

Thailand

Extending Labour Protection to the Informal Economy in Thailand

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1. Contemporary Snapshot

Globalization and economic restructuring have led to the growth of the informal economy all over the world. There are many factors contributing to the rapid growth of the informal economy. Increasing competition has led companies to seek and adopt employment flexibility in order to cut costs, and in turn, informal relations between employers and employees. Economic crisis and company restructuring have caused massive lay-offs; new employment is often found in the informal economy. Labour law, social protection and governmental institutions are outmoded and ineffective in coping either with flexible employment or production chains running across national boundaries or regions involving producers in a variety of employment relations.

In Thailand, attention needs to be paid to the informal economy because of its importance to the Thai economy and society. The majority of its workers are not protected. Although the informal economy makes up almost 50 per cent of employment, the rights of workers in the informal economy are unequal to those in the formal economy.

Definitions of the Informal Economy

The International Labour Organization (ILO) defines the informal economy as economic activities that have no protection or regulation under the law or having insufficient protection because these activities are conducted outside the legal framework. It can also refer to activities covered by laws that are scarcely or not enforced because of inappropriate regulation, the burden for those concerned, or the high cost of doing so.

The ILO divides persons in the informal economy into three groups.¹

1. Employers of small enterprises having few workers;
2. Self-employed/own-account workers and unpaid employees;
3. Workers in small enterprises of informal activities or workers with no definite employer or employment contract such as home workers or producers under production contract.

In Thailand, the Social Security Bureau of the Ministry of Labour has concluded its preparatory activities on the extension of social protection to informal economy workers in 2006 and set the definition as follows: Informal economy workers are those outside the protection of the social security law. These workers can be divided into two groups.

1. Those who are employed and receive income such as home workers, trade contract workers or seasonal agricultural labourers.

2. Those who are self-employed with no hired labour such as drivers with their own or hired vehicles, farmers with their own cultivated or hired land, street vendors, petty traders or pharmacists, lawyers, doctors or dentists.

According to the National Economic and Social Development Board (NESDB), 'informal economy' refers to the production of goods or services that generate income and employment occurring outside of the management or supervision of governmental bodies. They are generally small production units run by the community or self-employed persons who may hire workers or use family labour. They may be legally registered or unregulated by law. According to the NESDB, the informal economy is composed of:

1. Non-formal production of goods and services. This refers to economic activities that, while not illegal, are neither regulated by law nor taxed. There are no definite wage payments and no employment systems; production is in small units, vulnerable to volatile markets and uncertainty. These activities include:
 - Those engaged in production including small farmers and agricultural labourers, home workers, small producers, small family businesses, row-house shops, community businesses, group businesses and self-employed groups.
 - Those engaged in trade and services consisting of vendors, repairers of personal belongings or household equipment.
 - Those engaged in transport, consisting of for-hire motorcyclists, van, taxi and boat drivers.
 - Those engaged in domestic work, consisting of production for family consumption, remunerated domestic labourers, child care givers, and care giving for elderly and sick persons at home. Although these kinds of work are important for maintaining the family, they are neither paid for nor counted in the national income figures.
2. Production of illegal goods and provision of illegal services. These refer to production, distribution and services in illegal activities such as illegal gambling, drug trafficking, smuggling (including illegal trading in weapons, oil and pornography), sex and human trafficking (such as slave trading, child trafficking and prostitution), trading in wildlife and rare protected plants, corruption in the public and private sectors, money laundering and international crimes.

Overview of the Informal Economy in Thailand ²

Studies conducted by the NESDB find that the informal economy contributes almost as much to GDP as the formal economy (not including illegal activities). In 2001, the informal economy generated value amounting to 2.33 billion baht (US\$ equivalent: US\$75,161 million; 1 US\$ = approximately 31 Thai baht), or 45.6 per cent of GDP. Part of this contribution, about 33.3 per cent, is accounted for in the GDP while the remaining 12 per cent is unaccounted for.

There are an estimated 34.67 million employed persons in Thailand. Around 22.10 million persons—67.8 per cent of all employed persons—work in the informal economy and outside the protection of the social security law. Of these, 42.1 per cent work in the agricultural sector and 31.2 per cent are employed off-farm.

Ministry of Labour statistics show that there were 8.52 million workers employed in the country. The Social Security Fund (SSF) covers establishments with one or more workers. In January 2005, it had registered 7.84 million workers under its coverage.

A survey on the demand for social security for 2003 conducted by the National Statistical Office estimated that 24.9 million informal workers—about 70 per cent of all employed persons—were outside social protection.

The legalized informal economy refers to the unregulated sector with limited protection; it is distinct from the illegal economy. The majority are small establishments such as household enterprises. Small farmers rely mainly on family labour and constitute a major source of employment and income for many of the underprivileged groups in society, especially those with less education, low skills and no capital.

Though these informal activities are not considered very productive, their numbers have recently swelled and are now growing rapidly. For example, the number of commuter motorcyclists in the Bangkok Metropolitan Area has increased over sevenfold in the past 20 years, i.e. from 16,000 motorcycles and 1,570 stations in 1984 to 108,506 motorcycles and 4,440 stations in 2003. The number of street vendors has increased from 24,192 in 1986 to 25,653 in 1998. Entry into this business is quite easy as it does not require much capital. Between 1999 and 2001, the number of home workers has increased by about 80 per cent, from 226,473 to 406,473 households. The majority of home workers are engaged in manufacturing, especially of textiles and garments. Community enterprises such as those the government supports through the OTOP or One Tambon (sub-district) One Product policy generate employment and income for rural and urban communities.

