

Labour Law Reforms: An ILO Perspective

*Employment Law Specialists Association (ELSA) Luxembourg
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ILO Technical Assistance in Labour Law Reforms – A Constitutional Mandate

- Technical advice on “*the framing of*” labour laws and regulations: ILO Constitution, Art. 10(2)(b).
- The Office is tasked to respond to governments’ requests relating to laws and regulations that affect workers and employers every day.
- The task goes beyond helping a government identify legislative provisions that fail to give effect to ratified ILO Conventions, although that is of course an essential element.

Labour Law Reforms and Sustainable Development Goals (SDGs)

GOAL 8: Decent Work and Economic Growth

- Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

Targets:

- Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment;
- By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.

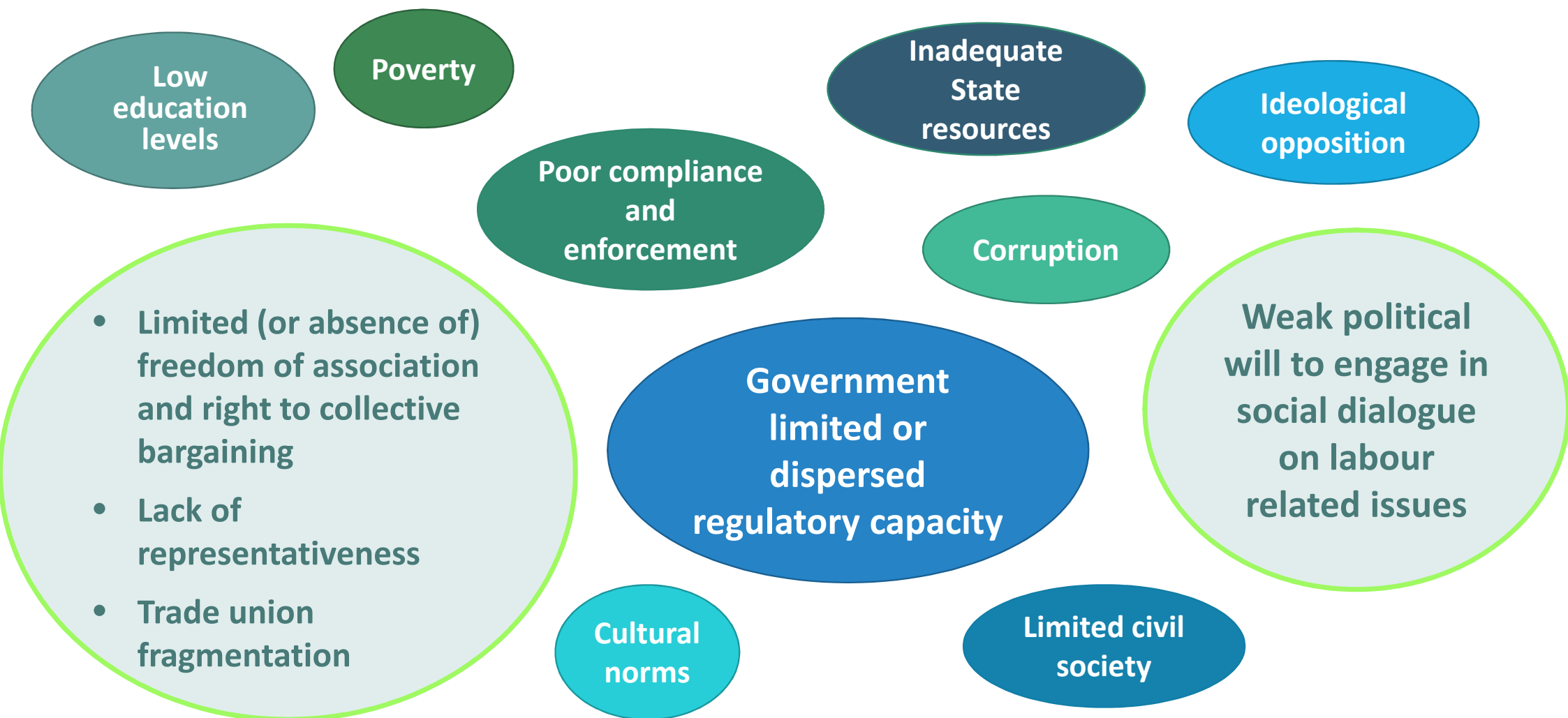
GOAL 16: Peace, Justice and Strong Institutions

- Promote just, peaceful and inclusive societies (access to justice for all, and building effective, accountable institutions at all levels).

