

# **Defining institutions and policies for equitable and efficient labour markets**

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# 1. Introduction

The ILO Director-General's 2006 report on *Realizing Decent Work in Asia* states that “to make decent work a reality in today's context of global production systems, intensified competition and changing patterns of work and employment relationships, it is crucial to adapt and modernize labour market governance”.<sup>1</sup> The report defines “governance” in this context as those “public and private institutions, structures of authority and means of collaboration that coordinate and control activity at work and in the labour market”.<sup>2</sup> This definition therefore includes the norms,<sup>3</sup> policies, laws and other forms of regulation, institutions, relations and processes that influence labour market functioning.

On this basis, labour market governance consists of employment and labour market policies; labour, employment and social protection legislation and subordinate legislation (for example, regulations, rules, by-laws and administrative orders); collective agreements; individual employment contracts; and labour market administration. This, in turn, includes labour ministries, bipartite and tripartite consultative bodies, labour inspection functions, labour dispute resolution bodies, employment services and social security administration. Corporate social responsibility initiatives and other voluntary regulations are also included. Bipartite and tripartite relations between employers, workers and their representatives and the government are at the core of labour market governance. As labour market governance is shaping issues of common concern to social partners – including issues such as employment, wages, occupational safety and health and social security – social dialogue<sup>4</sup> is indispensable to the operation of the labour market. Ultimately, it is the manner in which these various components operate together as a “system” that determines the overall quality, efficiency, fairness and effectiveness of governance in a particular setting.<sup>5</sup>

Labour market governance pursues efficiency and equity goals and is critical to shaping the conditions for economic growth, an enabling investment climate, improved employment prospects, fair income distribution, adequate social protection and poverty reduction, and hence progress towards full and productive employment and decent work.

The ultimate goal of labour market governance is to support the efficient functioning of the labour market, resulting in high levels of decent employment with adequate social protection and decent wages, sufficient employment opportunities and low working poverty rates. This requires effective matching of demand and supply in labour markets. Such policy actions need to achieve a balance between maintaining people in productive jobs, while also supporting the speedy reallocation of unemployed workers into more productive employment as a result of

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<sup>1</sup> ILO: *Realizing Decent Work in Asia*, Report of the Director-General, Fourteenth Asian Regional Meeting (Busan, Republic of Korea, 2006), p.67.

<sup>2</sup> *Ibid.*

<sup>3</sup> Norms include national norms established on a formal basis, or informally, through custom and practice, as well as international labour standards.

<sup>4</sup> For ILO, social dialogue includes all types of negotiation, consultation or simply exchange of information between, or among, government representatives, employers and workers on issues of common interest relating to economic and social policy.

<sup>5</sup> In a democratic society, stability and accountability of the governance system is also conditioned by adherence to the rule of law (including consistency and application of judicial decisions), respect for property rights, the enforcement of contracts and the absence of corruption. In addition, basic civil and political rights condition the extent to which labour market outcomes may be altered through, for example, collective bargaining and other political processes. Moreover, they establish the extent of democratic accountability and transparency in public policy and programme development.

structural changes. In addition, policy instruments must also enable access to jobs for new labour market entrants. In this context, participating in the labour market is a dignified way out of poverty.

Sound labour market functioning also requires action to balance the supply side and the demand side of wages and income, i.e. the need for decent wages, consumption and savings and thus labour demand (the macro wage employment link) and for maintaining manageable costs for employers (the micro wage employment link). As labour is not a commodity,<sup>6</sup> this implies that the regulations governing the remunerated labour market have both a social and an economic dimension. In other words, equity and efficiency concerns must be sought simultaneously.

Labour laws and their underlying policies and supporting institutions in many countries in the Asia-Pacific region need to be reviewed to provide a better framework to facilitate necessary labour market adjustments in the face of difficult, continuing internal and external challenges.<sup>7</sup> In recent years, labour market reforms have become a major focus of concern for most countries in the region. Attention is increasingly being directed to identifying ways to facilitate enterprise and sectoral restructuring and related workforce adjustments in response to structural changes. In numerous countries in the region, this debate is now increasingly being driven by the need to balance employers' demands for greater efficiency and flexibility with workers' needs for employment stability, increased social protection and expanded social security coverage.

However, potential reforms are in many cases being discussed in a national governance context characterized by a lack of policy coherence between economic and social goals, a low overall ratification and implementation record for key social dialogue and labour administration Conventions, uneven labour law reform, weak labour market institutions, poor enforcement, low technical capacities among the tripartite partners and limited social dialogue.<sup>8</sup> Moreover, the possibilities for intra-regional cooperation and networking on common issues of concern are not yet being developed consistently and effectively.

Each of these areas of governance limitation will require specific measures to secure improvements (see below). But at this and broader levels, there are three key principles which Asia-Pacific countries should be following in seeking to find mutually agreeable solutions for good labour market governance during current reform processes. The first principle is that reform should be examined from a total governance perspective. That is, all aspects of an issue – the implications for policies, laws, institutions, and processes – should be considered in determining an appropriate forward strategy and what is possible to deliver given available resources. Resource or other limitations may require a staged, incremental approach. But this does not obviate the need to consider at the outset the changes that are desirable or necessary in terms of strategic direction.

