



Title: The Law-Growth Nexus:
A mapping of labour law and MSE development

Country: Multiple, Sub Saharan Africa

Lead Office: Small Enterprise Development Team (SEED), Job
Creation and Enterprise Development Department,
ILO, Geneva.

**Responsible ILO
Official:** Graeme Buckley, EMP/SEED
Tel. +41 22 799 6312, email: buckleyg@ilo.org

**Collaborating
ILO Units/offices:** Sub-regional Offices in Harare, Addis Ababa,
Yaoundé, Dakar, DIALOGUE

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The Law-Growth Nexus: A Mapping of Labour Law and Micro and Small Enterprise (MSE) Development

Favourable, stable framework conditions are a precondition for private sector development. Framework conditions are normally defined as national conditions that are directly or indirectly influenced by political decisions. Norad helps to improve framework conditions, thereby better enabling developing countries to develop their business and industry.

NORAD policy on Private Sector Development

I. Background and Justification

Problem statement

Institutions matter for growth and the rule of law plays a key role in economic development. Legal institutions and laws have a direct bearing on the formation and growth of enterprises and this project will explore in detail the effect of labour and labour related laws on micro and small enterprises in Africa. The legal structure and the body of laws on which the legal structure is based forms a bridge or nexus between unregulated, poor quality and ultimately unsustainable development and regulated, higher quality, rights based and sustainable development. The law-growth nexus is a vitally important topic both because the unregulated or informal economy is so large in all countries in Africa (and by extension most employment is in MSEs) and because the quality of growth is so important for sustainable development.

Labour law is an important component of the broader enabling environment for sustainable enterprise development but it typically presents a conundrum: striking a balance in terms of minimizing the cost of the regulatory burden on MSEs and thus enhancing the prospects for competitiveness and growth, without compromising the laws and regulations designed to protect those who work in MSEs. This is an issue of growing international debate and the ILO has a mandate and comparative advantage in this field.

Most countries in Africa have large informal economies and in practice, most MSEs in Africa operate in the informal economy, typically beyond the purview of laws and regulations. For many MSEs the decision to remain informal is deliberate because the costs and procedural burden of joining the formal economy outweigh the benefits of staying in the informal economy. In many countries, the informal economy accounts for a significant but hidden portion of GDP. In Burkina Faso, for example, a country of 12 million people, only about 50,000 are employed in the formal economy and the informal economy accounts for about 38 percent of GNP.

However, MSEs make large contributions to national economies in both human and financial terms but when they operate informally, they cannot easily be reached with business services and they will struggle to compete for business with larger companies. Workers in such MSEs typically lack job protection and benefits such as access to health and safety provisions, wage protection, insurances, pensions and to unions. Informal MSEs also have restricted access to investment and credit. By being outside the formal regulatory framework, informal activity cannot be taxed which represents lost revenue to governments. Thus, MSEs operating in the informal economy can be a barrier to broader and sustainable economic development.

Labour Law and MSEs

There is a continuum between formality and informality meaning that enterprises may operate formally in some senses (e.g. by paying certain taxes) but informally in other senses (e.g. by avoiding registration). However, the implementation of labour law among MSEs is likely to be poor and evasion and/or avoidance of laws and regulations is also likely to be particularly pronounced among MSEs.

The evasion of laws and regulations is obviously undesirable and so is the fact that those who work in informal units do not enjoy the protection and rights that are afforded to their counterparts in the formal sector. The challenge is to identify which approaches are best suited to both broaden and deepen the coverage of labour law to include MSEs. In particular, the challenge is to identify the “win-win territory” where it is possible to reduce MSE compliance and/or efficiency costs whilst not compromising the protections which should be afforded to workers through, for example, the implementation of international labour standards. It is important, of course, to bridge the theory of legal provision with the practice in terms of its implementation.

Labour and labour related laws are taken to include:

- collective bargaining and freedom of association
- anti-discrimination/equal employment opportunity
- prohibitions on forced labour/child labour
- minimum wage
- overtime/working time limits
- paid time off
- social security (retirement, disability, death, sickness and health benefits)
- unemployment insurance
- workers' compensation
- protection against unjust dismissal
- occupational health and safety standards
- parental/family leave
- employee consultation
- protection of rights and entitlements on transfer of undertaking
- type of employment contract.

