Child Labour - The Role of Labour Inspection: A Resource Booklet for Labour Inspectors, other Enforcement Agencies and Key ILO Partners
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- Draft Version

by

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Preface

This booklet is intended to support a series of workshops organised by IPEC, for labour inspectorates, other enforcement agencies and key partners.

Its aim is to describe the pivotal role of labour inspectors/child labour monitors in the practice of child labour monitoring, its history (Chapter 1) and laws under which it operates (Chapter 2).

The core principles of labour inspection in relation to child labour monitoring, recently agreed at the European Union Senior Labour Inspectors’ Committee have been adapted for global coverage and are described in Chapter 3.

Chapter 4 goes to the heart of the work of labour inspectors in child labour monitoring describing their role, aims and the framework under which they operate. This includes setting policies, planning and deciding on priorities as well as working with key stakeholders.

Key to any of the work of labour inspectors is the exercise of discretion (Chapter 5) in deciding for example, whether inspectors should act and if so, how, in relation to a given set of enforcement circumstances.

Chapter 6 recognises that the work of labour inspectors, whilst pivotal in the monitoring process, is normally not sufficient on its own to achieve a successful outcome. Partnerships need to be established at all levels, coupled with a programme of raising awareness with the public, parents, children and key stakeholders (Chapter 7).

Finally, in Chapter 8, current challenges to effective inspection and monitoring are discussed.
Chapter 1

Introduction

National Developments

The history of labour inspection is now into its third century. The earliest reference in terms of regulation is 1802 when the Parliament in Britain passed an “Act to preserve the morals of apprentices”. “Morals” were defined in terms of occupational safety, health and welfare, and the “apprentices” were child workers in for example mining and chimney sweeping.

The Act was overseen by voluntary committees and as such was not effectively enforced with the result that over 30 years later in 1833, the government appointed the first four “inspectors” described as “persons of high standing” who paid particular attention to long working hours for adults and children.

In France, the first labour protection Act was adopted in 1841, again with inspectors required to enforce it following a further 30 years later.

By the end of the century, many European countries introduced legislation aimed to some extent at improving conditions at work. Specialist inspectors also started to appear. In Britain the first medical inspector was appointed in 1898 and the first specialist engineering adviser one year later. In 1901 the first female inspector of factories was appointed, in Germany.

So started the system of labour inspection which governs, in its widest form, a range of working conditions such as hours of work, wages, safety health and welfare, child labour, bullying and victimisation and labour disputes, although in some countries, labour inspection covers a more restricted list of areas of responsibility and competence.

International Developments

Whilst progress in the regulation of working conditions was being achieved at national level, early thinking was also being directed towards international standards.

In 1890, representatives of 15 countries attended a conference in Berlin to discuss and adopt the first international labour standards.

The major step forward followed the creation of the ILO in 1919, which included in its Constitution, a requirement for all member States to set up a system of labour inspection. Instruments followed providing a foundation for labour inspection as we know it today, but on a voluntary basis.
Nearly 25 years later, ILO Convention 1947 (No. 81) was promulgated and subsequently ratified over the years by 130 member States. This Convention remains relevant today and the principles enshrined within provide a fundamental foundation for labour inspection across the world.

Other important Conventions followed e.g. the Labour Inspection (Agriculture) Convention 1969 (No. 129) and the principle Conventions addressing child labour 1973 (No.138) and 1999 (No. 182), described more fully in Chapter 2. These have added to, rather than changed, the pivotal position of Convention 81.
Chapter 2

International and National Law

Labour Inspection

Although the authority of any labour inspectorate derives from national law, the heart of inspectors’ roles and responsibilities is encompassed in ILO Convention 1947 (No. 81) supported by the Protocol of 1995, which has now been ratified by over 130 member States.

This Convention establishes an explicit link between labour inspection and child labour in Article 3.1 (a) which includes amongst the primary functions of labour inspection “to secure the enforcement of the legal provisions relating to conditions at work and the protection of workers while engaged in their work, such as provisions relating to……..the employment of children and young persons……..”

The Convention identifies a platform of five key principles for the establishment and development of labour inspectorate systems in ratifying States:-

- that labour inspection is a public function with inspectors able (indeed expected) to operate in an independent and impartial way.

- that a sine qua non for effective labour inspection is close co-operation between the inspection service and the social partners, employers and workers.

- that for labour inspection to be effective, other relevant partners such as technical institutes, police and fire authorities need to be identified and co-operation established to provide support in an increasingly technically complex workplace.

- that an increasing emphasis on prevention, rather than investigation after accidents have occurred, is appropriate and necessary particularly as social standards and expectations are raised, and finally:

- to widen labour inspectors’ role and activities to the widest number of people at work, beyond those covered by traditional employer/employee relationship.
Convention No. 81 includes the following requirements in its goals for effective labour inspection:

- Labour inspection should be organised as a system (Article 1) applying to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers are enforceable (Article 2).
- It should cover a basic set of functions, such as hours of work, wages, safety, health and welfare, the employment of children and young persons, and other connected matters (Article 3.1).
- Inspectors should supply information and advice to employers and workers on how to comply with the law, and alert the competent authorities on any defects or abuses not covered by existing legal provisions (Article 3.1).
- Labour inspection should be placed under the supervision and control of a central authority (Article 4.1).
- Effective cooperation with other government services and private institutions (NGOs) engaged in labour protection, as well as with employers and workers and their organisations must be promoted (Article 5).
- Inspectors must be public officials assured of stability of employment and independent of changes of government and improper external influences (Article 6).
- They must be recruited with sole regard to their qualifications and adequately trained for the performance of their duties (Article 7).
- Their number must be sufficient to secure the effective discharge of these duties in regard to inter alia the number, nature, size and situation of the workplaces, the number of workers employed, and the number and complexity of the legal provisions to be enforced (Article 10).
- They must be properly equipped with local offices and transport facilities (Article 11).
- They must be provided with proper credentials and properly empowered (Articles 12 and 13).
- Workplaces must be inspected as often and as thoroughly as is necessary to ensure the effective applications of relevant legal provisions (Article 16).
- Adequate penalties for violations of legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties must be provided for by national laws and regulations and effectively enforced (Article 18).