In addition, the opportunity should be taken to accord high priority to building an integrated approach to addressing governance issues into the priorities reflected in individual Decent Work Country Programmes in the region. Doing so would enable ILO to work with its tripartite constituents in a coordinated and systematic manner and mobilize required resources

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<sup>6</sup> See ILO Constitution, 1919, Annex, Declaration concerning aims and purposes of the International Labour Organization, article I.

<sup>7</sup> See ILO: *Decent Work in Asia: Reporting on results 2001-2005*, Report of the Director-General, Fourteenth Asian Regional Meeting (Busan, Republic of Korea, 2006), pp. 79-85 and p. 90. See also ILO: *Realizing Decent Work in Asia*, op. cit., pp. 67-74.

<sup>8</sup> *Ibid.*

to implement changes, if necessary, across several biennia. Granted, developing such comprehensive policy and implementation agendas makes governance even more complex. However, policy-makers should be aware of and anticipate the likely primary and secondary effects of policy changes. Therefore, it is also important that implementation planning provides for monitoring and evaluation to assess the impact of reforms against the results expected and to make consequential adjustments where necessary.

The second principle is substantive and involves an approach to policy reform discussions on the basis of pursuing ways to balance business interests with workers' interests for access to employment and secure careers. This necessitates incorporating flexibility, stability and security considerations. Thirdly, given that labour market reform processes are invariably contentious, social dialogue is an essential tool to achieving acceptable outcomes to all parties.

## 2. Projections/Scenarios

From a substantive as well as from a process point of view, several, sometimes contradictory, challenges have to be managed through labour market governance systems during the next ten years, if progress towards decent work is to be achieved in the Asia-Pacific region. These challenges vary by country and subregion.

### (a) *Substantive issues:*<sup>9</sup>

One such challenge is the integration of young persons into the labour market, a problem that is particularly severe in countries such as Sri Lanka, Indonesia and the Philippines. But in some other countries (e.g. China, the Republic of Korea and Japan), the challenge is on the other side of age spectrum; that is, the need to manage an ageing workforce.

Another challenge is to strike a balance between support for maintaining/enhancing existing jobs and support for structural change by helping reallocate labour from "old" to "new" sectors. This often entails difficult choices. Yet, it is clear that broad structural change within the region, with shifts from agriculture to industry and services will continue, while technological change will also affect all three sectors. Employment shifts from agriculture to industry and services poses a particular problem of adjustment in terms of ensuring that workers are equipped with the skills needed in emerging jobs. The growing internal and external migration that accompanies and drives this structural change calls for regulation that supports the industries in need of manpower and advances decent employment and the working conditions of migrants.

At the same time, in some Asia-Pacific countries in an absence of quality labour market information, skills mismatches and/or insufficient numbers of workers with appropriate skills required for the jobs that are in demand, geographic disparities, and constraints on internal mobility are factors that are contributing to the paradoxical coexistence of labour surpluses and labour shortages within countries. Better labour market information systems and an expansion of quality educational and training institutions that are strongly linked with employers would help to address the inconsistencies arising in some labour markets in the region.

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<sup>9</sup>This review is based on information contained in two ILO publications, namely: *Labour and Social Trends in Asia and the Pacific 2006: Progress towards Decent Work* (Bangkok, 2006) and *Labour and Social Trends in ASEAN 2007: Integration, Challenges and Opportunities* (Bangkok, 2007).

A formidable challenge is to identify ways to formalize the informal economy. The informal economy is vastly diverse, ranging from near “formal” enterprises to self-employment activities such as street vending, small-scale agriculture and various types of services, including exploitative forms. This diversity requires equally diverse policy responses. Some informal activities transform into formal activities, but many new entrants to the labour market often remain trapped in informality. As the informal economy accounts for the majority of jobs in the region, the transformation towards more formality must be achieved gradually without jeopardizing employment, which might necessitate some adjustment in the formal economy as well.

While there are significant challenges on the governance side – in terms of the focus and content of regulations directed to the informal economy – the question of what services are appropriate in the informal economy context is also important. Inadequate access to important social services, such as old-age pensions, health and invalidity insurance and educational and vocational training programmes is a key characteristic of the informal economy. In many cases, in the absence of public provision, workers in the informal economy are simply unable to afford to invest in these services. In other cases, informal workers who could potentially afford to invest in these types of social services appear reluctant to do so because the services are of insufficient quality. Thus, enhancing social services for workers and firms operating in the informal economy is a key first step towards formalization.

The challenge of poverty and the working poor remains substantial: despite declining poverty rates overall, the region is still home to more than 900 million workers living with their families on less than US\$2 a day, which amounts to over 50 per cent of the region’s total workforce. Important gains have clearly been made: the share of workers living in extreme poverty on less than US\$1 a day has fallen to 17.6 per cent in 2006, down from 30.3 per cent a decade earlier, but much work remains to be done. Furthermore, rising inequality in wages and working conditions poses a potential threat to poverty reduction.

