

# Extending Labour Inspection to the Informal Economy



## A Trainer's Handbook



International  
Labour  
Organization

**woerrc**  
Work, Organisation & Employment  
Relations Research Centre



Sheffield  
University  
Management  
School.

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# List of abbreviations

<b>ACPSBM</b>	Analytical Centre for the Protection of the State Borders and Migration (Czech Republic)
<b>ALC</b>	Additional Licence Conditions (UK)
<b>CIF</b>	Construction Industry Federation (Ireland)
<b>DoL</b>	Department of Labour (South Africa)
<b>ETI</b>	Ethical Trade Initiative (UK)
<b>FKS</b>	Finanzkontrolle Schwarzarbeit (tax enforcement unit for undeclared work, Germany)
<b>FLSA</b>	Fair Labour Standards Act (USA)
<b>GLA</b>	Gangmasters Licencing Authority (UK)
<b>HEMG</b>	Hidden Economy Monitoring Group (Ireland)
<b>HMRC</b>	Her Majesty's Revenue and Customs (UK)
<b>HSE</b>	Health & Safety Executive (UK)
<b>IBCIEF</b>	Interdepartmental Body for Combating Illegal Employment of Foreigners (Czech Republic)
<b>ICLS</b>	International Conference of Labour Statisticians
<b>ICTU</b>	Irish Congress of Trade Unions (Ireland)
<b>IES</b>	Inspection and Enforcement Services (South Africa)
<b>ILC</b>	International Labour Conference
<b>ILO</b>	International Labour Organisation
<b>ILS</b>	International Labour Standards
<b>IPEC</b>	International Programme for the Elimination of Child Labour
<b>ITSS</b>	Labour and Social Security Inspectorate (Spain)

<b>JIU</b>	Joint Inspection Unit (Ireland)
<b>MOU</b>	Memorandum of Understanding
<b>MSE</b>	Micro and Small Enterprises
<b>NERA</b>	National Employment Rights Authority (Ireland)
<b>NGO</b>	Non-government organisation
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>SFA</b>	Small Firms' Association (Ireland)
<b>SLIO</b>	State Labour Inspection Office (Czech Republic)
<b>SMART</b>	Specific, Measurable, Attainable, Relevant and Time-Bound
<b>SME</b>	Small and Medium-sized Enterprises
<b>UIF</b>	Unemployment Insurance Fund (South Africa)
<b>USDOL</b>	U.S. Department of Labour (USA)
<b>VAT</b>	Value Added Tax
<b>WHD</b>	Wages and Hours Division (USA)
<b>WIETA</b>	Wine and Agricultural Ethical Trade Association (South Africa)

## Introduction to the training manual

This course is intended to take place over a period of two days. It comprises nine sessions. A set of aims and learning objectives has been specified for each session.

Most of the sessions involve two or more activities. In general the activities consist of a presentation by the tutor and some form of group



exercise. The emphasis is on interaction and on participants learning from each other. The tutors should do their best to ensure that all course members actively participate in the discussions.

**Powerpoint slides** have been provided to support each activity. The slides are numbered and each activity contains information about which slides to use. The slides for session 3 will need to be prepared by the tutor in advance as they will need to convey information about the informal economy in the country in which the course participants are based.

**Tutor notes** are contained in the manual. These are intended to support the tutor when preparing their presentations. Each tutor presentation activity lists issues that the tutor should cover during his or her presentation. The tutor notes contain background information on each issue and will need to be read as part of the tutor's preparatory work.

Although the information in the tutor notes will be sufficient to enable the tutor to make a full and well-informed presentation, the tutor might wish to include additional information. The tutor might wish to consult the following:

ILO (2013) Labour Inspection and Undeclared Work in the EU

ILO (2014) Transitioning from the Informal to the Informal Economy. Report V (1) International Labour Conference 103rd Session.

Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_218128.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_218128.pdf)

ILO (2013) The Informal Economy and Decent Work: A Policy Resource Guide. Supporting Transitions to Formality. Available at: [http://www.ilo.org/emppolicy/pubs/WCMS\\_212688/lang--en/index.htm](http://www.ilo.org/emppolicy/pubs/WCMS_212688/lang--en/index.htm)

Statistical data produced by the ILO. Available at: [http://laborsta.ilo.org/informal\\_economy\\_E.html](http://laborsta.ilo.org/informal_economy_E.html)

*The tutor notes for each session refer to a variety of sources. Complete information about the sources is included in the tutor notes.*

# Lab-Forum

The toolkit has been prepared on behalf of the ILO by Prof. Jason Heyes and Dr Thomas Hastings of the Work, Organisation and Employment Relations Research Centre (WOERRC) at the University of Sheffield (UK). WOERRC has created an online message board - Lab-Forum - to accompany the toolkit. Lab-Forum has been designed with three main functions in mind:

- » To act as a platform to help monitor/capture real world impacts related to the training toolkit.
- » As a place for participants to learn/develop inspection skills from one another by staying in touch after the course has finished.
- » To offer the chance for participants to socialise and stay in touch.
- » The tutor should ask all course participants to register at the start on Day 1 of the course by following instructions on the link below:

<http://www.woerrc.group.shef.ac.uk/forum/page/home>

The screenshot displays the Lab-Forum website interface. At the top, the logo 'lab-forum' is followed by the tagline 'talking labour inspection'. To the right are the logos for Sheffield University Management School and the International Labour Organization (ILO). Below the header, there are navigation links for 'Forums' and 'Members', and a search bar. The main content area is divided into two sections: 'Login' and 'Register'. The 'Login' section includes fields for 'Username:' and 'Password:', a 'Remember me' checkbox, a 'Hide my online status this session' checkbox, and a 'Login' button. The 'Register' section includes a paragraph of text explaining the registration process, links for 'Terms of use' and 'Privacy policy', and a 'Register' button. At the bottom of the page, there is a footer with a 'Board index' link, a 'The team' link, a 'Delete all board cookies' link, and a note that 'All times are UTC'.

There are three main discussion ‘rooms’ on Lab-Forum:

- » Course Chat: A place for discussing specific aspects of the course on a session by session basis.
- » Inspection Chat: A place for discussing labour inspection more broadly.
- » General Chat: A place for general discussion and for course participants to stay in touch.

In all of these ‘rooms’ conversations are organised within topic threads. Participants are encouraged to start their own topic threads of discussion in addition to participating in those already available.

A larger set of instructions are available via the ‘How to use Lab-Forum’ link located on the board index. This includes a description of Lab-Forum, instructions on how to use different functions on the site, and a set of community rules.

The tutor should regularly suggest to participants that they make use of Lab-Forum both during and after the course.

Lab-Forum is managed by WOERRC and inquiries may be directed online via email to Thomas Hastings: [t.hastings@sheffield.ac.uk](mailto:t.hastings@sheffield.ac.uk)



# SUGGESTED AGENDA

## DAY 1

- 9.00** Session 1: Introduction - the informal economy and labour administration
- 10.00** Session 2: Relevant ILO standards and principles
- 11.00** Coffee
- 11.30** Session 3: The informal economy in your country
- 12.30** Lunch
- 13.30** Session 4: Regulating the informal economy
- 15.00** Session 5: Informality and the employment relationship
- 17.00** Wrap-up the day

## DAY 2

- 9.00** Session 6: Undertaking an inspection
- 11.00** Coffee
- 11.30** Session 7: Making decisions and follow-up actions
- 12.30** Lunch
- 13.30** Session 7: Making decisions and follow-up actions (continued)
- 14.30** Session 8: Supporting labour inspection
- 16.00** Session 9: Reflections and close
- 17.00** Close



**SESSION 1:**  
**INTRODUCTION - THE INFORMAL**  
**ECONOMY AND LABOUR ADMINISTRATION**





## Timing:

### **60 minutes in total, broken down into:**

- » 15 minutes introduction by the tutor
- » 20 minutes presentation by the tutor
- » 10 minutes group discussion
- » 15 minutes feedback



## Slides:

1-16



## Equipment:

Projector, flip charts, whiteboard and pens



## Preparation:

- » Clear understanding of course objectives and any specific issues from the sponsoring organisation
- » Arrangement for opening session speaker to say words of welcome
- » Organising the participants into groups of between 6 and 10 people upon arrival





# Training Objectives

## Aims of the session

- » To introduce the course and emphasise its importance to the sponsoring organisation
- » To introduce the participants to each other
- » To develop understanding of the informal economy
- » To allow participant to express and discuss their main interests in relation to the informal economy
- » To introduce the participants to Lab-Forum

## Learning outcomes

- » Participants will have a clear understanding of the expected outcomes of the course
- » Participants will understand what is meant by the informal economy
- » Participants will understand the potential costs and benefits associated with the informal economy
- » Participants will be aware of the potential role of labour inspection in relation to the informal economy





# Activities

## Activity 1: Introduction to the course

It is suggested that the tutor begin the session by:

- » Introducing themselves and then asking each group member to introduce themselves
- » Setting out the aims of the course (Slides 1-5)
- » Asking the participants to discuss in pairs their expectations of the course and what they hope to learn
- » Asking participants to briefly say what their expectations are of the course and what they hope to learn
- » Introducing and encouraging registration on Lab-Forum (Slide 6)

**Suggested amount of time for this activity: 15 minutes**

## Activity 2: Presentation by the tutor

Slides 7-15 can be used to discuss:

- » Key concepts
- » The size of the informal economy in different countries
- » Reasons for participation in the informal economy
- » The potential costs and benefits of the informal economy
- » Issues for labour administration and labour inspection

Please refer to the Tutor Notes for Session 1 for detailed information relating to all of these issues.

**Suggested amount of time for this activity: 20 minutes**

### Activity 3: Discussion in groups

Using Slide 16, the tutor should ask the participants to discuss in their groups their views in relation to the following questions:

- » How big is the informal economy in your country?
- » Which industries, occupations and groups of people (e.g. younger people, women) are most affected?
- » What are the biggest problems in relation to enforcing workers' rights in the informal economy?

Each group should nominate a spokesperson to make some notes and provide a summary after the discussion.

**Suggested amount of time for this activity: 10 minutes**

### Activity 4: Feedback from the groups

Each group spokesperson should provide a brief summary of the issues discussed. The tutor can record key points on a flipchart.

**Suggested amount of time for this activity: 15 minutes**





# Tutor Notes

## Key concepts

How best to define the informal economy has been a matter of considerable debate. The term 'informal economy' was first used more than 40 years ago to describe work that was not recognized, protected or regulated by the public authorities<sup>1</sup>. Since that time, there has been much discussion concerning how the informal economy should be defined and measured.

The definition of informality adopted by the 15th International Conference of Labour Statisticians (ICLS) in 1993 included all 'unregistered or incorporated enterprise below a certain size, including: micro-enterprises owned by informal employers who hire one or more employees on a continuing basis; and own-account operations owned by individuals who may employ contributing family workers and employees on an occasional basis' (ILO 2002a: 11). However, this is an enterprise-based definition of informality. Some organizations and experts<sup>2</sup> regarded this as insufficiently broad, given that it excluded, for example, workers hired by formal enterprises on a casual basis and those with no fixed employer (Chen et al. 2002: 5).

An 'employment-based' definition of informality was therefore advocated. The 2002 ILO report on 'Decent work and the Informal Economy' (ILO 2002b) reflected this view by defining employment in the informal economy as comprising employment in the informal sector as defined by the 15th ICLS plus other forms of informal employment outside the informal sector (Husmanns 2004).

A conceptual framework to facilitate measurement of informal employment on the basis of the expanded definition was subsequently endorsed by the 17th ICLS in 2003<sup>3</sup>. Paragraph 3 of the ICLS Guidelines defines 'informal employment' as the total number of informal jobs, whether carried out in formal sector enterprises, informal sector enterprises or households, during a given reference period. Informal employment is taken to include:

- (a) Own-account workers employed in their own informal sector enterprises

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1. ILO: Employment, incomes and equality: A strategy for increasing productive employment in Kenya (Geneva,1972)

2. For example, the International Expert Group on Informal Sector Statistics (commonly referred to as the Delhi Group) and the policy and research network WIEGO (Women in Employment: Globalizing and Organizing).

3. Details relating to the 1993 and 2003 guidelines can be found in the annex of Husmanns (2004), available to download at <http://www.ilo.org/public/english/bureau/stat/download/papers/wp53.pdf>

(b) Contributing family workers, irrespective of whether they work in formal or informal sector enterprises

(c) Members of informal producers' cooperatives

(d) Employees holding informal jobs in formal sector enterprises, informal sector enterprises, or as paid domestic workers by households

(e) Own-account workers engaged in the production of goods exclusively for own final use by their household

With regard to (d), employees are considered to have informal jobs if their employment relationship is, in law or in practice, not subject to national labour legislation, income taxation, social protection or entitlement to certain employment benefits (e.g. advance notice of dismissal, severance pay, paid annual or sick leave, etc.). The reasons may be the following: non-declaration of the jobs or the employees; casual jobs or jobs of a limited short duration; jobs with hours of work or wages below a specified threshold; employment by unincorporated enterprises or by persons in households; jobs where the employee's place of work is outside the premises of the employer's enterprise; or jobs for which labour regulations are not applied, not enforced, or not complied with for any other reason.

This conceptual framework can help to support policy making at the national level. However, because specific informal employment situations differ between countries, the ICLS Guidelines leave it to national authorities to determine the definition of informal jobs and develop means of collecting information about informal employment.

*Key point:* the informal sector refers to informal enterprises while informal employment refers to informal jobs, which can be found in both the informal sector and outside the informal sector.

## Size of the informal economy

It is difficult to measure precisely the size of the informal economy. This is partly due to the difficulties in defining informality and partly to the difficulties associated with detecting workers and businesses in the informal economy.

The informal economy has expanded in both developing and industrialized countries and, indeed, 'the bulk of new employment in recent years, particularly in developing and transition countries, has been in the informal economy'<sup>4</sup>. While the extent of informal employment is greatest in the developing regions, its contribution to total employment in the developed economies is also significant.

Few countries produce regular statistics on the extent of informal economy employment. This is because of inadequate labour market information and a consequent inability to estimate the size of the informal economy. However, in 2012 the ILO published a manual on methodological issues for undertaking surveys of the informal economy at the country level<sup>5</sup>. In addition, the ILO Department of Statistics (STATISTICS) has provided technical assistance to countries in order to help them to introduce the new statistical measures in their national survey questionnaires.

The ILO provides detailed statistics for 47 developing or transitional economies. These are available at [http://laborsta.ilo.org/informal\\_economy\\_E.html](http://laborsta.ilo.org/informal_economy_E.html). The ILO emphasises, however, that these statistics should be treated as 'preliminary estimates', given the difficulties associated with collecting accurate and reliable data. Figure 1 is based on the data collated by the ILO.

**Please note:** A version that includes a smaller number of countries is provided in the Presentation Slides and should be used to show course participants the extent to which participation in informal employment varies between countries. The slide provides information relating to both the informal sector and employment outside of the informal sector. **Please also note** that the data relate to non-agricultural employment. If subsistence agriculture were included, the percentage of employment in the informal economy would be even larger.

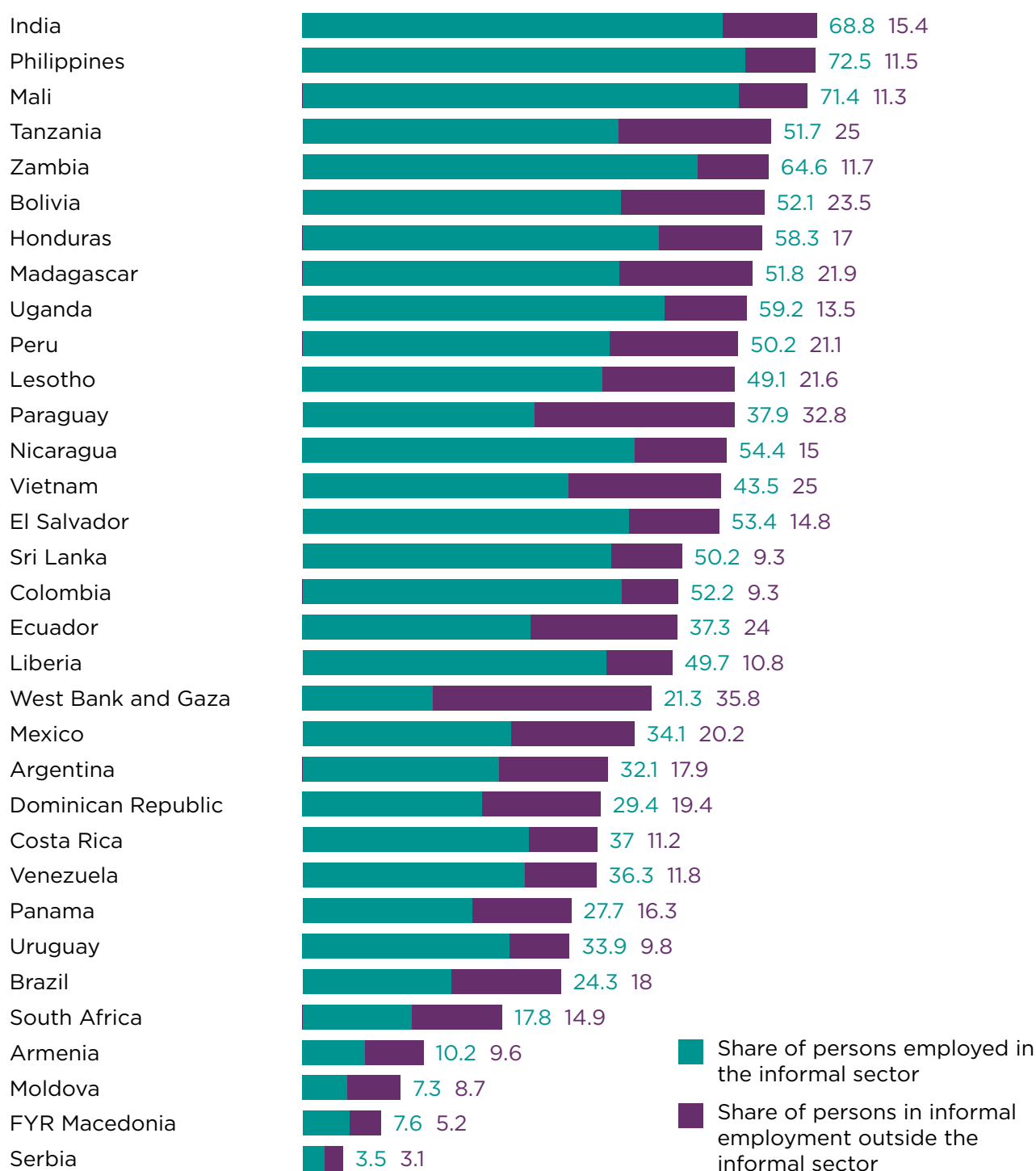
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4. ILO: Decent work and informal economy (Geneva, 2002)

5. ILO: Measuring informality: A statistical manual on the informal sector and informal employment (Geneva, 2012).



**Figure 1: Share of persons employed in the informal economy (excluding agriculture), latest available year**



Source: [http://laborsta.ilo.org/applv8/data/INFORMAL\\_ECONOMY/2012-06-Statistical%20update%20-%20v2.pdf](http://laborsta.ilo.org/applv8/data/INFORMAL_ECONOMY/2012-06-Statistical%20update%20-%20v2.pdf)

## Reasons for participating in the informal economy

Workers and businesses might enter and remain in the informal economy for a variety of reasons. For workers, the reasons might include a lack of alternative employment opportunities, a need to supplement a low income derived from employment in the formal sector or a desire to supplement social security benefits with an undeclared income. The reasons why businesses enter and remain in the informal economy include the difficulties entrepreneurs sometimes experience when attempting to navigate complex bureaucratic procedures, low skills and low productivity, a desire to increase competitiveness through avoiding or reducing the costs associated with taxes and social security contributions and inadequate inspection services, which implies a low risk of being detected.

Perceptions of what constitutes acceptable behaviour in respect of economic activity vary between and within countries over time and may alter according to changes in economic circumstances (for example, the level of unemployment and the extent of opportunities to access decent work in the formal sector of the economy). On the other hand, in countries where the informal economy has traditionally been relatively large, a perception that undeclared work represents a socially acceptable practice may become highly ingrained, thus presenting additional challenges for policy makers when seeking to secure public support for measures to address the informal economy.

The mix of factors that give rise to informal economic activities is likely to differ between countries, reflecting historically forged social and economic structures, the organization, resourcing and orientation of the welfare state, tax regimes and so forth. As well as varying between national economies, the economic and social forces that promote and sustain the informal economy may also vary across regions and localities within individual countries, and across industrial sectors. Policy makers may therefore need to give careful consideration to the specific context in which policy measures will be implemented. Furthermore, it is important that workers in the informal economy should not be regarded as a homogeneous mass.

## Costs and benefits of the informal economy

The informal economy has both potential benefits and potential costs. The nature of the specific benefits and costs and the balance between them will vary between countries and over time.

Potential benefits: The informal economy provides workers with a source of income, which is particularly important when opportunities for employment in the

formal economy are restricted. It might also provide a 'seedbed' environment in which entrepreneurs can begin to develop a business, which might subsequently be 'formalised'. For customers, the informal economy provides access to goods and services that might otherwise be unobtainable because of unaffordable cost or lack of availability in the formal sector.

Potential costs: The negative aspects and consequences of informal employment are outlined in the OECD's 2004 World Outlook Report (OECD 2004: 4). These include low tax and social security receipts; difficulties in targeting and managing social protection; lower costs for enterprises operating in the informal economy, which results in unfair competition; the cost governments incur through attempting to detect and penalize work in the informal economy; costs to businesses, including constraints on their ability to expand, lack of access to formal sources of finance and the time and effort spent in attempting to keep their activities hidden; and the role of the informal economy in facilitating illegal migration.

The costs of informality to workers can be considerable. Their activities might not be covered by labour and social protection legislation and they will therefore not have the social rights that are extended to workers in formal employment. Alternatively, they might be operating within the formal reach of the law, but the law is not applied or enforced.

Workers in the informal economy are not normally organised and therefore lack the ability to make collective representations to their employer or to public authorities. Their vulnerability means that they are often subjected to unfair treatment by employers, including under-payment of wages, unwarranted deductions from pay, discrimination, excessively long hours of work and hazardous working conditions. Informal employment can also involve the use of forced and child labour, violent abuse of workers and sexual harassment.

## Issues for labour administration and labour inspection

The vulnerability of those who work in the informal economy and the widespread failure of employers to respect national labour laws and treat their workers decently mean that the informal economy is an important issue for labour administration.

Labour administration is defined by the International Labour Organization (ILO) in its Labour Administration Convention (No. 150) of 1978 as 'public administration activities in the field of national labour policy'. This includes institutions, activities and outcomes across the entire field of labour policy, including employment policy, labour law, social protection and industrial relations. The Labour Administration Convention and the accompanying Recommendation No. 158 (1978) set out the ILO's vision of the tasks associated with labour administration and fundamental

principles to which national governments should adhere. These include preparing, coordinating and reviewing policies in the areas of labour protection, employment and industrial relations; collecting labour market data; providing 'technical advice' to workers' and employers' organizations; and making arrangements to ensure that 'consultation, co-operation and negotiation' between public authorities and representatives of employers and trade unions takes place. The Labour Administration Convention has one of the highest ratification rates of any ILO Convention.

Article 7 of ILO Convention No.150 recommends extending the functions of labour administration to workers who are not employed persons according to national labour laws. Furthermore, Article 3 of ILO Convention No. 81 on Labour Inspection calls for the protection of all types of workers, including vulnerable workers. The relevance of ILO Conventions and other instruments in tackling the informal economy is discussed in Session 2.

Labour inspection is one of the core components of labour administration. However, labour inspection services often lack the ability to intervene in the informal economy. A weak ability to intervene and enforce national laws means that the vulnerable situation of informal economy workers cannot be properly addressed. This in itself can encourage businesses to engage in informal employment practices, to the extent that they believe that the probability of being detected and inspected is very low.

Clearly the adequacy of the funding that governments provide to labour inspectorates is an extremely important influence on their ability to address problems associated with employment in the informal economy. Inadequate funding will result in inadequate staffing and other resources, such as information and communications technology. In many developing or transitional economies the informal economy is the main source of employment, which can mean that the resources available to labour inspection services are dwarfed by the scale of the problem that confronts them

Insufficient funding might also impinge on the ability of labour inspectorates to collect and process information about the informal economy and develop and maintain databases. Gathering information about the informal economy is also difficult because it is largely hidden. Workers are often unwilling to speak out, perhaps because they fear reprisals or because they believe the drawbacks associated with their job are outweighed by the benefits.

The effectiveness of labour inspectorates also depends on their mandate. In some countries the mandate of the main labour inspection service is oriented towards health and safety while in others it is more encompassing. Some countries have formed specialised units or teams. For example, in 2007 Spain organised special teams for the informal economy, which were provided with specific guidelines

related to road transport and subcontracting.

The degree of success is also likely to depend on the strategies that are pursued. Traditionally the focus of inspection activity has been on enforcement and compliance. While this remains important, there are other approaches to regulation, such as preventative and awareness-raising activities, that might be used alongside traditional methods. These are discussed in Session 4.

Finally, it is important to recognise that labour inspectorates cannot be expected to tackle informal economy problems on their own. The informal economy has implications for policy and administration in respect of employment, social security, health and safety, migration, education, employment relations and macroeconomic policy. Responsibilities for these different areas are typically distributed across a number of government ministries and agencies. Governments must find ways of joining-up the activities of the various ministries and agencies so as to ensure coordination of actions, coherence of policies and sharing of information. Effective governance is therefore essential if governments are to succeed in tackling the informal economy.

## Introduction to Lab-Forum

The Work, Organisation and Employment Relations Research Centre (WOERRC) at the University of Sheffield have created an online message board - Lab-Forum - to accompany the toolkit. Lab-Forum has been designed with three main functions in mind:

- » To act as a platform to help monitor/capture real world impacts related to the training toolkit.
- » As a place for participants to learn/develop inspection skills from one another by staying in touch after the course has finished.
- » To offer the chance for participants to socialise and stay in touch.

Trainees should register at the start of the course in their spare time (ideally by the end of Day 1) by following instructions on the link below:

<http://www.woerrc.group.shef.ac.uk/forum/page/home>



There are three main discussion ‘rooms’ on Lab-Forum:

- » Course Chat: A place for discussing specific aspects of the course on a session by session basis.
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- » General Chat: A place for general discussion and for course participants to stay in touch.

In all of these ‘rooms’ conversations are organised within topic threads. Participants are encouraged to start their own topic threads of discussion in addition to participating in those already available.

A larger set of instructions are available via the ‘How to use Lab-Forum’ link located on the board index. This includes a description of Lab-Forum, instructions on how to use different functions on the site, and a set of community rules.

Lab-Forum is managed by WOERRC and inquiries may be directed online via email to Thomas Hastings: [t.hastings@sheffield.ac.uk](mailto:t.hastings@sheffield.ac.uk)





**SESSION 2:  
RELEVANT ILO STANDARDS  
AND PRINCIPLES**





### **Timing:**

#### **60 minutes in total, broken down into:**

- » 30 minutes presentation by the tutor
- » 15 minutes group discussion
- » 15 minutes feedback



### **Slides:**

18-37



### **Equipment:**

Projector, flip charts, whiteboard and pens



### **Preparation:**

- » Clear understanding of material covered by the slides





# Training Objectives

## Aims of the session

- » To introduce participants to the ILO's position in relation to the protection of workers in the informal economy
- » To introduce participants to relevant ILO instruments and the principles underpinning these instruments
- » To stimulate a discussion amongst participants of their experience with respect to the application of national law

## Learning outcomes

- » Participants will understand the purpose, content and implications of key ILO instruments, including the 2002 Resolution on Decent Work and the Informal Economy and the 2015 Recommendation on the Transition from the Informal to the Formal Economy
- » Participants will understand the implications of international labour standards for the informal economy and the protection of workers' rights





# Activities

## Activity 1: Introduction and presentation by the Tutor

Slides 18-36 can be used to discuss:

- » International Labour Standards
- » International Labour Standards and the informal economy
- » The regulatory environment at national level
- » The 2002 ILO Resolution Concerning Decent Work and the Informal Economy
- » The 2015 ILO Recommendation on the Transition from the Informal to the Formal economy

**Suggested amount of time for this activity: 30 minutes**

## Activity 2: Group discussion and feedback

Using Slide 37, the tutor should ask the participants to discuss in their groups their views on the practical benefits of the ILO instruments and the practical challenges associated with applying them to the informal economy in their own country.

Each group should appoint a spokesperson, who will take notes and provide a verbal summary of the issues discussed.

**Suggested amount of time for this activity: 15 minutes**



### **Activity 3: Feedback from the groups**

Each group spokesperson should provide a brief summary of the issues discussed. The tutor can record key points on a flipchart. At the end of the session, the tutor should summarise key points and reflect on any similarities and differences in the views expressed by the various groups.

