

Philippines

Philippine Laws and Policies from the Perspective of Women Workers in the Informal Economy

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1. A Contemporary Snapshot

Unemployment and underemployment figures totaling more than 30 per cent of the labour force in the Philippines reflect the current employment crisis. With little advance since 2000¹ the situation can be traced to a weak agro-industrial base, aggravated by liberalization policies that allowed cheap imports, resulting in the disenfranchisement of local producers and large numbers of workers.²

Participation of women in the labour force has been declining since 2002; the latest figures put women at 49.8 per cent compared with 79.8 per cent for men. In terms of overall employment, only 46.1 per cent of women had jobs compared to 74 per cent of men in 2005.³ This indicates that education has not raised women's status to better levels⁴ despite their seeming advantage in terms of simple literacy, and their enrolment and completion at elementary, secondary and tertiary levels, where they perform better than men. Women's economic activity has been circumscribed by traditions that classify women as housewives who do not 'work', and hand over to women the demands of child care and domestic chores during their childbearing years.

Formal employment opportunities for Filipino women in export-oriented industries have increased but they are mainly consigned to the electronics sector, which in the last decade has been responsible for as much as two-thirds to three-quarters of total Philippine exports. These women comprise 80 per cent of the 545,000 employed workers concentrated in economic zones, where poor working conditions and violations of labour rights are commonplace. Where cheaper and compliant labour is desired, women are readily available. Lately, employment in the call centres is also registering a phenomenal growth with an estimate in 2005 of 162,250 jobs. Centres that are sprouting nationwide are mostly funded by big foreign players, perhaps drawn by the huge wage differential (where a Philippine customer service representative for example earns US\$1,689 per year while someone based in the US will get US\$25,000).⁵ Moreover, attrition rates reach as high as 50 per cent due to job-related stress and sleeplessness.

A process of de-unionization has accompanied changing employment patterns (flexibilization, which is most visible as contractualization, as well as informalization and migration) in a globalizing economy. Workers are affected by labour cost-cutting measures adopted by micro-businesses just to be able to keep up with increasing competition under globalization. The core of permanent workers is reduced to accommodate temporary and casual employees. The increasing use of cheap labour, such as apprentices and migrants' is continuing. Somehow this is tantamount

to deunionization or controlling unions. Moreover, subcontracting production and services outside formal workplaces (outsourcing) is accompanied by an increased number of shifts per day, overtime and use of piece rates. All of these actions have an overwhelming impact on workers, women and men, in both formal and informal employment.

A mere nine to ten per cent of the employed are currently covered by unions, and only one-third of union members and one-fourth of union leaders are women. Worse, according to trade union leaders, only 230,000 of unionized workers are covered by collective bargaining agreements.⁶

Currently, there are ten registered trade union centres (groups of registered federations, or national unions).

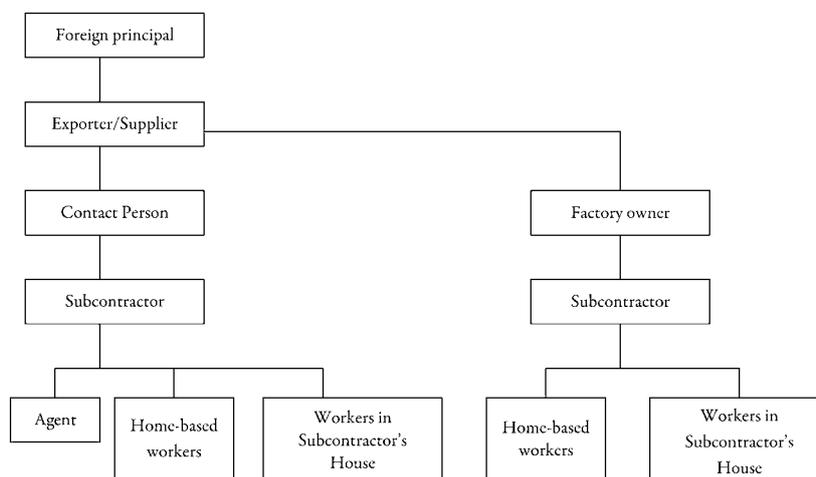
These centres represent various segments of the broad spectrum of the Philippine labour movement, which has had a long history of ideological and organizational division.⁷ Some of these centres have ventured into organizing women informal workers but have not managed to sustain these mostly fund-driven initiatives.

From Informal Sector to Informal Economy

The ranks of unprotected informal workers in the Philippines as well as in the whole of Asia⁸ are growing fast, even while those of regular formal workers are being depleted by the onslaughts of trade liberalization and the increasing flexibilization and contractualization of labour. Formal workers may become self-employed when they lose their jobs. Or they may continue working in the same industry as contractual, casual, agency-hired, or subcontracted homeworkers under precarious and insecure conditions. In this sense, they provide cheap and unprotected labour vulnerable to exploitation at the bottom of the production ladder while firms save on costs by maintaining just a few regular, organizable workers.

Formal and informal employment are often linked together by the subcontracting chain. And towards the bottom of the chain the distinctions between the two can often-times get hazy. This chain is negatively affected by the intricacies of international trade, where larger firms tend to exploit micro-enterprises by ordering at low prices or subcontracting certain stages of the production process to save on labour costs or to weaken the leverage of regular and/or unionized workers (see Figure 1).

Figure 1. The Subcontracting Chain



Note: In the garment industry, a foreign principal based abroad (a large enterprise) could order from a Manila-based exporter (a medium enterprise), which in turn could subcontract to a province-based factory (a small enterprise). This factory could order from outlying barangays, where agents could tap the productive capacity of microenterprises and/or home-based workers (HBWs). As the chain goes downward, so do the wages and benefits of the workers, who range from formal at the top to informal below.

