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Labour Inspection and Child Labour

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Labour Inspection and Child Labour

1. SCOPE AND NATURE OF THE PROBLEM

1.1 The scale of child labour

Some light work can be an essential part of a child's socialization and development process and a means of transmitting acquired skills from parent to child. Children might be involved in craft workshops and small-scale services, assisting their parents in ancillary tasks, acquiring skills and gradually becoming fully-fledged workers in family establishments or trades. Work of this kind is problematic, especially in regard to their schooling, but it is not what is generally meant by child labour.

The concern is for children who are being denied their childhood and their future, who work at too young an age, who work long hours for low wages, who work under conditions harmful to their health and to their physical and mental development, who are often separated from their families and who are frequently deprived of education. Such child labour is a detriment to the child and is in violation of international law and, usually, national legislation.

According to the ILO's latest estimates, about 250 million children between the ages of 5 and 14 are working full or part time in developing countries. Almost half, some 120 million work full time, every day, all year. Some 50-60 million are between 5 and 11 years old.

Available data suggests that more boys than girls are economically active, but girls who are denied educational opportunities because of their role in household tasks and sibling childcare may not be accounted for in these statistics. Working in the early childhood years may indeed have a more significant impact on girls, reinforcing gender discrimination and resulting in a denial of future options. Girls, moreover, are often engaged in work that exposes them to sexual and other forms of exploitation.

1.2 The nature of child labour

Many children work in extremely hazardous occupations and in dangerous industries such as construction, mining, quarrying and agriculture. A large number of children are trapped in virtual slavery in many parts of the world. They are bought and sold across national borders, and commercial sexual exploitation of children is on the rise. The employment of very young children and girls is a particularly alarming problem. The younger the children, the more vulnerable they are to hazards at the workplace and to economic exploitation. ILO surveys show that in some areas up to 20 per cent of child workers are under the age of 10. Many children work in the informal sector, or on the streets. The situation of girl children deserves special attention because of the nature their employment and the conditions under which they work. Much of their work is hidden from public view. For example, domestic service is a major sector of child employment. Girl children working as domestics are largely "invisible" workers, dispersed and mostly ignored. Isolated from their homes and sometimes virtually enslaved, they are frequently exposed to violence and sexual abuse.

1.3 The worst forms of child labour

The worst forms of child labour comprise:

- 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, procurement or offering of a child for prostitution, production of pornography or pornographic performances;
- The use, procurement or offering of a child for illicit activities, in particular for the production and trafficking of drugs; and
- Work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children;

1.4 Other potentially harmful work

Other potentially harmful work activities comprise:

- Work which exposes children to physical, psychological or sexual abuse;
- 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 in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; and
- Work under particularly difficult conditions, such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

Even where children do not suffer the worst forms of abuse or extremely dangerous conditions, many are allowed insufficient rest or work in cramped conditions with inadequate seating or unsuitable tools and without appropriate welfare facilities.

Finally, many millions of children who traditionally work in agriculture as part of the family unit are exposed to risk because their home is a workplace that presents a wide variety of hazards.

2. INHIBITIONS TO EFFECTIVE INSPECTION OF CHILD LABOUR

2.1 Lack of political will

Notwithstanding their obligations under international standards, a major obstacle to labour inspection in many countries is the lack of political support. This is often expressed in budget allocations; in many developing countries, the whole labour administration system receives less than 1 per cent of the national budget; sometimes, it is a mere 0.1 per cent. Labour inspection services in turn receive only a fraction of that sum. This is in stark contrast to the fact that the cost to the State of poor labour protection, resulting in accidents, illnesses, absenteeism, abusive exploitation, industrial conflict and the like, is in many countries in excess of 5 per cent of total GDP. There is substantive evidence that an effective and efficient labour inspection system can significantly reduce these losses. Strong political support for labour inspection and commitment to standards, as seen in the last ten years in many industrialized market economy countries, has made a measurable difference in the performance of their labour inspectorates, and therefore in the reduction of socio-economic losses, at both macro and micro levels.

Although labour inspectors may be convinced of the usefulness of their work, they have no control over the political and social environment in which they operate. It is hard for them to single out child labour abuse in workplaces where other labour regulations are being ignored. Labour inspectors are often frustrated because, on the one hand, they are asked to enforce the rules while, on the other hand, the underlying message is not to disrupt the economy. Lack of political will and, therefore, political support for inspectors when they meet resistance undermines their morale and confidence, as well as weakens their determination to achieve improvements.