**Suggested amount of time for this activity: 15 minutes**



# Tutor Notes<sup>1</sup>

## International Labour Standards

The ILO's instruments provide one of the primary sources of an international regulatory framework for the informal economy. The ILO's International Labour Conference (ILC) is responsible for drawing up international labour standards (ILS), which are legal instruments that set out basic principles and rights at work. They consist of conventions, which are legally binding international treaties that may be ratified by member states, or recommendations, which serve as non-binding guidelines. In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation supplements the convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous (not linked to any convention).

The ILO's Governing Body has identified eight conventions as 'fundamental', covering four subjects that are considered fundamental principles and rights at work:

- » freedom of association and the effective recognition of the right to collective bargaining;
- » the elimination of all forms of forced or compulsory labour;
- » the effective abolition of child labour;
- » and the elimination of discrimination in respect of employment and occupation.

These principles are also covered in the ILO's Declaration on Fundamental Principles and Rights at Work (1998). In 1995, the ILO launched a campaign to achieve universal ratification of the eight conventions listed in Figure 2. By 2015 there were over 1,200 ratifications of these conventions, representing 86% of the possible number of ratifications.

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1. The tutor notes for Session 2 are closely based on Chapter 2 of ILO: Transitioning from the informal to the formal economy, Report V(1), International Labour Conference, 103rd Session, Geneva 2014, pp. 15-33.

## Figure 2. The ILO's fundamental conventions

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Forced Labour Convention, 1930 (No. 29)

Abolition of Forced Labour Convention, 1957 (No. 105)

Minimum Age Convention, 1973 (No. 138)

Worst Forms of Child Labour Convention, 1999 (No. 182)

Equal Remuneration Convention, 1951 (No. 100)

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

## International Labour Standards and the Informal Economy

It is important to recognise that ILO conventions and recommendations are applicable to both the formal and informal economy. The ILO has emphasised that<sup>2</sup>:

- a. Conventions often have a provision to the effect that standards should be implemented in a way appropriate to national circumstances and capabilities
- b. It is untrue that ILO standards are only applicable to those in the formal economy where there is a clear employment relationship
- c. When a standard initially applies only to workers in the formal economy, there is sometimes explicit provision for its extension to other categories of workers
- d. There are instruments which focus on specific categories of workers who are often found in the informal economy

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2. ILO: Decent work and the informal economy. Report VI, International Labour Conference, 90th Session, Geneva 2002, pp. 44-47

- e. Even when informal workers are not explicitly referred to in the text, indications of the applicability of a particular instrument can be sought within the framework of the ILO supervisory system

With regard to the reach of labour administration and labour inspection activities, the Labour Administration Convention (No. 150) states that the system of labour administration, when required by national conditions, must be extended to groups not traditionally included in such systems (e.g. workers in the informal economy), by gradual stages where necessary.

The Labour Inspection Convention, 1947 (No. 81), limits the requirement to establish a labour inspection system aimed at ensuring the application of labour legislation to industrial and commercial undertakings. However, its Protocol of 1995 extends, in principle, the coverage of labour inspection to all the risks to which workers in the non-commercial services sector may be exposed, and to activities in all categories of workplaces that are not considered as industrial or commercial. The scope of labour administration and inspection therefore includes, in principle, both the informal and formal economies.

While there is broad acceptance that the ILO's eight fundamental conventions apply to the informal economy, other instruments also make explicit reference to it. There are also instruments which contain only implicit provisions, while others are particularly pertinent as they apply to specific categories of workers who are often present in the informal economy. Moreover, a number of ILO instruments apply explicitly to 'workers' rather than the legally narrower term 'employees', or do not contain wording limiting their application to the formal economy.

## **Freedom of association and collective bargaining**

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), provide that all workers enjoy the fundamental rights which flow from freedom of association. Informal economy workers therefore have the right to organise and to engage in collective bargaining (where there is an employer). They can freely establish and join trade unions of their own choosing, carry out trade union activities without interference from the public authorities, and have the right to represent their members in tripartite bodies and social dialogue structures.

The ILO's Committee of Experts<sup>3</sup> considers that certain categories of workers who are regularly denied the right to establish trade unions, such as informal economy workers, are in fact covered by the principle of freedom of association and has emphasised the need for member countries to ensure in law and practice that workers in the informal economy benefit from the guarantees set out in the Conventions.

The Committee of Experts has noted the innovative approaches adopted in certain countries to enable workers in the informal economy to organize. For example:

- » The right of domestic workers to organise has been recognised in Swaziland.
- » Under the terms of the Labour Code of Senegal, workers in the informal economy and agriculture enjoy the trade union rights guaranteed by the Convention.
- » The registration of a union for the informal economy in 2004 in Malawi.

## Forced labour

Under Article 2(1) of the Forced Labour Convention, 1930 (No. 29), the term 'forced labour' is defined as 'all work or service which is exacted from any person'. This definition therefore includes all types of work, service and employment, regardless of the industry or sector in which they are performed, including the informal economy.

The Committee of Experts has identified numerous instances of forced labour in the informal economy. Several of its comments relate to: trafficking in persons for sexual or labour exploitation; cases of forced labour imposed on vulnerable categories of workers, such as migrant workers, domestic workers or indigenous workers; and forced labour imposed within the framework of a relationship of dependency, such as slavery or debt bondage, which often occur in the informal economy.

Poor coverage and enforcement of laws and regulations, especially in the informal economy, provide an environment in which forced labour practices can emerge and go undetected. The Committee of Experts often calls for the strengthening of labour inspection and law enforcement machinery, including the provision of adequate human and material resources to allow labour inspectors to move

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3. Once a country has ratified an ILO convention, it is obliged to report regularly on measures it has taken to implement it. The ILO appoints a Committee of Experts to examine the government reports. It is composed of 20 eminent jurists appointed by the Governing Body for three-year terms. The Committee's role is to provide an impartial and technical evaluation of the state of application of international labour standards.

quickly, efficiently and safely throughout the country, thereby giving them access to remote areas and hidden forms of work, particularly in the informal economy.

## Child labour

The Minimum Age Convention, 1973 (No. 138) applies to all children employed in any occupation. Similarly, the Worst Forms of Child Labour Convention, 1999 (No. 182), covers all children under the age of 18 years and its definition of the worst forms of child labour implicitly includes those occurring in the informal economy.

The Committee of Experts has emphasised that the situation of children working in the informal economy deserves special attention and, in cases where general labour legislation excludes workers in the informal economy from its scope, has called for its amendment.

Some countries have taken steps to improve their inspection activities in relation to child labour in the informal economy:

- » Togo has produced a practical training manual for labour inspectors on child labour jointly with ILO-IPEC<sup>4</sup>.
- » Egypt has established a separate unit within the Ministry of Manpower and Migration for child labour investigations in the agricultural sector
- » In Brazil, the action of labour inspectors has been extended to reinforce inspections in both the formal and informal economies, with children and young people being removed from illegal work.

The Committee of Experts has also called for the amendment of any national legislation giving effect to the Conventions that explicitly excludes from its scope family work and domestic work. A number of countries have made such amendments. For example, Kenya and Zambia have extended protection to children working in family enterprises and those engaged in unpaid work.

## Discrimination

Equality and non-discrimination in employment and occupation is a fundamental principle and human right to which all men and women are entitled. No exclusions

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4. The ILO's International Programme for the Elimination of Child Labour



are allowed under the Equal Remuneration Convention, 1951 (No. 100), or the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which apply to all sectors of activity, the public and private sectors, and implicitly to the formal and informal economies. However, their application in both law and practice remains a challenge in the informal economy.

Convention No. 111 covers non-wage work, including people who work on their own account, as employers or as unpaid family workers. The term 'occupation' means the trade, profession or type of work performed, irrespective of the branch of economic activity or professional status. Traditional occupations, such as those pursued by indigenous peoples, including subsistence farming, handicraft production and hunting, are also 'occupations' within the meaning of the Convention.

## Employment

The Employment Policy Convention, 1964 (No. 122), calls for the adoption of active policies designed to promote full, productive and freely chosen employment with the aim of ensuring 'work for all who are available for and seeking work'. It also requires governments, when formulating and implementing employment policies, to consult the representatives of employers and workers with a view to taking into account their views and experience.

The Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), calls for measures to be taken for the progressive transfer of workers from the informal economy to the formal sector. It adds that national employment policy should recognize the importance of the informal economy as a provider of jobs in economic activities carried on outside institutionalised economic structures. Employment promotion programmes should be elaborated and implemented to encourage family work and independent work in individual workshops, in both urban and rural areas. Measures should also be taken to promote complementary relationships between the formal and informal economies, and to provide greater access for undertakings in the informal economy to resources, product markets, credit, infrastructure, training facilities, technical expertise and improved technologies so as to facilitate their progressive integration into the national economy.

Other employment-related standards, including the Human Resources Development Convention, 1975 (No. 142), and the Human Resources Development Recommendation, 2004 (No. 195), the Employment Service Convention, 1948 (No. 88), the Private Employment Agencies Convention, 1997 (No. 181), and the Employment Relationship Recommendation, 2006 (No. 198), also contain provisions that are particularly relevant to informal economy workers. The Job

Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), calls for the consideration of policies that include specific measures and incentives aimed at assisting and upgrading the informal economy to become part of the organized sector. The Promotion of Cooperatives Recommendation, 2002 (No. 193), adds that governments should promote the important role of cooperatives in transforming what are often marginal survival activities into legally protected work, fully integrated into mainstream economic life.

## Occupational safety and health

The Occupational Safety and Health Convention, 1981 (No. 155), applies to all branches of economic activity and all workers in those branches. Although it contains a number of flexibility clauses allowing for the exclusion, in part or in whole, of particular branches of economic activity (such as maritime shipping and fishing) in respect of which special problems of a substantial nature arise, these exclusions are not intended to be permanent and it is expected that progress will be made towards the full application of the Convention, with coverage being expanded to embrace excluded categories of workers.

Similarly, the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), provides that the national system for OSH shall cover micro-enterprises, small and medium-sized enterprises (SMEs) and the informal economy.

## Labour administration and labour inspection

The Labour Administration Convention, 1987 (No. 150), envisages the extension of the functions of the system of labour administration to include the activities of appropriate categories of workers who are not, in law, employed persons, such as: ‘tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers [and] self-employed workers who do not engage outside help, occupied in the informal sector as understood in national practice’ (Article 7).

The Labour Inspection Convention, 1947 (No. 81), applies to industrial and commercial workplaces and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), covers commercial and non-commercial agricultural undertakings. As noted, the Protocol of 1995 extends, in principle, the coverage of labour inspection activities to all categories of workplaces that are not considered as industrial or commercial, which implies the informal economy. Convention No. 129 contains important governance principles that are key to efforts to tackle the informal

economy and poverty through the establishment and functioning of a labour inspection system for agricultural workers and their families. Furthermore, the Safety and Health in Agriculture Convention, 2001 (No. 184), expands the scope and need for labour inspection in agriculture.

## **Instruments cutting across strategic objectives and covering specific categories of workers**

Certain other standards cut across the ILO's four strategic objectives, such as the HIV and AIDS Recommendation, 2010 (No. 200). Others apply to categories of workers that are present in the informal economy, such as:

- » The Plantations Convention, 1958 (No. 110),
- » The Home Work Convention, 1996 (No. 177),
- » The Rural Workers' Organisations Convention, 1975 (No. 141),
- » The Indigenous and Tribal Peoples Convention, 1989 (No. 169),
- » The Migration for Employment Convention (Revised), 1949 (No. 97),
- » The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143),
- » The Work in Fishing Convention, 2007 (No. 188),
- » The Domestic Workers Convention, 2011 (No. 189).

Other instruments that are implicitly relevant to the informal economy include:

- » The Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78),
- » The Protection of Wages Convention, 1949 (No. 95),
- » The Workers with Family Responsibilities Convention, 1981 (No. 156), which applies to all branches of economic activity and all categories of workers.

## **The 2002 Resolution Concerning Decent Work and the Informal Economy**

In addition to elaborating International Labour Standards and encouraging member countries to apply them to the informal economy, the ILO has developed principles and strategies for member countries to follow when tackling the informal economy.

In 2002 the ILO elaborated a Resolution concerning decent work and the informal

economy, which was adopted by the International Labour Conference at its 90th session. The Resolution set out a strategy that was premised on a belief that informality is principally a governance issue and that its growth is often encouraged by inappropriate or badly implemented macroeconomic and social policies (often developed without tripartite consultation), a lack of appropriate legal and institutional frameworks, and a lack of governance capacity to ensure the proper and effective implementation of policies and laws<sup>5</sup>. Measures directed at the informal economy should address not just the symptoms, but the whole range of underlying causes. Moreover, policy initiatives should involve all four components of decent work, namely the promotion of rights, decent employment, social protection and social dialogue.

The member countries should be assisted in addressing governance, employment generation and poverty-reduction issues. This integrated and comprehensive strategy would in the immediate term give priority to reducing decent work deficits in the informal economy; in the short and medium-term, to ensuring that new jobseekers and potential entrepreneurs are able to enter more formal, protected and decent sectors of the economy; and in the longer term, to creating sufficient employment opportunities. Most of the measures that might be taken in the governance field are within the competence of national governments. These include:

- » Comprehensive employment policies which promote the creation of decent jobs
- » A business-friendly legal environment (simplified registration and licensing procedures; reasonable and fair taxation, etc.)
- » A coherent legal, judicial and financial framework for securing property rights.
- » Implementation and enforcement of rights and protections, including improved systems of labour inspection, dispute resolution and combating corruption
- » Extension of social security coverage.

However, while national governments have the key responsibility for providing appropriate macroeconomic, social, legal and political frameworks for a sustainable economy and for situating decent employment at the centre of economic policies, the ILO recommends involving social partners in the formulation and implementation of these policies, in line with the ILO Employment Policy Convention No. 122. Social partners can play a crucial role in awareness-raising campaigns

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5. ILO: Conclusions concerning decent work and the informal economy (Geneva, 2002)

and in lobbying the public authorities for more efficient policies and institutions to combat unregistered work. Employers' organizations can potentially facilitate the establishment of links between informal and formal enterprises and assist the former by providing access to information and other business support services. Trade unions, for their part, can make efforts to organize informal economy workers or include them in collective agreements. They might also provide them with special services, including information on legal rights.

## Recommendation on the Transition from the Informal to the Formal Economy

In 2015, the ILO took a further substantial step in the development of guidance for member countries. The 2015 International Labour Conference adopted a new recommendation on the informal economy (R204 - Transition from the Informal to the Formal Economy). The Recommendation, the first ever international labour standard specifically aimed at tackling the informal economy, provides guidance for member States to:

- » facilitate the transition of workers and economic units from the informal to the formal economy, while respecting workers' fundamental rights and ensuring opportunities for income security, livelihoods and entrepreneurship
- » promote the creation, preservation and sustainability of enterprises and decent jobs in the formal economy and the coherence of macroeconomic, employment, social protection and other social policies
- » prevent the informalisation of formal economy jobs

The guidance directs member countries to adopt, review and enforce national laws and regulations or other measures to ensure appropriate coverage and protection of all categories of workers and economic units and ensure that an integrated policy framework to facilitate the transition to the formal economy is included in national development strategies or plans. Member countries should also ensure coordination across different levels of government and cooperation between the relevant bodies and authorities, such as tax authorities, social security institutions, labour inspectorates, customs authorities, migration bodies and employment services, among others, depending on national circumstances.



The recommendation has substantial implications for labour administration. In relation to rights and social protection, it is recommended that member countries take measures to achieve decent work and to respect, promote and realize the fundamental principles and rights at work for those in the informal economy, namely:

- » freedom of association and the effective recognition of the right to collective bargaining
- » the elimination of all forms of forced or compulsory labour
- » the effective abolition of child labour
- » the elimination of discrimination in respect of employment and occupation.

Specific recommendations relating to labour administration include the following:

- » Members should take immediate measures to address the unsafe and unhealthy working conditions that often characterize work in the informal economy; and promote and extend occupational safety and health protection to employers and workers in the informal economy.
- » Member countries should, through the transition to the formal economy, progressively extend, in law and practice, to all workers in the informal economy, social security, maternity protection, decent working conditions and minimum wage protection.
- » Members should put in place appropriate mechanisms or review existing mechanisms with a view to ensuring compliance with national laws and regulations, including but not limited to ensuring recognition and enforcement of employment relationships, so as to facilitate the transition to the formal economy.
- » Members should have an adequate and appropriate system of inspection, extend coverage of labour inspection to all workplaces in the informal economy in order to protect workers, and provide guidance for enforcement bodies, including on how to address working conditions in the informal economy.
- » Members should take measures to ensure the effective provision of information, assistance in complying with the relevant laws and regulations, and capacity building for relevant actors.
- » Members should put in place efficient and accessible complaint and appeal procedures.
- » Members should provide for preventive and appropriate corrective measures to facilitate the transition to the formal economy, and ensure that the administrative, civil or penal sanctions provided for by national laws for non-compliance are adequate and strictly enforced.

- » Members should ensure that those in the informal economy enjoy freedom of association and the right to collective bargaining, including the right to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing
- » Members should create an enabling environment for employers and workers to exercise their right to organize and to bargain collectively and to participate in social dialogue in the transition to the formal economy
- » Employers' and workers' organisations should, where appropriate, extend membership and services to workers and economic units in the informal economy
- » In designing, implementing and evaluating policies and programmes of relevance to the informal economy, including its formalisation, Members should consult with and promote active participation of the most representative employers' and workers' organisations, which should include in their rank, according to national practice, representatives of membership-based representative organizations of workers and economic units in the informal economy
- » Members should, in consultation with employers' and workers' organisations, on a regular basis:
  - f. Where possible and as appropriate, collect, analyse and disseminate statistics disaggregated by sex, age, workplace, and other specific socio-economic characteristics on the size and composition of the informal economy, including the number of informal economic units, the number of workers employed and their sectors; and
  - g. Monitor and evaluate the progress towards formalisation.

In developing or revising the concepts, definitions and methodology used in the production of data, statistics and indicators on the informal economy, Members should take into consideration relevant guidance provided by the International Labour Organisation, in particular and as appropriate, the guidelines concerning a statistical definition of informal employment adopted by the 17th International Conference of Labour Statisticians in 2003 and their subsequent updates.

## The legal framework at the national level

In some countries the scope of application of labour legislation is very broad and, at least in theory, it applies to all workers, including those in the informal economy. This does not mean that they necessarily have access to social and labour protection in practice. Even when the informal economy is covered by legislation, its application may be impeded by a general lack of monitoring or

enforcement capacity. In addition, most informal economy workers may not be aware of their theoretical right to protection under general labour legislation. For this reason, there is a legal obligation in certain countries (e.g. France) to inform specific categories of workers (such as migrant and domestic workers) of their labour rights in a language that they understand.

In certain countries, workers in the informal economy are excluded, either in part or entirely, from the scope of application of labour legislation (for example, the Labour Code of Rwanda excludes workers in the informal economy from most of its application). In others countries, labour laws only apply to formal employment relationships, and may thus explicitly exclude certain categories of vulnerable workers, such as agricultural workers, domestic workers, the self-employed or owners of small or micro-enterprises.

## **Extending protection to specific categories of workers**

In some countries, specific legislation has been adopted to protect certain categories of workers such as domestic workers (e.g. Argentina, Brazil), homeworkers (e.g. Algeria) and self-employed workers (e.g. Spain).

In South Africa, the Basic Conditions of Employment Act of 1997 was amended to establish conditions of employment and minimum wages for domestic work.

In the Philippines, the Domestic Workers Act of 2013 defines such terms as ‘domestic work’ and ‘domestic worker’, for whom it establishes rights and protections

In Thailand, the Home Workers Protection Act of 2010 requires written contracts between hirers and homeworkers containing certain minimum information and establishes a fine for failure to comply. Homeworkers producing outputs of the same nature, quality and quantity may not be paid less than the minimum wage. The Act established a Home Work Protection Committee to advise on remuneration, safety and other policies, and labour inspectors are permitted to enter the workplace of homeworkers

Several countries have extended social protection provisions to self-employed workers and to particularly vulnerable groups of workers in the informal economy, such as market workers (Algeria) and small enterprises and handicraft workers (Mauritius and Peru).

While progress has been made in some countries in extending legal protection to informal economy workers, much remains to be done. For example, it is estimated

that only 10 per cent of all domestic workers (or an estimated 5.3 million) are covered by general labour legislation to the same extent as other workers. In contrast, nearly 30 per cent, or some 15.7 million, are completely excluded from the scope of national labour legislation.<sup>6</sup> Broad disparities exist in labour and social protection between domestic workers and other workers. Over half of all domestic workers have no legal limitation on their normal weekly hours of work, and approximately 45 per cent have no entitlement to weekly rest periods. Just over half of all domestic workers enjoy minimum wage protection on an equal basis with other workers, and some 5.9 per cent work for lower minimum wages.

## Supporting transitions from the informal to the formal economy

Different approaches have been adopted to channelling informal workers into formal employment and providing them with better social and labour protection, depending on the main challenges facing each country. In developed countries, the main legislative thrust is the elimination of the informal economy through sanctions against illegal employment (and particularly the employment of irregular migrant workers) and undeclared work, combined with incentives to encourage employers to declare workers. In countries where the informal economy makes up a larger percentage of overall employment, the focus tends to be on extending the legislative framework to cover workers in the informal economy and adopting measures to facilitate their integration into the formal economy.

The ILO emphasises that the regulatory framework should be conducive to assisting transitions to the formal economy, and should be gender sensitive. When designing an enabling environment for formal sustainable enterprises, it is important to adopt or enforce laws setting out minimum labour standards and recognizing basic labour rights. Several countries have simplified their labour laws and procedures, for example by: reducing or eliminating the costs involved in registering enterprises with labour administrations and social security authorities; simplifying the requirements, forms and procedures for hiring workers through public employment offices; and recognizing contracts of employment, irrespective of their form, and accepting any means of evidence.

Some countries, particularly in the European Union (EU), including Italy and Spain, have adopted legislation to regularise irregular migrant workers and allow them access to the formal economy. One of the main eligibility criteria is proof of

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6. [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_200962.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_200962.pdf)

## Key points

In principle, ILO standards apply to both the formal economy and the informal economy

In practice, protections are often not extended to informal economy workers

The ILO encourages member countries to review their labour laws and labour administration practices and seek to extend their coverage to workers in the informal economy

The ILO also encourages member countries to improve transitions from the informal economy to the formal economy

The ILO's 2015 Recommendation provides member countries with guidance to help them to improve protections for workers in the informal economy and facilitate their transition to the formal economy





**SESSION 3:**  
**THE INFORMAL ECONOMY**  
**IN YOUR COUNTRY**



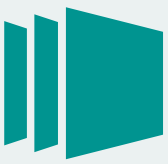




### **Timing:**

#### **60 minutes in total, broken down into:**

- » 15 minutes presentation by the tutor
- » 30 minutes group discussion
- » 15 minutes feedback



### **Slides:**

38-44



### **Equipment:**

Projector, flip charts, whiteboard and pens



### **Preparation:**

- » Clear understanding of material covered by the slides



# Training Objectives

## Aims of the session

- » To examine the key characteristic of the informal economy in the participants' home country
- » To introduce participants to labour legislation relevant to the informal economy in the participants' home country
- » To introduce participants to national policies and priorities relating to the informal economy
- » To discuss participants' experiences with respect to the application of labour laws and the role of the labour inspectorate in their home country

## Learning outcomes

- » Participants will understand the characteristics of the informal economy in their home country
- » Participants will understand the purpose, content and implications of key labour laws and the role of the labour inspectorate



# Activities

## Activity 1: Introduction and presentation by the Tutor

Slides 38 to 43 can be used to discuss:

- » The characteristics of the informal economy
- » Relevant labour laws
- » The role of the labour inspectorate

**Suggested amount of time for this activity: 15 minutes**

## Activity 2: Group discussion and feedback

Using slide 44, the tutor should instigate a discussion of the following issues:

- » Which labour laws are most relevant to the informal economy?
- » Which are most difficult to enforce and why?
- » What is the scope of the labour inspectorate's powers in relation to the informal economy? What are the limitations?
- » What are the labour inspectorates' priorities and expectations?

**Suggested amount of time for this activity: 30 minutes**

### **Activity 3: Feedback from the groups**

Each group spokesperson should provide a brief summary of the issues discussed. The tutor can record key points on a flipchart. At the end of the session, the tutor should summarise key points and reflect on any similarities and differences in the views expressed by the various groups.

**Suggested amount of time for this activity: 15 minutes**



# Tutor Notes

The tutor will need to gather information and prepare power point slides in advance of the session. The coverage of the slides will depend on the availability of information relating to the home country of the participants and the specific laws and issues relating to their country.

As far as possible, it is recommended that the tutor include information about:

- » The size of the informal economy
- » The composition of the informal economy (industry, occupation, age, gender etc.)
- » Reasons for participating in the informal economy
- » The potential costs and benefits of the informal economy
- » Relevant labour laws
- » The role, responsibilities and capacity of the labour inspectorate
- » Any emerging or particularly problematic issues





**SESSION 4:  
REGULATING THE  
INFORMAL ECONOMY**





### **Timing:**

#### **90 minutes in total, broken down into:**

- » 45 minutes presentation by the tutor
- » 30 minutes group discussion
- » 15 minutes feedback



### **Slides:**

45-62



### **Equipment:**

Projector, flip charts, A1 paper, whiteboard and pens



### **Preparation:**

- » Clear understanding of material covered by the slides



# Training Objectives

## Aims of the session

- » To introduce participants to different ways of thinking about regulatory activities
- » To discuss how the behaviour of employers and workers might be influenced in relation to the informal economy
- » To encourage thinking around different types of approaches.

## Learning outcomes

- » Participants will have a clear understanding of different approaches to regulation
- » Participants will understand the potential strengths and limitations of different regulation strategies
- » Participants will have learnt about approaches followed in a number of different countries





# Activities

## Activity 1: Presentation by the tutor

Slides 45 to 61 can be used to discuss:

- » Regulation and the informal economy
- » Enforcement and compliance
- » The enforcement pyramid and responsive regulation
- » Smart regulation
- » Meta-regulation
- » Regulating suppliers

**Suggested amount of time for this activity: 45 minutes**

## Activity 2: Discussion in groups

Using Slide 62, the tutor should ask the participants to discuss in their groups their views in relation to the following questions.

- » What are the regulation approaches (e.g. awareness-raising, deterrence) followed in your country?
- » Do any of the approaches involve elements of responsive, smart or meta-regulation (e.g. involvement of NGOs or requiring organisations to regulate their suppliers)?
- » How effective are the approaches?
- » Should a different approach be tried?
- » What would need to happen to enable a different approach?

Each group should nominate a spokesperson who should take notes and be willing to provide a summary of the issues discussed.

**Suggested amount of time for this activity: 30 minutes**

### **Activity 3: Feedback from the groups**

Each group spokesperson should provide a brief verbal summary of the issues discussed. At the end of this activity the tutor should summarise the main issues raised by the groups and reflect on any similarities or differences in the views expressed.

**Suggested amount of time for this activity: 15 minutes**



# Tutor Notes

## Regulation and the informal economy

Labour inspection is a regulatory activity. Black (2001: 142) defines regulation as 'a process involving the sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly defined outcome or outcomes'.

Authority can be used in different ways and there are therefore different ways of approaching regulation. In this session we will consider some of these approaches and explore their implications for strategies relating to enforcement and compliance. Although regulation of work in the informal economy is primarily a matter for government ministries and inspection agencies (e.g labour ministries and labour inspectorates), some approaches to regulation also suggest that non-government bodies can play an important role. This session will provide examples of different approaches.

## Enforcement and compliance

### Compliance and deterrence

Regulatory agencies, including labour inspectorates, are typically able to pursue either a strategy of deterrence or a strategy of compliance (advising and persuading). Agencies might choose to emphasise only one of these or pursue both in combination.

### Deterrence

Deterrence is a confrontational and adversarial approach to regulation. It assumes that the individuals that are being regulated are rational actors who will respond to incentives. If rule-breakers are detected and subjected to sufficiently severe punishments, then they will choose not to offend again in the future (Gunningham 2010: 121). If the target group perceives the probability of being detected as being relatively high, they will be disinclined to offend. This strategy, therefore, emphasises the importance of detecting violations and penalising those responsible.



In order for violations to be detected, there must be a complaints mechanism. Reactive inspection activities are triggered by the receipt of a complaint or expression of concern from workers, employers or concerned citizens. Complaints can be made to a telephone 'helpline'. Some countries also make it possible for citizens to complete an on-line form.

It is essential that the reporting process be made as straight-forward as possible. This is particularly necessary, given that workers in the informal economy are often migrants who may have an imperfect grasp of the native language and may therefore find the process of finding information particularly difficult.

## Box 1. Spain's MBOX

In 2012, Spain made available to all citizens an electronic mailbox ('MBOX of the Struggle Against Labour Fraud'), which enables any person who knows of any breach of the rules relating to labour, social security or the prevention of risks, to provide information to the Labour and Social Security Inspectorate (ITSS), by filling out a form which is made available on the Ministry's website. Workers can also confidentially report suspected fraudulent activity. As a result of information provided through this channel, 4,359 inspections were undertaken, resulting in the discovery of 1,097 undeclared jobs.

