

Social Security Coverage of the Informal Sector: Global and Asian Perspective*

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Abstract

In this paper, the author raises several complicated issues on the formal-informal work divide, the limitations of definitions on the informal sector, and the failure of social security laws to keep up with the changing nature of employment. The author illustrates recent experiences of countries in Asia and the Pacific, Africa, and Latin America and the lessons that the Philippines may be able to draw from these cases to tackle the question of how to provide social protection to the informal sector and other vulnerable groups.

This presentation covers the following: some facts on the size and specific characteristics of the informal sector, with specific reference to Asia; reasons for and impact of non-coverage of the informal sector; a few points on coverage extension and the case for enhanced protection; conceptual framework on coverage expansion; complementary institutional mechanisms; and some conclusions on the informal sector.

* This is an edited transcription of Prof. Olivier's lecture.

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Blurred Employment Categories

There are important considerations that should be taken into account when we talk about the informal sector. First, it is not often understood that even if people work informally that is not all that they do. Some or many of those who work informally happen to work at times in the informal sector and at times in the formal sector. That is a divide that has become blurred. There is a continuum, if you like, of people moving in and out of the formal and informal sector. The challenge of course for social security is to see how to insure that these people are covered, irrespective of whether they are at times in the informal or the formal sector.

The other important consideration that is not always well understood is that those who work in the informal sector are not in the full sense of the word self-employed. Some of them are but many of them (perhaps majority of them) are not. They do work in other kinds of dependency relationships. There may not be an employer who can be held accountable for social security contributions but there may be another kind of supplier or provider of work who provides the very tools or products that are being used or sold by the informal worker.

There are “at risk groups” within the informal sector who deserve special attention. When we construct solutions in extending social security to those who work informally, we must make sure that the particular position of women, migrant workers, the very old, disabled, and the very young are accommodated in the framework for extending social security to the informal sector. We need specialized mechanisms to make sure that these people who are most vulnerable are properly covered.

There is also a need to distinguish between the sub-categories among those who work informally. Many of those who work informally actually work in dependency relationships that may or may not have an employer; but certainly many of them are not self-employed. The moment we understand this, we realize as well that the solutions to cover these people may be different from others who work informally.

Other distinctions that we find is the distinction between those who are professionally and institutionally self-employed such as doctors, dentists, engineers and the like and on the other hand, those who are literally working informally. And yet, in terms of current social security coverage in most Asian countries, these categories are either fully excluded or not fully covered. There are small employers for that

matter and other providers for work who may themselves be in need of appropriate protection. Very often, we forget that there are also very small employers in the sector who are equally vulnerable, who cannot afford other kinds of mainstream insurance or protection for themselves. They need to be covered as well.

Quick Facts on the Informal Sector in Asia

Some facts and figures regarding the informal sector in Asia are contained in the World Social Security Report of the International Labor Organization in 2010. Depending on where in Asia you are, 45 to 85 per cent of those who work in Asia are working informally. If you go down into the details, you will find that only around 20 per cent of those in South Asia work formally; in Southeast Asia and the Pacific, less than 40 per cent and in East Asia a bit more than 40 per cent. Clearly with very few exceptions, in the whole of Asia, majority of those who work are in the informal sector, not in the formal. This highlights the importance of developing appropriate strategies for these categories of people.

There is limited health care coverage for these people. Unemployment insurance schemes, if they do exist, only fully cover one third of the economically active population in South and Southeast Asia. Also according to this report of the ILO, not more than 25 per cent of the working population and their dependents in Asia are covered by statutory social insurance similar to the Philippines' Social Security System. The picture is compounded by particular sub-categories. The old age coverage rates vary between 20-40 per cent. It is even lower in Southeast Asia and in India, it varies between 11-13 per cent of those who are old and covered in some way although there are some recent developments on this in India at the moment. The impact of having a small number of old age persons covered is that because there is no proper social security coverage for those who are old in Asia, they tend to keep on working as long as they are able physically to work and this has huge implications. The old-age labor force rate in Asia is one of the highest in the world.

