



LABOUR RIGHTS IN THE 'PRECARIOUS ECONOMY'

A global research agenda

ESRC/GCRF STRATEGIC NETWORK ON LEGAL REGULATION OF UNACCEPTABLE FORMS OF WORK

Unacceptable work: global dialogue / local innovation

The **UN International Labour Organization (ILO)** has called for workers around the world to be protected from **unacceptable forms of work (UFW)**: jobs that “deny fundamental principles and rights at work, put at risk the lives, health, freedom, human dignity and security of workers or keep households in conditions of extreme poverty”¹ This ILO policy agenda responds to the growth in insecure and low paid labour across the global work force. Sustaining productive and protected working lives is among the most pressing challenges of the early twenty-first century. The urgency of this objective was recently confirmed by the inclusion of the Decent Work objective among the **UN Sustainable Development Goals (SDG8)**.²



The Strategic Network identifies and responds to Global Regulatory Challenges: the most urgent and complex issues that face lower-income countries in upgrading or eliminating UFW.



Effective labour regulation is crucial to securing decent work. Yet the regulatory strategies that can eliminate unacceptable work – most urgently in lower-income countries - have yet to be identified.³ **The ESRC/GCRF Strategic Network on Legal Regulation of Unacceptable Forms of Work** responds to this urgent need by supporting a dialogue on UFW regulation.

The Network has brought together a **team of researchers and policy-makers from a range of disciplines and from the global North and South**. Network Teams are focused on identifying and responding to Global Regulatory Challenges: the most urgent and complex issues that face lower-income countries in upgrading or eliminating UFW. A set of Challenges have been identified and **Research Agendas** developed to investigate each Challenge through cross-regional comparisons of countries of different income levels.

The global regulatory challenge: effective regulation of precarious work

In the first half of the 20th century, permanent, full-time and binary employment - the **'Standard Employment Relationship'** – was dominant in industrialized countries. So-called **'non-standard' or 'precarious' employment** emerged across these countries after the 1970s, resulting in widespread concern. In contrast, precariousness had been a long-standing feature of labour markets in the **economic South**.

'Precarious work' is characterized by **insecure employment, low wages, discriminatory working conditions and low union density**. For the elimination of UFW, then, it is urgent to address these forms of work. Yet in many countries, the Standard Employment Relationship has been the model for labour laws and other protections. To date, **most governments have failed to adopt effective approaches** to reducing precariousness.

Some states, however, have developed **specialist regulation** to address specific facets or features of precariousness. Certain of these initiatives – adopting **the equality approach** – are based on a premise of **discrimination**. The legislation assumes that standard employment is the norm and precariousness is the exception. These tend towards correcting any deviation from 'normal' or 'standard' employment. Others – **specific regulation** – assume the opposite: that **precarious work, or inferior quality of work, is the norm**. The assumption is that, through effective regulation, there is scope for improving labour standards in selected sectors.

A key question, then, is which are the most **effective regulatory strategies** to address precarious work. This question is particularly urgent in countries in which 'non-standard' work is very extensive. For this reason, **the regulation of 'precarious economies'** has been identified by the Strategic Network as a **Global Regulatory Challenge**.

1. ILO Towards the ILO centenary: realities, renewal and tripartite commitment (2013); <http://www.ilo.org/global/topics/dw4sd/theme-by-policy-outcomes/>.
2. <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>
3. See further Judy Fudge and Deirdre McCann Unacceptable forms of work: a global and comparative study (ILO 2015); Deirdre McCann and Judy Fudge 'Unacceptable forms of work: a multidimensional model' (2017) 156(2) *International Labour Review* 147-184.

Precarious work regulation: a research agenda

During 2017, the Strategic Network on Legal Regulation of Unacceptable Forms of Work was funded by the UK Economic and Social Research Council through the Global Challenges Research Fund to design **Research Agendas** on combating unacceptable work. The purpose of the Research Agendas is to identify the **most effective research strategies** that can (1) illuminate the Global Regulatory Challenges and (2) identify the most effective legal and policy responses.

