



Between Flexibility
and Security

THE RISE OF NON-STANDARD EMPLOYMENT IN SELECTED ASEAN COUNTRIES

Edited by

Melisa R. Serrano

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© 2014 ASEAN Services Employees Trade Unions Council (ASETUC)
Jl. Cijung No. 4
Jakarta Pusat 10150
Indonesia

Tel. +62 (0)21 7193 711
Fax +62 (0)21 7179 1358

Research Team:

Melisa R. Serrano
Mary Leian C. Marasigan
Vera Eileen V. Pupos

Copy Editing:

Leong Wen Shan

Layout and Printing:

Xpress Print

The findings, interpretations, and conclusions expressed in this publication are entirely those of the author(s); they do not necessarily represent the views of Friedrich-Ebert-Stiftung (FES) and the ASEAN Services Employees Trade Unions Council (ASETUC). Individual authors are also responsible for the accuracy of facts and figures presented in this volume, which are published in good faith by FES and ASETUC.

Foreword

Since 2007, the ASEAN Services Employees Trade Unions Council (ASETUC) and its member unions affiliated to the Global Union Federations of Building and Wood Workers' International (BWI), Public Services International (PSI) and UNI Global Union (UNI) have come together to contribute towards the building of the ASEAN Community. According to the ASEAN Socio-Cultural Community Blueprint from 2009, this was to be forged by an "enduring solidarity and unity" among the working people of ASEAN so as to realise an "inclusive and harmonious society where the well-being, livelihood and welfare of people are enhanced." We believe that trade unions, as a social partner in labour relations, have an important role in promoting a sustainable and equitable ASEAN regional economy that enjoys shared prosperity for all.

Friedrich-Ebert-Stiftung (FES) shares the values of ASETUC, that strengthening the social dimension of the ASEAN integration process is crucial for its success. To build a people-oriented and socially responsible community entails taking into account the principles of the Decent Work Agenda proposed by the International Labour Organization. For FES, as an organisation committed to the values of social democracy, trade unions and the labour movement in the region play a crucial role in shaping the future of ASEAN societies in a socially just way with decent working conditions for all workers.

This publication, with the support of FES, is one of the many initiatives of ASETUC to develop better knowledge and understanding of the labour market and conditions in ASEAN. It was undertaken as a response from workers and trade unions who have expressed their collective concerns over the growing trend of precarious and other forms of non-standard work arrangements. These trends in the world of work have brought about numerous implications to the lives of working people with regard to access to social security, workplace entitlements and benefits, career progression and development, as well as decisions in the private sphere.


At the root of workers' and unions' concerns is a growing feeling of insecurity, given that work organisation and employment are increasingly flexible and a large majority of workers are placed outside the responsibilities of the principal company and the protection of employment legislations. Until today, labour laws in many countries have yet to adequately address these developments on the labour market and employment relations, and their enforcement remain to be improved.

Hence, this publication aims to map out the various types of non-standard forms of employment in six selected ASEAN countries, and to explain how their trends increase insecurity. In addition to the data and information that was made available, the publication also provides insights to the employers' or employment agencies' perspectives on the increasing trends of non-regular forms of employment. The publication also highlights "good practices" that are able to reconcile the need of workers for employment security and the employers' need for a flexible workforce.

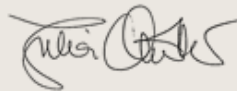
We would like to thank Mary Leian C. Marasigan, Vera Eileen V. Pupos, co-authors of this publication and especially, Dr Melisa R. Serrano for being the lead author and editor.

While this publication is intended for deliberations within ASETUC and its affiliates, we hope that the general public, academia and policymakers alike will find this publication to be of use for advancing the debate surrounding the evolving labour market and its impact on labour relations and conditions.

We welcome your feedback and comments at shafie@asetuc.org or julia.mueller@fes-asia.org



Mohamed Shafie BP Mammal
General Secretary
ASEAN Services Employees
Trade Unions Council (ASETUC)



Julia Mueller
Director
Friedrich-Ebert-Stiftung (FES)
Office for Regional Cooperation in Asia

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The key findings of our research were presented by this book’s lead author, Melisa R. Serrano, in the FES International Trade Union Conference “Fair Instead of Precarious — Trade Union Strategies for Decent Work Worldwide” on 11–12 March 2014 in Berlin, Germany. We thank Julia for providing us the opportunity to present the findings of our research. We also thank the participants of the conference who commented on the presentation.

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Melisa R. Serrano

Mary Leian C. Marasigan

Vera Eileen V. Pupos

Contents

Foreword	i
Acknowledgements	iii
List of tables, figures and boxes	vii
List of acronyms	vii
Executive summary	1
Introduction	7
1 From standard to non-standard employment:	9
The changing patterns of work	
<i>Melisa R. Serrano</i>	
Flexible workplace, flexible workforce	12
Key features of non-standard employment in the service sector	15
The rise of temporary agency work	17
Defining temporary agency work	17
The triangular employment relationship in agency work	20
ILO Convention 181 and temporary agency work	21
Common views of global unions on temporary work agencies	23
Conclusion	26
2 Indonesia	29
<i>Mary Leian C. Marasigan and Melisa R. Serrano</i>	
Economic growth and the labour market	30
Non-standard and fixed-term employment in Indonesia	33
GDP growth, employment and precarious work	35
Unionisation trends	36
The legal definition of fixed-term employment	38
Job outsourcing and labour outsourcing (labour supply)	40
Multiple interpretations on outsourcing	43
Positioning fixed-term workers in outsourced work	44
Employers' perspective	46
KSPI's experiences among contract and outsourced workers	46
Union strategies of joint, inter-union collaborations	48
Organising contract and outsourced workers	49
Conclusion	50

3	Malaysia	55
	<i>Melisa R. Serrano</i>	
	Economic growth and the labour market	56
	Unionisation trends	59
	The magnitude of non-standard employment	60
	The legal framework on non-standard employment	62
	Outsourcing practices in Malaysia: Employers' perspective	63
	Outsourcing and agency-hiring practices: Unions' perspective	65
	Union initiatives organising outsourced and agency-hired workers	66
	Conclusion	68
4	Philippines	71
	<i>Mary Leian C. Marasigan and Melisa R. Serrano</i>	
	Economic growth and the labour market	72
	GDP growth and non-regular employment	73
	Unionisation trends	75
	Categories of non-regular employment	78
	The legal framework of non-regular work	79
	Service or labour contracting	80
	The magnitude of non-regular/non-standard employment	84
	Trends in outsourcing and agency-hired work	87
	Operations of private employment agencies	91
	Trade unions' perspective on non-standard work	95
	Layered efforts to 'regulate' subcontracting	97
	Conclusion	99
5	Singapore	103
	<i>Melisa R. Serrano</i>	
	GDP growth and employment gains	104
	Non-standard work and economic growth	106
	Unionisation trends	108
	Outsourced workers and temporary agency workers	109
	Continuing demand for contract hires among professionals	110
	The legal framework on outsourced work	110
	From cheap sourcing to best sourcing:	111
	Tripartite initiatives protecting outsourced workers	
	Government initiatives protecting low-wage workers	113
	Union initiatives protecting low-wage and outsourced workers	113
	Conclusion	115

6 Thailand	119
<i>Melisa R. Serrano</i>	
Economic growth and the labour market	120
Unionisation trends	122
Informal and non-standard employment	122
The legal framework on non-standard work	125
The rise of triangular employment relationships:	128
Contracted and agency-supplied workers	
Operations of labour-supplying agencies	131
Union initiatives addressing outsourcing and agency work	132
Conclusion	134
7 Viet Nam	139
<i>Vera Eileen V. Pupos</i>	
The socio-economic and labour market context	141
Unionisation trends	151
The informal sector	152
The rise of labour dispatch	155
Labour dispatch and amendment of the Labour Code	156
Factors influencing the rise of labour dispatch	158
Trends in operations and practices of labour dispatch	160
Conclusion	163
8 Non-standard employment in ASEAN: Commonalities, varieties and union strategies	167
<i>Melisa R. Serrano</i>	
Variety of definitions ascribed to non-standard employment	169
Between “relaxed” and “highly-regulated” legal frameworks:	170
Variances and commonalities in the legal and regulatory framework	
Increasing incidence of and trends on non-standard employment	177
Employers’ mixed views on outsourcing	179
Representation and protection of non-standard workers:	180
A variety of trade union strategies	
Conclusion and policy recommendations	183
Notes on the authors	186

List of tables, figures and boxes

Tables

Chapter 1 – From standard to non-standard employment: The changing patterns of work

Table 1	Key features of a neo-Fordist interpretation of industrial JLP or Toyotism	11
Table 2	Key dimensions of standard and non-standard work/employment models	12
Table 3	Employment conditions of workers most adversely affected by non-standard precarious work	13
Table 4	Key features of interactive service neo-Fordism	16

Chapter 2 – Indonesia

Table 5	Growth rate of GDP at 2000 constant prices by industrial origin (%), 2004–2012	31
Table 6	Indonesia GDP (PPP), in current International US dollars 2004–2011	32
Table 7	Population and labour force statistics, 2006–2012	32
Table 8	Employed workers by main industry, 2004–2012 (in millions)	33
Table 9	BPS simplified definition of formal and informal sectors based on employment status and main occupation, Indonesia	34
Table 10	BPS broadened definition of formal and informal sectors based on employment status and main occupation	34
Table 11	Trade union developments in Indonesia, 1965 to present	37
Table 12	Union membership in Indonesia, 2006	38
Table 13	Employee and job characteristics by contract status	39
Table 14	Top 10 provinces based on number of outsourcing companies and workers, Indonesia as of December 2012	43
Table 15	Wage, social security and union membership based on employment status	45
Table 16	GDP growth (%) by sector in Malaysia, 2006–2012	57
Table 17	Employed persons (%) by industry in Malaysia, 2010 and 2011	58
Table 18	Employed persons by status of employment in Malaysia (%), 2010 and 2011	60
Table 19	Distribution of employed persons by employment status and sex (%), 2011	61

Chapter 4 – Philippines

Table 20	Annual growth rates in GDP and full-time/part-time employment: 2001–2010 (%)	73
Table 21	Employment statistics, 2011–2012 (in thousands, except for percentages)	73
Table 22	Legal framework for non-regular work and various practices that evade the labour law	79
Table 23	Non-regular employment in non-agricultural establishment with 20 or more workers by category, Philippines (2008 and 2010)	84
Table 24	Total employment of rank-and-file workers non-agricultural establishment with 20 or more workers by category, Philippines (2008 and 2010)	84
Table 25	Non-regular workers in non-agricultural establishments with 20 or more workers by category and major industry group, Philippines (2010)	85
Table 26	Percentage share of non-regular workers to industry employment by major industry group, Philippines (2008 and 2010)	86
Table 27	Establishments with agency-hired workers in non-agricultural establishments with 20 or more workers by major industry group, Philippines (2010)	89
Table 28	Total employment and agency-hired workers in non-agricultural establishments with 20 or more workers by major industry group, Philippines (2010)	90
Table 29	Private Recruitment and Placement Agencies (PRPAs), Job/Service Contractors/Sub-Contractors and Alien Employment Permit, Philippines (2011–May 2013)	92

Chapter 5 – Singapore

Table 30	Key features of cheap sourcing, Singapore	111
Table 31	Five principles of best sourcing practices	112

Chapter 6 – Thailand

Table 32	Employed persons by work status, Thailand	124
----------	---	-----

Chapter 7 – Viet Nam

Table 33	Proportion of companies by size and type in Viet Nam, 2011 (%)	143
Table 34	Selected key indicators of the labour market, Quarter 4 in 2011 and Quarter 3 and 4 in 2012	144
Table 35	Rate of the trained labour force in Viet Nam 2011 (%)	145
Table 36	Annual GDP real growth rates by aggregated economic sectors, 1999–2009 (at constant prices 1994)	147
Table 37	Labour force by sex, age group, residence and by region, Viet Nam	148
Table 38	Employment by sector in Viet Nam in 2009 (%)	149
Table 39	Structure of employment for working age population (+15) in 2007 and 2009 (%), Viet Nam	150
Table 40	Underemployment rate and unemployment rate among Vietnamese working age population, 2009–2012	151
Table 41	Employment by main job and by institutional sector in Viet Nam	152
Table 42	Rate (by organisation) of non-agricultural labourers not participating in social insurance (only those of working age)	153
Table 43	Percentage of labour force in informal sector employment in Viet Nam	153
Table 44	Employment in informal sector by gender and age (%)	154
Table 45	Types of labour contract by type of enterprises	155
Table 46	Average monthly gross wages by type of enterprise	162
Table 47	Average monthly gross wages by type of industry	162

Chapter 8 – Non-standard employment in ASEAN: Commonalities, varieties and union strategies

Table 48	Types of non-standard workers and terms used referring to non-standard employment in the formal sector	169
Table 49	Key aspects of legal and regulatory framework on non-standard employment in the six study countries	170
Table 50	Two stylised types of regulatory framework on non-standard employment involving triangular relations	175

Figures

Chapter 1 – From standard to non-standard employment: The changing patterns of work

Figure 1	The triangular relationship between an agency, a worker and a user company	20
----------	--	----

Chapter 2 – Indonesia

Figure 2	Growth in real GDP per capita (PPP*), unemployment rate and share of workers in precarious work to total employed (%)	36
----------	---	----

Chapter 3 – Malaysia

Figure 3	GDP growth and unemployment rate in Malaysia, 2006–2012	57
Figure 4	GDP growth by sector in Malaysia, 2006–2012	58
Figure 5	Union density in Malaysia (%)	59
Figure 6	Distribution of union membership by sector (%)	59

Chapter 4 – Philippines

Figure 7	GDP growth rates and share of employees in precarious work to total employed, Philippines (%)	74
Figure 8	Unemployment rate and share of precarious workers to total employed, Philippines (%)	74
Figure 9	Union density and collective bargaining coverage in Philippines, 1995–2012	75
Figure 10	Union membership by sex (%)	76
Figure 11	Collective bargaining coverage by sex (%)	76
Figure 12	Union membership by branch of economic activity (%)	77
Figure 13	Collective bargaining coverage by branch of economic activity, % distribution (1999–2010)	78
Figure 14	Percentage share of establishments with union to total establishments by major industries, Philippines (2008 and 2010)	78
Figure 15	Employees in precarious work, as % of employed, Philippines (2000–2010)	91

Chapter 5 – Singapore

Figure 16	Resident unemployment rate in Singapore, 2002 to 2012	105
Figure 17	Employment change by sector in Singapore, 2009 to 2012	106
Figure 18	GDP and incidence of term contracts in Singapore, 2006 to 2012	106

Figure 19	Incidence of term contracts for less than a year and one year and more, Singapore	107
Figure 20	Unemployment rate and incidence of term contracts, Singapore (%)	107
Figure 21	Union density in Singapore (%)	108
Figure 22	Nature of outsourced workers' relationship with third-party contractor and client company	109
Figure 23	Progressive wage model for the cleaning industry in Singapore (SGD)	114

Chapter 6 – Thailand

Figure 24	Real GDP growth and unemployment in Thailand, 2004–2012	121
Figure 25	Distribution of employed persons by sector, Thailand, 2007 to 2012	121
Figure 26	Formal and informal employment shares, periodic from 1980–2010	123
Figure 27	Comparison of formal and informal by economic groups in 2012 (%)	125
Figure 28	Triangular or multilateral employment relations in the car industry	130

Chapter 7 – Viet Nam

Figure 29	Population in Viet Nam, 2004–2012 (in millions)	141
Figure 30	Exports and Imports of Viet Nam, 2004 – 1st half of 2009 (in USD billions)	142
Figure 31	Viet Nam GDP growth, 2003–2012	146
Figure 32	Employed persons in Viet Nam, 2004–2012	147
Figure 33	VGCL membership growth, 2009–2012	151
Figure 34	Women in rural Viet Nam with children	154

Chapter 8 – Non-standard employment in ASEAN: Commonalities, varieties and union strategies

Figure 35	Union attitudes to and representation of workers different from their traditional membership	181
-----------	--	-----

Boxes

Box 1	CGU fundamental principles on temporary agency work	23
Box 2	CGU principles of public policy with respect to temporary agency work	25
Box 3	CGU Guidelines involving migrant workers dispatched by temporary work agencies	26
Box 4	“Jobs first, and then good jobs”	94

List of acronyms

ASEAN	Association of Southeast Asian Nations
ABADI	Asosiasi Bisnis Alih Daya Indonesia (Indonesian Outsourcing Association)
ADB	Asian Development Bank
ALIRAN	Aliran Kesedaran Negara
ALU-TUCP	Alliance of Labor Unions-Trade Union Congress of the Philippines
ASEAN	Association of Southeast Asian Nations
ASETUC	ASEAN Services Employees Trade Union Council
ASP	Administrative Services Fee
ASPEK	Asosiasi Serikat Pekerja Seluruh Indonesia (Association of Indonesian Trade Unions)
BIEN	Basic Income Earth Network
BITC	Banking Industry Tripartite Council
BITS	BLES Integrated Survey
BLES	Bureau of Labor and Employment Statistics
BPO/CC	Business Process Outsourcing/Call Centre
BPS	Badan Pusat Statistik (Statistics Indonesia)
BSI	Best Sourcing Initiative
BWI	Building and Woodworkers International
C3W	Centre for Contract and Casual Workers
CBA	Collective Bargaining Agreement
CGU	Council of Global Unions
CIETT	International Confederation of Private Employment Agencies
CPF	Central Provident Fund
CSR	Corporate Social Responsibility
DO	Department Order
DG	DiGi Telecommunications
DOLE	Department of Labor and Employment
EA	Employment Agency
EA	Employment Act
EFMA	Employment of Foreign Manpower Act
EPZs	Export Processing Zones
EUR	Euro
FDI	Foreign Direct Investment
FES	Friedrich-Ebert-Stiftung
FFW	Federation of Free Workers
FSPMI	Federasi Serikat Pekerja Metal Indonesia (Federation of Indonesian Metal Workers Union)
FTCs	Fixed-term Contracts

GDP	Gross Domestic Product
HR	Human Resource
IGP	Inclusive Growth Program
ILO	International Labour Organization
IMF	International Metalworkers' Federation
IT	Information Technology
IWTU	Institute for Workers and Trade Unions
JIT	Just-in-time
JLP	Japanese Lean Production
KSBSI	Confederation of Indonesia Prosperity Trade Union
KSPI	Konfederasi Serikat Pekerja Indonesia (Confederation of Indonesian Workers Union)
KSPSI	Konfederasi Serikat Pekerja Seluruh Indonesia (Confederation of All Indonesia Workers' Union)
LFPR	Labour Force Participation Rate
LFS	Labour Force Survey (Malaysia)
LMC	Labour Management Committees
LOC	Labour-only Contracting
LPA	Labour Protection Act
MEF	Malaysian Employers Federation
MOL	Ministry of Labour
MOLISA	Ministry of Labour, Invalids and Social Affairs
MOM	Ministry of Manpower
MOMT	Ministry of Manpower and Transmigration
MTUC	Malaysian Trade Union Congress
MYR	Malaysian Ringgit
NATU	National Association of Trade Unions
NEA	National Environment Agency
NGO	Non-government Organisations
NOC	Network Operations Center
NSO	National Statistical Office
NTUC	National Trades Union Congress
NUBE	National Union of Bank Employees
PKWT	Perjanjian Kerja Waktu Tertentu (fix-term contract)
PALSCON	Philippine Association of Local Service Contractors
PES	Public Employment Service
PHP	Philippine Peso
PLDT	Philippine Long Distance Telephone Company
PPP	Purchasing Power Parity
PrEAs	Private Employment Agencies

PRPA	Private Recruitment and Placement Agencies
PWM	Progressive Wage Model
SBSI	Serikat Buruh Sejahtera Indonesia (Indonesian Prosperous Workers' Union)
SEBA	Sole and Exclusive Bargaining Agent
SERC	State Enterprise Workers' Relations Confederation
SNEF	Singapore National Employers' Federation
TAW/TWA	Temporary Agency Work/Temporary Work Agency
TAWrs	Temporary Agency Workers
TCC	Tripartite Cluster for Cleaners
TEAM	Thai Electrical Appliances, Electronic, Automobile and Metalworkers
THB	Thai Baht
TLSC	Thai Labour Solidarity Committee
TOT	Telephone Organization of Thailand
TQC	Total Quality Control
TriCom	Tripartite Committee
TW	Team Work
UCCW	Unit for Contract and Casual Workers
UECI	Union of Employees in the Construction Industry
UK	United Kingdom
UNICEF	United Nations Children's Fund
UNI-MLC	Union Network International-Malaysia Labour Centre
UNIVEN	Association of Telecommunication and Multimedia Vendors Malaysia
US / USA	United States of America
USD	US Dollar
SGD	Singapore Dollar
VCCI	Vietnamese Chamber of Commerce and Industry
VGCL	Viet Nam General Confederation of Labour
VND	Vietnamese Dong
WDA	Workforce Development Agency
WICA	Work Injury Compensation Act

Executive summary

Non-standard forms of employment are on the rise in many countries, including countries in the Association of Southeast Asian Nations (ASEAN) region. This is one key finding of our study involving non-standard employment in formal enterprises in six ASEAN countries, namely, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Viet Nam. The need for numerical flexibility as a way to reduce the cost of longer-term employment is the main driver behind the decision of companies to use non-standard forms of employment. The demand for further flexibilisation of the workplace comes with the need for an adaptable and disposable workforce.

In the six study countries, non-standard employment is most often characterised by the following features: fixed or short-duration employment contract (or non-permanent employment tenure); lower wages; limited or absence of social security benefits (e.g., sick pay, pension, etc.); work at multiple worksites; low-skill (or in some cases medium-skill) job requirement without career prospect; over-representation of women and young workers; and lack of organisation (unorganised or non-unionised). In short, non-standard employment — i.e., contract work, outsourced work, agency-supplied work, agency-hired work, labour contracting, seasonal work, project-based work, casual work, 'bogus' self-employment, etc. — is largely precarious work.

Our study yielded the following findings:

1. *There are a variety of definitions ascribed to non-standard employment in the six study countries, including those that create triangular employment relationships. The variety of terms used, some of which overlap and even bear contradictory meanings, makes it difficult to use a single term in comparing the forms and trends of non-standard employment among the study countries. For example, in Indonesia, contract workers are those workers that have direct employment contracts with the principal company or the user enterprise, while outsourced workers are those workers that have employment contracts with the outsourcing company. In the Philippines and Singapore, contract workers can also be outsourced workers or workers dispatched by manpower supplying agencies or contractors. Nonetheless, the various terms used to refer to non-standard employment bear the key features of non-standard employment as listed above. Moreover, types of non-standard employment involving triangular relations are present in all the study countries. In most of these countries, the practices of outsourcing and subcontracting often involve triangular employment relations.*

2. *We posit two stylised forms of legal and regulatory framework pertaining to non-standard employment, including those that involve triangular relations: one is what we call “relaxed” regulatory framework and the other “highly-regulated” framework.* The legal and regulatory framework on non-standard forms of employment that involve triangular relations in Indonesia, the Philippines and Viet Nam may arguably be classified as “highly-regulated”. On the other hand, in Malaysia and Singapore, the regulatory framework is arguably more “relaxed”. However, it is important to stress that in the case of Singapore, the various tripartite initiatives aimed at improving the working conditions of workers on term contracts may arguably bear the functional equivalent of a “highly-regulated” legal framework. Thailand may be a special case that could be situated between the “relaxed” typology and the “highly-regulated” typology.
3. *With the exception of Singapore, the incidence of non-standard work, including temporary agency work (or outsourced work or dispatched work), is high and on the uptrend in the study countries.* In Indonesia, it is estimated that 65% of all employed workers in formal enterprises in 2010 were non-standard workers. In Malaysia, the combined share to total employment of own-account workers, unpaid family workers, and employers, who are most likely operating informal enterprises and employing non-standard workers, suggests that, at the very least, nearly one in four of all employed persons in Malaysia were non-standard informal workers. In the Philippines, about one in three rank-and-file workers employed in formal enterprises in 2010 was a non-regular worker. However, when the total employed in the informal sector (i.e., the self-employed and unpaid family workers) is considered, nearly half (44.6%) of the total employed were engaged in informal sector in 2001–2006. In Thailand, informal employment accounted about 63% of all employment in 2012. Meanwhile, in terms of occupation, the share of informal employment among service workers and shop and market workers stood at 74% in 2010. In Viet Nam, more than one in three labour contracts across all enterprises were of one to three years’ term. The incidence is higher in the foreign direct investment (FDI) sector where over two in five labour contracts were of one to three years’ term.

Non-standard work, particularly temporary agency work (or outsourced work or dispatched work), is sensitive to the ebbs and flows of an economy. This is very evident in the case of Indonesia and the Philippines where a direct correlation is observed between variations in GDP and the incidence of non-standard work, especially temporary agency work (or outsourced work or dispatched work). In years of growth, the supply of and demand for agency workers increases and diminishes when the economy falters. This suggests

that economic growth does not always result in the reduction of the use of fixed-term or temporary work by employers, especially in a situation of consistently high or stagnant unemployment levels.

Triangular employment relationships created through the use of temporary agency work, dispatch work, labour outsourcing, etc., may exist at different layers of the contracting or subcontracting chain as user enterprises or service buyers can also be a contractor of the principal, or a subcontractor of the principal's contractor. To the extent that most workers in these types of employment relationship are in precarious working conditions, this suggests that the degree of precarity (or precarisation) gets higher as the contracting and subcontracting chain goes down the value chain.

4. *Employers in the study countries have mixed views about hiring short-term workers and outsourcing work but what is common is the desire to reduce the workforce.* They hire workers on short-term and non-regular contracts or through third-party labour and manpower suppliers or outsourcing companies for a variety of reasons: variability of demand, reduction of workforce and concentration of resources on core business. Nonetheless, what is common among employers is their desire to reduce their workforce as the main motivation to outsource.

Does outsourcing lead to lesser costs? Although employers point to cost-savings, particularly in terms of reducing the workforce, among their main motivations to outsource, this practice *does not always* lead to lesser costs. This is revealed in the survey conducted by the Malaysian Employers Federation (MEF) among employers in Malaysia.

5. *Trade unions in the study countries utilise a variety of strategies to address the representational and protection needs of non-standard workers.* In countries where union multiplicity is a distinct feature of unionisation, such as Indonesia, Thailand, the Philippines and Malaysia, a higher incidence and broader spread across sectors and occupations of agency work, outsourced work or dispatched work are observed despite an apparently "highly-regulated" legal framework on these types of work in some of these countries. Regardless of whether union density is high or marginal, trade unions in the study countries have been innovating different structures of representation and undertaking various initiatives to narrow, if not close the representation and protection gap among non-standard workers. There are also union initiatives aimed at arresting the spread of non-standard employment.

An examination of the strategies of trade unions that address representation of non-standard workers in formal enterprises in the study countries (with exception of Viet Nam) points towards Regalia's "specialisation of protection/reconfiguration of representation" typology (2006). This means that among the trade unions included in the study, there is both a high level of awareness of the diverse interests of different categories of workers, particularly non-standard workers, and a high level of willingness to innovate representation models for non-standard workers, including those who are in triangular employment relations.

In Indonesia, the inter-union collaboration between the Federation of Indonesian Metal Workers (Federasi Serikat Pekerja Metal Indonesia, or FSPMI) and the union Lomenik which is affiliated to the Indonesian Prosperous Workers' Union (Serikat Buruh Sejahtera Indonesia, or SBSI) which started in 2001 resulted in the organisation of thousands of non-standard workers in the export processing zones in Batam. In 2012, the massive protests organised by the Confederation of Indonesian Workers Union (Konfederasi Serikat Pekerja Indonesia, or KSPI) and FSPMI in the metals industry that called for the regularisation of contract workers, increase in the minimum wage, and elimination of outsourcing, forced companies to regularise 40,000 fixed-term workers. In Malaysia, the Union Network International-Malaysia Labour Centre (UNI-MLC) has been organising in the services sector where many workers are in various forms of non-standard employment. Outsourced or agency-hired workers can individually become members of UNI-MLC. At DiGi Telecommunications, UNI-MLC established a Subcommittee of Outsourced Workers to represent about 450 outsourced workers from two outsourcing companies.

In the Philippines, the National Union of Bank Employees (NUBE) focuses on preserving regular jobs within the banks, preventing those jobs from being transferred to third parties. At the enterprise level, unions negotiate for provisions in the collective bargaining agreement (CBA) that would help safeguard members' jobs. Many of the CBAs of NUBE's local unions require management's consultation with the union in case the management "decides to outsource or hire contract employees" as shared by Jose Umali, the National President of NUBE. Some CBAs limit the number of contract employees or the duration of their employment. In Singapore, the National Trades Union Congress (NTUC) established the Unit for Contract and Casual Workers (UCCW) in 2006 to represent low-wage workers who are at the lower end of the outsourcing business. NTUC also initiated the formation of the Tripartite Cluster for Cleaners (TCC) in early 2012 to address the stagnating wages of contract cleaners. Through the TCC, UCCW-NTUC pushed

for the adoption of a Progressive Wage Model (PWM) in the cleaning industry, which provides a career ladder for three groups of cleaners so that wages of cleaners increase as they scale up through up-skilling. The NTUC also launched the tripartite Best Sourcing Initiative (BSI).

In Thailand, trade unions are also organising subcontracted workers. One example is the Auto Subcontract Workers' Union at the Ford/Mazda factory in the Rayong Province. Through collective bargaining, this union seeks to get permanent status for subcontracted workers after a year of subcontract work. Since its establishment at the Ford/Mazda plant, the union was able to narrow the wage gap between permanent and subcontracted workers and improve the benefits of subcontracted workers. Also, the union has been able to successfully negotiate permanent status for some of its members. In the public sector, the State Enterprise Workers' Relations Confederation of Thailand (SERC) employs a twin-strategy that involves first, the negotiation with management of the proportion of subcontracted workers that can be hired, and secondly, the regularisation of these subcontracted workers. This strategy was used at the Thai Post, CAT Telecom and the Telephone Organization of Thailand (TOT) beginning 2008. By 2015, SERC expects that all the subcontracted workers previously hired in these companies will be full-time or permanent workers.

Balancing employers' need for flexibility and workers' security is a tough challenge. Providing a clear and coherent regulatory framework on the use of non-standard employment that specifies boundaries and limitations where such type of employment can be used is one attempt to address this difficult balance. Macroeconomic policies addressing slow job growth barriers are also important. This may include programmes that aim to boost job creation, especially for young people, provide tax cut incentives for business that hire long-term or regular workers, and others.

Addressing the rise of non-standard employment requires a multi-dimensional approach or a mix of strategies. Some of these strategies include:

- Organising subcontract, outsourced and fixed-term workers using various structures and modalities (trade union of agency or subcontracted workers, subcommittee of agency or subcontracted workers, association of agency or subcontracted workers, etc.);
- Extending the coverage of collective bargaining to include non-standard workers;

- Bargaining for limitation on the hiring of non-standard workers;
- Bargaining for the regularisation of non-regular workers;
- Use of multi-employer bargaining strategies;
- Forging national framework agreements with the government which is the single biggest employer of non-standard workers; and
- Social dialogue through tripartite structures (e.g., Singapore's Best Sourcing Initiative, Tripartite Cluster for Cleaners, and Progressive Wage Model for low-wage workers)

Pushing for legislations that aim at closing or narrowing the protection gap in labour laws for non-standard workers are also key in addressing the need for security of non-standard workers. One good example is the provision in Thailand's Labour Protection Act 2008 that mandates fixed-term or subcontracted workers to receive the same pay and benefits as permanent workers when they do the same job. The adoption of a minimum wage for all workers is also an effective policy instrument. Thailand has recently adopted one minimum wage all over the country. Malaysia has also recently adopted two minimum wage rates, one for Peninsular Malaysia and another for Sabah and Sarawak. Additionally, the concept of a universal income floor or basic income (or "citizen's income") deserves serious study and consideration. Finally, since many non-standard workers are outside the coverage of social security, universalising the coverage of social security and healthcare is another important policy agenda. Again, other countries in ASEAN may draw valuable lessons and insights from Thailand's universal healthcare programme, which is considered among the most successful healthcare programmes in the world.

Introduction

The quest for competitiveness in the context of rapid globalisation has further expanded and deepened the adoption by businesses of lean and mean flexible production systems and a flexible workforce. In this regard, the common trajectory of changes in work patterns and employment in the countries comprising the Association of Southeast Asian Nations (ASEAN) is towards increasing flexibility or non-standardisation.

How we define non-standard employment today is exactly the opposite of the Fordist model of standard employment that peaked in the 1950s. More often, non-standard employment is characterised by fixed or short-duration employment contract (or non-permanent employment tenure), low wages, limited or absence of social security benefits, work at multiple worksites, low-skill (or in some cases medium-skill) job requirement without career prospect, over-representation of women and young workers, and lack of organisation or unionisation. In short, non-standard employment (i.e., contract work, outsourced work, agency-supplied work, agency-hired work, labour contracting, seasonal work, project-based work, casual work, 'bogus' self-employment, etc.) is largely precarious work, as underscored in the country chapters in this volume.

It is important to note however that the incidence or spread of non-standard forms of work or employment varies across countries in the region in response to local conditions. In this report, we identified several of these conditions: the level or trend of economic growth as measured by growth in gross domestic product; labour market conditions, particularly unemployment levels; the existing or absence of a regulatory framework; the existing industrial relations system (i.e., management-labour relations; mechanisms and extent of social dialogue and tripartism); and the relative influence of trade unions at the enterprise, industry and national levels.

Where availability of data permits, these factors are analysed in comparing the types of and the general trends in the growth of non-standard employment, particularly temporary agency work (TAW) in six ASEAN countries, namely, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Viet Nam. Also, the report looks into the perspectives of the social partners — trade unions, employers' groups and the government — on the role of agency, outsourced or contract work in the labour market. How temporary agencies, outsourcing agents and companies and manpower labour suppliers operate in some of the study countries is also discussed. Finally, this report highlights several strategies and actions taken by trade unions and governments in the six study countries that are aimed at regulating as well as arresting the spread of precarious non-standard forms of employment.

Recognising the expanded definition of informal economy which includes wage employment in non-standard jobs (e.g., casual wage workers), our report however does not include forms of employment in certain segments of this sector, such as own-account work; work in micro and small informal enterprises; unpaid family work; industrial homework; and domestic work. Moreover, while non-standard work is likewise widespread and on the uptrend in the public sector, our focus is mainly on non-standard work, particularly TAW, in the private sector. And although migrant or cross-border labour is a distinct feature of TAW in Malaysia, Singapore and increasingly in Thailand, this type of work is not covered in this report as this important issue deserves a separate study on its own.

It is to be noted that the quality and reliability of data on non-standard forms of employment vary among the six study countries. In general, there is dearth of existing official data on the various forms of non-standard employment in the countries studied. Often, available data is not disaggregated making it difficult to describe specific forms of non-standard employment and analyse trends.

This report is divided into eight chapters. Chapter 1 traces and analyses the changing patterns of work from the Fordist model of standard work to the contemporary concept of flexible non-standard work. Chapters 2, 3, 4, 5, 6 and 7 comprise the study countries, namely, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Viet Nam, respectively. In these chapters, the economic and labour market landscapes of these countries and how they relate to trends in non-standard employment are discussed and analysed. The definitions and various types of non-standard work or employment — in this volume, “work” and “employment” are used interchangeably — as well as the legal framework that deals with this type of work in each of the country chapters are also provided. Where data are available, some of the country chapters outline the operations of manpower or labour supplying agencies. Further, Chapters 2 to 7 highlight the various actions and strategies taken by trade unions in their attempt to accord protection to precarious non-standard workers in formal enterprises and at the same time contain the spread of flexible non-standard employment.

Finally, Chapter 8 integrates and summarises the previous chapters by providing some generalised lessons and insights that relate to the expansion of, albeit in varying degrees, and efforts to regulate the various forms of precarious non-standard employment in the study countries. This chapter also integrates the various strategies and actions undertaken by trade unions in the study countries that address the negative impact of precarious non-standard work. This last chapter likewise lists some strategies that unions may pursue to arrest the spread of precarious work and offers policy-oriented recommendations that may accord further protection to non-standard precarious workers.



FROM STANDARD TO NON-STANDARD EMPLOYMENT: THE CHANGING PATTERNS OF WORK

Melisa R. Serrano

What we call today standard employment, regular full-time employment or work refers to the type of employment or work that emanated from the Fordist model of production developed in the early 1900s in America by Henry Ford, the founder of the Ford Motor Company. The Fordist model of production later spread around the world, peaking in the 1950s. As a production and economic system, Fordism is characterised by mass production and mass consumption. Its key elements are the fragmentation and simplification of work tasks; the adoption of linear production and a moving assembly line (i.e., the factory system); and the use of standardised parts, in order to produce a high volume of low-quality products. Fordism became synonymous with standardisation: “a standard product produced by standard machinery using standardised methods and standardised human labour for a standard working day” (Doray, 1988; cited in Edgell, 2012: 96). Moreover, Fordism, though initially anti-union, began to embrace in the 1940s a more pluralistic managerial ideology, which recognised the legitimate role of trade unions at the workplace. This came however after many years of bitter struggle for union recognition by Ford workers in the United States of America (US) and the United Kingdom (UK).

Thus, under Fordism, the standardisation of work resulted in full-time permanent and unionised employment, especially of male ‘breadwinner’ workers. Edgell (2012) lists the key features of work or employment under the Fordist production system: job security, expectations of rising living standards through high wages, workplace participation of workers, the presence of strong trade unions, free collective bargaining, and a strong welfare state (i.e., welfare benefits provided by the state). These key features of work under Fordism basically sum up how we conceptualise standard employment today: “Work in the form of full-time employment involving a contract that typically includes regular pay for a specified number of hours and a range of benefits, notably sick pay and a pension” (ibid: 246). We must be quick to add that this type of work is done on the employer’s premises. In short, our concept of standard paid work is predicated on the standard work pattern that emerged with the rise of industrial capitalism towards the end of the eighteenth century and reached its fullest development under Fordism.

After peaking in the 1950s, Fordism went through a crisis of profitability and began to decline in the 1970s. Its crisis of profitability was the result of a combination of factors, such as the increasing cost of production in the 1970s, especially oil, the growing competition from Japan and from other lower-wage production in industrialising countries, heightened worker militancy and increasing customer demand for more varied high-quality products.

With the decline of Fordism came the rise of other production systems, notably the Japanese lean production system (JLP) or ‘Toyotism’ pioneered by Ohno Taiichi, Toyota’s production-control expert, who devised the just-in-time system (kanban)

of manufacture. Toyotism was thought to address the productivity and profitability crisis of Fordism. It is anchored on three key components, namely, just-in-time production (JIT), total quality control (TQC) and team work (TW).¹ JIT involves the supply of materials and parts for the final assembly exactly when they are needed thus reducing the size of buffer stocks.

Flexibility is at the core of JIT in terms of product flexibility or increased variety of models that are produced, functional flexibility or increased range of tasks performed, and numerical flexibility or increased variations in the supply of workers to particular tasks (Edgell, 2012: 104-105). Toyotism became dominant in Japan, the US, Europe and other developed capitalist countries in the latter part of the twentieth century.

Despite the focus on multi-skilling of workers, flexibility and variety of high quality products, it has been argued that Toyotism is not a new production system; in fact it is considered neo-Fordist in that it only modified some of the key elements of Fordism (Table 1).

Table 1: Key features of a neo-Fordist interpretation of industrial JLP or Toyotism

1.	Qualified Taylorised* work tasks and limited job enlargement and rotation
2.	Intensified work on a modified assembly line organised into teams with limited autonomy
3.	Partial de-standardisation of parts and an increasingly limited range of higher-quality products

*Fragmentation and simplification of tasks.

Source: Reproduced from Edgell (2012: 112), Table 5.4.

As it focuses on flexibility, the recruitment of temporary workers, who are more easily hired and fired, is a feature of Toyotism. In fact, there is a labour dimension in the successful transfer of Toyotism to the West and elsewhere. Citing several studies, Edgell points to the following (2012: 112–113):

- a clear preference for rural, non-union areas rather than urban unionised areas for locating transplants;
- the adoption of a lengthy and highly selective recruitment process to screen out those who do not express the required attitudinal and behavioural attributes;
- those hired are often put on temporary contracts on a trial basis with a provision of a permanent contract if they conform to company expectations; and

¹ For a more detailed discussion of JIT, TQC and TW, see Edgell, Stephen, (2012), *The Sociology of Work: Continuity and Change in Paid and Unpaid Work*, 2nd edition. London: Sage Publications Ltd.

- JLP plants favour a compliant workforce that lacks independent trade union representation.

In fact, Toyotism came to be branded as a 'lean and mean' production system because of its focus on work intensification, mandatory overtime, fragmented and simplified work standards with limited job rotation of multiple tasks, fast-paced assembly line, and a divided workforce and diminished role for independent trade unions.

Flexible workplace, flexible workforce

The decline of Fordism and the rise of Toyotism accompanied the move away from the standard model of permanent full-time work and towards the growth of non-standard work or numerical flexibility. The emergence of lean and mean production methods was accompanied by the widespread practice of customising, subcontracting, outsourcing, offshoring and downsizing, all of which privilege flexibility. In short, the increasing flexibilisation of the workplace went hand in hand with the increasing flexibilisation of the workforce. This is what has been referred to as the "destandardisation (of work) thesis" where flexible production is complemented by flexible labour.

Our concept of non-standard paid work — sometimes referred to as contingent work, atypical work, just-in-time labour, or at its worst state precarious work — is thus predicated on the concept of standard paid work that was the norm during the Fordist era. In this regard, conceptions of non-standard work or employment include the following: part-time work, temporary or fixed-term employment, and spurious forms of (or disguised) self-employment. Edgell (2012: 146) provides the key dimensions of standard and non-standard work or employment in Table 2.

Table 2: Key dimensions of standard and non-standard work or employment models

Dimensions	Standard work	Non-standard work
Contractual	Highly regulated* and collectively negotiated	Deregulated and individually negotiated
Spatial	Spatially concentrated, specialist site separate from home	Spatially variable, multiple sites
Temporal	Full-time, permanent	Variable time, impermanent
Gender system	Male breadwinner/female houseworker	Dual earner/variable houseworker

*Regulations covering hours, pay, redundancy, health, safety and benefits, such as pensions, holiday and sick pay, etc.
Source: Reproduced from Edgell (2012: 146), Table 7.1.

Based on how non-standard work is characterised in Table 2, forms of non-standard paid employment would thus include part-time work, temporary work, casual work, project-based work, seasonal work, agency work, (disguised) self-employment and any other variants of these types of work.

Similar to standard work, there is also polarisation in non-standard work, particularly in the services sector. This polarisation is characterised by the co-existence of a large number of insecure (i.e., limited duration), low-skilled and low-paid routine workers on one end, and a small number of high-skilled and highly paid non-routine workers on the other. For the first group of workers, access to health and retirement benefits is most often lacking or at best very minimal. They also have less opportunity for training and therefore have no career prospect. In this regard, the limited duration low-skilled low-pay pole of non-standard work is also referred to as precarious work. According to International Labour Organization (2011: 5):

[Precarious work] is usually defined by uncertainty as to the duration of employment, multiple possible employers or a disguised or ambiguous employment relationship, a lack of access to social protection and benefits usually associated with employment, low pay, and substantial legal and practical obstacles to joining a trade union and bargaining collectively.

While there is a breadth of possibilities in defining precarious non-standard work, the ILO notes that majority of workers who are the most adversely affected by precarious work arrangements are exposed to the conditions listed in Table 3.

Table 3: Employment conditions of workers most adversely affected by non-standard precarious work

Dimensions	Characteristics
Contractual arrangements	Limited duration (fixed-term, short term, temporary, seasonal, day-labour and casual labour)
Nature of employment relationship	Triangular and disguised employment relationships, 'bogus' self-employment, subcontracting and agency contracts
Conditions	Low wage, poor protection from termination of employment, lack of access to social protection and benefits usually associated with full-time standard employment, lack of or limited access of workers to exercise their rights at work

Source: Extracted from ILO (2011: 7).

Employers however point to some of the advantages of non-standard work or employment. Firstly, non-standard employment offers substantial continuity of employment to temporary workers, albeit in different workplaces and for different employers. Secondly, temporary contracts can sometimes serve as a stepping-stone to permanent work. Finally, employers contend that highly educated temporary workers have greater chances of receiving training and job tenure in non-standard work or employment.

