

# **Applying the concept of the informal economy to labor market changes in developed countries: What can be learned**

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## **I. Introduction: How the notion of informal economy relates to developed countries economies<sup>1</sup>**

The concept of the informal economy, and informal employment within it, were built to account for apparent contrasts and, some said, disjuncture or divides across economic activities and jobs in developing economies. The reality which they aimed to analyze challenged perceptions of developing economies' labor markets but also their likely trajectories going forward.

Over time, the notion of informality (referring to informal activities and informal jobs) has begun to appear in thinking about some activities and jobs in developed countries (for example, Portes and Sassen-Koob 1987, Sassen-Koob 1989, Fernandez-Kelly and Garcia 1989). This should not come as a complete surprise because the notion of informal employment in particular developed in parallel with, in a similar timeframe, theories of labor market segmentation in developed countries whose focus was on divergent job characteristics and discontinuities in labor markets. In both cases, understanding structural aspects of job markets (and activities that generate these) hinged upon qualitative distinctions across jobs, across the employment arrangements governing them and their relationship to regulation. In both cases, the ultimate goal has been to understand how these qualitative differences relate to earnings and broader economic outcomes for workers.

That developed countries should have any kind of “informal” economy flies in the face of simple characterization of these economies as “modern” and thoroughly governed by

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<sup>1</sup> The author would like to thank Joann Vanek and Sally Roever for careful reading and comments. Any errors are the author's responsibility. (10/04/16)

regulation and predictable organization. Any informal activity was considered marginal and in the process of atrophy. Indeed, developed economies are primarily formal; the bulk of activities and jobs are formal. However, in recent decades, changes in employment, in particular, have occurred that have fueled an interest in accounting for jobs that are “beyond the norm” that has prevailed and appear to put workers at greater economic risk. This has been the case primarily within the formal sector firms (generating “non-standard” employment) and, to a far lesser extent it seems, in informal economic units. These relatively recent trends have fostered interest in using the informal economy as a concept to capture broad patterns of change in all types of economies. The concept offers the possibility of developing a map of labor market structure and dynamics across economies, a fitting goal considering that analyses must take account of ever increasing scope and reach of capital mobility and, lesser though increasing, cross-national labor mobility.

With this paper, I examine how the concept of informal economy can be applied in developed country contexts, paying particular attention to informal employment per se. Rather, than simply drawing an analogy between informal employment and various forms of employment that diverge from the historical norm of paid employment in developed countries, I attempt to use the definition of informal economy (particularly informal employment) and some of the thinking that have emerged out of developing countries analyses and apply them to developed countries.

In order to get a handle on whether and how the concept of the informal economy applies to labor market patterns in developed countries, I address the issue in three ways. First, how the broad notion of informal economy relates to developed economies. Second, how some theories about the informal economy, relate to changes in employment in developed countries.. I will focus primarily on the relationship between informality and regulation. Third, how the statistical definition of informal employment, the International Conference of Labor Statisticians definition, can be used in the case of developed countries labor markets. The paper closes by revisiting the positives and caveats regarding bridging developing and developed country analyses.

## **II. Similar ideas**

In this paper, I take a “slice” of the many ways in which the notion of the informal economy has been used. I focus on employment informality—informal jobs and the processes that lead to them.

Key elements of the concept of informal economy have bearing on an understanding of developed countries’ employment patterns. As already noted, this observation is not new. The concept relies on the notion of a boundary, or boundaries, between patterns of activity, and

with some activities with characteristics that diverge from the societal, historical, norm, putting them on the other side of the informality “boundary”. Analyses of developed country labor markets also have used the notion of a simple duality or of labor market segmentation since the early 1970s.<sup>2</sup> Also the field of labor market segmentation has evolved, like the field of informal labor market research, away from rigid definition of self-contained labor market segments, studying, instead, the processes of segmentation, of qualitative distinction across employment arrangements and resulting differences in job quality (earnings and other key characteristics) (for example Marchington et al. 2005, Carré 2015). The field has also concerned itself with changes in job structures that result in qualitative differences across jobs and which affect worker ability to move across jobs with different characteristics (discontinuities in the market). In short, the emphasis has been on processes that yield qualitative differences in jobs with implications for economic well-being. Others have also conceived of informality as a process (e.g. Castells and Portes 1989) which results in degrees of informality rather than starkly defined, separate, “economies” with no interaction or overlap.

