

**HIGH LEVEL COMMISSION ON LEGAL
EMPOWERMENT OF THE POOR**

WORKING PAPER NO. 3

LABOUR RIGHTS

*“I think it is necessary to have
social security rights, employment
rights, and good social dialogue.
Decent work is a product of decent
fundamentals, enabling the governments,
workers and employers to come together”¹*

1. INTRODUCTION AND CONTEXT

Poverty eradication is today one of the top agenda among nations, regional and international organizations. As for the latter organizations the agenda is clearly articulated by, among others, the High Level Commission on Legal Empowerment of the Poor (HLCLEP), the World Commission on the Social Dimensions of Globalisation, the World Bank (WB), the International Labour Organisation (ILO) and the United Nations just to mention a few.

Poverty eradication features prominently in the set of the eight inter-connected Millennium Development Goals to which all members of the United Nations agreed in September, 2000. On the basis of these Goals member countries agreed to put in place programmes and policy considerations that are aimed at reducing extreme poverty at global level by half by the year 2015.

For developing countries like Tanzania this is a noble, and serious commitment leave alone a big challenge to them. What Tanzania and other developing countries in development have done, in essence, is to commit themselves to take responsibility to provide for their development and to carry out reforms by creating the necessary favourable conditions for development.

The High Level Commission on Legal Empowerment of the Poor is the most recently established organization with an international face whose primary objective is to explore how nations can reduce poverty through reforms that expand access to legal protection and economic opportunities for all. The Commission is based on the conviction that poverty can only be eradicated if governments give all citizens, especially the poor, a legitimate stake in the economy, thus making it the right of all citizens, and not the privilege of a few, to have access to user and property rights and other legal protections.² This conviction is based on the undisputed fact that most of the world's poor people live in what is now commonly known as the informal economy.

¹ Juan Carlos Zuniga Rojas, Sindicato Industrial de Trabajadores de Electricidad y Telecomunicaciones, Costa Rica, Voices of Decent Work in World of Work, No. 57. ILO, September 2006.

² High-level Commission on Legal Empowerment of the Poor, Poverty Reduction Through Improved Asset Security, Formalisation of Property Rights and the Rule of Law, Concept Paper 6th September, 2005, p.3

The ILO has its well known emphasis on the eight core Conventions which address poverty and informality in some sense: No. 29 Forced Labour Convention (1930), No. 87 Freedom of Association and Protection of the Right to Organise Convention (1948), No. 98 Right to Organise and Collective Bargaining Convention (1949), No. 100 Equal Remuneration Convention (1951), No. 105 Abolition of Forced Labour Convention (1957), No. 111 Discrimination (Employment and Occupation) Convention (1958), No. 138 Minimum Age Convention (1973), No. 182 Worst Forms of Child Labour Convention (1999).

Recently ILO has further articulated the poverty agenda in its Conclusions on Decent Work and the Informal Economy adopted at the International Labour Conference of the ILO in June 2002. In its second Conclusion the Conference observed that, “The promotion of decent work for all workers, women and men, irrespective of where they work, requires a broad strategy: realizing fundamental principles and rights at work; creating greater and better employment and income opportunities, extending social protection; and promoting social dialogue. These dimensions of decent work reinforce each other and comprise an **integrated poverty strategy.**” (emphasis added).

The employment sector and the agenda to reduce poverty is linked to the informal economy by the World Commission on the Social Dimensions of Globalisation as follows:

A balanced approach to upgrading the informal economy would require the systematic extension of property rights to be accompanied by similar action on core labour rights for all persons engaged in informal activities. There is a particular need to ensure that workers and employees in the informal economy have the right to freedom of association and collective bargaining. Women and youth, who make up the bulk of the informal economy, especially lack representation and voice. There is likewise a need to build adequate social protection systems. There is also a need to reverse the trend towards the erosion of collective organizations of both workers and employers and of collective bargaining.³

Further, the World Commission on the Social Dimension of Globalisation in its Report observed that informal activities have become part of a growing formal sector that provides decent jobs, incomes and protection, and that such a transformation has to be an essential part of a national strategy to reduce poverty. What comes out clearly in this observation is the linkage between the informal sector and poverty generally.

The totality of what is advocated by the World Commission is the promotion, extension and entrenchment of the dimensions of decent work in the informal economy just as they are fully advocated for in the formal economy. In so doing, the

³ World Commission, a Fair Globalisation – Creating Opportunities for All, 2004

rights of workers in the informal economy would, at the same time be protected presumably without compromising economic growth and business competitiveness.

The poverty reduction has also been one of the central themes to the World Bank's mission over the last 50 years. However, new vigour to combat poverty has gathered momentum in the last few years because of the increasing concerns in richer countries over security and immigration. At the G8 Okinawa Summit held in July 2000 the member countries of the Summit noted that eliminating global poverty "is both a moral imperative and a necessity for a stable world." This new impetus has propelled the World Bank to Commission studies on how the Bank can effectively participate in the process of poverty eradication.⁴

The general consensus that runs across the views of all these organizations is that poverty can effectively be addressed if the informal economy is exposed and enjoys the like benefits of the formal or legal order. Therefore, poverty and the informal economy are interrelated and this is the context in which the war against poverty should be fought. If the majority continue to live their lives in the informal economy, as is the case now, and the formal economy is dwarfed by the informal, the result is lower growth, less revenue and less room for investing in health, education and infrastructure and sometimes more instability and armed conflict. In the final analysis, this also has serious global repercussions in the form of a more unequal and unstable world.⁵

In the context of what has been highlighted above, this paper attempts to answer three fundamental questions, namely; how can a decent agenda be advanced both within the informal and formal economies; how can the costs of working informally be reduced and how can labour laws protect the rights of the poor without impeding economic growth and business competitiveness.

