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International Labour Conference

71st Session 1985

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INSPECTION

General Survey by the Committee
of Experts
on the application of Conventions
and Recommendations

International Labour Office Geneva

International Labour Conference

71st Session 1985

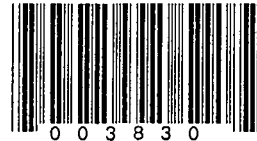
Report III

(Part 4 B)

Third Item on the Agenda:
Information and Reports on the Application
of Conventions and Recommendations

General Survey of the Reports on the Labour Inspection
Convention (No. 81) and Recommendation (No. 81),
the Labour Inspection (Mining and Transport)
Recommendation (No. 82) and the Labour Inspection
(Agriculture) Convention (No. 129)
and Recommendation (No. 133)

Report of the Committee of Experts on the Application of Conventions and
Recommendations (Articles 19, 22 and 35 of the Constitution)



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General survey: Labour inspection

Summary

	<u>Paragraphs</u>
Introduction	1-22
Chapter I: Objectives, methods and scope of labour inspection	23-58
Chapter II: The role of the labour inspectorate	59-108
Chapter III: Organisation of labour inspection services and inspection staff	109-155
Chapter IV: Powers and obligations of labour inspectors	156-203
Chapter V: Means of action available to the labour inspection services	204-252
Chapter VI: Proceedings and penalties	253-267
Chapter VII: Reports from labour inspection services	268-281
Chapter VIII: The role of employers' and workers' organisations in inspection	282-295
Chapter IX: Ratification: difficulties and prospects	296-317
Chapter X: Conclusions	318-332
Appendices	

Paragraphs

<u>INTRODUCTION</u>	1-22
Background to the survey	1-4
Standard-setting activities	5-9
Subject-matter of the instruments covered by the general survey	10-12
Other activities	13-15
Ratification of Conventions Nos. 81 and 129	16-18
Available information	19-20
Arrangement of the survey	21-22
 CHAPTER I - <u>OBJECTIVES, METHODS AND SCOPE OF LABOUR INSPECTION</u>	23-58
I. Objectives	23-27
II. Methods of application	28-30
III. Scope	31-58
A. The 1947 instruments	31-45
National practice	36-45
B. The 1969 instruments	46-58
National practice	52-58
 CHAPTER II - <u>THE ROLE OF THE LABOUR INSPECTORATE</u>	59-108
I. Functions relating to the application of legislation	60-81
A. Enforcement of legal provisions	60-73

	<u>Paragraphs</u>
(a) Legal provisions relating to conditions of work and the protection of workers	60-71
(b) Other legal provisions	72-73
B. Information and advice for employers and workers	74-78
C. Notification of the shortcomings of existing legal provisions	79-81
II. Preventive function	82-97
A. Prevention of occupational accidents and diseases	82-91
(a) Notification of occupational accidents and diseases	84-88
(b) Investigation of occupational accidents and diseases	89-91
B. Prior control of new establishments, plant, substances and processes	92-97
III. Other functions entrusted to the labour inspection services	98-108
A. Functions in the field of labour relations ..	99-103
(a) Settlement of disputes	99-102
(b) Participation in collective bargaining .	103
B. Activities of an economic nature	104-105
C. Subsidiary administrative functions	106-108
CHAPTER III - ORGANISATION OF LABOUR INSPECTION <u>SERVICES AND INSPECTION STAFF</u>	109-155
I. Organisation of labour inspection	109-126
Administrative structures	109-126

	<u>Paragraphs</u>
(a) Principle of the control of labour inspection services by a central authority	109-112
(b) National practice	113-120
(c) Collaboration between the different inspection services	121-126
II. Collaboration of the labour inspectorate with other institutions	127-135
III. Inspection staff	136-155
A. Status and conditions of service	136-148
(a) Status	136-140
(b) Conditions of service	141-148
B. Recruitment and training of inspectors	149-155
(a) Recruitment	150-153
(b) Training	154-155
CHAPTER IV - <u>POWERS AND OBLIGATIONS OF LABOUR INSPECTORS</u>	156-203
I. Inspection powers	156-191
A. Supervisory powers	157-178
(a) Right of free entry	157-168
(i) Establishments officially subject to supervision by the labour inspectorate	157-164
(ii) Other premises	165
(iii) Private home of the operator of the undertaking	166-167
(iv) Guarantee of the right of free entry	168

	<u>Paragraphs</u>
(b) The right of free inspection	169-178
(i) Interrogation	170
(ii) Inspection of documents	171-172
(iii) Enforcement of the posting of notices	173-174
(iv) Inspection of materials and substances used	175-178
B. Powers of injunction	179-191
(a) Formal notice with immediate effect	181-183
(b) Formal notice with a time-limit	184-185
(c) Appeals against inspectors' decisions ..	186-187
(d) Notifying the employer and workers' representatives	188-191
II. Obligations of inspectors	192-203
A. Detachment	193-197
B. Professional secrecy	198-200
C. Discretion as to the source of complaints ...	201-203
CHAPTER V - MEANS OF ACTION AVAILABLE TO THE <u>LABOUR INSPECTION SERVICES</u>	204-252
I. Size of the labour inspection staff	211-215
II. Composition of staff	216-226
III. Material means at the disposal of inspection services	227
A. Offices, equipment and documentation	228-232
B. Transport	233-234
IV. Inspection visits	235-252

	<u>Paragraphs</u>
CHAPTER VI - <u>PROCEEDINGS AND PENALTIES</u>	253-267
I. Choice of the action to be taken in the event of non-compliance	254-256
II. The initiation of proceedings	257-259
III. Penalties	260-267
CHAPTER VII - <u>REPORTS FROM LABOUR INSPECTION SERVICES</u> ...	268-281
I. Periodical reports from labour inspectors	268-271
II. Reports of the central inspection authority	272-281
A. Basic objectives	272-273
B. National practice	274-281
(a) Publication of reports	274-276
(b) Form of the reports	277-278
(c) Content of the annual inspection reports .	279-281
CHAPTER VIII - <u>THE ROLE OF EMPLOYERS' AND WORKERS' ORGANISATIONS IN INSPECTION</u>	282-295
I. Collaboration between the labour inspection services and employers, workers and their organisations	283-292
A. Collaboration within the undertaking	284-291
B. Collaboration outside the undertaking	292
II. Association of workers in the exercise of inspection functions	293-295
CHAPTER IX - <u>RATIFICATION: DIFFICULTIES AND PROSPECTS</u> ..	296-317
I. Difficulties	297-310
A. Convention No. 81	297-302

	<u>Paragraphs</u>
B. Convention No. 129	303-310
II. Ratification prospects	311-317
A. Conventions Nos. 81 and 129	312-313
B. Convention No. 81	314
C. Convention No. 129	315-317
CHAPTER X - <u>CONCLUSIONS</u>	318-332

APPENDICES

- I. Chart of ratifications
- II. Reports received as at 27 March 1985 on the Labour Inspection Convention, 1947 (No. 81); the Labour Inspection (Agriculture) Convention, 1969 (No. 129); the Labour Inspection Recommendation, 1947 (No. 81); the Labour Inspection (Mines and Transport) Recommendation, 1947 (No. 82); and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)
- III. Annual general report of the Labour Inspection Service

INTRODUCTION

Background to the survey

1. In accordance with article 19 of the Constitution of the International Labour Organisation, the Governing Body of the ILO decided at its 218th Session (November 1981) to request reports on the following instruments from States which have not ratified them: the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129); it also decided to ask all member States to supply reports on the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133).

2. These reports, together with those submitted in accordance with articles 22 and 35 of the Constitution by States which have ratified one or both of the two Conventions, have provided an opportunity for the Committee of Experts on the Application of Conventions and Recommendations to make a general survey of the situation, in accordance with its usual practice.

3. This is the fifth time that labour inspection has been chosen as the subject of the reports to be submitted in accordance with article 19 of the Constitution, which is an indication of the importance that the Governing Body attaches to the ILO's standards on the subject.¹ The five instruments covered by this survey were in fact classified by the Governing Body among the instruments to be promoted on a priority basis in its in-depth review of international labour standards in 1979.² However advanced it may be, a country's labour legislation is liable to remain a dead letter if there is no system of labour inspection to enforce it. This is particularly important in times of economic recession when the improvement of working conditions tends to be pushed into the background.

¹ The Committee's previous general surveys in 1951, 1957, 1966 and 1969 (on 17 selected Conventions) did not deal with labour inspection in agriculture.

² "Final Report of the Working Party on International Labour Standards", in ILO: Official Bulletin, 1979, Volume LXII, Series A, special issue, pp. 24-30.

4. Since its creation in 1919, the International Labour Organisation has devoted a great deal of attention to the question of labour inspection, and it may be useful here to recall briefly the main principles involved.

Standard-setting activities

5. As long ago as 1919, Part XIII of the Versailles Peace Treaty which set up the ILO included labour inspection among the general principles cited in Article 427, point 9, which states: "Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed". At its First Session in 1919, the Conference accordingly adopted the Labour Inspection (Health Services) Recommendation (No. 5) advocating a system of inspection to supervise the health of workers. Four years later, the sole item on the Conference agenda was the establishment of general principles for labour inspection; the discussions led to the adoption of the Labour Inspection Recommendation, 1923 (No. 20), which in many ways paved the way for the future Convention No. 81.

6. Other Recommendations concerning labour inspection were adopted subsequently, including the Labour Inspection (Seamen) Recommendation, 1926 (No. 28), and the Inspection (Building) Recommendation, 1937 (No. 54). The need for a Convention on labour inspection, however, was increasingly felt, as only a text with mandatory effect could make the ILO's standard-setting activities in this field properly effective.

7. The question of labour inspection was placed on the agenda of the 26th Session of the Conference (1940) but, because of the war, it could not be taken up again until 1947, when the Conference adopted the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection Recommendation, 1947 (No. 81), and the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82). At the same session it adopted the Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85).¹

¹ The former non-metropolitan territories to which Convention No. 85 was applicable undertook, when they became Members of the ILO, to continue to apply this Convention until they were able to ratify Convention No. 81. At present, the following States that have not ratified Convention No. 81 are still bound by Convention No. 85: Benin, Fiji, Ivory Coast, Papua New Guinea, Somalia, United Republic of Tanzania (Zanzibar), Togo, and Trinidad and Tobago.

8. Convention No. 81 relates only to industry and commerce, but not agriculture. In its 1966 general survey, the Committee expressed the view that "it would be highly desirable for the ILO to examine the possibility of adopting an instrument on labour inspection in agriculture which would supplement Convention No. 81".¹ At the 50th Session (1966) of the Conference, the Committee on the Application of Conventions and Recommendations regretted the limited scope of Convention No.81, particularly in view of the fact that a large part of the world's population is engaged in agriculture, and because of the increasing mechanisation of the sector. It therefore strongly emphasised the importance of including the question of labour inspection in agriculture in the agenda of a forthcoming session of the Conference. The decision was taken a few months later by the Governing Body at its 167th Session (November 1966), as a result of which the Conference adopted the Labour Inspection (Agriculture) Convention (No. 129) and Recommendation (No. 133) in 1969.

9. In addition to the texts dealing specifically with labour inspection, many Conventions contain standard provisions providing for the establishment of an appropriate system of inspection to ensure their implementation. Lastly, ILO Conferences and committees have adopted a wide variety of resolutions and conclusions on labour inspection. At its 70th Session (1984), for example, the Conference adopted conclusions concerning future action in the field of working conditions and environment, which stressed that "The improvement of working conditions and environment requires efficient labour administration and, in particular, effective labour inspection. Systems of labour inspection should be strengthened in order to improve their capacity to secure the enforcement of legal provisions, supply technical information and advice and identify new needs for action".

Subject-matter of the instruments covered by the general survey

10. Convention No. 81 provides for a system of labour inspection in industrial workplaces and, optionally, in mining, transport and commercial undertakings. Its provisions cover the organisation and operation of inspection services, staffing, training and working conditions, equipment, inspection visits and reports on inspection activities. Other provisions deal with the role of labour inspectors and their powers and obligations.

¹ ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 50th Session, Geneva, 1966, Report III (Part IV): Labour Inspection in Industry, Commerce, and Mining and Transport Undertakings, para. 235 (referred to below as "1966 General Survey on Labour Inspection"). It should nevertheless be noted that Part XI of the Plantations Convention, 1958 (No. 110) reproduces the majority of the provisions of Convention No. 81.

11. Convention No. 81 is supplemented by Recommendation No. 81, which contains further provisions concerning the preventive duties of labour inspectorates and their permanent educational role vis-à-vis employers and workers. Recommendation No. 82 provides that appropriate systems of labour inspection should be applied to mining and transport undertakings as rapidly as possible.

12. Convention No. 129 and Recommendation No. 133 are based largely on the standards established for industry and commerce in 1947, together with a certain number of innovations in the light of later experience. One of these innovations is that the Convention provides for the optional extension of the system of inspection to several new categories of workers or non-salaried persons.¹ The Convention also authorises the inclusion of officials or representatives of occupational organisations in the system of labour inspection, under certain conditions. Other innovations include the strengthening of collaboration with employers and workers during inspection visits, the association of the labour inspection services with any inquiry on the spot into the causes of the most serious occupational accidents or occupational diseases, and the preventive control of new plant, new materials or substances or new processing methods liable to constitute a threat to health or safety. Recommendation No. 133, in turn, adds certain details as to the operation of the inspectorate, particularly as regards the training of inspectors, preventive control and annual inspection reports.

Other activities

13. The ILO has evolved a programme to help governments to strengthen their inspection services and train the necessary personnel. This has taken various forms, such as sending experts to countries that wish to reorganise or improve their inspection services, the preparation of draft legislation or regulations on the subject, the publication of monographs and manuals on inspection procedures, and the training of inspectors by means of national and regional courses, seminars and workshops. Reference should also be made to the

¹ Such as tenants, share-croppers and similar categories of workers, members of a co-operative, members of the family of the operator of the undertaking (Article 5, paragraph 1, of Convention No. 129).

activities of the regional labour administration centres¹ set up with the assistance of the ILO in Africa, Asia, Latin America and the Caribbean, which serve as the main link for the implementation of the Organisation's inspection programme in the regions.

14. The importance of labour inspection in technical co-operation activities was reaffirmed in the International Programme for the Improvement of Working Conditions and Environment (PIACT) which adopts a global and multidisciplinary approach to the problems posed by the improvement of working conditions and the working environment. In this context, a new method of examining and improving labour inspection systems has been introduced. A tripartite team composed of three specialists visits countries at the invitation of the government to evaluate the effectiveness of their labour inspection systems and, specifically, "to evaluate objectively the organisation and functioning of labour inspection, the obstacles which inspection faces in performing its mission, practices concerning co-operation with employers' and workers' organisations, the procedures for starting legal action, the level of penal sanctions, the status of inspectors, their training, etc.". Missions of this type have been sent to Belgium (1977), Denmark (1979), France (1981), Federal Republic of Germany (1983), Italy (1982), Norway (1979) and the United Kingdom (1980-81). In view of the interest shown by the parties concerned, the ILO programme has decided to send similar missions to developing countries, and one has already visited Peru (1984).

15. Finally, the ILO has for some time been organising tripartite regional workshops on the effectiveness of labour inspection in order to assess the present state of inspection services, and especially the main problems and possible shortcomings that may be preventing them from functioning properly. Workshops along these lines have been held in the French- and English-speaking countries of Africa.

¹ CRADAT - African Regional Labour Administration Centre (for French-speaking African countries); ARLAC - African Regional Labour Administration Centre (for English-speaking African countries); ARPLA - Asian and Pacific Project for Labour Administration; CIAT - Inter-American Centre for Labour Administration (for Latin American countries); CLAC - Caribbean Labour Administration Centre.

Ratification of Conventions Nos. 81 and 129

16. At the time of preparing this survey, Convention No. 81, which came into force on 7 April 1950, has been ratified by 105 States,¹ 42 of them since the 1966 survey. Eighteen States have excluded Part II concerning labour inspection in commerce from their acceptance of the Convention.

17. Convention No. 129 came into force on 19 January 1972 and, by March 1985, had been ratified by 23 States.

18. Detailed information on the States bound by these instruments appear in Appendix I of this survey.

Available information

19. One hundred and forty countries, 132 States and 8 non-metropolitan territories have submitted reports on Conventions Nos. 81 and 129 and on Recommendations Nos. 81, 82 and 133, in accordance with article 19 of the Constitution, and on the two Conventions, where ratified, in accordance with article 22. Appendix II to this survey contains details of the countries that have sent reports. The Committee has also taken into account the comments of employers' and workers' organisations to which the government reports were communicated, in accordance with article 23, paragraph 2, of the Constitution.²

¹ One State, Brazil, denounced Convention No. 81 on 5 April 1971. In the report which the Brazilian Government submitted under article 19 of the Constitution, it states that the difficulties that had been encountered in applying the Convention - and specifically Article 6 (staff status) and Article 11, paragraph 2 (reimbursement of travelling and incidental expenses) - have now been overcome and that the Under-Secretariat for Labour Protection has recommended its ratification.

² The following organisations sent comments on the reports submitted in accordance with article 19 of the Constitution: Austria: Austrian Congress of Chambers of Labour, Federal Chamber of the Economy, Austrian Conference of Presidents of Agricultural Chambers; Brazil: National Confederation of Industry; Chad: National Union of Workers of Chad (UNATRAT); Finland: Finnish Employers' Confederation (STK); Central Organisation of Finnish Trade Unions (SAK); Greece: Pan-Hellenic Confederation of Unions of Agricultural Cooperatives (PASEGES); Japan: General Council of Trade Unions of Japan

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The comments addressed directly to the Office by these organisations were transmitted to the governments concerned for their observations. In some cases the comments were received by the Office and transmitted to governments at a date too close to the Committee's session for it to take account of any observations the governments may have made.

20. The nature and scope of the information supplied varies considerably from country to country. Some reports are very extensive while others offer a somewhat incomplete picture of how the instruments are implemented, and particularly of what the situation really is in practice. This may well be because statistics and other reliable data are not always available, particularly in countries where the system of inspection is proving difficult to operate. Moreover, the government reports do not always deal with all the instruments covered by the survey and, as far as Recommendations Nos. 81 and 133 are concerned, some governments merely referred to their reports submitted on Conventions Nos. 81 and 129 in accordance with article 22 of the Constitution. Consequently, in order to provide as accurate a picture as possible of how the principles set out in these instruments are being implemented, the Committee has as usual endeavoured to supplement the information sent by the governments by consulting other official sources, such as the annual reports on the activities of the inspection services, the ILO's technical assistance reports and the reports of the various tripartite missions set up to evaluate the effectiveness of labour inspection.

Arrangement of the survey

21. Following the introduction, Chapter I of the survey deals with the objectives, methods of application and scope of the instruments. Chapter II covers the role of the labour inspectorate and describes its various functions. Chapter III examines the organisation of the inspection services and the requirements that the inspectorate staff must meet, while Chapter IV deals with the powers and obligations of labour inspectors. Chapter V, which considers the means of action of inspection services, is particularly important, dealing as it does with how the inspectorate functions in practice; the Committee devotes particular attention to the inspectorates' staff, their material resources and the inspection visits in undertakings.

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(SOHYO) and Japanese Confederation of Labour (DOMEI); Portugal: Confederation of the Portuguese Industry, Confederation of the Portuguese Commerce and General Confederation of Portuguese Workers - National Inter-Union; United Kingdom: Trades Union Congress (TUC). Some of these comments and the observations of governments made in reply will be examined by the Committee during the examination of the reports due under article 22 of the ILO Constitution.

Chapter VI discusses the imposition of penalties on persons infringing labour legislation and examines the inspection services' relations with the judicial authorities. Labour inspectorate reports are dealt with in Chapter VII and the role of employers' and workers' organisations in labour inspection in Chapter VIII. Chapter IX covers the difficulties and problems identified regarding ratification. A final chapter contains the conclusions that the Committee has drawn from its survey.

22. As in the past, the Committee refers to the situation in individual countries by means of footnotes. In view of the large number of countries surveyed, these notes, which are intended to throw light on the scope and implementation of the various instruments, contain only the most representative examples and do not claim to be comprehensive.

CHAPTER I

OBJECTIVES, METHODS AND SCOPE OF LABOUR INSPECTION

I. Objectives

23. Articles 1 and 22 of the Labour Inspection Convention, 1947 (No. 81), lay down the basic principle that each State for which the Convention is in force must maintain a system of labour inspection in industrial and commercial workplaces. Acceptance of Part II relating to commerce, however, is optional. Article 3 of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), specifies a similar obligation in agriculture.

24. The international community is unanimous in recognising the importance of labour inspection. In the vast majority of countries steps have accordingly been taken to establish and maintain a system of labour inspection. There are, however, a certain number of exceptions to this general rule, mostly in the agricultural sector.¹

¹ For example, Burma; Greece (the Government states that there is no inspection system in agriculture); Jordan (the Government states that subject to certain exceptions, agricultural workers are not covered by the labour inspection system, since they do not come under the Labour Code); Nepal (according to information supplied by the Government, labour inspection in agriculture does not come under existing labour laws); Rwanda (according to the Government no legislation has yet been adopted guaranteeing protection for agricultural workers but a draft revision of the Labour Code provides explicitly for labour legislation to be extended to them; in the meantime, the competence of the inspectors in practice extends to the agricultural sector); Singapore (the Government states that, because of the urbanised nature of the country's economy, the instruments concerning labour inspection in agriculture are not relevant); Turkey (the Government states that,

(Footnote continued on next page)

25. In this regard, the traditional and seasonal nature of agriculture and the special type of relationship between landowners and agricultural workers have sometimes been cited as factors militating against the introduction of an inspection system in agriculture, which is mainly governed by local customs.¹

26. The Committee is quite aware of the rather special nature of the agricultural sector. Yet, very often, it is precisely on small farms employing frequently untrained seasonal workers that the employment injury rate is particularly high during the harvest period. This is certainly largely attributable to lack of training and know-how. Moreover, the agricultural sector is changing rapidly and nowadays employs new techniques that expose workers increasingly to the risks that are inherent in mechanisation and in the increasingly extensive use of chemical substances such as fertilisers, insecticides, pesticides, etc.

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as the law on work in agriculture and forestry has not yet come into force, there is no labour inspection system in agriculture; however, the inspectors of the Ministry of Agriculture, Forestry and Village Affairs supervise some of the agricultural undertakings that are governed by collective agreements; according to the Government, this system of inspection is not satisfactory); non-metropolitan territories: United Kingdom (Hong Kong) (the Government states that, in Hong Kong's small agricultural sector, enforcement of the Employment Ordinance, which applies in principle to all economic sectors, occurs only in response to complaints; according to government information, only one of the 901 complaints received between 1980 and 1983 concerned the agricultural sector). See also the following note.

¹ For example, Botswana (the Government states that most agricultural activity is subsistence in nature and that the rate of employment is fairly low in this sector, which is regarded as a traditional sector governed by practice and custom; there is therefore little scope for labour inspection, although legislation is currently being drawn up to ensure that certain labour standards are respected); Pakistan (the Government states that economic relations between workers and owners are based on local customs and tradition and that agricultural activities, which are seasonal by nature, cannot therefore be encompassed and defined as required by the Convention).

27. In some countries, the legislation excludes agricultural workers from its scope, save for a few exceptions mostly relating to agro-industrial activities.¹ Although the existing general inspection system is supposed to cover such activities, it should not be looked upon as an inspection system applicable to agriculture in the sense of Article 3 of Convention No. 129 but rather as an extension of the inspection system applicable to industry and commerce.

II. Methods of application

28. By their very nature, labour inspection services require an institutional framework based on laws or regulations. In a great many countries, the organisation of the labour inspectorate is based on laws² designed to protect workers, whether the text be of a general nature³ or specific to certain issues or branches of the economy. Generally speaking, these laws devote a chapter to the labour inspection service or else contain provisions for their enforcement. Very often they are supplemented by more detailed texts governing specific aspects of the inspectorate, such as its staff, though in many countries this too is governed by provisions that are applicable to public

¹ For example, Bahrain (Act respecting employment in the private sector, No. 23, 1976, s. 2); Saudi Arabia (Labour Code, s. 3).

² For example, Bahrain, Chad, Colombia, Comoros, Congo, Denmark, Libyan Arab Jamahiriya, Mali, Norway, Romania, Senegal, Sweden, Syrian Arab Republic.

³ This is the case in many member countries of the British Commonwealth where each text contains its own enforcement provisions. For example, New Zealand (Bush Workers Act, 1945; Machinery Act, 1950; Construction Act, 1952; Equal Pay Act, 1972; Industrial Relations Act, 1973; Agricultural Workers Act, 1977; Maternity Leave and Employment Protection Act, 1980; Wages Protection Act, 1983; Apprenticeship Act, 1983, etc.). In the United Kingdom, however, the Health and Safety at Work Act was adopted in 1974, which applies to all branches of activity.

servants in general. Other countries have specific basic regulations for the operation of the inspection services.

29. As the Committee observed in its previous general survey on the subject, the existence of laws or regulations does not in itself constitute a full guarantee of a properly functioning labour inspection system.² Labour inspection has a highly practical role to play and its effectiveness depends very largely on the efficiency of its staff. Consequently, in addition to the existence of texts laying down the institutional framework of the service, the competent authority should ensure the proper running of the inspectorate by drawing up guide-lines to help the inspectors in their work. In many countries these guide-lines are issued in the form of directives, circulars or instructions, and here the Committee wishes to stress the usefulness of providing labour inspectors with some sort of guide or handbook describing the essential features of their work and providing practical information to make it easier.³ Handbooks of this kind have in fact been issued in some countries.

30. Finally, for inspection systems to be able to operate efficiently, they must have the necessary staff and material facilities. This implies an awareness by public authorities at the highest level who should ensure that the necessary resources are granted. The importance of this aspect - which is dealt with in more detail in Chapter V on the means of action available to the labour inspection services - should be stressed already at this stage.

¹ For example, Algeria (Ordinance No. 75-33 of 1975 respecting the powers of the Labour and Social Affairs Inspectorate); Brazil (Decree No. 55841 of 1965 regulating the labour inspection system); Cuba (Decree No. 4 of 1977 regulating the national labour inspection system); Israel (Labour Inspection Organisation Act, 1954); Luxembourg (Labour and Mines Inspectorate Organisation Act, 1974); Suriname (Decree E-35 of 1983 on Labour Inspection); Uruguay (Decree No. 680 of 1977 to regulate implementation of Conventions Nos. 81 and 129).

² 1966 General Survey on Labour Inspection, paras. 32 and 33.

³ For example, Egypt, Paraguay.

III. Scope

A. The 1947 instruments

31. Article 2, paragraph 1, of Convention No. 81 stipulates that "the system of labour inspection in industrial workplaces shall apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors". A similar provision occurs in Article 23 which deals with commercial workplaces.

32. Neither Article 2 nor Article 23 of Convention No. 81 defines the meaning of the terms "industrial workplaces" and "commercial workplaces". The Convention's scope is determined indirectly by reference to the legal provisions that are enforceable by labour inspectors, which allows each State the discretion to determine which workplaces are to be covered by the inspectorate. On this point Convention No. 81 is particularly flexible, a feature which at the time was felt to be necessary because of the variety of national provisions on the subject. When it adopted the instrument in 1947, however, the Conference - aware of the opportunity that States were offered of reducing the scope of the Convention very considerably - adopted a resolution urging governments "to apply to all workers employed in industrial and commercial undertakings the legal provisions for the protection of workers which are enforceable by labour inspectors".¹ In a sense, the Conference responded to this preoccupation 22 years later when it adopted Convention No. 129, the scope of which was defined so as to cover the widest possible range of undertakings.²

33. The fact that certain legislation was relatively restrictive in its scope did not therefore necessarily constitute an obstacle to the ratification of Convention No. 81, contrary to the apparent impression of one government.

¹ See ILO: Record of Proceedings, International Labour Conference, 30th Session, Geneva, 1947, p. 587.

² See below, paras. 47 and 49.

³ Burma (the Government points out that the legislation on the subject is currently being gradually extended).

34. The scope of Convention No. 81 is made even more flexible by two general powers of exclusion. As already noted, acceptance of Part II of the Convention, which deals with labour inspection in commerce, is optional (Article 25, paragraph 1). In addition, mining and transport undertakings may also be exempted from the application of the Convention by national laws or regulations (Article 2, paragraph 2). States therefore have every opportunity to exclude both commercial workers and employees in mining and transport undertakings from the protection afforded by the Convention, though of course if they do not opt to do so the Convention must be applied to these undertakings in the same way as it is to other industrial workplaces.

35. The fact that the terms "industrial workplaces" and "commercial workplaces" are not defined is liable to pose problems, especially when a State decides not to accept Part II of the Convention applying to commerce. In certain borderline cases there may be some doubt as to whether an undertaking or part of an undertaking or one of its services comes under Part I or Part II.¹ This is why Article 26 of the Convention stipulates that in such cases the question shall be settled by the competent authority. In this connection, the Committee deems it desirable that the term industrial and commercial workplaces be given the widest interpretation so that no undertaking in these sectors should be exempt from inspection.

National practice

36. The question of the scope of labour inspection services in industry and commerce has to be looked at from the standpoint of the sectors themselves, on the one hand, and from that of the workplaces and workers covered, on the other.

37. On the first point, judging from information sent by governments, it is fair to say that in the vast majority of cases inspection services exist both for industry and for commerce. Although 18 of the 105 countries ratifying Convention No. 81 have excluded Part II on commerce from their acceptance, in accordance with

¹ This might occur, for example, in the case of certain commercial undertakings with a repairs department handling after-sales service.

Article 25 of the Convention, this need not imply that there is no system of supervision of commercial workplaces in those countries. In practice, available information indicates that in most cases the commercial sector is also covered to a varying extent by a system of inspection. This being so, the Committee wonders whether it might not be useful for countries to reconsider the possibility of extending acceptance of the Convention to Part II concerning labour inspection in commerce, as provided for in Article 25, paragraph 3, of the Convention, especially where it was ratified many¹ years ago. Since the last general survey, one country has done so.

38. Apart from the commercial sector, Article 2, paragraph 2, of the Convention also allows mining and transport undertakings to be exempted. It is an option which hardly any States ratifying the Convention have taken up, and available information on non-ratifying countries likewise suggests that such undertakings are not normally excluded from the competence of the national inspection systems. One government, however, has indicated that no system of inspection exists for the transport sector.²

39. In some countries, mining and transport undertakings are covered by a general system of inspection or at least a system applicable to industry;³ in others there is a specific supervisory

¹ Switzerland (the Government accepted Part II of the Convention in 1971).

² Burma.

³ For example, Bolivia, Cameroon, China, Colombia (the Government states however that the transportation sector is not sufficiently protected and that supervision is done only on the basis of complaints); Denmark (subject to certain exceptions); Luxembourg, Madagascar, Mauritius, Norway, Panama, Sweden, Tunisia (except for sea and air transport).

procedure,¹ though for certain activities the system may be mixed.² In certain countries, mining and transport are subject both to a general and to a specialised inspection system.³

40. The scope of inspections systems as regards the workplaces and workers they cover depends generally on the coverage of the legislation that they are required to enforce.

41. In countries with generally applicable legislation (Labour Code, general law on working conditions, law on the working environment, Labour Protection Act, etc.), the scope is usually defined in one of two ways.

42. The scope of the legislation may be expressed in terms of the employment relationship: in this case, the law applies to workers in an employment relationship⁴ or, in certain countries, to work performed

¹ For example, Austria, Belgium (mines), Cyprus (mines), Czechoslovakia, France, Hungary (mines), Italy, Kenya (mines), Switzerland (public transport).

² In several African countries such as the Ivory Coast, Mali and Rwanda, for example, supervision of occupational safety in mines is the responsibility of a special technical department working in collaboration with the labour inspectorate. A similar arrangement exists in certain countries, such as Italy in respect of working hours in the transport sector.

³ For example, Poland (mines), USSR.

⁴ For example, Bahamas (Fair Labour Standards Act, s. 3); Cameroon (Labour Code, s. 1); Chad (Labour Code, s. 2); Colombia (Labour Code, s. 1); Egypt (Labour Code, s. 1); Gabon (Labour Code, s. 1); Somalia (Labour Code, s. 1); Syrian Arab Republic (Labour Code, s. 2); United States (Occupational Safety and Health Act, ss. 3 and 4).

for an employer.¹ Alternatively, the scope of the legislation may be expressed in terms of "undertakings", sometimes with exceptions.²

43. Whatever formula is adopted, the scope of national laws and regulations is defined in general terms and the terms of reference of inspection services consequently tend to be very broad, subject to exceptions in conformity with the Convention, whose own scope is flexible. In a number of countries, moreover, the general legislation is not applicable to workers in the public sector, whose working conditions are governed by specific provisions.³ Although the

¹ For example, Denmark (Working Environment Act, s. 2.1); however, certain occupational safety and health provisions, for instance, also apply to work not performed for an employer); Sweden (Working Environment Act, Ch. I, s. 1; as for Denmark).

