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THE EFFECTIVENESS OF LABOUR LAW AND THE ROLE OF LABOUR INSPECTION

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Acronyms

AKAVA	Confederation of Unions for Professional and Managerial Staff in Finland
CEACR	Committee of Experts on the Application of Conventions and Recommendations
COLTI	Committee to Combat Illegal Work
EPZ	Export Processing Zone
ERA	Employment Relations Act
EU	European Union
FTA	Free trade agreements
GDP	Gross Domestic Product
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
ILO	International Labour Office
INTEFP	Institut national du travail, de l'emploi et de la formation professionnelle (National Institute of Labour, Employment and Vocational Training)
KIAB	Control of Illegal Employment of Workers
MERCOSUR	Mercado Común del Sur ('Southern Common Market')
NAALC	North American Agreement on Labour Cooperation
NAFTA	North American Free Trade Agreement
OECD	Organisation for Economic Co-operation and Development
OSH	Occupational Safety and Health
PPP	Public-private Partnership
RON	Romanian Leu
SAK	Central Organisation of Finnish Trade Unions
SENA	Sevicio Nacional de Aprendizaje (National Service Learning Center)
SERNAM	Servicio Nacional de la Mujer (National Women's Service - Chile)
SLIC	Senior Labour Inspectors' Committee
SWEA	Swedish Work Environment Authority
URSAFF	Union Pour Le Recouvrement des Cotisations de La Sécurité Sociale et des Allocations Familiales (Union For The Recovery of Contributions and Family Social Security Allowance)
WHP	Work Health Promotion

1. Introduction

As an institution, the purpose of labour inspection is to enforce labour legislation. Labour inspection operates as a part of labour administration. Its role is usually identified with specific services within labour ministries and is personified by labour inspectors. Labour inspection activity is exercised within workplaces, which are in essence economic units where labour relations occur – in other words, where a natural or a legal person employs others. Labour standards are a broad and complex field, usually embodied in a number of different legal texts of varying content. The enforcement and monitoring of these standards may be assigned to one single administrative body, or shared across various sections of a labour ministry or even in some cases, distributed across several specialized ministries and public agencies. The diversity and coverage of labour standards makes it difficult to apprehend their full scope but, viewed broadly, they cover the employment relationship, pay, working conditions, occupational safety and health, industrial relations, social security, employment and vocational training. The fact that countries have their own unique way of organizing their public administration makes it difficult to give a clear indication of the role of labour inspection, which bodies are part of it, what its precise functions are, what its sphere of action is, how far its purview extends and what constitutes its powers.

In this regard, the relationship between the effectiveness of labour law and labour inspection is crucial. The debate on this relationship is becoming more and more important in the context of the current effects of globalization on the national systems. Such a relationship has to do with the wider debate on the role of labour inspection in ensuring that both workers and employers implement labour legislation. In this context, of the effectiveness of labour law and the role of labour inspection goes hand in hand. Even more, if we look at what is usually called “the social question”.

2. The effectiveness of labour law: current debate

The effectiveness of labour law depends, largely but not only, on the smooth functioning of a labour inspection system. In line with the necessity of a search for a real balance between the compliance of labour legislation and its effectiveness in the real world, it is clear that it also needs constant evaluation. A type of evaluation, which is very close to an economic perspective rather than to the law, brings into question the social justification of the protection systems that are criticised for causing adverse effects on economic and social development. The challenge for labour law, then, is particularly inspiring in a scenario of economic globalization that is inherent in the foundation of fundamental social rights; that is to say, an essential element of core labour standards and hence not always to be “evaluated” through the parameters of economic rationality. In this regard, labour law remains an expression of priority interests for human protection. In this sense, the economic “evaluation” of labour law should not be held separately from the evaluation of social values. This quest brings a modicum of harmonization between different realities and approaches.

Notwithstanding the importance of economic arguments, the effectiveness of labour law will be dealt with in relation to the role of labour inspection, with a view to rendering more effective the protection of workers’ rights. In this regard, most of the labour inspection systems worldwide have undergone reforms aimed at redesigning the

functions and powers of the state agencies in charge of enforcing workers' rights. This is true, albeit at different levels and degrees of implementation, in all the countries that have responded to the questionnaire, notably: Argentina, Austria, Brazil, Chile, Colombia, Czech Republic, Dominican Republic, Ecuador, Finland, France, Hungary, Netherlands, New Zealand, Ireland, Israel, Italy, Japan, Romania, Slovenia, Spain, Sweden, Taiwan, Turkey and Uruguay. In order to strengthen the effectiveness of labour legislation, these countries have promoted a preventive and promotional culture within which labour inspectors started to encourage compliance in a climate of trust and collaboration with both employers' and workers' organisations. The overall aim is the achievement of more efficient and effective inspection activities at the initiative of the inspection services, in addition to the response to, individual or collective complaints. Nonetheless, it should be noted that not all systems examined here in this report have achieved the expected results. For example, in a good number of countries despite satisfactory results in detecting substantive violations, there seems to be a lack of significant improvements in terms of change in employers' behaviour and guarantee of workers' satisfaction.

In the debate on the effectiveness of labour law and better compliance mechanisms – and hence the role of labour inspection –, there is a dichotomy between deterrence and compliance models. In general, it can be said that the majority of the labour inspection systems combine these two, although there is a more general tendency towards the affirmation of the deterrence model as such. For example, in the majority of European and Latin American countries where they have a new regulatory approach that is encouraging inspection activities at the initiative of inspection services rather than merely in response to complaints, has been successful in capturing many substantive violations and quite efficient in detecting critical phenomena such as undeclared work. However, despite the degree of efficiency measured through the labour ministries' statistics, there is still a question about the level of effectiveness of such strategies in terms of achieving future compliance by way of encouraging employers' behavioural change and ensuring adequate satisfaction of workers. In other words, the “quality strategies” put in place by many labour inspectorates in the above-mentioned countries have improved the quality of targeting strategies, but this does not necessarily mean that workers are satisfactorily protected by the inspectorates' enforcement activities.

Tracing a map of the effectiveness/regulatory debate in this field, one could distinguish between softer and more accommodative methods, on one hand, (the compliance model) and legalistic and punitive approaches, on the other hand (the deterrence model). In this regard, according to the deterrence model, compliance with regulation is achieved when the probability of being caught and the costs of punishment are higher than the benefit of non-compliance. In this scenario, labour inspectors are supposed to inspect workplaces in order to detect the greatest possible number of violations and to impose strictly the prescribed sanction for each of them. The deterrence model strongly relies on the assumption that prosecution promotes greater compliance, functioning as a general deterrent towards both the offender and possible future violators. Such a model is mainly legalistic and is characterized by being more reactive, since it aims at detecting breaches followed by legal prosecutions to punish violators.

The compliance model, on the other hand, endorses responsive solutions, aimed at achieving compliance through more preventive measures than real enforcement tactics. According to this model, compliance is more likely to be achieved when there is a closer relationship between the enforcement officials and the regulated enterprises, which allows prompt intervention to prevent the potential violations from occurring. The systems adopting such a compliance approach are expected to adapt legal requirements to meet the needs of different types of enterprises, giving priority to training, advising

and persuasions over punitive means of enforcement. Supporters of this model argue that the “adversarial relationships” are counterproductive and do not encourage compliance.

In search for the effectiveness of labour law, broadly speaking one could argue that, since the deterrence approach is based on the assumption that actors determine their behaviour on the basis of a costs and benefits analysis of compliance, then a mere malfunction of the system would produce the opposite effect. Somehow, non-compliance could paradoxically increase if the model fails in its deterrent purpose, either for lack of resources to invest in monitoring or for the inadequacy of the sanctions in discouraging the breaches.

The deterrence and compliance models differ not only in terms of actions taken once the violation has occurred (prosecution vs. negotiation), but also in terms of monitoring techniques aimed at detecting such violations (monitoring techniques that search for specific violations vs. techniques based on broad observations and enterprise’s propensity towards compliance). Moreover, differences can also be found in the value that is attached to the sanctions. In fact, penalties, despite of being an essential feature of both models of regulatory enforcement, constitute the core element of the deterrence model, while being instrumental for the compliance model, in light of which they can be either suspended or withdrawn, provided that a conciliatory solution is achieved.

The legal systems that we have examined for the preparation of this Report provide us with a modicum degree of a balance between these two approaches. Of course, in some systems, one model is preferred to the other and this also depends on whether or not the labour inspection system is a general or a specialised system, the latter mainly based on occupational, safety and health (OSH) issues.

Nonetheless, the labour inspection system in all the above mentioned countries has the potential to play an even greater role than it previously had, in ensuring the protection of both men and women workers in all sectors and levels and in ultimately assisting and strengthening the international supervisory system. This was also reiterated in the Conclusions of the general discussion on labour administration and labour inspection at the 100th session of the International Labour Conference of June 2011¹. Certainly, labour inspection is a vital link in the promotion of decent work for all. At a time of globalization, increased competition, rapid technological change and new production methods, protecting workers remains a vital task. It is also a difficult task – and sometimes a dangerous one. The preconditions for worker protection and respect for decent work can be summarized as the following: labour legislation that is respectful of international labour standards; strong, independent, representative employers’ and workers’ organizations which enjoy the basic rights to organize and negotiate; and effective labour inspection, equipped with the necessary means and presence of inspectors who are trained, qualified and free of any undue outside influence.

Unfortunately, many studies show that many governments neglect labour inspection. Sometimes this gets to the point where even those whom labour inspection is supposed to protect, begin to doubt its effectiveness. However, we should not forget the great progress that labour inspection has achieved since its first introduction by law in different countries, nor should we overlook the existence of proposals for better inspection, which come mainly from the inspectors.

¹ Resolution and Conclusions on labour administration and labour inspection, ILC, Geneva, 100th Session, 2011

Central to labour inspection is ILO Convention, 1947 (No. 81). Like the one for the agricultural sector, Convention No. 129 (adopted in 1969), Convention No. 81 is recognized as a governance Convention². This Convention, which calls for labour inspectors to play an active role in the compliance of labour legislation, has been ratified by 142 countries up to June 2012. This represents one of the highest rates of ratification for any international labour standard. Nonetheless, the general discussion on labour administration and labour inspection of the International Labour Conference of June 2011 insisted on the need to campaign for further ratifications of these two Conventions, with priority going to Convention No. 129, which covers a particularly sensitive sector and has been ratified by 52 ILO member States up to June 2012.

Convention No. 81 assigns three basic missions to labour inspectors: ensuring that labour legislation is applied, advising employers and workers on the most effective means of achieving that aim and drawing the authorities' attention to abuses or shortcomings not currently covered by the law. The Convention states "conditions of work and the protection of workers while engaged in their work" are the fields to be covered by labour inspection. Therefore, while safety and health and the fight against forced labour or child labour are crucial issues for inspectors, they are also concerned with other matters ranging from working time, pay, maternity protection, weekly rest times, leave, equality to diversity in the workplace. In addition, inspectorates need to be knowledgeable about trade union rights in general, including the protection of workers' representatives against abuse and discrimination.

Where good governance is absent, labour inspectorates cannot be reasonably expected to guarantee their own independence and integrity. Labour inspection is undermined, if a government assigns low status to labour inspection or the inspectorate is understaffed and undertrained, with deplorable conditions of employment, this also affects their position to carry out their tasks effectively. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) agrees to recommend that governments and international institutions recognize "the vital contribution to development and social cohesion made by an efficient labour inspection service" and reflect this priority in the resources allocated to labour inspection. However, labour inspection can also be weakened if it is assigned tasks beyond its mandate, as defined in the ILO instruments. In some countries, for example, government orders may mean that an inspectorate spends more time monitoring the unions than protecting the workers. In other countries, labour inspectors are given the task of seeking out illegal migrant workers. On this point, the CEACR issued a reminder: "the primary duty of labour inspectors is to protect workers and not to enforce immigration law". Labour inspectors, experts and workers' representatives also warn against the trend towards

² These Conventions set out general principles and provide the universal framework for status, structure and function of labour inspection. The goal of Convention No. 81 is the establishment of a labour inspection system in industry and commerce that is capable of enforcing labour laws and closing holes that exist in the current legal framework. Convention No. 129 looks to realize similar goals in the agricultural sector. This system is designed with the purpose of enforcing laws and investigating complaints through labour inspection. It also provides technical support to employers, workers and their organizations. National law and practice shows that the functions entrusted to labour inspection are generally those envisaged by the instruments, securing the enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work. This practical relevance of labour inspection in both developing and developed countries can and should be further developed, especially in view of the ILO's Decent Work Agenda and the fact that labour inspection at the workplace can identify problems which require action at the national and legislative levels. Both Convention Nos. 81 and 129 along with Conventions Nos. 122 and 144 are considered to be, by the Governing Body of the ILO, as "governance instruments" (ILO, GB November session 2009).

relying on company self-regulation of working conditions and believing “private monitoring” is a substitute for action by the State and by public labour inspection services. Can employers be left to draw up rules that they intend to abide by and then be entrusted with monitoring their own compliance of these rules? In following the international labour standards, the great strength of labour inspection lies in those thousands of sworn in public servants, and inspectors who prove daily their commitment to decent work and their determination to get labour standards respected. To do so, they take up all sorts of challenges and overcome all sorts of obstacles, while the risks to their own safety grow.³

3. Effects of globalization on labour law enforcement

Globalization has profoundly affected the world of work both positively and negatively. One negative effect has been the relocation of some of the manufacturing sector to less developed countries, along with the introduction of technology that is considered dangerous or obsolete in the production processes. As corporations have begun to transcend national boundaries, institutions including those of collective bargaining and state regulatory commissions, which have traditionally maintained secure and humane working conditions, have begun to deteriorate. In recent years, industries that often have comparatively lower standards in OSH and Work Health Promotion (WHP) have shifted to developing countries. Globalization has contributed to the alarmingly high rate of workplace casualties that exist today. About 2.2 million work-related deaths are reported on an annual basis, and the costs of accidents in the workplace reached 4.4 per cent of the global GDP. In light of this, it is essential that worldwide health and safety standards be brought to the attention of everyone. This is particularly true for those systems that have adopted a specialized labour inspection system dealing mainly with OSH issues such as Austria, Finland, Israel, Japan, Sweden and Taiwan to mention a few.

Globalization affects all facets of the world of work, giving rise to new forms of work and expansion of other existing work models. This phenomenon is at least partially to blame for a certain lurking menace to workers’ health. For example, in many industrialized countries, the average number of hours worked in a year has been climbing recently. The increased pressure and related stress exposure have led to the development and spread of work-related ailments. This phenomenon is far from new, but has been shifting from primarily physical maladies to more psychosocial afflictions. This presents a clear and serious problem because these sorts of ailments have been shown to be more serious than usual. Additionally, the current crisis has had negative effects on the health and safety of workers. Fatal accidents have increased, especially in the construction and manufacturing sectors.

Good mental health is essential for both individuals and society. At the individual level, good mental health enables people to realize their intellectual and emotional potential, and find and fulfil their roles in social and work life. At the societal level, it is a resource for social cohesion, better social and economic welfare and facilitates the transition into a knowledge-based society. It has been estimated that by the year 2020 depression will be the second most common cause of disability in the developed world. Mental health problems pose a challenge not only for the health sector, but for society as well. Beyond the obvious, implications they hold for affected citizens and their families, mental health problems impose significant costs on the societal, economic, educational,

³ For more details on the various challenges ahead in the area of labour inspection see ILO, GB. 309/ESP/3, November 2010.

social, criminal and judiciary systems. Mental disorders are one of the top three causes of absenteeism from work and are a leading cause of early retirement. Mental health problems have resulted in an estimated loss of up to three to 4 per cent of the European Union's (EU) GDP, mainly through a decrease in productivity. It is important to remember that workers' health is just as fundamental in today's demanding and competitive business environment as it has always been. A close watch on the increasing demands on employees must be kept, in order to avoid work-related health problems. This is part of national campaigns in Austria, Czech Republic, Finland, France, Italy, and Romania to mention a few.

Globalization has also caused the transfer of low-skilled manufacturing and processing jobs to less developed countries. This is one of the major factors that has led to the formation of numerous export-processing zones (EPZs). Restraints on trade union freedom, restrictions on the right to strike, and absence of collective bargaining – these are still all-too-often the rule rather than the exception in EPZs.⁴ While employers point out that many of the problems cited for EPZs also arise elsewhere, and that conditions in enterprises within the zones are often better than those outside the report, nonetheless emphasized that working conditions and worker health and safety remained a major concern in the zones of some countries.