High unemployment and underemployment due to the decline or stagnation of local industries faced with ruinous competition drive displaced workers abroad in an often uncertain diaspora. Many of these migrants, especially the undocumented ones, wind up in unprotected, informal, 3D (dirty, dangerous, and demanding) jobs in construction, service and other industries. Feminization of migration has been a phenomenon since the early nineties, and lately, women comprise almost three-fourths of newly deployed migrants. The dollar remittances of these vulnerable migrants help keep the Philippine economy afloat and resilient.

The majority of employed women are in informal employment, whether agricultural or non-agricultural. The informal economy is highly gendered, serving as a catch basin of women who have been among the first to be displaced from formal work, especially in the garment industry, as globalization progressed. Furthermore, women have also been the mainstay of the informal economy even before the onslaught of globalization, since informal work (e.g. home-based work) is compatible with their reproductive work (child care, domestic chores), and since their status as secondary or supplemental earners often deprives them of opportunities to find formal employment.

In the whole of ASEAN, informal work comprised 156 million or 63.7 per cent of total employment in 2006, according to the ILO.⁹ In the Philippines, figures based on the 2005 labour-force survey show that informal workers now comprise 76.34 per cent or 24.6 million of the country's total employed, an increase of several percentage points from previous estimates.¹⁰ This rise in informal employment is accompanied by an alarming decrease in the ranks of formal workers.

The National Statistical and Coordination Board (NSCB) issued the following operational definition of the informal sector in 2002 after consultations with stakeholders:

Units engaged in the production of goods and services with the primary objective of generating employment and incomes to the persons concerned. It consists of household unincorporated enterprises that are market and non-market 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.

These enterprises may also be owned and operated by employers which may employ less than 10 employees on a continuous basis. (NSCB Resolution No 15, series of 2002)

The informal sector thus officially recognized and defined includes the following subsectors, among others: the micro-entrepreneurs, home-based workers (including subcontracted, own-account workers and self-employed), vendors, small transport operators (of tricycles, pedicabs and *bancas*), petty retailers, barter traders, small-scale miners and quarry workers, non-corporate construction workers, entertainers, beauticians, laundry persons, hairdressers, small and landless farmers, artisanal fisherfolk, on-call domestic helpers, volunteer workers, barkers, unorganized cargo handlers, etc.

In recent years, there has been a shift in terminology from 'informal sector' to 'informal economy', the latter defined by the ILO as 'all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements'.¹¹ The shift is underpinned by the realization that what used to be considered a transitory, marginal 'informal sector' did not disappear with industrial development but has become a permanent, expanding provider of jobs, goods and services for lower income groups not only in developing but also in industrialized economies. It is responsible for a significant portion of the Gross Domestic Product (GDP) and as the Philippine case suggests, accounts for a broad range of occupations from old resilient casual jobs in construction and subcontracted work done at home for the garment and handicraft industries, to new emerging forms such as temporary or part-time work and computer-based 'tele-homework' such as medical transcription. It also includes a wide variety of economic activity, from survival and livelihood projects to thriving micro-enterprises and stable businesses.

The informal economy covers 'all work in informal enterprises as well as informal jobs (jobs that pay no benefits or provide no social protection), thus including the *self-employed* in informal enterprises (for example home-based workers or street vendors) and *paid workers* in informal jobs (for example casual workers without fixed employers, most domestic workers, even factory workers in unregulated and unprotected work)'.¹² A worker therefore is no longer defined as someone in a formal setting having a regular job and with a clear employer, which is how the shrinking male minority of working people in the world see themselves. A worker is 'anyone who lives by selling his or her capacity to work, either for wages or for other forms of income'.¹³ And as a worker, he or she deserves the full compendium of labour rights and entitlements irrespective of formality or informality.

Impact of Informalization on Women Workers

Women's role as a significant income-source for the family defines the real extent of women's work and their contribution to the economy. It is in this context that women are responding with efforts to create their own jobs or to make do with low-quality jobs. This is because women's earnings are critical to ensuring family survival, especially during times of economic crises when their participation in the labour market noticeably increases.

Data gathered in 2002 show that the majority, or 6.2 million or 53 per cent, of employed women belonged to the informal economy.¹⁴ Women predominate among the unpaid family workers in agriculture, in the wholesale/retail trade, and social and personal services in the community. Many own-account or self-employed workers operating sari-sari or small variety stores and other micro-enterprises are women. Also included are the working children estimated at four million in 2001, of whom 1.5 million or 37.5 per cent are girls.¹⁵ Women and girls in the informal economy combine domestic tasks with income-generating work to sustain their families.

Problems of women workers in the informal economy are already common knowledge. They include: 1) lack of social protection due to the absence of clear employer-employee relations (no medical, maternity, and other benefits; no retirement pension); 2) irregular and unstable employment dependent on fluctuations in labour demand; 3) exposure to occupational and environmental health hazards, since their working and living conditions can hardly be monitored; 4) vulnerability to super-exploitation and abuse, such as below-minimum wages, non-payment of work done, etc.; 5) low awareness of their rights as workers and as women; 6) poor access to credit, markets, technology and other support services; 7) low levels of organization; 8) lack of

voice and representation in policy-making bodies; 9) lack of access to justice; and 10) vulnerability to gender-based violence such as domestic abuse and sexual harassment.

Aside from the cross-sector problems, specific subsectors of informal workers have other pressing issues. For example, many vendors are insecure in their workplaces, fearful of being driven away by authorities. Legislation meant to promote and protect the interests of construction workers has not really been implemented. Small miners are marginalized and disadvantaged by the Mining Act. Small transport operators (particularly of tricycles, *habal-habal*¹⁶ and railroad trolleys) are vulnerable due to lack of safety regulations for both drivers and passengers. Vendors whose goods are arbitrarily confiscated by the authorities or drivers who are unjustly penalized for alleged traffic violations just resort to bribery because there are no mechanisms to hear and address their complaints and grievances. Volunteer workers in government service lack compensation, incentives and protection. Small farmers and fisherfolk are affected by environmental degradation as well as increasing conversion of farm land and decreasing fishing grounds. Informal workers in the entertainment industry are vulnerable to sexual exploitation and harassment.

