

Promotion of compliance with decent labour standards through policy transfers and technical cooperation¹

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Purpose

This purpose of this paper is to discuss why the international community should be more interested in capacity building of national labour administration and inspection systems in developing countries. It explains that one of the main causes of non-respect of labour standards in countries that are our trading partners consists in the weakness of national authorities in enforcing their own national labour laws. The paper also provides some examples of how developed countries can help to address this problem through policy transfers and technical cooperation. The paper then focuses on technical assistance provided to its member States by one of the UN specialized agencies, the International Labour Organization (ILO).

1. Introduction

Global trade expanded dramatically during the last decades, now encompassing many fast growing countries with huge populations, including countries with planned economies such as China, Viet Nam and Cambodia that were not part of the world trading systems some two decades ago but which have become important trading partners of the USA and other capitalist economies. While these countries became competitors of Western businesses on the world markets, their level of economic development is strikingly different. For example, in China more than 200 million people live on less than US\$1 per day and an additional 600 million live on less than US\$2 per day; in India 94 per cent of the workforce is in the informal economy where even minimum national standards are neither applied nor enforced.

Under these circumstances of huge economic and social disparities among nations, it is difficult to talk about competition on a level playing field, and these disparities cannot be substantially diminished in the short term. The minimum that could be achieved, however, is the progressive *alignment of all world trading partners with basic labour standards*, corresponding to core values enshrined in fundamental labour rights, such as freedom of association, the right to bargain collectively, elimination of forced labour, abolition of child work and elimination of discrimination in respect of employment and occupation. Another objective that could be realistically established and promoted by practical steps is the *improvement, application and enforcement of national labour laws* that establish decent working conditions, for example in terms of working hours, minimum wages, or safety and health protection of workers.

¹ This paper is largely based on the ILO Working document "Ministries of Labour: Comparative Overview, Database, Organograms, ILO Action", Ludek Rychly, June 2013

http://www.ilo.org/labadmin/info/pubs/WCMS_216424/lang--en/index.htm

2. Sources of labour regulation

There are several sources of regulation of labour conditions, both at the national and international level: *national labour legislation, international labour standards and international trade agreements.*

National labour legislation

Labour legislation is widely used both to regulate individual employment relationships and to establish the framework within which workers and employers can determine their own relations on a collective basis, for example through collective bargaining between trade unions and employers or employers' organizations or through mechanisms of worker participation in the enterprise.

The legislative regulation of the *individual employment relationship* typically entails the enactment of provisions governing the formation and termination of the relationship (that is, the conclusion of contracts of employment, their suspension and termination) and the rights and obligations relating to the different aspects of the relationship (such as the minimum age for admission to employment of work, the protection of young workers, equality at work, hours of work, paid holidays, the payment of wages, occupational safety and health and maternity protection).

Regulation of the *collective relations of workers and employers* typically includes laying down legal guarantees of the right of workers and employers to organize in occupational organizations, to bargain collectively and the right to strike, as well as mechanisms for worker participation at the enterprise level.

Legislative provisions on these matters already exist in most countries. However, there are considerable differences with regard to the extent and detail of their legislative regulation and the degree to which the various aspects of the matters concerned are left to workers, employers and their organizations to determine by collective agreement or individual employment contract.

Labour law, as comprehensively set forth in labour codes and accompanying legislation, has increasingly come to be seen as an autonomous system of law, and as being independent of the typically more individualist body of civil law. In those countries where labour law has been codified, it has meant that the respective provisions are more readily accessible in comprehensive texts based on unified and overarching concepts that seek to provide greater coherence to the system as a whole. But in a number of countries there is still a tendency for the legislation to be fragmentary.

Provision also has to be made for enforcement procedures and supporting institutions (such as labour inspection services and courts or tribunals). However, enforcement of labour laws is seriously impeded by two major factors. First, in view of the low share of formal employment in many countries, regulations and labour laws in such areas as minimum wages, social protection, health and safety and employment protection are only applicable to a minority of workers. Second factor is weak institutional capacity and poor governance of ministries of labour and agencies under their purview, including labour inspection.

International Labour standards

Since the creation of the ILO (International Labour Organization, a specialized UN agency with a unique tripartite structure), considerable efforts have been made to achieve some

harmonization of labour laws at the international level. In fact, this harmonization (called “internationalization” by its founders) has been one of the ILO’s *raison d’être*. The 1919 ILO Constitution considered that “the failure of any nation to adopt human conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.”²

The need to harmonize labour laws increased with globalization of the world economy throughout the 20th century. The adoption of international labour standards provided a way to address this growing interdependence among nations and guarantee that at least basic labour conditions are to some extent regulated at the global level and are comparable among countries.. Since the ILO’s creation in 1919, more than 200 international labour Conventions³ have been adopted; when ratified, they constitute a legal obligation for their parties. To guarantee that these obligations do not stay merely on paper, a *mechanism was established to supervise their implementation*. ILO member States are also provided, especially since the Second World War, with extensive technical assistance to help them transform these international labour standards into national law and implement them in practice.

In 1998, significant progress was made towards better promotion of fundamental labour standards: the freedom of association, the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation were declared as fundamental principles and right at work, that are to be respected by all ILO member States whether or not they have ratified the fundamental international labour Conventions.⁴ Regular reports are to be provided by non-ratifying member States, which are compiled in a Review of Annual Reports, indicating progress achieved in the ratification of fundamental ILO Conventions, changes in national legislation, promotional activities as well as requests for technical assistance sent to the ILO.⁵ These annual reviews are submitted to the ILO Governing Body and provide a telling picture of the progress (or lack of it) in abiding by fundamental freedoms and rights at work throughout the world.