The EPZs represent a special case of the effects of globalization on the workplace's conditions. It has been linked to the frequent incidences of high stress levels among workers and exposure to hazardous labour conditions. The workers in these zones often develop health problems, such as cardiovascular, reproductive, and psychosocial disorder. Another facet of globalization is the rapid growth in the number of migrant workers. Less developed nations have had a large presence of these workers for quite some time and globalization has only served to increase this trend. Migrant workers are found in various industries, chiefly in construction, agriculture and manufacturing. They are often exposed to poor working conditions and may be further disadvantaged by a limited knowledge of the language and laws in their host country⁵. With the continuous growth of globalization, the types of economic and trade policies that are developed tend to encourage certain trends. As production spreads throughout the world, trade barriers are beginning to fall, and manufacturing centres are starting to spring up in many less developed nations, often leading to lower health and safety standards in the workplace. This is partially caused by the labour surplus that always nearly exists in less developed nations and by the related growth in the uncovered labour market. The lack of enforcement of labour laws has seen many workers forced into the unenviable position of taking jobs that are wrought with hazards due to lack of traditional employment.

One of the fundamental tenets of the new economic reality is the desire for the lowest production costs. Places where worker health is a secondary issue and OSH rules are often overlooked generally have lower production costs. Some are of the opinion that the rise in globalization and the spread of capital to unindustrialized countries will lead to

⁴ For more information see: ILO; *Good labour practice compilation of labour inspection practices in EPZs* (Geneva, 2010); and *ILO Guidelines for an effective labour inspection in EPZs*. (Geneva, 2010).

⁵ The ILO report on migrant workers describes safety and health issues as a major concern as these workers may be involved in hazardous and risky jobs. Language barriers, exposure to new technology, family disruption, poor access to health care and stress and violence are the specific problems faced by migrant workers, leading to higher vulnerability to safety and health risks at the workplace. Please see, ILO, *Towards a fair deal for migrant workers in the global economy*, Geneva, 2004).

a “race to the bottom” in labour standards.⁶ There is much support in the international community for the formation of worldwide versions of national regulatory agencies that will establish minimum standards of workplace safety and health, and national inspectorates to monitor and enforce them. This support rallies around the ILO’s core labour standards with the view to securing decent work for all. These core standards include freedom of association, collective bargaining, freedom from forced labour, discrimination and the abolition of child labour. Equal treatment of migrant workers and nationals and respect for the basic human rights of all migrant workers, as enshrined in ILO Convention Nos. 97 and 143 are central to this approach. The ILO framework encourages the use of labour inspection to apply national standards to the case of migrant workers. While the government has the responsibility of adopting standards, labour inspectors play an essential part in promoting compliance with these standards, including those concerning migrant workers. The inspectors monitor conditions of work and present a forum in which the workers may seek help. The inspectors also fill a crucial gap in the field, as the national government often poorly regulates migrant workers.

Globalization requires that labour inspection services are better coordinated, taking into account the changes in the world of work and the advent of new risks and opportunities. This would include coordination among the technical, medical, social, psychological, economical and legal areas. Practical strategies have to be elucidated in order to make decent work a reality, to protect and enhance the well-being of people in the workplace in the global economy. In this regard, labour inspection plays a pivotal role, acting as the enforcer of labour legislation and guidelines set in place by them. Although, much of the responsibility for promotion of workforce wellbeing in the workplace lies with the enterprises themselves, the promotion of a sound workplace should as well be pursued from within the company.

4. Labour inspection as a fundamental labour law supervisory body

The development of labour inspection has proceeded hand in hand with the creation and development of ministries of labour. During the years, the enforcement of labour law – such as supervising the right not to work on Sundays – often required the assistance of the police.

The development of labour inspections has depended upon the resources and interest of governments in strengthening the social sphere. The situation in many regions of the world has improved since the 80s and most countries have now upgraded and tightened up their labour inspections.

More recently, the regional integration processes confirm this trend both in Europe and Latin America. For example article 18 of MERCOSUR’s Social and Labour Declaration (1998) is devoted entirely to labour inspection, underlining its importance.⁷ In particular, clause 2 of the MERCOSUR Regional Integration Treaty has evolved into a set of recommendations issued by the Common Market Council: No. 1 (2005) on minimum conditions of inspection procedures and No. 2 (2005) on minimum standards for labour inspectors as the basis of joint international inspections currently being developed, as well as projects on integrated inspections at regional level.

⁶ Singh/Zammit, 2004.

⁷ Article 18 “(i) Every worker has the right to adequate protection with regard to the conditions of work and working environment, and (ii) the Member States are committed to establishing and maintaining labour inspection services in order to monitor compliance with legal provisions which protect workers and safety and health conditions at work”.

Moreover, a number of free trade agreements (FTA) – beginning with NAFTA in the 1990s (Mexico, Canada and the United States) – mention inspections as a matter of concern since the region clearly has low levels of supervision and control. Article 3 of the North American Agreement on Labour Cooperation (NAALC) (a parallel agreement to NAFTA) contains specific and pertinent commitments with regard to labour inspection (Article 3):

“1. Each Party shall promote compliance with and effectively enforce its labour law through appropriate government action, subject to Article 42, such as: a) appointing and training inspectors; b) monitoring compliance and investigating suspected violations, including through on-site inspections; c) seeking assurances of voluntary compliance; d) requiring record keeping and reporting; e) encouraging the establishment of worker–management committees to address labour regulation of the workplace; f) providing or encouraging mediation, conciliation and arbitration services; or g) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labour law.

2. Each Party shall ensure that its competent authorities give due consideration in accordance with its law to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party's labour law.”

Moreover, Articles 4, 5 and 6 of the NAALC provide for certain basic guarantees, such as proper access to legal or quasi-legal administrative procedures and due process, as well as publication of administrative or legal acts related to labour and procedural matters.

The important role of labour administration has been brought to the fore by the free trade agreements negotiated separately, since 2000, by Canada and the United States with other countries. In effect, these agreements paved the way for the so-called “White Book”, which contains a number of commitments on upgrading national inspections and affects Central American countries and the Dominican Republic. Andean countries, which have entered into an FTA with the United States, are currently implementing similar programmes, focusing on the same target, namely, improving and strengthening the inspection system.⁸

A new vision on labour, employment and safety at work policies is clearly needed prior to developing and implementing a trade agreement, so that the technical assistance provided for in the treaties and the effective capacity to manage projects and programmes are consistent at national level.

Bodies in charge of supervising adherence to labour law and provisions on health and safety at work must be strengthened and improved; this is based on several ILO studies⁹, which concluded that most countries¹⁰ in the region have an extremely weak apparatus for enforcing labour laws. Moreover, with particular reference to labour inspection, the regions mainly need to review supervision and oversight processes,

⁸ For example, the USAID MIDAS Project in Colombia has fostered the development of a new inspection model, based on prevention and the quality of the services rendered.

⁹ In particular, after the labour administration assessments carried out within the framework of the technical cooperation project in support of the CIMT, funded by USDOL and employing a methodology borrowed from the ILO InFocus Programme for the Promotion of Social Dialogue, Labour Legislation and Labour Administration (IFP/Dialogue).

¹⁰ Particularly in Latin America and the Caribbean.

provide specialized staff training, e-services, the promotion of preventive oversight programmes with employers and workers and joint inspection programmes with other independent public entities.

5. Experiences in Latin America

5.1. Types of labour inspection

Labour inspections in Latin America are based on a generalist concept, typical of inspections in several European countries and characterized by a respect for *ius gentium* (the law of nations or International law), as opposed to a specialist labour inspection system focussed on OSH issues, typical of North European countries. The model of inspection inherited from France, Italy and Spain is a model which encompasses both advice and sanctions, in contrast to the Nordic, Anglo-Saxon model, in which labour inspection is *strictu sensu* (strict sense) supervisory in nature.

In Latin America, labour inspectors have more discretion on the exercise of their duties and can decide whether to impose sanctions, give advice or request remedial action, in contrast to an exclusive focus on imminent risks to life and health (which may require more drastic action than merely formalizing an irregular situation, for example, by issuing orders). In this context, most countries in the region have labour inspectors who wield general power over social issues (some countries in the region refer to a “comprehensive inspection”), encompassing most aspects of working conditions and health and safety such as Argentina, Brazil, Chile, Uruguay and/or other matters, such as cooperatives in Argentina.¹¹

In Uruguay, labour inspectors have the power to impose fines on employers who violate laws on the following: the obligation to provide food for workers’ spouses, children and parents; the prohibition of using workers’ accommodation as storage space; the obligation to encourage children to go to school; and the obligation to allow dismissed workers or members of their family to remain on the farm in case of illness (Law 14785 of 9 May 1978 dealing with rural workers).

However, in some countries the authority of labour inspectors is confined to the supervision of working conditions and labour relations (plus a few aspects of health and safety supervision), while other services and inspectors are responsible for the inspection of environmental health and safety (Chile).¹² However, only the general labour inspection has the power to initiate sanction procedures.

The labour administration often collaborates with other bodies. Argentina, for example, has undertaken successive reforms, leading to the Federal Labour Pact,¹³ which has established greater uniformity in the provisions in terms of which inspectors act jointly with other agents or organs, particularly with regard to technical inspections

¹¹ In Argentina, the Ley de ordenamiento laboral of 2004 redesigned the inspection system and created an integrated system which supervises legal provisions on labour and social security, in addition to employment cooperatives.

¹² In Brazil, El Salvador, Honduras and Uruguay, among others, there is a core body of labour inspectors, in addition to a specific group of health and safety experts responsible for inspection and prevention. However, they usually do not have the power to impose sanctions.

¹³ The purpose of the Pact is to ensure cohesion and legal certainty with regard to labour issues and to unify the provisions related to sanctions and violations, among other things, including an Integrated Labour Inspection and Social Security System (Laws 25.212 of 1999 and 25.250 of 2000).

(technicians and proper inspectors proper conduct joint inspections) to ensure a more efficient supervisory service. In most countries, if there is an element of danger, the police are asked to intervene and in cases of child labour, the Ministry of Education intervenes.

In some countries (for example, Argentina, Brazil¹⁴ and Uruguay), although there is a single body of inspectors, internally there is functional specialization, in accordance with employment and working conditions, and inspectors with different technical profiles, knowledge and training (lawyers, doctors or technical experts) conduct health and safety and environmental inspections.

5.2. Scope powers and intervention¹⁵

A number of constitutional texts explicitly mention the role of inspections (Brazil)¹⁶. In general, an administrative law or a chapter of the Labour Act granting inspectors broad powers governs national inspections and in a country like Chile, they even have the power to promote social peace, which includes basic preventive measures and labour dispute settlement procedures.

In the majority of countries, the labour inspector's main function is to supervise compliance with legal provisions on working conditions, formulated in greater or lesser detail, depending upon legal traditions. However, in Argentina and Uruguay, inspectors are given the power to safeguard the enforcement of international labour agreements, covering a broad range of duties.

Although there are advantages in having broad powers, one common problem of labour inspections in the region, as confirmed by the ILO Committee of Experts (see below), is that inspectors have too many additional functions, including labour dispute settlement. This means that, besides generally upgrading labour inspections, specific labour dispute settlement services must also be created and organized, relieving inspectors of this task.

It should be noted that some inspection systems in Latin America have broad discretionary powers. This provides for flexibility, making it possible to adapt regulations to a company's specific circumstances, where strict enforcement might threaten employment. In general, however, interventions in many countries are extremely limited in scope and are undertaken in response to specific allegations, in addition to which, inspection methods are not adapted to include the informal economy.

In practice, in most countries inspections tend to focus on the same areas, such as trying to identify specific violations and issuing instructions on remedial procedures, and the variety, extent and interrelatedness of the relevant issues come to light only when proceedings are initiated by the court (*ex officio*) or in the course of regular inspections. The topics most often dealt with in the region are overtime and violations of workers'

¹⁴ Divided into specialists in medicine, engineering, hygiene and safety, as well as general experts.

¹⁵ Social security inspection, carried out by a specialized and dedicated inspection (with its own procedures) and distinct from the labour inspection, will not be examined here. However, most countries in the region which do not have an inspection with the authority to intervene in social security matters link social security to another inspection which has the power to intervene with regard to membership of social insurance schemes and the payment of social security contributions.

¹⁶ Brazil, Article 2 of the 1988 Constitution; Paraguay, Article 99; and El Salvador, Article 44, paragraph 2.

rights to rest time, non-payment of wages (especially the minimum wage) and benefits, and, in third place, health and safety deficiencies. In Chile, for example, the 2006 data from the General Directorate of Labour mention that 41 per cent of the sanctions imposed were due to violations of working time regulations.

In general, inspections in the region combine prevention and sanctions (most laws clearly define the main function as the enforcement of legal provisions) and provide technical guidance for workers and employers on meeting their obligations. In the region as a whole, especially in the past few years, the trend is towards preventive inspection,¹⁷ which is emphasized in the most recent proposals for institutional reform that focus on high risk enterprises as part of a shift towards prevention. This tendency, in extreme cases, may affect a marked distortion in the nature of labour inspection, whose ultimate purpose – as already mentioned – is to enforce labour legislation and impose sanctions, when deemed necessary, taking into consideration the seriousness of the violation and the degree of risk involved. Preventive and informational actions must be continuous and never put workers' health, dignity or lives at risk.

Labour inspection undeniably influences labour relations in the region. A study was carried out on labour inspection in Brazil, focusing on the inspectors' role in implementing labour law¹⁸. Several alleged violations were analyzed and a conclusion was reached that inspectors are better qualified, due to their position as so-called “*street level regulators*”, to bring employers and workers together, to establish better working conditions, combined with productivity increases, in the process of enforcing legal provisions. According to the study, labour inspectors have the capacity to look beyond unclear legal formulations (for example, differences between old-fashioned technical standards and modern business practices) and to provide technical or legal solutions adapted to present reality (in general, with regard to new ways of contracting and safer production processes). These solutions provide enterprises with incentives to improve working conditions in order to remain within the legality.

5.3. The core function of the supervisory enforcement of labour law.

Labour inspections in Latin America are a fundamental part of the state administrative system, and each country has a ministry of labour (with organically and functionally dependent territorial divisions). Some countries have a federal or decentralized administrative structure, with states, regions, provinces and so on. Whatever the national structure is, in practice the general directorates of labour inspections are located in capital cities and 70 per cent of their activities involve regional inspection functions and only a very small percentage of independent activities (sometimes limited to activities of the General Director and a few assistant directors or coordinators), despite the fact that they are parties to coordination agreements (as specified in the Labour Administration Convention, No. 150 of 1978).

5.3.1. General Directorates: coordination and consultation

Some countries have shared power structures – federal, provincial or state – in which case, the power of inspectors at the central level is limited to the subjects and types of company under federal jurisdiction for example, Argentina¹⁹. In this country,

¹⁷ For more information, see Piore and Schrank (2008).

¹⁸ Pires, 2008

¹⁹ In Argentina, the Executive has authority over the system's central authority and regular inspection functions are managed from the capital.

although the Ministry of Labour and Social Security represents the highest authority in the inspection system, the central labour inspection must ensure compliance with Conventions and coordinate actions with the provinces and the Independent City of Buenos Aires, within the framework of enforcing the law.

In most countries, for example, Brazil,²⁰ Chile and Uruguay, the central authority may endow inspectors with full powers anywhere within the territory through appropriate administrative acts. In general, the central authority enters through agreements on labour inspection issues at local level, in order to harmonize inspection procedures and strategies on safety, hygiene, training and child labour, as well as to obtain information on the collection of fines in cases of non-compliance.

5.3.2. The visit

In keeping with Conventions No. 81 and No. 129, legislation in Latin America gives inspectors supervisory functions, granting them power to manage cases *ex officio* or on the basis of individual allegations or claims. In general, inspections based more on programmes of regular inspections (Argentina, Brazil, Chile and Uruguay) organize most of their interventions in terms of visits targeted on sectors or enterprises.

For example, in Chile, back in 2001, the Directorate of Labour published a long and exhaustive systematization of oversight procedures and their legal ramifications. Uruguay has published a technical guidebook – or procedural handbook – on the principles, rules and regulatory procedures dealing with non-compliance. In general, these documents reflect the need to conduct visits, as well as covering the remaining, legal and procedural, aspects of inspection.

In Brazil, the 1988 Constitution introduced a new social watchdog and civil society engagement process, and the text expressly mentions labour inspections and federal competencies. Its main purpose was to “produce information on the situation of labour protection in each economic sector in the country”. The idea was to create an inspection planning system, with academic backing. Previous cadastre information was used as input, based on the company registry, the inspection registry and the company violations registry.

However, the system failed to bear fruit as it faced difficulties in collecting sufficient data, apart from the inadequacy or inaccuracy of the relevant information. Another critical point was the restricted computer database and poor capacity of the institution responsible for acquiring and operating state-of-the-art technology to produce up-to-date information. Nevertheless, the experience helped in amending the inspection system by introducing elements recognized as essential inputs for planning. In 1995, a system was implemented to generate historical series of labour inspection data broken down by economic activity, number of workers, municipality and postal code, thereby simplifying overall planning with regard to the enterprises to be inspected.