**Implementation by Member States**

Ratification of an ILO Convention by a member State binds that country to the requirements of the Convention. This is usually taken forward nationally, if not already in place, by a new Act or Regulations including, inter alia, the provisions of the Convention. It is not unusual to see certain provisions appearing in a series of separate but related Regulations. So for example, the requirements for minimum age of employment for certain activities, for health and safety and for hours of work could appear in separate legislation.
Child Labour

a) The Minimum Age Convention 1973 (No. 138) is the fundamental international standard on child labour which requires ratifying States to “undertake to pursue a national policy designed to ensure the effective abolition of child labour……”

Recommendation No. 146 provides guidance on a range of necessary measures to achieve this. The Convention applies to all sectors of economic activity irrespective of whether children are employed for wages. It allows for progressive improvement to be implemented including in developing countries, where lower ages are set for employment to start.

Fixing the minimum age for admission to employment is a basic obligation of ratifying member States as follows:-

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<td>For most countries</td>
<td>15 years (but not less than school leaving age)</td>
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<td>For developing countries</td>
<td>14 years</td>
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Recommendation No 146 provides the link between minimum age of children in employment and the role and work of labour inspectors in providing guidance on enforcement measures and the handling of child labour issues.

Emphasises:

- strengthening labour inspection and related services by, for example, providing special training for inspectors in detecting abuses in the employment or work of children and young persons and in correcting such abuses;
- strengthening government services for the improvement of training offered in enterprises;
- placing emphasis on the role which can be played by inspectors in supplying information and advice on effective means of complying with relevant provisions of the law and in securing enforcement of the law;
- coordinating labour inspection and inspection of training to provide economic efficiency;
- having the labour administration services work in close cooperation with the services responsible for the education, training, welfare and guidance of children and young persons.

Labour inspection should give special attention to:

- The enforcement of provisions concerning hazardous types of employment or work.
- The prevention of work during the hours when instruction is available where education or training is compulsory.
• Taking measures to facilitate the verification of ages, such as:

1. maintaining an effective system of birth registration, including issuance of birth certificates;
2. requiring employers to keep and make available to the competent authority, registers or other documents which give the names and ages or dates of birth of children and young people who are employed and who receive vocational orientation or training in their enterprises;
3. issuing licences or other documents to children and young persons who work in the streets, in outside stalls, in public places, in itinerant occupations or in other circumstances which make checking employers’ records impracticable and which indicate the eligibility to work.

b) The second fundamental child labour Convention is The Worst Forms of Child Labour Convention 1999 (No. 182) which requires the prohibition of the worst forms of child labour in ratifying member States. To date 156 countries have ratified, the fastest ratification records of any ILO Convention.

The convention covers four main categories:-

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.
- The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.
- The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in relevant treaties.
- Work, which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

The interpretation of the first three categories is relatively clear but in the fourth, “work which is likely to harm the health, safety or morals of children”, there is as yet no official list of activities which comes within scope of Convention 182.

Recommendation 190 (1999) provides guidance on what might be considered hazardous, including:

- work underground, underwater, at dangerous heights or in confined spaces.
- work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads.
- work which may expose children to hazardous substances, agents or processes or to temperatures, noise levels or vibrations damaging to their health.
- work under particularly difficult conditions such as work for long hours or during the night.

Convention 182 requires ratifying member States to establish a list of prohibited work for children following consultation with employers and workers organisations.
In spite of the guidance in C182, most member States have found this task very
difficult with the result that only a small minority now have such a list.

Some recent consultancy work for the ILO has suggested possible model elements of
generic hazards and work related activities which might be prohibited to children.
These at present have no official status but are intended to be of help in establishing
more lists in ratifying member States.

1) The possible model elements of generic hazards prohibited to children include:
   - lifting and carrying heavy weights
   - working at height
   - maintenance of unguarded machinery in motion
   - operation of machinery which is not fully guarded.
   - exposure to very toxic, toxic and harmful chemicals included listed
carcinogens.
   - exposure to asbestos
   - exposure to harmful ionising radiation
   - night work
   - work with ‘high risk’ biological agents
   - operating cranes, hoists and machine operated lifts
   - work which may result in contact with high voltage electricity where there is
     a risk of electrocution
   - work under abnormal conditions of heat, cold, vibration and noise
   - work with power driven cutting machinery

2) The possible model elements of work related activities prohibited for children
include:
   - work in slaughterhouses
   - mixing and application of pesticides and exposure during aerial spraying
   - manufacture, handling and storage of explosives and articles containing
     explosive materials.
   - work involving exposure to lead compounds as gas, dust or vapour including
     work with high lead paints.
   - work involving the production and handling of molten metals
   - commercial diving and work under water
   - deep sea fishing
   - ship loading/unloading
   - mining and work underground
   - operating power driven woodworking machinery
   - felling of trees and subsequent logging and cutting
   - work with wild, dangerous and poisonous animals
   - demolition work
   - ship breaking
Chapter 3

Labour Inspection

- a statement of Global Core Principles in relation to securing safe healthy and decent conditions in the workplace.

Introduction

We have seen that the practice of labour inspection covers a range of working conditions including child labour. This chapter has as its basis, a core document drafted by the European Union Senior Labour Inspectors’ Committee covering all E.U. States and all labour inspectorate activities and responsibilities. It is currently being used as a baseline tool for auditing States for compliance with international and E.U. requirements and legislation.

This document has recently been adapted by the ILO for use in all ILO member States, as follows:-

Labour Inspection – A Statement of Global Core Principles

Functions of the System of Labour Inspection

As has been described earlier, the scope of labour inspectorates worldwide varies sometimes substantially, but within those differences, there are core functions which appear relevant to most member States.

These are:

I. to secure the enforcement of national/state laws relating to health, safety and conditions of work and the protection of workers while engaged in work.

II. to provide technical information and advice to employers and workers concerning the most effective means of complying with the laws.

III. to advise the competent authority about “defects and abuses” not covered by existing provisions.

In other words, labour inspectors exist to help those in the workplace to comply with the law to secure decent working conditions, to enforce the law where it is not being met and to contribute to maintaining modern and effective legal provisions covering conditions at work.