Specific Issues of Women in Micro-Enterprises

In the Philippine context women micro-entrepreneurs experience gender-specific constraints, which according to the ILO largely originate from their socio-cultural context. These include lack of self-confidence, conflicting role demands and time limitations; lack of family support; limited mobility; fewer opportunities for vocational training and skills development; lack of information; and inadequate or fewer legal entitlements compared with men.¹⁷

Due to flexible time and involvement, production work in micro-enterprises is often done at home. But combining reproductive and productive work simultaneously has advantages and disadvantages for women, as can be gleaned in an ILO document:

As the economic activity is most often undertaken in addition to household chores and, in rural areas, to agriculture, women are not able to dedicate continuous attention to it. There is a lack of clear-cut division between household and business, both in terms of allocation and financial flows (re-investment is often subject to prior fulfillment of the family's basic needs). The total work load is heavy.

The owner-operator performs all the functions herself. The marketing and managerial functions are embryonic.¹⁸

Other constraints have to do with lack of access to productive resources. Foremost is the lack of affordable and accessible capital that makes them vulnerable to usurers. They are also unable to purchase in bulk, so their supply of raw materials and other production needs are always limited. Oftentimes, they lack management skills as well as access to or control of technology in terms of production, design, equipment, etc. And when they cannot market their own produce, they lose control over their revenues.

Due to unbridled trade liberalization, women micro-entrepreneurs suffer from competition with foreign products and limited access to profitable markets. They often end up as victims of non-payment of goods delivered or non-acceptance of goods due to real or trumped up quality-control issues. When they are victimized in this way, they have no real access to justice as they do not know which authorities to approach or what legal mechanisms to use in order to redress their grievances.

Different forms of micro-enterprises abound. There are micro-enterprises found at the bottom of the subcontracting ladder supplying larger firms with raw materials or finished products at very low cost, employing unprotected labour comprised of women homeworkers, child labour, indigenous craftspersons and others similarly situated. A special category of a non-profit-oriented micro-enterprise is the social enterprise, which may take the form of a group or cooperative enterprise, community-based and anchored on solidarity, mutual assistance and social service. Then there are also the 'free-standing' ones that are not dependent on other entities for capital or for markets.

Workers of various categories are found in micro-enterprises. And because they have particular needs, ensuring their rights through specific interventions must be a priority concern. Organized wage workers in formal or registered micro-enterprises are the most advantaged because of the employer's ability to provide for their basic legal entitlements like minimum wage, social security, and safe and healthy working conditions. Unorganized wage workers in informal micro-enterprises are the most disadvantaged since they do not receive the minimum wage, have no social protection and are subject to occupational hazards. One of the largest groups of unorganized wage workers, if statistics are to be the basis,¹⁹ is composed of unpaid family workers in family-based micro-enterprises. Perceptions differ as to whether they are advantaged or disadvantaged. They can be considered disadvantaged, especially in the case of women and girls due to lack of female labour valuation and persistence of child labour. On the other hand, they can be considered better positioned vis-à-vis non-related workers due to the positive effect of family relations on the meaning and experience of work. Finally, the self-employed or own-account workers, or micro-entrepreneurs who are also workers themselves comprise another large category of workers.

2. Analysis of Specific Laws and Their Implementation

The following discussion points out the gaps and biases in certain provisions of specific laws, and in one way or the other proposes recommendations towards revision and/or workable implementation.

Legislation of General Application

The 1987 Constitution of the Republic of the Philippines, as the fundamental law of the land, gives emphasis to the importance of labour as a primary social and economic force, which must therefore be protected and promoted. Section 3 of Article XIII on Social Justice and Human Rights states that: 'The state shall afford full protection to labour, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law....'

Section 1 of the same article provides for 'measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities and remove cultural inequities'. Section 2 calls for the 'promotion of social justice through creation of economic opportunities'.

Additionally, Article II, Section 9, provides for 'policies that provide adequate social services, promote full employment, a rising standard of living and an improved quality of life for all'. Section 10 of the same article emphasizes 'social justice in national development', and Section 8 highlights the need to 'protect the rights of workers and promote their welfare'. Article III, Section 1 of the Bill of Rights, enshrines 'due process and equal protection of laws'.

The abovementioned constitutional provision makes no distinction between formal and informal workers, spreading the mantle of protection, social justice and human rights to all.

Labour Code: Presidential Decree 442

The basic policy of the Labour Code is that: '*The state shall afford protection to labour, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employees. The state shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.*'

As observed by legal and labour experts, 'One of the critical features of the Code is its emphasis on workers with employer-employee relationship, the elements of which are not usually present in the informal sector.'²⁰ Even among formal workers, provisions of the Labour Code are weakly enforced in an atmosphere of stiff competition under globalization and the resultant 'race to the bottom' in terms of labour standards to save on production costs. Violations are rampant, especially among women workers in the economic zones. Recurrent worker complaints against below-minimum wage, non-regularization, labour-only contracting, forced overtime with or without pay, unreasonable pegging of quotas, working hours beyond eight hours a day and six days a week, non-remittance of Social Security Service (SSS) and PhilHealth contributions, denial of incentive leave, maternity leave and other privileges, non-compliance with occupational health and safety standards, etc. should be immediately addressed. Many of these clearly violate specific provisions of the Labour Code and should therefore be easy to penalize.²¹

