
Improving labour legislation, labour administration and labour inspection

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1. Introduction

This paper uses case study scenarios drawn primarily from Kenya in the Eastern Africa region, and also from Zimbabwe, South Africa and Swaziland in the Southern African region. Other examples are drawn from English speaking Africa where the author has considerable experience in the workings of labour inspectorates and the informal economy.

It identifies specific approaches that tend to balance decent employment with the promotion of basic labour and occupational safety and health initiatives. It also demonstrates how labour inspectorates and OSH specialists working in cooperation with relevant social partners and government departments have been able to entrench a culture of prevention and compliance within employment relationships to promote decent employment practices and productivity improvement.

It emphasizes that labour legislation, labour administration and labour inspection are mutually inclusive and reinforcing and must be addressed together to effectively promote decent work. This is where policy coherence and coordination in the labour market are integrated with strong, efficient and effective labour market institutions, processes and practices to extend the reach of labour inspectorates and OSH institutions into the informal economy enterprises.

The first case study from a rural district in Kenya focuses on the “win-win approach” of labour inspectorates working with others through alliances, using the “carrot and stick” engagement approach. This creates an enabling environment for the informal economy to create and sustain decent jobs as well as entrench minimum standards in labour and OSH.

The second case, also from Kenya concentrates on deliberate policy, legislation and “enforcement” approach at the national level. Labour inspectorates work through government departments that are legislated to deal with the urban informal economy, locally known as “Jua kali” in Kiswahili (meaning working in the hot sun”) as well as through supply chains influence, promote and entrench good labour and occupational safety and health practices.

Finally, synopses of various other approaches, where the informal economy has been addressed through labour and OSH services by special targeting are cited from Zimbabwe (“makeshift boilers”), South Africa and Swaziland (Roving and Blitz Inspection) in the Southern Africa region. Other concrete approaches and examples are derived mostly from English speaking Africa countries as well as elsewhere. This paper highlights the challenges that are faced, and the lessons to be learned from the case studies. It also suggests a way forward for promoting labour inspection services in the informal economy.

2. Labour and OSH inspection in SMEs and the informal economy (IE) in the forestry sector

In a rural district called Nyeri in Kenya, the local departments of labour and OSH which operated a dual system of labour inspection, though working together and complementing each other in practice, became alarmed by the large number of injuries and complaints that were reported, as well as the workmen's compensation claims involving accidents and deaths in the sawmill informal enterprises that were dotted around the slopes of the Aberdare Ridges and Mount Kenya.

Efforts were made to investigate the high incidence of accidents and sharp increase in compensation claims with the tacit support of the Provincial Labour and Occupational Safety and health Officers. Records indicated that most of the accidents and incidents, including near misses were never reported, as the sawmill never insured their workers under the Workmen's Compensation Act. Due to the nature of the business, the sawmills were isolated and located in and around forests and the roads leading to their locations were normally impassable. As a result, complaint based labour inspections that were mounted became fruitless, as the workers and employers would disappear as soon as the Labour Inspectors' vehicle (Land Rover) appeared on the horizon.

As these were small sawmills with between one and five casual employees on a good day, normal inspections were not feasible and a different strategy had to be employed. The two inspectorates decided to approach the district forester in charge of the forestry sub sector. Fifteen sawmills around the forest where they got the timber logs were targeted. Since the district forester had a register of the various sawmillers, as he is the one who issued permits for them to cut trees, the inspectorate had finally found an entry point. A preparatory meeting was held between the informal employers (one–five employees) of the sawmills, and later with the bigger sawmillers (five–ten employees) respectively, who at times subcontracted the informal ones, the district forester and the labour inspectorate.

The first meeting was a groundbreaking initiative, in which the inspectorate used awareness raising as a strategy and entry point to influence the employers on the need to provide not only a safe and healthy working environment but also good working conditions, including labour relations. While it was initially easy to convert the big employers, the IE ones were not really convinced and saw the labour inspector as somebody who would increase operating costs. Indeed they were also wary of the trade unions organizing their so-called casual employees.