The process of work destandardisation is accelerating, albeit unevenly across countries, as indicated by the increasing share of the labour force engaged in non-standard work, as discussed later in this volume. Moreover, the labour force participation of women has been on the uptrend in many countries and women tend to be over-represented in non-standard work, especially part-time work.

What accounts for the expansion of non-standard work? Accordingly, there are several factors that are often associated with globalisation. Firstly, the 1980s saw the decline of capital-intensive manufacturing (or deindustrialisation) and the growth of less capital-requiring labour-intensive services. Secondly, as competition intensified, firms resorted to organisational restructuring to seek numerical flexibility (i.e., hiring temporary and contractual workers) and reduce costs. Thirdly, technological innovations not only enable firms to reduce costs but to find market niches in other locations where regulation are more relaxed and labour is cheaper. Fourth, many governments adopted changes in the regulatory framework (i.e., deregulation of labour markets by modifying or suspending labour legislation) that enabled employers to hire and fire workers more easily in the name of efficiency. Fifth, there has been an increasing trend of feminisation of the labour force, although in general women continue to be over-represented in lower paid and low-quality non-standard work and under-represented at the top of the standard jobs hierarchy. Sixth, as a result of the dominance of the free market logic of neoliberal globalisation, capital has been strengthened and labour weakened. According to Castells, "At its core, capital is global. As a rule, labour is local" (2001: 506). This implies that flexibility is mainly on the employers' terms. This is clearly manifested in the establishment of export processing zones (EPZs) in less developed countries. In these EPZs, employers enjoy tax breaks, cheap and non-unionised labour, flexible and mostly female labour, and minimal health, safety and environmental regulations.

Indeed, the expansion of non-standard work or employment is driven in large part by demands for flexibility of employers in the context of deregulated labour markets and intense market competition. It has been used as a cost-effective way of dealing with variable demand. As Debrah and Smith put it:

Faced with the imperative of globalisation, management constantly seek greater wage flexibility, functional and numerical flexibility. Thus, the competitive pressures associated with economic globalisation induce shifts in workforce composition, labour demand, and the inter-temporal deployment of workers. (2002: 9)

In terms of worker organisation, the destandardisation of work resulted in the “individualisation of labour in the labour process” (Castells, 2001: 282), so that increasingly workers now have to negotiate the terms and conditions of their employment individually rather than collectively.

Key features of non-standard employment in the service sector

Broadly speaking, there are two types of service work. One is what Leidner (1993) calls interactive service work or emotional labour which involves communicating with service recipients, face-to-face or voice-to-voice. The other type, called specialist service work or knowledge labour, requires the extensive use of knowledge-based high skills. Interactive service workers are most often low-skilled and low-paid routine workers. They comprise the large number of workers in the service sector. Specialist service workers are the highly skilled and highly paid non-routine service workers. They account for a small number of workers in the service sector. This section is focused on the interactive service work.

Edgell (2012) argues that the provision of services in self-service retail shops and fast-food restaurants is essentially based on the production or assembly-line principle, but in this case it is the customer that moves around rather than the assembly line. As tasks were fragmented, simplified and routinised, a more detailed division of labour accompanied the expansion of self-service retailing as well as fast-food restaurants. In supermarkets for example, the workforce is often comprised of shelf-stockers, meat cutters, meat wrappers, check-out clerks and, in some instances, particularly in the less developed countries, baggers. These workers perform routine work requiring low skill. In this regard, interactive service work as we knew today is considered neo-Fordist, meaning, it is not dramatically different from the classical Fordist model described above but some of its key elements have been modified (see Table 4).

Table 4: Key features of interactive service neo-Fordism

1.	Qualified Taylorised work tasks and organisations (e.g., limited job rotation, team work)
2.	Assembly line process
3.	Limited destandardisation of parts, slightly wider range of customised products, impersonal service

Source: Reproduced from Edgell (2012: 134), Table 6.3.

McDonald's is often used as the example of a Fordist (mass production-mass consumption) approach to interactive service provision. In fact, the Fordist approach in interactive service work was pioneered by McDonald's in the late 1950s and later on emulated by other food and non-food service organisations. The Fordist features of 'McDonaldism' are the following: Taylorised (fragmented and simplified) work tasks; use of single purpose machines and conveyer belt assembly; use of standardised parts and the speedy delivery of a high volume of inexpensive low-quality products; standardisation of what workers say and how they appear to customers via scripts and appearance codes; and the presence of pressure from customers who expect to be served quickly (Edgell, 2012: 126). Moreover, the assembly-line feature of McDonald's operations is mirrored in its operations manual, which describes in detail how workers should perform every task correctly and how managers should organise a fast-food restaurant.

The success of 'McDonaldism' as an approach in the provision of services resulted in the growth of low-skilled, low-priced, repetitive, dead-end jobs, which Ritzer labels 'McJobs' (Ritzer, 1998: 59; cited in Edgell, 2012: 127). The fragmentation and simplification of tasks and the 'scripting' of interactions in service work deepened the deskilling and dehumanization of interactive service workers. Furthermore, recent technological advances in retail automation (e.g., bar code scanning) have reduced staffing level, especially full-time workers, further deskilled workers, and reduced training, pay and job opportunities. A general climate of union avoidance also encompasses the interactive service sector.

Today, production, organisational and worker flexibility is the key feature of work or employment across all sectors of the economy, including the services sector. Also, there is a marked division of labour between a *core labour force* of highly educated workers and a *disposable labour force* whose work can be automated and who can be "hired/fired/offshored depending upon market demand and labour costs" (Edgell, 2012: 139). Thus, like in industry or production, non-standard paid work or employment in the service sector includes part-time work, temporary work, casual work, contractual work, project-based work, seasonal work, agency work, and (disguised) self-employment. What is common in all these types of non-standard

work is the limited duration of the work involved, which can range from casual work lasting for a few hours to contract work lasting a few years. Also, in general, non-standard workers receive lower pay; have no holiday or sick pay (due to eligibility rules on time in employment); perform repetitive work tasks requiring low skill; have inflexible work time schedules; have no access to health and retirement benefits, and have less access to training. In short, majority of interactive service workers are in precarious work arrangements as listed in Table 3.

The rise of temporary agency work

The International Confederation of Private Employment Agencies (CIETT) reports that in 2011 the global agency work industry employed 46 million people and earned of EUR 259 billion (USD 356 billion) in total annual sales revenues (CIETT, 2013: 7). In 2011, this global industry comprised 140,000 private employment agencies and 179,000 branches worldwide, employing 863,000 internal staff. The US has the largest market share of the industry, with 23% of total annual sales, followed by Japan with 17% of the global agency work market, and the UK at 11%. Europe, however, is the leading regional entity by total annual sales revenues, accounting for 41% of global total annual sales revenues.

The Asia-Pacific region accounts for 61% of all private employment agencies (PrEAs). Europe represents 24% of all PrEAs, and North America 11%. China, Japan and the US are the top three countries in terms of number of PrEAs, collectively accounting for 67% of all agencies worldwide.

The CIETT provides a general profile of agency workers (ibid):

- On average, agency workers work around half the number of hours as full-time permanent employees;
- Most agency work assignments are more than a month long;
- 57% of agency workers in Europe are aged below 30;
- 77% agency workers have at most finished their secondary education; and
- Agency workers are employed in a wide range of sectors represented most strongly in services and manufacturing.

Defining temporary agency work

Agency work involves the supply to enterprises of workers who remain employees of the agency that dispatch them while performing work for other enterprises. Agency work is also referred to as contract work, dispatch work, personnel leasing and labour hire. Temporary work agencies are also referred to as labour brokers, labour suppliers or contractors (IndustriAll, 2012: 5).

In defining temporary agency work, the ILO (2009: 1) refers to the following:

- *Temporary agency employment* — Employment where the worker is employed by the temporary work agency and then hired out to perform work at (and under the supervision of) the user company. There is no employment relationship between the temporary agency worker and the user company, although there could be legal obligations of the user company towards the temporary agency worker, especially with respect to health and safety. A labour contract may be of limited or unspecified duration with no guarantee of continuation. The employment is often called “temporary work”, “temping” or “agency work”. The hiring company pays fees to the agency, and the agency pays the wages (even if the hiring company has not yet paid the agency). Flexibility for both worker and employer is a key feature of agency work.
- *Private employment agency* — Any enterprise or person, independent of the public authorities, which provides one or more of the following labour market functions: (a) services for matching offers of and applications for employment; (b) services for employing workers with a view to making them available to a third party (the “user enterprise”); and (c) other services relating to job seeking, such as the provision of information, that do not aim to match specific employment offers and applications. Agencies cannot charge workers for finding work.
- *Employment placement agencies* interview jobseekers and try to match their qualifications and skills to those required by employers for specific job openings.
- *Temporary help agencies* provide temporary employees to user enterprises to cover employee absences, skill shortages and varying seasonal workloads. Workers are employed and paid by the agency, but are contracted out to a client for either a prearranged fee or an agreed hourly wage. Some companies choose to use temporary workers on a long-term basis rather than employ permanent staff.
- *Temporary agency workers* — Workers with either a contract for service or a contract of employment with the agency who finds them work. Such workers may try out different kinds of work in this manner, as a stepping stone to the job they want; as a way of entering or re-entering the job market or of working more flexibly to suit their circumstances; and to move jobs easily and at short notice. However, they may have less control over their work, experience more pressure, have to take on shift work, and have fewer rights

than regular staff colleagues. The user enterprise has the flexibility to stop temporary work, and the agency may be liable for unfair dismissal or redundancy pay.

The private employment agency industry, which ILO defines as a sector in its own right, employs workers with varying skill and educational levels for placement in user workplaces across sectors of the economy. The temporary agency workers (TAWrs) tend to be younger (below the age of 30), with women and minority groups (or migrants) having a larger share of the total workforce, particularly at the low-end of the TAW labour market. Many TAWrs work in entry-level functions requiring low skill. Nonetheless, many TAWrs are also found in skilled occupations with high levels of training and skills, such as nursing, specialist trades in construction and others (ILO, 2009: 2).

The above definitions and characteristics of TAW fit into Edgell's (2012) characterisation of non-standard work as listed in Table 2. Contractually, TAW is deregulated and its terms and conditions are individually negotiated. Spatially, TAWrs often work in various workplaces, sometimes even within their contract duration. Temporally, their work is impermanent or irregular. TAWrs may do casual work lasting for a few hours to contract work lasting a few years. Lastly, there is a gender dimension to TAW. Women TAWrs tend to be over-represented at the low-end of the labour market.

The ILO recognises the role of PrEAs in the better functioning of rapidly growing and flexible labour markets.

Temporary work agencies are intermediaries in modern labour markets that allow enterprises to have more flexibility to increase or decrease their workforces, while ensuring for the workers sufficient security in terms of job opportunities and employment standards, including pay, working time and training. While they have long been recognised as complementing public employment services, they can also help to improve working conditions.

[...] Temporary agency work can be an effective stepping-stone for new entrants into the labour market and hence contribute to increased job creation. (ILO: 2009: 7)

In addition, the ILO notes that as a "broker of flexibility", PrEAs perform labour market functions both at the micro-level, meeting the preferred needs of individuals and enterprises; and at the macro-level, managing economic uncertainty and risk across the labour market (Peck and Theodore, 2007: 171–192; cited in ILO, 2009: 26).

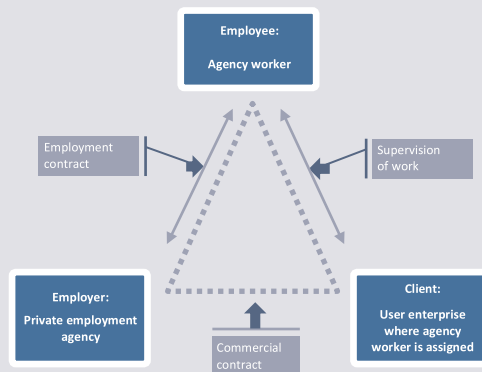
The triangular employment relationship in agency work

As mentioned above, PrEAs are considered as labour market intermediaries. Their core business deals with matching labour demand and supply that takes into consideration, on the one hand, the need of user company for workforce flexibility, and on the other hand, the need of workers for temporary employment. As PrEAs supply workers to many if not all sectors of the economy, their fortunes are thus bound by these industries.

At the core of PrEAs is a mediated employment relationship as these agencies provide a sense of “disposability” for both user companies and workers. As the ILO (2009: 26) puts it, “agencies bring user companies and workers together during economic upturns and provide a means of separation during the economic downturns.”

The intermediary role of PrEAs lends to the existence of a triangular relationship in the provision of agency work (Figure 1). An employment relationship exists between the agency worker (as employee) and the PrEA (as employer) and is governed by an employment contract. A commercial or business relationship exists between the PrEA and the user company (as client) where the agency worker is assigned. This relationship is governed by a commercial contract. The relationship between the user company and the agency worker is one of work supervision, which is done by the former.

Figure 1: The triangular relationship between an agency, a worker and a user company



Source: Reproduced from ILO (2009: 27), Figure 4.1.

The triangular relationship in agency work implies that the fortunes of the three actors are intertwined, so that changes in the circumstances of one may have knock-on effects for either or both of the other two actors (ILO, 2009: 27). During economic slumps, the importance of this triangular employment relationship diminishes. As discussed in the succeeding chapters in this volume, there is a close correlation between GDP growth and the use of TAWrs, as has been the case in many industrialised countries during and in the aftermath of the 2008–2009 global financial crisis. In these countries, the ensuing drop in GDP has led to a contraction of the global PrEA industry, as TAWrs were the first to leave user companies. Analysts, however, point out that in times of economic recovery and boom TAWrs are also the first to be employed. While this last point may sound assuring, it is in effect the agency worker that bears the business risk of the cost of longer-term employment. Moreover, the existence of a triangular relationship in agency work effectively separates the worker from the company that actually controls his or her work. In this respect, the worker has no say about the pay and working conditions as well as no mechanism to negotiate improvements.

It is important to stress that the principal/user companies to which agency workers are dispatched or hired out are not only the companies in which agency workers are assigned. User companies can also be the contractors and/or subcontractors of the principal companies. In short, agency workers can be found in layers upon layers of the subcontracting chain resulting in the creation of more triangular employment relationships throughout the subcontracting chain. And the lower the agency worker is located in the subcontracting chain, the more precarious is his/her work.

ILO Convention 181 and temporary agency work

To balance companies' needs for flexibility (to expand or reduce their workforce) with workers' needs for employment stability, decent conditions of work and a safety net when they are unable to work, the ILO came up with Convention 181 which came into force in May 2000. Convention 181 sets the parameters for the regulation, placement and employment of workers by PrEAs.

Both the ILO Unemployment Convention from 1919 (No. 2) and the Employment Service Convention from 1948 (No. 88) uphold the principle of free placement services for workers and employers as a standard for employment services. Convention 181 basically retained this principle for jobseekers, but nevertheless allows governments to grant exceptions to this principle on clearly justifiable grounds. Article 7 states that (ILO, 2009: 2):

1. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.

2. In the interest of the workers concerned, and after consulting the most representative organisations of employers and workers, the competent authority may authorise exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies.
3. A Member which has authorised [such] exceptions shall, in its reports under article 22 of the Constitution of the International Labour Organization, provide information on such exceptions and give the reasons therefor.

In addition, Article 2(4a) of the Convention 181 allows governments to exclude PrEAs from operating in respect of certain categories of or branches of economic activity, subject to consultation with the most representative organisations of employers and workers. Such exclusion is allowed in cases where malpractice by private agencies has occurred. Articles 4, 5, 9 and 11 of the Convention guarantee agency-recruited workers fundamental rights at work (i.e., freedom of association, collective bargaining, equality of opportunity and treatment, and eliminating child labour). Moreover, Article 8 provides special protection for migrant workers, to wit:

A Member shall, after consulting the most representative organisations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations, which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses. (ILO, 2009: 8)

The Convention also promotes co-operation between the public employment service (PES) and PrEAs. Article 13 specifies that:

A Member shall, in accordance with national law and practice and after consulting the most representative organisations of employers and workers, formulate, establish and periodically review conditions to promote cooperation between the public employment service and private employment agencies. (ibid: 9)

The Convention nonetheless emphasises that “the public authorities ‘retain final authority’ for formulating labour market policy [and for] utilising or controlling the use of public funds earmarked for the implementation of that policy” (ibid).

Common views of global unions on temporary work agencies

On 11 June 2010, the Council of Global Unions (CGU), comprised of 11 international trade union organisations², came up with a list of fundamental principles on TWAs. These principles were arrived at in view of concerns and challenges posed by TWAs on workers with regular and permanent employment. One concern raised is how the triangular relationship between the worker, the user company and the temporary work agency that supplies the worker undermines labour and social protection. In this regard, a key challenge faced by unions is the effective realisation of the right of all workers to form or join trade unions and to bargain collectively. In the CGU meeting on 23–24 January 2012, the principles were amended.

The CGU raised concerns on the use of TWAs to: (1) replace direct permanent employment; (2) adversely change employment conditions, avoid social responsibilities and evade laws; (3) weaken trade unions, avoid collective bargaining or prevent union organising; and (4) exploit workers, particularly migrant workers. Box 1 lists the fundamental principles on TWAs drawn by the CGU in the light of these concerns and challenges.

Box 1: CGU fundamental principles on temporary work agencies

- The primary form of employment shall be permanent, open-ended and direct employment.
- Workers provided by temporary work agencies must be accorded equal treatment and opportunities, including equal pay for equal work, with regular and permanent employees with respect to terms and conditions of employment.
- Workers employed through temporary work agencies must have a recognised and enforceable written contract of employment, specifying their terms and conditions of employment.
- Where agencies are permitted to operate, they must be strictly regulated, including through licensing.
- Temporary work agencies must not be used to eliminate permanent and direct employment relationships; diminish the conditions under which work is performed; avoid collective bargaining relationships with trade unions; or effectively make it impossible for an agency worker to join a trade union.

² The 11 international trade unions organizations comprising the Council of Global Unions (CGU) are: Building and Woodworkers International (BWI), Education International (EI); International Arts and Entertainment Alliance (IAEA); International Federation of Journalists (IFJ); IndustriALL Global Union (IndustriALL); International Transport Workers' Federation (ITF), International Trade Union Confederation (ITUC); International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF); Public Services International (PSI); Trade Union Advisory Committee (TUAC) to the OECD; and UNI Global Union.

- Employers should consult trade unions before agency workers are used and negotiate over any effects that the use of these agency workers might have on regular employees, on working conditions or on the collective agreement.
- The use of temporary agencies should be restricted to cases of legitimate need. As a minimum, there should be defined limits on the use of agency workers, as well as restrictions on the duration of such employment.
- Workers provided by temporary work agencies must be guaranteed access to information on health and safety regulations in the workplace and be given the same equipment, induction and training as permanent workers.
- Adequate and continuous social protection for agency workers, including social security coverage, must be ensured by employers and government alike.
- Temporary work agencies must treat workers without discrimination on the basis of race, ethnic origin, colour, sex, sexual orientation, religion, political opinion, nationality, social origin, age, disability or any other form of discrimination. Appropriate regulatory frameworks (governmental, co-regulation or self-regulation) on private employment agencies should include and promote these principles, rights and obligations. These include the minimum standards outlined in ILO Convention No. 111.
- Given the general over-representation of women in agency employment and the disparity in wages between permanent and agency workers, particular attention must be given to ensure that the equal pay provisions of Convention No. 100 are applied, including equal pay for work of equal value.
- The ILO should play a much more active role in ensuring that temporary employment agencies respect basic labour standards, as well as in collecting data on abuses and best practices, while at the same time monitoring and analysing trends in employment in both the private and public employment agency sector. This research should focus on issues relating to the economic crisis and the Global Jobs Pact. The Global Unions should participate in this work.
- Workers supplied by temporary work agencies must never be used to replace striking workers or undermine industrial action.
- Temporary work agencies must not charge any fees to workers for dispatching them.
- The user company must be held liable for all financial and other obligations with respect to temporary agency workers should the agency fail to honour its responsibilities.

At the same time, the CGU also drew a set of principles of public policy with respect to TWA (Box 2).

Box 2: CGU principles of public policy with respect to temporary agency work

- Governments have the responsibility to protect the interests of society in stable employment relationships and to ensure the applicability of labour law — the branch of law developed to protect workers in both public and private sectors — in their unequal relationship with employers.
- Governments can limit or ban the use of temporary work agencies in order to protect these broader societal interests.
- Government must set strict regulations and licensing conditions if agencies are permitted to operate.
- Governments should consult trade unions on issues related to working and employment conditions of the agency workers, as well as on conditions of use of temporary agency work prior to making changes in the regulatory framework.
- The respective roles, obligations and rights of the workers, the temporary work agency and the company using the worker must be clarified when there is an employment relationship between a temporary work agency and a worker.
- Governments must take genuine and concrete measures such as changes in legislation to ensure that workers dispatched by temporary work agencies are able to effectively exercise their right to join or form trade unions. This includes the right to join a union with a collective bargaining relationship with the user company and be part of a bargaining unit comprising direct employees of the user company; and be covered by all collective bargaining agreements applying to the user company.
- Governments should strengthen labour inspection, including through providing adequate resources, in order to effectively apply labour law and regulations to employment via temporary work agencies.
- Governments should provide effective mechanisms to protect all workers from health and safety hazards and ensure health and safety conditions of temporary agency workers are the same as of permanent ones. Governments should introduce sanctions for user companies, public and private, not complying with health and safety requirements.

Source: Council of Global Unions (2012) 'Global Union Principles on Temporary Work Agencies', Sixth Annual Meeting, 23-24 January 2012, Nyon, Switzerland, p. 4.

Finally, in view of the specific problems faced by migrant workers dispatched through TWAs, the CGU proposed a set of guidelines (Box 3) to accord protection to these workers (Box 3).

Box 3: CGU Guidelines involving migrant workers dispatched by temporary work agencies

- Migrant workers should receive details of their living and working conditions in a language they understand before leaving their country of origin.
- Governments must take active measures to prevent human trafficking and the exploitation of migrant workers by labour intermediaries, both public and private, including temporary work agencies.
- Governments should ensure that immigration legislation governing migrant workers recruited through agencies does not conflict with labour laws by imposing restrictions on migrant workers' rights to join trade unions or bargain collectively.
- Workers should not be required to pay deposits, visa, transportation and hiring fees. In the case of agencies dispatching workers to other countries, the agencies should be required to repatriate workers in the event that their employment ends or the user company disappears.
- Workers must not be required to surrender their passports or other travel or identity documents.
- Temporary migrant workers should have full rights to legal redress in the country where they work.

Source: Council of Global Unions, (2012), "Global Union Principles on Temporary Work Agencies", Sixth Annual Meeting, 23–24 January 2012, Nyon, Switzerland, p. 5.

Conclusion

How we define precarious non-standard employment today is exactly the opposite of how we defined the Fordist model of standard employment. Precarious non-standard employment has the following characteristics: fixed or short duration employment contract (or non-permanent employment tenure); lower wages; limited or absence of social security benefits; work at multiple worksites; low-skill (or in some cases medium-skill) job requirement without career prospect; over-representation of women and young workers; and unorganised or non-unionised.

Increased market uncertainties in the context of rapid globalisation have further expanded and deepened the adoption of businesses of lean and mean flexible production systems and a flexible workforce. Flexibilising the workforce meant de-standardising employment across all sectors and industries and occupations. Today, flexible non-standard employment in its various forms and names — contract work, outsourced work, agency-supplied work, agency-hired work, labour contracting, seasonal work, project-based work, casual work, 'bogus' self-employment, etc. — is increasingly becoming a distinct feature of the labour markets of both developed and developing countries.

Agency work, which is one form of flexible non-standard employment that involves a triangular employment relationship, has in fact become a burgeoning and profitable global industry. According to CIETT, the global agency work industry employed 46 million people and earned of EUR 259 billion (USD 256 billion) in total annual sales revenues in 2011. The US, Japan and the UK dominate the global agency work market. With the Asia-Pacific region accounting for 61% of all private employment agencies (PrEAs) globally, it is no wonder that flexible non-standard employment is on the uptrend in countries in the ASEAN region.

The rise of flexible non-standard employment, particularly agency work, may have prompted the ILO to come up with Convention 181 in May 2000. This Convention sets the parameters for the regulation, placement and employment of workers by PrEAs and guarantees agency-recruited workers fundamental rights at work (i.e., freedom of association, collective bargaining, equality of opportunity and treatment, and elimination of child labour). Moreover, Convention 181 allows governments to define or limit the categories or branches of economic activity where PrEAs can operate. However, as the following chapters would show, workers on non-standard work contracts are in effect precarious workers as they lack security at work and social protection, have no career prospect, and are prevented from exercising their fundamental rights at work. While employers may need some level of flexibility to cope with market uncertainties, this should be balanced with workers' needs for employment stability, decent conditions of work, and a safety net.

The fundamental principles and the principles of public policy drawn by the CGU with respect to temporary agency work, as well as the guidelines on migrant workers dispatched through temporary agencies, set basic standards on which governments could work on to improve or incorporate in their existing legislations and regulations pertaining to non-standard employment, particularly temporary agency work. Trade unions could also seriously consider these principles and guidelines in crafting their strategies to arrest the spread of temporary agency work that undermines labour and social protection and the effective exercise of the right of workers to form or join unions and bargain collectively.

Bibliography

Castells, M. (2001). *The Rise of the Network Society*, 2nd edition. Oxford: Blackwell.

CIETT/International Confederation of Private Employment Agencies. (2013). *The Agency Work Industry around the World*. Brussels: CIETT. http://www.ciett.org/fileadmin/templates/eurociett/docs/stats/CiETT_Economic_Report_2011.pdf.

Council of Global Unions. (2010). "Global Union Principles on Temporary Work Agencies". <http://www.global-unions.org/statement-global-union-principles.html>.

Debrah, Y. and I. Smith. (eds). (2002). *Globalization, Employment and the Workplace: Diverse Impacts*. London, Routledge.

Edgell, S. (2012). *The Sociology of Work: Continuity and Change in Paid and Unpaid Work*, 2nd edition. London: Sage Publications Ltd.

IndustriALL Global Union. (2012). *The triangular trap: Unions take action against agency labour*. Geneva: IndustriALL Global Union.

International Labour Organization. (2009). *Private employment agencies, temporary agency workers and their contribution to the labour market*. Geneva: International Labour Organization. http://www.ciett.org/fileadmin/templates/ciETT/docs/Public_Affairs/ILO_C181_WPrEA_2009.pdf.

International Labour Organization. (2011). *Policies and Regulations to Combat Precarious Employment*. Geneva: International Labour Organization. http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/meetingdocument/wcms_164286.pdf.

Leidner, R. (1993). *Fast Food: Fast Talk: Service Work and the Routinization of Everyday Life*. Berkeley, CA: University of California Press.

Peck, J and N. Theodore. (2007). "Flexible recession: The temporary staffing industry and mediated work in the United States", *Cambridge Journal of Economics*, 31(2): 171–192.

Ritzer, G. (1998). *The McDonaldization Thesis: Explorations and Extensions*. London: Sage.



INDONESIA

Mary Leian C. Marasigan
Melisa R. Serrano

There is still no agreed definition of non-standard work in Indonesia, although it often refers to workers in the informal sector, those on fixed-term or short-term contracts, casuals, trainees and apprentices. In the formal labour market in both private and public sectors, fixed-term appears to be the dominant non-standard form of employment. In recent years, these jobs have increasingly become widespread yet also more controversial notably because it has been combined with outsourcing.

In Indonesia, outsourcing is a business practice that was legalised with the enactment of the Manpower Act in 2003, the country's labour law. Under this Act, there are two possible types of outsourcing: job outsourcing and labour supply (or manpower) outsourcing. While a legitimate business practice, trade unions, labour researchers and some employers have alleged that there are many violations of the law and regulations by both user companies, employment agencies and subcontractors, particularly if the outsourcing activity involves manpower or labour supply.

This chapter therefore looks into the practice of hiring fixed-term or contract workers with particular focus given to those hired under third-party outsourced employment arrangements. The aim is to provide a snapshot of what is currently happening on the ground from the perspective of the social partners, highlighting the impact and prospects of fixed-term hiring at the individual and the organisational level in Indonesia.

The data for this chapter are drawn from interviews with stakeholders and secondary literature. Largely, the interviews validate the results of previous studies about the precarious conditions of outsourced workers. Workers with regular status have higher pay and better benefits, followed by contract or fixed-term, and finally outsourced workers. Regular workers and contract workers share a common employer and their union is in a better position to raise the issue of regularisation for the contract workers. However, this is not the case for outsourced workers.

Economic growth and the labour market

Indonesia is one of the fastest-rising economies in Asia with bright prospects for recovery after having been badly hit by the Asian crisis in 1997–1998 and the global financial crisis in 2007 and 2008. According to the Asian Development Bank (2012) Indonesia is now a middle-income country, the 16th largest economy in the world, and the biggest economy in ASEAN. Gross national income per capita has risen from USD 2,200 in year 2000 to USD 3,563 in year 2012 and debt-to-GDP ratio went down from 62% in 2003 to 24% in 2012 (World Bank, 2013). Many areas in the country are rapidly becoming urban centres and peoples' incomes are on the rise (MGI, 2012).

Table 5 shows Indonesia's average annual growth from 2004–2012 to be 5.79%. Of industrial origin, transport and communication is the economic leader due largely to the impressive growth rate of the communication subsector. In 2008, this subsector grew 31%. The trade, hotel and restaurants sector grew an average of 8.7% each year from 2010 to 2012 while the finance, real estate and business services sector grew 6.6%. Growth rates in construction and manufacturing sectors were likewise noteworthy, though it was clear that services was the economic engine of the country for the period shown.

Table 5: Growth rate of Indonesia's GDP at 2000 constant prices by industrial origin, 2004–2012 (%)

Industry	2004	2005	2006	2007	2008	2009	2010	2011	2012
Agriculture, livestock, forestry and fishery	2.82	2.72	3.36	3.47	4.83	3.96	3.01	3.37	3.97
Mining and quarrying	(4.48)	3.2	1.7	1.93	0.71	4.47	3.86	1.39	1.49
Manufacturing Industry	6.38	4.6	4.59	4.67	3.66	2.21	4.74	6.14	5.73
Electricity, gas and water supply	5.3	6.3	5.76	10.33	10.93	14.29	5.33	4.82	6.40
Construction	7.49	7.54	8.34	8.53	7.55	7.07	6.95	6.65	7.5
Trade, hotel and restaurants	5.70	8.30	6.42	8.93	6.87	1.28	8.69	9.17	8.11
Transport and communication	13.38	12.76	14.23	14.04	16.57	15.85	13.41	10.70	9.98
<i>Communication</i>	<i>22.88</i>	<i>24.58</i>	<i>26.03</i>	<i>28.74</i>	<i>31.04</i>	<i>23.61</i>	<i>17.81</i>	<i>12.64</i>	<i>12.08</i>
Finance, real estate and business services	7.66	6.70	5.47	7.99	8.24	5.21	5.67	6.84	7.15
services	5.38	5.16	6.16	6.44	6.24	6.42	6.04	6.75	5.24
GDP	5.03	5.69	5.5	6.35	6.01	4.63	6.22	6.49	6.23

Source: BPS (Statistics Indonesia)

The GDP in terms of purchasing power parity (PPP) has increased by about 67% in less than a decade (2004–2012) from USD 5,399 in 2004 to USD 9,011 in 2012 (Table 6), although between 2006 and 2008, it went down around USD 3,300 to USD 3,800. That people are driving newer models of cars, as observed during the field visit in Jakarta, may be one reflection of the rising levels of incomes of many Indonesians.

Table 6: Indonesia GDP (PPP*), in current International US dollars, 2004–2011 (USD)

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012
GDP (PPP)	5,399	5,806	3,294	3,662	3,827	7,424	7,876	8,442	9,011

Note: *GDP (PPP) is the gross domestic product converted to international dollars using purchasing power parity rates. An international dollar has the same purchasing power over GDP as the US dollar has in the United States.

Source: The World Bank (2014). GDP per capita, PPP (current international \$). <http://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD>; accessed on 14 May 2014.

In 2012, the working-age population in Indonesia stood at 173.93 million (Table 7). Of this number, the economically active members were 118 million, with around 110 million employed and 9.41 million unemployed persons. It can be noted that the number of employed persons was increasing from 2004 to 2012. In contrast, between 2005 and 2012, the number of unemployed persons was decreasing. Previous to 2004, the economic growth ensuing from Indonesia's recovery from the financial crises in the late 1990s did not translate to as many jobs created, but since 2004 the situation has become increasingly positive (World Bank, 2010).

Table 7: Population and labour force statistics, 2006–2012

	2004	2005	2006	2007	2008	2009	2010	2011	2012
Working age population	153.92	158.49	160.81	164.12	166.64	169.33	172.07	171.75	173.93
Labour force	103.97	105.86	106.39	109.94	111.95	113.83	116.53	117.37	118.05
<i>Employed</i>	93.72	93.96	95.46	99.93	102.55	104.87	108.20	109.67	110.80
<i>Unemployed</i>	10.25	11.89	10.93	10.01	9.39	8.96	8.32	7.70	7.24
LFPR* (%)	67.55	66.79	66.16	66.99	67.18	67.23	67.72	68.34	67.8
Unemployment rate (%)	9.86	11.24	10.28	9.11	8.39	7.87	7.14	6.56	6.1

*Labour force participation rate.

Source: National Labour Force Survey 2004; 2005 (November); 2006–2012 (August) as cited in BPS.

The economic sectors that are generating the most number of jobs include agriculture, wholesale and retail, restaurants and hotels, community and personal services, and manufacturing (Table 8).

Table 8: Employed workers by main industry, 2004–2012 (in millions)

Industry sectors	2004	2005	2006	2007	2008	2009	2010	2011	2012
Agriculture, forestry, hunting and fishery	40.68	41.309	40.13	41.206	41.331	41.661	41.49	39.33	38.88
Mining and quarrying	1.03	0.000904	0.000924	0.000995	1.07	1.15	1.25	1.46	1.60
Manufacturing industry	11.07	11.95	11.89	12.37	12.55	12.84	13.82	14.54	15.37
Electricity, gas and water	0.23	0.19	0.23	0.17	0.20	0.22	0.23	0.24	0.25
Construction	4.54	4.56	4.70	5.25	5.43	5.49	5.59	6.34	6.79
Wholesale trade, retail trade, restaurants and hotels	19.12	17.91	19.21	20.55	21.22	21.95	22.49	23.39	23.15
Transportation, storage, and communication	5.48	5.65	5.66	5.96	6.18	6.12	5.61	5.08	4.99
Financing, insurance, real estate and business services	1.12	1.14	1.34	1.40	1.46	1.49	1.73	2.63	2.66
Community, social, and personal services	10.51	10.33	11.35	12.02	13.10	14.00	15.95	16.64	17.10

Source: National Labour Force Survey 2004; 2005 (November); 2006–2012 (August) as cited in BPS.

Non-standard and fixed-term employment in Indonesia

There is no standard definition yet of non-standard work and workers in the context of Indonesia. The term is still new as far as the government and social partners are concerned and stakeholders' opinions vary as to what it means for the government and for the workers (Anwar and Supriyanto, 2012). However, parties agree that there are non-standard jobs in the formal sector. For Anwar and Supriyanto (2012) these would be the contract workers and outsourced workers. Similarly, Tjandraningsih, Herawati and Suhadmadi (2012) consider non-standard jobs to be short or fixed-term contract; outsourced work; apprenticeship; part-time; piece-rate; and on-call work.

In Indonesia, informal work, contract work and outsourced work make up the profile of non-standard work. BPS divides the types of workers according to their employment status at their place of work. Accordingly, there are seven types of workers: (1) own account worker; (2) self-employed assisted by temporary helper or family member; (3) employer; (4) regular employee; (5) casual employee in agriculture; (6) casual employee not in agriculture; and (7) unpaid worker (Anwar and Supriyanto, 2012: 6). Workers with status of employer and regular employee

are classified as formal sector workers. The rest are informal sector workers. This simplified definition of formal and informal sector workers in Indonesia was adopted by BPS since 2001 (Table 9). Following this simplified definition, it was estimated that 66% of Indonesian workers were employed in the informal sector.

Table 9: BPS' simplified definition of formal and informal sectors based on employment status and main occupation, Indonesia

Employment status	Activity/ sector
1) Own account worker	Informal
2) Self-employed worker assisted by temporary member	Informal
3) Employer	Formal
4) Regular employee	Formal
5) Casual employee in agriculture	Informal
6) Casual employee not in agriculture	Informal
7) Unpaid worker	Informal

Source: Table reproduced from Anwar and Supriyanto (2012: 6), Table 2.

Indonesia's formal and informal categorizations become more interesting when one looks at how the BPS classifies main occupations by employment status. Based on Table 10, for occupational category comprising professional, director, manager and clerical, as well as the occupational category sales, casual employees both in agriculture and non-agriculture belong to formal sector. It is also noteworthy that Indonesia's BPS considers unpaid professional, director, managerial and clerical employees in the formal sector.

Table 10: BPS broadened definition of formal and informal sectors based on employment status and main occupation

Employment status	Main occupation				
	Professional, director, manager, clerical	Sales	Agricultural worker	Production, transport, labourer	Other
Regular employee	Formal	Formal	Formal	Formal	Formal
Casual employee in agriculture	Formal	Formal	Informal	Informal	Informal
Casual employee not in agriculture	Formal	Formal	Informal	Informal	Informal
Unpaid workers	Formal	Informal	Informal	Informal	Informal

Source: Reproduced from Anwar and Supriyanto (2012: 7), Table 3.

According to ILO (2012: 41), the number of casual workers in Indonesia has increased at a relatively rapid average annual rate of 6.8% on average; from six million in 2001 to 11 million in 2010. The ILO also provides a general profile of casual workers in Indonesia (ibid).

- Majority of casual workers are males and their proportion increased over the last decade from 68.8% in 2001 to 74.4% in 2010.
- From 2010, the overall majority of precarious workers were based in the agricultural sector (53.1%).
- Among female casual workers, 72.1% were based in agriculture, while 46.6% of male casual workers were employed in the agricultural sector.
- In the non-agricultural sector, the male casual workers were based heavily in construction, while casual women workers were concentrated in manufacturing and in the sub-sector of community, household and personal services.

From the interviews done by the authors, unions were found to use the terms “fixed-term”, “contract”, and “outsourced workers” interchangeably. However, since not all contract workers are outsourced workers, this chapter distinguishes between fixed-term or contract workers and outsourced workers. Fixed-term or contract workers refer to those who are directly hired by user companies or placed by a labour agency; but whose contract is agreed upon directly with the user companies. Outsourced workers are those whose employment contract is with a third-party (or outsourcing company) that is usually a labour supply agency. They also work in the premises of the user company. For both workers, employment is usually fixed for a period and renewed several times without benefit of converting to regular status.

GDP growth, employment and precarious work

As indicated in Figure 2, the overall trend of incrementally increasing real GDP per capita in Indonesia between 2004 and 2010 was accompanied by an increase in the share of workers in precarious work. In general, there is also a noticeable pattern between GDP growth and the share of casual workers to total employment. This suggests that in years of growth, the supply of and demand for these workers tend to increase, and decrease when the economy contracts. This may imply that in periods of decline, casual workers are the first to be shed by companies, and the first ones to be employed as well in years of recovery.

Figure 2: Growth in real GDP per capita (PPP*), unemployment rate and share of workers in precarious work to total employed (%)



Graph constructed by the author using data from ILO (2012: 4, 10 & 42).

Note: *PPP GDP is the gross domestic product converted to international dollars using purchasing power parity rates. An international dollar has the same purchasing power over GDP as the US dollar has in the United States.

In contrast, an inverse correlation is observed between unemployment rates and share of workers in precarious work in Indonesia in the same period. While unemployment rates were going down, the share of precarious workers to total employment was going up. Thus, in the case of Indonesia, the assumption that an increasing incidence of fixed or short-term contracts goes hand in hand with a declining trend in unemployment rates appears to hold true.

Unionisation trends

Workers in Indonesia currently enjoy a policy environment that provides them with a wide space to unionise. As few as 10 members are required to form a union and the process of registration appears to be simple and straightforward. However, the lack of barriers also translates to a very fragmented labour movement that will not readily unite on similar issues. Similarly, the labour movement is prone to inter-union conflicts.

The post-Suharto changes in labour policy and the issuance of such laws as Law 21/2000 provided workers with the freedom to form one or more unions even within the same company (ILO, 2002). As a result, the number of trade unions has risen enormously. In 2012, the Ministry of Manpower and Transmigration (MOMT) reported as many as five national confederations, 91 national level unions, and 45,000 regional and sectoral unions (as cited in Haryanto, 2012). The biggest three among these are: the Confederation of Indonesia Prosperity Trade Union (KSBSI), Confederation of All Indonesia Workers' Union (KSPSI), and the Confederation of Indonesian Workers' Union (KSPI) (Gale, 2012).

Table 11 broadly summarises trade union developments from 1965 to the present, beginning from a period where unions took on a more communist orientation, followed by a period of control and repression, and finally to an atmosphere that is more permissive to unionisation.

Table 11: Trade union developments in Indonesia, 1965 to present

1965–1973	1973–1981	1982–1987	1988–1992/3	1992/3–1997/8	1998–present
“Left” oriented unions disbanded, government union (FBSI, later SPSI) formed	SPSI expands but is heavily dependent on government support, some Industrial branches of union active	Government exerts control over leadership and structure of SPSI through hard line Minister of Manpower	SPDI become less financially dependent on government but is bypassed in most labour Action. New union formed (SBM), despite government opposition	Because of domestic pressure and US threat to withdraw GSP trade rights, government does not ban independent unions, but they are not recognized and their leaders are harassed	Government reforms employment-related laws, including the law of Freedom of Association. The number of national unions grows quickly

Source: Manning (1998: 206).

However, union growth and more problematically, union density is difficult to ascertain since official data is not readily available (Rachmawati, 2009) and those that are quoted tended to be overblown (Bayuni, 2013; Rachmawati, 2009). According to Satrya and Parasuraman (2007), after Suharto’s regime the number of unions grew from 6,211 in October 1999 to 18,352 in January 2005. The latter were figures composed of 87 federations and three confederations.

On the contrary, union membership remained low. A 2005 verification study by the Ministry of Manpower and Transmigration (MOMT) gave a figure of 6.2% (3.3 million workers) out of 53.1 million non-agricultural workers (ibid). A similar estimate from 2006 (Table 12) claimed that only 6% to 7% of the 40 to 50 million workers in the formal sector, or 3.4 million, are trade union members. The distribution of membership in 2006 according to the biggest union confederations is shown in Table 12.

Table 12: Union membership in Indonesia, 2006

Name of trade union peak body (confederation)	Number of federations	Number of enterprise	Members
KSPSI	16	6,122	1,675,244
KSPI	10	1,101	793,874
KSBSI	11	1,307	227,806
National Federation of Trade Unions	3	833	269,509
"Non-confederation of Trade Union Federation"	50	1,677	403,714
Non-federation Trade Union		1,237	305,959
TOTAL		11,444	33,888,597

Source: ILO Jakarta, taken from Isaac and Sitalaksmi (2008: 244).

However, like most of its neighbours in ASEAN, overall union density in Indonesia is gradually declining.

The legal definition of fixed-term employment

How is fixed-term employment defined by law in Indonesia? According to Article 57 of the Manpower Act (Act No. 13/2003), fixed-term employment is a type of employment for a specified period of time not exceeding two years, although a one-year extension may be allowed. The same contract may be renewed only once for a period not exceeding three years (Article 59[6], Manpower Act). If the engagement extends beyond the allowable period the employment converts to work for an unspecified period of time, which is employment that leads to a permanent status. Further, fixed-term contract, or *Perjanjian Kerja Waktu Tertentu (PKWT)*, is only allowed for certain jobs that are expected to finish at a certain time (Article 59; cited in ILO, 2004: 15), namely:

- (a) Work to be performed and completed at one go or work which is temporary by nature;
- (b) Work whose completion is estimated at a period of time which is not too long and no longer than three years;
- (c) Seasonal work; or
- (d) Work that is related to a new product, a new [type of] activity or an additional product that is still in the experimental stage or try-out phase.

Notwithstanding this provision in the law, many fixed-term workers allegedly perform jobs that are regular or continuously demanded by and inherent in the business process of the company they work for. In practice, long years of service as a fixed-term also do not give one a regular status later on, as evidenced by the experiences related by interviewees and discussed in the next section.

