

## CONSIDERATIONS FOR REVISION OF THE ICSE-93

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### Introduction<sup>2</sup>

This note reviews employment categories that do not fit easily within the existing ICSE either because they sit ambiguously between paid employment and self-employment or because they require greater detail. This note presents the challenges raised by these forms of employment for data collection and possible approaches.

It first reviews the role of contractual arrangements in employment over time. Second, it recapitulates the areas where greater detail is needed within categories (sub-categories), and the forms of employment that do not fit easily in the existing framework (“intermediate” categories). (See Appendix A)

Third, it presents criteria to consider in how to address the categorization of ambiguous employment arrangements, whose use has given rise to debate about how best to categorize them.

Fourth, the note explores specific “intermediate” categories, whether they might fit in the existing ICSE framework, or new categories need to be devised. A specific example from the Mexican household survey (ENOE) is provided to illustrate ways to use *de facto* criteria for classifying workers.

Final sections explore the relationship between potential changes to ICSE-93 and the implementation of the ICLS-2003 definition of Informal Employment and note areas where further work is needed.

### Why the need for review of the ICSE-93

As noted by the ILO Statistics Department, the categories defined in ICSE-93 do not provide sufficient detail to monitor the changes in contractual arrangements in many countries.

Therefore, there is a need to provide:

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*“more clarity about the treatment of specific groups, to provide more detailed categories for the purposes of international comparison, and to deal more appropriately with the emergence over the last several decades of a variety of new forms of employment and contract types that are blurring the boundary between paid and self-employment.” (ILO for 19<sup>th</sup> ICLS 2013 P. 7, par. 7)<sup>3</sup>*

Any revision or modification of the ICSE-93, or modification of criteria for classifying particular groups of workers in the existing status of employment categories, would need to be established based on a set of diagnostic questions appropriate for each category (we provide examples below). It would need to rest upon a consideration of how countries implement status in employment and what dimensions of control and risk they deem important to consider given their specific national institutional context. Importantly, any change would require also considering how changes might be implemented and data collection altered.

### **Contractual arrangements over time**

Contractual arrangements have evolved over time and, as they relate to employment, these changes generate the need for the ICSE to change as well. A primary consideration in current discussions regarding the revision of the ICSE-93 is that employment arrangements are influenced not only by employment contracts but also, increasingly, by inter-firm (business to business) contracts with repercussions for workers.

Under the law, a contract is an agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a specified benefit<sup>4</sup>. The contract between an employer and an employee is a defining feature of formal wage employment (and has been the basis for building employment-based social protection)<sup>5</sup>; and a contractual agreement between two enterprises or firms is at the heart of formal business dealings. Contracts can be either written or oral. Both written and oral contracts may be considered legally binding, but oral contracts are more difficult to prove or enforce.

The term “contractual arrangements” is used here to refer to the ways in which firms contract, through intermediaries, for the production or supply of goods and services. The terms “contract worker” and “sub-contracted worker” refer to workers who are contracted or sub-contracted to perform a specific job, often without legally binding obligations by the employer/hiring agency or the buyer/supplier (this issue is considered below). Under most such

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<sup>3</sup> ILO Department of Statistics, 2013. “Revision of the International Classification of Status in Employment (ICSE-93)” Discussion Paper for 19<sup>th</sup> ICLS, Room document no. 8. Prepared by David Hunter.

<sup>4</sup> The following is based on Carré, F. and M. Chen, “Contractual arrangements,” WIEGO Strategy Note, 2013.

<sup>5</sup> Formal employment contracts can be explicit or implicit. An implicit contract simply means that terms of employment that apply to all workers apply, by default, to workers with such contracts.

contractual arrangements, the workers are responsible for making their own social protection contributions, reporting their income, and covering expenses associated with completing the task. In effect, such contractual arrangements serve to push down risk and costs on those who are contracted or sub-contracted to provide goods or services.

Informal wage employment and informal self-employment are characterized by a lack of enforceable employment or commercial contracts, respectively. Many informal workers, both waged and self-employed, are linked to formal firms through a variety of contractual arrangements that put the workers at a disadvantage in terms of enforcing their rights, if any. If they work for someone else, the arrangement is likely to be a verbal (possibly customary), set of work and payment conditions. If they are self-employed, particularly own-account self-employed, the conditions of their work are driven by entities which control the economic terms of transactions, be they the intermediary contractor to whom they sell their goods, and possibly from whom they purchase supplies, or the prime contractor.

Recent changes in the hiring and sourcing practices of formal firms have implications that link conditions for formal and informal workers more directly than in the past. These changes have been more marked since the recent 2007-2010 recession. The organization of supply chains by formal firms has meant lengthier supply chains with the informal self-employed - micro-entrepreneur, own-account operators, and small producer groups - at the bottom. Similarly, the organization of production chains has meant lengthier subcontracting chains with industrial outworkers, brokered contract workers, or casual day laborers at the bottom - but directly engaged in production for large firms and their suppliers (for example in garment production see Chan 2013<sup>6</sup>).

### **How employment arrangements are sorted into the classification of status in employment**

International labor statistics, as well as the implementation of the ICLS 2003 definition of informal employment, have rested on the primary distinction between paid/dependent employment and self-employment.