After the second meeting (this time the relevant union was invited to attend as an observer) after consultations with the IE sawmills and bigger employers, the inspectorate was able to make headway. However, though the IE sawmills continued to argue that the workers were paid a piece rate, and contracted informally on the basis of availability of work (they on various occasions threatened to sack them), the discussions and consultations were bearing pay offs.

Finally, labour and OSH inspections were carried out in five sawmills where the complaints and compensation claims were the highest and a number of omissions and commissions were identified. These ranged from unsafe working conditions, poor hygiene, poor house keeping, and use of defective and unguarded machinery. Others were lack of personal protective equipment, poor work and lifting posture, (especially for logs), inclement working environmental hazards e.g. noise, weather (hot, cold, humid) etc, slippery grounds, working hours, underpayment of wages, non reporting of accidents and incidents relating to plant and equipment and also logging. Problems relating to labour relations and employment issues were also identified among others.

The labour and OSH inspectorate managed to work successfully under difficult circumstances with the Department of Forestry, in cooperation with employers (and later with workers organizations and transporters of logging materials) to mainstream and integrate good practices in OSH among sawmillers, transporters from the forest to the sawmill, the loggers in the forest and others. The main objective was to promote and entrench decent work (employment) within the framework of mainstreaming basic labour and OSH national standards (labour legislation) in the forestry sector. The various strategies used included labour and OSH extension services that combined enforcement with education, awareness raising, advocacy, training, ownership and the pay offs of good practices among others.

The IE employers agreed to comply with various labour and OSH compliance requirements in a phased approach. This helped them to understand the payoffs of good OSH law and practice, which contributed to improved productivity and value addition. The relevant unions were allowed to organize in a phased approach too. Some of the bigger employers (particularly those who were fully compliant), and the district forester (in consultation with both the provincial labour and occupational safety and health officers) gave permits for logging and work to the IE employers (supply chains) in return for compliance as well as good labour and OSH practices through the supply chain influence strategy. Some of the bigger enterprises also benefited from the forward and backward linkages because a few of them were also not fully compliant. The other IE enterprises also started complying after they realized that there were good pay offs. Indeed, the partnership was a good example of how, with commitment, parties could work together to improve safety, health and working conditions through outreach and innovation. However, replication of this approach with IE miners and prospectors in the quarry industry failed miserably in the same district.

3. Deliberate policy, legislation and enforcement approach in partnerships

This approach involves labour inspectorates working through and with government departments that are mandated to deal with urban SMEs and the informal economy known as “Jua Kali” in Kiswahili, which can be translated to mean “working in the hot sun”. It is instructive to note that the ILO first studied the informal economy in Kenya in 1972. The use of the phrase Jua kali to refer to the informal economy was in use at the time, and is still used today. The Jua Kali sector has been deliberately regulated through the Department of small, medium and micro enterprises (SMMEs) or Jua Kali within the Ministry of Labour and Human Resources Development.

The sector is regulated through industrial associations that have been partnering with the government to build industrial sheds or work places in urban areas where they operate. The ones that comply with basic labour and occupational safety and health practices are given priority in government contracts. As is also happening in Zimbabwe, OSH inspectors and other relevant officials participate in the design and approval of the sheds (workplaces) that comply with safety, health and environmental requirements where they operate.

As in most African countries, the labour and occupational law does not discriminate against the informal economy in Kenya. However, the informal economy is normally ignored (in practice) by the labour and occupational safety and health inspectorates. However, efforts have been made in policy, legislation and enforcement to deliberately apply labour and OSH regulations as well as through different approaches through education, training, awareness rising and peer influence among others.

In Zimbabwe, some newly resettled small-scale farmers have been constructing “make-shift boilers” made from drums and reinforced with other paraphernalia to cure their tobacco. In one such case in May 2007, a 210 litre drum was converted into a boiler to steam tobacco, but the boiler succumbed to high temperatures caused by the boiling water, burst and exploded killing a female worker and injuring four other workers. Although the farmer was fined Z\$40,000 (US\$20) or five days in prison, after the OSH inspectors prosecuted “for negligently exposing the deceased and others to an occupational hazard which was foreseeable and could have been prevented by using a recommended boiler with a breather and temperature controls” one can imagine the implication on workers compensation.