In Indonesia, a contract of employment could be a written document or otherwise just a verbal agreement, which is allowed by the Manpower Act (Article 51). While written contracts are the standard, majority of workers have no written proof of employment (Table 13). Such a situation makes workers more prone to abuse as they have no document to serve as basis for their complaints (World Bank, 2012). Among those who do have contracts, fixed-terms outnumber those with permanent status contracts, a trend that appears even among the bigger companies (with workforce of 20 to over 100 workers), which also tend to hire more fixed-term in proportion to their total workforce. Those engaged in manufacturing, trade, financial services and social services tend to hire more fixed-term workers compared others.

Table 13: Employee and job characteristics by contract status

Job Characteristics	Contract status (% share)		
	Permanent	Fixed-term	No formal contract
Firm Size			
1–4 employees	9.21	5.51	26.52
5–19 employees	34.09	24.76	32.14
20–99 employees	28.78	30.05	23.99
≥100 employees	27.96	39.74	17.36
Sector			
Agriculture	1.7	1.34	7.35
Mining and quarrying	2.49	1.27	1.19
Manufacturing	23.23	39.27	26.86
Utilities	1.21	1.54	0.56
Construction	1.52	1.38	3.67
Trade	8.88	16.39	19.24
Transportation	3.94	3.52	4.17
Financial services	5.63	10.11	4.82
Social Services	50.0	23.66	30.31
Other	1.36	1.54	1.84

Source: RAND Corporation Indonesia Family Life Survey (2007); cited in World Bank (2010).

Work on a fixed-term contract is thus considered casual work. Workers on fixed-term contracts or temporary contracts may be directly hired for a specified period of time by the principal company, or provide services or work under a work agreement of outsourcing some parts of work (or services) to other companies. The MOMT Decree No. 100 of 2004 (“Guidelines on the Implementation of Fixed-Term Contract”) provides that workers under a fixed-term contract can be hired directly by a company or recruited through a labour agency. Such a worker is called a “contract worker” (*pekerja kontrak*). In effect, the labour law and regulations in Indonesia have legalised fixed-term contracts and outsourcing.

Job outsourcing and labour outsourcing (labour supply)

Contracting or outsourcing is a legal undertaking under Articles 65–66 of the Manpower Act. It is a business model whereby part of a business or production process is put out or farmed out to a third party. It helps the user company to focus on its core business, gives it better flexibility to cope with market fluctuations, such as when there is need to increase or reduce the workforce, which it can do much more easily and at lower costs under such arrangement. As such, outsourcing has long been adapted by businesses globally, first by those in the manufacturing sector, but now increasingly by companies engaged in services as well.

Earlier, it has been mentioned there are two types of allowed outsourcing activities in Indonesia: job outsourcing and manpower or labour-supply outsourcing.

The requirements for job outsourcing, based on Article 65 of the Manpower Act, are as follows (cited in ILO, 2004):

- (a) The work can be kept separate from the main [business] activity [of the enterprise that contracts the work to the other enterprise];
- (b) The work is to be undertaken under either a direct order or an indirect order from the [original] party commissioning the work;
- (c) The work is entirely auxiliary activity of the enterprise [that contracts the work to the other enterprise]; and
- (d) The work [when pending completion while being contracted out to the other enterprise] does not directly inhibit [the] production process [of the enterprise that subcontracts the work to the other enterprise].

For manpower or labour supply outsourcing, Article 66 of the Act stipulates the following requirements (*ibid*):

- (a) There is employment relationship between the worker/labourer and the labour provider;

- (b) The applicable employment agreement in the employment relationship as referred to under point (a) above shall be employment agreement for a specified period of time which fulfils what is required under Article 59 and/or employment agreement for an unspecified period of time made in writing and signed by both sides;
- (c) The labour provider shall be responsible for wages and welfare protection, working conditions and disputes that may arise; and
- (d) The agreements between enterprises serving as labour providers and enterprises using the labour they provide shall be made in writing and shall include articles as referred to under this act.

For these two types of outsourcing, it is clearly stipulated that only activities that are 'supplemental' or auxiliary to the main business of the company may be undertaken by third-party contractors.

Official statistical data on contract and outsourced workers in Indonesia is limited. However, several studies reviewed by Anwar and Supriyanto (2012) indicate that the number of contract and outsourced workers in Indonesia has increased from 2007 to 2011. Various estimates on the number of these workers have been given: 65% of formal workers in February 2010 were temporary workers (contract workers and outsourced workers) compared to 30% in 2005. In the same period, the proportion of contract and outsourced workers in the service industry was approximately 85%. In the garment, textile and footwear industries, it was 65%; in metal and electronic industries, 60.7%; and in basic and mining industries 55% (ibid: 13). Though the actual count of contract and outsourced workers may not be readily available at the moment, these figures indicate an exceptionally high incidence of contract work in Indonesia.

Anwar and Supriyanto (2012) cite a study by Tjandraningsih et al. (2010) on labour contracts and labour outsourcing in several metal industry companies. The study highlights the widespread practice by companies of outsourcing work through labour agencies or hiring employees on contract in non-core activities. The list of employees outsourced to client companies is long. It includes IT programmers, secretaries, salespersons, human resources and administrative staff, call centre staff, accountants, law experts, site engineers, funding officers, medical representatives, graphic designers, web designers, telephone operators, computer operators, junior secretaries, tellers/cashiers, administrative staff, sales/promotion staff, cleaners, gardeners, security workers, office staff, and some types of technicians (ibid: 13–14). Agencies could also provide managers or general managers who are hired directly as contract workers.

According to Anwar and Supriyanto (2012: 14), the study of Tjandraningsih et al. (2010) revealed that the types of occupations and skills influence how the contract and outsourced workers were employed. Accordingly, a manager was most likely to be hired directly by the client company as a contract worker, whereas technical and support staff were outsourced through labour agencies. The latter group of workers had a work contract with the labour agency that recruited them. This labour agency administered the wages, social security benefits and allowances based on the work agreement. In the Batam Export Processing Zone, many outsourced workers were hired through a labour agency with which they signed a contract. Agency workers were made legally responsible as well if they fail to do their work. These outsourced workers were likely to be fined by the labour agency for breach of work agreement in the provision of labour. If these workers fell sick, became pregnant or got hurt on the job, the user company would immediately ask the labour agency to replace them.

The study by Tjandraningsih et al (2010) further underscores that many companies intentionally terminate the contracts of their permanent employees and then re-hire them as contract workers or outsource them through labour agency. In this regard, the growing number of labour agencies and the rapid spread of outsourced work are adversely affecting the stability and quality of regular jobs.

It is not surprising therefore that in Indonesia, the number of outsourcing companies in operation is growing. According to data from the MOMT, in 2012 there were around 6,492 outsourcing companies (job and labour supply) that covered 335,456 workers. This number excludes unregistered outfits and workers. Supposedly, there are thousands of unregistered and unaccounted outsourcing deals going on (Muhamad Rusdi interview, 20 June 2013; Andriko Sugianto Otang interview, 21 June 2013). According to the Association of Indonesian Trade Unions (Asosiasi Serikat Pekerja Seluruh Indonesia, or ASPEK Indonesia) and the Indonesian Outsourcing Association (Asosiasi Bisnis Alih Daya Indonesia, or ABADI), there were about 2,000 outsourcing companies in 2005, but in 2012 the number increased to almost 6,500 (Muhamad Rusdi interview, 20 June 2013). This means that the number of (registered) outfits has tripled in a span of seven years. Table 14 also shows that out of 33 provinces, the province of Jawa Timur (East Java) had the highest number of registered outsourcing companies and workers in December 2012, followed by Papua and Jawa Barat (West Java).

Table 14: Top 10 provinces based on number of outsourcing companies and workers, Indonesia, as of December 2012

Province	Number of companies	Number of workers
1. Jawa Timur (East Java)	1,108	112,511
2. Papua	951	21,226
3. Jawa Barat (West Java)	818	33,316
4. Jawa Tengah (Central Java)	504	--
5. Sulawesi Selatan (South Sulawesi)	442	4,350
6. Kepulauan Riau (Riau Islands)	386	7,877
7. DKI Jakarta	363	19,618
8. Kalimantan Timur (East Kalimantan)	352	24,553
9. Banten	213	1,230
10. Bali	135	1,182

Source: Muhamad Rusdi interview, 20 June 2013

Multiple interpretations on outsourcing

With regard to outsourcing, a constant debate amongst employers and trade unions concerns the question of which activities should and should not be outsourced.

As far as labour supply outsourcing is concerned, auxiliary services could be outsourced. However, parties have struggled to interpret what the law means by “auxiliary (services) that are indirectly related to production process”, as stated in Article 66 of the Manpower Act. While the law states that “[s]uch activities include, among others, activities associated with the provision of cleaning service, the provision of catering service (a supply of food) to workers/ labourers, the provision of a supply of security guards, auxiliary business activities in the mining and oil sectors, and the provision of transport for workers/ labourers” (ibid), employers apply a liberal interpretation to the provisions, while trade unions insist on a limited interpretation. For employers, labour outsourcing includes the five activities, but other functions in an establishment could also be outsourced (Greg Chen interview, 21 June 2013). In other words, employers claim that the law does not put a limit on manpower outsourcing. On the other hand, labour groups insist that manpower outsourcing is limited *only* to those five activities.

Aside from auxiliary services, outsourcing of jobs or services in non-core functions are also allowed. The question that arises is how to identify the company's core and non-core functions. According to the Akatiga Foundation, FSPMI and FES (2010), Ministerial Regulation 220/2004:

[A] work provider company that will contract out part of its work to a contractor company is under an obligation to make [a chart depicting] a flow of activities concerning the process of carrying out such work and (in subsection 2 of Article 6) that based on the flow of activities concerning the process of how such work has to be carried out as referred to under subsection (2), the company which provides the work shall determine which work constitutes core work [or relates to the core business of the company] and which work belongs to support work based on the provision of subsection (1) and to report this to the local government agency responsible for labour affairs.

However, several questions as to the workability of this process have been expressed by ABADI (Greg Chen interview, 21 June 2013) since there is still no clear guideline on this particular regulation.

In 2012, the government issued Ministerial Regulation No. 19 that states labour supply is only allowed in the five types of auxiliary services that were originally specified in the Manpower Act (Hadiputranto, Hadinoto and Partners, 2013). ABADI has filed a complaint in the Supreme Court questioning the new regulation.

Positioning fixed-term workers in outsourced work

One of the protective clauses in the Manpower Act for fixed-term workers stipulates that these workers should receive the same level of wages and benefits that workers with regular status are entitled to. However, there are allegedly many violations committed by outsourcing firms against fixed-term workers (Greg Chen interview, 21 June 2013; Andriko Sugianto Otang interview, 21 June 2013). These violations include wage inferiority, unnecessary deductions in pay, longer work hours, lack of social security, and age and gender discrimination.

In 2010, a study by Akatiga Foundation et al. looked into the employment situation in the metals industry of Indonesia, where majority of workers have fixed-term contracts. The study covered three provinces, namely: Riau Islands, West Java and East Java. Data was based on a survey of 600 workers, interviews and focus group discussions. Accordingly, the study classified employees as being either permanent or non-permanent. Non-permanent workers are either contracted or outsourced. The authors note that while both types of workers were essentially fixed-term, they

were differentiated based on their employer, in which case, the contract workers' employer was the user company, while the outsourced workers were employees of the outsourcing companies. The profile of respondents indicated the following:

- In terms of gender, 40% were female and 60% male, but out of 10 female workers, only three were permanent. Further, out of seven who were non-permanent, about five were outsourced workers and two were contract workers.
- In terms of age, in general, 48.7% were between 25–34 years old, while 34.1% were less than 25 years old.
- In terms of marital status, 51% were single.
- In terms length of employment, 27.7% had been working for one to 12 months; 23.2% one to three years; and 38% for more than five years.

To summarise, the Akatiga Foundation et al. study found that there were more men than women workers in the metals industry. However, two-thirds of all the female workers were outsourced workers. Most workers were young and under the age of 35. More than half of the workers were single. Finally, 40% of respondents had been working for more than five years.

In the same study, a comparison of the wages, social security and status of union membership of permanent, contract and outsourced workers shows that in terms of the average wage, outsourced workers received only about 88% of the wage of contract workers, and 73.8% of the wage of permanent workers (Table 15). Outsourced workers were the least likely to have social security coverage, and none of them was a union member. The situation of contract workers was slightly better since their average wages were only 16.7% less than that of permanent workers. Also, around 90% of contract workers had social security. Further, a quarter of those who said they were union members were contract workers.

Table 15: Wage, social security and union membership based on employment status

	Permanent	Contract	Outsource
Average wage (in IR)	1,731,858	1,442,365	1,278,792
Per cent (permanent)	100	83.3	73.8
Per cent (contract)	--	100	88
With social security (per cent of respondents covered)	96.6	89.6	86.5
Per cent of union members (N = 197)	75.1	24.9	0.0

According to the Akatiga Foundation et al. study, outsourcing companies also charge varying fees from workers, including registration fee, placement fee, health test fee, uniform fee and stamp duty. Similarly, some workers were charged extra in order to place a job application (Greg Chen interview, 21 June 2013) or to obtain a contract extension (Andriko Sugianto Otang interview, 21 June 2013).

Employers' perspective

The Indonesian Outsourcing Organization, or ABADI, is an umbrella group of outsourcing companies in Indonesia whose members operate in different sectors but mainly in financial services (banks), oil and gas, and manufacturing. Their market consists of both local and multinational companies for which they could be outsourcing services or supplying manpower. For them, business outsourcing is the more profitable kind of outsourcing but manpower supply outsourcing helps to generate more jobs (Wisnu Wibowo interview, 21 June 2013). ABADI provides both skilled and low-skilled workers depending on the needs of their clients. Their member companies maintain their own training facilities to equip workers with the necessary skills before they are fielded to clients, particularly if their business is services outsourcing.

Outsourcing companies in Indonesia generally fall into two categories: those that comply with the law and those that do not fully comply. Non-compliant players in the sector profit from the management fees that they charge from user companies, but they also profit from taking undue advantage from the workers. Some others also profit from the government by not paying taxes (Greg Chen interview, 21 June 2013). ABADI points out that under Indonesian labour law, regular and non-regular workers are entitled to the same level of minimum wage and benefits but many players in the outsourcing business do not comply with the law. They charge very low management fees but recoup the difference from the workers. It is difficult for ABADI's members to compete with such players that seem to thrive in the manufacturing sector more than in other sectors.

ABADI takes the view that current law enforcement mechanisms need to be strengthened to help curtail violations by many players. Also, new regulatory issuances could benefit more from joint consultations with stakeholders, although such consultations are not standard practices yet in Indonesia.

KSPI's experiences among contract and outsourced workers

Konfederasi Serikat Pekerja Indonesia (KSPI) was established as a national confederation in 2003. Their affiliates are in the sectors of healthcare; forestry; tourism; services; chemical, energy and mining; metal; printing and publishing;

cement; and education (teachers). With over 700,000 registered members, the metals sector is the biggest group with currently around 200,000 members; followed by teachers; chemical, energy and mining; forestry; and services.

According to Muhamad Rusdi, the General Secretary of KSPI, the organisation is confronting several issues related to outsourcing, such as: (1) an increasing trend to outsource core activities, (2) lack of protection for workers in contract and outsourced work, and (3) failure of government to sanction companies violating the law (Muhamad Rusdi interview, 20 June 2013). Core functions and jobs are being outsourced and an increasing number of workers are seeing their employment status converted from regular to contract or outsourced work. He cites the following jobs as supposedly part of core activities but are being shifted to third parties: tellers (banks); soldering work (manufacturing); car assembly production line (auto); electronic parts assembly (electronic products); and pharmacy (health sector). He is concerned and sometimes frustrated with machinations by companies to prevent workers from becoming permanent, as well as how companies are converting the employment status of workers from regular to outsourced.

Similarly, in the media sector, employees who were on regular status for 15 years were told to transfer to an outsourcing company (Sabda Pranawa Djati interview, 20 and 22 June 2013). In the telecommunications sector, a number of regular workers in one company were separated and transferred to the outsourcing company when the Network Operations Center (NOC) was spun-off (Kun Wardana Abyoto interview, 21 June 2013). In the healthcare sector, some 500 out of 900 outsourced workers who had been working in the company for the last 12 years were all put under one unit, but after a few months the unit was dissolved, citing inefficiency, rendering hundreds of workers, who years ago should have become regular employees, jobless (Rita Shalya interview, 20 June 2013).

Most outsourced workers lack protection and face no possibility for upward mobility. KSPI notes the following (Andriko Sugianto Otang interview, 21 June 2013):

- *Outsourced workers can be dismissed easily.* While there is a provision in the law that workers can not be dismissed before the end of their employment contract, many workers (particularly the outsourced workers) are being terminated for no apparent reason.
- *Wages are below the minimum wage.* Wages are below the minimum wage, and the maximum rate that many outsourced labour receive is the minimum wage.
- *Workers are not entitled to social security or pension benefits.* When faced with unemployment after working for a number of years, workers do not receive any pension benefits.

- *No overtime pay.* Outsourced workers work longer hours than other workers but do not get additional pay.
- *Older workers are discriminated.* Most outsourced workers are young and applicants who are in their mid to late-20s are being refused because they are deemed “too old”.
- *Married workers or pregnant workers are retrenched.* Companies prefer single, unmarried individuals who, if they choose to marry later on, must resign from their jobs, particularly if they are women workers. This prompts others to not disclose their true marital status. Likewise, being pregnant is a ground for dismissal.

Organising workers is difficult and companies employ various tactics, for example:

- *Requiring workers to not join unions.* In some companies, outsourced workers are asked to sign a document that they will not join a union. Others are intimidated and told not to join or else they could lose their jobs.
- *Transferring the workers to another agency to prevent regularisation.* In order to break the three-year period before regularisation, the company creates another agency where workers are transferred. The employment period returns to year zero instead of accumulating.

Union strategies of joint, inter-union collaborations

Before 2012, KSPI already started to strongly advocate for revisions of regulations on outsourcing (and minimum wage) because of many cases of violations. Like employers' groups, they are of the opinion that the governing regulations are vague and need to be clarified; but unlike ABADI, KSPI welcomes the government's issuance of Ministerial Regulation No. 19.

KSPI addresses the problem of non-standard workers in several ways but its approaches are more or less underlined by a strategy that takes advantage of joint union collaboration, mass actions, combined issues and a focused approach in the manufacturing sector. The manufacturing sector appears to be the nucleus of the struggle against outsourcing (and for regularisation) because while this problem clearly cuts across all sectors, it is more strongly felt in this sector than in others. The study of Akatiga Foundation et al. (2010) in the metals industry and observations by ABADI (2013) somehow validate this.

According to Peter (2008), early organising of non-standard workers in the Export Processing Zones (EPZ) in Batam began in 2001 with the metal workers union, FSPMI, joining forces with Lomenik (SBSI). Between them, thousands of EPZ workers were organised. Then in 2012, KSPI and FSPMI staged massive protests in the

metals industry calling for the regularisation of contract workers, an increase in the minimum wage, and the elimination of outsourcing. The mass demonstrations went on for several days. For KSPI, staging a mass protest was the better option compared to settling disputes via the industrial courts, a process that can drag for years where the probability of a favourable decision is low (Muhamad Rusdi interview, 20 June 2013). The 2012 mass action was considered to have been very successful. It forced companies to convert the status of 40,000 fixed-term workers to permanent, aside from an additional 10,000 workers whose regularisation is still under negotiation (at the time of the interview). Some 80 other workers in Toyota are awaiting regularisation.

Organising contract and outsourced workers

It should be pointed out that before they had become regular workers, the 50,000 members of FSPMI (with 10,000 still under negotiation) were contract workers. They may have been placed in the company by a labour agency but signed employment contracts directly with the company. Since the employment contract is made directly, it is easier to hold the company accountable for violations of the law regarding terms and conditions of work. The same could not be said for outsourced workers whose employment contract is with the outsourcing companies. This shows that while it is difficult for contract workers to convert to regular status, it is almost impossible for outsourced workers to move from a status of outsourced to regular.

Similarly, regular workers are embracing more contract workers into the union. KSPI affiliates like ASPEK have contract workers as members but they are still excluded from the scope of the collective bargaining agreement (Sabda Pranawa Djati interview, 20 and 22 June 2013). However, their becoming members of the same union helps to bind these two groups of workers together to share common issues and needs that could forge a unity of interests and result in greater collective strength.

Outsourced workers cannot be part of the union of regular and contract workers since they have a different employer, but they could organise their own union (Aryana Satrya interview, 22 June 2013). FSPMI has helped outsourced workers to form their own union (Kun Wardana Abyoto interview, 21 June 2013) but on their own, they might not have been able to do this. Strong support from another union is crucial in order for such an organizing effort to succeed (Aryana Satrya interview, 22 June 2013).

Conclusion

The situation of contract and outsourced workers in Indonesia reflects a trend which puts more and more distance in the employment relationship between the worker and the company. The terms and conditions of work become poorer or worse as a worker's relationship with the user company becomes more blurred. ABADI, however, thinks otherwise and claims that "[...] the workers in our company have a career path. We first take them to do small jobs as outsourced workers in our clients, then if they stay and perform well we give them a more fixed-term contract of several months, and if they keep on working with us, they can become our regular employees" with (Wisnu Wibowo interview, 21 June 2013).

Sadly, outsourced workers particularly those under manpower supply outsourcing are in the most disadvantageous circumstances. They are being exploited by the outsourcing companies, cannot join the unions of contract and regular workers, and have difficulty forming unions of their own. It is this group who could benefit the most from an improvement, and more importantly, in the proper enforcement of the law.

Nonetheless, this chapter also highlights that trade unions in Indonesia have long started extending the mantle of union representation and protection to contract and outsourced workers. In addition to assisting these workers to organise among themselves, the unions have been jointly undertaking legislative and political actions, and mobilisations aimed at according more protection to contract, outsourced and other types of non-standard workers in Indonesia.

Bibliography

Asian Development Bank (2012). *Tracking the Middle-Income Trap: What is It, Who is in It, and Why?* ADB Economics Working paper series (306), Manila: <http://www10.iadb.org/intal/intalcdi/PE/2012/12165.pdf>. Accessed on 12 May 2014.

Akatiga Foundation, FSPMI and FES. (2010). "The practice of contract and outsourced workers in the metals industry in Indonesia".

Anwar, R. and A. Supriyanto. (2012). "Non-standard work, social dialogue and collective bargaining in Indonesia", *Dialogue*, Working paper (43), 4. Geneva: ILO. http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_205702.pdf. Accessed 1 July 2013.

Badan Pusat Statistik (BPS). (2013). www.bps.go.id. Accessed on 1 July 2013.

Bayuni, E. (2013). "Commentary: The Indonesian labor movement comes of age", *Jakarta Post*, 4 May 2013. <http://www.thejakartapost.com/news/2013/05/04/commentary-the-indonesian-labor-movement-comes-age.html>. Accessed on 15 November 2013.

Gale, B. (2012). "Indonesia's Fragmented Trade Union Movement", *Political Risk Tracker*. <http://www.politicalrisktracker.com/index.php/indonesia/social-issues/249-indonesia-s-fragmented-trade-union-movement>. Accessed on 15 November 2013.

Hadiputranto, Hadinoto and Partners. (2013). "New Manpower Regulation – Outsourcing". http://hhp.co.id/files/Uploads/Documents/Type%20HHPaLhhp_newmanpowerregulation_nov12.pdf. Accessed on 24 June 2013.

Haryanto, U. (2012). "Indonesian Activists Worry About Unions' Growth". <http://www.thejakartaglobe.com/archive/indonesian-activists-worry-about-unions-growth/>. Accessed on 15 November 2013.

International Labour Organization. (2002). "Labor Union Act of Indonesia (Act No. 21 of 2000)". http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcm_041910.pdf. Accessed on 15 November 2013.

International Labour Organization. (2004). "Act of the Republic of Indonesia Number 13 Year 2003 Concerning Manpower". Jakarta: ILO. <http://www.ilo.org/dyn/travail/docs/760/Indonesian%20Labour%20Law%20-%20Act%2013%20of%202003.pdf>. Accessed on 5 July 2013.

International Labour Organization. (2012). *Decent Work Country Profile: Indonesia*. Geneva: ILO.

Isaac, J. and S. Sitalaksmi. (2008). "Trade unions in Indonesia: from state incorporation to market orientation". In J. Benson and Y. Zhu (eds), *Trade unions in Asia: An economic and sociological analysis*, pp. 121–39. New York: Routledge.

Manning, C. (1998). *Indonesian Labour in Transition: An East Asian Success Story?* Cambridge, U.K; New York: Cambridge University Press.

MGI. (2012). "The archipelago economy: unleashing Indonesia's potential". http://www.mckinsey.com/insights/asia-pacific/the_archipelago_economy. Accessed on 2 July 2013.

Peter, K. (2008) *Organizing Precarious Workers in Indonesia*. International Metalworkers' Federation. <http://www.industrialunion.org/sites/default/files/migration/imf/RelatedFiles/08090411500779/feature.pdf>. Accessed on 12 May 2014.

Rachmawati, R. (2009). "Trade unions' behaviour towards multinationals in Indonesia", PhD dissertation: University of Birmingham.

RAND Corporation. (2007). Family Life Surveys. <http://www.rand.org/labor/FLS/IFLS/ifls4.html>. Accessed on 14 May 2014.

Satrya, A. and B. Parasuraman. (2007). "Partnership as Union Strategy — Does It Work in Asia? Case Studies in Indonesia and Malaysia", *Indian Journal of Industrial Relations: Trade Unions and Civil Society* 42(4): 589–619.

Tjandraningsih, I., Herawati, R. and Suhadmedi. (2010). "Diskriminatif dan eksploitatif: praktek kerja kontrak dan outsourcing buruh di sektor industri metal di Indonesia" [Discriminative and exploitative: the practices of labour contract and labour outsourcing in metal industry sector in Indonesia]. Akatiga Foundation, FSPMI and FES. <http://library.fes.de/pdf-files/bueros/indonesien/07846.pdf>.

World Bank. (2010). *Indonesia Jobs Report: Towards Better Jobs and Security for All*. <http://ddp-ext.worldbank.org/EdStats/IDNwp10b.pdf>. Accessed on 2 July 2013.

World Bank. (2013). Indonesia overview. <http://data.worldbank.org/indicator/NY.GDP.MKTP.PP.CD?page=1>. Accessed on 2 July 2013.

World Bank. (2014). GDP per capita, PPP (current international \$). <http://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD>; accessed on 14 May 2014.

Interviews:

Agus Tjahjoadi, Executive Director, Indonesian Outsourcing Association, interviewed on 21 June 2013.

Andriko Sugianto Otang, Head of Advocacy Division, Trade Union Rights Centre, interviewed on 21 June 2013.

Dr Aryana Satrya, Lecturer on Human Resource Management and Industrial Relations, Department of Management, Universitas Indonesia, interviewed on 22 June 2013.

Greg Chen, International Relations Division Head, Indonesian Outsourcing Association, interviewed on 21 June 2013.

Heru Widiyanto, Deputy Director MOMT, interviewed on 21 June 2013.

Dr Kun Wardana Abyoto, Director – Telecom & IBITS, UNI Asia and Pacific, interviewed on 21 June 2013.

Muhamad Rusdi, General Secretary, KSPI, interviewed on 20 June 2013.

Rina Julvianty, Program Officer, FES Indonesia, interviewed on 19 June 2013.

Rita Shalya, Chairperson, Pharmaceutical and Health Workers Union “Reformasi”, interviewed on 20 June 2013.

Roni Febrianto, Vice President, FSPMI, interviewed on 20 June 2013.

Sabda Pranawa Djati, Secretary General, ASPEK Indonesia, interviewed on 20 and 22 June 2013.

Widadi WS, Vice-President of the Chemical Federation, interviewed on 20 June 2013.

Wisnu Wibowo, Chairman, Indonesia Outsourcing Association, interviewed on 21 June 2013.



MALAYSIA

Melisa R. Serrano

Non-standard workers in Malaysia are in general those on short or fixed-term contracts. A fixed term employment contract bears a specified period of engagement, with a defined beginning and a defined end. This type of contract automatically expires after the period without the need to give notice.

In Malaysia, fixed-term contracts may refer to either “contract of service” or “contract for service”. A contract *of* service is a fixed-term employment contract between an employer and an employee. This type of contract is covered by the labour law. In contrast, a contract *for* service involves a person, also doing work for another party but not recognised as employee of that party for which he or she is doing work. A contract for service is also referred to as “independent contracting”. As such, persons or workers under this type of contract are excluded from the coverage of labour and employment legislation. Contract for service is governed by the general law of contract.

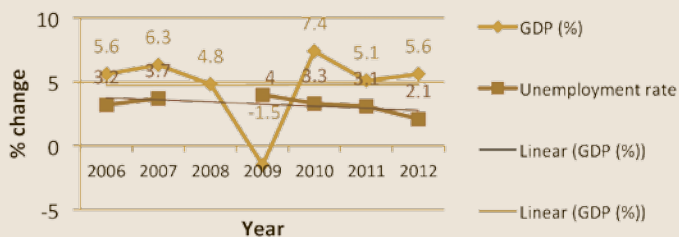
After providing an overview of the economic and labour market conditions in Malaysia, this chapter looks into the various types and magnitude of non-standard employment in the country. The legal framework on non-standard employment is discussed. Also, the perspectives of employers and trade unions on outsourcing practices are presented. Finally, this chapter highlights the organising initiatives of some trade unions in Malaysia involving outsourced and agency-hired workers.

The data for this chapter are from secondary literature and interviews with key people from trade unions, an employers’ organisation and a non-government organisation. The interviews were done during a field research visit in Malaysia in July 2013.

Economic growth and the labour market

In 2012, Malaysia’s GDP (at constant 2005 prices) grew by 0.5 percentage points relative to 2011. This is however lower than the growth achieved in 2010 which was 7.4%. In fact, between 2005 and 2006, Malaysia’s GDP remained stagnant averaging at about 4.7% (Figure 3). Nonetheless, an overall trend of declining unemployment rates was observed during the same period.

Figure 3: GDP growth and unemployment rate in Malaysia, 2006–2012



Note: GDP is at constant 2005 prices.

Sources:

- (1) GDP data: Department of Statistics Malaysia. (2013). *Annual Gross Domestic Product, 2005–2012*, p. iii.
- (2) Data on unemployment rates: Ministry of Labour and Human Resources. (2012). *Labour Force Survey Report 2012*, p. 30.

In terms of GDP growth by sector or industry, an increasing trend was observed in construction and manufacturing between 2006 and 2012. In contrast, an overall trend of declining GDP growth was noted in agriculture, mining and quarrying, and services (Table 16 and Figure 4).

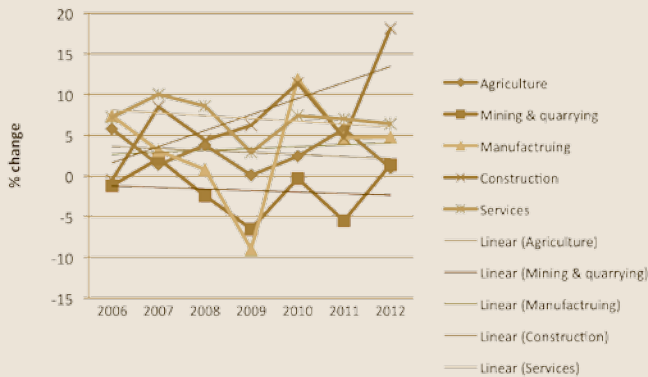
Table 16: GDP growth (%) by sector in Malaysia, 2006–2012

Sector/Industry	2006	2007	2008	2009	2010	2011	2012
Agriculture	5.8	1.4	3.8	0.1	2.4	5.8	1.0
Mining and quarrying	-1.2	2.1	-2.4	-6.5	-0.3	-5.5	1.4
Manufacturing	7.4	3.1	0.8	-9.0	11.9	4.7	4.8
Construction	-0.5	8.5	4.4	6.2	11.4	4.7	18.1
Services (public and private)	7.2	10.0	8.6	2.9	7.4	7.0	6.4

Note: GDP is at constant 2005 prices.

Source: Department of Statistics Malaysia. (2013). *Annual Gross Domestic Product, 2005–2012*, p. iii.

Figure 4: GDP growth by sector in Malaysia, 2006–2012



Note: GDP is at constant 2005 prices.

Source: Department of Statistics Malaysia. (2013). *Annual Gross Domestic Product, 2005–2012*, p. iii.

However, in terms of employed persons by sector or industry, more than half of all employed persons were in the services sector. In fact, the services sector³ grew by two percentage points between 2010 (55.7%) and 2011 (57.8%), the highest employment growth registered among all sectors. Meanwhile, employment in manufacturing grew by a mere 0.4 percentage points (Table 17).

Table 17: Employed persons (%) by industry in Malaysia, 2010 and 2011

Sector/industry	2010	2011
Agriculture and forestry	13.6	11.5
Mining and quarrying	0.5	0.6
Manufacturing	17.7	18.1
Electricity, gas, steam & air-conditioning supply	0.5	0.4
Water supply; sewerage, waste management & remediation activities	0.6	0.6
Construction	9.1	9.2
Services (including public services)	55.7	57.8
Activities of households as employers	2.4	1.8
Activities of extraterritorial organisations and bodies	0.0	0.0

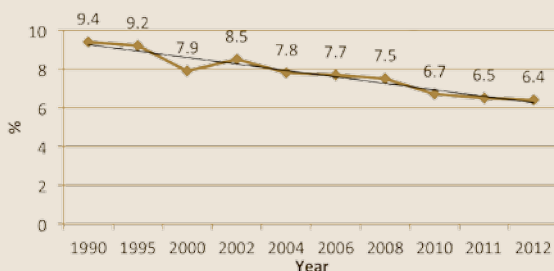
Source: Department of Statistics, Malaysia. (2012). *Labour Force Survey Report, Malaysia 2011*, Table 3, p. 9.

³ Per Malaysia's Labour Force Survey (LFS), the services sector includes the following: (1) wholesale and retail trade; and repair of motor vehicles and motorcycles; (2) transportation and storage; (3) accommodation and food and beverage service activities; (4) information and communication; (5) financial and insurance; (6) real estate activities; (7) professional, scientific and technical services; (8) administration and support service activities; (9) public administration and defense; compulsory social security; (10) education; (11) human health and social work activities; (12) arts, entertainment and recreation; and (13) other service activities.

Unionisation trends

Like in many countries around the world, union density in Malaysia is declining (Figure 5). While union membership has continued to increase in absolute terms over the years, the average membership per union has continued to shrink, resulting in the existence of many unions but with small membership size (Rose, Kumar and Ramasamy, 2011).

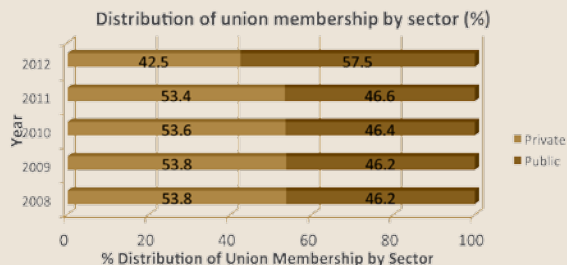
Figure 5: Union density in Malaysia (%)



Source: Graph constructed by the author using data (for 1990 to 2008) from Rose, Kumar and Ramasamy (2011) and from the website of the Ministry of Human Resources in Malaysia (for 2010 to 2012).

Between 2008 and 2011, more than half of all union members in Malaysia were private sector employees. However, in 2012 the trend reversed, with more than half (57.5%) of all union members were from the public sector. A gradual decline in union membership in the private sector has also been observed between 2008 and 2012. In contrast, a gradual increase in union membership has been noted in the public sector.

Figure 6: Distribution of union membership by sector (%)



Source: Graph constructed by author using data from Ministry of Human Resources (2012: 149).

What accounts for the low and declining union density in Malaysia? A study by Rose et al. (2011) found that a substantial majority of non-union members perceive that employers are highly opposed to unionisation. They point to employers' negative attitude towards unions as the main factor contributing to the diminution of union organising efforts. Their study also revealed that employers favour the unitarist approach, rather than the pluralist approach. They also stress that the state is reluctant to challenge employers' opposition to union organising. The rise of labour outsourcing discussed later in this chapter is also seen as a strategy to avoid unionisation.

The magnitude of non-standard employment

In Malaysia, there is very limited data on non-standard employment. Malaysia's Labour Force Survey (LFS) provided only four broad categories of employed persons by status, namely, employer, employee, own-account workers and unpaid family worker. From Table 18, it could be said that majority of workers in Malaysia are classified as "employees". However, from the categories in Table 18, it is difficult to get a good estimation of the magnitude of non-standard work as the categories employer and employee may include non-standard workers.

Table 18: Employed persons by status of employment in Malaysia (%), 2010 and 2011

Category of worker	2010	2011
Employer	3.7	3.6
Employee	75.7	76.6
Own-account worker	16.4	15.6
Unpaid family worker	4.2	4.2

Source: Department of Statistics, Malaysia. (2012). Chart 7, p. 11.

Nonetheless, it could be deduced from Table 18 that the combined share to total employment of own-account workers and unpaid family workers was about 20% in 2011. If we were to add the share of employers, who are most likely operating informal enterprises and employing non-standard workers, the combined share of all three categories of workers would be about 24%. This thus suggests that, at the very least, nearly one in four of all employed persons in Malaysia were non-standard informal workers. Of course, the share of non-standard workers may be higher as many of those categorised as employees may be non-standard workers.

Table 19 shows the distribution of these categories of workers by sex.

Table 19: Distribution of employed persons by status of employment and sex (%), 2011

Major Occupation	Male	Female	Total
Employer	4.7	1.6	3.6
Employee	74.8	79.8	76.6
Own-account worker	18.1	11.2	15.6
Unpaid family worker	2.4	7.3	4.2
Total	49.0	51.0	100.0

Source: Ministry of Labour and Human Resources (2012: 21).

From Table 19, it would appear that while there were more male own-account workers than female, the share of female unpaid workers was higher than their male counterparts in 2011. Moreover, the table also indicates that there were more male employers than female employers during the same period. Nonetheless, female employees outnumbered male employees in 2011.

Data on the share of workers on fixed-term contracts to the total employed are not available. Nonetheless, it could be inferred from several studies that fixed-term employment contracts are also on the rise in Malaysia. For example, a study by Saad (2011) involving 16 companies in the Klang Valley provides a snapshot of employment trends in Malaysia. The study found that all the companies surveyed employed the service of fixed-term employees across all departments in their organization. These employees accounted between 2% and 45% vis-à-vis permanent employees (ibid: 63). Moreover, 12 of the companies used fixed-term contract as a way to hire employees to cope with temporary shortage of manpower, while the other four used fixed-term contract as a way to re-employ retired employees. The study also underscored that companies with a high percentage of atypical or non-standard workers actually planned their recruitment as part of the business and human resource strategy, while companies with a lower percentage of non-standard workers hire fixed-term contract workers and part-time workers as a response to contingencies arising from the day-to-day operations of their business. Finally, all 16 companies cited ease of termination and lower labour costs as advantages of using fixed-term and part-time workers in their organisations.

The legal framework on non-standard employment

Section 11(1) of Malaysia's Employment Act 1955 indirectly refers to fixed-term contract when it referred to the term "contract of service". According to Saad (2011), there is a limited number of regulations on the use of fixed-term employment contract in Malaysia. At present, there are no limitations on the use of fixed-term contract, no limitation on the maximum number of successive fixed-term contract allowed, and no limitation on the maximum cumulative duration of fixed-term contract (ibid: 65). A fixed-term worker can come under the coverage of the Employment Act 1955 (i.e., workers under contract of service) or outside its scope (i.e., workers under contract for service).

Section 2 of the Employment Act 1955 defines a "contractor" as "any person who contracts with a principal to carry out the whole or any part of any work undertaken by the principal in the course of or for the purpose of the principal's trade or business." Meanwhile, a "sub-contractor" is "any person who contracts with a contractor for the execution by or under the sub-contractor of the whole or any part of any work undertaken by the contractor for his principal, and includes any person who contracts with a sub-contractor to carry out the whole or any part of any work undertaken by the subcontractor for a contractor."

The notion of using workers without entering any employment relationship was introduced via the concept of outsourcing, but originally this was only meant for migrant workers. In 2005, the Malaysian government adopted a policy that allowed factories and workplaces to use workers supplied by outsourcing agents or companies. These workers, commonly known as outsourced workers, do not have an employment relationship with the owners or management of these factories or workplaces. In this regard, they cannot join workplace unions and neither can they benefit from collective agreements.

Under Malaysia's Private Employment Agencies Act 1971, private employment agencies are considered the employers of these workers. In contrast, the outsourcing agencies or companies are not considered the employers of these outsourced migrant workers. At first, this Act only applied to migrant workers. Later, it was extended to cover local workers as well. According to Aliran Kesedaran Negara and GoodElectronics (n.d.), this Act was primarily meant for smaller companies that may not have the necessary resources to manage migrant workers full-time, and also for bigger companies which may have seasonal need for extra workers (e.g., peak seasonal harvests). Apart from supplying migrant workers to companies, outsourcing agents also take care of the workers' accommodation, transportation, payment of wages, medical examination, and getting the necessary insurance coverage for these workers (ibid: 17).

Today, outsourcing affects both migrants and local workers. In Malaysia, third-party suppliers of workers are called outsourcing agents, labour outsourcing agents, contractors for labour, or manpower/labour suppliers. Outsourcing agents supply workers to factories, plantation companies, construction companies, etc. These workers remain the employees of the outsourcing agents.

In 2010, the Malaysian government attempted to give statutory recognition to labour suppliers by introducing the concept of “contractor for labour” via an amendment to the Employment Act 1955. The amendment defines contractor for labour as “a person who contracts with a principal, contractor or sub-contractor to supply the labour required for the execution of whole or any part of work which a contractor or sub-contractor has contracted to carry out for a principal or contractor, as the case may be” (A1419 Employment (Amendment) Act 2012). The inclusion of this provision in the Employment Act accords recognition and legality to outsourcing agents and their practices, including the creation of triangular employment relationships whereby workers supplied by the outsourcing agents to companies where these workers perform work remain the employees of the former. With this amendment, the Malaysian government wanted to establish the contractor for labour as the employer, and this was to remain so even after the outsourced workers have started working in the workplaces of principals. This proposed amendment was withdrawn later. In June 2011, the amendment was again re-introduced and subsequently passed and came into force on 1 April 2012, despite strong protests coming from the Malaysian Trades Union Congress (MTUC) and civil society groups. Syed Shahir Syed Mohamad, former president of MTUC, contends that “[U]nlike the principal employer or the contractor who carries out work, the contractor for labour or labour supplier: (a) [D]oes not own the means nor the factors of production or services and has no knowledge on how to carry out work; (b) [D]oes not possess capital nor technology nor are they innovators and definitely are not wealth generators” (Hassan, Ping and Ismail, 2013: 313-314).

The continuing protests coming from trade unions and civil society forced the government to suspend the effect of the amendment on other sectors and confine the use of contractor for labour in the agricultural sector.

Outsourcing practices in Malaysia: Employers' perspective

In April 2005, the Malaysian Employers Federation (MEF) conducted a survey on company practices involving outsourcing of human resource (HR) and other functions. Of the 99 respondent companies, nearly one in three (30.3%) reported they outsourced their human resources functions and services. The survey revealed that larger companies, particularly multinational corporations, are more likely to outsource their HR functions. About 46% of the companies that outsourced these functions had between 251 and 1,000 employees, whereas 38.5% of the companies

that did the same had less than 50 employees. In terms of the HR functions that were mostly outsourced, the survey yielded the following: health and group benefits (47.7%), training and development (33.3%), payroll (30%), and staffing and recruiting (23.3%).

The respondent companies identified these main drivers behind their decision to outsource HR functions: improve organisational performance (58.7%), focus on core business (37.9%), cost savings (37.9%), and lack of HR expertise (31%).

The results of the MEF survey also showed that companies resort to outsourcing their HR functions to reduce their workforce. Over one in three (34.5%) respondent companies said they reduced their headcount through outsourcing. This practice is more prevalent in the manufacturing sector: 66.7% of the respondent companies that shed workers through outsourcing were engaged in manufacturing (e.g., basic and fabricated metallic products industry, electrical and electronic industry, food/edible oil/drinks and beverages, non-metallic mineral products industry, and petrochemical industry).

