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Freedom of association and collective bargaining in the informal economy in Mongolia

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Workers in the informal economy are more likely to suffer from low incomes, long hours, unsafe working conditions, low productivity, lack of training, limited or no access to social protection and labour rights violations than workers in the formal economy. Freedom of association and the ability to engage in collective bargaining enable the former to improve their wages and working conditions, acting as an important means of reducing labour rights violations in the informal economy and paving the way towards the increasing formalization of work.

Legislation

General provisions of the Labour Law (1999) state that it relates to employers and employees who enter into labour relations on the basis of an employment agreement. The terms “employer” and “employee” are defined as those who employ others and those who are themselves employed on the basis of an employment agreement, respectively, and such an agreement must be in written form. According to the strict letter of the law, the Labour Law is therefore inapplicable to workers in the informal economy:

Article 1. Purpose of the Code

- 1.1 The purpose of this Code law shall be to determine the common rights and duties of employers and employees who are parties to labour relations based on an employment agreement, to define collective agreement, collective bargaining, collective and individual labour disputes, labour conditions, management, control, and liabilities for breach of the legislation, and to ensure equality of the parties.

...

Article 3. Definitions

- 3.1 For the purposes of this Code:
 - 3.1.1. “employer” means a person employing an employee on the basis of an employment agreement;
 - 3.1.2. “employee” means a citizen employed by an employer on the basis of an employment agreement;

...

Article 24. Conclusion of an employment agreement

- 24.1 An employer or an official authorized by him or her shall conclude an employment agreement with a citizen in writing and shall be obliged to deliver a copy thereof to the employee. It shall be prohibited to conclude agreements other than employment agreement for a permanent workplace

However, in other legislation, there does not appear to be any restriction on freedom of association and collective bargaining rights for individuals working in the informal economy, i.e. those who do not have contracts with their employers or those who work for unregistered businesses.



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For example, according to the Constitution of Mongolia (1992), freedom of association is guaranteed to all citizens:

Article 16

The citizens of Mongolia shall be guaranteed the privilege to enjoy the following rights and freedoms:
...

10) Right to form a party or other public organizations and unite voluntarily in associations according to the social and personal interests and opinion. All political parties and other public organizations shall uphold public order and State security, and abide by law. Discrimination and persecution of a person or joining a political party or other public organization or for being their member shall be prohibited. Party membership of some categories of State employees may be suspended.

Furthermore, according to the Trade Union Rights Act (1991), freedom of association, freedom to conduct trade union activities and freedom from discrimination on the basis of trade union membership or non-membership are guaranteed to all citizens:

Article 1. The objective of the law

The objective of the law is to give a guarantee for citizens to voluntarily and freely associate and conduct activities with a view to securing the right to work and defending in common the legitimate interests that rise and regulate social relations that may crop up in the realm.

...

Article 3. The right of join a trade union

1. Citizens are entitled to join a trade union without a prior permission, solely on a voluntary basis, without any discrimination whatsoever to exercise their right to work and defend their legitimate interests concerned.
2. Joining or leaving trade union shall not be forced.
3. Restrictions of citizen's rights and freedom discrimination against them with regards to membership or non-membership in trade unions are prohibited.

There is therefore no legislative barrier to Mongolian citizens who work in the informal economy forming, joining or participating in trade unions, or engaging in collective bargaining. There is also no legislative barrier to these individuals forming, joining or participating in voluntary associations, members of which may in turn be represented by trade unions.

Practice

A 2006 report by the ILO stated that no trade unions represent the rights and interests of all workers in the informal economy, but some trade union federations and NGOs have worked to actively represent and protect the rights and interests of some groups of workers in the informal economy.¹

¹ http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_129_en.pdf (p117)



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Workers' and employers' representatives, such as the Confederation of Mongolian Trade Unions (CMTU) and the Mongolian Employers' Federation (MONEF), are paying greater attention to issues surrounding the informal economy in social dialogue, which has been reflected in national tripartite agreements.² The CMTU represents 14 different sectoral trade unions, including one that represents some workers in the informal economy, namely the Mongolian Small and Medium Enterprise, Trade, Service, Tourism and Informal Sector Workers' Trade Union. At the end of 2016, this trade union had 3,636 members, of which 3,485 (96 per cent) work in the informal economy and 2,375 (65 per cent) are women.³ Its membership comprises both dues-paying members and those who do not pay dues. Although the latter are unable to vote or stand for election, their views are represented and they have access to services, such as training and counseling.