A further function common to many inspectorates, is to investigate accidents and possible cases of work related ill-health to establish whether any laws have been broken and whether there are lessons to be learnt (relevant to their advisory function – above).
Aim and Purpose

Whilst recognising the differing scopes and stages of development of Labour Inspectorates worldwide, common principles can be seen to exist, consistent with Convention 81. The aim of this document is to present these common principles of labour inspection which underpin what inspectors seek to achieve and how they go about the task, always with the general aim of securing decent, safe and healthy conditions at work.

Whilst it is widely recognised that the effective enforcement of international codes and national laws is a precondition for improving the quality of the working environment, and this is at the heart of this Principles document, the changing world of work requires a more innovative approach to achieve the aim of constant improvement of health, safety and working conditions, and it is important that labour inspection is seen to be contributing fully to these developments.

This means that authorities responsible for labour inspection should assume the tasks of:

I. formulating a clear vision;

II. re-orientating services towards new goals, while recognising the continuing relevance of many existing goals;

III. effectively implementing all labour inspection activities;

IV. increasing their efficiency; of developing new policies, strategies and preventive intervention methods; and

V. optimising and evaluating their qualitative and quantitative impact.

This Global Core Principles document has been developed in response to these signposts. It can be used:

I. as a guide to strategic, administrative and inspection policy, and the organisation, practice and ethics of inspection;

II. as a tool for encouraging the development of inspection systems and for monitoring a member State’s progress towards a more effective system;

III. as a measure of efficiency of the different inspection systems in place, partly to help to strengthen the national and regional inspectorates and partly to increase the transparency between member States and the methods of evaluating their performance and impact externally and internally;

IV. as a source of policy reference, reflecting or taking into account international and national standards.
V. as an objective basis for the drawing up of labour inspection strategies, annual programmes of work and campaigns, together with the provision of adequate resources to match these.

VI. as an explanation of how an enforcement policy has to flow from a set of basic principles that reflect the role and responsibilities of labour inspection and the expectations of the world of work.

**Preconditions**

The work of the labour inspectorates and their inspectors forms just one albeit important link in the process chain starting with a member State’s ambition or obligation for decent conditions at work right through to the consistent achievement of those conditions in the workplace. The size of that link will differ from one member State to another depending on local administrative and legislative arrangements.

But irrespective of such differences, certain other links need to be in place for inspectors to have the powers and ability to do their work. Some may come under the responsibility of the inspectorate’s supervisory body, or central competent authority as defined in Convention 81. Others may come under the inspectorates themselves, and this balance will again vary between member States. The organisations in many States which include the labour inspectorate function also include the development of strategy, the establishment of operational policy and the planning, monitoring and information gathering functions.

As a result, the distinction between a labour inspectorate and a central or competent authority is in many cases largely artificial. Therefore references to the labour inspectorate in this Statement of Global Core Principles assume the inclusion of the role of the “central authority” including arrangements within federal systems.

The responsibility for the implementation and enforcement of national and international legislative provisions in relation to health, safety and conditions of work lies with member States. It is an essential precondition for the effective exercise of the labour inspectorate function in relation to the global core principles (below) that arrangements are in place in member States to:

I. ensure that relevant international codes and conventions are properly transposed into national law and that such law is appropriate to secure decent conditions at work.

II. establish their strategies for achieving these conditions, indicating what the member State wishes to achieve and over what period.

III. maintain or develop institutions and mechanisms for the enforcement of national law, which in certain cases, may include specialist support services, the police, and the legal and court systems, upon which labour inspectorates depend for the effective and efficient discharge of their responsibilities. These
institutions should be sufficiently resourced to discharge the duties expected of them by the national and regional strategies.

IV. establish effective relationships between ministries, organisations and institutions with a direct or indirect involvement in working conditions, to align strategies, share expertise and coordinate action;

V. establish effective relationships with the social partners to draw on their expertise, take account of their priorities and secure their support;

VI. collect, collate, analyse and publish information about health, safety and working conditions gathered at national, regional, sector of activity, and, where appropriate, company and workplace level;

VII. encourage employers and workers to take positive action to bring about decent standards of working conditions and to provide appropriate information and guidance to help employers and workers comply with the law.

The core principles

The core principles, whose applications is vital to all member States, concentrate on the implementation and enforcement of national legislation, recognising the widely held view that the effective enforcement of national law is generally a precondition for improving the quality of the working environment. To ensure that effective implementation and enforcement is delivered at operational level, labour inspectorates must:

Planning and Monitoring

I. prepare annual plans of work setting out the priority areas for action for the year and detailing the inspection and other programmes that will be necessary to deliver the plans;

II. set up systems for monitoring progress against the annual plan

Inspectors’ competencies and independence

III. ensure that men and women are eligible for appointment as inspectors; that inspectors have the appropriate qualifications; that they are competent to undertake their responsibilities; and that they receive the training, instructions and information necessary for them to carry out their work;

IV. ensure that inspectors are able to obtain specialist, technical, scientific, legal, methodological and other support to assist them in carrying out their duties;

V. ensure that inspectors are impartial, that they are independent of inappropriate external influences and of the companies or organisations which they inspect, and that they do not undertake other duties which may interfere with their primary responsibilities;
VI. ensure that inspectors are provided with suitable offices, and transport facilities, and are reimbursed for any necessary expenses they incur in carrying out their duties.

Inspectors’ Powers

VII. ensure that inspectors are given the powers necessary to carry out the duties assigned to them. These should include the powers:

- of entry to workplaces without notice;
- to carry out inspections and investigations at the workplace
- to require employers and employees to supply information relevant to an inspection or investigation
- to examine records and reports relevant to health, safety and working conditions
- to apply, or to arrange the application of, sanctions when these are deemed to be necessary
- to require the immediate stoppage of working activities in the case of serious health and safety risk. In some member States this serious risk must also be immediate – in others the serious risk may be delayed, as in the case of latent health effects.

These powers should be exercised taking full account of the confidentiality of personal medical data, economic information, employees’ complaints and manufacturing secrecy.

Guidance for inspectors

VIII. set out in writing the approach to be taken by inspectors at visits to workplaces and indicate the action which should be taken in particular circumstances

Internal communications

IX. ensure that good communication links exist to enable issues of good practice and areas for improvement to be brought to the attention of other inspectors, policy makers and legislators, especially through the use of a suitable information system.

