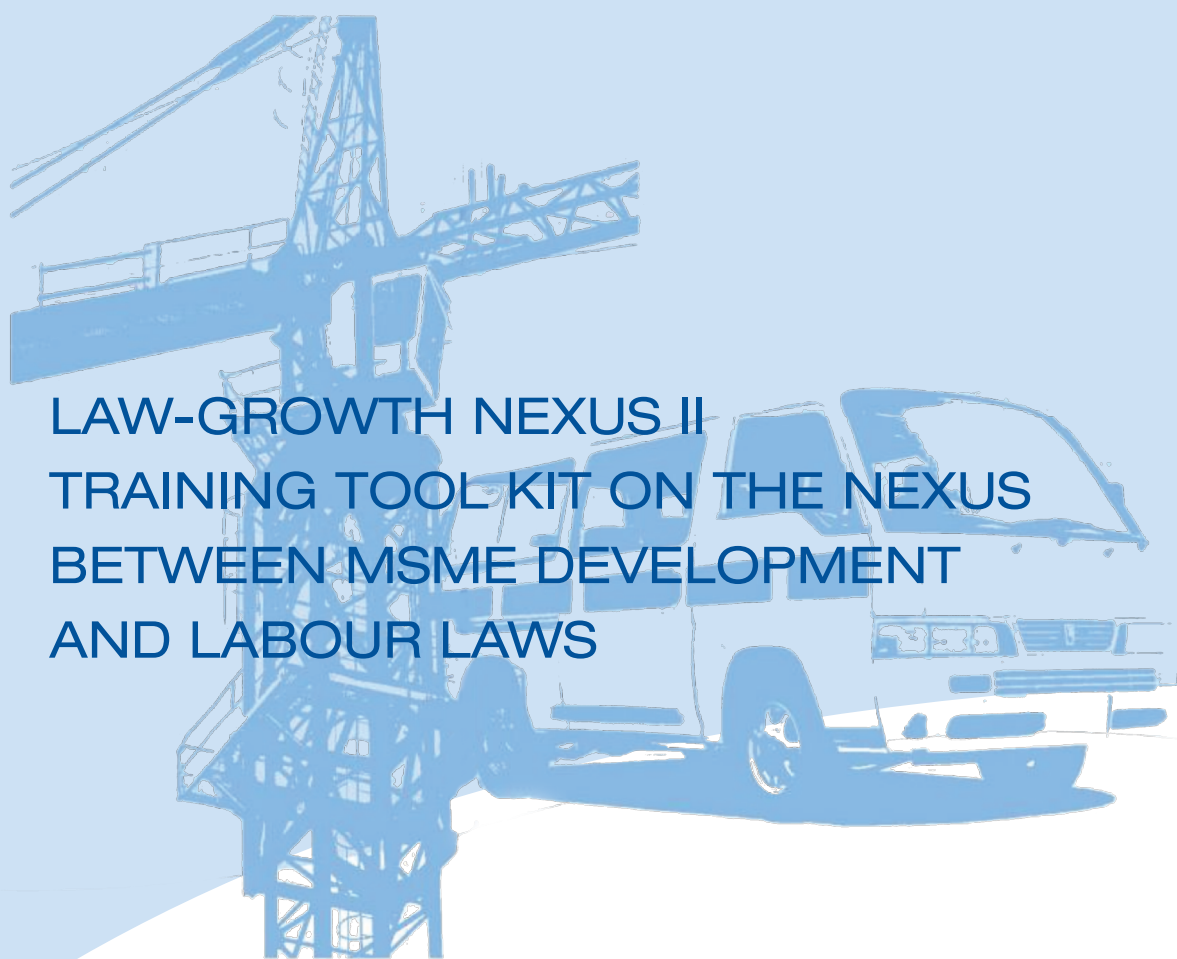




INTERNATIONAL LABOUR ORGANIZATION LAW



LAW-GROWTH NEXUS II
TRAINING TOOL KIT ON THE NEXUS
BETWEEN MSME DEVELOPMENT
AND LABOUR LAWS

FACILITATORS' MANUAL

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LGN
Law Growth
Nexus Project

Contributing to a more Enabling policy
Environment for SME Development



International
Labour
Organisation

INTERNATIONAL LABOUR ORGANIZATION LAW

**TRAINING TOOL KIT ON THE NEXUS
BETWEEN MICRO SMALL AND MEDIUM SIZE ENTERPRISES DEVELOPMENT AND LABOUR
LAWS**

FACILITATORS' HANDBOOK

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FOREWORD

The Law Growth Nexus II (LGN II) is a project of the International Labour Organization whose envisaged overall outcome is more and better jobs in the MSMEs sector.

The LGN II- Kenya is focused on MSMEs operating in the public transport sector whose large segment is in what is commonly known as “matatu transport industry“. The Law Growth Nexus II Project (LGN II-Kenya) is promoting the “win- win territory” where it is possible to reduce compliance costs for MSMEs and simultaneously improve protection for workers in those enterprises. The LGN II- Kenya will support the uptake of, and exposure to Labour Laws in the MSMEs sector by making a strategic contribution to a more enabling policy environment for MSMEs development in Kenya and specifically the Public Transport Sector with a focus on the matatu sector.

This Manual is a resource pack designed to help trainers build their capacity to deliver training modules in the Handbook for Participants (2012). The Manual targets policy makers, legal and regulatory development and enforcement institutions, MSMEs, workers and owners, and Business Development Service providers.

The Manual has been developed through a participatory approach whereby the ILO tripartite partners, MSMEs representatives, matatu industry leaders and regulatory agencies were involved at every critical stage. This Manual will equip trainers with skills on training methodologies which they will be expected to use to train workers and owners in the matatu industry.

We wish to thank all those who provided support during the development of this Manual.

Grace Sebageni
Chief Technical Advisor
Law Growth Nexus II
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5. Ministry of Cooperatives,
6. National Social Security Fund
7. National Hospital Insurance Fund
8. Insurance Regulatory Authority

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1. INTRODUCTION

Kenya's private sector consists of a small proportion of large enterprises and a large proportion of micro, small and medium enterprises that are expected to operate within the similar legal, regulatory and legislative framework. Previous studies confirm that these cluster of enterprises exhibit varied characteristics that influence the level and ability to comply with stated laws and other regulations. This in return poses a number of challenges to law enforcers. These scenarios do not only exist in Kenya but in a number of countries. Major concerns are on how to create decent and sustainable jobs in the MSMEs sector with the introduction of systematic and innovative approaches in the application of laws, including Labour Laws. This therefore calls for structured awareness-creation and consultations with key players in the sector with a view of striking a balance on what needs to be and how it should be done to develop a framework based on a win philosophy.