Apart from the ILO, several other regional groupings have adopted their own labour standards to be respected by their member states; however, only marginal impact has been noted in this area, with the probable significant exception of the European Union and its regulations and directives on certain aspects of working conditions or safety and health at work.

International trade agreements

The first attempt to link international trade with labour standards and thus protect basic working conditions was made in the late 1940s, when labour right commitments were included in the Havana Charter, designed to launch the International Trade Organization (ITO). However, the launch of the ITO failed and multilateral trade organizations were

² Constitution of the International Labour Organisation, Preamble.

³ At the same time, also more the 200 non-binding Recommendations were adopted by the ILO.

⁴ ILO Declaration on Fundamental Principle and Right at Work, 1998.

⁵ In 2012 for example, only in the field of freedom of association and the effective recognition of the right to collective bargaining, the ILO received requests for technical cooperation and assistance by 26 of its member States, including China, India, Thailand or Viet Nam. The 2012 annual review also indicates that all 48 reporting governments (those which did not ratify all eight ILO fundamental Conventions) have fulfilled their reporting obligations resulting in a 100 per cent reporting rate.

subsequently created, such as the GATT and the WTO, organizations which did not provide protection of labour rights.

A the same time, a series of bilateral and regional trade agreements were concluded by the United States. Already in the 1980s, the link between trade opportunities and labour-related conditions was created unilaterally with the establishment of eligibility criteria that beneficiary countries must meet in order to receive duty exemptions. These criteria first emerged in 1984, when the Reagan administration negotiated the addition of internationally recognized workers' rights to the eligibility criteria of the Generalized System of Preferences (GSP). In doing this, it was recognized that fundamental labour rights were essential for inclusive economic development in low and middle income countries and for ensuring a broader distribution of gains throughout the economy. Since 1993, the United States has included labour provisions in all bilateral and regional free trade agreements it has negotiated, for example the NAALC or the NAFTA. Similarly, Canada and Chile have included labour provisions in at least some of their bilateral agreements.

The obligations included in these agreements concern basic labour rights, such as freedom of association, the right to form unions and bargain collectively, limitations on child labour and a ban on forced labour, corresponding largely to the fundamental rights included in the 1998 ILO Declaration mentioned earlier. The United States, however, include rights in three additional areas: "acceptable conditions of work with respect to minimum wages, hours and health and safety". This US list is based on its trade legislation and is an obligatory negotiating objective. However, some agreements go beyond this list of very basic rights and cover, for example, protection of migrant rights or compensation for workplace injuries.

The enforcement of these agreements falls within the scope of national administrative bodies. Many of them also create some capacity for international review, including recourse to dispute settlement procedures, such as neutral fact-finding or arbitration, and – in case a party fails to carry out its commitments – the imposition of penalties. Negative incentives prevail in most trade agreements, but positive incentives are also possible, as demonstrated by the US-Cambodia Textile Agreement, under which the quota for textile and apparel exports to the US can be increased if Cambodia meets obligations to improve the enforcement of its own labour laws.

It is interesting to note that most trade agreements with labour provisions envisage cooperation between the parties and even create some institutional mechanisms. However, it seems that little has been achieved in terms of capacity-building or improvement of enforcement mechanisms; the best results are attained when technical assistance is combined with meaningful economic consequences, both negative and positive. As noted by Polaski, "*the actual amount of capacity-building needed by many developing countries is sobering, even in those cases where the political will to improve labour rights is present*" and "*targeted technical assistance carry the greatest promise for swift progress on workers' rights*".⁶

3. Challenges in enforcement of labour standards

Compliance does not flow automatically from the mere existence of legislation. It is the responsibility of governments to ensure the rule of law and the enforcement of those laws across society through various means, including building and empowerment of inspection services.

⁶ *Protecting labor rights through trade agreements: An analytical guide*, 2004.

Compliance with legal requirements is determined by a complex interaction of factors that are partly external to the government and partly arising from the actions of regulatory authorities. The main factors influencing regulatory compliance are quality of legislation, the structure of the regulatory system, and awareness of labour laws. Compliance is also helped by the existence of healthy industrial relations.

Quality of labour legislation

Well-designed labour law provides an essential foundation for ensuring the protection of labour related rights. Enacting such legislation is often the result of consultation and negotiation between the State, employers and workers. Labour legislation should have a *coherent design and aim eventually to be comprehensive*, so that all workers are afforded appropriate workplace protection in an equitable manner. The labour legislations should also be applied on the whole territory – in case of federal states, it is necessary to avoid clashes between the federal and state legislation and avoid competition among individual states in lowering labour standards to attract investors.

Legislation must also be *easy to understand*, so that duty-holders can comply with it and so that it can be easily enforced. Conversely, legislation that is obscure and intelligible only to the legally trained is unlikely to be easily understood and applied, while enforcement of the same is also likely to be difficult and inconsistent, leading to disrespect of the legal system as a whole.

The labour legislation should also be *up-to-date*: most importantly, it should reflect recent dynamic changes in the employment relationship design as well as changes in work organisation and in technology used. This last point is particularly important to protect workers safety and health at work.

Dissemination of information

Drafting and adopting sound legislation is not enough on its own: labour laws must be known by those who are supposed to comply with them, namely by employers, workers and their respective organizations. The wide dissemination of information about what the legislation actually requires, via National Gazettes, publications, websites and other means such as legal training, will be an important element of the overall strategy to promote compliance.

