

LABOUR LAW
& MICRO AND SMALL
ENTERPRISES (MSEs)

SURVEY

INTERNATIONAL ORGANISATION OF EMPLOYERS

November 2006

METHODOLOGY

The IOE carried out a survey of its members on the impact of labour law on micro and small enterprises (hereafter "MSEs") between July and September 2006. Of the 142 IOE members we received 48 answers from the following countries:

Algeria	Congo	Honduras	Madagascar	Norway	Tanzania
Australia	Côte d'Ivoire	Hungary	Malaysia	Portugal	Tunisia
Bangladesh	Cyprus	Iceland	Mali	Russia	Turkey
Belgium	Czech Republic	India	Mexico	Serbia	Uganda
Bulgaria ¹	Ecuador	Iran	Moldova	South Africa	U.K.
Cameroon	France	Japan	Mongolia	Spain	U.S.
China	Germany	Kuwait	Montenegro	Sweden	Venezuela
Colombia	Ghana	Lesotho	Netherlands	Switzerland	

¹ We received two completed surveys from member organizations in Bulgaria

Responses came from a mixture of developing and developed countries and represented a good regional spread. Twenty from Europe; eight from Asia; six from the Americas; twelve from Africa; and one from the Arab States. Member federations were asked sixteen questions – although not every responding federation replied to all sixteen.

The survey was designed to obtain a general picture of employers' views of the issue and the questions posed were therefore reasonably broad. A comprehensive survey of the issues addressed was beyond the scope of this project.

The information we subsequently received reflected this broad approach and in certain cases assumptions were made based on the answers received.

This paper is divided into two parts. The first part provides an overview of the survey results and tries to extract tentative conclusions and key messages from each part of the survey. The second part provides the actual breakdown of answers for each question.

PART I : LABOUR LAW AND MICRO AND SMALL ENTERPRISES (MSEs)

1. LABOUR LEGISLATION : CONDUCTIVE OR CONSTRAINING ON MSEs? (questions 1 & 2)

Member organizations were asked in the first instance if the legal framework in general was conducive or constraining to MSE growth and secondly whether specifically labour law was conducive or constraining on their development.

**HALF OF THE COUNTRIES
SURVEYED SAW LABOUR
LEGISLATION AS HAVING A
NEGATIVE IMPACT ON MSEs**

46 out of the 48 respondents answered this questions. Of those who respondent, 43% felt their national legislative framework (in general terms) was constraining on MSEs. A further 20% felt that it was not applied or enforced, which would suggest significant rigidities in the legislation or alternatively issues of capacity in enforcing the law. The remaining 37% felt the law to be a positive factor on MSE development.

Of those responding positively to this question some specifically stated that recent legislative changes had improved the law for MSEs. In Colombia, for example, recent enabling legislation specifically targeted MSEs (e.g. less paperwork, more credit facilities, increased training schemes for MSEs, softer taxation from regional authorities). However some respondents stated that while the law was positive and well-intentioned (such as legal protections for minority groups) it was not clear from the survey results if *in practice* the benefits of these laws are widely applicable (i.e. only applicable to formal enterprises and therefore a minority of workers).

**LABOUR LEGISLATION
NEEDS TO BE CONDUCTIVE
FOR MSEs BEYOND THE
START-UP PHASE**

Specifically in terms of the second question relating to 'labour legislation', respondents answered in much the same manner as the question dealing with the general legislative framework. 64% stated that labour legislation was either constraining or not applied.

Two respondents (Portugal and the UK) outlined that initial legislation to establish an enterprise was straight forward – it was in developing the business (i.e. once it was up and running) where regulatory constraints impeded growth. Some respondents noted that the problem often lay in the interpretation of laws by public officials and some specifically cited harassment by inspection authorities. Employers in Mali for instance noted that often officials take a very strict interpretation of law which can hurt MSEs. One respondent (Uganda) put the difficulties of MSEs in complying with the legislative framework most succinctly *'the law presumes every enterprise is a huge multinational'*.

2. HOW THE LAW IMPACTS ON CERTAIN GROUPS (questions 5, 9)

**LEGISLATION CAN BE WELL
INTENTIONED BUT NEGATIVE
IN PRACTICE**

Responding organizations were asked about whether labour legislation has had a positive, a negative or no impact at all on certain groups of workers including young, female, migrant or disabled workers. Of the 46 that responded to this question, 52% said that there was a positive impact and only 21% saying it had a negative impact. In the UK for example increased legislation, such as equality legislation while burdensome to MSEs to an extent, has aggregately contributed to a culture change and probably led to more opportunities for disadvantaged groups. Certain pieces of US anti-discrimination legislation likewise have impacted positively on certain groups, for instance increased labour market opportunities for disabled workers. On the negative side, the following statement from the Czech Republic is telling “ *this kind of legislation (targeting certain groups) is positive in theory but negative in practice*” which would support the previous conclusion that laws can be well intended but damaging in practice.

Female workers are often targeted for ‘friendly legislation’ which can in practice have the opposite effect. Female workers in Malaysia for example are required to take specific breaks between shifts thereby increasing the cost to hire female workers. In Mali and Montenegro female workers are prohibited from working at night – again acting as a direct disincentive to employ one group of workers. In Uganda (with the help of the ILO!) the *Maternity Leave Act* was revised making it more generous and this now acts as a direct disincentive to employ women.

