

Labour Legislation and Waged Agricultural Workers

Policy Advice by the World Bank

Research commissioned by Oxfam Novib

Carlos Montes
Anja Linder

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The authors accept sole responsible for the contents of this report

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Executive Summary

This is a summary of the report on “Labour Legislation and Waged Agricultural Workers: Policy Advice by the World Bank.” The report was commissioned for the Oxfam International Labour Rights Team by Oxfam Novib, to inform its thinking on agriculture and development as well as to provide country based information to Oxfam national programmes in Indonesia, Philippines, Bangladesh, India, Morocco and Chile. The work for this report was carried from late August to late September 2007.

The report reviews key World Bank documentation to summarise the World Bank approach and policy advice regarding labour legislation. This is done for World Bank advice in general as well as for World Bank advice related to the six country cases referred to above. The report also presents some discussion, for each of the country cases, on how labour legislation relates to the agriculture sector as well as the analysis and recommendations of some other actors. The aim of the research is extremely relevant and ambitious. However, our work has focussed only on collecting the initial set of information.

Labour Legislation: The approach and policy advice of the World Bank.

The findings in this section suggest that it is not easy to talk about a general approach of the World Bank to labour legislation. On the one hand, we found that the World Bank’s Labor Market Group and the Social Protection Unit, together with other official documents, such as the World Development Report 2006 on Equity and Development, often follows a “cautious” and evidence based approach, i.e noting clearly the trade-offs between flexibility and workers protection (see below). On the other hand, we found that the very influential Doing Business project follows an approach and policy advice on labour legislation that is generally less “cautious” -also reflected in the World Development Report 2005 “A Better Investment Climate for Everyone.”

A cautious approach: The Social Protection Unit is responsible for supporting the Bank’s social protection agenda, and its documents generally recognise that there are strong differences of opinion about the costs and benefits of employment protection policies and proposes that market policies must get beyond ideological positions and rely more on empirical studies. Under this “cautious” approach, the World Bank has also provided some support to the International Labour Organisation’s (ILO) “Core Labour Standards” (freedom of association and the right to collective bargaining, elimination of forced labour, child labour and equality and non discrimination). This had been requested by the countries providing funding to the World Bank. The Bank has included Core Labour Standards in its rating of countries for the purpose of resource allocation, (the Country Policy and Institutional Assessment, CPIA), and has also developed a toolkit for the incorporation of labour standards into the Country Assistance Strategies. However, there is some evidence that the use of the toolkit on recent Country Assistance Strategies is limited and that Bank operations generally do not place significant emphasis on Core Labour Standards. By contrast, the Asian Development Bank has recently launched a much more comprehensive and systematic handbook on core labour standards.

The “cautious” approach to labour markets was also followed by the World Development report 2006 which noted that “There is an international consensus that core labour

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standards...have such an intrinsic value that they should always be pursued” this WDR also brought up the example of Cambodia, noting the positive effects of Core Labour Standards there. The WDR 2006 is also supportive of trade unions as the “cornerstone of any effective system of industrial relations” and highlights the positive impact they have had on the situation of landless agricultural workers in north-eastern Brazil. Another example of World Bank following a “cautious” and evidence-based approach can be seen in the recent report on Informality. The report finds that attempting to reduce the weight of labour legislation by creating special classes of less protective contracts can often effectively create a parallel, unregulated “formal” sector that displaces formal contracting. It also concludes that rigorous enforcement of a redesigned labour code that combines strengthened safety nets, well designed worker protections, and worker representation with the flexibility firms need to adapt in a global economy, has the potential to expand formal employment and reduce opting out. More generally, the World Bank also supports activities on labour standards through its dialogue and capacity building with social partners and through its research agenda.

There are some good reasons to support a “cautious” and evidence-based approach to labour markets. For example, in a January 2007 Institute for the Study of Labour, IZA (Bonn) and World Bank workshop, Gary Fields a leading labour market expert, presented a paper that stated that “the status of labor market analysis and labor market policy in the development economics community now is similar to the status of poverty analysis and anti-poverty policy two or three decades ago. At the time, the profession knew that it wanted to take on poverty more fully but most in it didn’t know how.” He wrote that a well formulated labour market policy proposal would answer questions about (a) the specific labour objective (b) the particular model to be used (c) the available empirical evidence. He concluded that “If I were your manager it is only after these questions are satisfactorily answered that I would feel comfortable authorizing you to make policy proposals to a client country. Typically, labor market policies have been proposed without such questions being answered.”

A less “cautious” approach: The Doing Business project has been extremely influential since its inception (2004) and is used in the CPIA and influences World Bank analysis, country strategies as well as operations (see next Section). The indicators are attractive because their methodology is simple, they compare and rank 175 countries and they also provide simple, general and straightforward policy recommendations, i.e. improving on specific indicators will lead to a more favourable business climate.

The approach of the Doing Business project to labour markets is less cautious and is not generally context-based. For example, the indicator on “Employing Workers” which assesses the labour market does not rely on a carefully constructed labour market models (as above) but on indicators that simply measure the rigidity of employment in terms of the difficulty of hiring and firing and the rigidity of working hours and the level of firing costs. The scoring rewards countries where firms can use fixed term contracts for any type of tasks and can be extended for long periods; it rewards unrestricted night and weekend work and work weeks longer than 5 days or 50 hours; and also rewards the right to fire workers due to redundancy and without notification to third parties. With this methodology, compliance to “Core Labour Standards” is not relevant. In fact, a number of the 2007 top performers in terms of the index of employing workers are not even members of the International Labour Organisation.

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The International Trade Union Confederation, ITUC, and others have complained to the World Bank about the “anti-labour” bias of this methodology. More recently, the ITUC has reported that the World Bank President has agreed to review the Doing Business indicator methodology.

On the Agriculture Sector. Our initial review did not find much general discussion of labour legislation in the agriculture sector. However, the draft World Development Report 2008, Agriculture for Development, has recognised the **fundamental** importance of agriculture for sustainable development and poverty reduction and notes that agriculture is a growing employer of wage labour in most regions (particularly in export oriented agriculture). The WDR recognises that balancing flexibility in hiring for employees with basic protection for labourers has not been easy and it notes that labour contracting schemes would benefit from regulation. However, it also states that labour regulation, particularly in middle income countries, can unwittingly reduce employment demand and encourage informality. The WDR agrees that agriculture wage workers face significant occupational and environmental hazards rarely covered under labour protection and notes that agriculture is often excluded from labour legislation (and when it is not, it is also subject to poor enforcement). Surprisingly, the WDR does not discuss the importance of Core Labour Standards in the agriculture sector (except for the issue of child labour, p. 309), the increasing importance of ethical trade initiatives (in which supermarkets are beginning to play such a central role) or the links between trade agreements and labour standards. However, the WDR discusses some migration issues.

Case Studies: Indonesia, Philippines, Bangladesh, India, Morocco and Chile

In this section, the report describes the World Bank’s policy analysis and advice on labour legislation in six countries selected by the Oxfam International Labour Rights Team and also reviews some effects on the agriculture sector. We also present some of the key issues highlighted by other experts. The section presents initial findings on these issues.

The review finds that the World Bank policy analysis and advice for India, Morocco, Indonesia and Chile generally follows the Doing Business project approach, as described above.¹ Moreover, the World Bank finds that, for these four countries, existing labour legislation has a strong “inequality” impact.

In the case of India, the World Bank focuses on the difficulty of firing and notes that “these laws create massive inequality...and the “dualism” created...allows discrimination against women and facilitates caste bias in hiring”. However, policy recommendations are not too specific. In Morocco, the Bank analysis remarks that Morocco has one of the highest indexes of rigidity of labour regulations and the recommendations are directly related to affecting the country’s doing business indicators. In the case of Indonesia, the World Bank analysis also bases its analysis on the Doing Business indicators to find that “Indonesia has the most rigid and costly employment regulations in East Asia.” The analysis focuses on the difficulties imposed by the costs of firing and the onerous minimum wage legislation. However, while the Bank argues that labour legislation is

¹ As a way of reference, the World Bank “World Business Environment Survey 2000”, surveys 10,000 companies in 80 countries and finds that labour legislation is identified as a major obstacle in India (30%), Philippines (18%), Bangladesh (15%), Chile (11%) and Indonesia (10%) and a moderate obstacle in Chile (43%), Bangladesh (37%), India (34%), Philippines (30%) and Indonesia (21%).

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anti-poor the policy recommendations are not as detailed as for Morocco. Concerning Chile, the World Bank recognises Chile's excellent economic performance and relatively flexible labour market but finds problems with the minimum wage, wage indexation and firing costs. The policy recommendations are explicit but are not as directly linked to the Doing Business indicators as in Morocco. In the case of Chile, the Bank instead suggests for example, "Assessing the impact of the minimum wage on employment opportunities of the poorest."

By contrast, the World Bank policy analysis in Bangladesh does not follow the "Doing Business" approach but focuses on core labour standards and the protection of workers. The Bank finds that "labor laws and rules are relatively light" but also notes that "On balance, Bangladesh's ineffectively enforced labor laws and regulations are less of a hindrance to the functioning of the labor market than are deficiencies in protecting workers' rights." Significantly, the focus on worker's rights and Core Labour Standards, including child labour and discrimination, was already present in the 2001 Country Assistance Strategy.

In the case of Philippines, we did not find a reference to labour legislation or Core Labour Standards in key World Bank documents. Instead, the Bank has focussed on how the policy of maintaining a high price of rice has resulted in uncompetitive wages. However, the Bank is currently starting to work on constraints to the generation of equitable employment.

In summary, this report finds that World Bank policy analysis and advice in our selected countries does not generally focus on Core Labour Standards or other issues related to worker protection or voluntary labour codes-with the important exception of Bangladesh.²

On agriculture, our report did not find much evidence of World Bank analysis or advice on labour legislation concerning agriculture workers or about working conditions (including health and safety issues) or Core Labour Standards. Interviews carried out for this report suggest that labour legislation and minimum wage legislation do not cover agriculture wage workers in some countries, e.g. Bangladesh, or they are covered under different conditions, e.g. Morocco. However, even in countries where labour legislation applies to agriculture workers, e.g. Indonesia, Philippines, India and Chile; this legislation is often only applied to a small number of agriculture workers as the degree of informality is very high. In Chile, the degree of informality is lower but the legislation in practice does not apply to agricultural workers without contracts.

Labour legislation in other sectors affects the employment and conditions of agriculture waged workers but these effects are not easy to estimate. The analysis and reports of other actors focus on Core Labour Standards.

² The previous serious of CAS for Bangladesh, India and Indonesia, however, had some focus on Core Labour Standards.

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1. Labour legislation: Approach and Policy Advice

Sometimes a cautious approach and cautious policy advice

The World Bank published in 2002 a paper presenting its basic understanding of Employment Regulations.³ This policy primer recognises that there are strong differences of opinion regarding the costs and benefits of employment protection policies.

“One perspective sees restrictions on non-permanent hiring and on employer dismissal rights as providing important social protection for workers. An opposing view emphasizes the fact that these regulations raise the cost of labour and thus discourage job creation and favour more privileged “insiders”. The World Bank primer suggests that good labour market policy must get beyond these ideological positions and rely more on the findings of empirical studies. The World Bank employment regulations primer summarises some of these findings but it also recognises that “more empirical research is required in developing countries in order to see whether impacts of job security rules are affected by large informal sectors, weak compliance, and other factors that distinguish labour markets in developing countries from those in developed economies”.

The Employment Regulations primer also refers to the employment protection continuum, which goes from rigid or protective to flexible or unregulated. The primer recognises that those emphasising the protective nature of job security rules are more likely to define the continuum as protective/deregulated while those calling for greater flexibility will call it rigid/flexible.

World Bank offers some support for ILO Core Labour Standards

The World Bank’s approach to labour regulations followed in the policy primer is a good example of a cautious and evidence-based approach. The policy primer was produced by the Social Protection Unit.⁴ The Social Protection Unit is the focal point for labour market interventions and produces knowledge products and toolkits. Its approach is based on social risk management, and the importance of “security” in reducing poverty.⁵

World Bank’s Labor Market Group:

Why labor markets matter to the World Bank mission of poverty reduction and economic development.

“The ability to work is the only asset of many of the world's poor. Work can provide individuals with income to meet material needs, reduce social isolation, and impart a sense of dignity and self-worth. By creating opportunities for such work, efficient labor markets directly contribute to poverty reduction. Sound labor market policies and programs help workers manage risks associated with unemployment, lost income, and poor working conditions. Furthermore, in allocating labor to its most efficient use in the economy and encouraging employment and human capital investment, well-functioning labor markets can contribute to economic growth and development.”

Source: Labor Markets Group, World Bank.
www.worldbank.org/labormarkets

³ World Bank Employment Policy Primer, December 2002, No1. Gordon Betcherman and edited by Tim Whitehead.

⁴ The Labor Markets Group consists of specialists working in the Social Protection Unit of the Human Development Hub.

⁵ World Development Report 2000/01.

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Labour Regulations and Standards and Trade Unions⁶ is a priority area for the World Bank Labor Markets Group. A 2003 World Bank's study on Unions and Collective Bargaining, concluded that economies perform better in coordinated labour markets and that globalisation spurred interest in labour standards around the world.⁷

Earlier representatives of donor countries had also recommended a focus on **Core Labour Standards**⁸ at meetings for the IDA 12 and IDA 13 replenishments (These are the meetings where donors provide fund allocations to the International Development Association of the World Bank). In the IDA 12 replenishment discussions, Deputies proposed to include into the Country Policy and Institutional Assessment (CPIA) the role of core labour standards and suggested that the Bank extend its collaboration with the ILO on core labour standards.⁹ During the IDA 13 Replenishment, Deputies recognised that the Bank had incorporated labour standards into the CPIA but noted that more needed to be done to include labour standards in strategies and operations.¹⁰

Core Labour Standards are included under criterion 10 of the CPIA "Social Protection and Labor" and include indicators on "protection of basic labor standards" (10b) and "labor market regulations" (10c).¹¹ The CPIA notes that the focus in this section is the balance between job creation and social protection.