In addressing those questions the paper seeks to provide relevant inputs based on Tanzania's experience on the advancement of the decent work agenda as buttressed by the recent labour law reforms.

2.0 INFORMAL AND FORMAL ECONOMY IN TANZANIA: CAUSES AND EFFECTS

The definition and theories of the informal sector and informal economy are plentiful. Informal economy can broadly be characterized as all economic activities by workers and economic units that are- in law or in practice – not covered or sufficiently covered by formal arrangements directing both enterprise and work relationships.⁶ In another sense, informal economy or simply informality "characterizes those activities or holdings of land of households and businesses that lack formal (legal) recognition.

⁴ See, for example, Palacio, A. Legal Empowerment of the Poor: An Action Agenda for the World Bank, March, 2006

⁵ High Level Commission on Legal Empowerment of the Poor (HLCLEP), Overview Paper, January, 2006 p.3

⁶ Larsson A, Empowerment of the Poor in Informal Employment Paper presented at the 1st Meeting of the HLCLEP 20-21 January, 2006

Informality manifests itself in many ways but especially in the ownership of land, housing, and other property, in the provision of labour and other services, and in the management of finances and assets. Informal activities may be illegal or more typically, simply unrecognized by law or regulation, though many are tolerated...”.⁷

The informal sector also covers a wide range of labour market activities that combine two groups of different nature. On the one hand, the informal sector is formed by the coping behaviour of individuals and families in economic environment where earning opportunities are scarce (survival activities e.g. casual jobs, temporary jobs, unpaid jobs, multiple job holding etc). On the other hand, the informal sector is a product of rational behaviour of entrepreneurs that desire to escape state regulations (e.g. tax evasion, avoidance of labour regulation and other government or institutional regulations, no registration of the company etc).⁸

No matter how it is defined, an informal economy is normally characterised with the following:

- it provides jobs and reduces unemployment but in many cases the jobs are low-paid and insecure;
- it helps alleviate poverty but in many cases the jobs are, once again, low-paid and not secure;
- it recategorises workers into groups of:
 - (a) owner – employers of micro – enterprises;
 - (b) own- account workers and
 - (c) dependent workers e.g. home based workers. All these workers do not enjoy the protective security extended to workers in the formal sector
- it exposes employees to few opportunities and rights e.g. protection from health hazards and property rights, right to minimum wages, secure contracts of employment, terminal benefits, old age pensions, collective bargaining, fewer career and market opportunities etc.

The informal economy is now the largest source of employment especially of women and youths in Africa. About 60 per cent or more of women workers in the developing world are engaged in the informal economy.⁹ In Tanzania the informal sector employs over 90 per cent of the labour force including rural employment.¹⁰ The formalization of this economy will therefore contribute significantly towards the reduction of poverty in the country.

The Tanzania labour market is presented in the Integrated Labour Force Survey of 2000/2001. This Survey estimates the labour force for Mainland Tanzania to approximate 17.8 million people with an unemployment rate of 12.9%. The unemployment rate for females was a little higher at 14.2%, while males was at 11.6%. The total underemployment rate was 6.1%, here the males had a higher rate at 6.8%

⁷ HLCLEP, Overview Paper, *op. cit.* p.4

⁸ The Concept of Informal Sector in World Bank- ECA, Informal Sector in Transition Economies

⁹ Larsson, A. *op cit.* p.2

¹⁰ Dan, R.K. Extending Social Security Coverage: Social Security Coverage through micro-insurance schemes in Tanzania Banjul, The Gambia 7-9 October 2003

and females was at 5.5%. The estimated number of persons who were not economically active for various reasons such as, disabled, sickness, those schooling, too old and those with other reasons was about 4.6 million persons.¹¹

The division between urban and rural labour force was 19% in urban areas and 81% in rural areas. The Survey revealed that about 26% never had any “formal education”, another 26% had not completed primary school. Further, 43% had completed primary education and 5% had attended secondary education and above.

The Survey showed that overall; one in every three households had an informal sector activity in 2000/01 as compared to one in every four households in 1990/91. It also showed that 61% of the total households in urban areas had informal sector activities compared to 42% in 1990/91. As for rural areas, 27% out of the total 4.5 million households had informal sector activities in 2000/01 as compared to 21% of the total 3.6 million households in 1990/91. It is noted that over the ten years period, more households have been drawn into the informal sector. This is possibly a result of economic hardships households have been facing that have forced them to join the sector as a survival strategy.¹²

Geographically, a larger proportion of the urban labour force was employed in the informal sector (35 percent) than the rural labour force (11 percent). Overall, out of a total labour force of 17.8 million persons 16 percent was employed in the informal sector excluding the rural subsistence farming which is often included in the overall measurement of informal economy. In 1990/91, the same percentage of the labour force was employed in the informal sector. The distribution of persons employed in the informal sector, with the industries which employ more people are: retail trade-agricultural products, stationery, photography and general retail, retail trade-processed food and restaurant and hotels.¹³

Addressing informality is a complex exercise which requires a thorough understanding of the factors that create and perpetuate it. A humble attempt in the next part is made to identify some of these factors.

2.1 **Informal Economy: the Causes**

There are a variety of factors which contribute to people moving into and or staying in the informal economy. These include:

Rural migration to urban areas.

This is a traditional factor so to speak. In Tanzania, like in many developing countries many people especially the youths have always migrated from the rural to urban and peri-urban areas in search of employment. Many of them have failed to secure formal

¹¹ Integrated Labour Force Survey 2000/2001.