Growing incidence of informal work leads to declining rate of coverage, yet the number of informal workers continues to increase. There are several reasons why the number of informal workers has increased. Most recently, the global financial crisis since 2008 contributed to the rise in informal employment. This was also the case during the

1997-98 Asian crisis. What we found was that suddenly as people had to exit the formal labor market, they also found themselves working outside the protection of social security.

The other fact that we have to understand when we talk about why we have this phenomenon is that the very nature of work itself has been changing in the world. The labor market of today is not the labor market of 20, 30, 40 years ago. In fact, it is increasingly changing. All over the world, but particularly within the developing world, we found at least two important phenomena on the rise. One is the so-called casualization and the other is the so-called externalization. Casualization refers to the displacement of standard employment by temporary or part-time employment which immediately places many workers outside the framework of protection. Even more so, the second phenomenon, externalization, refers to the consequence of economic restructuring, to the transformation of what used to be the employment contract into employment regulated by a kind of commercial or sometimes civil contract. The implication of this in terms of social security protection is the same as that of casualization.

Narrow Definition, Narrow Framework

The traditional definition of social security is narrow, even in the ILO context however important the ILO standards and conventions may be. The definition of social security within the ILO framework excludes quite a number of people, and the ILO standards are not focused and were never developed with the mainstream informal worker in mind. The major suggestion by the ILO to cover these people in terms of the official definition ILO would refer to public nature, and yet we know in practice, especially in Asia, the coverage of this being extended to informal workers in terms of recent very interesting development would be of even a non-public nature. So however important the ILO standard might be, it is still a limited framework and it all has to do with the definition of social security.

In social security terms, the reason why those who work informally are not covered is primarily legal. If you analyze the social security laws in almost anywhere in the world, what is required inherently is the existence of an employment relationship where you have an employee who works for an employer for remuneration. The impact of that is dramatic because the moment you have this narrow

definition of the employment relationship as basis for social security coverage you exclude many other groups of workers, including those who are subjected to externalization, casualization, and other kinds of dependency relationships like contracting arrangements. They are all excluded from a definitional perspective. So we relegate most of our workers in the world to outside the protected area of social security just because of the definition that we use for who is or who is not a worker.

And the strange thing is that in the labor laws in some countries, also in the developing world, we have already made a shift. Many of the countries in Asia, Africa, Latin America have adopted labor laws that would start to cover some of these workers who are outside these formal employment relations sphere and yet the social security laws have not yet followed suit. And there are all sorts of implications from these. One is that we are creating a dichotomy where the labor laws cover an increasing range of workers while social security laws cover a very narrow range of workers. The very same workers are being covered very differently by labor laws and social security. That does not make sense from any perspective.

Then the other thing is that for those who are excluded, all of these who work as self-employed, who work informally even if they may work in a dependency relationship for another provider of work at times but not even always may be allowed to join a social security scheme but then they join voluntarily. And of course there may be a good reason why you cannot compel membership. But the very fact that membership is voluntary has the implication that if people can choose, of course they will not join. On the other hand, they will only join if you make it sufficiently attractive for them to join. This is a crucial matter. Unfortunately, most of our social security schemes in the developing world have not really gone the whole route to develop proper frameworks to cover those who work informally. We use the same contribution-dialectic framework that we use for formal sector workers and we think we will cover the informal sector. We will not because they earn differently. Their income may be irregular, may vary in size, and unless we put in place sufficient flexibility mechanisms to make it attractive from a contribution point of view for those who work informally, we will not cover them. The same applies to the benefits package. We look at the ILO 9 classical risks and while these are important considerations to say that we need to cover people in their old age, sickness, and so on, and yet we tend to forget that the needs of those who work informally are immediate needs. Unless we devise our social security package for those who work informally to somehow allow

them to use some of benefits for their short-term needs, we will not make it attractive for them. In Asian and African countries where we have seen successful attempts to increase their coverage of informal workers, this lesson has been learned.