Although a significant proportion of the respondents companies cited cost savings among their motivations to outsource, the survey showed that outsourcing HR functions does not always lead to lesser costs. Two in five (40%) respondent companies reported that the cost of outsourcing HR functions was in fact higher, while 36% said the cost was less prior to outsourcing. About 24% of the companies said the cost remained the same.

Apart from HR, the MEF survey revealed the other functions that companies outsource. Information technology (IT) functions were the most outsourced (59.5%). Other functions outsourced were: finance and accounting (28.6%), facilities management (21.4%), and marketing and sales (16.7%). IT functions were the most common functions outsourced by both manufacturing (73.3%) and non-manufacturing (51.9%) respondent companies.

Reduction of headcount and related expenses and concentration of resources on core business turned out to be the main drivers behind the decision to outsource the functions listed above (excluding HR functions). Over three in five (60.9%) respondent companies cited these reasons. Other reasons identified include: tapping outside talent for expertise (52.2%), better management of the cost of internal processes (43.5%), and reduction of costs (39.1%).

From the MEF survey, it is clear that that the decision to outsource is mainly motivated by the desire of companies to reduce their workforce.

Outsourcing and agency-hiring practices: Unions' perspective

According to Shafie Mammal, President of Union Network International-Malaysia Labour Centre (UNI-MLC) and Robert Vijendran Henry, Vice President, Malaysian Trade Union Congress (MTUC) and General Secretary, Genting Malaysia Bhd Workers Union, the practices of outsourcing and hiring workers through temporary employment agencies — referred to as outsourced workers — are on the rise, albeit silently, in Malaysia (Shafie Mammal interview, 9 July 2013, Email correspondence 9 January 2014; Robert Vijendran Henry interview, 9 July 2013). Outsourcing is mostly practised in the telecommunications, banking and information technology sectors. Meanwhile, many agency-hired workers are found in the hotel sector as well as in the retail sector. Outsourcing companies are mostly medium-sized enterprises and owned and operated by Malaysian nationals. In Malaysia, outsourcing companies are also called “contractors for labour”. Henry added that an outsourcing company could be a subsidiary of a user company.

How is outsourcing actually practised in Malaysia? The contract between a user company and an agency or outsourcing company is often between one and three years. The contract term however varies across sectors. In the services sector, the contract term is two years on the average.

How much do outsourcing companies make? Charles Hector, a lawyer and human rights activist, provides an example: A labour supplier agency may charge the user company about MYR 40 to MYR 50 (USD 12–15) per worker per day. An outsourced (foreign) worker often receives between MYR 19 and 20 per day. This leaves the agency about MYR 20 to 30 per worker per day. Thus the more workers the agency deploys, the higher its income. In 2013, the minimum wage in Malaysia is MYR 900 (USD 280) per month in Peninsular Malaysia and MYR 800 (USD 250) per month in Sabah and Sarawak. These minimum wage rates apply to both local and foreign workers.

Outsourced and agency workers often shuttle from one worksite to another. They work long hours, usually 12 hours per shift plus four hours for overtime work. According to Nadarajan Manickam, Senior Executive and Project Coordinator of UNI Global Union-Malaysia, outsourced workers have a one-page employment contract with their outsourcing company. This contract includes the following: name of the worker, duration of the contract, salary, number of days of vacation leave, clinic/medical benefits, and hours of work. There are no provisions in the contract pertaining to discipline. Supervision of outsourced workers is done by a worksite manager who is employed by the user company or principal. This worksite

manager or supervisor also disciplines outsourced workers when necessary. The user company can ask the outsourcing company to get back or pull out outsourced workers from the user company's worksite.

In Malaysia, as most locals shy away from certain "low-end" jobs, many outsourced workers are migrant workers. For example, locals do not normally want to work in casinos. In the casino and gaming sector, about one-fifth of all workers are foreign workers (Robert Vijendran Henry interview, 9 July 2013). Henry reveals that the Genting Group has formed its own outsourcing company that recruits foreign workers for its casinos and resorts. These foreign outsourced workers usually have a three-year employment contract and are paid less than the locals. For example, the starting salary of a Malaysian casino worker is about MYR 2,500 (USD 775), while a Filipino casino worker receives about MYR 2,000 (USD 620) (ibid).

The incidence of foreign labour or migrant work in Malaysia is highest in the construction sector. According to Adam Kaminski, Assistant Regional Education Officer at Building and Woodworkers International (BWI) Asia-Pacific, about 60–80% of all construction workers in Malaysia are foreign or migrant workers, most of who have legal documents (Adam Kaminski interview, 9 July 2013). Half of these workers are Indonesian. Foreign construction workers are paid between MYR 25 and 35 per day. Their employment status is project-based. In general, these workers do not get the minimum wage and do not have annual and sick leave benefits. They are also at risk in terms of poor safety and health conditions at the worksite. Kaminski added that subcontracting is widely practised in the construction sector. A construction company may have between 10 and 15 subcontractors. Most construction companies in Malaysia employ an average of 15 workers per worksite (ibid).

Kaminski emphasised the difficulty of organising in the construction industry as most workers are foreigners. The Union of Employees in the Construction Industry (UECI), an affiliate of BWI, organises workers in this sector. To date, UECI has about 400 to 500 members.

Union initiatives on organising outsourced and agency-hired workers

UNI-MLC has been focusing its organising efforts particularly in the services sector where many, if not most, workers are engaged in various forms of non-standard employment particularly in the services sector. At the time of interview, the union had about 300,000 members from 75 unions, mostly coming from the services sector, namely: telecommunications (including call centres), health, finance, retail and commerce, postal services, utilities, media (including newspapers and printing), security services, packaging, and graphic arts. UNI-MLC focuses its organising efforts at the enterprise level.

One recent successful organising drive of UNI-MLC is in the retail furniture shop IKEA-Malaysia (Ikano Pte Ltd), which has been operating in Malaysia for 17 years. On 30 December 2013, the first collective bargaining agreement was signed (Shafie Mammal email correspondence, 9 January 2014). This agreement, however, covers only the full-time and part-time workers of the company. At IKEA-Malaysia, full-time workers comprise 85% of all workers. Part-timers comprise the remaining 15%. Outsourced workers at IKEA are mostly security guards.

Other mega retail stores organised by UNI-MLC include Tesco, Giant, Aeon, Aeon Big (formerly Carrefour), Proton Edar (care sales), Bernas (rice trading), Robinsons and five other retail companies. The unions are in various stages of development.

Mammal emphasised that many workers in call centre are agency workers hired through individual contracts (Shafie Mammal interview, 9 July 2013). As such, they can be hired and fired easily. In 2010, the Association of Telecommunication and Multimedia Vendors Malaysia (UNIVEN) was launched by UNI-MLC. UNIVEN is an association that provides representation and organisation for those in the business process outsourcing/call centre subsector (BPO/CC) in Malaysia. UNIVEN aims to work for the improvement of the working conditions of BPO/CC employees, including fair wages, workers' safety and health, and a decent work environment.

In some workplaces organised by UNI-MLC, even outsourced (agency-hired) workers have direct membership with UNI-MLC. For example, at DiGi Telecommunications, there are about 450 outsourced workers from two outsourcing companies. These workers are employees of these outsourcing companies; they get their salaries directly from these companies. At DiGi, UNI-MLC organised these workers by establishing a Subcommittee of Outsourced Workers (Shafie Mammal interview, 9 July 2013). Moreover, the UNI-MLC union at DiGi provides services to outsourced workers in terms of consultation and advice on workplace problems, including harassment and safety and health issues.

Conclusion

Although data on the number of workers on fixed-term contracts in Malaysia are not available, it is clear that the proportion of non-standard workers (in the formal and non-formal economies) to the total employed is quite high: at the very least, nearly one in four employed persons in Malaysia in 2011 were non-standard informal workers. Like in Indonesia, female workers predominate in non-standard work in Malaysia.

The Saad (2011) of several companies in the Klang Valley indicate that at the enterprise level the share of fixed-term employees to the total workforce vary between 2% and 45%. Moreover, all the companies surveyed employed the services of fixed-term employees across all departments in their organisation. What is most interesting in this study is the finding that companies with a high percentage of atypical or non-standard workers actually planned the recruitment of these workers as part of their business and human resource strategy. This implies that the use of fixed-term contracts has become a permanent component of the business and human resource strategy of companies that employ a higher proportion of fixed-term workers.

The results of the MEF survey on outsourcing practices likewise echo one important finding of Saad's study: ease of termination and lower labour costs are the main motivations of employers in using fixed-term and part-time workers in their organisations. The MEF study underscores employers' desire to reduce their workforce as the main reason to outsource although the same survey found that outsourcing HR functions does not always lead to lesser costs; in fact many of the respondent companies reported that the cost of outsourcing HR functions was in fact higher.

The limited amount of regulations on the use of outsourced work or fixed-term employment contract in Malaysia may partly explain the increased use of outsourced workers or agency-hired workers in the country as claimed by trade unions. Malaysia's Employment Act 1955 sets no limitations on the use of fixed-term contract, the maximum number of successive fixed-term contract allowed, nor the maximum cumulative duration of fixed-term contract. The amendment to the Employment Act 1955 passed in June 2011 that aimed at providing statutory recognition of the outsourcing agent and its practices in all sectors may further increase the use of non-standard forms of employment, particularly outsourced work, in Malaysia as well as weaken the trade union movement. This is the reason why the MTUC and other civil society organisations have mounted protests against this amendment.

Trade unions such as UNI-MLC and UECl have started organising in sectors (i.e., services and construction) where non-standard workers are often employed. Apart from the union structure, innovative ways of representing these workers (e.g., UNI-MLC's UNIVEN, Subcommittee of Outsourced Workers at DiGi) have been adopted by these unions to reach out and accord protection to more outsourced or agency-hired workers.

Bibliography

Aliran (Aliran Kesedaran Negara) and GoodElectronics (n.d.) *Electrifying matters... for human rights defenders and migrant workers in the electronic industry*. Chiang Mai, Thailand: Aliran and GoodElectronics.

Employment Act 1955, Act 265, Malaysia.

Malaysian Employers Federation. (2005). *Survey on Outsourcing HR and Other Operations*. Kuala Lumpur: Malaysia.

Ministry of Labour and Human Resources. (2012). *Malaysia Labour Force Survey Report, 2012*. http://www.molhr.gov. /molhr_site/wp-content/uploads/2012/11/lfs2012.pdf.

Hassan, K.H., Ping, L.J. and Ismail, N. (2013). "Human Resource Management: Labour Outsourcing from Malaysian Law Perspective", *Prosiding Perkem VIII, JILID 1*, pp. 306-315. http://www.ukm.my/fep/perkem/pdf/perkemVIII/PKEM2013_1F4.pdf. Accessed on 13 May 2014.

Rose, R.C., Kumar, N. and Ramasamy, N.. (2011). "Trade unions in Malaysia: perspectives of employers and employees of unionized companies", *Indian Journal of Industrial Relations* 46(3).

Saad, H. S. (2011). "Regulating Atypical Employment in the Malaysian Private Sector: Balancing Flexibility and Security", *Journal of Global Management*, 3(1): 59–73.

Interviews:

Adam Kaminski, Assistant Regional Education Officer, Building and Woodworkers International (BWI) Asia-Pacific, 9 July 2013.

Charles Hector, Aliran (Aliran Kesedaran Negara), 10 July 2013.

Nadarajan Manickam, Senior Executive and Project Coordinator, UNI Global Union-Malaysia, 09 July 2013.

Robert Vijendran Henry, Vice President, Malaysian Trade Union Congress (MTUC) and General Secretary, Genting Malaysia Bhd Workers Union, 9 July 2013.

Shafie Mammal, President, Union Network International-Malaysia Labour Centre (UNI-MLC), 9 July 2013. Email correspondence on 9 January 2014.

Shamsuddin Bardan, Executive Director, Malaysian Employers Federation (MEF), 10 July 2013.



PHILIPPINES

Mary Leian C. Marasigan
Melisa R. Serrano

The Labor Code of the Philippines recognises several categories of workers but the general distinction is between regular and non-regular workers. Two features define regular employment in the country: first, the nature of the work performed and second, the duration of employment. One is considered a regular worker if one performs activities that are necessary and desirable in the usual business or trade of the employer, or if one has had a total of at least a year's service, whether such service was continuously rendered or not. An employee can therefore be considered "regular" based on either *or* both of these parameters (Azucena, 2010). Often, workers who are regular in both cases are also referred to as *permanent*, shorthand for permanent status to distinguish them from those whose work is for a period of a project or contract and not for an indefinite period.

In the Philippines, the destandardisation or flexibilisation of work in terms of using fixed- or short-term contracts is often referred to as "contractualisation" or "casualisation". Non-standard forms of employment consists of "various forms of flexible job-hiring arrangements, such as the outsourcing or subcontracting of work, deployment of agency-hired and third-party managed workers within the company's work premises, or direct hiring of workers under short-term employment contracts" (Ofreneo, 2013: 435).

This chapter provides an overview of the economic and labour market conditions in the Philippines and draws a link between trends in economic growth and (non-standard) precarious employment. The various types, the magnitude of and trends in non-standard employment in the country are also identified and analysed in relation to the legal framework on non-standard employment in the country. This chapter also describes how private employment agencies operate. Finally, this chapter highlights the organising and representation initiatives of some trade unions in the Philippines involving outsourced and agency-hired workers.

The data for this chapter are from secondary literature and interviews with key people from various institutions (i.e., trade unions, government agency and employers' organisations). The interviews were done in the Philippines between July and August 2013.

Economic growth and the labour market

Over the last decade (2001–2010) the GDP of the Philippines grew by 4.7% on average whereas employment only expanded by 2.9% (DOLE, 2011). This indicates that economic growth did not result in a proportionate growth in job creation. On average, more part-time jobs had become available during the given period as compared

to full-time jobs. This also helps to explain the high rate of underemployment in the country (Table 20). About one in five employed persons in the Philippines is underemployed.

Table 20: Annual growth rates in GDP and Full-Time/Part-time employment: 2001–2010 (%)

Indicator	Ave.	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
GDP (at constant prices)	4.7	1.8	4.4	4.9	6.4	5	5.3	7.1	3.7	1.1	7.3
Employment	2.9	6.2	3.1	1.9	3.2	2.2	2	2.8	1.6	2.9	2.8
Full-time	2.5	(2.1)	2.5	3.8	2.8	4.2	(0.6)	4.7	3.9	(0.5)	6.3
Part-time	3.8	21.2	3.4	0.2	2.7	0.2	6.3	0.3	(2.6)	8.4	(2.3)

Source: DOLE, Philippine Labor and Employment Plan, 2012.

Table 21 shows the basic employment statistics in the Philippines. The labour force consists of 40.4 million workers in 2012, which was 64.3% of the total household population. The employment rate was 93%.

Table 21: Employment statistics, 2011–2012 (in thousands, except for percentages)

	2011	2012
Household population, 15 years and over	61,882	62,973
Labour force	40,006	40,426
LFPR (%)	64.6	64.2
Employment rate (%)	93.0	93.0
Underemployment rate (%)	19.3	20.0
Unemployment rate (%)	7.0	7.0
Employment growth (%)	3.2	1.1

Source: BLES, Current Labor Statistics, July 2013.

GDP growth and non-regular employment

In the Philippines, the direct correlation between variations in GDP and the share of employees in precarious work to the total employed is more evident, as shown in Figure 7. The proportion of precarious workers and the variations in GDP growth (and declined) between 2000 and 2010 were moving almost in the same direction year-on-year. This means that the supply and demand of agency workers tend to increase in periods of growth, and diminish when the economy falters.

Figure 7: GDP growth rates and share of employees in precarious work to total employed, Philippines (%)



Source: Graph constructed by the author based on data from ILO (2012: 3 and 51).
Data on the share of employees in precarious work to total employed is based on Household Survey Data.

In terms of the relationship between the unemployment rate and the growth of non-regular employment, between 2005 and 2010, the sharp increase in the share of short-term, seasonal and casual workers to total employment was not accompanied by a decline in unemployment rates (Figure 8). In fact, the unemployment rate during this period remained stagnant at a high of above 7%. In the case of the Philippines, this finding thus does not support the claim that the use of non-regular employment somehow leads to employment gains.

Figure 8: Unemployment rate and share of precarious workers to total employed, Philippines (%)



Source: Graph constructed by the author based on data from ILO (2012: 3 and 51).
Data on the share of employees in precarious work to total employed is based on Household Survey Data.

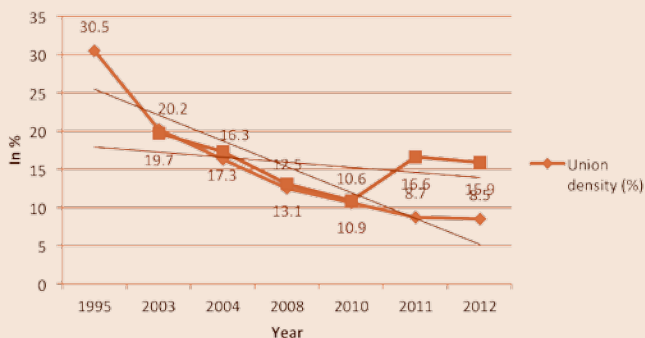
Unionisation trends

Like in most parts of the world, union density rate and collective bargaining coverage in the Philippines are on the downtrend. From a high of 30.5% in 1995, union density (i.e., share of union members to total paid employees) dramatically declined to 8.5% in 2012. At the same time, collective bargaining coverage (i.e., proportion of union members covered by a collective bargaining agreement) went down to 15.9% in 2012 from 20.2% in 2003 (Figure 9).

The ILO points to the increasing number of non-standard forms of employment, the dominance of small enterprises, and the expansion of the informal economy as the main reasons for the decline in union density (ILO, 2012: 77):

The decline in union density may be attributable to the growing number of short-term, seasonal or casual employees in private establishments, which at 2.056 million in 1995 almost doubled to 3.707 million in 2010 [...] The large share of small establishments (employing less than ten workers) and the large proportion of workers in self-employment and unpaid family work also restrict union formation efforts. In 2010, around 90 per cent of some 778,000 establishments were small-sized but accounted for only 30 per cent of the 5.669 million employed (NSO, List of Establishments). In addition, more than two-fifths of total employed were self-employed and unpaid family workers during the same year [...].

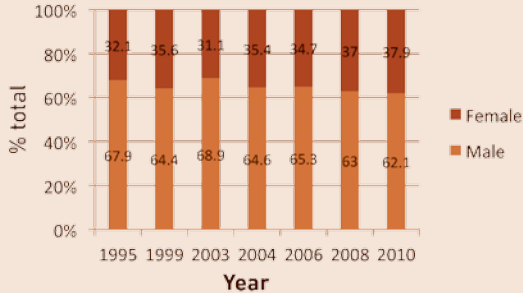
Figure 9: Union density and collective bargaining coverage (%)



Source: Graph constructed using data BLES and NSO-Labour Force Survey.

Men still comprised the bulk of union membership, although their share has shrunk from 67.9% in 1995 to 62.1% in 2010. Women's share in union membership increased from 32.1% in 1995 to 37.9% in 2010 (Figure 10).

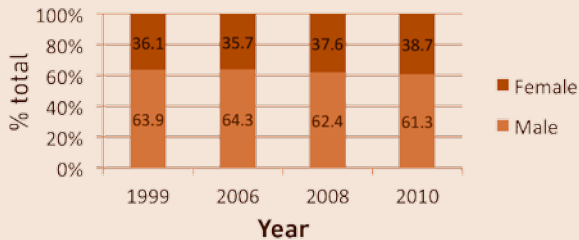
Figure 10: Union membership by sex (%)



Source: Figure reproduced from ILO (2012: 94).

In terms of bargaining coverage, men still comprised the majority although their share went down from 63.9% in 1999 to 61.3% in 2010. Women's share in bargaining coverage was at 36.1% in 1999, and this increased to 38.7% in 2010 (Figure 11).

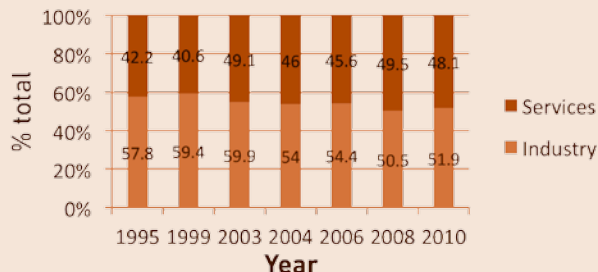
Figure 11: Collective bargaining coverage by sex (%)



Source: Figure reproduced from ILO (2012: 94).

In 1995, the industry sector was the bulwark of unionism, accounting for 57.8% of all union membership. However, by 2010, union membership share of the industry sector went down to 51.9% (Figure 12). Conversely, union membership from the services sector had increased, from 42.2% in 1995 to nearly half (48.1%) in 2010 (ILO, 2012: 87).

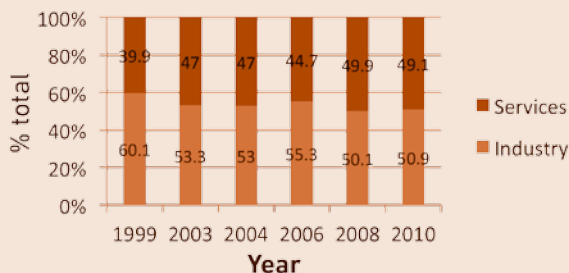
Figure 12: Union membership by branch of economic activity (%)



Source: Figure reproduced from ILO (2012: 94).

By sector, the majority of bargaining coverage was in industry in 1999 (at 60.1%). However, in 2010, industry's share of bargaining coverage shrank a little over half (50.9%). Meanwhile, there was a noted increase in bargaining coverage in the services sector, from 39.9% in 1999 to 49.1% in 2010 (Figure 13).

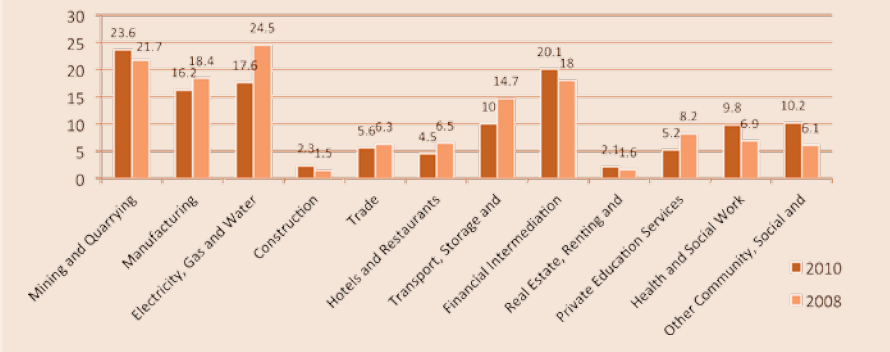
Figure 13: Collective bargaining coverage by branch of economic activity (1999–2010)



Source: Figure reproduced from ILO (2012: 94).

According to BLES (2011), mining and quarrying posted the highest proportion of establishments with unions, at 23.6% in 2010 (Figure 14). This was followed by financial intermediation (20.1%), electricity, gas and water supply (17.6%), and manufacturing (16.2%). Unions were more likely found in larger enterprises. In 2010, one in four (24.9%) establishments employing 200 and more workers had unions. Among establishments with 100–199 workers, only about 14.6% had unions. Establishments employing 20–99 workers were the least organised as only 5.2% had unions.

Figure 14: Percentage share of establishments with union to total establishments by major industry, Philippines (2008 and 2010)



Source: Figure reproduced from BLES (2011: 1), Figure 1.

As shown above, between 2008 and 2010, the number of establishments with unions declined in the following industry sectors: electricity, gas and water; transport, storage and communications; manufacturing; private education services; hotels and restaurants; and trade. Conversely, increase in the number of unionised enterprises took place in the following sectors: mining and quarrying; financial intermediation; health and social work; other community, social and personal services activities; construction; and real estate, renting and business activities.

Categories of non-regular employment

In the Philippines, workers on non-standard employment are called “non-regular workers”. These workers are hired by companies on a non-permanent status. According to BLES (2012a: 1), there are five categories of non-regular workers:

- *Casual workers* — workers whose work is not usually necessary and desirable to the usual business or trade of the employer. Their employment is not for a specific undertaking.

- *Contractual/project-based workers* — workers whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of engagement.
- *Seasonal workers* — workers whose employment, specifically its timing and duration, is significantly influenced by seasonal factors.
- *Probationary workers* — workers on trial period during which the employer determines their fitness to qualify for regular employment, based on reasonable standards made known to them at the time of engagement.
- *Apprentices/Learners* — workers who are covered by written apprenticeship/learnership agreements with individual employers or any of the entities with duly recognised programmes. Apprentices without compensation are excluded.

In the Philippines, BLES defines agency-hired workers as those “workers hired through agencies and contractors to perform or complete a specific job, work or service within a definite or predetermined period and within the premises of the establishment pursuant to a service agreement with a principal” (2012b: 1). Though agency-hired workers are mainly contractual workers, they can also be casual workers, project-based workers, seasonal workers or, to a lesser extent, probationary workers.

The legal framework of non-regular work

There are provisions in the Labor Code of the Philippines that define and regulate the term or duration of employment of various types of non-regular workers. Citing several studies, Ofreneo (2013: 436–437) highlights the legal framework for each type of non-regular worker and what is being done in practice to evade the labour law.

Table 22: Legal framework for non-regular work and various practices that evade the labour law

Type of worker	Legal framework	Practices that evade the law
Temporary and probationary workers	A company is allowed to subject workers to six months of probation, beyond which he or she is entitled to regularisation if the job is “regular and necessary” to the business. A company is also allowed to hire a casual worker; however, a year of accumulated service, even if intermittent, means he or she is also entitled to regularisation.	Some companies and placement and manpower agencies use short-term workers on a so-called 5–5 arrangement, meaning they are hired for only five months without any intention of regularising these workers. For manpower agencies with a network of partner companies, these workers are simply redeployed to another company for another five months, meaning that the company is able to avoid the legal requirement for regularisation following at least six months of continuous probationary service.

Table 22 (Continued): Legal framework for non-regular work and various practices that evade the labour law

Type of worker	Legal framework	Practices that evade the law
Project employees	Under the law, the tenure of project employees is co-terminus with the project they are assigned to, for example, developing a cellular transmission tower for a telecom company whose completion is bound to happen on "a certain day". This is the usual and well-established system of hiring workers in the construction industry, where work moves from one project to another.	The concept of project hiring, which can be for longer durations depending on the project (e.g., three years), has been adopted by non-construction companies or industries, which simply package different aspects of work, such as the assembly of one set of goods, treated as a project separate from the succeeding assembly of another set of goods. In the booming CC-BPO* sector, most jobs are under project-hiring arrangements.
Trainees	Under the law, companies can hire trainees, anywhere between six months and two years, at compensation rates that are 25% below the minimum wage.	Some companies in the electronics assembly and auto parts industries are heavy users of this scheme. In one big electronics company with around 20,000 workers, there are 19 apprentices-trainees for every one regular employee.
Workers under job contracting arrangement (within company premises)	The most common way of promoting labour flexibilisation is the company use of services provided by third-party manpower agencies that deploy project and other short-term workers within company premises.	Service or labour contracting agencies are "manpower agencies", which maintain "manpower pools" and place workers on a temporary basis in different companies to do all kinds of functions, supposedly all under their control and on their payroll. The question arises: Who is the real employer of these workers? The principal company, which contracted the services of the agency, or the agency, which places the workers in the principal's business? The unions complain that agency workers often outnumber the direct hires, especially in service industries, such as the distribution, hotel and restaurant industries as well as labour-intensive manufacturing industries.

Note: *CC-BPO refers to call centre-business process outsourcing.

Source: Ofreneo (2013: 436–437).

Service or labour contracting

Like in Indonesia, service or labour contracting is allowed in the Philippines, but only for activities that are not considered necessary or desirable, nor directly related to the business or operation of the principal. The Labor Code (Articles 106 through 109) recognises the legitimacy of "independent job contracting". Section 2 of the Department of Labor and Employment's Department Order (D.O.) No. 18-A Series of 2011 provides the following definitions and provisions:

- c) “Contracting” or “Sub-contracting” refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or sub-contractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.
- d) “Contractor” or “subcontractor” refers to any person or entity, including a cooperative, engaged in a legitimate contracting or subcontracting arrangement providing either of these services, skilled workers, temporary workers, or a combination of services to a principal under a Service Agreement.
- e) “Contractor’s employee” includes one employed by a contractor to perform or complete a job, work or service pursuant to a Service Agreement between with a principal.
- h) “Principal” refers to any employer, whether a person or entity, including government agencies and government-owned and controlled-corporations, who/which puts out or farms out a job, service or work to a contractor.

Section 4 of D.O. 18-A further defines legitimate contracting and subcontracting if all the following circumstances concur:

- (a) The contractor must be registered in accordance with these Rules and carries a distinct and independent business and undertakes to perform the job, work or service on its own responsibility, according to its own manner and method, and free from control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;
- (b) The contractor has substantial capital and/or investment, and
- (c) The Service Agreement ensures compliance with all the rights and benefits under Labor Laws.

Section 2(l) of the D.O. defines substantial capital as paid-up capital stocks/shares of at least three million pesos [USD 68,570] in the case of corporations, partnerships and cooperatives, and in the case of single proprietorship, a net worth of at least three million pesos.

In addition, Section 5 of D.O. 18-A recognises and clarifies the existence of a trilateral relationship and solidary liability in contracting arrangements through the following provisions:

- (a) An employer-employee relationship exists between the contractor and the employees it engaged to perform the specific job, work or service being contracted; and

- (b) A contractual relationship between the principal and the contractor as governed by the provisions of the Civil Code.

In the event of any violation of any provision of the Labor Code, including the failure to pay wages, there exists solidary liability on the part of the principal and the contractor for purposes of enforcing the provisions of the Labor Code and other social legislation, to the extent of the work performed under the employment contract.

D.O. 18-A is said to be an improvement of the previously issued D.O. No. 18-02, Series of 2002. The proliferation of “manpower cooperatives” has prompted the government to adopt stricter regulations, thus DO 18-A was issued. According to Ofreneo, manpower cooperatives “operate like the regular service agencies and yet claim that the workers they are deploying are not workers but ‘service co-operators’”, and that “as service cooperators, these workers are not covered by labour laws because they are ‘co-owners’ of the cooperative” (2013: 437). In effect, manpower cooperatives were claiming that an employment relationship does not exist between them as an organisation and the workers they deploy whom they consider as co-owners of the cooperative. In 2009, a Supreme Court ruling established the existence of employer-employee relations between Asia-Pro, a big manpower cooperative, and the workers it deployed in a banana plantation in Mindanao, and that Asia-Pro should therefore remit to the Social Security System its counterpart contribution of the social security of their workers (Azucena, 2010: 153–154; cited in *ibid*).

D.O. 18-A further strengthens the prohibition of “labour-only contracting” (LOC) defined as “a situation where the contracting agency has no substantial capital to back up its capacity to do the outsourced work, no equipment or tools to undertake the work, and no control over the manner and conduct of the work as performed by the recruited workers” (Ofreneo, 2013: 437). In essence, LOC is simply the opposite of independent job contracting. Section 6 of the D.O. expressly states this prohibition and clarifies how an arrangement is considered LOC.

- (a) The contractor does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others, and the employees recruited and placed are performing activities which are usually necessary or desirable to the operation of the company, or directly related to the main business of the principal within a definite predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal; or
- (b) The contractor does not exercise the right to control over the performance of the work of the employee.

Section 7 of D.O. 18-A stipulates additional prohibitions, such as the following, among others: (a) contracting out of jobs, work or services that results in the termination or reduction of regular employees, reduction of work hours, or reduction or splitting of the bargaining unit; (b) contracting out of a job, work or service through an in-house agency (i.e., a contractor which is owned, managed or controlled either directly or indirectly by the principal; or one where the principal owns/represents any share of stock, and which operates solely and mainly for the principal); (c) contracting out of a job, work or service performed by union members when such action will interfere, restrain or coerce employees in the exercise of their rights to self-organisation; and (d) repeated hiring of employees under an employment contract of short duration or under a Service Agreement of short duration with the same contractors, which circumvents the Labor Code provisions on security of tenure.

When a contracting arrangement is found out to be LOC or when any of the prohibited activities stipulated in D.O. 18-A have been committed, the principal will be deemed the direct employer of the contractor's employees.

With regard to the rights of the contractor's employees, D.O. 18-A accords to them all the rights and privileges in the Labor Code, such as: safe and healthy working conditions; labour standards (such as but not limited to service incentive leave, rest days, overtime pay, holiday pay, 13th month pay, and separation pay); retirement benefits under the Social Security System or retirement plans of the contractor; social security and welfare benefits; the right to self-organisation, collective bargaining and engagement in peaceful concerted activities; and security of tenure. It is also interesting to note that under D.O. 18-A, the principal is obligated to provide a copy not only of the Service Agreement (a sample template of such is provided as well) with the contractor but also of the employment contract of the contractor's employees to the principal's sole and exclusive bargaining agent (SEBA). This is the first time that the principal was required to furnish a copy of the Service Agreement to its SEBA. In D.O. 18-02, the SEBA could obtain a copy of the contract of employment of the contractor's employees.

Notwithstanding the stricter regulations on labour outsourcing under D.O. 18-A, in practice, the distinction between LOC and independent job contracting usually gets blurred. The grey area revolves around defining what activities (job, work or service) are deemed necessary, desirable or directly related to the business or operation of the principal.

The magnitude of non-regular/non-standard employment

In the Philippines, specific and disaggregated on non-standard forms of employment are available. The data is culled from the BLES Integrated Survey (BITS) which is a nationwide sample survey covering 6,780 non-agricultural establishments employing at least 20 workers. Based on the 2010 BITS Survey, total non-regular employment increased 16.2% between 2008 and 2010. The highest increase noted was among contractual/project-based workers: nearly one in four of all non-regular workers (Table 23).

Table 23: Non-regular employment in non-agricultural establishment with 20 or more workers by category, Philippines (2008 and 2010)

category	2010		2008		2008–10 change	
	No.	% distribution	No.	% distribution	No.	% distribution
Total employment	850,085	100.0	731,548	100.0	118,536	100.0
Contractual/ project-based workers	445,020	52.4	359,553	49.1	85,467	23.8
Probationary workers	179,384	21.1	169,452	23.2	9,932	5.9
Casual workers	170,817	20.1	147,447	20.2	23,370	15.8
Seasonal workers	28,815	3.4	33,684	4.6	-4,869	-14.5
Apprentices/ learners	26,049	3.1	21,412	2.9	4,637	21.7

Note: Figures may not add up to totals due to rounding.

Source: Table reproduced from BLES (2012a: 2), Table 2.

When the total number of rank-and-file workers covered by the survey is considered, the share of non-regular workers is staggering. In 2010, non-regular workers employed in formal establishments with 20 or more workers accounted 32.5% of all rank-and-file workers compared to 28.1% in 2008, an increase of 16.2% (Table 24). This means that in 2010, about one in three rank-and-file workers was a non-regular worker. It is useful to note too that the most recent financial crisis occurred in 2008/2009. However, the Philippine economy made a quick recovery in 2010, posting a GDP growth of 7.6%. This again shows the tendency of non-regular work to rise when the economy experiences growth.

Table 24: Total employment of rank-and-file workers non-agricultural establishment with 20 or more workers by category, Philippines (2008 and 2010)

Type of worker	2010	% to total	2008	% to total
Total	2,617,417	100.0	2,599,228	100.0
Regular	1,767,332	67.5	1,867,680	71.9
Non-regular	850,085	32.5	731,548	28.1

Source: Table extracted from BLES (2012a: 1), Table 1.

In contrast, though regular workers accounted for the majority of rank-and-file workers in 2008 and 2010, their share nonetheless shrank by 5.4%, from 71.9% in 2008 to 67.5% in 2010.

In terms of sectoral or industry distribution, the same BLES (2012a: 2–3) survey revealed the following:

- Establishments engaged in real estate, renting and business services and manufacturing were the two biggest employers of non-regular workers. Together, they accounted for more than half (54.1% or 460,089) of the total non-regular employment (Table 25).
- Relatively lesser shares were noted in wholesale and retail trade (11.0%), construction (10.1%), and hotels and restaurant (8.2%) (Table 25).

Table 25: Non-regular workers in non-agricultural establishments with 20 or more workers by category and major industry group, Philippines (2010)

Major industry group	Total	Percentage distribution	Category				
			Contractual/ project- based workers	Probationary workers	Casual workers	Seasonal workers	Apprentices/ learners
All industries	850,085	100.0	445,020	179,384	170,817	28,815	26,049
Mining and Quarrying	5,073	0.6	1,808	468	1,422	1,312	62
Manufacturing	202,704	23.8	85,744	37,850	51,553	7,980	19,577
Electricity, Gas and Water Supply	14,793	1.7	7,991	2,630	3,646	248	280
Construction	85,866	10.1	78,873	746	3,878	2,347	22
Wholesale and Retail Trade	93,242	11.0	40,489	16,731	24,124	11,276	622
Hotels and Restaurants	70,077	8.2	38,338	14,032	13,424	1,534	2,740
Transport, Storage and Communications	19,520	2.3	8,368	7,203	2,602	182	085
Financial Intermediation	11,466	1.3	2,757	7,381	922	-	406
Real Estate, Renting and Business Activities	257,385	30.3	147,582	58,181	49,874	1,371	376
Private Education Services	58,148	6.8	20,636	26,008	9,037	2,195	272
Health and Social Work Except Public Medical, Dental and Other Health Activities	14,885	1.8	3,729	5,630	4,940	26	559
Other Community, Social and Personal Service Activities	16,925	2.0	8,704	2,433	5,305	343	140

Source: Reproduced from BLES (2012a: 3), Table 3.

Meanwhile, the same BLES survey (ibid: 3–4) indicated that the growth of non-regular employment was highly mixed across industry groups (Table 26).

- In terms of the shares of non-regular employment to industry group total employment, three industries stood out as having the biggest proportions in their workforce, namely: construction (65.4%); real estate, renting and other business activities (37.7%); and hotels and restaurants (35.7%).
- In contrast, industries with the lowest proportions of non-regular employment were transport, storage and communications (11.6%); and financial intermediation (7.7%).
- Growth occurred in seven industry groups and was particularly strong in construction (72.9%, or an increase of 36,208); hotels and restaurants (53.1%, or an increase of 24,311); other community, social and personal service activities (44.3% or an increase of 5,194); private education (30.4%, or an increase of 13,568); and real estate, renting and business activities (21.2%, or an increase of 45,006).
- On the other hand, non-regular employment declined in five other industries. The biggest reduction was reported in mining and quarrying (-5,582) followed by transport, storage and communications (-3,669); and manufacturing (-2,531). The rest were reported in financial intermediation (-1,564); and electricity, gas and water supply (-920).

Table 26: Percentage share of non-regular workers to industry employment by major industry group, Philippines (2008 and 2010)*

Major industry group	2010			2008			2008-2010 Change	
	Total employment	Non-regular	% Share to industry employment	Total employment	Non-regular	% Share to industry employment	Increase/decrease	Growth rate (%)
All industries	3,042,750	850,085	27.9	3,011,801	731,548	24.3	118,537	16.2
Mining and Quarrying	19,450	5,073	26.1	24,721	10,655	43.1	-5,582	-52.4
Manufacturing	833,414	202,704	24.3	919,387	205,235	22.3	-2,531	-1.2
Electricity, Gas and Water Supply	80,826	14,793	18.3	91,606	15,713	17.2	-920	-5.9
Construction	131,216	85,866	65.4	95,152	49,658	52.2	36,208	72.9
Wholesale and Retail Trade	362,857	93,242	25.7	367,460	86,363	23.5	6,879	8.0
Hotels and Restaurants	196,075	70,077	35.7	150,501	45,766	30.4	24,311	53.1
Transport, Storage and Communications	168,452	19,520	11.6	184,713	23,189	12.6	-3,669	-15.8

Major industry group	2010			2008			2008-2010 Change	
	Total employment	Non-regular	% Share to industry employment	Total employment	Non-regular	% Share to industry employment	Increase/decrease	Growth rate (%)
Financial Intermediation	148,949	11,466	7.7	172,620	13,030	7.5	-1,564	-12.0
Real Estate, Renting and Business Activities	682,508	257,385	37.7	614,529	212,379	34.6	45,006	21.2
Private Education	239,014	58,148	24.3	229,710	44,580	19.4	13,568	30.4
Private Health and Social Work	87,408	14,885	17.0	91,518	13,247	14.5	1,638	12.4
Other Community, Social and Personal Service Activities	92,582	16,925	18.3	69,884	11,731	16.8	5,194	44.3

*In non-agricultural establishments with 20 or more workers.
Source: Reproduced from BLES (2012a: 4).

Of course, the magnitude of non-regular employment in formal non-agricultural establishments (with 20 or more workers) only captures one segment of non-standard employment in the Philippines, that is, informal employment in formal companies. Based on the Labor Force Surveys of NSO, BLES (2008) estimates that for the period 2001–2006, nearly half (44.6%) of the total employed in the country were employed in the informal sector.⁴ Between 2001 and 2006, informal sector employment grew at an average of 2.3%. Industry-wise, more than half (54.5%) of the total employed in agriculture were informal sector workers in 2006. The share of informal sector workers was also high in the services sector, with 39.5% of the total employed in the sector in 2006.

Trends in outsourcing and agency-hired work

Like in Malaysia, large-sized export-oriented establishments (i.e., 200 workers or more) in the Philippines are more likely to practise outsourcing *outside* their premises than those that serve only the local market. According to the 2010 BLES survey on “Establishments Resorting to Outsourcing or Contracting Out Jobs/Services” (BLES, 2012c: 1), although only 10.4% of the estimated 23,723 establishments in 2010 resorted to outsourcing or contracting out jobs and services outside their premises, certain industries exhibited incidence of such practice well above the overall industry average. They include financial intermediation (15.7%), manufacturing (14.7%) and construction (11.9%). In terms of type of establishment, establishments resorting to this type of work arrangement were mainly in manufacturing (31.2%); wholesale and retail trade (19.9%); and real estate, renting and business activities (11.1%). Altogether, they comprised 62.2% of total establishments engaged in outsourcing/contracting out.

⁴ BLES-DOLE defined informal sector workers as the sum of the self-employed and the unpaid family workers.

In terms of the type of jobs or services mostly outsourced/contracted out by the companies surveyed, the same survey found the following: accounting and financial services (44.2%), courier services (24.4%), transport services (18.7%); human resource/recruitment (17.0%); learning/training (12.1%); and billing and payment (11.0%). Contracting out jobs related to production/assembly was resorted to by only 193 companies or 7.8% of the total 2,471 establishments resorting to contracting.

Although the incidence of outsourcing *outside* an establishment's premises may be low as indicated above, the incidence of agency work in the Philippines, in contrast, is high. According to the 2009/2010 BLES Integrated Survey of Establishments (BITS) on agency-hired workers, nearly half of all establishments surveyed had agency-hired workers. As mentioned earlier, agency-hired workers in the Philippines are those workers hired through agencies and contractors to perform or complete a specific job, work or service within a definite or predetermined period and *within* the premises of the establishment pursuant to a service agreement with a principal. If we take together the results of the two BLES surveys, we could surmise that the practice of putting out work or service to a third party is increasingly done *within* the premises of establishments (i.e., the principal).

According to the BLES survey, 48.0% or 11,388 of the estimated 23,723 non-agricultural establishments (with at least 20 workers in June 2010) engaged agency-hired workers (BLES, 2012b: 1). Industry-wise, establishments engaged in electricity, gas and water supply posted the highest share (56.9%), followed by financial intermediation (53.4%), and private health and social work (52.1%). The lowest was noted in real estate, renting and business activities (29.1%).

The same survey estimated the number of agency-hired workers at 341,703 or 10.1% of the total 3.384 million persons engaged by the establishments in 30 June 2010.

Table 27: Establishments with agency-hired workers in non-agricultural establishments with 20 or more workers by major industry group, Philippines (2010)

Major industry group	Total establishments	Establishments with agency-hired workers		
		Number	% Share to industry	% Distribution
All industries	23,723	11,388	48.0	100.0
Mining and Quarrying	55	28	50.8	0.2
Manufacturing	5,253	2,680	51.0	23.5
Electricity, Gas and Water Supply	575	327	56.9	2.9
Construction	645	321	49.8	2.8
Wholesale and Retail Trade	4,928	2,539	51.5	22.3
Hotels and Restaurants	3,166	1,529	48.3	13.4
Transport, Storage and Communication	1,341	580	43.2	5.1
Financial Intermediation	972	519	53.4	4.6
Real Estate, Renting and Business Activities	2,749	801	29.1	7.0
Private Education Services	2,639	1,365	51.7	12.0
Private Health and Social Work	616	321	52.1	2.8
Other Community, Social and Personal Service Activities	784	378	48.3	3.3

Source: Reproduced from BLES (2012b: 4), Table 1.