¹² Integrated Labour Force Survey 2000/2001.

¹³ Integrated Labour Force Survey 2000/2001.

employment and thus, ended up into the informal economy. Employment tend to elude them because most of them are unskilled and have a low level of education attainment.

Restructuring of economy

The Economic Recovery Programme initiated by the Government in 1986 ushered in the policies of de-regulation, trade liberalization and privatisation. Privatisation of the parastatals has forced the retrenched workers to find employment in the informal economy.

Globalisation

Globalisation has posed another challenge. The internalization of trade, finance, production and markets has intensified the competitive pressures on developing countries like Tanzania. In order to cope up with the competition governments and businesses have introduced restructuring processes aimed at increasing flexibility and reducing labour costs. Reduction of costs has always entailed giving workers packages which are below the statutory minimum standards. Restructuring, on the other hand, has led to reduction of the workforce. Those retrenched end up in the informal economy because they cannot afford to be unemployed. In short, globalisation tends to erode employment relations by encouraging formal firms to hire workers at low wages with few benefits or to sub-contract or out-source the production of goods and services.¹⁴

Complex and expensive entry to formal economy.

This is largely due to a large number of unnecessary and inappropriately administered regulations which often date back to the socialist era or even colonial times. The BEST Programme (Business Environment Strengthening in Tanzania) confirms that licenses, levies and other requirements of central and local government are real barriers to growth and progression to the formal sector, as compliance cost fall particularly heavy on small and informal businesses.¹⁵

Unfriendly labour legislation.

This may entail having in place a labour legislation which hinders the promotion of business. The Security of Employment Act 1964 and the Industrial Court of Tanzania Act 1967 are such examples from Tanzania. There is also the Workmen's Compensation Ordinance Cap 263 which does not provide adequate compensation to workers who die or get injured in the course of employment.

Weak and unresponsive judicial system.

This includes, among others, accessibility to labour courts or tribunals, efficiency, predictability, simplicity and disposition to the parties appearing in the Courts.

¹⁴ Chen, M.A. Rethinking the Informal Economy: Linkages with the Formal and the Formal Regulatory Environment, Research paper No. 2005/10, EGDI and UNU-WIDER 2005 p.5.

¹⁵ Business Environment Strengthening. For Tanzania (BEST Programme) Enhancing Growth and Reducing poverty Draft Programme Document July 2003 p. xvii.

At the end, participation in the formal sector is a question of cost-benefit analysis. If access to formality is not fair then informality is the only reasonable alternative for the poor.

2.2 The Effects of Informal Economy:

The consequences of informality are far-reaching on the poor and the society generally. In the employment sector, informality breeds exploitation. Many of the world's poor are forced into the informal labour sector, including illegal spheres such as child labour, where they receive benefits and lower wages than formal workers, as well as endure longer hours and more hazardous working conditions. They also have less bargaining and representation than the formal work force achieves through unions and other labour organizations.¹⁶

In the Report of the Task Force on Labour Law Reform in Tanzania¹⁷ the following consequences of informality were aired by the workers during the public hearing sessions:

- Trade unions are often denied access to workplaces for purposes of recruitment and representing members;
- employers are hostile and discriminate against unionized workers;
- casual and part-time labour was on the increase as it is less costly to employers;
- employers were increasingly retrenching permanent and professional employees and rehiring them on casual basis;
- casual employees are hired to by-pass law. (e.g. forced to change names in order to evade the 280 days rule on casual employees).
- workers are forced to work without specified working hours/days;
- some employers pay wages below the statutory minimum wage;
- collective bargaining is hindered by the intervention of the Industrial Court.

This list is not exhaustive but it serves to show how the working conditions in the informal economy and, sometimes, in the formal economy fall below the Decent Working Agenda as propagated by the ILO. The next part of this paper will address these challenges.

3.0 THE DECENT WORK AGENDA IN FORMAL AND INFORMAL ECONOMY

The decent work agenda is promoted by ILO and can be seen to share many of the objectives of the legal empowerment of the poor. There are close linkages between the decent work agenda and the advancement of labour rights in formal and informal sectors.

In the eyes of the ILO, the Decent Working Agenda subscribes to the following aspirations: provide opportunities for work that are productive and deliver a fair

¹⁶ HLCLEP, Overview Paper *op. cit.* p. 10.

¹⁷ Ministry of Labour, Youth Development and Sports; First Report of the Task Force on Labour Law Reform.

income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men. In order to advance this Agenda these aspirations are translated into four broad policy goals, namely:

(i) **Promote Opportunities**

This goal endeavours to increase the assets, skills, productivity and competitiveness of the informal workforce comprising both self employed and wage workers, men and women as well. The opportunities are promoted through provision of various services, such as, microfinance, training, improved technology etc.

(ii) **Secure Rights**

Under this goal the following measures should be undertaken:

- secure the rights of informal wage workers through:
 - extending the scope of existing legislation;
 - promote collective bargaining and their enforcement;
 - promote enforcement of labour standards;
- secure the rights of the self-employed through:
 - giving them equal access to credit and other resources;
 - extending property rights etc.

(iii) **Protect Informal Workers**

This goal seeks to:

- provide insurance coverage for illness, maternity, disability, old age and death through extending existing schemes and or by developing alternative schemes;
- provide safety nets to cushion informal workers during economic crisis or business downturns; and
- promote occupational health and safety measures for informal workers.

(iv) **Build and Recognize the Voice of Informal Workers**

This goal is intended to promote the organization of informal workers into:-

- trade unions
- cooperative
- other membership – based organizations.

What is of particular importance is that these organizations should participate or have representation in the policy making or rule-setting institutions which affect their interests.