The main criteria used for this distinction have been risk and control/autonomy. The dimension of *risk* refers to the ability, or lack of it, to mitigate economic risk through one's autonomous economic activities. The self-employed take on the risks associated with financial investment in one's enterprise and have the opportunity to mitigate them through their own

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<sup>6</sup> Chan, Man-Kwon. 2013. *Contract Labour in Global Garment Supply Chains*. WIEGO Research Paper <http://wiego.org/publications/contract-labour-global-garment-supply-chains>

activities. This contrasts to employees/dependent workers who do not invest in the enterprise but depend upon managerial decisions for their employment (duration, compensation) and cannot exert autonomous control over their employment. By control/autonomy/authority is meant authority over the establishment/others or the ability to direct one's performance of the task at hand. Some countries implement "control" to include ownership of tools/equipment to perform the work.

One main interface between this dichotomy and the Informal Employment definition is that the dichotomy often drives the ways that countries allocate access to social protection and labor standards coverage:

- Paid employment is the basis for employment-based/related social protection
- Self-employment often excludes workers from employment-based social protection (except in countries that provide access to social protection to all workers regardless of status).

An important part of the context is that there are cross-national differences in which aspects of social protection are universally provided ( and whether they are linked to labor force participation).

Ambiguities and difficulties with classification come from several sources:

The primary source of ambiguity is that –for some categories of workers—there is a disconnect between, on one hand, the label and legal standing (*de jure* status) within national legislation and, on the other hand, the actual experience (*de facto*). This disconnect may be due to:

- Illegality: See \*misclassified\* independent contractors workers (below and in Appendix A)
- Ambiguity in implementation of the "risk and autonomy" criteria: The criteria for paid employment are often implemented narrowly while, conversely, self-employment is defined broadly in practice. Thus, "pseudo" self-employed workers (or false self-employed) may be economically dependent and yet their employment arrangement is within the "letter" of the national or local law or regulation. In particular, not having "autonomy" is often implemented as encompassing BOTH being accountable to a supervisor AND not providing one's own tools, only providing labor.
- Intermediation; for example, as with self-employed workers sent out to assignments by a dispatch service: Workers are treated as self-employed, and paid by the task even while they do not have contact with the client prior to delivering the labor services

As a consequence: It is increasingly difficult to rely upon the label –or legal status–for a category of workers in order to classify them as self-employed or paid employees in statistics.

- E.g. “Contractor” workers may be self-employed but economically dependent on client; or may be paid employees of a subcontractor company (possibly in subcontracting chain)

Another source of ambiguity is that some categories of workers fall into more than one status in employment category. For example, domestic workers can be paid employees of households, paid employees of agencies, or own-account self-employed. They tend to be considered as a homogenous group of workers (providing services within the household) but in fact work under varied, and distinct, employment arrangements. Their status in employment classification would depend on how the word “employer” is interpreted. In addition there is the more basic problem of the application of the industry codes. Many countries do not have a specific code for domestic workers as a branch of economic activity.<sup>7</sup> As a result domestic workers are not accurately measured.

Other groups of workers that also fall into more than one category. For example, “Contractor” workers may be self-employed but economically dependent on client; or may be paid employees of a subcontractor company (possibly in subcontracting chain)

A related source of ambiguity is that there is an increase in intermediated employment where a third party mediates between worker and the actor (client firm) that has ultimate control over terms and conditions of employment (sometimes the place of work), and over economic activity. In high income countries, and increasingly in middle income countries, job brokers such as staffing companies are one such example. Also, the spread of subcontracting for auxiliary functions (e.g. cleaning services) but also core production functions create situations where the terms and condition of employment of subcontractor workforces are directly affected by the terms of a business contract between the client company and the supplier company. In some low income countries, labor brokers and subcontractors –always present in supply chains for global contractors—have played a larger role (Chan 2013).

In addition, terminology matters and may affect the use of classification guidelines. Ambiguities are sometimes compounded by multiple meanings and uses of the word “contractors” which requires agreed upon definition and use. The term “contractor has been used in different settings to refer to workers in different arrangements, that is: 1) contractors = workers who are treated as self-employed individuals but are economically dependent, as

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<sup>7</sup> Instead, they may use occupation (which does not specify if the work is performed for households) or “relationship to head of household.”

discussed above (see ILO 2013 use of the term.); 2) contractor = contracted out that is, a paid employee of a subcontractor company, or an independent worker working for a subcontractor (Labeled “Outworkers” in ILO, 2013 ICLS document.); and 3) contractor = contracted “in” that is, a paid employee, or independent worker, who is brought into a primary firm’s workplace by a subcontractor company to the primary firm.

## Categories and employment arrangements requiring attention

The following categories require attention for several reasons. They do not easily fit within the existing ICSE; some deviate from the norm in paid employment; some straddle paid employment and self-employment and some can be either self-employed or employee for example. Domestic workers and day laborers may be self-employed or paid employees).

Also, some have not historically been considered “workers” at all in some national regulatory settings. Most notably, domestic workers or home care workers are sometimes classified as “companions” not covered by standards applied to workers, even if in all other respects they may fit in paid/dependent employment.