*Source: Daza (2015: 77, 79)*

The deterrence approach also requires that effective sanctions can be applied. Sanctions can play an important role in deterring illegal activity and undeclared employment. If they are to act as a deterrent, the penalties must be sufficiently strong. Those who might be tempted to transgress must also believe that there is a reasonable chance that their activities might be detected. In the absence of an effective means of detecting illegal practices or undeclared employment, sanctions are relatively worthless. However, it is also important that sanctions be proportionate.

The upper limit of fines can have a deterrent effect even for larger, more profitable firms. One problem that has become evident in practice, however, is the difficulty in collecting imposed fines. Firms might appeal against decisions and take legal action against the fines. Businesses in the informal economy might also 'disappear', making it impossible to collect the fine.

## Compliance

Compliance requires voluntary cooperation. The emphasis is on prevention through awareness-raising and persuasion rather than punishment. The conception of enforcement here ‘centres upon the attainment of the broad aims of legislation, rather than sanctioning its breach’ (Hawkins 1984: 4). Unlike the deterrence approach, the compliance approach views enforcement through punishment as a last resort (Gunningham 2010: 122).

Information campaigns have featured in government efforts to discourage work in the informal economy. Some target the population as a whole while others might target particularly groups, such as migrant workers or young people. The aim is normally to raise awareness of rights and obligations and discourage the view that undeclared work is socially acceptable. However, Mateman and Renooy (2001: 79) suggest that there is a risk that some information might encourage the very actions that governments hope to prevent. They advise against publicising the proportion of people engaging in undeclared work, as stressing this fact could have an adverse effect. People might think “if everybody is doing undeclared work, why should I not do it too?” Mateman and Renooy emphasize that the messages communicated via information campaigns should therefore be carefully considered.

## Box 2. Information and awareness-raising campaign, Lithuania<sup>1</sup>

In 2009 the State Labour Inspectorate launched a business consulting, public information and awareness-raising initiative using media channels such as radio, television, press, internet, information screens in shopping centres and public transport. The aim was to raise public awareness of the problems associated with undeclared and reduce the level of social tolerance for the practice. The State Labour Inspectorate also advertised a confidential telephone line for reporting cases of undeclared employment.

According to the State Labour Inspectorate, reports of suspected cases of undeclared work increased.

However, the campaign also met a negative reaction from some people because of a belief that declared employment and payment of taxes are not in their economic interest.

## Box 3: Awareness campaigns in agriculture and construction in the former Yugoslav Republic of Macedonia<sup>2</sup>

The ILO has supported the government of the former Yugoslav Republic of Macedonia in developing and launching awareness-raising campaigns. The aim was to raise awareness of the negative aspects of undeclared work whilst emphasising the benefits associated with formalising in the agricultural and construction sectors. Campaign themes and target sectors were selected by the public authorities, trade unions and employers. The campaign made use of posters and other information materials and inspection visits were also used. One of the reasons for launching the campaign was that communication and enforcement campaigns were not part of the labour inspectorates' daily work.

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1. <http://www.eurofound.europa.eu/observatories/emcc/case-studies/tackling-undeclared-work-in-europe/information-and-awareness-raising-campaign-lithuania>

2. <http://www.eurofound.europa.eu/observatories/emcc/case-studies/tackling-undeclared-work-in-europe/awareness-campaigns-in-agriculture-and-construction-former-yugoslav-republic-of-macedonia>

## Deterrence and compliance compared

The potential positive effects of deterrence-oriented approaches include:

- i. Punishing non-compliant employers who are in violation may lead them to change their behaviour so as to become and remain compliant thereafter
- ii. Punishment can serve as a warning to others and encourage them to ensure that they are meeting the required standards
- iii. Punishment can reinforce the belief that those who fail to 'play by the rules' will not get away with it. This might encourage employers to view the system as fair.

However, the positive impact will be less where:

- i. Employers believe that the chances of being detected are relatively small
- ii. Employers regard the potential penalties that result from being detected as being negligible or easily affordable (e.g. fines are small)
- iii. Routine inspections take place but there is no enforcement activity
- iv. Employers do not know what they need to do in order to be compliant (i.e. they are not deliberately ignoring standards but simply do not understand them or have enough information about them)
- v. The penalties that result from minor transgressions, particularly those that have occurred through ignorance rather than deliberate non-compliance, are excessive. This might lead otherwise compliant employers to perceive the system as unfair.

The potential positive effects of a compliance-oriented approach include:

- i. Provision of advice and guidance should make it easier for employers to access information at low cost and should lead to improved understanding of their obligations
- ii. The number of unintended violations might be lower than would otherwise be the case
- iii. Employers might feel supported by the state and its agencies, leading to high levels of trust.

However, the impact will be less where:

- i. There is no effective threat of enforcement. Those who have no interest in complying voluntarily will feel free to continue to ignore standards
- ii. Those who would be inclined to respect standards feel that others are 'getting away with it' and consequently enjoying an unfair cost advantage. Their own commitment to respecting standards might become weaker as a consequence
- iii. Regulatory agencies fail to provide sufficient information and practical support to enable individuals and firms to understand their obligations and take action to ensure that they meet them
- iv. There is a widely-held view that declared work and payment of taxation do not provide substantial benefits and that undeclared employment is socially acceptable.

The implication is that state agencies should not rely on either a wholly deterrence-oriented approach or a wholly compliance-oriented approach. The best course of action is likely to be a strategy that combines both approaches. Regulators also need to recognise that the individuals and firms that might be subject to regulations are diverse in terms of their circumstances and motivations. Drawing on Gunningham (2010), we can think in terms of:

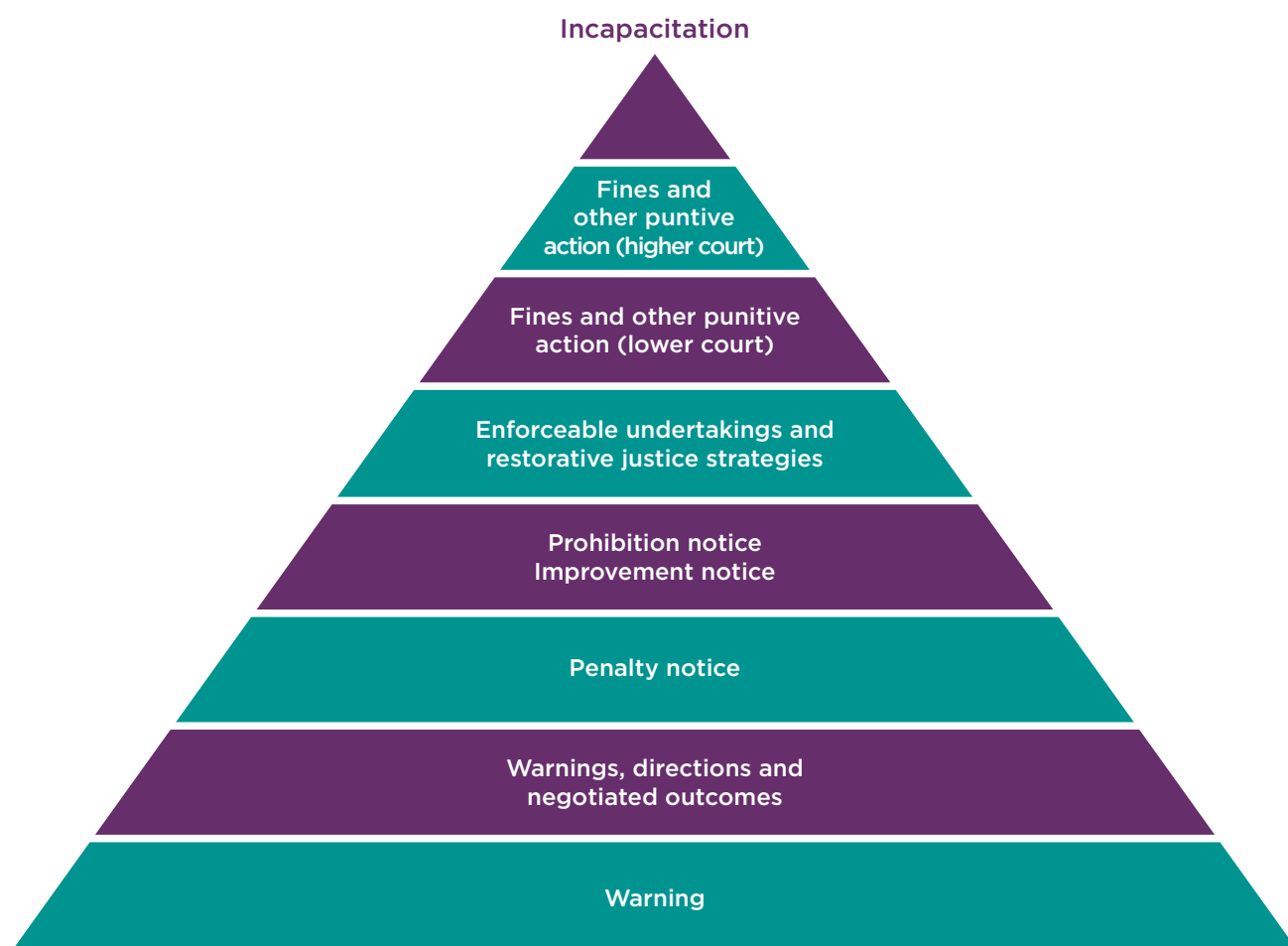
1. Leaders: these firms or individuals voluntarily meet or exceed the obligations established under the law
2. Reluctant Compliers: these firms or individuals meet the obligations, but would probably not do so in the absence of effective regulation
3. The Recalcitrant: these firms or individuals deliberately fail to meet the standards established under the law
4. The Incompetent: these firms or individuals fail to meet the standards established under the law because they lack sufficient awareness or understanding, or for some reason lack the ability to comply.

As Gunningham (2010: 126) puts it: 'The challenge is to develop enforcement strategies that punish the worst offenders, while at the same time encouraging and helping employers to comply voluntarily'.

## The enforcement pyramid and responsive regulation

A popular tool that can help regulators to think through how to combine strategies and decide on an appropriate course of action is the ‘enforcement pyramid’ developed by Ayres and Braithwaite (1992). The bottom of the pyramid focuses on compliance-oriented approaches and assumes that employers are willing to comply voluntarily. Ayres and Braithwaite suggest that this is where regulatory effort should begin. However, where the assumption of a willingness to comply voluntarily is found to be mistaken, regulators should move up the pyramid and employ approaches that are more oriented to deterrence. The enforcement pyramid therefore envisages an escalation of action by regulators in response to failures by employers to comply. In a nutshell, regulatory authorities should engage in ‘responsive regulation’.

### Figure 3: Enforcement Pyramid





The enforcement pyramid approach is most easily applied to large firms and where there are repeat inspections over time. Interaction should enable inspectorates to develop a good understanding of the circumstances and motivations of the firms being inspected (e.g. whether they are recalcitrant or incompetent). This might not, however, be possible where the informal economy is concerned. Although relatively large formal economy enterprises might employ undeclared workers, most businesses in the informal economy are small and elusive. Moreover, the ability of labour inspectorates to engage with any businesses on a regular basis is clearly dependent on the resources available to them.

Even though ongoing interaction might be difficult to achieve, particularly in relation to informal economy establishments, the pyramid can nevertheless help regulators to make a decision about the type of intervention that is most appropriate in relation to a business with which they do not have regular contact. Information gathered during inspections can also potentially be supplemented by information about the history of the duty holder (e.g. whether there is a record of previous violations).

**Please note:** Some labour inspectorates have developed their own version of the enforcement pyramid. Tutors should ask participants whether they are familiar with the enforcement pyramid approach and whether their labour inspectorate has developed an enforcement pyramid. If the labour inspectorate has developed a pyramid, differences and similarities with the enforcement pyramid shown on the slide can be briefly discussed. The tutor might also encourage participants to share and discuss their views concerning the application and value of the pyramid approach. This can be done in the context of Activity 2.

## Smart regulation and meta regulation

### Smart regulation

The 'Smart' approach to regulation builds on the enforcement pyramid approach. In general, approaches to regulation, including the enforcement pyramid, focus entirely on the relationship between regulatory authorities and business and the use by the former of formal mechanisms to control the behaviour of the latter. 'Smart Regulation', by contrast, recognises that regulatory authorities are not the only bodies that influence the behaviour of firms and that informal mechanisms of social control might be at least as important as the formal mechanisms used by regulators (Gunningham 2010: 131). Smart Regulation encourages regulatory authorities to consider the potential role that might be played by, for example, peer pressure, the supply chain, trade unions, employers' organisations, non-government organisations (NGOs), community groups and cooperatives.

Smart Regulation develops the enforcement pyramid in two ways: firstly, a quasi-regulatory role for non-state actors is envisaged and, secondly, regulation may involve a number of different instruments employed by a variety of different bodies (Gunningham 2010: 132). Non-government bodies might, for example, have primary responsibility for awareness-raising and persuasion. Where this approach fails, deterrence-oriented actions can be pursued (e.g. threat or actual imposition of penalties) by the regulatory agencies of the state.

The role of the government in relation to Smart Regulation is to act as a facilitator. Enabling second and third parties to assume a greater responsibility for enforcing standards will reduce pressure on the resources of the state's regulatory agencies. It might also encourage an increased sense of responsibility for regulatory issues on the part of business and civil society.

## Meta-regulation

Meta-regulation shares similarities with Smart Regulation in that both approaches entail an arm-length role for regulatory bodies. The emphasis of meta-regulation is on corporate responsibility - encouraging organisations to develop and put in place their own controls. The role of the regulator is to check the quality of the controls. Organisations should develop risk management plans that show how they intend to ensure that standards are upheld. These plans should be submitted to the regulatory agency for approval. The aim is to lead organisations to become reflective self-regulators that implement risk management plans and regularly consider how well the objectives are being met (Gunningham 2010: 135-40). The latter necessitates that the organisation puts in place an effective monitoring system and performance measures. Organisations are also expected to be able to demonstrate that their approach is effective and to allocate resources (e.g. staff) and develop procedures that are necessary to ensure effectiveness.

## Regulating suppliers

The influence of ideas associated with Smart or Meta Regulation can be seen in relation to regulatory efforts that focus on the relationship between customers and suppliers. The following examples illustrate a range of different approaches.

## Regulation in the garment industry (USA)<sup>3</sup>

In the 1990s and early 2000s the USA experimented with a new approach to regulating the garment industry. Until that time enforcement activity had focused on contractors and subcontractors. However, the level of fines and probability of being inspected were both relatively low and non-compliance was perceived to be a substantial problem in the industry. In response, the Wages and Hours Division (WHD) of the US Department of Labor switched from targeting individual contractors to exerting a different type of regulatory pressure. It utilised a provision of the Fair Labor Standards Act (FLSA) which enabled it to embargo any goods manufactured in violation of the Act. The WHD employed the threat of embargoing goods so as to persuade manufacturers to supplement the WHD's regulator activities. It made the release of embargoed goods contingent on the agreement of the manufacturer to develop a compliance agreement for its contractors and subcontractors.

The manufacturer is required to sign two types of agreement, one with the DOL and another with its contractors. The first agreement sets out a monitoring system that will be operated by the manufacturer. The manufacturer pledges to, among other things, screen new contractors and inform and train them in relation to their responsibilities under the law. The manufacturer is responsible for undertaking monitoring. The WHD's model programme suggests at least one unannounced visit every 90 days.

The second type of agreement, between the manufacturer and contractor, 'sets out the specific FLSA requirements; clearly define the terms and methods of computing wages and overtime (the subject of some ambiguity given that much of the industry uses piece rate payment); establish specific procedures for tracking payroll records, time cards, and the use of time clocks; and lay out other administrative procedures related to the contractor's compensation policies' (Weil et al. 2010: 30).

Evaluations of this initiative<sup>4</sup> indicate that it was successful in reducing the frequency of violations and improving compliance. Although this initiative was primarily focused on working time and payment of wages, it would in principle be possible to extend the number of issues covered by agreements. It represents an example of how purchasing power can be used within a supply chain to obtain compliance.

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3. This example is from Weil, D. et al. (2010) *Improving Working Conditions Through Strategic Enforcement*. Boston University. [www.dol.gov/whd/resources/strategicEnforcement.pdf](http://www.dol.gov/whd/resources/strategicEnforcement.pdf)

4. Weil, D. et al. (2010) *Improving Working Conditions Through Strategic Enforcement*. Boston University. [www.dol.gov/whd/resources/strategicEnforcement.pdf](http://www.dol.gov/whd/resources/strategicEnforcement.pdf)

## Gangmasters Licencing Authority

The UK provides an example of an approach to regulation that focuses on suppliers and users of labour. The Gangmasters Licencing Authority (GLA) issues licences to labour suppliers in the agricultural, shellfish and food processing and packaging sectors. All labour suppliers operating in these sectors are required to apply for a license. Successful applicants have to satisfy a number of licensing standards (see Box 4).

Licensed suppliers are listed on a public register. Labour users are required to use only licensed suppliers. It is a criminal offence to use a supplier who does not have a licence. The onus is therefore on the user to check that the supplier is licensed. If a labour user is found to have used workers from an unlicensed labour provider, the GLA issues an enforcement notice which explains that this is a criminal offence. If the user continues to use the supplier they may be prosecuted. The maximum penalty for using an unlicensed gangmaster is six months in prison and a fine.

Putting the onus on labour users to ensure that they use licensed providers is a way of using market pressure to encourage labour providers to become and remain compliant with labour standards. The labour user is not, however, responsible for violations by licensed providers and the GLA acts as a labour inspectorate where suspected violations are reported.

## Box 4: The licencing standards of the Gangmasters Licensing Authority, UK

The GLA licensing team is responsible for making decisions on new and existing licenses. The team checks that the labour supplier meets the conditions set out in the GLA's Licensing Standards. The checks are based on information gathered during inspections, supplemented with information from government departments (e.g. HMRC) and enforcement agencies including the police. The licensing standards cover eight areas:

- » Fit and Proper Test
- » Pay and Tax matters
- » Prevention of Forced Labour and Mistreatment of Workers
- » Accommodation
- » Working conditions
- » Health and Safety
- » Recruiting Workers and Contractual Arrangements
- » Sub-Contracting and Using Other Labour Providers

Each area is associated with a number of standards to which labour suppliers must comply. Points are attached to each standards. The number of points varies according to the GLA's assessment of the relative importance of the standards. For example, withholding wages results in a score of 30 points, which is the highest number of points. A majority of standards are associated with a score of 8 points. In arriving at a licensing decision, the points associated with any standards that have not been met are added together. Any labour supplier who receives a score of 30 or more points will be refused a license. A supplier who scores less than 30 but who has failed to meet some standards can be granted a license but with 'Additional License Conditions (ALCs)' attached. The ALCs highlight the issues that need to be addressed within an agreed period of time.

*Source: Heyes and Hastings (2015)*

## The Ethical Trade Initiative

There are other examples of supplier regulation that have not been the result of government initiatives, but nevertheless provide useful illustrations.

The Ethical Trade Initiative (ETI) was created in the UK in 1998 as a result of efforts by trade unions, NGOs and the media to draw public attention to the poor working conditions endured by many workers in developing economies making products for major global brands. Certain major high-street companies (including ASDA, Sainsbury and Body Shop) joined forces with trade unions and NGOs to develop a new approach to regulating labour standards in their supply chains. The number of companies involved in the ETI now exceeds 70. All of the corporate members of the ETI are required to adopt the ETI Base Code of labour practice, which is based on ILO standards. Essentially, retailers use their purchasing power to positively influence their suppliers' practices and bring them into line with the base code. The ETI also engages in awareness-raising activities and provides practical advice to help companies put ethical trade policies into effect<sup>5</sup>.

Although the ETI was not initiated by public authorities, it can be viewed as an example of Smart Regulation in that third parties are acting as quasi-regulators and the pressure for compliance is arising from the purchasing power of large organisations rather than the activities of regulatory agencies.

## Wine and Agricultural Ethical Trade Association (WIETA)

The ETI helped to develop the Wine and Agricultural Ethical Trade Association (WIETA) in South Africa. Established in 1992, WIETA was the first local multi-stakeholder initiative to tackle workers' conditions. WIETA is a not-for-profit, voluntary association of stakeholders in the South African wine industry. It has a strategic partnership with farm worker organisations and trade unions working in the sector. WIETA promotes ethical trade by developing and promoting a code of good practice governing employment standards for workers involved in the growing, production, packaging and bottling of agricultural products and conducting independent social audits to ensure that members of the association observe and implement the code.

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5. Further information is available at <http://www.ethicaltrade.org/>



‘Cellars, cooperatives and wine estates are encouraged to take their suppliers through the WIETA process. The process involves completing a comprehensive assessment, participating in awareness workshops on compliance requirements, and undertaking an inspection where the site has previously not had an ethical audit. Independent social, labour, and health and safety auditors, who have a good understanding of the sector and are familiar with relevant labour and tenure security legislation, as well as health and safety protocols and good practices, have been selected and trained by WIETA to monitor compliance with the code. [...] Those who do not comply will be required to develop an improvement plan, setting out the steps that will be taken towards compliance within reasonable time frames agreed upon with the association. Follow-up assessments and audits will be conducted to ascertain the extent to which these measures have been implemented’.<sup>6</sup>

The employment standards that members of the association commit themselves to are linked to the ILO’s fundamental principles and to South African labour law related to these principles. The standards, which are updated in line with changes in South African labour laws, therefore prohibit child labour, forced labour and discrimination and contain provisions relating to freedom of association and collective bargaining as well as health and safety at work, disciplinary procedures, wages, working hours, and housing and tenure. Examples include:<sup>7</sup>

- » Members shall not employ children under the age of 15
- » Employers shall not engage in or support the use of forced labour, nor shall employees be required to lodge ‘deposits’ or original identity documents with their employer upon commencing employment.
- » Spouses or cohabiting partners, parents or children of employees living on the premises of and working for any employer shall have their own individual contracts of employment.
- » No employer shall engage in or support unfair discrimination on arbitrary grounds, including (but not limited to) race, sex, marital status, sexual orientation, or gender, in respect of their employment practices and policies. Employment practices and policies include, but are not limited to recruitment, remuneration, access to training, promotion, benefits of employment (including housing) and discipline.

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6. Further information is available at [http://www.wieta.org.za/wieta\\_more.php](http://www.wieta.org.za/wieta_more.php)

7. Further information is available at [http://www.wieta.org.za/wieta\\_code.php](http://www.wieta.org.za/wieta_code.php)

- » Employers shall not tolerate incidences of sexual or racial harassment at the workplace; including gestures or language and physical contact that is racially or sexually coercive, threatening, abusive or exploitative.
- » Employees without distinction shall have the right to join or form trade unions or organisations of their own choosing and to bargain collectively.
- » Employers shall adopt an open attitude towards the activities of trade unions and their organisational activities, and shall not discriminate against any person because of his or her trade union membership or political affiliation.
- » Management shall furnish employees and their representatives who engage in collective bargaining with all relevant information to enable them to engage meaningfully in negotiations.
- » Employers shall provide a safe and healthy working environment for employees, and shall take adequate steps to prevent accidents and injury to health arising out of, associated with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment.
- » Employers shall strive towards the implementation of a practical integrated health and safety framework that allows for the analysis of risks, the implementation of measures to reduce or eliminate those risks, mechanisms for decision making on and monitoring of the implementation of health and safety measures, and record keeping in this regard.
- » Prior to commencement of employment, all employees shall be provided with a contract of employment, which will set out their terms and conditions of employment in relation to working hours and leave.
- » Should employers make use of labour contractors, they shall take measures to ascertain the conditions of employment of workers provided by the contractor, and shall endeavour to ensure that the contractor is complying with the standards set out in this code of conduct in respect of those employees working on their premises.

## Key points

Deterrence-oriented and compliance-oriented strategies both have potential strengths and drawbacks. Regulators should consider developing an approach that uses both coercion (deterrence) and persuasion (compliance)

The motivations and circumstances of individuals and organisations vary. Regulators need to ensure that their actions are appropriate and proportional

Frequent interactions with workers and businesses in the informal economy are unlikely to be possible. Regulators might therefore consider trying to work in cooperation with second and third parties

Firms might be able to exert pressure on their suppliers to meet labour standards and might therefore be viewed as a means of supplementing the regulatory efforts of labour inspectorates

## References

Ayres, I. and Braithwaite, J. (1992) *Responsive Regulation: Transcending the Deregulation Debate*. Oxford: Oxford University Press.

Black, J. (2001) 'Decentring regulation: understanding the role of regulation and self-regulation in a "post-regulatory" world', *Current Legal Problems*, 54: 103-47.

Daza, J-L. (2015) *Labour Administration in Spain*. Report Prepared for the ILO.

Gunningham, N. (2010) 'Enforcement and compliance strategies', in Baldwin, R., Cave, M. and Lodge, M. (Eds.) *The Oxford Handbook of Regulation*. OUP.

Hawkins, K. (1984) *Environment and Enforcement*. New York: OUP.

Heyes, J. and Hastings, T. (2015) *Labour Administration in the UK: Organisation, Challenges and Recent Developments*. Report Prepared for the ILO.

Mateman, S. and Renooy, P. (2001) *Undeclared labour in Europe: Towards an integrated approach of combating undeclared labour in Europe - Final Report* (Amsterdam, Regioplan Research Advice and Information).

Weil, D. et al. (2010) *Improving Working Conditions Through Strategic Enforcement*. Boston University. [www.dol.gov/whd/resources/strategicEnforcement.pdf](http://www.dol.gov/whd/resources/strategicEnforcement.pdf)





5



**SESSION 5:**  
**INFORMALITY AND THE**  
**EMPLOYMENT RELATIONSHIP**





### **Timing:**

#### **120 minutes in total, broken down into:**

- » 50 minutes presentation by the tutor
- » 40 minutes group discussion
- » 30 minutes feedback



### **Slides:**

63-82



### **Equipment:**

Projector, flip charts, A1 paper, whiteboard and pens



### **Preparation:**

- » Clear understanding of material covered by the slides
- » Participants to be organised into small groups of 6-10 people
- » Participants to be issued with flip charts (or sheets of A1 paper) and pens





# Training Objectives

## Aims of the session

- » To develop understanding of specific types of work in the informal economy and different approaches to organising work
- » To encourage discussion concerning general challenges relating to the status of workers as employees
- » To encourage thinking about the potential need for different types of intervention by labour administration and labour inspection services.

## Learning outcomes

- » Participants will have a clear understanding of the different ways of organising employment in the informal economy
- » Participants will understand disguised, triangular and ambiguous employment relationships
- » Participants will have an understanding of the different circumstances of domestic workers, homeworkers and micro-businesses



# Activities

## Activity 1: Presentation by the tutor

Slides 63 to 81 can be used to discuss:

- » The employment relationship
- » The employment relationship and informality
- » ILO Employment Relationship Recommendation, 2006 (No. 198)
- » Examples of practices consistent with R198
- » Specific issues relating to different types of worker and organisation, including domestic workers, homeworkers, agricultural workers and micro-businesses

**Suggested amount of time for this activity: 50 minutes**

## Activity 2: Discussion in groups

Using Slide 82, the tutor should ask the participants to discuss in their groups their views in relation to the following questions:

- » What problems might workers in the informal economy confront?
- » How might these problems differ according to (a) the type of work performed; (b) where the work is performed (e.g. in a factory, in the home, on a farm); and (c) who performs the work (e.g. do the issues faced by men and women differ?)
- » How might these problems be addressed?
- » What roles should labour inspection services play in addressing these problems?
- » What challenges might labour inspection services face in trying to perform these roles?

Each group should make notes and, using a flip chart or piece of A1 paper, summarise their thoughts on paper so as to present them to the other groups. Each group should nominate a spokesperson.

**Suggested amount of time for this activity: 40 minutes**

### **Activity 3: Feedback from the groups**

Each group spokesperson should make a presentation of the issues discussed. The tutor can record key points on a flipchart or whiteboard. At the end of this activity the tutor should reflect on the main issues raised by the groups and any similarities or differences in the views expressed.

**Suggested amount of time for this activity: 30 minutes**



# Tutor Notes

## The employment relationship

An employment relationship is formed where an individual works under the authority of an employer in return for payment (a wage or salary). The creation of an employment relationship places certain obligations on both employees and employers. The nature of these obligations varies between countries, depending on their labour laws.

It is not always straight-forward to determine whether or not a worker is an employee. Self-employed persons and those who work on their own account providing services to customers are not under the authority of an employer and are not employees. They are independent workers and do not have an employment contract but instead a contract for services. Their activities are regulated by civil and commercial law, not labour law. Employees, by contrast, do work under the authority of an employer and are normally economically dependent on their employer. In practice, however, determining the status of a worker is often far from straight-forward and employment status ambiguity is a particular problem in the informal economy. It is therefore crucial that labour inspectors be able to determine whether or not a worker is an employee if they are to tackle problems in the informal economy.