The World Bank introduced in 2001 a toolkit for the incorporation of core labour standards into Country Assistance Strategies, i.e. the Core Labor Standards Toolkit.¹² This toolkit recommends staff to: (a) understand the standards (b) find information for specific countries (c) provide adequate diagnosis (including: quality of legal and institutional assessment, assessment of situation in practice, determine actions to rectify abuses and World Bank strategy if non-enforcement of labour standards affect development). The toolkit background information finds adequate analysis in some Country Assistance Strategies, including Bangladesh (2001) and Indonesia (2001).

The toolkit notes that "the principles embedded in the four core labor standards can contribute to the World Bank's development mission. Adherence to core labor standards promotes effective labor market institutions that can contribute to economic growth and reduce workplace risks faced by the poor." However, compliance with core labor standards is not a condition for lending or technical assistance in client countries.

The "cautious" approach to labour market legislation, the role of trades unions and Core Labour Standards was also clearly presented in the World Development Report 2006, Equity and Development. The report begins by emphasising that "Labor markets are

⁶ See information on World Bank-Trades Union dialogue, information available on high-level and technical meetings up to 2004, WB website.

⁷ See also the activities of the Labor Markets Group:

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALPROTECTION/EXTLM/0,,contentMDK:20223825-menuPK:390633-pagePK:148956-piPK:216618-theSitePK:390615,00.html>

⁸ 1998 ILO Declaration on fundamental principles and rights at work, include (a) freedom of association and right of collective bargaining (b) elimination of force labour (c) abolition of child labour (d) equal opportunity and non-discrimination at work.

⁹ Core Labor Standards Toolkit- Excerpts from IDA 12 Recommendations. Additions to IDA Resources. December, 1998. IDA

¹⁰ "Additions to IDA Resources: Thirteen Replenishment" September, 2002.

¹¹ Guidepost for this criterion are both the Core Labor Toolkit and the summary indicators of the Doing Business Database.

¹² <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALPROTECTION/EXTLM/0,,contentMDK:20224310-menuPK:584854-pagePK:148956-piPK:216618-theSitePK:390615,00.html>

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different from other markets. Unlike the markets for commodities, labor markets generally are not competitive...employers may underpay workers to work in hazardous conditions, or discriminate against vulnerable groups.”¹³ The report notes that “The challenge for governments is to shift more jobs along this continuum toward better working conditions and higher wages, and to do so in ways that do not come at the expense of efficiency.” The WDR notes for instance that though the Nordic countries, on the one hand, and the United States, on the other, have opted for different labor market models both have succeeded in delivering good job opportunities and rising productivity.¹⁴

The WDR report is quite supportive of the role of trades unions stating that “Free trade unions are the cornerstone of any effective system of industrial relations.” The WDR provides an example of the positive experience of unions in the north-eastern Brazil, where “Union activity among landless agricultural workers in this case was an important factor behind improvements in work practices that led to higher quality (critical for export crops), higher productivity, and better working conditions for landless workers.”¹⁵

Furthermore, the 2006 WDR also notes ¹⁶ that “There is an international consensus that core labor standards- ... -have such intrinsic value that they should always be pursued.” It also notes how Cambodia has virtually eliminated the worst labour abuses; child labor and sexual harassment, through a monitoring system developed and implemented by the ILO, with the support of the US Department of Labor, the Government of Cambodia, and the Garment Manufacturers Association of Cambodia. The WDR also notes that 80 percent of Cambodia’s overseas buyers rated labor standards as one of their top priorities in sourcing decisions and stated that standards had positive effects on accident rates, workplace productivity, product quality, turnover and absenteeism.¹⁷

Similarly, the World Bank 2007 report on Informality: Exit and Exclusion (Latin American and Caribbean) could also be categorised as following the “cautious” and evidence based approach. It finds that present labour regulations serves workers and firms poorly but also notes that “attempting to reduce the weight of labor legislation by creating special classes of less protective contracts can be problematic. When well designed, such contracts may offer flexibility that helps young people enter the market. However, they can often effectively create a parallel, unregulated “formal” sector that displaces formal contracting”¹⁸ The report also recognises “that policy recommendations have to be sensitive to country context.”¹⁹ The report concludes that “rigorous enforcement of a redesigned labor code that combined strengthened safety nets, well designed worker protections, and worker representation with the flexibility firms need to adapt in a global economy, has the potential to expand formal employment and reduce opting out.”²⁰

¹³ World Development Report 2006, Equity and Development, p. 186.

¹⁴ World Development Report 2006, Equity and Development, p. 186.

¹⁵ World Development Report 2006, Equity and Development, p. 190.

¹⁶ World Development Report 2006, Equity and Development, p. 190.

¹⁷ World Development Report 2006, Equity and Development, p. 190 and end note 42 in p. 144.

¹⁸ World Bank, Informality: Exit and Exclusion, 2007. p. 15 and p. 126.

¹⁹ World Bank, Informality: Exit and Exclusion, 2007. p. 125.

²⁰ World Bank, Informality: Exit and Exclusion, 2007. p. 126.

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The World Bank also supports activities on core labour standards through its dialogue and capacity building with social partners (MILES agenda), through its research agenda and identifying appropriate roles for the private sector.²¹

We have not carried out a review on how the toolkit has been applied in the last series of Country Assistance Strategies. We also do not have evidence of how many World Bank operations are focussed on core labour standards. However, in the selected countries, only the case of Bangladesh shows a strong discussion on core labour standards. A review by Global Unions of 12 recent CAS found that only the CAS for Cambodia address Core Labour Standard issues.²²

DFID's has recently recommended that the World Bank take a more active stance on labour rights "The World Bank could be more active in promoting labour rights on a global basis. ... In order to realise the potential of PRS Papers for promoting labour rights, the Bank needs to acknowledge the fundamental significance of labour rights for poverty reduction, and to expand its dialogue on this issue with other stakeholders (such as the ILO and global labour movements)."²³

The World Bank risks falling behind in the international support of Core Labour Standards. The Asian Development Bank recently launched (December 2006), a comprehensive "Core Labour Standards Handbook," in partnership with the ILO. This handbook includes a review of the treatment of core labor standards at all stages of Asian Development Bank operations (strategy, project design and implementation) and includes checklists on how to reduce negative impacts. In the presentation of the handbook, the Deputy Director General noted that the poor and vulnerable in Asia do not need just any kind of employment but they are entitled to "decent work".²⁴

Support for a cautious and evidence-based approach to labour markets

A cautious and evidence-based approach to labour markets is consistent with recommendations of leading experts on labour markets. For example, in the recent IZA-World Bank workshop²⁵ Gary Fields noted that "the status of labor market analysis and labor market policy in the development economics community now is similar to the status of poverty analysis and anti-poverty policy two or three decades ago. At the time, the profession knew that it wanted to take on poverty more fully but most in it didn't know how". He notes that a well formulated labour market policy proposal would answer the following questions:

- a) "What specific labor market objective or objectives are you trying to achieve and by what welfare economic criterion or criteria will you decide if your objective(s) is/are being achieved?"

²¹ The World Bank, Core Labor Standards, Human Rights and Democracy. Spring Meeting Seminars, April 2007. Robert Hozman, World Bank.

²² Global Unions 2005: Statement by Global Unions to the 2005 Annual Meetings of the IMF and the World Bank. September 2005. p. Global Unions include the International Confederation of Free Trade Unions, the Global Union Federation and the Trade Union Advisory Committee to the OECD.

²³ DFID policy paper of May 2004, on "Labour Standards and Poverty Reduction".

²⁴ Launch of the Core Labor Standards Handbook, Opening Remarks by Shyam Bajpai, Deputy Director General.

²⁵ Institute for the Study of Labour (Bonn)-World Bank workshop: "The Informal Economy and Informal Labor Markets in Developing, Transition and Emerging Economies", January 2007, Bertinoro, Italy. "Modeling Labor Market Policy in Developing Countries: A Selective Review of the Literature and Needs for the Future", December 2006.

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- b) "What is the labor market model you are using to analyze the effects of the proposed policy"?
- c) "What is the empirical evidence favoring one view of labor market functioning over another"?

Gary Fields concludes "If I were your manager it is only after these questions are satisfactorily answered that I would feel comfortable authorizing you to make policy proposals to a client country. Typically, labor market policies have been proposed without such questions being answered."

Gary Fields shows how even policy recommendations presented in the World Development Reports 2005 (creating jobs) and the WDR 2006 (equity) are based on implicit models that may or may not be correct.

What is needed to improve advice on labour policies: Gary Fields

(1) Specify explicitly the welfare economic criteria by which labor market policy judgements are being made. An "abbreviated labor market well-being function" would also recognise that in addition to how many workers have jobs, what also matters is how much workers earn in those jobs" ...and a third component might be social protection. "For example, Bourguignon and Dethier (2006) have written, "The term "good job" has two connotations: higher wages and more protection against dismissals, earnings variation and several risks linked to health, old age and unemployment", p. 12.

(2) The need for fuller more comprehensive theoretical models of how developing countries' labor markets actually function. "...policy makers and advisors need to work with models that contain enough sectors, provide realistic stylizations of the workings of the labor markets in each sector, and contain reasonable specifications of the linkages between sectors in the country in question. It is better to base policies on a less rigorous model with approximately the right features than on an explicit model with demonstrably wrong features".

(3) For labor markets in developing countries "the literature is far from conclusive on policy implications. This is because these studies do not provide the information that is needed for public policy: knowledge of how market conditions would change if a particular action were to be undertaken along with knowledge of how the marginal social benefits compare with the marginal social costs".

Applying this framework to minimum wages, Fields finds that the standard conclusions may change when total labor earnings, inequality, and poverty are also included as components of welfare judgement.²⁶ In this model, a higher minimum wage could improve social welfare or not depending on the parameter values in the model. Similar results apply to labor retrenchment laws.

"Doing Business": influential but follows a less "cautious" labour market advice

The Doing Business project states that it provides objective measures of business regulations and their enforcement across 175 countries. The project's objective is to "investigate the regulations that enhance business activity and those that constrain it".²⁷

²⁶ "A Welfare Economic Analysis of Labor Market Policies in the Harris-Todaro Model", Journal of Development Economics 76: 126-127. A similar analysis also can be found in "Minimum Wages and Poverty with Income Sharing", Cornell Working Paper, 2007. Final version published as Fields, G. & Kanbur, R. (2007). Minimum wages and poverty with income-sharing. *Journal of Economic Inequality*, 5(2), 135-147. Labor Retrenchment Laws and their Effects on Wages and Employment: A Theoretical Investigation. Basu, Fields, DebGubta, Cornell Working Paper, 2007. Stephen Devereux and his team argued successfully to include a minimum wage for plantation workers in the 2003 Uganda PRSP, IDS Bulletin May 2007, Debating Social Protection. See Also "Can Minimum Wages Contribute to Poverty Reduction in Poor Countries?", Devereux, S. *Journal of International Development* 17-889912 (2005).

²⁷ World Bank (2007) *Doing Business in 2007: How to Reform*. World Bank, Washington, D.C.

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The Doing Business indicators are highly influential and are also used in the World Bank resource allocation, through the Country Policy and Institutional Assessment (CPIA).²⁸

In the CPIA, the labour market is not only covered under the section related to social protection (see above) but also under criterion 6 Business Regulatory Environment. The emphasis in criterion 6 is on how the policy environment helps or hinders private business in investing. The CPIA uses as guideposts the Doing Business indicators, particularly the rigidity of employment law index. The index of employment rigidity rewards an employment law that provides high “flexibility” to hire and fire workers, and the existence of other labour market institutions which facilitate doing business, while state intervention is only view as necessary for the purpose of smoothing out market imperfections.²⁹

The Doing Business project is extremely influential. The first Doing Business report in 2004 was already a top seller after the World Development Report. It generated 700 media articles in 600 countries, influenced a number of key World Bank operations and the CPIA, as well as other aid agencies and governments.³⁰ The influence of the report has only grown since. The attractiveness of the indicators is partly explained by the simplicity of their methodology (see Box below), by the fact that it allows the comparison and ranking of 175 countries around the world and by providing straightforward recommendations: “improve the business climate by improving the Doing Business indicators”. The approach does not require a time consuming definition of labour market objectives, complex models or establishing parameters (as discussed previously).

The Doing Business reports of 2006 and 2007 repeat simple, general and definitive conclusions, i.e. “Beyond these regulations and principles, governments struggle to reach the right balance between labor market flexibility and job stability. Most developing countries err on the side of excessive rigidity, to the detriment of businesses and workers alike.”³¹

The Doing Business reports refer to core labour standards (as fundamental rights at work) but does not make clear that countries have obligations to respect, promote and realise these principles.³² The Doing Business indicators do not incorporate core labour standards.

The Doing Business reports sometimes describes policy trade-offs. For example, the DB 2006 notes that “Rich countries can afford larger social security systems, while poor countries may need to rely more on employment regulations” and suggests that as countries develop they can move to more flexible employment regulation. The DB report of 2007 elaborates on this theme, and suggests one way to make labour reform “more palatable: combine it with temporary public works programs that can provide employment for those without jobs.”³³ Meanwhile, it suggests that middle-income

²⁸ CPIA, December 11, 2006. Operations Policy and Country Services.

²⁹ CPIA December 2006: 18.

³⁰ World Bank operations influenced by the DB 2004 report include the Bulgaria PSA, Brazil PAL, Chad CAS, China (credit markets), IDA triggers, India SAL, Macedonia CAS and Nicaragua PRSP. “Building the Investment Climate Practice”. Michael Klein, PSD Forum, April 2004.

³¹ World Bank 2007: 18; World Bank (2006a) *Doing Business in 2006: Creating Jobs*. World Bank, Washington, D.C.: 26.

³² DFID that “all ILO member states, even if they have not ratified the Conventions in question, have an obligation, arising from their membership in the ILO, to respect, promote and realise certain principles. Labour Standards and Poverty Reduction, May 2004. DFID.

³³ World Bank 2007: 21.

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countries might introduce unemployment insurance in place of rigid dismissal rules. These are more complex policy proposals and would require substantial research. However, this is not the central focus of the Doing Business approach. The central focus is simply on “improving” the hiring and firing difficulties and simple policy conclusions: “The best protection for workers is to make labor rules flexible so that the economy will have more jobs in the formal sector- and transitions from one job to another are easy”³⁴.