Importantly, contractual arrangements that govern “employment” arrangements have tended to develop from existing norms and institutional arrangements that have historically governed and organized specific activities. Thus, what are now ambiguous forms of employment started out in different arrangements (some as self-employed and some as paid employees) and result from different processes of employment change. The resulting relationship of employment arrangement to social and labor protection is affected, in part, by prior history. Put most simply, a contract supplier-farmer arrangement is a shift away from autonomous farming, which brings it closer to economic dependency (on the contracting company). Yet, because farmers have historically been viewed as autonomous, contract-supplier farmers in agriculture continue to be categorized as such.<sup>8</sup> Conversely, a paid employee who is employed through a broker is a change away from dependent employment as historically understood (over the past 50 years or so) to mean reliance on a single employer with access to employment-based social protection. Thus, even though they are considered paid employees, their relationship to the institutional system (rationed access to benefits) is different from common understanding of paid employment in each national setting.

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<sup>8</sup> A supplier contractor in agriculture owns or leases the land and retains control over hours worked, the labour inputs of others, and possibly other factors, although the price and goods produced (as well as quality standards) may be determined by the contracting enterprise. This is in contrast to contractors in computer programming for example, who provide skilled labor, possibly some tools, and work during a time period specified by the “client”.

\*Sub-categories in paid non-standard employment\* A number of countries now collect statistics on groups within dependent/paid employment in particular whose form of employment differs from “regular” employment, that is, from indefinite duration, usually full-time, employment in a subordinate employment relationship (ILO 2015)<sup>9</sup>. (See categories listed under non-standard employment in Appendix A). What is at issue is devising a list of the main forms of non-standard employment that can be implemented cross-nationally.

\*Self-employed: misclassified employees\* (where national/local employment law is violated, mostly, but not exclusively, in countries with majority formal work).

Examples include:

- Employer knowingly breaks the law and reports the worker as self-employed, paid for a total service/per unit, and not for work hours/salary: Industries where practice is common include construction, home-based services
- Employer inadvertently breaks the law
- Employer fails to register the worker with social protection schemes related to paid employment: e.g. national social protection in Mexico. (Employers may also “disguise” such workers as contributing family members.)

The context in which employee misclassification occurs is one in which the worker has little information or ability to challenge the employer decision on his/her status. It may be because the worker is undocumented immigrant for example, or in period of high unemployment.

\*Self-employed: “pseudo self-employed”\* (countries with majority formal work): The employment arrangement is not in violation of existing law but the worker is not independent economically.

The worker may have registered as a separate business unit with tax authorities, and/or the employing unit is not responsible for social security payments and/or the contractual relationship is not governed by labor law. Countries may vary in whether they classify such workers in self-employment or paid/wage employment but most do not report this group separately (ILO 2013, p. 19). For example, port truck drivers in major US harbors are treated as self-employed by transport companies, even though many lease their truck (sometime with company support) and are often prohibited by their contract with the company from working for more than one company at a time (Bensman 2014)<sup>10</sup>. Some have successfully argued in US state and federal courts that they are employees covered by employment and labor laws.

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<sup>9</sup> ILO, 2015. Conditions of Work and Equality Department, Report for Discussion at the Meeting of Experts on Non-standard Forms of Employment, Geneva, 16-19 February.

<sup>10</sup> Bensman, David. 2014. Misclassification: Workers in the Borderland,” *Journal of Self-Governance and Management Economics*, August.

\*Industrial outworkers (developing countries, mostly) are workers, primarily engaged in manufacturing, whose work activity occurs “on order” from a factory, or contractor or sub-contractor.

Industrial outwork refers to work done outside the work or factory that supplies the work. It is a common form of contracting that occupies, like other contractual arrangements, a “grey” intermediate space between independent self-employed and dependent wage employment. Industrial outworkers typically have to absorb many production costs and associated risks – including, buying or renting and maintaining equipment; providing workspace and paying for utility costs; and buying some inputs – often without help from their “employers”, that is, the contractor paying for their output. Thus their net remuneration may be significantly less than indicated by the piece-rates that they are paid. For instance, most garment outworkers have to buy and maintain their own sewing machines, replace needles and oil, and pay for the electricity to run their machines as well as, oftentimes, provide and light their workspace. Most industrial outworkers are also not directly supervised by those who contract work to them, although they are subject to delivery deadlines and to quality control of the products or services they deliver.<sup>11</sup> They may also work with family helpers or employ others.

Industrial outworkers are paid by piece rate or some other measure of production. Their economic dependence is established through one or more characteristics: work on order; purchase or are given inputs from the ordering/contracting unit; and do not sell their product themselves.

- For example, Sub-contracted home-based workers/industrial outworkers (called homeworkers) are contracted by an individual entrepreneur or a firm, often through an intermediary. They are usually given the raw materials and paid per piece. They typically do not sell the finished goods. They do, however, cover many costs of production: workplace, equipment, supplies, utilities, and transport.<sup>12</sup>

As the ILO Department of Statistics points out (ILO 2013), the nature of the contract (implicit or explicit) with the contracting unit drives how particular groups of outworkers are classified in the existing System of National Accounts. If remuneration is for labor *per se* (time spent as input into production), they should be categorized as paid employees; if remuneration is based on the value of the output produced (regardless of effort), they should be categorized as self-employed (p. 20). However in operation this distinction may not be clear with respect to the definition of “product/output”. A purchase price for very small units of production (e.g.

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<sup>11</sup> Carré and Chen, “Contractual arrangements,” WIEGO strategy note, 2013.

<sup>12</sup> <http://wiego.org/informal-economy/occupational-groups/home-based-workers>

garment, Indian *bidi*) is based on a “product” and would likely lead to categorization as *self-employed*. Yet remuneration on such basis is equivalent to a piece rate, a common form of compensation in *paid/dependent* employment.