2.2 Shortcomings in the law: The need for reform

Political will and commitment must not only translate into adequate resources; it must also provide an appropriate policy framework and legal base for labour inspection. Large volumes of outdated, fragmented and increasingly complex regulations impede labour inspection services in the execution of their duties. In some countries, the labour code alone contains several thousand articles, supplemented by even larger numbers of parallel or subsidiary regulations. This is true of child labour provisions, which are often found in several different laws and are sometimes inconsistent with each other. Inspectors may be required to master thousands of technical and legal standards in the area of safety alone.

Many countries have streamlined their regulatory framework, weeding out contradictory, overlapping or outdated regulations and standards. Others have mandated all their regulatory agencies to make the legislation more easily understandable, more relevant and more “user-friendly”. This has contributed not only to a better understanding by employers of what is required of them, and thus improved compliance with the law, but also to more effective supervision of compliance by labour inspectors.

For labour inspection to be effective, clarity in legislation and administrative regulations is very important. With inconsistencies and gaps in the law, varying minimum ages, a range of different age thresholds in different areas of child labour, confusing definitions – if any – of hazardous and non-hazardous work and standards governing labour inspection often scattered and complex, enforcement of the law becomes virtually impossible.

Strengthening inspection of children's working conditions is only possible if a clear distinction is made between "hazardous" and "non-hazardous" work, on the basis of specific guidelines that ensure a child's development needs are protected from abuse and exploitation. Using the guidelines on "hazardous work" in the new Worst Forms of Child Labour Recommendation, 1999 (No. 190), instead of prevailing broad generalizations like "dangerous to health", can help to make the legislation more workable. Establishing an age limit, in conformity with ILO Convention No. 138, below which no child may work can also help to generate uniform child labour laws, and thus facilitate inspection and the setting of standards.

Some government regulations prohibit work during school hours but do not have accompanying compulsory education requirements, or they have minimum ages for child labour and education that do not coincide. Others have compulsory education laws but still charge even low-income families school fees, or do not provide equal access to schools. Consistency between law and policy is critical for effective child labour inspection, a requirement that some countries have not yet achieved.

The commitment to eliminating child labour must be firmly established in national laws and policies. This requires the political will to eradicate child labour and place it as a priority on the national agenda. States must establish comprehensive and clear legislation on child labour and labour inspection. The complexity and limitations of the law can be a serious barrier to effective enforcement. The absence of a comprehensive and consistent set of standards at the national level for both child labour and labour inspection makes the work of the labour inspectorate extremely difficult.

2.3 Educational, attitudinal and economic factors

Even given the political will and comprehensive regulations that clearly state that child labour will not be tolerated, strict enforcement alone is unlikely to be successful. In addition to the practical problems of inspecting, discussed below, it is self-evident that where child labour has proliferated without sanctions over a long period of time there are educational and attitudinal adjustments that need to be made. Employers, parents and the children themselves have to be educated and convinced of the benefits of eliminating child labour.

It is necessary to develop a coherent and consistent policy on child labour that establishes a balance between the two categories of labour inspectors' methods of intervention, namely sanctioning and prevention. The imposition of sanctions, while aiming at compliance by employers, might unintentionally drive children into more dangerous or degrading forms of work and lead them into even less visible workplaces. Inspectors are likely to be sympathetic to parents in extreme poverty who appear to have no alternative to putting their children to work. However, preventive measures are likely to raise awareness throughout society of the desirability of eliminating child labour for one and all.

3. THE AUTHORITY OF LABOUR INSPECTORS

3.1 Defining the authority of labour inspectors

There must be an unambiguous definition of the role and functions of the labour inspectorate, as well as of its authority in relation to child labour. The legislation must establish that labour inspectors may enter and search premises, and specify sectors or areas where this power is limited. The mandate of the labour inspectorate must be established not only to guide its own action but also for the sake of other government agencies, employers', workers' organizations and NGOs that have a role to play in securing the rights of children. Children and their families must also understand the functions of the labour inspectorate to utilize it effectively.

There must be clearly established authority to enter and search business workplaces and special provisions must regulate inspectors' access to places where child domestic workers are employed or where children work in private homes. Inspectors must be protected against acts of intimidation by third parties or senior officials. Obstructing their work must incur severe penalties or sanctions. If the labour inspectors' authority includes a direct or indirect role in prosecution, they need to network with other agencies connected with law enforcement, such as the office of the state prosecutor or attorney-general, judges and the police. To do this, they will also require training on how to investigate complaints, conduct inquiries, initiate prosecutions and give evidence.

