



LAW'S DYNAMIC EFFECTS

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: extending law's dynamic effects

Expanding the reach and influence of labour laws is among the central challenges of contemporary labour regulation. Formal legal standards do not reach all workers and may only influence a small percentage of the working population in countries with large informal economies. Recent research, however, has made a crucial contribution to ensuring that labour standards are effective and highlighted **institutional dynamism**: the capacity of labour regulations to

- **extend beyond their formal parameters**, including to informal settings (**external dynamism**); and
- **interact with other institutions and regulations (internal dynamism)**.⁴

Recent **research on minimum wage laws** suggests that institutional dynamism is a potential gateway to improved **protective outcomes**. Studies in lower-income countries have demonstrated that the minimum wage influences the informal economy.⁵ Research on Europe has revealed that strong collective bargaining frameworks can bolster the effects of minimum wage legislation.⁶

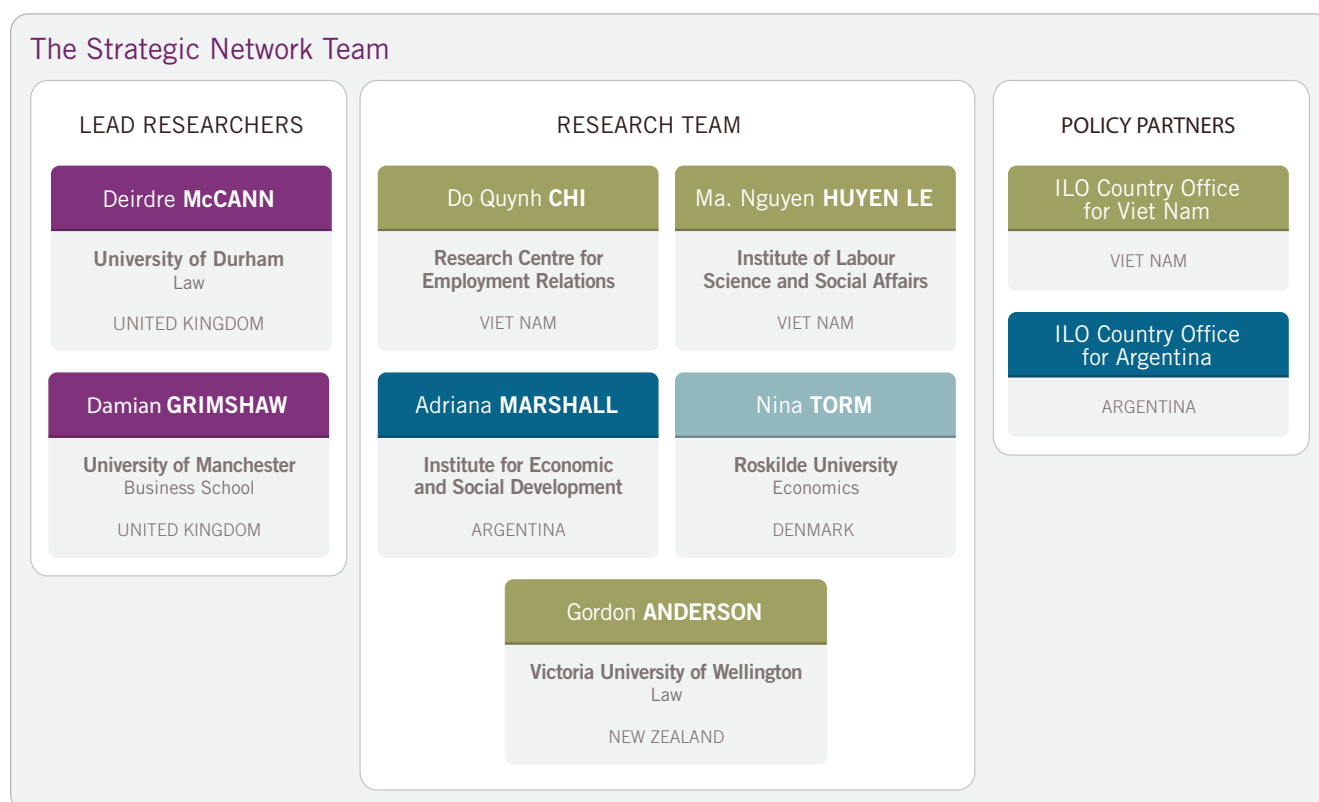
Institutional dynamism has particular potential for the regulation of UFW in **low-income settings**. It has the potential to extend the reach of legislated standards without costly investments in labour inspection and enforcement. Yet the operation of law's dynamic effects is not well-delineated nor firmly integrated into decent work policies.

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 Deirdre McCann and Judy Fudge 'Unacceptable forms of work: a multidimensional model' (2017) 156(2) *International Labour Review* 147-184.
4. Sangheon Lee and Deirdre McCann 'Regulatory indeterminacy and protection in contemporary labour markets: innovation in research and policy' in Deirdre McCann, Sangheon Lee, Patrick Belser, Colin Fenwick, John Howe and Malte Luebker *Creative labour regulation: indeterminacy and protection in an uncertain world* (2014) 87-125.
5. Eg Tito Boeri, Pietro Garibaldi and Marta Ribeiro 'The lighthouse effect and beyond' (2011) 57 *Review of Income and Wealth* S54-S78;
6. Damian Grimshaw, Jill Rubery and Gerhard Bosch 'The pay equity effects of minimum wages: a comparative industrial relations approach' in McCann et al (2014) 126-157.