The International Labour Organization, having recognized the role played by MSMEs and the need for transition to formality, developed the LGN II projects. The overall outcome envisaged by LGN II is more and better jobs in the MSMEs sector. The immediate project objectives of LGN II are:

- (1) To nurture respect for the rule of (labour) law among MSMEs in priority sectors;
- (2) To strengthen the capacity of ILO constituents to engage in social dialogue on the nexus between Labour Law compliance and MSMEs development;
- (3) To facilitate sector-specific regulatory reform; and
- (4) To strengthen the capacity of MSMEs to comply with the revised Labour Law.

The manual is a resource pack for facilitators while training workers and owners on the Nexus between MSMEs development and Labour Laws.

2. WHAT THE FACILITATORS MUST KNOW

- (a) Most businesses would want to maximize on profits. To a larger extent, businesses view any form of laws and regulations as added cost to their business. The situation gets worse for MSMEs whose profit margins are much lower than their large business counterparts. MSMEs also have a strong perception that they need state protection and hence what they need most is subsidies and not what they will commonly consider punitive laws and regulation. The situation in the matatu sector gets worse as any effort to regulate the sector is sometimes difficult to enforce due to limited capacity. To address this scenario, the manual emphasizes on the need for innovative and systemic approaches. As a facilitator, this becomes your number one priority; to create value-based awareness on Labour Law compliance.
- (b) The manual targets participants who are primarily adult with high male dominance. This poses a challenge and the facilitator must take full cognizance of the gender parities and apply more of a participatory training method.

- (c) Knowledge of Labour Laws in the sector is minimal. The interpretation and implication of the Constitution is not well understood by the actors in the sector. The facilitator must familiarize himself with the provisions of the Labour Laws and constitution in order to handle any concerns raised by the participants.
- (d) This manual has eleven modules and the methodology of imparting knowledge, principles and practices has been provided. The facilitator must familiarize himself with the training methodology.

2.1. LEARNING AND PRESENTATION METHODOLOGIES OF THE MANUAL

The training event is expected to take the following format:

- ◆ Involving participants during the learning process; this starts from and builds on the experience of course participants;
- ◆ Making the class more participatory;
- ◆ Asking questions that require participants to analyze a problem;
- ◆ Using pictures to illustrate critical issues;
- ◆ Use of help boxes to emphasize a point;
- ◆ Using demonstrations;
- ◆ Group work;
- ◆ Use of case studies;
- ◆ Role play to generate interactive learning and internalize learning materials;
- ◆ Displays or video.

2.2. WHAT IS EXPECTED OF THE FACILITATOR?

There are no set characteristics of an effective facilitator but the following principles of an effective facilitator are useful:

- Listen attentively and patiently;
- Maintain eye contact with participants;
- Let participants hear what you are saying;
- Provoke reasonable discussions;
- All answers are considered correct unless clarified;
- Recognition of participants' diversity;
- Flexibility in changing methods;
- Adaptation to scenarios.

2.3. TOOLS OF PRESENTATION:

- ◆ Power Point, laptop+(LCD) Projector,
- ◆ Flip charts Flipchart Stand/chalkboard,
- ◆ Markers,
- ◆ Cards.

3.1. OBJECTIVES OF THE MANUAL

The main objective of the facilitators' manual is to enhance the capacity of facilitators to train MSMEs workers and owners on the selected eleven modules, to showcase on the nexus between Labour Laws and MSMEs development.

At the end of the training, facilitators will have:

- a) Understood different training methodologies for adult learners,
- b) Appreciated presentation techniques and management of flow of training activities,
- c) Understood core training content.

3.2. WHO SHOULD BE TRAINED IN THE USE OF THIS MANUAL

These manual can be used by:-

1. BDS providers

2. Micro operatives

- MSMEs owners
- MSMEs employees
- MSMEs association leaders
- Matatu SACCO managers
- Matatu associations.
- Women Enterprise Fund
- Procurement Oversight Authority
- Kenya Bankers Association

3. Tripartite members

- Employer Organizations' representatives
- Worker representatives
- Labour Administration representative
- National Social Security Fund Representatives
- National Health Insurance Fund

4. Other Policy development agents

- Policy makers and policy enforcers
- TLB
- Traffic Department
- Insurance Regulatory Authority
- Retirement Benefits Authority
- Ministry of Local Government
- Kenya Private Sector Alliance

4.1. SCOPE OF THE MANUAL

This facilitators' manual is intended to assist trainers in effective delivery of identified training modules of concern towards the creation of awareness on Labour Laws compliance within the MSMEs sector and in particular, the public transport-matatu sector. *This awareness and knowledge is to promote decent and sustainable jobs in the sector in order to meet the objectives of the programme and beyond.* The delivery methodologies proposed in this manual have taken full recognition of the dynamics in the MSMEs sector including operational concerns and practices in the matatu sector. It is of essence to mention that, although the modules in the manual have taken into account the local conditions and environment, the modules may be used in other similar scenarios including other sectors with some adaptation.