The approach to be taken during an inspection must include a physical examination in the workplace of working practices, standards and conditions, and discussion with representatives of the employer and the workers’ representatives. It is important when investigating work-related accidents or cases of ill-health that whenever necessary and possible, the person affected is interviewed. Within the core principles, examination and discussion should be focussed on ensuring compliance with applicable national legislations. Following an inspection, the inspector must be in a position to take appropriate action, based on the legal powers of the inspector within the member State. Such action may include the use of sanctions which the inspector is empowered to use. The priorities for inspection are:-
Ensuring compliance with national law

I. to judge whether the employer’s policy for health, safety and working conditions is directed towards complying with national laws

II. to judge whether the organisation and arrangements the employer has introduced for securing decent working conditions are likely to lead to the identification, rectification and prevention of deficiencies. This will include the employer’s arrangements for identifying hazards and for assessing risk;

III. in particular to make assessments of the employer’s arrangements for:

- the effective planning, organisation, implementation, control, monitoring and review of the protective and preventive measures at the workplace.
- securing expert advice and assistance on health and safety measures.
- dealing with emergencies; providing the employees and/or their representatives with comprehensible and relevant information.
- training the employees in health and safety.
- ensuring consultation with the employees and/or their representatives on matters relevant to health and safety.
- ensuring that the arrangements in place effectively protect workers against the identified risk.

Action taken by the inspector as a result of the inspection

With respect to the employer

IV. to decide what action is necessary and take the required measure to secure compliance with legal provisions and acceptance of supporting guidance; such action may include (depending on local arrangements) advice (both written and verbal); the issue of an order requiring the immediate stoppage of work, or improvements by a specified deadline; the issue of an administrative fine/penalty (either directly or through the appropriate authority); or a referral to the prosecuting authorities.

With respect to the employees

V. to ensure that workers representatives are informed about the inspector’s conclusions, and that any written reports given to the employer, are made available to the workers representatives, who should also be informed of the responses given by the employer. Such reports should not include information confidential either to the employer or employees.

With respect to other organisations

VI. to decide whether liaison is necessary with other enforcing bodies who may have responsibility under national legislation for matters such as the social services.
With respect to records kept for internal labour inspectorate use

VII. to make a written record of the inspector’s decisions and action, which may include information on:
- core data, characteristics and identification of the employer and the organisation and arrangements for minimum age working conditions existing at the workplace;
- the level of compliance with the relevant legal provisions;
- child labour issues identified by the inspector and an assessment of any risks;
- advice given or formal enforcement action taken by the inspector
- an assessment of the scope for improvements in working conditions, and whether the improvements that have already been made are likely to be maintained. This may include the measures that the employer has proposed to the workers representatives, to improve and maintain standards of minimum age compliance.

Review

The practice of labour inspection is developing at a rapid pace to match corresponding changes in the world of work. There is no indication that this rate of change is reducing – quite the opposite.

Accordingly, this document will need to be reviewed from time to time to ensure that it is still relevant to twenty-first century labour inspectorates and the workplaces that they are striving to encourage and regulate.
Chapter 4

Labour The Role of Labour Inspectors in Child Monitoring
(CLM)

Earlier Chapters have described the authority of labour inspectors, the core principles under which they do their work and some pre-requisites such as operational planning and support necessary before this can take place.

Labour Inspectors exist to monitor working conditions, to investigate shortcomings including accidents and complaints, to get those shortcomings corrected and to decide what subsequent action is appropriate.

In principle, the model is the same for child labour as, for example, for health and safety. Indeed in many countries, the same inspectors are responsible for all working conditions monitoring, including those for child labour. Nevertheless, some of the techniques and skills required for child labour monitoring are different from those used in other labour inspection work, and this is recognised in some countries which employ inspectors who concentrate on child labour issues.

The aims of child labour monitoring

At the workplace, the aims of child labour monitoring are:-

- to satisfy society that those responsible for workplaces are complying with their legal responsibilities
- to assess the adequacy of risk to young workers to ensure that “hazardous labour” is not being undertaken by those under 18
- to persuade, and if necessary, enforce businesses to take action to achieve compliance with legal standards
- to disseminate information and guidance about how to comply with legal requirements
- to collect information and report on any child labour issues to assist other inspectors and policymakers in their child labour work.

Child Labour Monitoring Framework

Inspectors visit workplaces to check that all young people at work are above the minimum age specified in national legislation, and that any hazardous work, as defined, only involves workers of 18 or over if, and only if, it is properly controlled.

If the former is found, i.e. illegal child employment in “non-hazardous” work, a process is required leading to the eventual withdrawal of the child from the workplace. If the latter is found, i.e. illegal child employment in “hazardous” work, either the child needs to be moved to work which is not hazardous, or the work activity made non-hazardous. None of this can take place in isolation. A framework
needs to be established before monitoring can take place making clear how the child labour monitoring will take place. This framework will include:-

1) A policy for managing the monitoring of child labour

The first element of any framework involving labour inspectors is to establish a clear policy, open to key stakeholders such as employers and worker representatives and the social services, education bodies etc, detailing in this case what is expected of inspectors in their monitoring of child labour. Such a policy would likely:-

- make clear the authority of the inspector in CLM.
- emphasise prevention of child labour as the main aim
- make clear the balance between persuasion (“the carrot”) and the use of sanctions (“the stick”)
- make clear that unannounced visits would be the norm.

2) Key Stakeholders: Identification and Consultation

Child Labour Monitoring (CLM) requires the efforts of a range of key stakeholder and intermediary organisations to be brought together and co-ordinated. Agreements need to be sought and obtained on what CLM actually means in practice and how it is suggested that it is carried forward.

This will involve consultation and liaison with bodies at the national level (e.g. government departments, employers and worker representatives headquarters etc), at regional or district level (e.g. local authorities, police and social services regionally) and at the local level in the community and workplace. This is discussed more fully in Chapter 4.

3) Planning and setting priorities

Many, perhaps most, inspectors have more work on their desk than they are able to undertake, if the expectations of key stakeholders are to be satisfied. Priorities have to be established and publicised, to assist inspectors and to manage these outside expectations. Work in child labour is no different in this respect than any other labour inspectorate work.

Firstly, inspectorates have to decide on an appropriate balance between proactive and reactive work.

Proactive inspection covers visits to workplaces, planned in advance according to priorities at the time, and previous histories of child labour usage. Reactive work arises mainly as a result of complaints of child labour being used, or of accidents involving children.

