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# Working paper

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## **Informality, employment contracts and extension of social insurance coverage**

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## *Summary*

*The paper reflects on the extension of social security coverage to informal workers, primarily from the perspective of a review of the existing literature. It focuses on, but is not restricted to, social insurance coverage, broadly understood. In this regard it also discusses the question to what extent the notion of employment contracts could be used and adjusted for the informal-work context to support the extension of coverage. Possibilities, modalities and opportunities for, and challenges and limitations in relation to, the extension of social security and, in particular, social insurance coverage to the various (broad) categories of informal workers are considered. This is done against the backdrop of the inadequacy of the current framework of social security coverage as it applies to most informal workers, and with reference, among others, to the regulatory and organizational framework.*

## **1. The insufficiency of the traditional social security concept**

It is estimated that only 5–10 per cent of the active population in sub-Saharan Africa and South Asia are covered by statutory social security schemes, and in general only 20 per cent of workers enjoy adequate social security coverage worldwide (Reynaud, 2002, p. 1). This is especially the case for those working in the informal sector.

It would appear that one of the reasons for this state of affairs has to do with the very concept of social security as this concept has found its way into national legal systems and policy frameworks, and largely also in international and regional instruments. Traditionally, the concept of social security, as is the case with social security schemes established in developing countries, has been associated with a relatively strict distinction between formal employment-based social insurance and poverty-related social assistance instruments (ILO, 1989, pp. 3–5; Pieters, 1993, p. 5). The first category would rarely be applicable to informal workers, while the latter may for all kinds of reasons not be available to the majority of these workers in the developing world.

Furthermore, the traditional risk categories indicated in the ILO definitions may be helpful in identifying more common life experiences and the situations to which human beings are generally exposed (such as retirement, sickness, unemployment, employment injuries and diseases and maternity). However, these definitions of social security are not best suited to extending coverage in the developing world to the informal sector as it prioritizes protection through "public measures", that is, state-regulated and formal forms of social security (Jutting, 1999, p. 5). It fails to take into consideration non-formal, and non-state regulated social security, which the majority of people in the informal sector rely on, as part of social security. The definition also implies that people have achieved an acceptable standard of living which needs to be protected. However, this does not apply to the majority of people employed within the informal sector in the developing world (Kaseke, 2005, p. 91).

Finally, the focus on risks or contingencies does not sufficiently address the need of social security to focus on an overarching primary goal – which in the developing world context relates to addressing and redressing poverty and exclusion (ISSA, 2008a, p. 4). This is, of course, particularly relevant for informal workers. Also, most social security systems in the developing world are mainly compensation-focused, thereby not giving effect to the principle that social security also has a preventive and remedial character (Berghman, 1991, pp. 18, 20; Pieters, 1993, pp. 2–4).

The implication of this narrow compensation focus is that there is little appreciation of the need of informal workers to be protected against risks arising in the work environment (such as occupational health and safety risks). Nor do they benefit from reskilling, should they, for example, lose a formal sector position and be forced to join the informal sector.

It is suggested that one should refrain from defining the concept of social security too narrowly, as this may cause the concept to be inappropriate for the informal sector context. This is in particular true of the African, Latin American and (most parts of the) Asian contexts, where poverty is endemic, where people are exposed to a range of risks not traditionally captured by the social security concept (e.g. droughts, calamities, natural disasters, HIV/AIDS), and where the focus is often on satisfying immediate needs rather than meeting long-term risks (see Devereux, 2006; Olivier, 2003a). Regard should be paid to the chronic forms of deprivation alongside the temporary adversity to which people living in developing countries are exposed (see Ahmad, 1991, p. 43).

## **2. Informal sector and informal economy**

### **2.1 Conceptualization**

The concept "informal sector" has its origins in a research paper by the ILO conducted in Kenya in 1972 (ILO, 1972). It has since gained much recognition in a variety of fields, including law, economics and developmental studies and evolved into the "informal economy". Reynaud (2002, p. 2) also emphasizes the difficulties in using the word "sector". He states that it can no longer be called a sector "since it covers all sectors and all categories of workers: wage earners, the self-employed, home workers and unpaid family workers, etc." Reynaud favours the phrase "informal economy" (see also ILO, 2001).

Both these phrases fail to fully encapsulate the nature of what they are explaining. Activities within the informal sector fall into a variety of sectors, often with no similarities, whilst "informal economy" fails to illustrate the significant grey areas between the informal and formal economy.

The ILO indicates that the notion of informal economy includes both enterprise and work relationships and describes the informal economy as such (Treblicock, 2005, p. 2; see also ILO, 2002). The 2002 International Labour Conference proposed the term "informal economy" in lieu of the "informal sector" to accommodate all economic activities that are in law or practice not covered or insufficiently covered by formal arrangements. The broadened expression, it was opined, takes account of the considerable diversity of workers and economic units, in different sectors of the economy and across rural and urban contexts. The Conference also highlighted that priority should be given to enabling transition to formality (ILO, 2008a, p. 7).

The more or less general consensus appears to emphasize that, from a legal perspective, informality encapsulates those activities falling *de facto* or *de jure* out of the reach of law (ILO, 2008a, p. 12). It is, therefore, also important to consider the attempts to distinguish between the informal sector and the informal worker. Kannan and Papola (2008, p. 323) state that "[informal] workers consist of those working in the unorganized enterprises or households, excluding regular workers with social security benefits, and the workers in the formal sector without any employment/social security benefits provided by the employers". This includes all those in the informal sector and those employed within the formal sector but without contracts, or with informal contracts. Informality is, therefore, not restricted to the informal sector.

## 2.2 Different ways of conceptualizing the informal sector

The term "informal sector" is not uniquely defined and lacks consensus among researchers and analysts, in particular as far as its conceptual and operational meaning is concerned (Zimmer and Höffer, 2009, p. 10). In India, the Central Statistical Organization of India uses the term interchangeably with that of "unorganized sector", which has been defined as "all unincorporated enterprises and household industries ... that are not regulated by law and which also do not maintain annual accounts or balance sheets" (Saini, 2008, p. 45).

In fact, it is sometimes maintained that the use of some form of formal accountancy is relevant for the informal sector debate. According to this approach, the formal sector makes use of modern accounting techniques, with employees receiving payslips –written accounts, in personal books through formal accountancy. Also, rather than considering the individual as part of the sector in which he or she is employed, the individual is considered in the sector relevant to his or her contract. Thus according to this approach the informal sector is conceptualized by individuals rather than enterprises (Bocquier, 2005, pp. 9–10). However, the broader definition adopted by the Fifteenth International Conference on Labour Statisticians (ICLS) conceptualizes the informal sector (also) with reference to enterprises (ILO, 2000b, p. 194).

To the extent that it is accepted that informality implies the absence or non-application of a regulatory (legal) framework, this in turn raises a range of fundamental challenges. For example, it is not clear to what extent legal regulation must be absent or not applied – in particular, the question arises whether a person would be deemed to be an informal economy worker if he or she is covered by, for example, tax and property laws, but not by labour and social security laws (Chen et al., 2002, pp. 13–15). Furthermore, adopting the coverage by law approach as the main criterion would have the consequence that certain categories of workers in a particular country, for example, domestic workers or own account workers involved in informal trade, could be deemed to be informal, while workers involved in similar regulated occupations in another country may be regarded as operating in the formal economy. All of this could, of course, have a rather skewed impact on developing and interpreting formality/informality statistics and associated responses.

## 2.3 Relationships between informal and formal sector: Continuum and fluidity

The formal and informal sectors have a complex relationship of ties that bind them together. This makes it difficult to consider them as two separate sectors or economies. Some individuals work in both the informal and formal sectors. It is estimated that in Romania in 1998, 65 per cent of the population pooled money earned from both the formal and informal economies (Parlevliet and Xenogiana, 2008, p. 44).

Informal and non-traditional employment can, therefore, include a wide variety of people. This raises two further interrelated considerations. The first is that the borderlines between formal and informal and between traditional and non-traditional have increasingly become fluid and blurred as formal employment has decreased worldwide, and as people tend to move out of formal into informal and non-traditional employment, and vice versa, more readily than in the past (Barrientos and Barrientos, 2002, pp. 18–19; ILO, 2008a, p. 15). There is, therefore, both a continuum and a fluidity or mobility between the formal and informal economy. People who work are often, and increasingly so, moving between formal economy wage employment and informal economy (wage and) non-wage employment. The second factor has to do with the phenomenon that people who work informally in non-wage employment or otherwise non-traditionally may nevertheless be bound in a network of

dependency relationships. And yet, in the absence of the existence of an identifiable employment relationship, they are often wholly excluded from labour law and social security coverage. This is reflected on in section 5.1 below.

### 3. Contextual framework

#### 3.1 Statistical overview

Worldwide there is a growth in non-traditional, and in particular informal employment, and a decline in standard forms of work. These forms of work are usually associated with increasing job insecurity and precarious conditions of work (Quinlan, 2003, pp. 2–3). Recent figures indicate the extent and growth in the rate of informal work (Labour Bulletin, 2005, p. 44) (table 9.1).

**Table 9.1** *Informal economy as a percentage of total GDP*

Region	1990	2003
Sub-Saharan Africa	30.0	39.0
South Asia	22.0	28.0
East Asia and Pacific	18.5	20.0
Latin America and Caribbean	29.0	38.0
Europe and Central Asia	33.0	37.0
Developing countries (excluding China)	28.0	36.0
Developed countries	10.0	13.0

*Source: Labour Bulletin (2005).*

Certain regions in Africa are particularly affected by the rise in informal employment. In the Southern African Development Community (SADC), informal employment tends to be as high as 90 per cent in several SADC countries (Fenwick and Kalula, 2005, p. 31). As noted in a recent study (Fenwick and Kalula, 2005, p. 14), across the SADC region, between 10 per cent and 20 per cent of the economically active population are engaged in the formal sector of the labour market, and a significant minority work in farming, typically in subsistence agriculture. National labour markets in South and southern Africa are deeply segmented and are generally characterized by the prevalence of and steep increase in the use of forms of atypical labour, and the informalization and casualization of labour (see generally Olivier, 2008a).

In sub-Saharan Africa generally, informal employment constitutes 72 per cent of all non-agricultural employment. Self-employment makes up 70 per cent of informal employment and 53 per cent of non-agricultural employment. Agricultural employment, whether waged or non-waged, makes up 64.7 per cent of all employment. The gender dimension of informal employment in sub-Saharan Africa is evident from the fact that 84 per cent of women non-agricultural workers are informally employed, as opposed to 63 per cent of male non-agricultural workers (ILO, 2008a, pp. 3–4). In Africa as a whole, the relationship between informal work in low-productivity environments and lowly paid positions is evident (ILO, 2008a, p. 3).

The figures for other parts of the world correspond with those for Africa quoted above. In India, a total of 423 million workers are engaged in the unorganized sector – 92 per cent of the total work-force. Unorganized workers consist of those working in unorganized enterprises or households, excluding regular workers with social security benefits, and the workers in the formal sector without any employment/social security benefits provided by the employers (Sankaran, 2008). In Asia, the size of the informal economy ranges from 45 per cent to 85 per

cent in different parts of the continent. The figure for Latin America is 55 per cent (Chen et al., 2002, p. 6).

The reasons for this state of affairs are varied. One of these relates to the contraction of the formal sector in many developing countries. The formal economy in these countries has been unable to create jobs and to absorb labour entrants (ILO, 2008a, p. 10). Another reason concerns the impact of structural adjustment programmes (SAPs), particularly in Africa (see generally Jamal, 1995; Mailafia, 1997; Fenwick and Kalula, 2005, pp. 22–23; ISSA, 2008, p. 3). A third reason has to do with the historic emphasis, developed in colonial times, on supporting exclusionary formal sector-led economic growth. This has led to the racially discriminatory marginalization and exclusion of the majority of the working population, in particular Africans, from participation in productive activities in the formal labour market (Mhone and Kalula, 2001).