In Iran the legislation is viewed as having a negative impact and results in increased government ‘make work’ schemes for these groups. In Germany, collective agreements provide special benefits for older workers, such as salary supplements, protection against lower payment in case of changes in their work tasks and increased protection against dismissal. As these benefits involve costs for employers, which do not correspond to comparable benefits, they actually discourage the creation of jobs for older workers. Norway has experienced the opposite where anti-discrimination legislation has levelled the playing field.

3. HOW THE LAW IMPACTS ON DIFFERENT WAYS OF WORKING (questions 5, 9)

Question 3 addressed the fact that labour legislation has resulted in increases in different ways of working such as contract work, part-time work as well as outsourcing, in the main to get around rigidities in hiring employees (i.e. full time permanent employment contracts). 66% of 39 respondents felt that contract work had increased due to stringent labour legislation and 58% of the 38 felt that outsourcing had increased for the same reason. Legislation resulted in increases to part-time work in 38% out of the 39 responses and increased temporary work in 50% of 38 countries.

In some cases the legislation was extremely restrictive. In Lesotho, for instance employers have to apply to the Labour Commissioner *and the Minister* if they want employees to work outside the statutory hours of work!

The use of contractors and outsourcing was explicitly cited by some respondents as having a positive impact on productivity and competitiveness. For instance under the Australian *Workplace Relations Act 1996* it is now unlawful for limits or proportions to be placed on the number of part time employees and part time employment must not be prohibited in any industry. These changes have resulted in a rise in part time employment, but not at the expense of full time employment. This Act also saw some movement from irregular casual employment to part time employment. Such legislative changes can have a particularly positive impact on certain groups of workers such as women and young people.

**LABOUR LEGISLATION HAS
INCREASED DIFFERENT
WAYS OF WORKING**

According to the OECD strict employment protection rules may be an important factor behind the rise in the use of temporary contracts. The high cost of dismissing people on permanent contracts may constitute an incentive for employers to use a series of temporary contracts rather than converting them to permanent contracts. Certainly this is a recent experience in Europe.

Of the 44 respondents to question 9, 39% of respondents said that there was specific legislation in place in their countries covering independent contractors. The most recent example was in Australia where the government undertook to introduce legislation on contracting explicitly before the International Labour Conference debate on Employment Relationships (2006) which produced the controversial Recommendation No. 198. In Spain, a project is under discussion to regulate "independent workers" (there is already legislation in place that covers "self-employees" under commercial law).

The responses indicated that only 19% of countries have mechanisms in place to assess the impact in terms of cost of compliance with labour legislation (regardless of size).

4. EXEMPTIONS FOR MSES FROM CERTAIN LABOUR LAWS (questions 4)

MANY COUNTRIES HAVE EXEMPTIONS FOR MSES FROM CERTAIN KINDS OF LAWS

Of the 47 respondents to question 4, 60% of the countries surveyed had specific exemptions for MSEs from certain labour laws. A number of respondents provide explicit examples of 'ceilings' in legislation that enterprises do not wish to pass. For example, in Turkey there is a legal obligation for enterprises employing fifty or more employees to set up sports facilities, kindergarten and child day care facilities, training units, and a workplace health unit. Consequently many companies have a direct incentive not to employ more than 49 employees. In Madagascar companies with more than 50 employees are legally required to be party to collective agreements.

COMPLIANCE WITH LABOUR LAW IS HARDER FOR MSES THAN LARGER ENTERPRISES

On the positive side MSEs in Russia get an easy time from tax authorities who have put in place a simplified system of taxation for MSEs. In the US labour laws dealing with plant closures and notice requirements, an employer must give 60 days written notice prior to the closing of a plant or a mass layoff, defined as affecting 50 or more employees. But this law does not apply to any employer with fewer than 100 employees, and even then, if an employer meets the 100 employee criteria, notice is not required if the layoff does not affect 50 or more employees and at least one-third of the workforce.

The Australian *Workplace Relations Act 1996* provides that an employer of 100 or fewer employees cannot be sued for unfair dismissal (however an employer of any size can be sued for an unlawful dismissal – such as discrimination based dismissals). In March 2004 the Australian Industrial Relations Commission decided that a business of 15 or fewer employees should not have to bear the same level of redundancy payment obligation as a larger business.

Many respondents felt that compliance with labour law was considerably more difficult for MSEs than larger enterprises. Germany, Norway, Netherlands, Malaysia, and the US specifically referenced the 'time' factor in adhering to and understanding the legislation as a big issue for MSEs. Adjustment to legislation is also a factor highlighted by some respondents (UK and the Czech Republic) in that MSEs have less capacity to adjust to new legislation and usually need more time than larger entities to re-organise themselves. Overlapping laws and reporting requirements were referenced by India as particularly problematic for MSEs.

5. INFORMALITY AND LABOUR LAW (questions 6 & 7)

In many countries there is no data to track the informal economy so trying to determine exactly how many people it employs or what impact labour law has in driving them into informality is difficult to precisely ascertain. While informality occurs in all economies to some degree, it is a significant issue primarily for developing and transition economies.