Trade unions and voluntary associations have also been formed to represent groups such as informal miners, drivers and owners of minibuses and taxis, photographers, street vendors and market traders.⁴ According to a 2005 report by the National Human Rights Commission of Mongolia (NHRCM), however, they did not have regular activities or sufficient funding, being reliant on support from foreign programmes.⁵

Rural work, such as agricultural activities, is often characterized by high levels of informality. Through rural economic empowerment programmes, rural workers are being increasingly encouraged to establish, join and participate in cooperatives – independent, democratic enterprises jointly run by their members – to promote their interests, strengthen their position in the agricultural food chain and support the development of the rural economy. Cooperatives may engage in bargaining in their own right or be represented by trade unions.

There are a number of steps the Government can take to promote freedom of association and collective bargaining rights among rural workers, including those working in the informal economy. These are outlined in the Right of Association (Agriculture) Convention, 1921 (No. 11), the Rural Workers' Organisations Convention, 1975 (No. 141), and the Rural Workers' Organisations Recommendation, 1975 (No. 149), none of which Mongolia has yet ratified.

First, it should ensure that rural workers have the same freedom of association and collective bargaining rights as industrial workers, both in law and in practice, including in relation to freedom from discrimination. Rural workers' organizations should be able to:

- represent the interests of rural workers collectively at all levels, including involvement in national planning on rural development programmes;
- promote and obtain rural workers' access to services such as credit, supply, marketing, transport and technology;
- help to improve general and vocational education in rural areas;
- help to improve occupational safety and health for rural workers; and
- promote the extension of social security to rural areas.

Second, it should review any potential obstacles – including legislative and administrative obstacles – to the establishment, growth and pursuit of activities by rural workers' organizations, and eliminate them. Such obstacles may include requirements on minimum levels of membership, education and funds, which

² http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_129_en.pdf (p126)

³ Information provided by the CMTU, 14 April 2017 and 11 May 2017

⁴ http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_129_en.pdf (p117)

⁵ NHRCM (2005), *Status of the Right to Freedom of Association, and the Right to Organize and Collective Bargaining: Study, Research Report* (unpublished) (p44)



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should not prevent rural workers' organizations from developing in areas with scattered, ill-educated and poor populations.

Third, it should ensure national policies facilitate the voluntary growth of strong, independent rural workers' organizations. This should include the training of leaders and members of rural workers' organizations on relevant national laws and regulations, and international standards, as well as rural development issues. It could also include the provision of financial and/or material assistance, for example, for help in conducting education and training programmes.

Fourth, it should promote widespread understanding of the need to develop rural workers' organizations, and their contribution to improving employment opportunities and promoting decent work in rural areas, increasing national income and improving income distribution. This could include information and education campaigns, such as television and radio campaigns, seminars and coverage by journalists.

Representation of workers in the informal economy by both trade unions and trade union federations remains very low. Prior to Mongolia's transition from a centrally planned economy to a market economy in 1990, the informal economy was almost non-existent, and trade unions have maintained the traditional position of representing workers engaged in formal labour relations.⁶ Further obstacles to the representation of workers in the informal economy appear to include an inability to pay membership dues and a lack of awareness and understanding of collective bargaining and its purposes and benefits among some workers and employers.

Migrant workers

It should be noted that the Constitution of Mongolia and the Trade Union Rights Act guarantee freedom of association and collective bargaining rights to Mongolian citizens only. However, as the relevant provisions were drafted at a time when very few migrant workers were present in Mongolia, it is possible that such rights may in practice extend to all workers, whether citizens or not.

⁶ http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_129_en.pdf (p131)