3.1 **Decent Work Deficits**

Studies on labour market and employment in East Africa and, Tanzania in particular, have identified several decent work deficits especially for vulnerable groups such as,

youth and female workers. According to a study by Haji Semboja¹⁸ the following decent work deficits are relevant here:

- (i) **The informal sector**
The importance of the informal sector is largely due to the inability of the formal sector to absorb the increasing numbers of especially youth in secure formal employment. This forces young people and other jobseekers to enter into informal sector activities with lack of safety and security provisions.
- (ii) **Remuneration level**
The jobs obtained in the informal sector usually give lower earnings than in the formal sector. Further, allowances which are a large contributor to wages in the formal sector are not as readily available in informal sector and hence lower income in the informal sector.
- (iii) **Social protection**
There are very few people employed in the informal sector who benefit from formal social protection schemes including the youth. This has caused emergence of some community and NGO-based saving and credit schemes, but do not give the security of decent social protection. Most family and friends income are used in periods with loss of income.
- (iv) **Working conditions**
The working conditions are not satisfactory; this is seen especially in the informal sector and micro enterprises. There are very low standards of e.g. disposal facilities etc. A decent work environment and condition is a major concern in order to promote decent work.
- (v) **Membership in trade unions**
The trade unions and workers associations are traditionally seen as instrumental for the advancement of people's rights at the labour market. The success of these unions depends on the membership base and there the youth is missing out. On the other hand while strong unionization seems to promote decent work, it is also sometimes seen to reduce rates of profitability and investments and thereby creation of jobs.
- (vi) **HIV/Aids**
Finally, the importance and impact of the HIV/Aids pandemic on the labour force in Tanzania can not be neglected. The disease creates lower life expectancy, higher dependency ratio, absenteeism in work places, decline in productivity, cut down of effective manpower, increasing health costs, increase in training cost etc. all leading to less profit and a lower GDP growth. There is a strong need for tackling of the HIV/Aids issues by introducing good practices etc at workplaces and in the informal sector.

¹⁸ Semboja Haji Hatibu Haji, Concept paper on Promoting Opportunities for Youth Employment in East Africa. UDSM Economic Research Bureau, 2005. pp 14-15

3.2 **Reduction of Decent Work Deficits**

The reduction of the decent work deficits as identified above is central to the advancement of the decent work agenda. So, in view of the four policy goals (or dimensions of decent work) and given the fact that the informal economy is segmented between the **self employed** in informal enterprises and the **wage employment** in informal jobs the advancement of the decent work agenda will, naturally, be influenced by this segmentation as follows:

3.2.1 **The Self Employed**

This segment comprises workers in small unregistered or unincorporated enterprises, including: employers, own account operators and unpaid family workers. For this segment, the determinants or yardstick for advancing the decent work agenda include promoting its opportunities through:

- microfinance (this service may be provided by banks or NGOs e.g. PRIDE, SACCOS, etc.)
- training to improve their skills (a service to be provided by e.g. VETA)
- improved technologies – to enable them to produce goods which can compete on the market (to be facilitated by e.g. SIDO)
- provision of business development services e.g. establishment of investment centres at local level to assist them to promote their businesses
- policy interventions e.g. making policies on SMEs.

3.2.2 **Wage Employment**

This segment is composed of workers without formal contracts, employment benefits or social protection. They range from employees in informal enterprises, industrial workers or home workers to wage workers, such as, casual, daily, domestic, temporary, seasonal or part-time.

For this segment, the benchmarks for operationalising the decent work agenda include:

- securing their rights by extending the labour legislation to cover them;
- promoting collective bargaining and joining of trade unions by informal workers;
- securing representation in policy making or rule-setting institutions;
- securing the rights of the vulnerable groups e.g. women, children and the disabled, enjoyment of core rights and employment standards.
- protecting the informal workers by providing insurance coverage for illness, maternity, disability, old age and death;
- introducing alternative schemes to the traditional insurance schemes.

The approach on how costs of working informally or decent work deficit may be reduced is today a subject of much controversy in view of the competing theories on

the informal economy. However, there seems to be a well-founded view that these costs may be reduced by putting in place an informed and comprehensive policy on the informal economy.¹⁹

3.3 **Informed and Comprehensive Policy**

This policy should in the first place recognize the following basics;

- that the informal economy is here to stay: that it is a permanent feature of market economy;
- that the informal economy is diverse, including-
 - survival activities and dynamic enterprises;
 - unprotected workers as well as risk – taking entrepreneurs;
- the informal economy contributes to both economic growth and poverty reduction;
- the informal economy is caused variously by jobless growth, economic crises, global competition, corporate business strategies, lack of unemployment insurance and safety nets, increased costs of living, retrenchment of formal workers and privatization of public enterprises etc.
- is affected by all policies, both general and targeted; and
- is affected in different ways by policies than formal enterprises and formal workers are.

Thus, a comprehensive policy approach needs to take into account the different dimensions of the informal economy, namely:

- its component segments and their specific needs and constraints
 - the self employed and their enterprises/economic activities,
 - informal wage workers and their employers,
 - disguised wage workers, such as, home workers, and their employers,
 - women and men within each of these categories;
- the informal workforce as a whole and its common needs and constraints; and
- organizations of informal workers and their lack of recognition and voice.

3.3.1 **Policy Goals**

This informed and comprehensive policy should be enriched with the ILO Decent Work Agenda and its goals such as securing rights and protection of informal workers as elaborated in part 4.0 herein below.