Many respondents from developing countries gave very high figures for those engaged in informal work in their countries for example 70% in Cote d'Ivoire; 80% in Tanzania and 92% in India. According to the World Bank's **Doing Business Report 2007**, in Bolivia 400,000 workers have formal jobs in the private sector—*out of a population of 8.8 million*. In India 30 million workers have such jobs—in a country of 1.1 billion people. In Malawi, 50,000 out of a population of 12 million. In Mozambique, 350,000 in a country of 20 million.

« EXCESSIVE BUREAUCRACY » IS THE MAIN REASON IN DRIVING INDIVIDUALS INTO THE INFORMAL ECONOMY

The main reasons cited for informality were “excessive bureaucracy” with 62% of respondents listing this variable as a key driver in informality; lack of “access to credit” was next 50%; with “absence of a facilitative legal system” cited by 42% of the sample. “Rigid labour legislation” was ranked by only 18 respondents as a key driver of informality (37%). Some caution should be exercised with regard to this low ranking which is probably more a reflection of the ‘irrelevancy’ of labour law for many firms i.e. it is simply not applied/enforced so not rated a tangible problem (such as ‘access to finance’). Interestingly only 10% of respondents felt that property rights were a significant factor in informality. Additionally, referenced by some respondents was the issue of deliberate avoidance i.e. those in the informal economy looking to avoid scrutiny by relevant authorities (including tax authorities).

6. COLLECTIVE AGREEMENTS (questions 10)

Only 13% of respondents said that over half of MSEs were covered by collective agreements and only 7% said that above three quarters were covered. Due no doubt to the low level of unionization in MSEs. In a number of countries where collective agreements are prevalent they impact more broadly on enterprises regardless of whether they are part of the negotiating organization or not (e.g. Iceland where there is a legal requirement to adhere to such agreements). In Germany approximately a third of all small enterprises in membership organizations are covered by collective agreements, although this figure is in reality a lot higher as collective agreements impact indirectly on wage setting in many MSEs and SMEs.

COLLECTIVE AGREEMENTS OFTEN HAVE « PASS-ON » EFFECTS

7. UNDERSTANDING, PROMOTING AND COMPLYING WITH LABOUR LAW (questions 8, 11, 13, 14, 15)

UNDERSTANDING LABOUR LAW IS MORE DIFFICULT FOR MSEs

In a high number of countries, laws are well promulgated with 82% of the respondents indicating satisfaction. While a high number of respondents, 45% said that labour legislation was easy to understand. This seems to be a misleading figure when the comments of respondents are taken into consideration. Many seemed to have answered that the legislation is comprehensible in *strictly legal terms* (i.e. the law is clear) but for someone unfamiliar with the law in any detail, such as an MSE owner it quite probably is difficult. On the basis of the comments received from respondents we can make two assumptions. First, the overall understanding of labour laws for MSEs can be problematic and second the interpretation and application of legislation seems to be the major issue, especially for MSEs that may not have the resources to cope.

In terms of innovative schemes to encourage compliance with labour law a number of examples were given:

- In Portugal failure to comply with labour legislation can lead to the exclusion of enterprises from bidding for public tenders for a period of six months. A second means for labour administration to sanction non-compliance is to withhold access to certain programmes (for example vocational training programmes or employment programmes) when a company has fiscal or social security debts.
- In Tanzania there is a compilation of the new labour laws in portable pocket size booklets which are available both in English and Kiswahili (which promotes compliance in particular in areas outside the capital where English is not understood).
- In Australia there is a proactive (not reactive) labour inspectorate with both education and prosecution powers. It responds to complaints, but also targets industry sectors. Sometimes it gives an industry sector in a town advance notice that it will visit and this brings compliance levels to a high level.
- In Iceland there is a cooperation between the social partners and the ministry of social affairs to ensure that migrant workers' salaries and terms are in compliance with law and collective agreements.
- The US uses a system of gradation of penalties based on the size of the employer. The *Equal Access to Justice Act* for example permits SMEs to recoup legal fees when they prevail in an action against government. Other mechanisms include: administrative opinion letters where enforcement agencies answer compliance questions; advisory opinions; outreach for voluntary compliance; and reduced penalties for first time violators.

8. THE ROLE OF EMPLOYERS' ORGANIZATIONS (questions 12 & 13.2)

EMPLOYERS' ORGANIZATIONS ARE CONSULTED IN CHANGES TO THE LABOUR CODE

Only one of the responding organizations said that their organization was not consulted when government was devising labour law (Venezuela). Out of 48 respondents, 73% of employers' organizations have 'meaningful' consultation and 25% have 'some' consultation. In cases such consultations are enshrined in law. According to Article 525 of the Portuguese Labour Code, *"No project of law, decree-law or regional decree regarding labour legislation can be discussed and voted by the Parliament, Regional Governments or Regional Assemblies without the employees committees or respective co-ordination committees, union associations and employer associations having participated in such proposal or project"*. In Spain such consultations are safe-guarded by the Constitution.