Since 2005, a new regional and central planning system has been in the process of implementation, in three phases, involving (i) labour market diagnosis, (ii) an action timetable to deal with irregular situations and (iii) the monitoring of actions undertaken. Furthermore, according to plans for the following years, a labour protection network programme was created in Brazil, which, by taking action in specific sectors, seeks to combat and regularize informal labour. In total, a number of about 3 million workers

²⁰ Although Brazil is a federal republic and the labour inspection is part of the federal government, it has no competence in the federal states, with the exception of Sao Paulo, which has a parallel body of officials who specialize in safety at work.

were reviewed, of which a good number were registered, and employers started to pay the appropriate contributions to the Wage Guarantee Fund including social security. The labour inspection has also conducted campaigns on the labour market insertion of people with disabilities and with regard to contributions to the FGS in general.²¹

Given the importance of combating child labour in Latin America over the past few years a growing number of sections or units have been established related to child labour and broadly covered by labour inspections and subsequently for forced labour.

In this context, the Mobile Groups of the Secretariat for Labour Inspection in Brazil organized to cope with specific child labour and forced labour problems. The Special Mobile Inspection Group, established in 1995 under the coordination of the Secretariat of Labour Inspection, was provided with the means to conduct more expeditious inspections, taking into consideration the need for a “centralized command to diagnose and measure the problem; maintain the standard of procedures and direct supervision of the cases inspected; ensure absolute discretion in handling denunciations; and free local supervision from pressure and threats”.²² The coordinators in charge of setting up local teams make an effort to maintain efficiency, while bringing on board people with the right skills for such a high-risk activity. Prosecutors and the police may also participate. The results were significant: in 2009, 109 forced labour actions were conducted, releasing 3,417 workers, and in 2010, there were 114 actions, releasing 5,963 workers²³.

Starting from 2004, in Chile, a new line of action was created, called the sectoral inspection intervention, with the power to intervene in specific sectors and coordinate with the central level through the ex officio Scheduled Inspection Unit, whose purpose is to enforce labour legislation through a combination of dialogue, advice and compliance.

Other essential actions have also been conducted in collaboration with other institutions. In Chile, the National Service for Women and the Labour Directorate of Antofagasta initiated a collaboration project and adopted a joint agenda in order to improve, supervise and safeguard activities for women through effective and coordinated supervisory intervention, particularly in cases of accusations of sexual harassment. Furthermore, according to the project, a follow-up programme on sexual harassment accusations was set up, and managed by the Labour Inspection. An oversight programme concerning the working conditions of women night workers was also implemented, and communication strategies were designed to publicize the rights of female domestic servants in order to strengthen and formalize their contractual relationships.²⁴

Many countries in the region have specific national or regional programmes and inspection campaigns. In Argentina and Uruguay, for example, actions and interventions have been carried out, organized at national level with regard to clandestine, illegal and undocumented foreign labour.

In Argentina, the regularization of clandestine workers is the main subject of the campaign. Since the National Labour Regularization Plan was launched in 2003, an estimated 24 per cent of the workers concerned have been visited. In this case, the

²¹ Relatorio de Gestão 2003–2007. Secretaria da inspeção do trabalho. See also R. Bignami, A Inspeção do Trabalho no Brasil, Sao Paulo, LTR, 2007.

²² Brazil, MTE, SEFIT: Management Report of the Secretariat for Labour Inspection, 1997.

²³ See, A. Saint Pastous Nocchi, G Napoleao Velloso, M. Neves Fava. Trabalho Escravo Contemporaneo, 2. Ed., LTR, Sao Paulo, 2011 .

²⁴ Ministry of Labour and Employment website: <http://www.dt.gob.cl/1601/article-90661.html>

inspection combines information recorded during the visit with databases, which provide information on employers' affidavits concerning contributions and payments, detailing the number of workers registered. The inspector may demand access to the registry (at this level, the inspection has only an advisory capacity).

5.4. Information and dissemination

In accordance with the need for education and information mentioned in the labour inspection Conventions, some countries have also started to post information about their activities and functions on their websites, in addition to disseminating information through telephone hotlines and similar means. This trend is evident in Argentina, Brazil, Chile, Colombia, Dominican Republic, Ecuador and Uruguay they publish information on the variety of services offered, legal provisions and administrative jurisprudence. There are also various regular public information systems.²⁵

Argentina's *Ley de ordenación* (Management Act) of 2004 established the need to set up an inspection registry with corresponding fines and sanctions, as well as the duty to report to workers and employers' organizations on its activities and outcomes. The text also mentions that company representatives must accompany inspectors during visits and their right to be informed of the results. Similar rules on the participation of company representatives during inspection visits have been adopted by a number of countries.

As a supplement to the inspection for the purpose of prevention and advice-giving, the General Directorate of Labour in Chile has posted nine self-confirmation lists (www.dt.gob.cl/documentation/1612), used on an individual and indicative basis and including the labour and social security laws, company rules and regulations and sectoral information.

5.5. Human resources

Several countries have an institutionalized inspection body (or full-time staff). However, many countries also experience a high rate of employment flight to the private sector among inspectors, mainly due to low wages.

Administrative careers are not available in abundance. Argentina, Brazil,²⁶ Chile, and Uruguay offer properly trained inspectors a career in the administration and they are appointed on merit, based on strict selection criteria, and granted the status of civil servants.

Regardless of the provisions of the respective laws on civil servants, the different countries select labour inspectors on a competitive basis (merit or technical), with a broad scope and requirements. Nevertheless, initial recruitment practices have been questioned in many countries, with critics talking of political appointments.

In general, there is no wage scale or real incentives for inspectors, and this often discourages them, prompting them to resign or to neglect their duties.

²⁵ Argentina: www.trabajo.gov.ar; Brazil: www.mtb.gov.br; Chile: www.mintrab.gob.cl; Colombia: www.sinpro.gov.co/mintrabajo/; Uruguay: www.mtss.gub.uy.

²⁶ A structure for a career in labour inspection was created in 1944.

The number of full-time inspectors in the region is still low.²⁷ For example 19.3 inspectors per 100,000 workers in Chile, in 2005; and in 2007, between one and three inspectors per 100,000 workers in Colombia²⁸, Brazil²⁹ and an estimated three to six in Argentina, and the Dominican Republic,³⁰ and Uruguay.³¹

On the other hand, the geographical distribution is highly uneven and most of the inspectors are in capital cities. For example, in Uruguay, according to Labour Ministry data, in 2009, 85 inspectors were stationed in Montevideo out of a total of 109.

Statistics are scarce on the participation of women in inspections (although the Treaty of Versailles insisted on their presence).

In recent years, inspections have improved markedly, both qualitatively and quantitatively. Efforts were made in Argentina, Brazil, Chile, Colombia, Dominican Republic and Uruguay to increase the number of labour inspectors³². Special efforts have been introduced by the Ministry of labour of Ecuador more recently.

Since 2001, in the course of a rationalization, efficiency and modernization process, Chile's General Directorate of Labour decided that inspection procedures needed to be streamlined. This could be achieved by revising previous guidelines and procedures and developing a new inspection service order, covering the different stages of labour inspection and focusing on the most vulnerable, due to the possible risk of violation, as well as giving the labour inspection a more modern and operationally effective profile. In addition, computer support was sufficiently developed.

Once again, in Chile, and aside from a greater number of inspectors, training systems have been set up for officials, linked to objective-based salary incentives. Brazil has established a target-oriented productivity bonus. The system is based on assessment of an inspector's individual performance, on the one hand, and on the collective performance of the department, on the other, within a specific period of time.

However, the region has, to date, done little to develop initial and continuous training or specific programmes. Child labour programmes are the most important and of recent origin, and have been fostered and financed within the framework of international technical cooperation. Some efforts have been made to systematize training.

Potential problems relating to professional integrity and corruption are a recurrent theme in the observations of ILO supervisory bodies. However, many countries have codes of ethics and some have specific legal provisions for labour inspections. The practical enforcement and supervision of these provisions remains poorly developed, although there have been some interesting initiatives.

²⁷ See Piore and Schrank, 2008: 22

²⁸ According to the MTPS, there were a total of 289 inspectors in 2007, although some have other, "temporary" functions. There is, therefore, one inspector for every 61,000 workers.

²⁹ According to the Secretariat of Labour Inspection, in 2007 there were 3,178 active inspectors, with an average annual growth of around 100 since 2005. This will eventually restore the 1999 level, numbers having deteriorated during the course of the first five-year plan, starting in 2000.

³⁰ A total of 178 inspectors, according to Ministry of Labour data for 2007.

³¹ A total of 142 inspectors distributed in three regional labour teams (Montevideo, the provinces and the ports) (CEACR data, 2008, individual observation on Convention No. 81).

³² See Piore and Schrank, 2008: 3

A number of CEACR comments point out that some countries in the region – such as Argentina and Brazil – use some of the funds collected from fines as wage incentives, which has tended to shift inspections towards larger enterprises, thereby calling into question the independence of the labour inspection. Both countries have now reviewed these practices.

In Chile, the inspection service has an internal controller to ensure the integrity of officials as well as a system for selecting labour inspection targets, as in the Dominican Republic.

These are only first experiences and the subject being of vital importance to the efficiency of the labour inspection system requires more action.

5.6. Power to enter enterprises

The power of labour inspectors to enter enterprises unhindered, review documents or carry out any necessary tests or examinations, as specified by Conventions No. 81 and No. 129, are enshrined in the legislation of most countries in the region, even though, the relevant state may not have ratified these Conventions. In several countries, if the lives of individuals are under threat, inspectors may interrupt or shut down operations, (Argentina and Chile).

However, in other countries these powers seem to be restricted. In some of them, for instance, health and safety inspectors do not have the power to interrupt work and/or production processes and must report any imminent danger to the labour inspection, the only body that has the power to impose sanctions. Labour inspectors must be called upon to intervene and this takes time, creating delays and, perhaps, leading to unfortunate consequences.

Labour provisions also provide for intervention by the police or other public officials to assist inspectors, whenever necessary, and also to regulate, the possibility of officially summoning individuals before the labour agencies (primarily to submit documents). However, in many countries summons are rarely issued, since the law on this matter explicitly mentions mandatory re-inspection.

The visit – usually notified to workers and employers as specified by order of the authority that issued the service order – is recorded in a report, a copy of which is provided to those affected, containing requirements, warnings, prohibitions and other forms of intervention. A protocol detailing the infraction is prepared and handed over during a second visit, after verifying that no corrective measures have been undertaken.

Practically in every country in the region, as already mentioned, the law refers to *in situ* (site) re-inspection as a follow-up to the initial visit (in some cases, sanctions are not imposed during the first visit, regardless of the violation). Re-inspections account for a very high – 50 per cent – proportion of total interventions.

For example, in Chile, supervision coverage increased considerably in the years 2006 – 2008:³³ there were an estimated 131,891 visits, involving 3,558,243 workers in comparison to 114,937 inspections in 2005 and 94,981 in 2004. Of the visits conducted in 2008, more than 20 per cent were *ex officio*, within the framework of sectoral inspection programmes. (The average duration of inspection procedures is 60 days).

³³ Data from the General Directorate of Labour website: <http://www.dt.gob.cl/1601/printer-94681.html>.

5.7. Sanction procedures

In general, administrative procedures are applied in the region for the purpose of imposing fines and following up labour law violations. Some countries resort to the courts for the imposition of fines, although the latter are usually set by the administrative authority. Moreover, once administrative procedures have been exhausted, labour inspection cases may be brought before a court via an action under administrative or civil law.

The typical sanction imposed as a consequence of an inspection is a fine (frequently involving small amounts and not based on a fixed scale). Although legislation in almost every country in the region provides for the possibility of immediate interruption of work, shutting down the company or establishment or, in some cases (Chile, for example, Article 183 of the Labour Code), removal from the Company Register. In many cases, the sanction proposed must be approved by the legal department or office of the Ministry of Labour, which may also make suggestions to the inspection authority in charge of imposing the fine, describing the legal provision violated, its classification and the corresponding fine.

Countries in which specific inspections are conducted independently by the Ministry of Social Security apply special administrative procedures which, aside from sanctions, also involve the enrolment, *ex officio* (from the office), of workers in the social insurance scheme.

Although the procedures vary from country to country with regard to following up and documenting violations, in practice they are fairly homogeneous. For example, in Uruguay, the inspector makes a written record of the case and, if necessary, a statement notifying the employer of the documents to be presented, and/or violations to be corrected. A period of three working days is permitted to submit responses and/or make corrections. If there is non-compliance to the notification, and no response received, inspectors issue their ruling and a sanction is imposed. If documents or responses relating to the complaint are presented to the inspector in charge and, subsequently, to the Legal Department, they may rule on the case and this decision must be approved by the Inspector General of Labour. The ruling may be challenged by appeal or superior remedy (reinstatement) within ten days.

The structure of the sanction process in terms of inspection, re-inspection and hearing means that employers have three chances to correct violations without being sanctioned. It takes an average of two months before a sanction is imposed at the local level and six months in the capital with regard to special inspections and four months at the local level and up to two months in the capital in the case of regular inspections. The fines imposed may be challenged based on an administrative remedy (appeal) or administrative legal proceedings. Once the resolution to impose the fine passes from the Ministry of Labour to the Ministry of Economy for its collection and follow-up, the Prosecutor takes charge of the case through executive proceedings.³⁴

In Brazil, a plan to verify procedures was launched in 2003 in order to follow up and improve the collection of fines. This verification process reduced the number of remedies filed. Furthermore, the resolution period for remedies fell from 400 days in 2005 to 90 in 2008.

³⁴ According to data from the Ministry of Labour of Uruguay, 30 per cent of fines are appealed through administrative proceedings.

In Chile, a legal remedy is available for the revocation of fines and a special procedure known as the protection remedy may be filed before the Court of Appeal in cases of violation of constitutional rights. The fines are classified as minor fines, serious fines and especially serious fines, according to the number of workers affected.

In Argentina, Law 25.212, enacted after the Federal Pact of 1999, established a new scheme of infractions and fines, which defines violations more strictly, laying down a uniform system of labour sanctions as the basis of the fine, with minimum and maximum amounts adjustable at the discretion of the administrative authority (Article 5). Furthermore, criminal charges may be brought in the case of non-payment of a fine. In case of an infraction by a corporation, Argentinean law imposes the fine on the managers and other responsible individuals who are directly involved in the infraction, joint and severally. The authorities must also keep a record of persons sanctioned. Fines collected must be used to improve administrative services, the practice of allocating 10 per cent of fines to labour inspections to distribute among inspectors as incentives having been eliminated. In the Dominican Republic, the law does not allow inspectors to impose fines directly, since under the legal system this is the competence of the judiciary. In this regard, the discretionary power of the labour inspector to impose sanctions are quite restricted. In any case, the highest fine is 1,523USD, which would have little impact on a large *“maquiladora”* (foreign owned enterprises). In Colombia, the labour inspector has the possibility to apply monetary sanctions. For example, the amount can vary from one to 100 times the monthly minimum wage in accordance to the infractions this amount is forwarded to the *“Servicio Nacional de Aprendizaje (SENA)”*. In addition, labour inspectors can suspend temporarily or indefinitely the premises of an enterprise if there are violations of OSH legislation and child labour and to sanction with fines employers in violation of the national law dealing with the employment relationship.

In addition to what has been said above, it should be noted that in Latin American many countries are introducing special programmes for better implementation of labour legislation. In Chile, with the emphasis on prevention and advisory services, there is a special programme for small and medium-sized enterprises, which violate labour laws, called *“Programme to Substitute Fines by Training”*, which enables SMEs to avoid sanctions through enrolment in one of these training programmes. In Brazil, there is an interesting experiment involving the provision of a new instrument – the *“Committee of Understanding” (Mesa de entendimiento)* – to the labour inspection, within the framework of the Ministry of Labour’s Transformation Programme, for negotiations with individual enterprises. This is a special programme for the *“regularization of the situation of enterprises which infringe labour laws”*. The decision to start consultations in this programme, is taken at the initiative of the inspector. Furthermore, the relevant trade union shall be present. In case the consultation fails, the inspector applies the sanctions that are laid down in the law. In this instance, the inspection services promote consultations/negotiations between the parties. In a large measure, the inspectors facilitate the dialogue and try to provide support and legitimacy with regard to a possible final agreement between the parties.

The same trend on prevention, especially in OSH, can be found in Argentina, Brazil, Chile, Colombia and the Dominican Republic.