Finally, certain social and demographic indicators explain an important part of the context, in particular the poverty context, applicable to many informal economy workers in Africa and southern Africa. On the African continent, poverty is one of the most distressing social risks that the countries in the region have to grapple with. On average, more than 50 per cent of the inhabitants of the continent live below the poverty line, which constitutes the highest percentage in all regions of the world. About 290 million Africans live in extreme poverty, i.e. on less than US\$1 per day (see also the analysis of the Economic Commission for Africa below); they have no access to clean water, sanitation or essential drugs and do not know how to read and write. Not only are high levels of income inequality prevalent, but there is also extensive non-income poverty, and 33 per cent of all people in sub-Saharan Africa are malnourished. Life expectancy is estimated at 46.5 years (UNDP, 2003, p. 245), and is affected by the prevalence of HIV and AIDS.

### **3.2 Trends in the informal economy/sector**

The informal sector constitutes between 25 per cent and 90 per cent of urban populations in the developing world. Traditional developmental theory suggested that the informal sector would diminish in size as economies in the developing world grew, with more people being employed in the informal sector. However, in the 1980s it became apparent that the informal sector in many developing countries had not shrunk, but rather grown, absorbing more and more people, with a trend towards the informalization of employment (see also Bailey, 2004, p. 11). One of the reasons for the informalization of employment is that the "formal sector enterprises respond to competitive pressure in resorting to mixed-mode labour arrangements in which observance of labour regulations for a number of workers is combined with the use of non-standard, atypical, irregular, precarious, etc. types of labour or various forms of sub-contracting" (Husmanns, 2001, p. 2). Generally speaking, the informal sector is attractive for a variety of reasons, often also for workers, mainly because of the characteristics of business within the sector (see ILO, 1972, p. 6).

Recent trends indicate that a dual phenomenon of informalization, consisting of two different processes, characterizes the changing nature of work in the labour market. These processes are called casualization and externalization. The former relates to the displacement of standard employment by temporary or part-time employment (or both). The latter refers to a process of economic restructuring in terms of which employment is regulated by a commercial contract rather than by a contract of employment (Benjamin, 2008a, p. 6). As remarked by Benjamin, both represent shifts from the norm of the standard employment relationship which is understood as being indefinite (permanent) and full-time employment, usually at a workplace controlled by the employer. He indicates that these processes have led to an informalization of work as employment is increasingly unregulated and workers are not

protected by labour law (and, one could add, social security) either because they are unable to enforce their rights or because they do not have the legal status of an employee.

### **3.3 Categorization of the informal sector**

To the extent that coverage in terms of existing labour law and social security legislation is restricted to the employment relationship, it is necessary to distinguish between those non-standard workers in wage employment and those involved in non-wage employment (Chen et al., 2002, p. 5). The latter category would often be excluded from statutory protection, as borne out by the discussion below. Furthermore, there are those that have an identifiable employer (contract workers, domestic servants, homeworkers, casual workers etc.), those that work for their own account (employers, the self-employed, small farmers, fishers) and those that work as part of a group or community (e.g. organized members of cooperatives or associations) (Reynaud, 2002, p. 7; see also ILO, 2000b; Hussmanns, 2004, pp. 5–6).

Finally, one also has to recognize, for practical purposes and for understanding the informal economy in developing countries, the difference between the self-employed in the professional sense of the word and those working in the informal economy. Professional self-employed workers often have ample means to provide for their own contributory (private) social security mechanisms. In a number of Western countries the self-employed so understood are either covered by universal social security schemes, general (contributory) schemes for the self-employed or categorical (contributory) schemes for the self-employed (Schoukens, 1994, p. 8; Fuchs, 1997, pp. 17–18, 26–27). Informal economy workers would include the wide range of people who are usually not professionally qualified and who invariably work atypically and informally, often as a survival strategy. Their involvement in the informal economy does not necessarily imply unregistered and tax-evading operations, although unregistered and even illegal activity may be true of some forms of informal work (Chen et al., 2002, p. 11). Furthermore, their ability to contribute to social insurance-based and to tax-based social assistance and universal arrangements is indeed limited.

Three matters are of particular importance when deciding on a framework for extending coverage to informal economy workers. Firstly, as indicated above, a broad distinction should be drawn between wage workers and non-wage workers. Secondly, the large measure of movement across sectors, and from wage to non-wage and vice versa, needs to be factored in when a framework for coverage extension is developed. Finally, and as appears from point 7.2 below, it may be possible and at times advisable to adopt a sectoral approach when rolling out coverage extension initiatives.

## **4. Social security coverage: Perspectives on the current context**

### **4.1 Domestic legal systems**

One of the core problems experienced with existing labour law and social security systems is that, subject to exception, they essentially cover those in the formal economy, who work within the framework of an identifiable employment relationship. In terms of its traditional scope, labour law, and so also labour law-related social insurance arrangements, is restricted to the employment relationship and does not cover autonomous or independent contractors (ILO, 2008a, p. 19).

It follows that the impact of labour law on informal (economy) work relationships appears to be severely restricted (see generally Olivier, 2008a; Fenwick and Kalula, 2005, p. 31). For

example, in South Africa statutory labour law protection is, as a rule, limited to the traditional employer–employee relationship, since only persons who satisfy the definition of "employee" as contained in the various laws are generally covered. Despite a fairly wide definition of who would qualify as employees in these laws, the courts have consistently held that independent contractors are excluded from their ambit. This protection is consequently not available to certain categories of non-standard employees, and in particular not to those who work informally, to the extent that no employer could be identified (Olivier, 1998; Olivier, 1999; Horwitz and Erskine, 1995, p. 45). This appears to be the general picture in other SADC countries too, although there have been some recent legislative and other attempts to widen the scope of coverage of labour laws, even in the developing world (see section 5.1 below). In South Africa, for example, domestic workers have incrementally been covered – even in some instances domestic workers who serve as independent contractors. See the South African domestic workers case study below.

The same, but to some extent more restricted picture emerges from social security laws in the developing world, as appears to be the case in southern Africa (see Olivier, 2004, pp. 34–35). In almost all the SADC countries social security legislation tends to be very categorical and exclusionary (even more than is the case with labour law), especially as far as coverage is concerned, in the sense that a few benefit, while large pockets of people generally and informal workers specifically are excluded from protection. Several devices are utilized to obtain this result. For example, much of the area of social insurance is purely formal employment-based, in the sense that one must be an employee (in the formal sector context) as defined in the relevant legislation in order to qualify as a contributor and, consequently, as primary beneficiary. In addition, for certain (in particular pension) purposes it may be required that one must have been a contributing member of a particular social insurance fund for quite some time in order to qualify for benefits. For example, in the case of pension coverage under the INSS system in Mozambique, it is required that one must have contributed for at least 120 months during the last 20 years in order to qualify for the pension. Somebody with fewer years of contributions (e.g. nine years) is accordingly excluded.

Also, the definition of "dependant" in the various social security laws is normally linked to the employee/contract of service concept, in the sense that coverage is extended only to dependants of deceased employees or persons who rendered services on the basis of a contract of employment. Finally, exclusion and marginalization in social security may sometimes be the result of the lack of a legal obligation to participate in a particular scheme or programme aimed at insuring workers against certain social risks.

However, some exceptions and qualifications do exist, as far as SADC countries are concerned. For example, the Mauritian social security system is for the most part residence- and not formal sector employment-based – for example, self-employed people may, under the terms of the National Pensions Act, join the public pension system. Namibia also has a partly residence-based system, which effectively broadens the basis of social protection. In some countries (for example, Namibia), informal sector workers are entitled to join particular social security schemes; similar developments are apparently being considered in, for example, Zambia. In Mozambique the position is that while informal economy workers are presently excluded from the social security system, separate institutions are being developed to provide for these workers.

In the area of social assistance a categorical approach is often adopted, in that categories of beneficiaries are specifically indicated as worthy of the protection of the State, at the expense of other (often equally vulnerable) categories of people who fall outside the protective net. There is, therefore, no universal coverage. In SADC, the mainly residence-based systems of Mauritius and, to a lesser extent Namibia, are notable exceptions.

Overall the effect of all of the above is that dealing with and managing the risks to which informal economy workers and their dependants are exposed, due to the absence of labour law and social security protection, are effectively shifted onto such workers and their families. They in turn are invariably unable to cope with these risks, maintain an adequate standard of living and rise above poverty (Canagarajah and Sethuraman, 2001, p. 19; Loewenson, 2001, p. 866). Furthermore, and in particular as a result of diminished workers' compensation coverage, there has been a cost shifting from dedicated workers' compensation schemes to general health-care and social security schemes, to the extent that these schemes provide coverage (Loewenson, 1998, p. 5; Quinlan, 2003, p. 16).

## 4.2 International social security standards

It has often been remarked that international labour and social security standards emanating from the ILO instruments generally apply to informal workers as well, also and in particular within the framework of the ILO's Decent Work Agenda (ILO, 2008a, p. 19; ILO, 2009, paras 55–82; Reynaud, 2002, p. 16). In fact, a few ILO Conventions and Recommendations have been developed specifically with particular informal sector groups in mind – for example, the Plantation Convention 110 of 1958, the Home Work Convention 177 of 1996, the Job Creation in Small and Medium-sized Enterprises Recommendation 189 of 1998, and the Part-Time Work Convention 175 of 1994.

And yet, several qualifications need to be heeded. Firstly, in many cases it remains possible for countries to use the flexibility clauses (i.e. the exemption clauses) contained in certain Conventions to withhold application of a Convention from particular groups on the basis of perceived difficulty in complying with the provisions of the Convention as regards those groups. The result is that small and medium-sized enterprises (SMEs) are often excluded in this way (ILO, 2008a, p. 14). There may be some contrary tendencies: for example, the recently released ILO report on *Decent work for domestic workers* indicates that these exemption clauses have rarely been used to exclude domestic workers from coverage (ILO, 2009, paras 74–82).

Secondly, while the social security Conventions may in theory apply to the informal sector/economy, it is clear from the earlier discussion in this paper (see section 3 above) that the conceptual framework relied upon in these instruments was not developed with the informal work context in mind. In fact, there is little indication in these instruments how the provisions thereof could conceptually, institutionally, structurally and operationally be rolled out to the informal sector/economy. Finally, the ratification record of many developing countries, in particular in Africa (see Olivier, 2008a, pp. 35–38) and Asia (Olivier, 2008b, pp. 380–382), of social security Conventions is alarmingly low, with specific reference to post-Second World War social security Conventions (see also point 7.3 below).

## 5. Utilizing the employment contract as basis for extended coverage?

In 2006 the International Labour Conference adopted the Employment Relationship Recommendation 198 of 2006. The Recommendation requires the adoption of measures to combat disguised employment relationships, that is, where other forms of contractual arrangements are used to hide the true legal status of the (employment) relationship (clause 4(b)). Measures should also be adopted to ensure protection to employed workers in relationships involving multiple parties (clause 4(c)) – such as a triangular relationship, for example, or a labour hiring arrangement. Of particular importance is the provision requiring member countries to ensure effective protection to workers especially affected by the

uncertainty as to the existence of an employment relationship, including workers in the informal economy (clause 5). Countries are encouraged to use measures such as legal presumptions to help determine the existence of an employment relationship, and to distinguish between being employed or self-employed (clause 11).

The provisions of this Recommendation are of particular importance to the debate on the extension of social security coverage to informal workers. This is so in view of the fact that social insurance coverage is often, particularly in Africa, based on the existence of an employment relationship.

However, there are important qualifications to the above. Firstly, the Recommendation is evidently not intended to cover all relationships where work is being performed – for example, self-employed workers as a category of workers distinct from employed workers (clauses 4(a) and 11(c)). Also, the Recommendation preserves other contract types entered into without the intention to disguise an employment relationship (e.g. true civil and commercial relationships) (clause 8). The Recommendation therefore has limited application.

