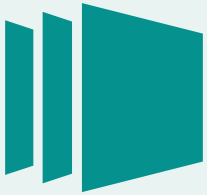


# **EXTENDING LABOUR INSPECTION TO THE INFORMAL ECONOMY**

## **SESSION 1**

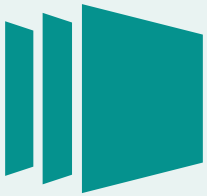
# **INTRODUCTION - THE INFORMAL ECONOMY AND LABOUR ADMINISTRATION**



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

### SESSION OBJECTIVES

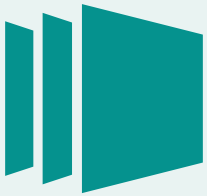
- To introduce the course and emphasise its importance to the sponsoring organisation
- To introduce the participants to each other
- To develop understanding of the informal economy
- To allow participants to express and discuss their main interests in relation to the informal economy



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

### ABOUT THE COURSE

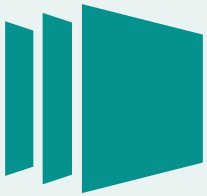
- Two-day course
- The aim is to consider how labour administration and labour inspection might be extended to the informal economy
- Mix of presentations and group work
- Emphasis on group discussion, knowledge-sharing and thinking about how to improve practices
- Participants should develop knowledge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



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

## LIST OF SESSIONS

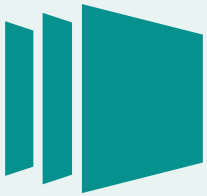
- **Session 1:** Introduction - The informal economy and labour administration
- **Session 2:** Relevant ILO standards and principles
- **Session 3:** The informal economy in your country
- **Session 4:** Regulating the informal economy
- **Session 5:** Informality and the employment relationship
- **Session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



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

### LAB-FORUM

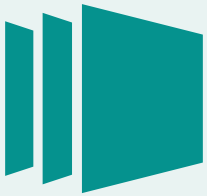
- The University of Sheffield have created an online message board called Lab-Forum to support this course. Registration is quick and easy: <http://www.woerrc.group.shef.ac.uk/forum/page/home>
- Lab-Forum is designed with three main functions in mind:
  - To act as a platform to help monitor/capture 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'



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

### 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
  - ‘.....unregistered or incorporated enterprises 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).
- 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