Finally, with regard to special procedures, mention should be made of allegations for non-respect of freedom of association in a country such as Uruguay. The procedures begin with the specific allegation of which the company as well as the workers are notified. Thereafter, proof is submitted through declarations or documents, after which a resolution is adopted. If a decision is reached stating that the principles of freedom of association were violated (for example, workers’ representatives were dismissed), a fine is imposed. In this regard, it should be noted that there are no legal provisions on

reinstatement. This resolution may be appealed through the administrative office responsible and then before the court. A similar procedure is also adopted in case of allegations of sexual harassment.

6. Experiences in Europe

6.1. Current trends in Europe

What do European labour inspectorates have in common today? Firstly, it is clear that, in line with ILO standards, all the European Union Member States, which have ratified ILO Convention No. 81, in particular (as provided in Article 3) have given the labour inspectorates the task of ensuring the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work. A task, which requires a common national legal framework, that is to say the system, which regulates working conditions in each country. Secondly, it is necessary to remember that the bulk of the Directives adopted by the competent bodies of the European Union feature provisions on safety and health at work, a field that falls within the general remit of all the inspectorates in the European region, irrespective of the inspection system in place or its scope of application. At the same time, countries, which aspire to full membership, are also taking steps to coordinate and harmonize their legislation with regional standards, a process that fosters mutual development and broadens aspirations in the field of inspection and protection in the region of Europe.

For the European Commission and Council, the effective enforcement of EU legislation is a prerequisite for improving the quality of the working environment. This is the reason why the Senior Labour Inspectors' Committee (SLIC)³⁵ aims at strengthening cooperation between the EU Member States and the European Commission, fostering the effective and coherent enforcement of European legislation in all the Member States. Its work has primarily, although not exclusively, focused on safety and health.

With regard to this issue, one must stress the role played by the SLIC in facilitating the exchange of information, experiences, organizing cooperation, mutual assistance and above all, providing support for objectives for establishing common principles of good practice in the field of occupational safety and health inspection and methods for assessing the national inspection systems, in line with these principles. This is something, which is extremely difficult in practice, which is not to deny that it is clearly convenient in the short term. That is why both the Commission and the Council agree that it is vital to integrate the inspectorates in the candidate countries into the SLIC framework, in order to ensure the effective enforcement of EU legislation.

It should be noted that it does not exist one model in Europe, on the contrary each system reflects its own administrative system. However, they all follow, including countries such as Israel and Turkey, the notion according to which the labour inspection is placed under a central authority. Following the requirements of Conventions Nos. 81 and 129. Most of the European systems have inspections carried out by a single labour inspection department responsible for all sectors of economic activity, or by a single labour inspection department, which would arrange for internal institutional specialization by creating a technically qualified service, or a specialized inspection service, the activity of which would be supervised by a central body³⁶ The concept of a

³⁵ In addition to EU Member States, Norway, Iceland, Liechtenstein and Switzerland also take part as observers.

³⁶ With regard to labour inspection a decentralized system operates under different circumstances and according to different criteria, based on the competences and structures of the existing labour

central authority does not imply the absence of a decentralized administrative structure or even a federal system. Decentralized states (the case of Austria) are perfectly able to implement the idea of a decentralized inspectorate in the Länder, which is coordinated at a central level by establishing in line with the provisions of ILO Conventions, links/cooperation with a central authority, which then facilitates the work of the labour inspectorates, while sufficient budgetary resources are also allocated to all the states.

In Europe, there is a variety of systems: centralized, federal, integrated, technical and generalist. This is why we do not refer to labour inspection models, but rather to labour inspection systems, thus avoiding any discussion of whether it is more appropriate to have a general or specialized inspectorate, especially in view of the fact that the majority of European systems exhibit, to a greater or lesser extent, hybrid features. For example, in Scandinavian countries, where the inspectorate's primary duties involve safety and health, inspectors are given the task of supervising certain aspects relating to labour conditions (working hours, leave and child labour).

The significant changes, which have taken place in the world of work, have meant that the inspectorates, in both Europe and other regions, have to seek new solutions in order to continue to fulfil their duty of protecting the workers. Today, the crisis has provided new challenges. This need to change and adapt, forces the inspectorate to be more flexible, so that it can quickly allocate resources to newly emerging challenges whilst maintaining clear priorities, in order to have as much of an impact as possible on compliance with safety and health standards and working conditions in enterprises. This has been the case in Hungary, Ireland, Slovenia and Turkey, resulting from a significant growth in undeclared work.

Indeed, in Ireland the Employment Law Compliance Bill of 2008 created a new, central authority on employment rights, (the National Employment Rights Authority – NERA) giving inspectors competencies in the field of employment relations, by means of better delegation and improved coordination with other competent authorities. The NERA has three main areas: a) Employment Rights Inspection Service, b) Inspection and c) Enforcement and Prosecution.

In Hungary, the inspectorate maintains a relationship with various employment authorities, out of which the most important are the Regional Employment Centre, equally trusted authorities, Tax Officers and the Hungarian Health Care Services with a view to examining those situations of illegal work – often, the inspectorate asks for the intervention and assistance of these employment authorities when it has no right to act.

6.2. The inspectorates in Europe: some core functions

Any attempt to describe the inspectorates in Europe becomes more complicated than one could imagine when one includes in the ongoing process of EU harmonization in the 27 Member States the candidate countries. It is a fact that, within the European mosaic, the varieties and models of labour inspection systems are changing, merging and revealing unique features. Although the national systems have their own peculiar characteristics, they do share a common objective, namely to ensure that the inspectorate's duties, which include prevention, consultation and monitoring activities and enforcement are performed effectively.

administration. In federal states, and irrespective of the criteria which may have been adopted with regard to specialized inspectorates, competences are generally divided between the federal labour inspection authorities and the authorities in each federal state, although in some countries the inspectorate may be placed directly under the authority of the federal authorities.

In addition, labour inspectorates need to address new issues, as a result of the current situation on the labour market. In this regard, European inspectorates face the challenge of the globalization of labour relations and, ultimately, the need to introduce trans-border monitoring.

The European Commission (with respect to the posting of workers in the framework of the provision of services (COM/2006/0159), which is developed further by Directive 96/71/CE to establish cooperation measures) indicates that the cooperation of the administrative authorities is vital and presupposes the existence of a controlling authority with sufficient measures and resources in each country. Moreover, it provides: “Member States need to constantly evaluate the effectiveness of labour inspectorates and other monitoring systems and examine ways to improve them, in keeping with their obligations under the Directive. These efforts may be supported by strengthening the cooperation between the national authorities responsible for monitoring (including labour inspectorates) on matters covered by the Directive. At least, once a year representatives of the labour inspectorates or other bodies responsible for monitoring the application of the Directive should meet in the expert group on posting of workers.” It adds, “In order to fulfil their obligations Member States are asked to re-examine their systems to monitor and implement the Directive. They are asked, in particular, to ensure that there is a mechanism in place to remedy any deficiencies; that appropriate and proportionate monitoring measures are in place and that service providers who do not comply can be effectively sanctioned. The Commission undertakes to work with the Member States in order to improve transnational cooperation of labour inspectorates in the subject areas covered by the Directive on the posting of workers”.³⁷

In this context, between 1999 and 2003 the Commission worked to redefine the concept of cross-border cooperation between inspectorates, following the introduction of the principle of free movement. Although the SLIC had established a basis for better cooperation and understanding, the efforts undertaken in 1999 under the British presidency (involving the creation of a working group on cross-border labour inspection), no agreements were signed. Although a call for interest was published in 2005 for a legal study on the issue, the project was later abandoned.

In general, significant progress has been made, but certain issues remain pending, such as the mutual recognition of sanctions, or the implementation of sanction proceedings.³⁸ A problem which still remains unresolved, to a certain extent, is the possibility of prosecuting enterprises which fail to comply with legislation in the Member States where they are active on a temporary basis, and are therefore, able to avoid sanctions when they cross the border and return to the state where their headquarters are registered. Both the European Convention on Mutual Assistance in Criminal Matters of 29 May 2000, and the Framework Decision (2005/214/JAE) of 24 February 2005, have introduced important changes, although they must first be implemented and transposed into national legislation.

While international efforts have yet to lead to the full implementation of Directive 96/71, they have nevertheless given rise to a series of bilateral agreements. For instance, the Agreement on the Exchange of Information and Cooperation of 3 October 2003,

³⁷ From Directive 96/71/EC.

³⁸ For further information, see *Páramo Montero, Pablo*: La ejecución transfronteriza de sanciones penales y administrativas. Asistencia y reconocimiento mutuos en los procedimientos sancionadores en el ámbito de la Unión Europea. Especial referencia a los supuestos del orden social. *Revista del Ministerio de Trabajo e Inmigración: Derecho del trabajo*, núm. 78 (Madrid, 2008), págs. 323-344. <http://www.mtas.es/es/publica/revista/numeros/78/Revista78.pdf>

between the Labour and Social Security Inspectorate in Spain and the General Labour Inspectorate in Portugal, regulates certain forms of cooperation between both bodies, especially in the fields of safety and health, accidents at work, work permits for citizens from outside the European Union or the exchange of information on the movement of workers, as well as regulations for identifying the official, registered headquarters of a company and the exchange of information on data on posted workers (of course, in line with national legislation on the protection of personal data pertaining to workers).

In 2007, other European countries also signed an agreement with the same scope which involves the inspectorates (including safety and health inspectorates) in the field of labour protection (working conditions and remuneration) for posted workers.

New agreements continue to be negotiated and/or signed (for instance, the recent agreement signed between France and the Netherlands) within the framework of the fight against undeclared work, and as a means of promoting improved compliance with EU directives on safety and health.

Other agreements, signed within the framework of the SLIC, open the way to interesting information exchange networks, as in the case of the MACHEx network which, when the EU Directive on machinery 2006/42/EC was implemented, established a system for sharing information between the inspectorates on cases involving defective machinery (which have affected or could affect the health of workers).

In order to address the need to protect workers in Europe, the legal and institutional framework must be adapted, new means of progress must be promoted, and efforts must be made to incorporate provisions on safety and health and working conditions into all EU policies. It is necessary to stress the fact that one of the Commission's competences involves ongoing efforts to adapt the Directives, taking into account new developments in the world of work, technical progress and scientific knowledge. In this regard, national reports on the practical implementation of the Directives have particular significance, including assessments carried out in enterprises. In this way, not only will any gaps be closed, but also improve existing regulations and practices.

At the same time, it is also necessary for representatives of the labour inspectorates in the candidate countries to become involved in the SLIC, the Bilbao Agency and the Dublin Foundation, amongst others. Once these basic tasks have been completed, in order to promote new roads towards progress, the labour inspection systems would need to harmonize their statistics and systems of compiling and processing data.

Moreover, as already mentioned on several occasions, it is essential to explore the role of social dialogue and tripartite cooperation. Emerging risks such as stress are ripe for analysis through social dialogue, bearing in mind that the wide variety of illnesses that may result from stress justifies the involvement of the social partners, in line with the procedures established in Article 38 of the EU Treaty.

6.3. Issues and strategies: specific examples

In the field of safety and health, a common and important matter for all the inspectorates, to remember whilst waiting for pending questions to be answered is that the Green Paper on Promoting a European framework for Corporate Social Responsibility [COM (2001) 366 final] put forward the view that safety and health are fields particularly suited to the introduction of voluntary good practice schemes by enterprises which may be concerned about breaching existing rules and standards. That is to say, it provides a common focus for improving working conditions.

However, a new community strategy in the field of safety and health at work will turn out to be meaningless if no efforts are made to diligently promote the incorporation of these strategies into other community policies, European strategies in the fields of employment and public health, and all those relating to labour inspection. Without the former, it is impossible to take full advantage of the productive potential in the European Union, while without the latter, there is no connection between safety at work and the general state of health of the population. Similarly, albeit to a lesser extent, there is need to ensure the implementation of strategies are based on preventive measures, such as those in the field of transport, the environment, civil protection and even the common fisheries policy. It is vital to harmonize policies and involve the inspectorates in all matters that may have a social impact.

At the same time, one must bear in mind that one of the common features of European inspectorates, as already mentioned, is the complex reality in which they are developed. This reality now includes new types of contracts which have led to the disappearance of permanent jobs, ill-defined labour relations resulting from new forms of employment, new occupational risks, new forms of work and working time, and all this against a backdrop of constant change. In this regard, a study published by the European Foundation for the Improvement of Working and Living Conditions³⁹ points out structural changes to working conditions, which have had an impact on national and regional policies. The study reveals a trend which features an improvement of working conditions, both in terms of legislative provisions and in practice (apart from, for example, in relation to night work and weekend work), and a decrease in professional risks, but an increased burden at an individual level (intensity of work) and growing levels of absenteeism, as well as an increasing lack of motivation owing to temporary contracts, with few career opportunities and poor access to training. The inspectorates thus face different problems with regard to risks (stress) and working conditions (more conflicts owing to a lack of motivation).

In parallel to these issues, the 48th SLIC meeting (Luxembourg, 7 March 2005) focused precisely on the idea of permanent changes to the social structure in Europe, which resulted in a series of conclusions concerning the management and organization of the inspectorates. These conclusions stressed the need to reinforce the working methods and organization of the inspectorates in order to achieve effectiveness, with all of this serving as the point of departure for creating a new focus.

One of the conclusions of that meeting was that reliable indicators were needed to measure the effectiveness of the inspection services, in terms of risk reduction and economic efficiency. In particular, it was stressed that it was vital to introduce yearly plans for labour inspection visits. In this context, it was necessary to refocus their activities on two levels, relying on support of social actors, who are the fundamental pillars for all programming activities. Firstly, they need to favour preventive methods over reactive ones, in order to address priority issues and, secondly, they need to focus on the possible sanctioning of enterprises with previous records of non-compliance to legislation. Finally, the conclusions also stressed the need to foster teamwork within the inspectorates, as well as the exchange of information and working methods among inspectorates. In short, there was an agreement that for better functioning labour inspectors do not need an “integrated system” but rather a well coordinated one.

³⁹ *Ramón Peña-Casas and Philippe Pochet: Convergence and divergence of working conditions in Europe: 1990-2005. European Foundation for the Improvement of Living and Working Conditions (Dublin, 2009). <http://www.eurofound.europa.eu/publications/htmlfiles/ef08104.htm>.*

6.4. The structure of labour inspectorates

In line with ILO Conventions Nos. 81 and 129 on labour inspection, the labour inspectorates exist to “ensure compliance with legal provisions relating to working conditions and protection of workers”.

There is a mixture of different inspection systems. There are generalist inspection systems responsible for monitoring labour conditions, the work environment and individual or collective labour relations. These systems often play a part in the areas of employment and training or social security such as in the Czech Republic, France, Italy, Spain, Portugal, and Turkey. They often co-exist with specialized systems in which the range of responsibilities devolved to different departments may be rather broad and concern not only conditions of work but also matters such as labour relations. These responsibilities are shared among a number of specialist departments under the overall control of separate authorities or of one single authority. Lastly, there are systems based on interventions by multidisciplinary teams in which, within one local inspection department, inspectors with complementary areas of competence can intervene together or in turns and consider mainly conditions of work, for example, Austria, Czech Republic, Finland, Slovenia and Sweden. In Sweden, the Swedish Work Environment Authority (SWEA) is the administrative authority for issues relating to the working environment and carry out inspections at workplaces. It supervises compliance with the work environment and working hour laws and regulations in all workplaces, all branches of activity and forms of employment, with the exception of work on ships. When carrying out compulsory inspections, the main objective is to reduce the risks of ill-health and accidents in the workplace and to improve the work environment in a holistic approach, i.e. from the physical, mental, social and organizational viewpoints.

In certain countries such as Turkey, inspectorates are responsible for monitoring the payment of social security contributions (but not affiliation status or the level of social security contributions, as is the case in Spain). In other countries such as Israel, with regards to the Safety and Hygiene Inspection Service responsible for enforcing safety in the workplace there exists a distinct separation between the Inspection Service, which is part of the Ministry of Industry, Trade and Labour and the Judiciary system. Nonetheless, interplay exists when the judge participates in the committee meetings on safety and injury complaints.

From the point of view of public administration, in certain countries labour inspection is the responsibility of a single body of civil servants, answerable to a Ministry that deals with labour issues (Spain). However, the work of the labour inspectorates is complemented by that of social security inspectorates (France). Italy combines a national system for supervising labour conditions and employment, operating within the remit of the Ministry of Labour and Social Policy, with a network of local inspectorates that monitor employment conditions and safety and health. In the Netherlands, the inspection system promotes a combination of activities of the safety and health inspectorate with powers exercised by bodies at the local authority level, especially when inspecting small and medium-sized enterprises in the services sector, including the enforcement of payment of minimum wages.