² For example, France (Labour Code, s. L-231-1: the provisions governing occupational safety and health and working conditions apply to industrial, commercial and agricultural undertakings and to the branches of such undertakings, irrespective of their nature, whether public or private; Hungary (Decree No. 47 of 1979, ss. 9 and 10); Switzerland (Labour Act, s. 1; with certain exceptions the Act applies to all public and private undertakings, and more particularly to undertakings engaged in industry, handicrafts, commerce and transport, to insurance institutions, banks, hotels, restaurants, cafés, clinics and hospitals and to the performance of other services, and also to forestry undertakings operating in public forests); Tunisia (Labour Code, s. 1; the Code applies to undertakings engaged in industry, commerce and agriculture and to the branches of such undertakings, irrespective of their nature, whether public or private).

³ For example, Bahrain (Act respecting employment in the private sector, 1976, s. 2.1: does not apply to officials and employees of the Government and of autonomous public bodies that are covered by regulations governing the public service and military service); Egypt (Labour Code, s. 3: except for Title V concerning occupational safety and health, does not apply to workers employed by the Government, local authorities, public organisations and companies in the public sector); Madagascar (Labour Code, s. 1.1: not applicable to persons who are subject to or governed by the special rules laid down for public services and establishments).

information supplied by governments is not always very clear, the inspection of public establishments in such cases would appear to be the responsibility not of the general labour inspectorate but of a special body. In several countries, this is also true of some military establishments or parts of such establishments employing civilian manpower where, for national defence reasons, working conditions are inspected by specially appointed officials. But even where public industrial or commercial undertakings are not formally excluded from the scope of the labour inspection system, the available information tends to show that in certain countries the supervision of these undertakings encounters difficulties in practice.

44. In many countries the national laws and regulations apply to specific sectors. Legislation on the British model, for example, distinguishes between "factories" and other sectors such as commerce and offices. These laws are often supplemented by more general legislation such as employment acts or other acts covering specific aspects of social protection. The scope and powers of the labour inspectorate therefore depends on a whole set of laws and regulations and varies significantly from country to country and within a given country.²

45. Finally, there are countries where the scope of the labour inspectorate is determined by legislation governing its organisation

¹ For example, Cameroon (Labour Code, s. 117.1); Congo (Labour Code, s. 158); Ivory Coast (Labour Code, s. 132).

² In Barbados, for example, the 1982 Factories Act uses a very broad definition of factories and can even cover premises where machinery or equipment is being used (whether mechanically or otherwise) for agricultural purposes. In Nepal, on the other hand, the Factories and Factory Workers' Act applies only to factories employing more than ten persons.

and operation.¹ As a rule it is defined in general terms, though certain undertakings or specific sectors may be excluded - for example, those subject to a special system of inspection.

B. The 1969 instruments

46. The scope of labour inspection services in agriculture must be examined, on the one hand, from the standpoint of the subject-matter of their work, viz. the workplaces and workers covered, and, on the other, from the legal framework of their work, viz. the enforceable legal provisions. The question of the scope of labour inspection in agriculture is in fact not the same as for Convention No. 81, whose scope, as seen above, is determined not in a uniform manner but by national legislation.

47. As regards the workplaces and workers covered, Article 4 of Convention No. 129 stipulates that "the system of labour inspection in agriculture shall apply to agricultural undertakings in which work employees or apprentices, however they may be remunerated and whatever the type, form or duration of their contract". This provision, which is couched in very general terms, is directed at all agricultural establishments irrespective of their legal status. Public agricultural undertakings are therefore covered by the Convention along with other

¹ For example, Austria (1974 Labour Inspection Act, s. 1: the scope of the inspection services extends to all establishments whatever their nature, except for establishments subject to supervision by special inspection services (agricultural establishments, mines, transport) and certain public institutions or administrations); Costa Rica (Decree No. 42 of 1949 regulating the labour inspectorate, s. 7: all workers who offer their services and all undertakings which carry out their activities on the national territory are subject to the general labour inspectorate, except as otherwise provided for by the Constitution or by legislation); Cuba (Decree No. 4 of 1977 regulating the national labour inspection system, s. 2: undertakings and units of the civilian state sector listed in the state budget, co-operatives and private sector work centres are subject to supervision by the labour inspectorate); Luxembourg (Labour and Mines Inspectorate Organisation Act, 1974, s. 3: the labour inspection system applies to all undertakings or establishments employing workers in any remunerated capacity whatsoever, except for public servants); Poland (1981 State Labour Inspection Act, s. 11: all establishments are covered by the state inspection system).

undertakings; so too are co-operatives in so far as they employ employees or apprentices. The concept of "employees" must be applied in its broadest sense, covering both permanently employed workers and short-term employees such as casual or seasonal workers, whether they are remunerated on a time or piece-work basis. Apprentices too are covered by the Convention whether or not they are considered as employees by national legislation.

48. In many countries salaried employees are only a small proportion of the agricultural labour force. Article 5 of Convention No. 129 accordingly provides for the optional extension of the inspection system to the following categories of persons working in agricultural undertakings: (a) tenants who do not engage outside help, share-croppers and similar categories of agricultural workers; (b) persons participating in a collective economic enterprise, such as members of a co-operative; (c) members of the family of the operator of the undertaking as defined by national laws or regulations.

49. The Convention likewise defines the agricultural sector so as to cover the widest possible range of activities. Article 1, paragraph 1, of the Convention defines the term "agricultural undertaking" as meaning not only undertakings and parts of undertakings engaged in cultivation, animal husbandry, forestry, horticulture, the primary processing of agricultural products by the operator of the holding but also "any other form of agricultural activity".

50. Certain activities may fall under both agriculture and trade or industry, for example when an agricultural undertaking engages in processing operations. Such cases as these demand a degree of flexibility. Article 1, paragraph 2, of the Convention therefore provides that, "where necessary, the competent authority shall ... define the line which separates agriculture from industry and commerce". So as to ensure that the discretion left to the government is not exercised in a manner contrary to the objectives of the Convention, two conditions must be fulfilled. One is that the employers' and workers' organisations must first be consulted, and the other that the line that separates agriculture from industry and commerce must be defined "in such a manner as not to exclude any agricultural undertaking from the national system of labour inspection".

¹ On this point see ILO: Labour Inspection in Agriculture, Report IV(2), International Labour Conference, 53rd Session, Geneva, 1969, p. 11.

51. As the areas of labour law that come within its purview also have to be defined, Article 6, paragraph 1(a), of Convention No. 129, whose wording is almost the same as that of Article 3, paragraph 1(a), of Convention No. 81,¹ provides that the functions of the system of labour inspection in agriculture are to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work "in so far as such provisions are enforceable by labour inspectors". The scope of the inspection services in this respect is thus defined in a very flexible way.

National practice

52. In many countries the inspectorate covers all branches of activity, including agriculture, in which case the term "agricultural undertaking" does not need to be defined.

53. The agricultural sector is often defined in sufficiently broad terms to cover all the activities listed in Article 1, paragraph 1, of Convention No. 129, and in many cases the relevant laws and regulations include under the general heading of agriculture not only strictly agricultural activities - i.e. the direct exploitation of vegetable and animal resources - but also the primary processing of agricultural products by the operator of a holding.² In one country the law extends the concept of "agricultural undertaking" even to ancillary activities involving the manufacture and maintenance of agricultural equipment used in the principal undertaking.³

¹ See para. 60 below.

² For example, Austria (1948 Agricultural Labour Act, s. 5); France (Rural Labour Code, s. 144: subsidiary establishments are also considered as coming under the heading of agriculture if the main activity is that of the principal agricultural undertaking); Netherlands (Labour Act, s. 6bis); Romania (Labour Code, ss. 32 to 36); Syrian Arab Republic (Agricultural Labour Code, s. 3(a)).

³ Austria (1948 Agricultural Labour Act, s. 5).

However, national laws and regulations sometimes carry a more restrictive definition of agriculture that does not extend to all the activities listed in Article 1 of the Convention, especially the primary processing of agricultural products.¹ In so far as these activities come under another sector of the economy for which there is a system of supervision, they do not however escape labour inspection altogether.

54. Very often, labour legislation, and consequently inspection services, in agriculture, would cover all undertakings employing workers.² Certain governments have nevertheless indicated some difficulty with the scope of the Convention.

55. One government states that the competence of its labour inspectorate cannot extend to the agricultural undertakings of a Land, municipality or federation of municipalities until express provision is made in federal legislation.³

56. Another government has stated that, largely because of the unorganised nature of the agricultural labour force, the relevant legislation is limited in scope. Apart from a few general laws governing certain specific aspects of social protection, such as the laws on minimum wages and equal remuneration, the federal legislation extends only to work in plantations and the primary processing of

¹ New Zealand (the Government states that the Agricultural Workers Act does not cover the primary processing of agricultural products in certain circumstances).

² For example, Costa Rica (Decree No. 42 of 1949 regulating the labour inspectorate, ss. 7 and 8); Cuba (Decree No. 4 of 1977 regulating the national labour inspection system, s.2); Czechoslovakia (Act No. 174 of 1968 respecting the technical supervision of occupational safety by the State, s. 3); Egypt (Labour Code, s. 1); Ecuador (Labour Code, s. 1); Finland (Act to provide for the supervision of labour protection, s. 4); Luxembourg (1974 Labour and Mines Inspectorate Organisation Act, s. 3); Madagascar (Labour Code, ss. 1 and 109); Mongolia (Labour Code, s. 1); Morocco (Dahir No. 1-72-219 of 1973 to determine the conditions of employment and remuneration of agricultural workers, s. 44); Poland (State Labour Inspection Act of 1981, s. 11); Romania (Labour Protection Act No. 5 of 1965, ss. 3 and 17: the state inspection service covers agricultural undertakings whether in the state sector or the co-operative sector).

³ Austria.

agricultural products.¹ In so far as all the undertakings covered by this legislation, and specifically the Plantations Labour Act, are subject to supervision by the labour inspectorate, this situation does not seem to be incompatible with the Convention.

57. The Committee wishes to recall that the prime objective of Convention No. 129 is to guarantee that, where laws and regulations governing working conditions and the protection of workers in agriculture exist and are enforceable by labour inspectors, all the undertakings without any exception should be covered by the system of inspection. This objective would not be achieved, however, where - as is the case in one country - the labour inspection system covers only some agricultural undertakings, as compared with social legislation, which protects all workers.² The Convention, on the other hand, does not require to extend the coverage of labour legislation to all agricultural undertakings employing remunerated workers or apprentices.

58. As regards the categories of workers covered by the inspection services, available information suggest that, generally speaking, salaried employees and apprentices are subject to labour inspection. On the other hand, the information received from governments is not always sufficient to indicate clearly whether and to what extent other categories of persons working in agricultural undertakings also come within the purview of the inspectorate. Only very few countries have specified that the three categories listed in Article 5 of the Convention are actually subject to labour inspection in agriculture.³ Some governments have in fact expressly stated that this is not the

¹ India (an Agricultural Workers Act has however been adopted in the State of Kerala).

² Ethiopia (under ss. 3.4 and 4.2 of Labour Standards Proclamation No. 232 of 1966, the competence of the labour inspectorate extends only to agricultural undertakings employing at least ten workers that are operated in conjunction with an industrial undertaking processing the cereals cultivated by them; whereas Labour Proclamation No. 64 of 1975 applies to all sectors of the economy).

³ For example, Colombia, Costa Rica.

case.¹ However, in a number of countries, and especially in certain socialist countries, the members of agricultural co-operatives are considered as agricultural workers.² As to tenants who do not engage outside help, it should be noted that, although self-employed workers are usually excluded from the protection afforded by labour laws of general scope, some laws and regulations contain provisions that are equally applicable to them.³ Lastly, whether or not the members of the family of the operator of an agricultural undertaking are covered by labour legislation and therefore subject to inspection depends in most cases on the existence of an employment relationship.

¹ For example, Mauritius, Uruguay.

² For example, Czechoslovakia, Romania, USSR, Yugoslavia.

³ In Denmark and Sweden, for example, some provisions of the laws on the working environment concerning occupational safety and health are equally applicable to work that is not carried out for an employer. However, under Sweden's Working Environment Ordinance (s. 15), persons working on their own account can only be visited by the labour inspection services if there are special grounds for doing so.

CHAPTER II

THE ROLE OF THE LABOUR INSPECTORATE

59. The role of the labour inspectorate is defined in several provisions of the instruments dealt with in this survey. Article 3, paragraph 1, of Convention No. 81 and Article 6, paragraph 1, of Convention No. 129 lay down the basic rule that the functions of the system of labour inspection are to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers, to supply technical information and advice to employers and workers on the subject, and to bring to the notice of the competent authority defects or abuses not covered by existing legal provisions. In addition to these functions relating to the application of legislation, the instruments contain a number of provisions outlining the preventive role of the inspection services: supervision of new establishments, plant, materials or substances and work processes, and the prevention of occupational accidents and diseases. Other functions may be assigned to the labour inspectorate, too, as indicated in Paragraphs 1 and 2 of Recommendation No. 133. However, according to Article 3, paragraph 2, of Convention No. 81 and Article 6, paragraph 3, of Convention No. 129, they must not interfere with the discharge of its primary duties.

I. Functions relating to the application of legislation

A. Enforcement of legal provisions

(a) Legal provisions relating to conditions of work and the protection of workers

60. Article 3, paragraph 1(a), of Convention No. 81 stipulates that the functions of the system of labour inspection are "to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the

employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors". This provision is repeated in Article 6, paragraph 1(a), of Convention No. 129, which adds a specific reference to weekly rest and holidays and to the employment of women. This addition does not alter the scope of the Convention, however, as the list of matters considered as pertaining to conditions of work and the protection of workers is given merely by way of example.

61. The fact that the list is not restrictive means that relatively new aspects of labour protection can be taken into account, even if they are not explicitly referred to in the aforementioned provisions of Conventions Nos. 81 and 129.²

62. In almost all countries, the labour inspection services are empowered by law to enforce labour legislation. In one country that has ratified Convention No. 129, however, the role of the labour inspectorate in agriculture is not yet clear.³

63. By stipulating that the function of the system of labour inspection is to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers "in so far as such provisions are enforceable by labour inspectors", the two Conventions leave it to the discretion of individual States to determine the range of legal provisions coming within the purview of the labour inspectorate. Consequently, its enforcement functions vary considerably from country to country, depending, on the one hand, on the scope and contents of the legislation in force - inasmuch as it is not necessarily applicable to all sectors of the economy⁴ and, on the other, on the Government's willingness to entrust enforcement of the legislation to the labour inspectorate.

¹ ILO: Record of Proceedings, International Labour Conference, 52nd Session, Geneva, 1968, Report of the Committee on Labour Inspection (Agriculture), Appendix VIII, p. 649, para. 61.

² For example, provisions relating to the protection of workers' representatives against dismissal, which in certain countries such as France are enforceable by labour inspectors.

³ Bolivia.

⁴ See para. 71 below.

64. Legislation is not usually the only method of laying down working conditions; it is often supplemented by collective bargaining. Save for a few exceptions, collective agreements are normally mandatory. It is for this reason that Article 27 of Convention No. 81 and Article 2 of Convention No. 129 specify that "the term 'legal provisions' includes, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law is conferred and which are enforceable by labour inspectors". States therefore can decide whether or not they wish to empower the labour inspectorate to enforce collective agreements and arbitration awards.

65. Many countries have adopted measures to have mandatory collective agreements and/or arbitration awards enforced through the national system of labour inspection.¹ In some instances, special inspection systems have been set up.² Generally speaking, the inspection services are empowered to enforce collective agreements whatever their nature, though in certain countries this is the case only with the collective agreements that have been extended to other undertakings by government decision.³ One government has indicated that the supervision of the application of collective agreements of a general nature, the scope of which is national, is entrusted to the Administration of Labour Protection.⁴

¹ For example, Australia (Federal Conciliation and Arbitration Act, s. 125; corresponding provisions also exist in state legislation); Bolivia (Decree No. 05202 of 1959 regulating the organisation of the Ministry of Labour, s. 45(a)); Colombia (Decree No. 062 of 1976 respecting the administrative reform of the Ministry of Labour and Social Security, s. 21(d); Costa Rica (Act regulating the establishment of the Ministry of Labour and Social Security, s. 88); France (Labour Code, s. 611-1); Gabon (Labour Code, s. 144); Guatemala (Labour Code, s. 278); Guyana; Italy; Luxembourg (Labour and Mines Inspectorate Organisation Act of 1974, s. 1(a)); Libyan Arab Jamahiriya; New Zealand (1954 Labour Department Act, s. 9); Romania.

² In Australia, for example, arbitration awards are enforced at the federal level by a special body of inspectors.

³ For example, Bolivia (Decree No. 05202 of 1959 regulating the organisation of the Ministry of Labour, s. 45(a)).

⁴ Finland.

66. In several countries, the labour inspectorate is also responsible for enforcing labour clauses on working conditions in undertakings that have signed public contracts with the State and other public authorities. In developing countries in particular, making this standard practice is a most useful means of ensuring that the working conditions, and especially the wages, of persons employed to carry out part of a government contract are at least as favourable as those of other workers.

67. In most cases the competence of the inspectorate is very broad and covers all the laws and regulations in force on working conditions and occupational safety and health. There are several ways of defining the coverage of a system of inspection. One is to couch the definition in general terms.² Another is to draw up a list - usually non-restrictive - the provisions enforceable by

¹ For example, Algeria, Barbados, Djibouti, Ghana, Grenada, Kenya, Mauritius, Morocco, Swaziland, United Republic of Tanzania, Tunisia, Turkey.

² For example, Barbados (Labour Department (Amendment) Act of 1961, s. 4: the function of the labour inspectorate is to ensure that existing laws on conditions of employment and the protection of workers in their occupation are fully implemented); Benin (Labour Code, s. 135: the labour inspectorate is responsible for enforcing all laws or regulations concerning labour and the labour force, specifically those concerning the protection of workers); Bolivia (Decree No. 05202 of 1959 regulating the establishment of the Ministry of Labour, s. 45(a): the function of the general labour inspectorate is to enforce labour laws in general); Costa Rica (Decree No. 42 of 1949 regulating the labour inspectorate, s. 1: the general labour inspectorate is responsible for enforcing all provisions relating to labour and social welfare); Gabon (Labour Code, s. 144: the labour inspectors enforce laws, regulations and agreements concerning labour, employment, social security and occupational safety and health); Ivory Coast (Labour Code, s. 122: the labour inspectorate is responsible for all questions relating to working conditions, labour-management relations, employment of workers, manpower movements, occupational guidance and training, and placement); Luxembourg (Labour and Mines Inspectorate Organisation Act of 1974, s. 1: the labour inspectorate is responsible, inter alia, for enforcing laws, regulations, administrative orders and agreements relating to the working conditions and protection of salaried workers in the exercise of their occupation).

the labour inspectorate.¹ An intermediate solution has been adopted in countries where the labour inspectorate is responsible for enforcing a specific text of a general nature, such as the Labour Code or the labour laws and regulations made under them.²

68. In several countries where the labour inspectorate is responsible for enforcing certain specific laws, its competence varies according to the subject-matter. When there are a large number of such laws or when they cover a broad range of issues, the sphere of action of the inspection services, though less general, is still considerable.³ Elsewhere, on the other hand, it may be rather more

¹ For example, Austria (Labour Inspection Act of 1974, s. 2(1): the inspectorate is responsible for ensuring the application of laws, regulations and administrative orders concerning the protection of workers, especially in respect of the protection of the life, health and morals of the workers, the employment of children, young persons and women, and the employment of workers in general as regards hours of work, breaks, rest periods, night rest, rest on Sundays, public holidays and leave, and the protection of apprentices and young workers); Ethiopia (Labour Inspection Service Order, No. 37 of 1964, s. 4(1): the inspectorate is responsible for ensuring that employers respect laws and regulations concerning conditions of work and employment, especially those relating to safety, health, welfare, hours of work, holidays, maternity, etc.)

² For example, Bahrain (Labour Law for the Private Sector, s. 147: officials of the Minister of Labour and Social Affairs are empowered to enforce this law and the regulations made under it); Egypt (Labour Code, s. 160); Libyan Arab Jamahiriya (Labour Code, s. 111).

³ For example, Burma (according to the Government, the labour inspectorate is responsible for enforcing laws and regulations concerning conditions of work and the protection of workers while engaged in their work); Kenya (the labour inspectorate is responsible, inter alia, for ensuring the application of laws and regulations on occupational safety and health, welfare, the protection of women and young persons, hours of work, annual leave, weekly rest and wages); Norway (apart from the Workers' Protection and the Working Environment Act and the regulations made under it, the labour inspectorate enforces certain other laws such as the Working Conditions (Agriculture) Act, Annual Holidays Act, Working Conditions (Domestic Employees) Act and other laws concerning homeworkers).

limited,¹ though there is a general tendency for the competence of inspection services to be extended as labour legislation develops.²

69. Certain matters governed by laws and regulations are sometimes excluded from the competence of the labour inspectorate. In one country, only public law provisions relating to the protection of workers come within the purview of the labour inspectorate, which is not empowered to enforce private law provisions relating to such matters as annual leave.³ The same sometimes applies to the enforcement of wage regulations.⁴

70. In some socialist countries, labour inspectors are generally empowered to enforce provisions relating to the protection of labour. This is a broad concept, in which the emphasis is sometimes on occupational safety and health. One government indicates in its report that employers infringing regulations on occupational safety, hours of work, weekly rest, wages and the protection of women and children are liable to penalties.⁵ In another country the state labour inspection system is responsible for enforcing labour legislation, and, inter alia, the provisions relating to occupational safety and

¹ For example, United Kingdom (Bermuda) (according to information supplied by the Government, pending the entry into force of the 1982 Safety and Health at Work Act, scheduled for April 1984, the labour inspectorate has been responsible only for enforcing the Employment of Children and Young Persons Act).

² In the United States, the competence of inspection services has been considerably extended at the federal level following the adoption of the Occupational Safety and Health Act in 1970.

³ Switzerland.

⁴ For example, Bangladesh (the Government indicates in its report that the enforcement of minimum wages in agriculture does not come within the purview of the inspection services). This is also the case in such countries as the Federal Republic of Germany, Sweden and Switzerland, where wages are fixed by collective agreement.

⁵ Hungary.

health.¹ Elsewhere, the inspectorate is empowered to enforce labour legislation and labour protection regulations.²

71. As already mentioned, the provisions enforceable by the labour inspectorate are not necessarily the same for all workers even where the legislation is of a general nature.³ In many countries, especially the English-speaking countries of Africa, occupational safety and health are governed by legislation on factories that applies principally to industrial undertakings. In agriculture, specifically, several governments have⁴ stated that there are very few relevant laws and regulations, if any.⁴ In certain countries, agricultural workers are covered by special provisions.⁵

¹ Poland (1981 State Labour Inspection Act, s. 11).

² USSR (Act No. 2-VIII of 1970 respecting the fundamental principles governing labour legislation, s. 104).

³ For example, Egypt (the provisions of Chapters II and III of Title VI of the Labour Code concerning the employment of young persons and the employment of women do not apply to the agricultural sector).

⁴ For example, Bangladesh; Canada (some provinces); Guyana; India (the Government states that there is no general legislation on conditions of work and life in agriculture, apart from a law adopted by the Government of Kerala. There are, however, a number of texts that apply to all workers, such as the Equal Pay Act and Minimum Wages Act. Moreover, the Factories Act is also applicable to factories located in plantations for the primary processing of agricultural products. Finally, the Plantations Act governing the conditions of work and life on plantations contains certain provisions relating to health (drinking water, toilet facilities and medical services), welfare (canteen, day-care facilities, etc.), hours of work, night work of women and children and paid holidays); Rwanda (the Government states that at present there is no legislation that protects agricultural workers but that a Bill explicitly extending to them the provisions of the Labour Code is currently under consideration); Sri Lanka (the legislation referred to by the Government concerns wages only).

⁵ For example, El Salvador (Labour Code, Book I, Title II, Chapter IV); Paraguay (Labour Code, Book I, Title III, Chapter V).

(b) Other legal provisions

72. In addition to the legal provisions relating to conditions of work and the protection of workers while engaged in their work, some governments have taken advantage of the possibility afforded by Article 6, paragraph 2, of Convention No. 129 and have entrusted the labour inspectorate with the enforcement of provisions relating to the conditions of life of workers and their families.¹ In several countries these provisions are concerned more specifically with workers' housing facilities.²

73. Other provisions enforceable by labour inspectors relate to such varied subjects as vocational training,³ social services (canteen, transport facilities, etc.),⁴ the employment of foreign

¹ For example, Hungary, Mexico, Romania. See also note directly following.

² For example, Austria, Bahrain, Italy, Kenya, New Zealand, Norway, Romania.

³ For example, Austria (vocational training of apprentices in agriculture), Cameroon, Ethiopia, Ivory Coast, Libyan Arab Jamahiriya, Sri Lanka, Syrian Arab Republic, Tunisia.

⁴ For example, Ivory Coast, Somalia, Tunisia.

labour,¹ the environment,² and social security.³ Some of these aspects are mentioned in Paragraph 2 of Recommendation No. 133.⁴

B. Information and advice for employers and workers

74. The action taken by labour inspectors in the course of their enforcement work is unlikely to have any effect so long as employers and workers are not fully aware of their reciprocal rights and obligations and, above all, if they are not convinced of the usefulness of the legislation applicable to them. Convention No. 81, in Article 3, paragraph 1(b), and Convention No. 129, in Article 6, paragraph 1(b), accordingly call upon the labour inspectorate "to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions". Like the enforcement function, this information and advice is intended to secure the effective implementation of the laws and regulations; in this sense, therefore, the two functions are interdependent and complementary.

¹ For example, Guatemala, Suriname, United Republic of Tanzania.

² For example, Federal Republic of Germany; Luxembourg (the labour inspectorate is responsible for identifying and recording infringements of the 1976 Anti-Pollution Act and the 1976 Anti-Noise Act and the regulations made thereunder).

³ For example, Chad, Italy, Mali, Somalia, Spain.

⁴ Paragraph 2 of Recommendation No. 133 stipulates that subject to the provisions of Article 6, paragraph 3, of the Labour Inspection (Agriculture) Convention (1969), the labour inspectorate in agriculture might be associated in the enforcement of legal provisions on such matters as: (a) training of workers; (b) social services in agriculture; (c) co-operatives; and (d) compulsory school attendance.

75. The information available to the Committee shows that States are, on the whole, fully aware of the importance of the advisory function of labour inspectors and, in the vast majority of countries, the relevant legislation contains explicit provisions assigning this task to them. Since most legal provisions on the subject call upon the labour inspectorate to supply information and advice, it is unnecessary to cite specific examples. In practice, moreover, labour inspectors engage in educational activities even where there are no specific provisions on the subject. When infringements come to their notice, for instance, labour inspectors generally prefer to rely on persuasion rather than to initiate legal proceedings immediately.

76. The inspectorates' information function takes various forms. In the first place, labour inspectors are naturally called upon to supply advice and information during their inspection visits in undertakings. Secondly, the labour inspectorate often receives written or verbal requests, a form of consultation which has reached such a scale in certain countries that measures have had to be adopted to relieve inspectors of part of the burden. In one country, a central information unit has been set up in the departmental labour directorates to provide the public directly with information on currently applicable regulations or contractual provisions so as to facilitate the work of the inspection services; this central public information service should enable the labour inspectors and assistant inspectors to devote more time to visits to undertakings. Lastly, advice and information may take the more general form of the kind of education campaigns advocated in Paragraph 7 of Recommendation No. 81 and in Paragraph 14 of Recommendation No. 133. Many governments have stated that, through the labour inspectorate or in collaboration with other bodies (especially with the employers' and workers' organisations), they have adopted measures to keep workers and employers informed on a regular basis of the requirements of labour legislation, and specifically of problems of safety and health.² The methods employed include the organisation of courses, seminars, conferences, radio broadcasts, exhibitions and the distribution of posters, pamphlets, and other publications and films.

¹ France.

² For example, Antigua and Barbuda, Australia, Austria, Botswana, Canada, Colombia, Denmark, Ecuador, Finland (however, the Central Union of Finnish Trade Unions (SAK) considers that the information campaigns have not been sufficiently numerous), Federal Republic of

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77. The information and advice dispensed by labour inspectors often entails bringing current legal provisions to the notice of employers and workers, explaining their significance and their scope and indicating the best way of complying with them. In the case of the prevention of occupational hazards, the inspectors may also be called upon to offer technical advice.

78. The labour inspectorates' enforcement function and information and advice function are complementary in so far as they are both intended to promote the effective implementation of legal provisions relating to the protection of workers. It is generally accepted that a successful advisory function will achieve more than mere reliance upon enforcement and nowadays labour inspectors are no longer looked upon merely as policemen responsible for imposing fines on persons infringing labour laws. This development is welcome, particularly as it emphasises the importance of prevention. But a correct balance must be struck between the two approaches to obtain the greatest degree of success of the inspectorates' work. It is essential that, whilst concentrating on their advisory role, inspectors do not lose sight of the importance of enforcement. To some extent they will be assisted in this if the system of penalties is effectively constructed - a problem which will be examined in Chapter VI of this survey.

C. Notification of the shortcomings of existing legal provisions

79. Article 3, paragraph 1(c), of Convention No. 81 states that one of the functions of the system of labour inspection is to bring to the notice of the competent authority defects or abuses not specifically

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Germany, Hungary, Italy, Mali, Mauritius, Mexico, Norway, Philippines, Poland, Portugal (according to the Confederation of Portuguese Trade, the labour inspectorate fails to carry out the educational mission provided for by Recommendation No. 81; since the Legislative Decree of 1983 to issue the rules of the General Inspectorate of Labour attributes to it an essentially repressive role. The Government states that section 28 of the rules clearly lays down the functions of the inspectorate in the fields of education and guidance. Furthermore, in its report on Recommendation No. 133, the Government states that the educational measures suggested in Paragraph 14 of Recommendation No. 133 come within the competence of other authorities, the educational action of the labour inspectorate being carried out as part of its normal inspection duties), Singapore, Sweden, Turkey, Uruguay, United Kingdom (Montserrat).

covered by existing legal provisions. Convention No. 129, which contains a similar provision in Article 6, paragraph 1(c), adds that the labour inspectorate in agriculture must "submit proposals on the improvement on laws and regulations". This function, the importance of which has been stressed by the Committee, is a vital factor in social progress. If it is properly understood and properly carried out, it should promote the introduction of new protective measures. Thanks to their direct knowledge of the working environment, labour inspectors are ideally situated to alert the authorities to the need for new regulations that are better suited to the needs of workers.

80. The need to entrust the labour inspectorate with the function of informing the competent authorities of the shortcomings of existing legal provisions would seem to be generally accepted, at least in principle. The normal channel for such information is the periodical reports that the labour inspectors submit to their superiors, though ad hoc reports may also be made. Unfortunately, it is not always possible to judge from available information whether labour inspectors do fulfil this function in practice and, if so, in what cases and to what extent.

81. By reporting on the shortcomings of laws and regulations, labour inspection services are to a certain extent involved in the process of drafting labour regulations. This involvement can sometimes be more direct, such as when a representative of the inspectorate takes part in the work of advisory bodies on labour affairs. In one country, the inspectorate is responsible, inter alia, for assisting the Ministry of Labour in the drafting of regulations made under the Working Environment Act.² In another, the authority to which the inspection services are attached (Health and Safety Commission) draws up regulations that it submits to the minister for adoption and may itself introduce codes of conduct and issue guidance notes.³ In a third, the federal Occupational Safety and Health Administration is empowered to adopt legally enforceable standards on occupational safety and health which are enforced by its own officials.⁴

¹ See the Committee's general observation on Convention No. 81 in Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4(a)), International Labour Conference, 61st Session, 1975, Geneva, p. 107.

² Denmark (Working Environment Act, s. 72.2).

³ United Kingdom.

⁴ United States.

II. Preventive function

A. Prevention of occupational accidents and diseases

82. By their very nature, the labour inspectorate's activities as described above help to reduce the incidence of occupational accidents and diseases. Prevention has always been and remains an essential part of the function of inspection. Though there has been some progress, the¹ accident rate is still dramatically high in the industrial sector. In agriculture, mechanisation and the use of new substances such as² insecticides and pesticides have brought new health and safety hazards.

83. Two aspects are particularly relevant to the instruments on labour inspection: the notification of occupational accidents and diseases, and the participation of the inspectorate in their investigation.

(a) Notification of occupational accidents and diseases

84. Article 14 of Convention No. 81 and Article 19, paragraph 1, of Convention No. 129 establish that the labour inspectorate must be notified of occupational accidents and diseases in such cases and in such manner as may be prescribed by national laws or regulations. This principle is embodied in most countries' legislation, though it is not always possible to establish from available information whether the obligation to notify also applies to agricultural undertakings. It may be so in countries where notification is provided for in factories' legislation, unless it is also required under more

¹ See ILO: Evaluation of the International Programme for the Improvement of Working Conditions and Environment (PIACT), Report VII, International Labour Conference, 70th Session, 1984, pp. 14-15 and pp. 35 et seq.