While the ILO perspective is important, from a standards perspective, it is a limited framework for extending social security to the informal sector for their reason that I previously cited. Another reason is the low ratification record of ILO Conventions. The main convention of the ILO is Convention 102 of 1952 or Minimum Standards in Social Security and yet in the whole of Asia only four countries have ratified that particular convention. So we need a fresh or an alternative approach.

Broadening the Framework

Most of the informal sector workers are indeed poor. On the other hand, developing countries in Asia with high poverty rates and big informal economy are least able to generate sufficient funds from taxes or contributions to finance social protection interventions. In other words, they whose needs are the greatest have the least ability, from the perspective of both households and governments, to deal with financing social protection. And yet we need to find the solutions and there are, to some extent.

Solely concentrating attention on institutionally reforming that part of the social security system that covers only a small part of the labor force (the formal labor force) at the expense of those involved in non-traditional work and in the informal economy is inherently unequal as it directs the attention of government and other stakeholders away from a huge segment of the population with no social security coverage. So there is no justification for doing this.

There was an attempt in 2006 by the ILO to develop a Recommendation. Incidentally, a Recommendation is a non-binding standard and this one was called the Employment Relations Recommendation. It seeks to make it easier for those who work in quasi-kinds of employment relations to be covered. It refers to disguised employment relationships and to other arrangements. However, if you analyze the Recommendation, it does not really help as far as the informal sector is concerned, for all sorts of reasons. One is that at least for those who work as self-employed in the informal sector, they are clearly not covered by this Recommendation as it excludes that category. Likewise it

excludes those covered by civil and commercial contracts, so all of those covered in the externalization sphere mentioned earlier will be effectively excluded from the scope of the ILO employment recommendation.

Coverage Solutions

But the solutions are out there and there are three strands or categories of solutions. When I say categories these are mutually supportive categories. One area relates to the conceptual and the definitional framework. The second area relates to institutional mechanisms – how to institutionally extend coverage. Finally the third area relates to what I would call dedicated, tailor-made, targeted arrangements for those who work informally.

Let us very briefly look at what is available already in the developing world in terms of these strands or areas. Conceptually I referred earlier to the narrow definition of who and what the worker is in terms of the social security laws in the world. We are seeing an extension of that framework in terms of labor laws and slowly there is a growing understanding that we have to do the same with our social security laws to extend that conceptual framework to cover more people. Of course we have to be realistic on how far we could go with that.

One of the most recent attempts in this regard is the recently adopted, end of 2008, Unorganized Sector Social Security Law or Act in India. It makes a dramatic departure from the historical approach discussed earlier. Firstly, it adopts a definition of who and what is meant by the unorganized sector, secondly, who and what an unorganized worker is, and thirdly who and what an employer is to capture all of these people who work informally. It is a deliberate attempt on the part of the Indian government and the Indian Parliament to cover literally the 400 million people in India who are working informally. It was preceded by a high-level cabinet committee, the NCEUS which did thorough investigations. While not all recommendations of the NCEUS were adopted, the law that came as a result of the work of the NCEUS makes a complete break with the past. The law is a framework law that allows for the Indian government at the central and state level to develop, extend, or expand new or existing schemes to cover these informal workers.

Examples in other jurisdictions can be seen in occupational health and safety laws and workers' compensation laws where there is widespread extension of who and what are covered. Australia is a good

example with the new model of OHS law and its workers compensation law has very extensive coverage, including parts of the informal sector.

The extended nature of employment relations may be required to indicate the widest sphere of liability or responsibility and allow the small employers to be covered. Let me just talk very briefly about an issue related to this which is dependency relationships. Many of those who work informally are in fact not self-employed. Work for them is being provided by somebody else. It may be tools so they can ply their trade or that products they can sell are being provided to them. And there is increasing realization that when you say employer, it may be somebody else who has some sort of influence, if not command or control over that very person or work. We refer to this as a dependency relationship.