4.2. SUMMARY OF CORE TRAINING CONTENT

- Module 1** Definitions of MSMEs, Labour Laws and the Informal Economy
- Module 2** Constitution and Implication to MSMEs
- Module 3** Major aspects of Labour Laws highlighting the core labour standards: Where is the balance
 - Part I: International Labour Organization core Labour Standards
 - Part II: Other ILO convention as highlighted in the Labour Laws
 - Part III: Labour Laws and ILO core convention: point of convergence
- Module 4** The contribution of Labor Laws to the overall business environment that determines the job creation capabilities of enterprises
- Module 5** Scope and coverage of Labour Laws in Kenya to MSMEs
- Module 6** Challenges in compliance of Labour Laws.
- Module 7** Incentives for MSMEs to formalize and comply with Labour Laws.
- Module 8** Implementation and enforcing Labour Laws in MSMEs
- Module 9** HIV & AIDS and MSMEs-Matatu industry

Module 10 Country example of the innovative practices in extending labour and labour related laws

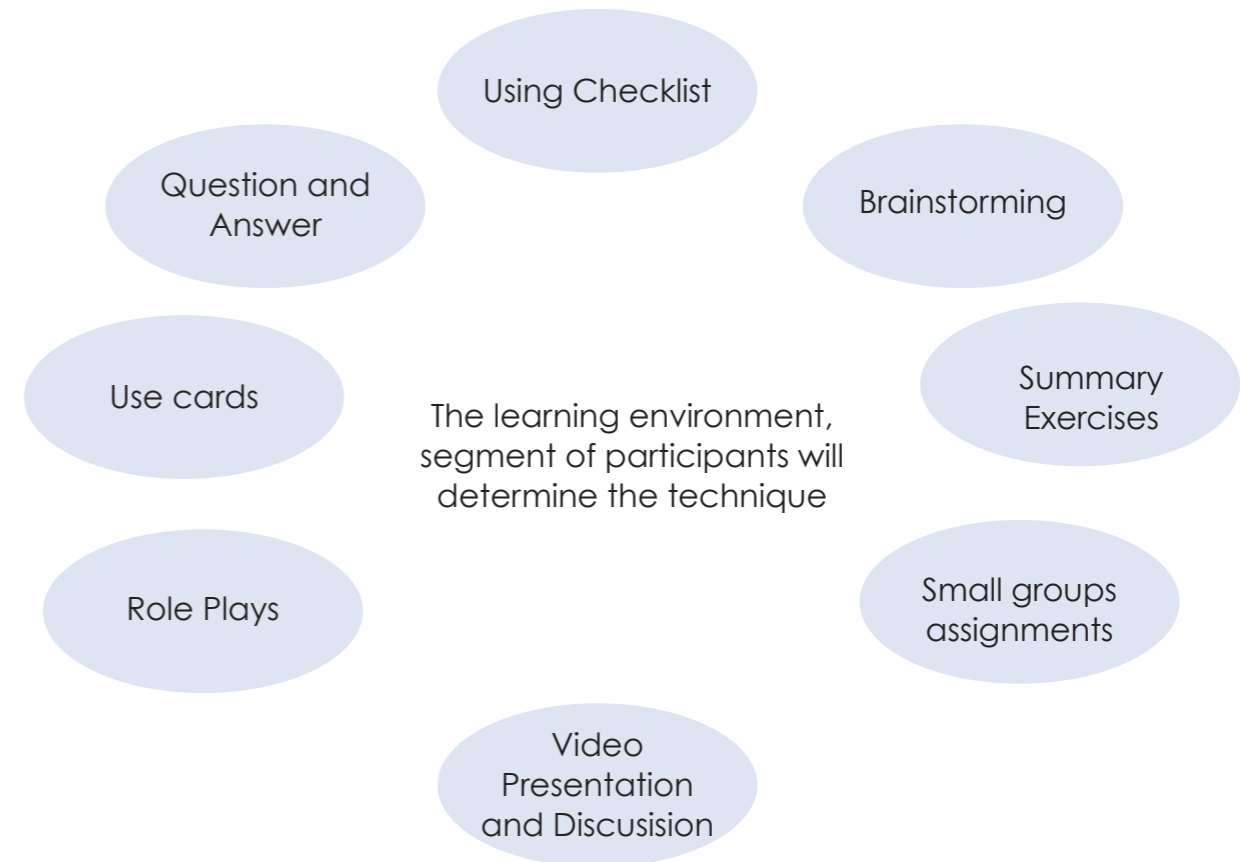
4.3. PROPOSED STRUCTURE AND MODULE DELIVERY

The manual is in two parts:

PART I: TRAINING TECHNIQUES

PART II: STRUCTURE OF THE MODULES DELIVERY TRAINING TECHNIQUES

The trainer's manual explains how you can use these Modules to teach other trainers and



target group. It also includes a glossary which is intended to assist the reader/instructor to understand the information in the Modules better. Sample Training techniques are shown below:-

4.4 STRUCTURE OF THE MODULES DELIVERY

Trainers must be familiar with the format of the modules

Each module follows the same format but training techniques will vary. The format is as follows:

- **Goal of the Module:** This informs you of the overall training (purpose of the Module). At the beginning of the training the facilitator will ask the participants to write down

their expectations for the entire training on a flipchart/card. It is recommended that you review the goals with the trainees when you start training each module. It is recommended that the facilitator assigns a participant(s) to recap key learning points of the previous days. Facilitator may choose to have expectations at the beginning of each module.

- **Objectives:** The objectives state the minimum that trainees should learn from the Module. When you start each Module, state the objectives for the trainees. You may also want to write the objectives on a flipchart or chalkboard and refer back to them when you finish the Module.

Note: The facilitator to ensure that the participants demonstrate their understanding of each module by listing key learning points as guided by the facilitator.

- **What is in this Module:** This section outlines the contents of the Module. Writing the outline on a flipchart, display on the screen (LCD or chalkboard) will give trainees the overall picture of the contents and purpose of the Module
- **Introduction:** This section explains the background to the problem(s) presented in the Module. Familiarize yourself with this information and then summarize it for the trainees.
- **Core of the Module:** Between the Introduction and the Summary of each Module, there are a number of sections containing the specific information on the topic of the Module. You will need to familiarize yourself with the information if it is new to you and then present it to the trainees. If necessary, you may supplement this information with other resources, such as textbooks.
- **Points to remember:** After each main section of text, you will find a list of points to remember. These are the “take home” messages for each segment, that is, a summary of the most important points contained in the section. Review these points with the trainees as you finish each section. The review will help to reinforce the main points.
Note: The facilitator may ask participants to list down in the workbook key learning points as per the sub-topics at the end of the module.
- **Summary:** This section provides a conclusion to the Module. It is recommended that you review the summary with the trainees when you finish the Module. At that point, you may wish also to restate the Module objectives so trainees can see what has been accomplished.
- **Exercises:** Each Module has at least one exercise at the end of it. The exercises give trainees the opportunity to apply some of what they have learned from the Modules, and are designed to reinforce what has been taught. It is recommended that you adapt the exercises to local situations as much as possible and use as many of them as time allows.