3.2 The qualities of labour inspectors

The labour inspectorate itself must be an efficient and well-trained cadre of permanent staff who have the necessary status within the public service to be able to perform their responsibilities. They need to know the law, the industrial and commercial environment and the measures that have to be taken to protect workers in general, and working children in particular. They must be able to maintain records, collect statistics, analyse data and write reports. The inspectorate must also have an infrastructure of support services for record keeping and maintaining the confidentiality of information. The impartiality and authority of labour inspectors has to be ensured through the system of recruitment, their conditions of employment and, most importantly, their expertise and conduct.

Given their protective and preventive responsibilities, labour inspectors must be able to interact with workers and employers and obtain their co-operation in upholding the law. If they have a role to play in conflict resolution, they need to have conciliation skills and considerable sensitivity. They must be trained in communication skills, as their responsibilities require that, in addition to employers and workers, they collaborate with a range of government officials and technical personnel. Networking with medical doctors, engineers and other professionals concerned with health and safety and other labour protection issues at the workplace may also be necessary.

In many developing countries there is shortage of human and material resources to carry out the functions of labour inspection. There may be genuine intentions to apply the law, but performance fails to measure up to these intentions. Posts exist but qualified inspectors cannot be found and there are insufficient funds for training and purchasing equipment.

3.3 Training inspectors in child labour issues

In order to be effective in the fight against child labour, appropriate training is critical. Positive country experiences and best practices, as well as international standards, must be used to improve the quality of training so that the inspectorate can respond to its dual responsibilities of prevention and protection. The experiences of past inspection visits should be introduced as case studies in the training process. There is an urgent need to develop skills in data collection, maintaining records, writing reports and conducting interventions in order to ensure effective monitoring. Practical exercises in this regard should be introduced into the training programme. Inspectors need to be made aware of the value of abolishing or regulating child labour as part of the broader goal of guaranteeing children's rights. Knowledge of international standards and reporting procedures must be integrated into the training of labour inspectors to help them fulfil their role in identifying the shortcomings of laws and policies.

Combating child labour requires labour inspectors to be trained in number of additional areas. In view of the sensitive nature of child labour, there is a need for training in the psychology of handling intimidated and bewildered children whose only experiences are poverty, insecurity and often violence, and who have no knowledge of their rights or the functions of labour inspectors. Employing women labour inspectors in cases involving child labour can be helpful since they are perhaps perceived as less daunting to the children and they are certainly more acceptable where only girls are employed or where religious attitudes require that women talk to girl workers and inspect their working conditions.

Labour inspectors engaged in combating child labour often have considerable sympathy for the child workers and their families and the impossible dilemmas they face. For many parents, especially single mothers and parents in situations of extreme poverty and deprivation, there is simply no alternative to putting their children to work. Working children means sustaining the family unit and there is no consideration before them other than immediate, physical survival. Appropriate training is the only way for inspectors to acquire the necessary professional understanding in such emotionally demanding situations. Clear policies and effective methods of training need to be developed on this aspect of the work.

3.4 Resources and status of inspectors

If labour inspection is to be carried out in the most effective and efficient way, inspectors' status needs to be enhanced and their working conditions improved. Labour inspectors regularly find themselves under considerable pressure not to perform their tasks properly because of the threat they represent to economic interests. Therefore, they need recognition, respect and support at the political level and from the community. This is difficult to achieve if their independence is threatened, their status low, and their salaries and working conditions inadequate. Unfortunately, this is often the case and, in such circumstance, will result in low motivation and poor performance and, at worst, in corruption and further lowering of status. The problem of attracting new entrants to the inspectorate in some countries is a measure of these problems. It is necessary to improve salaries and conditions and possibly increase the number of inspectors, for labour inspection involves far more than simply visiting workplaces.

4. MANAGING THE INSPECTION OF CHILD LABOUR

4.1 A clear policy

A labour inspectorate must have a comprehensive national enforcement policy including clear instructions on labour inspection and child labour that should, at least:

- emphasize prevention as the main aim and develop prevention-orientated methods of intervention;
- address the need to balance advisory and supervisory elements, unannounced inspections and the considered use of sanctions; and
- address the use of complementary inputs such as birth registration and school attendance records, information services, media, voluntary compliance programmes and codes of practice, credible monitoring systems and collaboration with other organizations and authorities.