Enhancing institutional dynamism: 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 these Research Agendas is to identify the **most effective research strategies** that can (1) explain and illuminate the Global Regulatory Challenges and (2) identify the most effective legal and policy responses.

This **Research Agenda on Law's Dynamic Effects** has been designed to investigate how to incorporate institutional dynamism into decent work policy.



The Strategic Network Team

The Research Agenda has been designed by a **Strategic Network Team** that integrates researchers and policy actors from across the world. To ensure the **interdisciplinary** mix of skills needed to address the complexity of UFW, the researchers were drawn from a range of 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

Key research questions have been identified:

- What **regulatory frameworks and mechanisms** can trigger and enhance dynamic effects?
- Are dynamic effects supported by legal frameworks **other than minimum wage laws**?
- Can these dynamics be **enhanced and harnessed for policy objectives** through the design and implementation of regulatory frameworks or by actor strategies?

A central focus is institutional dynamism in **working conditions** regulation. Decent working conditions are a crucial element of sustainable development. They are a foundation for inclusive and sustainable growth, including by ensuring the well-being of workers and their families. The SDG8 Targets highlight the significance of conditions of work, including the promotion of safe and secure working environments.⁷

Two legal fields are particularly important: **minimum wages and working time**. It is crucial to examine statutory rules, collective agreements, and government, employer and trade union policy and practice in these areas. The **objectives** should be (1) to identify examples of innovation in regulatory frameworks and (2) to explore the responses of social actors and make recommendations for improving protective outcomes.

METHODOLOGY

To explore the dynamic effects of labour standards, the research methodology must combine a **socio-legal analysis of regulatory frameworks** and an **empirical investigation of the awareness, perception, and influence of formal legal norms**.

Socio-legal analysis is needed to map the relevant regulatory regimes in all their dimensions (legislated standards, collective bargaining frameworks, corporate social responsibility initiatives etc.) Empirical methods can then be used to investigate the operation of institutional dynamism.

The examination of the **external dimension** of institutional dynamism would be centred on the influence of labour standards in informal work in e.g. the garment industry. This research should build on prior efforts to investigate working conditions in informal settings.⁸ The **internal dimension** would be investigated by gauging the strategies and activities of bargaining actors through semi-structured interviews with representatives of trade unions and employers' organizations and interrogation of collective agreements in key sectors.⁹

7. The Goal 8 Targets include to "protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment." <http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-8-decent-work-and-economic-growth/targets/>.

8. Sangheon Lee and Deirdre McCann, D. 'The impact of labour regulations: measuring the effectiveness of legal norms in a developing country' in Lee and McCann *Regulating for decent work: new directions in labour market regulation* (2011) 291-312.

9. Damian Grimshaw (ed) *Minimum wages, pay equity, and comparative industrial relations* (2013).

An illustration: Argentina, New Zealand, Viet Nam

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 on Legal Regulation of UFW has concluded that future research should involve of countries at a range of income levels and in different regions.

Comparisons on **Law's Dynamic Effects** should focus on the most globally significant legal innovations to combat UFW. As an illustration, three key interventions have recently been introduced in **Viet Nam, Argentina, and New Zealand**.

These countries have adopted some of the most significant **working conditions reforms** of recent years: the construction of a **minimum wage-setting framework in Viet Nam**, the extension of **minimum wage rights to the informal sector in Argentina**, and legislation to curb **'zero hours contracts' in New Zealand**. The minimum wage-setting regime in Viet Nam is part of a broader revival of the minimum wage in low-income settings; reforms

in Argentina combine minimum wage uprating with the transition of workers from the informal to formal sector by extending labour rights and social security coverage¹⁰; and in New Zealand, the 'zero hours' law is a global pioneer of casual work regulation in a 'framed flexibility' model¹¹.

These countries are diverse in socio-economic development, legal systems and economic development and labour market strategies. Yet they have potential to generate **lessons on innovative legal techniques** in UFW regulation in a low-, middle-, and high income country. They are illustrative of attempts to introduce legal regulation into arenas previously unregulated by formal norms. These novel frameworks seek to regulate via mechanisms that are innovative in each country context. To be considered effective, they would need to **embed in working practices and extend across the economy**, including in the most vulnerable sectors. It would therefore be valuable to test the strength, promise, and constituent strategies of institutional dynamism in these three settings.

Illustration: Argentina, New Zealand, Viet Nam



10. Fernando Groisman 'Employment, inequality and minimum wages in Argentina' in McCann et al (2014) 87-125.

11. Deirdre McCann and Jill Murray 'Prompting formalisation through labour market regulation: a "framed flexibility" model for domestic work' (2014) 43(3) *Industrial Law Journal* 319-348.