The rise of flexible employment not only in the economic zones but in most other workplaces has led to the effective negation of the right to organize and to bargain collectively. The number of establishments employing non-regular workers increased from 65.5 per cent to 86.4 per cent in just a three-year period (1998-2000), highlighting the seriousness of the phenomenon.²²

Unionization is often limited only to regular workers, which now comprise a minority of employees on the shop floor, the majority being contractual, casual, or agency-hired workers. Seasonality and insecurity of employment, with contracts lasting at the most five months to avoid regularization of workers and therefore higher labour costs, have made it almost impossible for organizers to consolidate workers they are able to contact and educate into a cohesive force with representation and bargaining power. Difficulties and delays in registering unions, calling for certification elections, as well as harassment of union leaders by management, all comprise barriers to the transition from organizing to collective bargaining. Management can also refuse to negotiate, forcing workers to strike, but when they do the footloose nature of industry under globalization makes it very easy for firms to just transfer to other places where cheaper and more compliant labour can be found.

Informal workers in the Philippines in general are beyond the reach and scope of government legislation because there are no formal contracts, only verbal agreements. As a result, the terms and conditions of their employment become exploitative and further aggravated by the absence of an employer-employee relationship. This situation hampers their access to social protection.

Social Security Act of 1997 (Republic Act 8282)

Section 2 of this Act provides that *'it is the policy of the State to establish, develop, promote and perfect a sound and viable tax-exempt social security system suitable to the needs of the people throughout the Philippines which shall promote social justice and provide meaningful protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death, and other contingencies resulting in loss of income or financial burden. Towards this end, the State shall endeavor to extend social security protection to workers and their beneficiaries.'*

The branches of social security that exist and are being implemented in the Philippines consist of 1) medical care; 2) cash sickness benefits; 3) maternity benefits; 4) old-age benefits; 5) invalidity benefits; 6) survivors benefits; and 7) employment injury benefits.

Social security in the Philippines follows the principle of contributory social insurance. Those who cannot pay the cost of social security are not qualified beneficiaries or are automatically excluded from formal social security coverage. Women workers who have no access to such benefits are doubly burdened because they cannot avail themselves of maternity and medical benefits.

SSS figures for mid-2005 show that employees (mostly formal sector) covered numbered 20.63 million, while the self-employed members (the category to which most informal workers belonged) comprised a mere 5.28 million.²³

Social security should be provided to all workers in case of death, illness, disability, maternity and old age. Most informal workers, however, do not enjoy such social security, perhaps because they have no clear participation in both policy-making and implementation on this issue. The SSS Law should be amended to allow for informal sector representation in the SSS Commission, accreditation of informal workers' organizations as collecting agents, improvement of benefit package and easier contribution terms for low-income earners. In order to facilitate informal worker membership, cooperatives and people's organizations should be accredited as collecting agents of premiums; other collection mechanisms (through cellphones, couriers, etc.) should also be developed. Efficiency, transparency and effectiveness in service delivery need to be ensured. Initiatives such as the Automatic Debit Account (ADA) scheme whereby informal workers can open savings accounts at minimal cost in specific banks and have their SSS contributions automatically deducted and remitted to SSS should be assessed, improved and replicated.

National Health Insurance Act of 1995 (Republic Act 7875)

This Act instituted the Philippine Health Insurance Corporation (PHIC) to actively implement a programme that aims to provide universal health insurance for all. The Programme, called PhilHealth, provides free hospitalization benefits to members and their families.

Although PhilHealth is aiming for universal coverage, its membership is still mainly formal sector. In mid-2006, PhilHealth had a membership base of 12.5 million, and 54.5 million beneficiaries representing 64 per cent of the population. The majority of the members come from the formal employed sector (56 per cent). Overseas Filipino workers account for 4.9 per cent; the sponsored sector (or those paid for by local politicians and other benefactors) 24 per cent; and the non-paying (indigent) sector comprises 0.6 per cent. The individually paying sector, to which informal workers generally belong, comprises a mere 14 per cent.²⁴

When informal workers and their family members fall ill and need to be hospitalized, they need health insurance to cover their needs otherwise they either fall into debt or are unable to seek necessary medical attention. Thus, they should eventually be covered by PhilHealth through universal, state-subsidized schemes such as the highly successful one in Thailand. In the meanwhile, the Kalusugang Sigurado at Abot-Kaya sa PhilHealth Insurance (KaSAPI) initiative (launched in 2005) and other PhilHealth programmes for indigents and the working poor should be expanded and improved in order to develop effective partnerships with organized groups and better serve their target populations.

Community-based health insurance and indigenous schemes such as the *damayan* should also be supported through technical assistance, subsidies, and other means by national and local bodies so that they can be of better service to their membership who cannot access or who need to supplement benefits provided by formal social protection mechanisms such as PhilHealth.

Legislation on Occupational Safety and Health

The right to minimum standards of occupational safety and health is guaranteed in Article XIII, Section 3 of the Constitution. Books III and IV of the Labour Code implement this mandate in general terms and prescribe maximum working hours, provision of protective equipment and clinics, among others. For specific occupations, the minimum conditions of health and safety are found in the Manual on Occupational Safety and Health Standards.

The occupational safety and health provisions mentioned, however, are applicable only to workers falling within an employer-employee relationship. Thus, workers in the informal economy are excluded from the coverage of the Labour Code.

The mandate of the Occupational Safety and Health Center, Bureau of Working Conditions, Employees Compensation Commission (ECC) and similar bodies should cover both formal and informal workers; resources should be made available for them to develop their programmes and services for informal workers. Such programmes and services, some of which are at the pilot stage, should also be institutionalized in the local government through budgetary allocations in their local health development plans. These should include the training of trainers among homeworkers and other informal workers as well as continuous awareness-raising to prevent and minimize work related and accidents.