The State should also make available information and advisory services to provide practical advice to employers, workers and other stakeholders as to how best to meet legal requirement. Wider national or regional programmes, campaigns, conferences and seminars are another means of promulgating information, and labour inspectors can have an active part to play in these initiatives even if they are not the principal driving force behind them.

Much has recently been written about information campaigns, such as those on safety and health, all with the aim of helping duty-holders to understand what is legally required of them, where to find more information and to encourage them to comply. Especially in rural areas where inspectors visit infrequently if at all, it is important that legal requirements are properly understood so that employers and workers can comply with them.

The scope and the institutional capacity of the enforcement system

Ministries of labour and employment and their agencies are the core of labour administration systems throughout the world. Enforcement of labour laws and provision of information to workers and employers about their rights and responsibilities in order to protect workers is one of their specific responsibilities and largely depend on their institutional capacity to implement these functions.

As one of the main labour administration's component, *labour inspection is a public function* and is at the core of effective labour law with wide powers and functions, including enforcement and sanctions that should be sufficiently dissuasive to deter violations of labour legislation while also providing corrective, developmental and technical advice, guidance, prevention tools and promoting workplace best practices. These functions (enforcement and prevention) should be balanced as part of a comprehensive compliance strategy in order to ensure decent working conditions and a safe working environment. In practice however, impact of labour inspection on compliance with labour laws is limited by the restricted inspection scope and coverage as well as by its weak institutional capacity.

In most countries, *the scope of labour inspection* is defined in general legislation such as labour codes, general labour acts, conditions of work legislation and industrial relations law. The determining factor for inclusion in the scope of labour inspection, at least in law, is often the existence of an employment or apprenticeship relationship. The terms used to refer to workplaces within the meaning of the Convention vary from one country to another: some examples are "enterprises", "workplaces", "work centres", "installations" or "organizations". In some countries, indications as to coverage by labour inspection are found in provisions regulating the function of the labour inspectorate. References in these texts to specific regulations sometimes indicate that legal provisions relating to conditions of work in certain sectors or economic activities are enforceable by another system of monitoring, usually outside of the scope of the ministry of labour. This is usually the case of such industries as mining, petroleum, nuclear power, airline, road transport or maritime sectors.

Other limitations on the scope of labour inspection are based on various criteria relating to the size, turnover or number of employees of the enterprise. As a result, the conditions of work of a varying substantial proportion of a country's workforce, scattered over a wide range of industrial and commercial activities, are excluded from any system of monitoring. Accordingly, some do not benefit from any technical advice or information from labour inspectors which would enable improvements to be made. This is especially the case in the *informal sector* and in countries where there is a multitude of small enterprises excluded from the coverage of the legislation or where there are enterprises employing less than the threshold number of workers.

Whatever the coverage of labour inspection in law, in practice labour inspection's impact is limited to varying extents by factors related to the economic situation of the country, the quality of the management of the inspection system, and above all, by the political will and priority given to labour law enforcement by the national authorities.

According to ILO needs assessments of national labour inspection systems,⁷ there are severe constraints substantially limiting the impact of labour inspection in practice:

- *Severe lack of budgetary resources*: the impact of the inspection service is limited by insufficient staffing and material resources necessary to run day-to-day activities, especially inspection visits. In many instances, labour inspectors do not have vehicles or

are not properly reimbursed for their travel; sometimes they are dependent on the cooperation of the companies to be visited. Quite often, inspectors lack basic office equipment and all paper work is done manually which has a negative impact on the use of the inspection report as a source for further learning about the situation of the labour market and for corrective action.

- *Poor organization of the inspection service:* when inspection is not properly governed and coordinated by a central inspection authority, the result is the inefficient use of existing resources, poor coordination between inspection components, and high departmentalization of inspection services even within one ministry.
- *Poor management of labour inspection:* results when inspection activities are not properly planned and monitored and impact of their actions is not evaluated. This also has a negative impact on the inspection service's reputation and leads to further budget cuts.
- *Weak cooperation between labour inspection and judicial authorities:* results in the lack of legal actions as a follow-up to inspection visits.
- *Poor human resources policies* in terms of selection, career development, motivation and training. In many countries, staff members are selected randomly within public administration services, are poorly paid, badly trained and frustrated by lack of career opportunities. In some countries, austerity measures prevent necessary rejuvenation of the corps of inspectors.
- *Lack of feedback from employers' and workers' organization* due to lack of interaction between state authorities and the social partners.
- *Ethical issues* often related to poor working conditions of inspectors or lack of supervision and monitoring.
- *Ideological obstacles:* when inspection is considered a burden to enterprises and its activities and impacts are purposely limited by State authorities.

4. What can be done to promote compliance with labour standards?

There are two basic ways through which the ILO can promote compliance with national labour laws. First, it can help its member States to raise the political significance of enforcement of labour laws in the country's policy priorities, especially through the promotion of international labour standards.⁸ Through the ILO's supervisory mechanism, the attention of the member States can be turned towards addressing non-compliance, as evidenced in reports on ratified ILO Conventions or from other sources such as complaints of national or international trade union organizations.

However, a more direct and promising avenue, with more immediate results, is *providing assistance to member States to improve the quality of national labour administration and labour inspection services*. The goal of this assistance is the strengthening of institutional capacities of national inspection bodies by improving their structures, management methods and human resources. In doing this, the ILO refers not only to its international Conventions and Recommendations, but mainly to international good practice. Such *policy transfers are used often* by the ILO in helping national labour administrations to build international

networks and learn from good practices in other countries. ILO Recommendations are themselves based on good practices among its member States.