² *ibid.*, pp. 37 et seq.

general laws or regulations.¹ In addition, the Committee of Experts has in fact addressed observations to a number of countries that have ratified Convention No. 81 and/or Convention No. 129, either because the labour inspectorate was not notified of work accidents and occupational diseases or because the requirement to do so referred only to work accidents or covered only an extremely limited list of² occupational diseases. In many cases, appropriate action was taken³ or promised⁴ by the governments to ensure fuller implementation of the relevant provisions of the two Conventions.

85. The manner in which the labour inspectorate is informed of occupational accidents and diseases varies considerably from country to country. In most instances, cases of occupational injuries must be notified directly by the undertaking, either immediately⁴ or within a specified period of time⁵ which may vary according to the

¹ The Government of New Zealand has stated that the notification of industrial accidents is not required by the Agricultural Workers Act. Provisions to this effect are, however, included in the Bush Workers Act and the Machinery Act.

² For example, Belgium, Gabon, Ghana, Guatemala, Haiti, Pakistan (action yet to be taken in respect of the notification of occupational diseases), Paraguay, Uganda, Uruguay, Yugoslavia (action yet to be taken in respect of the notification of occupational diseases in certain republics and provinces).

³ For example, Bahamas, Libyan Arab Jamahiriya, Yugoslavia.

⁴ For example, China (Regulations concerning safety and health in factories, s. 7); Ethiopia (Labour Standards Proclamation No. 232 of 1966, s. 11); Finland (1973 Act to provide for the supervision of labour protection, s. 22); Mauritius (Labour Act, s. 23, and 1961 Workmen's Compensation (Amendment) Act, s. 10); Netherlands (Working Environment Act, s. 9); Norway (Worker Protection and Working Environment Act, s. 21); Poland (Labour Code, ss. 228 and 229); Somalia (Labour Code, s. 102).

⁵ Bahrain (Act respecting employment in the private sector, ss. 121 and 131; various authorities, including the Ministry of Labour and Social Affairs, must be notified within 24 hours); Benin

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seriousness of the accident.¹ A similar requirement is sometimes imposed on any doctor who diagnoses an occupational disease.² In some countries, all occupational accidents and diseases recognised as such by the law must be notified;³ elsewhere, notification is required only in respect of the most serious accidents, especially those involving several workers or resulting in death or disability.⁴

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(Labour Code, s. 129: notification within 48 hours); Bolivia (Labour Code, s. 85: notification within 24 hours); Egypt (Labour Code, s. 130: notification within 24 hours for serious accidents); Guyana (Labour Act, s. 31: notification within six days); Mexico (Federal Labour Act, s. 504V: notification within 72 hours).

¹ For example, Bangladesh (Factories Regulations, ss. 84 and 85); Luxembourg (Labour and Mines Inspectorate Organisation Act of 1974, s. 26).

² For example, Finland (Act to provide for the supervision of labour protection, s. 22); Ireland (Factories Act, s. 76); Israel (Accidents and Occupational Diseases (Notification) Ordinance, s. 5); Poland (Labour Code, s. 229); Singapore (Factories Act, s. 60); Sri Lanka (Factories Act, s. 63); Sweden (1977 Working Environment Ordinance, s. 2(a)).

³ For example, Bolivia (Labour Code (Industrial Accidents)); Ethiopia (Proclamation No. 232 of 1966 on labour standards, s. 11); Japan (Industrial Safety and Health Regulations, s. 97); Luxembourg (Labour and Mines Inspectorate Organisation Act, s. 26); Mali (Labour Code, s. 228); Somalia (Labour Code, s. 102).

⁴ For example, Bangladesh (Factory Regulations, ss. 84-86: all accidents resulting in death or over 48 hours' disability must be notified); Cuba (Decree No. 4 of 1977 regulating the national labour inspection system, s. 22: fatal or collective accidents); Cyprus (Accidents and Occupational Diseases (Notification) Law, s. 3: fatal accidents or accidents resulting in over three days' incapacity); Denmark (Order No. 236 of 2 May 1973: any accidents resulting in death or at least one day's disability not including the day of the accident); Egypt (Labour Code, s. 130): immediate notification of any serious accident; Ghana (Factories, Offices and Shops Act, ss. 10-12: accidents or diseases resulting in death or more than three days' disability); Guyana (Labour Act, s. 31: death or over 24 hours'

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86. Notifying the labour inspectorate is not an end in itself but part of the more general aim of accident prevention. Its purpose is to enable the labour inspectors to conduct investigations in the undertaking to establish the causes of work accidents and occupational diseases and to have steps taken to avoid their recurrence. Although accidents in undertakings may not necessarily cause actual injury, they can provide extremely useful information on the state of the buildings, plant and equipment. In some countries, the legislation therefore also requires the inspectorate to be notified of certain occurrences liable to endanger the safety or health of the workers, even where there are no actual injuries.¹

87. In some countries, on the other hand, the employer notifies the labour inspectorate, not directly but through another body such

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disability; Ireland (Factories Act, s. 74: death or over three days' disability); Netherlands (Working Environment Act, s. 9: all serious accidents; other accidents resulting in physical injury to be noted in the undertaking's records); Poland (Labour Code, s. 228: any accidents resulting in death or serious injury or involving several people); Romania (Order No. 2896 of 1966, s. 5: collective, fatal or incapacitating accidents); Sweden (Working Environment Ordinance, s. 2: fatal accidents or accidents causing serious injury or affecting several employees); Zambia (Factories Act, s. 76: accidents resulting in death or over three days' disability).

¹ For example, Cyprus (Accidents and Occupational Diseases (Notification) Law, 1953, s. 4: the competent authority may require notice to be given in every case of explosion, fire, collapse of building, accidents to machinery or plant, whether or not there are any victims, by reason of the risk of serious bodily injury to workers); Luxembourg (1974 Labour and Mines Inspectorate Organisation Act, s. 26(3): the labour and mines inspectorate must be notified without delay of any serious incident that could have caused a serious industrial accident); Netherlands (Working Environment Act, s. 9.2: notification of any accident causing extensive material damage); Singapore (Factories Act, s. 49, and Annex 4: notification of prescribed dangerous incidents); Zambia (Factories Act, s. 77, and first annex: notification of prescribed dangerous accidents).

as the social security institution,¹ local or municipal authority,² police, public safety authority,³ or the court.⁴ This form of indirect notification is not incompatible with the Conventions Nos. 81 and 129, which are couched in very flexible terms. However, if notification is to be fully effective, the time between when the occupational accident or disease occurs and the notification to the inspectorate must be sufficiently short for the inspectors to be able to carry out inquiries in the undertaking if they so wish. The Committee has considered that one month is too long a delay for inspectors to be able to take any urgent steps to prevent further occupational accidents and diseases.

88. Despite laws and regulations requiring notification of occupational hazards, labour inspectorates seem in practice often to be denied information, especially of occupational diseases. This is a general problem to which neither developing nor industrialised countries are immune. Very often, the main reason for failure to notify the inspectorate is ignorance of the relevant legal requirements. Several countries have accordingly undertaken information campaigns to draw the attention of the employers and the medical authorities to this problem.⁵ One government states that industrial accidents notified to the social security institution are compared with those notified to the labour inspectorate and, when the comparison shows that the latter has not been informed of an accident, the employer is systematically

¹ For example, Algeria (Industrial Accidents and Occupational Diseases Act No. 83-13 of 1983, ss. 13 and 70); Gabon (Labour Code, s. 137).

² For example, Morocco (Dahir of 6 February 1963 amending the Dahir of 25 June 1927 concerning workmen's compensation).

³ For example, Syrian Arab Republic (Social Insurance Code, ss. 41 and 42).

⁴ For example, Austria (Labour Inspection Act of 1974, s. 15.3).

⁵ Uruguay (Industrial Accidents and Occupational Diseases Act No. 10004 of 1941, ss. 58 and 71).

⁶ For example, Ireland (the competent authority has reminded the medical profession of the need to notify certain prescribed diseases

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reminded of his obligation to do so.¹ Collaboration between the labour inspectorate and the social security agency has also been cited by one government as contributing to the revision of the list of occupational diseases of which the inspectorate must be notified.² It is important for the labour inspectorate to be kept properly informed that the list must be regularly updated. Other steps have been taken to improve records of work accidents and occupational diseases, such as simplified notification procedures and improved enforcement measures.³

(b) Investigation of occupational
accidents and diseases

89. As has already been stated, the labour inspectorate has to be notified of work accidents and occupational diseases so that the inspectors can decide on appropriate preventive measures. Article 19, paragraph 2, of Convention No. 129 accordingly stipulates that "as far as possible, inspectors shall be associated with any inquiry on the spot into the causes of the most serious occupational accidents or occupational diseases, particularly of those which affect a number of workers or have fatal consequences".

90. Only a few governments have supplied detailed information on the implementation of this provision. Generally speaking, however, it would seem that the inquiries conducted by labour inspectors following an occupational accident or disease are looked upon as an essential component of preventive action. Naturally, because of the limited time at their disposal and the very high rate of work accidents, the inspectors cannot carry out an inquiry in every case and therefore

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and to seek its advice about occupational diseases that are not officially notifiable); New Zealand; Sri Lanka (seminars have been organised for medical and nursing personnel to explain and emphasise the importance of notifying occupational diseases; occupational health has also been included in the subjects taught to medical students and to members of paramedical professions). See also following note.

¹ Denmark.

² Ireland.

³ For example, Denmark.

have to make a selection on the basis of, for example, the gravity, frequency or complexity of the accidents or diseases reported in an undertaking.

91. When an inquiry is ordered by another authority, such as the police or the prevention services of the social security agency, it should be possible to invite labour inspectors to take part, and certain governments have indicated that this is the case.¹ In some cases, their participation is explicitly provided for by law.²

B. Prior control of new establishments,
plant, substances and processes

92. Convention No. 129 and Recommendations Nos. 81 and 133 contain a number of provisions relating to the prior control of new establishments, plant, substances and processes.

93. Part I of Recommendation No. 81 calls, on the one hand, for advance notice to the labour inspectorate of the opening of any new establishment, and, on the other, for the submission to the appropriate labour inspection service of plans for new establishments, plant or processes of production, for an opinion making their execution conditional upon the carrying out of any alterations ordered for the purpose of securing the health and safety of the workers. When Convention No. 129 was adopted, it was found necessary to incorporate this principle in the body of the Convention so as to emphasise the labour inspectorate's responsibility in the prevention of occupational accidents and diseases.³ Article 17 of the Convention accordingly stipulates that "the labour inspection services in agriculture shall be associated, in such cases and in such manner as may be determined

¹ For example, Austria, Colombia, Islamic Republic of Iran, Japan, New Zealand (according to the information communicated by the Government, the decision is left to the police), Sweden.

² For example, Czechoslovakia (Act No. 174 of 1968 on the technical supervision of occupational safety by the State, s. 4(h)); Hungary (Decree No. 47 of 1979, ss. 11 and 12); Madagascar (Social Welfare Code, s. 181: the social security fund may request the labour inspectors to conduct an inquiry when an accident causes or seems liable to cause the death or permanent disability of the victim); Poland (State Labour Inspection Act of 1981, s. 8).

³ See ILO: Record of Proceedings, International Labour Conference, 52nd Session, Geneva, 1968, Report of the Committee on Labour Inspection (Agriculture), discussion in plenary session, pp. 418 et seq.

by the competent authority, in the preventive control of new plant, new materials or substances and new methods of handling or processing products which appear likely to constitute a threat to health or safety". However, the wording of this provision is very flexible so as to be enforceable by as many countries as possible, whatever their system of inspection. The Article in fact leaves it to the competent authority to determine the cases and manner of the preventive control and therefore does not imply "that the inspection service would intervene in all cases of new plant, new materials or substances or new methods of handling or processing products". Paragraph 11 of Recommendation No. 133 goes into more detail and provides that "the association of the labour inspectorate in agriculture in the preventive control of new plant, new materials or substances and new methods of handling or processing products which appear likely to constitute a threat to health or safety ... should include prior consultation with the labour inspectorate on (a) the putting into operation of such plant, materials or substances and methods; and (b) the plans of any plant in which dangerous machines or unhealthy or dangerous work processes are to be used."

94. The situation varies from country to country. In a few instances, the legislation contains no provision on the subject.² Elsewhere, the opening of a new establishment or the start of the work must be registered with the labour inspectorate, though the latter's

¹ See ILO: Record of Proceedings, International Labour Conference, 53rd Session, Geneva, 1969, Report of the Committee on Labour Inspection (Agriculture), Appendix VI, p. 629.

² According to the information available, this seems to be the case, for example in the following countries: Bahamas, Belize, Bahrain, Chile, Netherlands (the Government states that no statutory basis exists for the preventive responsibilities of the Factories Inspectorates, but that a notice for construction engineers, architects and owners of businesses has been issued on the construction and fitting out of industrial premises), Panama, Qatar, United Kingdom (the Government states that objections remain to the formal utilising of inspection staff on preventive duties. According to the Trade Unions Congress this situation is connected with an inadequate number of inspectors).

prior agreement is not required.¹ Sometimes, notice of the opening of an establishment must be accompanied by the plans,² although one government stated that this requirement is not stipulated by law.³ The requirements that the inspectorate be notified may concern all establishments⁴ or only certain establishments,⁵ such as factories⁶ or establishments employing a specified number of workers.⁷ In other countries, the prior agreement of the inspectorate or its opinion is normally required for opening new establishments⁸ or for building or

¹ For example, Algeria (Ordinance No. 75-31 of 1975 respecting conditions of work in the private sector, s. 316); Cameroon (Labour Code, s. 122); Comoros (Labour Code, s. 186); Finland (Act to provide for the supervision of labour protection, s. 21); Gabon (Labour Code, s. 165); Ivory Coast (Decree No. 68-300 of 20 June 1968, s. 5D102); Luxembourg (Labour and Mines Inspectorate Organisation Act of 1974, s. 27); Portugal (Legislative Decree of 1983 to issue rules on General Labour Inspectorate, s. 97); Somalia (Labour Code, s. 115); Zaire (Order of 10 August 1969).

² For example, Gabon.

³ Madagascar.

⁴ For example, Cameroon, Ivory Coast.

⁵ For example, Luxembourg (Labour and Mines Inspectorate Organisation Act of 1974, s. 27: only industrial, handicrafts and commercial establishments).

⁶ This is the case in countries with legislation on factories.

⁷ For example, Finland.

⁸ For example, Bulgaria (Labour Code, s. 101); Cyprus (Factories Act, ss. 8 et seq.); Kenya (Factories Act, s. 9); Malawi (Factories Act, s. 8); Mauritius (Factories Act, s. 44); Singapore (Factories Act, s. 9); Spain (Order of 1971 on the opening of labour centres, s. 3); USSR (Act No. 2 VIII of 1970 respecting the fundamental principles governing labour legislation, s. 59); Zambia (Factories Act, s. 13).

transforming undertakings.¹ In the latter case, in particular, prior submission of the plans is generally required. One government states that measures to implement Paragraph 2 of Recommendation No. 81 are

¹ For example, Australia (the legislation of several states contains provisions to this effect); Austria (however, the Austrian Congress of Chambers of Labour is of the opinion that even though the inspection services are consulted by the competent building authorities, there is no obligation to follow their advice, with the result that, in certain cases, new buildings do not meet regulations dealing with the protection of workers (according to the Congress, a change in that practice would reinforce the effectiveness of the supervisory service); Bangladesh (Factory Regulations, s. 3); Botswana (Factories Act, s. 10); China; Cyprus (Factories Act, s. 12: any authority to which the plans of the factory must be communicated by law must, before giving its approval, send a copy to the Chief Factory Inspector and await his opinion); Czechoslovakia (Act No. 174 of 1968 respecting technical supervision of occupational safety by the State, s. 4); Finland (Building Decree, s. 51: the authority responsible for issuing building permits must, if it deems it necessary, request an opinion from the inspectorate. It is not, however, bound by this opinion. The Government states that advance supervision is made difficult by the fact that the inspection services often have to give their opinion on the basis of undetailed plans. The Central Organisation of Finnish Trade Unions (SAK) considers that the low number of labour inspectors is one of the reasons for which the advance notification system is working badly. The Finnish Employers' Confederation (STK) considers that this system is in accordance with the aims of Recommendations Nos. 81 and 133); Federal Republic of Germany; Ghana (Factories, Offices and Shops Act, s. 4); Hungary (Decree No. 47 of 1979 of the Council of Ministers, s. 19); India (Factories Act, s. 6: provincial governments may issue appropriate regulations); Italy; Japan (Industrial Safety and Health Act, s. 88); Mauritius (Labour Act, s. 43); Norway (Workers' Protection and Working Environment Act, s. 19); Poland (State Labour Inspection Act of 1981, ss. 8 and 18); Sri Lanka (Factories (Amendment) Act of 1976, ss. 2 et seq.); Sweden (Working Environment Ordinance, s. 17: a building permit for a workplace is issued only after the labour inspectorate has confirmed that it meets occupational safety and health requirements); Switzerland (Labour Act, s. 7: plans for the construction or transformation of an industrial undertaking may be approved by the cantonal authority only upon receipt of the report of the Federal Labour Inspectorate; approval of the plans by the cantonal authorities is conditional on compliance with the proposals of the inspectorate when these are specifically designated as orders); Zambia (Factories Act, s. 15).

being incorporated in the draft Labour Code currently being prepared.¹ The inspectorate's approval may be conditional on steps to bring the establishment into line with safety and health regulations. Here again, this may be compulsory for all establishments or only for certain establishments.² In some countries, only undertakings officially listed as dangerous, unhealthy or offensive are concerned.³

95. Prior control may also be required for the machines and manufacturing processes and for the substances used.⁴ This is often the case with cranes and other lifting apparatus and with steam boilers. In order not to burden employers with the considerable cost of taking the necessary steps to improve the safety of plant or equipment acquired without knowledge of its dangerous nature, the laws and

¹ Mali.

² In Switzerland, for example, the procedure for the approval of plans provided for in s. 7 of the Labour Act concerns industrial establishments. Under s. 8, the procedure may, however, be extended to other high-risk establishments to be determined by ordinance.

³ For example, France (for the opening of establishments classified as dangerous, unhealthy or offensive, the commissars of the Republic must first seek the opinion of the competent labour inspectorate); Luxembourg (Act of 16 April 1979 respecting dangerous, unhealthy or offensive establishments); Morocco (Dahir of 25 August 1914 governing unhealthy, offensive or dangerous establishments, as amended, ss. 4 and 5); Netherlands (Working Environment Act of 1980, s. 5).

⁴ For example, Denmark (Working Environment Act, s. 40: when the safety and health of the staff so justify, the Ministry of Labour may rule that plans must first be drawn up for the conduct of work, operations and working methods and submitted to the labour inspectorate for authorisation before they are put into effect. See also Order No. 323 of 7.7.1983); France (Social Security Code, s. 498): labour inspectors must be informed by employers, prior to the start of work, of any processes liable to cause occupational diseases); Kenya (Factories Act, s. 32); Poland (State Labour Inspection Act of 1981, s. 8: the state inspectorate's supervision of construction plans from the standpoint of their compliance with occupational safety and health requirements extends to the equipment and technology used); Suriname (under section 3 bis, paragraph 4 of the Safety Act, the chief labour inspector can order previous testing of certain equipment and machinery. However, according to the Government, the relevant resolution required

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regulations in some countries transfer preventive control to the stage of manufacture, sale or import of the equipment concerned, in which case the labour inspectorate may or may not be associated in the control procedure.¹ A separate licensing committee may be set up in such cases in order to give its approval, though available information unfortunately does not show how far the labour inspectorate is involved in such licensing.²

96. The foregoing also applies to agriculture in so far as the legislation providing for the labour inspectorate to be associated in preventive control covers this sector, or when there is specific legislation. This is not always the case. One government states that the inspectorate is associated in preventive control only in respect of agricultural undertakings covered by the Factories Act.³ As to the countries that have not ratified Convention No. 129, only a few governments have reported in detail on this matter - particularly as regards the prior control of dangerous substances - although dangerous substances are in frequent use in agriculture. One government does refer to legislation on the control of pesticides which require prior authorisation of the Pesticides Control Board, of which the Chief Factory Inspector is a member, for the production, sale and distribution of any substances

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has not yet been adopted); Sweden (Working Environment Act, Chapter 3, s. 12; the National Safety and Health Board to which the inspectorate is attached may order that certain equipment, facilities, processes, work methods and substances liable to constitute a danger to the safety of the workers may not be employed without prior approval).

¹ For example, Czechoslovakia (Act No. 174 of 1968 on the technical supervision of occupational safety by the State, s.4); Denmark (Working Environment Act, s. 46: the Ministry of Labour may issue rules concerning the approval by the labour inspectorate of technical equipment prior to its transfer, sale or utilisation); Finland (Act to provide for the supervision of labour protection, s. 23); Japan (Occupational Safety and Health Act, s. 44 (prescribed equipment), and s. 57.2 (new toxic substances)).

² The Government of Mongolia, however, states that the labour protection inspectors participate, inter alia, in the work of the committees set up for the testing and approval of new types of machinery and technical equipment.

³ Barbados.

of this kind.¹ In another country, when the chief inspector considers that a product may be toxic and dangerous for the workers who use it in agriculture, he may order inquiries and studies on the conditions of work of the persons concerned and on the way in which this product is used.² Some governments have also stated that the inspectorate is generally associated in the preventive control referred to in Article 17 of the Convention.³ Another government has stated that no agricultural machinery may be manufactured which has not first undergone inspection in the presence of representatives of the competent bodies for the protection of agricultural workers.⁴ As to the countries that have ratified the Convention but not fully implemented this provision, the Committee has made appropriate observations concerning the shortcomings it has noted.

97. The Committee wishes to draw special attention to the importance of prior knowledge and control. Several factors make this increasingly important. The speed of technical change continues to increase: new chemicals are brought into being and radioactive materials find wider use. Machinery and chemicals created in one country are used in another country, often with a lack of technical information accompanying their transfer. Workplaces are used for a variety of changing operations and the processes and materials used are rapidly changing. However vigilant the inspectors, they will need assistance from other agencies whose specialised functions (e.g. control of environmental planning) or knowledge (e.g. research and development institutes) are essential to supplement the inspectors' knowledge.

III. Other functions entrusted to the labour inspection services

98. In many countries, the inspectorate is entrusted with functions other than those described above. Both Convention No. 81 (in Article 3, paragraph 2), and Convention No. 129 (in Article 6, paragraph 3), stipulate that "any further duties which may be entrusted

¹ Mauritius (Pesticides Control Act of 1972, ss. 4 and 9).

² Cyprus (Regulation No. 271 on agricultural work (safety, health and welfare, 1982).

³ For example, Cape Verde, Cuba, Cyprus, Gabon, Islamic Republic of Iran, United Kingdom.

⁴ Bulgaria.

to labour inspectors in agriculture shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers".

A. Functions in the field of
labour relations

(a) Settlement of disputes

99. Whereas the prevention of disputes seems a natural function of the labour inspectorate, the same is not true of the settlement of disputes. Accordingly, both Recommendation No. 81 (in Paragraph 8), and Recommendation No. 133 (in Paragraph 3), state that the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes. Given the special circumstances that sometimes prevail in agriculture, however, Recommendation No. 133 does accept the possibility that labour inspectors in agriculture may be called upon as a temporary measure to act as conciliators, provided that the necessary measures are taken to relieve them progressively of such functions.

100. The involvement of the labour inspectorate in the settlement of disputes has been¹ and remains a controversial issue. Some consider that inspection functions as such are incompatible with conciliation and arbitration functions, as there may be confusion between the role of inspectors as conciliators, seeking a solution acceptable to both parties, and their role as guarantors of the due enforcement of the law - a role which is incompatible with any idea of compromise. This view is supported by certain practical considerations: the extra work generated by the settlement of disputes may be such as to leave the inspectors little or no time for their principal supervisory function. The opposite view is that the labour inspector, by virtue

¹ During the discussion of Paragraph 8 of Recommendation No. 81, certain members of the Conference Committee on Labour Inspection observed that in some circumstances it was necessary and useful to employ inspectors as conciliators and arbitrators and that they were often the best qualified officials or the ones most readily available to perform such functions (ILO: Record of Proceedings, International Labour Conference, 30th Session, Geneva, 1947, p. 510). See also the report of the Sixth Session of the Permanent Agricultural Committee (Minutes of the 148th Session of the Governing Body, Geneva, 7-10 March 1961, Appendix III, p. 63) and the report of the Fifth Session of the Committee on Work on Plantations, May 1966 (ILO: Official Bulletin, Vol. L, No. 1, January 1967, p. 103, para. 14).

of his first-hand knowledge of the working environment, is ideally suited to the function of conciliation. Several governments have suggested in their reports that Paragraph 8 of Recommendation No. 81 and Paragraph 3(1) of Recommendation No. 103 should perhaps be amended to allow States to entrust the labour inspectorate with the role of conciliator in labour disputes. Another government has pointed out that it is difficult to reconcile the objective of the Recommendations with laws and regulations which call upon the inspection services to prevent and settle all labour disputes not within the purview of the National Conciliation Office.² Some governments have emphasised that employers and workers themselves wish the labour inspector to act as conciliator.³

101. The controversy over this matter of principle, which goes back to the adoption of Recommendation No. 81, explains why there has been little change in this respect since the last general survey. There are two main types of situation. In certain countries, the inspectorate's control function is seen as incompatible with the function of conciliation and arbitration.⁴ Consequently, the task is entrusted to other bodies. Elsewhere, the legislation makes the intervention of the inspection services as conciliator in collective disputes mandatory.⁵ Moreover, although individual disputes are

¹ For example, Ivory Coast, Madagascar.

² Luxembourg.

³ France (the Government adds that conciliation functions do not impede the independence of the labour inspectorate); Mali.

⁴ This is the case, *inter alia*, in the socialist countries of Eastern Europe and in Cape Verde, Chile, Denmark, Egypt, Federal Republic of Germany, Japan, New Zealand, Panama, Portugal, Sweden, Switzerland, Turkey, United Kingdom, Uruguay.

⁵ For example, Algeria (Ordinance No. 75-33 of 1975 respecting the powers of the Labour and Social Affairs Inspectorate, s. 3.5); Benin (Labour Code, s. 186); Burundi (Labour Code, s. 206); Cameroon (Labour Code, s. 166); Chad (Labour Code, s. 267); Comoros (Labour Code, s. 219); Ecuador (Labour Code, s. 464); France (Decree No. 77-1288 of 1977 to organise external labour and employment services, s. 2A, paragraph 2); Gabon (Labour Code, s. 239); Guatemala (Labour Code, s. 281(e); the Government indicates that measures are under way to give the conciliation function to specific services); Mali (Labour Code, s. 268); Morocco; Somalia (Labour Code, ss. 135-136); Syrian Arab Republic (Agricultural Labour Code of 1958, s. 245(e); Tunisia (Labour Code, s. 172); United Kingdom (Bermuda).

normally dealt with by labour courts, the legislation in several countries also provides for a preliminary hearing by the labour inspector. The countries whose legislation associates the labour inspectorate in arbitration are somewhat fewer.² In some countries, the situation is not necessarily so clear-cut and, although the separation of the functions of inspector from those of conciliator and arbitrator is recognised in principle, the shortage of officials may sometimes make it necessary in practice for the labour inspectors to intervene in the latter. One government states that the inspectors' functions do not normally include conciliation and arbitration but that, in certain undertakings within the jurisdiction of the central government, it has not been possible to separate the two functions.³ In other States, only some categories of inspectors have conciliation duties.⁴

102. From the standpoint of industrial relations, the involvement of the labour inspectorate in the settlement of disputes has unquestionably been highly beneficial in a great number of cases. The fact remains, however, that in numerous countries the inspectors are unable to fulfil their fundamental function of enforcing labour laws and regulations because of the time they devote to their conciliation duties, which is often considerable. This is part of the wider problems of the overburdening of labour inspectors with additional tasks, as touched upon in paragraph 108 below. As already pointed out, it is important that a labour inspector's role as conciliator when endeavouring to resolve a dispute should not induce him to compromise regarding the enforcement of the law. It should, however, be possible to avoid this to a large extent by training inspectors to distinguish between their supervisory function and their conciliation function and, for example, by issuing regular guide-lines to assist the inspectorate in this aspect of its work.

¹ For example, Algeria (Ordinance No. 75-33 of 1975 respecting the terms of reference of the Labour and Social Affairs Inspectorate, s. 3.4); Benin (Labour Code, s. 168); Burundi (Labour Code, s. 170); Cameroon (Labour Code, s. 146); Chad (Labour Code, s. 244); Gabon (Labour Code, s. 211); Mali (Labour Code, s. 241); Somalia (Labour Code, s. 134).

² For example, Ecuador (Labour Code, s. 468; the labour inspector is chairman of the Conciliation and Arbitration Court); Gabon (Labour Code, s. 242: the corresponding labour inspector is a member of the Arbitration Board); Morocco.

³ India.

⁴ For example, in Barbados and Kenya (according to the reports of these Governments, with the exception of factory inspectors, labour

(Footnote continued on next page)

(b) Participation in
collective bargaining

103. While in many countries collective bargaining takes place solely at the initiative of the parties concerned, in others national laws and regulations often provide for government intervention, particularly in the case of the agreement's automatic extension to other undertakings or sectors. In this regard, the existing procedure may provide for the labour inspectorate to participate in some way in the conclusion of collective agreements. In some countries, collective agreements are negotiated within a joint committee chaired by the labour inspectorate.¹ In others, the inspector intervenes only in the conclusion of collective bargaining that may be extended to other branches.² Elsewhere, the inspectorate may be called upon to seek a solution only when the joint committee fails to agree.³

B. Activities of an economic
nature

104. In the normal course of its work, the labour inspectorate has to compile extensive quantitative and qualitative data, especially on economic matters. It may accordingly be asked to report to the authorities on aspects of the economy. In one country, the inspection services compile information on national production and trends in production, and on strikes (for instance, causes and resolution of strikes).⁴ In another country, the external labour services are responsible for keeping the central government constantly informed on such matters as the implementation of its employment and vocational training policy.⁵ More generally, the inspectorates' knowledge may be very useful in preparing development plans.

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department officials responsible for enforcing provisions relating to labour disputes do have conciliation functions).

¹ For example, Burundi (Labour Code, s. 238). In France, although the law is not explicit on the subject, the labour inspector traditionally acts as chairman of the joint committee.

² For example, Mali (Labour Code, s. 67).

³ For example, Congo (Labour Code, s. 55); Mauritania (Labour Code, s. 62).

⁴ Italy.

⁵ France (Decree No. 77-1288 of 1977 to organise external labour services, s. 1).

105. In this context, Paragraph 1 of Recommendation No. 133 provides for the enlargement of the labour inspectorate's functions in agriculture "so as to include collaboration with the competent technical services with a view to helping the agricultural producer ... to improve his holding and the conditions of life and work of the persons working on it". However, no information has been received from governments on the implementation of this provision.

C. Subsidiary administrative functions

106. The labour inspectorate is often given administrative duties which, if too onerous, may prevent it from performing its enforcement work as it should. As already noted, the labour inspectorate in several countries has a supervisory role in social security, usually that of verifying that employers pay their contributions.² Furthermore, the labour inspectorate may also be empowered to authorise exemptions from legal provisions relating, for example, to working time, the employment of young persons or night work by women.³ Labour inspectors are sometimes responsible for issuing permits for activities, such as the opening of company stores⁴ or private employment agencies.⁵ The inspectorate may also have a role to play in employment promotion, for example in the placement of workers.⁶ It may be required to compile statistics on conditions of

¹ A survey has shown that labour inspectors in Italy have at least 64 administrative functions (for example, in regard to the employment of foreigners, hours of work, night work, maternity, etc.).

² See para. 73 above.

³ For example, Denmark (Working Environment Act, ss. 52, 54 and 73); France (Labour Code, ss. L.212-4.1, L.212-7, L.213-2, L.221-5-1); Guatemala (Labour Code, s. 128); Norway (Workers' Protection and Working Environment Act, ss. 35, 37, 38, 43, 45, 47 and 50).

⁴ For example, Cameroon (Labour Code, s. 86); Somalia (Labour Code, s. 100).

⁵ For example, Zambia (Employment Act, ss. 56-63).

⁶ For example, Ivory Coast (Labour Code, s. 122); Gabon (Labour Code, s. 149); Somalia; Sri Lanka; Tunisia (Labour Code, s. 280).

work and employment¹ or to conduct surveys.² In several countries, the inspectors are also expected to take part in various administrative committees.³

107. Lastly, labour inspectors in certain countries are required to enforce laws and regulations concerning collective dismissals.⁴ In the present economic situation, this is an increasingly important task that takes up much of the labour inspectors' time. In so far as the inspectorate is called upon to assess dismissals from the economic standpoint, this may make it go beyond its essential role of securing the enforcement of the labour legislation. In many cases, in fact, other bodies such as the employment services are responsible for supervising dismissals on economic grounds.