A number of fatal and non-fatal accidents have occurred, which has prompted the National Social Security Authority, responsible for OSH, to work with the media to highlight accidents and incidents to help address this problem in the rural agricultural sector. Through awareness raising, education and partnership with small-scale farmers associations, OSH Inspectors are mainstreaming good practices to address the occurrence. Further to this, the Zimbabwe Congress of Trade Unions (ZCTU) has an ongoing project that addresses the urban informal economy in Harare. The design stages of this project did not effectively mainstream OSH. The project is however, now closely working with the OSH Inspectorate to mainstream safety, health and environmental issues in their operations together with the urban informal economy Associations.

Enactment, enforcement and deliberate sectoral intervention

In South Africa, the Department of Labour has proactively enacted labour and OSH legislation that addresses SMEs and informal activities in agriculture (which was hitherto excluded). The informal economy has also been targeted through “Roving and Blitz” inspection, which treat all the enterprises on the same grounds during inspections, but every case on its own merit after registration. The Blitz inspection involves teams of inspectors targeting the informal economy on a “street-by-street” and “sector-by-sector” basis. In the South African case, since the labour inspection system is integrated (the first line inspector is a generalist who can effectively address basic occupational safety and health, employment issues as well as general working conditions) the interventions are more effective. Though this has been replicated in Swaziland, and especially the “street by street” strategy, other countries have learned that it adds value to send a combined team of both labour and OSH specialists to complement each other where the systems are dual.

In the case of Swaziland, the Blitz inspections are carried out on a zoned approach where SMEs and the informal economy are inspected on a “sector by sector”, street viz area basis, and on a door to door arrangement to enforce minimum labour and OSH standards. Advisory services, education and training are given to those who are found in violation, while a compilation of the violation is used as a basis to design labour and OSH extension services. This is mostly applicable to the urban centres of Mbabane, Matsapa, Manzini and other major towns.

Other approaches that combine enforcement, advice and advocacy, education, training, awareness raising, partnerships and promotion (working with others), building alliances, facilitation and special targeting have been used in various countries like Uganda, Ethiopia, Nigeria, Lesotho, Malawi, Zambia, the United Republic of Tanzania and others.

Influence through joint commissions and Protocols

In Namibia, which carried out a survey on the informal economy in 2001, the inspectorate has targeted this sector through associations as the entry point. As is the case in East Africa where there is a Federation of Jua kali Associations (bringing together the national associations from Kenya, Uganda and the United Republic of Tanzania), joint commissions of the informal economy are also to be found in the Southern Africa Development Community (SADC) and these have been used as important entry points to influence good practices in OSH in the informal economy. Indeed, the SADC region has an OSH protocol that can be used to entrench good practices in OSH. In Botswana, the coverage of labour law (inspection) has been extended to the agricultural and domestic sectors, which had been previously exempted. The inspectors can therefore enforce the legislation including minimum wages among domestic and agricultural workers.

Lessons learned and the way forward

The various lessons learned on labour and OSH inspection in the IE, which is unique and requires unique approaches, were as follows:

- A. The influence of suppliers of goods and services (through the supply chain influence approach) is critical to compliance in labour and OSH mainstreaming.
- B. A holistic, multidisciplinary, multi partner, multi approach, multi strategy interface is critical.
- C. Patience is very critical as a rush could make the employers ‘go underground.’”
- D. Replication of good practice does not always work in other sectors.
- E. A systems approach (private–public) partnerships adds value.
- F. The carrot and stick approach is critical where compliance means more business opportunities.
- G. It is vital to identify and cooperate with like-minded institutions that can add value to labour and OSH inspection in the IE.
- H. The use of existing structures is very cost effective.
- I. Inspectors need to be proactive and think beyond the box.