Local Government Code (Republic Act 7160)

Significant in relation to the need for visibility and voice of workers in the informal economy is Article X, Section 9 of the Constitution. This article provides that '*Legislative bodies shall have sectoral representation as may be prescribed by law.*' The Local Government Code passed in 1991 says in Section 41 that '*...there shall be one (1) sectoral representative for women, one (1) from the workers, and one (1) from any of the following sectors: urban poor, indigenous cultural communities, disabled persons, or any other sector ay may be determined by the sanggunian concerned within ninety (90) days prior to the holding of the next elections, as may be provided by law...*' These representatives from local sectoral groups would be elected as members of municipal, city and provincial councils nationwide. The Local Government Code also mandates sectoral representation in local special bodies such as Regional and Municipal Development Councils, School Boards, etc. Enabling rules should be enacted to realize local sectoral representation in practice. This would increase opportunities for participation of women and informal workers in local politics and governance.

The Local Government Code also empowers local authorities to create development committees in order to strengthen the participation of its constituents in the development process. Its significance lies in the bottom-up decision making process whereby interventions generated are the product of consultations and consensus among stakeholders. Further, the creation of a committee for workers in the informal economy will assist the local legislative council in crafting a policy framework and in creating concrete interventions for the sector.

Philippine Country Programme for the Informal Sector

In the Philippine context, advocacy for informal workers has been going on for almost two decades, with the main impetus provided by organizations of such workers and their allies. In the beginning, this advocacy was an uphill climb producing little result, since decision-makers were not sufficiently aware of and sympathetic to the plight of informal workers. In recent years, this advocacy has been considerably strengthened with the more visible multi-sectoral involvement not only of informal sector organizations and other civil society groups, but also of national government agencies, local government units (LGUs) and United Nations agencies such as the International Labour Organization (ILO), United Nations Development Program (UNDP) and the United Nations Development Fund for Women (UNIFEM). Efforts from these various stakeholders converged in what is known as the Philippine Country Program for the Informal Sector, the longer title of which is *Institutionalizing Programs and Policies for the Informal Sector through the Local Government*. This programme came into being through Resolution No. 2 (Series of 2003) of the Social Development Committee (SDC) based in the National Economic and Development Authority (NEDA) co-chaired by the Secretary of the Department of Labour and Employment (DOLE) and the Secretary of Socio-Economic Planning.

The SDC, which has a sub-committee on the Informal Sector (chaired by DOLE and with secretariat and management support office lodged at the Bureau of Rural Workers – BRW-DOLE), also has five Technical Working Groups (TWGs), one each for social protection; productive resources; capability building, organizing and representation; policy and statistics; and resource mobilization and advocacy, consistent with the components of the Country Program.

The Country Program was rolled out at the LGU level with the involvement of 17 cities and municipalities in Metro Manila, plus Angono and Rizal, tasked with implementing their local action plans for the institutionalization of policies and programmes for the informal sector through CLIPPS (Capacity Development of Local Institutions to Promote and Protect the Informal Sector).

These local initiatives continue today under a more focused intervention called ‘Unlad Kabuhayan Program Laban sa Kahirapan’ (DOLE Worktrep Program) targeting the working poor in the informal economy in cooperation with LGUs so that their livelihood projects can grow into viable and sustainable enterprises.

Gender-Related Laws

Since many workers in the informal economy are women, it is important to see what gender-related laws are relevant to their situation.

At the international level, the Philippines is a state party to the Convention for the Elimination of Discrimination Against Women (CEDAW). It has ratified ILO Convention No. 100, aimed at eliminating gender-based discrimination in employment. It is also a state party to

ILO Convention (1953) prohibiting night work, but there is now a push to review the Labour Code provision implementing this Convention due to perceptions that it is discriminatory to women who want to take advantage of opportunities to work at night.

The Philippine Constitution provides for equality of women and men at work in terms of pay as well as working conditions. To promote this, the Labour Code, specifically Articles 135 and 136, prohibits gender discrimination in employment, particularly against married and pregnant women. However, pre-employment discrimination is not yet addressed, and could be prevented by prohibiting advertisements mentioning sex preferences for certain jobs.

Separate legislation also guarantees maternity protection and benefits for women. These are still inadequate when measured by international standards. The situation could be remedied by extending maternity leave with pay, providing pre-natal and post-natal services, breastfeeding entitlements and protection against harmful work.

There is a law providing limited paternity leave for husbands of women who have just given birth, but this benefit is still limited and could still be extended and expanded to include unmarried couples in common-law relationships.

There is an Anti-Sexual Harassment Act, but this could still be strengthened by including harassment between peers, providing penalties for non-enforcement in firms and institutions, and putting in safeguards against retaliatory acts.

Aside from the limitations and flaws mentioned above²⁵ these measures normally apply only to women employed in formal establishments. Informal workers hardly benefit from them at all. It is important therefore to push for the Magna Carta for Women that has been pending in Congress for a number of years. It aims to affirm women's rights and facilitate women's political and economic empowerment. It includes chapters focusing on 'marginalized sectors', including women in the informal economy. The bill needs more extensive discussion and support among the sectors concerned, and should be made consistent with the provisions of the Convention on the Elimination of Discrimination Against Women (CEDAW).

Other Laws Pertaining More to the Self-Employed

The following laws can also be considered labour laws insofar as they cover micro-entrepreneurs, self-employed and other sectors in the informal economy.

The Social Reform and Poverty Alleviation Act (Republic Act 8425 of 1998) provides an entire section on microfinance services for the poor, and states that the protection and welfare of workers in the informal sector shall be one of the flagship programmes of the Social Reform Agenda, thus making it a clearly pro-informal sector policy. In its implementing rules, it was specified that the focus shall be on protection by labour laws, security at the workplace, protection against harassment and abuse, access to programmes and services catering to their special needs, and organization into unions, cooperatives and other forms of associations. It also provides representation for informal worker organizations in the National Anti-Poverty Commission (NAPC) through the Workers in the Informal Sector Council (WISC).