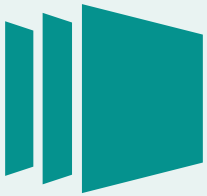


# SESSION 1: INTRODUCTION - THE INFORMAL ECONOMY AND LABOUR ADMINISTRATION

## 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)

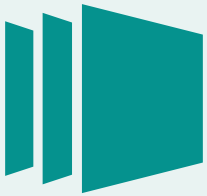




## SESSION 1: INTRODUCTION - THE INFORMAL ECONOMY AND LABOUR ADMINISTRATION

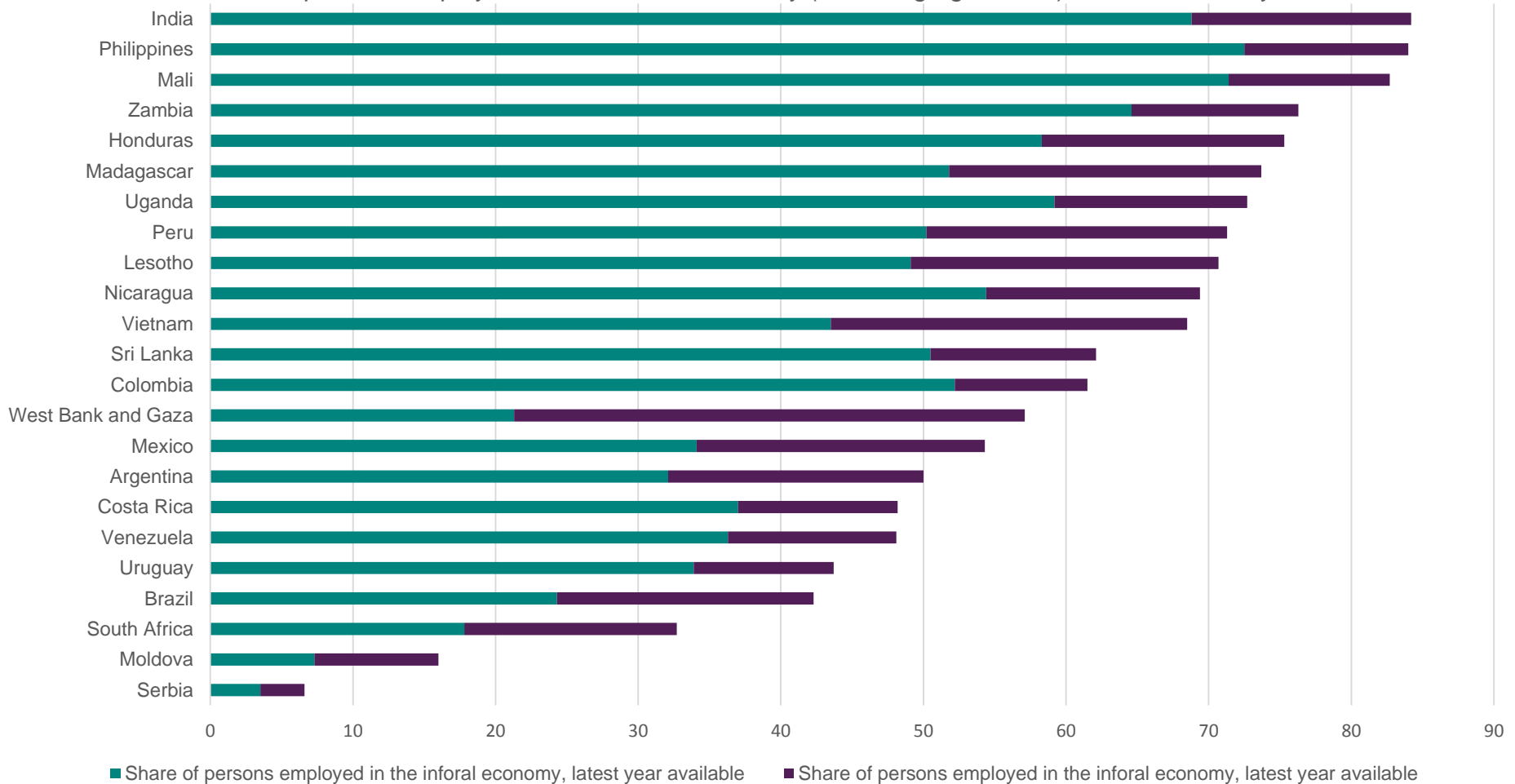
### THE SIZE OF THE INFORMAL ECONOMY

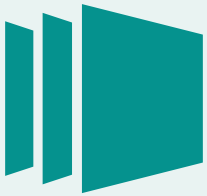
- The informal economy has expanded in both developing and developed economies
- Few countries produce regular statistics on the extent of informal economy employment
- In 2012 the ILO published a manual on methodological issues for undertaking surveys of the informal economy at the country level
- In 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](http://laborsta.ilo.org/informal_economy_E.html)



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

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





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

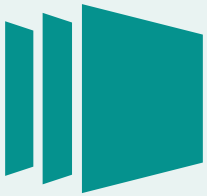
### REASONS FOR PARTICIPATING IN THE INFORMAL ECONOMY

#### 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



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

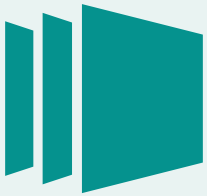
### COSTS AND BENEFITS OF THE INFORMAL ECONOMY

#### 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

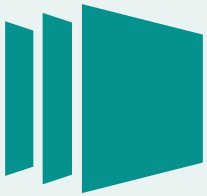
- Lower tax and social security receipts (reduces state revenue)
- Difficulties in targeting and managing social protection
- Unfair competitive advantage for enterprises operating in the informal economy
- Cost to government of detecting and penalizing work in the informal economy
- Constraints on the ability of businesses to expand
- Lack of access to formal sources of finance
- The role of the informal economy in facilitating illegal migration



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

### **COSTS TO WORKERS**

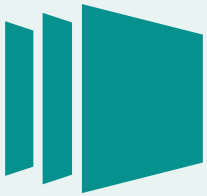
- Their activities might not be covered by labour and social protection legislation
- Alternatively, they might be operating within the formal reach of the law, but the law is not applied or enforced
- Workers will not be able to build up state pension entitlements and other contributory benefits
- Participation 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



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

### ISSUES FOR LABOUR ADMINISTRATION AND INSPECTION

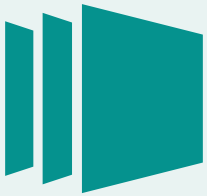
- The vulnerability of those who work in the informal economy and the widespread failure of employers to respect national labour laws and treat their workers decently mean that the informal economy is an important issue for labour administration and labour inspection services
- Labour administration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



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

### 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



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

### DISCUSSION

Working in groups, please discuss the following questions

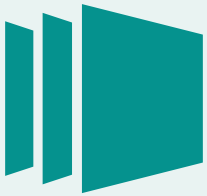
- How big is the informal economy in your country?
- Which industries and occupations are most affected?
- What are the biggest problems in relation to enforcing workers' rights in the informal economy?



# **EXTENDING LABOUR INSPECTION TO THE INFORMAL ECONOMY**

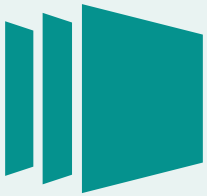
# **SESSION 2**

## **RELEVANT ILO STANDARDS AND PRINCIPLES**



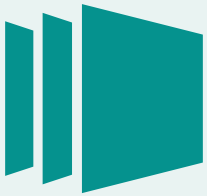
### SESSION OBJECTIVES

- 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



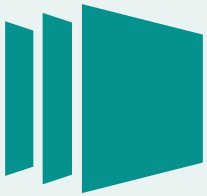
### INTERNATIONAL LABOUR STANDARDS

- 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



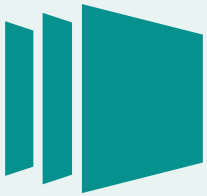
### THE ILO'S FUNDAMENTAL CONVENTIONS

- 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)