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108. The number of additional tasks entrusted to the inspection service is liable, in many cases, to reduce the effectiveness of its principal duties. There is a risk that, with so many responsibilities, labour inspectors may devote more time to subsidiary economic or other duties at the expense of those that should constitute the essential part of their work, namely the enforcement of laws and regulations relating to occupational safety and health and conditions of work. The situation in some countries has reached a point where governments and workers' and employers' organisations may have to consider how to tackle the problem of labour inspectors overburdened with subsidiary duties. There are two main solutions. One would be to increase the staff of the inspection services; this raises the more general problem of the means of action available to the inspection service. The alternative would be to relieve labour inspectors of some of their subsidiary duties.

¹ For example, Cameroon, Cyprus, Finland, Morocco, Somalia, Tunisia.

² For example, Ghana, Morocco.

³ For example, Guyana, Italy. See also para. 103 above.

⁴ France (Act of 3 January 1975 respecting dismissals on economic grounds and Decree of 5 May 1975 respecting the supervision of employment).

As far as countries that have ratified Convention No. 81 or Convention No. 129 are concerned, the Committee has already made comments in many cases where it has felt that various subsidiary duties of the inspection services might distract them from their principal job. In several instances, steps have been taken or envisaged by governments to remedy the situation.

¹ For example, France (increased staff); Mauritania (separation of employment services and labour inspection services for certain provinces); France (New Caledonia) (the labour inspectorate has been relieved of certain employment and vocational training functions).

CHAPTER III

ORGANISATION OF LABOUR INSPECTION SERVICES AND INSPECTION STAFF

I. Organisation of labour inspection

Administrative structures

(a) Principle of the control of labour inspection services by a central authority

109. The attachment of inspection systems to a central authority or body facilitates the establishment and application of a uniform inspection policy for the whole of the national territory. This is why both Convention No. 81, in Article 4(1), and Convention No. 129, in Article 7(1), stress the desirability of placing labour inspection under the supervision and control of a central authority or body "so far as is compatible with ... administrative practice". In the case of a federal State, the central authority or body may be established either at the federal level or at the level of a federated unit (Convention No. 81, Article 4(2), Convention No. 129, Article 7(2)).

110. The foregoing provisions have been so drafted as to permit some measure of flexibility in application in order that account may be taken of certain special arrangements that have been found useful in national administrative practice.¹

111. Moreover, Convention No. 129 lists, in Article 7(3), four possible formulae to give effect to the principle of control by a central authority in agriculture:

¹ In this connection see ILO: The Organisation of Labour Inspection in Industrial and Commercial Undertakings, Report IV, International Labour Conference, 30th Session, Geneva, 1947, p. 127.

- (a) by a single labour inspection department responsible for all sectors of economic activity;
- (b) by a single labour inspection department, which would arrange for internal functional specialisation through the appropriate training of inspectors called upon to exercise their functions in agriculture;
- (c) by a single labour inspection department, which would arrange for internal institutional specialisation by creating a technically qualified service, the officers of which would perform their functions in agriculture;
- (d) by a specialised agricultural inspection service, the activity of which would be supervised by a central body vested with the same prerogatives in respect of labour inspection in other fields, such as industry, transport and commerce.

112. The application of Convention No. 129 does thus not necessarily imply the establishment of special inspection services for agriculture, contrary to the impression which certain governments appear to have.

(b) National practice

113. The administrative structure of labour inspection systems may be considered either with reference to the economic sectors covered or with reference to the object of the supervision exercised. In the vast majority of countries national labour inspection systems apply to all branches of economic activity,² subject to a few exceptions, particularly mining and transport.³ There is often a certain specialisation within this general inspection system; this may take the form either of assigning specialised inspectors to agriculture,⁴

¹ For example, Belize, Cameroon, Chad, Congo, Ecuador, Egypt, Mali.

² For example, Belgium, Brazil, Cape Verde, Chile, Colombia, Cuba, Egypt, Honduras, Japan, Kuwait, Luxembourg, Mexico, Mozambique, New Zealand, Panama, Paraguay, Peru, Spain, Somalia, Uruguay. This is also the case in most French-speaking African countries and in those following the British administrative tradition.

³ See above, para. 39.

⁴ For example, Denmark, Guyana, Venezuela.

or of creating a service technically qualified to deal with this sector.¹ In other countries, on the other hand, there are separate inspection systems for each branch of activity, or at least for some branches, particularly agriculture.²

114. All these solutions are expressly provided for by Article 7(3) of Convention No. 129, and take as a starting point the principle that labour inspection services are to be attached to a single central authority, generally the ministry responsible for social or labour affairs. In certain less frequent cases, however, independent inspection services attached to separate national authorities have been set up for agriculture.³

115. Moreover, in a very large number of countries, the labour inspection system is in principle empowered to perform all the duties of a labour inspection service;⁴ in many others, the inspection services are specialised with reference to the subject-matter of supervision. This is, for instance, the case in a European country where the inspection system is composed of several specialised inspection services: technical inspectorate (responsible for ensuring accident prevention in undertakings); medical inspectorate (responsible for hygiene and health questions); social legislation inspectorate (responsible for supervising working conditions); social inspectorate (responsible for supervising the payment of social security contributions).⁵

¹ For example, Costa Rica, Guatemala, Morocco, Poland, Romania.

² For example, El Salvador, United Kingdom (the inspection of shops and offices is entrusted to the local authorities).

³ This is, for example, the case in Bolivia, where labour inspection in agriculture is part of the General Directorate of Labour and Peasant Justice of the Ministry of Peasant and Agricultural Affairs (Dirección General de Trabajo y Justicia Campesina del Ministerio de Asuntos Campesinos y Agropecuarios); it was also the case in France before the administrative reform of 1975, which set up an interministerial labour inspection corps.

⁴ For example, France, Luxembourg, Switzerland; this is also the case in French-speaking African countries.

⁵ Belgium.

Generally speaking, specialisation by subject is found in inspection systems based on the British model, where officials entrusted with the application of the legal provisions relating to wages and other conditions of work and with the protection of women, children and young workers exist side by side with the competent health and safety factory inspectors.

116. It would appear from the national practice of certain countries that there has been a trend towards regrouping the inspection services in recent years.¹ The idea behind this seems to be that the unification of inspection services should permit a better utilisation of available resources and a reduction in overlapping of on-the-spot inspections. Moreover, in separate inspection systems the conduct of separate activities by different inspection services in a single enterprise may leave certain matters neglected. Needless to say, however they are organised, inspection services have a growing need to have available the whole range of professions and specialisations required by the complexity of present-day production activities.

117. In certain countries the local authorities or municipalities may be called upon to play an important role in labour inspection. Article 12(2) of Convention No. 129 provides that certain inspection functions at the regional or local level may be entrusted to appropriate government services or public institutions on condition that this does not prejudice the application of the principles of the Convention.² This is, for instance, the case in a Scandinavian country, where the local authorities appoint municipal inspectors to

¹ In France, for example, the main inspection corps were in 1975 amalgamated into a single interministerial corps under the direction of the Ministry of Labour; in the United Kingdom the health and safety inspection services, which belonged to five different ministries, were regrouped in 1975 under the Health and Safety Executive.

² The text of Article 12(2) is as follows: "Where necessary, the competent authority may either entrust certain inspection functions at the regional or local level on an auxiliary basis to appropriate government services or public institutions or associate these services or institutions with the exercise of the functions in question, on condition that this does not prejudice the application of the principles of this Convention."

supervise small plants using no machinery.¹ Elsewhere, this delegation of authority may be of a more comprehensive nature, certain inspection functions being performed by the local authorities in the place of the state services. Thus, in one country, the supervision of the safety and health provisions in shops and offices is entrusted to the local authorities.² In another, the functions hitherto performed by the labour inspectorate as regards occupational health and safety have been transferred to the local health authorities under a recent administrative reform.³ In practice, this transfer results in the creation of two labour inspection services: one depending on the Ministry of Labour, which is responsible primarily for the supervision of the application of social legislation; the other, which will be an integral part of the national health service, is in principle competent to deal with health and safety questions. It is still too soon to judge the effects of this reform. The Committee has addressed certain questions to the Government on this subject.

118. In federal States, whatever the criterion of specialisation adopted, authority is generally shared between the inspection service of the federal State and those of its constituent units, although the inspection services of certain countries may depend directly on the federal authority.⁴

¹ Sweden. The Government indicates, however, that the system is being re-examined with a view to the possible integration of the municipal inspectorate into the labour inspectorate. In addition, it will be noted that the municipal inspectorate of Norway was in 1972 replaced by the municipal workers' protection commissions, whose principal function is to promote labour protection at communal level and to provide advice and information. On the other hand, in Finland, the communal health boards supervise industrial and commercial undertakings with less than ten employees.

² United Kingdom.

³ Italy (Act of 1978 to organise the national health service).

⁴ For example, Austria (as regards the inspection services established by the Labour Inspection Act of 1974). (The Austrian Conference of Presidents of Agricultural Chambers has indicated that the enactment of Act No. 280 of 1980 on the conditions of service of agriculture and forestry workers of the federal State has led to a division of the supervision of social legislation in agriculture and forestry, since the inspectorates in the Länder are no longer responsible for the sectors covered by Act No. 280; this responsibility is now assigned to the general federal labour inspectorate.)

119. The various systems described above all imply the attachment of the labour inspection services to an administrative authority. In several socialist countries the responsibility for supervising conditions of work rests in large measure on the action of the trade unions, whose supreme bodies constitute the authority on which the inspection services depend, although the State nevertheless retains certain prerogatives in this field. This delegation of authority is exercised in varying degrees. In one country the law has conferred upon the trade unions the sole responsibility for supervising labour protection.¹ Elsewhere, the inspection system is of a markedly dualistic nature, a state inspectorate exercising its functions in parallel with an inspectorate provided by the trade union organs. It may be of interest to describe the inspection system of a State that is particularly representative of this type.² In this federal State the unions enjoy very broad powers as regards the drafting of labour legislation and the defence of the workers' interests and are responsible for the technical inspection of labour and the general inspection of the application of labour legislation. For this purpose they have at their disposal a large body of permanent full-time inspectors, who are assisted by social inspectors at the level of the establishment. On the state side there is a whole system of supervisory and control organs whose functions are somewhat more specialised than those of the trade unions. These organs include the State Committee for Safety in Industry and Mines, which is responsible for the industrial sectors with the highest risks, the health and epidemiological services of the public health service, which are responsible for adopting and securing the application of measures to eliminate or prevent pollution of the working environment, the inspection services of the Ministry of Energy, the corps of inspectors of fire-fighting services, etc. In addition, many ministries administering a particular branch of economic activity have their own services responsible for supervising safety at work in the branch concerned. The operation of this relatively complex system is ensured thanks to the close co-ordination existing between the state inspection services and those of the trade unions, from the level of the union down to the local level. The principal characteristics of this system are to be found in a number of other countries.³ In other countries labour inspection is carried out mainly by a state service, the action of the trade unions being

¹ Bulgaria (Act of 1973 to entrust the Bulgarian trade unions with the supervision of labour protection).

² USSR.

³ For example, Byelorussian SSR, German Democratic Republic, Mongolia, Ukrainian SSR.

confined more particularly to the undertaking.¹ Two countries have recently adopted a similar system, while strengthening the action of the social inspectorates.²

120. Trade unions are also associated in the supervision of social legislation in other countries with a centrally planned economy. One government³ indicates that the Central Federation of Trade Unions and other organisations as well as the governmental authority conduct labour inspection. Besides regular supervision and inspection, there are often additional joint ones organised by the Party, the State and mass organisations. However, according to the Government's information, labour inspection is less developed in agriculture, although it is constantly being improved.

(c) Collaboration between the
different inspection services

121. In the event that an inspection system is composed of a number of different bodies, it is necessary for the various services to maintain close links with each other. This collaboration is all the more desirable when there is no technical unit in which the missions carried out by the different services can be co-ordinated.⁴

122. Collaboration between inspection services may take more or less institutionalised forms. Thus, for example, in certain French-speaking African countries where the supervision of safety in mines is the responsibility of a special technical service, the officials responsible for this supervision are obliged by law to inform the labour inspectors of the results of their visits.⁵ The latter may at any time ask to take part in the inspection visits. In another

¹ For example, Czechoslovakia, Romania.

² Hungary (Decision No. 1010 of 1984), Poland (State Labour Inspection Act of 6 March 1981).

³ China.

⁴ In this connection see ILO: Report of the Tripartite Mission to Evaluate the Effectiveness of Labour Inspection in Belgium (Geneva, 1978) (French only), p. 24.

⁵ For example, Ivory Coast (Labour Code, s. 132), Mali (Labour Code, s. 355), Rwanda (Labour Code, s. 156).

country, the legislation, which authorises the creation of a specialised body to ensure the supervision of the legal provisions relating to occupational safety and health, provides that all the inspection authorities of the Ministry of Labour and Social Security, the Ministry of Health, and the National Insurance Institute must collaborate in the exercise of their activities.¹ Elsewhere, collaboration is achieved through a committee entrusted with co-ordinating the activities of the various executing authorities.²

123. When authority is shared between a number of institutions, it may become necessary to adopt certain principles in order to avoid large numbers of separate verifications of compliance, which are often looked on with disfavour in the undertaking. In certain countries regulations exist for the purpose.³ Collaboration between supervisory bodies may also be the subject of agreements setting forth the principles to be followed in this connection. In one case of this kind, a government indicates that the bodies concerned, apart from being able to carry out joint visits, are under the obligation to inform each other of any infringements of legal provisions respecting workers' protection that have come to their notice, and of cases where the measures ordered by another body have not been complied with.⁴

124. In the socialist countries of Eastern Europe, where the system of supervision involves, as has been seen, many authorities of both the State and the trade unions, special measures are taken to co-ordinate the activities of these various bodies.⁵

¹ Costa Rica (Labour Code, ss. 268 and 298).

² For example, Switzerland (Federal Accident Insurance Act, s. 85).

³ For example, Denmark, Norway.

⁴ Poland.

⁵ For example, Czechoslovakia (according to the Government's report, there is co-operation among the technical supervisory bodies of the State, the organs of public health services, the social control bodies of the revolutionary trade union movement and those of the Union of Peasant Co-operators), German Democratic Republic, Poland (the Government's report indicates that under the Order of 22 March 1983 the state labour inspectorate collaborates with 11 state control organs and with the social inspectorates of labour and the trade unions), USSR (the Government indicates that the various state and

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125. The need for strict co-ordination between the administrations concerned has been particularly keenly felt in cases where certain functions of the inspection services are exercised by local authorities. This is why the Health and Safety Commission of one country has made certain recommendations to the local authorities regarding inspection priorities and methods. In addition, a local and national liaison system has been set up between the Health and Safety Executive and the local authorities to promote a more consistent interpretation of the legal provisions.¹

126. Finally, in federal States, the existence of systems of consultation between federal inspection authorities and the authorities of the constituent units has been mentioned by a number of governments as strengthening the effectiveness of inspection services.²

II. Collaboration of the labour inspectorate with other institutions

127. Under Article 5(a) of Convention No. 81 the competent authority must make appropriate arrangements to promote effective co-operation between the inspection services and other government services and public or private institutions engaged in similar activities. A similar provision is found in Article 12(1) of Convention No. 129.

128. The importance of collaboration between inspection services and other authorities or institutions seems to be recognised by all governments, even though the information available does not always enable the methods and extent of such collaboration - which vary from one country to another - to be determined with precision.

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trade union inspection services carry out their functions in close collaboration since their objectives are identical, aiming at guaranteeing the workers the most favourable conditions of work). According to the regulations in force, the technical inspectorates of the trade unions must collaborate with the Statutory Labour Inspectorate, the State Committee for the Inspection of Industry and Mines, the State Energy Inspectorate, the state public health supervisory organs and the other state control organs).

¹ United Kingdom.

² For example, Australia, India, Switzerland.

129. In many countries there is collaboration with the different administrations responsible for the technical matters that come under the supervision of the inspection services, such as the directorates, departments or ministries of agriculture, mining or education.¹ A number of governments have also referred to collaboration between the inspection services and ministries of health, which are often called upon to play an important role in the prevention of occupational risks.²

130. It also seems normal that inspection services should have continuous contacts with the other services of the labour administration at both the central and the local levels. It is interesting to note in this connection that the inspection services of one country co-operate closely with the employment services in order to ensure that the level of wages and conditions of service offered to jobseekers is in conformity with the requirements of the legislation and the arbitration awards.³

131. The action of the labour inspectorate and the social security services is often complementary in the field of occupational accident and disease prevention, even though their activities may have different aims. It is therefore particularly important that, as is the case in certain countries, close contacts should be maintained between these two institutions,⁴ both at the level of information and

¹ For example, Algeria (under s. 2 of Ordinance No. 75-33 of 1975 respecting the terms of reference of the Labour and Social Affairs Inspectorate, the supervision of conditions of work is carried out in technical collaboration with (a) the Directorate of Mining and Geology of the Ministry of Industry and Energy for workers in mines and quarries, (b) the Ministry of Agriculture and Agrarian Reform as regards agricultural workers), Bahrain, Guyana, Israel, Libyan Arab Jamahiriya, Malawi.

² For example, Bahrain, Cyprus, Ghana, Mauritius, Mexico, Mozambique, Saudi Arabia.

³ Australia (Commonwealth Arbitration Inspectorate).

⁴ For example, Bolivia (s. 46(g) of Decree No. 05202 of 1959 regulating the establishment of the Ministry of Labour stipulates that it is the task of the general inspector of labour to co-ordinate the activities of the labour inspectorate with those of the social security inspectors), Federal Republic of Germany (Ministry of Labour and Social Affairs Directives of 1977), Switzerland (Ordinance respecting accident prevention of 1983, s. 49); see also para. 87 above.

at the level of supervision properly speaking. Thus, in one country, the regional sickness insurance funds must supply the labour inspectorate with the information at their disposal on occupational hazards and they may request action by the inspectorate to ensure the application of the preventive measures provided for by the legislation. Regional co-ordination committees have been set up to ensure the harmonisation of these activities, the co-ordination of programmes of visits and the exchange of information and documents.¹

132. The development of technology renders the task of the labour inspectorate increasingly complex. Even when they belong to a high-level service, the inspectors cannot keep abreast of all technical progress. For this reason collaboration between the inspection services and public or private research bodies or institutions is increasing in importance. This collaboration may take place informally, but it is often institutionalised, as in countries where research institutes are integrated in varying degrees into the occupational safety and health supervisory machinery.²

133. When approved bodies are entrusted with the supervision of certain installations, such as lifting apparatus and steam boilers, the inspection services should work in close contact with these bodies.³

¹ France (Social Security Code, ss. L-422 and 424, and Ministerial Circular of 6 May 1965 respecting the policy of prevention of occupational accidents and diseases).

² For example, Bulgaria, Czechoslovakia, Denmark, German Democratic Republic, Hungary, India, Norway, Poland, USSR, United Kingdom.

³ This is the case, for example, in the following countries: Austria (Workers' Protection Act, s. 5), France (the labour inspector may, if he considers it necessary, require the enterprise to have certain installations, such as electrical installations or lifting apparatus, checked by an approved body; this is also the case where ionising radiations and asbestos are used), Kenya (under s. 38(9) of the Factories Act authorised boiler inspectors may be private persons authorised for this purpose by the Chief Inspector of Factories), Luxembourg (under s. 15(1)(c) of the Labour and Mines Inspectorate Organisation Act, 1974, senior inspectors may order a technical check of an installation to be made by experts or by specialised bodies or institutions approved by the Ministry of Labour, at the cost of the

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Generally speaking, the results of these verifications must be entered in a special register in the undertaking, which may be consulted at any time by the inspectors. The latter may also request the intervention of specialised bodies if they consider it necessary.¹

134. In the exercise of their functions, the labour inspectors are called upon to maintain relations with other bodies or institutions, such as courts and police forces, particularly when investigating occupational accidents. They may also be called upon to collaborate with the town planning authorities during the procedure for the issue of building permits, as is the case in a number of countries.²

135. Finally, the Committee stresses that, as certain recent catastrophes have shown (Bhopal in India (1984), Three Mile Island in the United States (1979), Seveso in Italy (1976)), it is important for the inspection services to work in close collaboration with the bodies responsible for the environment.

III. Inspection staff

A. Status and conditions of service

(a) Status

136. Under Article 6 of Convention No. 81 the inspection staff must be "composed of public officials whose status and conditions of service are such that they are assured of stability of employment and

(Footnote continued from previous page)

undertaking), Mauritius (under s. 99 of the Health, Safety and Welfare Regulations of 1980, persons entrusted with the inspection of boilers must, in particular, be engineers registered with the Registered Professional Engineers' Council).

¹ For example, France (see note directly above), Luxembourg (see note directly above).

² For example, Cyprus, Egypt, Ghana, Norway, Switzerland.

are independent of changes of government and of improper external influences". Article 8(1) of Convention No. 129 contains a similar provision. This is an essential principle on which the efficacy of inspection systems rests. Inspectors cannot act in full independence if their service or their career prospects depend on political considerations.

137. In most countries labour inspectors are generally public officials or equivalent officers¹ and in this capacity are guaranteed security of employment. This does not, however, appear to be the case in certain Latin American countries, where labour inspectors are not always administrative officials and hence do not enjoy the guarantees of security of employment enjoyed by such officials.² According to a recent study the tendency to make labour inspection a regular and permanent career whose officials are appointed on the basis of their personal merits does, however, appear to be gaining ground in this region.³ Moreover, in some countries legislation to regulate the conditions of service of labour inspectors has not yet been adopted.⁴

¹ In Luxembourg, for example, the manual and non-manual workers' assistant inspectors appointed under section 7 of the Act of 1974 to organise the inspectorate of labour and mines have the status not of public officials but of state employees. In this capacity they enjoy after a trial period of three years a legal status that gives them a stability of employment and an independence barely different from those of public officials (in this connection see ILO Memorandum to the Government of Luxembourg in Official Bulletin (Geneva, ILO), Vol. LVII, 1974, Nos. 2, 3 and 4, p. 197).

² For example, Bolivia (according to information communicated by the Government, labour inspectors do not in practice enjoy stability of employment, particularly when there are changes of government; a Bill designed to remedy this situation is being prepared); Colombia (the Government has indicated that certain inspectors are appointed at the discretion of the administration and may be freely dismissed, although recourse is not regularly had to this possibility in practice); Ecuador (only a certain number of inspectors are established officials enjoying the protection and stability provided for under the Act respecting the public service).

³ CIAT: Labour Inspection in Latin America (Lima, 1984) (Spanish only), p. 7.

⁴ For example, Dominican Republic, Mauritania.

138. As can be seen from the preparatory work on Convention No. 81, the status of public officials was considered necessary for inspection staff as being the best fitted to guarantee them the independence and impartiality necessary to the exercise of their functions.¹

139. Other arrangements may, however, be considered satisfactory for guaranteeing the independence of the inspectors;² the real test of this independence, however, as the Committee has pointed out on repeated occasions, "is to be found in the inspector's unquestioned ability to point out, without fear of open or covert reprisal, that the methods followed in a given undertaking are contrary to the law and must therefore be changed".³

140. In particular, trade unions in Eastern European countries, which are responsible for a large share of the supervisory activities, appoint and operate their own inspectorates. So far as these inspectors enjoy, under national legislation, the stability of employment guaranteed to officers of public supervisory bodies, this situation was considered to be in conformity with the spirit of Convention No. 81.⁴ Moreover, it was to take account of the evolution in the actual situation and in the practice of the supervisory bodies of the ILO that a provision was introduced into Convention No. 129 expressly to allow States to "include in their system of labour inspection in agriculture officials or representatives of occupational organisations" on condition, however, that such officials or representatives were assured of stability of tenure and independence (Article 8(2)).

¹ In this connection see The Organisation of Labour Inspection in Industrial and Commercial Undertakings, op. cit., pp. 130-131, and ILO: Record of Proceedings, International Labour Conference, 30th Session, 1947, Appendix VII; Report of the Committee on Labour Inspection, pp. 500-501.

² In this connection see the 1966 General Survey on Labour Inspection, p. 222, para. 99.

³ ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part IV), International Labour Conference, 40th Session, Geneva, 1957, Part Three, p. 160; see also 1966 General Survey on Labour Inspection, p. 222, para. 100.

⁴ In this connection see Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part IV), International Labour Conference, 46th Session, Geneva, 1962, p. 79 (observation made in respect of Bulgaria under Convention No. 81).

(b) Conditions of service

141. As a rule, the conditions of service of labour inspectors are governed by the general conditions of service of the public service, which in some countries are supplemented by special regulations applicable to the inspection staff.

142. It is not the intention of the Committee to make a general study of the conditions of employment of inspection staff, as this would go outside the limits of the present study. Nevertheless, certain aspects of their conditions of service, namely their period of appointment, remuneration and career prospects, directly affect their stability of employment and independence.

143. Regarding the first point, available information shows that, as public servants, labour inspectors are generally appointed permanently on the expiry of a probationary period whose duration varies from one country to another.² Accordingly, it should be possible to dismiss them only for a serious professional misconduct, which should be defined in as precise terms as possible in order to avoid arbitrary interpretations. Moreover, it is important that a decision to dismiss an inspector, like any other decision to apply a sanction with important consequences, should be taken, or at least confirmed, by an organ offering the necessary guarantees of independence or autonomy with respect to the hierarchical authority and in accordance with a procedure guaranteeing the right of defence and appeal. This would appear to be the case in many countries.³ Given the fundamental importance attached to the principle of stability of employment and independence of inspection staff, one government indicated that

¹ For example, France. This is also the case with many French-speaking countries.

² It will be noted that in Switzerland inspectors are appointed for a fixed period which is, however, constantly renewed in practice, according to information communicated by the Government; this was also the case in Finland until the adoption of Decree No. 631 respecting labour administration in 1972.

³ See IL0: Disciplinary codes and procedures in the public service, Report III, Joint Committee on the Public Service, Second Session, Geneva, 1975, pp. 24 et seq. and 39 et seq.; General Report, Report I, idem, Third Session, Geneva, 1983, Chapter V, pp. 81 et seq.

inspectors enjoyed better protection than other civil servants in the matter of dismissal.¹

144. While the enjoyment of security of tenure in a permanent administration is the prime guarantee of the independence of the labour inspection staff, the efficiency of the inspection services also demands levels of remuneration and career prospects that are sufficient to attract and retain high-quality personnel and to safeguard them from any undue influence. This objective, however, is not always attained.

145. The information available on the remuneration of labour inspection personnel and their career prospects is limited and does not make it possible to give an overall picture of the situation. Besides, it would be very difficult to make comparisons of any value between the various national scales of remuneration without a thorough study of the purchasing power they represent. Certain general remarks may, however, be made.

146. In most countries the salary systems of public servants are established with reference to public service structures based on the classification of public servants in groups according to the level and nature of the qualifications required. There is usually an official scale fixing the rates applicable to all officials of different bodies and different grades. It is therefore desirable that the classification of labour inspectors in the grade structure should correctly reflect the importance of their tasks and their responsibilities. However, according to a recent CIAT study, it appears that labour inspectors' salaries in certain countries are lower than those of officials of other bodies with equivalent activities, such as social security inspectors.² Moreover, since the base salary often represents only one element of remuneration, it is important that labour inspectors should also enjoy the bonuses and allowances paid to other officials. This does not always appear to be the case, and labour inspectors are placed at a disadvantage with respect to their colleagues in other administrations.³

¹ Japan. Under section 99 of the Labour Standards Law the dismissal of an inspector may be pronounced only if the Minister of Labour obtains the agreement of the Limitation Committee for Labour Standard Inspectors, a tripartite body including representatives of labour inspectors and other civil servants.

² See CIAT, *op. cit.*, p. 9.

³ See, for example, the General Report on the Work of the Labour Inspectors' Seminar held at Libreville (Gabon) from 10 to 20 July 1980, p. 7.

147. Good career prospects are a factor not without significance in contributing to the stability and quality of the inspection staff.¹ One government refers to the necessity of reconsidering its policy in this respect with a view to improving the status of the profession.² This presupposes, on the one hand, that the promotion of labour inspectors is based on objective criteria independent of factors extraneous to their professional competence and, on the other hand, that the administrative structure of the inspection services offers adequate opportunities for advancement. According to the information available, the principle of advancement to a higher grade on the basis of merit appears to be recognised in many countries at the same time as advancement on the basis of seniority within a grade. Moreover, in certain countries the current regulations reserve a percentage of posts in the labour inspectorate for internal promotions.³

148. The sometimes very low level of labour inspectors' salaries, combined with the absence of career prospects, may cause inspectors to turn from the labour inspectorate towards other administrations with more prestige or the private sector. This is particularly common in developing countries, where the budget of the Ministry of Labour does not make it possible to offer inspectors sufficient incentives to remain in the inspection services, though it is not entirely unknown in the industrialised countries.⁴ Where the country concerned is bound by Convention No. 81 or Convention No. 129 the Committee has always drawn the attention of the government to the need to improve the conditions of service of labour inspectors so as to avoid their departure. Certain governments have indicated that they have taken appropriate measures.⁵

¹ See ILO: Report of the Tripartite Mission on Labour Inspection in Norway (Geneva, 1979), para. 4.3.

² Philippines.

³ For example, Tunisia (Decree No. 73-13 of 8 January 1973 to establish special conditions of service for labour inspection staff).

⁴ For example, Austria. The annual report of the labour inspectorate for 1979 indicates that during the period under review six officials in the senior career group, seven officials in the middle career group and two specialised officials left the service because the private sector offered them better conditions of employment.

⁵ For example, Italy, Sri Lanka.

B. Recruitment and training of inspectors

149. The effectiveness of labour inspection depends in large measure on the competence and quality of its personnel. For this reason, Article 7(1) and (2) of Convention No. 81 and Article 9(1) and (2) of Convention No. 129 lay down the principle that labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties, the means of ascertaining such qualifications to be determined by the competent authority. In connection with training, Article 7(3) of Convention No. 81 and Article 9(3) of Convention No. 129 stipulate that labour inspectors must be adequately trained for the performance of their duties. Such training is to be given not only on their entry into service, but also, as Article 9(3) of Convention No. 129 expressly stipulates, in the course of their employment. Recommendation No. 133 contains certain details regarding the requirements to be fulfilled by candidates for posts of inspectors in agriculture. According to Paragraph 5, candidates for senior positions should be in possession of appropriate professional or academic qualifications or have acquired thorough practical experience in labour administration. As for candidates for other positions (such as assistant inspectors and junior staff), they should, if the level of education in the country allows, have completed secondary general education, supplemented, if possible, by appropriate technical training, or have acquired adequate administrative or practical experience in labour matters. The requirements are, however, lower for countries where education is not sufficiently developed (Paragraph 7).

(a) Recruitment

150. The principle that labour inspection staff should be selected on the basis of merit is generally recognised, candidates who fulfil the general conditions for eligibility (such as age or nationality) being selected according to the procedures in force on the basis of their personal competence and qualifications.

151. In most countries candidates for senior positions in the labour inspection services must hold a diploma of higher education (from a university, an establishment of higher technical education or a national school of administration). Moreover, there is an increasing tendency to require candidates to have a knowledge of labour matters. In this connection it is interesting to note that in one country¹ the regulations in force reserve a percentage of labour inspectors'

¹ France (this is, however, a special recruitment measure of a temporary nature).

positions for candidates who have acquired experience either in labour-management relations or in the prevention of occupational accidents. Middle-level staff must generally have completed secondary schooling when the level of education in the country allows.

152. In some cases, the lack of qualified staff has led the competent authority to resort to certain stopgap measures. Thus, in certain countries, students have been appointed who divide their time between inspection tasks and the continuation of their studies.¹ Elsewhere, young unemployed persons have been temporarily enrolled and police officials have been placed at the disposal of the inspection services.² Although these situations are relatively exceptional, the Committee must point out the risk they entail for the proper operation of inspection systems, which require a stable and experienced staff.

153. In general, the procedure for recruiting inspection staff is that applicable to the public service. One government indicates that, given the very high moral and professional qualifications required of labour inspectors, their conditions of appointment are more stringent than those of other public servants.³ Competitions are the most usual method of verifying the aptitudes of candidates, who have to undergo written or oral tests or both, supplemented by interviews. In other cases, inspection personnel are appointed by the competent authority after the qualifications of the candidate have been verified by means of an examination.⁴ Another method, which seems, however, to be less frequently used, consists in recruitment on the basis of diplomas. This is the case in certain countries, where candidates who can present a diploma from a national school of administration, unlike university graduates, do not have to take other examinations.⁵

¹ In this connection see CIAT, op. cit., p. 9.

² In Italy, for example.

³ Japan.