3.3.2 **Key Policy Areas**

The policy should address the four key areas which have a particular impact on the informal economy namely:

- macroeconomic policies: that tax burdens, incentives and statutory benefits (e.g. pension funds) should be more equitably distributed between micro, small, and big businesses and between employers and employees;

¹⁹ This approach is based on Chen, M.A. Rethinking the Informal Economy, Research Paper No. 2005/10 *op.cit.*

- labour policies: the scope of legislation, labour policies and collective bargaining agreement to cover all categories of workers as it seems to be the case with the new labour legislation in Tanzania;
- urban regulations: appropriate regulations and equitable allocation of urban space to be done through a consultative process among the stakeholders;
- social protection measures: the scope of statutory schemes should be expanded to cover as many categories of workers as possible, and alternative schemes that target informal workers should be established. The micro-insurance schemes are particularly relevant in this case.

3.3.3 Other Policy Areas

Apart from the key areas, other functional areas of particular relevance to this policy include:

- microfinance and enterprise development services to increase the productivity of their enterprises;
- infrastructure and services to improve their housing and living environment and social policies to improve their health and education;
- property rights to give them security of tenure over their assets and, as needed, the ability to transform their assets into capital assets; and
- intellectual property rights to protect their traditional knowledge and their rights to natural resources.

3.3.4 Policy Process

The process of formulating the policy should be guided by the following principles:

- it should be participatory and inclusive – that is, consultation with informal workers and through consensus of relevant government departments. The organizations of informal workers and other appropriate social actors should be encouraged;
- it should be gender sensitive – that is, it should take into account the roles and responsibilities of women and men.

Once a policy is in place and which subscribes to the attributes above-mentioned, it is presumed that the costs of working informally would be reduced to a substantial degree. At the same time, the Decent Working Agenda would have been realized to a great extent.

The following part of the paper will present the Tanzanian experience in having a comprehensive policy process in order to advance the decent work agenda.

4.0 LABOUR RIGHTS AND DECENT WORK AGENDA IN TANZANIA

4.1 Policy Changes

From the 1980s there has been a fundamental policy shift in Tanzania from a planned to a market economy. As a result employment has shifted from the public to the private sector and new industries especially mining are coming up. Yet, unemployment is rising, and work and employment are undergoing important

changes. These changes have encouraged the growth of informal employment and labour segmentation. The growth of the informal sector has meant that many workers will now fall outside the protective embrace of labour legislation. Therefore, there is an urgent need to protect these vulnerable workers.

The desire to protect vulnerable workers coupled with myriad of other reasons necessitated the Government to appoint a Task Force on Labour Law Reform in October 2001. We will use this reform as a case study to demonstrate how labour laws can protect the rights of the poor without impeding economic growth and business competitiveness. It should be pointed out that in this Task Force the social partners – i.e. Government, Employers and Employees and other key stakeholders were fully represented.

The Task Force carried out its work in two phases. The first centred on a review of employment law, labour relations law, dispute prevention and settlement machinery and Labour institutions. This has resulted in the passage of two laws, the Employment and Labour Relations Act, 2004 (ELRA) and the Labour Institutions Act 2004 (LIA). The second phase which is still in progress is reviewing the laws on Occupational Health and Safety, Social Security, Workers' Compensation and Employment Promotion.

The overall objective of the reform was to put in place policies, laws and regulatory structures that are more flexible and conducive to the business environment and to promote employment while securing core employment standards and labour relations. This corresponds to the key policy area of labour policies identified in under the Informed and Comprehensive Policy presented above.

4.2 **Employment and Labour Relations Law**

The two main employment and labour relations laws are, as mentioned, the ELRA and the LIA. ELRA provides for basic fundamental rights and protections, employment standards, organizational rights, collective bargaining and dispute resolution. The operations of the ELRA depend on the establishment of the labour market institutions under the LIA. LIA provides for the institutional framework and machinery for effective labour market regulations, such as the Labour, Economic and Social Council (LESCO), the Commission for Mediation and Arbitration (CMA) and the Labour Court.

These laws can empower and protect the poor by embracing the following broad areas:

4.2.1 **Recognition as workers**

As mentioned earlier the informal economy is dominated by workers in informal jobs. These range from casual, daily labourers, domestic workers, seasonal, temporary, part-time, home workers and the self employed. The definition of workers in most labour laws as employees engaged, usually on full time or permanent basis, creates a big obstacle to the inclusion of most informal economy workers in labour legislation and labour market policy.

The ELRA has addressed this problem by providing the definitions of “employer” and “employee” only. It has avoided to define who an “employee” is. Moreover, the new laws have brought in two innovations:

- Under section 98(3) the Minister responsible for labour in consultation with LESCO can deem any category of workers as employees for the purposes of any labour law. Workers in the informal economy can benefit from this provision if the Minister makes use of it;
- Section 61 of LIA creates seven situations in which a person may be presumed to be an employee regardless of the form of the contract. Those working in the informal economy are, therefore, covered by this law.

4.2.2 **Enjoyment of Core Rights**

Core rights are enshrined in the eight ILO Conventions. Together they form **the bare minimum** for the creation of a decent environment within which to work. The rights are:

- prohibition of child labour;
- prohibition of forced labour;
- prohibition of discrimination;
- the right to freedom of association;
- the right to free collective bargaining.

These rights are now fully secured in the ELRA apart from being recognized by the Constitution as well. What is needed is to enhance their implementability not only in the formal but also the informal economy.

4.2.3 **Employment Standards**

Employment standards are built on various ILO Conventions which reflect the international consensus on the areas covered by the Conventions. The Conventions are made taking into account the two competing interests that is, social justice and economic efficiency. On the other hand, employment standards provide minimum conditions of employment that can be flexibly varied by collective bargaining and individual contracts but without eroding the minimum conditions. Minimum standards also take into account the diversity of the modern labour markets including the informal economy. Essentially, they are not supposed to raise labour costs and curb incentives for firms to expand and hire more workers or to adopt new technologies.

