

**Limitations of social security coverage: current issues and innovative solutions
for extending social security to informal economy and other non-covered workers**

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Concept note

One of the major global issues of labour law is the unequally divided social protection of workers, whatever their status, against universally acknowledge social risks. Countries with well developed social insurance schemes are confronted with the fact that the labour contract – or rather the employee status – is no longer a suitable device for the organisation of social protection. A telling example of this are the so-called ‘new self-employed’ – a qualification which stands for two types of workers – as well as a large category in between. Some are truly self-employed and thus independent, for another portion the qualification ‘would be self-employed’ or ‘quasi employee’ appears to be more fitting (for a more detailed analysis at EU level see Supiot 1999). A comparable complication can be seen in the debate around and the efforts to build models of coverage applicable to workers in the informal economy. Here, the key issue is the invisibility of this part of the working population, which puts it under the radar of social policy.

The common denominator is the fact that the labour contract has never been a suitable device for the organisation of social security for these workers (see Olivier, 2009). In fact, the exclusion from (or limited coverage in terms of) social security flows from a wide range of interlinked considerations. These include the absence in many instances of an identifiable employment relationship and thus of an employer who could contribute – insurance-based contributory schemes are therefore rarely applicable to them. Also, these schemes are usually not attractive to them, as they are invariably required to contribute as if there is an employer – i.e. they have to pay both the employer and employee contribution.

Furthermore, for workers in developing countries the mainstream social security approach may not be sufficient, as the risks to which they are exposed – e.g. disasters, calamities, and poverty itself,

among others – are not covered by this approach (with some exception, however, with reference to the ILO Recommendation 202 of 2012 on National Floors of Social Protection). The same can be said of the individualised and futuristic-oriented focus of traditional social insurance-based arrangements, neglecting both the collective nature of many of the risks informal workers are exposed to, and the need for immediate relief (instead of an emphasis merely or primarily on long-term protection).

In addition, international standards have generally not been structured to appropriately provide coverage to informal workers. And finally, albeit with noticeable exceptions, trade unions traditionally do not count informal workers among their membership base and they are rarely involved in representing their interests; in fact, in many countries, there are legal constraints impeding informal worker membership of unions. The issue of workers representation is complex with respect to the 'new' self-employed as well. Here, trade unions are wrestling with their role as representative – of traditional workers (employees) or of workers who appear to be a threat to the position of their traditional members.

In sum, not only the traditional employment contract, but also the traditional workers' organisations have become problematic as a device for the organisation of social protection.

Perhaps it is not surprising then that over time a range of innovative solutions and mechanisms have been developed to address the issue. From the perspective of representation, grass-root initiatives to organise social security have sprung up in many countries, sometimes organised along the lines of informal worker-specific trade unions, cooperatives, mutuality-based organisational arrangements and even dedicated NGOs. Also, conceptual innovation has seen the redefinition – also in legal terms – of concepts such as "worker", "union", "informal" or "unorganised" sector, to enhance coverage extension. Furthermore, specific coverage extension models have been introduced, sometimes for the informal "sector" as a whole (e.g., framework legislation in India and Indonesia), and at times for specific categories of informal workers (e.g. in Tunisia and Sri Lanka; and the welfare fund models of India). Some countries have witnessed the introduction and expansion of universal health and other insurance schemes to ensure coverage extension; in certain countries dedicated schemes have been established to cover informal workers (e.g. Ghana). The establishment of comprehensive conditional and unconditional cash transfer and other social assistance schemes has contributed significantly to the provision of coverage for many informal workers. Also, innovative funding and scheme design modalities have been introduced. In a growing number of countries, government co-contributions strengthen worker and, where applicable, employer contributions, while taxes or levies on the aggregate output of informal workers' work activity (e.g. the produced goods) have enabled the establishment of welfare funds. Overall, participation in social security schemes has been made attractive by flexible (and often non-fixed) contributions, convenient entitlement criteria/requirements, and context-sensitive benefit regimes.

In all of this, innovations in the conceptual design of legal regimes and their areas of application have supported the drive to extend coverage – labour law, social security and competition law developments have all played their role, however incomplete.

The workshop intends exploring the issues above. The focus is not only on taking stock of the innovations in coverage extension, and the challenges experienced in social security terms by informal and other workers outside the realm of the employment contract, but also to investigate whether a more systematic approach to these matters could be developed. The workshop will be enriched by reflection from a range of different experiences and perspectives, as well as different emphases in key social protection domains and region-specific contexts of the said innovations.