⁴ For example, Poland (State Labour Inspection Act of 1981, s. 23).

⁵ For example, Algeria, Morocco, Tunisia.

(b) Training

154. The growing complexity of the tasks of inspection services due to technological change makes the systematic training of inspectors indispensable, as never before. It is therefore encouraging to note that most governments indicate that they have taken measures in this field. Some of them have also supplied information on the training and qualifications of inspection officials exercising functions in agriculture.¹ Several, however, report a lack of qualified personnel.² Initial training is undertaken by a variety of methods, which are often used simultaneously. Many governments have indicated that training is done in the field, new inspectors being paired with more experienced officials. This arrangement should, however, be supplemented by theoretical and practical courses for new candidates. The frequency, duration and curricula of courses vary substantially from one country to another. They may be given within inspection services or as part of the training programmes of the ministry responsible for social or labour affairs, with the possibility of special arrangements with specialised institutions. In certain countries special training centres for labour inspectors have been established so as to ensure a permanent structure.⁴ Thus, the training of inspectors in one country is carried out in an institute specially established for this purpose.⁵ The training, which lasts 18 months, alternates between theoretical courses and practical work. The instruction given is divided into two branches: first, legal, administrative and economic subjects; second, scientific and technical courses. The training of labour inspectors may also be given by national institutes covering all civil servants. These institutes sometimes have

¹ For example, Antigua and Barbuda, Austria, Barbados (the Government indicates that measures will be taken to ensure that officials entrusted with the supervision of the provisions of the Factories Act concerning agricultural undertakings receive appropriate training), Bulgaria, China, Finland, Guyana, Mauritius, Mexico, Spain.

² For example, Belize, Botswana, Zambia.

³ For example, in India (Central Labour Institute), Tanzania (the Government states that it is planned to train 20 inspectors a year at the Centre for Labour Studies), United Kingdom, United States (Occupational Safety and Health Administration (OSHA) Training Institute).

⁴ For example, France, Japan, Poland.

⁵ France (National Labour Institute (INT) established by Decree No. 75-823 of 3 September 1975).

specialised sections for inspection personnel.¹ When this is not the case, complementary measures must be taken to complete the general training given in national administration schools. In developing countries the absence of adequate budgetary resources sometimes makes the organisation of regular training courses very difficult. In such cases the training of inspectors relies mainly on international co-operation, in particular on the action of inter-regional institutes such as those set up in Africa, Asia, Latin America and the Caribbean with the assistance of the ILO.²

155. Whatever the value of the training given to inspectors on their entry into service, it is advisable that it should be periodically supplemented, not only in order to refresh their knowledge but also to keep them abreast of new technologies. Many governments have referred in this respect to the measures taken to ensure the further training of inspectors by means of various courses or seminars at home or abroad.³ Depending on the availability of resources, further training courses are organised more or less systematically. For this reason, the activities of the regional training centres, which periodically organise courses for adaptation and further training, are particularly welcome. It is to be hoped that there will be a gradual increase in the number of such courses, which is unfortunately too limited to meet all demands.

¹ For example, in Algeria and the Ivory Coast.

² See para. 13 above.

³ For example, Algeria, Austria, Bahrain, Bolivia, Botswana, Burundi, Cuba, Cyprus, Federal Republic of Germany, Ireland, Japan, Poland, Romania, United Kingdom, Yugoslavia.

CHAPTER IV

POWERS AND OBLIGATIONS OF LABOUR INSPECTORS

I. Inspection powers

156. In order to give labour inspectors the necessary legal means to enable them to carry out their duties, Conventions Nos. 81 and 129 both provide for certain powers to be conferred on them. These are: (a) supervisory powers - the right of free entry to establishments liable to inspection and the right of free inspection; and (b) powers of injunction enabling the inspectors to order the necessary measures to be taken (or to cause such orders to be issued) to remedy defects observed during an inspection.

A. Supervisory powers

(a) Right of free entry

(i) Establishments officially subject to supervision by the labour inspectorate

157. In accordance with Article 12, paragraph 1(a), of Convention No. 81 and Article 16, paragraph 1(a), of Convention No. 129, inspectors with proper credentials must be authorised to enter workplaces liable to inspection, without previous notice, at any hour of the day or night. These provisions aim expressly at giving labour inspectors the possibility of supervising, without prior warning and at any time, establishments liable to inspection.

158. The unexpected nature of the inspection visit is the best guarantee of effective supervision. The inspector must be able to enter undertakings without warning the employer or his representative in advance, especially when it is to be feared that prior notice might

result in the concealment of an infringement. Subject to certain exceptions,¹ all countries recognise the principle of the inspection being carried out without prior warning, whether this is expressly stated in the texts² or is part of the inspector's general terms of reference.

159. Once they have reached the workplace, in accordance with Article 12, paragraph 2 of Convention No. 81, inspectors must notify the employer or his representative of their presence "unless they consider that such a notification may be prejudicial to the performance of their duties". Convention No. 129, which contains a similar provision in Article 16, paragraph 3, further requires "workers or their representatives" to be notified also. Although it is very difficult for the inspector not to notify the employer of his arrival in the workplace - even if only for practical reasons - it is unusual for laws and regulations to make this notification compulsory.³ In the vast majority of countries the inspector is free to decide for himself.

¹ For example, United Kingdom (Bermuda) (s. 14 of the Employment of Children and Young Persons Act requires 24 hours' notice, but this condition can nevertheless be waived by a Justice of the Peace in certain circumstances.

² For example, Bahamas (Trade Union and Industrial Conciliation Act, s. 56B); Burundi (Labour Code, s. 150); Costa Rica (Decree No. 42 of 1949 to issue regulations on the general labour inspectorate, s. 39(a)); Luxembourg (Labour and Mines Inspectorate Organisation Act, 1974, s. 13(1)(a)); Somalia (Labour Code, s. 110(1)).

³ For example, Benin (Labour Code, s. 144(a)); Chad (Labour Code, s. 16(a)); Congo (Labour Code, s. 155); New Zealand (Agricultural Workers Act, s. 6.1(a)).

160. With regard to the time of the inspection, laws and regulations in several countries, in accordance with Conventions Nos. 81 and 129, establish the inspectors' right to make their visit either "at any hour of the day or night"¹ or, more generally, "at any time".²

161. In several countries, however, inspection is authorised only during working hours or while the undertaking is in operation.³ Thus restricted, the inspectors' power of entry does not enable them to ascertain whether workers are being unlawfully employed outside normal working hours. In addition, it is often easier to check the state of certain machines when they are not in use and therefore more effective to inspect them when the undertaking is not operational.

¹ For example, Cameroon (Labour Code, s. 115(a)); Comoros (Labour Code, s. 167(a)); Ethiopia (Proclamation No. 232 of 1966 on labour standards, s. 7(1)); Malaysia (Factories and Machinery Act, s. 7); Poland (s. 5(1) of the Resolution of the Council of State dated 27.10.1983 respecting the methods of work of the State Labour Inspectorate and the obligations of undertakings in this field); Romania (Decree No. 783 of 1969 concerning the organisation and functioning of the Ministry of Labour, s. 13); Singapore (Employment Act, s. 131(1)); Somalia (Labour Code, s. 110, Chapter 1); Tunisia (Labour Code, s. 174(a)).

² For example, Austria (Labour Inspection Act of 1974, s. 3(1)); China (Safety Regulations in Mines, s. 5); Czechoslovakia (Act No. 174 of 1968 on the technical supervision of occupational safety by the State, s. 6(1)(a)); German Democratic Republic (Labour Code, ss. 293 and 294); Islamic Republic of Iran (Regulations of 1959 concerning the duties and powers of labour inspectors, s. 1); Israel (Labour Inspection Organisation Act, 1954, s. 3(1)); Suriname (Decree E-35 of 1983 on Labour Inspection, s. 10); USSR (Regulations of 1976 concerning the statutory inspection of labour, s. 6(a); Regulations of 1977 concerning technical inspection carried out by trade unions, s. 9(a)).

³ For example, Bahrain (Order No. 28 of 1976 concerning the organisation of the functions of the inspectorate, s. 14(a)); El Salvador (Basic Law of the Ministry of Labour and Social Welfare, s. 38); Federal Republic of Germany (Industrial Code, s. 139(b), para. 4; Act of 1963 to reorganise the statutory accident insurance scheme, s. 714, para. 1; Act respecting the protection of young workers, s. 51, para. 2; Federal Mines Act, s. 170, para. 2, etc.); Libyan Arab Jamarihiya (Labour Code, s. 112); Mexico (Federal Labour

162. Moreover when, as is the case in some countries,¹ the inspectors' powers of entry are defined in general terms without reference to the actual hours of inspection, it would be desirable for laws and regulations to be supplemented in order to establish clearly the inspectors' right to enter undertakings "at any hour of the day or night" in accordance with the above-mentioned provisions of Conventions Nos. 81 and 129. This aim might be achieved, for example, by means of administrative circulars or instructions.

163. The principle according to which labour inspectors must be empowered to enter establishments liable to inspection at any time must be applied sensibly. That is why Paragraph 9 of Recommendation No. 133 recommends that the activity of labour inspectors during the night should be limited to those matters which cannot be effectively controlled during the day. In this line of thought, laws and regulations in many countries provide for labour inspectors to have the right to enter establishments "at any reasonable time".²

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Act, s. 541 II); Philippines (the Inspection Service Manual provides that supervision must normally be carried out during working hours unless there are grounds for thinking that work is being carried on outside these hours, in which case the inspector should as far as possible inform a superior before undertaking the inspection (pp. 12 and 13)); Saudia Arabia (Labour Code, s. 27(a)); Sudan (Act respecting individual labour relations, s. 53(1)).

¹ For example, Denmark (Working Environment Act, s. 76(1)); Morocco (Dahir No. 1-72-219 of 1973 determining the conditions of employment and remuneration of persons employed in agriculture, s. 44).

² For example, Bangladesh (Tea Plantation Labour Ordinance, s. 4(b)); Barbados (s. 95(a) of the Factories Act specifies that inspections must take place at any reasonable time of the day or night); Botswana (Employment Act, s. 8; the Factories Act, on the other hand, specifies in s. 69 that visits may take place by day or night); Burma (Shops and Establishments Act of 1951, s. 13(1)); India (Payment of Wages Act, s. 14(4); Plantations Labour Act, s. 5; s. 9 of the Equal Remuneration Act provides that the inspection may take place "at any reasonable time"); Jamaica (Labour Officers (Powers) Act, s. 3); New Zealand (Agricultural Workers Act, s. 6(1)(a)).

164. In so far as it is up to the inspector to decide whether or not a night visit is "reasonable" and this right is clearly recognised in the country's administrative or legal practice, a clause to this effect does not appear to be contrary to the spirit of the Conventions on labour inspection. Experience has shown, moreover, that even in countries where the laws and regulations establish the right of inspectors to enter "at any hour of the day or night", inspection visits generally take place during working hours, those outside working hours being confined to special cases such as those mentioned in paragraph 151.

(ii) Other premises

165. The definition of undertakings subject to inspection varies according to the scope of the various systems of labour inspection.¹ Various means, such as the compulsory notification of undertakings for registration purposes, enable the said undertakings to be identified.² There may be undertakings that genuinely believe themselves to be exempt from inspection and which have not been registered because there has been no notification to the competent authorities. It is in order to deal with this type of situation that Convention No. 81, in Article 12, paragraph 1(b), and Convention No. 129, in Article 16, paragraph 1(b), specify that inspectors must be empowered to enter by day any premises which they may have reasonable cause to believe to be liable to inspection. The above-mentioned provisions of Conventions Nos. 81 and 129 do not generally run into implementation difficulties. The few divergencies that have been noted in national laws and regulations seem to be more a matter of form than of any intention to reduce the powers of the inspector, given the general nature of the mission entrusted to him.

(iii) Private home of the operator of the undertaking

166. Because of the special situation of agriculture, where the private home of the operator of the undertaking is likely to be a workplace, Article 16, paragraph 2, of Convention No. 129 establishes a reservation vis-à-vis inspectors' powers of entry by specifying that labour inspectors may not enter the private home of the operator of an agricultural undertaking "except with the consent of the operator or with a special authorisation issued by the competent authority".

167. Although the information furnished by governments is not always explicit on this point, it would seem that, where they exist,

¹ See Chapter I, section III, Scope.

² See above, para. 94.

constitutional guarantees establishing the principle of inviolability of the private home should make it possible to ensure the observance of this provision. Several governments have stated that inspection staff were not authorised to enter private homes on an agricultural undertaking or that they could do so only in the circumstances provided for in the Convention.¹ Some social laws and regulations also contain provisions to this effect.²

(iv) Guarantee of the right
of free entry

168. Labour inspectors' right of free access is reinforced by laws and regulations through certain safeguards, either preventive or punitive in nature, which stress the importance of this right. In the first category, some laws and regulations provide that the labour inspector has the right to be accompanied on an inspection visit by a police officer.³ Sometimes this right stems from more general provisions requiring the authorities to assist the staff of the inspection

¹ For example, Austria, Barbados, Federal Republic of Germany, New Zealand, Syrian Arab Republic, Uruguay, Yugoslavia.

² For example, Botswana (Employment Act, s. 8(2)vi.B); Canada (Manitoba, Workplace Safety and Health Act, s. 24(2)); Cyprus (Act respecting annual holidays with pay, s. 13); Denmark (s. 2, Chapter 2 of the Working Environment Act excludes from its scope work carried out at the employer's private home); Netherlands (Labour Act, s. 85(4)).

³ For example, Algeria (Ordinance No. 75-33 of 1975 respecting the powers of the Labour and Social Affairs Inspectorate, s. 20); Barbados (Factories Act, s. 95(c)); Bolivia (Decree No. 05202 of 1959 regulating the organisation of the Ministry of Labour, s. 47(c)); Botswana (Factories Act, s. 69(1)(b)); Costa Rica (Decree No. 42 of 1949 regulating the labour inspectorate, s. 41); Cyprus (Factories Act, s. 87(b)); Gabon (Labour Code, s. 148); Ghana (Factories, Offices and Shops Act, s. 75(1)(b)); Guatemala (Labour Code, s. 281); Ireland (Factories Act, s. 94(1)(b)); Israel (Labour Inspection Organisation Act, s. 3(8)); Kenya (Factories Act, s. 69(1)(b)); Nepal (Factories and Factory Workers' Act, s. 5(a)); New Zealand (Factories and Commercial Premises Act, s. 5(1)); Saudi Arabia (Labour Code, s. 33); Sri Lanka (Factories Act, s. 101(1)(c)); United Kingdom (Health and Safety at Work Act, s. 22(b)).

services.¹ In some countries, moreover, inspectors have the powers of police officers.² The second category of safeguards consists of the statutory penalties laid down for impeding labour inspectors in the performance of their duties and will be considered in Chapter VI under penalties.

(b) The right of free inspection

169. Once they are on the premises of the undertaking, labour inspectors are entitled, as stipulated in Article 12, paragraph 1(c), of Convention No. 81 and Article 16, paragraph 1(c), of Convention No. 129 to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed. To this end, they must be able to interrogate the employer or the staff of the undertaking, to require the production of certain documents, to enforce the posting of certain notices and to remove for the purposes of analysis samples of materials used.

(i) Interrogation

170. In accordance with Article 12, paragraph 1(c)(i), of Convention No. 81 and Article 16, paragraph 1(c)(i), of Convention No. 129, laws and regulations in most countries contain provisions conferring on labour inspectors the right to interrogate both the employer and the staff of the undertaking in the course of an inspection visit. Some laws even provide that the labour inspector may call the employer and staff of the undertaking to his office.³ As the Committee emphasised in its previous survey,⁴ it is important that inspectors should be able to avail themselves of their powers in respect of interrogation either alone or in

¹ For example, Bahrain (Act respecting employment in the private sector, s. 152); Comoros (Labour Code, s. 170); Libyan Arab Jamahiriya (Labour Code, s. 114); Sweden (Working Environment Act, Chapter 7, s. 5(2)).

² For example, Colombia (Labour Code, s. 486); Federal Republic of Germany (Industrial Code, s. 139(b)); Qatar (Labour Code, s. 74); Somalia (Labour Code, s. 112).

³ For example, Congo (Labour Code, s. 155(e)(4)); Luxembourg (Labour and Mining Inspectorate Organisation Act, 1974, s. 15(3)).

⁴ 1966 General Survey on Labour Inspection, op. cit., para. 133.

the presence of witnesses, as is mentioned explicitly in many legal provisions.¹ It is also essential, moreover, although not always specified by law, that this power of the inspectors should be extended in practice to other persons in the undertaking, as provided for in Convention No. 129.²

(ii) Inspection of documents

171. In the vast majority of countries, inspectors have the right to require the production of books, registers and other documents whose keeping is prescribed by law in order to see that they are in conformity with the legal provisions, as is stipulated in Article 12, paragraph 1(c)(ii), of Convention No. 81 and Article 16, paragraph 1(c)(ii), of Convention No. 129.

¹ For example, Algeria (Ordinance No. 75-33 of 1975 respecting the powers of the Labour and Social Affairs Inspectorate, s. 5(2)(a)); Austria (Labour Inspection Act of 1974, s. 5(1)); Bahrain (Order No. 28 of 1976 concerning the organisation of the functions of the labour inspectorate, s. 14(d)); Cameroon (Labour Code, s. 115(c)(i)); Costa Rica (Decree No. 42 of 1949 regulating the labour inspectorate, s. 39(e) and (f)); Cyprus (Factories Act, s. 87(f)); Ethiopia (Labour Standards Proclamation No. 232 of 1966, s. 7(2)(a)); Finland (Act to provide for the supervision of labour protection, s. 4(2)); Gabon (Labour Code, s. 148(d)(i)); Mexico (Federal Labour Act, s. 541); Nigeria (Labour Act, s. 77(i)); Somalia (Labour Code, s. 110(4)); Tunisia (Labour Code, s. 174(d)(i)).

² The Government of Austria states that the Agricultural Labour Act does not provide for inspectors to have the right to interrogate persons present on the agricultural undertaking other than the employer and his employees. The Government adds, however, that such persons may be interrogated in accordance with the provisions of paragraph 46 of the Act on general administrative procedure although they are not obliged to reply.

172. On the other hand, provision is not always made for the inspector to be able to make extracts from such documents¹ although such a right may arise from the powers attributed in general terms to inspectors for carrying out their duties.²

(iii) Enforcement of the
posting of notices

173. The posting of certain notices such as works rules, time schedules, instructions for the use of certain dangerous equipment, etc. is often prescribed by national laws and regulations with a view to informing employers and workers of their respective rights and duties and to preventing any disputes in the matter.

174. Article 12, paragraph 1(c)(iii), of Convention No. 81 provides that the inspector is empowered "to enforce the posting of notices required by the legal provisions". Laws and regulations in several countries contain provisions expressly giving effect to this provision in the Convention,³ although this is not always the case. It may

¹ For example, Bahrain (Order No. 28 of 1976 concerning the organisation of the functions of the inspectorate, s. 14(b)); Bangladesh (Tea Plantation Labour Ordinance, s. 4(c)); Benin (Labour Code, s. 144(e)(2)); Bolivia (Decree No. 05202 of 1959 respecting the organisation of the Ministry of Labour, s. 47(b)(2)); Egypt (Labour Code, s. 161); Gabon (Labour Code, s. 148(d)); India (Plantations Labour Act, s. 5(c)); Japan (Labour Standards Act, s. 101); Mali (Labour Code, s. 353(e)(2)); Nepal (Act respecting factories and factory workers, s. 5(b)); Pakistan (Road Transport Workers' Ordinance, s. 9).

² For example, Bangladesh (Tea Plantation Labour Ordinance, s. 4(d)); Benin (Labour Code, s. 144(e)); Gabon (Labour Code, s. 148(d)); India (Plantations Labour Act, s. 5(d)); Mali (Labour Code, s. 353(e)); Nepal (Factories and Factory Workers' Act, s. 5(c)).

³ For example, Antigua and Barbuda (Labour Code, s. B 15.2(e)); Bahamas (Trade Union and Industrial Conciliation Act, s. 56 B(b)(iii)); Barbados (Shops Act, s. 15(1)); Bolivia (Decree No. 05202 of 1959 regulating the organisation of the Ministry of Labour, s. 47(g)); Ethiopia (Labour Standards Proclamation No. 232 of 1966, s. 7(2)(c)); Ghana (Labour Decree, s. 48(1)(i)); Luxembourg (Labour and Mines Inspectorate Organisation Act, 1974, s. 14(b)); Malawi (Labour Legislation (Miscellaneous Provisions), s. 4; Nepal (Factories and Factory Workers' Act, s. 61(2)); Saudi Arabia (Labour Code, s. 27(b)(4)); Somalia (Labour Code, s. 110, 6). The same also applies in most French-speaking African countries.

nevertheless be considered that such a right derives, failing any specific provisions, from the task entrusted to the inspection services of verifying compliance with labour regulations in general, including the requirements relating to the posting of notices.¹ This is probably one of the reasons why Convention No. 129 has not taken up the corresponding provision in Convention No. 81 in respect of the posting of notices, apart from the fact that agricultural workers do not generally work on the premises but are dispersed all over the estate.

(iv) Inspection of materials
and substances used

175. In accordance with Article 12, paragraph 1(c)(iv), of Convention No. 81 and Article 16, paragraph 1(c)(iii), of Convention No. 129, inspectors must be empowered to take or remove for purposes of analysis samples of products, materials and substances used or handled, subject to the employer or his representative being notified.

176. The importance of these provisions, which have a double aim, must be emphasised: firstly, the inspector must check that certain substances that are forbidden by laws and regulations are not being used in the undertaking; secondly, he may, where he has doubts as to the harmful nature of certain less familiar products, take samples away to have them analysed.

177. In so far as the taking of samples constitutes an infringement of the employer's property rights, entitlement to do so must be expressly stipulated in a legal text, as is the case in many countries. However, it is not always possible from the information furnished by governments to ascertain whether this power of the inspectors is in fact established by a specific provision.²

¹ See 1966 General Survey on Labour Inspection, op. cit., para. 138.

² This is the case, for example, in the following countries: Australia (Western Australia: Construction Safety Act); Bangladesh (Tea Plantation Labour Ordinance); Chile; India (Plantation Labour Act); Jordan; Libyan Arab Jamahiriya; Madagascar; Mauritius; Morocco (in respect of agriculture); Mozambique; Norway (in respect of agriculture); Pakistan; Qatar; Romania.

178. In view of the discretionary powers of inspectors as regards the taking of samples, certain guarantees have to be observed. In particular, the employer or his representative must be notified. This guarantee is found in the laws and regulations of most countries which contain a provision concerning the taking of samples. But even where no such obligation is provided for, one can imagine that inspectors will not fail to keep the employer informed even if only in the interests of good relations.¹ In order to avoid any subsequent disputes, the legislation in some countries provides that the sample must be divided into three, the first part being handed to the employer or his representative, the second retained by the inspector for future comparison and the third to be analysed.²

B. Powers of injunction

179. An inspection service lacking the necessary powers to enjoin undertakings to take the measures called for to remedy defects observed during an inspection visit would not be very effective. That is why both Convention No. 81 and Convention No. 129 seek to endow labour inspectors with certain powers of injunction. These powers are of two kinds: on the one hand, in accordance with Article 13, paragraph 2(a), of Convention No. 81 and Article 18, paragraph 2(a), of Convention No. 129,³ inspectors must be empowered to make or to have made orders requiring such alterations to the installation or plant, to be carried out within a specified time-limit, as may be necessary to secure compliance with the legal provisions relating to the workers' safety. On the other hand, in accordance with paragraph 2(b) of Article 13 of Convention No. 81 and Article 18 of Convention No. 129, inspectors must be able to order the taking of measures with immediate executory force in the event of imminent danger to the health or safety of the workers. Convention No. 129 specifically stipulates that these

¹ The Government of Austria states in this respect that the Agricultural Labour Act does not specifically establish that the inspector is obliged to notify the employer if he takes a sample.

² For example, Barbados (Factories Act, s. 69(2)).

³ Article 18, paragraph 2(a), of Convention No. 129 adds, after the word "installation", the words "plant, premises, tools, equipment or machines".

measures must be able to include the halting of work. It should be noted that the inspector must be empowered to order the taking of measures with immediate executory force whether or not a legal provision has been infringed.

180. To take account of the differences noted in the laws and regulations and administrative practice of States, both Conventions authorise the waiving of the above general rule by stipulating that "where the procedure ... is not compatible with the administrative or judicial practice of the Member, inspectors shall have the right to apply to the competent authority for the issue of orders or for the initiation of measures with immediate executory force".

(a) Formal notice with immediate effect

181. The power to order measures with immediate executory force in the event of imminent danger to the life or health of workers is provided for in the laws and regulations of several countries though not to the same degree as formal notice with a time-limit.¹

182. In an increasing number of countries the laws and regulations confer directly on the inspectors,² or in some more limited cases their

¹ The following countries encounter difficulties in this respect: Cameroon, Chad, Dominican Republic, Guinea, Jamaica, Kuwait. See also the countries mentioned in the note to para. 185.

² For example, Angola (Decree No. 110 B/75, s. 16); Bolivia (Decree No. 05202 of 1959 regulating the organisation of the Ministry of Labour, s. 47(f)); Canada (Canadian Labour Code, s. 94); Czechoslovakia (Act No. 174 of 1968 concerning the technical supervision of occupational safety by the State, s. 6); German Democratic Republic (Labour Code, s. 293(3) and (4)); Federal Republic of Germany (Industrial Code, s. 120); Ghana (Labour Decree, s. 48; in accordance with ss. 52 and 53 of the Factories Act, the judicial authority may also order such measures); Guinea-Bissau (Decree No. 44309 of 1962 to establish the rural Labour Code, s. 301); Hungary (s. 11 of Decree No. 47 of 1979); India (Factories Act, s. 40); Mexico (under s. 541 VI of the Federal Labour Act, inspectors can only suggest the measures to be taken); Pakistan (Factories Act, s. 33, I); Romania (Decree No. 783 of 1969 concerning the organisation and functioning of

superiors,¹ the right to order measures with immediate executory force in case of imminent danger to workers' health or safety. Where the laws and regulations do not endow inspectors with direct powers of injunction the decision may, as authorised by paragraph 3 of Article 13 of Convention No. 81 and paragraph 3 of Article 18 of Convention No. 129, be incumbent on other authorities to whom the inspector has to apply. Frequently this is a judicial authority.² In cases where the powers of injunction lie with the courts, it is important that the inspectors should be able to obtain a decision very quickly. In this respect it is interesting to note that the laws and regulations in some countries provide that the judicial authority may order the taking of the measures applied for without having heard the employer.³

(Footnoted continued from previous page)

the Ministry of Labour, s. 13, para. 1(b)); Saudi Arabia (Labour Code, s. 30); Spain (Decree No. 2122 of 1971 to approve the regulations governing the labour inspectorate, s. 23(b)); Suriname (Decree E-35 of 1983 on Labour Inspection, s. 12); USSR (Regulations of 1976 concerning the statutory inspection of labour; Regulations of 1977 concerning technical inspection carried out by the trade unions, s. 9); United Kingdom (Health and Safety at Work Act, ss. 22 et seq.); Yemen (Order No. 17 of 1974 on inspection in industry and commerce, s. 21).

¹ For example, Israel (Labour Inspection Organisation Act, s. 6(a): the measures are ordered by the regional labour inspectors); Luxembourg (Labour and Mines Inspectorate Organisation Act of 1974, s. 16).

² For example, Barbados (Factories Act, s. 42); Cyprus (Factories Act, ss. 47 and 48); Kenya (Factories Act, s. 43); Sri Lanka (Factories Act, s. 44); Zambia (Factories Act, s. 103).

³ For example, Barbados (Factories Act, s. 42(3)); Cyprus (Factories Act, s. 47(2)); Sri Lanka (Factories Act, s. 44(2)).

183. Although in some countries the nature of the measures with immediate executory force is not defined,¹ the laws and regulations in several countries contain specific provisions on the matter. For example, to safeguard the workers' safety many laws provide for machinery, equipment and installations to be taken out of service, for work to stop and for establishments to be partly or completely closed.²

¹ For example, Algeria (Ordinance No. 75-33 of 1975 in respect of the powers of the Labour and Social Affairs Inspectorate, s. 15); Austria (Labour Inspection Act of 1974, s. 7); Bolivia (Decree No. 05202 of 1959 regulating the organisation of the Ministry of Labour, s. 47(f)); Colombia (Labour Code, s. 486).

² For example, Barbados (Factories Act, s. 42: possibility of banning the use of dangerous ways, of works, machines, installations, methods of work or substances as well as all or part of a factory); Cuba (Decree No. 4 of 1977 regulating the national labour inspection system, s. 19: possibility of ordering the stoppage of certain machinery or equipment); Cyprus (Factories Act, s. 47: possibility of banning the use of dangerous ways, works, machinery, or installations and all or part of the factory); Czechoslovakia (Act No. 174 of 1968 on technical supervision of occupational safety by the State, s. 6: possibility of ordering machinery and equipment to be put out of service and of prohibiting the use of workplaces); Denmark (Working Environment Act, s. 77(1): possibility, in the event of serious danger, of ordering - in addition to the ban on the use of dangerous machinery, equipment, materials and substances - the removal of the staff from the dangerous area and the suspension of work in general); India (Factories Act, s. 40(2): possibility of banning the use of access roads, machinery or installations as well as all or part of the building); Japan (Industrial Safety and Health Act, s. 98: possibility of banning the use of work premises and of ordering any other measures that might prove necessary); Norway (Workers' Protection and Working Environment Act, s. 77(2): possibility of ordering the partial or total closure of the undertaking); Poland (State Labour Inspection Act of 1981, s. 9: possibility of ordering the closure of an establishment or part of an establishment); Suriname (Decree E-35 of 1983 on Labour Inspection, s. 12: evacuation of premises and stopping of the work); USSR (Regulations of 1976 on the statutory inspection of labour, s. 6; Regulations of 1977 on technical inspection carried out by trade unions, s. 9: possibility of ordering any measure that becomes necessary as well as the affixing of seals on dangerous machinery or equipment); United States (Federal Mines Act, s. 107(a): removal of all persons from the dangerous area).

(b) Formal notice with a time-limit

184. Many laws also provide for the power to give employers notice to take, within a prescribed time-limit, the measures necessary to remedy the defects observed during an inspection visit. Often, the competent authority (inspector, judicial authority, or other) is the same as in the case of formal notice with immediate effect. However, in some countries, inspectors are themselves authorised to issue a notice to take measures within a time-limit, even though they cannot directly order immediate executory measures for which they would have to apply to judicial or administrative authorities.¹ As a rule, the notice must be given, or at least confirmed, in writing. The time-limit is generally left to the discretion of the inspectors who in setting it will take account of the seriousness of the situation and of the importance of the work to be carried out, although some regulations establish minimum time-limits.

185. In some countries, however, in certain sectors at least, no procedures exist whereby the employer can be given formal notice that he must, within a certain time-limit, make the necessary changes to remedy defects that have been noted.²

(c) Appeals against inspectors' decisions

186. Laws and regulations generally provide the possibility of appealing against decisions taken by inspectors within the framework of their powers of injunction in order to avoid misuse of these powers. Sometimes the appeal is made to the senior inspection authority,³ and

¹ For example, Algeria, France.

² This is the case in the following countries: Bahamas, Bangladesh (Tea Plantation Labour Ordinance and Shops and Establishments Act); Bolivia (agriculture); India (Plantations Labour Act); Jordan; Libyan Arab Jamahiriya; Morocco (agriculture); Nepal; Pakistan (Shops and Establishments Act); Paraguay; Qatar.

³ For example, Algeria (Ordinance 75-33 of 1975 respecting the powers of the labour and social affairs inspectorate, s. 10); Comoros (Labour Code, s. 162); Congo (Labour Code, s. 140); Cuba (Decree No. 4 of 1977 regulating the national labour inspection system, s. 20);

in other cases to a judicial authority.¹ The methods of appeal and the period within which they may be made vary according to the country.

187. The effect of the appeal is sometimes established in the text itself, which provides for the inspectors' powers but frequently general rules of procedure are applied, which explains why information on the subject is not always available. In the case of formal notice with a time-limit, the appeal often has a suspensive effect, which appears to be justified by the fact that the measures ordered by the labour inspector are not, in this case, of an emergency nature.² But in the case of measures with immediate executory force, the Committee considers that the appeal should not have a suspensive effect; this is explicitly stated in certain laws and regulations.³ As the Committee has had occasion to emphasise in certain specific cases, the injunction with immediate effect is designed to protect workers against imminent danger; this aim cannot be achieved if the execution of an injunctive measure ordered by an inspector can be postponed by the lodging of an appeal.

(Footnote continued from previous page)

Denmark (Working Environment Act, s. 81); Luxembourg (Labour and Mines Inspectorate Organisation Act, 1974, s. 15(2)); Morocco (Dahir of 1947 to issue labour regulations, s. 34); Norway (Workers' Protection and Working Environment Act, s. 77(5)); Saudi Arabia (Labour Code, s. 146).