The two biggest employers of agency-hired workers were establishments engaged in manufacturing (157,209 or 46%), and wholesale and retail trade (51,015 or 14.9%). Together they accounted for about three-fifths of the total agency-hired workforce (Table 28). For manufacturing in particular, the share of agency-hired workers to the total persons engaged was placed at 15.9%. This means that roughly one in every six workers in manufacturing came from private employment agencies.

In terms of the types of services contracted out, the same survey found that agency-hired workers were engaged predominantly to provide security and janitorial services (BLES 2012b: 2–3). More than two-fifths (43.7%) of the total agency employment in 2010 were hired for these tasks. The number of agency workers hired for security services was exceptionally high in electricity, gas and water supply (70.3%) and financial intermediation (65.3%), while for janitorial services, the highest proportion was noted in private health and social work (47.7%); and private education services (40.3%). The next largest group of agency workers were those hired to perform activities related to production/assembly; they accounted for nearly one-third (30.2%) of total reported agency employment of 341,703. Almost all of the production/assembly workers were found in manufacturing (99.5%).

Table 28: Total employment and agency-hired workers in non-agricultural establishments with 20 or more workers by major industry group, Philippines (2010)

Major industry group	Total persons engaged	Total employment	Agency-hired workers		
			Number	% Share to total persons engaged	% Distribution
All industries	3,384,453	3,042,750	341,703	10.1	100.0
Mining and Quarrying	22,182	19,450	2,733	12.3	0.8
Manufacturing	990,623	833,414	157,209	15.9	46.0
Electricity, Gas and Water Supply	88,359	80,826	7,533	8.5	2.2
Construction	137,642	131,216	6,426	4.7	1.9
Wholesale and Retail Trade	413,872	362,857	51,015	12.3	14.9
Hotels and Restaurants	215,766	196,075	19,691	9.1	5.8
Transport, Storage and Communications	187,050	168,452	18,599	9.9	5.4
Financial Intermediation	168,851	148,949	19,902	11.8	5.8
Real Estate, Renting and Business Activities	706,744	682,508	24,236	3.4	7.1
Private Education Services	255,810	239,014	16,796	6.6	4.9
Private Health and Social Work	94,112	87,408	6,704	7.1	2.0
Other Community, Social and Personal Service Activities	103,442	92,582	10,860	10.5	3.2

Source: Reproduced from BLES (2012b: 4), Table 2.

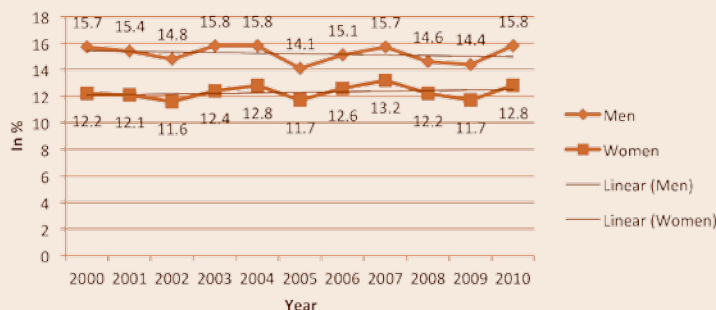
What is interesting to note from the BLES survey on agency-hired workers is the finding that agency-hired workers can be considered industry-specific, meaning that there are certain segments or components in specific industries where agency workers predominate. The survey results revealed that the share of agency workers was high in food service and catering in hotels and restaurants (81.5%); marketing/sales in wholesale and retail trade industry (75.7%); packaging in manufacturing (48.3%) and wholesale and retail trade (47.4%); research and development in other business activities (89.1%); and warehousing in manufacturing (48.9% or 1,055).

The rest of the agency-hired workers were engaged in jobs or services that were generally common across industries such as general administrative, repair and maintenance, IT services and logistics/transport services.

Unfortunately, the same survey did not provide the gender distribution of agency-hired workers. Nonetheless, data on the share of workers in precarious work, which includes agency work, may provide some insights into the gender dimension of agency work. Figure 15 indicates that although the share of men in precarious work

was higher than that of women for the period 2000 to 2010, the overall trend for men was one of gradual decline while that of women was of gradual increase. This implies that more and more women are engaged in precarious work.

Figure 15: Employees in precarious work, as % of employed, Philippines (2000–2010)



Source: Graph constructed by the author using data from ILO (2012: 51).

Operations of private employment agencies

Private employment agencies engage either in the business of (1) manpower recruitment and placement, or (2) job and service contracting. The first type is when the agency simply finds workers to fill certain required positions in the client company. Under this arrangement, the agency is paid a fee for locating suitable workers whose employment contracts are between them and the client company. These agencies must register as Private Recruitment and Placement Agencies (PRPA) of the Department of Labor and Employment (DOLE). The second type of agency is the focus of this paper. Independent job or service contractors should not engage in the business of manpower recruitment and placement and have a different registration which is that of legitimate service contractors. The dividing line between these two types of employment agencies is crossed when both practise labour-only contracting, which is merely supplying workers and leaving the control and supervision of those workers to the company.

In 2011, there were 3,246 registered job or service contractors, but in 2012 the number dropped to 1,125 (Table 29). The drop may be due to the November 2011 issuance of D.O. 18-A which increased the registration fee from PHP 1,000 to PHP 25,000 (USD 22–570) and the sufficient capitalisation requirement from PHP one million to PHP three million (USD 22,850–68,500).

Table 29: Private Recruitment and Placement Agencies (PRPAs), Job/Service Contractors/Sub-Contractors, and Alien Employment Permit, Philippines (2011–May 2013)

Indicator	2001	2012 ^a					2013 ^a			
		Total	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total	1st Qtr	Apr	May
Private Recruitment and Placement Agencies (PRPAs)										
License Issued	413	293	87	78	66	62	21	19	-	2
Licenses Cancelled	7	-	-	-	-	-	12	11	-	1
Licenses Revoked	17	2	-	-	-	2	-	-	-	-
Job/Service Contractors/Sub-Contractors										
Contractors/ Sub-Contractors Registered	3,246	1,125	105	259	371	390	534	291	116	127
Contractors/Sub-Contractors Delisted	194	5	-	1	-	4	4	1	1	2
Alien Employment Permit (AEP)										
AEP Issued	18,641	20,911	4,777	5,220	5,192	5,722	5,572	3,920	736	916
AEP Applications Denied	31	17	2	1	1	13	5	-	4	1
AEP Suspended	-	-	-	-	-	-	3	-	-	3
AEP Cancelled/ Revoked	204	130	12	2	58	58	294	170	50	74
Working Child Permit										
Permits Issued	4,082	3,954	891	1,040	951	1,072	2,774	1,627	886	261

Source: BLES, 2013. Current Labor Statistics (July 2013). Note: p=Preliminary

One of the employer associations in the subcontracting business is the Philippine Association of Local Service Contractors (PALSCON). With over 250 members, PALSCON operates in all types of industries and activities whether manufacturing, logistics, merchandising (selling), administrative services, and others (Sarah P. Deloraya interview, 20 August 2013). The number of workers in each of PALSCON member companies range from 3,000 to 10,000. Contracts for jobs or services with client companies are called "projects", the durations of which could range for a few months to several years. Workers' employment contracts are based on the length of the project, but this does not mean they are relieved by the subcontractor at the end of the project. They are maintained in the agency's workforce pool until they can be employed for another project again (ibid). As such, Deloraya considers them as their regular (project) employees. In between projects, workers are encouraged to take-up skills training or livelihood activities as alternative sources of income. Others find other jobs and so leave the workpool if the wait is too long.

Agencies mostly rely on walk-in job applicants; rarely do they place online job or newspaper advertisement as, according to Deloraya, advertised jobs require higher levels of qualifications not usually required by clients. Likewise, job applicants in their

agencies would not qualify for most types of jobs advertised in newspapers such as for call centre agents. Most jobseekers are working for the first time and have limited or low-level of skills and it is up to subcontractors/agencies to help them gain skills usually through on-the-job training. PALSCON believes it plays a role in skills building, notably in developing occupational skills that match industry demand.

Job ladder or career growth (within the agency) is possible for long-timers in the workpool, but this depends on many factors including luck. For example, a truck driver's assistant could upgrade and be deployed one day as a truck driver if he has learned to drive satisfactorily and if there is job vacancy. The luckiest break an agency worker could have is to be recruited for a job in the client company where he would most likely become a regular employee. In the meantime, while they are still in the workpool of an agency it is important, according to Deloraya, to upgrade skills, learn new skills, work hard and take on opportunities. The more skills workers have, the higher their chances of becoming hired for different projects, otherwise if they only have one skill they have to wait longer until a project that requires their know-how comes along.

As far as labour rights are concerned, PALSCON is of the view that agency workers receive the same level of wage, benefits and entitlements as any regular worker. For one thing, they consider them regular workers (or "talents"). They place them in other projects as soon as the last one ends and try to equip them with skills that would help them qualify for other positions. They could also form a union among themselves if they like, although it seems there is still none under PALSCON at the time of our interview.

The business of subcontracting can be likened to running a HR business. There are always people coming and going and a myriad of things related to recruitment, timekeeping, payroll, benefits and discipline have to be taken cared of on a daily basis. Since workers are deployed in different locations, agencies have roving supervisors to give them general directions regarding tasks and responsibilities and monitor workers stationed in different areas. If an agency has a sizeable number of workers deployed to a particular client it will usually keep an office in the premises as well.

Since turnaround time for collecting payment from principal companies could take several months it is important that subcontractors have enough revolving funds to make sure they can pay workers' wages and benefits on time. PALSCON members can easily do this, but small and sometimes illegal subcontractors often cannot and the principal who does not know that the agency is not paying its workers on time could land a possible labour case (Sarah P. Deloraya interview, 20 August 2013).

Box 4: “Jobs first, and then good jobs”

That is according to the President of Company A (hereafter referred to as Agency), a small company providing contingency services related to marketing, sales and operations (production) for small and big companies in the business of food manufacturing, selling or food handling. The Agency has been in business for four years. Their workers perform jobs like putting stickers on promotional products, bundling items (e.g., for buy-one, take-one offers), preparing (cooking) products for sampling and offering product samples to customers in supermarkets and groceries. They also provide production assembly services for a client engaged in food products manufacturing. Workers report to the office of the Agency but they are deployed in client companies for each day. While majority of the workers are on-call or have short-term contracts (from one to six months), it also has a pool of about 30 regular workers including two full-time coordinators at its food manufacturer client. In all, its number of workers averages 400 at any given time.

Job applications are processed in the small office of the Agency and hiring is based on certain qualifications depending on the available jobs. For certain positions, the Agency must adhere to client standards (e.g., age). For other jobs, the Agency hires elementary graduates (i.e., driver assistants in trucking or freight services, stickering or product bundling). They also hire high school graduates and disabled workers (hearing and sight impaired) whenever possible. Production crew positions require previous employment experience in a factory or production line. Forklift operators must be sufficiently skilled. The respondent is quite particular with the minimum age, which is 23 years, but he does not impose a maximum age requirement. The big supermarkets and groceries, however, insist that food sampling crew stationed in their premises should be no more than 27 years old. Majority of the workers are men because most tasks require lifting or carrying heavy items, but 98% of food samplers are women as required by clients.

The Agency also has a small office inside the premises of its food manufacturer client. Two coordinators oversee its regular and contractual workers stationed there. While the Agency uses its own office equipment such as computers, printers and supplies, the production workers use the factory machinery owned by the principal. The respondent adds that they were ready to buy their own equipment but the client dissuaded them from doing so since there were plans to automate the production process within the next two to three years.

All workers under the Agency receive minimum wage (Metro Manila rate) even if they are deployed to supermarkets in regions where the minimum wage is lower. Salary is dispensed through ATMs, with deductions for social security premiums and other government-mandated deductions. Workers are entitled to overtime pay, meal allowance (for food samplers stationed at the malls), 13th month pay, and group accident insurance (for mobile workers). The policy of no-work, no-pay applies even to regular employees. Paid vacation and sick leave entitlements are only redeemable at the end of the year (for regular workers) or contract. On average, seasonal or on-call workers are hired for a cumulative period that is less than one year.

This agency says that it maintains control over their workers including their selection and hiring, provision of relevant prior training, payment of wages, work scheduling, deployment and imposing discipline. All new hires undergo six to seven hours of orientation about rules and regulations, good manufacturing practices and food safety systems such as the Hazard Analysis and Critical Control Points (HACCP) and Sanitation Standard Operating Procedures (SSOP). Those who are deployed at the food manufacturing client undergo a further on-the-job training under the supervision of the Agency's other employees.

Profits are derived from the administrative services fee (ASF) which is added on as a percentage (no less than 10%) on top of the total contract price of the services the Agency provides. The respondent deems it important to maintain low overhead cost with a very lean administrative staff (which requires him to multi-task and perform multiple roles), and deploys at least 100 workers each day in order to break-even.

In what way does this kind of business help employers and workers? According to the respondent, they help companies expand the principal company's business with lesser costs. He adds that when businesses expand, more jobs are created. This business also encourages a mindset among workers to perform well and efficiently. They also help in skills development not only for the benefit of workers but clients as well. Some former workers have been hired directly by clients and so the Agency somehow also sees itself as the training pool from which clients could draw their future workers.

Trade unions' perspective on non-standard work

For trade unions in the Philippines, non-standard work is synonymous to (different types of) non-regular jobs. In the communications sector, for instance, non-standard work takes the form of short-term contract or contractual jobs. In retail, distribution

and logistics, contractual jobs are considered non-standard jobs. In the construction sector, project-based employment are considered non-regular or non-standard. In other sectors, non-regular jobs are defined by their variable pay schemes. For example, in the agricultural sector majority are piece-rate workers; in real estate are commission-based workers; and in the transport industry, a 'boundary system'⁵ exists (Gerard Seno interview, 16 August 2013).

In the largest telecommunications company in the Philippines, Philippine Long Distance Telephone Company (PLDT), the Union President Arthur Castillo observes that in his 26 years in the company, PLDT grew and expanded into other businesses. This gives him reason to believe that PLDT now employs more workers, certainly more than the 16,000 rank-and-file workers (and union members) that it employed in the 1990s. His current estimate is about 30,000 rank-and-file workers in the PLDT group, but majority of these are contractual workers, even for positions that perform a core activity like line repairmen (Arthur Castillo interview, 20 July 2013). Their contracts are continuously renewed since these are only for a month at a time. They are not employees of PLDT but of subcontractors or agencies. They should be supervised by supervisors of their agencies and not PLDT's as this is one of the conditions that helps to distinguish that their employment relationship is not with PLDT but with their agencies. According to Castillo, there are now only 1,500 regular rank-and-file workers (union members) in PLDT but 4,000 to 5,000 supervisors (unionised). He finds this to be a bizarre situation.

In the banking sector, subcontracting and outsourcing functions are likewise rampant, according to a 2010 survey conducted by the National Union of Bank Employees (NUBE) (Jose Umali interview, 6 July 2013). Out of 13 banks surveyed, 12 engaged in subcontracting and outsourcing. Among the jobs performed by third-party agencies and outsourced workers are printing of deposit statements; credit investigation and collection; janitorial services; processing of export, import and other trading transactions; messenger, courier and postal services; security services; vehicle service; credit card services; data imaging, storage and retrieval; transfer agent services for debt and equity securities; property appraisal; accounting services; ATM loading; clearing and processing of checks; and computer and ATM maintenance.

Gerard Seno, the National Executive Vice President of one of the biggest national federations, the Alliance of Labor Unions Trade Union Congress of the Philippines (ALU-TUCP) says it is unfortunate that most businesses consider workers as the most negotiable and flexible factor in production. Workers' time and effort are maximised by companies who employ them only within a short period of time. They have no chance of having regular and continuing sources of income. Among short-term

⁵ A boundary system is a payment arrangement between the owner of the vehicle and the driver in which the latter pays a pre-determined fixed amount to the former as "rent" usually for a day for using the vehicle for public transportation purposes.

hires, the union, he thinks, is most threatened by the agency-hired who work side-by-side the regular workers, but are usually paid less, receive no benefits, and are not covered by a collective bargaining agreement (Gerard Seno interview, 16 August 2013). Based on a survey by ALU-TUCP, about 20–30% of workers in majority of companies are agency-hired. The survey also found that some agencies are being operated by the middle managers of the company as their “racket” or “sideline”.⁶ Though some tend to be in-house or labour-only contracting, proving them as LOCs is quite difficult. According to Seno, it is important for local unions to find a way to absorb these workers into their organisation, perhaps under a different category of membership; doing so will not only help the unions gain control over the workforce, it will aid bargaining efforts as well (ibid).

Layered efforts to ‘regulate’ subcontracting

For Seno, it is alarming how this trend of subcontracting has grown in both size and scope. Whereas before it was just confined to functions that were traditionally contracted out like janitorial and security services, now almost all activities in the company are being done by third parties. This situation makes it more difficult for unions to organise, let alone negotiate with management. There is a surplus of workers, of which subcontractors and principals take advantage. Unions are facing choices where they must weigh and often balance options and consequences. According to Seno, one could either take a “hard” or “soft” approach. The hard approach is insisting “no to contractualisation” and making a firm non-compromising position, while a soft approach means taking an initial low position but gradually negotiating for more as the union gains influence and acceptability. TUCP, according to Seno, takes a hard national advocacy against contractualisation but takes a softer tack at the enterprise level.

Organising the workers of subcontractors is no strange territory for ALU-TUCP. In one case, after ALU-TUCP was able to form a union in one subcontractor, the principal company ended its service contract with the former. Some of the workers lost their jobs while others were re-assigned to other projects, but the union was dispersed. According to Seno, D.O. 18-A still does not provide enough protection to ensure that the relationship between the principal and the contractor are not severed because of union formation. ALU-TUCP also had an experience wherein the subcontractor refused to bargain with the union; the workers went on strike but in the long run the union was dissolved.

⁶ “Racket” or “sideline” are popular terms used in the Philippines to refer to economic activities, often informal, as additional sources of income.

Similarly, there are alternative approaches if organising contractual workers is not feasible. However, this means the union in the principal company should try to engage the company in some ways as to convince (or perhaps even force) the company to look into the plight of workers under its subcontractors, with the aim of helping to improve their situations. There are two roads, according to Seno. One is through the Corporate Social Responsibility (CSR) policy of the company. The CSR could be used to push the principal company to nudge the subcontractors and make sure that they too comply with the minimum wage law, pay social security premiums, practise health and safety requirements and so on. The other is through the labour-management committees (LMC) as these could also be used for the same end as the CSR (Gerard Seno interview, 16 August 2013).

Meanwhile, according to Jose Umali, the President of the National Union of Bank Employees (NUBE), the union federation is trying to focus on preserving regular jobs within the banks, preventing those jobs from leaking out and being transferred to third parties. His federation's efforts are geared at the level of the locals, NUBE itself, and between federations. Individual local unions negotiate for provisions in the collective bargaining agreement (CBA) that would help safeguard members' jobs. In their survey of 13 unions, NUBE found that half of the respondents (the exact number was not mentioned) have CBAs that require that the union be consulted in case management "decides to outsource or hire contract employees" (Jose Umali interview, 16 July 2013). Three of the CBAs limit the number of contract employees or the duration of their employment. Umali emphasised that it is important for NUBE to stay vigilant about what is going on within their members' banks and in the sector as a whole so they could swiftly act on issues that may have future negative impact on their affiliated unions. Also, it helps to work together with other unions and federations in the sector, namely, ALU-TUCP, Federation of Free Workers (FFW) and National Association of Trade Unions (NATU) (BITC, 2011). During the period when agency-hiring was becoming widespread, they asked the BSP (Philippine Central Bank) to define the essential banking functions which cannot be outsourced. The unions also took advantage of the industry-level social dialogue mechanism, the Banking Industry Tripartite Council (BITC), to negotiate added protection for jobs in the banks. For instance, while the BSP only limited the essential banking functions to five areas, the BITC forged an agreement (BITC Regulation No.1 2.b) with the other tripartite partners (employers and the BSP) that the union shall be consulted in case a company plans to outsource certain positions; when employers will re-assign affected regular workers to other departments within the banks; or when workers will be employed by third-party subcontractors. Securing the current roster of employment in the banking industry requires a layered approach and perseverance among unions and workers.

Conclusion

The Philippine labour law defines regular employment in terms of the nature of work or the duration of employment. However, the law also recognises that employers could hire different types of non-regular workers as may be required by the nature and operation of the business. For the last decade or so, employers have been leaning more towards hiring non-regular workers and justifying their decisions on competition, market volatility, changing organisational structure and so on.

In addition, employers have also been farming out or subcontracting jobs and services to third-party subcontractors so that they are not only engaging non-regular workers, but are also choosing to deal with them in an indirect way; that is, by having the subcontractors act as the direct employers of the workers. While some of these agency jobs are clearly peripheral functions in the organisation, some are also activities that are inseparable from their business.

Given this, the trade unions are clearly at a disadvantaged position. Union membership that traditionally comprised workers with regular status in the company has been dwindling. The only other source of members would be from the non-regular workers, but not all unions have made the decision to allow them into their organisations. Assuming that non-regular workers could become part of the union, the union could still exclude them in the scope of the collective bargaining. It would be ideal if unions could organise workers of the subcontractors, and while major stumbling blocks exist — for example, the principal company could abruptly end their contract with the subcontractor whose workers have become organised — legislative amendments and full enforcement of existing regulations that would prohibit such action would be important.

Nonetheless, despite the difficulties in organising and according protection to non-regular workers, especially agency workers, trade unions in the Philippines have utilised complementary strategies at the enterprise, industry and national levels to provide more protection to these workers and to contain the spread of non-standard non-regular work.

Bibliography

Azucena, C. A. (2010). *Employment and outsourcing under Philippine law*. Manila, Philippines: Rex Book Store.

BITC Resolution No.1 Series of 2011. <http://blr.dole.gov.ph/PDFandDownloadables/VCGP/National/Banking%20ITC%20-%20national.pdf>. Accessed on 21 Aug 2013.

Bureau of Labor and Employment Statistics (BLES). (2013). "Current Labor and Employment Statistics". <http://www.bles.dole.gov.ph/PUBLICATIONS/Current%20Labor%20Statistics/index.html>. Accessed on 23 Aug 2013.

Bureau of Labor and Employment Statistics (BLES). (2012a). "2010 Survey of Employment in the Philippine Industry and Services Sectors: Statistics on Non-Regular Workers", *Labstat Updates*, Vol. 16, No. 4. Manila: Department of Labor and Employment.

Bureau of Labor and Employment Statistics (BLES). (2012b). "2010 Survey of Employment in the Philippine Industry and Services Sectors: Statistics on Agency-Hired Workers", *Labstat Updates*, Vol. 16, No. 7. Manila: Department of Labor and Employment.

Bureau of Labor and Employment Statistics (BLES). (2012c). "2010 Survey of Employment in the Philippine Industry and Services Sectors: Profile of Establishments Resorting to Outsourcing or Contracting Out Jobs/Services", *Labstat Updates*, Vol. 16, No. 8. Manila: Department of Labor and Employment.

Bureau of Labor and Employment Statistics (BLES). (2011). "Extent of Unionism and Collective Bargaining in Establishments: 2010", *Labstat Updates*, Vol. 15, No. 31. Manila: Department of Labor and Employment.

Bureau of Labor and Employment Statistics (BLES). (2008). "Profile of Workers in the Informal Sector (IS), 2001–2006", *Labstat Updates*, Vol. 12, No. 18. Manila: Department of Labor and Employment.

Department of Labor and Employment (DOLE). (2011). *Philippine Labor and Employment Plan 2011-2016*. <http://www.dole.gov.ph/fndr/bong/files/PLEP-26%20April%20version.pdf>. Accessed on 29 August 2013.

International Labour Organization. (2012). *Decent Work Country Profile: The Philippines*. Geneva: International Labour Organization.

Ofreneo, R. E. (2013). "Precarious Philippines: Expanding Informal Sector, "Flexibilizing" Labor Market", *American Behavioral Scientist* 57(4): 420–443.

Umali, J. (2010). "Outsourcing in the Philippine Banking Industry". [http://mail.uniglobalunion.org/Apps/UNINews.nsf/vwLkpById/DBDCBBB78CE758E4C1257782002DB199/\\$FILE/ABUC%20Presentation-Bank%20Outsourcing%20in%20Phils.pdf](http://mail.uniglobalunion.org/Apps/UNINews.nsf/vwLkpById/DBDCBBB78CE758E4C1257782002DB199/$FILE/ABUC%20Presentation-Bank%20Outsourcing%20in%20Phils.pdf). Accessed 21 August 2013.

Interviews:

Arthur Castillo, President, Philippine Long Distance Telephone Union, 20 July 2013.

Gerard Seno, National Executive Vice President, Associated Labor Unions, Trade Union Congress of the Philippines (ALU-TUCP), 16 August 2013.

Jose Umali, National President, National Union of Bank Employees (NUBE), 6 July 2013.

Owner-operator of a manpower service company (name withheld per request of interviewee), 31 July 2013.

Romeo Montefalco, Director, Bureau of Labor Relations, Department of Labor and Employment, interviewed on 6 August 2013.

Sarah P. Deloraya, National President, Philippine Association of Local Service Contractors, Inc. (PALSCON), 20 August 2013.



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SINGAPORE

Melisa R. Serrano

What constitutes non-standard employment in Singapore? According to the country's official statistics, "term contracts" capture all forms of limited duration non-standard employment, including those workers hired and employed by agencies to perform work in user companies. Employees on term contracts have a fixed contract of employment that ends on the expiry of a specific term or period unless it is renewed, as well as those on casual/on-call employment (i.e., where persons are employed on *ad hoc* basis, as when the company requires additional manpower). Meanwhile, part-timers refer to those whose normal hours of work are less than 35 hours a week. There are two categories of part-time workers in Singapore: the time-related underemployed or those who are willing and available to work additional hours and the so-called "voluntary" part-timers or those who are unwilling to work additional hours or willing to work additional hours but unavailable for additional work.

After providing an overview of the economic and labour market conditions in Singapore, this chapter looks into the various types and the magnitude of non-standard employment in the country. The legal framework on non-standard employment is also discussed. Singapore's unique way of effectively dealing with outsourced and low-wage work through tripartite initiatives is highlighted in this chapter. Finally, this chapter presents what the trade union movement in Singapore has been doing to accord representation and protection to outsourced and low-wage workers.

The data for this chapter are from secondary literature and interviews with key people from trade unions, an employers' organisation and a non-government organisation in Singapore. The interviews were done during a field research visit in Singapore in August 2013.

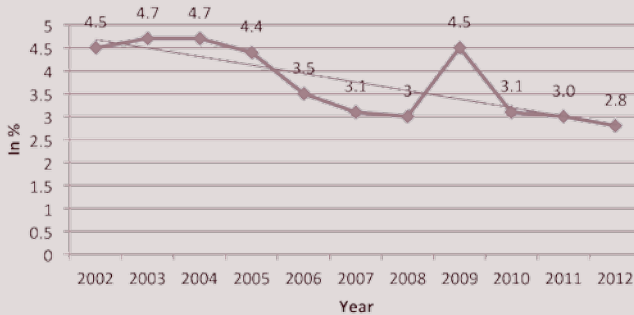
GDP growth and employment gains

Prior to the most recent global financial crisis, Singapore's GDP registered enviable growth; escalating to 16% in 2007 from 11% in 2006. With the outbreak of the World Financial Crisis in 2008, Singapore's GDP plummeted to 0.6% before inching up a bit to 1.9% in 2009. By 2010, the economy has fully recovered as GDP shot up to 15%. However, this growth was not sustained as the economy again contracted in 2011 and 2012, with GDP rates declining to 5.4% and 3.4%, respectively.

However, despite an overall trend of declining GDP in the period 2010–2012, unemployment remained low. In fact, between 2005 and 2008, unemployment rates in Singapore were declining (Figure 16). This general trend of decline was interrupted in 2009 with the outbreak of the financial crisis, which pushed up the unemployment rate to 4.5%. In 2010, however, with the economy registering positive and high

growth, the unemployment rate went down to 3.1%, dropping further to 2.9% in 2011 and 2.8% in 2012. As of March 2013, the unemployment rate remained low at 2.7%. In this regard, it could be said that there is almost full employment in Singapore.

Figure 16: Resident unemployment rate in Singapore, 2002 to 2012

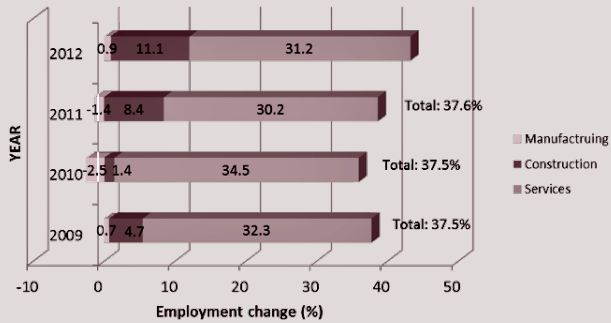


Source: Manpower Research and Statistics Department, Singapore. (2012). *Singapore Workforce, 2012*. Singapore: Ministry of Manpower, Chart 9, p. 13.

The bulk of employment gains in Singapore continue to come from the services sector. As shown in Figure 17, between 2009 and 2012, about eight in 10 employment generated came from the services sector. In the last quarter of 2012, accommodation and food services accounted about one in four (25%) of employment in the services sector. Nearly the same proportion was registered in wholesale and retail trade (23%), and community, social and personal services (23%).

Employment growth in the construction sector also registered positive gains overall in the period 2009–2012. On the other hand, employment generation in the manufacturing sector continued to be low and shrinking. In the first quarter of 2013, manufacturing employment shrank by 1.2%, lower than the 2% growth registered in the same period in 2012.

Figure 17: Employment change by sector in Singapore, 2009 to 2012 Note: Rate of employment change is of 4th quarter of the year covered.

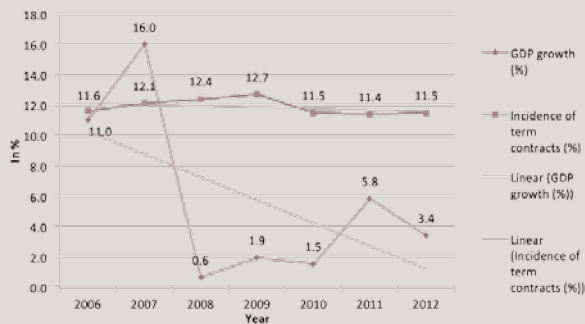


Source: Graph constructed by the author using data from: Manpower Research and Statistics Department, Singapore. (2012). *Singapore Workforce, 2012*. Singapore: Ministry of Manpower, Chart 6, p. 5.

Non-standard work and economic growth

The sensitivity of non-standard work to the ebbs and flows of the economy can be seen in the changes in the level or incidence of term contracts in Singapore. An overall trend of gradual decline is observed in terms of the share of resident employees on term contracts, reversing the uptrend since 2006 (Figure 18). Note that the decline in the incidence of employees on term contracts occurred from 2009 to 2011 as a result of the financial crisis in 2008 and 2009.

Figure 18: GDP and incidence of term contracts in Singapore, 2006 to 2012



Sources of data:

- (1) GDP data from Statistics Singapore.
- (2) Data on Incidence of Term Contracts from the Manpower Research and Statistics Department (2010).

Of particular interest is the trend towards reduction or shortening of the duration of term contracts. As shown in Figure 19, while the incidence of term contracts for less than a year was on the uptrend between 2006 and 2012, the reverse was observed for term contracts for a year or more. This implies that the duration of term contracts is becoming shorter and shorter in Singapore.

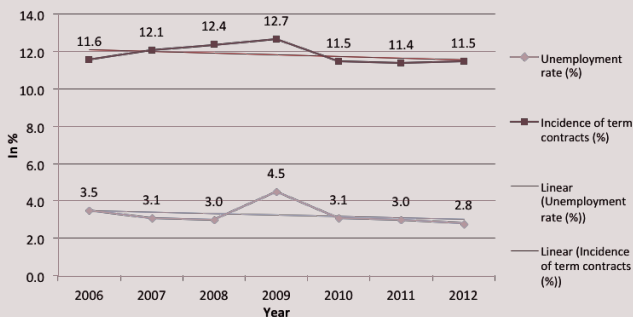
Figure 19: Incidence of term contracts for less than a year and one year and more, Singapore



Source: Graph constructed by author using data from Manpower Research and Statistics (2012: 12).

Unlike in Indonesia and the Philippines, in Singapore, the declining trend in unemployment rates between 2006 and 2012 came hand in hand with the downward trend in the incidence of term contracts (Figure 20). This is so because the labour market in Singapore is characterised by (almost) full employment. It is also important to note that Singapore is a labour-receiving country in the ASEAN region.

Figure 20: Unemployment rate and incidence of term contracts, Singapore (%)



Source: Graph constructed by author using data from Manpower Research and Statistics Department (2012: 11 and 13).

Singapore's official labour market statistics does not disaggregate the different categories of employment under term contracts. Nevertheless, based on Figure 20, 192,200 or 11.5% of resident employees in Singapore were on term contracts in 2012, a slight increase from 188,400 or 11.4% in 2011, but still lower than the peak of 12.7% during the 2009 recession. Overall, there has been a declining trend in the incidence of term contract employment between 2006 and 2012.

Unionisation trends

Singapore's Trade Unions Act defines a trade union as any association or combination of workers/employees or employers, whether temporary or permanent, whose principal objective is to regulate relations between workmen/employees and employers. The National Trades Union Congress (NTUC) is the only national confederation of trade unions in Singapore, and it draws membership from the industrial, service and public sectors. NTUC is comprised of 60 affiliated unions, one affiliated taxi association, 14 social enterprises and five related organisations, with over 770,000 union members by the end of 2013. NTUC's social enterprises are engaged in various economic activities, such as housing, recreational and leisure services; daycare for the elderly; retail trade (supermarkets); childcare and pre-school education; cooked food business; insurance; training; media; savings and loan; healthcare; and retail mall.

Unlike in most countries in ASEAN, union density in Singapore is increasing in recent years (Figure 21). Nearly one in three residents in Singapore was a union member in 2012 compared to one in four in 2006.

Figure 21: Union density in Singapore (%)



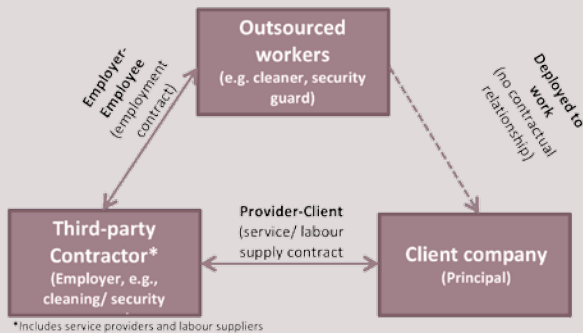
Source: Graph constructed by author using own calculations based on data (trade union members and total employed residents) from Department of Statistics Singapore (2013: 57 and 70).

In 2006, NTUC established the Unit for Contract and Casual Workers (UCCW) to represent low-wage workers who are at the lower end of the outsourcing business.

Outsourced workers and temporary agency workers

In Singapore, temporary agency workers (TAWrs) count among categories of workers considered as “outsourced workers”. These workers are employed and supplied by a third-party contractor (i.e., service provider who is also the employer of the workers) to work in a client company (i.e., the principal, service buyer or user company) under an outsourcing contract. Common examples are cleaners or security guards supplied by service providers. In this respect, outsourcing is also a form of subcontracting that involves agency-hired workers who work within the user companies’ premises. A document from the Ministry of Manpower (MOM) of Singapore illustrates the relationship of outsourced workers with the third-party contractor, on the one hand, and the client company, on the other hand (Figure22).

Figure 22: Nature of outsourced workers’ relationship with third-party contractor and client company



*Includes service providers and labour suppliers

Source: Ministry of Manpower. (2013). “Who are ‘Outsourced workers’?”. <http://www.mom.gov.sg/Documents/press-releases/2013/Inviting%20Public%20Views%20on%20Proposed%20EA%20and%20EFMA%20Changes%20in%20Phase%20II%20-%20Annex%20A2.pdf>.

Official data on the number of outsourced workers in Singapore is not available. However, according to a document from the MOM, an ad-hoc survey in 2011 estimated that outsourced workers comprised 3.3% of the workforce in private establishments. Among the pool of outsourced workers, 37% were performing cleaning services; 18% security services; and 13% facility repairs and maintenance (MOM, n.d.).

In Singapore, outsourced workers are commonly found in cleaning services, security services, information technology services, logistics/transportation services, and administrative and support services (secretarial, human resources). Most workers on contract work and outsourced work belong to the bottom 20% of the workforce in terms of wages. In the cleaning services, about three-quarters of workers are women. These workers are mostly older people.

Continuing demand for contract hires among professionals

In Singapore, a continuing demand for professionals on term contracts has been noted as well. This is particularly pronounced among finance and accounting and IT professionals. A survey done by the global recruitment company Robert Half revealed that one in three finance and accounting hiring managers in Singapore said they are hiring or considering hiring contract or temporary staff to address skills shortages in their organisations (Robert Half Finance and Accounting, 2011). In addition, there is also a growing interest among professionals of flexible employment. According to Robert Half, from 2010 to 2011, a 15% to 20% rise in the number of applicants for senior-level contract positions was observed. More and more professionals are attracted by bigger salaries and other benefits offered by companies, including increased work flexibility, career exposure and experiences (ibid). Robert Half notes that contract employment is also a viable option for new job entrants or professionals seeking mid-career switches.

Nonetheless, despite the attractiveness of contract jobs, job instability is the main drawback. As one former IT contract professional said: "Contract work can provide a great deal of variety by working for different companies, but the benefit of a permanent position is to help build a business over the long-term and grow professionally with the company" (Yap, 2011).

The legal framework on outsourced work

In Singapore, there is currently no legal framework in place on outsourcing of contracts. However, the operations of private employment agencies (PrEAs) are regulated under the Employment Agencies Act 2012 (as amended). This Act covers all entities and individuals, whether based in Singapore or overseas, that carry out employment agency (EA) work⁷ in Singapore. The amended Act requires, among others, the following: (i) the registration of all employment agency personnel performing EA work (involving both local and foreign workers) with the MOM; (ii) the certification by MOM of EA personnel (i.e., all persons who are engaged, whether on a permanent, temporary or contractual basis, by the employment

⁷ EA work includes the following: (i) facilitation of the placement of any worker with an employer; (ii) communication with any worker for the purpose of assisting in job applications; (iii) collation of biodata or resume of any worker to help secure employment; and (iv) submission of any work pass application on behalf of an employer or worker to MOM.

agency) and key appointment holders (i.e., persons in the employment agency who have general control and management of the any EA work) of employment agencies with comprehensive license (i.e., agencies that place all types of workers). The amended Act also stipulates no cap on the fee that employment agencies may charge employers for the services provided. However, the fees charged to workers were increased. Prior to the amendment, placement fees are capped at 10% of the employee's first month's salary. With the amendments, placed workers are now charged a maximum of two month's salary.

From cheap sourcing to best sourcing: Tripartite initiatives protecting outsourced workers

Outsourced workers as employees of third-party contractors are covered under the Employment Act (EA), Employment of Foreign Manpower Act (EFMA) and the Work Injury Compensation Act (WICA). However, due to the practice of "cheap sourcing" (Table 30) for certain outsourced contracts, especially for the cleaning, security and landscaping, outsourced workers have been facing problems such as stagnant wages particularly for the low-income group, difficulty in getting better terms of employment, job insecurity and lack of career progression path (Lan et al., 2013).

Table 30: Key features of cheap sourcing, Singapore

1.	The awarding of contracts by service buyers based on lowest tender price.
2.	The competition between service providers based on price pushes down the contract price.
3.	Outsourced workers are overworked and their salaries depressed. There is high turnover and absenteeism and low productivity.

Source: Lan et al. (2013: 3).

In order to address the problems associated with cheap sourcing and provide an alternative (later on referred to as 'best sourcing'), the NTUC took the initiative to tackle the issue at the Tripartite Committee (TriCom) for Low Wage Workers⁸ and Inclusive Growth. In March 2008, the TriCom released a Tripartite Advisory on Responsible Outsourcing Practices. In January 2012, after gathering feedback for six months from all stakeholders, an updated and renamed Advisory was released — the Tripartite Advisory on Best Sourcing Practices. The new Advisory, through moral persuasion, encourages service buyers to consider the five principles enumerated in Table 31 when outsourcing:

⁸ In Singapore, low-wage workers are those that receive a monthly pay of not more than SGD 1,900 (USD 1,520).

Table 31: Five principles of best sourcing practices

1.	Safeguard the basic employment rights of workers.
2.	Specify service contracts on the basis of service-level requirements rather than headcount.
3.	Recognise factors that contribute to service quality (i.e., good track record, provision of written employment contracts to workers, grading and accreditation level, training of workers, and appropriate tools and equipment).
4.	Seek to establish a long-term collaborative partnership with service provider.
5.	Provide a decent work environment for workers.

Source: Ministry of Manpower, National Trades Union Congress and Singapore National Employers Federation (n.d.: 8–10).

To provide more clarity on how to implement best sourcing practices, a step-by-step guidebook for best sourcing for service buyers was launched in January 2012. The best sourcing pledge, which is managed by the Singapore National Employers Federation (SNEF), was also introduced in 2012 as a way to encourage service buyers to adopt the Tripartite Advisory of Best Sourcing Practices for their outsourced contracts.

To motivate service providers to adopt best sourcing practices and remain competitive, the Best Sourcing Initiative (BSI) fund was introduced to fund up to 5% of the contract value up to a maximum of SGD 150,000 (USD 12,000) per contract. When bidding for projects, the service provider can also tap on the Inclusive Growth Program (IGP) funding to undertake productivity improvement projects, including the improvement of manpower capabilities. What is interesting to note is that both the BSI and IGP fund are managed by NTUC.

How do employers see BSI? Chua Ker Sin, Director of Research of the Singapore National Employers' Federation (SNEF) considers BSI as a way to encourage service providers to innovate (Chua Ker Sin interview, 16 July 2013). Moreover, he sees BSI as a strategy to improve the skills of workers through training and the use of proper equipment. Through BSI, he believes that workers' wages can be increased and their career prospects can be improved as well. Chua adds that before BSI was introduced, service buyers merely focused on headcount. With the implementation of BSI, more and more service buyers and service providers focus on performance and quality. According to Chua, SNEF supports the Progressive Wage Model for cleaners (discussed below) proposed by the Unit for Contract and Casual Workers (UCCW) of NTUC.

Government initiatives protecting low-wage workers

Other government agencies have also set up measures to encourage fair employment practices and provide training to low-wage outsourced workers. Singapore's National Environment Agency (NEA) introduced the voluntary Clean Mark Accreditation Scheme to recognise companies that deliver high standards of cleaning not only through upgrading equipment and technology to improve work processes, but also through training of workers and fair employment practices. Beginning 1 November 2012, NEA's accreditation scheme required accredited companies to pay their cleaners progressive wages under the proposed PWM (Maideen, 2012). To complement NEA's accreditation scheme, the Singapore Workforce Development Agency (WDA) has set aside USD 6.1 million over two years to train and upgrade 7,800 cleaners (ibid).

As of October 2012, there are 55 government organisations that are buying cleaning services from NEA-accredited companies (Lan et al., 2013). Beginning 1 April 2013, all government ministries and statutory body had to procure from NEA-accredited cleaning companies.

In July 2013, the National Wages Council issued a recommendation mandating a SGD 60 (USD 48) built-in wage increase for low wage workers, including outsourced contract cleaners, who earn a basic monthly salary of SGD 1,000 (USD 800) and below. According to Lim Swee Say, NTUC's Secretary General, while 80% of all unionised enterprises adopted NWC's recommendation, less than 30% of non-unionized enterprises failed to comply (Joseph, 2013: 2).

The government of Singapore, through the MOM, also engages in a name-and-shame strategy to discourage cheap sourcing that violates labour and social legislations. The website of the MOM provides a list of employers convicted for infringements of the Employment Act and the Central Provident Fund (CPF). It also provides a list of offenders convicted under the Workplace Safety and Health Act.