Activities in the informal economy play an important role in the increase in production and employment for a large part of the population, around 50 per cent of all employed persons. They are part of supply chains, providing labour, raw materials and intermediate products in the economic system, the starting ground of new entrepreneurs, and the provider of cheap, consumer products. At the annual NESDB conference in 2004, there was a recommendation of participants from many sectors, for the government to regulate the informal economy and to emphasize social protection over economic aspects of the phenomenon. According to this recommendation, the government should:

1. Alleviate poverty and promote income distribution. This can be achieved through product and service development of the informal sector and promotion of secure employment and income.
2. Provide those working in the informal sector rights and social protection equal to workers in the formal sector.
3. Create transparency in society by suppressing the illegal economy and its negative impacts.

2. Thai Labour Laws and Decent Work in the Informal Economy

The 87th International Labour Conference in 1997 upheld decent work in both the formal and informal economy as a goal and means of development. The International Labour Office supports policies and technical assistance to governments, employers' and workers' organizations to promote decent work and reduce decent work deficits.

The ILO Director General's report entitled *Decent Work in the Informal Economy* was presented at the annual International Labour Conference in 2002. It stated four fundamental areas of the ILO's efforts to promote decent work: labour rights, productive employment, social protection and social dialogue. The report noted particularly that the working conditions relating

to these four areas would improve if workers are organized and able to collectively bargain for improvements.

Labour Rights Protection

ILO conventions provide protection to all who work, without discrimination based on birthplace, nationality, ethnic, sex, age, religion, race, working status, economic or social status.

Thai labour laws do not protect all kinds of employees. The Labour Protection Act (LPA) covers employees in the private sector but does not cover some groups of private employees. They can be placed in three categories

The first group is employees protected under other special laws. These include persons 'working for central administration, provincial administration, and local administration' and those working for 'state enterprises under the law governing state enterprise labour relations'. Others protected under special laws include teachers in private schools, and particular groups exempted from the LPA, including employees of the Airport Authority of Thailand who are exempted from labour protection and relations acts by the 1989 Airport Authority of Thailand Act³ and directors, officials and employees in public transit organizations set up under the Public Organization Act of 1999, who are not covered by the labour protection and relations acts, social security law and workmen compensation fund.⁴

The second group is employees who receive limited protection on certain issues. One such example is those working in other peoples' homes for non-commercial purposes such as domestic workers, child care, cooking, cleaning, washing, gardening, night watch or other work related to residential areas. Domestic workers receive some protection such as the requirement that the employer pays wages at least once a month and provides working facilities. Sexual harassment by the employer is prohibited as well as other types of discrimination against women and children. They must arrange for at least six days off each year for those working over one year. Employees employed in non-profit organizations such as foundations also fall into this second group, as they receive certain protection such as equal wage payment for women and men doing the same work. The Workmen's Compensation Act (WCA) does not extend protection to workers in non-profit organizations. (See below for more on the WCA.)

The third group is employees who have protection different from the LPA. Employees can be the subject of government regulations concerning employment relations, thereby receiving protection that is potentially different from those determined by the LPA. For example, pregnant workers who are employees in managerial positions, doing professional or secretarial work as well as those in all forms of financial or accountancy work, are protected against compulsory overtime work. As for employees in direct sales, employers must pay to these employees commission derived from the sale of commodities. These employees have no right to overtime work except when employers agree to pay for it. Special regulations are also made for employees in fisheries, home-based workers, and seasonal labour.

The Right to Organize and Collectively Bargain

The 1976 Labour Relations Act (LRA) deals with setting up worker and employer associations, collective bargaining, and dispute settlement. After 30 years of implementation the legislation is outdated as compared to the labour protection and social security laws, which were the result of the reforms that the labour movement demanded of the Ministry of Labour.

The Act has a number of significant limitations. The LRA is not applicable to employees employed in government and state enterprises, as well as other activities exempted by Royal Decree. Strikes are prohibited in the important economic sectors of the railway, post office, telephone and communication, electrical power distribution or water works, medical centres, cooperatives, land, water and air transport. The LRA gives employees with Thai nationality and older than 20 years the right to form trade unions and become union committee or sub-committee members. Thai workers younger than 20 years old and foreign workers have the right to become members of trade unions but may not form unions or be members of union committees.

Right to Social Protection

Workmen's Compensation Act:

The objectives of the Workmen's Compensation Act (WCA) are to pay compensation to employees who suffer from work-related injuries or diseases, or work-related death or disabilities. The Fund covers employees of contributing employers. Coverage is required of all private enterprises with one or more employees. The following groups are exempted from coverage: domestic workers; central, provincial and local governmental administrative bodies; state enterprises; employers in private school businesses; employers in not-for-profit ventures; employers who are ordinary citizens that employ workers in non-business ventures; and employers in the vendor business.

Social Security Act:

As for social security funds, its objectives are to provide benefits to insured persons in cases of injury, disease or death that are not work-related, and includes maternity, invalidity, child allowance, old age pension and unemployment insurance. For employees of registered employers, the social security fund is pooled from a three-part contribution, which is to say, equal parts by employers, employees and the government. Covered enterprises include those with one or more employees, with a number of important exceptions.⁵

The Social Security Act (SSA), which has an office under the Ministry of Labour, permits employees who were previously covered by the social security law (but have since been removed from work) to become voluntarily insured. Article 39 sets the following qualifications and conditions for this coverage:

1. Being previously insured according to Article 33 (i.e. employee in a covered establishment) and having paid contributions for not less than 12 months
2. Not receiving invalidity benefits from the Fund
3. Must apply personally within six months after terminating employee status
4. Paying contributions, calculated on the basis of the monthly wage rate for all persons
5. Fulfilling a duty under Article 39 to send a monthly contribution by the 15th of every month⁶

Four reasons are found in Article 39 for terminating the status of an insured person. Contributions are not made in three successive months; leaving the job; death; and re-employment as an insured employee under Article 33.