## The employment relationship and informality

Determining the employment status of a worker is complicated by a number of factors, many of which relate to incongruity between employment law and the forms of organisation that develop within an economy. The organisational arrangements and employment practices of firms have developed in ways that give rise to informalisation, either because workers are not covered by employment law or because they are covered in principle but not in practice (e.g. because of weak enforcement). Many large organisations have outsourced production or services to smaller enterprises, shedding themselves of direct responsibility for employment-related matters while continuing to exert indirect control through the expectations they impose on their suppliers (Marchington et al. 2005, Weil 2014). However, these smaller enterprises are less easily inspected and may be more likely to violate labour standards. Enterprises might also choose to engage casual employees, agency workers, independent contractors or self-employed persons rather than enter into a regular employment relationship. These workers

might be excluded from certain or all labour law provisions. This in itself clearly implies informality. However, an additional problem is that the employment status of these workers is in practice often ambiguous.

Typically, national legal frameworks relating to the employment relationship have been developed based on the assumption that there is a single employer and single employee. In determining the employment status of a worker, authorities normally consider whether or not the organisation for which the worker performs services is responsible for exercising certain employer functions, such as directing, disciplining and dismissing workers. In practice, however, matters might not be straight-forward. The following scenarios might arise<sup>1</sup>:

- » The legal nature of the relationship is disguised: there is an employment relationship, but it appears to be of a different legal nature (civil, commercial, cooperative, family-related, etc.). Contracts may give an employment relationship a semblance of self-employment. Employers might inform their employees that they are self-employed, knowing that this is not actually the case. Relatively vulnerable workers in the informal economy might not be able to challenge this claim and might not even know that it is false.
- » The form of the relationship is disguised: the existence of the employment relationship is not in question but its nature is intentionally misrepresented in order that the employer might avoid certain obligations relating to employment law, social security or taxes. A fixed-term contract that is repeatedly renewed is an example of this type of disguised relationship. Here the employee might not enjoy the rights and protections that are extended to workers with an open-ended contract, even though they have worked for the organisation for a considerable period of time.
- » The relationship is ambiguous: some situations are genuinely unclear with the main characteristics of an employment relationship not apparent. For example, some workers might have been clearly independent when they began to provide labour services, but their relationship with a client might have slowly changed over time, resulting in a situation in which they effectively work under the authority of, and exclusively for, the client. It might be concluded that a de facto employment relationship has developed.
- » The relationship is triangular: in this situation there are at least three parties – the worker, the organisation for which they provide labour services and an intermediary (e.g. a temporary work agency). The problems that might arise

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1. These are based on ILO (2013) *The Informal Economy and Decent Work: A Policy Resource Guide - Supporting Transitions to Formality*, Chapter 4a.3, page 3.

here is that it might be unclear who employs the worker. Is it the agency or the organisation for which the worker is providing labour? It might be that the law considers the agency to be the employer even though the worker has worked exclusively for one organisation for a long period of time. Alternatively, the law might consider that agency workers are self-employed, even though they be economically dependent on one organisation.

## **ILO Employment Relationship Recommendation, 2006 (No. 198)<sup>2</sup>**

The ILO's Employment Relationship Recommendation (R198) was developed in response to the types of difficulties outlined above. Recommendation 198 encourages members to review and, if necessary, clarify and adapt the scope of relevant laws and regulations, in order to guarantee effective protection for workers who perform work in the context of an employment relationship. Member countries are encouraged to ensure that national policy includes measures to, among other things:

- i. provide guidance for the parties concerned, in particular employers and workers, on effectively establishing the existence of an employment relationship and on the distinction between employed and self-employed workers
- ii. combat disguised employment relationships
- iii. ensure standards applicable to all forms of contractual arrangements, including those involving multiple parties, so that employed workers have the protection they are due
- iv. ensure that standards applicable to all forms of contractual arrangements establish who is responsible for the protection contained therein

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2. Full text is available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312535](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312535)



- v. provide effective access of those concerned, in particular employers and workers, to appropriate, speedy, inexpensive, fair and efficient procedures and mechanisms for settling disputes regarding the existence and terms of an employment relationship
- vi. ensure compliance with, and effective application of, laws and regulations concerning the employment relationship

R198 also contains guidance to help member countries develop means of determining whether there is an employment relationship. The Recommendation states that 'the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties'. Members are encouraged to, among other things, provide clear methods for guiding workers and employers as to the determination of the existence of an employment relationship and to consider providing for a legal presumption that an employment relationship exists where one or more relevant indicators is present. Members should also develop, as part of the national policy referred to in this Recommendation, effective measures aimed at removing incentives to disguise an employment relationship.

## Examples of practices consistent with R198

### Clarifying employment status

National laws and codes of practice should be reviewed so as to ensure that there is clarity in relation to the legal status of workers and effective means of determining the status of individual workers or groups of workers. Ireland provides an example of how this might be done. A specially convened Employment Status Group developed a set of criteria to help determine whether a worker is an employee or self-employed. The criteria were updated in 2007 by Ireland's Hidden Economy Monitoring Group. Figure 4 contains an extract from the document<sup>3</sup>.

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3. The full text is available at <http://www.revenue.ie/en/tax/it/leaflets/code-of-practice-on-employment-status.pdf>

## Figure 4. Ireland's Code of Practice for Determining Employment or Self-Employment Status of Individuals

**While all of the following factors may not apply, an individual would normally be an employee if he or she:**

- » Is under the control of another person who directs as to how, when and where the work is to be carried out.
- » Supplies labour only.
- » Receives a fixed hourly/weekly/monthly wage.
- » Cannot subcontract the work. If the work can be subcontracted and paid on by the person subcontracting the work, the employer/employee relationship may simply be transferred on.
- » Does not supply materials for the job.
- » Does not provide equipment other than the small tools of the trade. The provision of tools or equipment might not have a significant bearing on coming to a conclusion that employment status may be appropriate having regard to all the circumstances of a particular case.
- » Is not exposed to personal financial risk in carrying out the work.
- » Does not assume any responsibility for investment and management in the business.
- » Does not have the opportunity to profit from sound management in the scheduling of engagements or in the performance of tasks arising from the engagements.
- » Works set hours or a given number of hours per week or month.
- » Works for one person or for one business.
- » Receives expense payments to cover subsistence and/or travel expenses.
- » Is entitled to extra pay or time off for overtime.

**While all of the following factors may not apply to the job, an individual would normally be self-employed if he or she:**

- » Owns his or her own business.
- » Is exposed to financial risk by having to bear the cost of making good faulty or substandard work carried out under the contract.

- » Assumes responsibility for investment and management in the enterprise.
- » Has the opportunity to profit from sound management in the scheduling and performance of engagements and tasks.
- » Has control over what is done, how it is done, when and where it is done and whether he or she does it personally.
- » Is free to hire other people, on his or her terms, to do the work which has been agreed to be undertaken.
- » Can provide the same services to more than one person or business at the same time.
- » Provides the materials for the job.
- » Provides equipment and machinery necessary for the job, other than the small tools of the trade or equipment which in an overall context would not be an indicator of a person in business on their own account.
- » Has a fixed place of business where materials, equipment etc. can be stored.
- » Costs and agrees a price for the job.
- » Provides his or her own insurance cover e.g. public liability cover, etc.
- » Controls the hours of work in fulfilling the job obligations.

## Extending protection

Consideration should be given to extending the definition of an employee or extending protection to workers who are economically dependent, yet are not regarded as employees (for example agency workers and labour-only subcontractors). For example, Morocco has amended its labour code to extend protection to salespersons and home workers while the Labour Relations Act of Ontario (Canada) deems 'dependent contractors' to be 'employees'.

## Removing incentives to disguise an employment relationship.

In the USA, employers are required to:

- i. analyse each exempt job classification as well as each independent contractor position
- ii. document justifications for finding that workers are properly classified as exempt or as independent contractors

- iii. maintain records demonstrating the employer's analysis of the classifications
- iv. provide records to workers so that they can check whether they agree with the classification
- v. conduct management and employee training so that both are able to understand the difference between exempt and non-exempt employees and independent contractors

Penalties are applicable if an employee is found to have been misclassified as an independent contractor.

In China the Labour Contract Law penalises firms for not signing written contracts with fixed-term and project-based (but not casual) employees within one month of an engagement by obliging them to pay double the specified remuneration (Cooney 2009).

## **Requiring organisations to register employment contracts**

In an effort to reduce the extent of undeclared work, many countries have introduced new requirements relating to the registration of employees. Employers are required to register all new employment with the appropriate authority (e.g. social insurance body) either before they begin work or within a specified (and normally very short) time period after they have commenced their employment.

Spain, for example, has a comprehensive approach to the registration of employments. Employers are required to maintain and keep up to date a Personnel Registration Book (in paper or electronic forms), in which all new employment must be recorded from the time when workers commence providing their services (Daza 2015: 72). All categories of employers and workers should be registered, including street vendors.

One potential difficulty is that employers might attempt to bypass requirements by using very short-term contracts or casual employment.

## Specific issues relating to different types of worker and organisation<sup>4</sup>

### Domestic workers

Domestic work involves the completion for a third party of tasks such as cleaning, washing, cooking, taking care of children, the elderly, the sick or disabled, driving, gardening, or acting as a guard. Domestic work is predominantly and traditionally occupied by women. Domestic workers are also often migrants and from ethnic minorities. In 2011, the ILO estimated that there were at least 52.6 million domestic workers worldwide, 83 per cent of whom were estimated to be women<sup>5</sup>.

Although some domestic workers may work in the formal economy, most are unprotected. They are at risk of being the victims of forced labour and often work for long hours in unsafe conditions for low pay and do not benefit from basic employment rights<sup>6</sup>.

The regulation of domestic work is difficult both because domestic workers work in households and in many countries they are not considered to be full workers. The ILO, however, has emphasised that domestic workers should be properly recognised as workers. In June 2011, the ILC adopted two instruments aimed at improving conditions for domestic workers: the 189th Convention and the 201st Recommendation<sup>7</sup>. The instruments establish that domestic workers who care for families and households must have the same basic labour rights as those extended to other workers. However, in some countries domestic workers continue to be fully or partially excluded from basic labour laws. The first step in extending labour inspection coverage to these workers, therefore, is to ensure that they are covered by labour law.

Domestic work presents a particular difficulty for labour inspection, in that labour inspectors might need to access a household that is not the property of the domestic worker. This need can come into conflict with the right to privacy, which is often enshrined in national legislation. It might be possible to overcome this problem by obtaining authorisation from the employer or a judicial authority. In addition, inspectors can disseminate information through the media without entering a workplace. The information should include advice about employment

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4. Much of the discussion of specific types of work and organisation is based on ILO (2013) *The Informal Economy and Decent Work: A Policy Resource Guide - Supporting Transitions to Formality*, Chapters 4b1-4b5.

5. [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_155951.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_155951.pdf)

6. Mantouvalou, V. (2006) 'Servitude and forced labour in the 21st century: The human rights of domestic workers', *Industrial Law Journal*, 35, 4, pp. 395-414.

7. For the full text of the new instruments see the Domestic Workers Convention, 2011, (No.189) <http://www.ilo.org/ilolex/english/index.htm> and Domestic Workers Recommendation, 2011 (No.201) <http://www.ilo.org/ilolex/english/recdisp2.htm>

rights and alert domestic workers to means by which they can seek further advice or register a complaint (e.g. a telephone hotline).

The ILO (2009) has documented a number of innovative practices relating to domestic workers<sup>8</sup>.

- i. The labour inspectorate of Guatemala has created an internet-based self-evaluation form for employers, in order for them to verify whether they comply with labour law. The forms provides a means of raising awareness and ensuring compliance and could potentially be adapted to the employers of domestic workers.
- ii. The constitution of Uruguay stipulates that the home is sacred and inviolable. However, Section 13 of Act No. 18.065 permits the Ministry of Labour and Social Security to undertake home inspections when there is a 'presumed violation' of labour and social security norms. The labour inspectorate has liaised with the judiciary to establish objective criteria for inspections. The decision to approve a home inspection visit must be established on a case-by-case basis by a labour judge following an independent evaluation.
- iii. In Ireland, a Code of Practice for Protecting Persons Employed in Other People's Homes has been developed. The Code of Practice stresses that domestic workers are entitled to employment rights and protections available to other employees and emphasizes that employers should inform their employees of their rights.
- iv. In South Africa, the Basic Conditions of Employment Act provides that the employer 'must display at the workplace where it can be read by employees a statement in the prescribed form of the employee's rights under this Act in the official languages which are spoken in the workplace'.

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8. ILO (2009) Report IV (1), Decent Work for domestic workers, Report IV(1), International Labour conference, 99th Session, 2010 (Geneva). [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_104700.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_104700.pdf), pp. 73-74



## Homeworkers

The ILO's Home Work Convention, 1996 (No. 177) defines homework as 'work carried out by a person, to be referred to as a homeworker, in his or her home or in other premises of his or her choice, other than the workplace of the employer; for remuneration; which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used'<sup>9</sup>. Convention No. 177 emphasises that national policy should promote 'as far as possible, equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise'.

Homeworkers range from formally-employed highly-paid professionals through to very low-paid informal workers. There is normally a relationship of paid employment between the worker and the employer, subcontractor, or intermediary. Most of those who work at home are women.

Many of the challenges observed with regards to domestic workers also apply to homeworkers. As both types of workers work within a household, they are hard to access and labour inspection is therefore difficult. The ILO's Homework Recommendation 1996 (No. 184) emphasises that labour inspectors should be allowed entry 'in so far as it is compatible with national law and practice concerning respect for privacy'. To facilitate inspection, the Recommendation states that employers should maintain a register of all homeworkers with details about their work and remuneration.

It can also be difficult to identify who is the employer as homeworkers (e.g. garment workers) are often at the end of a complex supply chain, not in a continuous employment relationship and in a disguised employment relationship (treated as if they were self-employed when they are in reality dependant workers).

Efforts need to be made to make employers at the top end of production chains responsible for the social protection and working conditions of the workers involved in the products or services that they are offering. The Homework Recommendation

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9. Full text available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C177](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C177)

1996 (No. 184) incorporates this principle: it is not only the contractor but also the lead firm that is responsible for protecting the rights of homeworkers.

The ILO has documented a number of good practices<sup>10</sup>:

- i. Some countries have extended their legislation to cover homeworkers, in some cases (e.g. Morocco, Chile, New Zealand) insisting that they be treated as employees.
- ii. Attempts have made to address the difficulties involved in penetrating complex layers of subcontracting which obscure employer responsibility. In India for example the Contract Labour Act, the Bidi and Cigar Workers Act and the Inter-State Migrants Act provide that both the principal employer and contractor who recruits workers or outsource production are 'jointly and severally responsible for complying with labour legislation'.

## Agricultural workers

Agriculture accounts for approximately half of the world's labour force. In developing economies, agricultural work tends to account for a very large share of the informal economy. Agricultural workers frequently experience decent work deficits, manifested in very low pay, long working hours, unsafe conditions and lack of representation. Trade union organisation tends to be weak and collective bargaining is normally limited to large plantations. Forced labour and child labour are particularly widespread in agriculture. Many agricultural workers are migrants and may be victims of trafficking. Employers in the agriculture sector often own not only the land, but also the other assets that workers need, such as housing. There are often complex interlocking relationships, which can involve wages, barter and payment in kind (ILO 2012).

The ILO's fundamental principles apply to agricultural workers. International standards have also been developed that relate specifically to agriculture. These include:

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10. ILO (2013) The Informal Economy and Decent Work: A Policy Resource Guide - Supporting Transitions to Formality, Ch 4.b2.

- » Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No.99) and Recommendation, 1951 (No. 89);
- » Holidays with Pay (Agriculture) Convention, 1952 (No. 101);
- » Convention on Plantations (No. 110) and its Recommendation (No. 110);
- » Tenants and Sharecroppers Recommendation, 1968 (No. 132);
- » Rural Workers' Organizations Convention, 1975 (No. 141) and Recommendation (No. 149);
- » Convention on Safety and Health in Agriculture (No.184) and its Recommendation (No. 192).

Many agricultural workers are poorly protected by national labour law. Some countries specifically exclude the agriculture sector from their general labour legislation. In other countries, general protective legislation may not be fully applicable to the agriculture sector, or may simply not be applied. Exclusions based on the size of an undertaking or on the contractual status of the worker are common. In many cases, labour laws are not applied because employers and workers are unaware of the detailed content of the law, application is found to be impractical in agricultural enterprises, or enforcement is weak.

In some cases, specific legislation has been enacted which accommodates the special characteristics of agricultural work, providing for flexible working time arrangements, the partial payment of wages in kind, the provision of housing and health care. Typically, casual, temporary or seasonal agricultural employees do not have labour protection equal to that of permanent employees.

Convention No. 129 completes Convention No. 81 and provides the framework for extending labour inspection to agricultural workers, including workers who are not in an employment relationship or one of dependency or subordination. Convention No. 129 is not applicable to all undertakings in rural areas, but only to agriculture (ILO 2012). Convention No. 129 specifically states that labour inspection in agriculture applies to 'employees or apprentices, however they may be remunerated and whatever the type, form or duration of their contract' (Article 4).

Agriculture can present labour inspectorates with particular difficulties. Agricultural workers typically work in rural locations that may be remote and difficult for labour inspectors to access. Their remoteness add to the vulnerability and isolation that agricultural workers might experience. In some countries labour inspectors might face threats or be the victims of violence, which can discourage labour inspectorates from trying to enforce standards.

Labour inspectorates face difficulties in determining the employment relationship and employment status of agricultural workers, particularly given the prevalence

of family farming, home work and informal work. Undeclared work is common and complicated documentation procedures may be a deterrent to registration. Employment relationships can be ambiguous, hidden beneath layers of labour contracting or deliberately disguised. Workers might be uncertain who employs them and, therefore, how to claim their employment rights. For example, it might appear that the workers are employed by an independent labour contractor/provider (gangmaster) yet in reality the contractor is an intermediary of the supposed user enterprise, deliberately created to conceal the user's identity as the real employer (ILO 2012).

The ILO (2012: 23) has drawn attention to a number of innovative practices intended to combat undeclared work in the agricultural sector. For example:

- i. In Argentina labour inspectors organized intensive inspections during 2010 and 2011. In the region of Mendoza during the fruit harvest labour inspectors visited 19 enterprises, of which 15 had compliance problems, and found that 73 per cent of the workers were not registered (over 280 workers).
- ii. In Spain, labour inspectors compare the size of plantations with the number of working hours spent during the harvest of the previous year and the number of workers registered in the database of the social security institution per month. This is done by consulting land registries, information on the suggested number of days for the harvest, the size of the harvest from the previous year, and the number of workers registered in the social security database. If there is a discrepancy, employers might be asked to submit documents, including employment contracts. If this does not resolve matters, an inspection visit might be undertaken. Information on property lines is double-checked using Google maps, as plantations might be difficult to access or scattered over great distances. As a result of this approach, 'the registration of workers in social security databases increased by some 217 per cent in 2009 compared with 2007, and the number of work permit applications rose by 50 per cent' (ILO 2012: 23).

## Micro-businesses

A large proportion of informal economic activity around the world takes place within micro and small enterprises (MSEs). This is partly because MSEs more often than not operate in a state of semi-formality. MSEs may be informal not only because they do not comply, whether in part or in full, with the law, but also because the law does not apply, in part or in full, to them. Similarly, workers within MSEs may be informal, even when they are working within a formal MSE, because of the precarious nature or the type of their employment relationship.

In general the ILO's international labour standards (ILS) do not contain exemptions for MSEs. Those ILS that do contain specific exceptions concern termination of employment, workers' representatives, occupational health and safety, paid educational leave, social security and employment and the rural sector. Many of the Conventions allowing for exclusions concern family enterprises, however, and are no longer considered up-to-date.

It is common for countries to exclude MSEs from certain regulations. For example, lower OSH standards might apply or firms might have to reach a certain size before requirements relating to information and consultation or trade union recognition become applicable. The reasons for excluding MSEs could include a concern that regulations would impose excessive costs on MSEs or a belief that it would not be possible to ensure that all regulations are applied to MSEs. However, thresholds can discourage MSEs from growing to a size where regulations would apply, or lead them to divide into two or more enterprises in order to overcome the threshold.

When the law does apply formally to MSEs, compliance is often deficient, either because employers are unaware of their obligation or because they regard them as imposing a cost and deliberately ignore regulations. Inadequate labour inspection capacity, resulting in a low probability of detection, can also encourage non-compliance.

Governments need to perform a balancing act, ensuring that there is effective protection for workers while simultaneously preserving an environment in which entrepreneurial behaviour can occur and small businesses emerge and develop. There are a number of measures that governments might consider:

- i. providing employers and workers with free and easily accessible information concerning their rights and obligations.
- ii. providing employers with a source of affordable advice in relation to the steps they need to take in order to comply with the requirements set down by labour law.
- iii. simplifying the law in order to make it easier to understand and apply. India, for example, is sometimes regarded as a country that would benefit from a simplification of its labour laws. Each piece of legislation has been drafted independently of others and labour legislation offers multiple definitions of the same basic terms, such as employer and employee.
- iv. ensuring that sanctions are effective but proportionate. Labour inspectorates need to consider the severity of the violation and the likelihood that the non-compliant organisation will comply in the future. A sanction that is too great may spell the end of an embryonic business that might have developed and had a beneficial impact on the economy. The consequences of business closure in a context of high unemployment also needs to be considered.

The Czech Republic provides an example that illustrates the importance of these considerations. The country significantly increased financial penalties in 2012, mainly for employers making use of bogus self-employment (i.e. disguised employment relationships). However, it has been recognised that the authorities should be able to take into account the gravity of the wrongdoing and the firm's wealth when determining the level of fines. In 2014, the lower limit for fines was abolished. The Constitutional Court pointed out that most cases present a low social risk and that the level of the minimum fine that was previously in place could wipe out a number of firms, a disproportionate punishment that would likely cause more harm than good. Consequently, administrative authorities can now set fines taking into account all the relevant circumstances (Lehmann and Kyzlinková 2015: 43).

- v. providing technical advice instead of levying fines. In the Philippines MSEs with less than five workers which are found to have breached labour regulations by a labour inspector are given technical advice and one year to comply with labour standards.
- vi. supporting trade union organisation and helping to extend it to smaller establishments.
- vii. ensuring that there are reliable means by which workers can make a complaint without fear of reprisals.
- viii. making it easier for MSEs to register their businesses and their employees by simplifying procedures. This can encourage MSEs to move out of informality. For example, Spain has progressively simplified the process of formalisation. A process that had previously required entrepreneurs to seek permission to open establishments has been replaced by a simple declaration that a business is opening. Commencement of activities must be notified to the labour authorities of the Autonomous Community within 30 days. Companies, individual employers and self-employed workers register with the Social Security General Treasury by submitting an official form and documentation identifying the company. Employees must be declared using an official form of notification. Notifications



can be made electronically, using an electronic document submission system, thus making it unnecessary for entrepreneurs to travel to Labour or Social Security Offices or post the forms (Daza 2015: 72).

- ix. implement other measures to encourage a transition from informality to formality, such as providing MSEs with access to sources of finance and business support services. In Sri Lanka, for example, several schemes have been implemented to help MSEs to access finance. The total amount of loans granted under these schemes reached Rs. 21,071 million by the end of 2013. Similarly there have been various measures to support MSEs in relation to access to technology and tax-related concessions (Chandrasiri and Gunatilaka 2015: 62).

## Key points

**Employment relationships in the informal economy are often deliberately disguised, which creates additional difficulties for labour inspectorates**

**Governments should put in place measures that are consistent with the ILO's Employment Relationship Recommendation, 2006 (No. 198)**

**Many workers in the informal economy are vulnerable, but their circumstances vary according to where they work and the nature of the work they undertake. Governments and labour inspectorates therefore need to consider how their regulatory efforts can be tailored to different contexts**



## References

- Chandrasiri, S. and Gunatilaka, R. (2015) Introducing ICT to Sri Lanka's Labour Administration. Report Prepared for the ILO.
- Cooney, S. (2009) 'Working conditions in an integrating world: Regulating time, money and family life - China', paper presented at the ILO Regulating Decent Work Conference, Geneva, 8-10 July.
- Daza, J-L. (2015) Labour Administration in Spain. Report Prepared for the ILO.
- Fenwick, C., Kalula, E. and Landau, I. (2007) Labour Law: A Southern African Perspective. International Labour Organisation, [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms\\_193513.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_193513.pdf)
- ILO (2012) Good Practices in Labour Inspection: The Rural Sector, with Special Attention to Agriculture. [http://www.ilo.org/labadmin/info/inst/WCMS\\_183022/lang--en/index.htm](http://www.ilo.org/labadmin/info/inst/WCMS_183022/lang--en/index.htm)
- Lehmann, Š. and Kyzlinková, R (2015) The Labour Administration's Performance in the Czech Republic. Report Prepared for the ILO.
- Marchington, M., Grimshaw, D., Rubery, J. and Willmott, H. (2005) Fragmenting Work: Blurring Organizational Boundaries and Disordering Hierarchies. Oxford: OUP.
- National Commission for Enterprises in the Unorganized Sector (2009) The Challenge of Employment in India: An Informal Economy Perspective, vol. I, Delhi: NCEUS. [http://dcmsme.gov.in/The\\_Challenge\\_of\\_Employment\\_in\\_India.pdf](http://dcmsme.gov.in/The_Challenge_of_Employment_in_India.pdf)
- Weil, D. (2014) The Fissured Workplace: Why Work Became so Bad for so Many and What Can be Done to Improve it? Cambridge MA: Harvard University Press.





## **SESSION 6: UNDERTAKING AN INSPECTION**





## Timing:

### 120 minutes in total, broken down into:

- » 20 minutes presentation by the tutor
- » 75 minutes group discussion
- » 25 minutes feedback



## Slides:

83-98



## Equipment:

Projector, flip charts, A1 paper, whiteboard and pens



## Preparation:

- » Clear understanding of material covered by the slides
- » Participants to be organised into small groups of 6-10 people
- » Participants to be issued with flip charts (or sheets of A1 paper) and pens





# Training Objectives

## Aims of the session

- » To consider issues relating to the planning of site visits
- » To encourage participants to think about the issues that they might need to address during a site visit
- » To encourage participants to think about who they might need to talk to and what sorts of information they might need to collect in order to determine whether workers' rights have been infringed
- » To consider the sorts of questions that might need to be asked in order to collect relevant information
- » To consider the difficulties involved in making assessments and using information collected during inspections to judge the extent of compliance with national provisions

## Learning outcomes

- » Participants will have a better understanding of how to prepare for a visit
- » Participants will have developed skills that will help them to determine who to talk to and what information to obtain from different people
- » Participants will have a clear understanding of difficulties relating to the collection of information
- » Participants will have an understanding of different approaches to collecting and using information



# Activities

## Activity 1: Tutor presentation

Slides 83 to 96 can be used to discuss:

- » Reactive and proactive inspections
- » Planning and targeting of inspections at national and local level
- » Practical considerations for labour inspection
- » Different types of questions
- » Different approaches to asking questions
- » Examples of questions that might be asked

**Suggested amount of time for this activity: 20 minutes**

## Activity 2: Group discussion

Working in their groups, the participants should be asked to identify and discuss (a) three things that they think are easy and (b) three things that are difficult in assessing whether workers are being treated in ways that are consistent with national labour law.

It is also important that participants continue to consider similarities and differences in the situation of different groups of informal economy workers. The tutor should direct participants to consider whether and how the difficulty of making an assessment varies between:

- » Domestic workers
- » Homeworkers
- » Agricultural workers
- » Street vendors
- » Micro-businesses

**Suggested amount of time for this activity: 40 minutes**



### Activity 3: Group discussion

Working in their group, participants should be asked to discuss the types of information that they would need in order to determine whether workers are being treated in ways that are consistent with the law. They should focus on the three 'difficult' issues they identified in the first group activity. They should devise a number of questions designed to elicit the information they believe they would need.

The questions should be written down on a sheet of A1 paper. The group should appoint a spokesperson to present a summary of the discussion and the questions.

**Suggested amount of time for this activity: 35 minutes**

### Activity 4: Presentations

Each group spokesperson should make a presentation of the issues discussed, including the suggested questions. The tutor should encourage other participants to make suggestions for changes to the questions or for additional questions.

The tutor can record key points on a flipchart or whiteboard. At the end of this activity the tutor should reflect on the main issues raised by the groups and any similarities or differences in the views expressed.

**Suggested amount of time for this activity: 25 minutes**



# Tutor Notes

## Preparing for a visit: proactive and reactive inspections

It is important to emphasise the value of good preparation for all labour inspectors irrespective of service length or experience. The amount of preparation that is required may, however, vary according to the type of business under investigation and the types of workers employed (e.g. precarious workers such as migrants are at greater risk of exploitation). Accordingly the time required to prepare for an investigation is likely to vary.

Broadly speaking, approaches to labour inspection may be divided into two categories: proactive and reactive. Proactive inspections are planned by either the inspector or team leaders/managers. The targeting of specific types of industry and/or specific sites is likely to reflect strategic decisions made at the national level (e.g. by the inspectorate's head office). Pro-active inspections may focus on sectors or localities where non-compliance is known to be relatively widespread or where the potential consequences of non-compliance are deemed to be particularly serious (e.g. where child labour or forced labour is employed).