There is no simple response to these challenges. For example, while labour shortages in countries and sectors (e.g. in countries affected by “workforce ageing”) could theoretically be compensated for by an influx of migrants, such simple substitution is difficult and requires a well-constructed migration policy, combining particular skills, language training and cultural adaptation counselling. The same approach could be considered in relation to a possible trade-off between youth and older workers: if there are not enough young persons in the labour market, it might be possible to encourage older workers to remain in their jobs longer. Again, this has implications for skills, wages and other working conditions.

Asia clearly does not suffer from a lack of substantive issues to be managed by instruments of labour market governance during the Asian Decent Work Decade. Failing to adequately address the myriad of issues represents a bleak scenario, potentially retarding economic and social progress and jeopardizing development. But how well placed to address these issues are the current systems of labour market in the region? Or, to put it in other words: can the “procedural side” successfully meet the challenges arising on the “substantive side”?

**(b) Procedural issues:**

The Asia-Pacific region is characterized by great diversity in terms of approaches to labour market governance.<sup>10</sup> The extent to which the region can make real progress towards

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<sup>10</sup> For example, economies such as China, Viet Nam and the Lao People’s Democratic Republic are seeing a move from essentially administrative intervention to a combination of rule of law, collective bargaining and corporate

decent work will be determined through the combination of governance mechanisms and whether the following governance challenges are met during the next few years.<sup>11</sup> These challenges include:

*1. Upholding the rule of law and international labour standards to provide the stability vital to productive activity, while at the same time ensuring that employers and workers are able to apply the framework of rules flexibly but efficiently and fairly to constantly changing work situations and labour market conditions:* The adoption or revision of labour and employment laws and regulations is an important means of implementing ILO standards and putting the concept of decent work into practice. Labour law reform has been an active area for many countries in the region in recent years. In this regard, the Asia-Pacific region has responded well to the campaign for ratification of the fundamental ILO Conventions. However, the region still has a poor record overall with respect to ratification and implementation of core social dialogue and labour administration standards. The areas of greatest continuing concern remain recognition of freedom of association and the right to collective bargaining and demonstration of a real commitment to improving social dialogue in its many forms.

*2. Finding an effective balance between flexibility, stability and security – conditioned by respect for rights and negotiated solutions in dynamic labour markets and taking into account the urban and rural informal economy. This balance cannot be found only through labour law reform – transparent, accountable institutions, democratic political and judicial systems, strong employers’ and workers’ organizations, economic openness and a viable civil society are all crucial:* This challenge represents a core policy and operational issue for labour market governance in the region for the foreseeable future.

An effective strategy combining flexibility, stability and security must have a proactive, enabling and coherent legislative component (a reactive and/or non-responsive approach) applied in conjunction with existing and/or new labour market and social security institutions and social dialogue processes which can anticipate, lead and respond to labour market developments. Some additional issues need to be resolved in this process. For example, how are labour market flexibility, stability and security to be seen in the context of high informality in labour markets characterized by the absence of employment contracts, social protection, voice and standards? How should rural labour markets be addressed? Should they, or can they, be covered by labour laws? If so, with appropriate legislative changes, this would mean the focus of attention could shift to developing remedial action to “formalize” informal workers. In this regard, there is an emerging set of approaches and tools within the region at the level of social dialogue and labour administration which illustrate how this issue can be addressed.<sup>12</sup>

*3. Providing a conducive environment for social dialogue, including collective bargaining, to handle the various changes in the world of work without overloading the legal system or labour inspection system and encouraging innovations in new forms of cooperation and conflict resolution:* Addressing this challenge requires action in two key areas: firstly, taking action to address the basic prerequisites for social dialogue; and, secondly, introducing various measures, separately addressed by governments or, in some cases,

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social responsibility initiatives (the latter have in some cases had a more prominent role prior to new statutory requirements and collective bargaining assuming their full roles). On the other hand, there are examples of countries where the influence of collective bargaining is ebbing and other types of “soft” law and legal instruments are beginning to emerge. In Japan, where there is renewed interest in relying on corporate social responsibility to define employment norms in the workplace, policy-makers have also been debating the possible introduction of some form of mandatory “voice” mechanism for employees.

<sup>11</sup> ILO: *Visions for Asia’s Decent Work Decade: Sustainable Growth and Jobs to 2015*, Paper prepared for the Asian Employment Forum: Growth, Employment and Decent Work, Beijing, People’s Republic of China, 13-15 August 2007.

<sup>12</sup> *Ibid.*

jointly with the social partners, to “re-engineer” labour administration to improve services and their delivery within a results-based framework.

All parties concerned, but particularly governments, must have the political will to implement social dialogue as an active labour market governance strategy. Strong, independent workers’ and employers’ organizations must exist, with the appropriate technical capacities to represent their stakeholders and with access to the information that enables them to participate effectively in social dialogue. This necessarily requires that the fundamental rights set out in ILO Convention Nos. 87 and 98 are respected.<sup>13</sup> There must also be mutual recognition and respect amongst all representatives in dialogue. Finally, there should be appropriate institutional support at whatever level of dialogue the parties are participating, be it at the national, regional, sectoral or enterprise level. The reason why effective social dialogue should be a part of any governance arrangement is its positive impact on the economy. In this respect, data from both the OECD and the World Economic Forum suggest that good worker and employer relationships contribute to better absorption of shocks and to increased competitiveness of countries<sup>14</sup> (see also Appendix).