In practice, contributions are based on a monthly minimum wage rate of 4,800 baht. Five benefits are set out in Article 39—sickness, invalidity, child birth, child allowance and retirement;

unemployment insurance is not included. An insured person under Article 39 must pay a contribution of 9 per cent of the monthly minimum wage (4,800 baht) or 432 baht a month. This is in contrast to employees benefiting from employers' contribution and pay only 4-5 per cent of his or her wage to be entitled to six benefits (Article 33). At present, the number of persons insured under this article has increased from 19,436 persons in 1996 to 179,512 persons in June 2004.

Many labour organizations and the Unemployed Workers Network have sought to have the Ministry of Labour revise Article 39 so that unemployed workers are required to pay only one part of the normal tripartite contribution, arguing that the unemployed already face economic hardships and have low income that barely make ends meet. Most of the unemployed workers had been insured, and had paid contributions for a long time; some may not have used their rights for sickness or maternity benefits. Therefore, they should be able to receive the benefit from their past contributions, which may be lost during a period of unemployment. It has also been argued that it is the government's duty to accommodate unemployed workers in the Social Security scheme in the name of equalizing social benefits.

The Social Security Board decided in August 2004 to oppose a revision of the SSA that would have reduced the contribution of the unemployed to one part. The reason given was that the benefits paid to insured persons according to Article 39 are higher than the contributions and that the use of the service is increasing every year.

The SSA allows self-employed persons to be voluntarily insured. This includes taxi drivers and street vendors among others. Article 40 of the Royal Decree (the SSA) states that self-employed persons may pay the entire contribution at a high rate, without support from government budget or an employer. They are entitled to only three benefits: invalidity, death and maternity. Health benefits were not included. The reason given for not covering health at that time (prior to 2001) was that health care was made available through health cards which anyone could buy at the price of 500 baht for a family of five persons. Since 2001, health care was made available to everyone through the universal health insurance scheme, better known as the 30 baht scheme. In 2004, there were only seven insurers covered under Article 40.

The Definition of Employer

The definition of 'employer' is the same in all the four labour laws discussed in this section. An employer is a person who agrees to accept an employee for work by paying him or her wages, including a person entrusted by the employer to act on his or her behalf and, where the employer is a juridical person, a person authorized to act on behalf of that juridical person and a person entrusted by an authorized person to act on its behalf.

Article 5(3) of the LPA, also defines employer to include labour contractors, that is, an entrepreneur who makes an arrangement against payment of a lump sum, with a person entrusted to supervise the performance of work and to be responsible for the payment of wages to an employee. The employees who have been procured by persons, not employment service agencies, to work even a part of or the whole of the production process or business under the responsibility of the entrepreneur, are also the employees of the employer.

Therefore, under the LPA, there are several types of employers, including those who recruit workers to work directly under them and/or those who recruit intermediaries as the employers' representative. In conclusion, an employer can be a labour contractor, subcontractor or contractor.

Table 1: Definition of employer and employee in four Thai labour laws

| Name of the law | Definition of employees |
|-------------------------------|---|
| 1998 Labour Protection Act | Accept to work for employer and receive wage payment in any kind |
| 1975 Labour Relations Act | Accept to work for employer and receive wage payment |
| 1994 Workmen Compensation Act | Employed to work for employer and receive wage payment in any kind but do not include domestic worker in house with no business operation |
| 1990 Social Security Act | Employed by employer and receive wage payment in any kind but do not include domestic worker in house with no business operation |

Another type of employment relationship, the ‘hire of service’, falls under the Civil and Commercial Codes. It can be summarized as a contract where it is assumed that the two sides of it, an employer and an employee, have the following characteristics:

1. The employment contract can be a written or verbal agreement, excluding trade contracts between employers and home-based workers.
2. The employer has the authority to contract and oversee how his or her employee works. The employee can be punished or discharged from the job if he or she does not comply with, for example, the employer’s setting the number of working or leave days, hours of work, how work is to be performed, etc.
3. The employee will receive payment according to duration of work or by piece rate. The employer has to pay the agreed wage even though the work is unfinished.
4. The employer is required to provide tools to his employee and the employee must work in the employer’s establishment or a location provided by the employer.
5. An employer cannot send his or her employee to work for another employer without consent from the employee and the employee cannot ask another worker to work in his or her place without consent from the employer.
6. The employer is responsible for any damages caused to third persons by an employee working under the orders of the employer.

The main difference between *hire of services* and *hire of work* are:

1. *Hire of work* aims at the result of the performance of work while *hire of services* aims at the labour of the employee, not necessarily the work that is to be done.
2. *Hire of work* gives the contractor no power to interfere in the work process of the subcontractor. With *hire of services* employees work under the supervision of the employer.

On the basis of these principles, the authority of an employer to control the work of the employee is the most important element of an employment contract. If a worker works independently outside the control of the employer or contractor, can independently organize the work process, can choose working time, and must find raw materials or tools, he or she is not an employee under the existing labour protection law. Many of these workers are those found in the informal economy outside the scope of labour law. The problem is that at present many employers have changed employment contracts so as to avoid the responsibility of paying wages and welfare

contributions according to the labour law without giving up real authority to supervise the work of the worker concerned.

In general, informal economy workers are workers who are under neither hire of services contracts nor employees of employers within the definitions of persons protected under the four main labour laws, that is, the Labour Protection Act, Labour cAct, Social Security Act and Workmen Compensation Act. These four laws have the same definition of 'employee', meaning those workers who are employed by employers and receive a wage. The WCA and SSA do not include domestic workers in their coverage.

