



# Evaluation Summary



International  
Labour  
Office

Evaluation  
Office

## *Law-Growth Nexus Phase III: Labour Law and the Enabling Business Environment for MSMEs in Kenya - Midterm Evaluation*

### Quick Facts

|                                    |  |
|------------------------------------|--|
| <b>Countries:</b>                  | <i>Kenya</i>                                     |
| <b>Mid-Term Evaluation:</b>        | <i>June - August 2015</i>                        |
| <b>Mode of Evaluation:</b>         | <i>Independent</i>                               |
| <b>Administrative Office:</b>      | <i>CO- Kenya, Uganda, Tanzania Rwanda</i>        |
| <b>Technical Office:</b>           | <i>DWST for Eastern and Southern Africa</i>      |
| <b>Evaluation Manager:</b>         | <i>Hellen Magutu Amakobe</i>                     |
| <b>Evaluation Consultant:</b>      | <i>Charles Munene</i>                            |
| <b>Project End:</b>                | <i>July 31, 2016</i>                             |
| <b>Project Code:</b>               | <i>M25008100890</i>                              |
| <b>Donor &amp; Project Budget:</b> | <i>NORAD (USD 1,369,557)</i>                     |
| <b>Keywords:</b>                   | <i>business services, enterprise development</i> |

to thrive in Kenya. This was to be achieved through 3 objectives which are i) Promotion of a culture that respects the rule of labour laws among micro, small and medium enterprises in Kenya, with a focus on the transport and the private securities sectors, ii) Strengthening the capacity of ILO constituents to engage in social dialogue on the nexus between Labour Law compliance and MSME development and to facilitating sector-specific regulatory reform and iii) strengthening the capacity of MSME to comply with the revised labour law and regulations.

This project is funded by the Norwegian Agency for Development Cooperation (NORAD) over an implementation period of 32 months ending 31<sup>st</sup> of July 2016. This follows a 6 months no cost extension. The total cost of the project is USD 1,369,557. The project is being implemented through local partner organizations including the tripartite partners.

### Background & Context

**Summary of the project purpose, logic and structure:** The informal economy in Kenya continues to create the most number of jobs in Kenya as seen in the Economic survey of 2015 which reports that the sector accounted for 86 percent of the all jobs created in 2014. However, work done in previous phases of the LGN project show that the sector was yet to unlock its job creation potential mainly because of some inherent challenges including decent jobs deficits which translate to growth constrains. This project therefore seeks to progressively support the establishment of an enabling environment for MSME

### Present Situation of the Project

The project has made significant gains in the transport sector. These include the awareness creation on labour laws, supporting their integration into traffic laws, and addressing issues related to child labour in the traffic act. Furthermore sector workers now enjoy social protection benefits through the mandatory deductions introduced following recommendations from the project. This has resulted in more participation of women in the sector. Through the project, social dialogue is being promoted and sector stakeholders who rarely met are able to sit and reason together. In addition there is promising progress

towards improved respect for labour laws as attested by the issuance of contracts to sector workers, monthly pay proposals and so on. Efforts to organize were also visible through the affiliation to SACCOs for employers and to COTU for the sector workers. Published materials for awareness creation and to support compliance will remain useful references for stakeholders in the sector. Absence of wage council for the sector remained a major impediment to attaining the desired workers' right relating to wages.

In the private securities sector, awareness creation had begun in earnest and sector stakeholders were confident that the materials produced would come in hand. About half the sector workers were yet to join the union which greatly reduces their voice and the overall impact of the union. But the sector has a strong workers' union, which has facilitated the signing of several CBAs. A regulatory bill was underway, which, when passed will legislate the labour related clauses. However, absence of the wage council continues to slow progress in attaining the rights of workers.

Overall there are significant challenges with the capacity of the MoLSSS to effectively discharge its mandate. There is therefore need to lobby for improved capacity and more funding of MoLSSS preferably by the social partners, starting with appraising the parliamentary committee on labour on labour issues. In the meantime, there is need to seek to synergize with other relevant departments.