### **III. How theories about the informal economy relate to developed countries**

As Guha-Khasnobis, Kanbur and Ostrom (2006) highlighted, two main strands of analyses capture many of the main dimensions of the informal economy and informality. One strand examines the degree and type of structuring of economic activities, and whether these are organized through formal or informal processes. Examples of activities studied include decision making processes for access to, or allocation of, communal resources for economic purposes, such as natural resources (water, forests) (Ostrom 1990). The second strand examines the relationship of economic activities to regulation. In this strand of analysis, informal activities are those that “are organized so that regulation does not apply or are in contravention of regulation” (Kanbur 2009, 2015, Kanbur and Keene 2014). Attention is put on the role of regulation in economic activity. This is regulation writ large, that is, encompassing property, enterprise regulation, product market and labor market regulation, as well as social protection. Kanbur’s argument rests upon the role of regulation (and enforcement) in the activities of informal sector enterprises and their self-employed owners. The present paper addresses itself primarily to the second strand of analyses because of their emphasis on regulation.

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<sup>2</sup> First developed as “dualism” of labor markets (e.g. Doeringer and Piore 1971, Reich, Gordon, and Edwards 1973), arguments evolved to more diversified segmentation theories (e.g. Berger and Piore 1982, Gordon, Reich and Edwards 1982, Michon 1982 among others) consisting of primary jobs (governed by bureaucratic rules, higher skill, OJT, upward mobility, relatively high wage and benefits), subordinate primary (lower skill, relatively high wage and benefits), and secondary (not governed by bureaucratic rules, and low or no skills, low wage, few benefits).

A later section of the paper develops this line of thinking about regulation and how it bears on the situation of employment in developed countries. Before addressing this issue, we first go back to the role of regulation in developed countries settings.

#### **IV. Developed countries and regulation**

A note about context is useful in the application of the concept of informal employment in developed countries. Developed and developing economies do contrast significantly in the amount of regulation and the degree of its enforcement. If a broad generalization is possible, developed countries have extensive regulation that applies to the bulk of enterprises and labor arrangements. They have experienced more consistent enforcement of labor and social protection regulations than developing countries, though not an iron-clad one. Some developing countries have extensive regulation as well but their scope can be limited (e.g. firm size) and enforcement is generally understood to be less effective.

Regarding the relationship of informal economic activities to regulation, the processes at play in developed countries are distinctive in the following ways: exclusion (of workers) from regulation rather than non-registration of economic units; avoidance of regulation (moving beyond its reach) is more common than evasion; and, importantly, the tolerance of jobs being created in a legal “vacuum” followed by legislative change plays a significant role.

##### *Regulatory context in developed countries*

The formal economy dominates economic activities in developed countries. The question of whether there is informality and what it may be rests in looking, not at firms, the bulk of which are in the formal sector, but at employment, that is, jobs in formal firms as well as informal firms, though formal firms employment practices dominate by far. Firms are expected to be registered with appropriate general or industry-specific agencies and to pay business-related direct and indirect taxes. Most do. Developed countries are “regulation rich” and enforcement of regulation mostly occurs with regularity. I focus on informal employment per se, and its relation to labor and social protection regulations; whether jobs are informal rests primarily in their relation to these extensive bodies of regulation. Developed countries social safety net policies (welfare state policies) encompass labor rights and employment standards, as well as social protection (risk mitigation). Regulations structure the relationship of employees – “dependent” workers—to the firm and the state. Less extensive regulations structure the relationship of those classified as “self-employed” –“independent workers”- - to the state. In their early exploration of informality in developed countries, Castells and Porter (1989) characterize these regulations as the social definition of state intervention.

In the developed country institutional context, the exclusion of jobs and workers from labor and social protection regulation is the process that is the hallmark of informality. Most jobs and workers are located in formal sector firms; jobs that can or could be considered informal are primarily in formal firms. At the same time, informal firms do exist—we will come back to these—and their jobs can be considered informal.

## **V. Informal employment and regulation in developed countries**

In thinking through issues entailed in the relationship of informality to regulation, the framework presented in Kanbur (2009, 2015) is particularly useful. This framework designed for developing countries is grounded in the universe of informal sector firms (and their employees) and the self-employed.

This argument can be used as a frame for examining the situation in developed countries, but with a difference. In developed countries, the employment behavior of formal sector firms is at the center of processes that generate informal employment. The informally self-employed also play a role but a less important one. Drawing on examples and the existing literature, I will argue that informal employment is generated from the employment practices of formal sector firms and as a by-product of the ways in which they organize production (Castells and Portes 1989, Weil 2014). (In developing countries, some of the informal employment, such as industrial outwork, homework, and some street distribution activities also are consequences of the ways formal sector firms of North countries in particular organize production and distribution.)

According to the Kanbur (2009, 2015) framework, informal economy activities, that is informal employment, results from three different ways in which economic actors and their activities relate to regulation: (B) Evading regulation (being in the ambit of the law and not complying); (C) Avoiding (adjusting economic activity so as to be outside the ambit of the law); and (D) “not affected”, that is, always being outside the ambit of the law. (Being formal, that is being in the ambit of the law and complying is labeled “A”). In this framework, the informal economy, primarily a universe of informal “firms” of the self-employed, is the outcome of the three patterns B, C, and D, but in the case of D (not affected), the role of regulation does not help explain informality.