Doing Business (DB): The Employment Index

The Employing Workers index is composed of indicators measuring the difficulty of hiring and firing of workers, the rigidity of working hours and firing costs. The Rigidity of Employment index (a sub-component of the Employing Workers index) includes the first 3 components and has values between 0 and 100, with higher values indicating more regulation. Looking at the various components and sub-components of the employment index, we will explain how this indicator assesses labour regulations:

In terms of **hiring workers**, DB puts a premium on allowing for the use of term contracts for any type of task as opposed to limiting their use for specific types of tasks. Furthermore, the longer the duration of such term contracts, the more positive the score. The level of the minimum wage in relation to average value added per worker for trainees or first-time employees is also measured, where the best score is given for relative minimum wage levels below 0.25.

When measuring the **rigidity of hours**, the DB gives the top scores to countries where night work and weekend work is unrestricted, where the work week can extend beyond 5 days and beyond 50 hours and where paid annual vacations amount to 21 working days or less.

In terms of the **difficulty of firing**, DB looks first of all at whether redundancy is allowed as a basis for terminating workers. Where it is not, countries are given a poor score. Requirements to notify and obtain agreement from third parties when terminating workers provide for a less favourable score, particularly when such requirements apply to the termination of one single worker. If the law requires employers to consider reassignment or retraining before redundancy termination, or whether priority rules apply for redundancies or reemployment, countries are also penalized in their score.

Firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weekly wages.

Source: The Doing Business Project <http://www.doingbusiness.org/MethodologySurveys/EmployingWorkers.aspx>

As seen in the box above, in terms of its scoring, the Employing Workers and the Rigidity of Employment indexes, favours flexibility above. The index favours a business context where firms can use fixed term contracts for any type of task and where these contracts can extend for longer periods of time without becoming permanent contracts. It rewards allowing for unrestricted night and weekend work while also favouring longer work weeks. The employment index also favours making the termination of workers as easy and less costly as possible.

This methodology can produce high rankings for countries with minimal labour regulations. The methodology does not consider the country context or potential social costs of implementing the reforms necessary to obtain favourable scores on the Doing Business ranking—and neglecting Core Labour Standards (or broader labour standards).

³⁴ World Bank 2007: 22.

1. Labour legislation: Approach and Policy Advice

The Doing Business 2007 rankings include among the top performers in terms of employing workers:

Ranking of	1	Marshall Islands (at the time not a ILO member country) ³⁵
175 countries:	4.	Tonga (not an ILO member)
	5.	Maldives (not an ILO member)
	7.	Palau (not an ILO member)
	11.	Samoa (ILO member from 2005)
	12.	Micronesia (not an ILO member)

Similarly, in terms of firing costs, Bhutan and Saudi Arabia are among the top performers. Both countries score low on political and civil rights.

The ITUC and others have complained to the World Bank on the “anti-labour” bias of this methodology. More recently, the ITUC has reported that the World Bank President has agreed to review the Doing Business indicator methodology.³⁶

The 2005 World Development Report, A Better Investment Climate for Everyone, provides an analysis and recommendations that are fully consistent with the Doing Business project approach. In the chapter, Workers and Labor Markets, the report finds, that “Indeed, as in other areas of regulation, labor regulation in many developing countries mimics or exceeds that in developed countries, benefits only part of the population because of widespread informality, and imposes a disproportionate burden on those firms that do comply.”³⁷ The WDR recommends (a) wage adaptability (including reassessing minimum wages), (b) ensuring workplace regulations reflect a good institutional fit (including liberalising restrictions on workweek) (c) balancing employment stability with firms’ need to adjust the workforce (including regulation on hiring and firing). The assessment of impact of legislation by the WDR generally concludes that “strict” regulations hurt vulnerable groups.³⁸

³⁵ Joined ILO in July 2007.

³⁶ <http://www.ituc-csi.org/spip.php?article491>

³⁷ WDR 2005, p. 141.

³⁸ WDR 2005, p. 149.

1. Labour legislation: Approach and Policy Advice

World Bank Document Providing Policy Advice Related to Labour Legislation

- Country Assistance Strategies, refer to labour legislation whenever this is seen as a key constraint to the client's development.
- Investment Climate Assessments, based on the Investment Climate Survey and the Doing Business database, also includes recommendations on labour regulations.
- Country Economic Memorandum and Development Policy Review, often include discussions on labour legislation.
- Project Documents (including Poverty Reduction Credits)

World Bank Documents Providing Policy Advice Related to Agriculture Sector

- Overall Strategy: Reaching the Rural Poor: A Renewed Strategy for Rural Development, 2003.
- Country Assistance Strategies
- Economic Reports
- Sector Reports
- Project Documents

1. Labour legislation: Approach and Policy Advice

The box below presents key World Bank documents related to analysis and policy advice on labour legislation and the agriculture sector:

World Bank and the agriculture sector

The draft 2008 World Development Report "Agriculture for Development in a Changing World, (*Box to be revised with final version of the 2008 WDR*) recognises the fundamental importance of agriculture for sustainable development and poverty reduction, as 75% of the world's poor are rural and most are involved in farming. The report notes that the agricultural agenda varies in the three distinct agricultural worlds: agriculture-based (where a productivity revolution in smallholder farming is required); transforming (high-value agriculture, non farm economic activity in rural areas, providing assistance to help move people out of agriculture) and urbanised countries (smallholders direct suppliers in modern food markets, good jobs in agriculture and agroindustry, and facilitating market for environmental services).

The WDR recognises that this agenda requires the visible hand of the state. Most of the recent decline in poverty is attributable to better conditions in rural areas. Yet, agriculture has been vastly underused for development. The WDR also notes that high-value markets are the fastest growing markets in most developing countries, and as income rises, supermarkets become more dominant in domestic retail sales.

The WDR notes that between 45-60 percent of the rural labour force is engaged in the agricultural labour market and the rural non-farm economy in Asia and Latin America. Self-employment, instead, is mostly relevant to Sub-Saharan Africa. The WDR notes that "Labor regulations are needed that help incorporate a larger share of rural workers into the formal market and eliminate discrimination between men and women.

The WDR finds that agriculture employs 10% of the agriculture sector labour force as waged workers. "Yet labor conditions in agriculture are not always conducive to large welfare improvements, in part because of the production process and in part because of a lack of appropriate regulation". p. 287. The WDR recognises that "making the rural labor market a more effective pathway out of poverty is thus a major policy challenge that remains poorly understood and sorely neglected in policy making", p. 287. The WDR also notes that agriculture is a growing employer of wage labour in most regions (now 47% in India). But wages vary sharply with weather conditions and other agricultural risks. The increase in wage workers occurs in countries enjoying the export-oriented agricultural boom. P. 295

The WDR also finds endorses the assessment (also P. Hurst 2005) that "agriculture wage workers face significant occupational, and environmental hazards rarely covered under labor protection. They are also poorly protected by national labor laws. Agriculture is often excluded from labor legislation... Even when laws are on the books, low familiarity by employers and workers and poor enforcement undermine compliance in rural areas." P. 293.

The WDR recognises that balancing flexibility in hiring for employees and basic protections for laborers has not been easy, "Labor contracting schemes can reduce the volatility of employment for agricultural workers, but the employment practices would benefit from regulation. Unregulated contractors can take advantage of workers"...The Bank argues that what is needed is to "adjust labor legislation that protects them (workers) but does not stifle employment", p. 312 or "encourage formality while maintaining flexibility." P. 294.

On the other hand, the WDR refers explicitly to labor regulations and notes that they "can unwittingly reduce employment demand and encourage informality by imposing high minimum wages, high severance payments, and an 'implicit labor tax", p. 294. In this section, the WDR 2008 refers to the WDR 2005 on investment climate.

Surprisingly, the WDR does not generally discuss the importance of Core Labour Standards in the agriculture sector (except for the issue of child labour, p. 309), its links to voluntary codes and ethical trade initiatives (in which supermarkets are beginning to play a central role) or links between labour standards and trade agreements. The WDR does include some discussion on the role of migration in agriculture.

The Bank's overall approach to rural and agricultural development is presented in the document "Reaching the Rural Poor" (2003). The rural strategy focuses on the rural poor. It stresses that improvements in the well-being of the poor will only be possible through enhancement of their productive, social and environmental assets, i.e. increasing the productivity and growth of both the farm and non-farm economies. The World Bank promotes liberalising the agriculture sector and reducing the protection of agricultural commodities.

Our review of World Bank documents has not identified specific advice on agricultural labour markets. The World Bank's rural strategy underlines the need to treat agriculture, in terms of public policy, as other sectors, stating that "policies must neither discriminate against agriculture nor give it special privileges." (World Bank 2003:XX).

2. Six Case Studies: Indonesia, Philippines, Bangladesh, India Morocco and Chile

In this section we describe the World Bank's policy advice in six countries selected by the Oxfam International Labour Rights Team: Indonesia, Philippines, Bangladesh, Morocco and Chile. As in the previous section, we review a few key World Bank documents for each country, e.g. Country Assistance Strategies, CAS progress reports, Country Economic Memorandum (analytical country reports) and investment climate assessments. We also carry out few interviews, including with some World Bank staff. The review allows us to describe the World Bank analysis and advice on labour legislation and provide some references on effects on the agriculture sector. We also present alternative analysis by other experts. This section presents our initial findings.

The selected countries include only one least developed country, Bangladesh. Most of the other countries are firmly middle income countries,³⁹ while Chile is an upper middle income country. Generally, in middle income countries the reliance on high-value agriculture crops and agriculture wage workers is higher than in agriculture-based economies.

Our review finds that the World Bank policy analysis and advice for India, Morocco, Indonesia and Chile generally follows the Doing Business project approach (see previous section).⁴⁰ The World Bank also identifies a strong "inequality" impact on much of existing labour legislation.

In the case of India, the World Bank focuses on the difficulty of firing and notes that "these laws create massive inequality...and the "dualism" created...allows discrimination against women and facilitates caste bias in hiring. However, the policy recommendations are not too specific. Concerning Morocco, the World Bank analysis notes that Morocco has one of the highest indexes of rigidity of labour regulations and the recommendations are directly related to affecting the country's doing business indicators. In the case of Indonesia, the World Bank analysis also bases its analysis on the Doing Business indicators to find that "Indonesia has the most rigid and costly employment regulations in East Asia." The analysis focuses on the difficulties imposed by the costs of firing and the onerous minimum wage legislation. However, while the Bank argues that labour legislation is anti-poor the policy recommendations are not as detailed as in the case of Morocco. In the case of Chile, the World Bank recognises Chile's excellent economic performance and relatively flexible labour markets but finds problems with the minimum wage, wage indexation and firing costs. The policy recommendations are explicit but are not as simply directly linked to the Doing Business indicators as in Morocco, e.g. "Assessing the impact of the minimum wage on employment opportunities of the poorest."

By contrast, the World Bank policy analysis in Bangladesh does not follow the "Doing Business" approach. In the case of Bangladesh the contrast is strong, as the World Bank not only finds that "labor laws and rules are relatively light" but finds that "On balance,

³⁹ India is classified as Other Low Income Country but soon will become a Lower Middle Income country (per capita GNI \$ 826-3,255 in 2004). OECD DAC List.

⁴⁰ As a way of reference, the World Bank "World Business Environment Survey 2000", surveys 10,000 companies in 80 countries and finds that labour legislation is identified as a major obstacle in India (30%), Philippines (18%), Bangladesh (15%), Chile (11%) and Indonesia (10%) and a moderate obstacle in Chile (43%), Bangladesh (37%), India (34%), Philippines (30%) and Indonesia (21%).

2. Six Case studies: Indonesia, Philippines, Bangladesh, India Morocco and Chile

Bangladesh's ineffectively enforced labor laws and regulations are less of a hindrance to the functioning of the labor market than are deficiencies in protecting workers' rights." The Bank's investment assessment also notes that Bangladesh was the first developing country to sign an agreement to eliminate child labour in garment factories. Significantly, the focus on worker's rights and Core Labour Standards, including child labour and discrimination, was already present in the 2001 Country Assistance Strategy which recommended a strategy for addressing labour issues within reform measures.

In the case of Philippines, we did not find a reference to labour legislation or Core Labour Standards in key World Bank documents. The World Bank analysis instead focuses on how the policy of maintaining high price of rice has resulted in uncompetitive wages. However, the Bank is currently starting to work on constraints to the generation of equitable employment.

Doing Business indicators 2007

	Ease of Doing Business Rankings*	Employing workers ranking**	Employing workers index			
			Rigidity of Employment Index*** (scale from 0 to 100)			(weeks of salary)
			Difficulty of hiring	Rigidity of hours	Difficulty of firing	Firing costs
Chile	28	58	33	20	20	52
Bangladesh	88	75	11	40	40	51
Morocco	115	156	100	40	50	85
Philippines	126	118	56	40	20	91
India	134	112	33	20	70	56
Indonesia	135	140	61	20	50	108

* The Ease of Doing Business rankings provide the relative ranking of countries across the ten indicators that make up the Doing Business index. 175 countries.

** The 'Employing Workers' ranking provides the relative ranking of countries across four indicators of ease of employing workers: difficulty of hiring, rigidity of hours, difficulty of firing and firing costs.

*** The Rigidity of Employment Index is the average of the difficulty of hiring, rigidity of hours and difficulty of firing indices. 0 least regulation 100 most regulation. The three indicators composing the Rigidity of Employment Index along with indicators of firing costs make up the Employing Workers index.

Source: World Bank 2006a; 2007.

Our review finds that the World Bank's recent policy analysis and advice in the selected countries does not generally cover Core Labour Standards or other issues related to worker protection -with the important exception of Bangladesh. However, we found a greater tendency to focus on Core Labour Standards in the previous series of Country Assistance Strategies, i.e. in particular, the 2001 CAS for Bangladesh, India and Indonesia. The current Bank analysis does not emphasise the possible trade-offs between flexibility and worker protection.

2. Six Case studies: Indonesia, Philippines, Bangladesh, India Morocco and Chile

The WDR 2006 noted how overseas buyers rated labour standards as one of their top priorities in Cambodia (linked to US export quotas). Increasingly, there is also emerging evidence of the importance of labour standards on free trade agreements (for example in the current US-Peru FTA). However, the World Bank analysis does not generally discuss these issues.

Analysis and Policy Advice On Agriculture:

Our review was not able to find much evidence of World Bank analysis of labour legislation in agriculture, Core Labour Standards, working conditions, and health and safety issues in the selected countries.