Reactive inspections take place in response to complaints received by the labour inspectorate. For various reasons inspectors may not be privy to the specific nature of a complaint, and accordingly inspectors must be prepared to conduct a full and thorough inspection irrespective of the proactive or reactive nature of the case<sup>1</sup>.

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1. In certain inspectorates a 'Chinese wall' may necessarily exist between the information gathering and inspection sides of the enforcement agency. This 'wall' may be necessary in order to observe data protection rules, and/or to avoid a potential bias in the course of the inspection.

## Box 5: Proactive vs. reactive inspections

### Proactive inspections

- Planned by inspectors or the inspectors' team leader
- Likely to stem from strategy (e.g. a focus on particular industries or business types)

### Reactive inspections

- Often in response to complaints received by the inspectorate
- Volume determined by employee awareness of the inspectorate and means of making a complaint

## Case allocation

In the majority of cases inspectors will be expected to follow a set of standard procedures developed centrally by the labour inspectorate's headquarters<sup>2</sup>. This process begins with the allocation of cases, a process typically led by team managers in order to ensure a timely, cost-effective and fair distribution of inspection cases<sup>3</sup>. It is common for inspectorates to establish a maximum case load that an inspector can be expected to handle at any given time (subject to review, and influenced by factors such as case complexity).

## The inspection process – interviewing employers

Inspectors must ensure that the interview is carried out thoroughly, consistently and fairly. Prior to the commencement of an inspection, inspectors should identify themselves and produce their certificate and warrant of authorisation to the employer or their representative. It is the policy of many inspectorates that employers should not be made aware of specific complaints levelled at the organisation. Accordingly the employer should be unaware of whether or not the inspection is 'reactive' or 'proactive' in nature<sup>4</sup>. Procedures are likely to vary, although the following may be considered a common format:

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2. This should ensure a consistency of approach which is both thorough and legally legitimate. This latter point is important in order to protect the inspectorate from the threat of retaliatory legal action.

3. Team managers will often allocate and supervise inspection cases in their regional areas, and regional managers will allocate and supervise inspection cases to be undertaken by team managers.

4. In certain exceptional circumstances inspectors may provide a highly detailed explanation to the employer. For instance, a repeat inspection within a short time period from the last inspection may require a greater explanation.

- » The inspector should use the appropriate inspection form and notify the employer/representative of the inspectors' intention to interview employees during the course of the inspection.
- » Once the inspector is satisfied that as much information as appropriate/possible has been provided, the inspector should inform the employer which piece(s) of legislation governs the inspection.
- » Should the employer dispute the inspector's opinion regarding the applicability of the legislation governing the inspection, the employer/representative should be advised to make a written submission to the inspectorate outlining their alternative view.
- » The inspector should proceed with the inspection and the relevant records should be requested for inspection.
- » The inspector should check if the employer requires any other employment rights information and provide it, where appropriate.

## The inspection process – interviewing employees

In many cases it is important for the inspector to verify the information provided by the employer by interviewing employees.

Employee interviews should normally take place on the day of the inspection, in conjunction with the examination of records. However, there may be cases where it is necessary to carry out the interviews prior to or after the examination of records, for example where:

- » An employer requests a late cancellation on the day(s) prior to the inspection.
- » An Inspector is already en route to an inspection and receives a late call for cancellation.
- » Employees are not located at the venue where the inspection is taking place.
- » Employees are not available on the day of the inspection.
- » The inspector feels it appropriate to gather information from employees prior to the inspection, or the Inspector believes that better quality information may be forthcoming if the interview is held at another time and/or place.

Interviewing employees prior to the examination of records allows an inspector to progress a file in a timely manner until such time as the full examination of records can take place. Depending on established procedures, the approval of the team manager should be sought to interview employees on a day other than the day of inspection.

As a last resort, inspectorates may issue questionnaires as an alternative to interviewing employees. If questionnaires are utilised, information about the survey and the answers to the questions should be recorded on file. Where postal questionnaires are used and there is any doubt as to the accuracy of the information, a sample of the employees who submitted the questionnaires should be contacted to verify the information supplied.

All inspections should be viewed as opportunities to provide employees with information about their rights. There are reasons for believing that workers in the informal economy will tend to be less aware of their rights than those in the formal economy. It is important that inspectors have access to literature that is written in a variety of languages. This is particularly important in relation to migrant workers, who are often to be found in the informal economy and who might not have a good command of the local language.

## The inspection process – examining records

According to inspectorate policy certain employment records will be prioritised in the course of the inspection. These records should be examined and verified. Copies should be taken and kept on file.

The inspector should endeavour to complete all checks during the inspection and seek the assistance of the employer in order to resolve any deficits in the information available. As a minimum requirement, Inspectors should examine the following employment records (and place relevant samples on file) without engaging in the reconstruction of records:

- » Terms of Employment issued by the employer for a sample of employees.
- » Payroll details (gross to net, rate per hour, overtime, deductions, shift and other premiums and allowances, commissions and bonuses, service charges etc).
- » Copies of payslips.
- » Annual Leave and Public Holiday entitlements received by each employee.
- » Hours of work for each employee (including start/finishing times, meal breaks and rest periods).
- » Register of those employees who are regarded as especially young people under the law (e.g. below 18 years of age).
- » Whether board and lodgings are provided and relevant details.
- » Any other documentation that may be necessary to demonstrate compliance.

The records selected should be drawn across an established time period (e.g. 12 months prior to the inspection date) and referral timescales for prosecution should be taken into account when examining records. Many inspectorates will establish minimum sample criteria for the above (for instance, a proportion of wage slips over a given time period may be required). Inspectors should also exercise judgement in relation to which additional records it may be necessary to request and examine.

## Conclusion of on-site inspection

A final meeting/interview with the employer should be held before leaving the premises. Any final queries should be made and the employer should be advised of the preliminary findings. It may be necessary at this stage to caution the employer.

The inspection should not be concluded until all required information has been obtained and all questions have been answered.

The Inspector will normally inform the employer/representative that a letter will be issued setting out the findings of the inspection. The letter will set out any violations that have been identified or, if there are no problems, conclude the case. Depending on established procedure, it is then necessary to advise on any letters that will be issued subsequent to the inspection. They may include:

- » If breaches are detected, the inspector should issue a letter to the employer within a set number of days of the inspection, setting out details of the breach(es) and giving a deadline by which the employer must respond. The employer's response should outline how and when compliance will be achieved according to a set time-frame.
- » Letters regarding the illegal employment of young people: It may be the case that special breach letters are required in the case of malpractice involving especially young workers who have not been granted special work permits.
- » Reminder letters.
- » Set day letter: If the employer fails to respond satisfactorily to letters within a reasonable timeframe, it is common for Inspectors to issue a follow-up letter after a set-number of days (e.g. a 14 day period). This correspondence is likely to contain the threat of legal proceedings for continued inaction/non-compliance.
- » Employee questionnaires.



## Crossing the line

In certain situations the inspector will be given a negative reception, which might escalate to verbal or even physical abuse. At the first sign of this, inspectors should warn that any continued hostility involving abuse will result in the breaking-off of the visit, which will have legal ramifications. This rule applies at any stage of the inspection, from the initial encounter through to the closing stages of the inspection.

If abuse continues, the inspector should end the visit and provide their office with a report of the incident, which will normally constitute non-compliance with the law and lead to a higher-level inspection, potentially involving law enforcement officers.

## Issues relating to the informal economy

The following offers some basic planning points for the tutor to consider:

### Domestic and homeworkers

As discussed in Session 5, domestic workers represent a pronounced enforcement challenge for labour inspectorates (see ILO convention 189 and Recommendation 201). The main problem relates to rights of privacy that might prohibit labour inspectors from entering households. To address this barrier, inspectors might try to obtain the authorisation of the employer, obtain a prior authorisation by a judicial authority or invite the employer to the inspectorate's premises. It is also important that domestic workers and homeworkers have a means of contacting the inspectorate (e.g. via a hotline).

### Agricultural workers

Like domestic/homeworkers, the priority in this area (see Convention 129) should be to uncover the conditions of work in what is often a remote and 'hidden' employment relationship away from the public eye. When inspecting agricultural businesses, emphasis should be placed on determining working hours, wages, rest periods and holiday allowances as these are common areas of abuse with often serious consequences for the physical labour involved. It is also important that inspectors undertake a thorough check of the safety, health and welfare of workers, as agricultural businesses often rely on vulnerable groups such as women, children and young persons. The inspector(s) should also underline the role of the inspectorate in supplying technical information and advice to employers and workers to assist compliance with the legal provisions in the country.

## Street vendors

Inspectors are likely to focus on compliance matters related to permits and/or a lack of standardised facilities which impact the working life of both owner-operators and the workers employed (this may include poor access to services and infrastructure such as water, electricity and financial services). In investigating these concerns, inspectors may inquire as to the daily routine of the operation – such as where workers can go for toilet breaks. In encouraging longer-term compliance it may be important for inspectors to stress the possibility of more regulated business environments with attendant facilities, such as the possibility of vendors joining formal market spaces in different locations. Inspectors are more likely to increase compliance in this sector through sustained information campaigns which may, for instance, emphasise the presence of a regulated and agreed public space for street vending which complies with labour laws. Information campaigns might reflect a strategy of ‘smart regulation’ in which collaboration takes place with other institutions, such as newspaper firms, radio stations, NGOs and trade unions. These bodies can also help disseminate information about new legislation and regulations affecting street vendors.

## Micro-businesses

The emphasis when investigating micro-businesses is often on encouraging compliance. Micro-businesses are frequently headed by entrepreneurs who are either ill-informed about the content of the law, or else make a strategic decision concerning the benefits and costs of complying with the law. It is therefore important for inspectors to emphasise the obligations that the law places upon entrepreneurs. Common violations include:

- » Failure to provide written employment contracts
- » Failure to declare employees to the tax and social security authorities (i.e. employing workers on an undeclared basis)
- » Under-payment of wages and unlawful deductions
- » Unsafe working conditions
- » Failure to respect entitlements relating to rest periods, holidays and other forms of leave (e.g. maternity leave)
- » Failure to respect entitlements relating to dismissal and redundancy

Employers should be able to comply with the following checklist of requirements:

## **Box 6: Employer checklist**

**Do you have:**

- » **The employer's registration number with the relevant revenue/tax authorities**
- » **A list of all employees, including full names, address and social insurance numbers**
- » **Dates of commencement and, if relevant, dates of termination of employments**
- » **Written terms of employment for each employee**
- » **Employees' job classifications**
- » **A record of annual leave and public holidays taken by each employee**
- » **Hours of work for each employee (including start and finish times)**
- » **Payroll details including: gross to net, rate per hour, overtime, deductions, commission, bonuses and service charges etc.**
- » **Evidence that employees are provided with payslips**
- » **A register of any employees deemed to be especially young (e.g. under 18 years of age)**
- » **Details of any board and lodging provided**
- » **Employment permits or evidence that permit is not required as appropriate by national law**



## Key points

Proactive inspections are planned by inspectorates in the first instance, and are likely to stem from a deliberate strategy (e.g. the targeting of a certain industry). Reactive inspections typically stem from complaints received by the inspectorate

Inspectors will often interview both employers and employees. The appropriate inspection form should be used in each instance

In the course of examining employment records copies should be taken and kept on file if possible. Records taken will ideally be based on an established time period

A final meeting/interview with the employer is desired prior to leaving the premises. Details of any subsequent action (e.g. follow-up letter) should be explained

Inspectors should follow their inspectorate safety guidelines with respect handling hostility/threatening situations that emerge in the course of the inspection. Inspectors should not place themselves at risk

## References

C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129). Available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312274](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100_INSTRUMENT_ID:312274)

ILO Convention 189 and Recommendation 201 At a Glance. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_170438.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_170438.pdf)





## SESSION 7: MAKING DECISIONS AND FOLLOW-UP ACTIONS





## Timing:

### 120 minutes in total, broken down into:

- » 30 minutes presentation by the tutor
- » 60 minutes group discussion (30 minutes per scenario)
- » 30 minutes feedback and whole-group discussion



## Slides:

99-116



## Equipment:

Projector, flip charts, whiteboard and pens



## Preparation:

- » Clear understanding of material covered by the slides





# Training Objectives

## Aims of the session

- » To discuss the various types of decision that an inspector might make
- » To discuss the different considerations that influence decisions
- » To discuss the different types of action that might be taken following an inspection
- » To discuss rules and procedures in the participant's own inspectorate

## Learning outcomes

- » Participants will have a clear understanding of the potential outcomes resulting from inspections
- » Participants will understand the importance of creating and storing detailed and precise inspection records
- » Participants will understand the different ways in which businesses and workers might be supported





# Activities

## Activity 1: Presentation by the tutor

Slides 99 to 112 can be used to discuss:

- » Action plans
- » Initial actions
- » Record keeping and reports
- » The 'enforcement pyramid'
- » Reflexivity

**Suggested amount of time for this activity: 30 minutes**

## Activity 2: Group work

The aim of the exercise is to encourage participants to consider appropriate remedial action in situations where employers have failed to meet the required standards. The tutors should ask the participants to discuss responses to two of the following scenarios. Participants should be encouraged to imagine and discuss variations on the scenarios (e.g. in the first scenario, they could consider whether they would respond differently if the employer was paying wages above the legal minimum, but still underpaying his or her employees).

Note: Linking back to initial discussions (i.e. in which participants introduced themselves) tutors should select two relevant scenarios for participants. Broadly speaking scenarios 1 and 2 are intended for early career inspectors while scenarios 3 and 4 are intended for inspectors with a greater level of experience, confidence in the role and expertise suited to more challenging scenarios.

The tips that accompany these scenarios should be offered to help stimulate discussions.

- » Groups should decide what action would be most appropriate in the chosen scenarios.
- » Groups should also write a short action plan for the employer for at least one of these scenarios. The plan should include suggestions for indicators that would enable the implementation of the plan to be assessed.
- » Each group should appoint a spokesperson.

**Suggested amount of time for this activity: 30 minutes per scenario (one before lunch, one after lunch depending on timings)**

**Scenario 1:** An employer is alleged to have under-paid his or her employees. In addition there are rumours that workers have not been paid the legal minimum level required by state legislation. The employer says that none of this is true, although the business does not issue formal pay slips as a matter of course. Accordingly there is no evidence to confirm the employer's claims. At the very least the employer is guilty of not issuing payslips and/or documenting the breakdown of relevant pay periods (e.g. overtime, holiday pay etc).

Tips: Participants should be encouraged to explain what sorts of testimonies/evidence can be gathered to verify the employer's claims. They should also devise an action plan for the employer, to encourage the use of pay slips and the formal documentation of hours worked.

**Scenario 2:** It has been established that workers are being required to work with potentially hazardous substances but have not been issued with adequate safety equipment (protective clothing, eye protection). Unfortunately employees are not forthcoming with evidence of the above, potentially because they fear losing their main source of income. Although inspectors have witnessed several safety violations, the case for prosecution would be far stronger with employee testimonies.

Tips: Is it possible to interview employees away from the premises? Ask participants if there is anything else they could do to gather evidence and, if possible, testimonies from workers.

**Scenario 3:** Your inspectorate has received repeated complaints that a street vendor is operating an illegal fast-food business in a backstreet adjacent to a busy high-street where numerous (legitimate) eateries are based. In the past you have struggled to locate the vendor, and when you have located them only relatively minor issues of non-compliance have emerged. However there are now allegations that the vendor is operating without a permit and is underpaying staff. In the past the street vendor has suggested that claims against him are being made by rival businesses who are jealous of the vendor's success.

Tips: It may be advisable for the inspector to check past file reports carefully to understand the exact nature of the previous complaints and how/whether they were resolved.

**Scenario 4:** Complaints have been made that women on a housing estate are manufacturing garments for an unknown supplier. You do not know who is contracting this alleged informal employment, but you have information about the address at which the women are working.

Tips: If there are difficulties gaining access to domestic settings, inspectors may be able to access the workers through non-conventional approaches – e.g. questionnaires or telephone interviews with the employees. Inspectors should be encouraged

to think of all barriers to the above case and possible ways around these in order to properly investigate this scenario.

### **Activity 3: Feedback from groups**

The tutor should ask each group to summarise their views in relation to the two scenarios they have opted to discuss.

When collecting views, the tutor should go through each scenario in turn, asking each group to provide views. The aim should be to encourage an exchange of views. Suggestions for the content of action plans should be recorded by the tutor on a white board or flipchart. The tutor should note differences and similarities in the ideas expressed and encourage discussion.

**Suggested amount of time for this activity: 30 minutes**



# Tutor Notes

## Action plans

Action plans are a useful resource for following up and monitoring any action taken as a result of the inspection. Action plans are comprehensive plans which outline the steps needed in order to achieve desired ends (in this case, greater rates of compliance stemming from investigations). In the case of labour inspection it may be helpful for inspectors to devise action plans for the employer, e.g. in order to monitor agreed indicators which ensure labour law compliance. While the detail of plans may vary, the general format should include realistic targets and expectations which employers should agree to follow. These targets should be based on evidence obtained during the inspection and the capacity of the organisation to respond to fresh requirements. Action plans should thus save resources in the longer term by specifying realistic expectations which are achievable.

Action plans should typically include:

- » A structured plan designed to achieve an end goal.
- » A breakdown of milestones and deadlines for achieving tasks.
- » A breakdown of the roles of stakeholders (i.e. expectations on employers and inspectors).
- » For employers and workers, details of where to access necessary information to help achieve compliance.

Based on agreements with employers, the use of action plans may provide a formal 'audit trail' which will help to ensure accountability for those organisations under investigation. Based on Session 4 of the toolkit, (see Figure 3) it may be possible to associate action plans with specific layers of the Enforcement Pyramid. It may also be worthwhile utilising the Enforcement Pyramid in the event that an employer fails to deliver on an agreed action or outcome. For instance, an employer's failure to comply with the action plan involving a base-level warning (i.e. with direction/negotiated outcomes) may ultimately lead to a more severe penalty and corresponding new action plan in line with sanctions at a higher level of the pyramid (such as a penalty notice or related improvement notice).

Before deciding on the details of the action plan, inspectors must consider what action they wish the employer to take and why, based on what was agreed at the last inspection.



## Initial actions

After the inspector has visited the premises and/or liaised with the relevant employees at the work site, the inspector should prepare to write the inspection report. While the exact format and content of the report will vary from one inspectorate to another, in all contexts it is important for the report to be completed as soon as possible after the conclusion of the inspection (ideally within 1 working day) so as to ensure that details are not forgotten. Certain steps may be necessary to help prepare the inspection report:

1. Inspectors must consult the notes taken during the inspection visit and the issues raised at the closing meeting. Inspectors must re-examine problems identified and confirm – based on personal reflection – that these are the main priority issues.
2. Consultation with technical colleagues and fact checking against legal texts, guidelines and publications will help to ensure that the recommendations proposed and/or instructions given are correct.
3. A decision should be taken in relation to what action is required for each problem. This may depend on the assessment of its seriousness, the inspector's powers under the law, and (crucially) how likely actions are to improve the workplace situation in a sustainable manner.

Based on the report, the inspector is likely to face a series of options. The inspector could decide to limit the action taken to that of advice on how best to comply with the law. This may require a further follow-up letter to the business premises, although it is good practice for inspectors to forward on any relevant forms/written information with respect to good formal working practices. Doing so may also serve to underline information that was or was not already delivered in person. Reminder letters and information can underscore the official nature of the inspection and remind business owners of their responsibility to comply. For problems that are not entirely covered by legal provisions – i.e. grey areas – advice on how to tackle the situation should be weighed up, based on discussions with superiors.

## Record keeping

The systems used for capturing records of the visit are likely to vary and may depend on the types of software used. Whatever the system, inspection reports must be added to the (ideally electronic) file on the enterprise, together with, if possible, the inspector's working notes and comments intended for future reference. Records for non-compliant enterprises should ideally contain a time-

line of reports with explanations for non-compliance and the actions requested, together with any improvement notices and their outcomes.

Reporting and entering data after the inspection is vital in order to maintain an up-to-date database. Information stemming from inspections may also help to identify further inspection needs and capacities – generating the evidence for increased investment, training, policy development and technological enhancements – geared to better tackling the informal economy. Inspectors should ideally upload labour statistics and contribute to online databases, including registers of enterprises and workplaces based on the inspections.

Even labour ministries with restricted budgets should maintain at least a baseline survey of existing enterprise records and establishments (e.g. in the case of Sri Lanka this is organized on a zonal level via reporting from Labour Officers).

## **Format of inspection reports**

The inspection report should typically consist of a standard format wherein the inspector provides information in response to set questions in a prescribed form. This should be supplemented by a narrative format incorporating both full sentences and bullet points, ideally organised into headings. These reports are a source of important information and a resource for supporting future actions (e.g. in the event of a court case).

## Box 7: Example of inspection report contents

A first inspection or routine/regular visit will normally cover at least some of the following details:

### **Inspection details:**

- » Nature of inspection (routine, special, follow-up, investigation etc.);
- » Nature of all contraventions;
- » Priority areas for attention;
- » Action to be taken on each priority area.

### **General information on the enterprise:**

- » Name;
- » Legal status (company, partnership);
- » Relation to other entities and companies (e.g. subsidiaries);
- » Nature and description of business;
- » Location and address;
- » Contact person and telephone/fax numbers/email addresses;
- » Number of employees (disaggregated by sex, young workers, occupational categories);
- » Special processes or high risks (e.g. use of chemicals).

### **Working conditions**

- » Hours of work;
- » Minimum wages and allowances paid;
- » Weekly rest periods and holidays;
- » Other legal conditions of employment requirements;
- » Safety conditions;
- » Health conditions;



- » Medical and welfare services;
- » General state of 'housekeeping';
- » Rating of enterprise in terms of work hazards;
- » Rating of enterprise management's ability and willingness to attain/improve existing standards.

### **Industrial relations**

- » Existence of a trade union;
- » Collective agreement applicable or not;
- » Number and function of workers' representatives;
- » Existence of a functioning consultative committee, such as: works council, workers' committee, OSH committee;
- » Frequency of strikes (if any).

This report should include the inspector's name, the names of the parties who are addressed in the report, and should be dated and signed. Depending on procedural rules, it may be necessary to keep hard copies of the report (e.g. including signatures of those inspected as well as the inspector). Different reporting arrangements may apply to special investigations containing specific details, actions to be taken and deadlines imposed. For inspectors who also investigate occupational accidents (i.e. as part of the inspection into the informal economy), detailed information on any accident causes (i.e. direct and indirect) should be noted and an assessment should include the likelihood of similar accidents taking place in future.

If copies of the report are to be sent to different stakeholders it may be important to consider for whom the report is addressed (e.g. whether this is an internal document or not may alter the content and style). Effort should be made to distinguish between fact and opinion.

## **Discretion**

Inspectors may operate with more or less discretion depending on the circumstances. Where an inspector is required to exercise their judgment, he or she should consult the appropriate guidelines and/or superior members of the inspectorate for advice. While exercising discretion can be beneficial – in particular when it comes to using tiers of the Enforcement Pyramid in a strategic/purposeful

manner – it is also important that inspectors demonstrate consistency and neutrality in their approach. The interpretation and enforcement of standards should not be used to advantage certain firms over others: doing so may compromise the reputation of the inspectorate. Accordingly ‘...the limits of discretion need to be clearly delineated so that inspectors and middle managers are confident of support in whatever actions they embark upon’ (ibid).

The following information covers common actions where non-compliance has been established, including the sorts of procedures and interventions that may be appropriate after the inspection.

## Issuing a caution

When inspectorates have considered the information gathered during the inspection and established a clear case of non-compliance, inspectors might issue a Caution (or national equivalent) to the employer. When doing so, inspectors should advise the employer that anything they say might be used in evidence.

The inspector must record on the file that a caution was given. This record should indicate the date and time at which the caution was given.

General notes regarding cautions

- » Inspectors should take notes that confirm when and how the caution was given and the general content of the employer’s responses must be recorded.
- » An employer who has been cautioned is under no obligation to provide a response.
- » Handwritten notes should be signed, dated and easily legible.
- » A copy of the appropriate records containing the breaches (or a note to confirm that no, or insufficient, records were produced) that gave rise to the need to question and caution the employer must be placed on the file.

## Non-payment of wages

In the case of non-compliance with respect to wage regulations (e.g. lack of payslips, underpayment of wages etc.), inspectors and/or their managers should review cases thoroughly. Legal proceedings involving solicitors will invariably require a strong and robust evidence base which relies on good record keeping and case management. With this in mind, a solicitor's letter may be sent as a last resort to the employer, so as to offer a final opportunity to rectify breaches. The letter should emphasise the need to respond within a set number of working days. In cases where the employer fails to respond, the case may be referred to the relevant legal proceedings committee, which will recommend action. A copy of the solicitor's letter (and any response) should be forwarded to the inspector to place in the case file.

The inspectors should record and seek recovery of unpaid wages for any employees who are affected. In the first instance the inspector should ask the employer to calculate the extent of any unpaid wages due to employees for a period of one year immediately prior to the date of the inspection and pay these wages. It is common for the date of the inspection to be the date of the first visit. Employers should be informed that wage payments are subject to the normal statutory deductions.

The information required when calculating unpaid wages will probably include:

- » The name and social insurance number of the employee
- » A breakdown of the hours worked per relevant pay period(s) into normal, overtime, any premium pay-rate times.
- » The rate of pay relevant to the above hours
- » The total sum payable
- » The total sum actually paid
- » The remainder of unpaid wages if applicable
- » Any deductions made by the employer for board and lodging

## Checking the employer's calculations

A good verification procedure is that the inspector should check the accuracy of the employer's calculations of unpaid wages as follows:

- » Select a sample of employees to whom unpaid wages are due.



- » For the sample of employees, check the calculations provided by the employer against the records collected during the inspection. If these calculations do not match, the inspector should contact the employer to discuss the discrepancy.
- » Where the employer's calculations are incorrect, the employer should be asked to recalculate the unpaid wages for all employees.
- » Where there are no records of time worked, the employer should provide a written note of the rationale used to calculate the unpaid wages that are due. The employer's rationale should be verified with a sample of employees. Where this is not possible, the reason should be noted on file.
- » All calculations completed by the inspector should be signed, dated and filed.

Instalment arrangements are often a matter for agreement between the employer and the employees. In such instances it is common that the employer should be advised to submit to the Inspector copies of any agreement entered into with the employees.

## Unpaid wages: verifying employer compliance after the inspection

Following an inspection where the employer has rectified breaches, the inspector should request records for the last pay reference period and inspect an agreed sample of the employer's records (which might include payslips) to check that the employer is compliant.

Where employers have made payments of unpaid wages to a statutory body (e.g. a Labour Court), it is common that a form should be completed and handed to the inspector for verification purposes. Copies must be retained on the file. Where an employer is unable, or refuses, to pay unpaid wages, the inspector must notify the employer that failure to do so may result in the case being referred for legal action.

## Health and safety

Labour inspectorates operate with distinct mandates which may or may not include encouraging health and safety compliance. Even where there is no legal requirement to do so, inspectors may still encourage the uptake of accident reporting systems. It is often prudent to encourage the recording of 'near miss' incidents which pose a future risk concern. A near miss may be described as an 'unplanned sequence of events that could have caused harm if conditions were different'<sup>1</sup>. The inspector should recommend investigations take place as soon as possible after incidents have occurred. Workers should report incidents to supervisors/line managers with a view to documenting and establishing the cause of any near miss or accident in order to prevent future recurrences.

Inspectors may also wish to discuss the training workers receive in preparation for roles involving machinery and/or aspects of a job which involve risk. Risks may include the use of basic as well as complex equipment or machinery (e.g. perhaps as simple as knowing how to position a ladder). Although other inspection units may have more obvious roles with respect to health and safety compliance, labour inspectors can and should play a role in encouraging safety consciousness among owners, managers and workers.

## Recommending a case for prosecution – the role of inspectors and managers

Prosecutions should only be initiated/continued where there is sufficient admissible, relevant and reliable evidence that indicates an offence has been committed. In the majority of inspectorates it will be common for inspectors to check and make sure at least some of the following items are on file:

- » The inspector's report (signed and dated) with the relevant legislation quoted.
- » Evidence to support the decision that an offence has been committed.
- » The date of any offence(s) should be clearly outlined.
- » Copies of any complaints should be maintained on file

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1. [http://www.process-improvement-institute.com/\\_downloads/Gains\\_from\\_Getting\\_Near\\_Misses\\_Reported\\_website.pdf](http://www.process-improvement-institute.com/_downloads/Gains_from_Getting_Near_Misses_Reported_website.pdf)

- » A copy of all correspondence between inspectorate and employer may be included (e.g. notes of telephone calls, copies of emails)
- » A calculation of any unpaid wages should be included.
- » Statements of any employees interviewed.
- » The inclusion of any evidence that the named employee are/were employed by the employer (e.g. payslips, employer records, other relevant evidence)

Having built this case up on file, tutors should ask participants ‘what happens next?’ The answer to this question is likely to vary, as inspectors possess different amounts of discretionary power from one country to another. For instance, inspectors in some countries may be able to issue fines of various amounts to employers found to be in breach of labour legislation. Alternatively, in other inspectorates only supervisors and/or managers may be able to make decisions regarding fines. In either case the inspector or the manager should pay attention to the seriousness of the alleged offences (the most serious offences should be prioritised), the quality of the evidence available for each offence, and the willingness of witnesses to give evidence (where necessary and appropriate).