Meanwhile, in developed countries, a literature has developed in recent years arguing that “exit options” —from the regulatory framework and social norms embedded in employment practices— play a significant role in wide differentials in quality across jobs, most noticeably in wage levels but also in social protection benefits (for a cross-national US-Western Europe

argument, see (Bosch, Mayhew and Gautié 2010).<sup>3</sup> Thus, exit options play a role in employment differentiation, particularly the confinement of some jobs (and workers) to thinner social protection benefits than is the norm and, often, lower earnings.

In the experience of developed countries, “above board” or legal means of avoiding regulation prevail over illegal means, such as standards violations and eluding enforcement (evasion). Evasion or violations of labor standards or social protection which entail “operating in contravention of the law” (“B” patterns in Kanbur model) do occur. There is some systematically documented evidence that, in some settings, labor standards and worker rights are violated and that, where violations occur, they are part of a pattern of systematic violation by formal firms. In other words, where violation occurs, it is severe, suggesting that some firms have a strategy, or business model, that entails intentional or high tolerance of evading labor standards regulation (for example Bernhardt et al. 2009, Milkman et al. 2012 for US cases on multiple violations; Weil 2005, Weil and Pyles 2005 on minimum wage violations and health and safety violations.) Evasion may mean putting the worker beyond the reach of regulation altogether through fraud. Cases of misclassification of workers who should be employees (subject to labor standards and social protection) as independent/self-employed workers (not covered) occur in construction and trucking in particular (Carré 2015).

There also is some evidence of unregistered firms, that is, informal sector firms, which are considered informal because they have not registered in order to avoid business taxation or in order to avoid registering employees with social protection schemes. The recent interest in “undeclared work” among OECD countries, EU members in particular, fall in this category. Governments seek to shed light on processes that result in evasion of taxation (income taxation and targeted social protection contributions), and lead to reduced tax revenue (ILO 2013, European Commission 2014, OECD 2004, 2008). A share of these “firms” consist of own-account self-employed “owners” who put themselves, as well as their firm, in contravention of tax law. Whether these evasion/violation processes can be considered formally organized or the result of extensive social tolerance among a set of firms or an industry varies with the violation, the industry, and likely the country.

However, much of the “action” that generates jobs with characteristics of informality occurs through the “avoidance” pattern “C”, that is through organizing activity, here jobs, to put them beyond the reach of key labor standards and/or social protection regulation. But informal jobs also occur through the “not affected” pattern (“C”) albeit due to processes at work in developed countries and related to the policy activism of formal sector firms/employers.

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<sup>3</sup> Initially developed to address exceptions to wage setting processes in Western Europe, exit options are described as “...the *de jure* or *de facto* exemptions, exceptions, or loopholes in otherwise inclusive pay-setting institutions.” An example being the exemption of smaller firms from terms of national collective bargaining agreements, thereby enabling firms to set low wages even in countries with high levels of collective bargaining (p. 92).

Both of these patterns, avoidance (C ) and “not being affected” (D), have a different meaning in developed countries than they do in developing countries.

### *Avoidance practices*

In a number of countries, “temp” work (temporary agency/staffing work) has operated without regulation of employment (without specified employment status and eligibility for employment-related social protection). For example, in the United Kingdom, court decisions have often deemed temp agency workers not eligible for entitlements (such as a written statement of contract, reasonable notice before dismissal, time off for parenting, etc.) under the Employment Rights Act 1996 because they do not meet all the requirements to be considered “employees.” Court decisions are divided as to whether the agency or the end-user firm is the employer and, apparently, neither entity takes responsibility for provision of benefits under the 1996 Act.

The “zero hour contracts” of the UK enable firms to have no obligation to a set number of paid work hours weekly, or to their scheduling. These workers do not benefit from regulation affecting steady employment, in particular minimum guaranteed hours and paid sick time.

In the US, for over a decade, FedEx Ground Corporation has successfully argued in courts that its package delivery workers are self-employed entrepreneurs/independent contractors able to engage in other, independent, business undertakings. It has taken recent court decisions (2014, 2015) in which the court examined the actual implementation of contracts, the assignment of workloads, and an assessment of driver ability to take on work for any other customer to determine that these workers are not “independent.”

Avoidance may entail subcontracting core production activities to external firms, possibly achieving one or more goals such as keeping core employment count below a threshold that triggers coverage under a specific regulation, or gaining a legal buffer between the firm and worker. As Weil (2014) has argued in the case of the US, when firms organize production through “networks”, they achieve cost control and possible efficiency goals and also put significant distance between themselves and employment conditions of the workforce of subcontracting firms.<sup>4</sup>

### *Outside the ambit of regulation?*

The experience in developed countries points to a dynamic that requires adaptation of the frame of three patterns of relationship to regulation. Rather than avoiding or evading, formal firms act directly on the regulation itself. It is not a matter of noncompliance, or of organizing

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<sup>4</sup> Earlier analyses have focused on the implications of sub-contracting for the growth of informal sector firms, for example Benton (1989) for Spain.

an activity or job so that it is not covered by regulation. Rather, regulation is changed in order to exclude some jobs from its ambit.