To this end, the ILO also supports regional centres for labour administration, such as ARLAC (African Regional Labour Administration Centre), CRADAT (Centre Regional de l'Administration du Travail), and ACLAE, that organize training and other activities for their members.

The ILO, supported by donors from developed countries, uses three main approaches in strengthening national labour administration systems:

- carrying out **needs assessments** (institutional audits) of ministries of labour and other components of labour administration systems, such as labour inspections;
- providing **technical advice and assistance** to individual countries or regions;
- Intervening as a **monitoring agency** within the better work programme;
- developing **“global products”** (research and training tools) addressing selected issues that are common to labour administrations in the world.

Assessment of needs of labour administration and inspection

Taking into account the limited resources available for technical cooperation, it is crucial for ILO interventions to be based on a *solid analysis of the needs of national labour administration systems*. The most *comprehensive* method used by the ILO, improved by many years of practice, are needs assessment exercises, known among ILO constituents also as “audits” of labour administration/labour inspection. During the period 2006-2013, nearly 40 national “audits” were elaborated at the request of governments concerned.

These audits serve a double purpose. First, they represent a unique source of knowledge on developments in labour administration (including institutions, regulations and procedures, staff, budget), throughout the world, helpful for both the country concerned and the ILO itself. Technical *memoranda*, that summarize the audit’s findings and recommendations, are not based on simple desk review, but they mainly reflect an interaction between ILO experts, the country’s administration and social partners. Second, they are not purely descriptive, but they contain a set of recommendations based on best comparative practices, ILO standards and guiding principles. In most cases, they result in a work plan,⁹ identifying measures that are to be taken to address identified gaps. It should be noted, that audits always deal – among other issues – with labour relations matters and that consultations with social partners (including the staff unions representing the public servants of the administration concerned) are part of the auditing process since the views and opinions of social partners about the functioning of labour administration provide a very important feedback.

Technical advice and assistance

Taking into account the labour administration’s needs and challenges as identified in the needs assessment reports, the ILO has been targeting its technical assistance to the following areas:

- ***The mandate of the labour ministry and its place in the labour administration system***

Changes in the mandate – or more accurately, the weakening – of labour ministries is one of the recent challenges in both developed and developing countries, and is thus one of the reasons of the low capacity of governments to implement and enforce their own labour legislation.

While ILO Recommendation No. 158 suggests what the key functions of national labour administration systems are, there is no universal model describing the scope of the labour ministry's responsibilities. However, how different portfolios are combined can have *impact* on how policies are formulated and implemented in practice, what policy areas or measures are given priority, or what angle is taken in dealing with specific issues.

As labour ministries in many countries had to struggle to maintain their traditional roles, the ILO has been frequently requested to provide its advice; recently, the issues were for example the relationship *between* the agenda of labour and employment (Namibia); employment and vocational training (South Africa); responsibility for administration of social protection (Swaziland) or for labour and migration policies (Maldives). It should be noted that the impact of such advice is rarely immediate as the final decision is taken by the country's highest authorities. However, for example in Belize, following the ILO audit in 2010, the Ministry of Labour recuperated the prime responsibility for issuing work permits (formerly it had solely an advisory role). In Colombia, a proposal was elaborated on the organization of the labour policy sector. In Peru, following ILO advice, the Ministry of Labour created a new Department of Migration (2010). In general, the ILO recommendations concerning the ministry's mandate, often based on examples of other countries, are often used by labour ministries when they lobby for wider responsibilities and functions.

- ***Policy making, planning, measurement of performance and evaluation of policies***

The current focus of labour ministries on improvement of quality of services provided to the population and a strong accent on their cost efficiency, can paradoxically lead to underestimation of the ministry's policy-making and strategic role, which becomes less proactive and only reacts to current developments. Labour ministry then focuses on partial *measures* such as amendments to laws, improvements of the ministry's management, expansion of new technologies or simply on cutting of costs, while nation-wide policies might be losing their coherence. In other cases, the ministry adopts its vision, mission and strategic objectives, but these objectives are not sufficiently anchored in their annual plans; as a result, clear indicators are missing, making thus evaluation of policies and their outcomes difficult. Sometimes annual plans of ministries are elaborated without budgeting of costs of planned activities; non-achievement of objectives that were not underpinned by budgetary allocations which then lead to the frustration of the ministerial staff. Lack of evaluation and difficulty to demonstrate impacts, result in mistrust in labour administration's capacity to address societal issues and consequently further diminishes its role.

The ILO has been regularly required to provide assistance in the elaboration of policy documents, especially strategic or annual plans. More recently, it has also been asked to provide guidance on measurement of *performance* and evaluation of policies.

In other cases, Governments require assistance with formulation of strategies and policies dealing with a specific area. For example, the ILO in several cases contributed to formulation of proper labour inspection policies, taking into account good international practice, but also

requirement of the ILO Labour Inspection Convention No. 81. For example in China the national labour inspection *development* strategy provided inputs into the 12th five-year plan.

In Sri Lanka, the draft of the labour inspection policy based on ILO guidelines was submitted to the national tripartite body and will be finally launched at the National Labour Inspection Conference in 2013.¹⁰ In several Arab countries, based on ILO's audit recommendations, labour inspection action plans adopted or national occupational safety and health policies were elaborated. For *example*, in Jordan, the national labour inspection policy and enforcement strategy were revised and updated, in consultation with social partners and other stakeholders. Based on ILO advice and assistance the labour ministries improved their planning capacities in Central American countries, such as Costa Rica, Honduras, Dominican Republic and Guatemala, where the ILO provided support to carry out specialized workshops and where, as a result, institutional plans were developed. LAB/ADMIN also directly assisted several countries in designing national training plans for labour inspectors.