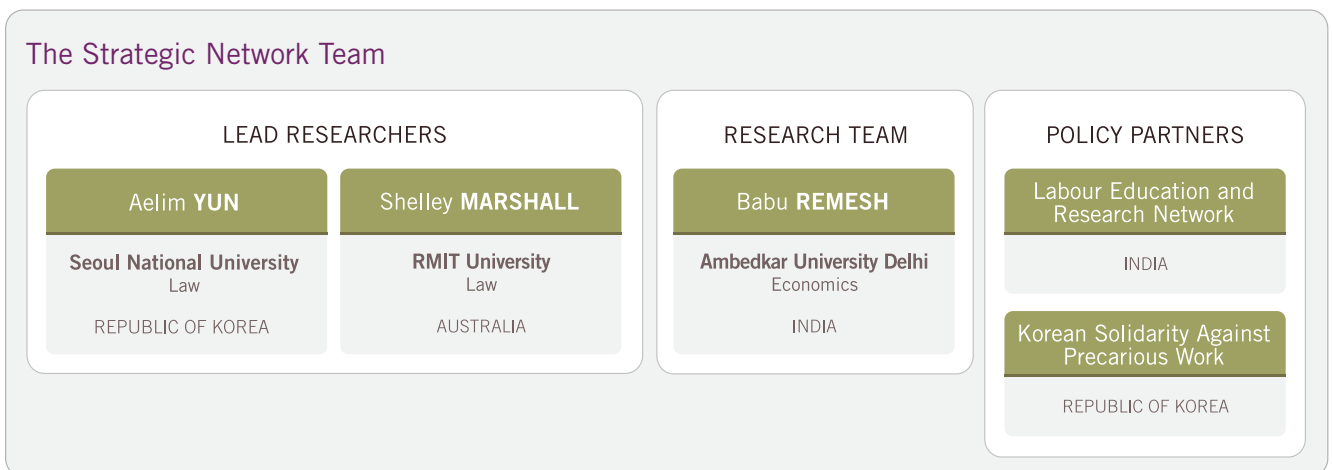
This Research Agenda on ***Labour Rights in the Precarious Economy*** sets out a strategy to comparatively investigate the effective regulation of precarious work.

The Strategic Network Team

This Research Agenda has been designed by a **Strategic Network Team** that includes researchers and policy actors from across the world.

To ensure the **interdisciplinary** mix of skills needed to address the complexity of UFW, the researchers are drawn from different academic disciplines.

Local **policy actors** were a core part of the Team, providing advice and guidance on how to achieve innovative regulatory interventions that can offer lessons to the global debates.



RESEARCH OBJECTIVES

A key research question that underpins this Research Agenda is: what are the most **effective regulatory strategies to address precarious work?**

The goal should be to investigate different **patterns of precarious and informal work**, including through a focus on **gender, the role of labour market actors, industrial and workforce structure, innovative practices**, and the potential for **replication** of successful initiatives in other settings.

A particular focus should be the capacity of regulatory interventions to challenge **structural factors**. These relate to the power relations that produce inequality and precariousness. The aim is to understand how **unbalanced distributions of power** among actors impact on the nature of regulations and policy interventions.

A central objective should be to investigate the benefits and limits of **specialist regulation**. A comparison and evaluation of the two main strategies – the **equality-based approach and specific regulation** – would produce global insights for research and policy.

Research should be tailored towards **assisting policy makers in designing more effective interventions** to address the employment insecurities and vulnerabilities of precarious work. To this end, particular focus should be placed on:

- **strengthening voice mechanisms** to improve the implementation of precarious work laws; and
- ensuring that laws to on precariousness address **industrial and workforce structure**.

METHODOLOGY

Research methodologies should combine a desk-based **socio-legal analysis of regulatory frameworks** with an **empirical investigation of the impacts of regulatory interventions**.

Secondary data would be drawn from national statistical agencies, government departments, trade unions and other community-based organisations. **Primary data** would be gathered through field work, including interviews with **unions, employers, and government departments**. Quantitative and qualitative research are blended in this approach. In particular, **action-based research models** would be used to explore the changing roles of these actors over time, and how their actions affect the success of initiatives to reduce precarious work.