A job “*not being affected*” because the economic activity is outside the ambit of the law means something quite different in developed countries. In the framework for developing countries, informal employment due to “being outside the ambit of the law” is attributed to patterns “always” (or traditionally/historically) in place, and yield little information about the role of regulation (Kanbur 2015). In developed countries, however, a context that is “regulation rich” and where regulation, particularly labor standards and social protection regulation, is subject to amendment, revision or rejection regularly, the notion of having activities always outside the ambit of the law likely is not as well suited to reality. Instead, much of the informal employment generated by formal sector firms occurs thanks to the evolution from, first, jobs organized to occur outside regulation (avoidance) and, then, to active changes in the law so that the law itself excludes this category of jobs or workers from coverage by the law.

Jobs can fall outside the ambit of labor regulation in a couple of ways. First, “novel” forms of employment might temporarily be outside of regulation. In the US, “on-demand” jobs created through digital platforms are one such example (e.g. Task Rabbit, or “ride sharing” companies).<sup>5</sup> Even in these cases, it is unclear whether operating in a legal/regulatory vacuum is operating “outside” of regulation, or the result of deliberate design of work arrangements in view of avoidance. Second, some categories of jobs are “outside” of regulation by policy design. For example, agricultural workers were excluded from the US Social Security retirement and survivor benefits, and wage and hours (until recently) laws in order to quell opposition from the farming industry. Until recently, some domestic workers deemed to provide “companionship” services in the home (e.g. home care or personal care) were not covered by basic labor standards such as the minimum wage and overtime premium, as other hourly employees.

### *Changing regulation in regulation-rich environments*

Among non-standard forms of employment (NSFE), those that entail reduced or exclusion from employment based benefits or social protection as well as the lack of access to labor rights and representation, have been developed through the erosion of regulations in place, first through practice (for example a form of employment in a legal vacuum), and eventually changes in employment law. Over time, NSFE are no longer a form of avoidance, they are within the ambit of regulation. The dynamic is to move forms of exclusion to falling within the ambit of

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<sup>5</sup> Berg and De Stefano (2015) present initial thoughts on the regulatory challenges posed by “on demand” or “gig economy” employment arrangements.

regulation.<sup>6</sup> So, what is the problem? These job situations do not run counter to regulation or avoid it; they are enabled by regulation. However, from the perspective of workers, from the perspective of distinguishing types of employment from each other and understanding the structure of employment, and from the perspective of employment-related social protection, NSFEs that exclude workers or jobs from mainstream employment arrangements meet the definition of informal employment. As will be seen later, they meet the current international statistical definition of informal employment; essentially they are not subject, in law or in practice, to key elements of national labor legislation, income taxation, social protection or entitlement to certain benefits (e.g. advance notice of dismissal, severance pay, paid annual or sick leave) (ILC 2003 definition).

Formal sector firms are important actors in this movement from avoidance to changing regulation. Their employment practices and their policy influence play a significant role in amendments to labor standards and employment-based social protection. Their practices sometimes lead the way in so-called “innovation” in employment arrangements, that is, introducing and normalizing particular employment practices or employment arrangements. Of course, they also play a role in affecting policy agenda through industry associations or individually. In the United States, the temporary staffing industry worked in past years to position itself as the payroll employer for the worker and to enable itself to collect a fee through the bill rate (e.g. Gonos 2001).

With changes in regulation and with non-trivial segments of jobs and workers excluded from regulation, observers describe the process as “informalization”, or the devolution of regulatory norms for employment, their weakening, fragmentation and reduced impacts.<sup>7</sup>

As employment arrangements change, and access to labor standards or social protection coverage is diversified by law, not just by practice, the issue of the boundary between formal and informal employment becomes difficult to assess. It is difficult to determine what is within/outside the ambit of regulation when the boundary shifts—a common challenge in research on informal employment in developing countries as well.

In the regulation-rich environments of developed countries, which have been experiencing significant changes in regulation of employment arrangements in recent years, a challenge of implementation also arises. For purpose of sorting jobs among formal and informal, and for measurement, what is meaningful inclusion or exclusion? Which key labor standard or employment-related social protection has primacy so that exclusion from coverage renders a

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<sup>6</sup> The literature on devolution of labor rights, of employment regulation, chronicles and analyzes this phenomenon, for example regarding short-term and temporary workers (e.g. Vosko 2000).

<sup>7</sup> For example, ILO 2015, Carré 2015, Carré and Heintz 2009. Some also use the word “precarisation” (Vosko 2010).

job informal?<sup>8</sup> Because so much of employment is regulation dependent, and the latter is nationally specific, criteria for such determination will vary across countries.