Within the project ADMITRA, focused on francophone Africa, assistance was provided in elaboration and adoption of a *Methodological* Guide for Labour Inspection in countries such as Benin, Mali, Mauritania, Niger, Senegal and Togo. Similar guides to labour inspectors were also developed in Bahrain, Kuwait, Occupied Palestinian and a number of Gulf States.

In South Africa the ILO provided comments on drafts of strategic and annual plans of the labour ministry and advice was *provided* on the ministry's performance management system. In Lesotho, ILO assisted the labour ministry in the adoption of a strategic plan for 2014 -2019.

In some countries a system for *monitoring* an evaluation of inspectors was developed.

- ***Restructuring of labour administration***

The ILO is very frequently asked to give advice on internal restructuring of the ministries of labour or of public agencies under their purview. While such an advice must be tailor-made and adapted to the *country's* needs, tradition, size, ministry's mandate, etc., it should always pursue some elementary objectives for example: clarity of reporting lines, fair division of labour, creation of homogeneous clusters, horizontal cooperation and coordination, efficient sharing of scarce resources.

For example, in South Africa, based on recommendations of the audit implemented by the ILO in 2009, DoL *implemented* internal reorganization involving strengthening of the central authority for labour inspection, putting all inspection and enforcement units under the responsibility of the Chief Inspector, subordinated to the Deputy Director General. Similarly, with ILO support, labour ministries in Honduras and El Salvador, developed proposals for the improvement of the internal organization resulting in decree proposals (Honduras) and in a draft Law on the Organization and Functions of the Labour and Social Welfare Sector was developed and finalized.

In China, a 3-layer labour inspection network was established, covering provinces, cities and prefectures with 23,000 full-time *labour* inspectors; the ILO's support to training of trainers was a key for the success of the capacity building strategy.

- ***Coordination of labour administration and inspection systems***

Insufficient coordination is among the regular findings of most labour administration and inspection audits and is dealt with by several technical cooperation projects. For example, a

study on internal and external coordination has been recently done in francophone African countries such as Mali, Mauritania, Niger, Senegal and Togo. In countries like Cost Rica, Dominican Republic, Guatemala and Honduras, improvement of coordination and management of labour administration system was promoted by development of pilot programmes at the local level, supported by the ILO with technical and financial assistance.¹¹

In several countries, process of decentralization of labour administration, often based on constitutional changes, led to de facto existence of several, largely or totally independent, levels of labour administration with their own competencies. In extreme cases, labour administration functions were transferred to provincial governments which led thus to the creation of several largely independent labour administration systems in one country. The ILO was asked to provide an opinion on the effects of decentralization in countries such as *India*, Indonesia, Pakistan or Uganda. Recommendations concerning the relationship between the Ministry and its field offices were provided in countries such as Belize, or Surinam. On the other hand Namibia and Lesotho were recommended to strengthen the administrative authority of provincial district offices that sometimes operate in remote and scarcely populated areas, and should have a higher autonomy in every day decision making. In fact, the relationship between headquarters and territorial labour offices is one of the most frequent areas dealt with by the ILO technical memoranda following labour administration and inspection audits.

In Indonesia, where the ILO facilitated discussions between the central and regional government in at least 20 provinces, new presidential decrees were issued requiring systematic coordination on labour *inspection* between central and regional government. Recommendations were made to the government towards improved better planning at the central level through improved data collection and reporting, and on overcoming the geographical isolation of many labour offices through an integrated information system.

▪ ***Collaboration and partnership***

As discussed earlier, implementation of labour policies often requires collaboration between the labour administration system and other ministries and public authorities. The ILO in many instances helped to establish, strengthen or even institutionalize this cooperation. In South Africa, the ILO helped to organize in 2010 a national labour inspection conference, which launched the process of bilateral and multilateral meetings between the Department of Labour and other ministries and public institutions. The stakeholders meeting in 2012 (attended by employers and workers representatives) confirmed the coordinating role of DoL and called for conclusion of the memoranda of understanding between government agencies in the implementation of the requirement of the Labour Inspection Convention No. 81. Similarly, the ILO helped to establish channels of cooperation between ministries of labour, health, civil defence, social security and vocational training corporations on occupational health and safety in a number of Arab countries and advised the government on collaboration between state supervisory bodies in Ukraine. In Dominican Republic, the ILO helped to negotiate an inter-institutional agreement between the labour ministry and the National Professional Technical Training Institute (INFOTEP) so that the Ministry could train INFOTEP personnel on labour rights and the special module on labour rights was included in INFOTEPs students' education programme.

For labour inspection to be efficient, it must be also supported by the judiciary system. The ILO helped Governments to develop this cooperation at the national level, but it also helped to exchange good practice in this field, for example by organizing a workshop between

neighbouring countries (e.g. in Benin, Mali, Mauritania, Niger, Republic of Central Africa, Senegal and Togo).

- ***Collection of data, reporting and introduction of new technologies***

One of the most common weaknesses of the labour administration management system, and not only in developing countries, is lack of reliable data. Not only the labour market indicators are missing or are not trustworthy, but also sometimes administrations do not have data on day-to-day functioning of their offices, making it difficult to make informed decisions. Significant efforts were done by the ILO to help in these areas. For example, in the Caribbean region assistance was provided in the development of tailor-made and computerized labour market information. St. Vincent and the Grenadines launched its first Labour Market Indicators (LMIs) in 2011, involving not only the Department of Labour, but also other government agencies.