ONLY HALF THE COUNTRIES SURVEYED REGULARLY REVIEW THEIR LEGISLATION

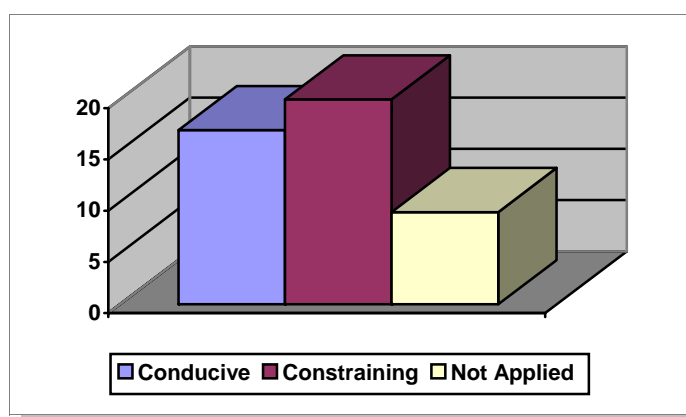
Three quarters of respondents said that the concerns and views of MSEs were taken into account when labour law was devised. This would happen through direct consultation with organisations representing MSEs but in most cases the responding employers' organizations said that MSEs were either part of their membership directly or members of small business associations affiliated to the employers' organization. Either way consultation processes are in place.

Regular reviews of the labour legislation take place in just over half the countries that responded to this question and in most of the cases (72%) they are considered effective by employers. In all cases (except in Venezuela) employers are engaged in such reviews. In some cases the reviews are lengthy – in the case of Uganda (while there are regular reviews of certain pieces of legislation) the whole process can take up to 15 years! The length of time to review labour legislation is important. For example, employers in Malaysia noted that for the most part their legislation was drawn up at the time when the economy was based on plantation, mining and timber logging. However, the economy now has been transformed to services and manufacturing, hence requiring a different set of laws.

PART II : SURVEY RESULTS

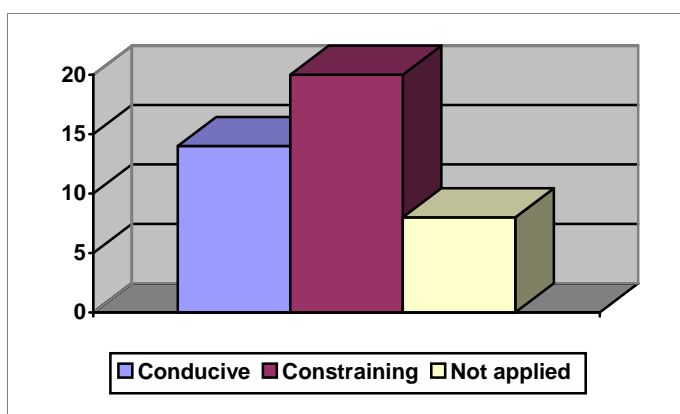
1. Would you describe existing legislation in your country as :
(46 out of 48 responded to this question)

- 17 conducive to M/SE creation and development
- 20 constraining M/SE creation and development
- 9 largely not applied/enforced in the M/SE sector



2. Specifically, would you describe labour legislation² for MSEs in your country as :
(42 of 48 responded this question)

- 14 Conducive to M/SE creation and development
- 20 Constraining M/SE creation and development
- 8 Largely not applied/enforced in the M/SE sector

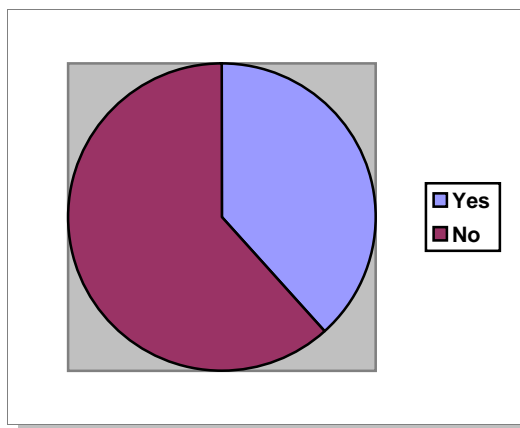


² For the purposes of this survey labour legislation covers all legislation governing the workplace including for instance OSH and social security

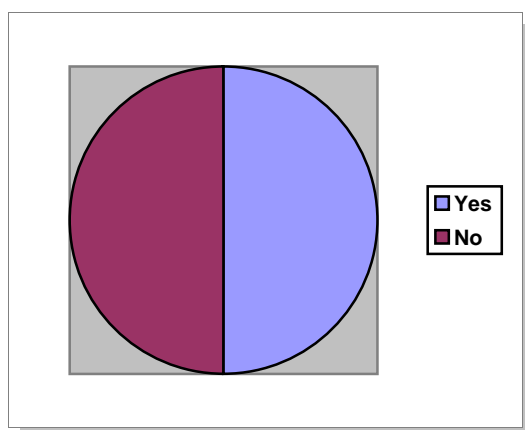
3. Has labour legislation been a cause for increases in:

(39 of 48 responded this question)