Union initiatives protecting low-wage and outsourced workers

Apart from initiating the BSI and the PWM for cleaners, the NTUC established the Unit for Contract and Casual Workers (UCCW) in 2006 to represent low-wage workers who are at the lower end of the outsourcing business. The Centre for Contract and Casual Workers (C3W) was also set up at NTUC's e2i (Employment and Employability Institute) as a one-stop service centre where workers can receive career guidance and direct assistance from UCCW. Members of UCCW are not exactly full-pledged members of NTUC. They pay only a fraction of the amount of union dues paid by regular NTUC members.

Specifically, UCCW focuses on the cleaning and security services. According to Lan Peishan of UCCW, workers in the cleaning and security services have stagnant wages and minimum working conditions (Lan Peishan interview, 16 July 2013). The employment tenure of outsourced workers depends on the place of work. It could vary from one to four years. In Singapore, there is no legislation regulating the employment tenure of outsourced workers. Lan observes an increasing trend of outsourcing in the cleaning and security services since 2006 (ibid).

UCCW provides information and educational activities to contract and casual workers about their employment rights. It has produced a little handbook in various languages (spoken by the cleaners and other contract workers), which contains information on training activities available for these workers, grievance handling and other employment-related issues.

In early 2012, the UCCW-NTUC initiated the formation of the Tripartite Cluster for Cleaners (TCC) to address the problem of stagnating wages in the cleaning industry. In October 2012, UCCW-NTUC pushed for the adoption of the PWM in the TCC. Initially, the PWM targeted to cover the three biggest groups of cleaners, namely office and commercial cleaners, food and beverage establishment cleaners, and conservancy cleaners (i.e., public cleansing, town councils, etc.). On the average, a cleaner received from SGD 815 to SGD 850 (USD 652–680) a month in 2011. With PWM, the proposed minimum pay for cleaners is set at SGD 1,000 (USD 800). A career ladder for the three groups of cleaners is drawn under PWM so that the wages of cleaners increase as they scale the career ladder through up-skilling (Figure 23).

Figure 23: Progressive wage model for the cleaning industry in Singapore (in SGD)*

Group 1 Office & Commercial Cleaners e.g., Offices, Schools, Hospitals and Polyclinics	Group 2 F&B Establishment e.g., Hawker Centre, Foodcourts	Group 3 Conservancy e.g., Town Councils, Public Cleansing
		Truck Drivers (Class 4/5) ≥ SGD 1,700
Supervisor ≥ SGD 1,600	Supervisor ≥ SGD 1,600	Supervisor / Class 3 Mechanical Drivers ≥ SGD 1,600
Multi-skilled Cleaners / Machine Operator ≥ SGD 1,400	Multi-skilled Cleaners / Machine Operator ≥ SGD 1,400	Multi-skilled Cleaners / Machine Operator / Refuse Collector ≥ SGD 1,400
Outdoor Cleaners / Inpatient Hospital Cleaners ≥ SGD 1,200	Dishwasher / Refuse Collector ≥ SGD 1,200	General Cleaners ≥ SGD 1,200
General / Outpatient / Indoor Cleaners ≥ SGD 1,000	Table-top Cleaners ≥ SGD 1,100	
	General Cleaners ≥ SGD 1,000	

*SGD 1,200–1600 (USD 960–1,270)

Source: Graph reproduced from NTUC (2013: 18).

The Singaporean government has already implemented in 2013 the PWM for cleaners in the government sector. As mentioned earlier, NEA's accreditation scheme has started requiring accredited companies to pay their cleaners progressive wages under the proposed PWM. By 2014, all service providers in the cleaning industry will be required to comply with the PWM. This means that all cleaners will earn a minimum salary ranging from SGD 1,000 to SGD 1,600 (USD 800–1280), depending on their job functions.

Conclusion

Among the six study countries, Singapore has the lowest incidence of non-standard employment in terms of fixed-term contracts. Most workers under fixed-term contracts are low-wage workers, particularly in the cleaning and security industries.

Although in general the incidence of term contracts has been declining over the last seven years, the incidence of term contracts for less than a year has been gradually on the uptrend.

Singapore is one country where tripartism in industrial relations is intensively used to address problems and challenges in the labour market. The establishment of a Tripartite Committee for Low Wage Workers, Tripartite Cluster for Cleaners, BSI and PWM are some of the country's good tripartite practices that aim to protect the rights and improve the working conditions of term contract workers. Apart from these tripartite initiatives, the NTUC established the UCCW as a representation structure for low-wage contract workers.

Bibliography

Department of Statistics Singapore. (2013). *Yearbook of Statistics Singapore 2013*. Singapore: Department of Statistics, Ministry of Trade & Industry. http://www.singstat.gov.sg/publications/publications_and_papers/reference/yearbook_2013/yos2013.pdf.

Joseph, J. (2013). "NTUC Champions Better Wages for Outsourced Cleaners", *NTUC This Week*, 14 June.

Lan, P., Ng, R. and C. Lee. (2013). "Singapore Country Report on "Flexibility and Security: Bipartite and Tripartite Dialogue Approaches to Outsourcing", paper presented in the 5th Tripartite Regional Seminar on Industrial Relations in the ASEAN Region, 27–28 February, Hanoi, Viet Nam.

Maideen, N. B. (2012). "Government Quick with Support for PWM", *NTUC This Week*, 26 October.

Manpower Research and Statistics Department. (2010). *Singapore Workforce, 2010*. Singapore: Ministry of Manpower. http://www.mom.gov.sg/Publications/mrsd_singapore_workforce_2010.pdf.

Manpower Research and Statistics Department. (2011). *Singapore Workforce, 2011*. Singapore: Ministry of Manpower. http://www.mom.gov.sg/Publications/mrsd_singapore_workforce_2011.pdf.

Manpower Research and Statistics Department. (2012). *Singapore Workforce, 2012*. Singapore: Ministry of Manpower. http://www.mom.gov.sg/Publications/mrsd_singapore_workforce_2012.pdf.

Manpower Research and Statistics Department. (2013). *Labour Market, First Quarter 2013*. Singapore: Ministry of Manpower. <http://stats.mom.gov.sg/Pages/Labour-Market-Report-1Q-2013.aspx>.

Ministry of Manpower. (n.d.). "Outsourced Workers". <http://www.mom.gov.sg/Documents/press-releases/2013/Inviting%20Public%20Views%20on%20Proposed%20EA%20and%20EFMA%20Changes%20in%20Phase%20II%20-%20Annex%20A2.pdf>.

Ministry of Manpower. (2013). "Foreign Workforce Numbers". <http://www.mom.gov.sg/statistics-publications/others/statistics/Pages/ForeignWorkforceNumbers.aspx>.

Ministry of Manpower, National Trades Union Congress, and Singapore National Employers Federation. (n.d.). *Best Sourcing: Step by Step Guidebook for Service Buyers*. Singapore: Ministry of Manpower, National Trades Union Congress and Singapore National Employers Federation.

National Trades Union Congress. (2013). "NTUC Champions Better Wages for Outsourced Cleaners", *NTUC This Week*, 14 June.

National Trades Union Congress. (2013). "NTUC Ordinary Delegates' Conference Secretary-General's Report 2013". <http://www.ntuc.org.sg/wps/wcm/connect/122e21ad-2515-4361-bc7e-9afdd98217e8/NTUC+Ordinary+Delegates%27+Conference+2013+SG%27s+Report.pdf?MOD=AJPERES&CACHEID=122e21ad-2515-4361-bc7e-9afdd98217e8>.

Robert Half Finance and Accounting. (2011). "Demand for Contract Professionals on the Rise in Singapore". <http://www.roberthalf.com.sg/id/PR-03237/increased-demand-for-contract-staff-in-singapore>.

Statistics Singapore. "Gross Domestic Product by Industry". http://www.singstat.gov.sg/statistics/browse_by_theme/national_accounts.html.

Yap, J. (2011). "Singapore sees continuing demand for contract hires". ZDNet. <http://www.zdnet.com/singapore-sees-continuing-demand-for-contract-hires-2062301696/>.

Interviews:

Christopher Ng, Regional Secretary, Union Network International Asia Pacific Office, 16 July 2013.

Chua Ker Sin, Assistant Director for Research, Singapore National Employers Federation (SNEF), 16 July 2013.

Lan Peishan, Senior Consultant, Unit for Contract and Casual Workers (UCCW)-NTUC, 16 July 2013.

Florence Tee, Principal Special Representative, International Department, National Trades Union Congress (NTUC), 16 July 2013.

Jolovan Wham, Executive Director, Humanitarian Organization for Migration Economics (HOME), 17 July 2013.

Lakshmi Vaidhiyanathan, Regional Secretary Public Services International Asia Pacific Region, 17 July 2013.



THAILAND

Melisa R. Serrano

In 2011, Thailand joined the ranks of countries categorised by the World Bank as upper-middle-income economies. This 'upgrade' puts Thailand side by side with countries such as Chile, China, Malaysia and South Africa, where average incomes range from USD 4,000 to USD 12,000 (Hewison and Tularak 2013: 444).

Since the mid-1970s, Thailand has been one of the main beneficiaries of the relocation of investments and manufacturing production from Japan, Korea, Taiwan, and later on the United States. This resulted in the increased significance of the industrial and services sectors. In the early 1950s, Thailand's exports were largely primary commodities. Today, about 80% of the country's exports are manufactured goods. Thailand counts among the leading producers of garments, automobiles and auto parts, hard disk drives and other electronic components.

Recent years however saw the 'silent' and gradual expansion of precarious work in Thailand. According to Hewison and Tularak (2013: 445), the deepening of economic liberalisation in Thailand has been accompanied by an increase in labour subcontracting or outsourcing and other forms of less secure work, particularly in the manufacturing sector.

This chapter identifies the types of precarious and non-standard work in Thailand. It also examines the magnitude and expansion of precarious work in the country. Perspectives of the social actors on this type of work are also discussed. Finally, this chapter highlights several initiatives and actions taken by trade unions and the government aimed at protecting precarious and non-standard workers and containing the spread of flexible forms of employment.

The data for this chapter are from secondary literature and interviews with key people from the academe, the Ministry of Labour, trade unions, an employers' organisation and a non-government organisation in Thailand. The interviews were done during a field research visit in Thailand in the August 2013.

Economic growth and the labour market

After years of uninterrupted growth, the Thai economy experienced a general trend of decline in real GDP growth rates between the period 2004 and 2009, which declined by 2.3% in 2009 in the midst of the global financial crisis. In 2010, the economy recovered registering a real GDP growth rate of 7.8%. However, this recovery was not sustained the following year as GDP fell 0.1%. In 2012, the economy rebounded and grew 6.4% (Figure 24).

Despite an erratic economic performance in recent years, unemployment is almost negligible in Thailand. Between 2007 and 2012, the unemployment rate averaged 0.6%. Arguably, the magnitude of informal employment may explain the very low unemployment rate in Thailand.

Figure 24: Real GDP growth and unemployment in Thailand, 2004 to 2012



Source: Graph constructed by the author using data from: IMF (2012) World Economic Outlook, April 2012. Washington, DC: IMF, Table A4, p. 195.

In 2012, about two in five (41.2%) employed persons in Thailand were in the agriculture sector. Around one in three (34.8%) workers was employed in the services sector. Employment in agriculture remained high; in fact it was gradually increasing in the period between 2007 and 2012 (Figure 25). In contrast, employment in the services sector was declining in the same period. Employment was also declining in the manufacturing sector while the opposite trend was noted in the construction sector.

Figure 25: Distribution of employed persons by sector in Thailand, 2007 to 2012



Source: Data constructed by the author using data from various labour force surveys of the National Statistical Office of Thailand.

Unionisation trends

Union density in Thailand is very low. As of May 2013, data from the Labour Relations Bureau of the Department of Labour Protection and Welfare put the number of union members at 579,349, 71% of which comprised union members from 1,373 unionised private enterprises and 29% from 45 unionised public enterprises. With a total employed workforce of 38.85 million in May 2013, union density was a puny 1.5%. As of May 2013, there were 20 labour union federations and one public enterprise labour union federation in Thailand. In 2012, there were 435 collective agreements compared to 422 collective agreements registered with the Bureau of Labour Standard Development of the Department of Labour Protection and Welfare. Unfortunately, data on the number of union members covered by collective agreements are not available.

Sakdina (2007) describes the Thai labour movement as weak comprising small house (or enterprise-based) unions that have low bargaining power. He adds that many of these unions were primarily set up to serve as mass base for the election of various tri-party organisations, and as such did not do their duty in terms of bargaining for their members. He further argues that there is lack of unity among the upper-level union organisations, such as federations and national centres; and that these organisations often split up. Labour federations hardly play a role in collective bargaining since the Thai Labour Law does not authorise them to do so (*ibid*).

In the past, despite a very low union membership, the Thai labour movement achieved notable successes. Through its massive campaigns and mobilisations with the support of other mass-based organisations and progressive academics, the unions were able to push the government to issue many useful laws such as the Social Security Act and the 90-day maternity leave with full payment.

As a response to the weakening of the Thai labour movement, the Thai Labour Solidarity Committee (TLSC) was established. TLSC is a coalition of labour organisations and labour-oriented non-government organisations committed to social movement unionism to promote unity in the labour movement and effectively work for the protection of workers' rights and interests. This coalition engages in public mobilisation in pushing the government to address the demands of workers, and closely monitors developments relevant to workers in the country (Sakdina, 2007).

Informal and non-standard employment

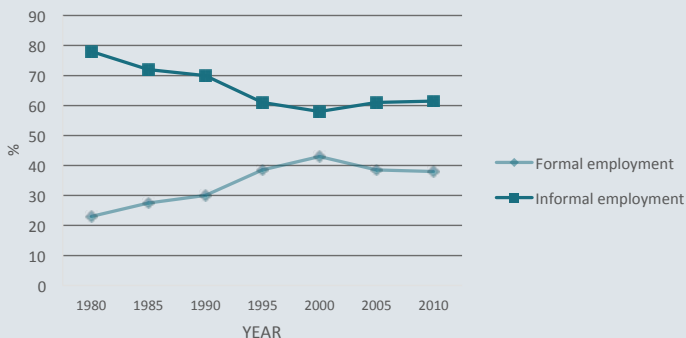
Non-standard work or employment, precarious work and precarious employment are terms not commonly used in Thailand. What is most commonly and now officially used to describe non-standard employment and/or precarious employment has been

informal employment. In general, informal employment as used in Thailand refers to persons who are not protected and have no social security from work. *Informal sector*, meanwhile, comprises various occupations and work situations: the self-employed, street vendors, contract farmers, taxi drivers, piece-rate homeworkers, hairdressers, in construction and in the fishing and seafood industry (Hewison and Tularak, 2013: 448). The terms *dispatched*, *outsourced* and *agency employment* are used to refer to “flexible labour” supplied to factories and are considered non-standard employment arrangements (Voravidh and Napaporn, 2003; cited in *ibid*).

Bundit, Voravidh and Suntaree (2008: 195–196; cited in Hewison and Tularak, 2013: 448) identifies two groups of workers that are included in the official definition of *informal employment*: “(a) home workers, contract workers, and seasonal agricultural labourers; and (b) the self-employed, ranging from farmers and street vendors to professionals such as pharmacists, lawyers, doctors and dentists.”

Informal employment dominates the employment landscape in Thailand (Figure 26). Although informal employment was declining between 1980 and 2000, this downtrend was reversed in the period between 2000 and 2010 when informal employment started to expand. On the other hand, formal employment was increasing between 1990 and 2000, but contracted in the same period. About two-thirds of informal employment is in the agricultural sector.

Figure 26: Formal and informal employment shares, periodic from 1980-2010



Source: Graph reproduced from Hewison and Tularak (2013: 450), Figure 1.

In 2012, informal employment accounted 62.6% of all employment in Thailand, while formal employment comprised 37.4%. The bulk of informal employment is in the agriculture sector; 62.5% of all employment in this sector was considered informal

in 2012. Data from the National Statistical Office (NSO) of Thailand indicate that the share of informal employment in the period from 2007 to 2012 remained stable. In 2008, informal employment was higher at 63.7%.

To the extent that non-standard workers often lack social security coverage, the magnitude of informal employment in Thailand may arguably provide a rough estimate of the incidence of non-standard work in the country.

In terms of work status of employed persons, more than half of all employed persons in Thailand are own-account workers and unpaid family workers. In 2011, own-account workers and unpaid family workers comprised 31.8% and 23.6%, respectively, of all employed persons in Thailand. Private employees accounted about one-third of all the employed. These categories of workers however do not provide the magnitude of non-standard employment in Thailand. Non-standard workers may count among the private employees as well as government employees. Nonetheless, Table 32 indicates that majority of the employed persons in Thailand are in vulnerable employment (i.e., the sum of own-account workers and unpaid family workers). In fact, the combined number of own-account and unpaid family workers increased between 2008 and 2011.

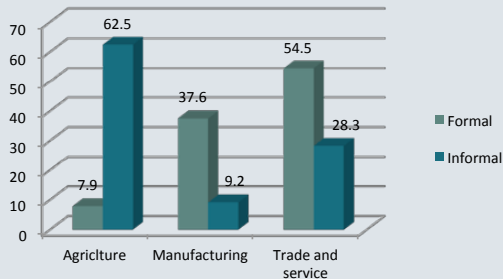
Table 32: Employed persons by work status, Thailand

Category of workers	2008	2009	2011
Employers	2.8	2.8	2.3
Private employees	34.5	35.1	32.7
Government employees	8.5	8.8	9.4
Own-account workers	31.9	32.1	31.8
Unpaid family workers	22.2	21.2	23.6
Cooperatives	0.1	0.1	0.2

Source: Data extracted from various labour force survey of Thailand's National Statistical Office.

A rough estimate of the share of non-standard work in manufacturing and trade and services may be drawn from Figure 27. Assuming that non-standard workers are not covered by social security, we could infer that about 28% and 9% of employed persons in trade and service and manufacturing, respectively, could be non-standard workers.

Figure 27: Comparison of formal and informal by economic groups in 2012 (%)



Source: Graph reproduced from NSO (2012) "Informal labour in Thailand". http://web.nso.go.th/en/survey/lfs/data_lfs/2012_iep_Executive%20Summary.pdf, p. vii. Accessed on 12 May 2014.

It is interesting to note from Figure 27 that among the three main sectors, it is in trade and service that formal labour predominates. In addition, the share of formal labour in this sector was higher than in the manufacturing sector. Nonetheless, in terms of occupational category, the share of informal employment among service workers and shop and market workers was high at 73.7% in 2010, next to skilled agricultural and fishery workers at 93.4% in the same year (ILO, 2013: 32).

The legal framework on non-standard work

Thailand's legal system distinguishes two types of employment contract: hire of service contract and hire of work contract. Under the Civil and Commercial Code, B.E. 2472, Chapter 3, Section 6:

A hire of services is a contract whereby a person, called the employee, agrees to render services to another person, called the employer, who agrees to pay remuneration for the duration of the services.

A hire of work is a contract whereby a person, called the contractor, agrees to accomplish a definite work for another person, called the employer, who agrees to pay a remuneration of the result of the work.

According to Suvit Sumala, Deputy Director General of the Department of Labour Protection and Welfare, there is no official definition of non-standard or non-regular work in Thailand's Labour Protection Act (LPA). In fact, there is no formal regulation in Thailand on which jobs or work can be outsourced or subcontracted (Lae Dilokvidhyarat interview, 30 August 2013).

However, Section 5 of the LPA provides a definition of a “boss”, an employee, and an employer:

“Boss” shall mean a person who agrees to accept an employee for work in return for a wage and shall also mean:

- (1) A person who has been assigned to work on behalf of an employer;
- (2) Where a boss has legal personality, “boss” shall also mean the persons who are authorised to act on behalf of such a boss and the persons who are assigned by persons authorised to act on behalf of such a boss to act on their behalf.
- (3) Where the operator of a business has contracted out the supervision of work and payment of wages, or has assigned any person to recruit employees for work, other than an employment service, such that the work is a part of the entire production or business which is under the responsibility of the business operator, the business operator shall be deemed to be the boss of the said employees.

“Employee” means a person who agrees to do work for an employer in return for a wage, regardless of the name given to describe his status.

“Employer” means a person who agrees to employ another person to carry out all or part of any work for his own benefit, in return for employment remuneration for satisfactory performance of the work.

Section 5 of LPA also distinguishes a contractor and a subcontractor.

“First-level contractor” means a person who agrees to undertake to carry out all or part of a job for the benefit of the employer.

“Sub-contractor” means a person who makes an agreement with a first-level contractor by undertaking to carry out all or part of a job under the responsibility of the first-level contractor for the benefit of the employer, and shall also mean a person who makes an agreement with a subcontractor to undertake a sub-contracted job under the responsibility of the sub-contractor, regardless of how many stages of sub-contract there may be.

From the above definition of sub-contractor, it is clear that multiple chains or layers of subcontracting exist and are allowed to operate in Thailand.

Like the Philippines' Department Order 18-A, Thailand's LPA acknowledges solidary liability for both principal and contractor/subcontractor for any violation of any provision of the LPA.

Where the employer is a subcontractor, the LPA provides that all superior contractors/employers are jointly liable with the immediate employer for wages, overtime pay, holiday pay, holiday overtime pay, severance pay, special severance pay, and contributions or surcharges. The first-level contractor or subcontractors have a right to recover any monies that they have been required to pay out from the immediate employer. It is permissible to include in an agreement between the immediate employer and superior employer(s), provisions that deal with or apportion these liabilities and for indemnity.

Suvit clarifies that some categories of non-standard workers (e.g., domestic workers, "hire of work" or "independent contractors") are not covered by the LPA (Suvit Sumala interview, 29 August 2013). Also, private agency employment is not defined in the LPA. Nonetheless, Suvit stresses that in terms of temporary agency employment, it is the agency, which is also called "labour subcontractor" that is the employer of the agency-sourced worker. In this regard, an employer-employee relationship exists between the agency and the outsourced worker recruited by the agency. As such, employment under labour subcontracting is covered by the LPA.

In 2005–2006, at the height of the military coup in Thailand, the trade unions proposed to the military government to illegalise all forms of subcontracting employment. The military government did not consider the unions' proposal but instead promised to accord all forms of protection to all types of workers albeit allowing all forms of employment (Lae Dilokvidhyarat interview, 30 August 2013).

As a response to the expansion of flexible non-standard employment, an amendment was introduced in the LPA in 2008 stipulating non-discrimination of workers. This amendment states that if two groups of workers do the same job, regardless of their employment category or status, they should receive the same wages and benefits. This means that agency-supplied workers should receive the same pay and benefits as permanent workers when both are doing the same job. Moreover, the unions in Thailand argue that the LPA requires that, where a collective agreement exists, workers on individual contracts could only be hired if their wages and benefits meet or exceed those of the collective agreement (Hewison and Tularak, 2013: 458).

The 2008 amendment to the LPA also aimed at cutting through layers of employment contracting by making “the actual place of work of the employee the ‘business operator’ and the ‘employer of the people coming to do such work’, and responsible under the Act for conditions that were the same as those employees operating under a collective agreement” (International Law Office, 2008; cited in *ibid*: 460).

Suvit emphasises however that the interpretation in the law in terms of defining what is “fair and non-discriminatory” is being contested by employers in Thailand (Suvit Sumala interview, 29 August 2013). At the time of field research in Thailand in August 2013, there is a pending case in the Supreme Court lodged by a Honda supplier subcontracting company questioning the LPA provision on equal treatment and non-discrimination. The workers of this subcontracting company took issue against the user company claiming that the equal treatment clause in the LPA entitles them to receive the hardworking benefit or reward and bonus given to regular workers. The first court ruled in favour of the subcontracted employees. The employer thus appealed the decision at the Supreme Court. The outcome of this case will certainly define the extent and form of outsourcing in Thailand.

The Ministry of Labour (MOL) monitors the working conditions of outsourced workers by doing factory inspections. It has set up a Worker Fund for Welfare of Workers which labour subcontractors or agencies could use to pay for their outsourced workers in cases where these subcontractors are not able to get new contracts and/or renew their contract with user companies. Suvit clarifies that under the LPA, a triangular employment relationship is not preferred (*ibid*). In this regard, MOL conducts dialogues with employers to encourage them to hire workers directly to improve productivity.

The rise of triangular employment relationships: Contracted and agency-supplied workers

Charit (n.d.) notes that after the Asian economic crisis of 1997, employment that is triangular in character was on the rise in almost all business sectors in Thailand. Accordingly, the main types of triangular employment are as follows:

- contracts or sub-contracts, in specific undertakings such as accounting, legal works, security and cleaning
- sub-contracts and package deal in production processes, work to be performed at the place of employment
- sub-contracts and package deal in production processes, but work is to be carried out outside of the place of employment

- recruitment of labour for business establishments where workers are employees of the recruitment agency. An increasing number of juristic persons that provide recruitment services are being set up, some to recruit workers at management levels while others recruit workmen for specific positions or to take charge of the whole production division. Instances of these are PC, BA staffs in department stores, automobile, communications, beverage sales promotion staffs popularly known as PGs (Promotion Girls)
- distribution of work to home workers by large business through middlemen or brokers or sub-contractors, thus giving rise to home worker groups or groups of producers of goods for sale. (Charit, n.d.: 47)

Like in Malaysia and Singapore, agency-supplied labour subcontracting is known as outsourced labour in Thailand. According to Bundit et al. (2008), employers have increased the use of outsourced labour because they are largely unorganised. This observation has been noted as well in interviews with key persons from the academe, the Department of Labour Protection and Welfare, employers' groups and trade unions. From these interviews, several reasons for the increased use of outsourced workers were identified: (1) employers wanted to cut on cost; (2) hiring workers through agencies or labour subcontractors is easier; (3) many workers prefer to apply for work in these agencies as selection process is simpler and faster; these agencies are not strict with regard to the qualification of workers; and (4) many outsourced workers are young people who prefer to move from one job to another. Thus they naturally opt to find work through these agencies or labour subcontractors.

Charit clarifies that in Thailand, the terms intermediary, broker and subcontractor are often used interchangeably. However, each of these terms carries different meanings and status. For example:

[...] In subcontracts where work is distributed to home workers through business agents or persons with close connection or indirect agents, such agents are not be liable for those home workers as juristic relations have already been created between the business concern and the home workers. The agents may or may not be paid remuneration.

[...] In legal connotation, a broker is a middleman who points out the possibility or arranges for any one that comes for his service to enter into an agreement with a third party. A broker is universally considered to be a kind of agent. (ibid: 48)

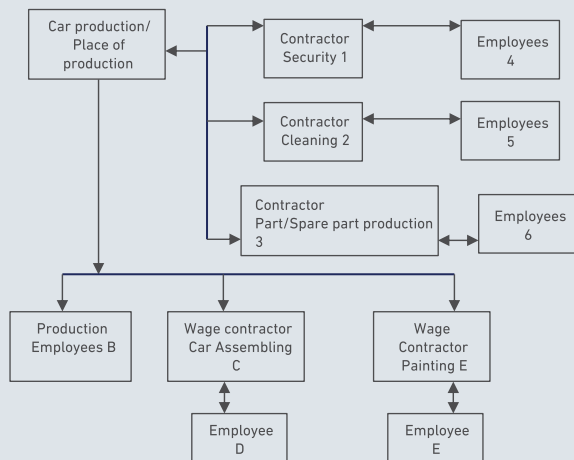
Charit adds that a person may be both an agent and a broker. Again, he provides an example:

A person may be both an agent and a broker. For example, a middleman may seek groups of workers who would accept to carry out work at home for the principal while at the same time, once a contract has been made, takes up the duty to pay wages to the workers.

A broker or middleman is expected to work for remuneration. Hence, a person who accepts work from the principal (owner of business) and himself fixes the rates of wages for those who in turn accept the work from him is not considered to be a middleman, but a sub-contractor. (ibid)

Figure 28 illustrates how multiple triangular or multilateral employment relations may exist in the car production industry in Thailand. As indicated in this Figure, there could be as many as five contractors in one company producing cars, each with its own employees. In this example, there are six groups of workers, with five groups belonging to the contractors and one group representing the workers directly hired by the car manufacturer.

Figure 28: Triangular or multilateral employment relations in the car industry



Source: Reproduced from Charit (n.d.: 49), adapted from Ratchadaporn Tongsook, (1999), "Legal Measure on the Contract Labour", Master of Laws thesis, Dhurakijpundit University.

Charit (n.d.) mentions that contractors and subcontractors are normally small and medium in size. Short-term employment contracts are generally the norm and employees are paid only the minimum wages. Moreover, there is no law or regulation in Thailand that limits the number of succeeding subcontractors so that, as shown in Figure 28, there can be a large number of them in one company.

Citing industry surveys, Hewison and Tularak (2013: 454) identify several industries where outsourcing is concentrated: garments, auto parts, electronics, computer, electrical appliances, wood products and furniture, paper products, publishing and printing, rubber, metal products, leather products and plastic products industries. In the manufacturing sector, outsourcing is mostly resorted to in production, logistics and transport (Ukrish Kanchanaketu interview, 29 August 2013). In manufacturing, outsourced workers are mostly either semi-skilled or low-skilled.

Outsourcing is mostly practiced by majority of multinational companies in Thailand and the greatest number of outsourced workers can be found in the electronics and auto industries (Suvit Sumala interview, 29 August 2013). Also, outsourcing may involve multiple layers of subcontracting. However, there are no available data that would provide the exact number of outsourced workers in these industries.

Hewison and Tularak (2013: 454) point out several features of the outsourcing system in Thailand which tends to increase insecurity and violate labour rights. Agency-sourced or outsourced workers have contracts ranging from three to 11 months. In many cases, outsourced workers do the same work as the regular and directly hired workers of a factory, yet they receive lower wages and have limited, if any, benefits (Suvit Sumala interview, 29 August 2013; Lae Dilokvidhyarat interview, 30 August 2013). Employers (the user company) contend that the companies supplying the workers should provide the benefits to these workers. In short, outsourced workers lack job security and have limited coverage under labour legislations.

Operations of labour-supplying agencies

In Thailand, majority of private employment agencies or labour subcontractors are owned and operated by Thai nationals. These agencies or subcontractors vary in size from small to large. Many of them individually supply labour to many user companies. Their offices are usually set up in the industrial areas where most factories are located. They enter into a commercial agreement with a principal for the supply of workers in the latter's factory, normally for one year. Based on the qualifications needed by the principal, these agencies recruit workers and send them to the principal's factory. The principal pays the agency a fee, which covers the latter's administrative cost and the wages of the workers recruited. The administrative cost varies. For example, the agency receives from the principal THB 400 (USD 12) for each employee it supplies to the principal's factory. Then it pays each worker THB 300 (USD 9). This leaves the agency THB 100 (USD 3) per worker (Suvit Sumala interview, 29 August 2013; Ukrish Kanchanaketu interview, 29 August 2013).

Normally, the labour subcontractor or agency sends one person in a factory to coordinate between the principal and the outsourced workers. In practice, however, the principal may have its own supervisor or foreman who supervises as well the work of the agency-supplied workers. By law, the authority to discipline and move outsourced employees from one workplace to another rests on the labour subcontractor or agency.

It is to be noted that despite a full-employment scenario, there is shortage of semi-skilled and low-skilled labour in Thailand. At the same time, the unemployment rate among college graduates is the highest.⁹ Clearly, there is skills mismatch in Thailand's labour market. In this regard, agencies or labour subcontractors find difficulty in supplying semi-skilled and low-skilled labour to factories (Ukrish Kanchanaketu interview, 29 August 2013). In addition, these agencies are also facing high labour turnover.

Migrant labour has filled the shortage on semi-skilled and low-skilled labour. In fact, the government of Thailand has entered into a memorandum of agreement with the governments of Cambodia, Laos and Myanmar in the supply of migrant labour in several industries (Lae Dilokvidhyarat interview, 30 August 2013). Laotians predominate in domestic work, Cambodians in construction, and Burmese workers in the fishing industry. About 80% of all foreign workers in Thailand are from Myanmar.

Union initiatives addressing outsourcing and agency work

In Thailand, one of the strategies of trade unions to arrest the expansion of outsourced and agency work is to negotiate a provision in the collective agreement that sets a ceiling on the proportion of outsourced or agency-supplied workers in the company. Unions have also negotiated for the regularisation of these workers.

Unions have also organised subcontract workers. The Auto Subcontract Workers' Union of Thailand is one example. This union represents subcontract workers at Ford/Mazda in the Rayong Province, about two and a half hours' drive from Bangkok, and has been striving to get all subcontract workers the right to seek permanent status after a year of subcontracted work (Latter, 2009). There is also a union of permanent workers at Ford/Mazda.

⁹ As of April 2013, the unemployment rates in Thailand by educational level are as follows: less than primary, 0.3%; primary, 0.8%; lower secondary, 1.1%; upper secondary, 1.0%; and higher level/college graduate, 1.6%. See 'Summary of the labour force survey in Thailand: April 2013', National Statistical Office of Thailand. http://web.nso.go.th/en/survey/data_survey/560716_LFS_Apr56_Eng.pdf. Accessed on 12 May 2014.

Ford/Mazda, Toyota, Isuzu and other big name auto companies hire subcontracted workers from subcontracting companies. Of the 350,000 workers in the automotive industry in 2008, about 50,000 were subcontracted workers. In some auto companies, about 70–80% of all workers are subcontracted workers (Sakdina Chatrakul Na Ayudhya interview, 31 August 2013).

At Ford/Mazda in Rayong, subcontract workers do the same job as permanent workers. However, permanent workers receive better pay rates, enjoy social security benefits, and are better secured in their jobs (*ibid*). Permanent workers receive rent support of THB 1,500 (USD 45) while subcontract workers receive THB 1,000 (USD 30). Also, permanent workers social security coverage includes injuries incurred not only at work but at home as well. Subcontracted workers do not have this benefit.

After the union of subcontracted workers was set up at Ford/Mazda, the wage gap between permanent and subcontracted workers has narrowed and the benefits of subcontracted workers have improved. The union has been able to successfully negotiate permanent status for some of its members.

Another union initiative aimed at protecting subcontracted or outsourced workers is the establishment of Appeals Centres by the Confederation of Thai Electrical Appliances, Electronic, Automobile and Metalworkers (TEAM) and the Thai Labour Solidarity Committee, a coalition of unions and non-government organizations (Latter, 2009). These Appeals Centres were established in January 2009 as these organisations' response to the government's inaction on the unemployment impact of the 2008 financial crisis. Workers can come to these centres to air their grievances and get advice on how to pursue mediation or legal hearing. For concerns about wages and compensation, the Appeal Centre directs workers to the local tripartite Labour Relations Committee. The next level of appeal is the Labour Protection Office of the Ministry of Labour. The highest level of appeal is the Labour Court. About 80% of the workers who made submissions at these centres in January 2009 were subcontracted workers. Most of the cases were about unpaid compensation.

In state enterprises, it is estimated that about 15% of workers are subcontracted or outsourced workers (Somboon Subsarn interview, 31 August 2013). Their employment duration lasts from six months to one year. In CAT Telecom, for example, there are subcontracted workers employed for one year who do the same job as fulltime workers. In government hospitals in the provinces, only the doctors and nurses work full-time. Many others are subcontracted workers.

The State Enterprise Workers' Relations Confederation of Thailand (SERC) employs a twin-strategy of negotiating with management the proportion of subcontracted workers that can be hired and the regularization of these subcontracted workers.

This strategy was used at Thai Post, CAT Telecom and Telephone Organization of Thailand (TOT) beginning 2008. By 2015, all the subcontracted workers hired in 2008 in these companies will be full-time or permanent workers (Somboon Subsarn interview, 31 August 2013).

Conclusion

Like in Indonesia, Malaysia and the Philippines, non-standard employment, including outsourced or subcontracted employment, is on the rise in Thailand. The lack of a regulation limiting the number of succeeding subcontractors has led to the existence of triangular and multiple employment relations in many companies, particularly in the manufacturing sector. Nonetheless, there have been attempts by the Thai government to regulate outsourcing and accord protection to outsourced or agency-supplied workers. One is the amendment introduced in Thailand's LPA in 2008 on non-discrimination of workers: if two groups of workers do the same job, they should receive the same wages and benefits regardless of their employment category or status. This should mean that agency-supplied workers should get the same pay and benefits received by permanent workers when what they do at work is the same job as permanent workers. The 2008 LPA amendment also establishes where an employment relationship exists in the many layers of employment contracting and subcontracting by making the actual place of work of the employee the employer of the people coming to do such work.

Although union membership in Thailand is very low, the trade unions have come up with innovative ways in representing non-standard workers, particularly outsourced or subcontracted workers. At the Ford/Mazda plant in the Rayong Province, for example, the subcontracted workers were able to organise the Auto Subcontract Workers' Union of Thailand. Aware that the fight against precarious non-standard work requires the support of other civil society groups in Thailand, several trade unions and non-government organisations have bonded together to form the Thai Labour Solidarity Committee (TLSC).

At the enterprise level, unions in the private and public sectors have also adopted some strategies to arrest the spread of precarious non-standard employment. One strategy is setting a ceiling in the collective agreement on the number of jobs that could be outsourced or the number of outsourced workers that can be employed in the company. Unions have also negotiated for the regularisation of these workers. Some of these initiatives have yielded successful outcomes.

Bibliography

Bundit, T., Voravidh, C. and S. Suntaree. (2008). "Extending labour protection to the informal economy in Thailand", in Asia Monitor Research Centre (ed.) *Asian labour law review 2008*. Hong Kong: Asia Monitor Research Centre, pp. 195–213.

Charit, M. (n.d.). "Thailand: National Study on the Employment Relationship", unpublished paper.

Hewison, K. and W. Tularak. (2013). "Thailand and Precarious Work: An Assessment", *American Behavioral Scientist* 57(4): 444-467.

International Law Office. (2008). Labor Protection Act (No. 2), B.E.2551. <http://ilo-phuket.com/laboprotection-2.html>. Accessed 29 August 2013.

International Labour Organization Regional Office for Asia and the Pacific. (2013). *Thailand: A labour market profile*. Bangkok: ILO Regional Office for Asia and the Pacific.

International Monetary Fund. (2012). *World Economic Outlook, April 2012*. Washington, DC: International Monetary Fund.

Latter, A. (2009). "The Struggle for Permanent Work in Thailand". <http://www.industrialunion.org/archive/imf/the-struggle-for-permanent-work-in-thailand>. Accessed 14 May 2014.

National Statistics Office. (2013). "Summary of the labor force survey in Thailand: August 2013". http://web.nso.go.th/en/survey/data_survey/561010_lfs_aug13.pdf. Accessed 14 May 2014.

National Statistics Office. (2013). "Summary of the labor force survey in Thailand: June 2013". 2013". http://web.nso.go.th/en/survey/data_survey/560927_LFS_June13.pdf. Accessed 14 May 2014.

National Statistics Office. (2013). "Summary of the labor force survey in Thailand: December 2012". http://web.nso.go.th/en/survey/data_survey/560205_LFS+Table+Dec55_Eng.pdf. Accessed 14 May 2014.

National Statistics Office. (2012). "Informal employed persons in Thailand". http://web.nso.go.th/en/survey/lfs/data_lfs/2012_iep_Executive%20Summary.pdf. Accessed 14 May 2014.

- National Statistics Office. (2011). "Summary of the labor force survey, 2011". http://web.nso.go.th/en/survey/lfs/data_lfs/2011_lf_Q4_Major%20Findings.pdf. Accessed 14 May 2014.
- National Statistics Office. (2011). "Summary of the labor force survey, 2010". http://web.nso.go.th/en/survey/lfs/data_lfs/2010_lf_Q4_Major%20Findings.pdf. Accessed 14 May 2014.
- National Statistics Office (2010) 'Summary of the labor force survey, 2009': http://web.nso.go.th/en/survey/lfs/data_lfs/2009_lf_Q4_Major%20Findings.pdf. Accessed 14 May 2014.
- National Statistics Office. (2011). "Summary of the labor force survey, 2008". http://web.nso.go.th/en/survey/lfs/data_lfs/2008_lf_Q4_Major%20Findings.pdf. Accessed 14 May 2014.
- National Statistics Office. (2011). "Summary of the labor force survey, 2007". http://web.nso.go.th/en/survey/lfs/data_lfs/2007_lf_Q4_Major.pdf. Accessed 14 May 2014.
- Ratchadaporn Tongsook. (1999). "Legal Measure on the Contract Labour", Master of Laws thesis, Dhurakijpundit University.
- Sakdina, C. A. (2007). "Weakness and Failure of the Thai Labour Movement", unpublished paper.
- Voravidh, C. and A. Napaporn. (2003). *Kan phattana rabop sawattikan samrap khon chon lae khon doi okat: Klum raeng ngan nai phak utsahakam* [The development on welfare system for the poor and vulnerable: Workers in the industrial sector]. Bangkok, Thailand: Chulalongkorn University Political Economy Centre.

Interviews:

Lae Dilokvidhyarat, Chair Professor, Faculty of Economics, Chulalongkorn University, 30 August 2013.

Sakdina Chatrakul Na Ayudhya, lecturer in Industrial Relations at the Thammasart University and adviser, Thailand Labour Solidarity Committee, 31 August 2013.

Somboon Subsarn, Director, Union Development and Organising Centre (UNIDOC-Thailand), 30 August 2013.

Suvit Sumala, Deputy Director General, Department of Labour Protection and Welfare, 29 August 2013.

Ukrish Kanchanaketu, Acting Executive Director, Employers' Confederation of Thailand, 29 August 2013.



VIET NAM

Vera Eileen V. Pupos

Non-standard work is not a term used in Viet Nam but there are many people who are working as unpaid family workers, own-account workers, wage workers without a contract, temporary workers, seasonal workers and contractual workers. There are many street vendors who sell food everywhere for Vietnamese are entrepreneurs by nature. These street vendors are part of the informal sector in Viet Nam.

Employment in the informal sector is the most common type of employment in Viet Nam. In Viet Nam, the informal sector refers to all private unincorporated enterprises that produce at least some of their goods and services for sale or barter, are not registered (with business licence) and are engaged in non-agricultural activities (Cling et al., 2011a). Moreover, those employed in the informal sector have low and irregular income, shorter or longer working hours compared to formal sector workers, and have no social and health insurance compared to the regular hired employees. And since they are not recognised and registered, they are not protected by law and the labour market institutions (Chu Thi Lan interview, 12 July 2013).

In the labour force survey of Viet Nam in 2007, out of 46 million jobs, 12.4 million or 27% comprised main and second jobs that belong to the informal sector. At the national level, the informal sector is present in almost all sectors, with manufacturing and construction having the highest number at 43%; trade at 31%; and services at 26%. This means that half of all industrial jobs in Viet Nam belong to the informal sector. In addition, Viet Nam has 8.4 million informal household businesses. The survey likewise indicates that 82% of most employment in Viet Nam was considered informal employment, meaning employment without social security.

A new trend on non-standard employment, called “labour dispatch” or “subleasing”, is also on the rise in Viet Nam. Labour dispatch is defined as “an act in which an enterprise licensed to operate as a labour dispatch enterprise recruits an employee to work for another employer, and the employee works under the control of the latter employer, while maintaining labour relationship with the dispatch enterprise” (Ministry of Labour, Invalids and Social Affairs, 2013). Yoon Youngmo, Chief Technical Advisor on Industrial Relations for ILO Viet Nam, mentioned that many foreign companies treated labour dispatch as an important part of their business practice (Hoang, 2013). At the same time, it also benefits those who are having a hard time looking for jobs. With more than one million entrants of the labour force every year of which most are students (Cling et al., 2011a), the labour dispatch enterprises link these job seekers to companies who are looking for temporary or seasonal workers.

This chapter looks into non-standard forms of employment in Viet Nam, specifically labour dispatch or subleasing. There are no recent data available about legal labour dispatch since the law legalising it took effect only on 15 July 2013. In this regard, all the information gathered focused on the unregulated labour dispatch. The data

used in this chapter are from interviews with some of the key informants from the employers group, non-government organisations, trade unions, government, and review of secondary literature.

The socio-economic and labour market context

Viet Nam is said to be one of the larger and more densely populated countries in the region with an estimated population of 88.8 million people in 2012. It is the 13th most populous country in the world.