In addition to non specific provision in labour codes, there are three broad approaches which can be adopted to embrace MSEs:

- a) exemption of the MSEs from the labour and labour-related laws;
- b) partial exemptions;
- c) parallel labour law regimes or;

Exemption of MSEs from the labour and labour-related laws: In some countries all enterprises below a certain threshold size (generally ten workers) are excluded from the scope of application of all labour laws. In other countries, some categories of workers are excluded due to narrow definitions of the employment relationship concerning for example “daily workers”.

Partial exemptions from certain specific statutes: In some countries, labour legislation covers all workers but exempts MSEs from certain specific sections of the general

statute, for example requirements to establish an occupational safety and health committee in the enterprise or the regulations concerning collective dismissal.

Parallel labour law regimes: A number of countries have adopted specific MSE laws, usually as stand-alone texts separate from the principal labour laws, but not always. Countries have created parallel labour regimes for MSEs with lower standards regarding matters such as hiring and firing, paid vacations, working hours and social security as well as in some cases simplified administrative procedures.

Objectives and outcomes

The overall objective of this project is to promote better business environments for workers and employers in MSEs. This will be achieved through realising the intermediate objective of developing good practice guidelines for labour and labour related laws for MSEs.

This work will help the ILO to develop training and capacity building tools and guidance on good practices. It will inform the ILO's policy work in this area and build the capacity of constituents to participate in policymaking. Ultimately, by developing good practice guidance on labour law and MSEs, the project will help governments to develop a legal and regulatory environment conducive both to the formation and growth of enterprises and to the realisation of decent work objectives embodied in labour and labour related laws.

The project in context

This policy oriented research project forms part of a broader stream of work on labour laws and MSEs currently being undertaken by the Job Creation and Enterprise Development Department at the ILO at the request of the Employment and Social Policy Committee of the ILO's Governing Body. It also builds on the 2007 International Labour Conference conclusions from the general discussion on the promotion of sustainable enterprises.

Other complementary action oriented research and policy activities currently underway cover aspects of labour and labour related laws and their impact on the formation and growth of MSEs in Asia and Latin America as well as other none country specific studies.

Management and institutional arrangements

The project will be divided into three interrelated but distinct phases covering a total period of approximately 24 months. A progress report will be issued at the end of phases 1 and 2 and a final report at the end of phase 3.

The project is a joint initiative between the Small Enterprise Team (SEED) at the ILO HQ in Geneva and enterprise specialists based in ILO Sub-regional Offices in the field. It will draw on specialist inputs and advice from labour lawyers at the ILO and will involve close collaboration with ILO constituents in each country. An international consultant will be engaged to provide expert oversight, quality control and coordination of national field based consultants. This will be done through regular contact via tele or video conference and occasional travel to support field based research if and when necessary. National consultants will be engaged to undertake the country level work, including organisation of the relevant workshops.

2. Strategy

Phase 1

Phase 1 will involve a desk based ***mapping of the labour code and related laws and their coverage and application to MSEs in about 12 countries in Sub-Saharan Africa***. This will fill an identified knowledge gap concerning labour law and MSEs. The selection of countries will be based on a number of criteria, including ILO Employment Sector focus countries, at least one country from each of the four ILO Sub-regional Offices in Sub Saharan Africa (Harare, Dakar, Yaoundé and Addis Ababa) and a selection based on what are judged to be countries with both relatively good and relatively poor environments for doing business. The choice of countries will be determined at a meeting of ILO specialists due to take place in Ghana before the end of 2007. It is expected that the following countries may to be included: Mozambique, South Africa, Namibia, Ghana, Mali, Senegal, Burkina Faso, Ruanda, Uganda, Cameroon, Tanzania and Kenya.

