

Measuring legal effectiveness: lessons from Tanzania¹

Sangheon Lee
International Labour Office
Geneva
lees@ilo.org

Deirdre McCann
School of Law
Aberdeen University
d.mccann@abdn.ac.uk

Introduction

The efforts made in recent years to develop indicators that quantify and compare labour market regulations are highly significant. These indicators promise to advance the available knowledge on the role of regulations in improving the quality of working life, advancing productivity etc. They also have the potential to offer policy actors a research-based and systematic body of knowledge that will guide their efforts to design legal frameworks. The existing indicators, however, are subject to a number of criticisms, including those that have been directed at the extent to which the indicators reflect the policy objectives of protective labour laws (Lee and McCann 2008); their flawed capture of domestic regulatory measures (Berg and Cazes 2007; Lee and McCann 2008) and the assumptions on the historical evolution of labour market regulations that are found in this literature (Deakin et al 2008).

This note reviews the authors' recent work, which has criticised the existing indicators by examining the extent to which they capture the actual or *de facto* influence of labour market regulations. This work has sought to measure statutory regulations in a way that takes into account both their substantive and *de facto* strength. It has also encompassed empirical work in a developing country – Tanzania – aimed at exploring workers' awareness of legal standards. This research has centred on regulatory frameworks that govern conditions of work and has had a particular focus on wages, working hours and holidays, and maternity protection.

Effectiveness and the ERI

In the existing indicators, the effectiveness of legal regulation often appears in the shape of an assumption, which might be characterised as 'formalist,' that the application of labour regulations is both comprehensive (the relevant regulations protect all workers who fall within their scope) and complete (these workers are entitled to the full array of legal protections guaranteed by the legal texts to the maximum extent possible) (Lee and McCann 2009). Where such assumptions are not made, efforts such as those of Botero et al (2004) to capture the relationship between the *de jure* and *de facto* application of legal regulations have so far been under-developed (see Lee and McCann 2008 for a critique).

The relationship of legal provisions and actual working conditions, however, cannot be assumed, and without a proper understanding of this relationship any conclusions as to the impact of regulations can only be speculative. Moreover, the evidence from industrialized countries is of a varying influence of legal standards within different institutional regimes

¹ Presentation to the IIRA 2009 Study Group on *Labour Market Regulations*, Sydney, 24 August 2009.

(Lee 2004). To respond to this limitation in the existing indicators, the authors have developed an index that attempted to measure both the substantive and *de facto* strength of regulations on working time and to compare different countries at a range of income levels (Lee and McCann 2008). This 'Effective Regulation Index for working hours' (ERI) was constructed by averaging the normalized values of statutory weekly hours limits and "observance rates" (the number of workers whose hours are within the statutory limit) for more than 50 countries. The analysis indicated that the correlation between the ERI and GNI per capita is weak overall, leading to the conclusion that future research should examine in more detail the reasons that working time and other laws appear to be more influential in some jurisdictions than others, even among countries at similar income levels.

Legal awareness in a developing country: empirical findings from Tanzania

The recent expansion of the *European Working Conditions Survey* to include questions relevant to other regions offers an opportunity to explore certain of the empirical questions derived from the literature on the measurement and comparison of labour regulations. The survey questionnaire for the *Global Working Conditions Survey* contains a number of questions on working conditions (including on wages/incomes, working time and work organization, physical work environment, work and family, maternity protection, health and safety, job satisfaction). The *Survey* was pilot-tested in Tanzania during 2009, generating results that offer revealing insights for the debates on the impact of labour regulations in low-income settings.

First, the survey confirmed the presence of significant "observance gaps" (actual working conditions v the primary legal standards), of around 30-40%. Given the extent of these gaps, then, the relevance of common statistical exercises that regress the indicators of labour regulations on labour market variables become questionable; and the conventional indicators, in particular the World Bank's "Employing Workers Index," are revealed to overestimate the constraints that labour laws place on employers (Lee and McCann 2009).

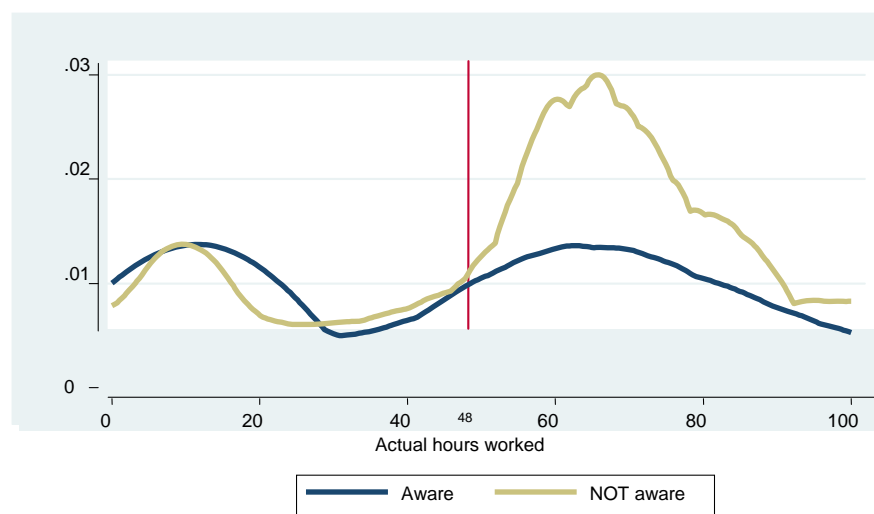
Secondly, the survey has generated data relevant to assessing practices of observance of labour market regulations. In the economic literature, the intensity of labour inspection and magnitude of penalties for violation of the law are often taken to account for the observance of legal norms (e.g. Squire and Suthiwart-Narueput 1997). Yet the picture is far more complex. As many studies have highlighted, for example, the role of the judiciary is often critical in determining the scope and application of statutory norms (e.g. Bertola and Cazes 2000; Bhattacharjea 2006); and the impact of labour regulations can also differ according to the response of individual enterprises (e.g. Edwards et al 2004).