Let us analyse dependency relationships to identify the people who are actually in control or in charge. We refer to this as the supply chain framework so we do what I call contract tracking – we track how this contractual relationship operate and who are in charge in order to make that person or institution liable for labor law practices, including social security coverage, as if that person or institution is the employer. This is a very important development not only in the literature but also in the legislative framework of some countries. The country that has set the pace for this is indeed Australia, which started formulating policy in this area of dependency relationships by saying that whether or not people work for employers, these persons or institutions are still subject to other forms and institutes of control. Therefore, relevant labor laws in Australia are made applicable to them and there is no reason why this should not be done insofar as social security is concerned.

Complementary Measures/Schemes

From the conceptual framework, let us discuss complementary measures. We have to understand that if we want to achieve a relevant extension of coverage to those in the informal sector, we need to appreciate the importance of needed complementary measures to achieve this. One particular measure on its own will not do the trick. That is important. And the examples of how this has been done in the world in the recent 10, 15, 20 years stress this.

Let us look at what is happening in the area of social assistance. Generally, in Asia, social assistance measures, mechanisms and schemes are weakly developed. The 2000 ADB report reflects on this. However,

more recently, we have seen a concerted focus on further developing cash transfers and conditional cash transfers. There is clearly an attempt to develop social assistance. You see this in Pakistan, Nepal, and Bangladesh. The point we want to make here is that social assistance transfers are crucial, as is the case with the social protection floor, to provide a basic level of protection to those who are really poor. And most of the informal workers are indeed poor. Yet, it should be stressed that this is never the end solution in itself. We should see social protection floor measures and social assistance interventions as a base, as a launch pad or bridge towards fuller coverage which should have to some extent a contributory element. There are encouraging signs of a progressive introduction of these measures/interventions and of the overwhelmingly positive direct and indirect effects at the household level of publicly-funded safety net programs, such as those in Brazil's *Bolsa familia*, Mexico's *Oportunidades* scheme, and old age and child support grant of South Africa.

We can look at another area that has some links to social protection floor and social assistance measures such as the employment guarantee schemes and public works program. The most prominent examples of employment guarantee schemes are of course found in India, in particular the national scheme or the National Rural Guarantee Scheme established in 2005. It is one of the largest rights-based social protection institutions in the world reaching out to 40 million households in India which provides a guaranteed 100 days of work for at least one family member of those who live below the poverty line. Important achievements have been arrived at despite many challenges and now in terms of recent announcement by the Indian government there is an attempt to extend this to urban areas eventually. Public works programs which are sort of related to employment guarantee schemes although not rights-based is also important for countries such as the Philippines.

Then there are hybrid models. We find an amazing array of varying initiatives that are taking place in the developing world. On the one hand, we find some top-down approaches, with government intervening saying we need to do something about people who are not covered in the informal sector and let us put in place mechanisms which have some kind of contributory element. On the other hand, there are bottom-up approaches with people organizing themselves institutionally -- on a community basis, or on a professional basis, or on an agenda basis -- and talk about making provisions for their own security. We find arrangements that look at the informal sector as a whole or the totality of the informal sector like the Indian Act of 2008. In many developing

countries, there are arrangements that focus on specific sub-sectors of the informal sector.

There is no right or wrong approach. All these mechanisms are important. Whichever approach or complementary approaches are used would depend very much on the particular country context. And then there are micro insurance schemes as well. There is also specific-sector approach, that is, specific targeting of sectors in the broad informal sector. For example, Sri Lanka introduced a scheme for fishers and farmers. In India, there is a very interesting approach called workers' fund system in some of the states. There are already ten (10) million Indian workers covered in this way.

What some of the states have done is to create a welfare fund for a particular industry. How is this welfare fund financed? Through a tax or levy that is imposed on the aggregate output of that particular industry and that fund is used for social security benefits of workers who work within that framework. Africa has perhaps the best examples of extremely successful sectoral approaches. Tunisia today is one of the countries in the developing world with the best coverage rates of those who work informally.