Operationally, many inspectors find that they have more impact on reactive visits as employers feel more vulnerable and concerned possibly about an accident or of possible sanctions, than on a proactive visit where there has been no accident or complaint.
So the issue facing Chief Labour Inspectors and policymakers is to decide on the balance of inspectors’ time spent on proactive and reactive work. This can be a very sensitive matter because complainants or the families of accident victims always want their case to be investigated. On the other hand, proactive inspections are about preventing child labour and preventing accidents which is obviously important. Decisions have to be made!

**The Phases for Child Labour Monitoring**

The CLM Framework has two distinct and important phases:-

a) The monitoring phase  
b) The follow-up phase.

**a) The monitoring phase**

This is at the heart of the role of labour inspectors who have been trained in child labour monitoring techniques. In summary, they are expected to check and then recheck on a periodic basis:-

- the activities being undertaken on site  
- whether child workers are present  
- the standard of health and safety controls in evidence (which can determine the age threshold for young workers)

and then

- to remove or refer children illegally at work  
- to gather information that may indicate that a change in policy or legislation is needed  
- to decide on what legal sanctions (if any) are appropriate.

The model for the child labour monitoring phase therefore has four elements:-

- **Identification**: this involves visiting a workplace where children may be working, observing what is going on in terms of the type of work, standard of health and safety, hours and wages and the employment relationship.

- **Referral**: moving under-age children out of the workplace using procedures agreed with the social services and education providers. This will be rapidly carried out if the child labour is hazardous and more measured if the type of work is not considered to require immediate action.

- **Protection and Prevention**: checking the workplace for hazards and poor management of health and safety to which child workers may be exposed. Then seeking to prevent new child workers from being introduced to the workplace.

- **Data Collection and Analysis**: information and data collected from the monitoring visit are recorded and disseminated to inspection managers and relevant stakeholders such as social services.
b) The follow-up phase

The inspection or monitoring has taken place, decisions have been taken concerning any child labour found to be operating and any health and safety issues have been dealt with. What remains is a number of activities to be covered in the follow-up phase.

- **Tracking**: it is not the responsibility of inspectors or monitors, themselves, to provide follow-up facilities for child workers removed from work but there must be a referral link made with programmes and agencies which can do so. Monitors need to verify that the children have reached the services to which they were referred and are participating in it. Otherwise they may simply move to other work.

- **Law Enforcement**: If the monitoring process has led to decisions involving formal enforcement procedures, these need to be followed up to ensure that such decisions e.g. on prosecution or financial penalties, are actually being taken forward.

- **Data Quality Control**: The monitoring process will yield a significant amount of data required for dissemination, analysis and social planning. This data will need to be quality controlled during the follow-up phase to ensure credibility, and particularly to ensure that individual children involved in the monitoring are not “lost” in the process.

So the child labour monitoring process must be able to link labour and education data and to cross check information on school attendance with that from monitoring visits conducted at the workplace. Who actually does this will vary depending on local arrangement and available resources, but it is likely to involve the child labour monitors to some extent.
Chapter 5

The Exercise of Discretion in Inspection

Discretion is a characteristic of most administrative systems which impinge on daily life. It is exercised not just by those regarded as ‘professionals’ or ‘experts’, but also by many people with apparently rule-bound jobs. The ticket collector who forbears from turning off the train someone who mistakenly has the wrong ticket is exercising discretion. Even though overriding a specific and relevant rule, this action may in fact be condoned by the organisation if it fits into a wider, cultural objective, such as being seen to be caring to customers. More generally, the law recognises that discretion is an essential and desirable part of administration, by insistence that decision-makers do no adopt rules which might improperly ‘fetter’ their discretion in applying the law to meet individual circumstances.

The enforcement of child labour law through inspection is no different, in that it too requires the exercise of a large measure of discretion. This is not simply incidental to the inspector’s task, it is essential for ensuring that:

a) inspectors’ actions, and responses are directed to important risks, and are proportionate to the harm being dealt with;

b) while inspectors’ judgments are consistent, they also reflect the needs of individual circumstances;

A Suggested Definition

The etymology of the word “discretion” is linked to “discrete” – that is, reflecting the distinct, separate nature of individual circumstances, but also to “discreet” – circumspect, prudent and so on, reflecting also the idea that the power of discretion will be used wisely. In the inspection context discretion might be defined as:

“Exercising judgement within a general framework of rules: making action fit the circumstances.”

Why discretion is needed

The complex nature of inspectors’ work makes the day-to-day exercise of discretion inescapable. It is possible to distinguish three main circumstances when discretion is needed:-

a) where there is no relevant rule (using ‘rule’ as shorthand for any official instruction, guidance or standard which seeks to direct inspectors’ actions). The wide range of activities and processes dealt with by inspectors and the business cultures in which they are found, means that it is not feasible to provide rules which cater for every circumstance;

b) where a rule exists but is written in such a way that further interpretation is envisaged. The modern approach to framing the law in terms of broad,
flexible objectives clearly envisages the use of judgement in determining compliance;

c) where an apparently relevant rule exists, but it fails properly to address the particular circumstances found. Even where rules exist, which set standards to be achieved, or guide inspectors’ actions, it will be rare that every conceivable application of the rule has been foreseen. It is right therefore that few rules are framed in absolute terms. In particular, prescriptive rules tend to lag behind technological advance and can become inappropriate and burdensome.

It is possible to identify two main types of inspectorial discretion. First, inspectors make conscious judgements about whether to act. This relates to choices about which premises to inspect, which topics to deal with, which questions to ask, which activities to examine and so on. Second, inspectors exercise discretion as to how to act. During inspection they compare what they find with relevant standards of compliance, and decide what advice to give, how it should be framed, the emphasis it should be given, how it should be followed up and so on.

Discretion enables inspectors to promote the inspectorial equivalent of ‘policing by consent’. It allows practical solution to be agreed between employers and inspectors which can account for a host of particular circumstances, without the need always to resort to formal and expensively bureaucratic mechanisms for resolving disagreements. As for any power, discretion needs to be applied wisely, and within acceptable norms. The following paragraphs set out the main mechanisms which exist for controlling discretion.