An Act for Women in Micro and Cottage Business Enterprises (Republic Act 7882) provides assistance to women engaging in micro and cottage business enterprises, and other purposes, particularly those who have been engaged for at least one year with a daily inventory of goods

worth not more than 25,000 pesos (~US\$62.50) or with any business equipment with a book value of not more than 50,000 pesos (~US\$1,250). (US\$1= approximately 40 Philippine pesos, February 2008.)

An Act Promoting the Integration of Women As Full and Equal Partners of Men in Development and Nation Building (Republic Act 7192), better known as the Women in Development and Nation Building Act, is a related legislation to RA 7882. It seeks to provide, among other things, that:

women shall have the capacity to borrow and obtain loans and execute credit arrangements under the same conditions as men; women shall have equal access and rights to all government private sector programs granting agricultural credit, loans and non-material resources, and shall enjoy equal treatment in agrarian reform and land resettlement programs; and a substantial portion of official development assistance funds shall be utilized to support programs and activities for women, among others.

An Act to Promote the Establishment of Barangay Microbusiness Enterprises (BMBEs), Providing Incentives and Benefits Therefore, and for Other Purposes (Republic Act 9178), also known as the Barangay Micro Business Enterprises (BMBEs) Act of 2002, that lends legitimacy to what has been generally put aside as 'underground', thus, acknowledges the economic contribution of microenterprises, and expresses the need to 'promote the establishment of Barangay Micro-Business Enterprises (BMBEs)' in the communities.

RA 6810 or Kalakalan 20, enacted in 1989 as a special legislation for the informal sector, which attempts to formalize countryside and barangay business enterprises by exempting them from certain taxes and regulations. This law seeks to enhance entrepreneurial undertakings and promote self-reliance.

An Act to Strengthen the Promotion and Development of, and Assistance to, Small- And Medium-Scale Enterprises, Amending for That Purpose Republic Act No. 6977, Otherwise Known as the 'Magna Carta For Small Enterprises' And For Other Purposes, May 1997 (Republic Act 8289). The main feature of the law provides that all lending institutions, public or private, 'shall set aside at least six per cent (6%) and at least two per cent (2%) for small- and medium-enterprises, respectively of their total loan portfolio'.

All of the laws mentioned need to be amended to ensure the rights of informal workers and micro-entrepreneurs (especially the women among them) as well as their access to credit and other productive resources.

As specific targets of assistance, women are not at all mentioned in the Magna Carta on SMEs, the BMBE Law, and to a large extent, the Social Reform and Poverty Alleviation Act (RA 8425). Women's particular needs and interests as regards microfinance and microenterprise development, which are different from those of men, are not at all considered. Neither are the basic sectors covered by RA 8425 described as comprising women and men.

The manner by which microenterprise has been defined and redefined (from up to P150,000 to up to P3 million) surfaces the intersecting of gender with class-based discrimination, leading to a lack of clear access of women in poverty. Under this law, bigger business concerns (mostly owned and run by men) have more advantages and benefits at the expense of the smaller (micro) ones (mostly run by women who are at the lower rungs of the capitalization ladder), and workers,

mostly women in the informal sector (who need not be paid a minimum wage, for example). Moreover, most of the laws have a strong bias for credit or minimalist model of microfinance and microenterprise development, which is primarily concerned with the financial sustainability of the providing institutions, not really with poverty reduction and/or women's empowerment. Women clients tend to be heavily disadvantaged by high interest rates and transaction costs, and low lending ceilings insufficient to lift them out of poverty.

Most of the laws are silent on the rights and entitlements of workers in micro-enterprises, and there is hardly any articulation of the needs and interests of workers in the informal economy, much less of the women who comprise much of this sector. The informal sector is mentioned in the BMBE Law only in one line in the declaration of policy which says that it should be integrated into the mainstream economy. The Social Reform and Poverty Alleviation Act is better because it clearly identifies workers in the formal and informal sectors as basic sectors with clear representation and participatory mechanisms in the work of the National Anti-Poverty Commission. On the BMBE law, which exempts micro-business from complying with the minimum wage, there seems to be a consensus among trade unions and informal sector groups that this exemption should be withdrawn.

Recommendations towards amendment strongly promote the inclusion of gender concerns in guiding principles, mandates, goals and objectives of the laws as well as in the implementing mechanisms. Women's groups and enterprises as ultimate beneficiaries of the laws and the resources they provide must be specified. Also, women's participation in decision-making bodies assigned to carry out such laws must be reflected. The laws must recognize the intersection of gender, class and other inequalities, and seek to redress discrimination based on all these inequalities. Specifically, the use of sex-disaggregated data and gender-based methodologies in research, planning, monitoring and evaluation must be prescribed and reporting on compliance by the concerned agencies must be mandatory. Not to be neglected is the use of gender-fair and inclusive language, mentioning the phrase 'women and men' as actors and beneficiaries whenever possible. Finally, there must be a stronger initiative for gender mainstreaming in microfinance and microenterprise development at all levels of governance in accordance with the state obligation articulated in Article 2 of CEDAW to 'pursue by all appropriate means and without delay a policy of eliminating discrimination against women...'²⁶

Subsectoral Laws and Policies

Aside from the laws of more general application analyzed earlier, there are policy issuances pertaining to specific subsectors of workers in the informal economy which deserve mention.