The departments responsible for labour inspection may be single departments covering all technical fields (France and Romania) or may involve two or three entities within the administrative system, with competences divided evenly between them, as is the case in Hungary and Slovenia. In these cases, coordination is based on the concept of what has come to be known as integrated labour inspection, which involves the participation of the various units responsible for labour inspection in joint planning activities and joint action, in order to achieve a common objective. Ultimately, the aim is

to ensure the effective coordination of management tasks, in order to avoid duplication of work.

Certain countries have specialized inspectorates for specific branches of industry, such as transport (the Netherlands) or mining (France, Slovenia and Spain).

Many countries have restructured and modernized their labour inspectorates, focusing their efforts on improving inspection in the field of occupational safety and health and, recently, the fight against undeclared work, as is the case in Ireland. These changes have been reflected in new standards and organizational structures, as well as internal guidelines.

Italy reformed its inspectorate in 2004 (Act No.124), in order to improve coordination and the exchange of information between the various agencies involved, as well as to improve its advisory services.

In other EU Member States, reforms aim to improve administrative efficiency. For example, the Czech Republic has established a National Central Labour Inspection Office as well as regional labour inspectorates, with a view to establishing a real, central inspection authority with a well-defined structure.

Overall, it can be said that in the majority of European countries, there is a central authority coordinating the regional and provincial structures.

6.5. Central authority and decentralization

At the same time, the current administrative and political structures of European countries raise certain concerns on the role of the central authority. Articles 1, 4, 5, 6 and 8 of ILO Convention No. 81 and Articles 3, 7, 8, 10, 12 and 13 of ILO Convention No. 129 on labour inspection lay down the rules according to which the labour inspectorates should be organized and operated, in order to achieve the goals set out by these instruments.

Under these provisions, the labour inspectorate must operate as one system, under the supervision and control of a central authority, with the cooperation of other private or public institutions, and the collaboration of employers and workers, or their organizations. At first glance, the concept seemed to reflect a very centralist and narrowly focused approach, but a detailed reading of the Convention clearly explains these concepts.

It is true that ILO Recommendation No. 20 on Labour Inspection of 1923 called for the labour inspectorate to be placed under the direct and exclusive control of a central national authority and to be independent of the local authorities. However, Article 4 of ILO Convention No. 81, amends this concept by introducing certain provisions which, although affirming the principle of a central authority, grants a certain flexibility with respect to two issues: firstly, the labour inspection system shall only be placed under the supervision and control of a central authority, in so far as is compatible with the administrative practices in the Member State (par. 1); secondly, in the case of a federal state, the term “central authority” may mean either a federal authority or a central authority of a federated unit (par. 2).

Indeed, a decentralized system operates under different circumstances and according to different criteria, in line with the competences and structures of the existing labour administration. In federal states, and irrespective of the criteria that may have

been adopted with regard to specialized inspectorates, competences are divided between the federal labour inspection authorities and their various subordinate bodies, although, in some countries, the inspectorate may be placed directly under the authority of the federal authorities.

The problems associated with a decentralized structure are multi-faceted and vary in nature, although one common problem does relate to the coordination of the inspectorates in terms of monitoring the enforcement of legislation (common criteria). In Austria, for example (the inspectorate was created under the provisions of the 1974 Act on labour inspection), the Austrian Conference of Presidents of the Chambers of Agriculture indicated⁴⁰ that the adoption of Act No. 280 of 1980, on the working conditions of workers in the agricultural industry and forestry in a federal state, led to the division of functions relating to the monitoring of social legislation in these sectors, given that provincial inspectorates did not yet have competences relating to the sector covered by the same Act, which has since belonged to the general inspectorate services of the state.

However, experience has shown that placing the inspection system in the hands of a central authority facilitates the creation and implementation of a single policy countrywide, encourages the sensible use of available resources and, in particular, minimizes the duplication of work.

One should not imagine that the flexibility clauses that apply to federal states undermine the principle of a single, central authority, because the authorities in each federal state have the budgetary resources to perform labour inspection functions in their respective areas of competence. The essential aspect in this case is that information must be clear and promote coherence.

6.6. The functions of the labour inspectorates

The way in which the inspectorates perform their functions varies greatly from country to country, depending on the structure of the inspectorate in each country. The amount of time dedicated to the various labour inspection functions, the activities involved, whether these actions are taken on the inspectorate's own initiative or in response to a complaint, and the scope and framework of inspections relating to safety and health or compliance with other working conditions. In general, inspections cover all sectors of the economy (including specific, specialized inspectorates), although certain basic principles are respected, such as the inviolability of the home (in practice, excluding the inspection of domestic workers) and the exclusion of prison work inspections.

The inspectorate's areas of activity vary with respect to the competences involved. There are significant differences between specialized inspectorates, although all of them cover safety and accidents at work. Issues such as coverage and monitoring of psychosocial risks or ergonomic issues constitute a minor part of their activities, and there is no regular inspection of chemical risks.

The preventive role of the labour inspectorates is becoming increasingly important in all countries. In several countries, for instance in the Czech Republic, Hungary, Finland, Israel and Turkey, the traditional mission of inspection and enforcement is now carried out in parallel with technical assistance and information. Even though, the regulations concerning welfare at work constitute the basis for inspection activity, and

⁴⁰ ILO: CEACR Observations C. 81 (Geneva, 2007).

OSH is a priority area of labour inspection, penalties are imposed only as a last resort. In other countries, such as Romania, the General Labour Inspectorate systematically contributes to the development of policies, including health and prevention strategies.

All labour inspectors enjoy powers granted to them under ILO Convention No. 81: free access, gathering of evidence, investigation of accidents, access to documents and the right to impose sanctions.

6.7. Resources and measures

A general survey on labour inspection by the ILO⁴¹ also stresses the vital importance of providing inspection services, with adequate material and human resources with a view to ensuring the effective functioning of the inspectorate and, at the very least, ensuring that the workplaces under their supervision are inspected thoroughly and regularly.

Although, it has generally been stressed, at the national level, that all countries need to recruit more inspectorate staff, the number of inspectors per country varies⁴². In 2007, there were between 45 and 50 inspectors per million workers in Hungary, the Netherlands, Slovenia and Spain, and 250 inspectors per million workers in Finland and Italy. However, this *ratio* does not paint a clear picture as, in certain countries, technical and auxiliary staff count as inspectorate staff or the inspectorate headcount also includes the technical support services. Furthermore, such a general and global ratio does not permit for the accurate measure of the actual activities of the inspectorates.

In France, in 2006, one inspector was responsible for 1,087 workplaces and, on average, 11,006 workers (in spite of the fact that the total number of staff employed by the inspectorate had risen since 1996 to 742). In Slovenia, in 2008, inspectorate staff inspected 11,000 out of 95,000 enterprises.

In recent years, the activities of the French inspectorate have mainly focused on the fight against undeclared work (*illegal* work under the provisions of the law), a phenomenon that is becoming more frequent every year in many EU countries. It is a concept that covers a great variety of offences against the laws on employment, as well as abuses of the right of residence of foreign nationals. Not only are inspectors called on to cooperate with the other state bodies responsible for combating illegal work, such as the police, the gendarmerie, the social security institute (URSAFF) and customs, but also with the inspector responsible for one of the two sections forming the labour inspectorate acts as the secretary of the Committee to Combat Illegal Work (COLTI).

Activities within this framework clearly aim to monitor illegal immigration, which has an impact on the inspectorate's ability to perform its normal functions. The professional association of French labour inspectors has filed complaints, both at the national level and with the ILO, concerning the fact that their work focuses exclusively on undeclared work, something that has led to both ethical problems and an excessive workload.

⁴¹ ILO, *General Survey of reports concerning Labour Inspection Conventions and Recommendations, ILC 95th Session, Geneva, 2006*

⁴² According to the HESA Newsletter: *Inspection still a weak link in most national preventive strategies*. Special Report. The Community strategy 2007-2012, No. 33, November 2007, page 23.

http://hesa.etui-rehs.org/uk/newsletter/files/Pages%2023-29%20from%20FINAL_News33UK_v5-6.pdf

Moreover, the French inspectorate now has a further, additional function, in that it has been given new responsibilities pertaining to the resolution of labour disputes. As a result, labour inspectors are regularly asked to intervene in labour disputes or to prevent latent disputes from erupting, especially in certain strategic sectors, which, if paralyzed, might put the economy of a French Department (or administrative region) at risk, for example a blockade that would prevent access to a port, an airport, or the main motorways, etc.

In Finland, the SAK and the AKAVA (trade union organizations) estimate that the inspectorate's capacity to cover inspection requirements in certain areas of activity has fallen by some 10 per cent. The Government, however, believes that the meeting of the operational districts of occupational safety and health was satisfactory and that the new inspection units are operational. However, generally speaking, the new missions are certainly more complex, in view of the fact that they involve assessing both the legal and the sociological aspects of the case. In spite of the trade unions' observations, the number of inspections carried out in Finland rose slightly in the last few years, after a period of decline, which lasted for a number of years, and now focus on the assessment of risks at work and on taking appropriate measures to enforce occupational safety and health legislation.

Recently, and presumably as a consequence of the economic crisis, certain European countries have "frozen" the recruitment of new inspectors (Sweden). On the other hand, countries such as Italy created hundreds of new posts in 2008-2009.

There is no uniform set of indicators available for the region to reflect the real effectiveness of the inspectors in relation to their numbers, and which would allow us to measure the effectiveness of the strategies implemented. There is no doubt that new methods for compiling and collating data are necessary, and that these methods should be based on common criteria, in order to facilitate comparisons between countries. For example, only certain countries have been able to assess the statistical probability of inspections in a given year, on a random basis. Nevertheless, national programmes should include such data, although currently they do not.

In all European countries, the selection and recruitment of inspectors, under the provisions of ILO Convention No. 81, is based on professional criteria and, in certain cases, the applicant's qualifications are examined (Austria, Czech Republic, Finland, France, Italy, Romania, and Spain). Shortlisted candidates are interviewed after steps have been taken to verify that they possess the necessary qualifications, as stipulated in the call for applications (Finland and Sweden).

Generally speaking, in the European Union the professional profile for inspectors focuses on engineering graduates (safety and health inspectorates) and lawyers (general inspectorates), followed by occupational health doctors and hygiene experts, as well as ergonomists and psychologists.

Each country has a different training system and all of them have created different training methods for vocational training for new inspectors, which generally combine theoretical and practical training. Although training may well be structured to ensure steady progress towards its goals, in some countries it remains far from being a systematic, up-to-date system with sufficient resources that are appropriate with regard to the specific conditions in that country. In the field of employment alone, training periods range from 3 to 24 months and a few countries have a training school for labour inspectors.

In France, the well-known INTEFP (National Labour Institute) in Lyon is the central institution responsible for the regular training of inspectors. This model has recently been introduced in other countries such as Romania and Spain. The training curriculum is, generally speaking, the same for technical inspectors as for general or employment inspectors and only a few countries have specific courses for inspectors specializing in certain technical areas, as in the case of engineers and hygiene experts in Austria, Finland, Israel, Slovenia and Sweden. However, specific training on individual topics is given to “specialist inspectors”. For instance, in the case of undeclared work, if two inspectorate units exist, the one responsible for the employment relationship will be the only one to benefit from training.

In certain countries, the training process is designed to culminate with competence tests. This is the case in Austria, Finland, France, and Sweden where the training process sometimes ends with an additional interview and a report (France), an assessment written by senior staff (Italy) or a follow up of the work of the trainees (Spain).

The majority of countries subscribe to the idea of lifelong learning, yet it is hard to find a tailor-made training programme for inspectorate staff. Instead, training involves *ad hoc* courses, which relate to specific priorities or campaigns.

6.8. Inspections' visit

It is believed that less time is spent on actual visits to enterprises than on administrative activities as a whole, whether they be administrative, investigation-related or additional tasks. This may conflict with the core role of the labour inspectorates (and, to a certain extent, with the principles of ILO Convention No. 81).

There are no quantifiable data available concerning the time spent on writing reports, legal documents and proceedings, meetings and discussions with other administrative authorities or on the time spent dealing with the public and on consultative activities, participation in debates or disseminating information. In a recent, internal EU evaluation⁴³ of the Swedish model, it was estimated that inspectors spent over 40 per cent of their time out of the office, and often used the telephone to obtain information and follow up on proposed measures. However, the assessors believed that even less actual time was spent on visits (around 25 per cent) due to the administrative burden.

It is important for the continuous process of legislative change in Europe to include sufficient time for evaluation and adaptation. Indeed, with more tasks and legal monitoring duties being allocated to the inspectorates, the more time will be available for assessment and adaptation. Countries such as France and Spain estimate that visits (in all forms) take up less than half the working time of inspection staff.

The majority of inspections are carried out in response to individual complaints (in Romania, for example, this is true in 30 per cent of cases⁴⁴) or planned campaigns, and very few are carried out on the inspectorate's own initiative. Moreover, many countries appear to favour what is known as "preventive" monitoring, which does not involve sanctions.

In France, in 2009, 72.18 per cent of actions resulted in observation and only 2.9 per cent gave rise to a report of a direct breach of regulations. In Italy, in 2009, operations

⁴³ Information provided by the SLIC.

⁴⁴ See OECD: Employment Outlook (Paris, 2008), page 117.

were suspended in 1,781 cases, i.e. in 7 per cent of all inspections. Meanwhile, 170,249 safety and health compliance orders were issued, i.e. 15 per cent of all inspections.

In Romania, the national authorities have created, as a specific preventive measure, internal regulations, which stipulate that the first visit to an employer (and particularly to a new company) shall be for the purposes of gathering information and consultation.

The majority of scheduled visits (around 60 per cent) follow a risk assessment at a central level that is used to identify sectors and enterprises to be inspected. The risk assessment also focuses on safety and health⁴⁵, although a growing number of ad hoc campaigns address the issue of undeclared work.

Campaigns are a widespread method used in a large majority of countries, and many of them are launched in response to priorities established to attain common goals.

6.9. Sanctions and monitoring mechanisms

One of the main obstacles to effective inspections, as indicated by the majority of the social partners⁴⁶, is the effectiveness and dissuasive impact of the sanctions imposed by the inspectors. This concern is also reflected in the annual inspection reports. Administrative sanctions are usually imposed and fines are channelled back into public funds. However, where the sanctions involve legal proceedings, the results are very different (very few proceedings result in a definitive outcome without appeal), which –in many cases– leads to doubts concerning their effectiveness. Furthermore, in many countries the judicial route is slow and potentially costly.

The total sum collected at the national level from administrative fines is not always significant although, in some cases, it may have a real deterrent effect at an individual level. For example, in Romania, 83,693 enterprises were inspected in 2006, producing 60,979 sanctions amounting to 90,069,310 RON (Romanian Leu). Moreover, of the 43 criminal proceedings associated with employment and minor matters initiated in 2006, 40 were pursued in the courts, although by September 2007, no final verdicts without appeal had been passed.

Aware that their fines were insufficiently low, countries such as Ireland reviewed and increased their fines, reforming the legislation on breaches of regulations in 2005. Agreements concerning certain types of sanctions were also adopted in France, the Czech Republic, France, Italy, Netherlands and Turkey.

Some countries have established specific forms of collaboration between the inspectorate and the judicial authorities, with the aim of ensuring that the inspectorate's actions are effective. In France, within the General Labour Directorate a monitoring agency was established to monitor the legal proceedings resulting from the inspectorate's actions, which not only collates information pertaining to administrative and criminal proceedings, but also manages collaboration with the Ministry of Justice, in order to ensure a better follow-up of the cases lodged.

In certain countries, the judicial and the administrative systems are integrated. In Austria, for example, alongside administrative proceedings which rely on *ad hoc* tribunals and involve the inspectorate, which is, therefore, authorized to present its

⁴⁵ Most activities in Europe focus on safety and health (2/3), although this is a logical consequence of EU directives in this field.

⁴⁶ HESA, op. cit.

argument before the court's verdict is handed down and to appeal against any decision, parallel proceedings also exist which deal with violations of the Penal Code. This process implements the provisions of the Penal Code and proceedings are initiated when the labour inspectors submit documents and reports to the Department of Penal Investigations or the Department of the Public Prosecutor. In any case, the courts must inform the inspectorate services of the end of any proceedings, but not of the court's decision.

The ILO's CEACR, in its general observations concerning Convention No. 81 in 2008, indicated that the "effectiveness of the binding measures taken by the labour inspectorate depends to a large extent on the manner in which the judicial authorities deal with cases referred to them or at the recommendation of labour inspectors. It is therefore, indispensable for an arrangement to be established whereby relevant information can be sent to the labour inspectorate so that it can accomplish two things: (1) to be able to review where necessary its criteria for assessing situations in which, with a view to bringing an end to a violation, it would be more appropriate to use other means besides prosecution in the courts or the recommendation of legal action (2) be able to take measures to raise the awareness of judges concerning the complementary roles of the courts and the labour inspectorate, respectively, in achieving the common objectives of the two institutions in the field of conditions of work and the protection of workers", which, according to the CEACR is confirmed by the "criticisms by workers' organizations of the inadequate level of support given by the courts to the labour inspectorate in other countries".