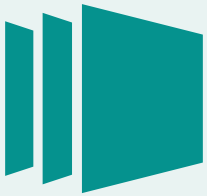
### THE COVERAGE OF ILO INSTRUMENTS

- 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

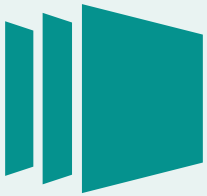
- The *Freedom of Association and Protection of the Right to Organise Convention, 1948* (No. 87), and the *Right to Organise and Collective Bargaining Convention, 1949* (No. 98), provide that **all workers** enjoy the fundamental rights which flow from freedom of association
- Informal economy workers 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

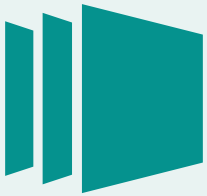




## SESSION 2: RELEVANT ILO STANDARDS AND PRINCIPLES

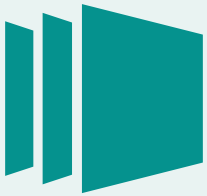
### CHILD LABOUR

- 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 its 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



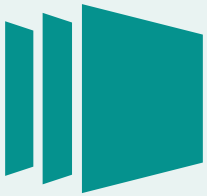
### DISCRIMINATION

- 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



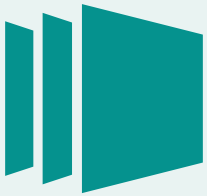
### EMPLOYMENT

- 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



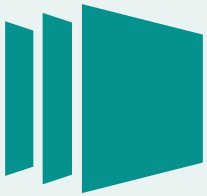
### **OCCUPATIONAL SAFETY AND HEALTH**

- 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



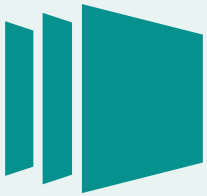
### LABOUR ADMINISTRATION AND LABOUR INSPECTION

- 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



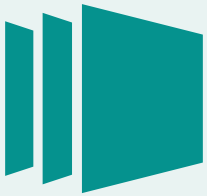
### THE 2002 RESOLUTION CONCERNING DECENT WORK AND THE INFORMAL ECONOMY

- 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**

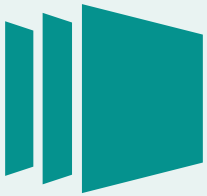
- Adopted by the ILC in 2015
- The Recommendation – the first ever international labour standard specifically aimed at tackling the informal economy – provides guidance for member States to:
  1. Facilitate the transition of workers and economic units from the informal to the formal economy, while respecting 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

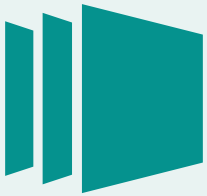
- Members should:
  - a) Promote and extend occupational safety and health protection to employers and workers in the informal economy
  - b) Progressively extend to all workers in the informal economy social security, maternity protection, decent working conditions and minimum wage protection
  - c) 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





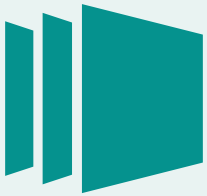
### THE LEGAL FRAMEWORK AT NATIONAL LEVEL

- 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



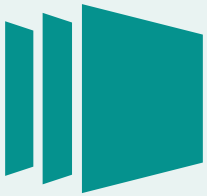
### EXTENDING PROTECTION TO SPECIFIC GROUPS OF WORKERS

- 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**

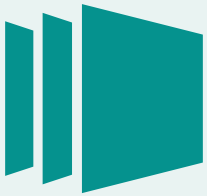
- In developed countries, the main legislative thrust is on the elimination of the informal economy
- In countries where the informal economy makes up a larger percentage of employment, the focus tends to be on extending the legislative framework to cover workers in the informal economy and adopting 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



## SESSION 2: RELEVANT ILO STANDARDS AND PRINCIPLES

### 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



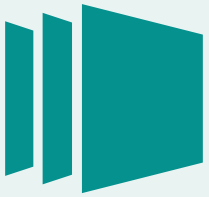
### GROUP ACTIVITY

- Please discuss in your groups:
  - a) The practical benefits of the ILO instruments
  - a) 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**

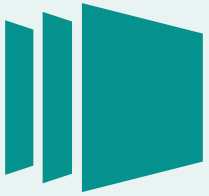


## SESSION 3: THE INFORMAL ECONOMY IN YOUR COUNTRY

### SESSION OBJECTIVES

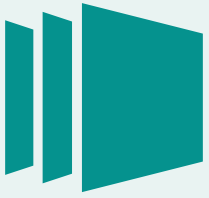
- To introduce participants to different ways of thinking about regulatory activities
- To discuss how the behaviour of employers and workers might be influenced in relation to the informal economy
- To encourage thinking around different types of approaches.