5.1: DEFINITIONS OF MSMES, LABOUR LAWS AND THE INFORMAL ECONOMY

Running time	60 minutes (1Hour)
Materials	Will depend on the venue but should, at least, use a flipchart and flip-chart stand/Chalkboard, markers, Cards
Equipment	Laptop and LCD
Handout	Definition as shown in Note 1-3, Other Country definitions
Target Audience	Policy makers and stakeholders in the matatu industry, MSMEs operators including employees, employers, policy makers

Introduction (10 minutes)

Facilitator:

- Asks the participants if they are aware of any criteria used in defining MSMEs;
- What the Kenyan definition is;
- Why is the definition important with respect to design and application of Labour Laws;
- Categorization of the matatu sector according to TLB and is this sufficient.

Learning Objectives (5 minutes)

The facilitator highlights the following objectives on a screen or flipchart. At the end of this session, participants will be able to:

- List various criteria used in defining MSME sector in Kenya.
- List the categorization of public transport in Kenya in terms of sitting capacity.
- Define labour laws and informal economy in the Kenyan context
- State why definition of MSME including the matatu industry is important in the application and enforcement of labour laws in Kenya

What is in this module (10 minutes)

Flash on the screen the key sub-topics in the module:

- The importance of the MSMEs industry;
- A case for the matatu sector and Labour Law;
- Other Country definitions as a determinant for Labour Law application.

Core of the module (20 minutes)

Using Power Point provided

Points to remember (5)

Example 1: Points to remember

1. Definitions differ from country to country and criteria used are not homogeneous
2. Countries have deliberated to use the definition at the design stage of Labour Laws to find the right balance on Labour Law application.
3. Clear definition is of critical value for Kenya as the country endeavours to create decent jobs and find the right approach in labour law compliance and enforcement strategies.

Exercise group discussions (10) Gaps on Kenya definition

Facilitator forms three groups according to stakeholder category and nature of business to discuss and explore appropriate definitions for Kenya.

Each group will put answers on flipchart and post answers on the wall so that it is visible throughout the training session.

Facilitator summarizes the results of brainstorming.

5.2. CONSTITUTION AND IMPLICATION TO MSMES

This section only highlights Constitutional issues with respect to Labour Laws. (A copy of the Constitution can be obtained from the Government Printer and internet)

Running time 120 minutes (2 hours)

Materials Will depend on the venue but should, at least, use a flipchart and flipchart stand/Chalkboard, markers, Cards

Equipment Laptop, LCD and VCR

Handout Preamble of the Constitution and National Values
Selected sections of the Bill of Rights

Target Audience Can be used for awareness-raising with various stakeholders i.e. MS-MEs operators including employees, employers, policy makers

Introduction (10 minutes)

Expectations: The facilitator asks the participants to write on a card provided what they expect to learn from the session and collects them to put on the wall for review.

Facilitator:

- Asks the participants what a Constitution is and what it entails;
- What a constitution is;
- Kenya's New Constitutional- making process;
- Major Highlights of the Constitution;

- Major Constitutional Articles and Clauses for emphasis in the module and why;
- Implication of the Constitution to MSMEs.

Learning Objectives (5 minutes)

Facilitator:

The facilitator highlights the following objectives on a screen or flipchart. At the end of this session, participants will be able to:

- Identify National values and how they impact on matatu sector.
- List as many rights as you can as stated in the Constitution
- List possible implications of the Bill of Rights in the Matatu sector

What is in this module? (10 minutes)

Flash on the screen the key sub topics in the module:

1. Preamble
2. Article 2 Supremacy of the Constitution
3. Article 8 State and Religion
4. Article 10 National Values and principles of Governance
5. Articles on Bill of Rights-General provisions
 - o Rights and fundamental freedoms
 - o Application of Bill of Rights
 - o Implementation of the rights and fundamental freedoms
 - o Enforcement of Bill of Rights
 - o Authority of courts to uphold and enforce the Bill of Rights
 - o Limitations of rights or fundamental freedoms
6. Articles 26 on Bill of Rights

Core of the module (50 minutes)

Using Power Point to expound on the core topics. The Power Point will be in bullet points. Facilitator to avoid reading from the PP directly

Points to remember (20 minutes)

Example 1: Points to remember

Article 2: Supremacy of the Constitution

The constitution is the supreme law of the country and is binding on all persons and state organs. The validity and legality of the constitution cannot be challenged in any court or by any state organ.

The general rules of international law and treaties and conventions ratified by Kenya form part of the laws of Kenya.

Example 2: Points to remember

National Values and Principles of Governance

Article 10 prescribes key national values and principles of governance that bind all state organs, state officers, public officers and all persons.

The values and principles that have direct impact on labour relations include good governance, integrity, transparency, accountability, democracy and participation, human dignity, equity, social justice, non-discrimination and protection of the marginalised.

Example 3 Points to remember : Implication

Article 258 declares the values and principles justifiable meaning that they are enforceable against all persons, public officers and state officers.

Failure to comply may attract legal liability. Widens level of responsibility on actions of employers and employees (recruitment, benefits, setting of terms and conditions of employment, liability to special categories of persons e.g. PWDs, aged, youth and children). Example 4: Points to remember

ARTICLE 19: PURPOSE OF THE BILL OF RIGHTS

To recognise and protect human rights, fundamental freedoms, dignity of individuals and communities, and

To promote social justice and realisation of the potential of all human beings

Guarantees 26 specific rights

Implications to MSMEs

Enforcement of the right against private persons e.g. an employer suing employee for unfair labour practice [Article 41(1)]

Example 5 Points to Remember: Article 41: Labour Relations

Every person has a right to fair labour practice

Every worker has a right to a fair remuneration

Reasonable working conditions

Form, join, participate in activities and programs of trade unions

[Go on strike](#)

Every employer has a right to form and join an employers organization, participate in the activities and programs of an employers' organization

The facilitator to ask participants to state major learning points and put the same on a flight chart.

Exercise group discussions (15 mins): issues on compliance and their interpretation

1. Facilitator leads brainstorming session on Bill of Rights discussion and interpretation by MSMEs. Facilitator establishes at least five groups of five participants per group; each group is assigned specific Bill of Rights Clauses to share their ideas on interpretation and how to comply with respect to their business operations. The question for brainstorming is:

- What does the Bill of Rights mean to your business operations?
- What can you do to comply with provisions in the Bill of Rights as

MSMEs?