The inspectorate should then recommend the charges to be included on the summons, focussing on how to bring the case against the employer in a clear and simple fashion, based on the strength of evidence available. Where the evidence suggests multiple breaches of employment law (e.g. in respect of several employees or over an extended period) a decision must be made as to which offences are most suitable for prosecution/inclusion in the summons. Again, this decision will partly be based on the availability of evidence.

In closing cases it is vital that inspectors operate good file management practice to ensure all files are maintained in a consistent manner so that they can be utilised in any future cases involving the same employer. Where electronic systems are used, the inspectorate might nevertheless continue to maintain a corresponding paper file. Manual reports created by inspectors should be signed, dated and placed on the physical file. All records/documents should be filed in a timely fashion so that records are kept up-to-date and complete. Any person in possession of an inspection file should store this in a secure manner.

## Reflexivity

Trainers should ask members of the class how the above processes work in their own experience, and if any additional remits and actions are required in their own labour inspectorates. The following questions may be asked so as to encourage a reflexive discussion concerning the effectiveness of labour inspection:

- » Who makes the key decisions with regards to inspection outcomes?
- » Are your recommendations followed up? If so, by whom?
- » What are the strengths of your current practices? Are there any weaknesses?
- » What good practices might you introduce to supplement those which exist?
- » In your experience, are inspection outcomes based on a consistent application of rules, or more subjective interpretations of rules and follow-on actions?
- » What is missing/what would you improve upon when it comes to decision-making?
- » With respect to the enforcement pyramid, how much discretion do you have as an inspector to adopt different actions from 'up'/'down' the face of the pyramid?

After completing the training, participants should be encouraged to continue the debate and discuss issues of this sort in the Lab-Forum.

## Key points

**Action plans are a useful resource for following-up and monitoring any actions/decisions taken as a result of the inspection**

**Inspectors should be rigorous and thorough when documenting inspection findings. Report details should be recorded soon after the inspection has taken place (ideally within one day)**

**Inspectors should follow their inspectorate's procedures when indiscretions and non-compliance are found to have taken place**

**In all cases the records taken should play a vital role in deciding the outcome of any action taken, ranging from a basic caution to a court prosecution**





## **SESSION 8: SUPPORTING LABOUR INSPECTION**







## Timing:

### 90 minutes in total, broken down into:

- » 30 minutes presentation by the tutor
- » 40 minutes group discussion
- » 20 minutes feedback



## Slides:

117-128



## Equipment:

Projector, flip charts, A1 paper, whiteboard and pens



## Preparation:

- » Clear understanding of material covered by the slides
- » Participants to be organised into small groups of 6-10 people
- » Participants to be issued with flip charts (or sheets of A1 paper) and pens





# Training Objectives

## Aims of the session

- » To encourage thinking about the necessary condition for effective inspection activities
- » To develop practical suggestions for ways of enhancing the effectiveness of labour inspection activities in the informal economy

## Learning outcomes

- » Participants will have a clear understanding of organisational, technological and other factors that influence the effectiveness of labour inspection activities
- » Participants will have developed practical proposals for ways of improving inspection activities in their home country





# Activities

## Activity 1: Presentation by the tutor

Slides 117 to 127 can be used to discuss factors that support and potentially enhance the effectiveness of inspection activities. It will cover:

- » Resources
- » Training
- » Information systems and data sharing
- » A targeted approach
- » Coordination and cooperation with other bodies
- » Cross-border cooperation

**Suggested amount of time for this activity: 30 minutes**

## Activity 2: Discussion in groups

Using Slide 128, the tutor should ask the participants to discuss in their groups potential ways in which inspection activities in relation to the informal economy might be enhanced. Each group should be asked to develop at least 3 or 4 suggestions for improvements.

Each group should make notes and, using a flip chart or piece of A1 paper, summarise their thoughts on paper so as to present them to the other groups. Each group should nominate a spokesperson.

**Suggested amount of time for this activity: 40 minutes**

## Activity 3: Feedback from the groups

Each group spokesperson should make a presentation of the issues discussed. The tutor can record key points on a flipchart or whiteboard. At the end of this activity the tutor should reflect on the main issues raised by the groups and any similarities or differences in the views expressed.

**Suggested amount of time for this activity: 20 minutes**



# Tutor Notes

This session will focus on the activities and resourcing of labour inspectorates and practices that might help to enhance the scope and effectiveness of labour inspection. Participants should be encouraged to think about practical steps that their government and labour inspectorate might be able to take at different levels (national and territorial) to improve the capacity and operational effectiveness of the labour inspectorate.

## Resources

The most fundamental requirement is the existence of a labour inspectorate that is well supported and adequately resourced.

Clearly the number of inspectors needs to be sufficient. An inspectorate that is very understaffed will not be able to perform effectively. All other things being equal, the lower the number of inspectors, the lower the probability of a workplace being inspected.

It is essential that labour inspectors have good access to computers, email and transportation. The last of these is particularly important. Clearly labour inspectors who do not have uninterrupted access to a car will find it difficult to conduct inspection visits. Inspectors may have to travel long distances. The more difficult it is for them to do so, the lower the probability that businesses operating in remote locations will be inspected.

Some countries have found that mobile devices can help inspectors in a number of ways. In Ireland, for example, laptops have been replaced by iPads to help inspectors to access databases whilst operating in the field. The iPads are also used as navigational tools to help inspectors find premises (Heyes and Hastings 2015).

It is also important that labour inspectors be well paid. Inspectors who are not decently remunerated may be less inclined to feel motivated and do a good job. There is also a risk that some of them will become susceptible to bribes.

## Training

Inspectors also need to be properly trained. Inspectors who are not adequately trained may not understand relevant legislation or codes of practices and will be more likely to make errors when making decisions during an inspection. Failure to follow correct procedures when issuing a compliance order, for example, can result in employers being acquitted in the labour courts on the basis of a technicality. In order to minimise this problem, inspectors need to be properly trained and procedures need to be made as simple as possible.

In addition to formal initial training programmes for new inspectors, labour inspectorates might use continuous training and learning activities to ensure that labour inspectors remain up to date with, for example, legislative developments. They might also encourage inspectors to reflect on their practices and encourage them to think about how they might improve.

### Box 8: Peer review in the UK's Health and Safety Executive

The Health and Safety Executive's field operations division operates a division-wide system of peer review, which is regarded as providing valuable opportunities for collective learning. Peer review brings together personnel within divisions and groups for the purpose of reflecting on the quality of decisions taken in the past. These might relate to, for example, prosecutions or statement taking.

To give an example, if the purpose of the peer review is to examine notices, a random sample of notices will be selected so as to ensure that there is good coverage of different scenarios. Inspectors will attend a meeting and be asked to score the various notices against a set of criteria (for example, was the notice legally correct? Was it technically correct? Could it be enforced against? Was it the right type of notice?). The inspectors' scores are then collected and a discussion takes place in respect of the various cases. No judgements are made if an inspector makes a 'wrong decision' - the emphasis is on checking and improving understanding with the objective of improving the quality and consistency of future decisions. The practice is highly regarded by HSE managers as a means of improving inspectors' knowledge, understanding, confidence and, in turn, the quality of the outcomes for which they are responsible. Furthermore, peer-review does not require support from the central training budget: the only potential difficulty resides in finding sufficient time in which to conduct the exercises.

## Information systems and data sharing

Reliable and accurate information systems are vital. Labour inspectorates need to have information about the location, characteristics and case history (if any) of businesses. They also need to be able to store and retrieve information relating to their inspection activities. In addition, information systems are an essential requirement for effective performance management.

Computerised case management systems provide a means of monitoring progress on cases and measuring the performance of inspectors and divisions. They can also provide a source of information that enables targeted and informed inspections. In principle, inspectors preparing to conduct an inspection can access the case management system to check whether the workplace has previously been investigated and its case history. Furthermore, the system might supply information about known 'poor performers' in close proximity to workplaces where inspections are due to take place. If an inspector has sufficient time following their planned inspection, they may visit some of these workplaces, thereby maximising the value of the time spent in the field.

It is important that inspection records be easy to complete and that they be stored in an electronic format so that they might be readily accessed. This should also make it possible to generate selected inspection statistics that are compatible with generally used metrics (e.g. size of establishment, sector). It is important that inspections databases be based on a standard database management system so as to ensure that they can be easily accessed and used with standard statistical packages.

Labour inspectors can help to update databases by providing information obtained as a result of their inspection activities, which can lead to them detecting new enterprises and identifying enterprises that have ceased to operate. Ideally, there also needs to be a mechanism by which the list of establishments is updated using information provided by other ministries and government agencies, such as the tax and social insurance authorities. This will help to improve the information available about the total potential population of establishments covered by labour laws.

Ensuring adequate information will often require cooperation with other bodies within the national labour administration system. The ability to share data is essential if cooperation between bodies is to be effective. Problems can occur where databases are not shared. For example, in Sri Lanka, the Ministry of Labour and Labour Relations and the Department of Labour (which is responsible for



enforcing standards) maintain three database systems without using an integrated system of information sharing (Chandrasiri and Gunatilaka 2015: 48). Furthermore, labour inspectors in Sri Lanka manually record labour inspection data. This can result in delays and inaccuracies and information that is difficult to analyse and use for planning and performance management purposes. It can also result in information that cannot be effectively shared with other bodies and reports that can be excessively time-consuming to process (Chandrasiri and Gunatilaka 2015: 19).

Several countries have taken steps to improve their ability to share data. For example:

- i. In the Czech Republic, an interconnected information system has been in place since 2015, giving staff of all ministries and agencies with a role in the informal economy direct access to relevant data from the other institutions' databases. The creation of the shared electronic register, which is accessible via remote access, has substantially improved communication between the various bodies. Labour inspectors regard it as a fundamental step towards ensuring more effective work. The law also now permits the transfer of selected information from the police and the interior ministry to the Ministry of Labour and Social Affairs and its organisational components (Lehmann and Kyzlinková 2015: 36; 40).
- ii. In Germany, a joint database and information platform has been developed, which can be accessed remotely. This has proved to be highly effective in fraud detection and law enforcement (Lubinski, 2013; cited in Weishaupt 2015).
- iii. In Spain, under a Collaboration Agreement between the College of Registrars of Spain and the Ministry of Employment and Social Security, the Labour and Social Security Inspection service may request access to data relating to particular companies, which can help them to identify potential cases of non- or under-payment of social contributions.

## A targeted approach

Where the informal economy is relatively large, labour inspectorates will struggle to cover all industries, occupations and regions. Labour inspectorates might therefore consider targeting specific industries where informal activity is known to be prevalent. They might also choose to focus on specific locations.

One approach is to focus all proactive inspection work on industries that are considered high-risk, while continuing to respond to problems that arise in lower-risk industries. Another approach is to have sustained campaigns in particular industries and regions, with the selection being changed on a regular basis (perhaps annually). In Spain, for example, it has been a common practice to organize annual inspection campaigns focused on particular sectors and regions, such as hotels, bars and restaurants in coastal tourist zones in summer time; footwear apparel production; and construction in all regions. Nevertheless, unions and politicians have expressed concerns about the efficacy of ordinary or periodically conducted actions, asking for further better-organised mechanisms to combat irregular employment (Daza 2015: 75).

## Box 9: Tackling undeclared work in Italy: Agriculture and construction<sup>1</sup>

In 2010, the Italian Ministry of Labour launched a special inspection strategy to fight undeclared work in agriculture and construction in four southern Italian regions. The project aimed to introduce an integrated and targeted inspection system to improve detection. The issues addressed included the utilisation of seasonal workers and illicit labour market intermediation. The measures consisted of a series of planned and coordinated inspection activities carried out jointly by teams composed of labour inspectors, social security inspectors and the Carabinieri (Italian military police). Targets were set, with 10,000 agriculture firms and 10,000 building sites to be inspected in the four regions between March and December 2010. In addition, the social partners disseminated information. As a result of the initiative, more than 20,300 irregular workers were identified, of which around 9,150 were totally undeclared workers. Some 44% of the inspected agriculture firms showed some forms of irregularity, while in the construction sector the share of firms with violations was over 60%. In the nearly 14,000 inspected firms in construction, almost 10,000 violations were recorded in health and safety regulations.

However, a targeted approach is likely to be difficult to take where enterprises are very small or have no fixed location (e.g. temporarily operate within markets, on streets, in open spaces). Regulatory efforts directed at such enterprises, that are very numerous and difficult to detect, are likely to require very substantial resources. It is likely to be easier to target registered businesses that operate at a known and fixed location and that operate in industries in which a substantial number of workers are employed on an undeclared basis (i.e. firms that are the formal economy but have workers who are informally employed). Clearly, the labour inspectorate would need to decide what is practicable given their resources and compare the costs and likely benefits of different courses of action.

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1. <http://www.eurofound.europa.eu/observatories/emcc/case-studies/tackling-undeclared-work-in-europe/inspection-strategy-in-agriculture-and-construction-italy>

## Coordination and cooperation with other bodies

The informal economy is an area where collaborative relationships are particularly important. In addition to issues relating to labour standards, the informal economy has implications for government bodies with responsibility for the collection of tax and social security contributions (e.g. tax inspectorate) and, to the extent that migrant workers are frequently engaged in informal work, the regulation of cross-border labour flows (e.g. Ministry of the Interior). Given that work in the informal economy can also be associated with illegal practices, the police force may also be involved.

There are many examples of cooperation in practice.

- i. In the US, the Wages and Hours Division of the Department of Labor (USDOL) has worked with the joint USDOL-U.S. Department of Treasury initiative ‘to detect and deter the misclassification of employees as independent contractors and to strengthen and coordinate federal and state efforts to enforce labor violations arising from misclassification’, a situation which precludes workers from receiving their rightful benefits under the Fair Labor Standards Act and the Family and Medical Leave Act. The initiative has been conducted jointly because such misclassification also leads to large losses in the form of taxes not paid to the Treasury, Social Security, Medicare and Unemployment Insurance programs (Heinrich and King 2015: 44).
- ii. The UK’s Gangmasters Licencing Authority often has to act in concert with other government bodies. For example, there have been cases of labour suppliers being involved in VAT fraud, which has resulted in the GLA working closely with HR Revenue & Customs (the tax authority) and the police. Memoranda of Understanding (MOUs) exist between the GLA and the bodies with which it needs to cooperate
- iii. In Germany, the German Social Security Office screens firms when they submit their payroll contributions for fraud or for not paying minimum wages. These auditing officers regularly review firms’ social security contributions, which in turn are based on wages. If fraudulent or incorrect behavior is detected, the Social Security Office contacts either the FKS (if there are suspected minimum wage violations) or the public prosecutors at Land (regional) level (if there are suspected public procurement violations). The FKS is a specially created customs unit responsible for monitoring minimum wages (Weishaupt 2015).
- iv. In Ireland, labour inspectors participate in joint inspections on an ad hoc basis via Joint Inspections Units (JIUs) which pool officers from the inspectorate, Irish Tax and Customs and the Department of Social Protection. Joint inspections between the police and the labour inspectorate have acted as a forum for knowledge sharing between the two bodies since 2009. Joint inspections have

not avoided criticism, however, with NGO groups voicing concerns over police presence at inspections. Concerns in the main refer to the police's priority to minimise illegal immigration over and above defending vulnerable workers from exploitation (Heyes and Hastings 2015).

The importance attached to close cooperation has led many countries to institute measures to place cooperation on a formal basis. For example, and as already mentioned above, the UK's GLA has established Memoranda of Understanding with the other agencies with which it needs to collaborate. Spain provides a further example of a country that has taken a number of steps to provide collaborative efforts with firm institutional foundations. In 2012 Spain approved a plan for combating irregular employment and social security fraud, which established mechanisms of stable cooperation between the State Public Employment Service, the Wage Guarantee Fund, the National Institute of Social Security, the Social Institute of the Maritime Workers and the General Treasury of Social Security. Spain also created a Sub Director General of Inspection on Social Security, Irregular Economy and Immigration, with the functions of developing plans, programs, actions, research methods and protocols for the detection and prosecution of fraud and breaches in terms of social security, irregular economy and foreign workers, as well as the coordination of actions with other administrative bodies with competence in the field of immigration and with entities and services of the Social Security (Daza 2015: 76-77).

## Box 10: Collaboration agreements in Spain

In Spain, collaboration of key agencies is ensured by a 1997 Act, which requires any organisation that performs a public function to provide the Labour and Social Security Inspection service all relevant data, reports and background information that it requires and to collaborate in relation to inspection activities. The Labour and Social Security Inspection Service is required to reciprocate. Recently, however, collaboration has been formalised through signing of agreements. The Directorate General of Labour and Social Security Inspection and the Social Security Treasury, signed a Joint Statement for the eradication of 'shell companies', which are established solely to facilitate access to various allowances, benefits and residence permits.

A subsequent agreement, signed in 2013 by the Ministry of the Interior and the Ministry of Employment and Social Security, promotes coordination between the Labour Inspectorate, the State Security and Police Forces. Joint actions increased by 30% in the year the agreement was signed.

A further agreement enables the Labour and Social Security Inspection service to request from the College of Registrars information relating to any company listed in its records (Daza 2015: 77-79).

In 2015 plans were made for a new National Office for the Fight against Fraud. This body will be located within the new Autonomous Agency of Labour and Social Security Inspection and will comprise all of the agencies involved in the fight against fraud. It will be responsible for the detection of fraud, the programming and implementation of inspection activities and evaluation of results. The new Office will also serve as a liaison with the 'European Platform against undeclared work' (Daza 2015).

Spain's new initiative is intended to focus efforts and ensure that agencies' activities are aligned. There are other mechanism that may serve to help improve alignment and inform actions in relation to the informal economy. The following illustrations represent examples of regular fora established to address particular issues relating to the informal economy:



- i. In the Czech Republic the SLIO (labour inspectorate) is a member of several interdepartmental commissions and working groups. These include the Interdepartmental Body for Combating Illegal Employment of Foreigners (IBCIEF), the Government Council for Occupational Safety and Health Protection, the Analytical Centre for the Protection of the State Borders and Migration (ACPSBM<sup>2</sup>) etc. Within these groups, there is cooperation between the departments, the non-profit sector and other entities (Lehmann and Kyzlinková 2015: 39).
- ii. Ireland has established a Hidden Economy Monitoring Group (HEMG). The group was established in 1990 and represents a collaboration between the Office of the Revenue Commissioners, the Department of Social and Family Affairs, NERA, the national trade union confederation ICTU, the national employers' body IBEC, the Small Firms' Association (SFA) and the Construction Industry Federation (CIF). Since its creation the HEMG has undergone internal reviews aimed at enhancing its effectiveness. The social partners actively collaborate at both national and regional levels in the HEMG.

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2. The ACPSBM deals with residence issues linked to the employment of foreign nationals, including the abuse of residence to perform illegal employment.

## Box 11: Hidden Economy Monitoring Group (HEMG) in Ireland

### Objectives

The central remit of the HEMG is to encourage better compliance with legal requirements, if necessary through increased enforcement. The terms of reference are ‘to provide a forum for the exchange of views on the effectiveness of measures introduced in combating the “black economy” between the Revenue Commissioners and Department of Social and Family Affairs and representatives of employers, trade unions and the construction industry’.

### Examples of achievements of the HEMG:

- » Its initial achievement following its launch in 2007 was to sponsor legislation providing for the exchange of employment information on the earned income of individuals between the Department of Jobs, Enterprise and Innovation, the Department of Social Protection and Revenue.
- » The production of an updated ‘Code of Practice for Determining Employment or Self-Employment Status of Individuals’ issued to all principal employers and sub-contractors in a total of 15 languages.
- » New procedures to strengthen the employment vs. self-employment distinction in the construction, forestry and meat processing sectors.

*Source: Heyes and Hastings 2015*

## Cross-border cooperation

Many of those who work in the informal economy are migrant workers. Some work in the informal sector of their own volition while others are victims of trafficking and forced labour. Cross-border flows, which may be facilitated by labour market intermediaries such as employment agencies, imply a need for cross-border cooperation involving labour ministries and labour inspectorates in different countries. Several countries have taken steps to develop such cooperation.

- i. In the Czech Republic, close cooperation in relation to measures to tackle illegal employment takes place with bodies in neighbouring countries (e.g. the National Labour Inspectorate of Slovakia, the Bavarian Chamber of Commerce).

- ii. In the UK, the GLA is developing connections with labour inspectorates in other EU countries. The GLA informs overseas labour inspectorates of licences they have issued to labour suppliers from those countries. In some cases, for example Lithuania, the labour inspectorate in the 'sending' country has carried out inspections on behalf of the GLA (Heyes and Hastings 2015).

## Key Points

**Labour inspectors need to be adequately rewarded and trained**

**It is important that labour inspectorates maintain up-to-date (and ideally computerised) databases**

**Targeted and risk-based inspection approaches can be used where the informal economy is relatively large**

**Cooperation between the labour inspectorate and other government departments and agencies is extremely important. Government efforts in relation to the informal economy need to be 'joined up'**

**The involvement of migrant workers in the informal economy can be an incentive for greater cross-border collaboration by labour inspectorates**

## References

Chandrasiri, S. and Gunatilaka, R. (2015) Introducing ICT to Sri Lanka's Labour Administration. Report Prepared for the ILO.

Daza, J-L. (2015) Labour Administration in Spain. Report Prepared for the ILO.

Heinrich, C. and King, C. (2015) Labour Administration in the United States. Report prepared for the ILO. May 2015.

Heyes, J. and Hastings, T. (2015) Comparative Developments in Labour Administration. Report prepared for the ILO, October 2015.

Lehmann, Š. and Kyzlinková, R (2015) The Labour Administration's Performance in the Czech Republic. Report Prepared for the ILO.

Weishaupt, T. (2015) The German Labour Administration in Action: Between Enforcement and Encouragement. Report prepared for the ILO.







## SESSION 9: REFLECTIONS AND CLOSE

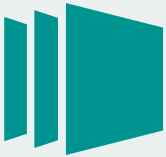




## Timing:

### 60 minutes in total, broken down into:

- » 15 minutes introduction by the tutor
- » 5 minutes individual reflection
- » 30 minutes feedback from participants
- » 10 minutes engagement with Lab-Forum



## Slides:

129-139



## Equipment:

Projector, flip charts, A1 paper, whiteboard and pens



## Preparation:

- » Throughout the sessions, capture key practical points
- » Participants to be organised into small groups of 6-10 people
- » Participants to be issued with flip charts (or sheets of A1 paper) and pens





# Training Objectives

The purpose of this session is to review the topics covered and to provide a final opportunity for participants to reflect on what they have learned. In particular, it is an opportunity for participants to say how they will apply the knowledge they have developed in their work.

Using slide 138, the participants will be asked:

- » What have you learned that is of value?
- » How will you apply this knowledge?
- » What needs to happen in order for you to be able to apply this knowledge?
- » What do you hope will be different as a result?

The discussion should involve the whole group. The tutors should capture key points on flip charts/whiteboards and encourage participants to comment and build on the ideas that are expressed





## Tutor Notes

This session will reinforce the learning of the participants. Key messages from the preceding sessions should be re-emphasised, drawing on the key points from previous sessions. The tutor should encourage the participants to think through how they will apply the knowledge they have developed during the course in order to enhance their own practices and those of the labour inspectorate. Participants should be asked to think about how they can use their knowledge to improve the effectiveness of labour inspection in relation to the informal economy.

Participants should be encouraged to identify changes that would be relatively easy to implement, as well as practices that might be harder to implement. A relatively easy change might relate to their own working practices (e.g. their approach to record keeping). A more difficult change might be to alter the working practices of the labour inspectorate as a whole.

Changes that might be difficult for one participant to achieve might be easier for another. For example, a participant who works as a labour inspector would probably be unable to implement changes that affect his or her labour office whereas a participant who works as a senior manager might be better placed to implement or propose such changes.

Participants might identify valuable ideas and principles but be uncertain how to put them into practice, in which case the tutor should encourage a discussion of potential ways of implementing them.

Participants might have a clear view as to how ideas might be put into practice, but believe that other things would need to change first or at the same time (e.g. the legal framework, the organisation of the labour inspectorate). The tutor should encourage a discussion of these wider challenges.

This session will probably work best where all of the participants work for the same labour inspectorate. Agreement might emerge in relation to desired changes and how they might be made. The tutor should ensure that the discussion remains constructive. The tutor should try to ensure that those with more seniority do not dominate discussions and also ensure that every course participant makes at least one contribution during the discussion. Depending on the size of the group and the group dynamics, the tutor might choose to ask each participant in turn to give one suggestion for how their new knowledge might be applied.

Ideally, every participant will leave the course with at least one idea for an improvement that will be achievable in practice. The tutor should tell the participants that this is the aim of the session at the outset.

**Finally**, at the end of the course the trainer should ask how many participants have signed up to Lab-Forum, the online message board which accompanies the course:

<http://www.woerrc.group.shef.ac.uk/forum/page/home>

Participants should be asked to continue any of the discussions relating to the course through this online message board. In addition, participants should be encouraged to view the forum as a chance to share knowledge with other labour inspectors who enrolled on the course. If both time and facilities are available, you may wish to let participants experiment with Lab-Forum before finally drawing a close to the training.