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

### **THE CHARACTERISTICS OF THE INFORMAL ECONOMY**



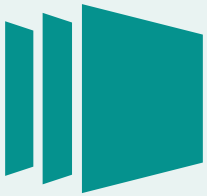
## SESSION 3: THE INFORMAL ECONOMY IN YOUR COUNTRY

### RELEVANT LABOUR LAWS



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

### **THE ROLE OF THE LABOUR INSPECTORATE**



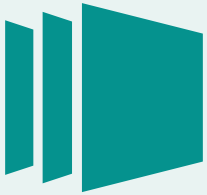
### GROUP DISCUSSION

- 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**

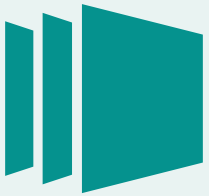
## **REGULATING THE INFORMAL ECONOMY**



## SESSION 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

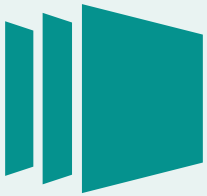


### **WHAT DO WE MEAN BY 'REGULATION'?**

'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.'

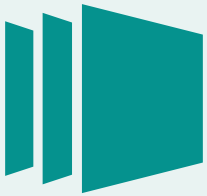
(Black 2001: 142)





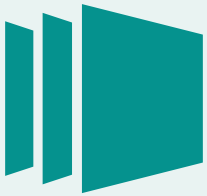
### EXAMPLE: SPAIN'S 'MBOX'

- 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



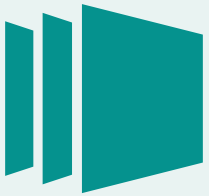
### COMPLIANCE

- 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



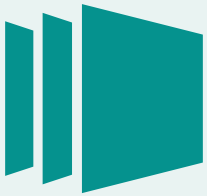
### AN EXAMPLE FROM LITHUANIA

- 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



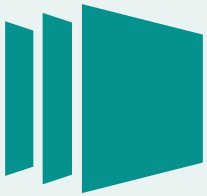
### **THE POTENTIAL POSITIVE EFFECTS OF DETERRENCE-ORIENTED APPROACHES**

- 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



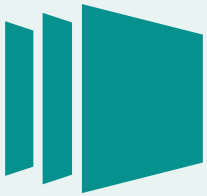
### **DETERRENCE-ORIENTED APPROACHES WILL BE LESS EFFECTIVE WHERE...**

- 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



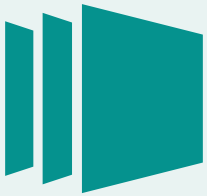
### **THE POTENTIAL POSITIVE EFFECTS OF COMPLIANCE-ORIENTED APPROACHES**

- 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...**

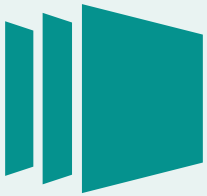
- There is no effective threat of enforcement. Those who have no interest in complying voluntarily will feel free to continue to ignore standards
- Those who would be inclined to respect standards feel that others are 'getting away with it' and consequently enjoying an unfair cost advantage. Their own 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)



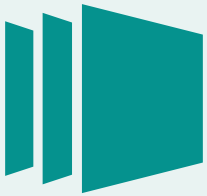




## SESSION 4: REGULATING THE INFORMAL ECONOMY

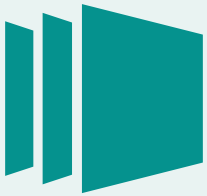
### **‘SMART’ REGULATION**

- ‘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

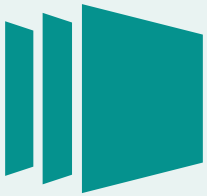


### REGULATING SUPPLIERS

- 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

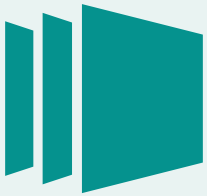
- In the 1990s and early 2000s the US DoL required garment manufacturers to develop compliance agreements for their contractors and subcontractors. Manufacturers pledged to screen new contractors, inform and train them in relation to their responsibilities under the law, and to undertake monitoring.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



### REGULATING SUPPLIERS

#### Gangmasters Licensing Authority (UK)

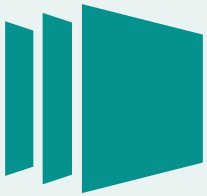
- The Gangmasters Licensing Authority (GLA) issues licences to labour suppliers in the agricultural, shellfish and food processing and packaging sectors. All labour suppliers operating in these sectors are required to apply for a license
- Licenced suppliers are listed on a public register. Labour users 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



## SESSION 4: REGULATING THE INFORMAL ECONOMY

### 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



## SESSION 4: REGULATING THE INFORMAL ECONOMY

### GROUP ACTIVITY

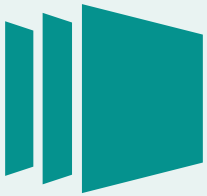
- Please discuss in your groups:
  - (a) What are the regulation approaches (e.g. awareness-raising, deterrence) followed in your country?
  - (b) Do any of the approaches involve elements of responsive, smart or meta-regulation (e.g. involvement of NGOs or requirements for organisations to regulate 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**