Figure 29: Population in Viet Nam, 2004–2012 (in millions)

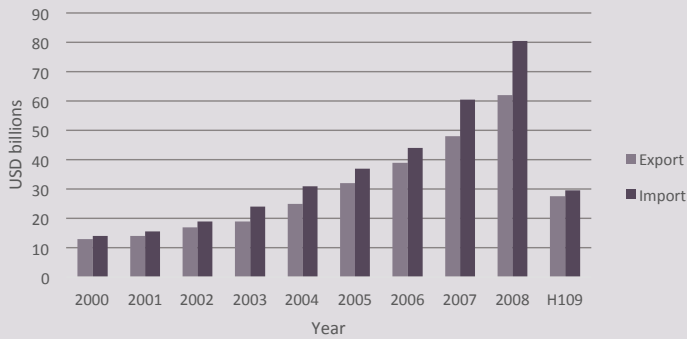


Source: www.tradingeconomics.com; General Statistics Office of Vietnam.

Viet Nam's economy was in crisis during the 1970s and 1980s due to the years of war the country experienced. In 1986, in order to overcome the crisis, Viet Nam opened its doors to the world and carried out the economic reform *doi moi* to introduce a market economy. As a consequence, Viet Nam's economy underwent rapid changes and was able to integrate gradually into the global economic and political mainstream. The country attracted private businesses and foreign investors from all parts of the world. Simultaneously, the estimated 58% of the population who were living below the poverty line in 1993 went down to less than 12% in 2009 (United Nations in Viet Nam, n.d.).

Ever since Viet Nam decided to open its doors to the world, the enterprises in Viet Nam continued to grow rapidly in number and size. Figure 30 shows that the export and import of Viet Nam increased through the years (Embassy of India, Viet Nam, n.d.).

Figure 30: Exports and Imports of Viet Nam, 2004 – 1st half of 2009
(in USD billions)



Source: General Statistics Office, Vietnam.

In the period 2006–2011, there was an average of 21% yearly increase in the number of enterprises. As of 31 December 2011, the fastest growing sector was the non-state sector, which posted an average of 21.7% yearly increase in 2006–2011. Meanwhile, FDI sector grew at an average of 16.4% yearly in the same period. In contrast, the number of enterprises comprising the state-owned sector shrank at an average of 2.5% yearly in 2006–2011.

Regardless of the increase in the number of business enterprises in Viet Nam, micro, small and medium-size enterprises are still the most dominant. In 2011, there were 324,691 active enterprises, among which only 7,750 (or 2.4%) were large-sized enterprises, while 316,941 (97.6%) were micro, small and medium-sized enterprises (Table 33). The number of medium-sized enterprises was 6,853 (2.1%), small-sized enterprises counted 93,356 (28.8%), and micro-sized enterprises, the highest in number at 216,732 (66.8%).

Table 33: Proportion of enterprises by size and type in Viet Nam, 2011 (%)

	Proportion				
	Large-sized enterprises	Micro, small, and medium-sized enterprises	Of which		
			Micro	Small	Medium
Total	2.4	97.6	66.8	28.8	2.1
By type of enterprises					
- State-owned enterprise	40.0	60.0	4.3	40.1	15.6
- Non-state enterprises	1.5	98.5	68.6	28.1	1.8
- Foreign invested enterprises	20.0	80.0	24.0	47.4	8.6
By kinds of economic activities					
- Agriculture, forestry and fishery	3.4	96.6	44.2	50.8	1.6
- Industry and construction	3.8	96.2	46.7	47.5	2.0
- Services	1.7	98.3	76.3	19.8	2.2

Source: General Statistics Office of Viet Nam (2013).

Viet Nam's Labour Force Survey of 2012 put the total working-age population (aged 15 years and older) at 68.82 million. About 52.79 million (76.7%) were in the labour force as of the last quarter of 2012. The labour force was higher in the rural areas (36.67 million) than in the urban areas (16.12 million). There were 51.9 million who were employed and only 857,400 (1.81%) unemployed. The employment rate in the urban areas increased 2.62% between the fourth quarter of 2011 and the fourth quarter of 2012. In contrast, employment in the rural areas decreased by 0.05% in the same period.

Table 34: Selected key indicators of the labour market, Quarter 4 in 2011 and Quarter 3 and 4 in 2012

Indicators	Quarter 4, 2011	Quarter 3, 2012	Quarter 4, 2012
Population aged 15+ (thousands)	67,970	68,742	68,822
Male	32,930	33,379	33,450
Female	35,041	35,363	35,372
Urban	22,518	23,025	23,139
Rural	45,452	45,717	45,683
Labour force aged 15+ (thousands)	52,538	53,098	52,788
Male	26,942	27,313	27,169
Female	25,596	25,786	25,619
Urban	15,714	16,154	16,115
Rural	36,825	36,944	36,674
Employed population aged 15+ (thousands)	51,685	52,114	51,931
Male	26,583	26,873	26,774
Female	25,102	25,241	25,157
Urban	15,273	15,658	15,684
Rural	36,412	36,457	36,247
Unemployed population aged 15+ (thousands)	853	984	857
Male	359	439	396
Female	494	545	462
Urban	441	496	430
Rural	412	488	427

Source: Report of Labour Force Survey 2012.

As Viet Nam moved from an agricultural to manufacturing and services based economy, it needs to equip the workforce with the skills that enterprises require. Note that more than half of Viet Nam's employment belong to the informal sector. According to the German Business Association (2011) report, only 54% of employees working in foreign invested enterprises were able to read and understand their labour contract. The report also pointed out that more than 65% of the total workforce in Viet Nam was low-skilled, and more than 75% of those aged 20–24 were either low-skilled or skill-trapped. This age group comprises the million new entrants of the workforce every year (ibid).

The result of the 2011 Labour Force Survey in Viet Nam indicated that of the 51.4 million workers aged 15 years and older, only 8 million or 15.6% were able to attend technical training (Table 35). This means that 43.4 million workers or 84.4% of the whole labour force had never been trained to achieve any level of technical specialisation. Table 35 also indicates that there were more men than women who had undergone training. Moreover, those who got training in the urban areas outnumbered those trained in the rural areas.

Table 35: Rate of the trained labour force in Viet Nam in 2011, %

Residence/Socio-economic region	Total	Vocation training	Secondary vocation school	College	University and over
Entire country	15.6	4.0	3.7	1.8	6.1
Male	17.4	6.0	3.3	1.3	6.8
Female	13.7	1.9	4.1	2.3	5.5
Urban	30.8	6.7	5.8	2.9	15.4
Rural	9.2	2.9	2.8	1.3	2.2
Socio-economic region					
Northern Midlands and Mountains	13.9	3.9	4.5	1.9	3.6
Red River Delta (*)	17.1	6.9	3.7	2.0	4.6
North and South Central Coast	14.7	3.2	4.3	1.9	5.2
Central Highlands	11.0	2.3	3.4	1.4	3.8
Southeast (*)	13.0	4.1	3.0	1.3	4.6
Mekong River Delta	8.6	1.8	2.4	1.0	3.4
Ha noi City	30.7	5.5	5.7	2.5	17.0
Ho Chi Minh City	28.8	6.1	3.0	2.7	17.0

(*) Red River Delta excludes Hanoi City and Southeast excludes Ho Chi Minh City

Source: Report on the 2011 Viet Nam Labour Force Survey.

The Viet Nam News (2013) reports that more than 60% of foreign companies in Viet Nam claim that the current workforce hindered production due to lack of skills. The same observation was noted in a separate survey¹⁰ conducted by the World Bank and the Central Institute for Economic Management (Thanh Nien News, 2012). Accordingly, 40% of local companies and nearly 30% of foreign companies said that the lack of training and skills of the workforce in Viet Nam delayed production (ibid).

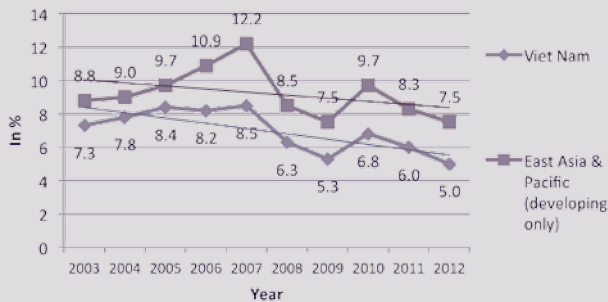
¹⁰ The survey covered 350 foreign and local companies in services and production.

To meet the need for high-quality personnel of enterprises in the economic zones, the Vietnamese government tasked the Ministry of Education and Training and the provincial People's Committees to set up local training centres to educate 2,400 young people. The government allocated a budget of VND 585 billion (USD 27.4 million) for the training of workers since 2009 in the Vung Anh Economic Zone. The 226 enterprises in this economic zone employ almost 12,500 workers. The government estimates that this economic zone will need an additional 55,000 workers in 2015 (Viet Nam News, 2013).

From 1986 to 1997, Viet Nam's annual GDP growth was between 8% and 9.5%. This remarkable growth record was interrupted with the outbreak of the Asian financial crisis in 1997. As a result, growth decreased from 5.8% in 1998 to 4.7% in 1999 (General Statistics Office, 2013). However, the economy started to recover beginning 2002 when the GDP rate started to escalate (Figure 31), only to decline again during the 2008/2009 global financial crisis. Viet Nam's GDP experienced the slowest growth in 13 years: 5% in 2012 from 6% in 2011.

Despite the erratic growth from 2008 to 2012, the average GDP was 5.88%, which was still high considering the macroeconomic turbulence that the country experienced. Nevertheless, foreign investors still believe that Viet Nam is one of Asia's rising stars and remains an attractive destination for future investments.

Figure 31: Viet Nam GDP growth, 2003–2012



Source: World Bank. <http://www.worldbank.org/en/country/Viet Nam>.

As shown in Table 36, Viet Nam's agriculture has been declining since 2000 while industry, manufacturing, and services were performing remarkably since the *doi moi* process until the outbreak of the global economic recession that resulted in the sharp drop in exports and capital inflows. Growth rates went down drastically especially in the manufacturing sector.

Table 36: Annual GDP real growth rates by aggregated economic sectors, 1999–2009 (at constant prices 1994)

Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Ave. annual growth rate 1999–2009
GDP	4.8	6.8	6.9	7.1	7.3	7.8	8.4	8.2	8.5	6.2	5.3	7.2
Agriculture	5.2	4.6	3.0	4.2	3.6	4.4	4.0	3.7	3.8	4.1	1.8	3.7
Industry*	7.7	10.1	10.4	9.5	10.5	10.2	10.7	10.4	10.2	6.1	5.5	9.3
(Manufacturing)	8.0	11.7	11.3	11.6	11.5	10.9	12.9	13.4	12.4	9.9	2.8	10.8
Services**	2.3	5.3	6.1	6.5	6.5	7.3	8.5	8.3	8.9	7.2	6.6	7.1

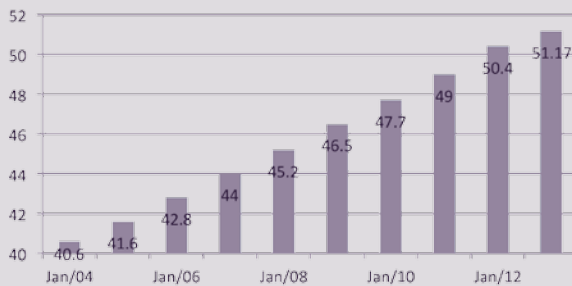
Source: GSO National Accounts

*The broad "industry" sector comprises: mining and quarrying; manufacturing; electricity; gas and water supply and construction.

**Services sector comprises: wholesale and retail trade; repair of motor vehicles; hotel and restaurants; transport, storage and communications; financial intermediation; science and technology activities; real estate, renting and business activities; public administration and defence; compulsory social security; education health and social work; cultural and sports activities; parties, unions and associations; other community, social work and personal services; private households with employees and other international organisations.

Despite the slow economic growth, the labour force in Viet Nam increased to 51.71 million persons in 2012 from 50.40 million persons in 2011 (Figure 32). For the last 20 years, Viet Nam was able to employ an average of 35.94 million persons.

Figure 32: Employed persons in Viet Nam, 2004–2012



Source: www.Tradingeconomic.com; General Statistics Office, Viet Nam.

Between 2005 and 2012, more than half of workers in the labour force of Viet Nam were male. Majority of those employed belonged to the 25 to 49 age group. In 2012, over two in three workers lived in the rural areas.

Table 37: Labour force by sex, age group, residence and by region, Viet Nam
(Unit: Thousand persons)

	2005	2009	2010	2011	Prel. 2012
By sex					
Male	52.3	52.0	51.4	51.5	51.3
Female	47.7	48.0	48.6	48.5	48.7
By age group					
15 – 24	20.4	18.6	18.3	16.5	15.1
25 – 49	63.3	61.4	61.4	61.3	60.9
50+	16.3	20.0	20.3	22.2	23.9
By residence					
Urban	25.5	26.9	28.0	29.7	30.5
Rural	74.5	73.1	72.0	70.3	69.5
By region					
Red River Delta	23.9	22.6	22.7	22.4	22.2
Northern midlands and mountain areas	14.0	13.8	13.7	13.7	13.7
North Central and Central coastal areas	21.7	21.4	21.7	21.7	21.6
Central Highlands	5.7	5.8	5.8	5.9	6.0
South East	13.9	16.0	16.0	16.3	16.6
Mekong River Delta	20.8	20.4	20.1	19.9	19.9

Source: Statistical Handbook 2012.

In 2009, agriculture registered the highest employment in Viet Nam. However, about four in five workers in the agriculture sector were unpaid family workers (Table 38). Unpaid family workers are those who have no assurance of the stability of their work and do not receive any type of social insurance. The agriculture sector also had the highest number of self-account workers.

Meanwhile, the industry sector had the highest proportion of wage workers at 48% in 2009. Nearly 40% of wage workers were also found in the service sector.

Table 38: Employment by sector in Viet Nam in 2009 (%)

Employment	Agriculture	Industry	Service	Total
Employer	33.4	25.7	41.0	100
Self-account worker	63.3	8.3	28.4	100
Unpaid family worker	80.4	4.9	14.7	100
Wage worker	12.4	47.7	39.8	100
Member of cooperative	35.0	50.0	15.0	100
Others	0.0	48.4	51.6	100
Total	47.6	21.8	30.6	100

Source: LFS, (2009), "Recent labour market performance in Viet Nam".

Table 39 indicates that there were more female unpaid workers and self-account workers than their male counterparts both in 2007 and 2009. It is also very evident that there were fewer females who were wage workers compared to male. This trend would likely remain, especially now that married women who give birth are given six months' maternity leave, since 1 May 2013, instead of four months as previously stipulated by law. The extension of maternity leave is to ensure that babies are exclusively breastfed from the minute they are born up to the time that they are six months old. As pointed out by United Nations Children's Fund (UNICEF) Viet Nam's Representative, Lotta Sylwander: "No mother should have to choose between her career and the best nutrition for her infant" (UNICEF, 2012). This additional two months leave benefit raised worries among businesses whose workforce are dominated by female workers. Businesses claim that if many women will go on maternity leave at the same time, production or deadlines will be affected. In this regard, offices or businesses may think twice before hiring female workers, especially married ones. However, Sylwander stresses that the additional maternity leave will be good for the employers because mothers will be raising healthier children which in effect will decrease the healthcare costs spent each year in addressing illnesses caused by poor health (ibid).

Table 39: Structure of employment of working age population (15+) in 2007 and 2009 (%), Viet Nam

Employment	2007			2009		
	All	Male	Female	All	Male	Female
Employer	3.2	3.8	2.7	4.8	6.3	3.2
Self-account worker	53.5	48.5	58.6	44.7	42.6	46.9
Unpaid family worker	12.9	11.8	13.95	16.8	11.8	22.2
Wage worker	30.0	35.4	25.45	33.4	38.9	27.5
Member of cooperative	0.1	0.2	0.1	0.1	0.2	0.1
Others	0.2	0.25	0.2	0.2	0.3	0.1
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source: LFS, (2007 and 2009), "Recent labour market performance in Viet Nam".

A report from Thanh Nien News stated that while in some countries the gender wage gap shrunk, in Viet Nam it widened by 2% between 2008 and 2011 (Hang, 2013). The ILO reported that women received on average only 75% of men's wages (ebd.). According to Hoang Phuong Thao, Country Director of Action Aid International Viet Nam, women receive lesser pay because they are more subject to family responsibilities (Hoang Phuong Thao interview, 10 July 2013). Though women are protected by Viet Nam law where termination during pregnancy up to 36 months from delivery of the child is not allowed, this however prevents women from getting hired easily. Women also have fewer chances of a salary increase. In addition, women retire early at age 55 while men at the age of 60.

The underemployment rate and unemployment rate in Viet Nam is very remarkable for it shows constant decrease despite the recent turmoil that the country has experienced. The proportion of underemployed workers in Viet Nam has been decreasing every year from 5.41% in 2009 to 2.74% in 2012. Also, the unemployment rate decreased from 2.90% in 2009 to 1.96% in 2012 (Table 40). There are more underemployed workers in the rural areas, and at the same time higher unemployment in the urban areas.

Table 40: Underemployment rate and unemployment rate among Vietnamese working age population, 2009–2012

Year	Underemployment rate (%)			Unemployment rate (%)		
	Total	Urban	Rural	Total	Urban	Rural
2009	5.41	3.19	6.30	2.90	4.60	2.25
2010	3.57	1.82	4.26	2.88	4.29	2.30
2011	2.96	1.58	3.56	2.22	3.60	1.60
2012	2.74	1.56	3.27	1.96	3.21	1.39

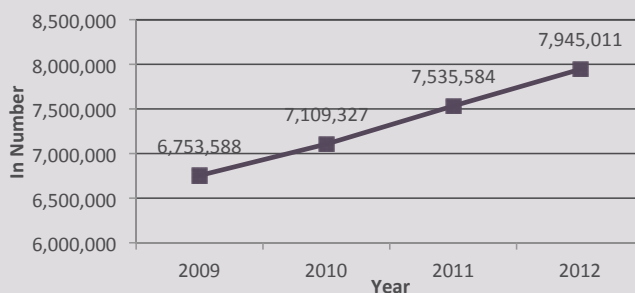
Source: Report of labour force survey 2012.

Unionisation trends

The Viet Nam General Confederation of Labour (VGCL) is the only trade union in Viet Nam. Its members are the wage earners and all legal freelancers who want to be covered by the union. According to Vu Quang Tho, Deputy Director of the Institute for Workers and Trade Unions of VGCL, when regular workers sign the labour contract, the trade union will approach and let them join the trade union. Likewise, Tho and Vu Minh Tien, Vice Director, Institute for Workers and Trade Unions, mention that while they organise all workers who have at least six months contract, agency hired workers are not being organised (Vu Quang Tho interview, 10 July 2013; Vu Minh Tien interview, 10 July 2013).

Figure 33 shows that VGCL's membership has been on the uptrend. In 2009, there were about 6.75 million members, going up to 7.94 million in 2012, an increase of 1.19 million in just three years (Serrano, 2013).

Figure 33: VGCL membership growth, 2009–2012



Source: Serrano (2013).

Tung (2013) refers to dispatch workers as temporary workers. He emphasises that trade unions have difficulty supporting temporary workers as they only sign contracts with the agency, which prevents them to become trade union members at the enterprises where they are dispatched. He adds that if agencies will have trade unions, they cannot protect the temporary workers since they do not operate at the enterprises.

The informal sector

According to Pierre (2012), the informal sector comprises businesses that are owned by a household or individual, and all other businesses (private sector, state sector, foreign-owned) that do not have a formal business registration to operate. In Viet Nam, informal jobs comprise the largest employment at 81.6% (Table 41). More than half (52.9%) of domestic enterprises have informal jobs. It is also interesting to note that informal jobs are also present in foreign enterprises and in the public sector.

Table 41: Employment by main job and by institutional sector in Viet Nam

Jobs	Number (‘000)	Structure (%)	Enterprise’s institutional sector (%)					
			Public sector	Foreign enterprise	Domestic enterprise	Formal HB	Informal sector	Agriculture
Formal	8,518	18.4	87.7	82.8	47.1	52	0	0
Informal	37,693	81.6	12.3	17.2	52.9	48	100	100
Total	46,211	100.0	100	100.0	100	100	100	100
Informal	37,693		611	156.0	1,400	1,719	10,866	10,866

Source: LFS2007, GSO; authors’ calculations.

Note: Total employment is not exactly the sum of employment in all sectors because 0.3% of jobs cannot be classed in a given institutional sector.

The people involved in informal employment are not covered by the labour law and have no social insurance. Table 42 shows that non-agricultural workers without social insurance were present in all types of organizations. In fact, in general, the bulk of non-agricultural workers were not participating in social insurance in 2007 and 2009, although there was a marked decline in their number between 2007 and 2009. Nearly all workers in self-employed households and individual business households were without social insurance in 2007 and 2009. What is alarming though is that more than half of workers in private enterprises and cooperatives were without social insurance in 2007 and 2009.

Table 42: Rate (by organisation) of non-agricultural labourers not participating in social insurance (only those of working age)

Organization Form	2007	2009	Increase (decrease)
Self-made households	99.89%	99.82%	(.07%)
Individual business households	98.69%	98.76%	.07%
Cooperatives	68.09%	63.49%	(4.6%)
Private enterprises	58.16%	58.22%	0.06
Offices	10.48%	10.35%	(0.13)
Foreign investment organizations	18.32%	19.21%	0.89
Others	36.29%	37.62%	1.33
General	84.75%	72.45%	(12.3)

Source: Pierre, 2012.

Table 43, meanwhile, shows a decrease of agricultural and informal employment of both men and women in 2009 compared to the rate in 2007. An increase of formal employment was also evident for both men and women in the same year compared to the rate in 2007. In addition, there were fewer women involved in the informal and formal sector than men, although women still outnumbered men the agricultural sector.

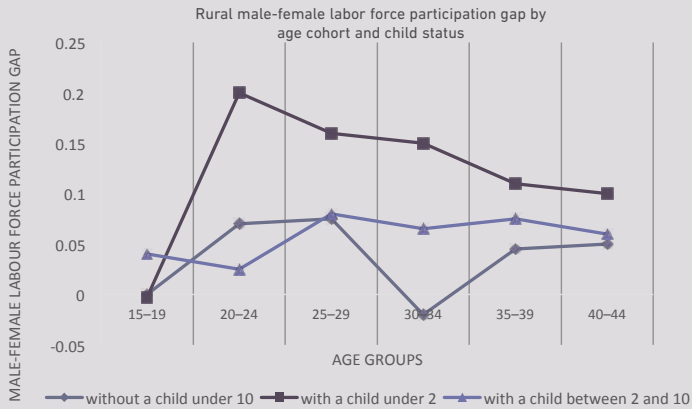
Table 43: Percentage of labour force in informal sector employment in Viet Nam

	2007			2009		
	All	Men	Women	All	Men	Women
Agricultural employment	50.1	47.9	52.4	47.4	45.4	50.0
Informal sector employment	27.7	28.2	27.1	24.4	25.1	23.7
Formal sector employment	22.2	23.9	20.5	27.9	29.5	26.3

Source: LFS, (2009), "Recent labour market performance in Viet Nam".

A possible explanation can be seen in Figure 34 which shows that women, most likely aged 20 to 24 that had children less than two years old were less likely to participate in the labour market compared to those who had older children (World Bank, 2012).

Figure 34: Women in rural Viet Nam with children



Source: World Bank staff estimates using Viet Nam Labor Force Survey (GSO Viet Nam, 2009 data).

Table 44 indicates that there were more young women workers aged 15 to 24 who were employed in the formal sector than young men. Nevertheless, as women get older, get married, and have children, their priorities change and they start to focus on taking care of their family. As a result, their involvement in the formal sector decreases. In addition, as the number of women in the formal sector decreases as they get older, their number in the agricultural sector goes up which could mean that women in their later years choose to work in the informal sector to have flexibility of their time to take care of their family (Pierre, 2012).

Table 44: Employment in informal sector by gender and age (%)

Age	2007						2009					
	Male			Female			Male			Female		
	AGR	INF	FOR	AGR	INF	FOR	AGR	INF	FOR	AGR	INF	FOR
15-24	52.5	24.1	23.5	49.5	21.2	29.4	48.6	21.6	29.8	47.4	16.0	36.6
25-34	40.1	30.4	29.5	45.4	27.7	26.9	35.7	25.2	39.2	41.5	24.6	34.0
35-44	43.8	32.2	24.0	50.2	30.8	19.0	41.4	31.0	27.6	45.9	28.9	25.3
45-54	48.9	27.8	23.3	56.3	27.7	16.1	48.0	25.3	26.7	56.8	23.5	19.8
55-64	61.7	22.7	15.6	68.5	24.8	6.7	61.9	19.2	19.0	67.4	23.2	9.4
65+	73.9	19.0	7.1	72.9	25.0	2.1	79.2	14.3	6.6	73.5	22.9	3.6

AGR = Agriculture employment; INF = Informal sector employment; FOR = Formal sector employment

Source: Pierre, 2012

The rise of labour dispatch

According to reports in Viet Nam News (2013; Hoang 2013), labour dispatch or subleasing has been going on unregulated in Viet Nam for at least 10 years, especially in the industrial areas of the South like Ho Chi Minh City, Dong Nai, Binh Duong, and Can Tho provinces. The survey conducted by the Ministry of Labour, Invalids and Social Affairs (MOLISA) and the ILO in Viet Nam revealed that between 2009 and 2011, Ho Chi Minh City alone had 52 companies providing employee subleasing services. These companies not only supply or dispatch manual workers but also professional and skilled workers.

Nguyen (2012) explains that labour subleasing was traditionally viewed by the government as a form of labour supply that benefits both the employee lessor (the company providing the employees) and the employee lessee (the company receiving the employees). However, employees dispatched are being exploited. Thao explains that the employee lessor pays lower social insurance compared to what is due the employee (Hoang Phuong Thao interview, 10 July 2013). Dispatch workers also receive lesser benefits than those employees who are directly hired by the company.

Most of the Viet Nam-based foreign companies resort to labour dispatching because it gives them the flexibility to hire workers and to accommodate seasonal demands, for example, in construction and manufacturing. Furthermore, it allows companies to hire workers for short-term jobs like accounting services for tax reporting and translation services.

Table 45 shows that over one in three labour contracts in Viet Nam are for a term of one to three years. The number of these contracts is higher in the FDI sector where over two in five labour contracts are for a term of one to three years. Nearly one in three labour contracts in private companies (32.1%) and joint stock companies (31.3%) are of the same contract duration. The highest number of workers without contracts (11.2%) is found in private companies.

Table 45: Types of labour contract by type of enterprises

		Type of enterprises (%)				
		Total	Joint stock	Private	Limited liability	FDI
Type of contract	No contract	3.4	3.9	11.2	1.5	1.3
	Seasonal labour contract below 12 months	3.7	2.5	7.0	5.5	1.3
	1–3 years' labour contract	34.7	31.3	32.1	35.6	43.9
	Indefinite term labour contract	58.2	62.2	49.7	57.5	53.5

Labour dispatch and amendment of the Labour Code

With the increasing trend of labour dispatch employment as the preferred practice of large companies, there was a growing concern for its regulation to protect the company lessee, company lessor, and most especially the dispatch worker. According to ILO (2013), problems were discovered during a survey done in Viet Nam about labour dispatch. Neither the company lessor nor the company lessee wants to take responsibility on the timely payment of wages, overtime, working hours, leaves and social insurance of dispatch workers (Hoang Phuong Thao interview, 10 July 2013).

To give protection to dispatch workers and eliminate illegal labour dispatch businesses, the National Assembly of Viet Nam amended the Labour Code and integrated labour dispatch in Chapter 2, Section 5. This amended Labour Code took effect on 1 May 2013. The labour dispatch provision in the Labour Code aims to regulate the widespread practice of labour dispatch and clarify the responsibilities of each party.

Rules on operating a labour dispatch enterprise have also been made stricter. To be able to get a 36-month term of license to operate this type of business, a company should have a capital of VND 2 billion (USD 95,200) and be able to pay a VND 1 billion deposit (USD 47,600) (Hoang Phuong Thao, 2013). These regulations were issued to ensure that these companies can pay the same wages to dispatch workers who are doing the same job as those directly employed in the enterprises and that the dispatched workers will be paid statutory allowances and insurance.

Contracts and rights and obligations

The Viet Nam government used ILO Convention 181 as guidance when they crafted the labour dispatch provision in the amended Labour Code 2012. The relationship between the labour dispatch enterprise, the user company and the hired employee is intertwined.

A written contract or a commercial contract, which is called a labour supply contract in Viet Nam, binds the labour dispatch enterprise and the user company after they discuss, negotiate and agree on the number of workers to be hired, the workers' wages, their working conditions, and their specific jobs. The contract also includes the work location of the company or where the labour dispatch worker will be assigned; the position of the worker and detailed description of the work; the duration of the contract, specifically the starting and ending date; the official time of work and rest day; the occupational safety and health conditions; and the obligations of each party to the worker. The labour dispatch enterprise must inform the hired employee of the contents of the labour supply contract and when the employee agrees on

what is written in the contract, an employment contract will be signed between the labour dispatch enterprise and the hired employee before being dispatched to the user company. The employment contract will also contain the amount of wages of the employee, which cannot be lower than the wage of the regular employee of the user company who is doing the same job. In addition, the employment contract will include wages during holidays, allowances, paid leaves, job-loss allowance, social insurance, health insurance, and unemployment insurance of the dispatched employee in accordance with the law. The hired employee at the same time will be supervised by the user company and must follow instructions and company rules and regulations and the collective bargaining agreement. In situations where there is a breach of contract between the user company and the employee, the labour dispatch enterprise will act as the real employer of the worker and has the power to impose disciplinary measures against the violating employee.

Limitations to labour dispatch work

Labour dispatch work has been legalised but has a limit of 12 months for each labour contract. This means that the employee cannot renew the contract with the same job and neither can he be extended nor supplied another job contract in the same company. The labour dispatch enterprise can however hire another worker for the job. Hiring through labour dispatch is permitted only when an employer needs to temporarily hire seasonal workers to accommodate peak production period or temporarily replace workers who are on maternity leave, who are affected with work-related accident or disease, who must carry out civic obligations, or who reduced their working hours. However, companies are not allowed to hire these workers for replacement of those who were retrenched and to work in locations with harsh living conditions (National Wage Council, 2013).

Recently, the Vietnamese government released Decree No. 55/2013/ND-CP detailing the conditions for labour dispatch. This decree, which took effect on 15 July 2013, limited the type of work that can be outsourced or dispatched (Lee, 2013), namely:

1. Interpreters, translators and stenographers
2. Administrative assistants
3. Receptionists
4. Tour guides
5. Sales support staff
6. Project support staff
7. Programmers of production machine systems
8. Staff that produce/install broadcasting and telecommunications equipment
9. Staff that operate, examine, and/or repair machines used for construction or electrical systems in production systems

10. Cleaning and sanitation staff for buildings and factories
11. Document editors
12. Bodyguards and security guards
13. Staff for marketing and customer care via telephone
14. Staff handling financial and tax problems
15. Automobile mechanics
16. Staff that produce scans and drawings for industrial engineering and interior decoration
17. Drivers

From interviews with key officers of VGCL, the Vietnamese Chamber of Commerce and Industry (VCCI), Institute for Workers and Trade Unions (IWTU), and MOLISA, it was found out that the most commonly hired dispatch workers are the following: drivers, security, cleaners, interpreters, shop keepers, caretakers, and electronic assembly workers. There are no available statistics on what gender is commonly hired through labour dispatch because there was no study or research done to date about it. The gender of the worker hired depends on the type of job available; for example, men are mostly employed as drivers and security guards while women are often hired as cleaners and caretakers.

Factors influencing the rise of labour dispatch

According to ILO (2013), labour dispatching is already an important part of the employment practices of many foreign enterprises in Viet Nam, especially large companies that are engaged in manufacturing. These companies just maintain a minimal number of regular employees and rely on labour dispatch during peak production periods as a cost-effective way of reducing company expenses, especially wages, benefits, social security and insurance (ibid).

From interviews with key officers of VCCI, VGCL, and Action Aid, some contributing factors to the increasing trend in labour dispatch have been identified. Firstly, many foreign direct investments are pouring in Viet Nam and the companies hire seasonal workers to accommodate variability in production demand. Secondly, Viet Nam's high unemployment rate pushes jobseekers to approach labour dispatch enterprises to help them find a job. Thirdly, it is claimed that labour dispatch enterprises are more professional and experienced in handling and matching jobs. Finally, extending to labour dispatch enterprises the recruitment and training of workers is seen by many employers as a way to get out from possible troubles that employment may bring.

The apparent profitability of labour dispatching also contributed to the increase in the number of labour dispatch enterprises. These enterprises earn through the administrative fees that they get from the successful dispatch or employment of

workers in user companies. According to Chu Thi Lan, Director of the Centre for Information, Strategic Analysis and Forecast of the MOLISA, the administrative fees charged by labour dispatch enterprises range between 15% and 25% of the employee's wages (Chu Thi Lan interview, 12 July 2013)

Advantages of labour dispatching

With the increasing number of unemployment in Viet Nam, labour dispatch is seen as a way to provide work to the new graduates or the newly trained who cannot find work or those low-skilled workers who have difficulty looking for the right job. At the same time, labour dispatch work is seen as a way to gain work experience and thus a stepping stone towards direct employment.

The labour market in Viet Nam changes very fast and labour dispatching can follow the fast change in the supply of and the demand for labour by some companies (Chu Thi Lan interview, 12 July 2013). The labour dispatch enterprise can accommodate and adapt to the flexibility needs of the labour market. Tran Chi Dzung, Deputy General Director of the Bureau of Workers' Activities of the Viet Nam Chamber of Commerce and Industry (VCCI) adds another advantage of labour dispatch: it is a good channel to connect the job seekers and job providers, thus making it easier for companies to recruit workers and cut on hiring costs (Tran Chi Dzung interview, 11 July 2013).

Disadvantages of labour dispatching

A report by the ILO in Viet Nam mentions that dispatch workers are vulnerable to exploitation and abuse yet many are still applying for a job in labour dispatching enterprises for the sake of having a job (ILO, 2013). The most common complaints are the low wages and less social security and social insurance benefits that the workers, particularly the lowly skilled, receive from the labour dispatching enterprises. When a worker signs his employment contract with the dispatching enterprise, there is no transparency on how the salary is computed. At the same time, the company where the worker will be assigned is not accountable to labour rights (Hoang Phuong Thao interview, 10 July 2013). A dispatch worker also receives lesser wages compared to an employee hired directly by the company even if both do the same job. In principle, a dispatch worker should receive the same salary as that of the directly hired worker, but as the former pays fees to the labour dispatch enterprise, he/she receives lesser take home pay (Tran Chi Dzung interview, 11 July 2013). The challenge now is to narrow the gap between the regular and directly hired worker and the labour dispatch worker and to monitor that labour dispatch enterprises abide by the laws.

The results of an on-going survey¹¹ by Hien (2012) that looks into the situation of wages, income and living conditions of workers at private sector enterprises in Viet Nam identified other disadvantages of labour dispatching. Accordingly, in large companies, production orders are variable and uncertain so that dispatch workers may be terminated earlier or are not able to work longer in the companies. Another disadvantage is that dispatch workers are hired to do precarious, difficult and hazardous jobs, such as cleaning with harmful chemicals, carrying and moving heavy materials, and doing other harmful tasks. Worse, these workers will stay low-skilled or may do simple work only for months in a company and will do the same job in another company. There will be no room for learning new skills to improve the prospect of finding a better job for these workers.

Trends in operations and practices of labour dispatch

To the extent that labour dispatch has just been legalised recently with the amended Labor Code of 2012, there are no data or studies about the operations and practices of labour dispatch done in Viet Nam. Data are also scant regarding the specific wages, benefits, social security and insurance that dispatch workers receive. In this light, the discussions in this section are drawn from interviews with representatives of government offices, non-government agencies, VGCL, and researchers in Viet Nam.

Hiring through labour dispatch

There are different procedures in hiring workers or matching workers to companies' needs through labour dispatch enterprises. The common practice is to have jobseekers submit their personal data information to the labour dispatch enterprise and when there is an order from a user company, the qualified job seekers will be selected. If the type of work requires the workers to go on training, then the labour dispatching enterprise will train them before sending them to the user company (Hoang Phuong Thao Interview, 2013). Another practice is that the labour dispatch enterprise first does some market research to find out the needs of the user companies. Then based on the gathered information, they will send some of their staff to different places to look for workers and recruit those who are qualified for the available jobs (Tran Chi Dzung interview, 11 July 2013). In some cases, a labour dispatch enterprise may just be an intermediary, that is, it introduces some workers to the user company and the user company will check and decide if they want the workers. If the user company decides to get the workers, then they have to pay the fees to the labour dispatch enterprise. The recruitment process works in two ways:

¹¹ The survey covered 90 small and medium-sized enterprises of all industries in the private sector in 10 provinces and cities in Viet Nam.

the agency can “advertise” its available labour to the user companies, or the user companies can visit the labour dispatch agencies to look for workers that they need (ibid).

There are also labour dispatch agencies that directly recruit workers and advertise to different companies the kind of skills that the recruited workers have. This advertisement includes the salary and the working conditions that these workers demand. If a user company is interested, it will contact the agency to discuss about the number of workers they need and other conditions. After they discuss, negotiate and agree, the agency will send the workers to the enterprise.

The hired dispatch workers need not go through an internship period (Vu Quang Tho interview, 10 July 2013). They are paid wages right after getting the job. For the highly-skilled dispatch workers, they are paid by the labour dispatch agency one-third of their monthly salary during the time they are waiting for a job; and if they are not hired after one or two months, they will be paid one-fourth of their salary for the waiting period.

Wages and benefits

As mentioned earlier, with the recent inclusion of labour dispatch in Viet Nam's Labour Code, no study has yet been done that looks into the practice of how much exactly dispatch workers receive and the specific benefits that are given to them by the company lessor and the company lessee.

The minimum wage in Viet Nam has been increased 10 times since 2003. The latest increase took effect on 1 July 2013, bringing the minimum wage from VND 1.050 million to VND 1.15 million (USD 49–54) per month. This increase was based on the study done by VGCL which showed that workers need between VND 750,000 and VND 900,000 (USD 36–43) per month to provide themselves sufficient nutrition (National Wage Council, 2013). According to a report in Thanh Nien News (Hang, 2013), a family needs VND 2.4–3.7 million (USD 113–175) a month to be able to raise children and provide for other needs. To make ends meet, workers prefer to sell in the street markets for they get higher income although they have no access to social security and no protection from the government as their businesses are not legally registered.

Based on a study done by Hien (2012) that covered 360 workers with different job positions and types of employment, the average gross wages across different types of enterprises is VND 3.2 million (USD 151) per month (Table 46). Limited liability companies pay the highest average gross wages at VND 3.389 million (USD 160) a month. By type of industry, construction and transport pay the highest average gross wages at VND 4.589 million (USD 217) a month (Table 47).

Table 46: Average monthly gross wages by type of enterprise

Type of enterprise	VND* per month (million)
Limited liability company	3.389
Joint stock company	3.221
FDI enterprise	3.123
Private companies	2.994

*VND 1 million are approximately USD 47.

Source: VGCL, IWTU.

Table 47: Average monthly gross wages by type of industry

Type of industries	VND* per month (million)
Construction, transport	4.589
Mechanical	3.169
Textile	3.155
Footwear	3.078
Trade - Tourism	2.980
Processing (agriculture, forestry, fisheries)	2.642

*VND 1 million are approximately USD 47.

Source: VGCL, IWTU.

The wages of workers hired through labour dispatch depends on the agreed contract between the labour dispatch enterprise and the user company, and likewise on the agreement between the labour dispatch enterprise and the worker (Tran Chi Dzung interview, 11 July 2013).

Tung (2013) explains that permanent workers receive higher bonuses and grants, which account 30% of their total income. They also receive meal assistance and profit from social security policies. In contrast, temporary workers or agency-hired/dispatch workers rarely receive any bonus or grant and if they do it would be much lesser compared to what the permanent workers receive.

In all interviews conducted in Viet Nam, none of the key informants was sure what other benefits labour dispatch workers receive. Only in the interviews with VGCL officers was it mentioned that bonuses for dispatch workers, if any, should be shouldered by the employee lessee (the user company), but this depends on the financial capacity of the user company.

Conclusion

The rapid expansion of the non-state sectors in the Vietnamese economy following the country's *doi moi* has been 'silently' accompanied by the rise of short-term non-standard employment, particularly labour dispatch work, in formal enterprises. The increased use of labour dispatch work, especially in the FDI sector, and the reported difficulties and exploitation experienced by dispatch workers prompted the Vietnamese government to formally regulate the practice of labour dispatching or employee subleasing and the operations of labour dispatch enterprises via an amendment in the Labour Code introduced in 2012. A further regulation was issued listing jobs that can be subjected to labour dispatch.

To date, there is no formal organising initiative involving dispatch workers. Nonetheless, the VGCL has started to gather information and data through surveys about the working conditions of dispatch workers and the operations and practices of labour dispatching enterprises.

Bibliography

Arnold, D. (2012). "Social Margins and Precarious Work in Viet Nam", *American Behavioral Scientist* 57(4): 468–487.

Cling, J. P., Mireille, R., Roubaud F. and H. C. Nguyen, HC. (2011a). "Growth and Informal Sector and Employment in Viet Nam", paper presented at 4th Congress of the Asia & Pacific Network, 14–16 September, Paris, France.

Cling, J. P., Mireille, R., and F. Roubaud. (2011b). "The Informal Economy in Viet Nam", ILO. http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_171370.pdf. Accessed 6 August 2013.

Embassy of India, Viet Nam (n.d.) "Viet Nam Economy: An overview". <http://www.indembassy.com.vn/tabid/240/default.aspx>. Accessed 18 September 2013.

General Statistics Office of Viet Nam. (2013.) *Development of Viet Nam Enterprises in the Period of 2006–2011*. Hanoi: Ministry of Planning and Investment and General Statistics Office.

German Business Association. (2011). "Human Resources Working Paper on Labour Sub Leasing". http://www.gba-VietNam.org/uploadfiles/file/GBA%20monthly%20meeting%2014_05_2012/Human%20Resources%20Position%20Paper_SubLeasing_24102011.pdf. Accessed 15 September 2013.

Hang, T. (2013). "Men-women wage gap widens", *Viet Nam Thanh Nien News*. <http://www.thanhniennews.com/2010/pages/20130307-Viet-Nam-gender-pay-gap-widened-ilo-report.aspx>. Accessed 30 October 2013.

Hien, D. (2012). "Summary Report: Major Results of Survey on the Situation of Wages, Income and Living Conditions of Workers at Private Sector Enterprises in Viet Nam". Viet Nam General Confederation of Labour – Institute for Workers and Trade Unions, Hanoi: VGCL.

Hoang, P. T. (2013). "New regulations for labour subleasing", *Viet Nam News*. <http://Viet-Namnews.vn/society/238818/new-regulations-for-labour-subleasing.html>. Accessed 6 August 2013.

International Labour Organization. (2013). "New employment pattern offers opportunities but can be a two-edged sword". http://www.ilo.org/hanoi/Informationresources/Publicinformation/WCMS_211256/lang--en/index.htm. Accessed 12 September 2013.

Lee, M. K. (2013). "Legal Update: Decree 55 Provides Guidance on Labor Outsourcing". <http://www.tilleke.com/resources/legal-update-decree-55-provides-guidance-labor-outsourcing>. Accessed 29 August 2013.

Ministry of Labour, Invalids and Social Affairs, International Cooperation Department. (2013). *Labour Code, 2012*. Vietnam: Labour-Social Affairs Publishing House.

National Wage Council. (2013). "National wage council established in Viet Nam, Minimum Wage Rises. Viet Nam Briefing". [http://www.Viet Nam-briefing.com/news/national-wage-council-established-in-Viet Nam-minimum-wage-rises.html/](http://www.Viet-Nam-briefing.com/news/national-wage-council-established-in-Viet-Nam-minimum-wage-rises.html/). Accessed 16 September 2013.

Pierre, G. (2012). "Recent Labor Market Performance in Viet Nam through a Gender Lens", Policy Research Working Paper 6056, The World Bank, East Asia and Pacific Region, Poverty Reduction and Economic Management Unit & Human Development Unit.

Serrano, M. R. (2013). "The VGCL-LO Norway Cooperation Program, 2010-2012: An Evaluation Report". Unpublished report.

Thanh Nien News. (2012). "Under-skilled Vietnamese workforce hindering production: survey", 12 November 2012. <http://www.thanhniennews.com/2010/pages/20121112-vietnam-workforce-obstacle-to-foreign-firms-production-survey.aspx>. Accessed 18 September 2013.