Secondly, expanding the employment relationship notion for labour law purposes does not automatically imply that the same would be true for social security purposes. The reason is that a more restricted notion of employee or worker is often used for purposes of access to public social insurance institutions (see section 4.1 above).

Thirdly, in the absence of a deliberate statutory intervention to force the trappings or legal consequences of an employment relationship (e.g. in the form of labour and social security rights) on parties who intended a different kind of relationship, it is highly unlikely that courts or arbitrators would do the same. The traditional ambit and role of the employment relationship remain of a restricted nature.

In view of the above, would it, in the fourth instance, help to apply employment contracts outside the framework of the traditional employment relationship to support coverage extension of social insurance arrangements? Several caveats are relevant, however. Firstly, it is unlikely to achieve this result in the absence of a statutory framework providing for same. Secondly, courts tend to investigate the true nature of a relationship in order to determine whether an employment relationship or another kind of relationship exists. In fact, the normal position is that a written contract is as a rule not required to constitute an employment relationship or, for that matter, a different kind of relationship (ILO, 2009, paras 123–128). Therefore, on the one hand, merely entering into a written contract which calls a particular relationship an employment relationship will not necessarily have this effect in law. On the other hand, as is evident from, for example, the Swaziland case mentioned below, labour rights may be applicable to a relationship even if no contract exists.

Finally, it is important to note that progressive statutory adjustments in various jurisdictions in both developed and developing countries are increasingly extending the scope of application of labour law. In the process labour rights have been extended to a range of workers who are not employees in the strict sense of the word, but who otherwise work in a dependent or subordinate relationship. This may serve as a useful example and precedent for the extension in principle of social security rights too.

For example, in the case of some Caribbean countries, labour dependent contractors have been included in the protective framework of labour legislation (Barrientos and Barrientos, 2002, pp. 29–30; Taylor, 2003). In Tanzania, based on a similarly worded provision in section 230(3) of the UK Employment Rights Act, 1996, an employee is defined (in the Employment and Labour Relations Act, 2004) with reference not only to a contract of employment, but also any other contract under which the individual undertakes to work individually for the other

party to the contract and the other party is not a client or customer of any profession, business or undertaking carried on by the individual (see Benjamin, 2008b, pp. 12–13). In South Africa, an administrative capacity to regulate unprotected work was given to the Minister of Labour to apply provisions of all labour laws to persons other than employees (see section 83 of the Basic Conditions of Employment Act (BCEA) 75 of 1997; Benjamin, 2008b, pp. 3–4). In addition, a rebuttable presumption of employment has been introduced into some of the major South African labour laws (section 83A of the BCEA; section 200A of the LRA; Benjamin, 2008b, pp. 4–5). The presumption is triggered by a range of factors, at least one of which may be particularly relevant to the informal worker context. This is the notion of "economic dependence" (Benjamin, 2008b, pp. 3–7).

Finally, in Swaziland, the definition of "employee" extends the scope of the labour legislation to workers other than contractual employees. The Swaziland Industrial Relations Act 1 of 2000 defines an employee as "a person, whether or not the person is an employee at common law, who works for pay or other remuneration under a contract of service, or under any other arrangement involving control by, or sustained dependence for the provision of work upon, another person." "Arrangements", therefore, indicating control by or sustained dependence upon another person will be sufficient to trigger the protective labour rights contained in the legislation. A contract of employment is therefore not required (Benjamin, 2008b, pp. 10–11).

In his study on the scope of the employment relationship in southern African countries, Benjamin concludes that legislative responses have expanded the scope of labour law and assisted individuals to prove the existence of an employment relationship. This may be relevant when the extension of social security coverage is considered (Benjamin, 2008b, p. 21).

## **6. Towards developing a framework for extension<sup>2</sup>**

### **6.1 Conceptual adjustment**

Definitional or conceptual widening of coverage to include at least certain categories of informal economy workers is an important step to extend labour law and social security protection. This is particularly true for those informal work relationships where an identifiable employment relationship is present. Extending protection to these categories, such as domestic and seasonal workers, may prove to be less difficult than initially thought. The extension of unemployment insurance protection to domestic and seasonal workers in South Africa may prove the point. See the case study on extension of coverage to domestic workers in South Africa below, as well as the recently released comprehensive report of the ILO on domestic workers (ILO, 2009).

In work relationships of dependence it may not be easy to identify the real employer(s) or provider(s) of work, as a worker could be rendering services in a wide variety of dependent contexts and for different providers of work and/or suppliers.

Innovative recent attempts aimed at extending protection and including informal workers within the statutory framework of social security could also be of benefit (see, among others, Barrientos and Barrientos, 2002, p. 37; Horn, 2008, p. 1). As discussed in section 5 above, at the international level, the Employment Relationship Recommendation of 2006 of the ILO provides useful standards and guidelines to extend labour law protection to different categories of non-standard workers. It is suggested that this may be helpful for the extension of social security coverage as well to these workers.

Developed countries with their well-developed social security systems clearly set the trend as is evident from, for example, the position in some of the Australian state jurisdictions with regard to (among others):

- occupational health and safety (for example, sections 22 and 23 of the Occupational Safety and Health Act 101 of 1984 (Western Australia); section 10 of the Occupational Health and Safety Act 2000 (NSW) and section 23 of the Occupational Health and Safety Act 1985 (Vic); sections 24 and 30 of the Workplace Health and Safety Act 1995 (Qld) and section 23 of the Occupational Health, Safety and Welfare Act 1986 (SA)); and
- workers' compensation (for example, section 5 of the Workers' Compensation and Injury Management Act 86 of 1981 (Western Australia) contains an extended definition of "worker"; see also *Summit Homes v. Lucev* (1996) 16 WAR 566; BC9601264 and Guthrie, 2008, p. 1319. See further the definition of "worker" contained in section 3 of the Workers' Compensation Act 70 of 1987 (NSW); section 4 of the Workplace Injury Management Act 86 of 1998 (NSW); section 8 of the Accident Compensation Act 10191 of 1985 (Vic), and see also section 175 of the Workers' Compensation and Injury Management Act 86 of 1981 (WA) (with regard to extended liability imposed on a principal contracting with a contractor for the execution of any work by or under the contractor, in relation to employees of the contractor); *Hewitt v. Benale Pty Ltd* (2002) 27 WAR 91; [2002] WASCA 163; BC200203416; *Marsden v. Unimin Australia Ltd* BC200404087; [2004] WASCA 143 and Guthrie, 2008, p. 5367; see also section 10A of the Accident Compensation Act 10191 of 1985 (Vic)).

However, innovative approaches are also discernible in the developing country context, and in the comparable area of extension of labour law protection even in some of the SADC countries (see Benjamin, 2008b). In fact, it might help to build bridges between the protection of formal and informal work relationships, in particular when workers move across the divide, to adopt a redesigned notion of security that ensures the continuity of employment (and, one could add, social security) status during transition periods (Benjamin, 2008a, p. 9). Which social security rights should be extended in this way, based upon the introduction of statutorily redefined formulations, should be carefully considered.

As far as social security coverage of informal workers is concerned, in India, for example, the recently approved Unorganized Workers' Social Security Act, 2008 (Act 33 of 2008) has adopted a deliberately wide notion, firstly, of what is comprehended by the term "unorganized sector" and, secondly, of who is intended to be an employer and a worker for purposes of covering those embedded in a relationship of work in the informal economy. "Unorganized sector" means "an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten" (section 2(k)). It defines "employer" as "a person or an association of persons, who has engaged or employed an unorganized sector worker either directly or otherwise for remuneration" (section 2(a)). It attaches a specific meaning to "unorganized sector worker", and defines this term with reference to a distinction drawn between a home-based worker, self-employed worker and a wage worker (see sections 2(b) and (j) respectively). The 2008 version of the Act has widened the scope of the definition of "unorganized sector worker", by stipulating that an unorganized worker means "an unorganized sector worker and also includes workers in the organized sector not covered by the existing laws relating to social security" (new section 2(n)). Of particular importance is the definition of "wage worker", which evidently aims at including workers with little income who render services in a subcontracted capacity, who may work for more than one employer, and who may fall within a range of atypical work relationships (see section 2(m)).

In similar but perhaps less elaborated fashion, the Social Security Bill, 2005 of Tanzania defines the "informal sector" as the sector which includes workers who work informally and who do not work in terms of an employment contract or another contract contemplated in the definition of employee. A "self-employed person" is defined as a person who works for gain for him/herself. "Worker" includes a self-employed person and a worker in the informal sector (clause 3).

In dependency scenarios, it might be necessary to embark on a contractual tracking exercise to determine who the real employer is (or combination of employers) (Quinlan, 2003, pp. 2–3, 22). It has been suggested that the "real" employer or provider of work down (or perhaps up) the chain – i.e. the unit that has responsibility for the rights and protection of all workers in the chain – is the lead firm that outsources production, even if it is only a retail firm (Chen et al., 2002, p. 34).

In fact, introducing regulatory approaches that centre on the regulation of supply chains could go a long way to extend not only labour law, but also social security protection to informal workers. To quote Benjamin (2008a, p. 10):

These approaches are a response to the outsourcing of aspects of the work process in sectors such as the clothing industry to categories of workers who fall outside of the conventional definition of employment such as outworkers and home-workers as well as to the increasing use of unprotected "owner-drivers" to transport goods. This approach has been used in state level legislation within Australia. It has the potential to apply to any situations in which businesses utilise supply chains that include "non-employee" workers. Aspects of this approach include applying minimum employment standards to all workers in a supply chain and placing obligations on entities such as retailers, manufacturers and primary contactors to disclose information on their supply chains to interested groupings such as trade unions and inspectorates.

## 6.2 Institutional mechanisms

Innovative reform approaches in the form of alternative institutional arrangements, linked to appropriate regulatory responses, have also been adopted in recent years (on the need for this, see Barbone and Sanchez, 1999, pp. 20–21).

Historically public measures have been seen as the preferred method to ensure social security coverage, with specific reference to the dual framework of social insurance and social assistance. This simple classification and limited framework of measures are no longer sustainable in a developing country context, where the importance of the complementarity of a range of measures to effect more comprehensive coverage is recognized:

- (a) Hybrid models have increasingly been developed – such as insurance-based schemes topped up by government co-contribution (e.g. the Tanzanian community health insurance framework).
- (b) Sector-specific modalities of coverage have been developed – such as the informal economy scheme framework provided for in the Indian and Tanzanian context (with reference to the unorganized sector).
- (c) Special coverage arrangements are being introduced on an industry basis – such as the welfare funds in India, in terms of which a cess or levy is imposed on a particular industry to provide for social security cover for workers in that industry.
- (d) Recognition of bottom-up approaches – with particular reference to mutuality-based informal social security arrangements.
- (e) In many developing countries attempts are made to rely on micro-insurance to provide coverage. In some cases this has been successful; in many cases, however, this appears not to be a viable option, due to limited numbers of scheme members, small contributions, the profit motive of insurance providers, etc.

In particular, as far as those in non-traditional work and in the informal economy are concerned, several options are available and need to be considered. Experience from other countries suggests that it is possible to extend social security coverage to non-traditional and informal workers.

### **6.2.1 Variety and complementarity of extension mechanisms: The Indian experience**

Two broad approaches have been used in India, a country with 423 million informal workers, of whom 393 million are to be found in the unorganized sector (Unorganised sector in India, 2006, p. 1), namely, bottom-up and top-down approaches (Sankaran, 2008). A good example of top-down approaches, apart from the centrally funded social assistance schemes, is the introduction of welfare funds by the Government of India – at both the national and provincial (state) level; five such funds have been set up at national level by the Government of India. Central funds are administered through the Ministry of Labour for workers in certain occupations for whom no direct employer–employee relationship exists, such as beedi (hand-rolled cigarette) workers. These funds, which cover around 10 million workers in the unorganized sector, are funded from levies on employers and manufacturers. In the latter case, a tax (levy/cess) is imposed by state governments on the aggregate output of selected industries (e.g. the Beedi Welfare Fund is financed by a tax on beedis). In the case of building and construction work, a small levy/cess is collected on the basis of the construction project. The benefits provided by welfare funds include medical care, maternity benefits and assistance with children’s education, housing and water supply. A legislative framework for the welfare funds has also been developed (Unorganised sector in India, 2006, pp. 3–7).