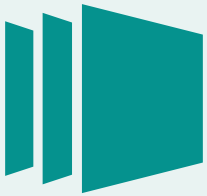




## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### SESSION OBJECTIVES

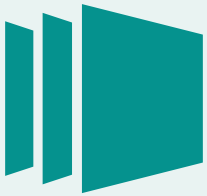
- To develop understanding of specific types of work in the informal economy and different approaches to organising work
- To encourage discussion concerning general challenges relating to the status of workers as employees
- To encourage thinking about the potential need for different types of intervention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



## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### THE EMPLOYMENT RELATIONSHIP

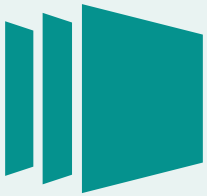
- An employment relationship is formed where an individual works under the authority of an employer in return for payment (a wage or salary)
- It is not always easy to determine whether or not a worker is an employee
- Employment status ambiguity is a particular problem in the informal economy
- It is 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



## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### THE EMPLOYMENT RELATIONSHIP AND INFORMALITY

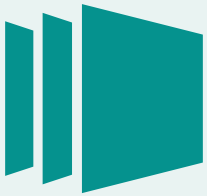
- In determining the employment status of a worker, authorities normally consider whether or not the organisation for which the worker performs services is responsible for exercising certain employer functions, such as directing, disciplining and dismissing workers
- In practice, however, matters might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



## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### ILO EMPLOYMENT RELATIONSHIP RECOMMENDATION (R198)

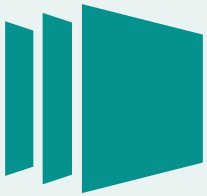
- Member countries are encouraged to ensure that national policy includes measures to, among other things:
  - (i) Provide guidance for employers and workers on effectively establishing the existence of an employment relationship and on the distinction between employed and self-employed workers
  - (ii) Combat disguised employment relationships
  - (iii) Ensure standards applicable to all forms of contractual arrangements
  - (iv) Ensure that standards applicable to all forms of contractual arrangements establish who is responsible for the protection contained therein
  - (v) Provide effective access to 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



## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### CLARIFYING EMPLOYMENT STATUS

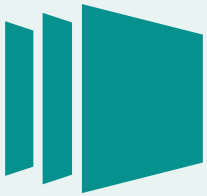
- National laws and codes of practice should be reviewed so as to ensure that there is clarity in relation to the legal status of workers and effective means of determining the status of individual workers or groups of workers
- Ireland provides an example of how this might be done. A specially convened 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>



## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### EXTENDING PROTECTION

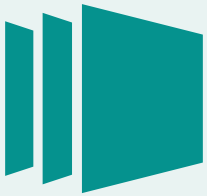
- Consideration should be given to extending the definition of an employee or extending protection to workers who are economically dependent, yet are not regarded as employees (for example agency workers and labour-only subcontractors)
- Morocco has amended its labour code to extend protection to salespersons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



## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### 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

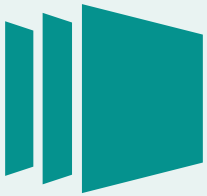


## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### **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

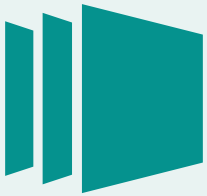




## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### DOMESTIC WORKERS

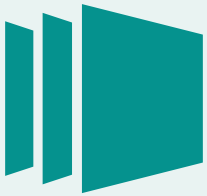
- Domestic work involves the completion for a third party of tasks such as cleaning, washing, cooking, taking care of children, the elderly, the sick or disabled, driving, gardening, or acting as a guard
- In 2011, the ILO estimated that there were at least 52.6 million domestic workers worldwide, 83 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



## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### PRACTICES IN RELATION TO DOMESTIC WORKERS

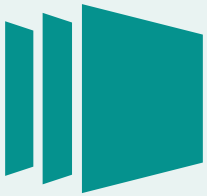
- The labour inspectorate of Guatemala has created an internet-based self-evaluation form for employers, in order for them to verify whether they comply with labour law. The form provides a means of raising awareness and ensuring compliance and could potentially be adapted to the employers of domestic 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



## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### HOMEWORKERS

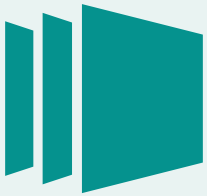
- The ILO's Home Work Convention, 1996 (No. 177) defines homework as:  
'...work carried out by a person, to be referred to as a homeworker, in his or her home or in other premises of his or her choice, other than the workplace of the employer; for remuneration; which results in a product or service 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



## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### PRACTICES IN RELATION TO HOMEWORKERS

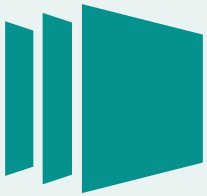
- Some countries have extended their legislation to cover homeworkers, in some cases (e.g. Morocco, Chile, New Zealand) insisting that they be treated as employees
- Attempts have made to address the difficulties involved in penetrating complex layers of subcontracting
- In India for example the Contract 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'



## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### AGRICULTURAL WORKERS

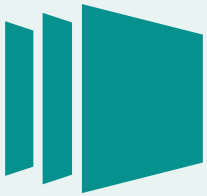
- Agriculture accounts for approximately half of the world's labour force
- The ILO's fundamental principles apply to agricultural workers. Other international standards have also been developed that relate specifically to agriculture
- Many agricultural workers are poorly protected by national labour 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



## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### PRACTICES IN RELATION TO AGRICULTURAL WORKERS

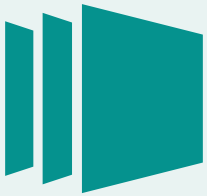
- Some countries compare and cross-check information gathered from several databases and other information sources
- In Spain, labour inspectors examine the size of plantations, the number of working hours spent during harvest of the previous year and the number of workers registered in the database 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)



## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### 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

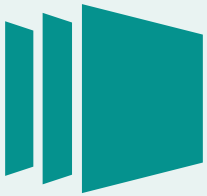


## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### 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

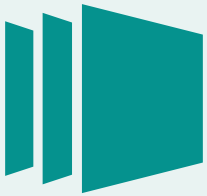




## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

### 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



## SESSION 5: INFORMALITY AND THE EMPLOYMENT RELATIONSHIP

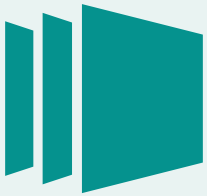
### GROUP ACTIVITY

- 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**

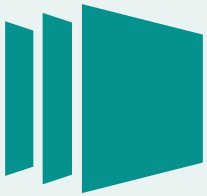
## **UNDERTAKING AN INSPECTION**



## SESSION 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

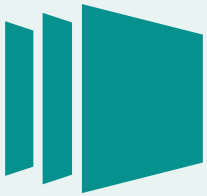
- Planned by either the inspector, team leaders and/or managers
- May target specific types of industry/specific sites
- May reflect strategic decisions at the national level (e.g. inspectorate HQ)

#### 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

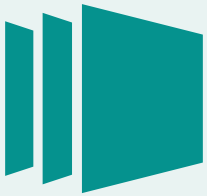


## SESSION 6: UNDERTAKING AN INSPECTION

### PRE-INSPECTION CHECKLIST

#### Things to bring:

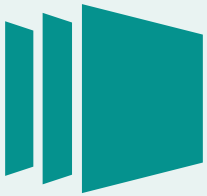
- A print out of the company/business details from website (if available)
- A copy of the last inspector's report, if previously inspected
- The Company Registration printout (country equivalent) and notes of work permits/database checks
- Your appointment letter, including inspector contact details (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

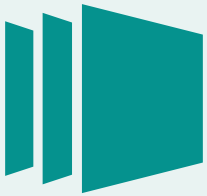
- Be consistent, thorough and fair!
- Identify yourself and produce any required certificates/warrants of authorisation to the employer
- Often the employer will not know if the inspection is 'reactive' or 'proactive'
- Once consent has been given, the inspector should inform the employer which piece(s) 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

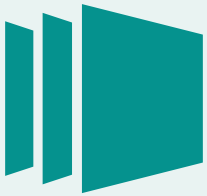
- Interviewing employees is important for:
  - Verifying information provided by the employer
  - Establishing problems not otherwise anticipated/uncovered in the course of the inspection
- For many inspectorates interviews should normally take place on the day of the inspection, together with the examination 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)



## SESSION 6: UNDERTAKING AN INSPECTION

### EXAMINING RECORDS

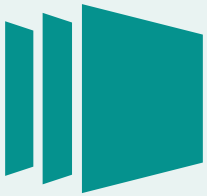
- Certain employment records may be prioritised in the course of the inspection
  - Records should be examined and verified. Copies should be taken and kept on file
  - Employer assistance should be sought where necessary
- Records should be drawn across an established time period (e.g. the last 12 months 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



## SESSION 6: UNDERTAKING AN INSPECTION

### **BASIC EMPLOYMENT RECORDS TO EXAMINE**

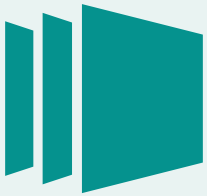
- Terms of Employment issued by the employer for a sample of employees
- Payroll details (e.g. gross to net pay rates, rate per hour, overtime, deductions....)
- Copies of payslips
- Annual leave/public holiday entitlements for each employee
- Register of those employees who are regarded as especially 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



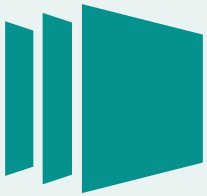
# DOMESTIC AND AGRICULTURAL WORKERS

## 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?**



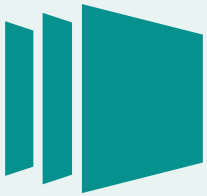
# STREET VENDORS AND MICRO-BUSINESSES

## 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

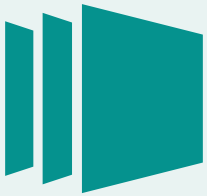
- Problems often surround awareness or avoidance of formal rules and regulations
- Possible strategies:
  - Persistent engagement with non-compliant business owners
  - Try to establish whether rule breaks are down to mistakes or deliberate acts
  - Move 'up' the enforcement pyramid to help encourage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