Interviews carried out for this report, suggest that in some countries labour legislation and minimum wages do not cover the agriculture sector, e.g. Bangladesh, or the legislation may cover agriculture under different conditions, e.g. Morocco. However, even when the legislation includes agriculture workers, e.g. Indonesia, Philippines, India and Chile; poor implementation (because of informality) means that the legislation only applies to a very small proportion of agriculture wage workers (often plantation or large enterprises) e.g. Indonesia, Philippines and India. In Chile, labour legislation does not cover temporary workers which account for about one third of the agricultural labour force. In Bangladesh, agriculture work is overwhelmingly informal.

Labour legislation in other sectors affects the employment and conditions of agriculture waged workers but these effects are not easy to estimate. Other institutions and actors focus strongly on Core Labour Standards. For example, the International Trade Union Confederation produces reports on “Internationally Recognised Labour Standards” for the WTO General Council review of Trade Policies,⁴¹ “Trade Union Rights Profiles” and the “Annual Survey of Violations of Trade Union Rights.” This information is comprehensive and complements the information provided by the “Doing Business” approach. However, the ITUC reports do not allow an easy ranking of countries according, which may be necessary if World Bank staff wanted to identify the countries with most serious weaknesses in implementing Core Labour Standards.

However, while the World Bank Doing Business indicators show a relatively good ranking, the ITUC notes that “Consistent anti-union discrimination by employers ensured that Bangladesh maintained its sorry reputation as one of the worst countries for trade union rights violations in the region.”

Other indicators, Association and Organisational Rights (including trade union’s rights),⁴² suggest that Morocco (6) and Bangladesh (8) are the countries with the worse record in supporting the Core Labour Standards rights of association. The indexes for our other case studies are Indonesia 9, Philippines 9, India 10 and Chile 12.

Similarly, the ITUC indicators for Child Labour (5-14 years),⁴³ another Core Labour Standard, indicate that Bangladesh is the country with worse performance regarding this problem (28%), followed by India 13% (both for the 1999-2003 period).⁴⁴

⁴¹ 2007 reports for Indonesia, India and Bangladesh.

⁴² Freedom House, Freedom in the World 2007.

⁴³ Trade Union Rights Country Profile 2007.

⁴⁴ ITUC Trade Union Rights Profiles.

2. Six Case studies: Indonesia, Philippines, Bangladesh, India Morocco and Chile

The 2007 ILO, FAO and IUF report on agricultural workers⁴⁵ as well as an interview with the International Union of Food Workers (IUF), shows that these institutions focus not only on decent work and freedom of association rights but also on the need to improve health, safety and environmental conditions on farms and plantations (one of the three most dangerous occupations globally). Interviews with independent experts noted the importance of improving health and safety issues in India, Morocco and Indonesia, The IUF is also focussing on the conditions of migrant workers in agriculture. These areas, however, are not generally included in World Bank documents.

The trade unions, ITUC and IUF, have traditionally focused on support for labour legislation. Several partners of Oxfam are working on this as well. In Chile, the government has recently introduced legislation on sub-contracting establishing joint responsibility of large firms for labour conditions in sub-contracted firms. This is an important step as the vulnerability and lack of protection of temporary workers is high. However, ensuring the full implementation of this labour legislation is challenging.

However, there is some evidence that the implementation of voluntary labour codes (Ethical Trading Initiative, Fair Trade, etc), implemented by Northern companies and supermarkets can have a positive impact on health and safety issues and sometimes on workers wages and reduction of child labour (but less so on freedom of association, discrimination and harsh treatment and reaching migrant and contract workers).⁴⁶ These positive impacts are more likely in the presence of direct and stable relations between buying companies and suppliers. Also the impact assessment recommended making ethical trade more central to core business practice, and to focus on sustainable sourcing strategies and market incentives for code compliance. The future role of Northern supermarkets in the implementation of labour codes may be critical. The IUF and Oxfam are actively supporting some of these initiatives. Independent experts recommend joint action by trade unions and NGOs.

⁴⁵ Agricultural Workers and Their Contribution to Sustainable Agriculture and Rural Development, (2007), Peter Hurst, et. Al.

⁴⁶ The ETI Code of labour practice. Do workers really benefit. Reports of the impact Assessment (2006). IDS. S. Barrientos and S. Smith.

Case 1: Indonesia, Labour Legislation and Agriculture Sector

Summary: The World Bank stresses that Indonesia has managed to establish macroeconomic stability and to reduce poverty. However, it notes that further progress will partly depend on greater investment. The Bank states that Indonesia has the most rigid and costly employment regulations in East Asia, particularly related to the minimum wage and costs of firing. In the view of the Bank, this legislation is becoming increasingly restrictive, is anti-poor and leads to greater levels of informality. However, the Bank recognises that the legislation and minimum wages are not implemented in small firms and evidence of survey data shows that companies do not see labour legislation as a serious problem. There is limited discussion of Core Labour Standards in World Bank documents, except in the previous Country Assistance Strategy and some references to workers' rights in the policy recommendations. Interviews for this report, suggest that the legislation is not generally applied in the agriculture sector. The ILO instead focuses on a Decent Work agenda in Indonesia.

World Bank Documents Reviewed for Indonesia:

(2003a) *Country Assistance Strategy for Indonesia*. FY 2003-2007 World Bank, Washington, D.C. October

(2005) "Indonesia: Ideas for the Future: Creating Jobs" World Bank Policy Brief on Indonesia. World Bank, Washington, D.C. January.

(2006b) "Making the New Indonesia Work for the Poor" World Bank, Washington, D.C.

(2006c) "Revitalizing the Rural Economy: An assessment of the investment climate faced by non-farm enterprises at the District level, Consultative Draft." The World Bank Office Jakarta, Indonesia. July.

(2001) *Country Assistance Strategy for Indonesia*. World Bank.

Advice on Labour Legislation

The *World Bank Country Assistance Strategy* notes that Indonesia has regained macroeconomic and political stability, but economic growth has remained weak, and governance remains a challenge. Income poverty has fallen from 27% in 1999 to 16% in 2003. The Bank considers that improving the investment climate is a crucial aspect of the growth and poverty reduction strategy.⁴⁷

80% of Indonesia's poor live in rural areas. Agricultural households represent only about 40% of the population, but almost two thirds of poor household heads work in agriculture. For all years, the average per capita expenditure was lowest and incidence of poverty was highest among formal and informal agriculture-sector workers. Whereas 65% of poor households are agricultural, only 50% of their income is from farming and 8% from agricultural wage work.⁴⁸ Agriculture remains a crucial factor for poverty reduction in rural Indonesia.

⁴⁷ World Bank 2003a: i.

⁴⁸ World Bank (2003a) *Country Assistance Strategy for Indonesia*. World Bank, Washington, D.C. October 29. World Bank (2006b) "Making the New Indonesia Work for the Poor" World Bank, Washington, D.C.

The World Bank finds that “Indonesia has the most rigid and costly employment regulations in East Asia. The costs of firing a worker, for example, are large, costing up to 9 months of salary in severance pay alone.”⁴⁹ The World Bank notes that following the financial crisis in Asia in the late 1990s, economic recovery was stifled by rigid labour market regulations, which have been increasingly strengthened.⁵⁰ The Bank reported that minimum wage legislation was strengthened to highly onerous terms, and more stringent conditions for hiring and firing workers had a significant impact on employment prospects, particularly for the poor.⁵¹ Also, the World Bank reports “ample evidence that the jobless recovery since the financial crisis is largely a product of a worsening investment climate for formal-sector firms. Recent labor regulations are a significant contributing factor to this. Existing labor regulations are inherently anti-poor, largely because they are forcing an increasing share of the labor force into the informal, unprotected sector.”⁵² “Lackluster employment creation due to increasing rigidity in the labor market and continuing setbacks in the investment climate have been the main reasons for rising unemployment in recent years.”⁵³

The World Bank argues that regulations in the formal sector can have immediate effects on employment and productivity in the informal sector, where most of the poor work. In the Bank analysis, the enforcement of “restrictive” labour market regulations that decrease employment in the formal sector⁵⁴ will cause an increase in the levels of employment in the informal sector. In order to absorb the excess supply of workers, wages and marginal productivity in the informal sector will fall.⁵⁵

The Bank also finds that local labour regulations often are used as means of boosting local government revenues and provide little practical protection for workers. On the other hand, informal labour practices, such as discrimination against non-local workers and payments to obtain jobs, are also common and have a negative effect on employment and on the investment climate.⁵⁶

The World Bank notes that the minimum wage increased substantially in the early 1990s and has continued increasing since. While the Bank states that research has pointed to mixed evidence on the impact of minimum wages on employment, it argues that “minimum wages may be a more important constraint upon employment in the formal sector now than in the more favorable labor-market conditions prior to the crisis. But it should be noted that the vast majority

⁴⁹ World Bank (2005) “Indonesia: Ideas for the Future: Creating Jobs” World Bank Policy Brief on Indonesia. World Bank, Washington, D.C. January: 3.

⁵⁰ World Bank (2005) “Indonesia: Ideas for the Future: Creating Jobs” World Bank Policy Brief on Indonesia. World Bank, Washington, D.C. January.

⁵¹ World Bank 2006c: 115.

⁵² World Bank 2006b: 118-119.

⁵³ World Bank 2006b: 44.

⁵⁴ World Bank 2006c: 16.

⁵⁵ World Bank 2006b: 115.

⁵⁶ World Bank 2006c.

of micro and small businesses at the district level do not conform to the minimum wage legislation at all.”⁵⁷

The Bank also argues that increases in severance pay may restrict mobility in the formal sector.⁵⁸ For workers dismissed for economic reasons, the Law on Manpower of 2003 increased the overall rate of severance pay threefold. Many firms have claimed not to be able to afford severance payments according to the 2003 law and in practice, payments amount to about 1-2 months of salary regardless of legal entitlement. However, this still results in increased use of short term contract workers and outsourcing.⁵⁹

The regulations governing the employment of contract workers and the outsourcing of labour is becoming more restrictive, according to the World Bank. Restrictions on the choice of employment arrangements have discouraged firms from hiring new permanent workers in the formal sector. The Bank finds that the use of contract workers and outsourcing is increasing, under informal arrangements. Firms are limiting the number of permanent workers they hire, or have avoided hiring permanent workers altogether.⁶⁰ The Bank argues that existing labour regulations are inherently anti-poor, because they are forcing an increasing share of the labour force into the informal, unprotected sector.⁶¹

This analysis is consistent with the Doing Business approach; however, some earlier data suggests that labour legislation may not be as critical.⁶² A recent climate assessment of non-farm rural enterprises found that “it is likely that national level labor regulations are not a major constraint for the vast majority of micro- and small-scale businesses, simply because these enterprises cannot and do not comply with minimum wage or severance pay laws.”⁶³ The Bank also underlines that the constraints for rural small enterprises are mostly related to local level restrictions on hiring out-of-area workers, other informal restrictions, and labour force skills.

⁵⁷ World Bank 2006b: 116-117.

⁵⁸ As above.

⁵⁹ “Despite substantial non-compliance regarding severance payments, the law still causes concern to businesses, with firms worried about their ability to stay competitive in the face of slow business growth and the threat of competition from similar industries in the East Asia region. There is a tendency for firms to increase the use of short term contract workers and outsource their orders, especially for firms with fluctuating orders, in order to avoid the use of employees who would be entitled to higher severance pay” (World Bank 2006c: 35).

⁶⁰ World Bank 2006b.

⁶¹ World Bank 2006b: 118-119 and World Bank 2006c: 36.

⁶² World Bank Enterprise Survey 2000.

⁶³ World Bank 2006c: 25.

Policy Recommendations (2006b and 2005)

- Build a new social contract regarding minimum wages, severance pay and methods for settling industrial labour disputes. Reduce the costs associated with employment, particularly of younger and female workers, while protecting and enforcing basic labour rights and conditions appropriate to the country's level of development: (2006b:118)
 - (i) Implement further study on the impact of minimum wages on the formal and informal employment of the poor. (2006b:273)
 - (ii) Review and revise Indonesia's labour laws/regulations at both the national and the local level. (2006b:273)
 - (iii) Rather than limiting or banning outsourcing, the Government should seek to enforce labour rights on sub-contracting firms.(2005:3)
- Finalise implementing regulations of the labour laws, and address two key concerns of employers (2005:3):
 - (i) the need to retain flexibility in hiring contract workers, especially for young employees without prior work experience; and
 - (ii) the need to retain flexibility in outsourcing, while ensuring that sub-contractors enforce labor rights.
- Contemplate social support policies for the working poor (e.g. cash compensation programs for those affected by rises in fuel prices) and public works schemes for the poor in order to build support for labour market reform. (2006b:118)
- Establish the labour courts as required under the industrial dispute law to ensure swift resolution of labour disputes. (2005:3)
- Set up an expert group to guide the setting of regional minimum wages. Consider introducing the right of the central government to limit minimum wage increases in the regions. (2005:3)

A World Bank economist notes the need to revise the labour law to make hiring and firing less costly for employers but also protect the rights of workers. He suggests that a first step would be to provide a less costly but more secure severance pay scheme for workers and then gradually provide an affordable unemployment insurance or assistance system in the longer term. This is currently being discussed in the meetings between government, unions and employer associations.”⁶⁴ A similar sequence is recommended in the Doing Business reports 2006 and 2007.

The latest World Bank Country Assistance Strategy does not make any reference to Core Labour Standards, even though the ITUC country report finds serious weaknesses on freedom of association and child labour abuses.⁶⁵ However, the CAS 2001 placed significant emphasis on CLS, and particularly the right to organize and bargain collectively. According to the previous CAS “the broader political changes have opened up labor policies...As a result, new labor unions have sprung up...But there are questions about the capacity of business and labor to handle the changes and concerns that implicit alliances between

⁶⁴ E-mail interview with Kurnya Roesad, Economist, World Bank, Jakarta.

⁶⁵ ITUC, 2007. Indonesia: Internationally recognised core labour standards in Indonesia. Geneva, June 2007.