ELRA has documented the under-mentioned standards and applied them to all employees and employers including those in the informal economy. These are:

- Hours of work - restricting the hours of work in a day or week.
- Remuneration – directing when how and where wages should be paid.
- Leave: sick, annual, maternity, paternity and compassionate.
- Termination of employment – prescribing the grounds and fair procedure upon which an employee can be terminated from employment.

It is crucial for the upholding of the employment standards given in the new labour legislation that an effective labour administration and inspection service are in place.

Effective labour inspection depends on the capacity of the overall service with good guidance by rules and regulations and physical capacity, such as adequate number of labour inspectors, relevant training, resources (means of transport) and more labour officers closer to the workplaces. There are currently 33 labour offices in Tanzania, covering all regions and some districts.

The effect of awareness creation and raising on the importance and relevance of employment standards should not be understated. This will also enable the social partners to take a more effective role in the monitoring of compliance at the workplaces. The philosophy is that social dialogue and voluntary agreements can facilitate and develop an effective workplace based system of checks and balances on employment standards etc.

4.2.4 **Freedom of Association and Collective Bargaining**

The fundamental right to freedom of association embraces a number of other rights, such as:

- the right to form and join trade unions or employers' associations;
- the right trade unions and employers' associations-
 - to draw up their own constitutions,
 - to elect their representatives in full freedom,
 - to organize their administration,
 - to formulate their programmes
- protection of workers against victimization;
- measures to promote collective bargaining.

The ELRA has adequate provisions to guarantee this right. They can be seen in Parts II, IV, V, and VI of the Act. The challenge ahead is enforcement and unionization of employees in the informal economy.

4.2.5 **Dispute Resolution Machinery**

It is correctly argued by the HLCLEP Overview Paper together with other studies including the BEST Programme Document of 2003 that the poor generally expect little recourse from the slow, corrupt and unpredictable court systems, wherein the courts are often located far from the areas that are home of the many poor. In making the dispute resolution machinery meaningful to the poor, the ELRA has instituted the following:

- all labour disputes would be resolved through mediation as the first step. This is a voluntary process and less costly in terms of time, and resources;
- where mediation fails the dispute would be referred to arbitration;
- both mediation and arbitration will not be bound by the technical rules on procedure and evidence as applied in ordinary courts;
- disputes not resolved at arbitration level would go to the Labour Court;

- in all the three stages parties may choose to appear in person or be represented by a trade union official/employers' association, an advocate. In the Labour Court parties may also be represented by a person of the party's own choice. Para-legals and legal aid schemes can exploit this opportunity to represent the poor in the Labour Court;
- parties will not be responsible for the costs of mediation, arbitration and adjudication;
- disputes should be resolved within the possible shortest time 30 days are allocated at the stage of mediation. The arbitrator is given 30 days to hear the arbitration and another 30 days to write the award. This will reduce the costs in terms of time.
- Accessibility to the dispute resolution machinery, that is the Commission for Mediation and Arbitration (CMA) is simplified. Parties will only be required to fill in a prescribed form and submit it to the Commission. Further, the Commission will establish offices in areas and at administrative levels as it may determine. This should be done in order to cut down distances which workers should walk before they access the Commission

The awareness among workers and employers of the new dispute machinery and the main intention behind it of trying to let the social partners resolve their disputes effectively and efficiently is crucial for the implementation of the reform. The knowledge of new labour laws, and how to use the new opportunities of dispute settlement is fundamental for the success of the reform and, by that fact, the empowerment of the people at the workplaces. This is, thus, an issue for the government in cooperation with the social partners that will be given high priority in the nearest future.

The practical operation of CMA is also given great consideration and it is acknowledged that it will be a big task to implement and roll out the reform in all mainland Tanzania. The first step will be to create zonal offices, thereafter regional and district offices shall follow. The phased implementation will for a short period of time mean longer distances to offices for some workers, which create challenges with regard to accessibility to justice. This will have to be given extra consideration and solutions such as "traveling CMA". Of course, the success of CMA will eventually depend on availability of funds and personnel.

The final step in the "dispute machinery" will be the Labour Division of the High Court, which will be operating from its Headquarters and few zonal centres. This will also, in the light of accessibility, be given extra considerations, but again it partly depends on resources of personnel, buildings, transport and support facilities.

4.2.6 **Restoration of the right to strike and lock-out**

The right to strike is generally seen as a necessary element of collective bargaining. If workers could not, in the last resort, collectively refuse to work, they could not bargain collectively. Similarly, the power of management to shut down the plant would not be matched by corresponding power on the side of labour.

To this effect, the ELRA has restored these rights which were almost prohibited by the Industrial Court of Tanzania Act 1967. The process for staging a strike or lockout is now short and simple as follows:

- the parties should be involved in a dispute of interest;
- the dispute should have been referred to mediation;
- the dispute has remained unresolved at the end of the time allocated for mediation (normally 30 days);
- a ballot is conducted if the strike is called by a trade union. This requirement does not apply to employers;
- 48 hours notice has been given to the employer or employees of the intention to strike or lockout respectively.

All the above areas target the decent work agenda in general, but in particular the second policy goal of securing rights. The following case to be presented is specifically targeting the third goal of promoting protection of informal workers through their inclusion in social security schemes. This part of the paper will be followed by a short presentation on initiatives in Tanzania to address the remaining two policy areas in the decent work agenda, the promotion of opportunities and the building and recognizing of the voice of informal workers.

4.3 **Social Security**

The social security legislation in Tanzania also forms part of the labour law reform and directly addresses the area of social protection on the decent work agenda.