#### **Purpose, scope and clients of the evaluation**

This is an independent mid-term evaluation. It serves two main purposes. The first is to give an independent assessment of progress to date of the project across the major outcomes; assessing performance as per the foreseen targets and indicators of achievement at output level; strategies and implementation modalities chosen; partnership arrangements, constraints and opportunities in Kenyan and the second is to provide strategic and operational recommendations as well as highlight lessons to improve performance and delivery of project results

The clients of the evaluation include: project staff, ILO CO Dar, DWT Pretoria, ROAF, the donors and

constituents, in particular the national technical and advisory committee.

The evaluation covers all aspects of project implementation including design and implementation, project components and processes and working methods. Field evaluation visits were made in Nairobi, Nakuru and Kajiado to assess the progress, achievements, challenges and lessons learned in the implementation of activities. The evaluation was led by Charles Munene, a consulting researcher.

#### **Methodology of evaluation**

Qualitative approaches were used whereby project documents were first used and guidelines developed to guide discussions with project stakeholders. Key informant interviews, focus group discussions, and field visits were then used to collect data from the field. However relevant quantitative data was extracted from the documents reviewed and from the field level discussions. This approach allowed for in depth analysis of issues relating to the project within a relatively short period of time. A total of 27 stakeholders were interviewed in the course of the evaluation.

#### **Main Findings & Conclusions**

The project sought to improve the working conditions of workers in the informal sector, support creation of decent jobs and consequently unlock the potential of the sector to create more jobs. This mirrors the goals of the country and the strategic objectives of the United Nations Development Assistance Framework (UNDAF). Overall, the project objectives are relevant to the needs of the stakeholder. Further the project design was valid having been largely informed by experiences from phase I and II of the project and extensive context analysis both in the project document and in the subsequent baseline surveys reports. The objectives, inputs and outputs are consequential and logically link one another. Causality in the design was easily established. Implementation plans were logical and realistic. The indicators conformed to the SMART principle. The design was equally appropriate given that it allowed for the active participation of stakeholders in the project implementation. However, the design needed to bring

on board other key stakeholders to the decision making levels in the project so as to create ownership and boost the sustainability potential of interventions.

With respect to immediate objective 1 which sought to nurture respect for the rule of (labour) law among MSMEs in Kenya, substantial mileage had been attained in creating awareness on labour laws. Specifically, the pocket friendly compendium of labour laws worked very well in reaching more workers and employers in the informal sector. An indication by the workers representatives that they were contemplating going to court to push for compliance with laws only serves to show the level of awareness they had and the confidence they had gained in pursuing their rights. Even though, many of the workers were not aware of their rights, and thus the need for more aggressive efforts in awareness creation.

The business case was slowly being understood by those MSMEs that have been reached. While most had not fully complied, efforts towards compliance were evident in Prestige Shuttle Services in Nakuru, Orokise SACCO in Kajjado, and WALOKANA and Supermetro Sacco in Nairobi. Discussions with the NTSA further revealed courtesy of the clauses on labour issues introduced in the traffic laws, payment of National Hospital Insurance Fund and National Social Security Fund was mandatory before a vehicle or the respective SACCOs are licensed. Notably, access to NHIF was singled out as a strong pull factor for increased entry of women into the transport and the private securities sectors. More participation of women in previously male dominated sectors is colossal, and a big boost to sustainable development. Awareness creation in the private securities sector was also underway. Workers representatives reported that they take a few minutes to share discuss the laws during their Timam parades<sup>1</sup>, which is a practical and cost effective method of reaching more of their members.

Immediate objective 2 seeks to strengthen the capacity of ILO constituents to engage in social dialogue on the

---

<sup>1</sup> TIMAM parades are morning briefing and inspection parades for security guards usually convened by a supervisor for a group of guards under his/her command.

nexus between labour law compliance and MSME development and facilitate sector-specific regulatory reforms. Notably, the stage was set with the highlighting of good practices on issues of compliance and social dialogue as discussed in the baseline surveys. Further, consultation meetings with ILO constituents on appropriate structures to facilitate social dialogue were held and concluded. A National Technical Committee (NTC) and National Advisory Committees (NAC) were constituted which allow the constituents to meet quarterly for subject specific social dialogue. These committees continue to play an advisory role to the project and members continue to steer the project implementation. The project, through the national committees continues to facilitate dialogue meetings between MSME owner and worker associations and the employer and worker representative organizations. During the validation workshop for example, the process of bringing together private security sector workers' representatives and employers was initiated. The two groups had previously not met to dialogue and viewed each other with mistrust.