Government, employers and even military and police may persist. ... Issues for medium-term consideration involve: (i) further development of the labor relations framework covering the formation of trade unions, collective bargaining, and settlement of industrial disputes; and (ii) regulations governing employment standards, covering issues such as working hours, wage determination, and job security. Longer-term reform will also involve a sustainable system of social protection, including reform of the inefficient government-run Jamsostek social insurance scheme.”⁶⁶

Effects on agriculture workers

Agricultural employment represents around 40% of total employment.⁶⁷ Agricultural workers are covered by the national labour legislation. However, as the large majority of the agricultural labour force is estimated to be informal,⁶⁸ *in practice*, the vast majority of agricultural workers are not covered by the legislation. The national labour legislation covers mostly some large agriculture enterprises. The minimum wage in Indonesia varies from state to state. (see *ILO Database on Conditions of Work and Employment Laws*).

In Indonesia, 65% of poor households are agricultural, but only 8% of their income derives from agricultural wage work. A shift of labour out of the agricultural sector has helped maintain the growth of labour productivity in the sector and recent poverty diagnostics show that increases in agricultural incomes are an important driver of reductions in poverty. Between 1993 and 2000, 40% of agricultural workers in rural areas escaped poverty while staying in rural agriculture.⁶⁹

Alternative Views

An ILO expert notes the importance of reform of the labour markets accompanied with social protection for those that loose their jobs. He notes that Indonesia’s framework for social protection is weak and labour reforms have had some adverse impact on some workers who lack compensatory measures when they are laid off.⁷⁰ He notes that recent changes in the labour legislation in 2003 aimed to make the labour market more flexible have resulted in job losses and a flow of workers into agriculture with a resulting downward pressure on wages.⁷¹ The impact on agriculture workers is nonetheless low.

⁶⁶ World Bank Country Assistance Strategy for Indonesia 2001.

⁶⁷ E-mail interview with Kurnya Roesad, Economist, World Bank, Jakarta.

⁶⁸ Up to 90%. Telephone interview with Mr Kee Beom Kim, Economist, ILO Indonesia.

⁶⁹ World Bank 2006b.

⁷⁰ Telephone interview with Mr Kee Beom Kim, Economist, ILO Indonesia.

⁷¹ Telephone interview with Mr Kee Beom Kim, Economist, ILO Indonesia.

The ILO expert notes that a key issue in the sector is poor working conditions of agricultural workers and their low productivity. The ILO has recommended the promotion of decent work in Indonesia and has issued policy recommendations to advance this agenda.⁷² The Decent Work agenda is part of the Poverty Reduction Strategy Paper.

The ITUC notes that far-reaching improvements were achieved since the change of government in 1998 in terms of freedom of association and the right to collective bargaining. ITUC reports that Indonesia has ratified all eight core ILO labour Conventions. However, there are broad restrictions on trade union rights. Furthermore, child labour, forced labour and discrimination constitute significant problems. In practice there is anti-union discrimination, non-respect of labour laws and interference in strikes by police and the military. Women migrant workers and domestic workers are among the most badly affected.⁷³ Despite recent efforts, the U.S. State Department also reports that the Indonesian government does not enforce child labor laws in an effective or thorough manner due to corruption, a lack of resources, and lack of child labor inspections.

⁷² Telephone interview with Mr Kee Beom Kim, Economist, ILO Indonesia.

⁷³ ITUC 2007a.

Case 2: Philippines. Labour Legislation and Agriculture Sector

The Philippines has strong endowments but, according to the World Bank, its development outcomes have not matched its potential. The Bank notes that the labour market response to growth has been insufficient to reduce unemployment. The Bank also notes that Philippines needs to address the competitiveness of its labour markets, mainly by reducing the protection of rice in order to put downward pressure on wages. The World Bank analysis also discusses labour quality issues. The World Bank is now beginning to focus on the effects of labour legislation.

World Bank Documents Reviewed for Philippines:

World Bank (2007) "Philippines: Invigorating Growth, Enhancing its Impact", May 2007. Report n. 39226-PH.

World Bank (2007f) "Country Assistance Strategy Progress Report for the Republic of the Philippines." Report No. 40085-PH. World Bank; International Finance Corporation. June.

World Bank (2007e) "Philippines: Agriculture Public Expenditure Review" Technical Working Paper 40493. Sustainable Development Department. June.

World Bank (2005c) *Country Assistance Strategy for the Republic of the Philippines*. Report No. 32141 International Finance Corporation; World Bank, Washington, D.C. April.

The World Bank notes that the Philippines has valuable endowments but per capita growth has lagged behind other East Asian countries. Income inequality remains high, excluding the poor from their share of the income benefits generated by growth.⁷⁴

"The contrast between the country's human and physical assets and its modest development outcomes is perplexing. Ultimately, this can be explained by the limited

Philippines basic labour force and employment data

Indicators	2005
Population ages 15-64, total (millions)	51
Unemployment, total (% of total labor force)	10.9
Labor force, female (% of total labor force)	39.8
Labor force, total (millions)	37
Labor force with primary education (% of total)	..
Employees, agriculture, female (% of female employment)	24.8
Employees, agriculture, male (% of male employment)	44.7

Source: World Bank,
<http://go.worldbank.org/XA79EUBIQ0>

⁷⁴ World Bank 2007f.

ability of public institutions to resist capture by special interests and to work effectively for the common good, a sign of a frail social contract between the government and its citizens. Put succinctly, this has created a vicious cycle of weak public services, lack of trust in the government, and an unwillingness to provide adequate resources to it. As a result, the Philippines has been unable to achieve its development potential.”⁷⁵

“Both volume and productivity of domestic investments and foreign direct investment inflows have been lower than other East Asian countries...Between 2000 and 2004, the Philippine competitiveness ranking deteriorated, while that for Malaysia and Thailand improved (China and Singapore did not change).”⁷⁶

The World Bank states that competitiveness is significantly undermined by high unit labour costs due. According to the Bank the “rice policy has also retarded crop diversification and, together with other protected import-competing wage goods, raised the costs of living in the Philippines, putting upward pressure on wages and undermining competitiveness of unskilled labor.”⁷⁷ “The Philippines has one of the highest unemployment rates in the region: lower prices could help alleviate this problem. Brooks (2002) found the minimum wage to be significantly and negatively correlated with employment in the Philippines, especially in the agriculture and service sectors.”⁷⁸

The World Bank notes that the labour market is protected and suffers from competitive problems with emigration and informal activity remaining the major outlets. However the focus is on supply issues, including the quality of education.⁷⁹ According to the World Bank Business Environment Survey 2000, a relatively high number of companies identified labour legislation as a major or moderate problem. However, we did not find any recommendations related to labour legislation issues in the documents reviewed. The World Bank is nonetheless currently starting to look at the constraints on equitable employment generation, including in agriculture and rural areas.

We also did not identify any references to Core Labour Standards or decent work conditions in the World Bank documents reviewed. In our interviews, the Bank noted that the general approach regarding Core Labour Standards is to recommend strengthening these, but with a view to limiting negative impact on employment.⁸⁰

Effects on agriculture workers

Agricultural workers are covered by the national labour legislation. Chapter two of the code of agricultural reform lists rights of agricultural workers and states that they have the right to organize and form unions, right to a minimum wage and

⁷⁵ World Bank 2007f: i.

⁷⁶ World Bank 2005c: 4.

⁷⁷ World Bank 2007e: ix.

⁷⁸ World Bank 2007e:46; World Bank 2000b.

⁷⁹ World Bank 2007, *Invigorating...* p. 11 and p. 32.

⁸⁰ Telephone interview with Mr. Fabrizio Bresciani, Rural Development Economist, World Bank Manila.

stipulates a maximum working day of 8 hours. The minimum wage in the Philippines varies from state to state and is different for the agriculture sector. However, informality in the sector is very high and therefore many agricultural workers are not covered in practice.⁸¹ Informal agricultural workers have no pension or social security coverage. Moreover, safety nets in rural areas are quite weak. However, with the devolution of functions to local authorities, some local governments are setting up rural pensions.⁸²

Many agricultural workers are employed on a seasonal or casual basis in the small farm sector, which is mostly based on rice. Workers are often engaged on a sharecropping basis and receive part of the rice harvest. The agricultural reform resulted in the transformation of the rice sector. The sharecroppers benefited extensively from the transfer of land and from new technology. The Philippines also has an important plantation sector. The plantations are large and tend to be formal and respect the labour legislation and workers' rights. These farms are typically more capital-intensive, are often linked to large multinational corporations. Plantation workers receive higher wages and benefit from better social protection.⁸³

The analysis of the World Bank finds that high rice prices have increased income disparity within agriculture, as most of the benefits of the high price accrues to rich rice farmers.⁸⁴ The World Bank estimates that only 12% of all agricultural households reap the major benefits of high rice prices.⁸⁵ The Bank also believes that rice policy has retarded crop diversification.⁸⁶

Our interviews noted that a key issue in agriculture is the fact that the agricultural reform did not significantly affect much agricultural workers. Previously, they had the possibility of 'climbing the social ladder' in the agricultural sector, by going from being landless to renting land to owning land. The new legislation has made this much more difficult.⁸⁷

Alternative Views

The U.S. Department of State reports that child labor enforcement is weak because of a lack of resources, inadequate judicial infrastructure, and low conviction rates. In addition, child labor laws are not enforced in the informal sector. The National Plan of Action for Decent Work 2005-2007 prioritizes the elimination of the worst forms of child labor. The Medium Term Philippine Development Plan 2004-2010 also includes measures for reducing the incidence of child labor, especially in hazardous occupations.

⁸¹ Telephone interview with Mr. Fabrizio Bresciani, Rural Development Economist, World Bank Manila.

⁸² Telephone interview with Mr. Fabrizio Bresciani, Rural Development Economist, World Bank Manila.

⁸³ Telephone interview with Mr. Fabrizio Bresciani, Rural Development Economist, World Bank Manila.

⁸⁴ World Bank 2007e.

⁸⁵ World Bank 2007e

⁸⁶ World Bank 2007e

⁸⁷ Telephone interview with Mr. Fabrizio Bresciani, Rural Development Economist, World Bank Manila.

Case 3: Bangladesh, Labour Legislation and Agriculture Sector

Bangladesh has achieved impressive social and economic progress, according to the World Bank. But the Bank believes that continued poverty reduction will require improving the investment climate, especially in rural areas. The Bank notes that Labour market regulations are relatively flexible and do not constitute a major problem to investors. The World Bank documents reviewed include a focus on the quality of the labour force, core labour standards and the protection of workers' rights rather than on a flexible labour legislation. This focus was already evident in the 2001 Country Assistance Strategy. This is important because a number of indicators suggest that the respect of Core Labour Standards, including freedom of trade unions and child labour are extremely poor.

World Bank Documents Reviewed for Bangladesh:

World Bank (2007g) "Bangladesh Strategy for Sustained Growth Volume I: Summary Report." Report No. 38289-BD Poverty Reduction and Economic Management Sector Unit, World Bank, Washington, D.C.

World Bank (2007h) "Bangladesh Strategy for Sustained Growth Volume II: Main Report." Report No. 38289-BD Poverty Reduction and Economic Management Sector Unit, World Bank, Washington, D.C.

World Bank (2006f) *Bangladesh: Country Assistance Strategy 2006 – 2009*. World Bank, Washington, DC

World Bank (2005d) "Bangladesh PRSP Forum Economic Update: Recent Developments and Future Perspectives." World Bank Office, Dhaka. November.

World Bank (2003) "Improving Investment Climate in Bangladesh", Bangladesh Enterprise Institute and the World Bank.

World Bank (2001), Bangladesh Country Assistance Strategy.

The World Bank finds that Bangladesh has recorded impressive economic and social gains since the 1990s, doubling the annual growth of per capita GDP from 1.6% in the 1980s to 3.3% in 1990 to 2004. Bangladesh has outperformed both IDA-only countries and low-income countries in this period, as well as most low income countries on a range of social indicators.⁸⁸ The Bank argues that macroeconomic management and trade liberalisation have encouraged a strong private sector.

Bangladesh basic labour force and employment data

Indicators	2005
Population ages 15-64, total (millions)	86
Unemployment, total (% of total labor force)	4.3
Labor force, female (% of total labor force)	36.9
Labor force, total (millions)	64
Labor force with primary education (% of total)	..
Employees, agriculture, female (% of female employment)	58.6
Employees, agriculture, male (% of male employment)	49.8

Source: World Bank
<http://go.worldbank.org/XA79EUBIQ0>

However, the World Bank argues that attaining the MDGs would require accelerating economic growth to 6-7% per year. Improving growth will require a substantial improvement in the investment climate, harmed by perceived high level corruption and lack of transparency. Bangladesh continues to perform poorly in terms of governance.⁸⁹

The Bank has identified agriculture as a top priority for generating employment, however, the rural investment climate is perceived to be weak. Improving the investment climate is a central pillar of the Bank's strategy and this includes providing a private sector friendly labour market. However, the focus is on labour quality –as the productivity of labour lags behind Bangladesh's Asian neighbours and trade rivals.⁹⁰ "Labour it is often said is Bangladesh's most precious resource...A relative abundance of labor provides Bangladesh with a comparative advantage in the production of labor-intensive goods."⁹¹ However, that advantage "only translates into global competitiveness when it rests on a foundation of high productivity".⁹²

The Bangladesh Investment Climate Assessment finds that "Few firms in Bangladesh believe that labor issues impede their growth. ...the median firm reported that its current staffing levels was ideal."⁹³ The conclusion of the Investment Climate Assessment is also cautious, "...flexible rules on hiring and firing benefit firms, but so too do investment in workers".

⁸⁸ (World Bank 2006f)

⁸⁹ (World Bank 2006f)

⁹⁰ (World Bank 2006f; 2005d).

⁹¹ World Bank 2007g: 28.

⁹² World Bank 2007h: ix-x.