¹ For example, Israel (Labour Inspection Organisation Act, s. 8(b)); United Kingdom (Health and Safety at Work Act, s. 24); Singapore (Factories Act, s. 48).

² For example: Congo (Labour Code, s. 140); Cuba (Decree No. 4 of 1977 regulating the national labour inspection system, s. 20); Denmark (Working Environment Act, s. 81(3)); Tunisia (Labour Code, s. 175); Zaire (Labour Code, s. 142).

³ For example, Austria (Labour Inspection Act of 1974, s. 7, para. 4); Cuba (Decree No. 4 of 1977 regulating the national labour inspection system, s. 21); Denmark (Working Environment Act, s. 81(3)); Luxembourg (Labour and Mines Inspectorate Organisation Act, 1974, s. 15(2)); Poland (1981 State Labour Inspection Act, s. 21); Saudi Arabia (Labour Code, s. 146: the possibility for the appeal authority to give a contrary ruling is however reserved); Singapore (Factories Act, s. 48); Suriname (Decree E-35 of 1983 on Labour Inspection, s. 14).

(a) Notifying the employer and
workers' representatives

188. Article 18, paragraph 4, of Convention No. 129 provides that "the defects noted by the inspector when visiting an undertaking and the orders he is making or having made ... shall be immediately made known to the employer and the representatives of the workers".

189. This provision aims at associating the workers' representatives in the supervisory process so that they may exert a certain degree of pressure and thus avoid delay in the execution of the measures ordered by the inspector. The provision takes account of the special character of agricultural undertakings, which are often at some distance from the inspectorate's offices, and could in fact be usefully applied in other sectors of activity.

190. On the whole, national laws and regulations provide more or less explicitly that defects noted in the course of an inspection visit must be notified to the employer or his representative. However, it has not always been possible, from the information available, to determine whether the workers' representatives were also to be informed. It may nevertheless be assumed that the inspector will inform the representatives of safety and health committees or safety delegates, where they exist, in the course of his discussions with them, as is explicitly laid down in certain regulations.¹ Furthermore, the laws and regulations in several countries prescribe that the findings of inspection visits must be recorded in a special register that is to be kept in the undertaking for consultation by inspectors.² Where workers' representatives have access to this register, the provisions of paragraph 4 of Article 18 of Convention No. 129 can be considered to have been respected. Workers could also be given information by the posting of notices, as the law of one country provides.³ One government, however, has stated that defects noted by the inspectors were not

¹ For example, Norway (Workers' Protection and Working Environment Act, s. 77(6), and guide-lines for the local labour inspectorate, s. 24); Philippines (Inspection Service Manual, p. 36); Poland (Resolution of 27 October 1983, s. 21); Sweden (Working Environment Ordinance, s. 16).

² For example, Burundi (Labour Code, s. 155); Cameroon (Labour Code, s. 124); Congo (Labour Code, s. 139); Gabon (Labour Code, s. 136).

³ Israel (s. 6(c) of the Labour Inspection Organisation Act provides that the measures ordered by an inspector may be posted up in a conspicuous part of the workplace).

normally brought to the attention of the workers' representatives.¹ Difficulties have also been encountered on this point by some governments bound by Convention No. 129.²

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191. Articles 12 and 13 of Convention No. 81 and Articles 16 and 18 of Convention No. 129 concerning the powers of inspectors are of fundamental importance. In this respect the information available shows that although in very many countries the inspectors are endowed with the necessary powers, in others the laws and regulations give only partial effect to these provisions. It is nevertheless encouraging to note that since the last General Survey several states bound by one or other of these instruments have taken measures to ensure their implementation on these points following comments made by the Committee.³

II. Obligations of inspectors

192. As a balance to the extended powers conferred on inspectors, it is only normal that they should have certain obligations. To maintain their impartiality and independence they are forbidden to have interests in the undertakings placed under their supervision (obligation of detachment). Moreover, they have obligations of discretion in respect both of the undertaking and employers (professional secrecy) and of the workers (discretion as to the source of complaints). These obligations are stipulated in Article 15 of Convention No. 81 and Article 20 of Convention No. 129, subject to such exemptions as national laws and regulations may prescribe.

¹ New Zealand.

² For example, Bolivia, Burkina Faso, Costa Rica, Kenya, Madagascar, Morocco, Spain.

³ (a) As regards inspection powers: Algeria, Argentina, Belgium, Cameroon, Comoros, Cuba, Egypt, Greece, Guyana, Haiti, Iraq, Ireland, Kuwait, Madagascar, Malaysia, Nigeria, Norway, Pakistan, Panama, Paraguay, Sierra Leone, Sudan, Suriname, Syrian Arab Republic, Uganda, United Kingdom, Uruguay, Venezuela, Yugoslavia.

(b) As regards powers of injunction: Algeria, Argentina, Belgium, Comoros, Cuba, Ghana, Haiti, Iraq, Kuwait, Madagascar, Mauritania, Morocco, Panama, Peru, Sierra Leone, Sri Lanka, Suriname, Uruguay.

A. Detachment

193. Both Article 15(a) of Convention No. 81 and Article 20(a) of Convention No. 129 provide that labour inspectors are prohibited from having any direct or indirect interest in the undertakings under their supervision. The importance of the principle of the detachment of labour inspectors is generally recognised by governments. Some socialist countries have nevertheless stated that these provisions have no relevance in view of the economic system in force.¹

194. In most countries, inspectors are prohibited from having interests in the undertakings under their supervision by specific provisions governing the labour inspection services, although the general rules of the public service may also contain provisions applicable in this field.² Many countries have adopted wording that is identical or similar to that of the labour inspection Conventions.³

¹ For example, Romania, USSR, Yugoslavia. See 1966 General Survey on Labour Inspection, *op. cit.*, para. 162.

² For example, Morocco (the Dahir of 24 February 1958 to establish general rules for the public service, provides, in s. 16, that no official, whatever his position, may have, whether directly or through a third party, and in any form whatsoever, interests likely to compromise his independence in an undertaking under the supervision of the administration or service to which he belongs); New Zealand (State Services Conditions of Employment Act, s. 53); Switzerland (Federal Act respecting the conditions of service of federal employees, s. 15); Tunisia (Public Service Act, s. 5).

³ For example, Algeria (Ordinance No. 75-33 of 1975 respecting the powers of the labour and social affairs inspectorate, s. 17); Bahamas (Trade Union and Industrial Conciliation Act, s. 56G); Bahrain (Order No. 28 of 1976 concerning the organisation of the functions of the labour inspectorate, s. 12); Bolivia (Decree No. 05202 respecting the organisation of the Ministry of Labour, s. 52(a)); Burundi (Labour Code, s. 157); Chad (Labour Code, s. 14); Ghana (Labour Decree, s. 48); Guyana (Factories Act, s. 9); Luxembourg (Labour and Mines Inspectorate Organisation Act of 1974, s. 22); Mexico (Regulations on Federal Labour Inspectorate, s. 24); Rwanda (Labour Code, s. 150); Somalia (Labour Code, s. 111); Zaire (Labour Code, s. 164).

Others, on the contrary, list cases of prohibited interest.¹ These include participation in the management of the undertaking, either directly or through another party, the acquiring of shares or financial interests or even, as is the case in some countries, having an interest in the use of a patent² or a trade mark.³ This latter method has the advantage of enabling inspectors and the competent authority to have a clearer idea of the cases of "interest" that are prohibited.

195. It would be desirable for measures to be taken to verify that inspectors are complying with their obligation of detachment. Only a few governments have sent information in this respect. In some countries the inspector, like all other officials must, upon appointment, inform the competent authority of all his financial interests in the undertakings of the country. If the authority considers that the interests might come into conflict with the official's public duties or might have any influence on his duties, it will require him to divest himself of these interests to such extent as it may direct.⁴ In another country it is ascertained, when duties are being assigned among inspectors, that the latter have no direct or indirect link with the undertakings placed under their supervision.⁵

¹ For example, Austria (Labour Inspection Act of 1974, s. 14); Botswana (Factories Act, s. 68(5)); Finland (Act to provide for the supervision of labour protection, s. 7); Norway (Workers' Protection and Working Environment Act, s. 82).

² Botswana (Factories Act, s. 68(5)); Finland (Act to provide for the supervision of labour protection, s. 7); India (Factories Act, s. 8).

³ For example, Finland (Act to provide for the supervision of labour protection, s. 7).

⁴ For example, Cyprus, Mauritius.

⁵ For example, Egypt (procedural guide-lines).

196. In the event of breach of duty by inspectors, as public officials they are normally subject to disciplinary penalties which, if they refuse to divest themselves of the prohibited interests, should be able to result in their dismissal. Specific provisions to this effect are sometimes included in laws and regulations.¹ In some countries the laws and regulations provide that an inspector must not inspect an undertaking in which he has an interest.² Although not explicitly stated in the labour inspection Conventions, it goes without saying that the obligation of detachment extends to offers of gifts or services made by employers or workers. As a rule, acceptance of such offers by an inspector renders him liable to penal sanctions for corruption.

197. Article 15(a) of Convention No. 81 and Article 20(a) of Convention No. 129 nevertheless provide for exceptions that "may be made by national laws or regulations" to the obligation of detachment. It is important that no exception that might be authorised should undermine the principle of the obligation of detachment. In this respect, one government stated that the requirements of Article 15(a) of Convention No. 81 would be considered to be of crucial importance when authorising exceptions to the obligation of detachment prescribed by law.³

¹ For example, Colombia (the Government refers to a decision of the Council of State whereby the provisions of the Code of Civil Procedure concerning the impeachment and recusation of judges are applicable in the absence of legal provisions concerning the officials); Finland (s. 7 of the Act to provide for the supervision of labour protection refers to the procedure of recusation of judges); India (Factories Act, s. 8(3)).

² For example, Ethiopia (the Labour Standards Proclamation No. 262 of 1966 provides, in s. 9, that labour inspectors may not be assigned to inspection or supervision of any enterprise in which they possess any proprietary or other interest); Luxembourg (Act respecting the organisation of the labour inspectorate, s. 22(3), with reference to undertakings in which the family or relations of the inspector have an interest); Norway (Workers' Protection and Working Environment Act, s. 76(3)).

³ Norway.

B. Professional secrecy

198. Through their supervisory activities, inspectors naturally acquire information of an economic nature which the undertaking may wish to keep confidential. This is why Article 15(b) of Convention No. 81 and Article 20(b) of Convention No. 129 provide that labour inspectors "shall be bound on pain of appropriate penalties or disciplinary measures not to reveal, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties".

199. As public servants, inspectors are in principle bound by the general obligation of secrecy by the provisions of the rules governing the public service which apply to state officials,¹ although special provisions, generally using the terms of Conventions Nos. 81 and 129, have frequently been adopted for labour inspectors.² In a large number of countries this obligation has been explicitly included in the oath that must be taken by labour inspectors before they take up their

¹ See IL0: Disciplinary codes and procedures in the public service, Report III, Joint Committee on the Public Service, Second Session, Geneva, 1975, pp. 10 et seq.

² For example, Antigua and Barbuda (Labour Code, s. B 16(1)); Austria (Labour Inspection Act of 1974, s. 14); Bahamas (Trade Union and Industrial Conciliation Act, s. 56 F); Bolivia (Decree No. 05202 of 1959 respecting the organisation of the Ministry of Labour, s. 52(b)); Burundi (Labour Code, s. 156); Costa Rica (Decree No. 42 regulating the labour inspectorate, s. 28(a)); Cyprus (Factories Act, s. 89); Czechoslovakia (the Government states in its report that, in accordance with the labour regulations of the organisations in which they are employed, workers of the state technical supervisory bodies, work safety and public hygiene service are required, under pain of disciplinary penalties, not to divulge, even after leaving the service, any production or trade secret or any manufacturing process which has come to their knowledge through their duties); Denmark (Working Environment Act, s. 79(1)); Ecuador (Labour Code, s. 535); Islamic Republic of Iran (Regulations on the powers and duties of labour inspectors, s. 8); Mauritius (Instruction of the Department of Labour, No. 8, 1961, s. 12); Poland (State Labour Inspection Act of 1981, s. 24); Singapore (Employment Act, s. 135); Switzerland (Labour Act, s. 44).

duties; this shows how much importance is attached to this principle.¹ Exceptions are sometimes provided for to take account of service requirements, as is authorised by Convention.²

200. In the event of breach of professional secrecy, inspectors are liable to disciplinary penalties in accordance with the procedure in force in the public service, without prejudice to civil or penal penalties.³

¹ For example, Bahrain (Act respecting employment in the private sector, s. 148); Benin (Labour Code, s. 138); Cameroon (Labour Code, s. 113); Comoros (Labour Code, s. 160); Congo (Labour Code, s. 152); Egypt (Labour Code, s. 160); Gabon (Labour Code, s. 146); Ivory Coast (Labour Code, s. 125); Libyan Arab Jamahiriya (Labour Code, s. 113); Luxembourg (Labour and Mines Inspectorate Organisation Act of 1974, s. 24); Mali (Labour Code, s. 350); Morocco (Dahir of 2 July 1947 to issue labour regulations, s. 55); Saudi Arabia (Labour Code, s. 25); Tunisia (Labour Code, s. 173).

² For example, Antigua and Barbuda (Labour Code, s. B 16(1): the divulging by inspectors of information concerning processes or trade secrets is authorised by the Department of Labour where necessary for the performance of their duties); Finland (Act of 1973 to provide for the supervision of labour protection, s. 5: information may be communicated to the court or the police authorities, with a view to penalising an infringement, as well as to other authorities empowered to receive such information in accordance with the law); Zambia (Employment Act, s. 7: information may be communicated to a court or to a person empowered by law to require its divulging as well as to any person participating in the enforcement of the Employment Act in so far as this information may be necessary for enforcement).

³ For example, Bahamas (s. 56 F of the Trade Unions and Industrial Conciliation Act provides for a fine and/or imprisonment); Benin (under s. 138 of the Labour Code, an inspector who breaks his oath is punished in accordance with the Penal Code); Bolivia (Decree No. 05202 of 1959 respecting the organisation of the Ministry of Labour, s. 52; disciplinary penalty without prejudice to civil or penal sanctions); Cameroon (under s. 113 of the Labour Code, an inspector who breaks his oath is liable to penal sanctions); Comoros (under s. 160 of the Labour Code, an inspector who breaks his oath is liable to penal sanctions); Congo (under s. 152 of the Labour Code, an inspector who breaks his oath is liable to penal sanctions); Denmark (Working Environment Act, s. 79(1); penalties prescribed by the Penal Code); Ecuador (Labour Code, s. 536; disciplinary penalties and fines); Gabon (under s. 146 of the Labour Code, an inspector who breaks his

(Footnote continued on next page)

C. Discretion as to the source of complaints

201. In accordance with Article 15(c) of Convention No. 81 and Article 20(c) of Convention No. 129, labour inspectors are required to treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and to give no intimation to the employer that a visit of inspection was made in consequence of such a complaint. This is a fundamental duty, respect for which is indispensable for the labour inspector's work. All too often, for fear of possible reprisals, workers are reluctant to draw the attention of the inspection services to situations in the undertaking that are dangerous to life and health. For the same reasons they often refrain from reporting infringements of legal provisions that might have a detrimental effect on them.

202. Although at the beginning some difficulties in implementation were reported by governments, it would seem that this provision of Conventions Nos. 81 and 129 is now observed in most countries which have ratified the instruments. Since the Committee's last General Survey, many of these countries have supplemented their laws and regulations by provisions requiring labour inspectors to preserve secrecy regarding the source of complaints.¹ Nevertheless, some countries still seem to be encountering difficulties in making this a legally binding obligation.² Since the consequences could be particularly serious for the workers if inspectors did not observe their obligation to preserve secrecy, the

(Footnote continued from previous page)

oath is liable to penal sanctions); Guyana (Labour Act, s. 39 A; fine and/or imprisonment); India (Factories Act, s. 118(3); fine and/or imprisonment); Kenya (Employment Act, s. 55; fine and/or imprisonment); Luxembourg (Labour and Mines Inspectorate Organisation Act, 1974, s. 24, and Penal Code, s. 458; fine and imprisonment); Morocco (under s. 55 of Dahir of 2 July 1947 to issue labour regulations, an inspector who breaks his oath is liable to penal sanctions); Sri Lanka (Labour Inspections (Maintenance of Secrecy) Act, s. 3; fine and/or imprisonment); Tunisia (under s. 173 of the Labour Code, an inspector who breaks his oath is liable to penal sanctions).

¹ For example, Algeria, Australia, Cameroon, Cuba, Ghana, Guatemala, Ireland, Jamaica, Kenya, Kuwait, Madagascar, Netherlands, Nigeria, Pakistan, Panama, Sri Lanka, Uganda, United Kingdom, Uruguay, Yugoslavia (measures still have to be taken in certain republics and provinces).

² For example, Bolivia (in respect of agriculture), Colombia, India, Libyan Arab Jamahiriya, Mozambique, Pakistan, Qatar, Rwanda.

Committee recalls that it is absolutely necessary for this obligation to be established in a legal provision or, failing that, in a regulation or administrative text such as a circular, directive or instructions sent to the labour inspectors - as has been done in some countries to give effect to the comments of the Committee of Experts.¹ As regards countries that are not bound by either of the labour inspection Conventions, it has not always been possible from the information communicated by governments to determine whether the obligation to preserve secrecy as to the source of complaints was explicitly laid down in national laws and regulations.² In one country it is even provided that employers are entitled to be informed of the name of the complainant and of the nature of the complaint.³ In another country, the inspection order which the inspector has with him must mention that the visit is being made following a complaint.⁴

203. The obligation to preserve secrecy as to the source of complaints may sometimes, as is authorised by the Conventions, be subject to certain exceptions. The laws and regulations in several countries authorise the divulging of the complainant's name with his express agreement,⁵ as well as for the purposes of legal proceedings.⁶

¹ For example, Cuba, Guatemala, Ireland, Jamaica, Kuwait, Nigeria, United Kingdom.

² For example, Burma, Byelorussian SSR, Chile, China, German Democratic Republic, Hungary, Mongolia, Nepal, Poland, Ukrainian SSR, USSR.

³ Philippines (Memorandum of 14 August 1979).

⁴ Mexico (Regulations on the federal labour inspectorate, s. 27).

⁵ For example, Netherlands (Labour Act, s. 86); Norway (Workers' Protection and Working Environment Act, s. 81(1)).

⁶ For example, Finland (Act to provide for the supervision of labour protection, ss. 5 and 6); Kenya (Employment Act, s. 55); Malawi (Labour Legislation (Miscellaneous Provisions), s. 4.3(c)).

CHAPTER V

MEANS OF ACTION AVAILABLE TO THE LABOUR INSPECTION SERVICES

204. As the Committee has pointed out on previous occasions, the principal means by which action in the field of labour inspection is carried out are: the inspection staff¹ (who must be sufficiently numerous and so composed and managed as to be able to cope with the complex technologies used in modern economic activities) and the material facilities placed at their disposal, including transport, equipment and information facilities, as appropriate. These are the factors which enable inspection visits to be made as frequently and as effectively as necessary to make the protection of workers a reality.

205. The Committee attaches great importance to this subject on which it has attempted, through its observations, direct requests and, on occasion, through direct contacts, to pursue a constructive dialogue over the years with many governments which have ratified the relevant Conventions. The Committee is also aware of the importance in this connection of other forms of ILO action, such as research, tripartite discussion and technical co-operation; these may provide significant help to governments in appreciating the nature and magnitude of the problems involved and in seeking solutions to them with the co-operation of employers and workers and their respective organisations.

206. Indeed, the practical effectiveness of labour inspection cannot be achieved through legislation alone. The Committee is fully aware that, year after year, effective action has to be taken, without which even the best labour inspection laws may encounter serious problems of implementation in practice or, at worst, remain a dead letter. Furthermore, the effectiveness of national labour inspection activities is in turn a prerequisite for effective implementation of other international labour standards as reflected in national practice.

¹ This has been stressed also in a comment by the Austrian Congress of Chambers of Labour.

207. As in the past, information on the size of the labour inspection staff is available for several of the countries covered by this survey; somewhat less information is available on the extent of their activities and less still on the material means and resources of the inspectorates. However, in view of broad geographical distribution of these countries and their greatly varying economic and social conditions, no very significant purpose could be served by merely comparing the bare figures. The figures have to be seen in relation to the number, geographical distribution, compliance rating and potential exposure to risk of undertakings liable to inspection, to the number of workers they employ and possibly to the degree of participation by management and labour in ensuring the daily observance of the relevant social and technical standards. Information on such factors which is available to the Committee differs considerably from one case to another, and sometimes the necessary statistical basis is lacking.

208. None the less, the Committee has endeavoured over a number of years to seek such practical information of this kind as would enable it better to appreciate in the circumstances of each case the adequacy of the size of the labour inspection staff, and also to understand the problems involved in their operations. Thanks to the co-operation of a number of governments, and also of employers' and workers' organisations which at various times provided comments, the Committee has been able either to comment upon or to note, on certain occasions, the practical information and/or explanations received as a result of these endeavours.

209. Moreover, the Committee is glad to note with great interest a development which started in the late seventies within the framework of the ILO. A number of countries have recently asked the ILO as a tripartite organisation to undertake, in co-operation with their own tripartite constituencies, studies of the effectiveness of national labour inspection systems. Tripartite missions on labour inspection

¹ For example, Algeria (1982, 1984), Angola (1981), Austria (1976, 1980, 1982), Barbados (1978), Belgium (1982), Bolivia (1983), Burkina Faso (1981, 1982), Burundi (1983, 1984), Colombia (1983), Comoros (1984), Ecuador (1984), France (1981, 1983, 1984), Gabon (1984), Ghana (1983), Greece (1978, 1980), Ireland (1976), Israel (1984), Italy (1978, 1984), Madagascar (1977), Malaysia (1980), Nigeria (1983, 1984), Paraguay (1979, 1982), Peru (1979, 1981, 1982), Portugal (1981, 1983), Romania (1982), Spain (1982), United Republic of Tanzania (1980), Turkey (1984), Uganda (1978, 1982), Uruguay (1982), Zaire (1984).

have already been carried out in several countries¹ under this programme. Indeed, the Committee believes, on the one hand, that the tripartite discussion and evaluation which occur on such occasions can only enhance the solution of whatever problems are met in operating national labour inspection systems, while, on the other hand, the findings of such missions (and the ensuing discussion at tripartite meetings which are planned for participating countries) will also promote better knowledge and understanding of the experiences of various countries. On both accounts, these missions are likely to help in the general orientation of the Committee's own efforts.

210. Notwithstanding these developments, the Committee is concerned to note that, in recent years, the overall situation of labour inspection as regards its means of action seems to have deteriorated in various countries.

I. Size of the labour inspection staff

211. Article 10 of Convention No. 81 provides that the number of labour inspections shall be determined with due regard for certain parameters (importance of inspection duties; number, nature and size of workplaces; number of workers employed therein; number and complexity of legal provisions; material means placed at the disposal of inspectors; practical conditions of inspection visits). Similar provisions are contained in Article 14 of Convention No. 129. The Committee is seriously concerned at the frequent staff shortages or even decreases in labour inspectorates. The poorer countries, for instance, have traditionally been unable to maintain a labour inspection establishment of adequate size and composition owing to shortages of both funds and qualified candidates. In some of the richer countries, recent cuts in public service expenditures have generally

¹ For example, Belgium, Denmark, France, Federal Republic of Germany, Italy, Norway, Peru, United Kingdom.

produced corresponding cuts in labour inspection establishments also.¹ In other countries, both industrialised and industrialising, a certain number of existing funded posts (limited though these might already be) have gone chronically unfilled. In other cases still, a larger intake of inexperienced staff (e.g. unemployed youth, students, secondments from police ranks) has been used inadequately to make up for the lack of more highly qualified inspectors. It is also not infrequent for the competent authorities to experience difficulties in redeploying existing staff who, following well established administrative traditions or as a result of administrative reform, may find themselves scattered among a variety of inspecting bodies with different fields of competence. In other cases the growth, in both size and complexity of economic activities, has not been accompanied by a corresponding increase in labour inspection staff. Unfortunately the deployment of labour inspection staff has sometimes been affected by war,² too.

212. The seriousness and complexity of this problem have not escaped the Committee's attention. These have been evident from information reported - in certain cases, by some governments themselves - under article 19 or article 22 reporting procedures. It is also apparent from certain activity reports published annually by central labour inspection authorities. In several cases, where countries have ratified Conventions Nos. 81 or 129, such shortages and the reasons for them have been the subject of dialogue between the Committee

¹ The Trades Union Congress of the United Kingdom is of the view that there are not enough inspectors to carry out the duties required for the full implementation of the Health and Safety at Work Act and its various regulations. Between 1981 and 1982 for example, the Health and Safety Executive grant from the Department of Employment was cut by 7.4 per cent compared with the previous year, and the number of factory inspectors has now fallen from 660 in 1980, to a current level of 565. This constitutes a 16 per cent reduction in the inspectorate's size. The consequences include cuts in the frequency of visits by factory inspectors to workplaces, with the average interval between visits considerably longer than in 1974. According to the TUC, it has now been officially acknowledged by the Department of Employment that some workplaces will receive no visits at all unless there is an accident or a complaint.

² For example in Chad.

and the governments concerned.¹ Furthermore, shortages of staff and resources for labour inspection have been pointed out by a number of regional studies or seminars and meetings,² some of them under ILO auspices, or in various ILO mission reports.

213. Against this discouraging background, the Committee is glad, however, to be able to point out that there have been improvements in the staffing of labour inspection services in certain countries. When cases of progress of this nature have occurred following direct requests or observations previously made by the Committee, the Committee has been

¹ For example, Algeria, Angola, Argentina, Austria, Bahamas, Bangladesh, Barbados, Belgium, Bolivia, Burkina Faso, Burundi, Cameroon, Colombia, Comoros, Costa Rica, Ecuador, France, Gabon, Ghana, Greece, Guinea-Bissau, Guyana, Ireland, Israel, Italy, Jamaica, Jordan, Lebanon, Madagascar, Malawi, Malaysia, Mauritania, Morocco, Nigeria, Paraguay, Peru, Portugal, Spain, Sudan, Suriname, Swaziland, Syrian Arab Republic, Turkey, Uganda, United Kingdom, Uruguay, Yemen, Zaire, France (French Polynesia, New Caledonia), Netherlands (Netherlands Antilles), United Kingdom (Hong Kong). With particular regard to agriculture (i.e. Convention No. 129): Kenya, Netherlands, Yugoslavia.

² See, for instance, Labour inspection: A brief survey of the scene in Asian and South Pacific countries (Bangkok, ARPLA/ILO, 1979); Report on the Tripartite English-speaking African Regional Workshop on Effective Labour Inspection for Improvement of Working Conditions and Environment (Nairobi, 26-31 October 1981) (Geneva, ILO, 1982); Labour inspection in agriculture in South-East Asia (Bangkok, ARPLA/ILO, 1982); Report on the African Tripartite Workshop on Effective Labour Inspection for the Improvement of Working Conditions and Environment (Yaoundé, 22-27 November 1982) (Geneva, ILO, 1983, French only); Labour Inspection in Latin America (Lima, CIAT, 1984, Spanish only).

able to note them;¹ generally asking the governments concerned to continue indicating new measures taken or envisaged to increase the size of the labour inspectorate.

214. The Committee would like to make three remarks on this important general question. Firstly, the case of countries which, because of their state of development and resources, chronically face nearly insurmountable difficulties in the staffing of their labour inspection services, continues to preoccupy the Committee. Here it can only express the hope that the governments concerned will continue untiringly in their efforts to improve the situation gradually and that they may also benefit from international co-operation to that end. Secondly, where current shortages of staff or other resources for labour inspection can be remedied, the Committee ventures to hope that governments will proceed to do so and that employers' and workers' organisations will give this objective their support as may be required. Thirdly, the Committee wonders whether general civil service cuts, in countries where they do occur, must inevitably include cuts in labour inspectorates; it hopes that the economic and social value of this institution, as well as the social cost of reducing its effectiveness, will be given thorough and continuing consideration by all parties concerned.

¹ For instance, in the course of its examination of reports due under article 22 of the Constitution, the Committee has been able, following its previous comments on the matter, to note increases in recent years in the numbers of inspection staff (though even so staffing might sometimes be a bit lower in fact than the high number of posts budgeted for a given year) in the cases of Austria, Barbados, Belgium, Cameroon, Comoros, Ecuador, France, Ghana, Greece, Ireland, Israel, Jamaica, Malaysia, Nigeria, Paraguay, Peru, Spain, United Republic of Tanzania, Uganda, Uruguay, Zaire, United Kingdom (Hong Kong). In other cases, e.g. Argentina, Turkey, the Committee has been able to note the Governments' intention to strengthen labour inspection services or the intention to review the situation of the labour inspection services as a whole so as to ensure the better application of the Convention, e.g. Burkina Faso. Usually the Committee has asked the governments concerned, in both sets of cases, to continue to indicate in future reports any new measures taken.

215. However, the Committee is also aware that a situation may occur where although a labour inspection establishment may have reached a reasonably adequate size in the general opinion, it may not continue to keep pace with the growth of economic activity or employment and their technological complexity. Therefore, problems of resource management for inspection also arise, which the Committee will discuss further on in this chapter. In this connection instances have been noted with interest where management and labour have taken the initiative - in close co-operation with, and under the supervision and guidance of, labour inspection services - to train and organise personnel at the level of the undertaking to perform tasks which foreshadow, extend or enhance the work of official inspectors.¹ However, the idea expressed in the following quotation from the report of an ILO tripartite mission should be not lost sight of:

The influence of those directly concerned upon increasing safety performance in the plant and upon achieving the actual betterment of the workplace is undeniable. It can produce very valuable results in a very large number of workplaces, and we would not want to diminish its importance in any way. However, we have to point out that it is also an aspect of human nature that those that live every day with a certain physical danger facing them may, with time, become less aware of its existence or of its seriousness, or "home blind" ... This is one reason why, in some cases, a labour inspection coming from the outside is necessary to recognise the occupational hazard and point it out.²

II. Composition of staff

216. Regarding the composition of labour inspection staff, mention should first be made of the situation respecting the provisions of Article 8 of Convention No. 81 and of Article 10 of Convention No. 129, which require that both men and women be eligible for appointment to the inspection staff and that, where necessary, special duties may be assigned to men and women inspectors. As a general principle,

¹ See also Chapter VIII of this survey: "The role of employers' and workers' organisations in inspection".

² ILO: Report of the Tripartite Mission on Labour Inspection in Norway, op. cit., para. 7.6.

virtually all governments report that, in law, women as well as men are entitled to join the labour inspection staff. While many governments also report that in fact a number of women have done so, a few still point out that there do not happen to be women in the present complement of their labour inspectorates, while others are silent on this point. All in all, significant progress appears to have occurred during the last couple of decades, in the sense that absolute exclusion of women from labour inspectorates seems to have virtually ceased. Regarding assignment to special duties, on the other hand, the legislation and practice of many countries for which information is available (including some which report relatively large numbers of women in labour inspection services) seem, generally speaking, to make no distinction between women and men.² In some countries, however, the supervision of special acts, e.g. maternity protection Acts³ may be especially entrusted to women, or sometimes certain inspection tasks connected with social or welfare matters or other special duties, as the case may be.

217. The Committee wishes to draw the attention of governments to the general principle that maintaining an adequate presence of women in the labour inspection staff is even more necessary with the current growth of women's participation in the labour force and the need for inspection staff who are duly sensitive to the problem of women workers.

218. Another aspect of the composition of the staff is the participation of technical specialists or experts. Article 9 of Convention No. 81 sets forth specific provisions which are very important for the practical effectiveness of labour inspectorates. These provisions require the necessary measures to be taken to ensure that duly qualified technical experts and specialists, including specialists

¹ Such seems to have been the case, at least until not so long ago in Malawi and Mauritius, for example.

² For example, Austria, Bahamas, Bahrain, Bolivia (certain industries excepted), Byelorussian SSR, Congo, Denmark, Ecuador, Ghana, Israel, Italy, Kenya, United Republic of Tanzania, USSR, United Kingdom.

³ For example, Federal Republic of Germany.

⁴ For example, Cyprus, India.

in medicine, engineering, electricity and chemistry, are associated in the work of inspection in such manner as may be deemed most appropriate under national conditions for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers while engaged in their work and of investigating the effects of processes, materials and methods of work on the health and safety of workers. Article 11 of Convention No. 129 contains similar provisions, adapted to the context of agriculture.

219. The practice of States, in this matter, reflects two main approaches: a variety of technical specialists may be included in the establishment of the labour inspection services concerned or, where necessary, the general inspector may call on a technical expert outside the inspection staff, who may sometimes have the same duties and powers as the inspector within his terms of reference. The two approaches may also be combined.