Progress and Limits of Protection to Informal Economy Workers

Based on the specific authorization in the LPA,⁷ the Ministry of Labour has drawn up Ministerial Regulations to provide protection to home workers⁸ and agricultural workers, effective 8 August 2004 and 13 April 2005 respectively. The protection given to these two groups of workers will need a different approach from that taken by the LPA.

The Case of Home Workers

The home workers to which the 2004 Ministerial Regulation refer are:

1. Workers who receive work contracts from an employer to produce, assemble, repair or process;
2. Those who work at a location that is not the establishment of the employer;
3. Those who work to earn a wage;
4. Workers who use all or part of raw materials or production instruments of the employer;
5. Those who work, contracted to be performed at home, are a part or a whole of the production process or business in the responsibility of the employer.

Self-employed workers are thus excluded from this definition of home workers.

This Ministerial Regulation has divided home workers into two main groups. These are first, those who use raw materials or tools of the employer, who are thus considered employees under protection of the ministerial decree, and second, home workers who buy raw material or tools on their own, who will not receive protection from the Ministerial Regulation.

The Ministerial Regulation establishes certain protection for home workers. Employers who contract work to be performed at home must make a declaration to the labour inspectorate according to the requirements set by the Director General of the Social Welfare and Labour Protection Department. The employer must report by sending a letter seven days before delivering work and every time work is delivered thereafter. The report must contain the names and number of employees, the types of work performed, the date of delivering work, the method of payment, and the workplace of the employees, the raw materials or instruments provided.

An employer who contracts work to be performed at home must make a written employment contract that must be signed by both the employer and the employee, and a copy of the contract must be given to the employee. The work contract must contain at least eight specified items.⁹ Any other items will depend on the agreement between the employer and employee and can be mentioned in the contract. The employer has the responsibility to pay the employee the wage according to time and location specified in the work contract within 15 days after the completed work is delivered. The employer has the right to deduct money from an employee's wage in the following cases:

1. To pay personal income tax of the employee;
2. To pay debt to a credit cooperative or welfare fund which benefits the employee, provided that the deduction is accepted by the employee;
3. To compensate for damages to machinery, equipment or raw materials of the employer caused by negligence of the employee, but with written agreement from the employee.

For 1. and 2., deduction cannot be over 10 per cent for each item, and for all items must not be above 20 per cent of wages unless with the agreement from the employee.

Employers are prohibited from giving hazardous work to the employee, including work related to explosives or fireworks, dangerous chemicals or poisonous materials, or cancerous substances, including 13 items under the supervision of the Minister of Labour and Social Welfare, such as benzene, chromium, etc.

Employers have the duty to oversee safety of the workplace by providing safety equipment and setting safety standards for home workers.¹⁰

The Regulation also upholds home workers' rights according to the LPA.

For example,

1. The employer must provide equal treatment of employment between men and women employees.
2. The employer must provide the same wage for the same work between men and women.
3. Sexual harassment of women and young workers by the employer, foreman, or supervisor is prohibited.
4. The employer has the duty to provide safety equipment as required by law.
5. The employment of children less than 15 years of age is prohibited.
6. The employee has the right to make a complaint with labour inspectors for disputes concerning wage payment or file a complaint in court.

Analysis of the Ministerial Regulation on Home Workers and ILO Convention No. 177

The ILO Home Workers Convention No. 177 and Recommendation No.184, 1996, establish a definition for home workers and the perimeters for their protection. Home work is defined in the Convention, and can be summarized as:

1. Work carried out by a person, where:
 - the workplace is in the worker's home or a place chosen by the home worker, but not the workplace of employer; and
 - payment is received.

No account is to be taken of who provides equipment, raw materials or other inputs for the work.

2. Home work does not include:
 - employees who occasionally take work home rather than working at the factory or establishment of the employer.
 - persons who have the degree of autonomy and economic independence necessary to be considered self-employed under national laws.
3. 'Employer' refers to an ordinary or legal person who contracts out work, directly or through an intermediary.

The scope of Thai law has at least two shortcomings as compared with Convention No. 177.

First, it defines the employer as one who provides raw materials and working equipment; the ILO Convention does not set this requirement, specifically conveying home worker status 'irrespective of who provides the equipment, materials or other inputs used'.¹¹

Second, Thai law does not define the employer to include an intermediary; Convention No. 177 defines the term employer as 'a person, natural or legal, who, *either directly or through an intermediary, whether or not intermediaries are provided for in national legislation, gives out home work in pursuance of his or her business activity*'.¹²

In order to protect the rights of home workers, Convention No. 177 proposes that a national policy on home work be formulated to promote equal treatment between home workers and other wage employment, especially with respect to:

- (a) the rights of home workers to establish or join organizations of their own choice and to participate in the activities of such organizations;
- (b) protection against discrimination in employment and occupation;
- (c) protection in the field of occupational safety and health (OSH);
- (d) remuneration;
- (e) statutory social security protection;
- (f) access to training;
- (g) minimum age for admission to employment or work; and
- (h) maternity protection.

An examination of the Ministerial Regulation and the SSA reveals that Thai law does not provide home workers with protection in the areas of remuneration, training, social security or maternity leave. Indeed, the bulk of the Ministerial Regulation's content does not enhance the protection of home workers.

Discussions with home workers reveal a lack of understanding about the objective of the law, as some home workers see this law as a way to register home workers just so that taxes or social security contributions can be collected. This is perceived to be the overriding objective since in practice employees may not comply with the particular requirements under the written contract, because it is complicated and the employer may not be accustomed to the requirements. If the employer refuses to make written contracts, the employee or home worker may well not demand them, fearing that the employer will retaliate by reducing or ending work orders. Finally, most home workers cannot find their employer so that written contracts can be made, since most home workers get orders through an intermediary and not directly from the factory.