⁹³ p. 33

In summary, the World Bank analysis does not consider labour legislation as a main constraint in the country. “Overall, labor laws and rules are relatively light, and firms retain considerable flexibility to hire and fire. At the same time though, lack of organized union activity in the formal private sector, where only about one worker in twenty is covered, has its down sides, especially since it arises from government curbs that International Labor Organization experts have decried for being excessively restrictive. Such limited union activity handicaps workers’ ability to engage in collective bargaining and protect their rights, and hinders the formation of an effective mechanism to resolve labor disputes.”⁹⁴

The World Bank’s analysis focuses on the importance of improving the protection of workers’ rights. “On balance, Bangladesh’s ineffectively enforced labor laws and regulations are less of a hindrance to the functioning of the labor market than are deficiencies in protecting worker rights.”⁹⁵

In reference to Core Labour Standards, the Investment Climate Assessment also notes that Bangladesh was the first developing country to sign an agreement to eliminate child labour from its garment factories.⁹⁶ The 2001 CAS cited ITUC information, stating that “Bangladesh has ratified six of the eight International Labor Organization conventions on core labor standards, but not the two pertaining to child labor. Despite the formal ratification, the Government still restricts freedom of association in export processing zones to attract foreign investment.” The Bank goes on to discuss discrimination against women and minorities, and highlights the serious problems of child labour. The CAS nevertheless expects improvements, as a result of the growing support of efforts to abolish child labour.⁹⁷ The 2001 CAS also states that labour issues are not properly addressed in reform measures and suggests conducting a study to identify strategies for addressing labour issues within the reform measures.⁹⁸ Among the self-evaluation indicators, the Bank also lists “Extent and scope of policy dialogue to include labor unions.”⁹⁹

World Bank policy recommendations on labour legislation and labour markets:

- More effective enforcement of the existing labor market policies is needed, especially to protect worker rights (World Bank 2007g).
- Assist industry in ensuring labour standards are met in the knit-wear sector (World Bank 2005d).

⁹⁴ World Bank 2007h: x.

⁹⁵ World Bank 2007g

⁹⁶ World Bank 2003. P. 29

⁹⁷ World Bank 2001a: 3.

⁹⁸ World Bank 2001a.

⁹⁹ World Bank 2001a: Annex 9 p. 8.

Effects on agricultural workers

Agricultural workers are excluded from the national labour legislation. Agricultural workers have no legal protection, no minimum wage and no right to organize or bargain collectively.¹⁰⁰ The agriculture sector employs about 50% of the labour force (contributing only 20% of GDP). The informal sector is estimated to account for close to 80% of the employed labour force, and this share has been increasing.¹⁰¹

Agricultural work is overwhelmingly informal and workers are mostly engaged on a daily basis, which means their income source is unstable and insecure. Agricultural work is also very seasonal and many agricultural workers migrate to find work. Women's wages are generally lower than those of men for the same type of work. In certain areas of the country, women are also not allowed to work in the fields and then instead perform lower-paid domestic services.¹⁰² Even large firms, usually sub-contract work to land-owners who usually operate informally.¹⁰³ Workers conditions are also highly vulnerable to environmental conditions. According to the World Bank, "wages vary sharply with weather conditions and other agricultural risks. In Bangladesh, the real agricultural wage fell by 50 percent during the 1974 drought year."¹⁰⁴

Alternative Views

Experts have identified the need to establish a legal framework for agriculture workers, covering basic rights and also providing a minimum employment security for agricultural workers and registration.¹⁰⁵

The ITUC report for the WTO¹⁰⁶ notes that Bangladesh has ratified seven of the eight core labour conventions. However, the report notes that the right to strike is not recognised by law and export processing zones fall under special labour legislation according to which labour regulations are not mandatory. In 2004, bowing to international pressure, the Parliament of Bangladesh passed a bill granting limited workers' association rights in the EPZs effective from November 1, 2006.¹⁰⁷

More generally, the ITUC 2006 Annual Survey on violations of trade union rights concludes "Consistent anti-union discrimination by employers ensured that

¹⁰⁰ Telephone interview with Mr. Shahid Ullah, Director of Policy and Research, Karmojibi Nari, NGO in Agriculture and waged labour, 14 September 2007. In 1984, a minimum wage law included agricultural workers, but the law was not fully implemented.

¹⁰¹ World Bank 2007g.

¹⁰² Telephone interview with Mr. Shahid Ullah.

¹⁰³ Telephone interview with Mr. Shahid Ullah. 14 September 2007.

¹⁰⁴ World Bank 2007i: 292-293.

¹⁰⁵ Telephone interview with Mr. Shahid Ullah.

¹⁰⁶ ITUC 2006, Internationally Recognised Core Labour Standards in Bangladesh. Report for th WTO General Council Review of the trade Policies of Bangladesh.

¹⁰⁷ World Bank 2007g.

Bangladesh maintained its sorry reputation as one of the worst countries for trade union rights violations in the region.”

Indicators on association and organizational rights (Freedom house) and Child Labour (ITUC annual survey) also indicate a poor record of compliance with Core Labour Standards.

According to the U.S. Department of State, child labor enforcement is seriously inadequate relative to the scope of the problem. Although the vast majority of child labor occurs in the informal sector, officials inspect only formal sector workplaces and focus primarily on the ready-made garment industry. The government’s PRSP includes as a strategic goal taking immediate and effective measures to eliminate the worst forms of child labor.¹⁰⁸

¹⁰⁸ U.S. Department of Labor 2007.

Case 4: India, Labour Legislation and Agriculture Sector

The World Bank reports that India has achieved impressive growth rates but retains high levels of inequality. The World Bank considers Indian labour laws among the most restrictive and complex in the world and one of the greatest challenges of doing business in India. According to the Bank these laws (including retrenchment) create not only inefficiencies but also massive inequality and may even facilitate caste bias in hiring. The Bank recommends easing restrictions in hiring and firing to reduce employment costs and boost competitiveness and provide “real” protection for workers. Enforcement of labour legislation in agriculture is restricted by the high level of informality in the sector.

World Bank Documents Reviewed for India:

World Bank (2006g) “India: Inclusive Growth and Service delivery: Building on India’s Success” Development Policy Review, Report No. 34580-IN. World Bank, Washington, DC. May.

World Bank (2004a) *Country Strategy for India* World Bank, Washington, D.C. September.

World Bank, IFC (2004), *Investment Climate and Manufacturing Industry*. November

The World Bank reports that India has achieved impressive growth rates, averaging about 6% per year between 1993 and 2004. However, performance has been uneven. There is also a substantial and persistent disparity of opportunity.¹⁰⁹ The World Bank believes that improving the investment climate is key to sustaining growth. Demand for jobs and public services have also highlighted the necessity of institutional and policy reform, decentralisation and employment-friendly growth policies.¹¹⁰

India basic labour force and employment data

Indicators	2005
Population ages 15-64, total (millions)	686
Unemployment, total (% of total labor force)	5.0
Labor force, female (% of total labor force)	28.4
Labor force, total (millions)	435
Labor force with primary education (% of total)	..
Employees, agriculture, female (% of female employment)	..
Employees, agriculture, male (% of male employment)	..

Source: World Bank, <http://go.worldbank.org/XA79EUBIQ0>

Medium-term prospects for growth, in the World Bank’s analysis, depend critically on the pace of structural reform and fiscal consolidation, and reforms to

¹⁰⁹ Furthermore, according to the India CAS of 2001, India has ratified only four of the eight ILO conventions on CLS. The four not ratified concern the freedom of association, the right to organize and two conventions concerning child labour.

¹¹⁰ World Bank 2004a.

encourage private investment. “Investment climate surveys and recent research suggest that Indian labor laws are among the most restrictive and complex in the world. Firms with more than 100 workers consider labor regulations to be as important a constraint to the investment climate as power shortage problems.”¹¹¹ “Restrictions on the hiring and firing of workers by medium and large firms are one of the greatest challenges of doing business in India.”¹¹²

The Country Assistance Strategy also refers to “the typical Indian firm reported having 17% more workers than it desired and that the labour laws and regulations were the main reasons why it could not adjust to the preferred level, 2002”¹¹³ However, the most recent Investment Climate Assessment (2004), finds that overstaffing was reduced to 11 percent, reflecting a marked improvement in labor market flexibility, possibly due to government reluctance to enforce the more intrusive provisions of existing laws.¹¹⁴

“Employment in India’s registered firms (those with more than 100 employees) is highly protected. Any registered firm wishing to retrench labor can only do so with the permission of the state government which is rarely granted. These provisions make labour rationalization in registered firms very difficult, discourage the hiring of labour in the organized sector, and are especially onerous for labour-intensive sectors.”¹¹⁵ The Investment Climate Assessment 2004 notes that some flexibility is provided by the hiring of contract workers but this is at the discretion of state governments. The assessment relies on the Doing Business indicators to make comparisons with other countries in the region. Similarly, a recent Bank research study concluded that rigid labour regulations in India have not achieved their goal of improving worker protection, but have created large costs for society and encouraged growth of the informal sector.¹¹⁶

The World Bank country analysis also argues that “Ill-designed labor regulations can lead to unnecessary conflict between legitimate concerns: protecting workers in jobs and creating new jobs and rising wages for workers.”¹¹⁷ The World Bank argues that reforms ought to protect the interests of *all* workers by creating an environment for labor relations in which the legitimate social interests in fairness for workers can be met. At the same time the labor regulations should not exclude other workers from jobs by creating unnecessary and arbitrary regulations that discourages firms from hiring workers, forcing firms to stay inefficiently small, and inducing firms to use capital at the expense of labor.”¹¹⁸

¹¹¹ India Investment Climate Assessment of 2004 (World Bank 2004b) as cited in a 2006 Bank Development policy review (World Bank 2006g: 120).

¹¹² World Bank 2004a: 128.

¹¹³ World Bank 2004a: 128. Quoting the Investment Climate Assessment 2002.

¹¹⁴ ICA, 2004, p. 32.

¹¹⁵ World Bank 2004a: 128.

¹¹⁶ Source Ahsan and Pagés (2007). Note, however, that this is a discussion paper and does not necessarily represent the official Bank view.

¹¹⁷ World Bank 2006g: xvi.

¹¹⁸ World Bank 2006g: xvi.

The World Bank argues that these regulations are not only affecting negatively labour costs but it is encouraging a bimodal distribution of firms, with many small firms and a few very large ones and little in between.¹¹⁹ The World Bank notes that the productivity of small firms is 20% or less than that of large firms.¹²⁰ “Specifically, restrictive labor laws appear to create diseconomies of scale, particularly for middle-size firms whose scale is not large enough to overcome the higher labor adjustment costs imposed by laws. Interviews suggest it is the medium- and small-scale firms that suffer the most from these diseconomies in labor adjustments and are the most threatened by permanent loss of business and clientele in prolonged disputes.”¹²¹

The World Bank argues that labour legislation is unfair. “These laws create massive inequality. They divide a tiny enclave of relatively better-paid salaried formal sector workers, who have good job security and benefits, from the vast majority of informal or unorganized sector workers, who work for much lower wages and with little or no social protection. Salaried workers make about 28 percent more than casual workers—even when workers are similar in age, education, etc. Moreover, ... the dualism created between “good” jobs and casual work or self-employment allows discrimination against women and facilitates caste bias in hiring.”¹²²

World Bank policy recommendations

Country Assistance Strategy includes the need to “reduce inefficiencies in factor markets by easing restrictions on hiring and firing of workers ...”

Regulatory reforms aimed at reducing entry and exit barriers to manufacturing industries, including those aimed at improving the functioning of the labor, land and product markets...p. 90, ICA, 2004.

The World Bank documents, however, do not include a specific discussion of protection of workers or Core Labour Standard. Only the 2001 CAS describes the ILO conventions ratified by India and notes that child labor is a serious problem.¹²³

Effects on agriculture workers

Indian labour legislation applies to agricultural workers. However, there is high informality in the sector so in practice most agriculture workers are not covered

¹¹⁹ In 1989–90, more than 40% of the employment in manufacturing took place in firms with five to nine workers, compared with only 4% in such firms in Korea. Recent data suggest that dualistic trends have persisted (World Bank 2006g: 122).

¹²⁰ Mazumdar 2005 as cited by World Bank 2006g: 122.

¹²¹ World Bank 2006g: 122.

¹²² World Bank 2006g: 123.

¹²³ World Bank Country Assistance Strategy for India, 2001.

by the legislation.¹²⁴ Agriculture is mainly carried out in small units, where application of existing labour laws and health and safety codes is minimal. There is a separate legislation which covers plantation labour, and since plantations are generally large, enforcement of labour laws is higher.¹²⁵ The minimum wage varies from state to state and it is different for agriculture activities (tbc ILO database).

The agriculture sector in India employs 58% of the total labour force¹²⁶ and almost half of the agriculture labour force.¹²⁷ In addition, 80% of India's poor live in rural areas.

According to the World Bank, "India has witnessed a considerable decline in the number of permanent workers; the majority of agricultural wage employment is now casual. The proportion of casual workers increased to 80 percent in 2002 among male wage earners, and to 92 percent among female...In India (casual workers) incidence of poverty reached 49 percent in 1993/94, almost three times the 17 percent for permanent workers."¹²⁸ Female agricultural workers are frequently discriminated against.¹²⁹

More generally, the World Bank finds that agricultural "price supports ... and ... input price subsidies ... encourage the perpetuation of unsustainable and environmentally harmful cropping practices and discourage agricultural diversification that could also enhance agricultural growth."¹³⁰ The Bank argues that agro-industry has the potential to provide greater value addition in agriculture and generate employment in rural areas. The World Bank recommends bold actions to move away from the existing subsidy-based regime and move towards an internationally competitive agricultural sector.¹³¹

Alternative Views

Some experts support the need for more labour flexibility, but argue that retrenchment should be costly to firms so that workers are compensated when they are laid off. Moreover, they argue that basic worker rights should not be diluted. Basic standards regarding safety, hygiene, working hours and holidays among other issues are needed and should be protected.¹³² However, the legal framework could be updated to recognize new circumstances, e.g. need to hire casual labour.¹³³

¹²⁴ Telephone interview with Dr T.S. Papola, Development Economist, specialist on labour and employment in India. Institute for Studies in Industrial Development.

¹²⁵ Dr T.S. Papola.

¹²⁶ Government of India, Department of Census and Statistics, "Provisional Population Totals: India, Census of India 2001." As cited in World Bank 2006g.

¹²⁷ World Bank 2007i, p. 291.

¹²⁸ World Bank 2007i: 293.

¹²⁹ World Bank 2007i: 301.

¹³⁰ World Bank 2006g: 127.

¹³¹ World Bank 2006g.

¹³² Dr T.S. Papola,

¹³³ Dr T.S. Papola,

A key problem of the sector is the low productivity in agriculture. An estimated 90% of agricultural workers are paid less than the stipulated minimum wage. This labour surplus in agriculture is partly due to the low employment creation of the non-agricultural sectors.¹³⁴

According to a recent ITUC report, India has not ratified the core ILO Convention on freedom of association or the core convention on collective bargaining.¹³⁵ There are furthermore several restrictions with regard to freedom of association, collective bargaining and the right to strike, both in law and in practice. Overall, there is a growing use of contract labour, which makes organizing difficult and has led to a weakening of trade unions. Women are mainly employed in agriculture and in the informal economy. India, moreover, has not ratified the ILO Conventions on Child Labour, which is a serious problem.