# EXTENDING LABOUR INSPECTION TO THE INFORMAL ECONOMY

## SESSION 1 INTRODUCTION - THE INFORMAL ECONOMY AND LABOUR ADMINISTRATION

2



### SESSION 1: INTRODUCTION - THE INFORMAL ECONOMY AND LABOUR ADMINISTRATION

#### SESSION OBJECTIVES

- To introduce the course and emphasise its importance to the sponsoring organisation
- To introduce the participants to each other
- To develop understanding of the informal economy
- To allow participants to express and discuss their main interests in relation to the informal economy

3



### SESSION 1: INTRODUCTION - THE INFORMAL ECONOMY AND LABOUR ADMINISTRATION

#### ABOUT THE COURSE

- Two-day course
- The aim is to consider how labour administration and labour inspection might be extended to the informal economy
- Mix of presentations and group work
- Emphasis on group discussion, knowledge-sharing and thinking about how to improve practices
- Participants should develop knowledge and ideas that will be of practical use in their jobs

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### SESSION 1: INTRODUCTION - THE INFORMAL ECONOMY AND LABOUR ADMINISTRATION

#### LIST OF SESSIONS

- **Session 1:** Introduction - The informal economy and labour administration
- **Session 2:** Relevant ILO standards and principles
- **Session 3:** The informal economy in your country
- **Session 4:** Regulating the informal economy
- **Session 5:** Informality and the employment relationship
- **Session 6:** Undertaking an inspection
- **Session 7:** Making decisions and follow-up actions
- **Session 8:** Supporting labour inspection
- **Session 9:** Reflections and close

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### SESSION 1: INTRODUCTION - THE INFORMAL ECONOMY AND LABOUR ADMINISTRATION

#### LAB-FORUM

- The University of Sheffield have created an online message board called Lab-Forum to support this course. Registration is quick and easy: <http://www.woerrc.group.shef.ac.uk/forum/page/home>
- Lab-Forum is designed with three main functions in mind:
  - To act as a platform to help monitor/capture the real world **impacts** of this training
  - As a place for participants to **learn and develop skills** from one another after the course has finished
  - To provide the chance for participants to easily **stay in touch** with one another
- Three online 'rooms' correspond with these aims:
  - Course Chat: for discussing aspects of the course on a session by session basis
  - Inspection Chat: for discussing labour inspection more broadly
  - General chat: for general discussion and socialising after the course is finished
- Each 'room' has its own set of forum threads which you may contribute to. In addition participants should feel free to start their own discussion threads – full rules and explanations are available online on the link 'How to use Lab-Forum'

6



DEFINING THE INFORMAL ECONOMY

- There has been much discussion concerning how the informal economy should be defined and measured
• The definition of informality adopted by the 15th International Conference of Labour Statistician (ICLS) in 1993 included all
• This is a narrow enterprise-based definition of informality. An employment-based definition of informality was subsequently developed by the ILO
• The 2002 ILO report on 'Decent work and the Informal Economy' defined employment in the informal economy as comprising employment in the informal sector as defined by the 15th ICLS plus other forms of informal employment outside the informal sector



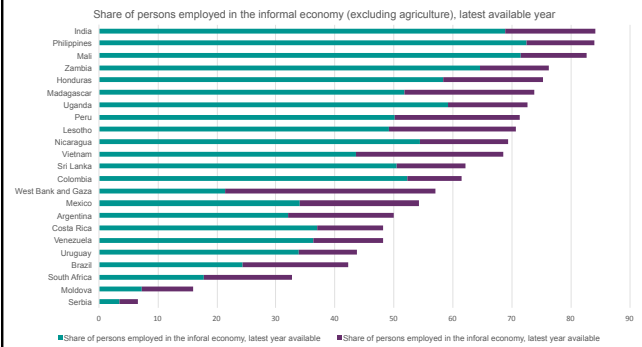
ILO CONCEPTUAL FRAMEWORK

- A conceptual framework to facilitate measurement of informal employment was endorsed by the 17th ICLS in 2003
• The ICLS Guidelines define 'informal employment' as the total number of informal jobs, whether carried out in formal sector enterprises, informal sector enterprises or households, during a given reference period
• Informal employment includes:
(a) Own-account workers employed in their own informal sector enterprises
(b) Contributing family workers, irrespective of whether they work in formal or informal sector enterprises
(c) Members of informal producers' cooperatives
(d) Employees holding informal jobs in formal sector enterprises, informal sector enterprises, or those working as paid domestic workers by households
(e) Own-account workers engaged in the production of goods exclusively for own final use by their household
• With regard to (d), employees are considered to have an informal job if their employment relationship is, in law or in practice, not subject to national labour legislation, income taxation, social protection or entitlement to certain employment benefits (e.g. advance notice of dismissal, severance pay, paid annual or sick leave)



THE SIZE OF THE INFORMAL ECONOMY

- The informal economy has expanded in both developing and developed economies
• Few countries produce regular statistics on the extent of informal economy employment
• In 2012 the ILO published a manual on methodological issues for undertaking surveys of the informal economy at the country level
• In addition, the ILO Department of Statistics (STATISTICS) has provided technical assistance to countries in order to help them to introduce the new statistical measures in their national survey questionnaires
• The ILO provides detailed statistics for 47 developing or transitional economies. These are available at http://laborsta.ilo.org/informal\_economy\_E.html



REASONS FOR PARTICIPATING IN THE INFORMAL ECONOMY

- Workers
• A lack of alternative employment opportunities
• A need to supplement a low income derived from employment in the formal sector
• A wish to supplement social security benefits with an undeclared income
Businesses
• Perceived or actual bureaucracy associated with formalisation
• A wish to avoid or reduce costs associated with taxes and social security contributions
• Inadequate inspection services
• In countries where the informal economy has traditionally been relatively large, a perception that undeclared work represents a socially acceptable practice may become highly ingrained



COSTS AND BENEFITS OF THE INFORMAL ECONOMY

- Potential benefits
• A source of income for workers
• A 'seedbed' for new businesses
• Provides consumers with access to goods and services that might otherwise be unobtainable
Potential costs
• Lower tax and social security receipts (reduces state revenue)
• Difficulties in targeting and managing social protection
• Unfair competitive advantage for enterprises operating in the informal economy
• Cost to government of detecting and penalizing work in the informal economy
• Constraints on the ability of businesses to expand
• Lack of access to formal sources of finance
• The role of the informal economy in facilitating illegal migration



### COSTS TO WORKERS

- Their activities might not be covered by labour and social protection legislation
- Alternatively, they might be operating within the formal reach of the law, but the law is not applied or enforced
- Workers will not be able to build up state pension entitlements and other contributory benefits
- Participation in the informal economy might make it harder to make a subsequent transition to formal employment (e.g. because of a lack of a formal career history)
- Workers in the informal economy lack the ability to make collective representations to their employer or to public authorities.
- They are often subjected to unfair treatment by employers

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### ISSUES FOR LABOUR ADMINISTRATION AND INSPECTION

- The vulnerability of those who work in the informal economy and the widespread failure of employers to respect national labour laws and treat their workers decently mean that the informal economy is an important issue for labour administration and labour inspection services
- Labour administration is defined by the International Labour Organization (ILO) in its Labour Administration Convention (No. 150) of 1978 as 'public administration activities in the field of national labour policy'. The Labour Administration Convention has one of the highest ratification rates of any ILO Convention
- Article 7 of ILO Convention No.150 recommends extending the functions of labour administration to workers who are not employed persons according to national labour laws
- Article 3 of ILO Convention No. 81 on Labour Inspection calls for the protection of all types of workers, including vulnerable workers

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### POTENTIAL DIFFICULTIES

- Labour inspection services often lack the ability to intervene in the informal economy
- Funding and resources may be inadequate
- Labour inspectorates may lack the ability to collect and process information about the informal economy and develop and maintain databases
- The effectiveness of labour inspectorates depends on their mandate
- Labour inspectorates cannot tackle informal economy problems on their own
- Cooperation and effective governance are essential if governments are to succeed in tackling the informal economy

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### DISCUSSION

Working in groups, please discuss the following questions

- How big is the informal economy in your country?
- Which industries and occupations are most affected?
- What are the biggest problems in relation to enforcing workers' rights in the informal economy?

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## EXTENDING LABOUR INSPECTION TO THE INFORMAL ECONOMY

## SESSION 2 RELEVANT ILO STANDARDS AND PRINCIPLES

18





### SESSION OBJECTIVES

- To introduce participants to the ILO's position in relation to the protection of workers in the informal economy
- To introduce participants to relevant ILO instruments and the principles underpinning these instruments
- To stimulate a discussion amongst participants of their experience with respect to the application of national laws



### INTERNATIONAL LABOUR STANDARDS

- The ILO's International Labour Standards (ILS) are legal instruments that set out basic principles and rights at work
- They consist of:
  - a) Conventions, which are legally binding international treaties that may be ratified by member states
  - b) Recommendations, which serve as non-binding guidelines
- The ILO's Governing Body has identified eight conventions as 'fundamental', covering four subjects that are considered fundamental principles and rights at work:
  - 1) Freedom of association and the effective recognition of the right to collective bargaining
  - 2) The elimination of all forms of forced or compulsory labour
  - 3) The effective abolition of child labour
  - 4) The elimination of discrimination in respect of employment and occupation



### THE ILO'S FUNDAMENTAL CONVENTIONS

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)



### THE COVERAGE OF ILO INSTRUMENTS

- The ILO's fundamental conventions apply to the formal economy **and the informal economy**
- Other ILO instruments also make explicit reference to the informal economy or deal specifically with groups of workers who are often found in the informal economy
- There are also instruments which contain implicit provisions
- A number of ILO instruments apply explicitly to 'workers' rather than the legally narrower term 'employees', or do not contain wording limiting their application to the formal economy
- In practice, however, the ILO's principles are often not extended to the informal economy



### FREEDOM OF ASSOCIATION

- The *Freedom of Association and Protection of the Right to Organise Convention, 1948* (No. 87), and the *Right to Organise and Collective Bargaining Convention, 1949* (No. 98), provide that **all workers** enjoy the fundamental rights which flow from freedom of association
- Informal economy workers therefore have the right to organise and engage in collective bargaining and social dialogue
- The ILO's Committee of Experts has noted the innovative approaches adopted in certain countries to enable workers in the informal economy to organise. For example:
  - a) The right of domestic workers to organise has been recognized in Swaziland
  - b) Under the terms of the Labour Code of Senegal, workers in the informal economy and agriculture enjoy the trade union rights guaranteed by the Convention
  - c) The registration of a union for the informal economy in 2004 in Malawi



### FORCED LABOUR

- Under Article 2(1) of the *Forced Labour Convention, 1930* (No. 29), the term 'forced labour' is defined as 'all work or service which is exacted from any person'
- This includes all types of work, service and employment, regardless of the industry or sector in which they are performed, including the informal economy
- Examples include trafficking in persons for sexual or labour exploitation; forced labour imposed on vulnerable categories of workers, such as migrant workers, domestic workers or indigenous workers; and forced labour imposed within the framework of a relationship of dependency, such as slavery or debt bondage, which often occur in the informal economy
- Poor coverage and enforcement of laws and regulations, especially in the informal economy, provide an environment in which forced labour practices can emerge and go undetected



### CHILD LABOUR

- The *Minimum Age Convention, 1973* (No. 138), applies to all children employed in any occupation
- The *Worst Forms of Child Labour Convention, 1999* (No. 182), covers all children under the age of 18 years and definition of the worst forms of child labour implicitly includes those occurring in the informal economy
- Some countries have taken steps to improve their inspection activities in relation to child labour in the informal economy:
  - a) Togo has produced a practical training manual for labour inspectors on child labour jointly with ILO-IPEC
  - b) Egypt has established a separate unit within the Ministry of Manpower and Migration for child labour investigations in the agricultural sector
  - c) In Brazil, the action of labour inspectors has been extended to reinforce inspections in both the formal and informal economies, with children and young people being removed from illegal work
- A number of countries (for example Kenya and Zambia) have amended their labour laws so as to extend protection to children working in family enterprises and those engaged in unpaid work



### DISCRIMINATION

- Equality and non-discrimination in employment and occupation is a fundamental principle and human right to which all men and women are entitled
- The *Equal Remuneration Convention, 1951* (No. 100), and the *Discrimination (Employment and Occupation) Convention, 1958* (No. 111), apply to all sectors of activity, including (implicitly) the formal and informal economies
- Convention No. 111 covers non-wage work, including people who work on their own account, as employers or as unpaid family workers
- The term 'occupation' in Convention No. 111 includes traditional occupations, such as farming and handicraft production



### EMPLOYMENT

- The *Employment Policy Convention, 1964* (No. 122), calls for the adoption of active policies designed to promote full, productive and freely chosen employment with the aim of ensuring 'work for all who are available for and seeking work'
- The *Employment Policy (Supplementary Provisions) Recommendation, 1984* (No. 169), calls for measures to be taken for the progressive transfer of workers from the informal economy to the formal sector
- National employment policy should recognize the importance of the informal economy as a provider of jobs
- Measures should be taken to promote complementary relationships between the formal and informal economies and to facilitate the progressive integration of informal undertakings into the national economy



### OCCUPATIONAL SAFETY AND HEALTH

- The *Occupational Safety and Health Convention, 1981* (No. 155), applies to all branches of economic activity and all workers in those branches
- Although it allows for the exclusion, in part or in whole, of particular branches of economic activity (such as maritime shipping and fishing), these exclusions are not intended to be permanent and it is expected that progress will be made towards the full application of the Convention, with coverage being expanded to embrace excluded categories of workers
- Similarly, the *Promotional Framework for Occupational Safety and Health Convention, 2006* (No. 187), provides that the national system for OSH shall cover micro-enterprises, small and medium-sized enterprises (SMEs) and the informal economy



### LABOUR ADMINISTRATION AND LABOUR INSPECTION

- The *Labour Administration Convention, 1987* (No. 150), envisages the extension of the functions of the system of labour administration to include those occupied in the informal sector
- The *Labour Inspection Convention, 1947* (No. 81), applies to industrial and commercial workplaces
- The *Protocol of 1995 to the Labour Inspection Convention* extends, in principle, the coverage of labour inspection to activities in all categories of workplaces that are not considered as industrial or commercial, which implies the informal economy
- The *Labour Inspection (Agriculture) Convention, 1969* (No. 129), covers commercial and non-commercial agricultural undertakings
- Convention No. 129 contains important governance principles that are key to efforts to tackle the informal economy and poverty through the establishment and functioning of a labour inspection system for agricultural workers and their families



### THE 2002 RESOLUTION CONCERNING DECENT WORK AND THE INFORMAL ECONOMY

- In 2002 the ILO elaborated a Resolution concerning decent work and the informal economy
- The Resolution established that informality is principally a governance issue
- Its growth is encouraged by inappropriate or badly implemented macroeconomic and social policies (often developed without tripartite consultation), a lack of appropriate legal and institutional frameworks, and a lack of governance capacity to ensure the proper and effective implementation of policies and laws
- Measures directed at the informal economy should address the whole range of underlying causes
- Policy initiatives should involve all four components of **decent work**: the promotion of rights, decent employment, social protection, and social dialogue



### R204 – TRANSITION FROM THE INFORMAL TO THE FORMAL ECONOMY

- Adopted by the ILC in 2015
- The Recommendation – the first ever international labour standard specifically aimed at tackling the informal economy – provides guidance for member States to:
  1. Facilitate the transition of workers and economic units from the informal to the formal economy, while respecting workers' fundamental rights and ensuring opportunities for income security, livelihoods and entrepreneurship;
  2. Promote the creation, preservation and sustainability of enterprises and decent jobs in the formal economy and the coherence of macroeconomic, employment, social protection and other social policies; and
  3. Prevent the informalisation of formal economy jobs



### EXAMPLES OF RECOMMENDATIONS RELATING TO LABOUR ADMINISTRATION

- Members should:
  - a) Promote and extend occupational safety and health protection to employers and workers in the informal economy
  - b) Progressively extend to all workers in the informal economy social security, maternity protection, decent working conditions and minimum wage protection
  - c) Ensure compliance with national laws and regulations. Civil or penal sanctions for non-compliance should be adequate and strictly enforced
  - d) Have an adequate and appropriate system of inspection, extend coverage of labour inspection to all workplaces in the informal economy, and provide guidance for enforcement bodies
  - e) Ensure the effective provision of information, assistance in complying with the relevant laws and regulations, and capacity building for relevant actors
  - f) Ensure that those in the informal economy enjoy freedom of association and the right to collective bargaining
  - g) Consult employers' and workers' organisations when designing, implementing and evaluating policies and programmes of relevance to the informal economy



### THE LEGAL FRAMEWORK AT NATIONAL LEVEL

- In some countries the scope of application of labour legislation is very broad and, at least in theory, it applies to workers in the informal economy
- However, even when the informal economy is covered by legislation, its application may be impeded by inadequate monitoring or enforcement capacity
- In addition, informal economy workers may not be aware of their right to protection under general labour legislation
- In certain countries, workers in the informal economy are excluded, either in part or entirely, from the scope of application of labour legislation
- In others countries, labour laws only apply to formal employment relationships, and may thus explicitly exclude certain categories of vulnerable workers, such as agricultural workers, domestic workers, the self-employed or owners of small or micro-enterprises



### EXTENDING PROTECTION TO SPECIFIC GROUPS OF WORKERS

- In South Africa, the Basic Conditions of Employment Act of 1997 was amended to establish conditions of employment and minimum wages for domestic work.
- In the Philippines, the Domestic Workers Act of 2013 defines such terms as 'domestic work' and 'domestic worker', for whom it establishes rights and protections
- In Thailand, the Home Workers Protection Act of 2010 requires written contracts between hirers and homeworkers containing certain minimum information and establishes a fine for failure to comply. Homeworkers producing outputs of the same nature, quality and quantity may not be paid less than the minimum wage
- Several countries have extended social protection provisions to self-employed workers, market workers (Algeria) and small enterprises and handicraft workers (Mauritius and Peru)



### SUPPORTING TRANSITIONS FROM THE INFORMAL TO THE FORMAL ECONOMY

- In developed countries, the main legislative thrust is on the elimination of the informal economy
- In countries where the informal economy makes up a larger percentage of employment, the focus tends to be on extending the legislative framework to cover workers in the informal economy and adopting measures to facilitate their integration into the formal economy
- The ILO emphasises that the regulatory framework should be conducive to assisting transitions to the formal economy, and should be gender sensitive. Several countries have simplified their labour laws and procedures, for example by:
  - a) Reducing or eliminating the costs involved in registering enterprises with labour administrations and social security authorities
  - b) Simplifying the requirements, forms and procedures for hiring workers through public employment offices
  - c) Recognizing contracts of employment, irrespective of their form, and accepting any means of evidence



### KEY POINTS

- In principle, ILO standards apply to both the formal economy **and** the informal economy
- In practice, protections are often not extended to informal economy workers
- The ILO encourages member countries to review their labour laws and labour administration practices. Countries are also encouraged to extend labour law coverage to workers in the informal economy
- The ILO also encourages member countries to improve transitions from the informal economy to the formal economy
- The ILO's 2015 Recommendation provides member countries with guidance to help them to improve protections for workers in the informal economy and facilitate their transition to the formal economy



**GROUP ACTIVITY**

- Please discuss in your groups:
  - a) The practical benefits of the ILO instruments
  - b) The practical challenges associated with applying them to the informal economy in your country

**SESSION 3: THE INFORMAL ECONOMY IN YOUR COUNTRY**

**SESSION 3  
THE INFORMAL ECONOMY IN YOUR  
COUNTRY**



**SESSION OBJECTIVES**

- To introduce participants to different ways of thinking about regulatory activities
- To discuss how the behaviour of employers and workers might be influenced in relation to the informal economy
- To encourage thinking around different types of approaches.



**THE CHARACTERISTICS OF THE INFORMAL ECONOMY**



**RELEVANT LABOUR LAWS**



**THE ROLE OF THE LABOUR INSPECTORATE**



**GROUP DISCUSSION**

- Please discuss in your groups:
  - (a) Which labour laws are most relevant to the informal economy?
  - (b) Which are most difficult to enforce and why?
  - (c) What is the scope of the labour inspectorate's powers in relation to the informal economy? What are the limitations?
  - (d) What are the labour inspectorates' priorities and expectations?

**SESSION 4: REGULATING THE INFORMAL ECONOMY**

**SESSION 4  
REGULATING THE INFORMAL ECONOMY**



**SESSION OBJECTIVES**

- To introduce participants to different ways of thinking about regulatory activities
- To discuss how the behaviour of employers and workers might be influenced in relation to the informal economy
- To encourage thinking around different types of approaches



**WHAT DO WE MEAN BY 'REGULATION'?**

'Regulation is a process involving the sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly defined outcome or outcomes.' (Black 2001: 142)





**EXAMPLE: SPAIN'S 'MBOX'**

- In 2012, Spain made available to all citizens an electronic mailbox ('MBOX of the Struggle Against Labour Fraud')
- This enables any person who knows of any breach of the rules relating to labour, social security or the prevention of risks, to provide information to the Labour and Social Security Inspectorate (ITSS), by filling out a form which is made available on the Ministry's website
- Workers can also confidentially report suspected fraudulent activity



**COMPLIANCE**

- Compliance requires voluntary cooperation
- The emphasis is on prevention through awareness-raising and persuasion rather than punishment
- Unlike the deterrence approach, the compliance approach views enforcement through punishment as a last resort
- Information campaigns have featured in government efforts to discourage work in the informal economy. Some target the population as a whole while others might target particular groups, such as migrant workers or young people
- The aim is normally to raise awareness of rights and obligations and discourage the view that undeclared work is socially acceptable



**AN EXAMPLE FROM LITHUANIA**

- In 2009 the State Labour Inspectorate launched a public information and awareness-raising initiative using media channels such as radio, television, press, internet, information screens in shopping centres and public transport
- The aim was to raise public awareness of the problems associated with undeclared work and reduce the level of social tolerance for the practice
- The State Labour Inspectorate also advertised a confidential telephone line for reporting cases of undeclared employment
- According to the State Labour Inspectorate, reports of suspected cases of undeclared work increased



**THE POTENTIAL POSITIVE EFFECTS OF DETERRENCE-ORIENTED APPROACHES**

- Punishing non-compliant employers who are in violation may lead them to change their behaviour so as to become and remain compliant thereafter
- Punishment can serve as a warning to others and encourage them to ensure that they are meeting the required standards
- Punishment can reinforce the belief that those who fail to 'play by the rules' will not get away with it. This might encourage employers to view the system as fair



**DETERRENCE-ORIENTED APPROACHES WILL BE LESS EFFECTIVE WHERE...**

- Employers believe that the chances of being detected are relatively small
- Employers regard the potential penalties that result from being detected as being negligible or easily affordable (e.g. fines which are small)
- Routine inspections take place but there is no enforcement activity
- Employers do not know what they need to do in order to be compliant
- The penalties that result from minor transgressions, particularly those that have occurred through ignorance rather than deliberate non-compliance, are excessive



**THE POTENTIAL POSITIVE EFFECTS OF COMPLIANCE-ORIENTED APPROACHES**

- Provision of advice and guidance should make it easier for employers to access information at low cost and should lead to improved understanding of their obligations
- The number of unintended violations might be lower than would otherwise be the case
- Employers might feel supported by the state and its agencies, leading to higher levels of trust





### COMPLIANCE-ORIENTED APPROACHES WILL BE LESS EFFECTIVE WHERE...

- There is no effective threat of enforcement. Those who have no interest in complying voluntarily will feel free to continue to ignore standards
- Those who would be inclined to respect standards feel that others are 'getting away with it' and consequently enjoying an unfair cost advantage. Their own commitment to respecting standards might become weaker as a consequence
- Regulatory agencies fail to provide sufficient information and practical support to enable individuals and firms to understand their obligations and take action to ensure that they meet them
- There is a widely-held view that declared work and payment of taxes do not provide substantial benefits and that undeclared employment is socially acceptable



### ENFORCEMENT PYRAMID (AYRES AND BRAITHWAITE, 1992)



### 'SMART' REGULATION

- 'Smart Regulation' recognises that regulatory authorities (e.g. labour inspectorates) are not the only bodies that influence the behaviour of firms and assumes that informal mechanisms of regulation might be at least as important as the formal mechanisms used by regulators
- Smart Regulation focuses on the potential roles that might be played by peer pressure, the supply chain, trade unions, employer organisations, non-government organisations (NGOs), community groups and cooperatives
- Non-government actors might have primary responsibility for awareness-raising and persuasion. Where this approach fails, deterrence-oriented actions can be pursued by the regulatory agencies of the state
- The role of the government in relation to Smart Regulation is to act as a facilitator



### META-REGULATION

- Meta-regulation is similar to Smart Regulation in that both approaches imply an arms-length role for regulatory bodies such as labour inspectorates
- The emphasis of meta-regulation is on *corporate responsibility* - encouraging organisations to develop and put in place their own controls
- The role of the regulator is to check the quality of the controls
- Organisations should develop risk management plans that show how they intend to ensure that standards are upheld. These plans should be submitted to the regulatory agency for approval



### REGULATING SUPPLIERS

- The influence of ideas associated with Smart or Meta-Regulation can be seen in relation to regulatory efforts that focus on the relationship between customers and suppliers

#### US Department of Labor

- In the 1990s and early 2000s the US DoL required garment manufacturers to develop compliance agreements for their contractors and subcontractors. Manufacturers pledged to screen new contractors, inform and train them in relation to their responsibilities under the law, and to undertake monitoring. [www.dol.gov/whd/resources/strategicEnforcement.pdf](http://www.dol.gov/whd/resources/strategicEnforcement.pdf)



### REGULATING SUPPLIERS

#### Gangmasters Licensing Authority (UK)

- The Gangmasters Licensing Authority (GLA) issues licences to labour suppliers in the agricultural, shellfish and food processing and packaging sectors. All labour suppliers operating in these sectors are required to apply for a licence
- Licenced suppliers are listed on a public register. Labour users are required to use only licenced suppliers. It is a criminal offence to use a supplier who does not have a licence
- The onus is on the user to check that the supplier is licenced. The labour user is not, however, responsible for violations by licenced providers and the GLA acts as a labour inspectorate where suspected violations are reported



KEY POINTS

- Deterrence-oriented and compliance-oriented strategies both have potential strengths and drawbacks
- Regulators should consider developing an approach that uses both coercion (deterrence) and persuasion (compliance)
- The motivations and circumstances of individuals and organisations vary. Regulators need to ensure that their actions are appropriate and proportionate
- Frequent interactions with workers and businesses in the informal economy are unlikely to be possible. Regulators might therefore consider trying to work in cooperation with second and third parties
- Firms might be able to exert pressure on their suppliers to meet labour standards, and accordingly this may help to supplement the regulatory efforts of labour inspectorates



GROUP ACTIVITY

- Please discuss in your groups:
  - (a) What are the regulation approaches (e.g. awareness-raising, deterrence) followed in your country?
  - (b) Do any of the approaches involve elements of responsive, smart or meta-regulation (e.g. involvement of NGOs or requirements for organisations to regulate their suppliers)?
  - (c) How effective are the approaches?
  - (d) Should a different approach be tried?
  - (e) What would need to happen to enable a different approach?

SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

SESSION 5  
INFORMALITY AND THE EMPLOYMENT RELATIONSHIP



SESSION OBJECTIVES

- To develop understanding of specific types of work in the informal economy and different approaches to organising work
- To encourage discussion concerning general challenges relating to the status of workers as employees
- To encourage thinking about the potential need for different types of intervention by labour administration and labour inspection services



THE EMPLOYMENT RELATIONSHIP

- An employment relationship is formed where an individual works under the authority of an employer in return for payment (a wage or salary)
- It is not always easy to determine whether or not a worker is an employee
- Employment status ambiguity is a particular problem in the informal economy
- It is therefore crucial that labour inspectors be able to determine whether or not a worker is an employee if they are to tackle problems in the informal economy



THE EMPLOYMENT RELATIONSHIP AND INFORMALITY

- In determining the employment status of a worker, authorities normally consider whether or not the organisation for which the worker performs services is responsible for exercising certain employer functions, such as directing, disciplining and dismissing workers
- In practice, however, matters might not be straight-forward. The following scenarios might arise:
  - The legal nature of the relationship is disguised
  - The form of the relationship is disguised
  - The relationship is ambiguous
  - The relationship is triangular



ILO EMPLOYMENT RELATIONSHIP RECOMMENDATION (R198)

- Member countries are encouraged to ensure that national policy includes measures to, among other things:
  - Provide guidance for employers and workers on effectively establishing the existence of an employment relationship and on the distinction between employed and self-employed workers
  - Combat disguised employment relationships
  - Ensure standards applicable to all forms of contractual arrangements
  - Ensure that standards applicable to all forms of contractual arrangements establish who is responsible for the protection contained therein
  - Provide effective access to procedures and mechanisms for settling disputes regarding the existence and terms of an employment relationship
  - Ensure compliance with, and effective application of, laws and regulations concerning the employment relationship
- R198 also contains guidance to help member countries develop means of determining whether there is an employment relationship



CLARIFYING EMPLOYMENT STATUS

- National laws and codes of practice should be reviewed so as to ensure that there is clarity in relation to the legal status of workers and effective means of determining the status of individual workers or groups of workers
- Ireland provides an example of how this might be done. A specially convened Employment Status Group developed a set of criteria to help determine whether a worker is an employee or self-employed
- The full text is available at <http://www.revenue.ie/en/tax/it/leaflets/code-of-practice-on-employment-status.pdf>



EXTENDING PROTECTION

- Consideration should be given to extending the definition of an employee or extending protection to workers who are economically dependent, yet are not regarded as employees (for example agency workers and labour-only subcontractors)
- Morocco has amended its labour code to extend protection to salespersons and home workers
- The Labour Relations Act of Ontario (Canada) deems 'dependent contractors' to be 'employees'



REMOVING INCENTIVES TO DISGUISE AN EMPLOYMENT RELATIONSHIP

- In the USA, employers are required to:
  - Analyse each exempt job classification as well as each independent contractor position
  - Document justifications for finding that workers are properly classified as exempt or as independent contractors
  - Maintain records demonstrating the employer's analysis of the classifications
  - Provide records to workers so that they can check whether they agree with the classification
  - Conduct management and employee training so that both are able to understand the difference between exempt and non-exempt employees and independent contractors
- Penalties are applicable if an employee is found to have been misclassified as an independent contractor



REQUIRING THAT EMPLOYMENT CONTRACTS BE REGISTERED

- Many countries have introduced requirements relating to the registration of employees
- Employers are required to register all new employment with the appropriate authority either before they begin work or within a specified time period after they have commenced their employment
- In Spain, for example, employers are required to maintain and keep up to date a Personnel Registration Book (in paper or electronic forms), in which all new employment must be recorded from the time when workers commence providing their services
- All categories of employers and workers should be registered



DOMESTIC WORKERS

- Domestic work involves the completion for a third party of tasks such as cleaning, washing, cooking, taking care of children, the elderly, the sick or disabled, driving, gardening, or acting as a guard
- In 2011, the ILO estimated that there were at least 52.6 million domestic workers worldwide, 83 per cent of whom were estimated to be women
- They are at risk of being the victims of forced labour and often work for long hours in unsafe conditions for low pay and do not benefit from basic employment rights
- The regulation of domestic work is difficult because domestic workers are based in households and in many countries they are not considered to be full workers. The ILO, however, has emphasised that domestic workers should be properly recognised as workers
- Labour inspectors might need to access a household that is not the property of the domestic worker. This need can come into conflict with the right to privacy, which is often enshrined in national legislation



PRACTICES IN RELATION TO DOMESTIC WORKERS

- The labour inspectorate of Guatemala has created an internet-based self-evaluation form for employers, in order for them to verify whether they comply with labour law. The form provides a means of raising awareness and ensuring compliance and could potentially be adapted to the employers of domestic workers
- The constitution of Uruguay stipulates that the home is sacred and inviolable. However, the Ministry of Labour and Social Security is permitted to undertake home inspections when there is a 'presumed violation' of labour and social security norms
- In Ireland, a Code of Practice for Protecting Persons Employed in Other People's Homes has been developed. The Code of Practice stresses that domestic workers are entitled to employment rights and protections available to other employees and emphasises that employers should inform their employees of their rights



HOMEWORKERS

- The ILO's Home Work Convention, 1996 (No. 177) defines homework as: '...work carried out by a person, to be referred to as a homeworker, in his or her home or in other premises of his or her choice, other than the workplace of the employer; for remuneration; which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used'
- The Convention emphasises that national policy should promote 'as far as possible, equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise'
- The ILO's Homework Recommendation 1996 (No. 184) emphasises that labour inspectors should be allowed entry to homes 'in so far as it is compatible with national law and practice concerning respect for privacy'
- It can be difficult to identify who is the employer as homeworkers are often at the end of a complex supply chain, not in a continuous employment relationship and in a disguised employment relationship



PRACTICES IN RELATION TO HOMEWORKERS

- Some countries have extended their legislation to cover homeworkers, in some cases (e.g. Morocco, Chile, New Zealand) insisting that they be treated as employees
- Attempts have made to address the difficulties involved in penetrating complex layers of subcontracting
- In India for example the Contract Labour Act, the Bidi and Cigar Workers Act and the Inter-State Migrants Act provide that both the principal employer and contractor who recruits workers or outsources production are 'jointly and severally responsible for complying with labour legislation'



AGRICULTURAL WORKERS

- Agriculture accounts for approximately half of the world's labour force
- The ILO's fundamental principles apply to agricultural workers. Other international standards have also been developed that relate specifically to agriculture
- Many agricultural workers are poorly protected by national labour law
- Agricultural workers typically work in rural locations that may be remote and difficult for labour inspectors to access
- Labour inspectorates face difficulties in determining the employment relationship and employment status of agricultural workers, particularly given the prevalence of family farming, home work and informal work
- Workers might be uncertain who employs them and, therefore, how to claim their employment rights



PRACTICES IN RELATION TO AGRICULTURAL WORKERS

- Some countries compare and cross-check information gathered from several databases and other information sources
- In Spain, labour inspectors examine the size of plantations, the number of working hours spent during harvest of the previous year and the number of workers registered in the database of the social security institution per month
- As a result of this approach, 'the registration of workers in social security databases increased by some 217 per cent in 2009 compared with 2007, and the number of work permit applications rose by 50 per cent' (ILO 2012: 23)



**MICRO-ENTERPRISES**

- A large proportion of informal economic activity around the world takes place within micro and small enterprises (MSEs)
- In general the ILO's International Labour Standards (ILS) do not contain exemptions for MSEs. Many of the Conventions allowing for exclusions concern family enterprises and are no longer considered up-to-date
- It is common for countries to exclude MSEs from certain regulations
- When the law does apply formally to MSEs, compliance is often deficient, either because employers are unaware of their obligations or because they regard them as imposing a cost and deliberately ignore regulations
- Governments need to perform a balancing act, ensuring that there is effective protection for workers while simultaneously preserving an environment in which entrepreneurial behaviour can occur and small businesses emerge and develop



**PRACTICES IN RELATION TO MICRO-ENTERPRISES**

- Providing employers and workers with free/accessible information concerning rights and obligations
- Providing employers with affordable advice in relation to the steps they need to take in order to comply with the requirements set down by labour law
- Simplifying the law in order to make it easier to understand and apply; and ensuring that sanctions are effective but proportionate
- Providing technical advice instead of levying fines
- Supporting trade union organisation and helping to extend it to smaller establishments
- Ensuring that there are reliable means by which workers can make a complaint without fear of reprisals
- Making it easier for MSEs to register their businesses and their employees by simplifying procedures; and implementing other measures to encourage a transition from informality to formality



**KEY POINTS**

- Employment relationships in the informal economy are often deliberately disguised, which creates additional difficulties for labour inspectorates
- Governments should put in place measures that are consistent with the ILO's Employment Relationship Recommendation, 2006 (No. 198)
- Many workers in the informal economy are vulnerable, but their circumstances vary according to where they work and the nature of the work they undertake
- Governments and labour inspectorates therefore need to consider how their regulatory efforts can be tailored to different contexts



**GROUP ACTIVITY**

- Please discuss in your groups:
  - a) What problems might workers in the informal economy confront?
  - b) How might these problems differ according to
    - (i) The type of work performed;
    - (ii) Where the work is performed (e.g. in the home, on a farm)
    - (iii) Who performs the work (e.g. men or women)
  - (c) How might these problems be addressed?
  - (d) What roles should labour inspection services play in addressing these problems?
  - (e) What challenges might labour inspection services face in trying to perform these roles?