- Each group will put answers on a flipchart and post answers on the wall so that it is visible throughout the training session.
- Note that 5-7 minutes questions or clarification from other non members of the groups.
- They note key issues to be agreed upon in the plenary.

2. Facilitator summarized the results of brainstorming and highlights the compliance using the following ideas:

- The Bill of Rights is a constitutional issue put emphasis on selected Articles and their clauses such -----
- Every Kenya has a right to-----
- Business must endeavour to comply with the Bill of Rights.

Summary (10 minutes)

This section provides a conclusion to the Module. It is recommended that you review the summary with the trainees when you finish the Module. At that point, you may wish also to restate the Module objectives so trainees can see what has been accomplished.

5.3 MAJOR ASPECTS OF LABOUR LAWS HIGHLIGHTING THE CORE LABOUR STANDARDS:

Running time 120 minutes (Two hours)

Materials Will depend on the venue but should, at least, use a flipchart and flipchart stand/Chalkboard, water-base markers and Cards. Also thumb tacks, glue or masking tape.

The Facilitator should visit the venue in advance of the training.

Equipment Laptop and LCD or VCR as necessary

Handout Printed fliers on selected aspects of the Labour Laws. All the five laws would have such excerpts for use. Some sections of the law may be

projected through Power Point slides.

The Facilitator should have copies of all the five Acts for reference. He/ she should insert page markers in the law book for convenient access.

Participants should be informed of the conventional sources of the laws such as the Grey Book and the internet.

Target Audience Stakeholders in the informal sector and more so the Matatu sector. Matatu owners and their employees. Government policy makers should also be invited.

Introduction (10 minutes)

Expectations: The facilitator asks the participants to write on a card provided what they expect to learn from the session and collects them to put on the wall for review

Facilitator:

- Will ask participants to try their knowledge on Labour Laws;
- How were the new Labour Laws made and what need arose for them to be created;
- Find out if they know the stakeholder participation in the making of the laws;
- Inquire their knowledge of the three social partners in labour matters – FKE, COTU and Government (MoL);
- Find out – are Labour Laws useful to the informal sector and why?

Learning Objectives (5 minutes)

Facilitator:

At the end of this session, participants will be able to:

- List key highlights in the five labour acts
- Identify areas for Labour Laws compliance in the matatu sector
- List ILO core conventions and their application in the matatu sector.

What is in this module? (10 minutes)

The New Labour Laws are as follows:

- Employment Act
- Labour Institutions Act
- Labour Relations Act
- Work Injury Benefits Act
- Occupational Safety and Health Act

Core of the module (40 minutes)

Using Power Point to expound on the module

Points to remember (10) Exercise group discussions: Summary (5 minutes)

5.4. THE CONTRIBUTION OF LABOUR LAWS TO THE OVERALL BUSINESS ENVIRONMENT THAT DETERMINES THE JOB CREATION CAPABILITIES OF THE ENTERPRISE

Running time 90 minutes (1 hour, thirty minutes)

Materials Will depend on the venue but should, at least, use a flipchart and flip-chart stand/Chalkboard, markers, Cards

Equipment Laptop, LCD, VCR

Handout

- Decent Work Agenda core pillars
- Decent work and Matatu sector response
- Paradigm shift
- Moving to self control and self regulation in the matatu sector

Target Audience Can be used for awareness-raising with various stakeholders i.e. MS-MEs operators including employees, employers, policy makers

Introduction (10 minutes)

Facilitator:

- Asks the participants what they consider as decent work;
- Current practices on labour relationship in the sector (providing a lead on decent work core pillars);
- Can decent jobs be created from the MSMEs with respect to matatu sector.

Learning Objectives (5 minutes)

Facilitator:

The facilitator asks the participants to write on a card provided what they expect to learn from the session and collects them to put on the wall for review.

The facilitator highlights the following objectives on a screen or flipchart.

At the end of this session, participants will be able to:

- Identify and list labour laws that contribute to decent business environment in the matatu sector
- Identify current labour practices in the matatu sector which hinder decent job creation
- List the role to be played by matatu FKE, COTU and Ministry of Labour towards decent job creation
- List the benefits of the decent work agenda to Matatu sector

What is in this module (10 minutes)

Flash on the screen the key sub topics in the module:

- Labour Laws and contribution to business environment
- Decent work agenda and core pillars
- Decent work and MSMEs response current practice
- Paradigm shift process
- What needs to be done

Core of the module (40 minutes)

Using Power Point to expound on the core topics. The Power Point will be in bullet points. Facilitator to avoid reading from the PP directly

Points to remember (10minutes)

Points to remember, 1
Matatu sector employs about 350,000 workers. The sector has the potential to contribute to decent jobs the moment the workers and employers jointly embrace social dialogue mechanisms, law enforcer create awareness on the Labour Laws and accruing benefits. Kenya's policy makers strongly advocate for the transformation of the matatu sector to enable the sector to grow and create decent jobs. Efforts should be on promoting self control in the sector in as far as Labour Laws are concerned.

Points to remember 2

Declaration of Fundamental Principles and Rights at Work
Adopted in 1998, the Declaration commits Member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions.
These categories are: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect to employment and occupation.
The Declaration makes it clear that these rights are universal, and that they apply to all people in all States - regardless of the level of economic development. It particularly mentions groups with special needs, including the unemployed and migrant workers. It recognizes that economic growth alone is not enough to ensure equity, social progress and to eradicate poverty

The facilitator to ask participants to state major learning points and put the same on a flip chart .

Plenary discussion: Paradigm shift towards decent work in the matatu sector using the information provided. This will be a plenary discussion.

(Summary 5 minutes)

Decent work is possible but it requires combined effort from all stakeholders including employees, employers, tripartite- plus approach.

5.5: SCOPE AND COVERAGE OF LABOUR LAWS IN KENYA TO MSMEs

Running time	90 minutes (1 hour thirty minutes)
Materials	Will depend on the venue but should, at least, use a flipchart and flip-chart stand/Chalkboard, markers, Cards
Equipment	Laptop and LCD, VCR
Handout	ILO Recommendation No 189 on General Conditions to stimulate job creation and small and Medium Enterprise
Target Audience	Can be used for awareness-raising with various stakeholders i.e. MS-MEs operators including employees, employers, policy makers

Introduction (10 minutes)

Facilitator: MSMEs are growing in large numbers but the challenge is to create jobs that are sustainable and decent. Labour Laws are one way of creating decent jobs. Present decent agenda core pillars.

