). The OECD (2004: 262-263) provides some country-specific examples.

In France in 1995, six professional organisations in the building industry and civil engineering adopted a new standard contract for subcontracting. This contract includes a provision requiring the company that subcontracts to make sure when concluding a contract that the subcontractor exercises the activity within regular conditions, excluding all kinds of undeclared work.

Germany, from 2002, introduced in the construction sector the principle of general contractor's liability for the social security contributions of the contracted firm (EC, 2003).

In the Netherlands, the *Law on Ultimate Responsibility in the clothing industry* came into force of 1994, allowing the authorities to claim tax and social security debts of subcontractors (usually clothing workshops) from contractors.

Under the UK *Inland Revenue Construction Industry scheme* introduced in 1999, building industry contractors may only pay their subcontractors gross if they hold a particular certificate from the Inland Revenue. This measure is one of the most recent in a long line of initiatives that have attempted to regulate casual labour in the construction industry.

In Sweden, the National Tax Board in 1998 set up a "subcontractor chain analysis" project group aimed at the building industry. The procedure is that *e.g.* a big building company is asked to submit information on what subcontractors it uses. These subcontractors are subsequently asked what subcontractors they use, etc. Having identified all parties and levels within a building project, the information from the companies and from the tax authorities' database is linked. If strange proportions between contract value and salaries arise from this analysis, undeclared work is most probably involved (Mateman and Renooy, 2001).

Though the examples above come from developed countries, some important insights and do-able strategies can be culled from these initiatives, such as adopting the principle of general contractor's liability for the social security contributions of subcontractors' workers, having contract provisions mandating the enforcement of labour standards throughout the subcontracting chain, and doing 'subcontractor chain analysis' to track undeclared informal work, among others.

4. Transitioning from the informal to the formal economy is not done overnight. It is an on-going, gradual and incremental process involving a set of enablers (i.e., macroeconomic policies that generate formal employment, enabling policy and regulatory environment, labour and social protection policies that promote decent work for all workers). Much of the literature on formalizing the informal economy focused on the benefits and advantages of being in the formal economy. However, in many countries the formal economy is shrinking. In fact, there is an increasing trend of informalization in the formal economy. In the case of the Philippines, informalization of jobs in terms of the rise of non-regular employment, coupled with a high unchanging unemployment rate, may dilute and deter transition initiatives. For example, how could an informal self-employed worker move to the formal economy if job opportunities are very limited and the jobs available are non-regular in nature?

In this regard, it is crucial that the rise of non-regular employment in formal enterprises is curbed. Here again, macroeconomic policies that encourage the growth of regular/permanent jobs and labour and social protection policies that promote decent work (i.e., universal social security coverage, universal health coverage, universal income floor, etc.) are key.

5. The proposals of WIEGO, discussed in Chapter 5 of this report (see Tables 7-9), on how formalization may be pursued in the interest of workers in the informal economy deserve serious consideration. They echo the demands and proposals of the informal workers who participated in our FGDs. The proponents of MACWIE may want to compare the WIEGO proposals with the provisions in the Magna Carta to identify gaps.
6. Finally, in Chapter 6, we have provided several approaches, initiatives and strategies, adopted and pursued in other countries that facilitated the transition from the informal to the formal economy. These are the following: the use of targeted tax measures, the adoption and implementation of a comprehensive SME development strategy, linking employment generation with formalization, the use of ‘formalization vouchers’ to stem informal work, the enactment of laws that legalize and protect specific categories of informal workers, the provision of incentives for voluntary disclosures of informal work, the conduct of educational campaigns aimed at increasing awareness on the benefits of formalization and the provision of support services to ease formalization processes, targeted social assistance in the form of conditional cash transfers for poor households (most of which belong to the informal economy), the development and implementation of unique and affordable social security and healthcare schemes for informal workers, and encouraging the organization of informal workers as a stepping stone to formalization.

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