### *Revisiting the question of “D” – not affected by regulation*

The patterns of regulation shifts, which in turn affect whether employment will be considered informal, operate in different directions in developed countries rather than developing countries for the most part, though exceptions likely exist. In developing countries, the challenge usually is to extend regulation to additional spheres of activity and employment, bringing additional groups of workers within the ambit of regulation with the understanding that regulation also comes with credible enforcement, a non-negligible challenge as Kanbur (2009) notes.<sup>9</sup> In contrast, the dynamic in developed countries—at least regarding many forms of non-standard employment—seems to run in the opposite direction, which is to re-regulate/deregulate or modify access to key labor standards or employment-based social protection for some categories of jobs, in fact moving them not exactly to “category D” but to another status, a different (lower) degree of access to regulation or social protection, thus diminishing the ambit of regulation. In the developed country environment, even if enforcement is reliable, avoidance may be an attractive practice (possible cost savings) and operating in a regulatory “vacuum” may occur. Furthermore, regulatory change in labor or social protection is an option and where successful has yielded forms of informal employment.

## **VI. Informal enterprises and regulation in developed countries**

A dimension less well covered in this paper relates to the pockets of informal sector activities in urban areas of developed countries, notably in neighborhoods with recent immigrants where starting out on one’s own overcomes the limitations of language, access to bank credit, and educational credentials. Street vending, food catering, small craft activities (tailoring, sewing), and day labor are such activities.<sup>10</sup> Not all these activities are unregistered; there are street vending licenses<sup>11</sup>, regulated market areas, even organized day labor sites and ways for micro enterprises to contribute to the tax base. These activities also are settings where it is possible

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<sup>8</sup> The relationship of self-employed workers to regulation might also play out differently from that of dependent/employees, and vary with the regulation—whether it relates to social protection or to enterprise regulation.

<sup>9</sup> Attempts to extend regulation to activities “D” (beyond regulation) will increase the numbers of activities under compliance (A), avoidance (B) and evasion (C). The actual distribution across these will depend on the nature of the regulation and reliability of enforcement (Kanbur 2009. P. 8).

<sup>10</sup> Examples of street vending in Dunn (2014), Gaber (1994).

<sup>11</sup> For an example of how vending licenses, a tool of regulation, have given rise to a secondary, informal, market in the right to vend see Koyen (2016).

to evade regulation, labor regulation in particular. Informal sector firms can be active if regulations are silent on their operation or enforcement is weak. This is a small scale pattern rather than the bulk of informality processes. While many of these enterprises are registered with local authorities, the workers (operators, paid workers) are likely to be in informal employment, in that they are excluded from key labor standards and social protection. The operator may be an own-account self-employed worker and treat their workers as self-employed as well. The premise of “independence” results in lack of coverage from labor standards and social protection.

Understanding the relationship of operators/owners of informal enterprises to regulation requires identifying their goals in operating informally (livelihood for self vs. aiming for growth) and the level of information they have about regulation. It also entails considering the particular regulation which is evaded or complied with, whether it is enterprise regulation (registration, taxation) or labor and social protection regulation.<sup>12</sup> Some enterprise regulations may facilitate the growth of small enterprises while others may not, or be perceived not to; they will affect compliance/evasion choices differently. The governance level of a regulation/rule also plays a role in developed countries. National and regional/state level taxation for example, is highly visible, fairly consistently enforced, and likely to enlist compliance. Local regulation on business operation may not, particularly in the case of small size transactions between households and own-account workers.

## **VII. Statistical definition of Informal Employment: Applying it to developed countries**

### *Operationalizing IE in developed countries*

In developing statistical definitions of the informal sector and informal employment, statisticians, recognized that these concepts will need to be improved in the light of additional experience.<sup>13</sup> The standards and the operational guidelines that they set are flexible enough for cross-national measurement to occur and yet sufficiently meaningful to facilitate cross-national comparison.

Any operational definition comes up against what constitute formal employment, what employment rights and working conditions are entailed by it. As the “terms/contents” of formal employment change, so the boundary between formal and informal employment may shift. Some researchers and others measured informal employment by the absence of a formal

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<sup>12</sup> I am indebted to Sally Roever for these distinctions.

<sup>13</sup> 15<sup>th</sup> International Conference of Labor Statisticians (1993) preamble.

“employment contract.” This approach has worked for countries where there is an agreed upon standard for what constitutes an employment contract that is formal—whether explicit or implicit. This approach is sometimes used for cross-national comparison. For example, Hazans (2011) argues that many European countries provide written “conditions of employment” statements even if they do not necessarily have a written contract and these can count in its stead. In this view, workers know whether or not they get such statement.