#### \*Casual day laborers

Casual day laborers work within construction subcontracting chains and find themselves at the bottom end of such chains. They hire themselves out either as individuals (and are treated as “self-employed” even though they only supply their labor) or through a broker (such as a staffing intermediary specializing in day labor). In this latter case, they may be treated either as employees of the intermediary company or self-employed (recruited but not payrolled by the labor broker). In developed countries, they labor in short-term hiring, often by the day; they are paid for labor provided (as a paid employee would) instead of for a product (as an independent self-employed worker would be).

In developing countries, generally they are hired as informal self-employed. In India, the share of casual labor in the construction workforce increased by 10 per cent between 1983 and 1993. In 1993, 64 per cent of men and 96 per cent of women in urban construction were working on a casual basis” (Pais 2002<sup>13</sup>).

With the increase of construction subcontracting, casual day labor increases. Studies in both Kenya and Tanzania show that employment in the construction sector has stagnated or declined, while informal sector surveys indicate a large and increasing number of construction workers in enterprises with fewer than 5-10 employees. Kenya has experienced the growth of specialized enterprises offering labor for common tasks such as concreting or block laying (Wells and Jason 2010<sup>14</sup>)—a trend likely to make day laborers working conditions dependent upon one or more intermediary company and further distant the autonomy and control assumed to be part of self-employment.

#### \*Contracted Suppliers

Informal contractual arrangements are increasing in commercial transactions, not just employment relationships. As an example, contract farming is agricultural production carried out according to an agreement between a buyer and farmers, which establishes conditions for the production and marketing of a farm product or products. Typically, the farmer agrees to

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<sup>13</sup> Pais, Jesim. 2002. “Casualization of Urban Labor Force: Analysis of Recent Trends in Manufacturing.” *Economic and Political Weekly*. Vol. 46, 16. Cited in <http://wiego.org/informal-economy/occupational-groups/construction-workers.wiego>

<sup>14</sup> Wells, Jill and Arthur Jason. 2010. “Employment Relationships and Organizing Strategies in the Informal Construction Sector.” *African Studies Quarterly*. Vol.2 & 3, March.

provide established quantities of a specific agricultural product, meeting the quality standards and delivery schedule set by the purchaser. In turn, the buyer commits to purchase the product, often at a pre-determined price. In some cases, the buyer also commits to support production by supplying farm inputs, providing technical advice, and arranging transport of produce to the buyer's premises. In practice, the contract farmers are often forced to buy all inputs and sell all produce to the buyer at a price specified by the buyer and/or to absorb the risks of production in event of a natural disaster or a market downturn – without any legal protection or insurance.

In most respects, production conditions of contract-supplier farmers meet the criteria for economically dependent activity: little or no autonomy in the organization and direction of the work, and little or no autonomy in interaction with the market for their product.

\*Domestic workers—except those in dependent/paid employment are those whose categorization requires attention.

When classified *outside* of dependent/paid employment, domestic workers currently categorized as self-employed may or may not have autonomy in the performance of their work: they may be assigned to households by a broker; they may not choose where they work. The degree of dependence also is affected by whether they have one or more “clients/employers” and whether they “live in” their place of work. Thus, the categorization into either paid employee or self-employed/independent workers is a categorization based on specific circumstance and is *de facto*.<sup>15</sup>

\*Franchisees:

Franchising has historically been seen as an independent/self-employed form of employment, where the worker is autonomous (exerts managerial autonomy, provides own capital to the enterprise). However the classification of franchises should entirely depend on the nature of the franchise contract with the primary company.

The categories of franchisees that require attention could be labeled “pseudo-franchisees” in some countries. They are individual workers who signed a franchise contract requiring them to purchase inputs/tools/equipment from the lead enterprise, and to sell their service under the label and marketing of the lead enterprise. Examples include cleaning franchisees who pay a marketing fee to access customers, and must purchase supplies from, a company which has

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<sup>15</sup> Even in *paid employment*, domestic workers may be working in a regulatory regime distinct from that of other employees. As noted above, they may have been excluded from employee regulations.

direct contact with customer companies. Figure 1 (end of document) illustrates how intermediary forms of employment relate to the two main categories of paid and self-employment.

*\*Contributing (auxiliary) family workers:* The group has until now been classified in self/independent-employment. Historically, this has been so because family members, particularly, wives are considered “partners” in a business owned or run by the couple. In reality, contributing family members may not be equal partners in decision making regarding the business. This is the case for many spouses, and is certainly the case for teenage contributing family members. Some and likely many of these workers, therefore, occupy the ambiguous space between paid employment and self-employment. (In theory, those participating in decision making are classified as own-account self-employed, and those with lesser involvement are classified as contributing family workers. This distinction is rarely tested in surveys. In most countries wives are classified as contributing family workers.)

### **Considerations for sorting categories of workers into a classification based on *de facto* criteria**

The labels used for the problematic categories encompass diverse employment arrangements with varied degrees of risk and autonomy. Hence, it is not straightforward to assign all the workers currently grouped under a “label” within a single category in the ICSE.