In December 2004, a training workshop for labour inspectors was organized by the Department of Labour Protection and Welfare to prepare for enforcement of the new Ministerial Regulations. The following example problems and obstacles in labour inspection among home workers were identified at the training workshop:

1. The labour inspectors lack knowledge about and an understanding of home workers, and guidelines for enforcement are unclear. For example, it is unclear whether or not intermediaries are employers of the employee, or whether labour inspectors have the power to go and inspect the workplace since the residence and workplace are identical.
2. Home workers' workplaces are difficult to access. They are often very far away and widely dispersed; working hours are very irregular. These factors prevent labour inspectors from

- carrying out their duties effectively.
3. Employers do not cooperate. They prohibit their employees from revealing information on employment, suspecting that the authorities will use this information to collect taxes and/or social security contributions, or for trade competition.
 4. Employers may feel that these provisions increase administrative burdens by, for example, requiring the preparation reports to inspectors or written work contracts. Employers are also obliged to have permission before sending hazardous work out to home workers.
 5. Not wanting to be bound by written contracts which may be used in court, employees do not cooperate in preparing them. They wish to avoid having to pay taxes on the basis of such contracts.

In 1997, the Ministry of Labour created a home workers' section within the Labour Protection and Welfare Department. It was then responsible for promoting the organization of home workers and exploring appropriate ways to protect them. This section was dismantled after the reform of the government structure in October 2002 and the work placed instead under the Job Promotion Section within the Employment Department, which plays the role of promoting employment for home workers. The role of protecting home workers falls on regular labour inspectors under the Bureau of Labour Protection. To this day, there continues to be no link between labour protection and employment promotion.

In 2003, the Employment Department established a policy to promote home work and to set up a home workers' fund. The latter was intended to provide home workers access to credit. Both regulations are in force today.

Finally, the Labour Protection Bureau of the Labour and Social Welfare Department is responsible for the enforcement of the law. Without close cooperation with the Employment Department of the Ministry, the work of the Bureau protecting rights in line with the Ministerial Regulation may have an impact on home workers' employment security and organization; that is, employers and home workers might find it difficult to maintain the employment for fear that compliance with the Ministerial Regulation will increase the cost of labour (e.g. OSH equipment) as well as taxation. Therefore, the work on employment promotion e.g. orders, marketing, skills development and loans, will be necessary for both home workers and employers.

Box 1. Approach and procedures for the implementation of the measures to promote home workers

The following procedures were some of the concluded outcomes of the training workshop on the procedures in implementing the Ministerial Regulations on home workers held in December 2004.

1. Set up a registration bureau for home workers, in the official employment bureaus in the provinces and Bangkok.
2. Nominate the employment bureau and the director of the Bangkok Employment Bureau to become the registrar of home workers in order to give advice and suggestions to home workers, promote and support home workers to organize and to promote skills development.
3. Register home workers' organizations meeting the following qualifications.
 - 1) The group must have not less than 10 members.
 - 2) Members must not be under 15 years old.
 - 3) The group has clearly stated occupationally-related objectives.
 - 4) The group has named leadership.

4. Qualifications are needed for borrowing from the home workers' fund. They should include:
- 1) being a home workers' group registered with the employment department;
 - 2) being a group with clear management;
 - 3) being a group organized for not less than six months;
 - 4) being a group owning assets or capital not less than 10,000 baht; and
 - 5) having a contact address.

*The Case of Agricultural Workers*¹³

The Ministerial Regulation for the Protection of Workers in the Agricultural Sector, 2004, covers agricultural work, including work related to cultivation, animal husbandry, forestry, salt farming and fishing, but not sea fishing. Employers covered by the Ministerial Regulation are those who neither hire workers year round, nor are engaged in agro-processing enterprises. (The LPA, on the other hand, covers agricultural enterprises that hire workers all year round or those which process agricultural products such as canning pineapples or processing fish in a factory.)

Workers covered by the Ministerial Regulation have the following protections:

1. The right to at least three days of holidays after working 180 days continuously. Authorized holidays are included in the 180 days. In case the work is discontinued, the counting of the working day will also stop unless there is proof of the employers' intention to avoid application of the Regulation.
2. Double the usual wage must be paid if the employer demands his worker to work during a holiday or to have holidays of less than three days.
3. Employees have a right to be paid sick leave of not over 15 days.
4. The employment of children less than 15 years old is prohibited. Children between 13-15 years old can be employed during school vacation but not to do hazardous work which may have a bad impact on health or work that prevents the proper development of children. Parents must give permission for such work.
5. Employer must provide clean drinking water.
6. In the case of employees staying with the employer, the employer must provide a clean and safe place for them.
7. The employer needs to provide other welfare benefits to his employees as required by the Director-General of the Department of Labour Protection and Welfare.
8. Covered agricultural workers receive certain rights under the LPA, mostly the same protection as home workers but with additional benefits such as rights to maternity leave, the exemption of pregnant women from dangerous work, and a prohibition on the termination of pregnant women. Maternity leave is provided to workers without pay.
9. Wages must be paid at least every 15 days, and wage deductions are prohibited, unless the employee agrees. No advance wage payment may be given for work to be done.
10. There is no requirement for a written agreement or contract.
11. In the case of subcontracting or contract farming, the principle contractor is held responsible for all workers in case the subcontractor fails to pay wages to its employees.

The OSH regulations in LPA (Regulation No. 103) are also applicable to agricultural workers covered by the Ministerial Regulation. Workers under the Ministerial Regulation are also eligible for the Workers Welfare Fund (Regulation No. 134).