The policy should, in particular, include methods aimed at informing, persuading, influencing or stimulating employers of children to comply with the law on a sustainable basis.

4.2 Strategies

Clear strategies are necessary to:

- establish priorities in situations which are most abusive or most hazardous to minors;
- define clear objectives for intervention:
 - elimination of the illegal employment of children;
 - establishment of preventive measures to improve the working conditions of young persons who are legally employed;
- extend intervention to all types of workplaces:
 - urban and rural;
 - registered and unregistered;
 - visible and invisible;
- adopt concrete measures, bearing in mind that the purpose of inspection is to ensure compliance with the law and not just to apply sanctions.

4.3 Planning and setting priorities

Provided there is both a clear policy and the political will for action, the central inspection authority can organize inspection programmes that either include child labour among other aspects to be investigated or are dedicated specifically to combating child labour.

Sometimes inspection plans are based on campaigns or special national or sectoral action programmes aimed at problems that are already serious or are expected to become serious. Some

examples are problems related to a particular substance or process used in an industry, problems related to particular categories of workers (including child workers) or problems which have been assessed as very serious throughout a given industry. Priority might be given to searching out and eliminating the worst forms of child labour prevalent in a given country.

4.4 Special inspections, investigations and follow-up visits

Besides ordinary or regular inspections, there may be special inspection visits, follow-up visits or team visits, each of which has its own set of prerequisites, methods and consequences. Inspection may deal with specific issues, such as occupational safety and health, or it may address all aspects of protection of the workers. An integrated approach is obviously more cost-effective, but it is also more demanding and requires a higher level of competency. Special visits may concern the investigation of accidents or complaints or the collection of data; they may also be ordered specifically to detect and deal with cases of illegal child labour. Often, inspections investigating illegal forms of employment are organized as team inspections, involving agents from outside the inspectorate, such as labour administrators, other government agents, representatives of labour market organizations, experts or monitors from NGOs and possibly others.

The effectiveness of inspections also depends on the rigour with which follow-up visits are undertaken. Follow-up visits must be made if an employer has been ordered to take corrective action within a specified period of time, after which he or she faces legal charges. Visits are also useful when a new regulation or policy has been introduced and the inspector wishes to ascertain whether the requisite new action has been taken. In programming inspection activities related child labour, it is important to give it priority and a specific allocation of time, or “inspector days”, to prevent the work being squeezed out by other functions.

4.5 Complaints

Inspection visits to workplaces may be initiated by the inspection service itself or prompted by complaints from the public. Normally complaints are made by those affected – the victims – or by their representatives. However, child workers or members of their families do not normally report instances of child labour (except perhaps in cases of forced labour), because their circumstances are such that they see no alternative. In fact, they may have an interest in perpetuating child labour. Some may not even know there are laws against it.

The public, as individuals or as members of an organization, could play an important role in reporting child labour. In most countries where child labour is prevalent specific abuses are rarely reported, but heightened public awareness and better training of inspectors can increase the number of complaints.

4.6 Co-ordination and co-operation with other authorities and social partners

Labour inspection alone cannot solve the problem of child labour. But it can certainly make a valuable contribution if the conditions are right. This means co-operation with the ministries of education, health, social affairs, etc., whose mission it is to protect the safety and welfare of the public in general, and of children in particular. It means co-operation with local authorities, which can help locate the establishments employing child labour and facilitate access for the labour inspectors.

It is essential to establish good working relations with employers, workers organizations and others, such as the community, who can assist labour inspectors in carrying out their duties. The importance of co-operation and co-ordination has to be emphasized because it allows the labour inspectorate to be viewed not only as reporting violations but also as working together as part of a team for the elimination of child labour. Working with government agencies, employers, workers and other concerned groups, such as NGOs, is particularly important, as these groups are often well placed to identify instances of abuse and to support children once they have been removed from employment.

Inspection procedures should specifically include co-operation with the police, social services and juvenile courts. The use of intermediaries has proved very useful in dealing with sensitive aspects of child labour. Collaboration with employers' and workers' organizations, through collective negotiation, the workers' representation machinery and other consultative arrangements, should be encouraged.

4.7 Collection of data

Inspectors should also contribute to the systematic gathering of information on the nature and extent of child labour, for instance on a sectoral basis. This data can be then used in policy development, planning, monitoring, publications, research, etc.