Also in the field of labour inspection, existence of objective and comparable data is necessary to manage labour inspection activities, to assess their impact, to assess individual inspectors and also to compare and benchmark national labour inspection system.

In many countries, the ILO institutional audits found the lack of standardized methodology of data collection in Ministries' daily activities. For example inspection reports are not written after the inspection visits or even when they are, they are not communicated to higher instances. Monthly, quarterly or annual reports from field offices are not properly elaborated or sent to the central authority. Another common problem is that information, even if existent is not presented in a more systemized way. Labour inspection reports are just a compilation of rather disparate data that are not a good basis for further analysis. In such circumstances, it is difficult to expect that labour inspection can fulfill one of its essential roles, that of informing policy makers about the real situation at workplaces and to help them in taking corrective measures.

The introduction of information technology may be one way to improve gathering, analyzing and sharing of information between labour inspectors and managers across the country. In many countries, the ILO helped to introduce new technologies, especially in the collection and processing of data in labour inspection or in systemization of information on labour conflicts. For example, in Jordan the ILO provided capacity development support to the Directorate of Labour Inspection at the Ministry of Labour to modernize labour inspection processes and to automate all labour inspection systems at the Ministry. In countries like Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, or Nicaragua, the ILO helped the labour ministries to periodically collect and analyze the data, both quantitative (number of labour inspectors and inspections implemented, the coverage of labour inspection, labour ministry budget), and qualitative information. Thanks to ILO intervention, high officials learned how to handle and analyze data produced by their administration. As a result of the ILO Project, three labour ministries in the Central American region (Costa Rica, Dominican Republic and Honduras) improved their capacity for information gathering and two of them (Costa Rica and Honduras) have produced a statistical yearbook with the ILO support and it is under way in other countries of the sub-region. In Costa Rica and in Honduras, the ILO helped to create an electronic database of collective bargaining agreements and the Costa Rican Labour Ministry renewed its public website enabling consultations from the public. In Costa Rica, software was installed in the Labour Ministry Office to facilitate the follow up to the Strategic Plan. In some countries (e.g. Guyana, Kenya and Namibia) the ILO recommended a more efficient use of new technologies in the service of labour administration and inspection. In Moldova and Ukraine, the ILO helped to introduce an information management system for senior labour inspectors. In Ukraine, an

on-going support is provided in developing a registration system for the labour relations labour inspectorate, providing information on employers, workplaces and inspection activities. In Sri Lanka, a new automated labour inspection scheme was launched in April 2013, as a result of a US funded project implemented in partnership with the ILO.

In many countries, the ILO helped to improve the operational part of labour inspection by assistance in developing basic inspection tools, such as checklists, inspection forms, labour inspection manuals and guides, monthly or weekly work plans and reports.

- ***Promotion of consultations between employers and workers***

In some countries, for example in Namibia, South Africa or Sri Lanka, the ILO helped to launch discussions about the best *ways of institutionalization of dialogue on enforcement of labour standards through national tripartite bodies, their specialized sub-committees or specialized labour inspection or safety and health tripartite bodies at the national or local level.*

In many countries, for example, in Belize, India, Indonesia, Macedonia, Moldova, South Africa or Ukraine the ILO activities helped to increase collaboration between labour administration and social partners through various methods, such as meetings with stakeholders, involvement in training or through raising awareness on the role of labour inspection and its respective functions. The purpose of this kind of activity is to improve the knowledge of employers and workers' representatives on how the inspectorates work, what are the obligations and powers of inspectors and to ensure the understanding that a strong role of labour inspectors, combined with social responsible enterprises and sound labour relations can be a win-win strategy for promoting sustainable development.¹² In Indonesia, the ILO helped to develop consultations between the labour ministry and social partners, as well as with public agencies involved in labour inspection. In Tanzania, a Tripartite Committee on Inspections was established in 2011, following the ILO recommendation.¹³

In several countries of the Caribbean region (Grenada, Bahamas, Suriname, St. Vincent and Grenadines, St. Kitts and Nevis, and St. Lucia) tripartite workshops helped build conciliation, mediation and negotiation skills; in Grenada, as a result, the Labour Advisory Board was revitalized, similarly to Aruba. The ILO also helped to reinforce capacity of the Tripartite Commission of Social Concertation in Cape Verde and also supported revitalization and development of structures and capacities of bodies such as National Committee for Combating Human Trafficking (Jordan) or the National OSH Committee (Occupied Palestinian Territories and Oman). Improvement of the enforcement of labour rights was discussed at regular tripartite workshops, organized by the ILO in Costa Rica, Dominican Republic, Guatemala, Honduras and Nicaragua, where the focus was on the follow up of recommendations of the White paper on strengthening of labour institutions. In Ukraine, through a tripartite meeting, information resources were developed on working conditions and undeclared work.

In other countries, the ILO supported training programmes for workers and employers representatives on labour inspection and relevant international labour standards. Some of these interventions were also held at the sub-regional level, such as the tripartite sub-regional workshop on inspection campaigns for undeclared work and occupational safety and health (Albania, FYR Macedonia and Moldova, with the participation of Belgium, France and Portugal).

▪ ***Human resources development***

While ILO Conventions provide for existence of sufficient human resources as a precondition for proper functioning of labour administration and labour inspection, audits in many countries identified serious insufficiencies not only in numbers of officials, but also in their qualification, training, selection, evaluation and remuneration. Not surprisingly, the ILO has been very frequently requested to intervene in this area, as any labour administration or inspection cannot carry out its tasks effectively without an adequate number of staff, appropriate conditions for hiring, training and service, in other words without professionalization of the labour inspection service.