Learning Objectives (5 minutes)

The facilitator highlights the following objectives on a screen or flipchart. At the end of this session, participants will be able to:

- List various approaches on how labour laws can be covered in the matatu sector.
- Identify an appropriate approach to cover labour laws in the Matatu sector
- Identify possible implications of compliance with the labour laws by the matatu sector

What is in this module? (10 minutes)

Flash on the screen the key sub topics in the module:

- International Perspective on Labour Law coverage;
- ILO Recommendation No. 189 on General Conditions to stimulate job creation and MSMEs;
- Approaches on Labour Law coverage;
- Current status and trends on Labour Law compliance in matatu sector.

Core of the module (40 minutes)

Using power point to expound on the module

Points to remember (10)

Points to remember 1:

Highlights of the Recommendation:

The adoption of policies that creates an optimal economic environment regarding inflation, exchange

rates, interest rates, taxation, employment and social stability;

The establishment and application of adequate laws for property rights, including intellectual property, location of establishments, enforcements of contracts, fair competition, social and labour legislation;

Improving the attraction of entrepreneurship. In the promotion of efficient and competitive SMEs capable of providing productive and sustainable employment under equitable social conditions, the following areas are addressed as the areas of priority:

- Creating conditions for SME promotion (i.e., access to credit, foreign exchange, imported inputs, fair taxation and effective Labour Laws);
- Removing constraints to the development and growth of efficient and competitive enterprises;
- Developing a policy and legal framework (collection of national data, assessing of the impact of existing policies and regulations on SMEs and reviewing labour and social laws);
- Addressing risk and disadvantage with specific policies to provide social protection to SMEs;
- Assisting and upgrading the informal sector with specific policies and incentives.

Points to remember 2:

There are well researched ways of applying Labour Laws but at any given time, the approaches have both pros and cons. It is therefore Kenya to choose the best approach that suits our local conditions.

- Full application. A few countries make no special provision for MSEs: at a formal level they are subject to all of the Labour Laws.
- Selective exclusions. The second approach, adopted by most States, is to promulgate universal Labour Laws, but exclude MSMEs from the application of particular labour standards.
- Parallel Labour Laws. The third approach is to exempt enterprises below a certain threshold size from the general Labour Laws, and to require MSMEs to comply instead with a separate, or parallel Labour Law regime that is less onerous for these enterprises.
- Complete exemption. Finally, some countries exclude enterprises with a certain number of employees from all Labour Laws and regulations

Exercise group discussions: **approach most suitable for Kenya**

Question for the groups;

- What gaps can be filled?
- What are the implications of Labour Laws on the MSMEs sector?

Facilitator summarized the sessions by emphasizing the following:

- There is a scope for Kenya to develop implementation and enforcement rules that will take into account peculiarities in MSMEs sector in as far as Labour Law compliance is concerned.

Summary (5 minutes)

Facilitator asks participants to quickly state lessons learnt

5.6: CHALLENGES IN COMPLIANCE OF LABOUR LAWS IN MSMEs (MATATU)SECTOR

Running time 60 minutes (1 Hour)

Materials Will depend on the venue but should, at least, use a flipchart and flipchart stand/Chalkboard, markers, Cards

Equipment Laptop, LCD, VCR

Handout Compliance challenges associated with matatu sector

Target Audience Can be used for awareness-raising with various stakeholders i.e. MSMEs operators including employees, employers, policy makers

Introduction (10 minutes)

Expectations: The facilitator asks the participants to write on a card provided what they expect to learn from the session and collects them to put on the wall for review

Facilitator: Implementation of Labour Laws is always an issue particularly to MSMEs whose number runs into millions. The characteristics of the sector also pose major challenges

Facilitator:

- Asks the participants to state the compliance challenges on labour to MSMEs;
- What, in their opinion needs to be done.

Learning Objectives (5 minutes)

The facilitator highlights the following objectives on a screen or flipchart. At the end of this session, participants will be able to:

- Identify possible challenges that matatu industry needs to overcome to comply with labour laws
- List possible strategies for the matatu sector to overcome the challenges.
- Rank the following labour law issues in terms of ease to comply ([ILO Governing Body recommendation – 297th session](#)) : minimum wages, overtime/working time limits, paid off-leave, severance pay, social security, , workers compensation, protection against unjust dismissal, parental leave, collective bargaining and freedom of association, discrimination/equal employment opportunities, prohibition of forced/child labour, occupational safety and health, dignified working conditions

What is in this module 10 minutes)

Flash on the screen the key sub topics in the module:

- Compliance challenges;
- Compliance challenges associated with matatu sector;
- A case for matatu.

Core of the module (40 minutes)

Using Power Point to expound on the core topics. The Power Point will be in bullet points.

Points to remember (10)

Point to remember 1

The Government makes laws following any process it deemed appropriate. However, the Kenyan Constitution advocates for maximum consultation with stakeholders during the policy-making process. The need for adequate consultation is premised on the basis that laws are made “by the people, for the people” and that proper consultation at the design stage makes implementation a lot easier.

Point to remember 2

Labour laws in their current form are useful as the core ILO Conventions have been integrated into the laws. The compliance process particularly in the MSE sector can be complicated as the sector has its own challenges. The need to address these challenges is of critical importance as structured dialogue between the enforcers, tripartite partners, other arms of government such as the police, cooperative and MSE leadership is of essence

Points to remember 3

Baseline survey undertaken by ILO in the Matatu sector reveals that 91 per cent of the matatu industry employees and owner-managers thought that it makes business sense to comply with the Labour Laws. Only 8.96 per cent thought otherwise. Those who supported the idea indicated that it would lead to improvement in the terms and conditions of employment (27.6%); enhance job security (20%); and promote employee empowerment (9.8%). Other perceived benefits from complying with the Labour Laws were given as social protection (8.6%); enjoyment of rights and freedoms at work (7.8%); and streamlining of the industry (6.7%).

Plenary issues on compliance: The plenary will discuss on how best compliance can be enhanced.