The International Conference of Labor Statisticians (2003) has settled upon an operational definition of informal employment that gives precedence to the (lack of) access to standard labor and employment rights (labor standards coverage, representation rights) and/or to employment-related social protection.<sup>14</sup> It reflects the concern that exclusion from the baseline of rights and social protection are key factors in the transformation of employment structures in *both* developing and developed countries.

The understanding embedded in this definition is that some employment “contracts” (implicit or explicit terms of employment) may exclude workers from coverage under labor standards, or social protection; there is a correlation between the outcome (lack of access) and terms of employment. This operational definition can be applied to distinctions among workers’ terms of employment that are *de jure* or *de facto*. While it is often harder to measure “de facto” exclusion from certain rights in developed countries because employers in particular are not likely to report practices that are deemed illegal, the definition aims to allow for measurement of outcomes (lack of a core protection or right) as indicative of informal status.

The guidelines for the statistical definition allow countries to pick one or a few most significant indicators of the rights and social protection that are considered “baseline”/standard/formal in the country and whose lack would consign a worker or job to informal employment. It does not prescribe which to use. Of course, as employment regulation changes, the way that countries measure informal employment might as well –not an insignificant issue for longitudinal analysis, yet it is the only way to retain a measurement that fits the changing regulatory environment of many developed countries.

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<sup>14</sup> The ILC definition is as follows: Informal employment refers to all workers not covered or insufficiently covered by formal arrangements through their work. So defined, informal employment includes own account workers and employers operating informal sector enterprises (i.e., unincorporated enterprises that may also be unregistered or small); all employees who do not enjoy labour rights, such as those not affiliated to social insurance in the job, or who lack the right to vacation or sick leave, whether or not they work in informal enterprises, formal enterprises or households; and all unpaid workers, including family workers, own use producers, volunteers and trainees included in employment, whether or not the economic units they operate or work for are formal enterprises, informal enterprises or households. *Statistical definition of informal sector- 15th ICLS (1993); Statistical definition of informal employment -17th ICLS (2003)*

### *What is possible with existing statistics*

With existing statistics, it is possible to document some forms of informal employment created by “avoidance” behavior, organizing employment in ways that put beyond the reach of one or more key relevant regulation (here, employment regulation) and by later regulatory change. Workforce statistics, most often from household surveys, are available for some sub-categories of Employees who, due to their employment arrangement, receive reduced or no employment-related social protection and/or are excluded from coverage by some labor standards. Categories of non-standard arrangements –short-term, temporary, or casual work—where they entail such patterns of exclusion are forms of informal paid employment. Avoidance is easiest in countries with limited regulation of employment conditions.

Fixed-term employment – that is, employment with an explicitly stated duration – and temporary agency work have been tracked over the past forty years in many, not all, OECD countries. From the late 1970s through the 1990s, the labor force surveys of Western European countries and Japan, showed growing trends in limited-duration hires and temporary agency employment, as did the Canadian labor force survey.<sup>15</sup> Across OECD countries, as of 2011, the incidence of fixed-term and temporary agency work combined ranged from a high of 27 percent of *waged and salaried employment* in Poland to a low of about 6 percent in the UK. Of 27 countries with data in 2011, temporary employment accounted for over 20 percent of *waged and salaried work* in four countries, from 10 to 18 percent in 14 countries and from 6 to 9.6 percent in nine countries (ILO-WIEGO 2013: Table 3.1). This is by no means a universal phenomenon. Incidence of these forms of employment varies across countries, reflecting different economies (industry and occupation mix), different levels at the beginning of the period, and, importantly, different regulation and definitions of what standard (and therefore nonstandard) employment entails.

Countries with the greatest increases of temporary employment over the 1990–2011 period are Italy (8.2 percentage points) and the Netherlands (10.8 points). In Poland temporary employment increased from 12 to 27 percent of waged and salaried employment between 2000 and 2011. In some countries – Greece, Spain, Iceland, Turkey and Denmark – the incidence of temporary employment declined by 2 to 5 percentage points from 1990 to 2011. In most OECD countries the share of temporary employment in women’s employment exceeds the corresponding share for men. (ILO-WIEGO 2013).

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<sup>15</sup> Statistics were incomplete or non-existent in the United States with the exception of a growth trend for the temporary help/agency industry (Edgell 2012: Table 7.3, p. 184). Reports on employment patterns in specific sectors and occasional surveys of employer practices (e.g. Houseman 2001) pointed to changes in staffing patterns and the growing use of nonstandard employment during those decades.

US data series are less extensive and less consistent. The most recent estimates indicate that nonstandard employment as a whole —limited duration direct hires, temporary agency work, externally-subcontracted work, freelancing and digitally mediated on-demand work (self-employment but working on assigned tasks)—amounted to 15.8 percent of the workforce in 2015 up from 10 percent in 2005 (Katz and Krueger 2016).