Tung, N. T. (2013). "Some issues on temporary work in Viet Nam". Translated from Vietnamese by Tran Hong Hanh.

UNICEF. (2012). "UNICEF congratulates Viet Nam on maternity leave extension to six months". http://www.unicef.org/eapro/media_18878.html. Accessed 18 September 2013.

United Nations in Viet Nam. (n.d.). "A Success Story of Economic Growth and Poverty Reduction". <http://www.un.org.vn/en/about-viet-nam/overview.html>. Accessed 18 September 2013.

United Nations in Viet Nam. (n.d.). "Viet Nam at a Glance". <http://www.un.org.vn/en/about-viet-nam/overview.html>. Accessed 18 September 2013.

Viet Nam General Confederation of Labour – Institute for Workers and Trade Unions. (2012). "Summary Report: Major Results of Survey on the Situation of Wages, Income and Living Conditions of Workers at Private Sector Enterprises in Viet Nam". Hanoi: VGCL.

Viet Nam Labour Code, as amended, 2012. <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/91650/106402/F-1475261172/VNM91650%20Eng.pdf>. Accessed 14 May 2014.

Viet Nam News. (2013). "Viet Nam Issues New Labor Outsourcing Regulations — Viet Nam Briefing". <http://www.Viet-Nam-briefing.com/news/Viet-Nam-issues-labor-outsourcing-regulations.html/>. Accessed 16 September 2013.

Vinh, Q. N. (2012). "Employment Subleasing: A New Form of Labor Supply in Viet Nam". http://www.tilleke.com/sites/default/files/2012_Aug_Employment_Subleasing_Vietnam.pdf. Accessed 29 August 2013.

World Bank. (2012). *Toward Gender Equality in East Asia and the Pacific: A companion to the World Development Report*. Washington DC: World Bank.

Interviews:

Chu, Thi Lan, Deputy Director, Centre for Information, Strategic Analysis and Forecast, Ministry of Labour, Invalids and Social Affairs (MOLISA), 12 July 2013.

Hoang, Phuong Thao, Country Director, Action Aid International Viet Nam, 10 July 2013.

Ha, Thi Phuong Thao, Staff, International Department, Viet Nam General Confederation of Labour (VGCL), 10 July 2013.

Ta, Thi Bich Lien, Director of Women Workers Department of Viet Nam, National Union of Post and Telecoms Workers (VNUPTW), 10 July 2013.

Tran, Chi Dzung, Deputy General Director, Bureau for Employers' Activities, Viet Nam Chamber of Commerce and Industry (VCCI), 11 July 2013.

Vu, Hong Quang, Deputy Director of VGCL Policies and Legal Affairs Department, 10 July 2013.

Vu, Minh Tien, Vice Director, Institute for Workers and Trade Unions (IWTU), Viet Nam General Confederation of Labour (VGCL), 10 July 2013.

Vu, Quang Tho, Director of Institute for Labor and Trade Unions, Viet Nam General Confederation of Labour (VGCL), 10 July 2013.



NON-STANDARD EMPLOYMENT IN ASEAN: COMMONALITIES, VARIETIES AND UNION STRATEGIES

Melisa R. Serrano

Between the period 1920s and 1970s — also known as the Fordist period — employment in the industrial world was characterised by high standardisation, continuing full-time employment, high unionisation rate and collective agreement coverage, and extensive social rights. However, the inception of neoliberalism in the 1980s and its deepening in the succeeding years saw the beginning of the destandardisation of work and individualisation of labour relations. Non-standard forms of employment are indeed on the rise in many countries, including countries in ASEAN. This is one key finding of our study involving non-standard employment in formal enterprises in six countries: Indonesia, Malaysia, the Philippines, Singapore, Thailand and Viet Nam. The need for numerical flexibility as a way to reduce the cost of longer-term employment in the context of market uncertainties brought about by globalisation is the main driver behind the decision of companies to use non-standard forms of employment. The demand for further flexibilisation of the workplace comes with the need for a flexible and disposable workforce.

Flexibilisation and non-standardisation affects all wage workers, albeit in different ways and on different levels. Most wage workers today are in fact in employment relations that include at least some dimensions of precarity, which to Candeias (2007: 9) are, “relations that do not produce a safe income high enough for [a good] living, that are linked to dequalification and overwork, that are excluded from the usual business structures and relations of cooperation, that make further necessary requalification impossible, that undermine the maintenance of social contracts, that include hardly any claims on social security services, and so forth.” Candeias (2007: 10-11) argues that there are generalisable problems that are common both to the software programmer and the cleaner: work addiction, super exploitation, burnout syndromes, lack of or limited guarantee in the reproduction (and development) of one’s own labour power, insecure or unstable income, discontinuous employment, and inability to plan one’s own life project.

In the six study countries, non-standard employment is most often characterised by the following features: fixed or short-duration employment contract (or non-permanent employment tenure); lower wages (compared to regular full-time employment); limited or absence of social security benefits (e.g., sick pay, pension, etc.); work at multiple worksites; low-skill (or in some cases medium-skill) job requirement without career prospect; over-representation of women and young workers; and lack of organisation (unorganised or non-unionised). In short, non-standard employment (i.e., contract work, outsourced work, agency-supplied work, agency-hired work, labour contracting, seasonal work, project-based work, casual work, ‘bogus’ self-employment, etc.) is largely precarious work, as underscored in the country chapters in this volume.

Variety of definitions ascribed to non-standard employment

The term “non-standard employment” is not used in the study countries. Instead, various terms are used to refer to different forms of non-standard employment in the formal sector, including those that create triangular employment relationships (Table 48). The variety of terms used, some of which overlap and even bear contradictory meanings, makes it difficult to use a single term in comparing the forms and trends of non-standard employment among the study countries. For example, in Indonesia, contract workers are those workers that have employment contracts with the principal company or the user company, while outsourced workers are those workers that have employment contracts with the outsourcing company. In the Philippines and Singapore, contract workers can also be outsourced workers or workers dispatched by manpower supplying agencies or contractors.

Table 48: Types of non-standard workers and terms used referring to non-standard employment in the formal sector

Country	Types of non-standard workers/Terms used	Non-standard employment involving triangular employment relations
Indonesia	<ul style="list-style-type: none"> - Short/fixed-term contract workers - Casual workers - Outsourced workers - Apprentices - Part-time workers - Piece rate workers - On-call workers 	Outsourced work
Malaysia	<ul style="list-style-type: none"> - Fixed-term contract - Contract of service - Contract for service - Casual paid employee - Contract/piece paid worker 	Outsourced work, contractor or subcontractor for labour, agency-hired work
Philippines	<ul style="list-style-type: none"> - Short-term contract work (i.e., casual, contractual/project-based, seasonal, probationary, apprenticeship/learnership), - outsourcing or subcontracting of work, agency-hired and third-party managed work 	Agency-hired work, manpower supply, service or labour contracting
Singapore	<ul style="list-style-type: none"> - Term contracts - Casual/on-call employment - Part-time work 	Outsourced workers
Thailand	<ul style="list-style-type: none"> - Hire of service employment contract - Hire of work contract - Informal employment - Dispatched, outsourced and agency employment 	Contracting/subcontracting, labour contracting
Viet Nam	<ul style="list-style-type: none"> - Seasonal work - Labour dispatch or employee subleasing 	Labour dispatch or employee subleasing

Nonetheless, though the term “non-standard employment” is not used in the study countries, the various terms used to refer to non-standard employment in these countries bear the key features of non-standard employment as listed above. Moreover, types of non-standard employment involving triangular relations are present in all the study countries. In most of these countries, the practices of outsourcing and subcontracting often involve triangular employment relations.

Between “relaxed” and “highly-regulated” legal frameworks: Variances and commonalities in the legal and regulatory framework

Among the study countries, the legal and regulatory framework on non-standard employment, particularly those types employment that involve triangular relations, varies in terms of coverage and extent of regulation. Table 49 provides the key aspects of the legal and regulatory framework on non-standard employment, particularly those types that involve triangular relations, in the six study countries.

Table 49: Key aspects of legal and regulatory framework on non-standard employment in the six study countries

Country	Legal framework on non-standard employment
Indonesia	<ul style="list-style-type: none"> - Fixed-term employment not exceeding two years with one-year extension; fixed-term contract is only allowed for certain jobs that are expected to finish at a certain time (Articles 57 & 59, Manpower Act). - Job-outsourcing involves work that is separate from the main (business) activity or is an entirely auxiliary activity of the enterprise that contracts the work to the other enterprise (Article 65, Manpower Act). - Manpower outsourcing or labour supply involves providing or supplying labour to enterprises. There is employment relationship between the worker/labourer and the labour provider, and the latter is responsible for the wages, welfare protection and working conditions of the worker/labourer, and the disputes that may arise. There is a written agreement between enterprises serving as labour providers and enterprises using the labour they provide (Article 66, Manpower Act). - For both job-outsourcing and manpower outsourcing or labour supply, only activities that are “supplemental” or auxiliary to the main business of the user enterprise can be undertaken by third-party contractors.
Malaysia	<ul style="list-style-type: none"> - Fixed-term contracts may be either <i>contract of service</i> or <i>contract for service</i>. The former is a fixed-term employment contract between an employer and an employee, and is covered by the labour law. A contract for service, also referred to as “independent contracting” involves a person doing work for another party but not recognised as an employee of that party for which he is doing work. Workers under this type of contract are excluded from the coverage of labour and employment legislations.

Table 49 (Continued): Key aspects of legal and regulatory framework on non-standard employment in the six study countries

Country	Legal framework on non-standard employment
Malaysia (Continued)	<ul style="list-style-type: none"> - No limitations on the following: use of fixed-term contract, the maximum number of successive fixed-term contracts allowed and the maximum duration of fixed-term contract. - A contractor is “any person who contracts with a principal to carry out the whole or any part of any work undertaken by the principal in the course of or for the purpose of the principal’s trade or business.” A sub-contractor is “any person who contracts with a contractor for the execution, by or under the sub-contractor, of the whole or any part of any work undertaken by the contractor for his principal, and includes any person who contracts with a sub-contractor to carry out the whole or any part of any work undertaken by the subcontractor for a contractor” (Section 2, Employment Act 1955). - A sub-contractor for labour is “any person who contracts with a contractor or sub-contractor to supply the labour required for the execution of the whole or any part of any work which a contractor or sub-contractor has contracted to carry out for a principal or contractor, as the case may be” (A1419 Employment (Amendment) Act 2012).
Philippines	<ul style="list-style-type: none"> - Probationary workers are subject to six months of probation, beyond which he or she is entitled to regularisation if the job is “regular and necessary” to the business. - Casual workers are hired for work which is not usually necessary and desirable to the usual business or trade of the employer. However, a year of accumulated service of a casual worker, even if intermittent, means he or she is entitled to regularisation. - Contractual/project-based workers are workers whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of engagement. - Seasonal workers are workers whose employment, specifically its timing and duration, is significantly influenced by seasonal factors. - Project-based employees’ employment tenure is co-terminus with the project they are assigned to. - Contracting or sub-contracting is an arrangement whereby a principal agrees to put out or farm out with a contractor or sub-contractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal (Section 2, D.O. 18-A, Series of 2011). - Contractor or subcontractor refers to any person or entity, including a cooperative, engaged in a legitimate contracting or subcontracting arrangement providing either of these services, skilled workers, temporary workers, or a combination of services to a principal under a Service Agreement (Section 2, D.O. 18-A, Series of 2011).

Table 49 (Continued): Key aspects of legal and regulatory framework on non-standard employment in the six study countries

Country	Legal framework on non-standard employment
Philippines (Continued)	<ul style="list-style-type: none"> - An employer-employee relationship exists between the contractor and the employees it engaged to perform the specific job, work or service being contracted; and a contractual relationship between the principal and the contractor as governed by the provisions of the Civil Code. In the event of any violation of any provision of the Labor Code, including the failure to pay wages, there exists solidary liability on the part of the principal and the contractor for purposes of enforcing the provisions of the Labor Code and other social legislation, to the extent of the work performed under the employment contract (Section 5, D.O. 18-A, Series of 2011). - Labour-only contracting (LOC) defined as “a situation where the contracting agency has no substantial capital to back up its capacity to do the outsourced work, no equipment or tools to undertake the work, and no control over the manner and conduct of the work as performed by the recruited workers” is expressly prohibited under D.O. 18-A, Series of 2011.
Singapore	<ul style="list-style-type: none"> - No legal framework for outsourcing of contracts, but there are tripartite and government initiatives protecting outsourced workers, such as Best Sourcing Initiative (BSI), Tripartite Committee for Low Wage Workers, Progressive Wage Model for Low Wage Workers, Clean Mark Accreditation Scheme, etc. - Outsourced workers are employees of third-party contractors (outsourcing companies/service providers) and are covered by the Employment Act, Employment of Foreign Manpower Act, and the Work Injury Compensation Act. - Employment Agencies Act 2012 regulates the operations of private employment agencies, whether based in Singapore or overseas, that carry out employment agency (EA) work in Singapore. EA work includes the following: (i) facilitation of the placement of any worker with an employer; (ii) communication with any worker for the purpose of assisting in job applications; (iii) collation of biodata or resume of any worker to help secure employment; and (iv) submission of any work pass application on behalf of an employer or worker to the Ministry of Manpower.
Thailand	<ul style="list-style-type: none"> - Hire of work is a contract whereby a person, called the contractor, agrees to accomplish a definite work for another person, called the employer, who agrees to pay a remuneration of the result of the work (Section 6, Chapter 3, Civil and Commercial Code, B.E. 2472). - Where the operator of a business has contracted out the supervision of work and payment of wages, or has assigned any person to recruit employees for work, other than an employment service, such that the work is a part of the entire production or business which is under the responsibility of the business operator, the business operator shall be deemed to be the boss of the said employees (Section 5, Labour Protection Act).

Table 49 (Continued): Key aspects of legal and regulatory framework on non-standard employment in the six study countries

Country	Legal framework on non-standard employment
Thailand (Continued)	<ul style="list-style-type: none"> - First-level contractor means a person who agrees to undertake to carry out all or part of a job for the benefit of the employer (Section 5, Labour Protection Act). - Sub-contractor means a person who makes an agreement with a first-level contractor by undertaking to carry out all or part of a job under the responsibility of the first-level contractor for the benefit of the employer, and shall also mean a person who makes an agreement with a subcontractor to undertake a sub-contracted job under the responsibility of the sub-contractor, regardless of how many stages of sub-contract there may be (Section 5, Labour Protection Act). - Where the employer is a subcontractor, the Labour Protection Act (LPA) provides that all superior contractors/employers are jointly liable with the immediate employer for wages, overtime pay, holiday pay, holiday overtime pay, severance pay, special severance pay and contributions or surcharges. - Non-discrimination of workers: if two groups of workers do the same job, regardless of their employment category or status, they should receive the same wages and benefits (2008 amendment to LPA). - LPA requires that, where a collective agreement exists, workers on individual contracts could only be hired if their wages and benefits meet or exceed those of the collective agreement.
Viet Nam	<ul style="list-style-type: none"> - Labour dispatch or employee subleasing is "an act in which an enterprise licensed to operate as a labour dispatch enterprise recruits an employee to work for another employer and the employee works under the control of the latter employer, while maintaining labour relationship with the dispatch enterprise" (Labour Code 2012). - Labour dispatch work is limited to 12 months for each labour contract. This means that the employee cannot renew the contract with the same job and neither can the employment be extended nor the employee supplied another job contract, although the labour dispatch enterprise can hire another worker for the job. Hiring through labour dispatch is permitted only when an employer needs to temporarily hire seasonal workers to accommodate peak production period or temporarily replace workers who are on maternity leave, affected with work-related accident/diseases, must carry out civic obligations, for employees who reduced their working hours, or to hire highly skilled workers. However, companies are not allowed to hire these workers for replacement of those who were retrenched and to hire workers to work in locations with harsh living conditions.

Table 49 (Continued): Key aspects of legal and regulatory framework on non-standard employment in the six study countries

Country	Legal framework on non-standard employment
Viet Nam (Continued)	<ul style="list-style-type: none"> <li data-bbox="269 292 1002 651">- The written contract or a commercial contract, called labour supply contract, between the labour dispatch enterprise and the user enterprise should stipulate the number of workers to be hired, wages, working conditions and specific jobs. The contract also contains the work location of the company or where the labour dispatch employee will be assigned, the position and detailed description of the work, the duration of the contract specifically the starting and ending date, the official time of work and rest day, the occupational safety and health conditions and the obligations of each party to the employee. The labour dispatch enterprise must inform the hired employees of the contents of the labour supply contract and when the employee agrees on what is written in the contract, an employment contract will be signed between the labour dispatch enterprise and the hired employee before he will be dispatched to the user enterprise (Amended Labour Code 2012). <li data-bbox="269 667 1002 946">- Dispatched workers should receive wages that are no lower than the wage of the regular employee of the user company who is doing the same job, wages during holidays, allowances, paid leaves, job-loss allowance, social insurance, health insurance and unemployment insurance in accordance with the law. The hired employee at the same time will be supervised by the user company and must follow instructions and company rules and regulations and the collective bargaining agreement. <i>In situations</i> where there is a breach of contract between the user company and the employee, the labour dispatch enterprise will act as the real employer of the worker and has the power to impose disciplinary measures against the violating employee. <li data-bbox="269 962 1002 1066">- A labour dispatch enterprise should have a capital of VND 2 billion (approximately USD 94,600) and pay a VND 1 billion deposit (approximately USD 47,300) to be able to get a 36 months' term of license to operate this type of business (Section 5, Chapter 5, Labour Code 2013). <li data-bbox="269 1082 1002 1129">- There are 17 types of work that can be outsourced or dispatched (Decree No. 55/2013/ND-CP, effective 15 July 2013).

In this study, we posit two stylised forms of regulation which could be placed at two opposite poles of the regulatory spectrum: one is what we call “relaxed” regulatory framework and the other “highly-regulated” framework. In Table 50, we list the key features of these two types of regulatory framework on non-standard employment that involve triangular relations.

Table 50: Two stylised types of regulatory framework on non-standard employment involving triangular relations

Dimension	“Relaxed” regulatory framework	“Highly-regulated” framework
Coverage by sector, job type and business activity	No specification on sectors, business activities and types of jobs where use of agency work/outsourced work/labour contracting or outsourcing/labour dispatching is allowed	Business activities and/or types of jobs (and in some cases exigencies at work) which could use labour supplied by an outsourcing company/labour contractor/manpower supplier/labour dispatch or subleasing company are specified
Duration of term contracts	No limitations set on the number of times a contract can be renewed	Limitations are set on the term of the first contract, the number of times a contract can be renewed, and the cumulative number of years of working under a fixed-term contract
Regulations on the operations of third-party labour suppliers	Existence of laws and regulations on manpower recruitment and supply	Laws and regulations on manpower recruitment and supply are complemented by stricter and special regulations on the operation of labour/manpower supply and dispatch, e.g., capitalisation requirement, ownership of tools and equipment, registration with the Ministry of Labour/Manpower, etc.
Provision on solidary liability between user company and third-party labour supplier	Not specified	Specified; principals or user companies are jointly liable with the labour/manpower supplier for the latter workers’ wages, overtime pay, holiday pay, holiday overtime pay, severance pay, special severance pay, etc.
Provisions on the rights and legal entitlements of workers	Not clearly specified in laws and regulations	Clearly specified and identified in laws and regulations

From Tables 49 and 50, the legal and regulatory framework on non-standard forms of employment that involve triangular relations in Indonesia, the Philippines and Viet Nam may arguably be classified as “highly-regulated”. On the other hand, in Malaysia and Singapore, the regulatory framework is arguably more “relaxed”. However, it is important to stress that in the case of Singapore, the various tripartite initiatives aimed at improving the working conditions of term contract workers may arguably

bear the functional equivalent of a “highly-regulated” legal framework. Thailand may be a special case which could be situated between the “relaxed” typology and the “highly-regulated” typology. While Thailand’s Labour Protection Act specifies joint liability between the (labour) contractor/subcontractor and the principal or user enterprise and non-discrimination in terms of wages and benefits between a regular and a non-regular (subcontracted) worker doing the same job, regulations limiting the use of subcontracted workers in certain business activities and job types and the duration (and renewal) of contract of these workers are seemingly missing.

What is common in the regulatory framework of all the six countries is the identification of the outsourcing company/service provider/manpower agency/labour dispatch or employee subleasing enterprise/company lessee/contractor or subcontractor for labour as the *employer* of the workers engaged in triangular employment relations. Another area of commonality is in terms of employee discipline: the company that supplies labour has the power to impose disciplinary measures against its employees that breached the employment contract or the user company’s rules and regulations.

Nonetheless, regulations in terms of supervision of these workers vary. In the Philippines, for example, regulations stipulate that a representative of the manpower agency or cooperative, or manpower/labour supplier, should supervise the work of agency workers and coordinate between the principal (the user company) and the agency workers. In Indonesia, Malaysia, Thailand and Viet Nam, the outsourced or dispatched workers are supervised by the user company. Also, not all countries identify specific jobs, sectors or circumstances where agency/outsourced/dispatched workers can be hired. In Indonesia and the Philippines, job outsourcing and labour outsourcing (in the case of the former) and service or labour contracting (in the case of the latter) are only allowed for activities that are supplemental, auxiliary or not necessary and desirable to the main or principal business or activity of the user company. As mentioned in the chapter on Indonesia, the government issued Ministerial Regulation No. 19 in 2012 that identified five types of auxiliary services¹² where labour supply is allowed.

In Viet Nam, labour dispatching is allowed during the peak production period of a company or to temporarily replace workers who are on maternity leave, who are affected with work-related accident/diseases, etc. Moreover, the Viet Nam government issued in 2013 a decree listing 17 types of work that can be outsourced or dispatched. In contrast, limitations on the use of these types of non-standard employment for specific jobs or sectors are apparently lacking in Malaysia, Singapore and Thailand.

¹² Auxiliary services that are indirectly related to the production process include the following: activities associated with the provision of cleaning service; the provision of catering service (a supply of food) to workers; the provision of a supply of security guards; auxiliary business activities in the mining and oil sectors; and the provision of transport for workers.

The regulatory framework of a country is an important factor that may influence the depth and breadth of non-standard employment involving triangular relations. Having this in mind, we would expect that violations of laws and regulations dealing with this type of employment would be marginal in Indonesia, the Philippines and Viet Nam, which we have considered as having “highly-regulated” frameworks on triangular employment relations. However, from previous studies reviewed in this volume and from the interviews conducted by the authors among various organisations in the study countries, the existence of a “highly-regulated” legal framework is no guarantee that abuses and violations will only be minimal, particularly in the case of Indonesia and the Philippines. Regarding labour supply outsourcing, the bone of contention in the regulatory framework in these countries is always in the interpretation of what are the supplemental, auxiliary and not necessary and desirable activities of the enterprise that can be subjected to a third-party labour or manpower provider. In fact, in Indonesia, Malaysia, Thailand, and to a lesser extent the Philippines, many agency or outsourced workers perform core activities of the companies where they are assigned or dispatched.

Increasing incidence of and trends on non-standard employment

With the exception of Singapore, the incidence of non-standard work, including temporary agency work (or outsourced work or dispatched work), is high and on the uptrend in the study countries. In Indonesia, it is estimated that 65% of all employed workers in formal enterprises in 2010 were non-standard workers. In Malaysia, the combined share to total employment of own-account workers, unpaid family workers, and employers, who are most likely operating informal enterprises and employing non-standard workers, suggests that, at the very least, nearly one in four of all employed persons in Malaysia were non-standard informal workers. In the Philippines, about one in three rank-and-file workers employed in formal enterprises (with 20 or more workers) in 2010 was a non-regular worker. However, when the total employed in the informal sector (i.e., the self-employed and unpaid family workers) is considered, nearly half (44.6%) of the total employed were engaged in informal sector in 2001–2006.

In Thailand, informal employment accounted about 63% of all employment in 2012. In terms of occupational category, the share of informal employment among service workers and shop and market workers stood at 74% in 2010. In Viet Nam, data from VGCL indicate that across all types of enterprises over one in three contracts were of one to three years' term in 2013. The incidence is higher in the FDI sector where over two in five labour contracts were of one year to three years term.

Non-standard work, particularly temporary agency work (or outsourced work or dispatched work), is sensitive to the ebbs and flows of an economy. This finding is evident in the case of Indonesia and the Philippines where data on GDP growth and the share of non-regulars workers to the total employed over the years were available. In these countries, there is a direct correlation between variations in GDP and the incidence of non-standard work, especially temporary agency work (or outsourced work or dispatched work). In years of growth, the supply of and demand for agency workers increase and diminish when the economy falters. This implies economic growth does not always result in the reduction of the use of fixed-term or temporary work by employers, especially in a situation of consistently high (or stagnant) unemployment levels.

In Singapore, a gradually declining GDP in the period 2006–2012 was accompanied by a sharp decline in the incidence of term contracts. Nonetheless, during the same period, an increasing trend on the use of term contracts of less than a year was observed.

Non-standard work in the form of fixed-term or flexible contracts is said to have the potential to create employment opportunities, thus bringing down unemployment levels. This means that an increase in the incidence of these types of contracts should be accompanied by a decline in the unemployment rate. This relationship has been observed in Indonesia and to a lesser extent in the Philippines. In the latter, despite an increasing share of seasonal, short-term or casual workers to total employment between the period 2005 and 2010, the unemployment rate remained stagnant and high at over 7%. However, despite the employment-generating potential of using fixed-term contracts in the case of Indonesia, the employment conditions attached to these types of employment contract leave much to be desired.

One characteristic of non-standard employment is the dominance of women and (relatively) younger workers. This is the case in Indonesia, Malaysia and the Philippines, where data was available.

The use of fixed-term contract of employment through outsourcing is widely practised in the study countries in almost all sectors and across a variety of occupations. In fact, even in countries where the regulatory framework limits to non-core or supplemental and auxiliary the business activities and jobs which could be outsourced to third parties, there has been an increasing trend to outsource or contract out these activities and jobs (e.g., Indonesia and the Philippines). The manufacturing sector tends to have the highest incidence of outsourced and dispatched workers. It has been observed that the practice of outsourcing or putting out work to a third party is increasingly being done *within* than *outside* the premises

of the principal. Moreover, export-oriented establishments are more likely to practise outsourcing than those serving only the local market. Outsourcing practices have also given rise to triangular relationships.

Triangular employment relationships created through the use of temporary agency work, dispatch work, labour outsourcing, etc., may exist at different layers of the contracting or subcontracting chain as user companies or service buyers can also be a contractor of the principal or a subcontractor of the principal's contractor. To the extent that most workers in these types of employment relationship are in precarious working conditions, it could be said that the degree of precarity (or precarisation) gets higher as the contracting or subcontracting chain goes down the value chain.

Employers' mixed views on outsourcing

From interviews with employers' groups in the study countries, there are several reasons that motivate employers to hire workers on short-term and non-regular contracts or through third-party labour/manpower suppliers or outsourcing companies. These include variability of demand, reduction of workforce and concentration of resources on core business. Nonetheless, what is commonly highlighted in the interviews is the desire of companies to reduce their workforce as the main motivation to outsource.

Does outsourcing lead to lesser costs? Although employers point to cost savings, particularly in terms of reducing the workforce, among their main motivations to outsource, this practice *does not always* lead to lesser costs. This is revealed in the survey conducted by the MEF among employers in Malaysia.

Most of the representatives of employers' organisations interviewed by the authors point out that labour outsourcing or dispatching companies fall into two categories: those that comply with the law and those that do not comply. Some labour or service contractors or outsourcing companies may provide training to up-skill the workers they deploy or dispatch while some do not. These companies largely rely on walk-in job applicants. Rarely do they place online job or newspaper advertisement. Accordingly, most jobseekers seek work for the first time and have limited or low-level skills.

According to the representatives of employers' organisations interviewed, labour outsourcing or manpower supplying agencies or companies derive their income from administrative or management fees (often based on headcount) they charge from user companies. This administrative services fee is a percentage of the total contract price (e.g., no less than 10% in the Philippines, and between 15% and 25% of an employee's wages in Viet Nam). In the other study countries (i.e., Malaysia

and Thailand) the administrative fee is already integrated into the fee per worker that the principal pays to the labour contractor or subcontractor. As the contract price depends on headcount, it is thus important for labour contractors to deploy or dispatch as many workers as possible each day to earn a sizeable income.

Collecting payment from principal companies may take several months. Thus it is also important that labour contractors and subcontractors have enough revolving funds to pay workers' wages and benefits on time. Bigger companies may have sufficient funds to advance but small and sometimes illegal contractors or subcontractors often cannot. In the study countries, labour contractors or subcontractors are mostly small and medium in size and are owned and operated by locals.

Representation and protection of non-standard workers: A variety of trade union strategies

A pattern of union decline in terms of union density is observed in Indonesia, Malaysia, the Philippines, and Thailand. In contrast, union density is increasing in Singapore and Viet Nam. It is to be noted that there is only one union confederation in these two countries. In Singapore, the incidence of term contracts is declining between 2006 and 2012, albeit gradually. And despite the absence of regulations on outsourcing (which also creates triangular employment relations), Singapore's tripartite initiatives on low-wage (short-term) workers have been quite successful in according protection and better terms of employment for these workers.

In countries where union multiplicity is a distinct feature of unionisation, such as Indonesia, Thailand, the Philippines and Malaysia, we observe a higher incidence and broader spread across sectors and occupations of agency work, outsourced work or dispatched work, despite an apparently "highly-regulated" legal framework on these types of work in some of these countries.

But whether union density is high or marginal, trade unions in the study countries have been innovating different structures of representation and undertaking various initiatives to narrow, if not close the representation and protection gap among non-standard workers. There are also union initiatives aimed at arresting the spread of non-standard employment.

According to Regalia (2006), there are two dimensions influencing unions' attitude towards representation of workers different from their traditional membership (i.e., standard workers). These are: (1) awareness of the specific nature of diverse workers' interests, and (2) willingness of unions to innovate representation models. She further identifies four situations corresponding to an equal number of attitudes

by unions towards these different workers (Figure 35). These attitudes are defined as: (1) indifference; (2) opposition or resistance; (3) a commitment to extending the protections of other workers to these ones by imitation; and (4) a willingness to explore new forms of representation, or to imagine a more general reconfiguration of labour representation.

An examination of the strategies of trade unions that address representation of non-standard workers in formal enterprises in the study countries (with exception of Viet Nam) points towards Regalia's "specialisation of protection/reconfiguration of representation" typology as indicated in Figure 35. This means that among the trade unions included in the country chapters, there is both a high level of awareness of the diverse interests of different categories of workers, particularly non-standard workers, and a high level of willingness to innovate representation models for non-standard workers, including those who are in triangular employment relations.

Figure 35: Union attitudes to and representation of workers different from their traditional membership

		Willingness to innovate representation models	
		Low	High
Awareness of the specific nature of diverse workers' interests	Low	Indifference	Imitative extension of protection
	High	Resistance/opposition	- Specialisation of protection - Reconfiguration of representation

Source: Adapted from Regalia, I. (ed). (2006). *Regulating New Forms of Employment. Local experiments and social innovation in Europe*. London: Routledge, p. 248.

In Indonesia, the inter-union organising collaboration between the metal workers union (FSPMI) and Lomenik (SBSI), which started in 2001 resulted in the organisation of thousands of non-standard workers in the Export Processing Zones in Batam. In 2012, the massive protests organised by KSPI and FSPMI in the metals industry that called for the regularisation of contract workers, increase in the minimum wage, and elimination of outsourcing, forced companies to regularise 40,000 fixed-term workers.

In Malaysia, the UNI-MLC has been organising in the services sector where many workers are in various forms of non-standard employment. Outsourced or agency-hired workers can individually become members of UNI-MLC. At DiGi Telecommunications, UNI-MLC established a Subcommittee of Outsourced Workers to

represent about 450 outsourced workers (from two outsourcing companies). The UNI-MLC union at DiGi also provides information and legal advice to outsourced workers on workplace-related problems, including harassment and health and safety issues.

In the Philippines, the NUBE focuses on preserving regular jobs within the banks, preventing those jobs from being transferred to third parties. At the enterprise level, unions negotiate for provisions in the CBA that would help safeguard members' jobs. Many of the CBAs of NUBE's local unions require management's consultation with the union in case the management "decides to outsource or hire contract employees" (Jose Umali interview, 6 July 2013). Some CBAs limit the number of contract employees or the duration of their employment.

Like the unions in Indonesia, NUBE works together with other unions and federations (i.e., ALU-TUCP, FFW and NATU). During the period when agency-hiring was becoming widespread, these union federations asked the Philippine Central Bank to define the essential banking functions which cannot be outsourced. The unions also took advantage of the industry level social dialogue mechanism, the BITC, to negotiate added protection for jobs in the banks. Through the BITC, the unions were able to forge an agreement (BITC Regulation No.1 2.b) with the other tripartite partners (employers and the BSP) that the unions shall be consulted in case the company plans to outsource certain positions, and that employers will re-assign affected regular workers to other departments within the banks or make certain that workers will be employed by the third party (subcontractor).

In Singapore, the NTUC established the UCCW in 2006 to represent low-wage workers who are at the lower end of the outsourcing business. NTUC also initiated the formation of the TCC in early 2012 to address the stagnating wages of contract cleaners. Through the TCC, UCCW-NTUC pushed for the adoption of the PWM in the cleaning industry. Under the PWM, a career ladder for three groups of cleaners is drawn so that wages of cleaners increase as they scale up the ladder through up-skilling. The Singaporean government has implemented the PWM in 2013 for cleaners in various government offices and agencies. By 2014, all service providers in the cleaning industry will be required to comply with the PWM.

Of course, the BSI was initiated by NTUC. Through moral persuasion and fund support (for service providers), BSI encourages service buyers to consider best sourcing practices that consider, among others, the following: (1) safeguard the basic employment rights of workers; (2) recognise factors that contribute to service quality (i.e. good track record, provision of written employment contracts to workers, grading and accreditation level, training of workers, and appropriate tools and equipment; and (3) provide a decent work environment for workers (Ministry of Manpower, National Trades Union Congress, and Singapore National Employers Federation, n.d.). The

SNEF views BSI as a way to encourage service providers to innovate, to improve the skills of workers through training, and to increase the wages and enhance the career prospects of low-wage workers.

In Thailand, trade unions are also organising subcontracted workers. One example is the Auto Subcontract Workers' Union at the Ford/Mazda factory in the Rayong Province. Through collective bargaining, this union seeks to get permanent status for subcontracted workers after a year of subcontract work. Since its establishment at the Ford/Mazda plant, the union was able to narrow the wage gap between permanent and subcontracted workers and improve the benefits of subcontracted workers. Also, the union has been able to successfully negotiate permanent status for some of its members.

In the public sector, the SERC employs a twin-strategy that involves first, the negotiation with management of the proportion of subcontracted workers that can be hired; and secondly, the regularisation of these subcontracted workers. This strategy was used at the Thai Post, CAT Telecom and the TOT beginning 2008. By 2015, SERC expects that all the subcontracted workers in these companies will be full-time or permanent workers.

In Viet Nam, interviews with VGCL officers revealed the lack of organising initiatives targeting dispatched workers. A common reason cited is the lack of interest of dispatched workers to join the union.

Conclusion and policy recommendations

Balancing the need of employers for flexibility and the need of workers for security is a tough challenge. Providing a clear and coherent regulatory framework on the use of non-standard employment that specifies boundaries and limitations where such type of employment can be used is one attempt to address this difficult balance. Macroeconomic policies addressing slow job growth barriers are also important. This may include programmes that aim to boost job creation, especially for young people, provide tax cut incentives for business that hire long-term or regular workers, and others.

Addressing the rise of non-standard employment requires a multi-dimensional approach or a mix of strategies. Some of these strategies are the following:

- Organising subcontract/outsourced/fixed-term workers using various structures and modalities (union of agency or subcontracted workers, subcommittee of agency or subcontracted workers, association of agency or subcontracted workers, etc.);

- Extending the coverage of collective bargaining to include non-standard workers;
- Bargaining for limitation on the hiring of non-standard workers;
- Bargaining for the regularisation of non-regular workers;
- Use of multi-employer bargaining strategies;
- Forging national framework agreements with the government which is the single biggest employer of non-standard workers; and
- Social dialogue through tripartite structures (e.g., Singapore's BSI, Tripartite Cluster for Cleaners, and PWM for low-wage workers)

Pushing for legislations that aim at closing or narrowing the protection gap in labour laws for non-standard workers are also key in addressing their need for security. One good example is the provision in Thailand's Labour Protection Act 2008 that requires fixed-term or subcontracted workers to receive the same pay and benefits as permanent workers when they do the same job. The adoption of a minimum wage for all workers is also an effective policy instrument. Several studies have indicated that a minimum wage policy has the highest positive impact among low-wage workers, particularly women (Flavin, Pacek and Radcliffe, 2010; Western and Rosenfeld, 2011). Thailand has recently adopted a single minimum wage all over the country. Malaysia has also recently adopted two minimum wage rates, one for Peninsular Malaysia and another for Sabah and Sarawak.

The concept of a universal income floor or basic income (or "citizen's income") deserves serious study and consideration. The Basic Income Earth Network (2013) defines basic income¹³ as follows:

[A]n income unconditionally granted to all on an individual basis, without means test or work requirement. It is a form of minimum income guarantee that differs from those that now exist in various European countries in three important ways: it is being paid to individuals rather than households; it is paid irrespective of any income from other sources; and it is paid without requiring the performance of any work or the willingness to accept a job if offered.

Finally, since many non-standard workers are outside the coverage of social security, universalising the coverage of social security and healthcare is another important policy agenda. Again, other countries in ASEAN may draw valuable lessons and insights from Thailand's universal healthcare programme which is considered among the most successful healthcare programmes in the world.¹⁴

¹³ For more information on the concept of basic income, see Philippe Van Parijs, (2000), "Basic Income: A Simple and Powerful Idea for the 21st Century", a paper presented in the VIII International Congress of the Basic Income European Network, 6–7 October 2000, Berlin. <http://www.basicincome.org/bien/pdf/2000VanParijs.pdf>. Assessed 14 May 2014.

¹⁴ For a discussion and assessment of Thailand's universal healthcare scheme, see Health Insurance System Research Office, (2012), Thailand's Universal Coverage Scheme: Achievements and Challenges. An independent assessment of the first 10 years (2001–2010). Nonthaburi, Thailand: Health Insurance System Research Office. <http://www.gurn.info/en/topics/health-politics-and-trade-unions/development-and-health-determinants/development-and-health-determinants/thailand2019s-universal-coverage-scheme-achievements-and-challenges>. Assessed 14 May 2014.

Bibliography

Basic Income Earth Network. (2013). "About Basic Income", <http://www.basicincome.org/bien/aboutbasicincome.html>. Assessed 14 May 2014.

Candeias, M. (2007). "Unmaking and Remaking of Class – The 'Impossible' Precariat between Fragmentation and Movement", translated from German by Peter Thomas, RLS Policy Paper 3/2007, Rosa-Luxemburg-Stiftung, Berlin. http://www.rosalux.de/fileadmin/rls_uploads/pdfs/Policy_Paper/pp-3-09_Candeias.pdf. Assessed 14 May 2014.

Flavin, P., Pacek, A. and B. Radcliff. (2010). "Labor Unions and Life Satisfaction: Evidence from New data", *Social Indicators Research* 98(3): 435–449.

Ministry of Manpower, National Trades Union Congress, and Singapore National Employers Federation (n.d.) *Best Sourcing: Step by Step Guidebook for Service Buyers*. Singapore: Ministry of Manpower, National Trades Union Congress and Singapore National Employers Federation.

Regalia, I. (ed). (2006). *Regulating New Forms of Employment. Local experiments and social innovation in Europe*. London: Routledge.

Van Parijs, P. (2000). "Basic Income: A Simple and Powerful Idea for the 21st Century", paper presented in the VIII International Congress of the Basic Income European Network, 6-7 October 2000, Berlin. <http://www.basicincome.org/bien/pdf/2000VanParijs.pdf>. Assessed 14 May 2014.

Western, B. and J. Rosenfeld. (2011). "Unions, Norms, and the Rise in American Wage Inequality", Department of Sociology, Harvard University, Cambridge, USA, unpublished research report. http://www.wjh.harvard.edu/soc/faculty/western/pdfs/Unions_Norms_and_Wage_Inequality.pdf

Interview

Jose Umali, National President, National Union of Bank Employees (NUBE), 6 July 2013.

Notes on the authors

Melisa R. Serrano is an assistant professor at the School of Labor and Industrial Relations of the University of the Philippines. Her current research areas are comparative labour laws and industrial relations in ASEAN, union renewal, post-capitalist alternatives, wages and productivity, precarious work and non-standard forms of employment, informal economy, agrarian reform, and social security. She has co-authored and co-edited several books and published in national and international academic journals. The chapters she contributed in the book *The Pursuit of Alternatives: Stories of Peoples' Economic and Political Struggles around the World* (2012) which she co-edited with Edlira Xhafa, won an International Publication Award in 2013 from the University of the Philippines. Her paper "Between accommodation and transformation: The logics of union renewal" was awarded the SAGE Best Comparative Paper in the 10th European Congress of the International Labour and Employment Relations Association (ILERA) in June 2013 in Amsterdam. The paper was subsequently published in the *European Journal of Industrial Relations* edited by Richard Hyman. Melisa earned her PhD in Labour Studies from the Graduate School of Social and Political Sciences, University of Milan, Italy. She is also an alumna of the Global Labour University (University of Kassel and Berlin School of Economics and Law) in Germany.

Mary Leian C. Marasigan is University Extension Specialist at the UP School of Labor and Industrial Relations and currently a PhD candidate at the University of Amsterdam. Her doctoral research focuses on employability and labour market dynamics in the Business Process Outsourcing (BPO) sector of the Philippines. She has done collaborative studies on call centre workers, social protection for informal workers, outsourcing and subcontracting, unionisation, and sector studies in construction and garments. At home, she is mother to three children aged four, five and eight.

Vera Eileen V. Pupos is University Researcher at the School of Labor and Industrial Relations of the University of the Philippines. She is currently pursuing her masters at the University of the Philippines. Her thesis focuses on the care work of left-behind fathers in transnational families. As a researcher, she has been involved in studies on overseas migrant workers, non-standard forms of employment, trade union capacity in organising and bargaining, women and gender issues in trade unions, and working conditions of domestic seafarers in the Philippines.

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To request for more copies of this publication, please contact:

ASEAN Services Employees Trade Unions Council

General Secretary: Mohamed Shafie BP Mammal

No. 27 Jalan Limau Manis, Bangsar Park

59000 Kuala Lumpur, Malaysia

Phone: (603) 2284 1232

Fax: (603) 2282 0555

Email: shafie@asetuc.org

Website: www.asetuc.org

Friedrich-Ebert-Stiftung (FES)

Office for Regional Cooperation in Asia

Director: Julia Mueller

7500 Beach Road,

#12-320/321/322 The Plaza

Singapore 199591

Tel: (65) 6 29 76 760

Fax: (65) 6 29 76 762

Email: enquiries@fes-asia.org

Website: www.fes-asia.org

At the 22nd ASEAN Summit on 24–25 April 2013 in Bandar Seri Begawan, Brunei Darussalam, the heads of state agreed to redouble their efforts towards the realisation of the ASEAN Community by 2015. They reaffirmed the need to build a caring and sharing society where the long-term goal is a people-oriented and socially responsible ASEAN community that achieves enduring solidarity and unity among all nations and people in Southeast Asia. For the working people of ASEAN, decent work is central towards the realisation of this goal.

The ASEAN Services Employees Trade Unions Council (ASETUC), dedicated to improving the living and working conditions of the workers in the region, commissioned this research study to better understand and map the increasing precariousness of employment and non-standard work arrangements in the ASEAN member states which are situated within the global economy and labour market.

In preparing this study, the authors conducted field research, interviews and literature research in order to classify, evaluate, compare and interpret the various forms of non-standard employment arrangements in six ASEAN countries, namely, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Viet Nam.

In the context of a regional and global labour market, employers infer the need for flexible production and correspondingly a more flexible workforce. On the other hand, non-standard employment mostly means poorer wages and conditions for workers. Fixed or short term employment contracts, including outsourcing and subcontracting, most often lack the necessary access to and coverage of social security. While women and young workers are over-represented in these forms of employment the organisation of workers into trade unions is limited and widely restricted. The authors argue for the need to re-balance some level of flexibility to cope with the uncertainties of a globalised market with the workers' need for stability, decent working conditions and social protection.