

Terms of Reference
National consultancy for conducting a case study on
Non-Standard Forms of Employment in Mongolia
(February-March 2020)

I. Background

The ILO study on non-standard forms of employment (NSFE) around the world, published in 2016, has revealed a rise in the use of non-standards forms of employments. The study classifies these employments into 5 types as follows:

- Temporary employment;
- Part-time employment;
- Multi-party employment;
- Disguised employment;
- Dependent self-employment.

These employment arrangements give business flexibility to respond to fluctuating labour demands and availability. In a short-term firms are able to make financial savings through flexible employment arrangements as the cost of temporary hiring is less. Companies that do not invest in its work force will likely have to pay a high price for the short-term gains as they trade away skilled workforces, capacity to innovate, stay agile and increase productivity.

Mongolia is among the 12 countries where the share of non-standard forms of employment in established firms is more than 20%. In fact, Mongolia is among the top 3 countries. The 12 countries and their respective share of temporary employment is shown below:

Rank	Country	Temporary employment as a percentage of total wage employment in private sector firms
1	Poland	28.4
2	Peru	26.5
3	Mongolia	26.3
4	Vietnam	25.6
5	Dominican Republic	24.6
6	Liberia	24.6
7	Portugal	23.6
8	Spain	22.5
9	Philippines	21.5
10	Tanzania	21.4
11	Niger	21.3
12	Republic of Congo	20.2

National institutions in Mongolia have been voicing their concerns about the state of the Mongolian labour market where jobs are not growing and nearly 30% of workers experiences jobs with high degree of decent work deficits. The National Human Rights Commission's survey on labour rights in the private sector, especially in small and medium sized enterprises shows young workers and female workers often have to work long hours, do not receive wage during the trial period of employment, receive unfair dismissal, and endure a hostile workplace.

In its review of Mongolia's report on ratified conventions, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has requested the government to provide more information as follows:

- **C181 – Private employment agencies (PEA)**
 - Measures undertaken to ensure that workers who receive employment through the service of private employment service ensure equality of opportunity and treatment in access to employment and specific occupations and enjoy the rights to organize and collectively bargain;
 - Measures undertaken to effectively govern the functioning of private employment agencies and the allocation of responsibilities between them and user enterprises
 - Measures undertaken by labour inspection to supervise and ensure compliance of private employment agencies.
- **C88 – Public employment services**
 - Information, including statistics disaggregated by sex and age, on the impact of the measures taken by the public employment services to ensure the best possible organization of the labour market with a view to promoting the effective recruitment and placement of workers;
 - Regular collection and analysis of labour market information, profiles of particular categories of job seekers, and the impact of public employment services especially in assisting workers in categories of concerns to enter the job market successfully;
 - Measures undertaken to promote the cooperation between the public employment service and the private employment service.
- **C122 – Employment policy**
 - Information and analysis on the labour market situation, levels and trends of employment, unemployment and underemployment;
 - Measures taken to promote job creation in small and medium-sized enterprises, analyse the performance of public employment services, create opportunities for sustainable and lasting employment for young persons, persons with disabilities, workers in rural areas and remote communities, measures undertaken to facilitate the progressive transition of workers from the informal to the formal economy.

In these comments, the CEACR calls on the government to consult with the most representative organization of employers and workers in the formulation and implementation of employment measures and labour protection.

During the first half of 2019, the ILO has held a series of consultations with the Government, MONEF, CMTU, and other key stakeholders in aligning national laws with international labour standards and facilitating transitions from the informal economy to the formal economy. All national stakeholders

have agreed on the need to generate more and better jobs. Each organization is pursuing actions in line of its mandates and strategic interest.

- MONEF, representing small enterprises, is developing a programme of action to help small and fledging firms to register their business, access business development services and gain voice in social and economic policy and programme development at various level.
- CMTU, guided by its own plan of action on the informal economy, wishes to enhance the capacity of trade unions members at various levels to better protect the fundamental principles and rights at work for its members in the informal economy and improve its training programme on collective bargaining, including in the contexts of the informal economy.
- Ministry of Labour and Social Protection, General Agency for Specialized Inspection, Authority for Family, Child and Youth Development have commonly expressed their interests in better understanding the organization of work and employment in today's labour market. Specific issues of concerns are: employment arrangements, wages, working hours, social insurance, occupational safety and health, benefits. The priority economic sectors are: construction, retails, services, tourisms.

Countries around the world are facing the challenges of how to regulate the ever changing and diversified employment relationships so as to ensure labour protection, sustainable growth and social benefits. Effective response measures are those that emerge from tripartite dialogues and commitments to decent work. Having up-to-date information about various ways work is organized and having opportunities and forum to reflect on their short and long term impacts on individual workers, businesses and society are the preconditions for achieving decent work and sustainable development.

II. Objectives

- To create a common language and understanding about non-standards forms of employment in Mongolia, especially how they are or not protected with respect to employment arrangements, wages, working hours, social insurance, occupational safety and health, benefits;
- To collect information for case study analysis and discussion among concerned governments, workers and employers, especially in view of finding legal and institutional options to expand protection;
- To engage employers, workers, and their respective organizations to share their views, concerns and proposals on their roles and responsibilities;
- To facilitate the deliberation of the member of the tripartite working group on labour law in the MLSP in their deliberation on the (draft) revised labour law and its application (upon its approval).