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ABSTRACTS

INNOVATIVE SOLUTIONS TO ORGANIZED SOCIAL PROTECTION FOR THE SEEMINGLY COVERED i.e. INFORMAL WORKERS

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In Africa, social protection has become a topical issue following the realization that coverage of social protection is low. Social security is the dominant form of social protection, with social insurance being the preferred form of social security. Many governments prefer the use of social insurance because it reinforces the principle that individuals and families should be responsible for their own social protection. This approach takes away the burden of social protection from the state. According to the ILO (2000), coverage of social security in sub-Saharan Africa is between 5 and 10 percent only. In essence this means that between 90 and 95 percent are without social protection. The low coverage of social security is largely attributed to the fact that social insurance is oriented towards protecting workers in formal employment. However in Africa, unemployment levels are high, which means a significant percentage of the population is automatically excluded from participating in social insurance schemes. The African Union (2008) has observed that only 5 to 10 per cent of those entering the labour market in Africa are able to find jobs in the formal sector. This means that the majority of labour market entrants can only be absorbed in the informal economy. The African Union further observes that the informal economy in Africa continues to grow. Consequently, more people in working age find themselves in atypical forms of employment that are not reached by social insurance

schemes. The African Union concludes that informal workers have limited or no access to social security and social protection.

The African Union has developed the African Social Policy Framework which, among other things, seeks to promote social protection in Africa. The African Union Social Policy Framework has provision for the extension of social security and social protection to rural and informal workers. It is envisaged that this would contribute towards building human capital and breaking the cycle of intergenerational poverty. Many social security schemes in Africa have provision for extending coverage to informal workers. However, these schemes require informal workers to pay double contributions to cover both their own contribution and the contribution that is normally paid by employers. This makes it financially burdensome and as a result informal workers are discouraged from participating in social insurance schemes. Thus the double contribution acts as a disincentive. It has also been established that most of the existing social insurance schemes do not address the priority needs of informal workers (ILO, 2000). Consequently, many of the informal workers are not motivated to participate in social insurance schemes.

In view of this, there is need for innovative solutions to organized social protection for informal workers so as to achieve universalization of access to social protection. One possible innovative solution is to establish special schemes for informal workers. These schemes should reflect the priority needs of informal workers. Secondly, the contribution regimes for such schemes should reflect the contributory capacity of informal workers bearing in mind that informal workers are not a homogenous group. These schemes may require subsidization from the state in order to enhance their viability and capacity to provide adequate benefits. In light of the Social Protection Floors Recommendation 2012 (No. 202), it is also possible to use non-contributory forms of social security in order to extend social protection to informal workers. There is consensus about the need to extend social protection to informal workers but the world is short of innovative solutions to make this possible. The search for innovative solutions should be given sufficient attention if universalization of social protection is to be realized. The focus will be on the growing informalization of employment, social security and the exclusion of informal workers, and the search for innovative solutions towards the social protection of informal workers, drawing lessons from other countries.

Innovative solutions for informal workers in Latin America: vehicles for social inclusion

Pablo Arellano Ortiz

Informal working relationships have a significant presence in Latin America. The average rate of informal employment in the region is about 50% of the economically active population. In some countries this figure even reaches 60%. This has a major impact on the labour market and on the measures taken to protect this category of workers and their families. Many efforts have been made by governments with a view to formalising and incorporating these workers into social security. However, these efforts have met with certain challenges. Given this, creative mechanisms have been implemented to understand the complexities of informality and to serve as a vehicle to bring these

workers into the social security system. These examples will be highlighted in the paper as an ingenious way of extending social security to excluded groups.

Independent contractors and the risk of sickness and long-term disability:

A case study of public and private initiatives in the Netherlands

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Over the years many EU member States have witnessed the influx on the labour market of workers who are also known as ‘new self-employed’, ‘self-employed without personnel’ or ‘independent contractors’. Some of them are truly independent – in the sense of ‘real entrepreneurs’ - others however are not. For them the qualification ‘quasi-employment’ appears to be more suitable. Quasi self-employment can and has proved to be a win-win situation for two parties. For employers, it can offer an easy way out of restrictive labour law rules, such as working time conditions, minimum wage rules and even rules about work safety. For the worker it may offer a possibility to ask for and – if the supply of this type of labour is scarce - receive more profitable labour conditions than those which are agreed on in collective bargain agreements. As a result, independent contractors (hereinafter IC) are as a rule not very popular among traditional trade unions. For them, the phenomenon of independent contracting means an undermining of their bargaining position, given that a substantial group of workers is able and willing – and this completely within the law – to perform the same services as employees, but for a less lower price (on this more detailed, see Westerveld 2012).

An important reason why IC-work is relatively cheap is the lack of (state regulated) social protection. ICs are no members of employment insurances so there wages are contribution free. It is up to the worker himself to use part of the money he receives for his services for alternative risk coverage ... or not.

As far as unemployment is concerned, the average IC does not really care. After all, the risk of temporary unemployment – in the sense of a deficient work portfolio - is part of the package deal which is connected to entrepreneurship. Moreover, ICs share this fate with the average flex worker, employees who do work under contract but whose contribution record is usually too fragmented or too small to add up to employment benefit rights. As far as the risk of sickness and long-term disability is concerned, this is another story. For starters, these risks are in many schemes covered for workers under employment contract, no matter how little their working past and consequently their contribution record. ICs on the other hand are lacking this type of social protection and research has shown that a great majority among them perceive this as problematic, especially with respect to risks in the domain of health care, disability and old age. In those areas their policy preferences do not greatly differ from those of employees (Dekker, 2011).

