WIEGO Law Pilot Project on the Informal Economy
Consultation on Fish Workers and Domestic Workers
August 23rd 2008
Indian Social Institute, Bangalore

Authors: Kamala Sankaran, Shalini Sinha and Roopa Madhav

Concept Note

The law pilot project of the Women in Informal Employment Globalising and Organising (WIEGO) in India is examining the laws relating to informal workers, and in particular, the own-account workers within this category. The self employed or the own-account workers present a challenge for labour law, premised as it is on the employment relationship. The idea of the control and supervision wielded by the employer and the subordinate position of the worker within this relationship has dominated the understanding of what constitutes a ‘worker’ within labour law. The vulnerability of the own account workers places them on par, and often even below that, of a wage workers in the economy. Since traditional labour law has limited applicability for own-account workers, there is a need to locate suitable entry points within other laws through which own-account workers could construct an identity as ‘workers’ and put forward their claims on the economy as workers to improve their working conditions.

Depending on the sector, a plethora of laws directly affect the economic and social security, incomes and employment of own-account workers. These vary from municipal laws which affect the urban self employed such as street vendors or waste collectors to agricultural produce laws and regulations which affect agricultural workers and small farmers. However, it is not only self employed workers who need to deal with these laws. Wage workers in the informal economy are rarely covered by existing labour laws (either these laws are not extended to them or they are not implemented) and it is these other laws which are often more important for them.

Over decades, the fish workers and domestic workers have engaged in several struggles across the country to attain basic rights and protections, both at the state and the national level. However, a comprehensive law or policy for the specific sectors, continue to elude them. In documenting and mapping the developments in law and policy in these two sectors, the WIEGO pilot project aims to bring together the stakeholders within these two sectors to deepen our understanding of how the legal framework affects both waged and own-account workers in this sector, how the worker-based identity of such workers could be advanced through law and policy and to create a web page on laws relating to the informal economy for future use by activists and researchers in this area.

Fish Workers:

Mechanisation, industrialisation of production processes and the globalization of the markets has transformed the fishing sector. The changes have been both positive and negative. The most notable negative outcome is the over-exploitation of the marine resources resulting in the marginalization of traditional fishing methods and the communities.

The majority of workers in the harvesting of fish are male. These workers could be a part of the mechanized, semi-mechanised or traditional fishing communities. Four types of employment status can be enumerated in the fisheries sector – self-employment, wage labour, family labour and income sharers. It must be noted that some daily wagers are in effect income...
This system provides incentive to workers to reduce on costs and enhance productivity even without the presence of supervisors.

However, in fish processing, majority of the labour force is women and in several areas migrant women workers from Kerala. Work in a fish processing unit is broadly divided into two parts, the pre-processing part that involves peeling and cleaning of raw material and the second part involves grading and packing of the product. The pre-processing engages both daily wage workers and contract workers (largely migrant women). The second stage is dominated by migrant contract workers. The daily wage workers are employed on a piece rate basis. Women workers are also to be found in the sale of fish in various markets along the coast.

“The combination of the two types of labour is especially important to the work process as the contract employees can be deployed for work whenever raw material reaches the unit, even if it is at night and the workers are asleep. They can be made to work for long hours without anyone raising questions about the propriety of such work. Thus the utilisation of contract labour in a captive environment works to the advantage of capital. This is also an important factor in cutting the cost of production, as the raw material kept frozen for a longer time would also push up the company’s cost of inventories. Some units have separate fish peeling and cleaning outfits, apart from the processing plant.”

This sector is not homogenous. The concerns of the workers depend on the work being carried out – harvesting, processing, marketing, etc. Additionally, the concerns of the marine fish workers are different from that of the inland fish workers. Women and men workers also face different set of issues as they are almost exclusively engaged in different activities. In addition, it is clear that the needs of the self employed are distinct from those wage or income sharing arrangements, and these need to addressed in any comprehensive law on the subject. The right to livelihood of fish workers is crucially dependant on establishing the right of the communities over natural resources.

The organization of workers who work for wage labour has not been as vibrant as the organisations of workers from the traditional fishing communities, who are self-employed. Several struggles have been organised by the latter, notably against large scale fishing and mechanization, battles for access to common property resources and to protect the interests of the small operators.

While no comprehensive legislation has been attempted for this sector, the broad policy needs of the sector have been identified by the Murari Committee report. This report was approved in 1996, made several recommendations. Among the major recommendations of the Murari Committee were:

- ensuring an adequate supply of fuel at subsidised rates to fisherfolk
- the formulation of marine fishing regulations in the entire Exclusive Economic Zone (EEZ),
- an end to joint ventures with foreign entities, and banning foreign fishing vessels from Indian waters
- the establishment of a fisheries ministry at the centre.
- the withdrawal of Aquaculture Authority Bill;
- implementation of Coastal Regulation Zone (CRZ) notification and ensuring “traditional and customary right of the fishing community” in the coastal zone;

---

- an end to legislative attempts to dilute CRZ notification through amendments and an end to attempts to displace fisher people from coastal zone and islands like Jambu and Khirisai of Orissa;
- cancelling all the fishing licences to foreign vessels issued by the commerce ministry and enacting legislation to give the right to own and manage water bodies; fish resources and fishing implements to the fishing communities that depend on them for livelihood.