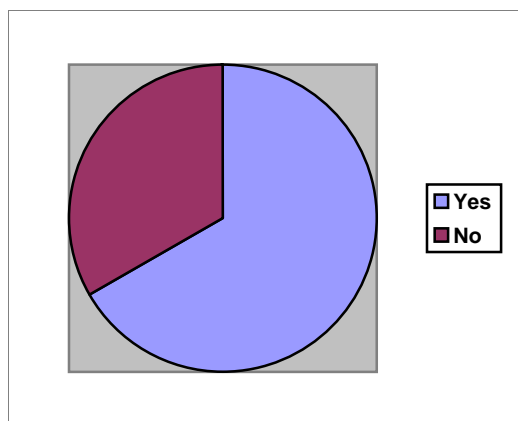
- Part-time work
Yes, 15 No, 24



- Temporary work *(36 of 48 responded this question)*
Yes, 18 No, 18



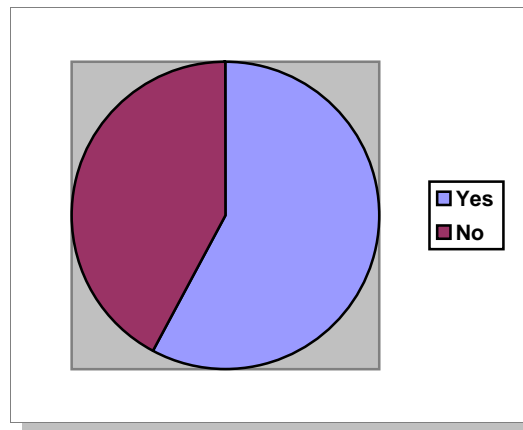
- Contract work *(39 of 48 responded this question)*
Yes, 26 No, 13



- Outsourcing (38 of 48 responded this question)

Yes, 22

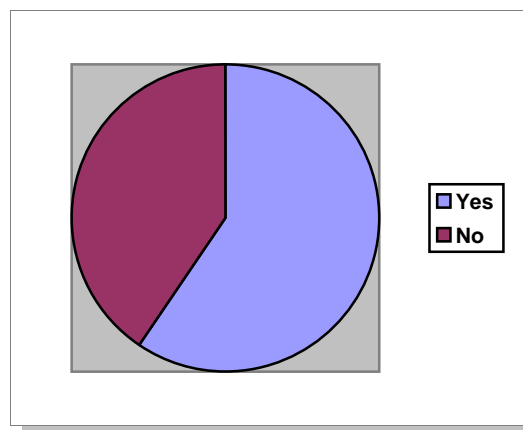
No, 16



4. Are there exemptions for M/SEs from certain labour laws, e.g., M/SEs with 10 employees or less? (47 of 48 responded to this question)

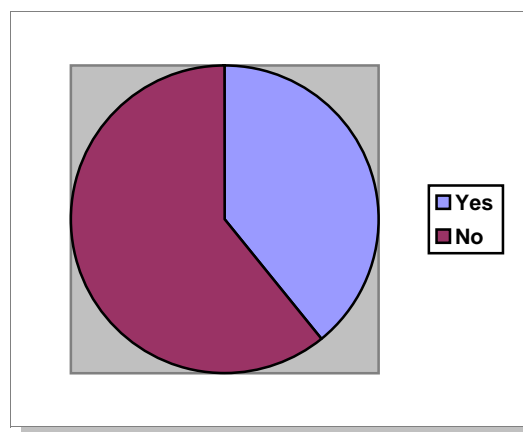
Yes, 28

No, 19



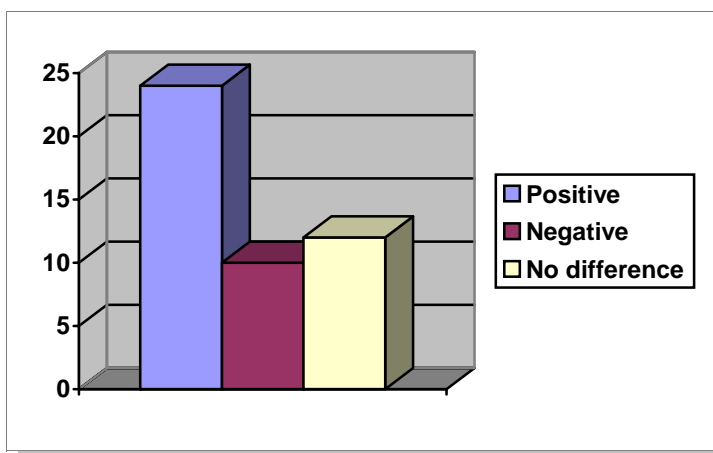
4.1 If so, in your opinion does this work effectively, (i.e., does not create 'growth traps' whereby MSEs don't want to cross a certain threshold?