In addition, some forms of own-account self-employment (that is, self-employed without employees) may be included in informal employment when the economic activity of the worker involved appears to be either an ambiguous situation or “disguised wage employment” (OECD 2000), that is the worker is dependent on another economic unit (the hallmark of “employee/dependent” status). By definition and in most countries, workers classified as self-employed are ineligible for labor rights (they are deemed their own employer), ineligible for earning replacement during sickness or unemployment and responsible for providing their own social protection. This employment pattern may be the result of “avoidance” without having been found to be illegal or of “evasion” in which case the presumed employer evades compliance with regulations governing wage employment by falsely classifying the worker as self-employed. Currently, the ILO Working Group on the revision of the International Classification of Status of Employment is addressing this group of “dependent contractors” and how they should be classified in cross-national statistics. The degree of dependency of such contractors on another entity for access to the market (end customer) plays a significant role in understanding their employment and economic situation.

Given this complex pattern of practices, the size of this phenomenon is more difficult to gauge. A common proxy is to track the ‘own-account’ self-employed, that is, those without employees. Across the 28 countries OECD countries for which statistics are available, in 2008 own-account self-employment was as high as 21 and 20 per cent of the *total employment* in Greece and Turkey respectively. For 11 of the countries it ranged from 10 to 19 percent of *total employment*, and for the remaining 15 countries, it comprised 4 to 9 percent of total employment (ILO-WIEGO 2013: Table 3.3; Vanek et al. 2014).

In 2008, own-account self-employment ranged from about 20 per cent of total employment in Greece, the Republic of Korea (South Korea), and Turkey to a low of 4 per cent in Luxembourg. These rates were relatively stable for most countries. From 1990 to 2008, own account self-employment declined significantly in only four (of the 28) countries with data: Belgium, Greece, Ireland, and Spain. The Czech Republic and the Slovak Republic reported a significant increase over the whole period. During the recent period, 2000 to 2008, Greece, Hungary, Iceland, Korea, Poland and Turkey experienced declines (2 to 4 points); six countries experienced small increases; while Slovakia experienced large increases.

Compared to men, women have lower rates of self-employment but, *within* self-employment, they are more likely to be own-account workers and less likely to be employers. In 2008, own-account self-employment accounted for over 12 percent of total *women's* employment in Greece, Portugal, and the Republic of Korea (South Korea). (ILO-WIEGO 2013; Vanek et al. 2014).

Informal employment created by formal employers through “evasion” of key meaningful regulation, that is, labor standards violation, is a phenomenon that some argue is on the rise in some developed countries. It is difficult to document because employers do not report such practice in national surveys and workers affected may not be aware of violations. Thus, only indicative information is available from industry-specific or place-specific investigations. As noted earlier, a study of low-wage sectors in three American cities found what appears to be a systematic pattern of labor standards violation for entry-level employees, affecting worker compensation insurance coverage or paid leave time (Bernhardt et al. 2009). A study of French retail trade grocery and consumer electronics subsectors also reported surprisingly high incidence of labor standards violations affecting entry-level workers (off the clock work, cancelled breaks, unpaid overtime rates) in the operations of major retailers (Askenazy et al. 2008, p. 233). In these service settings, it has been possible to organize production/distribution in ways that make enforcement difficult (Weil 2011).

Studies of specific industries with high concentration of entry-level workers, such as garment production, have found high incidence of minimum wage violation (Weil 2011). The ambiguity regarding this pattern is whether a wage law violation—however significant—is universally considered to meet the ILO criterion for informal employment in those cases where the employer meets all other labor standards requirements. (Although some research finds that when the US minimum wage law is violated, other violations are present as well.) Minimum wage and hours laws are a key labor standard for employees in the United States; those ineligible for it *de facto* are laboring in informal employment. This example illustrates the fact that the ILO definition gives leeway to countries to identify the key labor and/or social protections standards that are markers for formal employment and proceed to classify workers.

Another form for evasion is to not “declare” one’s workers to tax authorities, to mandatory payroll contribution schemes. These workers may be treated as fictitious “self-employed” but other times they simply are invisible to administrative authorities. This pattern is deemed relatively more common in some Central European transition economies than elsewhere (Bernabè 2002, Hazans 2011)

In short, in developed country statistics, it is far easier to systematically document patterns of avoidance than those of evasion. Within patterns of avoidance, only those that are long standing—codified—patterns affecting wage employment are documented. Here too, the ILO

process for revising the ICSE is addressing whether greater statistical detail (more categories) might be devised for better understanding patterns within the Employee category.

With currently available categories, it is possible to develop indicators of informal employment cross-nationally. With WIEGO colleagues, we have made such an argument for aggregating several UN Economic Commission for Europe Quality of Employment Indicators on security of employment that cover short-term and casual employment, some parts of part-time employment (where ineligible for employment-based social protection) and own-account self-employment in order to arrive at an estimate of total informal employment, most of which being created by patterns of avoidance ((UN-Economic Commission for Europe 2015, Carré, Negrete, and Vanek forthcoming).