## SESSION 6: UNDERTAKING AN INSPECTION

### 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

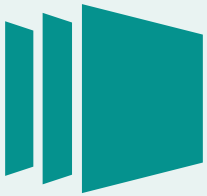


## SESSION 6: UNDERTAKING AN INSPECTION

### 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





## SESSION 6: UNDERTAKING AN INSPECTION

### DISCUSSION 1

- Working in groups, identify and discuss:

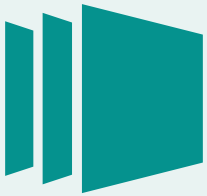
(a) 3 things that you think are easy

(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



## SESSION 6: UNDERTAKING AN INSPECTION

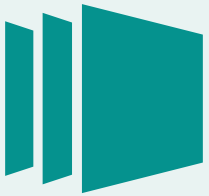
### DISCUSSION 2

- 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**

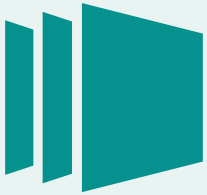
# **SESSION 7**

## **MAKING DECISIONS AND FOLLOW-UP ACTIONS**



### SESSION OBJECTIVES

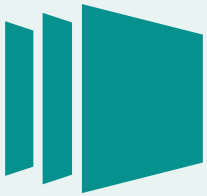
- To discuss the various types of decision that an inspector might make
- To discuss the different considerations that influence decisions
- To discuss the different types of action that might be taken following an inspection
- To discuss rules and procedures in the participant's own inspectorate



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

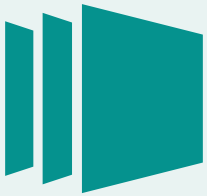
*“However advanced it may be, a country’s labour legislation is liable to remain a dead letter if there is no system of labour inspection to enforce it”*

**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



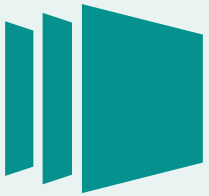
### INITIAL ACTIONS

- 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:

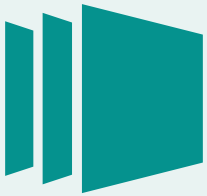
- The assessment of how seriousness the non-compliance issue is
- The inspector's powers under the law
- The likelihood of different actions improving the workplace situation in a sustainable manner





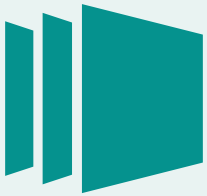
### RECORD KEEPING AND INSPECTION REPORTS

- 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:

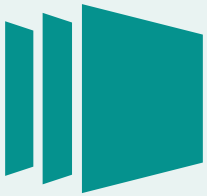
- ⌚ Name;
- ⌚ Legal status (company, partnership);
- ⌚ Relation to other entities and companies (e.g. subsidiaries);
- ⌚ Nature and description of the business;
- ⌚ Location and address;
- ⌚ Contact person and telephone/fax numbers/email addresses;
- ⌚ Number of employees (disaggregated by sex, young 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

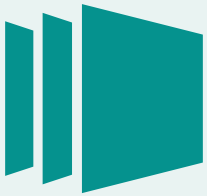
#### Industrial relations:

- ⌚ 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)



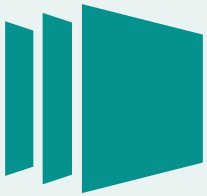
### MAKING DECISIONS: ISSUING A CAUTION

- 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



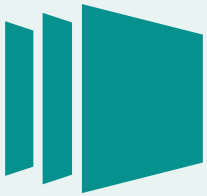
### NON-PAYMENT OF WAGES

- 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

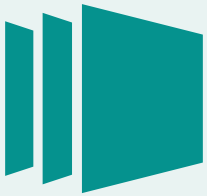


### REFLEXIVITY

- 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?

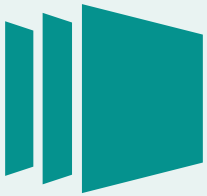


## SESSION 7: MAKING DECISIONS AND FOLLOW-UP ACTIONS

### KEY POINTS

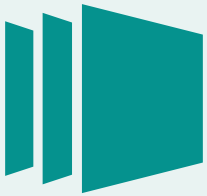
- Action plans are a useful resource for following-up and monitoring any actions/decisions taken as a result of the inspection
- Inspectors should be rigorous and thorough when documenting inspection findings. Report details should be recorded soon after the inspection has taken place (ideally within 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





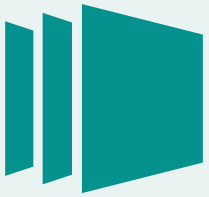
### SCENARIO 1

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.)



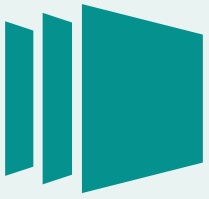
### SCENARIO 2

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.