On Covering Entire Informal Sector

Let us look at attempts to cover the entire informal sector as a whole. Indonesia shows us how not to do it. Recently, it adopted a law that provides for this wide scale extension to the informal sector and the figures are just mind-boggling. From an existing 13 million there is an attempt to cover an additional 150 million people by 2014. There was no proper preceding work to see how Indonesia can do the extension. Just use the law as the basis for that? Now the ILO, the ADB and the Indonesian government are trying to find ways to make this possible. This is not the way to do it.

But we can learn from India and from Ghana as well. Ghana realized that it had to extend coverage to the informal sector. Initially Ghana got it wrong. It has this huge SSS scheme like in the Philippines which was called SSNIT. That scheme covered all of those who work in the informal sector and allowed for those who work informally to join voluntarily but no specialized arrangements were made. In fact if you want to join as an informal worker or as a self-employed person, you have to pay a double contribution because you have to cover the contribution

of an employer, as if there is one, and the additional contribution of the informal worker. There is no way that you will be able to attract informal workers to that kind of a social security scheme. And because of that, the coverage of those who work informally through the SSNIT had remained at about 5,000 informal workers even if majority of the workforce in Ghana are in the informal sector.

And then three (3) years ago the Ghana government had a presidential commission to investigate how the informal sector in Ghana could be covered. Thorough investigations were done, along with widespread consultations all over the country with the affected informal sector groups as well. They were able to develop an alternative ring-fence framework for those who work informally to join on the basis of a completely flexible contribution regime. Those who work informally can contribute whenever they want, however much they want to contribute, and at whatever intervals. There are no restrictions. Secondly in terms of the benefits package, a set percentage of their contribution goes into the long-term framework or to the pension if you like. Another percentage goes into the short-term benefit arrangement which could be used for quite a range of needs that informal workers would have in Ghana not only for unemployment but also education costs, housing collaterals, and the like. Three years after this framework called the Informal Sector Fund within the broad SSNIT scheme was introduced, 90,000 informal workers have been covered. It is one of the success stories in the African sphere.

In terms of specific contingencies, if you focus on the informal sector as a whole where do you start? You could look at the risk-based approach and you could say, let's target pensions. For example, what the Indian government did at first was to target pensions. In India a so-called new Indian pension law was created in 2005. In 2009, subsequent to the adoption of the framework law, the Indian government took deliberate steps to make this pension scheme available and applicable to the informal sector as well. Aside from allowing for reduced contribution rates, the government also provided co-contribution to those who join.

Two years after, there was a realization that this did not work. Very few informal workers in India have joined. This led to the appointment of a commission in India and in July 2011 the report of the commission came out. According to this report, the scheme was still not flexible enough for those who work informally. The kind of contributions they were required to pay was still too high so that has now been reduced. Secondly, other costs had to be paid by the informal workers, some of

which were for the private sector providers. These costs were brought down. About two months after that, about 100,000 informal workers joined the scheme, though these figures are still small if you talk about India. So what is the message that we get? The message is we really have to be open-minded, flexible in our thinking and our construct if we want to cover the informal sector.

Let also mention about Thailand and its extension of its social health insurance. This was done incrementally in theory at least, not necessarily in practice. The whole population of Thailand, including the informal workers, were not covered by health insurance. It required a few years of consultation and adapting/adjusting the scheme to make it affordable (it is a contributory-based scheme) to all, including the very low-income earners.

Under a wide scale extension what is required is that the instruments by which to do this must be very carefully selected and fine-tuned. Proper consultations with those affected are necessary; the institutional and fiscal capacity play a very important role. Also, government has to co-contribute and public awareness has to be raised as well.

Other Frameworks

Bottom-up approaches such as micro insurance are another area, and so are gender rights frameworks. An example of the latter would be the SEWA or the Self-Employed Women's Association of India. It started off as a trade union, extending its services to social security for female workers of whom around one (1) million are now covered in India. SEWA also has other social protection initiatives as well.

Another approach would be institutional arrangements. The short message: be innovative in devising the contribution framework and benefits package for those who work informally and be sensitive to their context.