One critical element broadly missing from the literature, however, is the response of workers to legal regulations. The exception is the research that has examined workers' awareness of legal standards (e.g. Meager et al 2002), which has so far been confined to industrialised countries but is relevant also to other regions. The *Global Working Conditions Survey* offers an opportunity to explore the extent and role of legal awareness in low-income settings, since it includes a set of questions on whether the workers are aware of

their working conditions entitlements on minimum wages, working time and maternity leave (see Lee and McCann 2009 for further details and the questionnaire).

The Tanzanian survey indicated a level of awareness of the primary standards (around 60%) although a substantial number of workers (around 30%) are not aware of their legal entitlements. The results of the survey also indicate that awareness is of substantial importance in determining actual conditions of work (see Chart 1 for an illustration). To test this relationship in a rigorous manner, a series of logistic regressions controlling for standard demographic variables was undertaken, which indicated that there is a very strong correlation between awareness of legal standards and actual conditions.

Chart 1. Can awareness make a difference?: Distribution of weekly working hours and workers' awareness of the statutory maximum hours



Source: Working Conditions Survey, Tanzania (2009)

To explain the channelling mechanisms through which awareness translates into actual improvements in work environments is a complex endeavour that needs to take into consideration a variety of factors. Two possible elements were examined in the survey: job satisfaction and workers' behavioural patterns in response to non-compliance with the law. The results indicated that (1) workers' dissatisfaction with their working conditions increases with their levels of awareness of statutory standards, once their actual conditions are controlled for; and (2) workers were not passive when they recognized the gaps between their legal entitlements and actual conditions of work, most being likely to take action, most often by complaining directly to the employer. It appears then that legal awareness may tend to lead to corrective action, although such efforts may not always be successful (see Lee and McCann 2009 for further details).

Conclusions

It is increasingly evident that a sound understanding of the effectiveness of legal norms is critical to the design of indicators that accurately reflect the influence of legal norms and

therefore to balanced policy debates on the role of labour regulations. Above all, “observance gaps” should be measured and taken into account in estimating the labour market impacts of legal regulations. The research discussed above has also demonstrated that the massive problems with implementation in a number of countries could be associated with low levels of legal awareness, although further research is needed to explain the channelling mechanism through which awareness translates into actual improvements in work environments.

The empirical research in Tanzania suggests strong potential for improving working conditions by increasing workers’ legal awareness, without the need for significant institutional reform. This finding that observance gaps may be narrowed to some degree by awareness-raising supports the contention in the literature that, at least in developing countries, the debate should not be configured as a choice between “regulation” and “de-regulation,” but centred rather on how these countries can best design, promote and implement labour laws and policies (or “how to regulate”) (Fenwick et al. 2007; Lee, McCann, and Torm 2008). In this way, countries can avoid the wasteful process of engaging in continuous labour law reform projects carried out in the absence of any opportunity to evaluate the impacts of the reforms, an approach that has in recent years overwhelmed the governments of many Asian and African countries under pressure from the international financial organizations.

References

- Berg, J and Cazes, S 2007 *The Doing Business Indicators: measurement issues and political implications* Geneva ILO
- Bertola, G and Cazes, S 2000. “Employment Protection in Industrialized Countries: the case for new indicators” *International Labour Review* 129(1), pp. 57-72
- Bhattacharjea, A 2006. “Labour Market Regulation and Industrial Performance in India: a critical review of the empirical evidence”, *Indian Journal of Labour Economics* 49(2), pp. 211-232
- Botero, J, Djankov, S., La Porta, R., Lopez-de-Silanes, F. and Shliefer, A. 2004 “The Regulation of Labour” *Quarterly Journal of Economics* 119(4), pp. 1339-1382
- Deakin, S., Lele, P. and Siems, M. 2007. “The Evolution of Labour Law: calibrating and comparing regulatory regimes” *International Labour Review* 146, pp. 133-162.
- Edwards, P., Monder, R., and Black, J. 2004 “Why Does Employment Legislation Not Damage Small Firms?” *Journal of Law and Society* 31(2), pp. 245-65
- Fenwick, C., Howe, J. Marshall, S. and Landau, I. 2007. “Labour and Labour-related Laws in Micro and Small Enterprises: innovative regulatory approaches”, ILO SEED Working Paper No. 81. Geneva
- Lee 2004 “Working Hours Gap: trends and issues” in J Messenger (ed) *Working Time and Workers’ Preferences in Industrialised Countries: finding the balance* London and Geneva: Routledge/ILO
- Lee, S. and McCann, D. 2008. “Measuring Labour Market Institutions: conceptual and methodological questions on ‘working-hour rigidity’” in Berg, J. and Kucera D. eds. *In Defence of Labour Market Institutions: Cultivating Justice in the Developing World*. Geneva and London: ILO and Palgrave
- Lee, S, McCann, D “The Impact of Labour Regulations: measuring the effectiveness of legal norms in a developing country” (Paper for the *Regulating for Decent Work Conference* Geneva 8-10 July 2009
- Lee, S., McCann, D. and Torm, N. 2008. “The World Bank’s “Employing Workers Index”: findings and critiques – a review of recent evidence” in *International Labour Review* 147(4), pp. 416-432.
- Squire, L. and Suthiwart-Narueput, S. 1997. “The Impact of Labour Market Regulations” *World Bank Economic Review* 11(1), pp. 119-143.