First of all, in many countries the ILO turned the attention of the authorities to the fact that the number of inspectors is so low, that even with the most efficient use of these human resources labour inspection is not capable to cover a significant proportion of enterprises and workers. Even if the ILO cannot directly influence the number of civil servants, it contributed to greater awareness of this problem and encouraged authorities to proceed with hiring additional staff (for example, Angola, Guatemala, Indonesia, Jordan, Oman and Sri Lanka recently increased the number of their labour inspectors). This rise in the number of inspectors has obviously a positive impact on inspections' coverage; for example in South Africa, hiring of additional staff resulted in increase of inspection visits from 147,556 in 2009/10 to 192,129 in 2010/11.

However, as general conditions of employment of civil service are usually established centrally for all civil servants, the scope for ILO intervention is limited to advice on possible reforms of legislation or on specific issues, such as the relationship between salaries of labour inspectors and salaries of comparable professions, such as the judiciary or tax collection.

The most visible results were achieved in increasing qualification of labour administrators and labour inspectors and in enhancing the capacity of national administrations to training their own staff. The high priority was also given to increase the capacity of national administrations to formulate their own training policies or programmes. As mentioned earlier, several countries, for example Angola, Bosnia and Herzegovina, China, Haiti, India (states of Bihar and Maharashtra), Moldova, Namibia, Yemen and Ukraine were assisted in elaboration of their national labour inspection training plans using the ILO/ITC training materials and by providing specialized training to senior servants who would themselves serve as trainers for local staff. For example in South Africa, a group of trainers, both from Pretoria Head Office and from provincial labour offices, were trained in both specialized labour inspection disciplines and managerial and training skills using the above mentioned ILO/ITC modules, while SA Department of Labour rolled out a series of provincial training using these trainers. In China, the ILO strongly supported capacity building of large corps of labour inspectors by training 80 master trainers and ILO's work also influenced the setting up of a team of national experts to support the ToT programme. Similar trainings were provided also in several other countries.

While most national labour administrations provide some kind of initial or advanced training to their labour inspector (either directly or through public or private training institutions), in many of them the training provided is limited in scale, rather haphazard and provider driven. Most often, a real training policy, establishing clear objectives and establishing standards for individual categories of inspectors, is missing. The ILO helped to elaborate these policies, or at least launch serious discussion about it, in countries such as India, Kuwait, Jordan, Qatar, Sri Lanka, Swaziland, the United Republic of Tanzania or United Arab Emirates.

In some countries, the ILO assistance contributed to creation or strengthening of labour inspection training institutions, for example in Jordan, where the Ministry of Labour

established a Training Centre for Labour Inspection, while in China, establishment of a similar institutions is being considered, following a study visit to France and Spain, organized by the ILO. In Guinea, the ILO supports training of inspectors provided by the Centre for Administrative improvement.

In several countries the ILO contributed to the creation of sustainable training capacity of labour inspection by establishing and training of group of managers or trainers. For example, in Oman, a series of training activities, including IT, communication, language and technical skills contributed to the creation of a strong and effective labour inspection unit that reached 170 members and implemented 12,000 inspection visits in 2010. ILO/ITC training modules were adapted to the Omani context for this purpose.

In other countries, training on fundamental Conventions as well as on labour administration and labour inspection Conventions *included* not only labour inspectors, but also judges and attorneys (for example in Benin, Burkina Faso, Cameroon, Colombia, Ivory Coast, Mauritania, Madagascar and Niger). In some countries, the ILO helped to implement training destined to the pedagogical staff, national public administration schools and judicial training institutes (e.g. in Benin, Cameroon, Ivory Coast, Kuwait, Mali, Niger, Occupied Palestinian Territories, Senegal and Togo). The ILO also contributed to networking and mutual learning between labour inspectors from countries like Afghanistan, Brazil, China, India, Italy, Portugal and Spain and among French speaking countries in Africa.

Study tours were organized for inspectors from several countries to get acquainted with the most developed labour inspection systems; for example, a study tour of Chinese inspectors in Spain and France focused on training programmes for new inspectors as well as on the job training. In the Caribbean region, exchange of experience was supported on various labour administration related issues, such as dispute settlement, occupational safety and health or trade related issues.

The International Academy on Labour Administration and Labour Inspection took place in Turin on September-October 2011 jointly designed and organized by the ITC and LAB/ADMIN Programme and was attended by 77 participants from 38 countries. Another edition of the Academy is planned for October – November 2013.

Exchange of good practice is important not only at the international level, but also within countries, especially in big countries with highly decentralized labour administration. For example in India, activities were organized where states involved in ILO technical cooperation, shared acquired knowledge with other state governments.

▪ ***More efficient enforcement methods***

In the last few years, many countries requested ILO assistance in improving their enforcement methods, including more effective sanctions imposed by labour inspection and other measures to make the inspections action more efficient and more dissuasive. An increased interest of member States on sanctions, and on making judicial procedures more expedite, was a frequent focus of ILO labour inspection audits. Benefiting from results of a survey carried out by the ILO in 2010-2011, the ILO advised many governments. For example, Malaysia changed their *sanction* scheme in 2010, while Nicaragua and El Salvador, supported by the ILO developed in consultation with key sectors, new Acts on Labour Law Procedures.

Better work programme

Better work programme, introduced more than a decade ago in partnership between the International Labour Organization (ILO) and the International Finance Corporation (IFC) is testing an innovative approach based on combination of global and local forces and relies on combination of private self-regulation with limited but essential public intervention. This public intervention – both global and national – are destined to correct deficiencies that typically arise in purely voluntary corporate self-regulation.