The CEACR also suggests, "effective cooperation" between the labour inspection services and the justice system can be achieved through the adoption of legal provisions and the implementation of educational measures and the exchange of information. For example, the legislation could define: (i) cases in which the representative of the public prosecutor may either issue a prior warning to the entity responsible for a violation or, within a reasonable period, refer reports of violations by labour inspectors to the competent court; (ii) cases in which labour inspectors may seek a judicial ruling to give injunctions or administrative fines executor force; and (iii) cases in which interim daily penalties for non-compliance may be imposed until the measures ordered by the labour inspector have been given effect. For example in Ireland, the law authorizes labour authorities to publish the names of enterprises and individuals convicted in court, together with the reason for the convictions, making this information accessible to the labour inspectorate, which then allows the central authorities to make good use of this data.

Similarly, certain mechanisms are currently aimed at strengthening the punitive nature of the sanctions imposed by publishing them. An example is given by Spain, where sanctions may be accompanied by a decision to publish cases involving repeat offenders, and which feature either serious or very serious breaches. Furthermore, in Italy, sanctions may also be accompanied by a ban on participation in public tenders. In a good number of European countries, sanctions may include increases in insurance premiums and, in the withdrawal of permits and the suspension or revocation of the company's operating licence.

6.10. Accidents at work and its rate

One of the labour inspection's priorities is to reduce the number of accidents at work. For example, in Europe the safety and health strategy for 2007-2012 set the goal of reducing accidents at work by 25 per cent. Although progress has been made in this regard, much remains to be done in order to achieve this objective. According to the ILO, there are about 150,000 work-related accidents worldwide every day. According to the

European Occupational Safety and Health Agency, accidents at work cause 167,000 deaths in Europe alone per year, and the average number of days of absence from work is between 13 and 71 days per accident.

It is important to bear in mind that the accident rate is directly linked to working conditions and the types of contracts in place. This is what emerges from national reports from countries like Austria, Czech Republic, Finland, France, Israel, Italy, Romania, and Turkey. An inquiry into working conditions revealed that the accident rate involving workers in temporary employment enterprises was much higher when compared with the average for the country as a whole, and that for apprentices, the rate was even higher.

6.11. Collaboration with social partners

The importance of a sound collaboration between the inspectorate and the social partners has always been highlighted (especially in relation to ensure compliance with legal obligations).

As the CEACR pointed out in its 2006 general survey on labour inspection, “the labour inspectorate can attain its objectives only if appropriate measures are adopted by the competent authority to promote effective collaboration with employers and workers in its activities.”⁴⁷ Certain European countries have created a national, tripartite consultative body, with broad competences, to address issues relating to labour, within the framework of collaboration between workers and employers’ organizations and the labour inspectorate in the field of occupational safety and health.

However, it is more often the case that national tripartite councils are set up to thoroughly examine issues relating to occupational safety and health in industry and trade, as is the case in several countries.

Inter-institutional cooperation and collaboration with social partners may also take other forms. In Finland and Sweden, inspectors often send letters to the workers and employers of a given company, indicating the programme and aims of the inspections, and request comments. The responses received are taken into account when planning inspections and establishing technical requirements. Many brochures and documents containing information are distributed during the visits.

Various countries have also taken a number of specific steps, involving the social partners, in the field of undeclared work as in France, Italy, Romania and Spain.

Many countries have committees that deal with issues relating to occupational safety and health in specific types of workplaces or enterprises (for example, the joint committees established in France, Italy and Romania).

In a given company or establishment, collaboration between the inspectorate and the social partners is frequently established thanks to contact, either continued or sporadic, with designated worker and safety delegates. In Finland and Sweden, in workplaces with more than five employees, workers need to elect at least one employee who can request that the employer adopt the necessary measures to ensure a satisfactory working environment, from a safety and health point of view. This representative may also consult with authorities in charge of monitoring the working environment if the requests made are not implemented or if there are delays. If there is any imminent

⁴⁷ ILO: General Survey of reports concerning Labour Inspection Conventions and Recommendations, ILC 95th Session, Report III (Part B), Geneva.

danger, the representative can order the suspension of work until the authorities reach a decision regarding the case, or can order the workers not to perform the work the employer has requested, if it violates a decision made by the aforementioned authorities.

In several Nordic European countries, trade unions play a more active role in “inspections”, and are able, in certain cases, to request broader powers to take preventive action in the field of prevention. Thus, in certain places worker representatives have the collective right to suspend a company’s activities in the event of imminent danger.

7. Experiences in ASIA

The labour inspectorate system in Asia (i.e. Japan, New Zealand and Taiwan) has been considered essential for the implementation of labour legislation. The difficulty, however, has been in the lack of sufficient budgetary and human resources. In the current economic situation, it is unlikely that this issue will be solved soon through the allocation of increased funds and staff to labour inspection.

7.1. The scope of Labour Inspection

7.1.1. *The Mandate of Labour Inspectorate*

In Japan, the labour inspection is responsible for ensuring the enforcement of the Labour Standards Act of 1947, which provides for the clear indication of working conditions, advance notice of dismissals, methods of payment of wages, working hours, rest periods, days off, annual paid leave, regulations for the protection of minors and women, including maternity leave, work rules and other matters. Labour inspectors are also granted powers under the Minimum Wages Act of 1959 and the Industrial Safety and Health Act of 1972⁴⁸. The Security of Wage Payment Act of 1976⁴⁹ is also enforceable by labour inspectors. The Industrial Homework Act of 1970 confers powers on labour inspector authorities. More recently, the mandate of the labour inspectorate was broadened in 2008⁵⁰. The determination of whether workers’ injuries or illnesses resulted from employment, and thus fell to be compensated under the Industrial Accident Compensation Insurance Act, having been made by clerical staff of the labour ministry, come within the remit of the labour inspectorate. For the purpose of supervising industrial health and safety, including investigating machines such as cranes and boilers, technical staff of the labour ministry have been assigned to the Labour Inspection Offices. The main idea behind this is to establish an appropriate administration system considering the closer connection between the mandate of labour inspection and that of industrial health and safety and industrial accidents⁵¹.

In another country such as New Zealand, the labour inspection system is established by the Employment Relations Act 2000 (ERA) and administered by the Department of

⁴⁸ The Pneumoconiosis Act of 1960, the Act on Special Measures concerning Carbon Monoxide Poisoning Caused by Coal Mine Accidents of 1967, and the Working Environment Measurement Act of 1975 can also be listed.

⁴⁹ This act obliges employers to take certain preservative measures for workers’ savings entrusted to the employers and workers’ retirement allowances.

⁵⁰ The description on this reform is based on the opinions expressed by some members of the Zenrodo, a trade union representing officials of labour ministry. See http://www.zenrodo.com/press/mff/mff_1002_01.html (last accessed 10 December 2011)

⁵¹ This description of the reason is based on the explanation of the Ministry of Health, Labour and Welfare.

Labour. Labour inspectors are responsible for the monitoring and enforcement of certain minimum employment rights, including those concerning annual leave, sick leave, parental leave, public holidays and wages. In this regard, it should be noted that a separate division of the labour inspectorate is dedicated to health and safety issues. Moreover, no other agencies are involved with monitoring or enforcing labour legislation.

7.1.2. *The structure of competences of Labour Inspection*

In the majority of the Asian countries, there is a single national labour inspectorate that coordinates the activities and policies implemented at the regional/prefecture/district levels. For example, in Japan in each prefecture, there are several Labour Standards Inspection Offices supervised by the Prefectural Labour Bureau. This Bureau is a local branch of the Ministry of Health, Labour and Welfare. A labour inspector is attached to the Prefectural Labour Bureau to serve at one of the Labour Standards Inspection Offices supervised by that Bureau.

7.1.3. *Specialized inspection system*

Taiwanese Labour Inspection Law has a wide range of coverage in all industries and activities, but there are some specialized regulations for certain fields, such as mining, pesticide manufacturing, firecrackers and powder manufacturing, high-pressure containers and petrochemical. This is also true in Japan where there are special inspectors who monitor safety in mining as well as mariners labour inspectors.

7.2. Sanctions

In a good number of Asian countries, labour inspectors have the authority to order the suspension of use in relation to industrial safety and health; in addition, they carry out the duty to work as judicial police officers.

7.2.1. *Penalties*

In Japan, for example, one is the order of suspension of use (the Industrial Safety and Health Act of 1972 art. 98). Labour inspectors may order employers to take necessary measures to prevent industrial accidents, including halting work, suspending or altering the use of buildings, wholly or partly, in a case where safety measures as required by the Industrial Safety and Health Act have not been taken.⁵²

When labour inspectors issue such an order, they are subjected to administrative laws. Since these orders fall into the category of administrative dispositions, which change the legal status of the concerned parties, reasons for such adverse dispositions (the Administrative Procedure Act of 1993, art. 14) must be indicated. As administrative practice, a standardized form for the order of suspension seems to exist. In this form, a labour inspector prescribes the provisions, which an employer has violated, the measures,

⁵² A person who has violated this ordinance shall be punished by imprisonment with work of not more than 6 months or by a fine of not more than 500,000 yen (the Industrial Safety and Health Act, art.119 item.2). Another example is the order to suspend the use of, or alter, a dormitory attached to an enterprise, in a case where the dormitory is in the violation of the safety and health standards (the Labour Standards Act, arts. 96-3 and 103). A person who has violated this ordinance shall be punished by imprisonment with work of not more than 6 months or by a fine of not more than 300,000 yen (the Labour Standards Act, art. 199 item.2).

which the employer must take to remedy the contravention, and the time limit within which such measures should be taken. The information on administrative and judicial appeals is printed in this standardized form. Advance notification is not required to issue this order. However, cases in which each labour inspector may exercise this authority with immediate effect are limited to those of imminent danger; otherwise, the authority is only given to the Chiefs of Labour Standards Inspection Offices and Directors of Prefectural Labour Bureau.

Apart from these orders, the criminal proceedings can be recommended against employers by labour inspectors. Fines and imprisonment⁵³ may be imposed by the court after the prosecutor brings in an indictment against an employer. In connection with this, labour inspectors may exercise the duties of judicial police officers under the Code of Criminal Procedure (the Labour Standards Act, art. 102). Labour inspectors are granted an authority to carry out an arrest, a seizure, and send papers on the case to prosecutors. The rules of criminal procedure must be observed throughout this process.

In administrative practice, it is said that labour inspectors give prosecutors the files on cases in accordance with certain criteria. The typical case would be where a worker's death was caused by an industrial accident, and a labour inspector, in the course of investigation of causes of that industrial accident, identified serious infringements of the Industrial Health and Safety Act.

7.3. Inspection's advice

In New Zealand, the ERA of 2000 provides that labour inspectors must—

- take all reasonable steps to ensure minimum employment rights are complied with;
- support employers, employees, and other persons in complying with minimum employment rights by providing information and education;
- prevent non-compliance with the relevant Acts by assisting employers to implement systems and practices that comply with minimum employment rights;
- provide any other services that assist employers and employees to effectively and promptly resolve employment relationship problems: section 233A.

The advisory function is also stressed in the Japanese system that is called “recommendation for correction”. The latter starts with inspection visits made by labour

⁵³ Fines or imprisonment with work can be imposed on the person who has violated the provisions of the Labour Standards Act, for example. The penalty is set in accordance with the provisions which the employers have breached. The most severe punishment can be imposed against the forced labour (the Labour Standards Act, art.5). A person having violated this provision is punished by imprisonment with work of not less than one year and not more than 10 years or a fine of not less than 200,000 and not more than 300,000 yen. The second most severe punishment is imprisonment with work of less than 6 months or a fine of not more than 300,000 yen. This punishment can be imposed on a person who has violated, for example, the provisions on maximum working time (art. 32). The lightest punishment is a fine of less than 300,000 yen (art. 120). This can be imposed, for instance, on a person who does not indicate working conditions to the worker, and thus has violated the provision of Article 15. This punishment shall be also imposed on a person who has refused, impeded or evaded an inspection by a labour standards inspector, a person who has not replied or has made false statements in response to questioning by a labour standards inspector, or a person who has not submitted books and records or has submitted books and records containing false entries to a labour standards inspector.

inspectors⁵⁴. During the inspection, they hand in a written form, which recommends employers correct the violation of the legal provisions of the Labour Standards Act (or other acts, if any). For this correction recommendation, there seems to be a standardized form where labour inspectors fill in the articles violated, the violating matters and time limit for rectifying the situation. This form specifies the name and title of the labour standards inspectors.

An employer having received a correction recommendation letter is required in practice to submit a report to the labour inspector. The labour inspectors carry out further inspection, in cases, for instance, where serious offenses have been found. This is called “Re-inspection”.

7.4. Defence and appeal

Under this system, the orders described above, which are characterized as administrative dispositions, are accompanied by appeals procedures. An employer receiving such an order may appeal for reviews by the Minister of Health, Labour and Welfare. This must be done within 60 days from the day when the employer know of the order. Lawsuits may also be brought demanding the revocation of the order within 6 months from the day when the employer knew of the order. The possibilities of administrative and judicial reviews shall be clearly stated in writing.

On the other hand, recommendation for correction, which is voluntary in nature, is not subjected to any reviews.

7.5. Conditions of service

7.5.1. The number of Labour Inspectors

In Japan, 3,970 persons served as labour inspectors on 31 March 2011⁵⁵. The number of labour inspectors has been increasing; in 2004, that number was, 3,752. However, only less than 3 per cent of establishments subject to labour inspection were supervised through actual inspection visits in 2006 (115,993/4,087,519) It cannot therefore, be said sufficient number of labour inspectors exist to enforce the labour legislation effectively. In New Zealand, in July 2008 there were 189 labour inspectors, of which 156 were health and safety inspectors. In Taiwan, according to the latest figure in 2008, there were 309 inspectors in total.

7.5.2. Recruit and training of Labour Inspectors

In general, in the Asian countries those who have finished or are about to finish their undergraduate degrees are qualified to apply for an examination for a position as a labour inspector. Persons, who have such qualifications, if they pass the special written tests and interviews, can obtain positions as labour inspectors. One of those written tests examines candidates’ general knowledge. The other is specialized; candidates can choose one of the following two types: one testing candidates mainly on their knowledge of labour laws, sociology and economics; the other testing candidates mainly on knowledge of engineering. For example, in Japan in 2011, according to the website of the Ministry

⁵⁴ In practice, there are several types of labour inspection: regular inspection, which is carried out at the initiatives of labour inspectors, inspection carried out in a response to work-related accident or disease, and inspection in response to a complaint of the worker.

⁵⁵ This description is based on the explanation of the Ministry of Health, Labour and Welfare.

of Health, Labour and Welfare, they planned to hire one hundred persons from candidates taking the law test, while twenty persons from those taking the engineering test⁵⁶.

In Japan, labour inspectors take three months' basic training course during the first year. They focus on labour laws, criminal law, criminal procedures, industrial safety and health, practices of labour inspection and functions as judicial police officers, including the investigation of suspects. They take a three-week training course during the second year. This training focuses on industrial safety and health, and workers' accident compensation. In the course of development of a career, labour inspectors receive further training. These training courses mentioned above are held at the Labour College of the Japan Institute for Labour Policy and Training.

Labour inspectors enjoy a guarantee of tenure. The consent of the Labour Standards Inspector Council is required for the dismissal of a labour standards inspector (the Labour Standards Act, art. 97 par. 5).

In another country such as Taiwan, inspectors are recruited by special examinations. They will become civil servants once they pass the examination. There are two training ways, one is pre-employment training, and the other one is on-the-job training. The candidates for these examinations are required to have a university degree in science, engineering, medical, agriculture, labour, sociology, law or management.

In the Taiwan system, there is also a figure denominated "labour inspection agent" which means that a person who holds delegated inspection identification card is authorized to carry out the inspection. Such labour inspection agents are not civil servants. However, they are qualified by pre-employment training or through validation by national authorities, in case they want to join a full career as labour inspectors.

7.6. Prevention foreseen by legislation

In relation to occupational safety and health, the preventive control exercised by the labour inspectorate is foreseen under legislation in several Asian countries. For example, in Japan Article 88 of the Industrial Safety and Health Act stipulates that an employer when making a plan to install, move, or alter the main structure of the buildings or machines, shall notify the Chief of the competent Labour Standards Office no later than 30 days prior to the date of commencement of that work. In a case where a notification pursuant to the provision is made, and the Chief of the Labour Standards Office identifies the violations of the legal provisions of the act, they may order the employer to suspend the commencement of the work or to alter the said plan.