*4. Promoting regional cooperation and strengthening the multilateral system for improving governance. Over the Asian Decent Work Decade, growing economic and social interdependence and the nature of opportunities and challenges that cut across national borders will make collective actions and multilateral cooperation all the more important:* There is renewed interest among governments in the region to use existing regional institutions (e.g. ASEAN, SAARC, and the Pacific Islands Forum) to address more directly the social issues of economic integration, including labour market governance considerations. In this respect, the ASEAN labour market agenda is currently very active in this area and the recent ILO-ASEAN cooperation agreement will likely strengthen this. In addition, the Policy Coherence Initiative on Growth, Investment and Jobs (PCI), a joint initiative of ILO and other agencies of the multilateral system, including the Bretton Woods institutions, is helping to improve understanding among agencies on major factors in economic and social development. This offers the prospect of increasing policy coherence within the multilateral system and in the advice given to countries, including with respect to labour market governance.

### **(c) Other considerations**

As noted previously, weak implementation of labour policy, laws and administrative programmes characterize the situation in many countries in the region. Much of this situation reflects difficulties arising from access to only limited financial and other resources and poor technical capacities in various areas of labour administration. However, these issues need not prevent administrative reform initiatives from succeeding. As much as anything else, what is needed is a preparedness to change and to try new approaches and to build capacity for review, evaluation and innovation as an integral part of the way labour administration carries out its work. Such an approach also requires a willingness on the part of governments to confront difficult issues together with the social partners. For example, if labour inspection is ineffective, incentives can be identified to encourage the social partners to take a role in the strategy. If employment services are to be strengthened, local communities can be involved and local infrastructure can be utilized to broaden sources of information for follow-up purposes.

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<sup>13</sup> ILO Convention No. 87 is the “Convention Concerning Freedom of Association and Protection of the Right to Organise”; ILO Convention No. 98 is the “Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively”.

<sup>14</sup> Organisation for Economic Co-operation and Development (OECD): *Employment Outlook* (Paris, 2006); World Economic Forum: *The global competitiveness report 2006-2007* (Geneva, 2006).

In addition, there is considerable experience available to be shared within the region if appropriate arrangements are made between labour ministries. In this context, a knowledge sharing information system on employment policies and an observatory on actions of individual countries would be most helpful.<sup>15</sup>

If continued attention is not given to each of these issues – through legislation, new institutions and/or processes – and to related capacity-building of the tripartite constituents, progress towards decent work by 2015 will be minimal. Instead the region will face a bleak scenario of unbalanced growth, non-inclusive labour markets, wide wage disparity, rising poverty and persistent informality. In contrast, recent progress in the region points much more to a positive scenario; if the labour market governance systems of countries are able to manage these concerns, at least partially, decent work might become a reality for many more people than is the case today.

***(d) An important further issue: labour market intermediation***

The agenda set out above – to secure effective labour market governance – is formidable. The key issues on both the substantive and the procedural sides hint to the importance of having strong labour market governance regulations and institutions in place. Building these regulations and institutions requires the actors of labour market governance to be active and interactive: a strong government, a framework of effective social dialogue and a sound labour market administration.