One possible way to proceed is to provide countries with criteria to use in sorting workers, with the explicit recognition that these problematic categories are on a continuum between paid/wage employment and self-employment. It is not sufficient to rely on the legal status of workers to sort them among ICSE categories precisely because a legal status may entail different degrees of risk and autonomy. The revision of ICSE could emphasize the importance of *operationalizing* the ICSE definitions for categories in terms of combination of questions in surveys rather than the present approach of single-question measurement

A primary recommendation is to use a more inclusive definition of Paid/wage (or salary) employment: Either the absence of control over one’s economic conditions (e.g. do not access market, do not sell directly, or get work/contract through an intermediary) OR the absence of control over one’s work (e.g. reporting to a supervisor/boss) OR the provision of labor as primary contribution to production (minimal contribution of capital, or equipment/tools) would qualify workers as in wage/paid employment.

The ability to rely on specific considerations based in work conditions for classifying workers between paid/wage and self-employment, and allowing for a “continuum” or gradation within each of these two categories are the approaches taken by Mexico’s household survey.

### *Determining Status in Employment: The Approach of Mexico and Argentina*

(Based on information and substantive commentary from Rodrigo Negrete, INEGI.)

In the standard approach in household surveys, status in employment is considered as a clear dichotomy between *dependent/paid/wage employment* and *independent/self-employment*. In contrast, Mexico and Argentina consider independent (self-employed) and dependent workers as a basic classification with degrees in both branches. Rather than implementing the categories as clear dichotomies, labour force surveys in both countries allow for degrees of autonomy and risk within the basic categories. A set of questions rather than a single question determine the respondent’s status in employment. Although Mexico and Argentina follow similar approaches, the example reported here is specific to Mexico.

#### *Principles*

Mexico’s ENOE (National Survey of Occupation and Employment) as well as the Argentinian survey follow several principles in determining the status in employment particularly for distinguishing the self-employed from paid employees. These principles are relevant not only for workers who derive income from employment but also for unpaid contributing family members (now classified as self-employed).

First, the means of remuneration (wage/salary or pay for product/flat fee<sup>16</sup>) is not used as the distinguishing characteristic to sort workers into paid employment or self-employment. This leaves open the possibility that workers who do *not* receive a wage or salary can in fact be dependent workers (possibly pseudo self-employed).

Second, the type of “contract” is not used as criteria for the status in employment. For example, some independent contractors are independent workers while others have little or no autonomy in the work process and only contribute their labor.

Third, it is important to assess the degree of economic “dependence” of the self-employed both in paid and unpaid employment. Even for those with autonomy in the work process and/or who contribute their own capital (equipment, tools) to the work activity, a further distinction can be drawn between those self-employed who work with one client at a time, and those with several clients.

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<sup>16</sup> Piece rate compensation may occur with paid/dependent employment or self-employment.

A set of questions then seeks to establish the degree of authority/autonomy and economic risk (or dependence) of the worker by implementing these principles.

The final principle is that the questions need to take into account that they may be answered by proxy respondents.

The implementation of these principles in the Mexico household survey is detailed in Appendix B to this paper.

### Considering possible changes to ICSE-93

In sum, as a general principle, to be effective, ICSE changes under consideration would need to meet certain requirements:

- That they be implementable through a series of specific questions on contractual arrangements, or conditions of employment
- That they be implementable by national statistical offices
- That they enable harmonization of labor force statistics and facilitate cross-national data comparison

Specific considerations for possible changes to the ICSE include the following:

- A. Within paid/dependent/wage employment, a primary distinction between “regular” employment and a group of non-standard arrangements encompassing the main sub-categories listed in Appendix A in ways that are implementable at the country level (nationally relevant categories), is recommended.
- B. Within paid/dependent/wage employment, providing sub-categories for the groups of workers in non-standard employment (cf. sub-categories with “\*” in the list in Appendix A). It is understood that not all countries collect such detail in the national labor force survey. Still, most high- and middle-income countries do collect the main forms of such employment (short-term hires, and brokered employment). Importantly, it is also understood that such sub-categories must be mutually exclusive. In order for this to be the case, the nature of the contractual arrangement should be the primary dimension. For example, direct hire short-term employment (within a firm) is a separate category from brokered employment that may be short-term (or long term).
- C. \*Within self-employment, the “pseudo self-employed” is the most problematic category for statistics to address because “economic dependence” has to be established *de facto*. Whether workers are categorized as self-employed or as paid/wage employees—using the existing main categories—is a determination that rests on the degree of “economic

dependence” and how it is assessed in each national context. Implementation may also be affected by whether countries’ legal system has a presumption of employee status (with burden on firms/employers to prove self-employment) or not.

Possible ways to proceed have advantages and drawbacks:

- Rely on national legislation and criteria and continue to report these as one or the other of the main categories of employment. The drawback is that the special status of these workers is not accounted for.
- Issue international guidelines and criteria to be followed by national statistics to determine “economic independence” or “dependence” –making some allowance for different regulatory systems yet allowing far less variation than is currently the practice. The advantage is that there would be coherence in classification practice.
- If, instead, national variation in criteria and classification practice continues, then “contractors” could be identified as a sub-group *within each of the two categories*, as contractors-SE and contractor-employee. This would enable analysis to be conducted on the aggregate category of “contractor” without taking away the main distinction between paid/dependent/wage employment and self-employment.