**The control of discretion**

Discretion is exercised within a framework of influences, both internal and external, which provide the necessary control mechanism:

a) **internal**: training which is common, thorough and structured; policies, codes, instructions and guidance; continuing professional training and development; day-to-day managerial and professional oversight of adherence to such policies and rules; individual experience; shared experience (the organisation’s habits or culture); and the overall operational framework; and

b) **external**: the economic and political climate, and the influence of government policy such as on deregulation; legal precedent and the criminal justice system; knowledge of the state or attitudes of the industry concerned; the transience or permanence of the premises or activity; the circumstances of the organisation or individual.

This is a formidable range of influences, which might be seen as leaving inspectors little room for manoeuvre. In practice, their very complexity requires individual inspectors to develop a professional and pragmatic approach to their work, which they exercise through:
a) their personal qualities (authority; penetration; persuasiveness etc);

b) their knowledge (of the law; technical standards; and the key elements of child labour monitoring);

c) their understanding (of the way organisations work; of human factors, how to influence people and organisations; and how to generalise from symptoms to causes);

d) their experience (previous successful solutions; how to transfer experiences from one industry to another, and when to share decisions or call help); and

e) their political instinct (identifying sensitive issues; being able to see others’ points of view; how a course of action would appear if ‘something goes wrong’).

Though these personal and cultural qualities are applied in a wide range of situations, inspection or investigation is sufficiently systematic, and deals with such frequently-recurring problems, that a considerable amount of practical experience is acquired fairly rapidly. This contributes to consistency by the individual, the effect of which can be widened through professional discussion both formal and informal, and through the use of team inspections. But there remains a significant challenge for those managing inspection to achieve and demonstrate consistency, so that similar circumstances meet with similar responses by all inspectors.

The problem is that apparently similar circumstances are rarely in fact similar in all the elements which determine an inspector’s response to them. Take for example decisions on prosecution action which requires many variables to be considered – e.g. the alleged offender’s record, the seriousness of the breach, and the desirability of making a public point. Overlying these is the professional judgement of whether evidence supports a realistic prospect of securing a conviction. Whilst training, experience and internal quality control can help to ensure the consistency of these complex judgements, the variety of circumstance cannot be entirely foreseen by ‘rules’. Inspectors are professionals who are expected to make discretionary judgments and be accountable for them.

This implies that inspectors should have some choice in the way they achieve their objectives. Most inspectors would accept that some colleagues are able to achieve as much by their personality as others do through formal enforcement. It would therefore be counter-productive to make inspectors conform to a narrowly-defined norm of behaviour; on the other hand inspectors cannot ignore, for example, public expectation that they will make appropriate use of enforcement sanctions. The only practical way of ensuring that the positive benefits of this are realised and that variability of action is within acceptable bounds is through line managers, who are accountable for discretionary judgements against a framework of policies and rules. Discretion cannot be controlled by devising an ever greater set of rules; the paradox is, the more rules there are, the more discretion is required to distinguish just when and where they should be applied.
Chapter 6

Partnerships in Child Labour Monitoring

Introduction

The role of labour inspectors in eliminating illegal child labour through the inspection process has been discussed in Chapter 4. This role is pivotal in the sense that it is essential if progress is to be achieved. However, it is not sufficient, in itself, to achieve that progress. Partnerships are needed firstly with the key players, those responsible for the work activity and those representing those at work, secondly with those who share the ambition for the elimination of illegal child labour and whose primary function can support the labour inspector, and thirdly with those who can help, but whose function is not primarily about child labour.

It cannot be overemphasised how important is this aspect, that of gaining the support of key stakeholders, which in the end may well decide whether the monitoring goals are met, irrespective of how expert are the individual inspectors.

Depending on the organisation of government and key stakeholder organisations in any particular country, partnerships within the CLM Framework will be required normally at three levels.

- **At the national level**
  - consultation will be necessary with all relevant government departments to seek support for a CLM programme which can then be passed down to their representatives at local levels. Political support is an essential prerequisite for a successful CLM programme and time spent identifying all of the political players who may have an interest and then seeking their support, is likely to be time well spent.

  - it is also important to seek employer and industry support for a CLM programme. Their support will be invaluable in getting key messages down to their representatives at the workplace. The opportunity here is for codes of practice to be negotiated and agreed and can involve either the industries potentially using child labour or other industries using their products where the former may have the leverage to insist that no child labour is used downstream.

  - a third key stakeholder at national level is the workers representative organisation, usually the trade union headquarters. Trade unions can raise awareness amongst their member of the negative factors of child labour and can encourage feedback from where this is taking place.
• **At the intermediate level**

Labour inspectors probably will not have been involved at the national level, unless they happen to have been working in their headquarters. They are likely to get involved, however, at the intermediate (regional or district) level where initiatives which have taken place at national level need to be developed and the details agreed with the local government departments together with the social partners and trade associations.

Awareness raising (Chapter 7) of child labour issues will be necessary and local political support essential for the CLM Framework to be taken successfully forward to the local level.

A successful framework needs to link the monitoring of child labour with the support that the child can expect from for example the education and welfare services. Teachers can provide information about child attendance, and can provide counselling to both children and parents with the aim of removing perceived barriers to education.

At the intermediate level, partnerships can be established between labour inspectorates and the education services to agree the details of what will be practicable during the monitoring, referral and follow-up phases in child labour cases, who will do what, and how good communications can be maintained.

• **At the local level**

This is in the workplace and in the associated community. Here we are talking about specific workplaces, schools and social services. This is the level at which actual monitoring activities are carried out and appropriate follow-up is ensured, both with the identified child workers and with the information that results from the monitoring. The labour inspector is a major player at the local level not only in his/her traditional visiting and inspection/monitoring role but in raising awareness in the local community to try and establish public opinion that child labour is unacceptable, and in establishing one-to-one links with individual teachers, social workers and other local organisations such as training organisations for young people, who can play their part particularly during the referral and follow-up phases of the framework.
Chapter 7

Raising Awareness in Child Labour Monitoring

Earlier chapter have described the pivotal role of labour inspectors trained in child labour monitoring work. However, as we have seen earlier, this role is not in itself sufficient to deliver a successful framework. Alliances have to be developed (Chapter 6) to bring together those who can contribute to the process.

Coupled with all of this is the need to raise awareness at all levels in order to inform and educate about the purpose of CLM, why it is so important and why using children in the workplace is wrong, legally and morally.