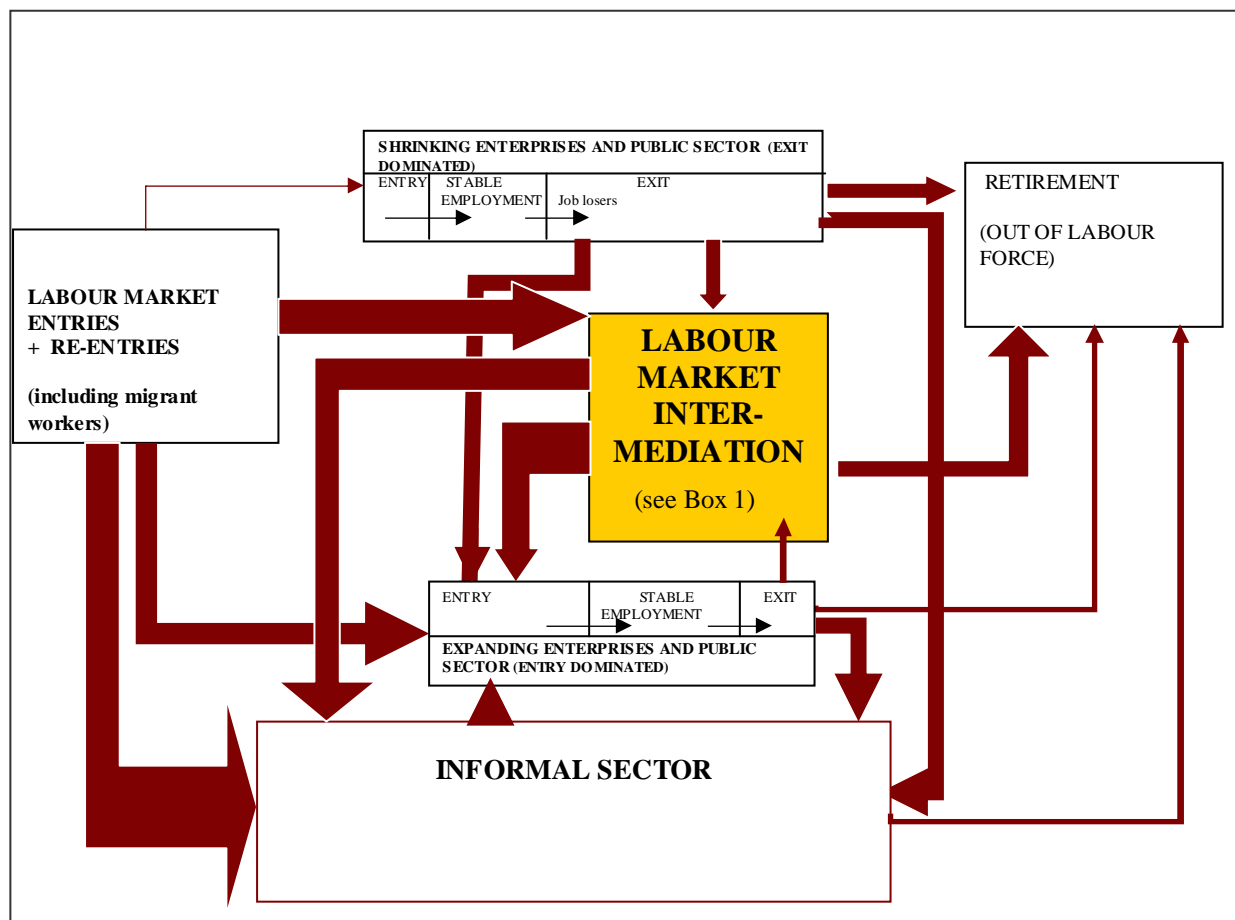
These general governance regulations and institutions are varied and complex. Figure 1 below shows what is at stake when considering labour market governance in a narrow sense, i.e. as those institutions and processes that lead to effective matching of labour supply and labour demand. They therefore reflect only some of the tasks that a comprehensive system of labour market governance must achieve.

In this respect, labour supply consists of those persons wanting to enter the labour market and those who participate in the labour market, but are unable to find work. The sources of labour demand exist in expanding firms and potentially in the public sector. But in the region the informal sector provides the largest reservoir for jobs. Many labour market participants find jobs spontaneously in both the formal and the informal sector. But many others need help to locate jobs and would benefit greatly from receiving benefits, undergoing training, and/or participating in job creation schemes.

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<sup>15</sup> See also ILO: *Providing implementation support to the Asian Decent Work Decade: Background paper on an Asian Decent Work Knowledge Network*, Paper prepared for the Asian Employment Forum: Growth, Employment and Decent Work, Beijing, People's Republic of China, 13-15 August 2007.

**Figure 1: Incomplete labour market governance**



**Box 1: Labour market intermediation functions**

The function of intermediation is the core business of the public employment service, but other organizations are active as well (i.e. private temporary work agencies, NGOs, training institutions, etc.). The main functions of labour market intermediation are as follows:

- Guaranteeing income and job search while in transition (labour exchange, unemployment insurance and assistance as well as early retirement and sometimes severance pay)
- Maintaining and improving employability (active labour market policy, training)
- Fulfilling a temporary and permanent demand function (ALMP: public temporary job creation, wage subsidies, small and medium sized enterprise programmes)
- Providing sound labour market information and monitoring.

Source: Adapted from P. Auer et al.: *Labour Market Policies around the World* (Geneva, ILO, 2006).

The nuclei of the type of intermediation mechanisms identified above exist in most Asia-Pacific countries. But they need to be developed further and then coordinated with other elements of each governance system to achieve a coherent approach (see also Appendix).

An example is China, whose authorities have introduced temporary organizations to facilitate the reallocation of workers made redundant in state-owned enterprises; now, more permanent institutions are emerging to manage large worker flows, including rural to urban migrants. Many countries in the region have employment services and also re-training

institutions (e.g. Australia, China (notably, Hong Kong, China), India, Japan, Malaysia, New Zealand, Singapore, Republic of Korea, and Sri Lanka). Most countries have severance pay schemes of one form or another. Also, statutory employment protection exists. For example, in China and South Korea, notice of retrenchment has to be given to both the government and unions; in Malaysia, to the government; and in Sri Lanka to the unions. Prior authorization for lay-offs has to be requested in Sri Lanka and India (in the latter country for firms with more than 100 workers). In addition, the Republic of Korea, China and India have some form of unemployment benefits system, while introduction of a similar system is being discussed in Sri Lanka. India is discussing a comprehensive social welfare system for the unorganised sector and has a nation wide employment guarantee scheme.

These schemes are sometimes weak, with low wage replacement and low coverage rates and uneven administration. But they show that a policy framework that takes into account the economic adjustment needs and social protection needs of workers exists in the Asia-Pacific region. However, this needs to be strengthened. Again, the process of enhancing the labour market institutions required for a well-functioning labour market that permits fair access to employment for all and provides a strategic opportunity for social dialogue is an important issue of common concern in the region.