Another example of a top-down approach is the introduction of social insurance schemes by central and state governments in India. These include schemes launched for the benefit of weaker sections of the working population through the Life Insurance Corporation and the General Insurance Corporation of India. Some of these schemes may cover accidental death and partial or total permanent disability due to accident. Contributions are paid by beneficiaries and by the Government of India (Unorganised sector in India, 2006, pp. 2–3).

More recently, in terms of the provisions of the Unorganized Workers’ Social Security Act, 2008 a particular arrangement in the form of dedicated schemes is foreseen for unorganized sector workers. The arrangement is envisaged to provide as a minimum pension ("old-age protection"), health benefits, maternity benefits, life and disability cover, and any other benefit as may be determined by the central Government (section 3(1)). Some provision is made for in-built flexibility in this regard: the central Government may "... formulate, from time to time, suitable welfare schemes for different sections of the unorganized sector workers" (section 3(1)). In addition, state governments may develop, from time to time, suitable welfare schemes for different sections of organized sector workers, relating to the following benefits and services: provident fund, employment injury benefit, housing, educational schemes for children, skill upgrading of workers, funeral assistance, and old-age homes (section 3(4)). Contributions for the central Government schemes come from beneficiaries (the workers), employers (where identifiable) and government (either the central Government alone, or partly the central and partly the State governments) (section 4(1)). Contributions for the State government schemes follow the same pattern, except that in this case the State government may seek financial assistance from the central Government (section 7(1)–(3)). Delivery of social security to these workers will apparently be done either through workers’ organizations or through other organizations, such as panchayat bodies, self-help groups and trade unions.

The interesting and exemplary experience of the Self-Employed Women's Association (SEWA) in India, is a good example of a bottom-up approach (see the SEWA case study below). SEWA became a registered union in 1972 in order to improve the welfare of women in the informal sector. The informal sector workers are divided into four categories, namely vendors, hawkers, home-based workers and labourers. SEWA provides a number of services for its members such as credit, training, child care, health care, pension and insurance. In order to provide these services SEWA has links with private insurance companies. The strength of SEWA is that it responds to the specific needs and priorities of the members and also responds to both immediate and future needs (Unorganised sector in India, 2006, p. 3).

As noted in a recent ILO publication (Gillion et al., 2000, p. 530), there is no one solution to the fundamental problem of extending social security coverage to non-traditional and informal economy workers. The first (theoretical) option would be to extend the social assistance system to as many as possible of those who are poor and vulnerable, including those who work informally.

As a second option, the pursuit of social justice ideals demands that coverage of existing social insurance schemes be extended to non-traditional and informal economy workers. However, as noted by the ILO, most of the existing social security schemes, at least in Africa, cannot easily be extended to the self-employed and the informal economy, because the threshold of entry in terms of their contribution and benefit structure is too high for most of those excluded and because the benefits provided are not consistent with the priorities of people living in poor circumstances whose social protection requirements are essentially short-term. Also, it needs to be determined whether the administrative capacity of the existing (public) social insurance schemes, if any such schemes are indeed in existence, is adequate to take on the task of extending coverage (Gillion et al., 2000, p. 530; Barbone and Sanchez, 1999, p. 32).

Ghana provides an illustration of a less than successful attempt to use an existing public fund to extend social security coverage to the informally employed. The Social Security and National Insurance Trust Fund (SSNIT) of Ghana covers the self-employed on a voluntary basis. Of its 942,000 active members (10 per cent of the working population) a few years ago, there were only 5,400 voluntary members in spite of the fact that those in the informal sector represent 70 per cent of the working population. Furthermore, problems are also experienced with extension of coverage in SADC countries where informal workers are required to pay a double contribution in the absence of an employer contribution. For example, in Namibia although the Social Security Act of 1994 provides for self-employed workers to voluntarily join the social security framework established in terms of the Act, uptake has been extremely low, in particular due to the inability of informal workers to pay a double contribution.

Tunisia, however, provides an example of how this option can be successfully implemented in the area (among others) of workers' compensation. In this country, on an experimental basis, contributions to their employment injury and diseases scheme were determined for small farmers, fishers, the employers of domestic workers and private individuals using labourers for a short period. The contribution was in the form of a lump sum and determined according to the size of the farm, the type of crop, type of fishing or the provisional duration of the work (Chaabane, 2002, p. 17). This is a result of the need to develop innovative ways to extend protection to non-traditional workers (see the case study on Tunisia below for further details). The Social Security Bill, 2005 (Tanzania) also makes provision for this possibility.

As a third option, the importance and potential use of existing informal social security arrangements have to be acknowledged. Mutuality- or self-organized group-based arrangements in particular offer real solutions to the dilemma of limited formal social security coverage (Mouton, 1975, p. 143). This does, however, require that these institutions and the role played by them be recognized and supported by governments. Economies of scale can be

achieved if proper links are developed between these informal arrangements and the formal social security system. There should therefore be a proper model aimed at developing an integrated approach towards formal and informal social security coverage (Olivier and Kaseke, 2004; Tostensen, 2004, p. 1). This may require a limited measure of formalization, in particular if government support were to be extended to these informal schemes.

However, it is doubtful whether the existing informal social security arrangements will be able to extend social security coverage to the bulk of the excluded non-traditional and informal economy workers. As a matter of general experience, these institutions, despite some noticeable exceptions (such as SEWA in India) reach only a fraction of the essentially unorganized informal economy, while their effectiveness, reach and sustainability are limited (Holzmann, 2002, part II).

Governments could consider, as a fourth option, the establishment and support (by way of, for example, a subsidy) of a public low-cost social security scheme as a strategy for enhancing coverage and social protection. The recently adopted unorganized sector workers' social security arrangement in India, referred to above, would be an example of such an approach.

The discussion above effectively also highlights a related area of innovative approaches, namely an increased role for governments and innovative funding options. As is evident from the preceding discussion, the welfare fund system in India falls outside the framework of a specific employer and employee relationship in as much as the resources are raised by the Government on a non-contributory basis: the delivery of welfare services is effected without linkage to the individual worker's contribution (Unorganised sector in India, 2006, pp. 3–4). Likewise, in terms of the structure foreseen in the Unorganized Workers' Social Security Act, 2008, the position is that contributions are forthcoming from the workers, employers (where identifiable) and central and/or state Government (in particular where employers are not identifiable).

Also, those for whom an employer is not forthcoming may not be able to sufficiently contribute on their own, let alone pay a double contribution, as is sometimes required by formal social insurance-based schemes when extending coverage. In this regard, additional funding mechanisms, such as government subsidies and/or a levy on the industry concerned, may be viable alternatives to explore.

### **6.3 The importance of a rights-based and standards approach**

As regards the third area of innovative approaches needed, namely the area of human rights, international standards and standard-setting, it has to be acknowledged that the absence of minimum labour and social security standards, accompanied by demands for greater labour flexibility and the competition for work, has undermined the social protection of informal economy workers (Quinlan, 2003, p. 17).

One of the important international instruments providing for the right to social security, also in relation to informal economy workers, is the UN International Covenant on Economic, Social and Cultural Rights (UNICESCR) of 1966. Article 9, which guarantees the right to social security, has recently been comprehensively commented on by the UN Committee on Economic, Social and Cultural Rights in its General Comment No. 19 (E/C.12/GC/19 of 4 February 2008 (adopted on 23 November 2007)). The Committee makes it clear that the social security system of a ratifying country should cover informal economy workers (paras 16, 28 and 34 of the General Comment). It defines the circumstances under which coverage for social risks such as occupational injuries, maternity and disability should be provided for in such a way as to include informal workers as well (see paras 17, 19 and 20 respectively). It is

expected of governments to respect and support social security schemes developed within the informal economy, such as micro-insurance schemes (para. 34). Despite limited financial capacity, countries should consider lower-cost and alternative schemes to provide for marginalized groups, and should ensure the progressive inclusion of informal economy workers (para. 51).

As indicated above (see section 4.2), the conceptual framework relied upon in ILO social security instruments was not developed with the informal work context in mind. In addition, many of the ILO Conventions relating to social security (including the "mother" Convention pertaining to social security, the ILO Social Security (Minimum Standards) Convention, 102 of 1952, which has been ratified by only 44 countries) are generally poorly ratified and weakly implemented (Loewenson, 2001, pp. 865–866).

From an international standard-setting perspective, it would appear that a careful reconceptualization and remodelling may be required to ensure that international norms are suited for the non-traditional and informal work environment, and are in fact extended to and applied in the various contexts. Some of the specialized non-traditional work and informal economy-focused ILO Conventions may have limited relevance in the area of social security. For example, while the ILO Convention on Home Work 177 of 1996 contains important provisions in the occupational health and safety context, the limited relevance of this Convention flows from the fact that the Convention has a weak ratification record (only five countries have thus far ratified this Convention), it does not address a range of social security contingencies, and is still premised on the existence of an employment relationship (Bezuidenhout et al., 2003, p. 20).

There is also the problem that social security standards do not (yet) form part of core international standards. While it is true that the Decent Work Agenda of the ILO applies to all workers, including those in non-traditional work and in the informal economy (Barrientos and Barrientos, 2002, p. 29), much more could and should be done to prioritize awareness of social security standards, perhaps as part of a targeted drive to encourage the ratification of a number of key social security Conventions, and along the lines of the successful attempt to persuade countries to ratify a number of core labour Conventions.

The truth is that the lack of appropriate labour and social security protection in the informal economy is a human rights issue and needs to be addressed as such (Chen et al., 2002, p. 13). Fundamental rights provisions in constitutions could contribute to the extension of social protection to vulnerable groups of society, including informal economy workers. The South African Constitution, for example, provides that everyone has the right to access to social security including, if they are unable to support themselves and their dependants, the right to appropriate social assistance (section 27(1) (c); see also the Constitutional Court judgment in *Khosa and others v. The Minister of Social Development and others*, *Mahlaule and others v. The Minister of Social Development and others* (2004) 6 BCLR 569 (CC) 573A).

Furthermore, regional instruments could also play an important role. For example, the Charter of Fundamental Social Rights in the SADC ("Social Charter") contains important provisions relating to the social protection of both workers and those who are not employed and regulates the position of workers (in terms of social protection) more comprehensively than those who do not work. Article 10 is the lead article in this regard, and stipulates as follows:

SADC member States shall create an enabling environment such that every worker in the SADC Region shall have a right to adequate social protection and shall, regardless of status and the type of employment, enjoy adequate social security benefits. Persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be able to receive sufficient resources and social assistance.

Further provisions are contained in the Code on Social Security in the SADC (approved by the SADC Ministers of Labour in 2007), in terms of which the right to social security is accorded to everyone (article 4(1)) and SADC member States are requested to provide compulsory coverage, either through public or private mechanisms or through a combination of both (see articles 5–6 and 12). The Code urges every member State to maintain its social security system at a satisfactory level in accordance with the provisions of the SADC Social Charter and at least equal to that required for ratification of the International Labour Organization (ILO) Convention Concerning Minimum Standards of Social Security No. 102 of 1952 (article 4(2) and (3)).

## 7. Conclusions and recommendations

7.1 It is suggested that the inappropriateness of the traditional social security concept constitutes one of the core reasons why it has been difficult to extend social security, including social insurance coverage, to those who work informally. For various reasons informal workers often find themselves outside the traditional social insurance and social assistance framework, particularly in the developing world. This has been the result of (among other factors):

- over-emphasis on the formal employment relationship as the basis for social insurance coverage;
- failure to develop collective responses to collective risks;
- a focus on covering future risks and neglect of the need to also cover, often as a priority, immediate risks;
- inability to sufficiently cover preventive and remedial dimensions of social security in policy and practice as regards informal economy workers;
- lack of understanding that people living in most developing countries are constantly exposed to huge covariate risks (such as natural disasters and calamities), including chronic deprivation alongside temporary adversity.