220. Special arrangements are often made where medical specialisation is involved. A few countries have organised a special medical¹ inspectorate, others attach an employment medical advisory service² or medical inspectors³ to the general inspectorate; some provide for various forms of association with medical practitioners.⁴ As the practice of having occupational health services at enterprise level (or pooled between enterprises) extends, closer links tend to develop between the latter and the inspectorates too.

221. That being so in principle, the number of technical experts available, the range of their specialisations and the organisation of their work vary considerably from country to country and have to be

¹ For example, Belgium.

² For example, United Kingdom.

³ For example, Cyprus, France.

⁴ In Italy, for example, safety and health inspections under current legislation are organised within the framework of local health service units.

assessed in the light of the circumstances of each case. Only in extreme cases (poorer or smaller countries) do such arrangements seem to be lacking altogether.

222. The Committee wishes to point out the importance of the optimal management of technical specialisations required for, and available to, labour inspection services as a key factor in determining their effectiveness. It is not only a question of numbers and professional specifications: it is also a question of being able to cope with the realities of industry at a given place and time and even more of whether staff are utilised in the manner which in given circumstances is most likely to result in effective protection and advice. On occasion and in particularly complex situations, inspections may be conducted by multidisciplinary teams.¹

223. To the extent that certain highly qualified expertise is scarce, decisions may have to be made regarding the level of expertise at which routine inspections are to be made, while the more skilled professionals may have to be pooled centrally or regionally, at least in inspectorates having competence for a large spectrum of industrial activities. Where certain industrial sectors are entrusted to special inspectorates, the case is different: e.g., mine and transport technical inspectors can obviously only be recruited from among expert technicians qualified in their respective fields. Even in their general inspectorates, certain countries with a complex industrial structure tend to organise and train individual inspectors so as to enrich specialised knowledge of the problems of particular industries or processes.

224. There are difficulties, though, for some of the poorer countries, where certain highly technical specialisations may be particularly scarce: provisional arrangements may be necessary in such cases and efforts at ensuring the future availability of required skills, through training and otherwise, may have to be pursued over relatively long periods. International help may be more than desirable in those situations and the Committee hopes that such facilities, for instance, as have been made available to this end through ILO technical co-operation programmes will continue and that these programmes will receive the necessary support.

¹ For example, Austria, Bahrain, German Democratic Republic, Federal Republic of Germany, Poland, United Kingdom.

225. The following remarks concern the functional composition and grading of the staff. Apart from the question of technical qualifications, the inspection staff, except perhaps in the smallest countries where the entire inspectorate may amount to one or two individuals, is usually organised in the more or less traditional patterns of administrative structure and hierarchy. In nearly every country the labour inspectorate is composed of different grades, managers (central, regional, district or sectional), inspectors and subordinate personnel such as deputy, assistant or auxiliary inspectors. The responsibilities of the latter may in some cases be more limited than those of labour inspectors, owing to their lower qualifications, and they generally work under the inspectors' authority and supervision. In certain circumstances they may be promoted to the rank of inspector.

226. In so far as resources allow, most countries tend to deploy inspection staff at various geographical levels (e.g. central, regional, district, local) with corresponding levels of responsibility or coverage. There are a few cases, however, where owing to a variety of factors (resources, geographical configuration or size of the country or distribution of industries, communications or transport problems), staff may be concentrated in the capital city. There is no doubt that the efficacy of labour inspection depends on the adequate deployment of staff throughout the country so as to cover effectively all workplaces liable to inspection.

III. Material means at the disposal of inspection services

227. Under Article 11 of Convention No. 81 and Article 15 of Convention No. 129, the competent authority shall make the necessary arrangements to furnish labour inspectors with (a) local offices suitably equipped in accordance with the requirements of the service (Convention No. 129 adds that offices should be so located as to take account of the geographical situation of the agricultural undertakings and of the means of communication) and accessible to all persons concerned (in so far as possible in the case of agriculture); (b) the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist. The reimbursement of travelling expenses incurred while on duty is also provided for. Paragraph 12 of Recommendation No. 133 adds that employers should provide the necessary facilities to labour inspectors in agriculture, including, where appropriate, the use of a room for interviews with persons working in the undertaking.

A. Offices, equipment and documentation

228. It is difficult for the Committee to form a considered opinion about the position in various countries regarding office premises described in the reports. Nearly all governments report that suitable and suitably equipped offices are available to their inspection services. However, some reports acknowledge that, owing to various difficulties, the accommodation of inspectorates is considered inadequate; in some cases efforts are being made at improvement. ILO mission and seminar reports have on occasion pointed out certain difficulties in this respect, which may be particularly serious in the case of poorer countries. In extreme cases, the Committee has noted with concern from the government's report that labour inspectors in the majority of districts do not have offices at their disposal.

229. There are two aspects of the problem which the Committee wishes to point out. Firstly, the Committee must repeat its remark of 1966, i.e. that as inspection services are in continuous contact with the public, it is important for their local offices to be introduced in such a way as to facilitate public access and also to create a pleasant atmosphere, which can contribute to the establishment of good relations between the public and the inspection staff. A further step towards gaining the confidence of employers and workers who visit the inspection services is for each inspector to have a private office; furthermore, communications facilities (telephone, secretariat) are needed for messages to be left for the inspector when he is out of his office on inspection visits.

230. Secondly, labour inspection premises need to include rooms for libraries, laboratories, exhibition and lecture facilities and the Committee wishes to point out that the provision of these facilities is more than a matter of routine importance. Indeed, inspection services need more than the usual office facilities, equipment and secretariat support. In order to plan, carry out and follow up their work, these services need an effective system of registration and records of undertakings as an information tool; in some of the more developed countries such systems are being increasingly computerised. In addition, the inspectorate needs adequate equipment

¹ The Committee has been maintaining a dialogue on this problem - generally attributed to lack of funds or the economic situation of the country - with the governments of a number of countries having ratified the relevant Conventions. Improvements have been noted, for example, in the case of Portugal.

(which has to be stored and maintained, and requires personnel trained for its use) for the necessary sample-taking, measurements and so on in undertakings. More sophisticated analytical work requires regional or central laboratories, either attached to the inspectorate or available to it at universities, public hygiene institutes and the like. Indeed, some of the more industrialised countries, in order to face up to the needs of their own industries, have established and maintain impressive specialist research institutions in this field.¹ Obviously, the results of such scientific research, which are usually published, benefit the entire world community and not only the countries where the research is carried out. Occupational hazards occur which may be linked to particular climates, products or processes, and it is therefore desirable to promote the availability of resources for supporting the scientific base of labour inspection work in all parts of the world. The Committee has noted with satisfaction, for instance, the technical co-operation which the ILO has been able to provide so far to laboratories, research institutes and centres attached to the factory and labour inspectorates of many developing countries. The Committee expresses the hope that the necessary resources will be available to enable it to continue.

231. A third set of problems concerns the availability to labour inspectorates of premises and resources to prepare, stock and dispense, in clear, comprehensible form, information to employers and workers, not only on how to comply with the law, but also on how to prevent occupational accidents and diseases, on recommended codes of practice, and the like. Information available to the Committee shows that, in some countries, the labour inspection services possess the resources to do so, but unfortunately lack them in many others. The Committee believes, however, that great attention should be paid, or continue to be paid, to every opportunity available to boost the effectiveness of labour inspectorates through appropriate information to employers and workers on appropriate technical practices, as well as on their duties and responsibilities.

232. Regarding any measures taken, for instance by employers, in particular in the agricultural sector, to ensure that labour inspectors are provided with the facilities necessary for the performance of their duties, including a place for interviewing persons working in the

¹ See also Chapter III, "Organisation of labour inspection services and inspection staff".

undertaking, very little information is available to the Committee. Some countries have made special provisions in this regard.¹

B. Transport

233. With regard to means of transport, governments report that inspectors often use public transport facilities where these are available. In some countries, the inspection service may have some official cars available; in others, inspectors may be helped by the government (e.g. through loans on favourable conditions) to purchase private cars. Various combinations of such transport facilities also occur. Whatever the means of transport used, most governments state that there are rules applicable for the reimbursement of travelling expenses incurred on duty.² While, generally speaking, recourse to public transport facilities and use of private automobiles (rather than official vehicles) appear to be the most frequent practices, resources to cover these costs may be scarce with respect to the amount of official travel needed, or else indemnities applicable under relevant rules may be regarded as rather low. Cases of this nature have been drawn to the Committee's attention from time to time. In other cases, because of inflation, the transport credits of labour inspectorates may have decreased in real terms over time. Cases have been known where inspectors have had to pay for public transport from their own pocket.

234. In certain countries, the nature of the terrain (e.g. scattered islands, difficult roads, scattered settlements in vast areas)

¹ For example, the Netherlands.

² On occasions, in the course of its examination of reports due under article 22 of the Constitution, in recent years, the Committee has found it necessary to pursue with governments concerned the question of appropriate provision in laws or regulations for the reimbursement of travelling expenses to labour inspectors. In exceptional cases, where the information provided by the government showed that neither travelling nor incidental expenses were reimbursed to labour inspectors, the Committee could only urge that the various measures be adopted in the near future.

may combine with the lack of means of transport¹ to restrict, in practice, inspection visits to areas mainly around the capital city. Breakdowns of official (or private) cars may be difficult to repair in countries where maintenance facilities are short. Exceptionally, some petrol shortages have affected labour inspectors' transportation too, confining them somewhat to urban areas. There have been a number of cases where the Committee has had to note in its comments to ratifying countries that the frequency of inspection visits depends on the availability of transport, and has expressed the hope that the governments concerned will take the necessary steps to provide inspectors with suitable transport facilities. One country² has reported that the transportation of inspectors is ensured by taking them to an area in government vehicles and returning to pick them up later. On other occasions, following the Committee's comments, measures were taken to furnish the inspection service with adequate material means, including³ the transport facilities necessary for the performance of their duties.

IV. Inspection visits

235. Article 16 of Convention No. 81 and Article 21 of Convention No. 129 provide that workplaces should be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. What happens in practice under this clear and simple provision is the basic test of the entire concept of labour inspection. And yet it is in this respect that the information that reaches the Committee is frequently perplexing and worrying.

236. From information available it would appear that in many countries (including both industrialised and developing countries), it would take labour inspectorates 4 to 12, 15 or even 20 years or more

¹ The National Union of Workers of Chad remarks that labour inspection in that vast country meets with many difficulties because of the "total lack of means of transport and equipment". This Union has expressed the hope that international technical assistance might help to redress the situation.

² Ghana.

³ For example, in Zaire.

to visit all workplaces liable to inspection. In one country routine inspections have been suspended altogether;¹ elsewhere they are restricted to a minimum and inspectors mainly react to requests and complaints; there are countries where agricultural enterprises are visited on complaint only or not at all.

237. This is far from the ideal voiced some decades ago, i.e. visits to be aimed at once a year on average (admitting, however, that some enterprises might not belong to the "once a year" category). For instance, the draft of Article 16 of Convention No. 81 originally proposed by the Office, provided that inspection visits were to be made at least once a year in dangerous and unhealthy workplaces and as often as necessary to ensure enforcement of the law in other workplaces: it was argued in support of the drafting which was eventually adopted that it was undesirable to base the frequency of visits on a specific period of elapsed time, and that the proposal incorporated the idea that inspection visits were to be thorough, which was equally important.² The Committee was even able to note in 1966 that, while, "generally speaking, the frequency of inspection visits is more often established by administrative instructions or left to the initiative of the inspectors than governed by specific laws or regulations", none the less "where there are explicit provisions they state, as a general rule, that all workplaces must be inspected once a year".³ The "once a year" rule seems still to be retained in principle by some legislations, sometimes with the qualification that more emphasis is placed on visiting large establishments whose administration seems unsatisfactory from the point

¹ In the Philippines, according to the Government's report, the labour inspection staff's routine inspections have been suspended since 1979. Inspections following complaints, assistance to employers and workers, general and technical inspection (health and safety) and clerical work are the duties at present being performed.

² ILO: Record of Proceedings, International Labour Conference, 30th Session, Geneva, 1947, p. 505.

³ 1966 General Survey on Labour Inspection, paras. 193 and 194.

of view of maintaining the workers' health and safety or where hazardous operations harmful to health are carried out: the information available did not, however, allow the Committee to check the degree of conformity of practice with law in all these cases. If the Committee has recalled the old concept of "once a year" visits, it has not done so because there is something sacred about it, but rather to show how the ability of inspectorates to make visits has evolved since then and throw light on the problems they now have to face.

238. It is clear from current information that many inspectorates do not and cannot visit once a year every single undertaking subject to their supervision. It is also obvious, though, that they can hardly be effective if they can cover the ground only over periods of 12 years or longer. Between these two extremes, the ability to reach a satisfactory compromise ensuring that - as the terms of the relevant Conventions prescribe - "workplaces shall be inspected as often and as thoroughly as is necessary", is a matter partly of resources and partly of management.

239. Unfortunately, declines (sometimes steady declines) in the number or frequency of inspections carried out (even in some industrialised countries) have been brought to the attention of the Committee, sometimes with the remark that on the basis of statistics of industrial injuries it is not possible to conclude that there is evidence of a tangible improvement in conditions of work and occupational safety.²

240. Where the frequency of inspection visits has decreased markedly during recent years in certain industrialised countries, this may at least in part have been related to the increase in the number of workplaces, to the greater complexity of the legal provisions to be enforced and to the greater complexity of the technologies involved. In other cases, particularly in some developing countries, although the annual frequency of visits of inspection may be regarded as satisfactory for the country as a whole, certain regional discrepancies are noted, with particularly low visiting rates in certain provinces.

¹ The Central Organisation of Finnish Trade Unions (SAK) has stated in regard to the Government's report on Recommendation No. 133 that the small number of labour inspectors is an obstacle to their ability to inspect all workplaces at least once a year.

² A comment to this effect has been made by the Central Organisation of Finnish Trade Unions (SAK).

241. In agriculture generally, the frequency of inspection visits appears to be less satisfactory than in industry. Where agricultural undertakings are found to have the lowest priority for inspection, or are not inspected over long periods, serious consideration should be given to remedying the situation.

242. Having dealt with resources in earlier paragraphs, the Committee will now turn to management, in so far as it is relevant to the frequency and nature of inspection visits. The main instruments of management used, either singly or in combination, by certain labour inspectorates (including those of some developed countries) to maximise results with scarce resources which have been brought to the Committee's attention, can be grouped in the five categories which follow.

243. Firstly, mention must be made of careful planning and selection of priorities for inspection, reserving inspectors' time for both routine visits (general, special or follow-up) and visits following complaints. Periodical or annual programmes, including priority objectives, may be planned for.¹ Urgency-rating systems have been devised, for instance, taking into account a variety of factors (including potential dangerousness of work, management record, time elapsed since last visit) with a view to obtaining a reasonable order of routine visits which are planned on the basis of an objective selection of priorities.² Accounting in various ways for one or the other particular factor in selecting priority of visits is mentioned in some reports.³ The frequency of visits may also be planned according to the size of undertakings.⁴ Efforts have also been made to deploy staff throughout the national territory on the base of economic concentration, current priorities and development plan objectives.⁵ However, in the case of certain countries, particularly among the developing

¹ For example, in Belgium, Czechoslovakia, German Democratic Republic, Federal Republic of Germany, Japan, Norway, Qatar.

² For example, in the United Kingdom.

³ For example, in Bahrain, Cyprus.

⁴ For example, in the Federal Republic of Germany.

⁵ For example, in Algeria.

ones, any such planning is considerably hampered at the start by inadequate information on the precise number and nature of establishments subject to inspection. It seems, unfortunately, that inspectorates exist where planning or preparation of inspection visits is not usual. Cases have been known where red tape (special permits, time restrictions, check-in and check-out) has run contrary to the effectiveness of inspectors' movements.

244. A second possibility is to plan for campaigns aimed at thorough canvassing of a problem which, according to current record, may be or be expected to become particularly serious, e.g. problems related to a particular substance, or to certain processes, or affecting a category of workers, or assessed as potentially serious throughout a given industry, etc. This method often has the additional advantage of producing a better grasp of the facts of the problem for improved control in the future.

245. Thirdly, duplication in the use of scarce resources has to be guarded against, especially when different inspectors or inspectorates are involved.

246. Fourthly, specialist inspectors, e.g. on an industrial basis, have sometimes served to maximise the effectiveness/time ratio.

247. Fifthly, it may be noted again that participation of employers and workers and their respective organisations - which is analysed to some extent elsewhere in this survey² - in addition to being socially desirable, effectively enhances the economics of labour inspection. This is particularly the case where specialised units are set up in employers' and workers' organisations and at workplaces to look after problems of the working environment and working conditions.

248. In any case, it is important that the management of labour inspection services ensures that inspectors spend most of their time (say, three or four days a week) actually doing field work (i.e. visiting enterprises), rather than sedentary office work (discussing cases, answering calls, reporting or collating information, maintaining correspondence, or involved in administrative red tape). A number of

¹ For example, Denmark, Ireland, Norway, United Kingdom.

² See Chapter VIII, "The role of employers' and workers' organisations in inspection".

shortcomings in achieving this result - which is after all what labour inspectorates are there for - have been drawn to the Committee's attention from time to time.

249. For these overall reasons, the Committee, in the course of examination of reports due under article 22 of the Constitution, has understandably been seeking from a number of governments information about the frequency and nature of inspection visits and factors influencing them. It expresses the hope that, with the continued co-operation of governments, it will be in a position to assess clearly the evolution over time of this very important test of the overall effectiveness of labour inspection.

250. There have fortunately been some countries (both developing and highly industrialised) where the number, and possibly the frequency, of inspection visits (mainly in industry) have shown some increases; regrettably such occasions for satisfaction which have been clearly reported to the Committee have not been numerous.

251. As regards the actual conduct of inspection visits, or the establishment of any practical rules or instructions² for the working methods of inspectors and the carrying out of visits, little information is really available to the Committee. While it appears that some inspectorates have extensive recourse to such rules or instructions, unfortunately there is some indication, too, that in other cases where they would be badly needed and have been proposed (e.g. with the assistance of ILO experts) in practice they are little used. In general terms, the Committee can only commend again in this connection the ILO publication Labour inspection, purposes and practices, which first appeared in 1973.

252. It is normal practice in most countries for inspectors to make, for official purposes, a report of the visit made. Information available to the Committee seems to indicate that generally speaking in

¹ For example, Austria, Cyprus, Denmark, Egypt, Federal Republic of Germany, India, New Zealand, Uruguay.

² Such rules, instructions or guide-lines have - according to information available - been established in, for example, Ecuador, Ethiopia, German Democratic Republic, Italy, Kenya, Poland, Saudi Arabia, USSR, United Kingdom.

many countries¹ copies or extracts of such reports are usually sent to the employer and in some of those countries also to the representatives of the workers.² In certain countries, the information must be first sent to the workers' organisations and undertakings concerned.³ In addition, it has usually been recognised that good labour inspection practice requires, after the lapse of a reasonable time, control (by follow-up visits or otherwise) of the measures taken by the employer to remedy the infringements or deficiencies found by the inspector. The attention of the Committee has been drawn to the fact that such practice is followed in certain countries, or that in certain cases the employer is bound to inform the inspectorate within a prescribed delay of the action he has taken at the inspector's request. Unfortunately, however, the Committee has not at present sufficient information to enable it to assess in detail to what extent such good practices are applied throughout the world. It appears that in some countries, perhaps because of a general lack of resources, they are not applied in any systematic way.

¹ For instance: Belgium, Bolivia, Burundi, Cameroon, Colombia, Cuba, Cyprus, Ecuador, Ethiopia, Gabon, Federal Republic of Germany, Islamic Republic of Iran, Italy, Japan, Kenya, Netherlands, Norway, Switzerland, United Kingdom, Zambia.

² See also Chapter IV, section I.B(d).

³ For example, Byelorussian SSR, German Democratic Republic, Poland, Ukrainian SSR, USSR.

CHAPTER VI

PROCEEDINGS AND PENALTIES

253. The credibility of any inspection service, however, well organised, risks being seriously compromised unless it is supported by an appropriate system of penalties in the event of contravention of the labour legislation. For this reason both Convention No. 81 and Convention No. 129 contain certain provisions designed to ensure the effective application of penalties for violation of the legal provisions for whose enforcement the labour inspectors are responsible.

I. Choice of the action to be taken in the event of non-compliance

254. Article 17 of Convention No. 81 and Article 22 of Convention No. 129 provide that persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt proceedings without previous warning. There are, however, two derogations from this principle. On the one hand, national laws or regulations may make exceptions "in respect of cases in which previous notice to carry out remedial or preventive measures is to be given". On the other hand, "it shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings".

255. In many countries labour inspectors have full powers to decide on the action to be taken with regard to the cases of non-compliance which they have detected. This discretion generally derives from the absence of special provisions respecting proceedings, although certain laws and regulations make more or less detailed provision for the different remedies available to inspectors in such cases, such as warnings, oral or written observations, injunctions, or

statements of non-compliance.¹ However, when the inspector detects a dangerous situation in the undertaking as a result of non-compliance with a legal provision on occupational safety and health, he may not, in certain countries, initiate the penalties procedure unless he has ordered the person responsible for the undertaking to take the necessary measures of compliance.² In such cases an injunction also serves as a warning. This is a derogation from the rule provided for by Article 17 of Convention No. 81, and Article 22 of Convention No. 129, but it is a derogation authorised by the very terms of these provisions.

256. However, the available information shows that, generally speaking, labour inspectors prefer in practice - except in cases of wilful or serious non-compliance, culpable negligence or flagrant ill will - to resort to advice and persuasion before instituting or recommending proceedings.

II. The initiation of proceedings

257. When persuasion and previous warning have proved ineffective it is necessary to resort to the coercive measures provided for by law.

¹ For example, Bahrain (Order No. 28 of 1976 respecting the organisation of the functions of the inspectorate, s. 15), Burundi (Labour Code, s. 153), Comoros (Labour Code, s. 163), Costa Rica (Decree No. 42 of 1949 regulating the labour inspectorate, ss. 44-46), Luxembourg (Labour and Mines Inspectorate Organisation Act of 1974, s. 18), Saudi Arabia (Regulations respecting the organisation of the activities of the inspectorate, s. 15), Somalia (Labour Code, s. 110), Syrian Arab Republic (Order No. 465 of 1965, s. 14).

² For example, France (Labour Code, s. L 231-4(1)). This also appears to be the case in many French-speaking countries of Africa.

258. In certain countries, the inspector is empowered to bring the matter before the courts himself; one government indicated in this connection that the agreement of the head office of the department of labour had to be obtained beforehand.²

259. This situation is, however, far from being the rule. For this reason Article 23 of Convention No. 129 provides that, when labour inspectors are not themselves authorised to institute proceedings, "they shall be empowered to refer reports of infringements of the legal provisions directly to an authority competent to institute such proceedings". While in a number of countries the national laws and regulations recognise the right of labour inspectors to refer reports of infringements directly to the public prosecutor or any other competent body,³ in others the reports made by the inspectors are

¹ For example, Cyprus (Factories Act, s. 92(1)), Ghana (Labour Decree, s. 48; Factories, Offices and Shops Act, s. 73), India (Factories Act, s. 105), Kenya (Factories Act, s. 70; Employment Act, s. 50), Malawi (Labour Legislation (Miscellaneous Provisions), s. 4), Pakistan (Factories Act, s. 74), Singapore (Factories Act, s. 79(1)).

² New Zealand.

³ For example, Benin (Labour Code, s. 140), Comoros (Labour Code, s. 163), Gabon (Labour Code, s. 147), German Democratic Republic (Labour Code, ss. 291 and 292), Italy (under s. 8 of Decree No. 520 of 1955 to reorganise the central and external services of the Ministry of Labour and Social Welfare inspectors have the status of police officers, and in this capacity they may transmit their reports directly to the public prosecutor's office), Japan (under s. 102 of the Labour Standards Act inspectors are authorised to exercise the powers of a police officer), Mali (Labour Code, s. 352), Romania (the Government indicates that labour inspectors are authorised to bring the matter before the organs of the public prosecutor's office).

transmitted through the official channels.¹ To the extent that the higher authority reviews the merits of the inspector's action in a way which might prejudice his taking initiatives, doubts arise as to the conformity of such a practice with Article 23 of Convention No. 129. In any case, it is indispensable for the period of transmittal of the reports to be as short as possible if the proceedings are to be effective.

III. Penalties

260. Under Article 18 of Convention No. 81 and Article 24 of Convention No. 129, adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties must be provided for by national laws or regulations and effectively enforced.

261. This principle appears to be recognised by virtually all the countries in which the social legislation provides for penalties both for infringement of the legal provisions and for obstructing inspectors.² The penalties consist either of fines or prison sentences, and very often a combination of both. In some countries, however, the labour

¹ For example, Bolivia (Code of Labour Procedure, s. 223), Costa Rica (Decree No. 42 of 1949 regulating the Labour Inspectorate, ss. 44-46), Egypt (Procedural Directives of 1964), France (Instructions of 23 February 1978 for the application of the Decree of 24 November 1977 respecting the organisation of external labour and employment services), Luxembourg (Labour and Mines Inspectorate Organisation Act of 1974, s. 18(2)), Morocco (Dahir No. 1-72-219 of 1973 to determine the conditions of employment and remuneration of agricultural workers, s. 45; according to information communicated by the Government reports are transmitted to the competent jurisdiction through the intermediary of the Ministry of Employment and National Advancement).

² In the United States, however, an employer may refuse to allow an inspector of the Federal Occupational Safety and Health Administration to enter his establishment, in which case the inspector must obtain a search warrant.

legislation merely prescribes a fine.¹ None the less, when the infringement constitutes an offence owing to the circumstances in which it was committed, the penal legislation applies automatically.

262. Infringements of social legislation are also likely to cause prejudice to the workers. Experience has shown that they often hesitate to insist on their rights, whether for fear of reprisals from the employers or because of lack of information. It is therefore interesting to note that certain national laws and regulations make express provision for the right of the inspector to represent the workers before the courts.²

263. It is natural for the competent national authorities to decide on the nature and severity of penalties. However, the Committee wishes to stress that it is essential for the effectiveness of inspection services that penalties should be fixed at a sufficiently high level to have a dissuasive effect. It is the exemplary nature of penalties which will in large measure determine the way in which undertakings heed the advice or warnings of the inspectors. It would be decidedly regrettable if employers preferred to pay fines because they found them more economical than taking often costly occupational safety and health measures or paying workers wages on time. For this reason, when the penalty consists of a fine, the rate of the fine should be periodically reviewed. This is not always the case, but it is a particularly important point which should not be overlooked.

264. In most cases the penalties are pronounced by the judicial or administrative authorities, although in some countries³ the inspector or his responsible chief is authorised to impose fines.

¹ For example, Bolivia (Code of Labour Procedure, s. 239), Colombia (Labour Code, s. 486).

² For example, Ghana (Labour Decree, s. 48(f)), India (Minimum Wages Act, s. 20(2)), Kenya (Employment Act, s. 50(1)(h)), Malawi (Labour Legislation (Miscellaneous Provisions), s. 4(1)(h)).

³ For example, Bolivia (Decree No.05202 of 1959 to regulate the establishment of the Ministry of Labour, s. 47(f)), Colombia (Labour Code, s. 486), Ecuador (Labour Code, s. 605), German Democratic Republic, Hungary, Poland (Labour Code, s. 285). The Austrian Congress of Chambers of Labour considers that, in order to increase the efficacy of supervision, the penal competence over violations of the provisions for workers' protection should be transferred from the general administration of the State to the labour inspectorate.

265. The application of Article 18 of Convention No. 81 and Article 24 of Convention No. 129 presupposes that adequate penalties must not only be provided for by national laws or regulations but also "effectively enforced".

266. The information available indicates that labour inspectors sometimes hesitate to use the powers relating to the institution of proceedings which have been conferred upon them or to resort to injunctions, either because of economic considerations or because they prefer to have recourse to persuasion, particularly in cases where the legal provisions respecting occupational safety and health are especially complex and difficult to enforce. As a number of ILO mission reports and certain workers' organisations have suggested, this is a matter to which governments might give some thought.

267. Moreover, the Committee has noted that the judicial authorities, whether the public prosecutor or judges, may tend to minimise the importance of infringements of social legislation. Thus, the public prosecutor's office, which is responsible for taking decisions on the desirability of proceedings, will often decide to shelve an application for the imposition of a penalty. In this respect it is interesting to note that, in one country, the reports of labour inspectors on cases which are declared closed are transmitted to a specialised service of the Ministry of Employment and Labour, which may decide to impose an administrative fine, if necessary. The courts, too, may hesitate to impose penalties exceeding the minimum fixed by the legislation. Furthermore, the procedure is often very slow. This situation, which has aroused concern among many labour inspectors, appears to be due mainly to a lack of awareness of social problems on the part of the judicial authorities and to the absence of contacts between them and the inspection services. This is also a matter to which thought should be given. In certain countries, moreover, measures have already been taken or are under study to secure closer collaboration between the public prosecutor's office and the labour inspectors.² The Committee considers it highly desirable that inspectors should be kept regularly informed of the judicial action taken on reports of non-compliance. This obligation is prescribed by certain national laws and regulations, but it is not clear whether it

¹ Belgium.

² France, Norway.

is always respected in practice.¹ Furthermore, in countries where inspectors are not authorised to conduct proceedings before the courts, it would be useful to improve information available to magistrates on labour inspection problems, for instance during their training period or by the organisation of symposia.

¹ It will be noted that the Federal Office for Industry, Arts and Crafts and Labour (OFIAMT) of Switzerland on 29 June 1983 addressed a circular to cantonal departments of justice and police recalling the obligation of the cantonal authorities to communicate to it all judgments, administrative pronouncements and orders of dismissal handed down in application of the Federal Labour Act. It had been found that, in practice, these decisions were not being systematically communicated to OFIAMT. Its circular therefore stressed that it was important for it, as the supreme body entrusted with the supervision of the application of the Labour Act, to have knowledge of events with penal implications arising out of the enforcement of the Act in order to have an overall picture and thus to throw light on the problems arising in this field and to assign certain priorities in the activities of the enforcement bodies.

CHAPTER VII

REPORTS FROM LABOUR INSPECTION SERVICES

I. Periodical reports from labour inspectors

268. If the higher inspection authority is to exert control over the operation of the inspection services which are subordinate to it, it must be kept regularly informed of their activities. For this reason Article 19 of Convention No. 81 and Article 25 of Convention No. 129 provide that labour inspectors or local inspection offices, as the case may be, are to be required to submit periodical reports on the results of their activities to the central inspection authority at least once a year; the form and content of such reports are to be distinguished from the reports normally made by labour inspectors after each visit and referred to in Chapter V, "Means of action available to the labour inspection services".¹

269. Although in many countries the obligation of inspectors to submit a periodical report is prescribed either by the legislation or by administrative instructions, the information available has not always made it possible to determine with precision whether and to what extent this obligation is complied with in practice.

270. The periodicity of the reports to be presented by labour inspectors varies from one country to another. They may be required

¹ See above para. 252.

to submit daily,¹ weekly,² monthly,³ quarterly,⁴ six-monthly⁵ or even annual reports.⁶ In some countries an annual report supplements reports presented at shorter intervals.⁷ Furthermore, inspectors may also be required to furnish special reports on specific questions.⁸

271. The content of reports also differs from one country to another, although they generally include information on the number of establishments visited during the period covered, the infringements noted and the accidents that have occurred. In certain countries inspectors are required to present their reports within a given framework.⁹ The generalisation of such a practice would be highly desirable in order to facilitate the analysis and interpretation of information at the national level. Moreover, the preparation of the overall report which the central authority must establish each year on the activities of the inspection services will be far easier if the reports on which it is based are drafted according to a uniform model.

¹ For example, Australia (Victoria Scaffolding Inspectorate).

² For example, Cyprus, Israel.

³ For example, Bahrain, Bolivia, Botswana, Burma, Burundi, Costa Rica, Gabon, Federal Republic of Germany, Japan, Kenya, Libyan Arab Jamahiriya, Luxembourg, Mauritius, Morocco, Netherlands, Saudi Arabia, Sri Lanka, United Republic of Tanzania.

⁴ For example, Cameroon, Norway, Switzerland.

⁵ For example, Portugal (six-monthly report from regional co-ordination centres and quarterly reports from labour delegations).

⁶ For example, Austria, Czechoslovakia (the report must be communicated at least once a year), Poland.

⁷ For example, Algeria, Finland, Kenya, Netherlands, Norway, Qatar.

⁸ For example, Algeria (detailed reports on current problems), Cameroon (according to circular No. T8/4692/MEPS/ICSE/BIC of 22 December 1972 a detailed report must be made on any explosive situation or where any social event occurs which is important or has repercussions in the economic or political fields or on public opinion).

⁹ For example, Algeria, Cameroon, Cyprus, France, Mauritania, Mauritius, Switzerland.