According to the U.S. Department of Labor's report on child labour, large numbers of children work under forced or bonded labor conditions in India. The vast majority of bonded laborers are from former scheduled castes and tribal groups. The U.S. Department of Labor also reports that enforcement of child labor and bonded labor laws is primarily the responsibility of state and local governments. However, the U.S. Department of State reports that overall enforcement of child labor laws is inadequate, because of insufficient resources, poorly trained inspectors, low inspector salaries, and social acceptance of child labor. Penalties are too light to serve as an effective deterrent.

¹³⁴ Dr T.S. Papola,

¹³⁵ ITUC 2007b.

Case 5: Morocco: Labour Legislation and Agriculture Sector

World Bank Documents Reviewed for Morocco

Kingdom of Morocco Country Economic Memorandum: Fostering Higher Growth and Employment with Productive Diversification and Competitiveness (Two Volumes). 2006

Investment Climate Assessment (2005b)

Country Assistance Strategy for the Kingdom of Morocco. 2005a

The World Bank finds that Morocco is experiencing modest growth and has not managed to create sufficient jobs. The World Bank finds that Morocco has one of the “worst” indices for rigidity of labour, including minimum wage and firing costs. The Bank considers labour regulations to be an important obstacle to employment and growth. It recognises that the policies reflect political agreements but argues that high labour costs seriously undermine competitiveness and encourage informality. The World Bank recommends directly that Morocco improves its employment Doing Business indicators related to Employing Workers. The Bank does not discuss issues related to the Core Labour Standards or the Decent Wage agenda.

Table 6: Morocco basic labour force and employment data

Indicators	2005
Population ages 15-64, total (millions)	19
Unemployment, total (% of total labor force)	11.2
Labor force, female (% of total labor force)	25.5
Labor force, total (millions)	11
Labor force with primary education (% of total)	..
Employees, agriculture, female (% of female employment)	63.0
Employees, agriculture, male (% of male employment)	41.0

Source: World Bank, <http://go.worldbank.org/XA79EUBIQ0>

The World Bank notes that Morocco has implemented successful stabilisations programs since the mid-1990s. However, it finds that growth has been modest and insufficient to create the jobs that are needed to absorb the unemployed labour force. The Bank warns that “if growth and job creation over the coming decade does not accelerate significantly faster than the rates of the past decade, poverty and exclusion could reach levels that incite unmanageable social tension.”¹³⁶

The World Bank strategy for Morocco focuses on: 1) accelerating employment-generation and sustainable economic growth, and 2) reducing poverty and marginalisation. It argues for reforms to improve the transparency, accountability, and inclusiveness of the public sector.¹³⁷

¹³⁶ World Bank 2005a: 7.

¹³⁷ World Bank 2005a.

The World Bank has identified the rigid labour market as one of the four government failures which act as binding constraints to growth.¹³⁸ “Moroccan labor rigidities and costs remain high by international standards. Before the new Labor Code was approved in 2004, Morocco already had one of the highest indexes of rigidity of labor regulations.”¹³⁹ The Bank argues that the new Labour Code has brought more flexibility to the labour market and better regulations in order to prevent social conflicts (accidents and work registration for social security). However, it has also doubled firing costs (severance payments). The Bank nevertheless admits that limited compliance means that this is less of a problem in practice.¹⁴⁰

The World Bank finds that Morocco has higher labour unit costs than most of its competitors. The minimum wage has evolved from a system with several rates to a dual system which only differentiates by sector; agriculture and non-agriculture and by age. The Bank notes that the minimum wage has been rising and is currently above productivity gains.¹⁴¹

The World Bank notes that the policies on severance and minimum wage reflect political agreements. However, the World Bank argues that these policies are inconsistent with the country’s overall need to promote competitiveness and private investment.¹⁴²

The World Bank identifies the demand for highly skilled labour, as the binding constraint, not the inadequacy in human capital, in view of Morocco’s significant investments in education.¹⁴³ Indeed, the Bank stresses, “reducing labor costs and issuing effective norms for more flexible hiring and dismissal procedures are the two most relevant policy issues in the reform of the labor compact...”¹⁴⁴

The World Bank argues that labour regulations have encouraged the expansion of the informal sector -about a third of the economy. “The ICA survey identifies a significant number of formal firms that are at the threshold of informality because their low productivity and labor regulation costs force them to operate below the minimum wage.”¹⁴⁵ Recent changes to the labour code create terms contracts and adds the temporary increase in economic activity in the firm as a justified reason for hiring temporary workers, particularly in agriculture.¹⁴⁶

¹³⁸ World Bank 2006d: i. The previous CAS 2001 also recommended a more flexible labour market, p. 17-18.

¹³⁹ World Bank 2006d: 27.

¹⁴⁰ World Bank 2006d.

¹⁴¹ World Bank 2006e.

¹⁴² World Bank 2006d.

¹⁴³ World Bank 2006d: 20.

¹⁴⁴ World Bank 2006e: 148.

¹⁴⁵ World Bank 2006d: 55-56.

¹⁴⁶ World Bank, 2006 d: 36.

World Bank Policy Recommendations for Morocco

- Reduce Doing Business indicators of job market rigidity: (2005 CAS: p 24)
 - Reduce recruiting difficulty from 100 in 2004 to the regional average 25
 - Decrease the difficulty in laying off workers: from 70 in 2004 to the regional average 40
 - Cut the cost of lay-offs: from 101 weeks of salary in 2004 to the regional average 75
- Reduce labour costs and issuing effective norms for more flexible hiring and dismissal procedures. 2006e. p 148
- incentives for hiring first-time jobseekers and female workers by a temporary reduction of the minimum wage. 2006 d, p. 74
- Keep real minimum wages constant over the medium term (especially while unfavourable external shocks persist) and prevent further distortions (for example, in territorial minimum wages). 2006 d, p. 68
- Reviewing the procedures and reconsidering the amount of the current severance pay is needed. (Unless these procedures are simplified and this amount is reviewed, about one in four firms will continue to apply formal dismissal mechanisms).

Source: These recommendations are contained in the CAS (Recommendations based on the Doing Business index) (World Bank 2005a), and the Country Economic Memorandum (World Bank 2006e).

Effects on Agriculture Workers

Agricultural workers in Morocco are covered by the same labour regulations as non-agricultural workers. However, conditions are different, for example, the work week is 4 hours longer in the agriculture sector, and the agricultural minimum wage is less than 60% of the industrial minimum wage.¹⁴⁷

Agricultural firms are exempted from paying taxes and receive subsidies. However, despite such advantages for firms, agricultural workers are often not covered by labour regulations and are frequently paid less than the agricultural minimum wage. Women are often paid half of the agriculture minimum wage. Only about 4% of all agricultural workers are covered by social security.¹⁴⁸ However, there are pressures to improve legislation for agricultural workers, to put it on par with workers in other sectors.

Alternative Views

According to a Moroccan NGO,¹⁴⁹ the minimum wage is insufficient to provide for the needs of workers and moreover it is not applied to most workers.

¹⁴⁷ Telephone and e-mail interviews with Mr. Abdelrahim Handouf, ex-Secretary General of the National Agricultural Federation and Mr. Mohamed Hakech, Secretary General of the National Agricultural Federation.

¹⁴⁸ Telephone and e-mail interviews with Mr. Abdelrahim Handouf.

¹⁴⁹ Morocco, Jamal Chahdi, Director General, Centre des Droits des Gens, CDG.

The NGO notes that the most important issue concerning agricultural labour is the absence of workers rights. They do not enjoy the legally stipulated rights and protections to which they are entitled and they are often victims of bad treatment and, in the case of female workers, sexual harassment. Transportation is another problem, as workers are transported in trucks with no dignity. Workers also work long hours, without additional compensation.¹⁵⁰ Health and safety association is a matter of concern

The new labour code introduces the right to union representation, which did not exist before. It also increase severance payment. However, whereas before temporary workers automatically became permanent after 6 months of work, now, the trial-period is 2 years during which workers can be fired without having the right to receive any compensation.¹⁵¹

According to the U.S. Department of Labor, the Government of Morocco has put in place a number of action programs toward the achievement of its 2005-2015 National Action Plan to Eliminate Child Labor.

Other indicators, the Association and Organisational Rights (including trade union's rights),¹⁵² suggest that Morocco is one of the countries with worse record in supporting rights of association.

¹⁵⁰ Morocco, Jamal Chahdi.

¹⁵¹ Telephone and e-mail interviews with Mr. Abdelrahim Handouf, ex-Secretary General of the National Agricultural Federation and Mr. Mohamed Hakech, Secretary General of the National Agricultural Federation.

¹⁵² Freedom House, Freedom in the World 2007.

Case 6: Chile Labour Legislation and Agriculture Sector

The World Bank finds that Chile has established a sound macroeconomic environment and has reduced poverty. It also finds that Chile has a relatively good investment climate but it states that the labour market is one area in which reforms could improve performance. The Bank points to firing costs, in particular, as well as the minimum wage as key constraints and recommends actions in these areas. The World Bank does not discuss issues related to Core Labour Standards or the Decent Work agenda in reference to Chile. .

World Bank Documents Reviewed for Chile:

World Bank (2007b) *Chile: Investment Climate Assessment (In Two Volumes) Volume I: Executive Summary and Policy Recommendations*. Report No. 39672-CL. Finance and Private Sector Unit, World Bank, Washington, D.C. April 16.

World Bank (2007c) *Chile: Investment Climate Assessment (In Two Volumes) Volume II: Background Chapters*. Report No. 39672-CL. Finance and Private Sector Unit, World Bank, Washington, D.C. April.

World Bank (2006h) "Chile: Development Policy Review. Volume I: Summary Report." Report No. 33501-CL. Poverty Reduction and Economic Management Unit. World Bank, Washington, D.C. June.

World Bank (2006i) "Chile: Development Policy Review. Volume II: Main Report." Report No. 33501-CL. Poverty Reduction and Economic Management Unit. World Bank, Washington, D.C. June.

World Bank (2002) *Country Assistance Strategy for Chile*. World Bank, Washington, D.C. January 23.

The World Bank notes that Chile has had the most robust economic performance in Latin America and has impressive social and economic indicators. Chile averaged over 6.6% economic growth per year during the 1990s. The Bank reports that extreme poverty is now at about 4% of the population and overall poverty levels have been halved, dropping to between 17 and 21% of the population, depending on the poverty line used.¹⁵³ The Bank argues that the integration of the poor in the labour markets was a major contributor to poverty reduction.¹⁵⁴

According to the World Bank Investment Climate Assessment, Chile compares extremely well with other countries. When asked about major obstacles to the growth of their businesses in Chile, firms report fewer obstacles compared to those in other countries.¹⁵⁵

However, the World Bank notes that labour market outcomes have not equalled Chile's growth performance.¹⁵⁶ In terms of obstacles to growth identified by firms, "labor

¹⁵³ World Bank 2002.

¹⁵⁴ World Bank 2007.

¹⁵⁵ World Bank 2007b.

¹⁵⁶ World Bank 2007c: 77.

regulation emerges as the principal concern for Chilean managers, especially the managers of large firms. It is perceived as the foremost obstacle to a firm's growth, and firing costs are identified as the main problem.¹⁵⁷ Nevertheless, the Bank notes that though "labor regulation was the obstacle most frequently identified ..., even so, it is still not perceived as a major problem by 75 percent of firms."¹⁵⁸ "Finally, even the emphasis placed on labor regulation seems to be more a concern with risks than with costs. When asked which aspect of labor regulation most prevents them from achieving their optimal level of employment, firms mention firing costs, and in most cases (80 percent) they express a desire to increase the labor force, not to decrease it."¹⁵⁹

The World Bank thus identifies the labour market as one of the areas in which reforms could significantly improve performance. "In Chile, the literature has highlighted two problem areas: one is the institutional framework for wage setting, comprising both the minimum wage policy and backward looking schemes of wage readjustment. These two mechanisms have been blamed for the downward rigidity of real wages (Cowan, Micco and Pagés, 2004). The second problem relates to provisions for job security, especially firings costs, which are usually associated with a slow adjustment of the Chilean labor market to shocks."¹⁶⁰ This was also noted previously by the Development Policy Review, "the minimum wage and wage indexation became increasingly binding constraints following the shocks of the late 1990s". The Bank remarks that the "minimum wage doubled to around 60% of the market wage for unskilled workers between December 1997 and December 2002 ... discouraging employment. That could partly explain the slow growth of employment in small firms after 1998."¹⁶¹

Minimum wage regulations, according to the Bank, can also exacerbate inequality because some groups of unskilled workers, especially the youngest, are likely to be worse off in terms of employment, while others are better off in terms of income.¹⁶² The Bank's Policy Review concludes that a "binding minimum wage may be limiting employment prospects for the very poorest groups that Chile Solidario"...¹⁶³ aims to integrate to society. Furthermore, "increases in the minimum wage significantly raise not only the risk of unemployment but also the risk of losses from protracted periods of joblessness."¹⁶⁴

Similarly, the World Bank, notes that "firing costs are high (52 wage weeks) – but, still, below the Latin American average. The 2002 reform introduced a savings account in place of severance payments and severance pay was cut from 30 to 24 days for each year worked." The government also assists unemployed workers through benefits for five months.¹⁶⁵

The Investment Climate Survey confirms that firms see firing restrictions, as having an impact on the size of a firm's labour force. Among the 21% of firms who wish to hire more people, 59% identify higher firing costs as a constraint to making the adjustment.

¹⁵⁷ World Bank 2007b: 17.

¹⁵⁸ World Bank 2007b: 16.

¹⁵⁹ World Bank 2007b: 19.

¹⁶⁰ World Bank 2007b: 32.

¹⁶¹ World Bank 2006h: 17.

¹⁶² World Bank 2002: 16. Source: ILO, Panorama Laboral 2000. However, this conclusion contrasts with that of an IDB study on competitiveness.

¹⁶³ World Bank 2006h: 34.

¹⁶⁴ World Bank 2006h: 33.