III. Research Questions and Methodologies

This study will specifically look into (a) non-standard forms of employment in Mongolia, (b) analyse if and how they are covered by the labour law, in law and in practice, (c) select specific sectors for in-depth description and analysis, (d) explore and recommend actions on various fronts – legislative, regulatory, strategic, including the roles of social partners.

Hence the study will cover the following questions:

1. What are the extent and common characteristics of non-standard forms of employment in Mongolia? In which sectors are they typically found?
2. Select the non-standard forms of employment relevant to Mongolia which the study will examine:
 - a. Provide a profile of these priority forms of employment based on the labour force survey: age, sex, education, formal/informal employment, industry, occupation, geographical region, inclusion in trade unions;
 - b. Are these types of work covered by the labour law? If they are not covered, analyse how are they excluded in the coverage of the labour, social protection and other protective laws?
 - c. If they are covered, do they receive the full protection of the labour and social protection laws? If not, analyse from which protective systems/programmes are they excluded and why are they excluded? (Consider effective coverage of social security, labour inspection, trade union organizing, access to dispute resolution mechanisms);
 - d. Propose options to strengthen and expand the existing labour law for better protection of workers in non-standard forms of employment.
3. Case studies: Case studies will delve into each type of NSFE, following the guide questions below.

Through literature review, focus group discussions and public surveys, a set of information will be collected for use in development of case studies. The information and subsequent case study documentation should provide insights about non-standard forms of work in the construction, retail and service sectors. The case study documentation should be reviewed and discussed by tripartite bodies.

The case studies should illustrate:

- Perception of workers/employers on:
 - How the non-standard job arrangement benefits workers (what benefits and how);
 - How the non-standard job arrangement benefits employers (how and under what circumstances)
- Determination of wages, working hours, place of work;
- Use of contract and establishment of roles and responsibilities of various parties in managing occupational health and safety and social security;
- Reporting and other experience of employers/workers with the following: Registration bodies, labour inspection, social security system, labour mediation, trade unions;
- Success and barriers workers and employers have in organizing and earn the rights to collective bargaining;
- Common disputes, grievance mechanisms and results;

1. The workers

- a. Sex, age, education level, work experience
- b. Social characteristics/profiles

- c. Membership in any professional/occupational organizations
- d. Workers' investment to get the job

2. Identifying job opportunities

- a. How a jobseeker get job information
- b. Application process
- c. What does a job seeker have to do to get a job

3. Getting workers

- a. How are the workers hired, directly by the company or through employment agency?
- b. Who are "user enterprise"
- c. Who are private employment agencies (PEAs)
- d. What are the agreements between PEAs and User Enterprises
- e. Specifications of workers

4. Employment contract

- a. Who are the contracting parties
- b. What are the contracting obligations of the parties
- c. Specific conditions
- d. Generic conditions

5. Duration of contract

- a. Open ended
- b. Time-limit (i.e., how long)

6. Working hours

- a. Duration of work
- b. Hours of work
- c. Minimum hours of work per week

7. Place of work

- a. Workers' own place
- b. User enterprise's premise
- c. PEAs' premise

8. Wages and remuneration determination

- a. Method of determining wages
- b. Applicable wages
- c. Employment benefits

9. Work supervision and disciplining

- a. Who supervises the worker
- b. Method of supervision
- c. Penalties for non-compliance/non-performing

10. Training and OSH

- a. Pre-employment and on-the-job training
- b. Any specific requirements

11. Grievance mechanisms

- a. Instances of disputes
- b. Means of resolving disputes by the workers, their “employers” and others
- c. Outcomes of the resolution

Note:

- (a) The opinions of hiring companies and workers will also be sought in respect of their perceptions of the hiring modality;
- (b) Selection of the non-standard form as case study, in particular which form and in which industries, will be confirmed upon consultation with ILO, with social partners and initial review of literature. The choice will depend on the forms that social partners deem most urgent and important to address through legislative and regulatory solutions.

IV. Outputs

A final report containing the overall analysis and the case of selected NSFE will be submitted in English and Mongolian.

Case study documentation that illustrates key aspects of non-standard forms of employments with key questions described above.

Each case, including the overall report, should be written in a simple language and written in a style of a human-interest story. Each case should be about 1 page long and, where information is available, it must include an analysis of practices and treatment of workers in similar jobs but with adequate protection provided or converted into standard (and protected) employment arrangements.

Key recommendations will be included in each case study and/or the overall report. Recommendations will consider the aspects of legal coverage, institutional or regulatory improvement, design of protection or coverage, and action by the social partners.

Case analysis template:

Case A: Title

Key aspects: Select from the insight areas in Section III Methodologies

The story:

- What happens
- Who does what
- Actors (job seekers, employers, supervisors, co-workers, or unions)
- Contexts
- Results

Points for discussion

- A. Relevant laws
- B. Responsibilities of different parties
- C. What to improve
- D. How to improve and who to be involved

These cases are meant for use in capacity building training and public campaigns. They are also meant to improve “labour literacy” in the Mongolian language.

V. Duration

The assignment is expected to be undertaken for two months starting from February 2020.

VI. Qualifications

The consultant is expected to work independently and closely with:

- the ILO technical specialists in Bangkok and programming and national coordination teams in Beijing and Ulaanbaatar;
- the relevant staff of the Labour Relation’s Policy Implementation and Coordination Department, Ministry of Labour and Social Protection.

Requirements:

- Advanced degree in social sciences;
- At least (5) five years experiences in the field of social research with a proven record of similar studies on the subject matter;
- Good knowledge of labour and employment issues/relations is an asset;

Language: Excellent command of English and Mongolian.