### **3. Lessons learned in Asia-Pacific and options for the future**

It has been noted above that “implementation” of labour policies and laws has not been successfully achieved in many countries in the region. At the same time, there are interesting examples within the region where innovative approaches are being taken by some labour ministries which are resulting in improved public administration infrastructure and better quality services, underpinned by more research and knowledge development.<sup>16</sup> The examples presented below are not being showcased as models to follow, but rather as indications of what can be and is being achieved in “re-engineering labour administration” to address issues of importance in particular countries. A number of these examples also indicate how social dialogue at the national level has played a positive and important role in this process. It is important that the region itself provides best practice examples, even if the conditions for implementing them in some countries of the region are not yet optimal. There is certainly a need to find adapted policies and approaches for different levels of development.

In Singapore, the administrative reform agenda has resulted in an enlarged Ministry of Manpower whose major priorities include: supporting transition to a knowledge-based economy through a broad, market-driven, performance-based continuing adult education and training framework; encouraging “quality workplaces” and providing tools to support them; improving dispute settlement procedures; and maintaining a national wage body which is sensitive to economic changes and operates by tripartite consensus.

One of the most effective and proactive employment services operating in the Asia-Pacific region is managed by the Hong Kong Department of Labour. The Department operates job centres to assist job seekers to find work and employers to recruit staff. To facilitate this

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<sup>16</sup> Further information on some of these examples can be found in G. Casale, A. Sivananthiram and C.S. Venkata Ratnam (eds.): *Re-engineering Labour Administration to Promote Decent Work* (New Delhi, ILO, 2007) and G. Casale, A. Sivananthiram and J.L. Daza-Perez (eds.): *Showcasing Tools and Experience in Labour Administration and the Informal Economy* (New Delhi, ILO, 2007).

process, a web-based interactive employment service provides 24-hour online access to job vacancy data. Special attention is directed to meeting the needs of “vulnerable groups”, particularly youth, and a range of novel promotional and publicity tools are being deployed.

Employment insurance, employment “adjustment” following corporate restructuring and vocational training are key aspects of the developing jobs strategy applied in the Republic of Korea. In addition, following much research and discussion, that country has recently established a national social dialogue body to promote consultations on social and economic policy. The Korean Labour Institute also provides an important example of linking research to public policy development and implementation.

In the area of labour inspection, the Philippines has embarked on an important new initiative – the Labour Standards Enforcement Framework – to increase its institutional reach in enforcing labour laws and in response to the need to apply national labour standards to a large number of establishments vis-à-vis the limited number of labour inspectors available nationwide. The Framework envisages the creation of a culture of safety, health and welfare at the workplace by raising awareness and building an ethic of self-regulation and voluntary compliance with labour laws relying on a variable strategy according to the size of an enterprise.

In terms of extending the reach of labour administration into the informal economy, examples from Cambodia (safety and health on small construction sites), Thailand (homeworker legislation), India (extending welfare coverage), Viet Nam (agriculture), and the Philippines (female domestic workers) illustrate what is possible in relation to improving the working conditions of some of the most vulnerable groups of workers in the region.

The latter examples show that governments and social partners in the Asia and Pacific region are engaged in debates and reform efforts to make their labour markets function better. Triggered by critiques that labour markets do not function properly and are not flexibly adapting to changes in the wake of globalization and technological change, some elements of the labour market governance structure have already been reformed in some countries, while in others possible reforms are still being debated.

Besides the basic economic arguments of a low degree of adaptability of national governance systems, there are also social concerns behind recent reform efforts. Indeed, social security for workers – an important part of decent work – risks being jeopardized in the wake of structural changes related to economic development if no adequate protective measures exist.

Labour law reform plays a significant role in this area and the controversial debates surrounding change, for example, in India (Box 2) and in Nepal, show the difficulty in finding solutions which create an adapted legal framework permitting adjustment in workers’ security. In other countries, such as China, new legislation is being introduced as witnessed by the employment promotion and the employment contract law and efforts to design and implement dispute settlement legislation, which all introduce some new rights for workers.

<b>Box 2: Labour law reform in India</b>
In India, the issue of reform of the labour law has sparked much controversy among social partners. Under article 246 of the Indian Constitution, both the central government administration as well as the individual

states can legislate. Observers count around 50 central and 175 state laws which are directly related to labour and employment issues.<sup>17</sup>

One of the claims of the proponents of reform is that the process is directed to simplifying, rationalizing and consolidating the complex and often contradictory network of labour laws. While these laws touch upon such diverse issues as industrial relations, wages, working conditions, social security and insurance, the controversy revolves, particularly, on a provision in the Industrial Disputes Act, 1947, Chapter VB which states that for retrenchment and lay-offs to proceed, permission from the government is mandatory for all industrial establishments with at least 100 employees. Together with provisions of the Trade Union Act, Chapter VB is considered by employers as a major impediment to flexibility in the organized sector.