Analysis of the Regulation

The Ministerial Regulation for agricultural workers is quite different from that for home workers. It was not designed to resolve issues arising from the nature of agricultural work, as was the case with home workers. With its focus on extending protection to agricultural enterprises excluded by the LPA, the Regulation has plainly targeted small-scale agricultural employers, and is not aimed at resolving more complex relational issues associated with the employment in the informal economy.

Consistent with self-employment, there is no standard wage set for agricultural workers. Yet workers are dependent on the employers for their means of making an income. Despite there being no clear definition of 'employer' in the Regulation, the burden to comply with it simply falls on small farmers who need to employ labour at certain times.

The Ministry of Labour organized a workshop on the Ministerial Regulations on 30 June 2005. Participating agricultural workers identified several problems and demands much in line with a view of them being ordinary employees entitled to benefits given to agricultural workers engaged by larger enterprises.

They included:

- having holidays for every 60 days of work since there is no crop that lasts for 180 days;
- having social security benefits with the accident compensation fund from the employers.
- changing the regulation so as not to allow the employer to lay off women because of pregnancy;
- increasing publicity given to the Ministerial Regulations.

There are two things that workers in the informal economy most desire:

- representatives of agricultural workers at the village level to look after their interests, in coordination with the village council and local authorities; and
- a guaranteed market price for agricultural products.

3. Informal Labour Network and Demand for Extension of the Law

The movement of Informal Labour Network (ILN) with the Foundation for Labour and Employment Promotion, the non-governmental organization (also called Homenet Thailand) working on informal labour rights, and the Working Group on Law finally and successfully pushed to have the 2003 Ministerial Regulations on Home Workers and the 2004 Ministerial Regulation for the Protection of Workers in the Agricultural Sector as the two first laws for informal workers; yet the limitations of those laws are still high. There is still lack of clarity about the definition of 'home worker' and the regulations cover only workers who are working with employer's raw materials and tools, and do not cover 'contracting farmers' in the case of agricultural workers. There are also important elements such as, for instance, unfair pay and access to the Social Security Fund (SSF), and the lack of effective implementation of ensuring compliance with the regulations.

ILN, Homenet Thailand, and their alliances see the needs and demands and continue to advocate for improvement of the Ministerial Regulations' implementation and law amendments.

1. Draft and advocate for the Labour Protection and Homemaker Promotion and Development Act

Based on the decent work principle ratified by the ILO Home Workers Convention No. 177 and Recommendation No. 184, and the fundamental rights of labour to eliminate all limitations that exist, the movement has developed a draft containing the following essential elements:

- Redefinition of home worker to include the family members who are assisting a home worker, and improvement of the definitions of employer or hirer, because some persons in the production line do not aim to earn monetarily from the business; and on the purposes of work distribution and occupational assistance and promotion. Definitions must also cover different patterns and types and contract of home work as well. Furthermore the draft stipulates:
- Wage payment administration based on the decent work principle. Its aim is that payment for the same decent work be re-classified and re-scaled to be the same or similar according to value and quantity.
- The concept and principle of informal labour and home worker promotion and development within the labour protection law. The concept of promotion and development must include access to information, technology, skills, credit loans, capital funds and organization development; thus home workers would be strengthened through their occupations and result in better work and life quality and security.
- Greater responsibility taken up by the employer's side on health and on a safer working environment, and on any sickness, disability and death caused from work, as well as prohibition of hazardous material and chemical substance delivery and preparation of personal protective equipment, as already indicated in the 2003 Ministerial Regulations on Home Workers.
- The establishment of two committees as national mechanisms, in order to work laws out at the policy level and supervise law enforcement, and a local committee to work on labour conflict and bargaining mechanism. The local committee should be composed of informal labour representatives, employers, attorneys, lawyers, academia, NGOs and related authorities.

Movement on the Act demanded

While the Informal Labour Network, IHomenet Thailand and its alliances have been drafting their demands for amendment of the ministerial legislations, the Ministry of Labour has its own draft as well. The difference is in the concept and major principle. The Ministry of Labour's draft still has unclear definitions of employer or hirer and pattern of work. There is no fair pay protection and promotion and development of home workers, and no labour bargaining or conflict mechanism. Thus ILN, Homenet Thailand and the Working Group on Law organized a series of exchange forums with the Ministry of Labour between November 2006 and March 2007.

In the meantime, Thailand's temporary Constitution of 2007 has stipulated that the submission of the new law to the National Council (NC) must go through three channels:

- the Ministry which authorized the draft law submits it to the Cabinet for acceptance in principle and the NC works on it before announcing the effective date and enforcement of the law which the Ministry of Labour has processed. The Cabinet accepts the law since 24 April 2007.
- At least 25 NC members propose the draft law to the NC for review and announce the effective date of the law.
- The Commission of Labour and Social Welfare submits the draft to the Parliament, which

is the channel that Homenet Thailand utilized through the Commission Chair, on 25 April 2007, for considering and effectiveness of the law.

After 21 May 2007, the Meeting of the Commission appointed a sub-committee to work on the Draft and it was agreed that Informal Labour Network representatives and Ministry of Labour representatives would work together to integrate and modify the two drafts by 1 August 2007. However the Network representatives and Homenet Thailand had a meeting with the Decree Committee considering the drafts and agreed to support the draft of ILN and Homenet on the decent work principle and confirmed their support to the Cabinet.

In the meantime, the Decree Committee and NC and all the law-issuing procedures have been stopped and suspended by the election law according to Thailand's temporary Constitution of 2007. ILN, Homenet and their alliances in the movement on informal labour law demand that the government must plan for further movement in the newly-elected Thai Parliament and possibly have the Ministry of Labour and the former Decree Committee in the process. They also demand citizens' rights under the new Constitution to advocate for the desired laws through a given procedure (i.e. notwithstanding the temporary suspension of law-issuing procedures under the 2007 temporary Constitution).