At the core of Better Work's vision to improve workers' lives are programmes that drive sector-wide, sustainable compliance with national labour law and core labour standards and promote business competitiveness in major garment producing countries. Country programmes typically combine independent [factory assessments](#) with [advisory](#) and [training](#) services to support practical improvements through workplace cooperation. Using Better Work's unique information management system (STAR), enterprises can share assessment and remediation information with their [buyers](#). This in turn allows buyers to reduce their own auditing and redirect resources to fixing problems, focusing on sustainable solutions.

Better Work country programme are designed with active involvement of social partners. Once operational, country programmes are advised by a local, tripartite [Project Advisory Committee](#) (PAC).

ILO and IFC work together to mobilize necessary resources for country projects (currently covering seven countries). In addition, Better Work country programmes are organized to work closely with existing IFC and ILO initiatives, particularly those focusing on capacity building in the private sector, public-sector labour administration and employers' and workers' organizations.

The Better work programme contains a number of *innovative features*. For example, the activities of the programme in Cambodia are based on:

- *Positive incentives (linking of trade privileges with improved labor rights through increased export quota)*
- *Goal setting (benchmarks are set between the US and Cambodia Governments in semiannual consultations, providing ownership of the project by both sides)*
- *ILO monitoring (for the first time, ILO had directly inspected factories and monitored private sector behavior)*
- *Transparency (sharing of monitoring reports)*

Global products, research and publications

Renewed focus of the ILO on labour administration and labour inspection and the necessity to offer constituents advice and technical assistance based on the most up-to-date knowledge, required own research of recent trends and developments as well as building of

linkages and partnerships with other training and research institutions, in particular with the International Training Centre in Turin, and with the academic world.¹⁴

To raise the quality and consistency of training provided to labour administrators and labour inspectors and to reflect in training both ILO values and best practices in labour administration throughout the world, new training tools were developed in close cooperation with the International Training Centre in Turin, especially training modules on labour administration and training curriculum for labour inspectors. Both products have been tested and used in many countries (and customized to local needs in some of them) as well as at international events such as the already mentioned Labour Administration/Inspection Academy held in Turin in October 2011. The core training curriculum was translated into 12 languages; together with the ITC-ILO a “Users’ training” was carried out where national labour inspectors were trained to use this tool. The existing modules are still being further developed, extended by new ones (e.g. on gender or on freedom of association) and also adapted to national circumstances.

As awareness of social partners of labour inspections’ role is an important condition of compliance with labour laws, guides for employers and workers on the role and functioning of labour inspection systems were developed. These guides were designed to raise awareness among social partners about how labour inspections works, how it can assist the social partners and how employers and workers can collaborate with labour inspectorates to help strengthen the inspectorate’s role in improving working conditions and thereby enhancing productivity. National workshops based on these guides have been carried out in several countries in Europe, the Arab States and Latin America. The guides are also routinely distributed to social partners taking part in ILO labour inspection training activities.

Research has been focused on most topical issues identified by the ILO constituents during discussions of the relevant policy documents at the 100th ILC and the 312th Session of the ILO Governing Body in 2011. More than twenty studies and working papers have been elaborated since establishment of LAB/ADMIN in 2009, covering various topical issues, for example on international labour standards and guiding principles of labour administration and labour inspection, labour inspections sanctions and remedies, good practice of labour inspection in rural areas, inspection in respect of HIV/AIDS or labour inspection in Export Processing Zones (EPZs). A guide on LI practices in member states of Gulf Cooperation Council (GCC) was also elaborated.

To improve understanding of how labour inspection works in various countries and to help with mutual learning and with policy transfers, LAB/ADMIN has published more than 50 labour inspection profiles following an identical outline enabling the ILO constituents to compare different practices on national labour inspection systems.

In collaboration with the University of Sheffield, a book on “Labour Administration in Uncertain Times: Policy and Practice Since the Crisis”, edited by Prof. J. Heyes (University of Sheffield) and L. Rychly (ILO, Department of Governance and Tripartism), has been written and was published in October 2013 by Edward Elgar Publishing. The book discusses recent developments in ministries of labour, national employment services and labour inspections with a special focus on consequences of the current economic and financial crisis.
https://www.e-elgar.com/bookentry_main.lasso?currency=UK&id=15525

Also a first comparative study on ministries of labour was written and published by the ILO in June 2013 : Ministries of Labour: Comparative Overview, Database, Organograms , ILO Action”, L. Rychly, ILO Work document Nr.27.
http://www.ilo.org/labadmin/info/pubs/WCMS_216424/lang--en/index.htm

Conclusions and lessons learned

Despite a growing number of international labour standards and despite growing number of labour provisions in international trade agreements, the main responsibility for regulation of labour matters is still with national governments. The regulation by labour laws however does not have much impact, unless the laws are not complied with. National authorities – mainly ministries of labour and their specialized inspection agencies – have the main responsibility for promoting of compliance and – if necessary – for enforcement of labour laws.

In practice however, most ministries of labour in developing countries that are important trading partners of the Western economies, are institutionally very weak and they are unable to promote compliance with labour laws in a meaningful way. International community and specialised institutions such as International Labour Organization are providing technical assistance focused on enhancing of institutional capacities of national public bodies responsible for labour law enforcement and contribute to increase of national labour inspection performance. In many instance these programmes contributed to increased capacity of national authorities to enforce their own laws and in increased awareness of employers and workers of their obligations and rights. It is in the interest of both developed and developing countries that these processes continue and are given priority among programmes (and budgets) for technical assistance and cooperation.

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