In most countries, labour inspectorates organize advisory and information meetings on labour laws, especially on the new amendments. In other cases, the causes of industrial accidents and prevention measures are lectured to employers, especially in those sectors where there is an increase of industrial accidents. Employers can be contacted through a trade association in their industry.

More and more of the so-called "self-inspection" are being carried out at the initiative of each local authority. For example, in Japan the Labour Prefecture Bureau or the Labour Standards Inspection Offices send a questionnaire on the compliance of

⁵⁶ The outline of the examination for prospective labour standards inspectors in 2011, at: http://www.mhlw.go.jp/general/saiyo/230201_2kantokukan.pdf (last accessed 10 December 2011).

labour legislation to each establishment in a targeted industry. Employers are not bound to respond. It is up to the Labour Standards Inspection Offices to analyze the results obtained through the collection of the questionnaires. This analysis is taken into consideration when the Labour Standards Inspection Offices set their policy on inspection. In addition, this may give employers an opportunity to check their compliance with labour laws, and also act as a guide on improving working conditions in a similar way to 'collective guidance' as mentioned above.

7.7. Cooperation with the social partners

Cooperation with the social partners is generally sound especially when the labour inspection deals with OSH issues. For example, in Japan an Industrial Accident Prevention Plan, which provides for the main measures for preventing industrial accidents, was formulated after hearing the opinion of the Labour Policy Council (a tripartite body: the Industrial Safety and Health Act, art.6) and it was agreed for the period 2008-2012.

7.8. Cooperation between the labour inspectorate and the judiciary

The decrease in cases which are sent to prosecutors, but are not prosecuted (or do not result in a sentence) in the end, would enable labour inspectors to spend their time and energy more efficiently. In this respect, improved documentation would enhance the prospects of a judgment of the guilty. To this end, some measures may be possibly adopted in the region. One measure would be to promote the interactions between labour inspectors and prosecutors. In practice, it is said prosecutors, who are referred cases from labour inspectors, sometimes request labour inspectors to draw up supplementary written statements. Another measure might be to require courts to provide a labour inspector with a follow-up of the case, which the inspector has sent to the prosecutor. In fact, Labour Standards Inspection Office is usually informed of the final judgement in some way⁵⁷.

Also in Taiwan, the relationships between the judiciary and the labour inspectorate are long standing, good and effective and there are no significant problems. Jurisdiction is divided between the ordinary courts and the specialist employment institutions. In this regard, it is worth mentioning that safety and health prosecutions are taken in the District Court with appeals to the High Court and with leave on points of law to the Court of Appeal and Supreme Courts. Issues relating to other matters (such as minimum employment conditions) are taken to the Employment Relations Authority and are to be processed in the Employment Court. Again, appeals are permitted only on points of law to the Court of Appeal and Supreme Courts.

7.9. Shortcomings

In general, it is pointed out that some employers do not show a cooperative attitude to labour inspectors, they refuse to meet with the inspectors during the inspection visits; and they do not obey, for example in Japan, to the correction recommendations made. This might be due to inspectors' lack of absolute authority in the Japanese system.

Also in Taiwan there are several shortcomings: the number of inspectors is not sufficient; financial resources are not adequate; according to Labour Inspection Law article 25

⁵⁷ This was confirmed by the explanation of the Ministry of Health, Labour and Welfare.

inspectors cannot take any final decision (this entails a long administrative procedure); emphasis is on OSH items and not so much on labour and employment relations; the inspection resources of different authorities are unevenly distributed.

7.10. Current Reforms

There are few reforms underway in the region. However, in Japan recently one reform has been introduced under the denomination of “team inspection”⁵⁸. Labour inspectors were accustomed to making inspection visits alone. Since 2011, this practice was changed. Two or more labour inspectors form a team in certain cases (for example, in the case of inspection at large-sized establishments). This way of inspection was introduced in order to address the increasingly complicated matters, for example, the proper control of long working hours and supervisor exemption, to strengthen the inspectorate system.

At the same time, a new method of inspection was also introduced for establishments having problems in their working conditions, including small sized establishments and those in the catering business. In accordance with this method, labour inspection is done first through self-inspection, followed by inspection directed at each establishment. The purpose of this reform was for labour inspection to be carried out effectively with limited human resources.

Also in New Zealand, the recent reform has brought some changes on the operation of the labour inspection. Amendments to the ERA regarding the role of labour inspectors took effect on 1 April 2011. These amendments clarified the role of the labour inspector as a “complaints manager” and “provider of support and assistance”, as well as introducing measures to allow for enforceable undertakings and improvement notices and providing for penalties and penalty interest in relation to demand notices. These changes are likely to improve compliance, reduce litigation and ensure speedy resolution of claims. In addition, the previous Act had no legal description of the labour inspector’s role. Now, the new Section 223A provides that a labour inspector’s role is to manage complaints and support businesses in achieving compliance with minimum employment rights. Finally, a further addition was the introduction of “enforceable undertakings”, designed to allow a non-compliant to avoid legal proceedings by undertaking to comply.

8. Major challenges to labour law enforcement

8.1. The fight against undeclared work

The fight against undeclared work in the European Union⁵⁹ and also in several Latin American countries such as Argentina, Brazil and Uruguay has become a key concern. Undeclared work is a constant source of concern, reflecting a general problem which implies a need to monitor this multi-faceted phenomenon (which can include human trafficking and forced labour) and where the legal issues are linked with social issues,

⁵⁸ The method of team inspection is described on the basis of the answer provided by the Ministry of Health, Labour and Welfare.

⁵⁹ According to the European Commission (Communication of 7 April 1998 - COM (98) 219 final, 07.04.1998) on undeclared work, which affects all Member States of the European Union, “any paid activities that are lawful as regards their nature but are not declared to the public authorities, bearing in mind that differences in the regulatory system of Member States must be taken into account.” This definition excludes criminal activities and professional activities, which do not have to be declared officially.

including marginalization, migration policies, protection of workers and, in particular, vulnerable workers.

Most undeclared work involves small enterprises, or at least those with fewer than 50 workers, and sectors such as the construction industry, small-scale retail, hospitality and transport. Local inspection campaigns focusing on these sectors are effective in practice.

In 2004, the European Commission drew up macroeconomic estimates pertaining to undeclared work among Member States, which, of course, do not take recent developments into account (the rise in immigration and regularization campaigns) or the impact of the recent economic crisis. Certain important variations between countries became visible, such as the fact that undeclared work could represent up to 20 per cent (or even more) of the GDP in certain countries in southern and eastern Europe. Although this data remains valid overall, the strong impulse to create new jobs seen in recent years has resulted in a decrease of this phenomenon in certain new Member States. These figures also apply to other European countries affected by similar economic and social problems.⁶⁰

The main reasons for undeclared work⁶¹ in Europe involve the following conditions:

- the failure to register enterprises (and, therefore, the lack of a formal existence) and draw up formal contracts;
- the failure to comply with social security obligations; and
- lack of effective or planned control measures and procedures, which are needed to ensure a stable and solid labour administration and an effective labour inspectorate.

There is no doubt that these issues relate to the activities of the inspectorate, and that effective programmes to overcome this fundamental problem are being sought. Thus, in certain countries, the existence of illegal work has resulted in administrative structures designed to combat it.⁶² Various European countries have also organized campaigns to regularize undeclared workers calling on administrative sanctions and involving the supervision of the inspectorate, something that has had a significant impact in terms of new registrations and the formalization process.

The inspectorate has become the key player and first line of defence in the fight against illegal and undeclared work and its need, as laid down in national and international law, to collaborate with other authorities, organizations and social partners, as well as its role as a public authority responsible for ensuring compliance, make it a particularly relevant entity. Its relevancy cannot be overstated and is evident in such cases as that of Spain where breaches of regulations related to contracting of foreign

⁶⁰ There are a number of recent factors which seem to favour undeclared work and, ultimately, informal labour: the increased demand for domestic services and assistance owing to the socio-demographic changes; the appearance of labour relations that have a less hierarchical structure and more flexible remuneration systems; the boom in self-employment, subcontracting, flexible contracts and ad hoc work; the simplification of the process for establishing cross-border businesses.

⁶¹ This refers to labour that is illegal under the provisions of labour law, and not to criminal activities *per se*.

⁶² In 1997, France created an inter-ministerial mechanism to fight illegal work. In Italy, the Ministry of Labour drew up a plan to bring out illegal work, which was complemented by a collective agreement in the construction industry.

workers are the second most common type of violation in that country, both in terms of numbers and scale (2008, 22,204,859). The importance of this issue does not eliminate the need to streamline the role of the inspectorate, in view of this phenomenon, favouring collaboration with specific authorities, and not adding spurious competences (which fall within the remit of the immigration or police authorities), to its central task of monitoring working conditions⁶³.

In Austria, the inspectorate's functions in the field of undeclared or illegal work were transferred to the Federal Finance Ministry on 1 July 2002 (in a similar manner to the Finanzkontrolle Schwarzarbeit in Germany), and a special unit of the border administration, the KIAB (Control of Illegal Employment of Workers), was given the task of checking work permits and, ultimately, the employment of foreign workers. The results of these controls are sent to the relevant competent authorities, which include administrative authorities responsible for imposing sanctions, the monitoring body for industry, the employment services and the labour inspectorate, ensure that they are subject to the relevant procedures. These functions were transferred to a different authority as of January 2007.

In Italy, various structural and legislative measures were implemented when Legislative Decree No. 124/2004 was adopted. The measures focused on strengthening the powers of the Ministry for Labour and Social Policy in the fight against clandestine labour and undeclared work, and emphasised the key role played by the labour inspectors as part of the mechanisms set up for this purpose. The inspectors participate, in a systematic manner, in coordinated operations to combat undeclared work, which does not appear in any way to favour the climate of trust necessary to ensure the collaboration of workers engaged in irregular employment on issues such as the right to residency and work. On the contrary, this role has turned out to be more of an obstacle to inspectors trying to obtain information on working conditions in enterprises with a high risk of accidents.

The inspectorate also plays an important role with regard to providing information and advice, especially where a number of European inspectorates need to monitor legislation relating to foreign workers this being the case in countries such as Israel and Turkey.

At the European level, beyond the need to create national programmes and policies, there are plans to set up collaboration and action programmes involving other authorities (essentially tax and social security) and the social partners, as well as developing a strategic focus that is coordinated at regional level, to ensure vigilance and combat fraud, based on the work and competences of the labour administration authorities.

Certain measures have been put in place at the European level to better identify undeclared work, although there may sometimes be gaps in terms of knowing how to address situations and protect workers, as well as in terms of administrative follow-up action and the measures, which must be implemented.

⁶³ In recent years, CEACR has stated its attitude towards the phenomenon of restricting the functions of the inspectorate in Italy and France and in its comments concerning ILO Convention 1947 No.81 of 1947 on labour inspection.

http://www.ilo.org/dyn/natlex/natlex_browse.home?p_lang=es.

8.2. Public-private initiatives

With a view to foster the effectiveness of labour law, including its better compliance, the public-private partnership (PPP) initiatives in monitoring working conditions may increase the rate of compliance at the workplace. As we know, there are several dangers inherent in work. These could be reduced or eliminated with the promotion of a prevention culture, established through education. There has been proliferation of PPPs in recent years, and they are rapidly reconfiguring the landscape of safety and health. Several factors have caused this trend. There are generic factors, such as market failure in special research product development and a lack of high safety standards. These partnerships demonstrate exciting new possibilities for tackling problems that formerly seemed intractable, including research and development. PPPs have been able to promote sustainable practices by showing that these goals are achievable along with financial gain. Industry incentives for the development of safer and healthier products are being generated and with an improved image, the commercial sector may be able to attract new investors and establish new markets. The economic losses caused by accidents, incidents, early retirement, or sickness benefits could be significantly decreased by establishing a health and safety prevention culture. These unspent budgetary funds could then be invested in increasing the enterprises' performances and creating new jobs, thus allowing the poor to be able to escape the vicious cycle of poverty. Numerous studies have shown that health promotion saves money on medical costs. Policy makers, labour inspectors as well as health and safety experts, all play an important role in the prevention process and the initiation of a shift from short-term profits towards long-term investments in safety and health.

Establishing and implementing a culture based on health and safety prevention at the national level requires the active participation of the labour inspectorates. Labour inspectors are the only state enforcement agents that have access to all of the enterprises necessary to transmit health and safety messages in an effective manner. Therefore, it is crucial to increase the labour inspectorates' capacities in terms of organizational structure, frequency and quality of inspections, knowledge on its advisory role and competency in a sustainable approach. This shall be achieved through a range of proposed activities, such as policy analysis and policy reform, the development of training modules, the training of national labour inspection trainers, the setting up of a competency network, and the development of international guidelines on supply chain management.

8.3. Labour inspection and the informal economy

The informal economy accounts for about half of the workers in the world and includes workers that are self-employed, work in a family-run business and work in informal enterprises. There is a growing divide between a formal global economy and the expansion of an informal local economy in most societies. Social protection and employment issues are interwoven due to the manifold related risks. Low capital supply, the use of primitive tools and production equipment and poor working conditions cause critical deficiencies in this sector: low safety awareness, common occupational illnesses and serious hazards.

The term "informal economy", although widely used, has only recently been adopted in some countries. There are still misunderstandings on the actual meaning of this term. Its connotations and nuances may also vary from one language to another. Ask what the informal sector is and who the informal workers are and the answers provided will often describe either particular situations or muddled amalgams of various situations that are often ill defined and have few characteristics in common. In 2002, the International Labour Conference (ILC) noted that although there is "no universally

accurate or accepted description or definition” of the term informal economy, it may be taken to refer to “all economic activities by workers and economic units that are – in law or in practice – not covered, or insufficiently covered, by formal arrangements⁶⁴. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which refers to the fact that – although they are operating within the formal reach of the law, the law is not applied or not enforced...”⁶⁵

This notion of an informal economy covers two completely different situations:

- in the first case, the informality is due to the lack of a formal reference point; that is to say, there is no applicable labour standard and thus there are no obligations to be fulfilled, nor any rights to be respected or demanded; and,
- in the second case, the informality is due to non-conformity with a legal reference point, meaning that applicable labour standards do exist, but are partially or completely flouted. Obligations are not met, and rights are not recognized.

Although the consequences for workers in each of these cases may appear to be similar, their origins are quite different. In the first case, when there is no standard applicable to a certain situation, the cause is the lack of legal provisions covering that situation or a specific legal exclusion. In such situations, it is entirely appropriate to speak of “informality”. The cause of the second situation (non-compliance) may be ignorance, as the content or even the existence of standards may not be known. However, it may also be a deliberate decision not to comply with the standards in order to avoid costs. In these situations, many countries use the term “illegality”. There are also situations not sufficiently taken into account by formal systems. For instance, there are cases where working conditions are regulated but social security is not. This situation is usually due to the poor development of social security institutions and is generally linked to the presumption, or the reality, that those subject to the system, or who are supposed to be protected by it, are unable to pay contributions.

Here too, the term “informality” may be properly applied, as indeed may be the case with the converse situation in which a group of enterprises or workers is included in a compulsory social security system but excluded from the regulation of working conditions.

Not all formalities which enterprises are required to comply with have to do with labour law and not all the rights demanded by workers in the informal economy concern labour rights or elements of social protection. If the requirements are imposed by law and compliance with them is the essence of formality, then informality may appear to be a negative phenomenon – a matter of not being or not doing. Achieving a working concept of “labour informality”, so that it could serve as a reference point for action by a national labour administration, entails looking at a country’s labour standards as a whole and identifying precisely which types of enterprise and worker fall within their scope and which do not. Even though, illegality is the opposite of legality, and formality may be synonymous with legality, illegality cannot always be equated with informality.⁶⁶

⁶⁴ ILC General Discussion, Decent work and the informal economy, Committee on the Informal Economy, Governing Body, 90th Session, June 2002, paragraph 3.

⁶⁵ Ibid.

⁶⁶ J. Daza, “Labour inspection and the informal economy”, in Labour Education, ILO, Geneva, 2005.

There are many national variations in this distinction between informality and illegality. Linguistic nuances are important as they often point to different perceptions of similar phenomena. For instance, it is usually said in developing countries that labour legislation is “not applied” in the informal sector, whereas in the developed countries, it is more commonly said to be “not complied with”. In contexts where the majority of the populations live within traditional frameworks and the social rules do not correspond to the legal rules, of which they may simply be unaware, informal productive activities or units are not usually termed “illegal”. However, in more developed countries, activities that are regarded, in juridical terms, as illegal as they do not comply with certain legal requirements or they violate some standards, may be popularly called “informal”. The terms applied to the informal economy are not always the same, but in Europe, when work or employment is concerned, terms such as “black economy”, “hidden employment”, “clandestine labour” and “undeclared work” are frequently utilized. The term most used to describe the labour impact, at least officially in European Union documents, is “undeclared work”. One of the main characteristics of informal activities in developed countries is that they are hidden or clandestine. The most prominent effect of this cover-up is that workers are not registered for social security, and contributions are not paid.⁶⁷

There are also activities in which the law is not applied or not complied with in practice. Setting aside for a moment the issue of undeclared work and bearing in mind the different degrees of compliance with standards in each country, non-compliance with labour standards and with social security is frequently found in domestic work, home work, rural work and in micro- and small-scale enterprises.