¹⁶⁵ World Bank 2007c: 79.

This is a greater obstacle than other issues (...) and is perceived as a barrier to hiring workers.¹⁶⁶ “Similarly, of the 6 percent of firms that wish to reduce the size of the labor force, nearly 77 percent cited firing restrictions. This result is in line with a growing literature on labor market issues in Chile that identifies firing restrictions as one of the rigidities that affect labor market outcomes in Chile.”¹⁶⁷ Previously, the Development Policy Review also concluded that the cost of firing workers is relatively large and that it reduces the speed of employment adjustment.

World Bank Policy recommendations for Chile

- Restructuring job security (DPR and also ICA)
- Decreasing wage rigidity by further de-indexing wages
- Assessing the impact of the minimum wage on employment opportunities for the poorest (DPR).
- Reducing severance payment component and increasing the employment insurance component of job security and in general reducing wage rigidities will contribute to faster adjustment to shocks. DPR, 2007, p. 17.

- in order to improve labor-market flexibility during shocks, consider tying the minimum wage to measurable variables such as unemployment. Evaluate alternative wage indexation options with the aim of having at least one wage component flexible. 2006i: 47).
- Redesign the framework for job security with a view to reducing the role of severance payments and increasing the role of the unemployment insurance, thereby keeping the overall package neutral with respect to the labor market (DPR 2006i: 47).

Effects on agriculture workers

Agriculture workers are covered by the labour legislation and other regulations.¹⁶⁸ In terms of the length of the working day, it cannot be longer than an *annual average* of 7.5 hours. In practice, however, this means that at least some working days can be much longer. There is a legal limit to the working day of 10 hours per day, and 45 hours per week, with an additional limit of 2 extraordinary hours per day and 12 extraordinary hours per weeks –limits that also apply to agricultural workers.¹⁶⁹ In terms of pay, agricultural workers can, according to law, be paid in money and in kind. However, in-kind remuneration cannot amount to more than the equivalent of 50% of the total wage.¹⁷⁰

However, labour legislation in practice cannot effectively cover temporary and seasonal workers without contracts. Temporary workers are often hired on a daily basis. In theory, they can organize and bargain collectively, but in reality this is not feasible. These

¹⁶⁶ World Bank 2002.

¹⁶⁷ World Bank 2007c: 82.

¹⁶⁸ Telephone interview with Martín Pascual, CENDA, Chile.

¹⁶⁹ E-mail exchange with Michael van Gelderen, Advocacy Officer, Oxfam, Santiago, Chile. Extraordinary hours must be paid with a 50% increment above the contracted wage, or 50% above the minimum wage, whichever is the higher.

¹⁷⁰ In-kind remuneration can consist of housing, access to land etc. Source of information on labour regulations: “Contrato de trabajo, Contrato Individual, Tipo de Contrato ¿Por qué normas se rige el contrato del trabajador agrícola?” Labour Directorate, Ministry of Labour, Chile. <http://www.dt.gob.cl/consultas/1613/article-60776.html>

workers are brought to their place of work in the morning of each work day and thus do not know the destination ahead of time,¹⁷¹ or they do not complain because they do not know their rights, or they do not wish to compromise their employment.

The agricultural labour force is about 17% of the total labour force. In Chile wage earners have been increasing in number and now account for more than 60% of the agricultural labour force.¹⁷² Approximately one third of the agricultural labour force consists of temporary workers. Whereas all permanent agricultural workers have employment contracts, around one third of the temporary agricultural workers do not have contracts, which underscores their vulnerability. Moreover, most of the temporary agricultural workers are women.¹⁷³

Furthermore, the seasonality of agricultural employment and earnings is very significant. According to the World Bank, “average daily earnings for workers in the fruit industry vary 50–60 percent from the peak season to the slack. There, men more involved in field operations tend to remain in the labor force throughout the year, but women’s participation, which is more linked to processing the harvest, drops by nearly 30 percent from the peak to slack season. Moreover, females remaining in the labor force have high rates of unemployment, exceeding 50 percent on a daily basis during the slack season.”¹⁷⁴ Workers without contracts are effectively excluded from the limited health and pension system for contracted agricultural seasonal workers.¹⁷⁵

Small agricultural enterprises are typically informal. Many of these are owned by farmers who work their own land and who also themselves supply farm labour to big farms. The agriculture sector, however, has reduced its “informality”. Generally, large multi-national firms comply with labour legislation and workers’ rights. These enterprises are subject to regular monitoring by the authorities. However, even though these companies comply, their suppliers are generally informal and do not comply with labour legislation. The problem of abuse of workers’ rights is reported to be significant and mostly happens at the level of the sub-contracted firms.¹⁷⁶

A 2006 reform attempts to remedy this situation. The Law of Sub-contracting¹⁷⁷ establishes the joint responsibility of large firms for labour conditions in sub-contracted firms. According to the law, sub-contractors now have to be “formal” and respect the labour legislation and if they do not comply with these requirements, any firm which sub-contracts them can be held responsible. In other sectors, this has so far had the effect of discouraging sub-contracting and instead leading to workers being hired directly, which tends to have a positive effect on the level of pay. In the wine sector for instance, studies have revealed that those hired directly receive wages approximately double those hired by sub-contractors.¹⁷⁸

According to an official from the Labour Directorate of the Ministry of Labour,¹⁷⁹ it is not yet clear whether the new law will have an impact on the agriculture sector. He also noted that the law will not resolve the problem of instability of employment of temporary

¹⁷¹ Telephone interview with Martín Pascual, CENDA, Chile.

¹⁷¹ World Bank 2007i: 291.

¹⁷² World Bank 2007i: 291.

¹⁷³ Telephone interview with Martín Pascual, CENDA, Chile.

¹⁷⁴ World Bank 2007i: 292.

¹⁷⁵ E-mail exchange with Michael van Gelderen.

¹⁷⁶ Telephone interview with Martín Pascual, CENDA, Chile.

¹⁷⁷ Ley de Subcontratación, No. 20.123. This law was published in October 2006 and entered into effect on 14 January 2007.

¹⁷⁸ Telephone interview with Martín Pascual, CENDA, Chile.

¹⁷⁹ Telephone interview with Diego López, Labour Directorate, Ministry of Labour.

agricultural workers, nor the low level of pay of agricultural workers. However, if appropriately enforced, the law could decrease the levels of informality and ensure that health and safety and social security codes are enforced.

Alternative Views

ITUC has argued for some time that Chile's liberalization strategy has led to more inequality (ITUC 2003: 5). Growth has been accompanied by increasing inequality and a diminishing quality of life for a large part of the population which has not shared in the growth. According to a study commissioned by the Labour Directorate of the Chilean Ministry of Labour (Henríquez et al. 2006 *Leyes de Trabajo Decente: El Empleo Desprotegido*), Chile's market-oriented productive strategy in the last decades fundamentally altered labour relations. The new system was not easily compatible with the concept of labour rights, and consequently led to a continuous deterioration of labour conditions, which still remain very weak.

ITUC (2003: 5) notes that the shift from small farming towards export agriculture has led to increasing job insecurity as well as an increase in the number of seasonal workers, working under unsafe and unhealthy conditions and enjoying few labour rights. There has been little focus on Core Labour Standards.

Similarly, Oxfam expresses doubts about the quality of many jobs created in Chile. Production has become concentrated in a few, mainly transnational, companies. Under prevailing free trade agreements, "these corporate entities enjoy global protection for their rights, while their workers are increasingly disempowered. The demand for more flexible labor, faster production and cheaper prices, has eroded the rights of workers, especially women."¹⁸⁰

The Oxfam document "Frutas de la Discordia" also reports non-compliance with legal working hours and wages. The workday can be up to 18 hours long for seasonal workers without contracts who are paid piece rate wages. All workers work longer than the 63 hours week for agriculture and extra hours are often not paid according to the legislation. Moreover, the disposition for in-kind remuneration is abused by some employers to pay less than the minimum wage by overstating the value of in-kind remuneration. Oxfam also notes that multi-national firms also often do not comply with labour legislation (as reported by the Oxfam Salmon Industry report). More generally, Oxfam notes that policy advice on labour legislation is mainly based on business opinion surveys, overstates the costs of firing and does not address the problems of poverty and inequality. In the view of Oxfam, Chile requires a strengthened regulatory framework to protect workers and labour rights.

Temporary agricultural workers are mainly excluded from labour legislation measures. Any strengthening of the legal framework to protect workers would therefore not affect them. This also has important gender equity implications as women constitute the vast majority of temporary agricultural workers. These women find themselves in a vulnerable situation.¹⁸¹

¹⁸⁰ Oxfam International

http://www.oxfam.org/en/programs/development/samerica/chile_regional_trade_agreements

¹⁸¹ Telephone interview with Martín Pascual, CENDA, Chile.

World Bank and Labour Legislation Other Countries: Views from Trade Unions

ITUC finds that "among the CAS/CPS posted between October 2006 and June 2007, almost half (seven out of fifteen) included recommendations that the country undertake labour market deregulation on the basis of its *Doing Business* scores."¹⁸²

Georgia:

The *Doing Business* report of 2007 praises Georgia as the world's top reformer, because of its "most far-reaching reform of labor regulation." According to ITUC, however, *Doing Business* neglects to mention that Georgia refused to consult the social partners on this reform and rejected advice from the ILO, part of which concerned problems with the reform measures' compatibility with ILO Conventions 87 and 98, two of the CLS conventions.¹⁸³

Haiti:

*The Haiti case provides an example of an IFC project with an explicit loan condition to respect core labour standards.*¹⁸⁴

In October 2003 the IFC approved a \$20 million loan to Grupo M. In response to fears expressed by trade unions and NGOs that labour rights could be violated in the plant, the loan included a precedent-setting condition requiring the company to recognise its employees' collective bargaining rights. Problems first flared up in March when 31 workers were illegally fired. Grupo M was forced to reinstate the dismissed workers, and promised to protect freedom of association, establish a dialogue with the union leadership, and bring in a team of independent observers to monitor labour relations. In the intervening months, these observers noted increases in daily production quotas, intimidation of workers by the factory management and, towards the end of May, the establishment of a "climate of terror" on the factory floor.

The AFL-CIO's (American Federation of Labor and Congress of Industrial Organizations) called on the IFC to "insist that Grupo M immediately reinstate all of the discharged workers or face the cancellation of its loan." The loan agreement stipulates that failure to ensure the workers' right to form unions "will be treated explicitly as an event of default." The IFC was nevertheless reluctant to cancel the loan.

In December 2005, an agreement was reached between management and the union at the Grupo M textile factory. Wage issues were resolved, as were issues relating to union recognition, labour rights, and working conditions. Nevertheless, Charles Arthur of NGO Haiti Support Group was negative about the role of the IFC throughout the dispute: "The IFC should have used its influence to pressure Grupo M to conclude a collective bargaining agreement with the Sokowa union in early 2004, but it did not, and representatives of organised workers had to fight tooth and nail for nearly two years to win this agreement. The IFC's remedial action plan and specific covenants in the loan agreement regarding freedom of association have been shown to be a complete sham."¹⁸⁵

Nepal:

*In Nepal the World Bank recommended reforms which went against the nationally negotiated solution and the recommendations of the ILO. (ITUC)*¹⁸⁶

In January 2005, Nepalese trade unions, employers and the government, supported by the ILO, agreed on a labour law reform process through tripartite negotiations. The process would make job termination rules more flexible and also establish a social security system, improve health and safety standards and ratify ILO conventions. In February, the King seized absolute power, suspended civil rights, outlawed assemblies, imprisoned unionists and suspended the tripartite labour law reform process. In March and May the World Bank was urged to pressure King to re-establish democratic rule, not impose unilateral labour reform. Nonetheless, in May the Bank encouraged the King to decree labour reform that reduces protection against dismissal, curtails scope of collective bargaining and restricts trade union action.

In January 2006, the World Bank country Director wrote a letter saying that rapid adoption of labour law reform would "determine HMGN's ability to access budget support from the World Bank." The King subsequently decreed the labour ordinance designed by the World Bank. Following this, Nepalese unions joined mass demonstrations to overthrow the King's absolute rule and restore democracy. After hundreds of detentions and several deaths, the King gave up dictatorial rule, and restored parliamentary rule. In May 2006, the new government withdrew the King's labour ordinance and proposed the restoration of the tripartite reform process, which in March 2007 reached an agreement in principle on a labour law reform package accompanied by improved social protection.

¹⁸² Global Union 2007. The Role of IFIs in Supporting Decent Work and Countering the Risks of Financial Globalisation. Statement by Global Unions to the 2007 Annual Meetings of the IMF and the World Bank.

¹⁸³ ITUC 2007b: 6.

¹⁸⁴ Bretton Woods Project "Haitian jobs hang in the balance in IFC-funded plant" 26 July 2004. <http://www.brettonwoodsproject.org/art-62678>

¹⁸⁵ Bretton Woods Project. "Good news from Haiti labour dispute" 23 January 2006

¹⁸⁶ Bakvis 2007.

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General

Peter Bakvis, International Trade Union Confederation, Washington DC
James Howard, International Trade Union Confederation, Brussels.
Sue Longley, International Union of Food Workers, Geneva.
Alex Wilks, Eurodad, Brussels.
Stephanie Barrientos, Institute of Development Studies, England

Bangladesh

Rafiquzzaman, Agriculture and Rural Development, World Bank Bangladesh
Shahid Ullah, Director of Policy and Research, Karmojibi Nari, NGO in Agriculture and waged labour

Chile

Martín Pascual, Centro de Estudios Nacionales de Desarrollo Alternativo, Development and Labour Rights NGO
Diego López, Labour Directorate, Ministry of Labour, Chile

India

T.S. Papola, Development Economist, specialist on labour and employment in India.
Institute for Studies in Industrial Development

Indonesia

Kee Beom Kim, Economist, ILO Indonesia
Kurnya Roesad, Economist, World Bank, Jakarta

Morocco

Abdelrahim Handouf, ex-Secretary General of the National Agricultural Federation
Mohamed Hakech, Secretary General of the National Agricultural Federation
Jamal Chahdi, Director General, Centre des Droits des Gens, CDG

Philippines

Fabrizio Bresciani, Rural Development Economist, World Bank, Manila
Maria Concepción Sardaña, Senior Programme Officer, ILO Philippines

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