The project contributed to the incorporation of basic labour laws into the proposed Private Security Regulation Bill 2014, which was going through the parliamentary approval process as at the time of this evaluation. Further, the project had supported the private securities sector in lobbying for the passing of the bill and discussions with them revealed that the lobbying efforts have seen them hold 6 consultative meetings with the respective parliamentary committees.

Notably, the stage for social dialogue was set, firstly with the requirements for transport sector employers to join SACCOS. Some SACCOs were reported to have signed recognition agreements with employer representatives. The sector workers association had also gained confidence in articulating their issues as reported by the association chairman. The association was reported to have commenced the process of affiliating to COTU. In the private securities sector, while workers have a strong union, not all were members and interaction between the workers union and the employers was limited.

To institutionalise gains made in promoting social dialogue, the wage councils were widely seen as the

missing links. The private securities wage council was yet to be gazetted while that of the transport sector was yet to be constituted. The wage councils are recognised as institutions for promoting social dialogue in the national medium term plan.

Immediate objective 3 seeks to strengthen the capacity of MSMEs to comply with the revised labour laws and regulations. Most activities under this objective were ongoing or yet to begin at the time of this evaluation. However, the project had already partnered with Business Development Service providers to offer tailor made courses to MSMEs. The evaluation noted that a ToT training for BDS providers had been done and MSMEs training was set to be rolled out. The NTSA was reported to be carrying out an audit on compliance levels on SACCOs and companies.

An operations/human resource manual for *matatu* SACCOs and companies had been developed and disseminated to operators in the *matatu* sector. The manual offers practical tools that can be easily adopted by SACCOs such as sample employment offers, employment records, leave application forms, and other practical information that should aide the employers to quickly comply with the provisions. Closer linkages with line government departments could add value to some of the activities. For example, it was observed that officers from MSEA had capacity building of MSMEs as one of the key activities in their performance contracts. Discussions with MSEA revealed that some of the content that they would be training the MSMEs on was similar to what was expected to be delivered by BDS providers. Closer collaboration with MSEA would effectively avoid overlaps and possibly increase the total reach.

### Recommendations

1. In light of recommendation 204 of the General Conference of the ILO, adopted on the 12<sup>th</sup> of June 2015 this project offers the best opportunity to fully test formalization of the informal sector and build a strong case for future efforts in pursuant to this recommendation. It is strongly recommended that formalization of the two sectors should be supported to formalize so as to set precedence for the formalization of other sub-sectors such as construction, mining, and

beauty and hairdressing subsectors among other vulnerable sectors.

2. There is need to step up awareness creation on labour laws and rights of employees preferably through the media. This campaign could include the marketing of the mobile phone application which is about to be launched.

3. Efforts will need to be focused on disseminating and creating awareness on the business case for compliance. This should be carried out by the trained BDS providers ensuring that additional ToTs are trained to effectively penetrate the informal sector.

4. The project should support sector workers to lobby and advocate for the gazettelement and activation of the private securities sector and transport sector wage council respectively. This will be a significant milestone in institutionalising the dialogue for improved working conditions.

5. The project should facilitate the formative process of bringing together workers and employers in the private securities sector in a similar way it did to the transport sector. Once this is done the social partners (COTU and FKE) will be expected to play a more active role and effectively reach out to sector workers and employers respectively to organise for more effective social dialogue.

6. The project should facilitate closer linkage and collaboration between the project stakeholders and key agencies such as the NTSA. The participation of NTSA has remained lukewarm despite its central role in the overall objective of this project. Such collaboration will resolve many challenges that currently hinder compliance such as scattered decision making in the sector and different enforcement agencies

7. Social partners need to more aggressively lobby for additional support to the MoLSSS. This could be through sensitisation of parliamentary committees and relevant government officers and departments on labour issues. This should go hand in hand with encouraging the government to honour its commitments as a tripartite partner.

8. In the meantime, there is need to forge closer partnerships with relevant government ministries and departments for more effective implementation of interventions.