Today the move to replace the Coastal Zone Regulation with a Coastal Management Zone Authorities is facing stiff opposition from various groups across the country. The Coastal Aquaculture Authority Act, 2005 has also seen as a means to reduce livelihood options and permitting damage the environment paying no heed to the precautionary or polluter pays principles. The right to dwell along the coast and to obtain a decent livelihood as an inalienable right requires demands to be formulated with respect to not only working conditions, social security but also economic and trade policies, polices for urban renewal, marine policy keeping the concerns of the fish workers as a priority. Many groups have put forward demands on such issues. A platform of demands that reflects these all sided concerns needs to be developed further.

**Objectives of the Consultation:** This consultation, with respect to fish workers, aims to (a) map the existing legal provisions that impinge on fish workers (b) provide a deeper understanding of how own-account fish workers can utilise existing legal provisions for promoting their livelihoods and achieving a fair return for their work (c) discuss the need for, and contours of, a comprehensive law relating to fish workers in the country.

**Domestic Workers:**

There are no reliable statistics about the number of domestic workers in the country. Dominated largely by women and children, effective laws and policies to protect these workers has been elusive. Domestic workers comprise those who work part-time in several households and those who are “live-ins” dependant upon their employer for boarding and lodging. Placement agencies, which bring in workers from other states to work in large metros, are completely unregulated. The latest in a series of efforts to address the concerns of Domestic Workers are the two draft bills brought out in 2008 by the National Commission for Women and the National Campaign Committee of Unorganised Sector Workers also in 2008.

Several states have attempted a variety of approaches to protect the rights of Domestic Workers. Tamil Nadu included domestic workers in their Manual Workers Act and created a separate board for them while Maharashtra is actively considering a law for them, with draft bills under discussion. Maharashtra has published a code of conduct. Under Section 27 (A) of the Maharashtra State Public Service Conduct Act, 1997, the Maharashtra government prohibits government employees from employing children below 14 as domestic workers. Such rules can be found in the rule books of 18 other state. Karnataka has notified minimum wages for domestic workers and Kerala has followed suit. The Government of India has amended the Central Civil Service Conduct rules to prohibit Civil Servants from employing children below the age of 14 as domestics.

No formal contracts ensuring an employer-employee relationship, lack of organisation, poor bargaining power, no legislative protection, and inadequate welfare measures, better working conditions with weekly holidays, maternity leave and health benefits are some of the key issues that need to be addressed. This lack of regulation has led to countless violations of domestic workers’ rights, including working hours ranging between 8 and 18 hours and the
absence of any job security. Apart of these, there are other specific concerns relating to the sector such as sexual harassment, harassment by the police and the need to regulate placement agencies.

It is the experience of both Karnataka and Maharashtra that even the minimal protections accorded by the law are difficult to implement. Time and again, the labour department has expressed its inability to monitor the implementation.

As part of our mapping, we have identified the study put together by Stree Jagruti, an organization based in Bangalore in 2005, on minimum wages for domestic workers. The report proposes a few guidelines for fixing the minimum wages for domestic workers. The recommendations are reproduced here, as much thought has been given to the specificities of domestic work as a category.

“Minimum Wage Law Proposal:
We propose the following Guidelines:
• Domestic Workers involved in Sweeping, Swabbing, Cleaning Clothes, Cleaning Vessels, Dusting and other unspecified items should be paid a minimum of 151 (Basic) + 99 (VDA) = 300 Rupees per month for an hour’s work per day, regardless of the activity or the number of tasks;
• Domestic Work involving cooking and preparing food should be paid 350 Rupees per month for an hour’s work per day;
• Any part-hour or multiple of hours should be calculated pro-rate against the appropriate rate, above;
• Domestic Workers should be given a weekly day off. If this is not given, overtime should be paid: the resulting monthly rates should be 400 Rupees and 475, respectively. This is based on an overtime rate of double the standard rate and 4.5 overtime days per month;
• These rates should be altered each year in line with inflation.

Under these terms, our example of a two-hour, three-task employment with no time off would be paid 400 * 2 = 800 Rupees.”

Objectives of the Consultation: This consultation with respect to domestic workers hopes (a) to discuss the various central and state level bills currently under discussion in the light of demands raised by domestic workers and the study outlined above (b) discuss possible ways to input in the ongoing discussion at the International Labour Organisation that is proposing a new international labour standard relating to domestic workers.

****