Why reforming labour laws?

- **Inconsistent with international labour standards;**
- **Out of date, and unresponsive to social and economic change** (democratic and/or political transformation, globalization pressures, regional integration processes,...);
- **Inadequate coverage** (incl. gender, informal economy, youth, rural workers, firm size...);
- **Change of government/political opportunity;**
- **Managing economic and political evolution;**
- **In the context of international trade deals;**
- **As response to economic crisis, to address:**
 - Slow economic and employment growth / Inequalities / Pressures on business competitiveness
 - Rise in labour disputes
- **Fragmented laws / Conflict with other parts of the legal system;**
- **Lack of implementing regulations /Lack of effective compliance institutions...**

Why do many countries have poor labour regulation?



Main subjects of labour law reforms

- **Scope of application of labour laws** (see also: Recommendation No. 204)
- **Freedom of association and collective bargaining**
right to organize / protection against anti-union discrimination / procedure and criteria to determine representativeness /content and level of collective bargaining /...
- **Employment protection legislation (hiring & firing)**
fixed-term contracts / temporary agency work / procedural requirements for collective dismissals / severance pay /notice and probationary periods... (see also: C. 158 and R. 166)
- **Working time and working conditions**
- **Dispute resolution systems** (individual and collective disputes)
- **Non-standard forms of employment** (temporary employment / TAW and multiple parties contractual arrangements/ ambiguous employment relationships /part-time employment).

What Values Arise in the Context of Regulating Work?

Income	Safety	Voice	Productivity
Choice			Learning
Association			Personal life
Childhood	Rest	Equality	Family

Labour Law and Reform Unit (LABOURLAW)

“ Provide integrated, proactive policy advice on what labour law and dispute resolution systems can do, based on evidence from other countries.”

Promoting the rule of law and good governance, by providing services that:

- a) Increase the number of ILO member States which base their **labour and other employment-related legislation** on ILO standards and advice about comparative best practice, and which use a tripartite consultative process;
- b) Assist member States to establish and strengthen **labour courts, industrial tribunals and dispute resolution mechanisms** so that individual and collective disputes are dealt with efficiently, effectively and equitably; and which
- c) Integrate **gender** into all aspects of labour law and dispute settlement.

Labour Law and Reform Unit (LABOURLAW)

ADVISORY SERVICES

Labour Law Reform Processes

- Identification of key policy goals
- Evaluation of existing regulatory framework
- Advice on consultative design
- Evaluation of draft legislation – Technical Memorandums
- Assistance in the consolidation of existing laws
- Facilitation of tripartite consultations

Dispute Resolution Systems

- Support for enhanced labour dispute resolution
- Ensuring solid legal foundations
- Case management systems
- Conciliation and mediation skills
- Effective outreach for dispute prevention

TRAINING (ITC/ILO)

- Evolving Forms of Employment Relationships.
- Building Effective Labour Dispute Systems.
- Conciliation / Mediation Skills.
- Labour Court Judges.

RESEARCH

- Global research on individual labour dispute resolution systems (Access to justice).
- Other topics: Legal regulation of the employment relationship, temporary agency work, termination of employment....