Department Order No. 5 on Home Work

Articles 153 and 154 of the Labour Code concern homeworkers and direct the Secretary of Labour to regulate employment of industrial homeworkers. It was in 1992 when the advocacy work of home-based workers' organizations such as PATAMABA (Pambansang Tagapag-ugnay ng mga Manggagawa sa Bahay, or National Network of Homeworkers) and their supporters within and outside government finally bore fruit and then Labour Secretary Ruben D. Torres issued Department Order No. 5 substantiating and putting into operation the abovementioned articles. This Order now constitutes Rule XIV, Book III of the Labour Code's Implementing Rules and Regulations.²⁷ Among its salient provisions are:

- 1) *The right to self-organization of homeworkers and the registration of homeworkers' organizations which shall be entitled to the rights and privileges granted by law to legitimate labour organizations;*
- 2) *Registration of employer, contractor and subcontractor;*
- 3) *Immediate payment for home work after delivery of goods, and remittance by the contractor/ subcontractor or employer of contributions to the SSS, Medicare, and ECC;*
- 4) *Standard output rates determined by time and motion studies to equalize piece rates received by workers in the factory or main undertaking of the employer and homeworkers performing the same job or activity, individual/collective agreement between employers and homeworkers, or tripartite consultations with representatives of government, employers and workers;*
- 5) *Prohibition of any deduction from homeworkers' earnings for materials lost, destroyed, soiled or damaged save for certain conditions;*
- 6) *Liability of the employer, jointly and severally with the contractor or subcontractor if the latter fails to pay the wages or earnings of his/her workers;*
- 7) *Regulation of employment of minors as homeworkers; and*
- 8) *Prohibition of homework in dangerous occupations.*

Until now, however, this Rule has not been tested in action. It has to have penalties and sanctions against erring employers, contractors, and subcontractors to be effective.

The plight of homeworkers can also be further addressed through the ratification of ILO Convention 177 on Home Work. This seeks to uplift the conditions of homeworkers so that they can experience the same treatment, exercise the same rights based at the very least on the core labour standards of decent work, and receive the same entitlements workers in the formal and other sectors are legally enabled to enjoy. Among these are the following: 1) *the right to establish or join organizations of their own choosing and to participate in the activities of such organizations;* 2) *protection against discrimination in employment and occupation;* 3) *protection in the field of occupational safety and health;* 4) *remuneration;* 5) *statutory social security protection;* 6) *access to training;* 7) *minimum age for admission to employment or work;* and 8) *maternity protection.* The campaign for ratification in the Philippines started as early as 1996. It is now finally bearing fruit with the commitment of trade unions, employers, and government bodies, principally the Department of Labour and Employment (DOLE) and the Office of the President to pursue the ratification process. The campaign needs to be pursued to its logical end – concurrence by the Senate through the Senate President.

Executive Order 452 Providing Security of Registered Vendors

This promulgation provides security to vendors in their workplace. They are protected from being arbitrarily deprived of their livelihood by unjust ejection from their workplaces or demolition of their stalls, provided that they comply with existing national and local laws and ordinances. Under this law, vendors are encouraged to form an association in order to empower them.

This issuance may in the long run prove beneficial to women who earn their income as vendors in the informal sector. One unique issue under this promulgation is security at the workplace which is properly the concern of the Local Government Unit (LGU). Some LGUs have actually provided vending sites around municipal halls and other vacant government spaces for their vendor constituencies as a result of informal worker advocacy.

To date, many of those who are supposed to enforce the Executive Order, and those who are likely to benefit from it, are not even aware that such a law exists. As a result, vendors are still

subjected to harassment coming from law enforcement agencies at the local and national levels. Furthermore, since the Executive Order does not have the status of a law passed by Congress, local government units are emboldened to contravene its spirit through their own resolutions. Conscious of this, vendors groups attempted to push for a bill in the 13th Congress to ensure their rights but this initiative did not prosper.

Republic Act 6685 and Department Order No. 13 on Construction Workers

RA 6685 was enacted to address the plight of construction workers. This piece of legislation aims to promote local hiring and enhance alternative skills that will open opportunities for construction workers towards an alternative form of employment.

To date, non-enforcement of RA 6685 (particularly on minimum wage and holiday benefits) is attributed to lack of understanding and appreciation of the merits of supporting construction workers. Likewise, contractors are fearful of organized groups. Among construction workers, the fear of not being hired at all prevents them from joining or being associated with an organization.

Department Order No. 13 (1998), entitled *The Guidelines Governing Occupational Safety and Health in the Construction Industry*, prescribes the provision of personal protective equipment, construction safety signage, emergency facilities, mandatory certification and safety information. These guidelines, however, are not rigorously observed in informal settings.

Towards a Magna Carta for Workers in the Informal Economy

The absence of comprehensive legislation that can cover the cross-sectoral concerns of all subsectors has led to intensified lobbying and advocacy for a Magna Carta for Workers in the Informal Economy. A bill for this, crafted with the participation of Homenet Philippines, the Association of Construction and Informal Workers, as well as other stakeholders, was filed in the 14th Congress in August 2007.

The recent shift to a rights-based framework of development and the ILO's decent work agenda emphasizing core labour standards, means the following fundamental rights of informal workers will be recognized, promoted, protected and fulfilled by this bill: 1) the right to self-organization; 2) the right to enhance their entrepreneurial skills and their capabilities to become more productive and self-reliant thereby ensuring participation in mainstream economic activities; 3) the right to be free from any form of discrimination, whether this be based on gender, age, ethnicity, political, religious or sexual orientation, etc.; 4) the right to just and humane working conditions, access to productive resources, and social protection, including occupational and reproductive health services; 5) the right to represent their organizations in a continuing process of consultation and dialogue towards maximizing the provision of a comprehensive package of reforms, interventions, and services in accordance with their articulated needs and interests; and 6) the right to access justice by enactment of national and local policies towards alternative dispute resolution.