All in all ICs do have two alternatives if they do want some social protection. They may turn to the standard private sector or in other words buy a private insurance. Or they may develop their own 'branch'-related alternative.¹

In this paper I will deal with both alternatives, using the developments (with respect to sickness and long-term disability coverage) in the Netherlands as a case study. As far as sickness is concerned, the ICs have dealt with this issue themselves on a collective basis as a kind of quasi ngo. In this part I will describe the origin of this phenomenon – the so called Bread Funds, a phenomenon which goes back as far as the 17th century – its present translation as well as the strengths and weaknesses of this current translation. Under the heading of long-term disability I will describe the evolution of its coverage in the Dutch social security scheme – which was ended in 2004– the alternative of private insurances as well as its – real and / or perceived – weaknesses.

I will end with some conclusions about the question if - and if so how and by whom - both issues could or should be handled: the private sector, NGO's or trade unions, or the state.

Innovative solutions for expanding the boundaries of social security protection to informal economy workers: a comparative overview

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Focusing primarily on workers in the informal economy in the developing world, this contribution critically reflects on, firstly, salient aspects of the conceptual and demographic framework relating to informal employment, also in ASEAN; secondly, the exclusion or limited application of social security for those who work in the informal economy; and, thirdly, a range of recent, innovative mechanisms to effect expansion of coverage regarding these workers, based on social security conceptual and instrumental innovation, and supported by a progressive appreciation of the social security values domain and human rights dispensation in ASEAN countries and the rest of the developing world.

Different from what the position might be in the so-called developed economies, informal employment is not generally regarded as illegal or irregular in the developing world, but as a standard way of life and income-generation. Informal employment represents a significant share of non-agricultural employment in developing regions: ranging from 51 per cent in Latin America to 65 per cent in East and Southeast Asia, to 66% in sub-Saharan Africa (SSA) (excluding a few Southern African countries), and to 82 per cent in South Asia. If informal employment in agriculture is included, this rate

¹ The word is put between quotation marks to stress that IC is more of a type of work relation – dependent or independent – than a branch, such as construction, ICT or the like.

is as high as 90% of employment in some countries (e.g. Ghana in SSA and India in South Asia).² As indicated in the ILO World Social Security Report 2010/2011, the result is extremely low levels of social security coverage, both quantitatively and qualitatively, in most ASEAN countries and in other developing countries. The exclusion or limited applicability of social security for informal workers in many developing countries flows from a variety of reasons, including restricted conceptual frameworks, absent or deficient institutional structures and instruments, inappropriate eligibility criteria, lack of or non-involvement of representative institutions, exclusionary contributory and benefit regimes, and limited administrative capacity and enforcement ability. This may also be the result of lack of legal innovation and adaptation to the realities of the changing nature of and modalities of work. Social security (in particular social insurance) laws would be restricted to those who work within the confines of the traditional employment relationship – or the those who work within the, equally restricted, framework of "workers who are considered comparable to employees" – who work for an identifiable and equally narrowly defined employer. Workers who fall outside this restricted framework, and for purposes of social security coverage also their dependants, are therefore definitionally excluded from protection. Finally, international standards are rarely designed to impact on these workers.

And yet, especially in the last few years, pronounced and unprecedented steps have been taken in a range of developing countries to extend social security coverage to informal workers. Bearing in mind the developing scientific discourse on these matters, the contribution critically reflects on the rationale for and nature of these extension modalities. These developments have largely been informed by economic considerations and shifting social, cultural and conceptual perceptions. Changing values in Asia, Africa and Latin America confirm a new appreciation of the human rights debate in the provisioning of social security, and the social contract between the state/government and its citizens, based on dialogue, serving the welfare interests of the people and moving away from an exclusive focus on economic growth; and a realisation that welfare enhancement is good for economic growth. Furthermore, conceptual adjustments in areas affecting the very notion and purpose of social security, the so-called contingencies covered by (traditional) social security, and some of the actors involved (e.g., a redefined understanding of "workers" and "employers") have been paramount. In addition, non-public instruments have played a crucial role as regards extent and quality of coverage, either as a complementary arrangement or as a bridge to innovative joint public-private forms of social security provision. Also, there has been a dedicated construction of appropriate institutional frameworks, while new forms of representative structures have been operative in this domain.

To some extent these adjustments and developments in fact challenge the traditional boundaries of the social security notion, aims, structures and mechanisms. The contribution adds to the developing scientific discourse on these matters, also by reflecting on the foundational values informing social security and alternative perspectives on social security.

² *Empowering People for Inclusive Growth: The Perspective of the Working Poor in the Informal Economy*; EC Concept Note – High Level Panel (2012) 2, quoting Vanek, J; Chen, MA; Hussmans, R; Heintz, J; and Carre, F *Women and Men in the Informal Economy: A Statistical Picture* (Geneva, Switzerland, ILO and WIEGO, 2012).