In considering how to deal with the dependent self-employed, it is important to keep in mind that the classification as either self- employed or paid employee must interface with national accounts. The system of national accounts (SNA) draws a distinction between activities that entail solely labour and those that combine labour and capital. For example if a person who only provides labor is classified as self-employed based on the type of arrangement she has with the user of her services, her income would be classified as mixed income in SNA terms even though she doesn’t own capital or the key assets used to perform her task. Mixed income generally corresponds to those self- employed who personally conduct their economic unit assuming they own something (e.g. tools). Conversely if an asset/tools owner supplying (or vending to) only one customer is defined as a dependent/paid employee, it would be necessary to determine if her income is, or is not, mixed income. In other words, it would need to be determined whether the SNA’s conceptual frame accepts mixed-income for persons not deemed self-employed but paid employees instead. Additionally, in those cases where this person hires another paid employee, the status of the latter may require a new category in the classification (employee of an employee?).

Changes in the status in employment classification also would impact the mechanism of classification used for the formal/informal employment matrix if new categories are introduced on a par with the existing two main ones— self-employed, dependent/paid worker/employee. (We return to this issue in a later section.) Therefore any revision of the classification should

keep in mind implications in terms both of SNA's income classification and the informal employment matrix.

The background research recommended in ILO 2013 (p. 38) seems an appropriate way to explore this issue.

- D. Similarly, "pseudo-franchisees" could be classified following guidelines akin to the options identified for the "pseudo-self-employed" above.
- E. Industrial outworkers in developing countries should be considered Paid Employees/dependent workers. (Consideration should be given to cases where outworkers engage others for pay.)

Current knowledge on the employment of these workers indicates that, if the two main categories remain, they should be reported under paid/wage employees.<sup>17</sup>

- F. Within agriculture, "contract-supplier farmers" are a category akin to pseudo self-employed contractors outside of agriculture. They meet some of the current criteria for self-employment (e.g. own equipment) but not all; they operate with little control of their own production activities, and do not sell directly to market. They could be categorized in ways similar to pseudo self-employed or "industrial/agricultural outworkers". (Sharecroppers might be classified depending upon whether the category is treated as a form of commission pay for paid employment; or as a form of sub-contracting with economic dependence because sharecroppers work to particular specifications and are deemed to have little control.)
- G. Domestic workers may pose a challenge in some countries because they work under diverse status of employment. The fact that they work within households has meant, historically, that they were not considered workers at all. Now, some are paid employees of formal enterprises (agency) whose workplace is households, but they operate with lesser coverage from labor and social protections than other regular employees in many cases (exclusion of workers who provide services to households in labor standards of some countries). To some extent, their status approaches that of "contractor" workers because some are classified as self-employed by the dispatching agency. Others are direct paid/wage employees of households; the nature of the employing unit (whether or not the household

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<sup>17</sup> Raveendran, Govindan, Ratna M. Sudarshan and Joann Vanek. 2013. Home-Based Workers in India: Statistics and Trends WIEGO Statistical Brief No. , December. Based on data collected by the National Sample Survey Organisation (NSSO) through the Employment-Unemployment Surveys in 1999-00, 2004-05 and 2011-12. <http://wiego.org/publications/home-based-workers-india-statistics-and-trends>

registers as an "employer") and of the employment relationship (whether they have limited or no social protection ) may indicate that they are in informal employment. Yet other domestic workers are "own-account" self-employed who, for now, are classified as informal paid/wage employees of private households (Husmann matrix).

It could be that developed countries (which use more of an agency model) would want a sub-category for domestic workers in paid/wage employment. And developing countries would likely primarily use the existing location of Domestic workers as informal paid/wage employees of households.

## **The ICSE and informal employment**

### ***Contractual arrangements and informal employment***

Informal wage employment and informal self-employment are characterized by a lack of *enforceable* employment or commercial contracts, respectively. Many informal workers, both waged and self-employed, are linked to formal firms through a variety of contractual arrangements that put the workers at a disadvantage in terms of enforcing their rights, if any. If they work for someone else, the arrangement is likely to be a verbal (possibly customary) set of work and payment conditions. If they are self-employed, particularly own-account self-employed, the conditions of their work are driven by entities which control the economic terms of transactions, be they the intermediary contractor to whom they sell their goods, and possibly from whom they purchase supplies, or the prime contractor.

### ***How potential additional ICSE (sub-)categories might interface with the IE definition***

An important goal of the possible revision of the ICSE is to monitor the evolution of the employment relationship and provide a realistic picture of the main forms of employment. The reason for calling attention to changes in employment, namely to "new" forms of employment, is that the latter usually entail a different type and degree of access to the systems of social protection and labor regulation. The policy concern is that notable numbers of workers find themselves with a different, usually lower, level of access to social protection by virtue of their form of employment.

Therefore, changes in the ICSE would be most productive if they help clarify and reflect significant differences across forms of employment in type and degree of access to social protection and labor regulation.

This emphasis also connects the impacts of changes to the ICSE to the definition of informal employment, which rests on how forms of employment relate—*de jure* or *de facto*— to the

institutional and regulatory systems for access to social protection and to labor and employment law.

In the current ICSE, the divide between paid/wage employment and self-employment is mirrored in a split between inclusion and exclusion from labor and employment law and from *employment-based* social protection. (Exclusion is based on risk and authority/autonomy.)<sup>18</sup> Thus forms of employment that are “in between” require clarification. *Within paid/wage employment*, most non-standard forms of employment entail limited access to protection, but not usually outright exclusion. These meet the definition of informal employment. The current categorization of the self-employed in/out of informal employment relies upon the formal/informal status of the economic unit to which they are attached. They are categorized as in informal employment if the economic unit is informal (not registered); conversely, they are considered in formal employment if the economic unit is formal. *Within self-employment* own-account workers (who constitute both the worker and the economic unit) are in informal employment if their unit is not registered. This is common in developing countries and is often the case with “economically dependent” own-account workers. Changes to the ICSE may clarify and make more explicit how own-account status excludes workers who are economically dependent.