This bill offers a comprehensive, integrated, rights-based and gender-responsive policy instrument to address empowerment issues and bring the workers in the informal economy closer to their dreams.

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ENDNOTES

1. In 2000, unemployment was recorded to be 10.14 per cent of the labour force, and underemployment 19.9 per cent. National Statistical Coordination Board. *2005 Statistical Yearbook* (2005). Beginning 2005, unemployment figures became lower because of new criteria for defining the unemployed. Thus in April 2006, unemployment was placed at 8.2 per cent, but underemployment was at a very high 25.4 per cent.
2. The industrial sector – particularly manufacturing which is supposed to produce the greatest number of jobs as the country progresses – has been stagnant at 14 to 17 per cent since the 1960s; in 2003, the percentage was 15.7 per cent (National Commission on the Role of Filipino Women (2004), *State of the Filipino Women Report*. Chapter 2, p. 6). Agriculture showed a declining trend in employment from 1.7 per cent in 1980 to 37 per cent in 2003 (Ofreño, R. E. 'From core to periphery: Why has the Philippines failed to industrialize' in *A Nation in Crisis: Agenda for Survival* published by the Fair Trade Alliance.)
3. Illo, J.F.I. (2005). See Table 6. Distribution of working-age population, by type of economy, October 2001. 'Prospects for People Living in Poverty to Participate in Growth-Oriented Enterprises' in Review of Women's Studies, Special Issue on Gender, Globalization, Culture and the Economy (Vol. XV, No.2; July to December 2005). The employment-population ratio has not improved since 2002, when only 46 per cent of women were employed compared to 73 per cent of men.
4. National Statistical Office. *October 2002-2005 Integrated Survey of Households Bulletin*, Table 6: Employment Indicators: Women and Men Aged 15 Years and Over, 2002-2005; National Statistical Coordination Board. *Women and Men in the Philippines 2006 Statistical Handbook*, Table 2.4: Labour Force and Labour Force Participation Rate by Highest Grade Completed and Sex, Philippines: 2002-2004 on p. 32. Note, however, that women who finished college had more participation in the labour force than other women with lower levels of education.
5. Sibal, Jorge V. (2006) 'Strengthening Offshoring in the Philippines: Issues and Concerns.' University of the Philippine Forum. July-August.
6. Proceedings of the Labour Agenda meeting sponsored by FES Manila, 7 November 2007.
7. On one side is the Trade Union Congress of the Philippines (TUCP) which comprises a moderate force enjoying representation in government and tripartite bodies. On the other side is the Kilusang Mayo Uno (KMU) which espouses a 'genuine, militant, anti-imperialist' mould of unionism. It belongs to the national democratic movement, which has taken the brunt of state repression in the form mainly of extra-judicial killings of trade unionists and other activists. Partido Manggagawa (PM) is another left-oriented party list group which used to have a seat in Congress. It takes a direct socialist line, which distinguishes it from KMU. Bukluran ng Manggagawang Pilipino (BMP) belongs to the PM formation. The Federation of Free Workers (FFW), formerly with the World Confederation of Labour (WCL), is identified with the Christian Democrats and like TUCP, has had relatively harmonious relations with government. The National Confederation of Labour (NCL) and KATIPUNAN are other progressive blocs of left-oriented federations.

8. Informal employment now comprises 71 per cent of non-agricultural employment in Asia. (WIEGO website – http://www.wiego.org/stat_picture)
9. *Labour and Social Trends in ASEAN 2007: Integration, Challenges and Opportunities*. (2007) International Labour Organization.
10. *National Labour Force Survey of Business and Industry, 2005* (2005). Table IV. Comparative Sizes of Formal and Informal Sectors 1999 and 2005.
11. Resolution concerning decent work and the informal economy, document of the 90th session of the General Conference of the International Labour Organization (2 , 2002, Geneva.
12. Gallin, Dan (2002): 'Organising in the Informal Economy.' http://www.wiego.org/papers.lab_ed.pdf.
13. Ibid.
14. National Commission on the Role of Filipino Women (2004). *State of the Filipino Women Report*, Chapter 2, p. 18.
15. National Commission on the Role of Filipino Women (2004). Chapter 2, p. 19.
16. The *habal habal* is a motorcycle outfitted with extenders on both sides as well as the back of the driver's seat, where as many as six passengers are accommodated.
17. International Labour Organization (1998): *Gender Issues in Micro-Enterprise Development*, Briefing Note. <http://www.ilo.org/public/english/employment/ent/papers/gender.htm>, pp. 4-5.
18. Ibid., pp. 5-6.
19. See Table 6. Distribution of working-age population, by type of economy, October 2001, in Illo (2005).
20. Department of Labour and Employment. Bureau of Rural Workers. (2004) *Inventory of Laws and Policies Affecting the Informal Sector*.
21. These minimum standards include: 1) Normal hours of work shall not exceed eight hours a day (Article 83. Normal hours of work); 2) If workers perform their job for over eight hours, they shall be provided with overtime pay and night differential pay for those working between 10 pm and 6 am. (Article 86. Night-shift differential and Article 87. Overtime work); 3) Workers are entitled to a rest period of not less than twenty-four (24) consecutive hours after every six (6) consecutive normal work days. (Article 91. Right to weekly rest day); 4) Night work prohibition for women workers (Article 130. Night work prohibition); Right to a yearly service incentive leave of five days with pay if a worker has rendered at least one year of service. (Article 95. Right to service incentive leave).
22. Betonio, as cited in Asper.
23. Homenet Southeast Asia (2006), p. 318.
24. Homenet Southeast Asia (2006), p. 320.
25. Largely based on Battad (2006).
26. A more comprehensive analysis of these laws can be found in Pineda Ofreneo.(2006).
27. DOLE (2004), p. 11.