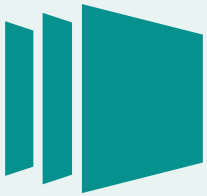
### SCENARIO 4

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**

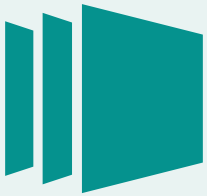
# **SESSION 8**

## **SUPPORTING LABOUR INSPECTION**



### SESSION OBJECTIVES

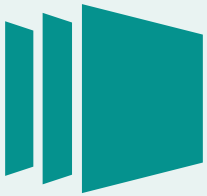
- To encourage thinking about the necessary conditions for effective inspection activities
- To develop practical suggestions for ways of enhancing the effectiveness of labour inspection activities in the informal economy



### RESOURCES AND TRAINING

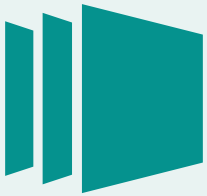
- Labour inspectorates need adequate resources
- Severe staff shortages can reduce the effectiveness of the inspectorate
- New technology can help to improve efficiency (e.g. use of tablet devices)
- Inspectors need to receive regular training updates (e.g. on procedures and changes to legislation that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





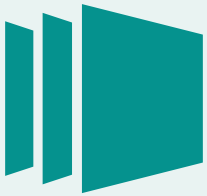
### INFORMATION SYSTEMS

- 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



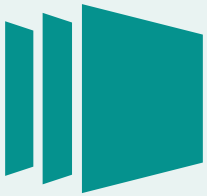
### DATA SHARING

- 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



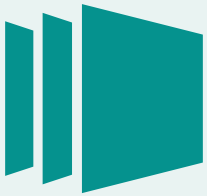
### A TARGETED APPROACH

- 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



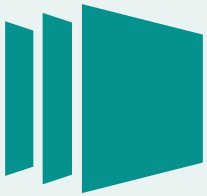
### **COORDINATION AND COOPERATION WITH OTHER BODIES**

- 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)



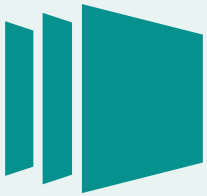
### EXAMPLES OF COOPERATIVE EFFORTS TO TACKLE THE INFORMAL ECONOMY

- 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



### CROSS-BORDER COOPERATION

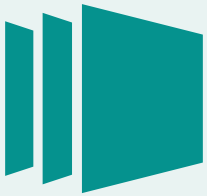
- Many of those who work in the informal economy are migrant workers
- Cross-border flows, which may be facilitated by labour market intermediaries such as employment agencies, imply a need for cross-border cooperation involving labour ministries and labour inspectorates in different countries
- For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



## SESSION 8: SUPPORTING LABOUR INSPECTION

### 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

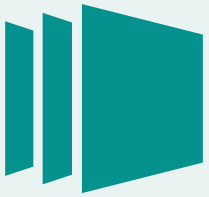
- Please discuss in your groups potential ways in which inspection activities in relation to the informal economy might be enhanced
- Think of practical steps that your government and labour inspectorate might be able to take at different levels (e.g. national, territorial) to improve the capacity and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



# **SESSION 9: REFLECTIONS AND CLOSE**

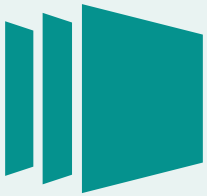
# **SESSION 9**

## **REFLECTIONS AND CLOSE**



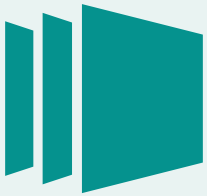
### SESSION OBJECTIVES

- 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



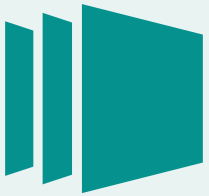
### KEY POINTS: SESSION 2 – RELEVANT ILO STANDARDS AND PRINCIPLES

- 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



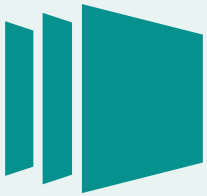
### **KEY POINTS: SESSION 4 – REGULATING THE INFORMAL ECONOMY**

- 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



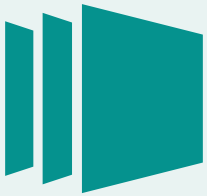
### **KEY POINTS: SESSION 5 – INFORMALITY AND THE EMPLOYMENT RELATIONSHIP**

- 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



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

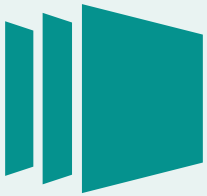
- Proactive inspections are planned by inspectorates in the first instance, and are likely to stem from a deliberate strategy (e.g. the targeting of a certain industry). Reactive inspections typically stem from complaints received by the inspectorate
- Inspectors will often interview both employers and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



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

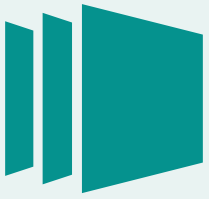
- Action plans are a useful resource for following-up and monitoring any actions/decisions taken as a result of the inspection
- Inspectors should be rigorous and thorough when documenting inspection findings. Report details should be recorded soon after the inspection has taken place (ideally within 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





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

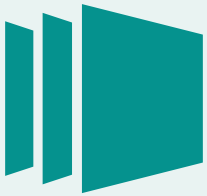
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### GROUP ACTIVITY

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?



## SESSION 9: REFLECTIONS AND CLOSE

### 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>