## **VIII. Strengths and limitations of the use of IE for developed countries**

### *Strengths:*

Using the concept of informal employment across developing and developed countries provides the opportunity to generate an overarching understanding of jobs, qualitative differences across them, and their implications. It offers a systematic way to analyze labor markets, taking into consideration overall job quality rather than solely the wages/earnings dimension. Emphasizing these qualitative differences is not solely a matter of job “quality.” Sustained, qualitative differences in jobs affect workers not only at one point in time but over the life course (ability to sustain “shocks’ such as illness or aging related challenges). They are one of the sources of inequality.

Using informal employment across types of economies underscores that some similar processes are at work in the interactions of economic actors and regulations, particularly labor regulation and social protection. It carries the analysis of the role of institutions across distinct institutional settings, triggering opportunities for cross-national analyses. Such cross-national analyses can focus on the role of formal sector firms within their “home” country and in host countries, querying their role in the processes creating informality in developed as well as developing countries.

Researchers may trade concepts and tools for analysis, benefitting from insights coming from a different environment and field. Thus, we witness a research literature on informal jobs in the formal sector (referred to by other terms) and informal activities in developed countries (e.g. street vending in immigrant neighborhoods). Conversely, an emerging literature on changes within formal firms in developing countries identifies indications of trends toward destandardization of formal employment (Kuruvilla et al. 2011, Srivastava 2015, Zang 2011).

This is particularly significant because it has always been a policy aspiration of developing countries to steer opportunities for workers toward formal sector firms as providers of “good” jobs, that is jobs with employment-related labor and social protection.

An argument can be made that formal sector firms adopt productive and labor deployment strategies that are rather similar to each other in basic characteristics (within industry-specific constraints). Managerial approaches and the formulation of proximate goals are shared cross-nationally. An important element of variation is the legal-institutional setting in which decisions are made. Using informal employment as one tool to characterize changes in employment facilitates comparison. From a policy analysis standpoint, it also calls attention to shared risks for workers across countries.

Also, the question of the enforcement of regulation, which is salient in developing countries, has become a notable concern in some developed countries as well. At the bottom of the labor market, it is no longer possible to dismiss the difficulty of enforcement of labor standards and social protection rights as a marginal phenomenon. Whether there is deliberate “evasion” of regulation, or weak enforcement is the result of firms organizing production in ways that make monitoring and enforcement difficult (e.g. subcontracting or operating with small, scattered, units), the end result has been that enforcement has become more demanding for jobs at the bottom.

*Caveats: Implications of differences between developed and developing settings*

In applying the concept of informal employment to developed economies’ situation, a number of distinct characteristics of these economies give rise to caveats. The framing of informal activities as “disorganized” because not regulated by government has already been challenged in the case of developing economies (Guha-Khasnobis, Kanbur and Ostrom 2005). In developed country settings, informal employment takes place within formal economic units and as a result of their strategies and practices, and is part of processes that are systematically organized in most cases.

Also, informal wage/paid employment (employee status) has visibility, a legal status (e.g. fixed-term contracts) and some claim to parts of the legal system (e.g. partial coverage). The situation of developed economies requires placing workers and jobs along a continuum of informality rather than consistently applying a covered/uncovered criterion. Characterizing jobs requires determining which regulation is most relevant and *to what degree* a worker is excluded from coverage. This perspective agrees with Kanbur’s (2009, 5) statement that in characterizing the relationship of economic activity to regulation or intervention by the state “...every characterization of formality and informality *needs to specify precisely the regulation concerned.*”

In developed countries with their regulation rich contexts, the challenge for implementing analysis becomes singling out those most significant regulations that govern the relationship of employment arrangement to regulations with greatest impact on social protection and economic outcomes for workers.

On the whole, informal economy activities mostly occur within the sphere of formal firms' production organization, either within these firms or as a byproduct of their organization. It is informal employment, either in dependent employment or in self-employment (dependent contractors). Nevertheless, there also are some informal jobs generated by informal sector activities, that is, the economic units are neither registered nor contribute to taxation to the mandated level. This phenomenon of "undeclared work" in OECD countries is framed in terms of evasion of fiscal obligations and loss of revenue to governments.

It also turns out that "being outside the ambit" of regulation is a far more slippery, or shifting, notion in regulation-rich environments. It has already been noted that this pattern is historically specific, meaning that "always being outside regulation" may be the result of social and political norms; and norms do change over time. But in developed country labor markets of the past 25 years, processes of "exit options", and normalization of practices that put forms of work within the ambit of regulation by modifying regulation—allowing/regularizing exclusion from social protection or labor standards—seem to be more frequent and more effective than "evasion/violation" patterns. These processes contribute to pushing jobs along a continuum toward informal conditions. They are important to understand because they are also making their way into the practices of formal sector firms in developing countries.

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