At the end of phase 1, a short brief (about 10 pages) for each country and a summary analysis will be produced, covering:

- a) Manner in which MSEs are covered (according to points a – c above) in the labour code
- b) Identification of salient aspects of separate/broader legal and regulatory frameworks and instruments covering MSEs, including gender related dimensions.
- c) Current status and most recent changes in the labour code and the relevance or otherwise of these changes to MSEs
- d) Current status and trends in labour law compliance amongst MSEs
- e) Estimated cost of compliance with labour law provisions for a typical urban small firm (e.g. percentage of wage cost)
- f) Capacity of labour administration to enforce labour law compliance

It is expected that this work will take place over a period of 4 months and will involve the engagement of national consultants (probably a lawyer and economist team based on 4 work months each) under the overall guidance of a project coordinator engaged for two months spread over the four month duration of phase 1 of the project.

National consultancy inputs	
8 work months @ \$10,000	80,000
Travel (HQ and local)	30,000
International coordinator 2 months (2 x 15,156)	30,312
Publications, communications and reporting	4,000
Sub-total	144,312
Programme support income 13%	<u>18,761</u>
Total	163,073

Phase 2

Phase 2 will involve the identification and elaboration of **six country case studies** (from the initial larger sample) which illustrate interesting examples or approaches for further analysis, identifying the costs and benefits of different labour law regimes on the formation and growth of MSEs (from the perspective of both entrepreneurs and those who work in MSEs).

Subsequently and based on the country case studies, tri-partite (plus)¹ **country level workshops and policy dialogues** will be organised in each country to increase awareness of the effects of legal structures, laws and specific labour and labour related laws on the development of MSEs. This is expected to lead to increased capacity of governments to effectively implement labour and labour related law with respect to coverage of MSEs and to the adoption of good practices or policy reforms by governments.

In each country, the analysis and subsequent policy dialogue will centre on assessing:

- the potential of MSEs for creating decent and productive jobs and how this can best be harnessed for the economic growth of the respective countries;
- the compliance requirements of labour and labour related laws and how they affect the growth and job creation potential of MSEs in these countries;
- how the 'growth trap'² for MSEs can be eased while extending appropriate labour law requirements to MSE's so as to create an enabling environment for employment growth whilst protecting the rights of workers; and
- the key aspects of the broader legal structure and institutions which impact on the formation and growth of MSEs.
- emerging international good practices.

In addition to interviews with key stakeholders and selected focus group discussions, it is expected that a survey instrument (questionnaire) will be used to assess compliance, perceptions and implementation.

The tripartite plus dialogue in each country is expected to result in:

- an understanding of the role and dynamics of legal requirements, including labour law, in creating a conducive environment for growth of small enterprises and jobs;
- an agreed set of parameters for policy formulation and implementation mechanisms;
- an agreed set of required labour law reforms and/or required improvements in labour law administration;

¹ Tripartite means the ILO constituents, i.e. government, workers and employers' organisations. Tripartite plus means the inclusion of other entities in addition to the constituents, such as NGOs, academia, donors or other relevant stakeholders. The social partners are workers' and employers' organisations.

² The growth trap refers to cases where due to regulations and related costs, enterprises may have little or no incentives to grow beyond the threshold for compliance.

- a set of capacity building measures *with implementation strategies and achievement indicators* for each of the countries.

It is expected that this work will take place over a period of approximately 8 months; it will involve the engagement of national (local) consultants for 1 ½ months in each country and the continuation of the project coordinator (an international consultant or coordinator) engaged for four months spread over the eight month duration of the project).

National consultancy inputs	
nine work months @ \$10,000	90,000
Workshop cost (6 x 15,000)	90,000
International coordinator (3 x 15,156)	45,468
Travel (HQ and local)	30,000
Evaluation	15,000
Publications, communications and reporting	5,500
Sub-total	275,968
Programme support income 13%	<u>35,876</u>
Total	311,844

Phase 3

The third phase is contingent on the earlier two phases and on inputs from the related complementary work underway in Asia, Latin America and elsewhere. It is divided into two parts and it is expected that this phase will cover a period of up to 12 months

Phase 3 (i)

Will involve the drafting and ***publication of a guide on the law-growth nexus*** and, in particular, on ***good practices in labour and labour related laws and MSE development*** by bringing together the material and case studies of the earlier two phases. It will also entail the integration of this into a broader ***training package*** on small enterprises and the business enabling environment.