2. Recommendations on Contract Farmers

Co-mechanism to develop protection pattern for contract farmers

The 2004 Ministerial Regulations for the Protection of Workers in Agricultural Sector does not really extend to protecting contract farmers. Homenet Thailand has moved forward continuously proposing its demands and advocating the concepts in the amended law.

Following two meetings with the Labour Minister on 28 February and 18 March 2007, a working team was established composed of Ministry of Labour officials, contracting farmer representatives, academics, agricultural NGOs and Homenet Thailand representative to work on the amendments.

Proposal from Homenet Thailand and Alliances on Contract Farmers

The Contract Farmers Group (CFG) in the Network with Homenet Thailand and the Law Working Group analysed the labour relations in the contract system and found relations that fall outside the definition of employment. The relations provide for no supervision and control and involve two types of contracts: 1) hire to produce for the purpose of completing pieces of work and 2) advance trading for the purpose of ownership transferring. These processes are based on conditions and time agreement with limited bargaining power on the agricultural workers' side and no fair rules nor regulation from the state's law enforcers. Companies offer workers unfair contracts, written to make sure they absolutely controlled and assured any damage would be paid in any way by the farmer contractee. These contracts force, violate and limit the farmer contractee's rights and decision-making. Every single detail of the agreement is stipulated solely by the company and all risk, damage and unexpected burdens are the contracting farmers' responsibility. Moreover, some regulations and measures may have been written down as amended agreements and added to the contracting farmers' burden. The proposal of Homenet and alliances is a demand for a 'fair contract' under the state authorities' legal protection, providing for a fair relationship between contract farmers and business companies. Some details are:

- All companies holding contract farm business or similar must be registered under the law that could be under Ministry of Labour, Ministry of Agriculture, Ministry of Commerce or

- any states' appointed mechanisms.
- All contracts signed between two parties in these business must be registered by state authorities.
 - All contract agreements must include the price of the produce.
 - All contract farmers should be able to access necessary information, for instance, product price administration, risks and dangers of the production process and anticipated costs in the production process.
 - Unfair treatment and actions should have clear remedies, for instance, for termination in the middle of the contracting period, quotas cut without good reason or explanation, forcing a worker to produce only for one specific company, etc.
 - No black-listing or termination of the contract when a contract farmer demands rights protection.
 - Assign a mechanism for and have fair processes of conflict resolution, to be worked out by a board or committee composed of three parties:

These are the proposals to protect the rights of contract farmers, which need to be pushed to be effective in the law.

3. Demand for Extension of Social Security to Informal Labour

Extension of law proposed by Homenet Thailand

Homenet Thailand continues to demand that the law extension be fixed to include these following concepts:

1. Based on the fundamental principle of equal shares in all negative and positive parts of the same business, all informal labour from every occupational group should be included in the Social Security Scheme and their contribution to the Social Security Fund thus established should be rated based on income and they should be able to receive social protection and welfare in their worst times.
2. The state and employer must be responsible for contributing partially to the Social Security Fund, in addition to the worker.
3. Based on equal treatment and non-discrimination among labour, formal and informal, workers of all occupational categories working in the informal economy should be covered by the amendment of the Social Security Act. The social security system must cover all seven types of informal labour contingencies; sickness, disability (the two including work-related injuries and diseases), death, child birth, child care pension and unemployment. All these must be included in the compensation fund. The contribution rate of the worker must not be over five per cent of income.
4. Home workers, contract farmers and other informal labour groups who are challenged by the risks from having no social security, must be the first few groups that should be provided access to the social security system.
5. The Bureau of Social Security must design the administration of the Social Security Fund to be established, emphasizing participation of the informal workers as the true owners of the fund.
6. Bureau of Social Security, Ministry of Treasurer and concerned authorities must support community welfare as another social security system for informal labour and citizens.

Present situation of the extended law

Following the persistent activities of Homenet Thailand and its alliances, the Bureau of Social Security Scheme has prepared for the law extension since 2004 and set up two sub-committees

to work on the law extension; 1. A sub-committee for feasibility study on the extension of the social security law, and 2. A sub-committee for drafting the law extension, respectively. Both sub-committees have Homenet Thailand's representatives' participation. The sub-committee draft mainly concerns privileges, the rate of contribution to the SSS and opening of the draft to participation from all parts of the informal workers. The draft has been revised several times. Several issues in the draft include:

1. Voluntary entry to the SSS, which tends to create the risk that the only poorer economic status informal workers would see the importance of entering.
2. Only informal workers would send their contribution to the SSS but the state and employer would send none, and
3. In fact informal workers have the same risks as formal workers. But the Bureau of Social Security Scheme has prepared to implement provision of pensions in the form of financial management or savings.

The political changes in September 2006 opened a new opportunity for the second sub-committee to develop the latest draft as detailed:

1. Agree to recruit all informal workers into the formal SSS system on the principle of equal treatment and non-discrimination.
2. The contribution rate to SSS based on income, at the rate of about 4.5-5 per cent of the income and based on studies of estimated incomes of informal workers.
3. Contribution from the government.
4. The concept of compensation of earning deficit during sickness and maternity leave, which is a progressive concept at this stage.

There is worry about government budget allocation on the contribution, sustainability of the fund and the funding of administration and management. These lead to

1. Reluctance to protect in case of unemployment, and
2. The start of a pilot scheme on informal workers who are in better economic situations; a body of about six clearly defined groups, such as taxi driver cooperatives and the tour guide groups, for example.