Even critically minded observers note that Chapter VB makes it difficult to introduce timely changes. But it has symbolic character and is defended strongly by some of the country's unions. Observers also note that the provision concerns only the (small) formal segment of the economy and it would be an exaggeration to blame it for wider impacts, such as the growth of the informal economy.

It should also be noted that in India, as well as in many other Asia-Pacific countries, a major concern is not so much with the substance of the labour laws themselves, but with the fact that they are not implemented and enforced effectively. This has in large part to do with the large informal and often rural economy. But even in the formal sector, labour laws in India are "most rigid on paper" but "most flexible in practice".<sup>18</sup>

Still, regardless of the difficulties encountered in moving forward, a reform agenda exists in India and elsewhere in the region that calls for rationalization, streamlining and better implementation of labour laws in a context which is seeking to address flexibility and security concerns. A range of specific statutory governance issues are also being examined in many countries. This includes minimum contract provisions (Australia, China), extending social security provisions (Nepal), improved labour law enforcement (Philippines), better dispute resolution mechanisms (China), and formal consultations with the social partners (Jordan, Vietnam). As noted previously, national minimum standards, based on a number of the ILO fundamental Conventions have already been or are being established through legislation.

However, in many countries of the region, labour law reform struggles with problems akin to those in India: laws might be rigid on paper, but are not applied in practice, either as a result of weak administration or enforcement, creating de facto flexibility. Unions then claim that laws should be applied in order for employers to prove that they have negative effects on the labour market, a move that employers oppose on the basis that they are too rigid and costly. The "catch 22" situation that arises from such a controversy must not in all cases lead to stalemate, but this danger exists and only a frank but constructive dialogue between the stakeholders can resolve such a blockage.

Policies which openly and honestly ensure both adjustment flexibility and workers' security might be a way out of this situation. But the conditions for arriving at such a solution are not easily achieved. The countries concerned usually lack strong security channels other than holding a formal job in the private or public sector and it is, from the point of view of worker representatives, understandable to ask for strong protection at the levels where protection can be provided. While often poorly paid informal sector jobs provide families with some very basic security, a more formal security "net" through an extension of social security coverage should be developed. As argued in *Realizing Decent Work in Asia*, "reforms of social protection systems must accompany reform of labour market regulations to protect workers from the insecurities associated with flexibility and make adjustment to labour market changes as painless as possible".<sup>19</sup> As such the quest for more flexibility becomes equally one for extending coverage

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<sup>17</sup> There are many more that are indirectly related to labour and employment issues. J. Praveen and S. Golder: *Labour market regulation and economic performance: A critical review of arguments and some plausible lessons for India* (Mimeo, New Delhi, 2007).

<sup>18</sup> A. Forteza and M. Rama: *Labour market rigidity and the success of economic reforms across more than one hundred countries* (World Bank, Mimeo, 2002), p.18.

<sup>19</sup> ILO: *Realizing Decent Work in Asia*, op. cit., p. 77.

through employment-related social protection, such as unemployment benefits and active labour market policies (see Box 3).

### **Box 3: Flexibility, stability and security in Asia and the Pacific**

The term “flexi-curity” was originally coined in the context of European labour market reforms. It describes a system of employment, employability and income protection in flexible labour markets. It arises from the observation that labour markets have become more volatile under the joint impact of globalization and technological progress and entails recognizing claims for better protection of affected workers without jeopardizing adjustment needs of firms. In the context of developed countries, several elements are essential for triggering flexi-curity: statutory labour contracts that allow for lay-offs when economic circumstances require, albeit with the observance of workers’ rights for notice and severance pay; a system of social protection, including active labour market policies which provide effective placement, training and job creation measures that allow for transitions to other jobs; certain social rights (such as maternity and parental leave); and functioning social dialogue, to settle mutually agreeable arrangements. Flexi-curity implies also an approach which observes the labour market through the life time employment biography of individuals who face different risks at different moments of their career. It is mostly when they transit between jobs or between jobs and other situations on the labour market that they face risks of unemployment, skill loss and exclusion.

While the conditions for labour market reforms along the lines of “flexi-curity” exist in many developed countries, these conditions are rarely met in developing countries. But this does not mean that the idea should be rejected for application in the Asia and the Pacific region: reflecting about the effects of the transitions of individuals on the labour market and situations with varying labour market risks that have to be managed by policies, is a powerful way of identifying what is available and what is lacking in the labour market of many countries in terms of “rights” and “risk insurance”. It also points at a required policy sequence: in developing countries with large informal labour markets – and therefore with arguably high numerical flexibility – but no social security, the concept calls for the introduction of at least some form of basic social security.

There is no reason why building the elements of a flexibility-stability-security framework cannot commence with statutory labour contracts combining protection with adaptation needs when required, a basic system of insuring labour market risks (e.g. some form of unemployment benefits and of active labour market policies), an effective employment service, and commitment to social dialogue about the arrangements. “Flexi-curity” is therefore a complement to the Decent Work Agenda that points to the need for negotiating the creation or enhancement of modern labour market institutions that balance the need for protection with the need for adjustment.

It is correct to say that in the large informal sectors of some regional countries, the reach of labour market institutions is weak. But this does not mean that the introduction of some basic institutions is not possible. These would have to cope with a variety of situations and most probably be based on local, community approaches, such as community training centres.