Yes, 9 No, 14



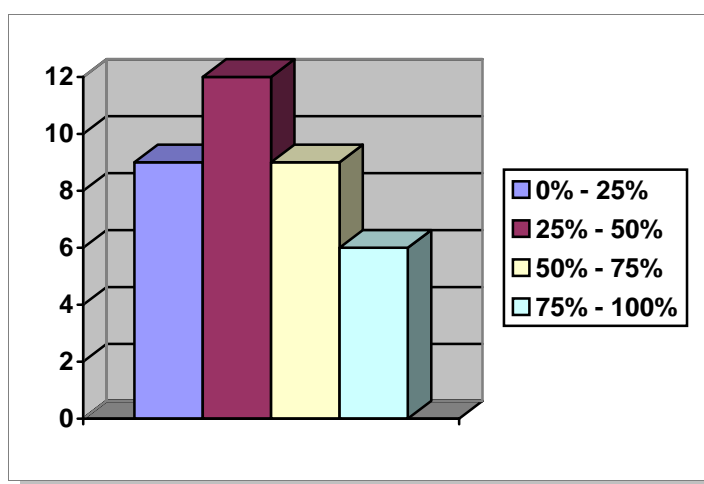
5. What impact does labour legislation have on certain groups of workers, (e.g., young, female, older, disabled)? *(46 of 48 responded to this question)*

24 positive
 10 negative
 12 no difference



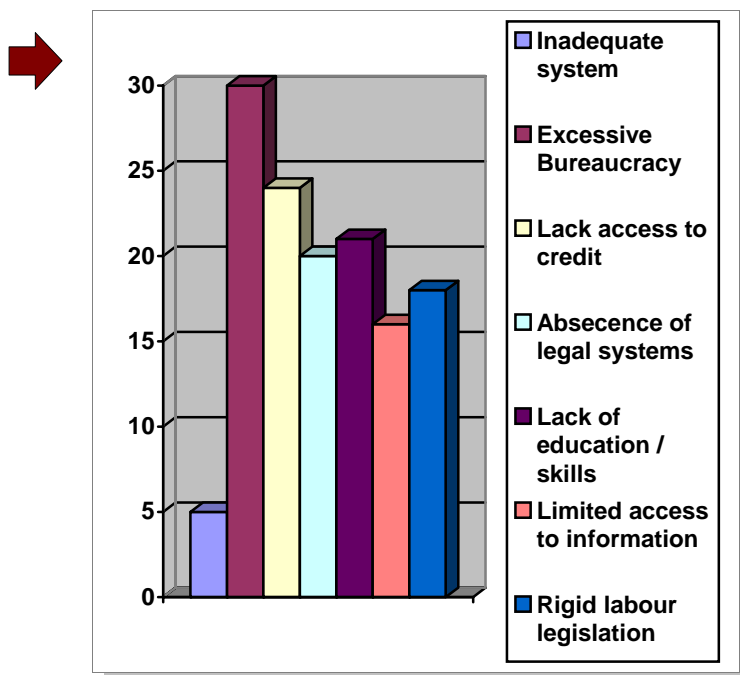
6. Approximately what percentage of M/SEs operate in the “informal economy” ?
(36 of 48 responded this question)

- 9 between 0%-25%
- 12 between 25%-50
- 9 between 50%-75%
- 6 between 75%-100%



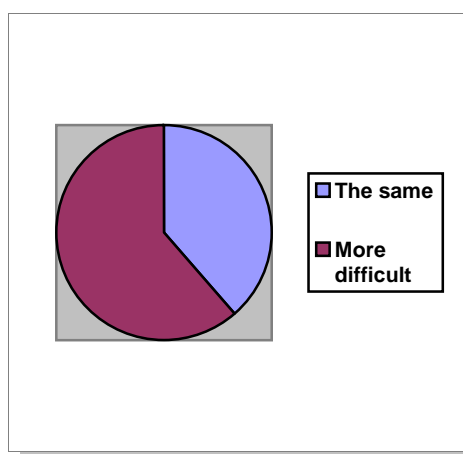
7. Would you attribute M/SEs working ‘informally’ to:
(46 out of 48 responded to at least one of the options provided)

- 5 inadequate system of property rights
- 30 excessive bureaucracy, i.e. cost/time involved in registering a business or, staying formal)
- 24 lack of access to credit
- 20 absence of facilitative legal systems
- 21 lack of education/skills to function in the formal economy
- 16 limited access to market information
- 18 rigid labour legislation



8. Is compliance with labour law in terms of cost/time:
(44 of 48 responded to this question)

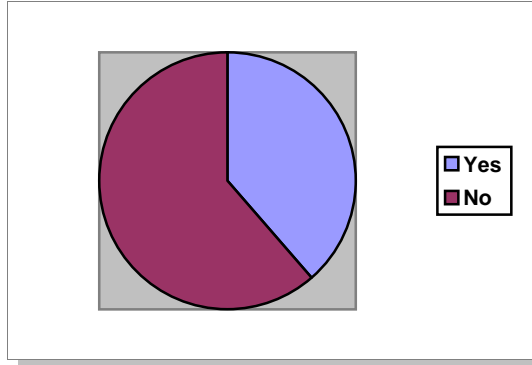
- 17 the same for all enterprises
- 27 more difficult for M/SEs