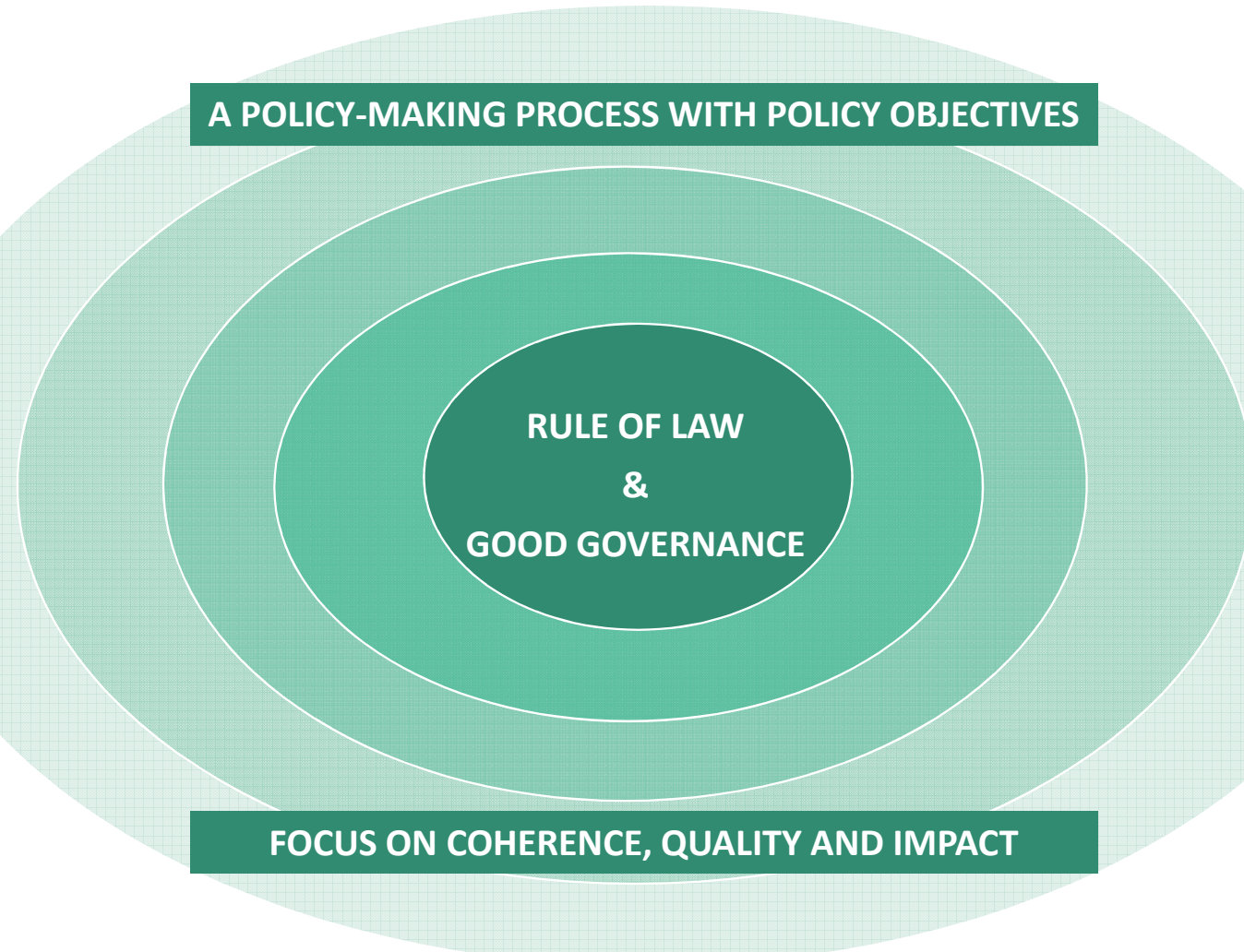
ILO's Approach to Labour Law Reforms

Proactive and integrated technical advice

Tripartite consultations with most representative workers' and employers' organizations