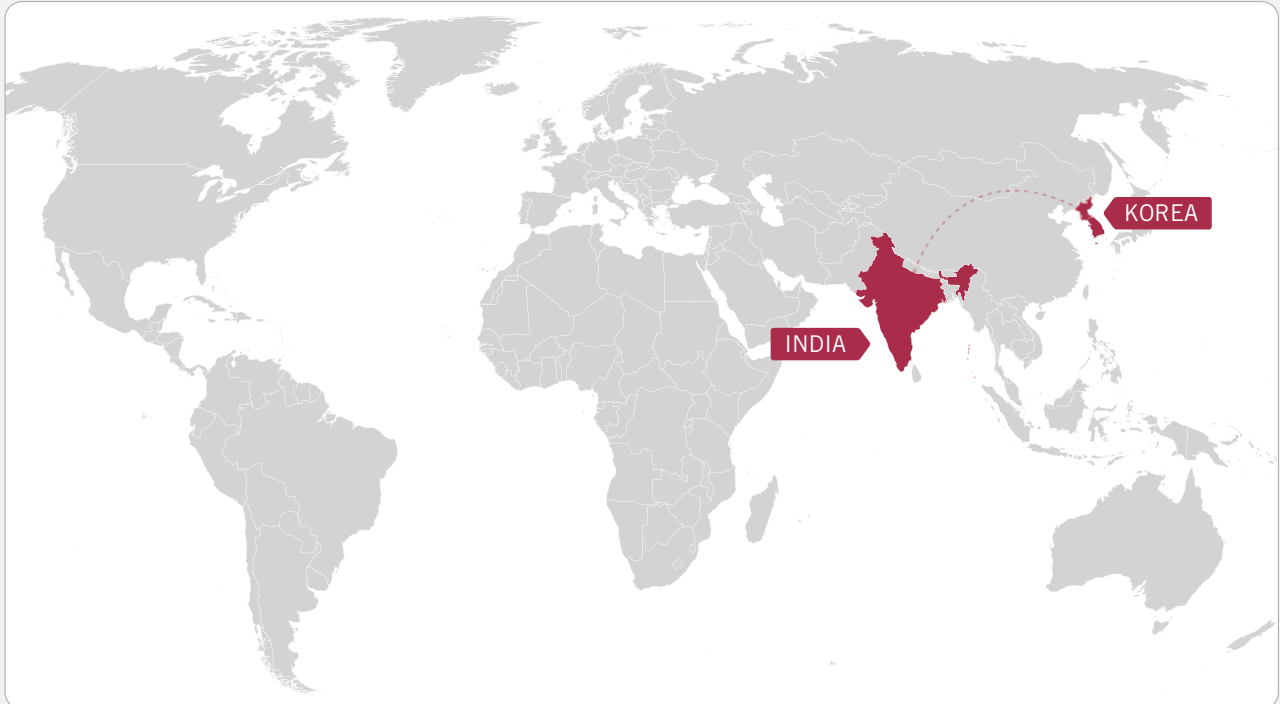
An illustration: India and Korea

Comparative research on the operation of regulatory frameworks is crucial to combat UFW and to derive global lessons from innovations at the country level. For this reason, the Strategic Network has concluded that future research should involve **comparisons** of countries at a range of income levels and in different regions.

A comparison on *Labour Rights in the Precarious Economy* should focus on countries in which **precarious work is widespread** and in which **globally-significant legal reforms** have been introduced to improve precarious work.

Korea and India are two important examples. In both countries, non-standard working relations are particularly **widespread**. Both have adopted **pioneering initiatives** to regulate their 'precarious economies.' This comparison would illustrate the two **key regulatory models** that are being tested: the **equality approach** (Korea) and **specific regulation** (India). It would also highlight the differences and similarities between a **rich, recently developed economy and a country from the global South**.

An illustration: Korea and India



In **Korea**, **legislation** has been enacted to protect **fixed-term, part-time, and agency workers**. *The Acts on Protections for Fixed-term and Part-time Workers* and *Protections for Agency Workers* were both enacted in 2006. These Acts are **equality-oriented individual-complaint** mechanisms. They prohibit discrimination against non-standard workers while allowing the free use of those types of contracts for up to two years. These Acts allow **individual workers** to claim that they have been discriminated against compared with secure, standard workers.⁴

The **labour market in India is highly fragmented**. Workers in formal enterprises, are often formally protected by labour laws but lack **effective means of enforcing their rights**. The **large majority of workers** have never worked in formal enterprises or received a contract of employment. The net result has been the **continued growth of informal sector**, characterised by UFW, which employs more than 90 per cent of the workforce.

Yet India is also home to one of the most significant initiatives on precarious work. This covers loading and unloading workers, or **'head loaders'** (Mathadi workers). These workers traditionally worked under highly exploitative and physically gruelling conditions. The state of **Maharashtra** passed specific legislation for Mathadi workers in 1969.⁵

The 'Mathadi Act' set up tripartite Boards of representatives of the workers, employers and the government. These Mathadi Boards have built hospitals and schools for the families of these workers, set up canteens, stipulated labour standards and extended social protection.

4. Deirdre McCann 'Regulating working conditions in East Asia and the Pacific' in François Eyraud and Sangheon Lee (eds) *Globalization, Flexibilization and Working Conditions in Asia and the Pacific* (Chandos 2008) 81-112; Joohoo Lee 'More protection, still gendered: the effects of non-standard employment protection Acts on South Korean women workers' (2017) 47(1) *Journal of Contemporary Asia* 46-65.

5. Shelley Marshall 'How does institutional change occur? two strategies for reforming the scope of labour law' (2014) 43(3) *Industrial Law Journal* 286-318.