The existing social security schemes in Tanzania do not benefit employees in the informal economy and the possibilities of including the sector is under review by the government and the Labour Law Reform Task Force. The sentiment is that the schemes should be sought to be extended to the informal economy.

“The overall aims and functions of social security is three fold, namely to guarantee adequate living standard and minimum income protection; to safeguard the acquired standards of living; and to contribute to reintegration of individuals into a labour market. In other words, social security programs should be able to guarantee a sustained satisfaction of society basic needs; to guarantee protection against worsening of living conditions; to protect against unforeseen contingencies; to redress income inequality and to facilitate social integration”.²⁰

The Task Force on social security in Tanzania in its Report identifies the different shortcomings of the social security system as:

- 1) Limited coverage
- 2) Inadequate benefits
- 3) Fragmented and uncoordinated system
- 4) Lack of portability of benefit rights (from one scheme to another)
- 5) Based on benefits not rights

²⁰ Rwegoshora, H. Report on Social Security in Tanzania to the Task Force on Labour Law Reform, 2005

- 6) Conflicting legislation
- 7) Non-contributory benefits
- 8) Lack of liberalization
- 9) No guidelines for investments of social security funds

These shortcomings are addressed by the Government of Tanzania in the National Social Security Policy which aims at:

- 1) Widening the scope and coverage to all citizens
- 2) Harmonizing social security schemes in the country so as to eliminate fragmentation and rationalize contribution rates and benefit structures
- 3) Reducing poverty through improved quality and quantity of benefits offered
- 4) Instituting a mechanism for good governance and sustainability of social security institutions through establishment of a regulatory body
- 5) Establishing a social security structure that is consistent with the ILO standards but with due regard to the socio-economic situation in the country and
- 6) Ensuring more transparency and involvement of social partners in the decision making with respect to social security institutions.

The general objective is to ensure protection against economic and social distress, where the structure must acknowledge the different needs and varied types of protection.

The Task force recommended the structure of the social security system to be based on the ILO framework – which is a three tier structure:

- 1) Social assistance schemes (primary health, primary education, etc) on a means tested basis.
- 2) Mandatory schemes – compulsory financed by employer and employee during working life for terminal/short-term benefits.
- 3) Voluntary – supplementary – schemes (personal savings, occupational pensions schemes, private pension schemes) managed by professional private bodies.

Concurrently with the reform process other initiatives towards the integration of the informal sector into the social security schemes have been undertaken. In the year 2001 the National Social Security Fund (NSSF) conducted a research whose primary objective was to ascertain how social security could be extended to the informal economy. Based on this study NSSF has started to register workers in the informal economy.²¹

In addition to the efforts by NSSF other stakeholders have also attempted to extend coverage to this sector. This has been done through the introduction of micro-

²¹ Dan, R.K. Extending Social Security Coverage: Social Security Coverage through micro-insurance schemes in Tanzania Banjul, The Gambia 7-9 October 2003

insurance schemes by NGOs or associations of people sharing similar risks. Some of the NGOs which have successful micro-insurance schemes is UMASIDA (Umoja wa Matibabu wa Sekta Isiyo Rasmi Dar es Salaam). The scheme was started in 1995 with a mission to provide health care services to its members.

Therefore, for the workers in the informal economy, social security protection may be availed to them through:

- extending the existing social security schemes to cover the informal economy. This can be done by NSSF and PPF;
- working out alternative schemes by NSSF/PPF and other social security provided to suit workers in the informal economy;
- promoting micro-insurance schemes to be run by NGOs, CBOs etc.

Finally, as a parallel process to the social security reform, there is also a reform in the area of Workers' Compensation in case of injury at the workplaces. The compensation for employees is by all parties considered too low (maximum compensation is Tshs 108,000 – equivalent of 90 USD). The work of reforming this area is awaiting final discussion by the Cabinet before it will be presented to the Parliament. The new bills will have wider coverage, be gender sensitive and have better compensation rates.

5.0 OTHER INITIATIVES ON THE DECENT WORK AGENDA IN TANZANIA

The above described initiatives on the decent work agenda have mainly focused on promotion of labour rights and protection of informal workers. The other two areas on creation of opportunities and promotion of the voice of the informal workers have been addressed as follows:

In August 2006 Tanzania and ILO promulgated the Tanzania Decent Work Country Programme, which is a 5 year programme with four broad focused areas on the decent work agenda namely:

- i. Employment – as the principal route out of poverty
- ii. Rights – without them, men and women will not be empowered to escape from poverty,
- iii. Protection – social protection safeguards income and underpins health
- iv. Dialogue – the participation of employers' and workers' organizations in shaping government policy for poverty reduction ensures that it is appropriate and sustainable.

The specific priority areas chosen for the decent work country programme are:

- (i) Poverty reduction through creation of decent work opportunities with a focus on young men and women;
- (ii) Incidence of child labour and its worst forms reduced; and

- (iii) Socio-economic impact of HIV/AIDS at the workplace mitigated.²²

There is a focus on the most vulnerable groups – the youth – which suffer from a large proportion of unemployment and underemployment.

The initiatives that are taken in the Tanzania Decent Work Country Programme are capacity building, training in organization and support to formalization of small informal businesses. There is further planned entrepreneurship training and career counseling. These initiatives will support the first and fourth area on the decent work agenda.

The overall purpose is to enhance the productivity and competitiveness in the informal sector by formalization and to create awareness of the core ILO standards. This is seen as a way to move ahead on the decent work agenda without impeding economic growth and employment initiatives.

6.0. CONCLUSION AND WAY FORWARD

The paper sought to answer three questions which constituted the terms of reference.