This work will mainly be undertaken by ILO staff and the costing is based on the publication and distribution costs associated with the guide and the costs of developing training materials.

Production and distribution of guide and development of training package	20,000
Programme support income 13%	2,600
Cost increase (year 2)	1,130
Total	23,730

Phase 3 (ii)

As a result of the country level work undertaken in phase 2, it is envisaged that a focused set of promotional and capacity building activities will be undertaken in one country (to be identified during phase 2) where there is particular scope for implementing an agreed set of reforms. This work will aim at **assisting in the implementation of agreed labour law/administrative reforms.**

National consultancy inputs	
two work months @ \$10,000	20,000
Workshop cost	20,000
International coordinator (2 x 15,156)	30,312
Travel (HQ and local)	15,000
Programme support income 13%	11,091
Cost increase (year 2)	4,820
Total	101,223

3. Reporting: Monitoring and Evaluation

ILO shall submit to NORAD a progress report at the end of phases 1 and 2 and a final report at the end of phase 3. Each report shall include the following information:

- A description of activities and actual outputs compared to planned outputs
- An explanation of major deviations from plans
- An assessment of problems and risks (internal or external to the project) that may affect the success of the project
- An assessment of the need for adjustments to activity plans and/or inputs and outputs, including actions for risk mitigation.

4. Total Project Budget

	2008	2009	
National consultant	170,000	20,000	
International coordinator	75,780	30,312	
Workshop	90,000	20,000	
Travel (ILO staff)	45,000	15,000	
Travel (project staff)	15,000		
Evaluation	15,000		
Publications, communications	9,500		
Training guide		20,000	
Sub total	420,280	105,312	
PSI	54,636	13,691	
Cost increase		5,951	
Total	474,917	124,954	
Overall total			599,870

Logical framework

Target Group(s): Government (including ministries of labour), social partners, donors			
Project title: The Law-Growth Nexus		Project duration: 24 months	
Project structure	Indicators	Means of verification	Assumptions/Risks
DEVELOPMENT OBJECTIVE/ Better business environments for workers and employers in MSEs	More MSEs operate in the formal economy Better implementation of labour and labour related laws among MSEs	Ministry of labour/labour inspectorate records Surveys of MSE performance and growth	
IMMEDIATE OBJECTIVES/ PROJECT OUTCOMES Good practice guidelines for labour and labour related laws for MSEs developed	1. Development and adoption of good practices or policy reforms by governments through a) developing an understanding of the role and dynamics of legal requirements, including labour law, in creating a conducive environment for growth of small enterprises and jobs; b) an agreed set of parameters for policy formulation and implementation mechanisms; c) an agreed set of required labour law reforms and/or required improvements in labour law administration; d) a set of capacity building measures <i>with implementation strategies and achievement indicators</i> for each of the countries. 2. Guide and training materials prepared 3. Establishment of tripartite dialogue on policy reform in six countries	Assessment of increased capacity of governments to effectively implement labour law with respect to MSEs Survey of awareness and perceptions of law reform among governments, donors and social partners. Reform agenda implemented in one country.	Political will and capacity for reform Labour ministries have sufficient capacity to monitor implementation of labour codes Sufficient data sources maintained to establish evidence base
OUTPUTS	The labour code and related laws and their coverage and application to MSEs in about 12 countries mapped Six country case studies elaborated which present interesting examples or	Diagnostic briefs for each 12 country study Detailed country case studies, including policy reform agenda and action plan for 6 countries.	

	innovative approaches to the application of labour and labour related laws in MSEs Support to the implementation of agreed labour law/administrative reforms in one country. Improved social dialogue centred on labour and labour related laws and MSEs	Project reports, end of phases 1, 2 and 3. Workshop/seminar reports	
ACTIVITIES	1. Preparation of reports mapping the labour code and labour related laws and their coverage and application to MSEs in 12 countries. 2. Preparation of detailed diagnostic reports and draft policy recommendations for 6 country case studies 3. Six tripartite plus workshops corresponding to the detailed diagnostic studies aimed at verification of policy options and elaboration of policy action plan (with associated capacity building programme)		