9. Is there specific legislation in place covering independent contractors?

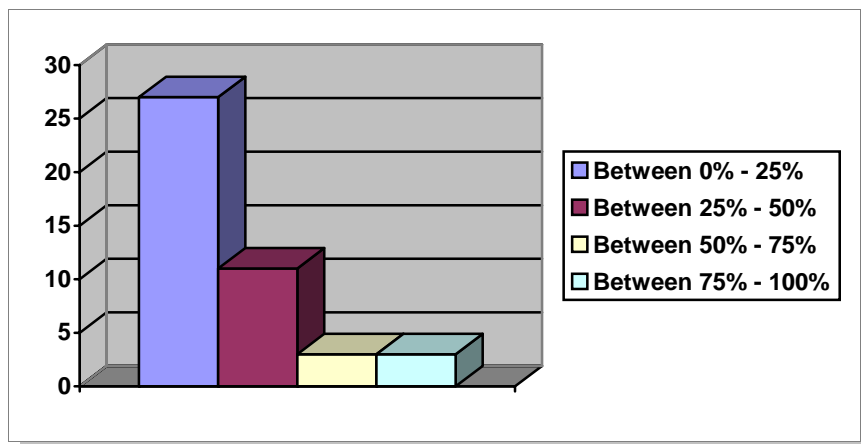
(44 of 48 responded to this question)

Yes, 17 No, 27



10. What proportion of the workers in M/SEs would you estimate are covered by collective agreements? *(44 of 48 responded to this question)*

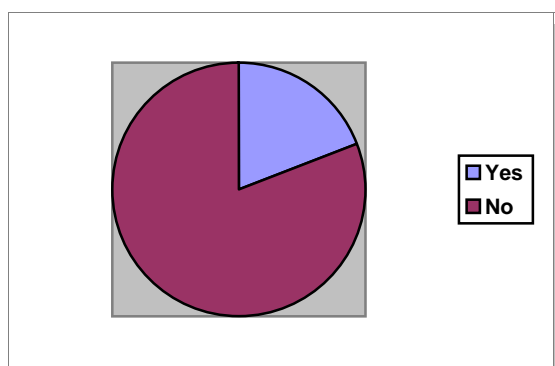
- 27 between 0%-25%
- 11 between 25%-50
- 3 between 50%-75%
- 3 between 75%-100%



11. Are there any mechanisms in place in your country to ascertain the cost of compliance with labour legislation? (42 of 48 responded to this question)

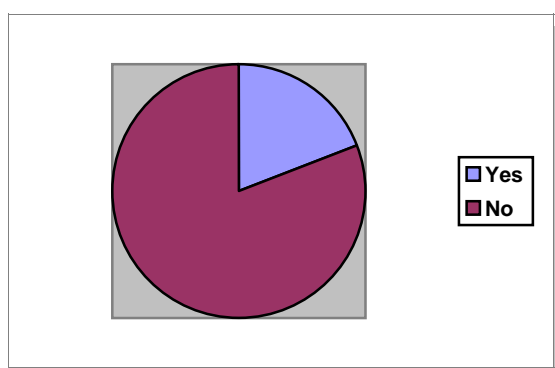
Yes, 8

No, 34



12. What role do employers' organizations have in devising labour legislation? (48 responded to this question)

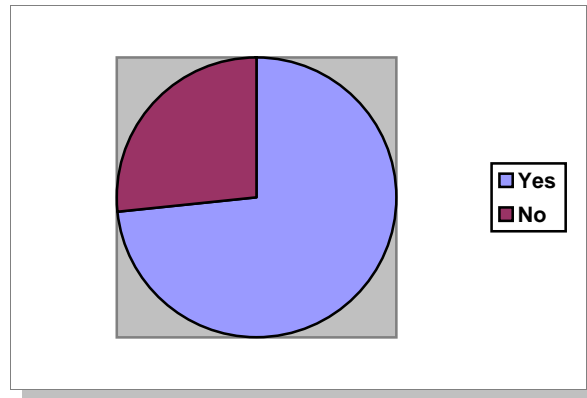
- 35 meaningful consultation
- 12 some consultations
- 1 employers' organizations not consulted



- 12.1 Are organizations that are specifically representing M/SEs consulted in this process? (45 of 48 responded this question)

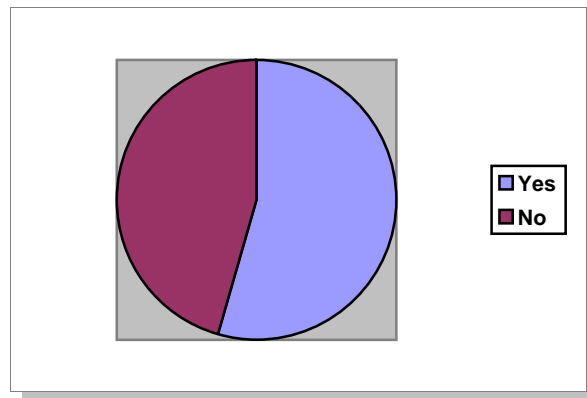
Yes, 33

No, 12



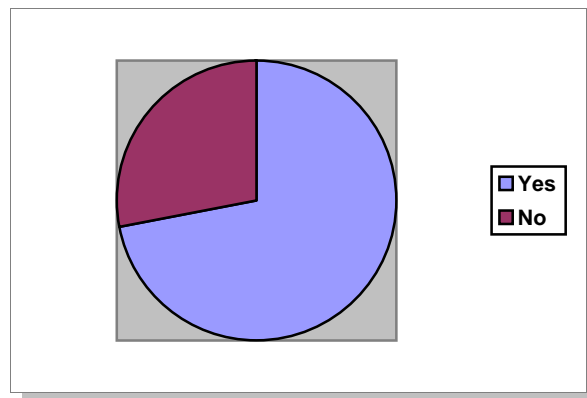
13. Are there regular reviews of labour legislation?
(46 of 48 responded this question)