5.7: INCENTIVES FOR INTERVENTIONS TO PROMOTE FORMALIZATION OF MSMEs

Running time 60 minutes (1 hour)

Materials Will depend on the venue but should, at least, use flipchart and flipchart stand/Chalkboard, markers, Cards

Equipment Laptop, LCD, VCR

Handout Global incentives and other country examples
Government schemes in support of MSMEs

Target Audience Can be used for awareness-raising with various stakeholders i.e. MSMEs operators including employees, employers, policy makers

Introduction (5 minutes)

Expectations: The facilitator asks the participants to write on a card provided what they expect to learn from the session and collects them to put on the wall for review

Moving of MSMEs from informality to formality is a subject of concern to many countries. Kenya’s MSMEs continue to grow in numbers (horizontally) and only a small fraction is growing vertically. Remaining informal does not promote decent work and complicates Labour Law compliance.

Facilitator:

- Asks the participants to enumerate possible incentives towards formalization.

Learning Objectives (5 minutes)

The facilitator highlights the following objectives on a screen or flipchart. At the end of this session, participants will be able to:

- Identify and list possible incentives for the matatu sector that can promote formalisation

What is in this module? (5 minutes)

Flash on the screen the key sub topics in the module:

Core of the module (25 minutes)

Using Power Point to expound on the core topics. The Power Point will be in bullet points. Facilitator to avoid reading from the PP directly

- Global perspective in creating incentives for MSMEs
- Positive incentives for MSMEs
- Ways of designing incentives
- Lessons from other countries

Exercise group discussions (10minutes)

How can the formalization process be integrated in the existing government schemes in support of MSMEs.

Divide the group and let them present their view

Summary (5 minutes)

This section provides a conclusion to the Module. It is recommended that you review the summary with the trainees when you finish the Module. At that point, you may wish also to restate the Module objectives so trainees can see what has been accomplished.

5.8: IMPLEMENTING AND ENFORCING LABOUR LAWS IN MSMES SECTOR

Running time	90 Minutes (1Hour and half)
Materials	Will depend on the venue but should, at least, use flipchart and flip-chart stand/Chalkboard, markers, Cards
Equipment	Laptop and LCD, VCR
Handout	Selected country examples
Target Audience	Can be used for awareness-raising with various stakeholders i.e. MS-MEs operators including employees, employers, policy makers

Introduction (10 minutes)

Expectations: The facilitator asks the participants to write on a card provided what they expect to learn from the session and collects them to put on the wall for review

Facilitator:

- Asks the participants to give their opinion on how implementation can be undertaken;
- Let participants identify current pitfalls in the implementation process of Labour Laws.

Learning Objectives (5 minutes)

The facilitator highlights the following objectives on a screen or flipchart. At the end of this session, participants will be able to:

- Prioritise implementation approaches and their possible implications to the sector (full application, selective exclusion, parallel labour laws and complete exemption)

What is in this module? (10 minutes)

Flash on the screen the key sub topics in the module:

Core of the module (20 minutes)

The Power Point will be in bullet points. Facilitator to avoid reading from the PP directly.

- Innovative implementation approaches
- Enforcement strategies

- From punitive to holistic approaches
- Labour Laws implementation Strategies
- Role of tripartite in labour law implementation

Points to remember (5minutes)

Point to remember 1

- Full application. A few countries make no special provision for MSEs: at a formal level, they are subject to all of the Labour Laws.
- Selective exclusions. The second approach, adopted by most States, is to promulgate universal Labour Laws, but exclude MSEs from the application of particular labour standards.
- Parallel Labour Laws. The third approach is to exempt enterprises below a certain threshold size from the general Labour Laws, and to require MSEs to comply instead with a separate, or parallel labour law regime that is less onerous for these enterprises.
- Complete exemption. Finally, some countries exclude enterprises with a certain number of employees from all Labour Laws and regulations.

Points to remember 2

Holistic process

Best option: Information, education, and incentives for compliance with Labour Law or for enterprise formalization

Better option: Monitoring compliance & co-ordination of State and private actors

Good option when the two above may have failed Tailored Sanctions

Can give bad result Punitive Sanctions

The facilitator to ask participants to state major learning points and put the same on flip chart.

Group discussions: Discuss pros and cons of the approaches and lessons Kenya can learn in the application of Labour Laws.

Summary: (5 minutes)

This section provides a conclusion to the Module. It is recommended that you review the summary with the trainees when you finish the Module. At that point, you may wish also to restate the Module objectives so trainees can see what has been accomplished.

5.9 HIV AND AIDS AND MSME-MATATU INDUSTRY

Running time	120 minutes (Two hours).
Materials	Will depend on the venue but should, at least, use a flipchart and flipchart stand/Chalkboard, water-base markers and cards. Have thumb tacks, glue or masking tapes at hand.
Equipment	Laptop and LCD or VCR if necessary.
Handout	Necessary materials on selected aspects of the HIV and AIDS. Excerpts from relevant legal citations from sources such as the Constitution (Article 27), Labour Laws (Employment Act), the HIV and AIDS Control Act 2006 (Act No. 14, 2006 part 8), the various codes of practice including the FKE Code of Conduct and the ILO Code of Best Practice. Some of the citations may be projected in Power Point slides.
Demonstration	A penile, pelvic model, female and male condoms
IEC Material	Materials should be made available to the participants
Target Audience	Stakeholders in the informal sector and more so the Matatu sector. Matatu owners and their employees. Government policy makers.

Introduction (15 minutes)

Expectations: The facilitator asks the participants to write on a card provided what they expect to learn from the session and collects them to put on the wall for review

Facilitator:

Introduction:

- HIV and AIDS in Kenya has been a major concern over the last thirty years.
- Impact of HIV and AIDS:
 - Has devastated the economy, businesses and families.
 - For the economy - it has robbed the country of valuable human resource and also eroded the resources needed for other development agenda.
 - For the businesses, it remains as an outlet of company resources through treatment, care and support as well as catering for funeral expenses. This is besides the cost of absenteeism from work.
 - For the family unit, the pandemic has taken away bread winners and also meager resources as families spend them on medical care. It has also exacerbated poverty at the level of the family.
- The Matatu sector is one of the most at risk sectors because of the nature of their work, the risk behavior and the environment that encourages risk.