Comparative best practices from carefully selected comparative countries

A POLICY-MAKING PROCESS WITH POLICY OBJECTIVES



**RULE OF LAW
&
GOOD GOVERNANCE**

FOCUS ON COHERENCE, QUALITY AND IMPACT

Core ILO standards

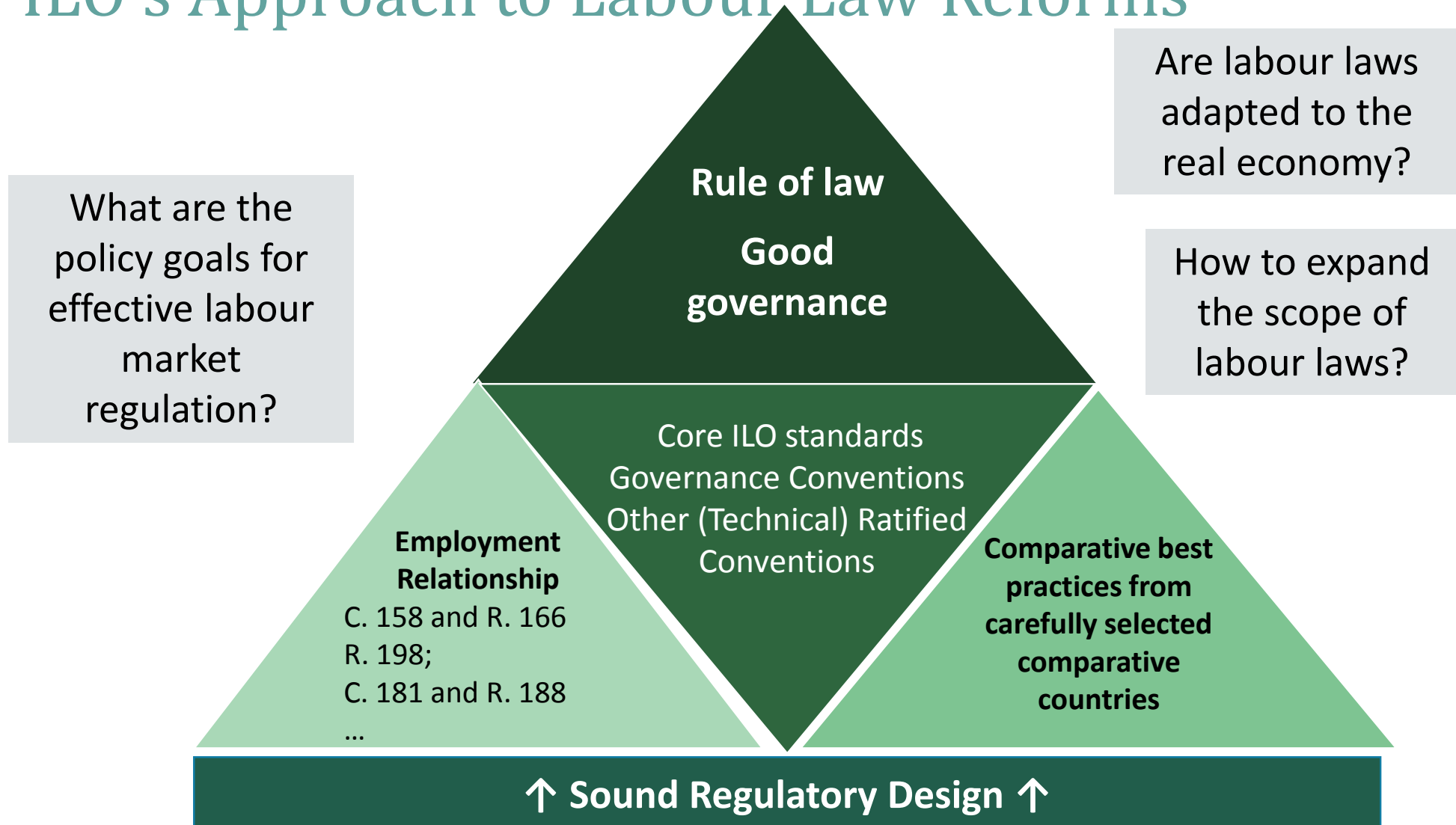
Governance conventions

Other (technical) ratified ILO conventions

Sound regulatory design

Employment relationship issues
(C. 158 and R. 166;
R. 198; C. 181
and R. 188)