7.2 Until recently, attempts to widen the scope of social insurance coverage to include those who work informally and/or outside the confines of the traditional employer–employee relationship, have largely been unsatisfactory. Little attempt has been made to accommodate the specific context of informal and self-employed workers within the traditional social insurance framework by way of, for example, specialized arrangements. In fact, social insurance schemes often require those who work but do not have an identifiable employer, to contribute to these schemes both as an employer and employee. This is for various reasons an inappropriate response, not only because this is largely unaffordable.

7.3 And yet, there are increasingly indications that tailor-made solutions are being developed and tested in a range of developing countries and environments. These experiences are to be found in particular in middle-income developing countries, although some attempts are also being made to implement certain initiatives in low-income developing countries. One of these solutions, to be found in both low- and middle-income developing countries, relates to the extension of coverage beyond the sphere of the formal employment relationship. Other solutions include the effective extension of preventive measures on an insurance basis to informal workers – such as the successful health-care provisions in Thailand (see the case study below). Measures of a remedial character are also rolled out on a targeted basis to categories of informal workers – as is the case with large-scale skills training initiatives for domestic workers in South Africa.

7.4 Any policy approach focusing on the extension of coverage to informal workers, should take into account the blurring of the divide between informal and formal work (and because many workers constantly move between these two categories), and the prevalence, increasingly, of dependency relationships which fall outside the domain of the traditional employment relationship. In addition, policy responses should consider the ongoing structural developments in the changing nature of work. Almost everywhere informalization, casualization and externalization of work have been on the rise, as is the case with contractual restructuring of the relationship between worker and the provider of work.

7.5 The responses to these phenomena, emanating from both the developed and developing world, have been varied. They include the widening of the base for social insurance coverage by, for example, extending the scope of coverage to workers other than traditional employees (as is evident from the experience in a range of SADC and some Caribbean countries) and even including, where appropriate, independent contractors (as is the case with domestic workers in South Africa).

7.6 In this regard, the ILO Employment Relationship Recommendation 198 of 2006 has been particularly helpful, as this instrument sets out principles to deal with disguised and multiple party employment relationships and to extend protection to vulnerable workers whose employment status may be uncertain. However, the Recommendation is evidently not intended to cover all relationships where work is being performed. For example, it makes it clear that work performed on the basis of, for example, a genuine independent contract relationship, will not be treated as an employment relationship. The Recommendation therefore has limited application.

7.7 In fact, the position is that with some qualification, most of the ILO standard-setting instruments are not particularly helpful as regards the debate concerning the extension of social insurance coverage to informal economy workers. These instruments by and large use the formal sector employment relationship as their essential point of departure, and do not provide sufficient scope and direction for the development of tailor-made approaches targeted at the informal economy. In addition, the post-Second World War Conventions of the ILO have a weak ratification record in Africa and Asia in particular.

7.8 As regards the question whether and, if so, to what extent it would support the cause of coverage extension of social insurance instruments to apply employment contracts outside the framework of the traditional employment relationship, the following issues need to be noted:

7.8.1 Firstly, progressive statutory adjustments in various jurisdictions in both developed and developing countries (see the SADC and Caribbean examples referred to above) are increasingly extending the scope of application of labour law. In the process labour rights have been extended to a range of workers who are not employees in the strict sense of the word, but who otherwise work in a dependent or subordinate relationship. However, it has to be noted that expanding the employment relationship notion for labour law purposes does not automatically imply that the same would be true for social security purposes. Deliberate revision of the social security terminology in this regard needs to be effected as well.

7.8.2 Secondly, in the absence of deliberate statutory intervention to force the trappings or legal consequences of an employment relationship (e.g. in the form of labour and social security rights) on parties who intended a different kind of relationship, it is highly unlikely that courts or arbitrators would do the same.

7.8.3 Thirdly, courts and arbitrators tend to investigate the true nature of a relationship in order to determine whether an employment relationship or another kind of relationship exists. In fact, the normal position is that a written contract is as a rule not required to constitute an employment relationship or, for that matter, a different kind of relationship. Therefore, on the one hand, merely entering into a written contract which calls a particular relationship an employment relationship will not necessarily have this effect in law. On the other hand, in the wake of statutory provisions to this effect, labour rights may be applicable to a relationship even if no contract exists.

7.9 For these reasons, it is clear that progressive statutory adjustments are the preferred vehicle to ensure the extension of social insurance coverage to largely uncovered informal economy workers. This has been the experience in many countries discussed in the text and the specific examples provided, such as in Thailand, Tunisia, India (with particular reference to the recent 2008 legislation) and South Africa (with particular reference to the position of domestic workers).

7.10 Innovative recent attempts of a statutory nature aimed at extending protection and including informal workers could be of particular benefit. These statutory interventions employ a redesigned notion of workers and of security that ensures continuity of social security status, despite transition periods (e.g. moving between formal and informal work; or between periods of unemployment and employment). In India, for example, the recently approved Unorganized Workers' Social Security Act, 2008 has adopted a deliberately wide notion, firstly, of what is comprehended by the term "unorganized sector" and, secondly, of who is intended to be an employer and a worker for purposes of covering those embedded in a relationship of work in the informal economy.

7.11 Furthermore, in dependency scenarios, it might be necessary to embark on a contractual tracking exercise to determine who the real employer or provider of work is, and to make that person or institution responsible for employer-associated social security obligations. The experience of this kind of approach in, for example, Australia could evidently be of assistance to developing country contexts.

7.12 Explicit regulation of supply chains using contract-tracking mechanisms seems to be crucial in the attempt to widen coverage to those who work informally. Workplace regulation played a major role a century years ago when labour law and social security legislation was introduced. Some of the non-traditional work arrangements which were prevalent at that time are similar to those found today (such as temporary work). They are in need of proper regulation. A second wave of rigorous but innovative legislative drafting, accompanied by a fresh workplace registration drive, will assist in the endeavour to extend labour law and social security coverage to those who work non-traditionally and informally in the present-day context.

7.13 Extension of social security coverage to those who work informally should also recognize that a range of complementary institutional measures is needed to achieve meaningful extension of protection. Merely extending existing social insurance arrangements without adjusting the same to the special informal economy context has not proved to be particularly successful – as some of the experiences on the African continent have shown. Social assistance measures are, however, crucial, even if limited fiscal capacity to implement them exists, also (ideally) as a bridge towards achieving social insurance extension over the longer term (see the discussion on the South African old-age grant system). Successful informal and/or self-initiated arrangements are equally important, provided that these institutional frameworks are sufficiently sizeable and organized – the experience of SEWA in India provides one of the best examples in this regard. Special top-down approaches may also

be required, such as coverage arrangements introduced on an industry basis – for example, the welfare funds in India, in terms of which a cess or levy is imposed on a particular industry to provide for social security cover for workers in that industry.

7.14 Note should specifically be taken of the recent attempt in India to extend protection on a comprehensive basis to unorganized sector workers. The provisions of the Unorganized Workers' Social Security Act, 2008 foresee a particular arrangement in the form of dedicated schemes for unorganized sector workers in India. The arrangement is envisaged to provide a minimum range of benefits, but allows for extension of the range of benefits. Some provision is made for in-built flexibility in this regard: the central Government may "... formulate, from time to time, suitable welfare schemes for different sections of the unorganized sector workers". In addition, state governments may develop, from time to time, suitable welfare schemes for different sections of organized sector workers.

7.15 From the available evidence it is clear that wide-scale extension of coverage impacting effectively on the whole or most of the informal economy framework may be possible and even required – provided that the instruments to achieve the extension have been carefully selected and fine-tuned, the extension and the measures to achieve it have been thought through, consultative and public awareness approaches have been adopted, and the required institutional and fiscal capacity is existing. In this regard the recent Thai and Indian (legislative) experience discussed in this paper may be particularly useful.

7.16 However, sectoral approaches embedding tailor-made solutions, provisions and prescriptions for a particular group of workers in the informal economy could be crucial for successful extension of coverage. This can often only be done on a progressive basis, as the experience in Tunisia has indicated. However, successful extension requires that the affected group must be sufficiently sizeable and relatively homogeneous in terms of its characteristics, and that there must be a clear need for enhanced protection – as is evident from, for example, the South African domestic workers case study, the Indian welfare scheme arrangements, and the increasing coverage of informal economy groups in the Tunisian social security system. Even so, political will, policy determination and public awareness and persuasion, backed by consultative approaches and, where possible, some measure of international support, may be essential to the relative success of extending protection, as the examples provided in this paper have shown.

7.17 In addition, it might be necessary to develop specialized contribution modalities, eligibility criteria and benefit packages for the informal economy/sector as a whole or for particular sectors individually. As far as contributions are concerned, this would require that the limited ability of poor workers and of those who work intermittently has to be accommodated. Topping up small contributions of poor workers by way of government subsidies is crucial – see, for example, the recent Indian (legislative) experience, the extension of health insurance in Thailand, and the community health insurance system in Tanzania. In addition, as the Tunisian example indicates, it could be helpful to develop flexible income scales on the basis of which contributions are calculated. As far as benefit packages are concerned, it is important to consider adopting tailor-made packages, which provide for a minimum range and level of benefits for informal economy workers (this could be done on a sectoral basis). This applies to both state-initiated schemes and self-initiated group-based schemes – as is evident from the Indian examples. It might also be prudent to sequence the extension of benefit arrangements by prioritizing the extension of particular benefits (first). The extension of health insurance in Thailand and of certain benefit arrangements to domestic workers in South Africa serve as useful examples in this regard.

7.18 Finally, it is important to understand that informal economy workers also have a right to social security coverage, in terms of international human rights frameworks and,

increasingly, also in terms of constitutional protection available in a growing number of countries. This is an important element in the debate about extending social insurance coverage. However, as indicated above, the ILO standards framework has limited concrete impact in this regard. Perhaps of more importance – both legally and practically – is the protection embedded in the UN International Covenant on Economic, Social and Cultural Rights. This is the case for at least two reasons. Firstly, this UN instrument has been ratified extensively, also by countries in the developing world. Secondly, the right to social security, contained in Article 9 of the Covenant, has been comprehensively commented on by the UN Committee on Economic, Social and Cultural Rights in its (recent) General Comment No. 19. The Comment requires a ratifying country to cover informal economy workers (listing options and modalities in this regard), and expects governments to respect and support social security schemes developed within the informal economy, such as micro-insurance schemes. Despite limited financial capacity, countries should consider lower-cost and alternative schemes to provide for marginalized groups, and should ensure the progressive inclusion of informal economy workers, according to the Covenant.

## **Annex Case studies**

### **1. Extension of coverage: Domestic workers in South Africa**

Historically domestic workers were one of the most vulnerable categories of workers in South Africa. Excluded from labour law and social security protection they had no access to the labour rights which accrued to most other workers in South Africa; statutory protection in the form of minimum conditions of employment, dismissal protection and collective labour rights were not granted to them. They also had no minimum wage guarantee. Social security rights, in the form of unemployment insurance and workers' compensation entitlements, were not available to them. In practice they also had very little access to pension and health insurance coverage. The protection available under common law was minimal, and subject to contractual adjustment. Working in private households and employed by the female household head or via employment agencies as an integral part of the household implied that their relationship with their employer was essentially a status relationship. All of the above had clear gender and racial overtones, given the fact that by far the majority of the 1 million domestic workers in South Africa happen to be African (91 per cent) and female (Lund and Budlender, 2009).