Before attempting to answer these questions, the paper, in the Introduction, tried to conceptualise the problem of poverty and its linkage to the informal economy. This was done by highlighting the concerns on poverty by various international organizations. In the second part, an attempt was made to determine the problem of poverty and its linkage to the informal economy within the context of the Tanzania situation. Here the causes and effects of informality were discussed, albeit, in brief.

Part three of the paper tried to answer the first two questions. It started by highlighting the goals of a decent work agenda. Briefly, these are: promotion of opportunities; security of rights; protection of informal workers; and building and recognition of the voice of informal workers. The determinants/benchmarks for advancing the decent working agenda were discussed based on the two segments of employment prevalent in the informal economy, that is, the self employed and those on wage/informal employment.

For the self employed the determinants are: promotion of their opportunities through micro financing, training to improve their skills, improved technologies, provision of business development services and policy interventions. For those on wage/informal employment, the benchmarks or determinants for operationalising the decent work agenda include: securing their rights by extending the labour legislation to cover them; promote collective bargaining in their set-ups; increase their membership in the informal economy; secure their representation in policy making organs; secure the rights of vulnerable groups and provide them with insurance coverage for illness, maternity, disability, old age and death.

In as far as the second question is concerned, the paper first, identified what is considered to be decent work deficits. Essentially, these are gaps or weaknesses

²² ILO Tanzania Decent Work Country Programme, 2006: p7

within the working environment. They relate to rights of workers in both the formal and informal economy. The deficits, in the Tanzania context, include unemployment and underemployment; low level of remuneration; lack of social protection; poor working conditions; poor trade union membership in the informal economy and the prevalence of HIV/AIDS in places of work.

In order to reduce the decent work deficits, the paper recommended the passage of an informed and comprehensive policy that takes cognizance of the basics: that the informal economy is here to stay; that the informal economy is diverse and is affected by all policies both general and specific. To this effect, the policy should take into account the following key areas: macroeconomic policies, urban regulations, labour policies and social protection measures. The policy should also be informed of other policy areas, such as, micro-financing, infrastructure and property rights. More importantly, the policy process should be participatory and gender sensitive.

The last question is addressed in part four of the paper by bringing in the labour law reform exercise which was undertaken by the Task Force as a case study. On the basis of the new labour legislation enacted pursuant to the recommendations of the Task Force, the paper bases the protection of the rights of the poor on areas, such as, statutory recognition of workers; enjoyment of core rights and freedom of association and collective bargaining; adherence to employment standards, presence of an effective dispute resolution machinery and restoration of the right to strike.

On social security, the paper recommends three approaches to protect workers in the informal economy. These are, first extend the existing social security schemes to them, secondly, work out alternative schemes specially tailored for this sector and, thirdly, promote micro-insurance schemes by NGOs or CBOs.

In spite of the labour law reforms so far carried out in Tanzania, the enhancing of the decent work agenda is still faced with the following challenges:

Firstly, awareness and publicity of the new labour legislation especially amongst the workforce. All the improvements and better working conditions sought to be brought about by the inclusion of the core rights and employment standards in the new legislation would not benefit the workers in both formal and informal sector if the beneficiaries are ignorant of the said laws. The same would apply to the newly introduced dispute resolution machinery which is intended to be much more accessible and less costly.

Secondly, promotion of social dialogue within the public and private sector. Promotion of social dialogue as advocated by the new laws will encourage tripartite and bipartite negotiations which may lead to conclusion of collective/voluntary agreements which are vital tools in the promotion of industrial peace and the improvement of the working conditions and the decent work agenda generally. Therefore, there is a need to empower, strengthen and sensitize social partners of their immense role of formalizing the informal economy and the implementation of the decent work agenda.

Thirdly, unionisation of workers in both public and private sector and, more importantly, in the informal economy. Presently, few of the workers in the formal sector are unionized and most of these are in the public sector. It is, therefore, a challenge not only to trade unions but also the Government to ensure that workers are motivated to join trade unions which will, in turn, engage employers in collective bargaining. So, the Government should take a lead in promoting trade unionism in the public sector, a measure which may have a spill-over effect on the private sector.

Fourthly, revising the social security schemes to cater for those working in the informal economy. The social security schemes should be designed in such a way that they motivate both employers and employees to join them. The rates of contributions and the benefits offered under the schemes should elicit compliance and motivate employees especially in the informal economy to join the schemes. However, the most notable challenge here is compliance by employers to remit their contributions to the Security Funds. Hopefully, reforming the social security laws will provide a long term solution to this perennial problem.

Fifthly, low wages which have the consequence of retarding the pace towards creation of a decent working environment. Much as the new labour legislation establishes sectoral wage boards for purposes of determining minimum wages on sector basis, still there is a need to have in place policy guidelines on wage determination. The guidelines may consider the diversity of pay packages amongst employees say in the public sector. They may also underscore the willingness by the Government to allow effective participation of the trade unions in setting up decent minimum wages in the public sector.

Sixthly, the prevalence of HIV/AIDS at places of work. The pandemic threatens to erode the efforts towards enhancement of the decent work agenda. The challenge ahead is how to ensure that this pandemic is handled at places of work without compromising the rights of workers. To this effect, employers in collaboration with workers should prepare HIV/AIDS policies and Codes of good conduct and practices within the context of their settings while addressing the whole question of stigma.

Seventh and lastly, is empowerment of the Ministry responsible for labour to ensure compliance by all employers and employees of the new labour laws. Empowerment entails provision of resources, financial and human to the Ministry. This will not be realized unless the Ministry is recognized as one of the key port folios in the entire set up of the Government.

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