Finally, the human rights framework. Coverage is a human rights issue. The UN Declaration of Human Rights states that every human being has a right to social security, which means it applies to informal sector workers too. And yet, this is an area where insofar as the informal sector workers are concerned the standards are not there, or at least not binding. It also means that there are problems with the ILO definitional framework. However, we do see some attempts at the regional level,

to sort of widen the framework. One interesting example is in South Africa where they established a Code of Social Security where they set an explicit provision for the extension of social security to the informal sector and adopted a few guidelines, if not standards, in this regard.

Probably a more important instrument is a UN Convention which unfortunately is not always well understood. This Convention has been ratified by most of the Asian countries. It is the United Nations International Covenant on Economic, Social and Cultural Rights. Article 9 of that Convention has a provision for the right to social security. Interestingly in 2009, the international committee tasked to supervise this particular Convention or Covenant developed a general comment on the right to social security and how the informal sector should be covered. The importance of this is that it provides a framework from an international standards perspective. So if a country such as the Philippines, assuming that the Philippines has ratified this international instrument, has to report to the United Nations its compliance with Article 9 of this covenant by providing information to the United Nations as to what it has done in these areas to extend coverage.

Conclusion

In conclusion, there is a need to address the lack of legal foundations and resource allocations, particularly in Asia. According to the 2010 report of the ILO on social security, these legal foundations and resource allocations to extend coverage to the informal sector are non-existent in 70 per cent of the countries. Huge work needs to be done.

Also, another problem, in Asia in particular, expansion of coverage is a mere policy and is not reflected or contained in the legal framework. For example, in the area of old-age provision, in many countries in Asia the extension of social security to people who are old, especially those in the informal sector, is purely policy based. And policies change as governments change. Government priorities may change but a law does not change unless by Parliament action. So there is clearly a need for a rights-based perspective to underline and underscore coverage to people who work informally.

Informality is not sufficiently captured in labor market and household surveys. It complicates our planning. How do we do the extension if we do not know who we are talking about, where they are, what are their characteristics? So part of the work that needs to be

done is to make sure that we have the proper data capturing and the data analysis. There are different categories of workers who need social protection. Social protection is an integral part of what is now known in Asia as inclusive growth agenda within the ADB's 2020 framework because of its developmental impact and to meet of course the Millenium Development Goals. In fact, unless we combine the support to be given to informal workers by additional measures aimed at creating and supporting developmental framework for those who work informally, we will probably fail. For informal workers it is important also to be properly skilled, to have access to markets. This is a message that is increasingly understood in many of our developing countries.

This brings me to another aspect of the developmental approach: social security is not necessarily about paying compensation or paying benefits although this is the historical thinking. Social security aims in the first place to try and prevent the very risks against which we are insuring people from arising, much like preventive labor market strategies. The point here is that we need to develop our labor market strategies as part of the extension of social security to the informal sector. We have to strengthen our health and safety regime in order to prevent employee injuries from arising. So social security is in the first place prevention, not compensation.

In the second place, social security is not about compensation but about integration or re-integration. If people were to find themselves outside the labor market because of work injuries, unemployment, or whatever reason, our first priority is to bring them back, if possible, into the labor market. Whether in the formal or informal sector does not matter. Why? Because the moment they are re-introduced again they are able to make a contribution also to their own welfare and that is what we want in the first place. Only in the last instance that social security is about compensation.

Finally, where do we start? If we want to extend coverage to the informal workers, there must be proper planning, consultation, some kind of a high-level institutional framework like a presidential commission or a cabinet-appointed committee that investigates the possibilities. An important building block is the adoption of an inclusive social protection or social security policy in the country. It is heartening to say that there are efforts along this line in some Asian countries. Cambodia, for example, recently introduced a national social protection policy. In Africa, Kenya recently adopted a social protection policy, which also provides in principle a framework to extend coverage to the informal sector.

We have to think holistically and strategically. In other words, we have to first think in terms of a broad framework and then start drilling down to the details and then do the proper work at that level as well.