All of this called for serious intervention. To date the intervention has had a dramatic impact, in particular on domestic workers' position in labour law. However, their coverage in social security terms remains limited, despite major improvements. Also, representation via trade unions remains problematic, given the particular nature of their work.

The intervention took both an international and domestic form. During the apartheid years the ILO identified domestic workers in South Africa as one of the vulnerable groups whose plight warranted intervention. Technical advice was therefore made available to help improve the position of domestic workers (ILO, 2009). Domestically, the first democratically elected government in South Africa prioritized the position of domestic workers, and introduced a range of measures aimed at changing their position in law and, as far as possible, in practice.

The adoption in 1995 of the Labour Relations Act drew no distinction between domestic workers and other workers. Domestic workers therefore for the first time enjoyed statutory protection as far as the exercise of individual and collective labour rights was concerned. They could sue for unfair dismissal and unfair discrimination, could lay claim to fair labour practices, and could invoke the provisions relating to freedom of association (i.e. they could

join a union of their choice) and, in principle, collective bargaining and, where applicable, the right to strike.

Similarly, in 1997, when the Basic Conditions of Employment Act was adopted, care was taken to ensure that domestic workers would be covered by most of the provisions of this Act – as long as they worked for at least 24 hours per month for an employer. The implication was that most of the legislative floor of minimum conditions of employment was extended to them, including the provisions relating to working time, overtime, annual leave, maternity leave and sick leave. Despite this, it was felt necessary, given the particular employment context of domestic workers, to regulate their position in a special instrument provided for by legislation. As a result, Sectoral Determination No. 7 was adopted in 2002. This instrument provides for wide-ranging and extensive, yet tailor-made protection, including forms of protection (as well as enhanced protection) not generally available to other workers in South Africa. For example, the Determination stipulates the payment of (an annually adjusted) minimum wage, which varies according to the number of hours worked per week, and which takes into account differentiated needs of urban and rural domestic workers. Longer periods of notice of termination of service also apply to them, than to other workers covered by the Act. Also, a domestic worker may only be required to be on standby if she or he agrees to this in writing, and on condition that the standby time is for a limited number of hours and occurs on a restricted number of occasions; moreover, the domestic worker must be compensated by way of an allowance which is payable or appropriate time off in the event that standby is required. Furthermore, in order to curb possible abuse of rental payment for accommodation provided or paid for by the employer, the Determination stipulates that not more than 10 per cent of the wage paid may be deducted for accommodation purposes. It is further required that the accommodation must meet certain minimum requirements of decency – it must be weatherproof; generally kept in good condition; and have at least one window, a door that can be locked, and a toilet and a bath or shower, or access to a bathroom. Finally, section 9(1) of Sectoral Determination 7 requires an employer to supply a detailed, written list of particulars to domestic workers when they start work. As noted in a recent ILO report, an annex to the legislation contains a sample of written particulars provided by the Department of Labour. Section 9.2 is particularly original, as it requires an employer to ensure that the domestic worker understands the written particulars by explaining them in a language the worker knows (ILO, 2009).

Of particular importance is the fact that protection has been extended to domestic workers who are not employees in the formal sense of the word – Section 31 of the Determination extends protection explicitly both to domestic workers, defined as employees, and to independent contractors who perform domestic work in a private household and who receive, or are entitled to receive, pay. This is a major breakthrough in extending labour law protection, as South African labour laws generally exclude independent contractors from their purview.

Other labour laws subsequently also extended protection to domestic workers. This is true of, for example, the legislation adopted in 1998, which prohibits discrimination in employment and provides for skills training.

The trend to extend protection has also been noticeable in the case of some, but not all, social security legislation. Of crucial importance is the fact that unemployment protection has been extended to domestic workers. The implication is that the benefits provided for by the relevant legislation, namely benefits in the event that the worker becomes unemployed as a result of termination of employment, sickness, maternity or adoption, have been made available to domestic workers as well. However, recognizing the particular difficulties of accommodating domestic workers within the framework of the re-enacted Unemployment Insurance Act of 2001, the legislature allowed a 12-month period for their inclusion. A special

committee was set up to advise the Minister of Labour regarding the terms of their inclusion. The result was the incorporation of special provisions in the Act, to allow for the coverage of domestic workers on a basis which takes into account their particular context. The following examples may be mentioned in particular. Firstly, in recognition of the fact that many domestic workers work for more than one employer, but contrary to the position of other workers who have more than one employer, provision has been made in the Unemployment Insurance Act that a domestic worker could in principle claim benefits even where she or he is partially employed – i.e. where she or he has lost employment with one employer, but still works for another. Secondly, and taking into account the personal nature of a domestic worker's employment relationship, the Act provides that a domestic worker is entitled to unemployment benefits in the case of the termination of the worker's contract of employment as a result of the death of the employer of that worker.

Finally, within the framework of skills development and related legislation, a comprehensive training project, entitled the Domestic Workers Skills Development Project, was launched in 2008. This project is financed by the National Skills Fund, and aims to train 27,000 domestic workers throughout South Africa over a three-year period. The training is overseen by one of the Sector Education and Training Authorities (SETA), namely the Services SETA, which has established a specific chamber for domestic services. Domestic workers so trained will receive formal recognition of their skills (ILO, 2009). The importance of this intervention has to be understood against the background of the education figures for domestic workers: more than one in ten (11 per cent) have no schooling at all; and the rest are distributed between some primary schooling (35 per cent) and some secondary schooling (53 per cent) (Lund and Budlender, 2009).

The largely positive impact of the new arrangements sketched above has been impressive. As noted by the ILO (ILO, 2009, p. 41):

However, a gender-disaggregated 2005 study of the effect of minimum wages on the employment and earnings of South Africa's domestic workers found that real hourly wages, average monthly earnings and total earnings of both male and female domestic workers had risen since the minimum wage regulations came into force. That said, as of September 2004 approximately 58% of domestic workers were still earning less than the regulations stipulated. While there was a marginal increase in growth in employment for men, for women total hours worked per week and overall employment had fallen. Minimum wages may have reduced overall poverty somewhat for domestic workers.

Also, the Sectoral Determination, which requires that particulars of employment must be made available to domestic workers, has had the effect that, according to the 2007 Labour Force Survey, "36 % of domestic workers said they had a written contract: a half of all the men, and a third of the women. This was a sharp increase on the figure for 2004, which was 25%: 19% of the men and 27% of the women domestic workers ... This increase almost certainly reflects the impact of the sectoral determination" (Lund and Budlender, 2009, p. 10)

One of the important elements of the relative success of the extension of coverage to domestic workers has been the level of public awareness of the expanding rights framework, and willingness to comply and make use of the mechanisms created by the relevant legislation. For example, it has been noted that in a recent research report analysing 873 arbitration awards sampled from unfair dismissal and labour practice cases for the years 2003–05, it was found that, while domestic workers constituted 8.7 per cent of the workforce, they accounted for 12.1 per cent of referrals to the adjudicating institution, called the Commission for Conciliation, Mediation and Arbitration (CCMA) (ILO, 2009).

Perhaps one of the most dramatic indications of the level of public awareness, and of compliance, has been the registration of domestic workers once the Unemployment Insurance Act had been extended to them. Within a short space of time, by April 2003, some 579,000

employers had registered with the Fund (Lund and Budlender, 2009). In fact, extensive use has been made of the benefits available under the Unemployment Insurance Fund (Samson, 2009, p. 2):

From 2003 to 2006 over half a million domestic workers registered with the Unemployment Insurance Fund and approximately 15 per cent of these have actually received benefits. By 2008, the number of registered workers reached 633,000 employed by 556,000 employers. Over 324,000 domestic workers have actually received benefits.

However, the quest for coverage extension in the social security area has not yet been fully addressed. For example, the main law providing for compensation for occupational injuries and diseases still excludes domestic workers from its scope of application. The implication is that domestic workers are placed in the untenable position to sue employers directly, and only if fault on the part of the employer could be proved, in the event of a work-related injury or disease. Also, and due to the lack of public/national retirement and health insurance arrangements in South Africa, most domestic workers are effectively outside the framework of contributory social insurance arrangements in these areas. For example, private contributory retirement arrangements cover a mere 12 per cent of domestic workers in South Africa (Lund and Budlender, 2009). Much more can be done to improve their plight as far as these issues are concerned – even if it is true that domestic workers can, in principle, access the social assistance-based older persons grant upon retirement (see the case study below for a discussion on social assistance-based pension payments in South Africa). Arrangements in these areas would have to be regulated and imposed, as it is unlikely that collective bargaining could be used as an effective tool to obtain such benefits for domestic workers, in view of the problems associated with organizing domestic workers on a national scale (see Lund and Budlender, 2009).

Several lessons can be learnt from the South African experience of extending labour law and social security coverage to domestic workers.

- Firstly, a sectoral approach embedding tailor-made solutions, provisions and prescriptions for a particular group of workers in the informal economy could be crucial for successful extension of coverage. This is particularly the case where the group is sizeable, relatively homogeneous in terms of its characteristics, and where there is a clear need for enhanced protection. The special arrangements contained in the unemployment insurance legislation and the Sectoral Determination, as well as targeted interventions, such as the comprehensive rolling out of skills training to domestic workers, are indicative of this.
- Secondly, specialized arrangements would need to be contained in a regulated framework and imposed from above, where the possibility for achieving extended coverage through the normal mechanisms of collective bargaining is minuscule.
- Thirdly, the reality of the informal economy is such that many workers do not work within the strict confines of the traditional employment relationship. It is, therefore, necessary to extend protection by legislative means to workers who do the same or similar work, but within the framework of a different relationship, such as being independent contractors.
- Fourthly, the complementarity of the range of measures adopted plays an important role in ensuring that effective extension of coverage and protection is taking place. It is significant that, in the South African context, several interrelated measures were adopted in the space of a few years which, together, contributed to dramatically changing the status of domestic workers in law and, increasingly, in practice.
- Fifthly, political will, policy determination and public awareness, backed by some measure of international support, have been central to the relative success of extending protection to domestic workers in South Africa.

- Finally, policy-makers, researchers and advocates need to be vigilant in their effort to take the extension of coverage of informal economy workers to remaining areas of exclusion and marginalization. It is clear that much still needs to be done to extend protection of domestic workers in South Africa to vast areas of the social security domain – in particular workers' compensation, contributory retirement provision and health insurance. An understanding of the context – such as the absence of meaningful collective bargaining structures – would have to inform the kind of measures that need to be adopted to ensure extension of coverage to these remaining areas of exclusion and marginalization.

## 2. Thailand: Extending health cover

The cost of health care and health-care insurance is of critical importance to those working in the informal sector. In the absence of adequate levels of health cover, serious illness and the costs related with this can cause catastrophic financial outcomes when an individual or household is forced to spend a large sum of their income on medical costs, meaning that money must be diverted from normal payments in the short or medium term and assets that are owned by the payee can be put at risk. This can result in the family being plunged into poverty or pushed even further into poverty. This is sometimes called the "medical poverty trap". The very poor and those employed in the informal sector are most at risk from this trend due to their limited cash supplies, high costs of medical services and low coverage of medical insurance within this group.

After a number of years of experimenting with different approaches of coverage extension, Thailand took bold steps in 2001/2002 and was successful in extending coverage to 100 per cent of its population. Instead of focusing on extension to the poor, as was the paradigm in the past, Thailand focused on universal coverage, irrespective of the covered population's socio-economic status, and irrespective of the usual formal sector versus informal sector categorizations. This new approach has succeeded in covering the informal sector and the very poor in Thailand who have traditionally faced a double burden when it comes to health care with millions of informal workers and their families not having medical insurance and the poor having to pay proportionally more of their income for health care.