A revision of the ICSE, or a revision of criteria for assigning particular forms of employment/groups of workers, will need to preserve the representation of inclusion/exclusion from employment-based protection but also the distinction between “lesser” and “full” access to protection. This is because having “lesser” access to protection either through the employment relationship, or the relationship with the buyer of services is one important consideration in determining informal paid/wage employment. (The other important consideration is that informal workers cannot count on contracts, nor on legal protection for the enforcement of their contracts.)

Over time, forms of employment have emerged in developed countries that are akin to informal employment—even while countries have majority formal employment and formal sector firms. Conversely, formal sector firms in developing countries have begun to mirror such changes. Also, ambiguous self-employment in developed countries shares features with cases in developing countries. Thus any modification in the ICSE should take into account the need for congruence in the implementation of the IE definitions across developing and developed countries.

Over several decades, formal firms in developed countries have diversified employment arrangements within their firms, generating more short-term, temporary, and contract work

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<sup>18</sup> This dichotomy is not absolute in all countries. Some countries have extended some elements of social protection and some labor standards to the self-employed.

that shifts economic risks and social protection risks (e.g. health) directly onto the workers. Workers in these arrangements absorb the consequences of fluctuations in demand through unstable work and earnings. Because these arrangements entail reduced or no access to employment-based social protection (e.g. paid sick days, or disability, or health benefits), workers also absorb the consequences of life crises more directly. In these ways, once fully “formal” workers experience conditions that are informal and even share similar positions in production processes as informal workers.

These patterns of “informalization” have spread to firms in developing countries – India, Mexico, South Africa, for example. They need to be explored in order to understand the drivers of informality and to anticipate work conditions for informal and formal workers alike. The implications of these changes for labor standards formulation and enforcement as well as for systems of social protection must be understood in order for policy advocacy, formulation, and enforcement to be effective.

### **The ICSE revision and the 19<sup>th</sup> ICLS definition of Employment**

At this state, questions –rather than recommendations—can be raised about the implications of the new definition of employment for the ICSE. As the employment definition is broadened to include activities that are not remunerated/unpaid (within the SNA general production boundary), should the classification of status in employment be extended to these activities?

According to the new definition, work activities are first categorized as production for others or for own-use and, second, as paid (existing ICSE scope) or unpaid.

Perhaps ICSE categories are particularly useful to be devised for production activities for others that are unpaid/not remunerated. Types of work arrangements that would fall under this broad category are<sup>19</sup>:

- those in unpaid training/apprenticeships (in order to acquire skills or experience);
- those performing volunteer work;
- Other work activities (e.g. unpaid compulsory work; “workfare”).

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<sup>19</sup> Walsh, Kieran, 2014. Overview of new ICLS resolution: Statistics of work, employment & labour underutilization. EDGE Project, Midterm Review Technical Meeting. ILO Department of Statistics. 3rd to 5th December, Kitakyushu, Japan.

The ILO (2013 document for ICLS) also has identified the category of “Entrepreneurs” as requiring definition to take account of the new definition of productive activities.

### **Implementation issues to consider**

In considering revisions to the ICSE-93, issues of implementation also arise. Regarding the key distinctions among wage/paid employment, the importance of *operationalizing* the ICSE definitions for categories in terms of combination of questions in surveys may need to be underscored--this in contrast to the current approach of single-question assessment. These issues will be explored and illustrated with selected country examples in a later, revised and augmented, version of this note.

### Shifts in Employment Arrangements over Time: Some examples

Paid employment – Dependent				Self-employment – Independent
-----→	→		←-	←-----
Regular hire	Temporary worker		Contract-supplier farmers (agriculture)	Farmers
-----→			Contractor (misclassified or not)	Consultant
Regular hire	Casual day laborer			
		Franchisees		
Factory worker	Industrial outworker			

## APPENDIX A

### Existing categories, and where greater detail needed or ambiguities to clarify (\*starred)

#### A. Employers (Self-employed)

- Own-incorporated enterprise
- Own unincorporated enterprise

#### B. Employees/paid employment

- a) Regular employees (full-time and part-time)
- b) Non-standard employee: (full-time and part-time)\*\*
  - a. Short-term employment: fixed-term, limited duration\*
  - b. Seasonal, casual\*
  - c. Brokered employment\*
    - i. Temporary staffing
    - ii. Through labor brokers, labor hire agencies
  - d. Intermediated employment:
    - i. \*\*Contract company workers – or subcontract company workers (e.g. may include domestic work, janitorial work, professional work) → May be titled “subcontracted” or “contracted” worker
  - e. Trainees including interns (paid in cash, in kind, unpaid)\*

-Note: Domestic workers have historically been treated under a separate regulatory regime – even when they are in paid/wage employment/employees, because they provide services to households.