ILO's Approach to Labour Law Reforms



National economic and social circumstances

- **Labour laws need to be drafted so as to respond to national economic and social circumstances** and to the organisation of a country's legal system.
- **Any major law reform needs to respond to local conditions**
(*eg. level of economic development; industry structure; industrial relations context; size of the informal workforce; migration patterns; level of unemployment,...*)
- Tempting for governments to **'transplant' a law, or aspects of a law, from another country to their own** (no drafting effort, no public consultation...)
→ Not advisable

The involvement of employers' and workers' organizations in labour law reform processes may:

Help ensuring that government policy and programmes are **fair, inclusive and meet the needs** of the intended beneficiaries

Improve the quality of legislation, because the government has a wider range of information and policy options

Improve compliance with new legislation, particularly if non-government parties believe it has been created through a fair process

Lead to more stable and enduring regulatory initiatives, with less contestation, especially if it proves possible to reach agreement around major controversial issues

Trends

- **Ongoing globalization and global financial crisis**
→ Two phenomena that provoked changes to labour laws in virtually all parts of the world;
- **Rise of non-standard forms of employment**
(see ILO 2016 Report on NSFE)
- **Specific Challenges in Global Supply Chains**
- In many countries, recent reforms tended to **render existing labour law provisions more flexible and loosen minimum standards**, shifting the emphasis to soft law (deregulation).

The consequences of labour law reforms may depend on **how regulations interact with a number of other factors** influencing social and economic outcomes at country level.

“The more successful reform initiatives are those which view labour market reform as a **process of re-regulation**, in which any loosening of employment protection laws is accompanied by complementary measures for mutualizing labour market risks and targeting employment transitions through subsidies and fiscal support.

Thus, the solution often lies not in employment protection law reform, or at least not entirely, but in a number of **complementary regulatory mechanisms**, including active labour market policy, multi-employer collective bargaining, work-life balance laws and work-sharing arrangements, which together form an **integrated policy response** to segmentation and informality.”

(S. Deakin, 2013)

Labour Law Reforms

LABOUR LAW

ACTIVE LABOUR MARKET POLICIES

Constitutional Law

Equal Treatment at Work

Pay and wage protection

Elimination of child labour

Working time and work-sharing arrangements

Public Law

Civil procedure Law

Forming and ending work contracts

Right to form associations and to bargain collectively

Right to rest and personal time

Solving labour disputes

The Law of Obligations (contract, tort,...)