The sector of domestic work is recognized as problematic worldwide and one that is mainly carried out by women. Only a few countries are without any regulatory framework and, in fact, many have special labour regulations and social security schemes for domestic workers. These special labour regulations involve many exceptions to the general legislation, regarding pay (the option of counting board and lodging as part of the wage), daily working hours and rest periods (compulsory attendance times, standby, restrictions on leaving the premises, calculation of night work, among others) and termination of employment (broad definition of “just cause” and lower indemnity entitlements). The applicable social security provisions are usually based on reduced contribution and lower coverage. The labour inspectorate conducts only limited checks in this sector. As employment within a household is not regarded as an entrepreneurial activity, business registration is not required for the hiring of domestic workers. Taxation is difficult, as the inspection services do not generally have the legal right to enter private homes in order to make checks.

In most countries, work in the employer’s residence is covered by regulations similar to those for any other employment relationship. As far as pay is concerned, piece-rates are very common and in some cases, the wage received may be below the legal minimum. General social security schemes are usually also applicable to domestic workers. Labour inspectorates face difficulties when checking on work in the home, which in many cases is hidden and not declared by the employers, sometimes in agreement with the workers, in order to avoid paying contributions and taxes, or to disguise fraudulent contracts or subcontracts. In many cases, only one employee is declared even when the employee’s entire family, including children, work in the home. As inspectors may not have the authority to enter workplaces located within private

⁶⁷ ILO/LAB/ADMIN, “*Labour Inspection in Europe: undeclared work, migration and trafficking*”, WD No.7, Geneva, 2010.

residences, the task of supervision is, therefore extremely difficult, unless there is access to the payrolls or bookkeeping records of the enterprises that contracted the domestic workers.⁶⁸

Three general factors present difficulties in applying general or special standards to rural labour. First, in many countries, rural workers may be generally unaware of the existence or the content of applicable standards. One reason for this is that in many parts of the world, rural populations have higher illiteracy rates and speak languages other than the official one in which legal standards are available. In addition, they tend to hold ancestral customs in higher esteem than legislation. Second, as agricultural work is mostly performed by seasonal and temporary workers, the complicated and expensive documentation procedure may be a deterrent to their registration (the end of which, it must be remembered, is the deduction of taxes and social security contributions from their wages). Furthermore, they may not particularly want to contribute to social security if it cannot provide them with local, accessible health care services. Finally, the State itself does not usually have at its disposal a labour administration capable of informing, assisting and inspecting agricultural enterprises, which as a sector, is a frequent user of child labour. Thus, labour standards are not enforced, occupational safety and health regulations are unknown, and the failure to declare workers goes undetected.⁶⁹

In every country, micro and small-scale enterprises have the highest rates of non-compliance with labour regulations, according to information from the labour inspection authorities. Non-compliance begins with the failure to declare a new business, to obtain the necessary permits, to provide the requisite employment documentation and to declare workers for social security purposes. This non-compliance with the initial registration procedures leads to non-recognition of substantive non-compliance: workers' rights such as the minimum wage and other situations including that of safety regulations not being respected and unpaid social security contributions. The first challenge encountered by labour inspectors is to detect the existence of these enterprises, identify their heads, and track them down. The next difficulty is in establishing and proving the nature of employment contracts or labour relations. Checks must then be conducted on working conditions and employer compliance requirements such as the minimum wage. The job is simplified, when one single inspection service is assigned with the supervision of labour standards as a whole, and provided with the necessary means. It is nonetheless a big task and one that largely depends on the cooperation of local authorities and people prepared to denounce irregularities. When separate inspection services are involved, the task becomes more difficult and complicated, since different actors have to be coordinated and mobilized to apply different standards and procedures, in line with work assignments whose priorities may not always coincide.

In addition, there are activities of persons or enterprises that are not regulated by labour law. The situation in many countries could be one in which certain work circumstances are generally outside the scope of labour laws, such as self-employment, or work within the family. Nonetheless, in the majority of countries, self-employed workers are required to declare their status to the appropriate agencies. In the developed countries, they are also compulsorily covered by the social security system. The obligation to declare and to pay contributions falls upon the self-employed workers

⁶⁸ G. Casale, A. Sivananthiram, J. L. Daza, C. Mar, *Showcasing Tools and Experiences in Labour Administration and the Informal Economy*, ILO, Geneva, 2006.

⁶⁹ G. Reinecke, S.White, *Policies for small enterprises: creating the right environment for good jobs*, ILO, Geneva, 2004.

themselves, and they may be required to respect the safety regulations in their own workplace.

In some developing countries, casual work is unregulated, as are micro- or small-scale enterprises employing less than a certain number of workers. The ceiling ranges from 5 to 10 employees, and up to 20 in a few cases. The situation of casual workers is complex, as part of their work may occupy an “informal” space in the midst of more formal employment relationships. In some cases, casual work may be of such duration that it becomes equivalent to a temporary or seasonal job. In both cases, the casuals may be working alongside formal workers on permanent contracts within the same enterprise. The permanent workers will have full entitlements, while the casuals will only have their pay and, at best, some coverage against occupational accidents. In the case of micro- or small-scale enterprises with a fixed maximum number of workers, the law itself exempts the employer from legal obligations. This situation exists primarily in Asian and East African countries. Three common variants may be found: first, micro- and small-scale enterprises that are not covered by any applicable labour regulation; second, those in which standards on labour conditions are applied, sometimes limited to pay and daily hours, without the application of occupational safety standards and social security requirements, and third, those from which only social security standards are excluded. When employers or other responsible parties do not have any attributable legal obligations, labour inspection has limited options in terms of the measures or actions it can take. For example, a labour inspector will not be able to inspect the micro- and small-scale enterprises that are exempt from the application of labour standards and will not have the means of requiring that certain safety measures be implemented into a production process or that workers be given a payslip; nor will an inspector be able to oblige the firm to register workers for social security. Any grievances from workers in exempted enterprises or employment relationships can be lodged only through the procedures laid down by civil or criminal law. In the case of purely informal working relations, the labour administration will generally refrain from taking any initiatives. At best, it may engage in information work aimed at preventing workplace risks or promoting voluntary social protection schemes.

When dealing with problems posed to labour inspection by the informal economy, the first problem identified concerns the labour inspectors’ knowledge of the standards and their application to different types of enterprises and workers. Inspectors need to have a thorough knowledge of the labour standards they are charged with monitoring. Nowadays, labour inspectors deal with many different kinds of enterprises and within complex production systems, which make extensive use of subcontracting and labour intermediaries and cover a wide range of contract types. The solution is to be found first in the rigorous selection and training of inspectors and second, in administrative resources dedicated to handling information about enterprises, which means the creation and maintenance of registers or databases and sharing them with other units of the public administration.

The second problem concerns the decisions to intervene in cases where standards are not complied with, in places, sectors and enterprises for which sufficient evidence of non-compliance exists or from which denunciations of non-compliance have been received. In some countries, the appropriate decisions have not been taken, and the laxness of the administration has contributed to the growth of informality. The solution depends on decisions taken by the government at the highest level, with the support of the social partners. It should consist of guiding the inspection system through the provision of clear instructions to the inspectors. The instructions should set criteria for deciding where to focus inspections, depending on the resources available, and should establish priorities, which include paying attention to reports denouncing non-registration of enterprises and non-declaration of workers. As most of the irregularities occur in

micro- and small-scale enterprises, inspectorate activities in many countries tend to focus primarily on such enterprises, in sectors with high rates of staff turnover and temporary employment (e.g. construction, hotels, and textiles and garments), as well as all types of transport and shops. In many cases, it is necessary to combine pre-programmed visits with visits responding to complaints, in order to cover as much ground as possible.

The third problem centres on difficulties encountered during the inspection visits themselves. These may include pinpointing the location of clandestine enterprises, tracing the head of the firm, identifying non-declared workers, finding ways of verifying the number of hours actually worked, calculating wages and social security contributions due, and proving possible social security fraud (which happens in certain instances, sometimes only through collusion between employers and workers). In many cases, only some of the workers in an enterprise have been declared. In some cases, when the non-declared workers work for contractors or subcontractors, the labour inspectors must establish the chain of responsibility. Inspectors may also find foreign workers who do not have work permits and children whose ages have to be checked. If the inspectors can refer to lists of workers in each firm, drawn from social security databases, the difficult task of proving irregularities becomes more straightforward.

A fourth, rather controversial, problem is how to regularize the situations of non-compliance that have been found and indemnify those whose interests have been compromised. Non-compliance must be dissuaded, but without putting the workers' jobs and the enterprises' survival at risk. The non-declaration of workers by some enterprises and the concomitant avoidance of costs, results in unfair competition for other enterprises. It also causes immediate economic prejudice to non-declared workers (e.g. wages below the minimum set by law, among others) and jeopardizes their future social security benefits (due to the non-payment of contributions). Faced with the dilemma between issuing a warning and applying sanctions, several countries have opted to subject the offending enterprises to procedures entailing the immediate payment of wages and contributions owed, in addition to punitive measures. The sanctions applied are, in many cases, proportional to the number of workers affected and the size of the enterprise. In some countries, awareness of the scale or growth of illegal work in the informal economy has led to the creation of administrative structures, inter-administration coordination systems, programmes or initiatives aimed at combating the various forms of illegal work. In a number of European countries, where a significant proportion of undeclared labour is performed by undocumented immigrants, regularization campaigns have been held, during which employers were encouraged to declare employment relationships, without risk of sanctions. A different problem concerns the means to be used in order to promote decent working conditions for workers in enterprises that are exempted from the application of labour standards, as well as for workers whose employment is unlikely to be regularized, and for the self-employed. In these cases, the labour inspectorate does not have a mandate to act, as its field of activity is limited to workplaces that are, by law, subject to labour standards. However, there is scope for purely promotional activities, which can be carried out by other advisory labour administration services; thus, the labour inspectorate does not necessarily have to be involved. The inspectors should focus on those enterprises for which they are competent and the standards that they are charged with monitoring, and thus increasing the effectiveness and efficiency of labour inspection services⁷⁰.

⁷⁰ G. Casale, A. Sivananthiram, J.L. Daza, C.Mar: *Showcasing tools and experiences in Labour Administration and the Informal Economy*, op.cit.

9. Conclusions

The globalization of the world economy is changing the way individuals work, the hazards workers face and the intervention strategies needed for worker protection. It is also creating a deficit in the quest for decent work. Although globalization is viewed differently depending upon one's country, culture, workplace and employment status, ensuring that it is beneficial to workers depends upon how well countries, organizations and persons responsible for labour and employment inspections, workplace safety and health, and indeed general working conditions, achieve a balance between often competing interests. Labour rights can best be achieved in this global arena through partnerships between governments, industry and workers' organizations, amongst others. Millions of workers die from occupational injuries and diseases every year. Others suffer from poor working conditions that are not in conformity with ILO standards. The suffering in terms of human life is enormous, while the economic costs place a considerable burden on the competitiveness of enterprises and the general productivity of labour. It is estimated that the annual losses resulting from workdays lost, interruption of production, training and retraining, medical expenses and so on, amount to over 4 per cent of the gross national product of all countries worldwide. The ILO, with its tripartite constituency, has developed Conventions and Recommendations aimed at the implementation of a global policy. In its Global Jobs Pact of June 2009, the ILO entrusts labour administration and labour inspection with new roles and responsibilities. The idea is to ensure compliance with labour legislation, including health and safety. This implies a better coordination of different fields of inspection, including enforcement, advisory, consultation, control and implementation. Furthermore, the adoption by the ILO of the Resolution and Conclusions on labour administration and labour inspection of June 2011 proves once again the need to strengthen the labour inspections services with a view to creating a level playing field for everyone.

The clear need for an improvement in worldwide OSH standards has been illustrated by the high number of deaths that occur every day due to work-related accidents and diseases. Labour inspectorates can provide a helping hand to employers in ensuring that their workplace is compliant with safety rules and regulations. They can also inform workers of the hazards that may be present in the workplace. In addition, they can provide the government with guidance in setting effective labour policy that promotes well being at the workplace.

Global problems require global responses, although these must be anchored in the realities of local life and work. Nevertheless, that alone will not be enough; more is needed. ILO Convention Nos. 81, 129, 150, 155 and 187 are essential in securing decent living and working conditions and ensuring that progress improves workers daily existence, wherever we live and work. On labour inspection issues, the main task is not to achieve formal ratification, although that is certainly necessary. Rather, the main task is the need to achieve concrete implementation in practice.

What must be established and agreed upon are fair rules for international trade, investment, finance, and the movement of people, which take differing needs and capabilities into account. This requires an intensified dialogue process at all levels, bringing the key actors together to work out methods for handling major global issues and putting them into practice. Fair globalization also calls for more emphasis on a national level, for improved governance, and policy coherence. After all, globalization is an important issue for every worker. Action should be taken with a view to promoting and securing employees' health, workplace security, and investment in a preventative culture. A preventive approach for better health and the reduction of accidents and diseases in the workplace must be linked to labour inspection services. These services have a pivotal role in providing counsel and information, and promoting compliance with

labour standards in the workplace. Labour inspectors are the controlling authority for working and employment conditions including OSH activities. The strengthening of labour inspection is crucial in ensuring high standards in labour protection, including OSH promotion, and thus contributing to overall economic stability.

In the end, there is a need to focus on certain issues, such as the priority areas for a country's action, in terms of achieving an effective labour inspection system:

- a) *Drawing up national policies and programmes*, which allow countries to meet the current needs of the world of work, especially in view of the economic crisis. The dominance of non-permanent contracts, the existence of new forms of employment and labour relations which are difficult to identify due to the complexity of existing connections/relations, the emergence of new occupational risks, such as psychosocial risks, new forms of organization and working time, and where all of these issues appear against a background of constant change, has meant that new competences, methods and ways of taking action are required, which need a specific focus that moves beyond existing campaigns and involves a real social commitment. The inspectorate should guarantee protection and ensure the enforcement of labour legislation using all the means at its disposal.
- b) *Lifelong learning*. Initial training should be followed by lifelong, structured training/learning which enhances performance quality and quantity. Training should be based on an assessment of the staff, the unit's performance and the annual programming itself, which should be flexible concerning issues in a changing world.
- c) *Cooperation with public and private institutions* with regard to the inspectorate's operations. Joint work with other administrative authorities will bear fruit, and proof of this can be found in the previously mentioned activities in the field of child labour and forced labour. Similarly, self-assessments and assessments carried out prior to monitoring activities, as well as monitoring measures, can also help to create a culture of compliance. This would support and strengthen the role of the labour inspection. Cooperation among public administrative authorities is a vital step towards achieving a successful and effective inspectorate in the field of monitoring, and a prerequisite for this is the existence of a monitoring authority with adequate budgetary funds and resources, which can realize common goals.
- d) *Strengthening relations with worker and employer representatives*, both from the point of view of training and information, and promoting the idea that the inspectorate operates in the general interest and helps to improve labour relations and the safety and health of workers. At the same time, planning activities and the inspectorate's actions should be focused on reviewing results, establishing criteria for follow up activities and collaboration. It is vital to ensure that the entire population is aware of the work of the inspectorate and, in this respect; the media has a key role to play.
- e) *Improve administrative procedures and provide an incentive to enhance the deterrent effect of sanctions*. The administrative process should be based on the principle of immediate and effective action, and sanctions should be issued to motivate enterprises to correct what is wrong. It is vital for the inspectorate to establish appropriate sanctions and processes for imposing fines, as well as fast judicial proceedings, following the principles of due process, and a well-structured process, which could effectively collect the fines imposed.
- f) *Improve international collaboration*. The relationship between safety and health and working and employment conditions is becoming increasingly clear. In this regard, there should be strengthened the regional and international networking (such as South-South cooperation) to further promote the exchange of

information and best practices on the effectiveness of labour law and the role of labour inspection.

- g) *Information and communication technologies*. Labour inspection systems should take advantage of the advances in ICT to improve their internal working methods and expand the range and accessibility of services to the public.

There is no doubt that labour inspectorates are at the forefront of implementing innovative and coordinated measures. However, as we have indicated in the preceding pages, much more remains to be done. The labour inspectorates perform a vital function, one that must adapt to changes in the world of work and is essential in order to achieve compliance with labour legislation. It is only in this systematic way, that progress and social peace, which are the ultimate goals of labour legislation, can become a reality.

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