If fully developed, such a system can trigger enhanced labour market security, as it includes a combination of time spent in employment (employment protection) with time spent out of employment during which the jobless receive assistance. It need not be costly, but can start with some form of institutional support for job search and gradually extend to various forms of training and job creation schemes.

Flexi-curity points to the fact that flexible employment relations exist, however, only as complements to stable employment relationships, and that they are obviously necessary for operating in increasingly open financial, goods and labour markets. Workers should be insured against carrying the full risks of flexibility through adequate social protection measures. In the understanding of the ILO, it also hints at the benefits of stable, long-term relationships between workers and employers for enterprise performance, productivity and decent jobs.<sup>20</sup>

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<sup>20</sup> P. Auer, J. Berg and I. Coulbaly: “Is a stable workforce good for productivity?” in *International Labour Review*, Vol. 144, No. 3, 2005. These authors have demonstrated the positive relationship between employment stability and productivity. These findings have recently been confirmed by S. Storm and C.W.M. Naastepad: *Why labour market regulation may pay off: Worker motivation, co-ordination and productivity growth*, Economic and Labour Market Papers 2007/4 (Geneva, ILO, 2007).

#### **4. Suggested key questions**

1. There is much talk about “balancing flexibility, stability and security”, but how are these issues best addressed in country settings with low levels of social dialogue, weak labour market institutions and inadequate safety nets?
2. If informality is principally an issue of governance, what are the appropriate macroeconomic and social policies and the necessary legal, institutional and procedural frameworks to address the informal economy?
3. How can policy and programme coherence in national employment plans best be achieved?
- 4.. What must be done to develop strong, representative worker and employer organizations and better-equipped labour administrations, including with respect to the informal economy? What new and/or revised role(s) are there for ILO principles, standards and action to support the constituents in these respects?
5. What labour market issues are on the current agendas of regional institutions for consultation between governments and possible coordinated action within and across national boundaries? What other labour market issues are appropriate to refer to such institutions and what are the prospects for such action in the short-term?
6. How can countries in Asia-Pacific more effectively share experiences and knowledge about good practices for improving institutions and policies for equitable and efficient labour markets?

## Appendix

This appendix provides a rough guide on first steps to be taken for breaking down a comprehensive governance system to its elements. The table requires further work (e.g. listing country- or even locality-specific problems and solutions and listing further elements of governance).

Issues	Barriers	Solutions
<p>Introducing an effective labour market intermediary system that brings together the principal labour market services at the appropriate level (national, regional, local) for providing services that match jobs and job-seekers</p>	<p><u>General:</u> Costs</p> <p>Low level of organizational capacity</p> <p>Too many actors and no policy coherence</p> <p>High informality</p> <p><u>Specific:</u> No labour market information system</p> <p>No or ineffective unemployment benefits system</p> <p>No or ineffective active</p>	<p>Donor “seed money”, earmark funds in budget, levy (even small) contributions from employers and workers</p> <p>Get advice and help from existing organizations in the region and abroad, use best practice cases, Management by Objectives techniques, etc.</p> <p>Create “one stop” shops (uniting services even if administration separated). Reallocate responsibilities between institutions.</p> <p>Create efficient services that even employers and workers in informal sector might buy. Formalise through decentralised and sectoral approaches (e.g. community training centres).</p> <p>Use available advice at national, regional and international level (use LMI experience in ILO SRO-offices and ILO HQ).</p> <p>Feasibility study, taking due account of similar endeavours in the region. Examine issues including financial needs and sources, monitoring and evaluation techniques to determine issues, problems and potential solutions.</p> <p>See above</p>

	labour market policies  No or ineffective labour exchange	See above
Effective social dialogue: <ul style="list-style-type: none"> <li>• Tripartite and/or bipartite;</li> <li>• Formal and/or informal;</li> <li>• At national, regional, and local levels; and/or</li> <li>• Inter-sectoral, sectoral and/or enterprise levels</li> </ul>	Lack of political will of all parties concerned to engage in social dialogue	At national level, government must take the lead and indicate a preparedness to engage with the social partners on issues of substance (policy, legislation, institutions and administration). The social partners (and others, where appropriate and/or desirable) must then be willing to respond. At other levels, government may or may not be involved. In most cases, it is for the social partners to determine the way(s) in which they wish to interrelate.
	Strong, independent workers' and employers' organizations, with: <ul style="list-style-type: none"> <li>• appropriate technical capacities; and</li> <li>• access to information, to enable participation in social dialogue</li> </ul>	The social partners must establish and build their own representative organizations, including their own internal skills and expertise. Government can facilitate through provision of information and support to develop appropriate capacities.
	Respect for fundamental rights of freedom of association and collective bargaining	Ratification and implementation of ILO Conventions 87 and 98. Government enforcement.
	Appropriate institutional support	This will depend on the type of dialogue taking place (formal/informal) and the level(s) at which it takes place.
	Mutual recognition, respect and trust between all representatives	Social dialogue is fundamentally about people and relationships. Participants in social dialogue must be able to work together effectively.