Before the implementation of universal health care, Thailand had four main public health schemes. The first was the Civil Servants Medical Benefit Scheme (CSMBS) which provided subsidized health care to Government officials and their dependants and state enterprise employees and their dependants. The second was the Social Security Scheme (SSS) which was a contributory scheme covering private employees in the non-agriculture sector. The third was the Low Income Card Scheme which was established in 1970, providing free care to low-income families, elderly, people with disabilities and children under 12. The fourth scheme was the Voluntary Health Card Scheme which had been introduced in the 1980s and was funded by equal payments between the Ministry of Public Health and the household. These funds successfully covered approximately 70 per cent of the population in 2000 (Somkotra and Lagrada, 2008, p. 2028).

With the introduction of universal health care in 2001, everyone that was not covered by either the CSMBS or the SSS was registered in the Gold Card Scheme based on house registration. The Gold Card Scheme allowed its members to get medical treatment in the region in which they were registered for a nominal fee of 30 baht (US\$0.85), with the rest of the costs being subsidized from general revenue. The 30-baht co-payment was abolished in 2006 as a sign of good will from the military regime that came into power through a coup that year. Those who are registered are required to attend the hospital or health centre for which they are registered and are required to show their gold card and an identification card when

seeking treatment. Higher level health care is available via a referral from a registered primary care giver, although emergency care can take place at any location.

The original plan for extension was to merge the four existing funds to create a universal health-care fund. This was met with resistance which resulted in the Government pooling the Ministry of Public Health's budgets "for public hospitals, other health facilities, and the low income and voluntary health card schemes and providing some additional money" (Towse et al., p. 103) to finance the Gold Card Scheme. This could all be done without changing legislation and meant that the Gold Card Scheme could be implemented while legislation was written. New legislation was passed in 2002 which created institutions to regulate the payments and quality of medical care provided. The CSMBS and SSS were retained but placed under the National Health Security Office which controls the Gold Card Scheme, allowing the three schemes to be pulled together should there be political will in the future.

The implementation of the Gold Card Scheme has been successful at extending health-care coverage to those in the informal sector and the very poor. It is estimated that by 2004 coverage had been extended to 18.5 million previously uninsured people and some estimates suggests 23.3 per cent growth in the percentage of the population covered, from 71 per cent in 2001 to 94.3 per cent in 2004 (Coronini-Cronberg et al., 2007). The Gold Card Scheme was very successful at extending coverage while maintaining coverage to those who were previously insured by other schemes. The Thai Government spent 68.3 billion baht on the three health-care schemes (CSMBS, SSS and Gold Card) in 2003 resulting in 6 per cent of total government spending, 59 per cent of which was spent on the Gold Card Scheme (Chandoevrit, 2005, p. 14). The incidence and effects of out-of-pocket payments on health care by the poor, resulting in financial catastrophe, have been greatly reduced by the Gold Card Scheme. The out-of-pocket costs of health care for the poor have decreased significantly since the introduction of the scheme despite the use of health care going up (Somkotra and Lagrada, 2008). This is in direct contrast to the situation before the scheme was introduced, with high costs being paid for limited use of health care.

There are some lessons to be learnt from the successful coverage extension in Thailand. The first is that there was massive political will for the extension of health care to the informal sector. It was on the back of reformist policies, such as the extension of health care, that the Thai Rak Thai party came into power in 2001, and they commenced with the implementation of the Gold Card Scheme three months after being elected. The changes to the medical system were also supported by a group of reformers within the Ministry of Public Health, meaning that the political conviction and social contract were in place for the changes (Hughes and Leethongdee, 2007, p. 1002).

Secondly, the low costs paid by the users meant that there was no resistance from members of the informal sector or the very poor. When South Korea (Kwon, 2002) expanded its health-care scheme to cover the informal sector, the Government originally met with resistance due to the level and design of contribution, resulting in the Government being forced to compromise and rearrange the scheme. This was not the case in Thailand as the new scheme does not require a large contribution from the users.

Thirdly, much of the infrastructure on the supply side was already in place for the implementation of the Gold Card Scheme. The administration systems in Thailand were efficient enough to register about 45 million people for the scheme within four months, and although most of the hospitals in Thailand are concentrated in urban areas, successive governments have expanded community hospitals and primary care infrastructure in most districts of the country (Towse et al., 2004, pp. 103–104). The Gold Card Scheme has departed from previous health schemes which were hospital-dominated, to focus instead on primary health-care facilities. This meant that, although the quality of care might be low in some areas,

the infrastructure was already available, meaning that the implementation of the scheme did not require huge sums of investment to build more hospitals and health centres. The supply side of extension had already been achieved which meant that the rearrangement of the financing structure was the most important aspect to address. The technical functioning of the three schemes (Gold Card, SSS and CSMBS) is based heavily on the use of information technology (IT) with hospital bills processed online between hospitals and the National Health Service Organization headquarters. The IT used was bought from the SAP so that substantial amounts were invested in hardware and software, and in training of staff.

Fourthly, an important aspect of funding in Thai health care was to pay capitation directly to clinics and hospitals that registered to treat patients. This has meant that access to health care for those excluded prior to coverage extension has not been limited and it has also ensured that funding goes directly to the facilities that have the most patients. This means that the facilities are willing to sign up patients, and have the necessary resources and staff to treat them. It has also meant that the scheme thus far has not been tainted by "under the counter" payments as has often happened when health care has been extended in this way (Damrongplasit and Melnick, 2009).

Fifthly, despite its appearance of being "big bang" health extension, the Gold Card Scheme had been well planned and thought through (Hughes and Leethongdee, 2007, p. 1002). Health-care extension had been debated in parliament for years, and it had constantly been on the political agenda. The previous low-income card health care scheme had provided plenty of experience in resource allocation, with Thailand also having experience at managing insurance schemes (Towse et al., 2004, p. 104).

### **3. Extension of coverage: Adopting inclusive approaches in Tunisia**

When attempting to integrate self-employed workers into statutory pension insurance programmes, governments are often faced with a variety of difficulties. These include the reluctance of the self-employed to pay "twice" for social insurance coverage, e.g. the employer's and worker's contributions (van Ginneken, 2003, p. 286) and a lack of understanding concerning the importance of social security and how the system works. Tunisia has employed an innovative gradualist approach that has achieved high levels of social security coverage, especially within the informal sector, by addressing these two issues. In 1996, the country implemented a social security system which combined proper enforcement with the creation of a more accurate income estimation system for the self-employed (Chaabane, 2002). These two aspects, combined with education programmes, has seen high levels of growth in coverage, with 80 per cent of Tunisia's employed population covered by some form of social security in 1999, in comparison to just 60 per cent ten years earlier. Coverage has been extended for health care, old-age pensions, maternity and employment injury. The expansion of social security in Tunisia has been successful at targeting large portions of the informal sector, including craftspeople, petty traders and small farmers, although levels of coverage still remain low in these industries in comparison to other industries.

The first part of the approach saw changes to the social security system, with new legislation enacted in 1995 which unified the two existing social security schemes – one for self-employed agricultural workers and one for self-employed non-agricultural workers. The two schemes had previously been differentiated by the scope and the amounts of benefits, the level of contribution rate and the basis taken for calculating contributions (Chaabane, 2002, p. 16). The unification of the two schemes led to an increase in the amount of agricultural self-employed and an increase in the scope and benefits of the scheme. The second change to the

system was the extension of the bracket on which the flat-rate income on contributions was calculated (Chaabane, 2002, p. 16). To coincide with this, efforts were made to avoid minimal contributions by the self-employed based on the lowest income brackets. A realistic income scale was introduced which determines the lowest income bracket relevant to the occupation of the insured person (physician, architect, shopkeeper etc.) and the size of the firm or farm (Chaabane, 2002, p. 17). Through the application of this scale, each insured person must contribute equal to the bracket employed on the scale, unless they can prove that their real income is lower, while they are free to contribute on a higher scale. These changes to the social security system had a positive influence which resulted in coverage extension.

The changes to the social security system in Tunisia have also coincided with a variety of other processes which have helped the changes in the system to be embraced by the working public. These processes have included the Government, along with employers and workers' associations, conducting campaigns to raise awareness of and explain the new set-up and the Government taking the initiative for the scheme but regularly consulting representatives of the sectors that coverage was being extended to. Such education and consultation is especially important in the informal sector where workers are often more concerned with immediate needs than planning and preparing for the future. Educational and promotional programmes have also coincided with a change in attitude by many Tunisians which has seen them embrace income protection for old age, and protection against illness as a priority. This change in attitude is born out of rising medical costs, an educational role played by trade unions and the Government, and positive experiences of the benefits of social security. These aspects have combined to legitimize social security. The new measures combined with the awareness and education campaigns led to almost 70,000 new affiliations in 1996 and 1997 alone.

The reforms to the social security system have not been successful in extending coverage to everyone in the informal sector. Whilst many in the informal sector, including casual and seasonal workers; domestic helpers and workers on development sites, do not have social security they are still covered regarding "compensation for industrial injury and occupational diseases" (Chaabane, 2002, p. 11). This leaves home helpers and the unemployed without any form of social security coverage. It should be emphasized that the challenges of extending coverage to these groups are immense both in terms of size and practicality; however, Tunisia is looking at ways to extend social security coverage to the entire working population. An adapted system was also not successful at achieving high levels of coverage of fishers. There have also been lower levels of social security extension in rural areas due to the difficulties of administering the system in rural zones and fishing ports.

It is certainly possible to apply the innovative approach of the Tunisian experience to other social security institutions. The employment of a realistic income scale can be implemented elsewhere; however a strong education and consultation programme would also be needed. In the past, certain quarters of the Tunisian work-force had been reluctant to fully embrace social security for a variety of reasons (Mouelhi, 1990), but the education programmes and societal changes in the perceptions towards social security meant that changes to the system were embraced more readily. It appears that the Tunisian experience suggests that the application of social security can only be successful if accompanied by programmes that educate workers about the new system and also encourage them to embrace it. This should take place alongside a consultative approach. Social security in Tunisia has traditionally been the sphere of the Government (Mouelhi, 1990) but pressure for this initiative was not placed on the Tunisian Government by the Tunisian population, but rather it was encouraged by the Tunisian Government itself, and implemented along with strong education programmes which encouraged previously reluctant workers to accept it. The size of the contributory payments is also important as these were small enough to be affordable, and also flexible if it could be shown that the contributor was earning lower than the base income for the particular type of

job. The consolidation of the two insurance schemes for the self-employed into one and the subsequent positive results illustrates that groups within the same sector should not be too small as this can restrict the scope and level of benefits available, as well as appearing unattractive for potential members. The Tunisian example illustrates the complexities of extending coverage to the informal sector suggesting that it is necessary to try to implement systems which are specific to the needs of the targeted group. The viability of this extension approach to other lower-income developing countries may be less apparent. It is important to note that Tunisia is a middle-income developing country and thus had the capacity to manage this type of extension.

#### **4. Micro-insurance: SEWA in India**

Women working in the informal sector are often invisible, unrecognized and unaccounted for. They face poverty, instability and vulnerability and have traditionally lacked representation, and often do not earn enough to afford social security of any form. They are caught up in a cycle of vulnerability and risk and are severely constrained in being able to cover this vulnerability and minimize the risks. In order to address the lack of representation and invisibility, a union called the Self-Employed Women's Association (SEWA) was founded in Gujarat province in India in 1972. It consists of mainly self-employed women working in the informal sector who are engaged in activities such as home-based work, door-to-door sales and small-scale commerce. The example of SEWA as a trade union is in many ways unique to the Indian environment. In many countries a trade union can only register if it represents workers in a traditional employee-employer relationship. This means that in many countries workers in the informal sector cannot be represented by a trade union. SEWA is a non-state, non-profit contributory organization which represents the interests of over 1 million women in the informal sector. The Association has two main goals: the first is to organize women to gain full employment security – including job security, income security and social security – and the second is to "make [the members] individually and collectively self-reliant, economically independent and capable of making their own decisions" (ILO, 2008b, p. 2).