Right now, with a relatively new government in office, the draft sub-committee cannot perform its duties. ILN is thus using this opportunity to revise its proposals and make them more concrete so that real implementation can be enabled after the new government has settled down.

4. Conclusion

It could be said that none of the major labour laws of Thailand – Labour Protection Act 1998, Labour Relation Act 1975, Workmen Compensation Act 1994, or Social Security Act 1990 – cover workers in the informal economy. They get stuck within the old-fashioned labour relation concepts, such as control and supervision and administration by employers, ownership of production inputs, i.e. tools, equipments and raw material, and the assumption that the purpose of the production is for wage payment. At present, the relationship has been shifted to other complicated forms to avoid responsibility and take advantage of the weaknesses and gaps in labour laws, which are outdated and exclude more than half of Thailand's labour from protection.

With their own awareness and demands to mutual help, these informal workers have set up their own groups and networks. They demand nothing more than the fundamental rights of labour. They have strong support from academia, labour law and legal aid organizations and individuals, NGOs and the ILO. The movement of labour protection alliances has brought about

great changes in the concept of labour protection in Thailand and in the progress towards pushing a new draft law.

However, the capacity of the state's own mechanisms is still limited. A new vision, concept and practice is required on the part of concerned authorities, i.e. the Ministry of Labour, Bureau of Social Security and Parliament. The question remains as to how a new amended law can be efficiently and effectively implemented. The ILN and its alliance must work harder in putting the new law into effect once it is passed.

REFERENCES

- Tajgman, D., Ed., (2006), *Extending Labour Law to All Workers: Promoting Decent Work. 2 in the Informal Economy in Cambodia, Thailand and Mongolia*, Bangkok: International Labour Office.
- Bundit Thanachaisethavut, ed. (2002). *Enforcement of the Labour Protection Law*. Bangkok: Arom Pongpangan Foundation - Labour Resource Centre (APFLRC) and American Centre for International Labor Solidarity (ACILS).
- _____ (2003). 'Comparative Studies on Workman's Compensation Fund and Social Security Fund.' Studies on Social Security Related Royal Decrees and Ministerial Regulations. Bangkok: APFLRC/ACILS.
- _____ (2003). 'Proposed Draft Labour Relation Law by Workers' Organisations in Thailand, APFLRC, Workers' Solidarity Committee and Federation of Electrical Appliance and Electronic in Thailand.'
- _____ (2003). 'Problem of Enforcement of Labour Laws under Globalisation.' Paper prepared for the Labour Group's Meeting during the 4th National Law Conference on Legal Measures Concerning FTA Negotiation. Held at the U.N. Convention Center, Bangkok, 15-16 September 2003.
- _____ (2005). *Thai Labour Movement in 2004*. Bangkok: APFLRC-Friedrich Ebert Stiftung (FES).
- Chalit Meesith (2003). 'Subcontracting and Impact on Law and Policy on Women Workers.' Paper presented during the Seminar on Textile and Garment Industry under the Quota System. 21 December 2003, Bangkok.
- Chalit Meesith and Sitthisak Samsri (2000). Preliminary Report on Labour Law and Home worker, HomeNet, supported by ILO.
- International Labour Organization (2003). *Decent Work and Informal Economy*. Bangkok, International Labour Office.
- National Economic and Social Development Board (2003). *Annual Report for 2003, Mid-Term, Ninth Economic and Social Development Plan, 2002-2006*. Bangkok: NESDB.
- Social Security Office (2005). Preparatory Documents for the Extension of Social Security to the Informal Sector.
- Institute for Health Research 'OTOP and Health of the Thai People' article in *Health Knowledge* (January 2005).

ENDNOTES

1. International Labour Organization, *Decent work. Report of the Director-General to the 87th Session of the International Labour Conference*. International Labour Office (Geneva, 1991).
2. Tajgman, D. Ed., (2006) *Extending Labour Law to All Workers: Promoting Decent Work in the Informal Economy in Cambodia, Thailand and Mongolia*, International Labour Office, Bangkok.
3. Article 6.
4. Article 38.
5. Domestic workers; government officials and regular employees of the central administration, provincial administration and local administration except for temporary employees; employees of foreign governments or international organizations; employees whose employers' office is in the country but being stationed abroad; teachers or headmasters of private schools under the Private School Law; students, nurse students, undergraduates, or apprentice doctors who are employees of schools, universities or hospitals; employees of Red Cross Society; employees of State Enterprises; employees of agriculture, forestry, fishing enterprises who are not employed all year and who are not engaged in other work; employees employed for temporary or seasonal work; employees of Chulaporn Research Institute; employers who are ordinary citizens, who employ workers in non-business ventures; vendor businesses.
6. Contributions falling delinquent are subject to a charge of 2 per cent per month.
7. Article 22 which states 'agricultural work, sea fishing, transport work or sea transportation, home-based work and other works stated in the royal decree will in the ministerial regulations provide the protection to workers in various cases different from this Act'.
8. The Ministry of Labour used the word 'home workers' because this ministerial regulation focuses on sub-contracted workers and excludes self-employed workers
9. 1. Date, month, year and location where contract is done 2. Name and surname, age, address of employer and employee 3. Workplace of employer and employee 4. Types of work 5. Date, month, year and location where work is contracted 6. Wage 7. Date, month, year and location where work completed is delivered 8. Date, month, year and location where wage is paid.
10. Such as safety equipment with the same standard as formal workers and providing employees with a safety manual which provides guidelines for the use of material or equipment to prevent accidents.
11. Article 1(a)(iii).
12. Article 1(c). Emphasis added.
13. Some of the information presented in this section is derived from the Workshop on Labour Protection for Workers in Informal Economy, Home Workers and Agricultural Workers, June 2005, in Khon Kaen province.