The prize is in winning social acceptance of child labour monitoring and the mobilization of the general public as well as potential partner agencies to better understand and help in combating child labour. They are not always sufficiently aware of the dangerous effects of child labour, or they may accept them as unavoidable consequences of poverty. In many countries, people are unaware of the problems of child labour in general, and of children working in hazardous conditions in particular. Making the most intolerable forms of child labour visible, showing their consequences, and indicating what can and should be done are the first steps in the right direction to ensure that the most abusive forms of child labour become socially unacceptable. Once public opinion has been aroused, it can play an important role.

A parallel can be seen in some countries over the issue of drinking and driving. Previously the culture was to regard those caught driving above the legal alcohol limit, as having bad luck in being caught. A series of media campaigns, often visually dramatic, has changed the national culture to one of regarding such drink-drivers as anti-social. Community pressure can be very powerful!

Awareness-raising at national level is likely to involve initiatives in the media, graphic articles in newspapers and children’s comics, and short films on television or at the cinema using national celebrities to add to the impact of the key messages.

Awareness-raising is particularly important in the main target area where the actual monitoring is going to take place. Monitoring will be resented if people are not concerned about child labour and it is important that they fully understand the rationale for it and the positive outcomes that are being sought.

Labour inspectors will have an important role here, in talking to employers, trade unions and social and education service providers.

All of this takes time – attitudes and cultures do not change quickly. A programme of raising awareness needs to be properly planned at all levels, potential partners identified to help with the process which is then taken forward in a co-ordinated manner to ensure, for example, that employers will not panic and send children off from work without proper education and social security networks in place.
Child labour preventive work is particularly important in rural economies where child labour often occurs as part of home based agriculture. Here the workplace and the home are often the same. In South Australia, for example, the inspectorate produced a short film “Farm Work is not Child's Play” to get key messages over to the public and stakeholders.

Another effective way to mobilize public opinion into action is for labour inspectors to take public officials and other key people such as journalists on unannounced inspections to places where children work, and to give talks at local events. This again takes time and needs careful and co-ordinated planning.
Chapter 8

Current Challenges to Effective Labour Inspection in the field of Child Labour and Child Labour Monitoring

Earlier chapters of this booklet have described pre-requisites which need to be in place before a labour inspector starts his/her duties on combating child labour. It is widely recognised particularly by those in or associated with the profession, that even with these pre-requisites in place, the work of labour inspectors can still be difficult. Where they are absent, those difficulties can magnify exponentially.

So what are the challenges that inspectors can face?

1. Lack of clear legislation

Ideally, labour inspectors in their pursuit of decent working conditions, seek compliance with well drafted, well understood legislation, accepted by those on whom are placed duties.

Where such legislation doesn’t exist because for example international obligations such as ratified ILO Conventions haven’t been converted into national legislation, success in implementing a CLM (or indeed any other working conditions) framework is highly unlikely. An example is ILO Convention C182 which prohibits for those under 18, work which is likely to harm their health and safety. Ratifying countries (of which there are 156 to date) are required after consultation, to draw up a national list of hazardous child labour activities which are to be prohibited or severely restricted. This has proven to be difficult and most have not yet done so. This presents a severe challenge to the inspector in trying to eliminate hazardous child labour.

More generally however, and in particular in those countries which became independent in the second half of the 20th Century, legislation on child labour was grafted onto a fragile economy and implanted in a society which had not incorporated the underlying concepts of the international Conventions and treaties designed to protect children. In this context, there is the danger that labour inspectors’ actions and arguments will not be seen as part of a national initiative and they will have to individually justify their actions in the face of local practice and prejudice. Labour policy and legislation is not the only legal framework that is needed. Registration of births, necessary to prove age, may not exist or not be followed. There may also not be adequate legislation on compulsory education to provide alternatives for the children removed from work. Lastly, employers in many parts of the world may choose not to know, or more often actually do not know, the law or the extent and seriousness of the risks to the health and safety or morals of the children who work for them.

The job of understanding, explaining and ultimately enforcing the law becomes difficult and at times virtually impossible if there are gaps in the law, varying minimum ages, confusing and different (or the absence of) definitions of hazardous
and non-hazardous work (or of acceptable light work), or out-dated and excessively complex regulations spread through fragmented and sometimes inconsistent laws.

2. **Lack of political support**

A major obstacle to good labour inspection is the lack of political support. In some developing countries, the whole labour administration system receives less than 1% of the national budget and sometimes a mere 0.1%, with the labour inspection services, in turn, receiving only a fraction of that. But the cost to the state of poor labour protection, in the form of accidents, illnesses, absenteeism, abusive exploitation, industrial conflict and the like is often in excess of 5% of total gross domestic product. And there is considerable evidence that an effective and efficient labour inspection system can significantly reduce these losses. In many industrialised countries in the last 10 years, strong political support for labour inspection and commitment to high standards has made a measurable difference in the performance of their labour inspectorates and a reduction in economic and social loss at both national and at enterprise level. The cost to the state of child labour – in the case of children whose adult work years are shortened by disease or whose productivity is grossly curtailed due to lack of education – is almost incalculable.

The most tangible evidence of political commitment is expressed in terms of adequate pay and other conditions of employment to attract and train inspectors who are competent and independent as well as the equipment they need, such as transport and running costs, to carry out their duties.

Political support should translate into high level support for inspectors when they meet resistance and defiance. It is not unknown in some countries, for employers who are under pressure from a local inspector requiring improvements, to contact a politician to get the inspector removed from the site. Where this is allowed to take place, the morals and confidence of the inspector and his or her inspectorate suffer substantially and poor labour conditions including those involving child labour, remain as a consequence.