**SESSION 6: UNDERTAKING AN INSPECTION**

**SESSION 6  
UNDERTAKING AN INSPECTION**





SESSION OBJECTIVES

- To consider issues relating to the planning of site visits
- To encourage participants to think about the issues you might need to address during a site visit
- To encourage participants to think about who they might need to talk to and what sorts of information may be needed to determine whether workers' rights have been infringed
- To consider the sorts of questions that might be needed in order to collect relevant information
- To consider the difficulties involved in making assessments and in using information collected during inspections to judge the extent of compliance and national provisions



REACTIVE VS. PROACTIVE INSPECTIONS

Proactive

- Planned by either the inspector, team leaders and/or managers
- May target specific types of industry/specific sites
- May reflect strategic decisions at the national level (e.g. inspectorate HQ)

Reactive

- 'Reactive' in response to complaints received
- Inspectors may not know the details of a complaint (this may be confidential)

Case loads

- Often allocated by team managers to ensure a timely, cost-effective and fair distribution



PRE-INSPECTION CHECKLIST

Things to bring:

- A print out of the company/business details from website (if available)
- A copy of the last inspector's report, if previously inspected
- The Company Registration printout (country equivalent) and notes of work permits/database checks
- Your appointment letter, including inspector contact details (phone/fax and email)
- If the inspection was arranged/confirmed by phone: a record of the telephone call, including the agreed date and time of inspection
- If responding to a complaint, evidence that the complainant was contacted to verify information
- Proof that the inspection was confirmed in advance of the inspection



INTERVIEWING EMPLOYERS

- Be consistent, thorough and fair!
- Identify yourself and produce any required certificates/warrants of authorisation to the employer
- Often the employer will not know if the inspection is 'reactive' or 'proactive'
- Once consent has been given, the inspector should inform the employer which piece(s) of legislation govern the inspection
- Follow procedures when consent is not given for the inspection – i.e. there is resistance from the employer
  - The employer may be required to submit a form to the inspectorate outlining their case for resistance
- When undertaking the inspection relevant records should be requested
- Check if the employer requires any other employment rights information where appropriate



INTERVIEWING EMPLOYEES

- Interviewing employees is important for:
  - Verifying information provided by the employer
  - Establishing problems not otherwise anticipated/uncovered in the course of the inspection
- For many inspectorates interviews should normally take place on the day of the inspection, together with the examination of records
- Questionnaires may also be issued depending on the inspectorate
- All inspections should be used to provide employees with information regarding their employment rights
  - Where possible literature should be available in a variety of languages (this may be especially relevant for categories of migrant workers)



EXAMINING RECORDS

- Certain employment records may be prioritised in the course of the inspection
  - Records should be examined and verified. Copies should be taken and kept on file
  - Employer assistance should be sought where necessary
- Records should be drawn across an established time period (e.g. the last 12 months prior to the inspection date)
- Many inspectorates will establish a minimum sample criteria (e.g. a proportion of wage slips over a given time period)
- Inspectors may use judgement to establish which additional records may be necessary to request and examine





**BASIC EMPLOYMENT RECORDS TO EXAMINE**

- Terms of Employment issued by the employer for a sample of employees
- Payroll details (e.g. gross to net pay rates, rate per hour, overtime, deductions...)
- Copies of payslips
- Annual leave/public holiday entitlements for each employee
- Register of those employees who are regarded as especially young under the law
- Whether board/lodgings are provided and relevant details of these if so
- Any other documentation necessary to demonstrate compliance



**INSPECTION CHECKLIST**

Inspectors may be required to ensure the following is complete in order to facilitate appropriate follow-up actions against an employer:

- Full inspectorate forms should be in tact (including date, start/finish times of inspections), with notes and calculations that are signed and dated by relevant parties.
- A list of employees and their job classification should be recorded together with a sample of relevant employment records
- A note of the records required by statute but not kept/produced by the employer should be included in reports
- A record of the number of employees should be included in the report, including the number of employees interviewed on the day; the number of employees to whom questionnaires were issued or posted; and the number of employee questionnaires that were returned
- Evidence of any caution should be included in the report



**DOMESTIC AND AGRICULTURAL WORKERS**

**Domestic workers**

- Difficulties associated with invisibility and rights of privacy
- Possible strategies:
  - Find novel routes of gaining site access (e.g. permission to enter, requests to interview off-site)
  - Promote telephone hotline/advice services for workers
- ❖ **What other problems/solutions can you think of?**

**Agricultural workers**

- The employment relationship is often hidden/ removed from public eye
- Employees may be subject to excessive hours, low wages and insufficient rest periods
- Possible strategies:
  - Target known agricultural sectors
  - Target known problem areas (e.g. health and safety concerns of key concern for workers operating machinery)
- ❖ **What other problems/solutions can you think of?**



**STREET VENDORS AND MICRO-BUSINESSES**

**Street vendors**

- Common problem in relation to a lack of permits/ facilities for staff and customers
- Possible strategies:
  - Promote solutions to the above – e.g. via information campaigns and the promotion of regulated facilities where possible
  - Explore possibilities for working with third sector organisations to promote compliance (i.e. smart regulation)
- ❖ **What other problems/solutions can you think of?**

**Micro-businesses**

- Problems often surround awareness or avoidance of formal rules and regulations
- Possible strategies:
  - Persistent engagement with non-compliant business owners
  - Try to establish whether rule breaks are down to mistakes or deliberate acts
  - Move 'up' the enforcement pyramid to help encourage compliance
- ❖ **What other problems/solutions can you think of?**



**STAYING SAFE**

- Inspectors must always follow the safety guidelines of their national inspectorate
  - This includes adherence to basic mandates on safety (e.g. in Ireland inspectors must operate in pairs during night-time inspections)
- Whatever the context, negative/hostile reactions from employers are often an occupational hazard of labour inspection
  - Inspectors should issue warnings when such behaviour occurs, and reiterate the legal mandate of the inspectorate and any consequences for blocking the inspection
- Inspectors should end the visit and report non-compliance in the event of sustained abuse/hostility.
- In instances where distress is experienced by the inspector
  - Report the incident to your team leader/superior
  - Seek available counselling/support from your inspectorate
  - Report any untoward behaviour on the part of employers/employees on the appropriate section of the inspection file



**KEY POINTS**

- Proactive inspections are planned by inspectorates in the first instance, and are likely to stem from a deliberate strategy (e.g. the targeting of a certain industry). Reactive inspections typically stem from complaints received by the inspectorate
- Inspectors will often interview both employers and employees. The appropriate inspection form should be used in each instance
- In the course of examining employment records copies should be taken and kept on file if possible. Records taken will ideally be based on an established time period
- A final meeting/interview with the employer is desired prior to leaving the premises. Details of any subsequent action (e.g. follow-up letters) should be explained
- Inspectors should follow their inspectorate safety guidelines with respect to handling hostility/threatening situations that emerge in the course of the inspection



**DISCUSSION 1**

- Working in groups, identify and discuss:
  - (a) 3 things that you think are easy
  - (b) 3 things that you think are difficult
- ...in assessing whether workers in the informal economy are being treated in ways that are consistent with national labour law

Consider similarities/differences in the situation of different groups of workers in the informal economy:

- Domestic workers
- Home workers
- Agricultural workers
- Street vendors
- Micro-businesses



**DISCUSSION 2**

- Linked to the earlier discussion, explain the types of information that you would need in order to determine whether workers are being treated in ways that are consistent with the law
- Devise a number of techniques, including questions, which may be useful for gathering this information

**SESSION 7: MAKING DECISIONS AND FOLLOW-UP ACTIONS**

**SESSION 7  
MAKING DECISIONS AND FOLLOW-UP  
ACTIONS**



**SESSION OBJECTIVES**

- To discuss the various types of decision that an inspector might make
- To discuss the different considerations that influence decisions
- To discuss the different types of action that might be taken following an inspection
- To discuss the various ways in which compliance might be ensured in the longer-term
- To discuss forms of support that might be provided to businesses and workers



*"However advanced it may be, a country's labour legislation is liable to remain a dead letter if there is no system of labour inspection to enforce it"*

**Report of the Director-General, International Labour Conference, 71<sup>st</sup> Session, 1985.**



**ACTION PLANS**

- Action plans are used to follow-up/monitor actions taken as a result of the inspection
- Plans should include:
  - A structured plan designed to achieve an end goal
  - A breakdown of milestones and deadlines for achieving tasks
  - A breakdown of the roles of stakeholders (i.e. expectations on employers and inspectors)
  - For employer and workers: details of where to access necessary information to help achieve compliance
- It may be possible to link action plans to specific layers of the Enforcement Pyramid (see Session 4)
  - E.g. action plans may be re-appraised/re-designed following non-compliance on issues agreed with an employer



**INITIAL ACTIONS**

- After the assessment the inspector should prepare to write the inspection report
- Reports should be written as soon as possible after a conclusion is reached (ideally within 1 working day)
- Inspectors should consult notes from the inspection and the closing meeting. Inspectors should re-examine any problems identified
- Inspectors should consult with technical colleagues and fact-check against legal texts, guidelines and publications. This will help to ensure recommendations and actions taken are correct
- A decision should be taken regarding what action is required depending on the problems uncovered. Outcomes may depend on:
  - The assessment of how seriousness the non-compliance issue is
  - The inspector's powers under the law
  - The likelihood of different actions improving the workplace situation in a sustainable manner



**RECORD KEEPING AND INSPECTION REPORTS**

- The system used for capturing records depends on the type of software used. Inspection reports should be added to (ideally electronic) files on the enterprise in question
  - Inspectors should include any comments where applicable
- Reporting and data entry is vital for building up a case against employers
  - Records may also be helpful for generating the case for greater investment, training, and technological enhancements in the inspectorate
  - The format of inspection reports is likely to vary, but may include:



**HEALTH AND SAFETY**

- Your inspectorate may have a distinct mandate with respect to health and safety compliance, including the encouragement of strong health and safety compliance
- Inspectorates have a remit to check machinery, equipment and aspects of the role which involve risk
- The role of the inspectorate is likely to vary with respect to documenting discrepancies and taking action
  - Action may include offering basic advice such as the uptake of accident reporting systems where none is present. In addition advice may be offered on risk avoidance including solutions to both complex and simple scenarios (e.g. training in how to place a ladder correctly)
  - Health and safety should be encouraged among owners, managers and workers
- Some inspectorates have a limited function/role with respect to health and safety
  - Is this the case in your own inspectorate?
  - If so, does your inspectorate liaise with another Health and Safety Department/body? Does part of your inspection role involve communication of findings/awareness raising with this body?



**REPORT CONTENT EXAMPLE**

**Inspection details:**

- ⊙ Nature of inspection (routine, special, follow-up, investigation etc.);
- ⊙ Nature of all contraventions;
- ⊙ Priority areas for attention;
- ⊙ Action to be taken on each priority area

**General information on the enterprise:**

- ⊙ Name;
- ⊙ Legal status (company, partnership);
- ⊙ Relation to other entities and companies (e.g. subsidiaries);
- ⊙ Nature and description of the business;
- ⊙ Location and address;
- ⊙ Contact person and telephone/fax numbers/email addresses;
- ⊙ Number of employees (disaggregated by sex, young workers, occupational categories);
- ⊙ Special processes or high risks (e.g. use of chemicals)

**Working conditions:**

- ⊙ Hours of work; minimum wages and allowances paid; weekly rest periods and holidays;
- ⊙ Other legal conditions of employment requirements;
- ⊙ Health and Safety conditions;
- ⊙ Medical and welfare services;
- ⊙ General state of 'housekeeping';
- ⊙ Rating of enterprise in terms of hazards;
- ⊙ Rating of firm's ability and willingness to maintain/improve existing standards

**Industrial relations:**

- ⊙ Existence of a trade union; whether collective agreements are applicable or not;
- ⊙ Number and function of workers' representatives;
- ⊙ Existence of a functioning consultative committees;
- ⊙ Frequency of strikes (if any)



**MAKING DECISIONS: ISSUING A CAUTION**

- Discretion – inspectors may operate with different levels of discretion depending on their seniority and their inspectorate
- Inspectors must remain consistent and transparent in their decision-making
- When inspectors have considered the information gathered and established a clear case of non-compliance, they may decide to issue a caution (or national equivalent) to the employer. Typically this will involve reading employers their legal rights
- The caution must be added to the file. Records should include the time, date, any notes taken and general content of the employer's responses
- An employer often has no obligation to provide a response to the caution
- A copy of the appropriate records taken which provide evidence of the breaches (or explanation for the lack of evidence) should be recorded on file



NON-PAYMENT OF WAGES

- Common areas of concern include the under- or non-payment of wages, and a failure to provide payslips
- A solicitor is often required for cases likely to result in legal enquiries and court cases
  - With this in mind a solicitor's letter may be sent as a last resort to encourage employers to rectify breaches (this should also be recorded on the case file)
  - A letter should be sent to the employer emphasising the need to respond within a set number of working days
  - Inspectors should record and seek recovery of unpaid wages for any employees affected
- The employer may be asked to calculate unpaid wages for a set period
  - Calculations should then be checked against records collected during the inspection. Employees should contact employers over any discrepancies.
  - Where there are no records of time worked the employer may be asked to provide a written note of the rationale used to calculate unpaid wages that are due; this should be verified with a sample of employees
  - All calculations completed by the inspector should be signed, dated and filed



RECOMMENDING A CASE FOR PROSECUTION

- Prosecutions should only be initiated/continued where there is sufficient admissible, relevant and reliable evidence that indicates an offence has been committed
- Linked to the last slide, inspectors should check and ensure that the case file includes some of the following:
  - *An inspector report which is signed/dated with relevant legislation cited. The file should contain all relevant evidence to support the decision that an offence was committed*
  - *Copies of any complaints on file, and the dates of any offences should be clearly outlined*
  - *A calculation of any unpaid wages/details of other misdemeanours, and statements of any employees interviewed*
  - *The inclusion of any evidence that the named employee(s) were employed by the employer (e.g. payslips, employer records, other evidence)*
- Inspectors are likely to possess different levels of discretionary power and operate through different processes according to the inspectorate
  - E.g. Inspectors may be able to issue fines autonomously (i.e. prior to a court prosecution) based on their own decision-making. In other cases only managers may be able to issue fines



REFLEXIVITY

- How do the above processes work in your respective inspectorates?
- Do you have any additional remits/actions you are expected to carry out over the course of an inspection?

Some other questions worth discussing:-

- Who makes the key decisions with regards to inspection outcomes?
- Are your recommendations followed up? If so, by whom?
- What are the strengths of your current practices? Are there any weaknesses?
- What good practices might you introduce to supplement those which exist?
- In your experience, are inspection outcomes based on a consistent engagement of rules, or more subjective interpretations of rules and what to do next?
- What is missing/what would you improve upon when it comes to decision-making?
- With respect to the enforcement pyramid, how much discretion do you have as an inspector to adopt different actions from 'up'/down' the face of the pyramid?



KEY POINTS

- Action plans are a useful resource for following-up and monitoring any actions/decisions taken as a result of the inspection
- Inspectors should be rigorous and thorough when documenting inspection findings. Report details should be recorded soon after the inspection has taken place (ideally within one day)
- Inspectors should follow their inspectorate's procedures when indiscretions and non-compliance are found to have taken place
- In all cases the records taken should play a vital role in deciding the outcome of any action taken, ranging from a basic caution to a court prosecution



SCENARIO 1

An employer is alleged to have under-paid his or her employees. In addition there are rumours that workers have not been paid the legal minimum level required by state legislation. The employer says that none of this is true, although the business does not issue formal payslips as a matter of course. Accordingly there is no evidence to confirm the employer's claims. At the very least the employer is guilty of not issuing payslips and/or documenting the breakdown of relevant pay periods (e.g. overtime, holiday pay etc.)



SCENARIO 2

It has been established that workers are being required to work with potentially hazardous substances but have not been issued with adequate safety equipment (e.g. protective clothing, eye protection). Unfortunately employees are not forthcoming with evidence of the above, potentially because they fear losing their main source of income. Although inspectors have witnessed several safety violations, the case for prosecution would be far stronger with employee testimonies.



**SCENARIO 3**

Your inspectorate has received repeated complaints that a street vendor is operating an illegal fast-food business in a backstreet adjacent to a busy high-street where numerous (legitimate) eateries are based. In the past you have struggled to locate the vendor, and when you have located them only relatively minor issues of non-compliance have emerged. However there are now allegations that the vendor is operating without a permit and is underpaying staff. In the past the street vendor has suggested that claims against him are being made by rival businesses who are jealous of the vendor's success.



**SCENARIO 4**

Complaints have been made that women on a housing estate are manufacturing garments for an unknown supplier. You do not know who is contracting this alleged informal employment, but you have information regarding the address at which the women are working.

**SESSION 8: SUPPORTING LABOUR INSPECTION**

**SESSION 8  
SUPPORTING LABOUR INSPECTION**



**SESSION OBJECTIVES**

- To encourage thinking about the necessary conditions for effective inspection activities
- To develop practical suggestions for ways of enhancing the effectiveness of labour inspection activities in the informal economy



**RESOURCES AND TRAINING**

- Labour inspectorates need adequate resources
- Severe staff shortages can reduce the effectiveness of the inspectorate
- New technology can help to improve efficiency (e.g. use of tablet devices)
- Inspectors need to receive regular training updates (e.g. on procedures and changes to legislation that arise over time)





### INFORMATION SYSTEMS

- Reliable and accurate information systems are vital
- Computerised case management systems provide a means of monitoring progress on cases and measuring the performance of inspectors and divisions. They can also provide a source of information that enables targeted and informed inspections
- It is important that inspection records are easy to complete and that they are stored in an electronic format which is accessible

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### DATA SHARING

- Ensuring adequate information will often require cooperation with other bodies within the national labour administration system
- The ability to share data is essential if cooperation between bodies is to be effective
- Several countries have taken steps to improve their ability to share data
- In the Czech Republic, an interconnected information system gives staff of all ministries and agencies with a role in the informal economy direct access to relevant data from the other institutions' databases
- In Germany, a joint database and information platform has been developed, which can be accessed remotely

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### A TARGETED APPROACH

- Where the informal economy is relatively large, labour inspectorates will struggle to cover all industries, occupations and regions
- Labour inspectorates might therefore consider targeting specific industries or locations where informal activity is known to be prevalent
- One approach is to focus all proactive inspection work on industries that are considered high-risk, while continuing to respond to problems that arise in lower-risk industries
- Another approach is to have sustained campaigns in particular industries and regions, with the selection being changed on a regular basis (perhaps annually)
- However, a targeted approach is likely to be difficult to take where enterprises are very small or have no fixed location

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### COORDINATION AND COOPERATION WITH OTHER BODIES

- The informal economy is an area where collaborative relationships are particularly important
- A number of government departments (e.g. tax authority, Ministry of the Interior) might have an interest in the informal economy
- The importance attached to close cooperation has led many countries to institute measures to place cooperation on a formal basis (e.g. via memoranda of understanding, inter-departmental commissions and working groups)

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### EXAMPLES OF COOPERATIVE EFFORTS TO TACKLE THE INFORMAL ECONOMY

- In Spain, collaboration of key agencies is ensured by an Act, which requires any organisation that performs a public function to provide the Labour and Social Security Inspection service all relevant data, reports and background information that it requires and to collaborate with it in relation to inspection activities
- In the Czech Republic the SLIO (labour inspectorate) is a member of several interdepartmental commissions and working groups. These include an Interdepartmental Body for Combating Illegal Employment of Foreigners, a Government Council for Occupational Safety and Health Protection, and an Analytical Centre for the Protection of the State Borders and Migration
- Ireland has established a Hidden Economy Monitoring Group (HEMG). The group is a collaboration between the labour inspectorate, government departments with responsibility for tax and social insurance and the social partners

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### CROSS-BORDER COOPERATION

- Many of those who work in the informal economy are migrant workers
- Cross-border flows, which may be facilitated by labour market intermediaries such as employment agencies, imply a need for cross-border cooperation involving labour ministries and labour inspectorates in different countries
- For example, in the UK the Gangmasters Licensing Authority (GLA) informs overseas labour inspectorates of licences they have issued to labour suppliers from those countries

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**KEY POINTS**

- Labour inspectors need to be adequately rewarded and trained
- It is important that labour inspectorates maintain up-to-date (and ideally computerised) databases
- Targeted and risk-based inspection approaches can be used where the informal economy is relatively large
- Cooperation between the labour inspectorate and other government departments and agencies is extremely important. Government efforts in relation to the informal economy need to be 'joined up'
- The involvement of migrant workers in the informal economy can be an incentive for greater cross-border collaboration by labour inspectorates



**GROUP ACTIVITY**

- Please discuss in your groups potential ways in which inspection activities in relation to the informal economy might be enhanced
- Think of practical steps that your government and labour inspectorate might be able to take at different levels (e.g. national, territorial) to improve the capacity and operational effectiveness of the labour inspectorate
- Please develop 3 or 4 suggestions for improvements in your country

**SESSION 9: REFLECTIONS AND CLOSE**

**SESSION 9  
REFLECTIONS AND CLOSE**



**SESSION OBJECTIVES**

- To establish what you have learned that is of value
- To explore the ways you may apply knowledge from the course
- To uncover any barriers (and identify possible solutions to these) so that you may apply this knowledge
- To talk reflexively about what you hope will be different in your role a result of this training



**KEY POINTS: SESSION 2 – RELEVANT ILO STANDARDS AND PRINCIPLES**

- In principle, ILO standards apply to both the formal economy **and** the informal economy
- In practice, protections are often not extended to informal economy workers
- The ILO encourages member countries to review their labour laws and labour administration practices. Countries should also seek to extend labour law coverage to workers in the informal economy
- The ILO also encourages member countries to improve transitions from the informal economy to the formal economy
- The ILO's 2015 Recommendation provides member countries with guidance to help them to improve protections for workers in the informal economy and facilitate their transition to the formal economy

**KEY POINTS: SESSION 4 – REGULATING THE INFORMAL ECONOMY**

- Deterrence-oriented and compliance-oriented strategies both have potential strengths and drawbacks
- Regulators should consider developing an approach that uses both coercion (deterrence) and persuasion (compliance)
- The motivations and circumstances of individuals and organisations vary. Regulators need to ensure that their actions are appropriate and proportionate
- Frequent interactions with workers and businesses in the informal economy are unlikely to be possible. Regulators might therefore consider trying to work in cooperation with second and third parties
- Firms might be able to exert pressure on their suppliers to meet labour standards, and accordingly this may help to supplement the regulatory efforts of labour inspectorates

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**KEY POINTS: SESSION 5 – INFORMALITY AND THE EMPLOYMENT RELATIONSHIP**

- Employment relationships in the informal economy are often deliberately disguised, which creates additional difficulties for labour inspectorates
- Governments should put in place measures that are consistent with the ILO's Employment Relationship Recommendation, 2006 (No. 198)
- Many workers in the informal economy are vulnerable, but their circumstances vary according to where they work and the nature of the work they undertake
- Governments and labour inspectorates therefore need to consider how their regulatory efforts can be tailored to different contexts

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**KEY POINTS: SESSION 6 – UNDERTAKING AN INSPECTION**

- Proactive inspections are planned by inspectorates in the first instance, and are likely to stem from a deliberate strategy (e.g. the targeting of a certain industry). Reactive inspections typically stem from complaints received by the inspectorate
- Inspectors will often interview both employers and employees. The appropriate inspection form should be used in each instance
- In the course of examining employment records copies should be taken and kept on file if possible. Records taken will ideally be based on an established time period
- A final meeting/interview with the employer is desired prior to leaving the premises. Details of any subsequent action (e.g. follow-up letters) should be explained
- Inspectors should follow their inspectorate safety guidelines with respect to handling hostility/threatening situations that emerge in the course of the inspection

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**KEY POINTS: SESSION 7 – MAKING DECISIONS AND FOLLOW-UP ACTIONS**

- Action plans are a useful resource for following-up and monitoring any actions/decisions taken as a result of the inspection
- Inspectors should be rigorous and thorough when documenting inspection findings. Report details should be recorded soon after the inspection has taken place (ideally within one day)
- Inspectors should follow their inspectorate's procedures when indiscretions and non-compliance are found to have taken place
- In all cases the records taken should play a vital role in deciding the outcome of any action taken, ranging from a basic caution to a court prosecution

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**KEY POINTS: SESSION 8 – SUPPORTING LABOUR INSPECTION**

- Labour inspectors need to be adequately rewarded and trained
- It is important that labour inspectorates maintain up-to-date (and ideally computerised) databases
- Targeted and risk-based inspection approaches can be used where the informal economy is relatively large
- Cooperation between the labour inspectorate and other government departments and agencies is extremely important. Government efforts in relation to the informal economy need to be 'joined up'
- The involvement of migrant workers in the informal economy can be an incentive for greater cross-border collaboration by labour inspectorates

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**GROUP ACTIVITY**

Working in groups, please discuss answers to the following questions:

- What have you learned that is of value?
- How will you apply this knowledge?
- What needs to happen in order for you to be able to apply this knowledge?
- Is there anything you hope will be different as a result?

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**LAB-FORUM**

If possible, complete your registration for Lab-Forum and continue these discussions in your own time via: <http://www.woerrc.group.shef.ac.uk/forum/page/home>