5. DEALING WITH INSPECTION PROBLEMS

5.1 Finding and gaining access to premises

One of the difficulties in eliminating child labour or improving the working conditions of minors is that the work often takes place in the informal sector. If labour inspection activities are planned solely on the basis of the official registers of businesses, they will cover only a fraction of the establishments in the country. It is not often that a significant number of child workers will not be found in these officially registered businesses, particularly in industrializing countries.

In some countries, only registered, large- or medium-sized and, in many cases, exclusively urban enterprises are monitored. In such cases, inertia and limited resources may inhibit inspectors from fulfilling their advisory and enforcement function in regard to unregistered enterprises, particularly small businesses in the informal sector of the economy. In these circumstances it is often difficult to track down cases of child labour. If inspectors are able to extend their action beyond registered businesses, however, they are more likely to succeed in identifying areas employing child workers.

Most incidences of child labour occur in the informal sector in both urban and rural areas, in home-based activities carried out families or, as in the case of domestic service, in "invisible" workplaces such as the child's own or someone else's home. Because of this, these places of employment are very difficult – indeed often legally impossible – to reach by inspectors. The inspectors face problems of legal intervention in such informal work situations, not to mention the practical problem of finding shifting workplaces, such as those on the street.

In most countries, the law stipulates that when workers live and work on the same premises, the occupier's permission is required before those premises may be entered. If permission is refused, there is usually little the inspector can do, despite the fact that a large number of people may be

working in unsatisfactory conditions. Often, the requirement for obtaining permission is abused for the very purpose of hiding illegal employment, including child labour, from the inspectors' intervention.

5.2 Lack of understanding of the inspector's role

When people are living in scattered private dwellings there is considerable scope for illegal activity. Often, the people whom the inspector is meant to protect do not fully understand what inspection is about, or are too frightened to co-operate. In such circumstances, the inspector must rely on tact and the power of persuasion to win their confidence, obtain information and then take the necessary remedial action.

The presence of a stranger, such as the labour inspector, might be a signal for children working illegally in agriculture and other sectors to disappear from the work site. Labour inspectors, therefore, often need to act very quickly in order to be effective. On the other hand, parents often need to have their children near them while they work, for where there is little work parents have to take advantage of whatever opportunities are available.

5.3 Lack of children's co-operation

A common problem for inspectors is the uncooperative attitude of child workers (often forced on them by their employers) and their parents, who may not be aware of the negative consequences of child labour. Child labour provides an income – however small – and sometimes the chance to get some minimal training, which could be, in some cases, more attractive than the alternative of inadequate schooling followed by unemployment. In these situations, children and their parents may not appreciate the intervention of labour inspectors. Apart from the difficulty of facing such potentially negative reactions, inspectors often also have no choice but to resort to legal or even physical force in order to fulfil their obligations. This raises the serious issue of their own safety and in turn raises the broader issue of the limitations on the proper conduct of labour inspection in dangerous and violent conditions. Where children would not co-operate with the inspectors, there has been some success using a multidisciplinary approach working with, for example, the juvenile police, the labour courts or the social services.

6. ENFORCING COMPLIANCE AND APPLYING SANCTIONS

6.1 Difficulties

For many reasons, evident in the foregoing sections, the application of sanctions for child labour is by no means straightforward. The reasons for difficulties include actually discovering illegal child labour, proving ages and the considerable expenditure in inspector time and resources to bring just one case to court. There is also the problem of dealing with the economics of the family in poverty, as well as confronting the attitudes of parents and the children themselves. The low status of inspectors in some ILO member States seriously weakens their determination to press for any enforcement measures. But such difficulties cannot be used as an excuse for inaction or half-hearted enforcement.

6.2 The essential sanctioning policy

Inspection without enforcement and enforcement without the application of effective legal sanctions will not reduce the incidence of child labour. Unless laws prohibiting the exploitation of

children are seen to be vigorously and equitably applied and enforced, well-intentioned and compliant employers will become resentful for being put at a competitive disadvantage in relation to ruthless and uncaring employers who continue to benefit from defying the law with impunity.

While legislation and political support are important, the effective programming of various types of inspection and investigation is also vital. The application of sanctions must be swift and certain when serious cases of illegal exploitation of children are discovered or when children are found to be exposed to serious mechanical, chemical or psychological risks.

Inspectors must be encouraged and supported by their hierarchy in ensuring that serious violations are taken to court and effectively prosecuted. Equally important, such cases must be widely publicized, not only as a warning to other non-compliant employers, but also as an encouragement to the co-operative ones, and as a signal the public that the exploitation of children will not be tolerated.