Seeing the need for social security and social insurance amongst the women they represent, SEWA set up Vimo SEWA (SEWA insurance) as a separate cooperative unit in 1992, offering social insurance to all women and their families without age limit working in the informal sector. SEWA's Integrated Social Security Scheme covers health care (with a small maternity care component), life insurance in the form of both death and invalidity and insurance against the loss or deterioration of work equipment or the home (Reynaud, 2002, p. 9). The inclusion of insurance for work equipment is an important feature as workers in the informal sector are dependent on their tools for their income, and struggle to afford replacement tools if theirs are stolen or damaged. Members pay an annual premium which is then passed on to a formal sector insurance company which takes most of the risk, although this was not the case from 1994 to 2000. Members also have the option of making a one-off payment into a SEWA bank account with the interest being used as the yearly insurance premium.

In 2007, the highest form of coverage cost a premium of Indian rupees (INR) 275 (US\$5.40) with the cheapest coverage costing INR 125 (US\$2.50). This is topped up by Life Insurance Corporation of India and from the interest on a revolving fund (Chen et al., 2002, p. 48). The SEWA health insurance scheme does not make use of one health provider, but rather the user can go to any health facility of their choice and claim back their costs after the treatment. This does require all the costs of the health care to be paid up front by the user. There have been attempts by SEWA to introduce prospective reimbursement which sees 80 per cent of the costs being reimbursed while the patient is still in hospital. An important part of the micro-insurance offered by SEWA is the distribution of the plan which is undertaken by special

female counsellors known as Aagewans. These women go from door to door and meet informal workers individually, educating them about the importance of social insurance and about the Vimo SEWA plan, and also help them to fill out claims (ILO, 2008b, p. 4). There are also regular seminars which educate members about how to process claims. Due the size of Vimo SEWA, it has been able to ensure that its members have access to state hospitals, trust hospitals and private hospitals.

Vimo SEWA has had a great deal of success at extending social security coverage to the informal sector, mainly in Gujarat province in India. It had 194,000 members insured in 2008 with 25 per cent of this number including the husbands of women in the informal sector and 15 per cent children (ILO, 2008b, p. 5). This was a marked increase from 2004 when only 109,000 people were insured. The scheme provides considerable financial benefit with 76.5 per cent of all claims between 1994 and 2000 being reimbursed, more than halving catastrophic hospitalizations in that time (Ranson et al., 2006, p. 709). Between 2003 and 2006 there were a total of 18,700 claims, the majority of which were for health care, with the second highest incidence being claims for stolen or damaged assets (ILO, 2008, p. 5).

While the health insurance scheme does cover the costs of hospital treatment, there are still significant barriers for those in the informal sector which contribute to them struggling to access health care, even if they have insurance. The scheme is limited in the cover it can provide for its members in that it excludes all primary and tertiary health care, medications and HIV/AIDS cases. Although Vimo SEWA is constantly trying to improve the reimbursement process, another barrier to health care for SEWA members is that payment has to be made upfront, with the members being reimbursed for their financial costs. It can be difficult for them to secure a loan to make the original payment, often having to borrow the money or sell assets. This difficulty leads to many not seeking health care despite having health insurance. Women can often not afford the costs of travelling to a hospital for treatment, and whilst travelling and receiving the treatment they forgo the money that would have been made while working. Women especially, as the primary care-givers, are reluctant to spend time away from their families as they need to care for their children and husbands (Ranson et al., 2006, p. 709).

Vimo SEWA was one of the original micro-insurance schemes of their type, and their development was therefore based on learning from its mistakes. A number of these lessons can be taken and applied to other micro-insurance initiatives (Garand, 2005, pp. 42–44). The first important lesson is that it is vital to have reinsurance. Vimo SEWA did not have reinsurance from 1994 to 2000, and the organization was faced with great economic difficulty after the earthquake in Gujarat in 2001. This experience was the catalyst for the reintroduction of insurance companies in 2001.

Insurance needs to be sold, it is not bought. This is also the case for social insurance. Vimo SEWA's system of education and using Aagewans to promote the products has been successful at recruiting more people for social security coverage, as well as ensuring high rates of renewal. SEWA was in a unique position to offer micro-insurance due to its history as a trade union. It had already built up a reputation as an organization with an interest in improving the situation of women in the informal sector.

It is critical for the viability of a micro-insurance scheme that a large proportion of the population is part of the scheme. This includes attempting to cover families, instead of just single members of a household, and covering large parts of a community.

The claims by members need to be tracked and processed efficiently. The processing of claims by Vimo SEWA originally took as long as eight months, but it has been able to cut down on the time that it takes to process claims, thus ensuring better service.

It is important to ensure that micro-insurance is run professionally and productively, with an emphasis placed on quality management, training of employees and professional structures of insurance. Within this, it is critical to understand the needs of the members, and regularly update schemes in accordance with these needs. Vimo SEWA seeks feedback yearly, allowing it to alter its schemes as is required by the members. Vimo SEWA's integrated product helps to address the risk management needs of workers, especially females, in the informal sector. Although it is more complicated and challenging to have an integrated product, it ensures that Vimo SEWA's insurance is more practical and applicable than other micro-insurance schemes.

Vimo SEWA is a compelling example of a trade union that has provided social security for women in the informal sector. It has been able to step in, adopting the role which is typically covered by government. The Indian Government has encouraged the expansion of SEWA, because the informal sector in India is too large for the Government to be able to cover with any kind of success. There is support from the Indian Government in its provision of funds to public insurers who are willing to provide subsidized coverage for life and health insurance.

## **5. South Africa: Using social assistance for the elderly**

Ageing often results in the individual not being able to find gainful employment and seeing limited assets either used up or fall in value. In situations where old people fall into poverty, they often become dependent on their children which in turn restricts the opportunities and increases the risk of poverty for their children, making the wider household vulnerable to declining living standards. Some of the elderly in developing countries have worked in the informal sector and are not covered by contributory pension systems, and are therefore forced to continue to work in the informal sector in order to survive, or to rely on traditional community and family support structures. However, in many societies such structures are not as strong as they were in the past. The HIV/AIDS epidemic in the developing world has also seen the elderly take on the role of primary care-givers for young children whose parents have died from the infection.

In order to address the vulnerability and risk of old people and their households falling into poverty, South Africa has implemented the second-largest non-contributory, state-funded pension programme in the world behind Brazil. While it is not aimed explicitly at workers or past workers in the informal sector, it is still successful at covering such employees who have no pension. The scheme pays out a lump sum per month on a means-tested scale based on the income of the individual beneficiary and his or her partner, if married, to men and women aged 60 years and older. The scheme was originally paid to men over the age of 65; however, 2010 will see parity in the age of payments between men and women. This change has been phased in since 2008 and will result in a growth of an estimated 420,000 extra beneficiaries between 2007/08 and the projected coverage amount for 2010/11 (RSA National Treasury, 2009, p. 8). In 2009 the payment was South African rand (ZAR) 1,010 (US\$120) and the income of others in the household is not taken into account (Barrientos and Lloyd-Sherlock, 2002, p. 5).

Pensions in South Africa were first paid in 1928, although this was done along racial lines, and despite development of the pension programme through the 1980s and 1990s, it was only in 1993 that a non-discriminatory programme was introduced (Olivier, 2003b). The programme is administered quite effectively and reaches the poor in the rural areas. It is funded completely through generally taxation and cost ZAR 26 billion (US\$3.3 billion) in 2008/09 (RSA National Treasury, 2009, p. 8). This system is aimed at restricting the vulnerability of the elderly who do not have contribution-based pensions due to their previous employment in the

informal sector, and through this also limits the influence their financial dependence may have on their children. It is projected that in 2009/10, the scheme will cover almost 2.5 million elderly people in South Africa. Because the pension payment has historically been available to women at a younger age, and because women tend to live longer than men, the payment is gendered with between 70 per cent and 75 per cent of the recipients being women (Olivier, 2003b), although this figure will go down with the payment extended to men aged 60 years and older. This illustrates the feminization of poverty into old age, and the impact of a labour market which has historically been gendered.

There are a number of lessons which can be learnt from the social pension scheme in South Africa with the old-age grant having a positive impact directly on the recipients and indirectly on the wider household of the recipient. The pensions often function as a form of poverty reduction for the recipients and their households. The grant is estimated to reduce the poverty gap by 94 per cent for the elderly, and estimates suggest that in KwaZulu-Natal the pension payment makes up more than half the income for a third of the households (Olivier, 2003b). Because pensions are shared within the household, they should essentially be considered as household cash transfers, with this being the only income for a family consisting of three generations in some cases. In African families, it is estimated that each pensioner's income helps five other people in the household (Taylor, 2002, p. 159). The old-age grant therefore reduces household vulnerability, ensuring that there is a lower chance of the household experiencing a significant decline in living standards due to a lack of employment, or a fall in the value of assets. The wide-ranging, cross-generational influence of the pension payment is very difficult to measure statistically; however, the pension often results in more people living in the household of the recipient, which has a positive cross-generational impact. It is found that children with a low per capita household income are more likely to live with a pensioner who is receiving the payment (Case and Deaton, 1996). The effects of non-contributory pensions are far-reaching, ensuring that not only the recipients of the pension are provided with levels of social protection and reduced vulnerability, but also members of their households. The payment can also result in the development of very small businesses by allowing individuals to get credit, hire equipment or purchase agricultural inputs.

The pension system in South Africa is both politically and economically viable, and it appears that it will remain so in the medium term despite the extra strain provided by ageing populations. Politically, there is no resistance to the pension system (HelpAge, 2003, p. 18). This is in part due to the effectiveness of the system in redistributing income to the elderly and also to the role the pensions play in cross-generational poverty reduction. Currently, there is debate about whether rather than being means-tested, the pension system should instead be implemented universally. Economically, the non-contributory pension scheme represents a total expenditure of about ZAR 26 billion (Republic of South Africa National Treasury, 2009, p. 319). The payment alone is not likely to become economically untenable in the medium future. South Africa does, however, need to ensure the economic viability of its social assistance programme, which includes a variety of other payments.

South Africa is an example of a non-contributory pension scheme that works effectively at reducing the vulnerability of the recipients and their extended household; it is politically and economically viable and has achieved a high degree of coverage at a relatively low cost. There are some important lessons which can be learnt from the application of the pension. Firstly, South Africa has a relatively large tax base which can support the payment, and has the ability to administer such a system to quite a high standard. The application of a similar non-contributory pension scheme is not likely to be successful in countries with low tax bases and poor systems of administration, and it is necessary to think further about the design and application of a similar scheme in such countries (HelpAge, 2003, p. 22). Similar schemes in smaller developing nations could involve financial and organizational support from

international organizations, or could be targeted at a smaller group of the most vulnerable parts of the population.

A second lesson is that a non-contributory pension scheme is a very effective way of reducing the vulnerability of the elderly who do not have contributory pension schemes and it also contributes to poverty alleviation in the wider community.

Thirdly, the targeting of the payments has meant that the benefits are felt not only by the elderly, but also by their households. With women often the primary care-givers in a community, the payments help to support more than just one generation. The targeting of the payment also helps to address some of the problems caused by HIV/AIDS; children who are orphaned by the disease are often cared for by their grandparents and many of them are able to do this largely through the pension payment.

Fourthly, the non-contributory pension payments fill the gap of contributory pension payments which many of the elderly in South Africa do not have due to their past employment in the informal sector and lack of compulsory pension schemes. While the South African example is successful at extending pension payments to the elderly, it has also resulted in a large proportion of the elderly being dependent on the Government. Therefore, when extending the social pension to the informal sector, it should act as a stop-gap for those that do not have a pension, while reforms of social security can take place allowing younger generations to build up their own pensions, whether those pension schemes are non-contributory or contributory in nature. Such reforms will mean that the social assistance old-age grant may only be available for a limited time while it is needed in order to compensate for past legislative and social security failures. This line of thinking is not currently being pursued in South Africa, however, with no attempts being made to create a pension system in the informal sector where inadequate pension coverage remains.

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## Notes

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<sup>2</sup> See Olivier (2009, pp. 254–268).

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