3. **Fragmented labour inspection**

Unfortunately in many countries there is no single inspectorate mandated to deal with all aspects of child labour. The labour inspectorate may be responsible for identifying child labour as well as assessing general employment conditions, rates of pay, overtime and the resolution of disputes between workers and employers. Specialist factory inspectors will oversee the formal sector, while occupational health and safety inspectors will give attention to the mechanical, chemical, and ergonomic hazards in the worksite. Like labour inspectors, they are usually few in number considering the need, and their duties do not bring them in contact with those children at greatest risk. Often there is a continuing division between inspectorates responsible for occupational safety and those responsible for occupational hygiene, which makes it difficult for employers to adopt a systematic, integrated, prioritised, management approach to occupational health and safety.
If labour inspectorates are fragmented and effective arrangements for cooperation and coordination are absent at the top (and/or lower levels), local labour inspectors may have no contact with those responsible for parallel or particular aspects of child labour. For example, they may have no connection with police authorities who are combating illicit activities such as prostitution, pornography or drug trafficking, nor with occupational health and safety inspectors who are investigating hazards. Without appropriate arrangements for coordination or information sharing, there can be rivalry and competition, duplication of work, and waste of scarce resources, or more often, each authority leaving the problem to each other. And yet labour inspectors with their wide responsibilities and geographical coverage could so usefully be the eyes of the authorities and other stakeholders, for instance the police, telling them of suspected illicit activities and, if unable to deal with particular health and safety issues themselves, drawing the attention of occupational health and safety inspectors to deal with particularly complex or serious cases of hazardous employment of children.

4. **Lack of clear priorities**

A key principle in labour inspection is that attention and effort should be directed at the most serious risks and the least well controlled risks. No labour inspectorate has enough inspectors to, for example, visit every workplace every year, even if that was necessary, investigate every accident and investigate every complaint.

Priorities have to be identified and choices made, It is important that these priorities and choices are seen to be fair, logical and justifiable.

Where specialist child labour monitors are employed within the inspectorate, they will need to know how their time should be divided between, for example, awareness raising, visiting schools and social services and monitoring workplaces. If as is often the case, labour inspectors include child labour monitoring with their other responsibilities, they will need to be clear how much of their time should be spent on child labour work.

If they are not clear, experience has shown that they will be pulled in all directions by interested parties wanting their “interest” to receive special attention.

5. **Lack of access to the informal economy**

One very practical problem is finding and gaining access to the type of workplaces where child labour most commonly occurs – the unregulated side of the economy. If labour inspection activities are planned solely on the basis of the official register of businesses, they will cover only a fraction of the establishments in the country, and certainly none of the informal sector. And it is not often that any significant number of child workers will be found in these officially registered businesses, at least in industrialising countries. In some countries, inspectors only visit registered, established, large or medium-sized, and in many cases, exclusively urban formal sector enterprises. Limited resources may inhibit inspectors from carrying out their advisory and enforcement functions in small businesses in the informal sector, but also tradition plays a part as well. To track down cases of child labour, inspectors
would need to get out into the community and extend their actions to new areas. They might encounter barriers in the forms of laws which bar them from small workshops with less than 5 employees or, as in the case of domestic service, “invisible” workplaces such as the child’s own or somebody else’s home, since in many countries, the law provides that when workers live and work on the same premises, the occupier’s permission is required before those premises may be entered. They may also fear that, in these unknown settings, they will be threatened and may even suffer physical violence.

In addition, there are practical problems of identifying transient workplaces in the informal sector (e.g. the street). Remote places of employment are particularly challenging and some, such as offshore fishing platforms, are almost inaccessible.

In the informal economy, complex and diffuse employment arrangements can complicate enforcement, as it is not always clear who is to be held accountable when it is not the owner of the business but middlemen who recruit and pay the children, sometimes clandestinely. Even formal sector companies may rely on complicated informal sector supply and sub-contracting chains that make it difficult to identify employer-employee relationships.

6. Cultural issues

Action against child labour may also encounter cultural obstacles. Abolishing child labour may be seen as a luxury reserved for those to whom life offers other alternatives. People may feel that, because they belong to a certain social category, ethnic class, caste or religious group that they have no other options. Child labour may not be seen as an alarming phenomenon in this society. Rather, being idle and a social parasite are greater causes for worry as they may contribute to misconduct and delinquency and are contrary to the values of solidarity within the community.

Parents may themselves have worked from a very young age, not having been to school, and may see this as part of a tradition, in which the children of poor families have always worked for their survival and that of the family. They may have no experience of families which escaped this economic constraint. Traditionally too it may have been that only some of the children were able to go to school and to succeed. Whilst awaiting the success of the eldest son or the most intelligent child, the other children had to work to contribute to his or her education.

Society may see work by children as a normal stage in the process of growing up. Hard work when young may be considered as the best form of education and preparation for community life. Even abusive conditions may be tolerated as a way of teaching children the “realities of life” in which they must learn to respect power and authority and their place in the social hierarchy.

7. Resistance from children

It is not unusual for inspectors to find child workers strongly resisting any effort to remove them from work. The work provides them with an income, however small,
and sometimes the chance to get some minimal training, which, in the face of inadequate schooling followed by unemployment, may well appear preferable. Work also gives children a sense of being grown up. They are proud that they are able to help their families and support the schooling for a younger sister or brother. Indeed child workers may not therefore see themselves as victims but as assuming responsibility and earning the respect of their family, themselves and their community. If not gifted at school, they might see themselves as inferior if it were not that work conferred a status of its own.

8. Poverty

Poverty is one of the key causes of child labour. The labour inspectorate is confronted with the reality of this face to face on the ground. Inspectors see the poverty, the economic powerlessness of the prime producers or service providers and the lack of any trade union presence in many sectors, and they are acutely aware of the economic consequences for the family of removing children from work in certain circumstances. This is very different from prosecuting a large corporation for violations of laws protecting adult workers.

There is, in fact, a vicious circle of under-development and child labour. Economic under-development is associated with low productivity which in turn results in low living standards, low incomes and inadequate food, education, training, housing, hygiene, sanitation and health care. These conditions reduce the capacity to work and contribute to fatigue, premature ageing, accidents, disease, and absenteeism. These in turn lead to reduced income, indebtedness and increased poverty. There is then increasing pressure for the employment of children which results in low school attendance rates, low levels of general and vocational education, low wages and continuing lack of adequate food, housing and health care. The consequential low capacity to work and to consume completes the circle of economic under-development. This is the cycle that inspectors see, not as economic theory, but in the lives of real people. Traditionally, inspectors have been asked to intervene at one point only in the circle without being able to influence the prior conditions or ameliorate the consequential damage. Strict enforcement alone, except where children are found in very hazardous work, is unlikely to be successful in the longer term in breaking this cycle, without additional measures that make it cost-effective for the family to release the child from work.
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