Yes, 25 No, 21



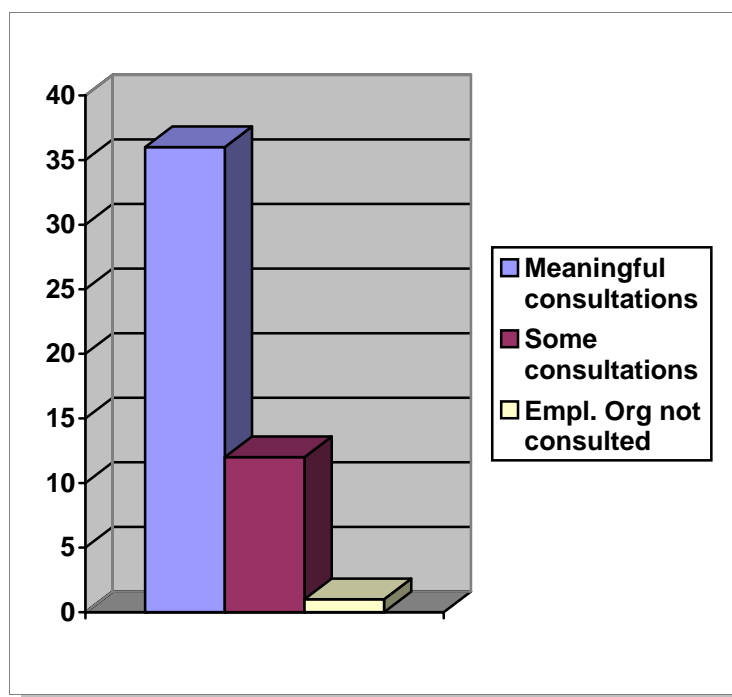
13.1 If yes, is this effective?
(26 of 48 responded this question)

Yes, 18 No, 7



13.2 What role do employers' organizations have in such reviews?
(48 responded to this question)

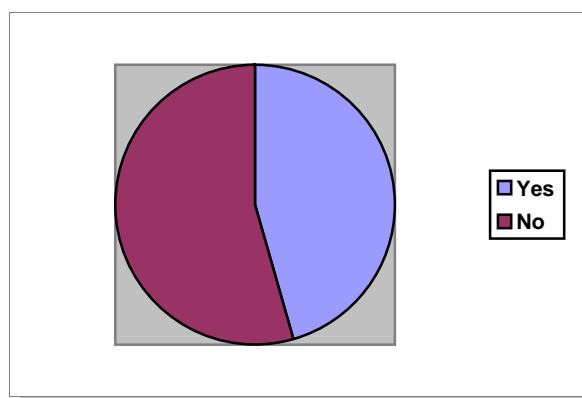
- 36 meaningful consultation
- 12 some consultations
- 1 Employers' organizations not consulted



14. Is labour legislation easy to understand?

(46 of 48 responded this question)

Yes, 21 No, 25

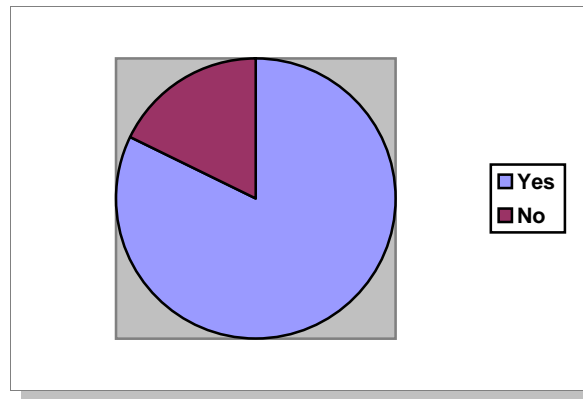


15. Are laws well promulgated?

(45 out of 48 responded)

Yes, 37

No, 8

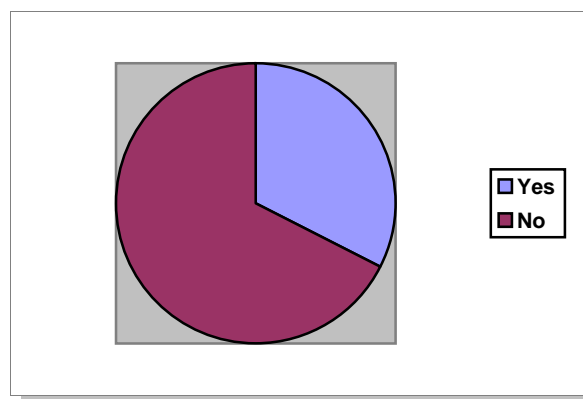


16. Are there any innovative schemes in place to encourage compliance with labour law in your county ?

(45 of 48 responded this question)

Yes, 14

No, 29



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INTERNATIONAL ORGANISATION OF EMPLOYERS (IOE)

26 chemin de Joinville
1216 Cointrin / Geneva
Switzerland

Phone : +4122 929 00 00
Fax : +4122 929 00 01
E-mail : ioe@ioe-emp.org
Website : www.ioe-emp.org