Business organisation Law

Work Safety

Freedom from forced labour

Equal treatment at work

Work life balance

Tax Law

Criminal Law

Consultations at work

Securing compliance and enforcement

Social security & income protection

Skills development

Human Rights Law

Migration Law

Employment Protection Legislation Database - EPLex

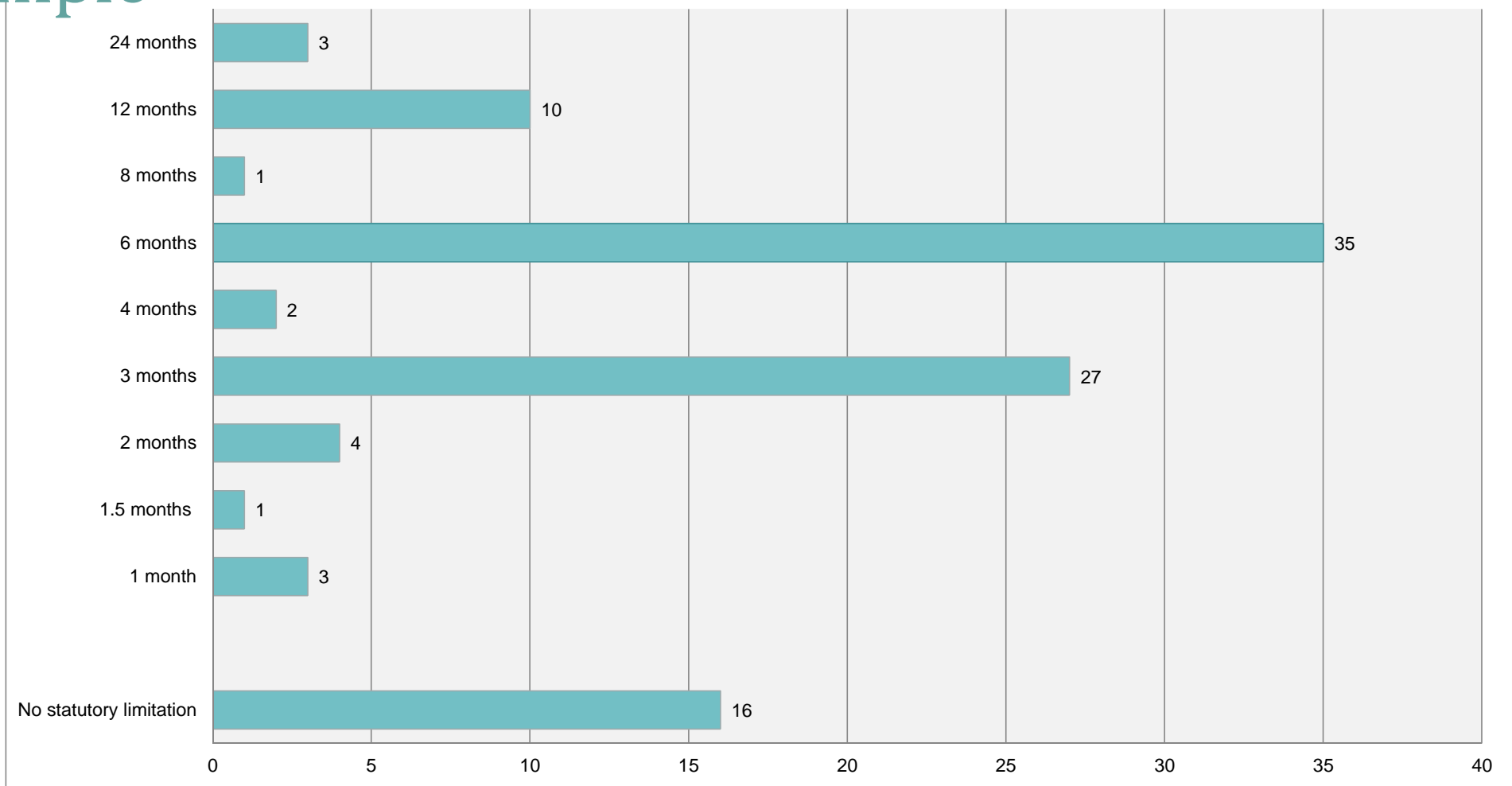
- **Source and scope of regulation**
- **Contract of employment** –duration of probationary periods and the conditions and limits on fixed-term contracts.
- **Substantive requirements for dismissals** –authorised and prohibited grounds and highlights categories of workers enjoying particular protection.
- **Procedures for individual dismissals** –obligation to give reasons, form of notification, length of notice by tenure and pay in lieu of notice.
 - **Collective dismissals for economic reasons** –definitions and procedural safeguards such as prior consultation, notification and/or approval by workers' representatives and public authorities as well as priority rules for dismissal and re-employment.
- **Severance pay** – outlines calculation by tenure, redundancy payment.
- **Avenues for redress** – reviews compensation for unfair dismissal, reinstatement, competent courts, conciliation, arbitration

□ **EPLex Database (50 variables, 95 countries, since 2009)**

<http://www.ilo.org/dyn/eplex/termmain.home>

Example

Statutory maximum duration of probationary period



Dispute settlement: Critical for labour law?

- Tribute to Bob Hepple by Prof Halton Cheadle :

Impact of Bob Hepple on South African Labour Law

See: <https://www.youtube.com/watch?v=zcbY3twHRD4>

→ as of time: 05.32



Thank you for your attention

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