Facilitator:

- Will ask participants to try their knowledge on HIV and AIDS issues.
- The history of HIV.
- Have them define the Human Immuno-deficiency Virus and Acquired Immune-deficiency Syndrome.
- Participants to describe in simple and direct ways, how HIV is acquired and how AIDS comes about.
- Participants to be encouraged to discuss their fears about HIV and AIDS in their lives, family, friends and country.
- Find out what strategies they recommend for avoiding HIV infection.
- Have them mention their cultural beliefs that hinder prevention of HIV infection.
- Find out how many are affected by the pandemic?

Learning Objectives (15 minutes)

Facilitator: The facilitator asks the participants to write on a card provided what they expect to learn from the session and collects them to put on the wall for review and reference.

- What are your expectations from this session?
- How do you intend to apply the knowledge to be obtained?

Facilitator: Highlights the following objectives on a screen or flipchart.

At the end of this session, participants will be able to:

- Differentiate the between the term HIV and the term AIDS
- Describe the epidemiology of the virus
- List and identify the modes of transmission of HIV and prevention methods;
- Learn about constitutional and legal positions regarding HIV and AIDS;
- List the implications of HIV and AIDS to the Matatu and other informal sectors in Kenya;
- Discuss MSMEs strategies to combat HIV and manage AIDS;
- Learn to be active agents in the fight against new infections and the management of existing cases to [AIDS state](#).

What is in this module (15 minutes)

- Epidemiology of HIV and AIDS
- Global View of HIV and AIDS
- Definitions
- Modes of HIV Transmission

- Prevention and Management of HIV and AIDS
- Role of MSMEs in Prevention
- Informal Sector HIV and AIDS Issues
- Support Mechanisms
- National Response towards Prevention
- Legal Aspects of Prevention of HIV Infections
- ILO Recommendations on HIV and AIDS
- General Principles of ILO Recommendation 200
- National Code of Practice on HIV and AIDS in the Workplace
- Guiding Principles in the Code of Practice
- The Kenyan Legal Position- The Constitution
- Role and Responsibility of MSMEs in the Against HIVandAIDS
- Communication Strategies for HIV and AIDS Programmes
- HIV and AIDS Issues in Labour Laws
- The HIV AIDS Prevention and Control Act, 2006
- Points to Remember about the HIV and AIDS Act

Core of the Module:

USE PP Slides

Points to remember:

- HIV and AIDS is real. We all have a responsibility in the prevention of new infections, care and support for those living with HIV.
- Legal instruments prohibit discrimination on the basis of one's HIV status and intentional infection of others.
- Infected workers should not be terminated. They should be assisted to live quality life and contribute to the development of the Matatu industry.
- The best mode for prevention is through Abstinence, being faithful to one uninfected partner and using condoms for protection (ABC).
- The Matatu industry has an estimated 350,000 strong workforce. MSMEs are encouraged to protect this critical human resource through aggressive advocacy programmes.
- **Exercises and Group Work:**
Discuss MSMEs strategies to combat HIV and manage AIDS;
- **Demonstration: Participants offer to demonstrate the effective of condoms**

5.10: COUNTRY EXAMPLES ON INNOVATIVE PRACTICES IN EXTENDING LABOUR AND LA-

BOUR RELATED LAWS

Running time	60 minutes (1Hour)
Materials	Will depend on the venue but should, at least, use a flipchart and flip-chart stand/Chalkboard, markers, Cards
Equipment	Laptop, LCD, VCR
Handout	Selected Country examples
Target Audience	Can be used for awareness-raising with various stakeholders i.e. MS-MEs operators including employees, employers, policy makers

Introduction (10 minutes)

Expectations: The facilitator asks the participants to write on a card provided what they expect to learn from the session and collects them to put on the wall for review

Different countries have used differentiated and innovative approaches in the Labour Law enforcement. Some approaches have shown remarkable results. Kenya can learn from these countries if the enforcement is to have meaningful results. "Moving from conventional enforcement is best approach"

Facilitator:

- Asks the participants to give their opinion on how enforcement of Labour Laws can be undertaken

Learning Objectives (5 minutes)

The facilitator highlights the following objectives on a screen or flipchart. At the end of this session, participants will be able to:

- Identify the various country examples on labour law enforcement

What is in this module? (10 minutes)

Flash on the screen the key sub topics in the module:

Core of the module (20 minutes)

Using Power Point to expound on the core topics. The Power Point will be in bullet points. Facilitator to avoid reading from the PP directly

- Application of Labour Laws lessons from other countries
- Lessons on special exclusion

- Lessons on parallel Labour Laws to MSMEs
- Special approaches on enforcement
- Lessons on responsive regulations

Points to remember (5 minutes)

After each main section of text, you will find a list of points to remember in a box. These are the “take home” messages for each segment, that is, a summary of the most important points contained in the section. Review these points with the trainees as you finish each section. The review will help to reinforce the main points.

Points to remember 1 Pitfall 1: Excluding MSEs from the application of certain fundamental labour rights

Excluding MSE workers from the application of certain labour standards can leave them without protection for many of their fundamental rights at work. There is a clear tension between such approaches and the principle of nondiscrimination that should guarantee equal rights for all workers.

Points to remember 2:

Safety and Health: Namibia, section 42(1) of the Labour Act 2004 provides that workers in enterprises with more than 10 employees may elect a health and safety representative. In South Africa, enterprises with 20 workers or more are required to designate a health and safety representative. Moreover, only enterprises with 10 or more workers are required to contribute to workers' compensation insurance. In Tanzania, internal Workers' Committees, which consult and advise the employer on safety conditions, are only required in enterprises employing 10 or more workers. In Thailand, only enterprises with 50 or more employees are required to appoint a fulltime health and safety officer. In most countries in South Asia, micro-enterprises (often with fewer than 5 or 10 workers) lie outside the ambit of legislation on occupational health and safety.

The facilitator to ask participants to state major learning points and put the same on flight chart

Group discussions: Discuss the lessons learnt on other countries. pros and cons of the approaches and discuss lessons Kenya can learn in the application of Labour Laws.

Summary: (5 minutes) This section provides a conclusion to the Module. It is recommended that you review the summary with the trainees when you finish the Module. At that point, you may wish also to restate the Module objectives so trainees can see what has been accomplished.