#### C. Intermediate or problematic categories: currently classified as self-employed (OASE)

- *\*Self-employed: misclassified employees\** (where employment law is violated, mostly, but not only, in countries with majority formal work). Titled “contractors” or “independent contractors” as is the next category.
- *\*Self-employed: “pseudo self-employed”* (mostly, but not only, countries with majority formal work): arrangement not in violation of existing law but not economically independent. Titled “contractors” or “independent contractors”
- *\*Industrial outworkers* (developing countries, mostly)

- Casual day laborers
  
- *\*Domestic workers:* Except those in paid/wage employment
  
- *\*Franchisees:* Classification of “pseudo-franchisees” based on the degree of autonomy
  
- *\*Contributing family workers*

**D. Self-employed – without employee:**

- Independent workers with incorporated enterprises and no employee

**E. Other forms of employment**

- Members of cooperatives
- Contributing family workers
- Other categories considered as requiring attention (ILC room document 2014): Agricultural sharecroppers

## Appendix B

### Mexico (ENOE) Implementation Questions for Determining Status in Employment

#### *Implementation*

Instead of asking a person to self- classify oneself as independent or not, a first level question (3a) asks a person if at work they are accountable to a boss or a superior. Here independence is understood in terms of accountability rather than in terms of the working process which would cover creativity, flexibility, selection of methods. If the response is Yes, the worker is considered NOT self-employed: in cases where a proxy respondent is unsure, the question is followed with one about whether the worker uses their own capital (equipment, vehicle) to perform the production activity or service. (If NO, they are considered paid/dependent workers even without receiving a wage/salary.) Example: If a cab driver rents or leases a car he does not own, and pays a share of revenue, they are dependent workers. Experience with the survey in Mexico indicates that, in most cases, the car owner or a supervisor of the cab company is often also identified as the person to whom the driver is accountable.

Independent status is also verified with a later question verifying that the person owns their own equipment.

#### **3a. At work, do you have a boss or a superior?**

1 Yes Go to 3h

2 No

A second level question (3b) asks whether the person is running the business on their own. This question identifies those who are NOT accountable in the previous question (for example, accountable to a board, not a supervisor) but are dependent workers. If NO, they are considered NOT self-employed (paid employee, unpaid non relative, contributing family worker)

#### **3b. So, you are running a business or any activity on your own?**

1 Yes

2 No Go to 3h

Third level questions (3c, 3d, 3f, 3 g) seek to ascertain the **degree of economic independence/dependence** of the self-employed. This degree depends upon the number of customers, the number of workers, if any; whether the self-employed have direct access to the market, and the overall size of the enterprise

#### **3c. Do you offer products or services to...**

**1 a single enterprise, business or an intermediary?**

**2 several enterprises, businesses or intermediaries?**

**3 directly to the public?**

**4** It is self-consumption of farm products

**9** Doesn't know

**0** To be used only for data capture

-> Question 3c goes part of the way toward identifying those self-employed who also have a single customer (as well as those who produce for their own use)

3d queries on the number of employees or helpers; 3e queries about the number of businesses, and 3 f. on the number of enterprises owned/run by the worker. 3g. queries on the nature of the employment arrangement for employees.co workers.

The criteria for determining dependent worker status is different in Mexico and Argentina:

- In Mexico, a person who has no accountability to supervisor (3a) and runs their own business (3b), will be classified as *independent/self-employed* if he answers that he confirms owning assets (3f) even if he only has one client at time of survey.
- In Argentina, it is sufficient for the person to have one client at time of survey to be classified as dependent worker.

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Thus Argentina may classify owners of work-related assets as dependent/paid workers because they only have one client at time of survey, whereas Mexico gives primacy to not being accountable to another by virtue of owning work related assets, in spite of having a sole customer.

Several subsequent questions ascertain the nature and type of the business, as well as the place of work.

**4c. So, this business is...**

**1 An independent, personal or family business?**

**2 A private firm or enterprise?**

*(trading company: corporation or corporations under other modality, commercial firm, banking company, service industry)*

**3** None of the above

Further questions ascertain whether this is a registered or not registered business, the place of operation and the place of work, and accounting procedures.

**4e. The business or economic activity...**

**1 Has a premise and an office? Go to 4h**

*(doesn't matter if they are integrated or in different locations)*

**2 Only has an office?**

**3 Only has a site?**

**4 Doesn't have a site, nor office nor premise?**

**9 Doesn't know**

**4f. So, where do you perform your work?**

*(Listen, write down and circle the option specified by the informant)*

**01 At the countryside, at open, in a dyke, well, at the sea**

**02 Door to door, or at the streets**

**03 At no fixed place**

**04 Non motor vehicle *(bicycle, tricycle, cart, boat, etc.)***

**05 Motor vehicle, automobile, motorcycle, light truck, etc.**

**06 At your own address *without any special equipment***

**07 At your own address *with special equipment***

**08 At the owner's address or the owner's property, or at the client's request place**

**09 Semi-fixed premise**

**10 Fixed premise**

**11 Other site**

**99 Doesn't know**

**4h. Where do you usually work?**

*(Read the options and circle the one specified by the informant)*

**1 At the facilities (or vehicles) of (mention the firm's name given in question 4)?**

**2 At another firm or enterprise facilities, or at any institution they sent you?**

**3 Visiting clients?**

**4 At the construction site?**

**5 None of the above**

**9 Doesn't know**

As regards contributing family members (including unpaid family members), questions related to risk and autonomy/control also are applied. Follow-up questions and criteria facilitate the identification of those who exert little control over decisions in the family enterprise and, thus, should be considered employees rather than self-employed.