II. Reports of the central inspection authority

A. Basic objectives

272. Under Article 20 of Convention No. 81 the central inspection authority must publish annual general reports on the work of the inspection services not later than 12 months after the end of the year to which they relate, copies of which must be transmitted to the ILO within a period of three months from their publication. The content of these reports is defined in Article 21 of the Convention and in Paragraph 9 of Recommendation No. 81. Articles 26 and 27 of Convention 129, and Paragraph 13 of Recommendation No. 133 contain equivalent provisions regarding the preparation of annual reports on the work of the agricultural inspection services.

273. The Committee has stressed on many occasions the great importance it attaches to the publication and communication to the ILO of annual inspection reports within the prescribed time-limits.¹ These reports, if well prepared, constitute valuable sources of information from two points of view. From the national point of view, the annual inspection reports are essential for an assessment of the practical results of the activities of labour inspectorates. Moreover, these reports give the national authorities significant data for the application of labour legislation and may also reveal gaps in the legislation which may be instructive to the authorities for the future. The publication of annual inspection reports should also provide information to employers and workers and their organisations and elicit their reactions. From an international point of view, annual inspection reports also should make it possible to judge the manner in which inspection systems function in practice and to assess the extent to which the international labour Conventions ratified by the different countries are being applied with reference to the extent of application of the relevant national laws and regulations.

¹ In this connection see the 1966 General Survey on Labour Inspection, para. 203, and ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4A), International Labour Conference, 59th Session, 1974, general observation concerning Convention No. 81.

B. National practice

(a) Publication of reports

274. Although the ILO receives a fairly large number of annual inspection reports, half of the countries which have ratified Convention No. 81 and/or Convention No. 129 appear to have difficulties in fulfilling their obligations in this respect, either because they do not prepare annual reports, or because they do not transmit them to the ILO within the prescribed time-limits.¹ In a number of countries the documents communicated by certain governments as annual inspection reports cannot be regarded as giving effect to Article 20 of Convention No. 81 and Article 26 of Convention No. 129, to the extent that they do not appear to have been published. Additional information has been requested of the governments concerned.²

275. The lack of qualified staff and of financial resources has often been mentioned as the major cause of these shortcomings. Given the importance which it attaches to annual inspection reports, the Committee cannot but be gravely concerned at this situation, which appears to be worsening over the years.

276. In countries which are not bound by any of the labour inspection Conventions, it has in most cases not been possible to determine from the information available whether annual inspection reports are published regularly.³ One government indicated in this connection that most of the information requested under Article 21 of Convention No. 81 and Article 27 of Convention No. 129 was prepared for internal use by the State.⁴

¹ This is particularly the case in the following countries: Algeria, Angola, Antigua and Barbuda, Bahamas, Bangladesh, Barbados, Bolivia, Cape Verde, Central African Republic, Chad, Colombia, Comoros, Costa Rica, Cuba, Djibouti, Ecuador, France (for agriculture), Ghana, Grenada, Guinea, Guinea-Bissau, Haiti, Iraq, Italy, Jamaica, Kenya, Luxembourg, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Romania, Saudi Arabia, Senegal, Sierra Leone, Sudan, United Republic of Tanzania (Tanganyika), Tunisia, Turkey, Uganda, Yemen.

² For example, Burundi, Dominican Republic, Portugal, Rwanda, Zaire.

³ For example, Benin, Botswana, Burma, Byelorussian SSR, China, German Democratic Republic, Hungary, Mongolia, Nepal, Somalia, Ukrainian SSR, USSR.

⁴ Czechoslovakia.

(b) Form of the reports

277. Annual inspection reports, where they exist, very often appear in a separate publication of the central authority,¹ although other arrangements may also be found. Thus, in certain countries, annual inspection reports are included in the general report of the ministry responsible for labour and/or social affairs,² whereas in others they are published in the official gazette³ or in administrative or other reviews.⁴ All these various arrangements give effect to Article 20 of Convention No. 81 and Article 26 of Convention 129, which merely require the annual report to be published. In cases where there are difficulties of a financial nature in the publication of an annual report, recourse to inexpensive methods of printing - for instance roneoed or mimeographed inspection reports - should enable the requirements of the Conventions to be met, provided that the reports are widely disseminated among the authorities and administrations concerned and among workers' and employers' organisations, and that they are placed at the disposal of all interested parties.

278. However, the Committee considers it desirable that the information to be contained in the annual inspection report should be published in a single document and not scattered throughout a number of publications. Needless to say, in countries where a number of autonomous labour inspection services exist for different branches of activity or different objects of supervision, the reports of each inspection system may be published separately. In particular, as regards labour inspection in agriculture, Article 26 of Convention No. 129 states that the report may either be published separately or as part of the annual general report of the inspection services; in the latter case, the report must naturally contain specific information on agriculture, which is not always the case.

(c) Content of the annual inspection reports

279. Under Article 21 of Convention No. 81 and Article 27 of Convention No. 129 annual inspection reports must contain information on the following subjects: (a) laws and regulations relevant to the work of labour inspection; (b) staff of the labour inspection service;

¹ For example, Austria, Belgium, Denmark, Ireland, Luxembourg, Netherlands, Sweden, United Kingdom.

² For example, Bahamas, Barbados, Kenya, Mauritius, Singapore.

³ For example, Guatemala.

⁴ For example, Israel, Switzerland.

(c) statistics of undertakings liable to inspection and the number of persons working therein; (d) statistics of inspection visits; (e) statistics of violations and penalties imposed; (f) statistics of occupational accidents; (g) statistics of occupational diseases. This is a minimum requirement designed to ensure a measure of uniformity in the information requested, but it would of course be useful for annual inspection reports to include other information, as advocated by Recommendations Nos. 81 and 133, particularly suggestions and recommendations on the social objectives to be attained and on desirable improvements in the relevant fields.

280. The content of annual inspection reports varies substantially from one country to another. In countries with well-equipped statistical services the reports are often voluminous documents which not only contain most of the data required by the labour inspection Conventions but also stress the most outstanding events of the year in order to give the national authorities subjects for reflection. In other countries with insufficient human and material resources, on the other hand, the information is less complete. A comparison of the different annual reports available shows that statistics of occupational diseases are those most frequently missing from annual inspection reports. One of the reasons for this shortcoming is undoubtedly that employers do not always fulfil their obligations in this respect.¹ This could also explain why the statistics of occupational diseases, where they exist, as well as statistics of occupational accidents, may be understated with respect to reality.²

¹ See in this connection para. 88 above.

² Certain workers' organisations have wondered whether statistics of occupational injuries faithfully reflected the realities. The Irish Government has taken certain measures following the comments of the Irish Congress of Trade Unions (see on this point para. 88 above). As concerns the United Kingdom, it should also be noted that according to the Trades Union Congress, the present system of compiling and supplying statistics of occupational accidents and diseases is inadequate in spite of certain improvements. Proposals to improve the system by the Health and Safety Commission are under study.

281. In accordance with the wish expressed by the Committee on Labour Inspection (Agriculture) of the International Labour Conference in 1969, the ILO has prepared a simplified model annual report in order to facilitate the task of governments and to achieve uniformity in the presentation of the information requested by Conventions Nos. 81 and 129. Even though this model report should be updated to take account of certain developments, the Committee considers it useful to include it in the present survey (Appendix III) in case governments may wish to refer to it.

CHAPTER VIII

THE ROLE OF EMPLOYERS' AND WORKERS' ORGANISATIONS IN INSPECTION

282. The effectiveness of inspection services will be considerably enhanced if supported by concerted action by employers, workers and their representatives. In this respect, it is encouraging to note, from information contained in the reports, that governments pay due regard to this aspect of the question, which was stressed by a trade union organisation.¹ The present tendency is to associate employers and workers more closely in the supervision of the measures taken to improve safety and health at the workplace. Thus the professed objective of the working environment Acts of certain Scandinavian countries is to provide a basis for undertakings to solve themselves the working environment problems in co-operation with the occupational organisations and under the supervision of the competent authority.² The role played by employers' and workers' organisations in the supervision of the application of the social legislation will be examined in the paragraphs which follow; a distinction will be made between forms of simple collaboration and association in the exercise of inspection functions.

I. Collaboration between the labour inspection services and employers, workers and their organisations

283. Under Article 5 of Convention No. 81 and Article 13 of Convention No. 129 the competent authority must make appropriate arrangements to promote collaboration between officials of the labour

¹ The Austrian Congress of Chambers of Labour proposes that new methods of supervision should be developed in Austria with the enhanced participation of the social partners.

² Denmark (Working Environment Act, s. 1), Norway (Workers' Protection and Working Environment Act, s. 1).

inspectorate and employers and workers or their organisations. These measures are supplemented by Part II of Recommendation No. 81 and Paragraph 10 of Recommendation No. 133, which advocate as one of the possible forms of collaboration the establishment in undertakings of committees for hygiene and safety or similar bodies including representatives of employers and workers. In addition, Paragraph 6 of Recommendation No. 81 advocates that collaboration between officials of the labour inspectorate and organisations of employers and workers should be facilitated by the organisation of conferences or joint committees, or similar bodies, enabling representatives of the labour inspectorate to establish a dialogue with representatives or organisations of employers and workers.

A. Collaboration within the undertaking

284. Many governments have referred to the establishment of joint safety and health committees in undertakings of a certain size.¹ These are, however, found more rarely in agriculture, according to information communicated by certain governments.² These committees, which in a sense extend the action of the labour inspectorate within the undertaking, exercise permanent supervision over conditions of occupational safety and health and generally participate in improving the prevention of occupational risks. Very often, the establishment of joint committees is provided for by legislation, supplemented by collective bargaining, although they may be established voluntarily in

¹ For example, Australia, Austria, Botswana, Burma, Canada, China, Colombia (according to the Government there are safety and health committees in some undertakings established mainly by collective agreement), Comoros (the report indicates that all heads of undertakings must as far as possible establish committees responsible for safety and health questions), Costa Rica, Denmark, Finland, France, Federal Republic of Germany, Japan, Mali, Mauritius, Mexico, Netherlands (the functions of the working environment committees are assumed by works councils, where these exist), New Zealand, Norway, Pakistan (the Industrial Relations Ordinance provides for the establishment of works councils and joint enterprise committees responsible for occupational safety and health, among other things), Portugal, Singapore, Spain, Sweden, Turkey (the Government refers to section 76 of the Labour Act, which provides for the establishment of occupational safety and health committees, without, however, stating whether these committees operate in practice), United Kingdom, United States.

² For example, Australia, Colombia, Finland, New Zealand.

some countries.¹ In this respect one government has indicated that an amendment to the Factories Act is under study in order to provide for the constitution of safety committees in undertakings of a certain size.² Parallel with this, the institution of safety delegates appointed by workers or their organisations has developed to a considerable degree. In a more general way, the legislation of one country provides for the right of workers to supervise, through the intermediary of their representatives, the application of standards relating to the prevention of occupational risks and to promote the search for, and the working out and application of, any measures to protect their health and physical integrity.³

285. In order to permit the joint health and safety committees and safety delegates to exercise their functions, the law is conferring upon them increasingly extensive powers. The laws of many countries allow the members of committees and/or safety delegates to accompany labour inspectors on their inspection visits.⁴ This is a particularly important point, since their knowledge of the working environment makes joint committees and safety delegates particularly able to detect certain problems which they may point out to the inspector during his

¹ This is, for example, the case in Colombia, New Zealand, Panama and Portugal.

² India.

³ Italy (Act No. 300 of 1970 to make provisions respecting the protection of workers' freedom and dignity, trade union freedom and freedom of action within the workplace, and provisions respecting placement, s. 9).

⁴ For example, Austria (Labour Inspection Act of 1974, s. 3(5)), Canada (Ontario) (Occupational Health and Safety Act, s. 28(3)), Finland (s.14 of the Act to provide for the supervision of labour protection recognises this right in so far as the inspector considers it appropriate), Israel (Labour Inspection Organisation Law of 1954, s. 14), Netherlands (Working Environment Act, s. 14: a reservation is, however, made in respect of cases in which the inspector considers that this presence would prevent him from performing his functions properly), Norway (Workers' Protection and Working Environment Act, s. 26). It will also be noted that in Australia (Victoria) a Bill which is at present being prepared confers this right on members of safety and health committees.

visit.¹ For this reason, in countries where the legislation contains no express provisions to this effect, the Committee considers that it would be particularly desirable in practice for inspectors to associate workers' representatives with their inspection visits,² as far as possible, as provided for in Article 5, paragraph 4, of the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148).³ Moreover, certain national legislations entrust joint committees with the task of investigating serious occupational accidents or diseases which have occurred in the undertaking, for the purpose of proposing the necessary measures to avoid their repetition.⁴ It is to be presumed that on this occasion the representatives of the safety and health committees will collaborate with the labour inspectors as

¹ Section 7(2) of the Danish Working Environment Act provides that the labour inspector, during his visits to the undertaking, shall maintain frequent contact with the safety delegates, groups responsible for safety or representatives of the safety committee. These may freely draw the attention of the labour inspectorate to any questions concerning safety and health.

² The Government of New Zealand has, however, indicated that workers' representatives do not normally accompany inspectors during their visits and investigations. It seems that such is also the case in Mexico as far as the joint safety and health committees are concerned.

³ The text of Article 5, paragraph 4, of Convention No. 148 reads as follows:

Representatives of the employer and representatives of the workers of the undertaking shall have the opportunity to accompany inspectors supervising the application of the measures prescribed in pursuance of this Convention, unless the inspectors consider, in the light of the general instructions of the competent authority, that this may be prejudicial to the performance of their duties.

⁴ For example, Algeria (Ordinance No. 75-31 of 1975 respecting conditions of work in the private sector, s. 267), Bahrain (Order No. 29 of 1976, s. 24), Canada (Ontario) (Occupational Health and Safety Act, s. 8), France (Labour Code, s. R.231-5), Mali (Order No. 2993 MT/CAB of 1975, s. 7(a)), Norway (Workers' Protection and Working Environment Act, s. 24(3)).

advocated by Paragraph 5 of Recommendation No. 81.¹ One government nevertheless indicated that collaboration during investigations, and particularly during inquiries into occupational accidents and diseases, was not possible given the state of its legislation.²

286. In certain Scandinavian countries a particularly important right of safety delegates deserves special mention. Delegates have the power to order work to be stopped when they consider that there is an immediate danger to the life and health of workers which cannot be avoided in another way, until the labour inspectorate has taken a decision on the question.³ In another country, where the worker may refuse to perform an act which he has reasonable grounds to believe may have particularly serious effects on his health or safety or on that of any other person at the workplace concerned, a representative of the workers' members of the safety and health committee has the right to be present during the investigation conducted to determine whether the worker's refusal was justified.⁴

287. These various examples are characteristic of a trend to associate workers and their representatives more closely in the supervision of safety and health measures at the workplace.

288. In order to promote the activities of the joint safety and health committees the law often provides for the intervention of labour inspectors in their operation. Thus, inspectors must be kept informed of the establishment of all committees.⁵ They may in certain circumstances order a committee to be set up in establishments where the number of workers is less than the prescribed minimum.⁶ Certain laws

¹ Such is, for example, the case in China.

² Turkey.

³ Norway (Workers' Protection and Working Environment Act, s. 27), Sweden (Working Environment Act, Chapter VI, s. 7).

⁴ Canada (Ontario) (Occupational Health and Safety Act, s. 23).

⁵ For example, Norway (Workers' Protection and Working Environment Act, s. 23(2)).

⁶ Norway (ibid., s. 23(1)).

provide for the right of inspectors to attend meetings of committees.¹ Elsewhere, the reports of these meetings must be communicated to the inspectorate or made available to it.² An analogous obligation is sometimes also provided for regarding the committee's annual report on its activities.³ In any case, experience has shown that, when safety and health committees work well, collaboration with the labour inspection services is a current practice.

289. The effectiveness of joint safety and health committees rests mainly on the qualifications of their members. The same goes for safety delegates. For this reason, Article 19(d) of the Occupational Safety and Health Convention, 1981 (No. 155), provides that there shall be arrangements at the level of the undertaking under which workers and their representatives in the undertaking are given appropriate training in occupational safety and health. Certain national laws contain provisions to this effect which often serve as a basis for the conclusion of collective agreements.⁴ Under one of these agreements, training must be given at the employer's cost and during work hours; it includes a basic working environment course of 40 hours.⁵

290. The complexity of working environment problems has led undertakings in certain countries to have recourse to the establishment of works medical services and occupational safety departments or responsible specialists. It is obvious that when such institutions develop they are called upon to collaborate closely with the inspection services.

¹ For example, Austria (Labour Inspection Act of 1974), s. 2(2)), France (Labour Code, s. R 236-8).

² For example, Algeria (Ordinance No. 75-31 of 1975 respecting conditions of work in the private sector, s. 267), Canada (Ontario) (Occupational Health and Safety Act, s. 8(7)), France (Labour Code, s. R 236-11), Israel (Labour Inspection Organisation Act of 1954), s. 15(b)).

³ France (Labour Code, s. R.236-11), Norway (Workers' Protection and Working Environment Act, s. 24(5)).

⁴ For example, Denmark (Working Environment Act, s. 9(3)), Norway (Workers' Protection and Working Environment Act, s. 29(2)), Sweden (Working Environment Act, Chapter VI, s. 4).

⁵ Sweden (agreement regarding training in working environment questions concluded by SAF, LO and PTK).

291. The collaboration of the inspection services with workers' representatives is not confined to occupational safety and health questions. In many countries the legislation provides for the institution of trade union delegates and other staff representatives within the undertaking with special responsibility for conditions of employment and work. These staff representatives are responsible for submitting to the labour inspectorate complaints and observations relating to the application of the provisions of laws and regulations.¹ As in the case of members of safety and health committees, the legislation often lays down the obligation, or at least the right, of inspectors to be accompanied by staff representatives on their visits.²

B. Collaboration outside the undertaking

292. Outside the undertaking collaboration will often be on an informal basis, it being customary for employers and workers or their organisations in certain countries to consult the labour inspection services on their problems. But collaboration may also be subject to appropriate arrangements, such as those mentioned in Paragraph 6 of Recommendation No. 81. Many governments have in fact referred to the existence of joint or tripartite committees at the national, regional or local level, with more or less general competence for labour (for example, labour advisory councils, higher councils for labour and employment, higher councils for the prevention of occupational risks, national safety and health committees, etc.), within which the labour inspectorate is able to establish contacts with the occupational associations.³ Another government has indicated that the inspection services organise periodical meetings with organisations of employers and workers with a

¹ For example, Benin (Labour Code, s. 153), Cameroon (Labour Code, s. 135), Comoros (Labour Code, s. 184), France (Labour Code, s. L-422-1), Gabon (Labour Code, s. 198), Rwanda (Labour Code, s. 164).

² For example, Gabon (Labour Code, s. 148(c)), Peru (Decree No. 003/83/TR of 1983, s. 16), Somalia (Labour Code, s. 110).

³ For example, Australia, Austria, Burundi, Cameroon, Canada, Colombia, Cyprus, France, India, Ivory Coast, Mali, Netherlands, Portugal, United Republic of Tanzania, Turkey, United States.

view to discussing questions or problems falling within their competence.¹ Moreover, in the same country, the central labour inspection service organises, in addition to certain meetings on specific questions, a conference of labour inspection bureaux, which is held every two years and to which representatives of employers' and workers' organisations are also invited. In another country, representatives of workers and employers participate in the work of the committee which gives its advice on application for approval submitted by bodies which wish to be entrusted with certain special kinds of technical supervision.²

II. Association of workers in the exercise of inspection functions

293. As already mentioned, trade unions, particularly those in the socialist countries of Eastern Europe, are closely associated with the exercise of inspection functions. Their action is generally at two levels. In many of these countries the state inspectorate is paralleled by a labour inspectorate administered by the trade unions.³ The latter exercises a major responsibility in the field of occupational safety. The activities of the state supervisory bodies and the trade unions are supplemented at the level of the undertaking by the action of social inspectors appointed by the staff of the undertaking and by the action of labour protection committees set up by trade union committees. In this respect one government⁴ has indicated that the social supervisory organs of the trade unions have, among other things, the right to supervise the manner in which the undertakings fulfil their obligations regarding occupational safety and health, and to make regular inspections of the workplaces and installations. Moreover, these bodies have powers to verify whether undertakings make investigations of occupational accidents and to participate in investigating the causes of such accidents and of occupational diseases, by making investigations themselves in appropriate cases. In order to perform their task effectively these organs may invite undertakings, by means of instructions of a binding nature, to make good shortcomings existing in the operation of machinery and equipment and, in the event of

¹ Austria.

² Morocco.

³ See above, para. 119.

⁴ Czechoslovakia (Labour Code, s. 136).

imminent danger, to order a stoppage of work. The measure taken by the social supervisory organs may, at the request of the undertaking, be subject to examination by the State Labour Safety Inspectorate; however, they remain in force until a decision has been taken.

294. The system of the socialist countries in Eastern Europe is perhaps one of the most striking examples of the association of workers in the exercise of inspection functions. But there are other forms. Thus, in one country, controllers appointed by the Minister of Labour from among manual workers and employees on the proposal of the most representative trade union organisations may be incorporated into the permanent labour inspection staff after an initial trial period of three years.¹ One government mentioned the temporary incorporation of workers' delegates into the mining inspectorate as an example of collaboration which has proved highly fruitful in practice.² Their experience in mining work gives these workers' delegates, who are appointed for a period of four years renewable on the proposal of the trade union organisations, the ability to make an effective contribution to the activities of the mining engineers under whom they work. One of the main characteristics of this institution lies in the authority of the workers' delegates, in the event of imminent danger and after discussion with the management or its representatives, to order measures with immediate effect including the evacuation of the danger area. The engineer of the mining service, who must be warned as early as possible, has 24 hours in which to give his opinion on the decision taken.³

295. Finally, it should be noted that in several countries the body responsible for occupational safety and health policy comprises representatives of employers' and workers' organisations, who are thus able to exert direct influence on the activities of the labour

¹ Luxembourg (Labour and Mines Inspectorate Organisation Act of 1974, s. 7).

² Belgium.

³ For further information on the situation in mines, see ILO: Participation of workers in labour inspection of mines (Geneva, 1977) (French only).

inspectorate.¹ In certain Nordic countries this participation takes place at both the central and the local levels.² At the central level the directorate of the labour inspection service is controlled by a central labour inspection council comprising representatives of employers' and workers' organisations. At the local level, a labour inspection council is established for each inspection district. Within limits fixed by the central inspection council, the district councils are competent to take decisions concerning the planning and organisation of labour in the district. Systems with certain variants exist in other countries of the region.³ Elsewhere, workers' and employers' organisations can influence the activities of the labour inspection service through their representatives on a consultative body.⁴

¹ For example, United Kingdom (the Health and Safety Commission, which has nine members, three of whom are appointed after consultation with employers' organisations and three after consultation with workers' organisations, is responsible for promoting the application of the Health and Safety at Work Act).

² Norway, Sweden.

³ Denmark, Finland.

⁴ For example, Luxembourg (Consultative Committee for the Inspection of Labour and Mines).

CHAPTER IX

RATIFICATION: DIFFICULTIES AND PROSPECTS

296. A number of governments have referred to difficulties which they consider likely, temporarily at least, to prevent ratification of Convention No. 81 and/or Convention No. 129; others have supplied information on their intention to ratify them.

1. Difficulties

A. Convention No. 81

297. Some governments state, in general terms, that they would have difficulties in ratifying the Convention.¹ Others mention difficulties in connection with specific aspects of the Convention.

298. The Government of Burma has raised certain problems regarding scope.² The Committee recalls in this respect that in view of the particularly flexible wording of Article 2, paragraph 1, of Convention No. 81, governments are free to determine which establishments are to be liable to inspection.

299. The Government of Botswana has asked whether the policy whereby employers who infringe the provisions of social laws and regulations must be warned before proceedings are taken against them is not to some extent inconsistent with the Convention. The Committee recalls that under Article 17, paragraph 2, of the Convention, it is up to the inspectors to decide whether to give a warning or advice instead of instituting or recommending proceedings. It consequently considers that the practice referred to by the Government is not necessarily contrary to Article 17 of the Convention, provided inspectors have the right to bring a matter before the judicial authority immediately when they consider this necessary for instance because of the seriousness of the infringement.

¹ For example, Ethiopia, Mexico.

² See para. 33 above.

300. The Government of the Philippines has stated that the suspension of systematic inspection visits in that country constitutes one of the obstacles to ratification. The Committee is obliged to emphasise that this type of visit is essential for the operation of an efficient inspection service, in accordance with Article 16 of the Convention which provides that "workplaces shall be inspected as often and as thoroughly as is necessary.....". It therefore hopes that the Government will soon be able, in accordance with its expressed intention, to take the necessary measures for inspection visits to be resumed on a regular basis.

301. Furthermore, many governments consider that the shortage of human and material resources prevent their ratifying Convention No. 81. The Government of Botswana states that shortcomings in the inspection services are due mainly to the lack of skilled personnel and of adequate means of transport. According to the Government of the Congo, the labour inspection services do not yet have sufficient logistic and financial resources and their personnel do not enjoy the conditions of work and facilities that could make them independent of any undue outside influence. In Equatorial Guinea the Government considers that the sole difficulty that will remain after the adoption of the draft legislation on labour inspection will be the lack of the economic and human resources needed to establish an adequate infrastructure. The Government of the Philippines also refers to financial constraints, and the Government of Somalia to the general lack of available resources for developing the inspection services. According to the Government of Zambia, the difficulties reside in the lack of skilled personnel and of adequate transport; these matters will receive priority as soon as funds become available.

302. Finally, the fact that annual inspection reports are not published is mentioned by the Governments of Czechoslovakia and Somalia as an obstacle to ratification.¹

B. Convention No. 129

303. As in the case of Convention No. 81, some governments have referred in general terms to difficulties in respect of the ratification of Convention No. 129.²

¹ This difficulty also concerns Convention No. 129.

² For example, Saudi Arabia, Mexico.

304. According to the Government of the United States, the federal structure of the State is one of the difficulties likely to delay or prevent the ratification of Convention No. 129, since labour inspection falls within the jurisdiction both of the federal authority and of the constituent States. As the Committee emphasised in its previous General Survey, in connection with Convention No. 81, it would seem that where the division of responsibility prevents the taking of measures of general application, the establishment or development of machinery for consultation between the federal inspection authorities and those of the federated units would contribute to overcoming this difficulty.¹ So far several federated States have ratified Convention No. 81 and/or Convention No. 129.²

305. For the Government of Austria one of the obstacles to ratifying the Convention is the scope of the inspection services in agriculture as regards the undertakings covered.³

306. Several governments have mentioned certain problems in connection with Article 7 of the Convention as regards the organisation of labour inspection systems in agriculture. The Governments of Australia, Belize, Cameroon, Chad, Congo, Egypt and Mali see the fact that their inspection system applies to all economic sectors as an obstacle to ratification of the Convention. In this respect it should be recalled that the Convention suggests, in Article 7, paragraph 3, four possible structures for the inspection system in agriculture, ranging from a single labour inspection department responsible for all sectors of economic activity to a specialised inspection service.⁴ Consequently the implementation of Convention No. 129 does not necessarily imply the setting up of special inspection services for agriculture. Nor is it necessary, as the Government of Ecuador seems to think, for inspectors to devote themselves solely to inspecting

¹ 1966 General Survey on Labour Inspection, para. 212.

² Convention No. 81 has been ratified, in particular, by the following federated States: Argentina, Australia, Austria, Federal Republic of Germany, India, Malaysia, Nigeria, Pakistan, Switzerland, United Arab Emirates, Venezuela and Yugoslavia.

Convention No. 129 has been ratified, in particular, by the following federated States: Federal Republic of Germany and Yugoslavia.

³ See above, para. 55.

⁴ See above, para. 111.

agricultural undertakings. The Government of the United States points out that the existence of various statutes at the federal level on the protection of agricultural workers prevents all inspections being conducted by a central labour inspectorate. The Committee recalls in this respect that the very flexible wording of Article 7, paragraph 1, of the Convention, which provides for labour inspection in agriculture to be placed under the supervision of a central body "so far as is compatible with the administrative practice of the Member", makes it possible to take account of the special arrangements recognised as being necessary in national administrative practice.

307. Articles 16 and 18 of the Convention concerning the inspectors' powers constitute one of the reasons why ratification is not contemplated in some countries. The Government of Austria states that the Agricultural Workers' Act does not give inspectors the right to question persons other than those working in the undertaking or the operator of the undertaking. However, as the Government states, in so far as it is possible to question other persons in the undertaking under the Act respecting general administrative procedure, it would seem to the Committee that Article 16, paragraph 1(c)(i) can be considered to be applied. The Government of New Zealand states that inspectors can exercise their power of entry provided for by the Agricultural Workers' Act and by the Shearers Act, only in the presence of the employer or his representative or after having informed them, which would be incompatible with Article 16 of the Convention. In this connection the Committee recalls that Article 16, paragraph 3, of this instrument lays down the principle that on the occasion of an inspection visit inspectors must notify the employer or his representative, and the workers or their representatives, of their presence unless they consider that such notification may be prejudicial to the performance of their duties. It is thus only in exceptional situations that an inspector will decide not to inform the employer of his presence - for example, if he has reasons to think that the employer might conceal certain evidence. Furthermore, the same Government states that the obligation set forth in Article 18, paragraph 4 of the Convention - according to which the defects noted by the inspector when visiting an undertaking and the orders he makes or has made to remedy them must be made known to the employer and the workers' representatives - is contrary to section 6(3) of the Agricultural Workers' Act, which stipulates that an inspector may not disclose any information he acquires in the exercise of his functions except "for the purposes of this Act and the exercise of his functions". The Committee considers that the inspector's duty to inform persons directly concerned, and particularly the workers or their representatives, of any dangerous situation discovered in an undertaking falls within the normal exercise of the duties incumbent on the inspection services and is in no way contrary to Article 20(b) of the Convention which requires inspectors to observe professional secrecy. Finally, the Government of Japan

refers to divergencies between the Convention and national laws and regulations as regards the powers of inspectors as reasons for the delay in ratification.

308. The implementation of Article 20(a) of the Convention which provides that inspectors are prohibited from having any interest in undertakings under their supervision, is also considered by the Government of Austria to be an obstacle to ratification. However, as the Government states, in so far as the general obligation for administrative bodies to refrain from exercising their functions and to apply to be replaced in matters in which they or their relatives have an interest applies to inspectors in agriculture in respect of undertakings under their supervision, it seems to the Committee that the aim sought by this provision of the Convention can be considered to have been achieved.

309. Two Governments have mentioned the question of penalties as being likely to prevent ratification of the Convention. According to the Government of Austria, the obstruction of inspectors in the exercise of their duties is not punishable in certain Länder. The Government of the Philippines states that it is studying the possibility of introducing realistic penal sanctions for employers who, as is often the case, object to or delay inspection visits.

310. However, as in the case of Convention No. 81, the main obstacle to the ratification of Convention No. 129 lies in the inadequacy of financial, human and material resources of inspection services in practice. Difficulties of this kind have been reported by the Governments of the following States: Barbados, Belize,¹ Burundi, India, Philippines,² and Somalia. Some Governments have stated that these difficulties were aggravated because of the vast size of the country (India) or its terrain (Greece).³

¹ According to the Government of Belize, the means of action and training of inspection staff are inadequate.

² The Government of the Philippines refers in particular to the labour inspectors' lack of technical know-how and experience, especially as regards chemicals used in agriculture; it also refers to transport problems.

³ However, the Panhellenic Confederation of Unions of Agricultural Co-operatives (PASEGES) has expressed the view that, despite the difficulties encountered in introducing a system of labour inspection in agriculture, ratification of Convention No. 129 is desirable in order to protect workers and avoid abuses respecting them.

II. Ratification prospects

311. A number of governments have stated that they are considering ratifying Convention No. 81 and/or Convention No. 129. The information on ratification prospects will be examined according to whether it concerns both Convention No. 81 and Convention No. 129, or only one of these instruments.

A. Conventions Nos. 81 and 129

312. According to information from the Government of Benin, Convention No. 81 has been submitted for ratification to the competent authority; there do not seem to be any difficulties regarding ratification of Convention No. 129. The Government of the Ivory Coast states that the ratification of both Conventions is being considered.

313. The Government of Czechoslovakia states that ratification of Conventions Nos. 81 and 129 will depend on whether or not it is decided to publish annual labour inspection reports. The Government of China states that the question of ratifying Conventions Nos. 81 and 129 is being studied.

B. Convention No. 81

314. The Government of Brazil has reported that the difficulties inherent in the application of Convention No. 81, which led to its denunciation,¹ have been overcome and that the Under-secretariat for Labour Protection has given notice that it is in favour of ratifying the instrument.² The Government of Nepal states that ratification of the Convention has been proposed.

C. Convention No. 129

315. The Government of Zaire states that the Executive Council proposes to request ratification of the Convention.

¹ See above, para. 16.

² In its comments, the National Confederation of Industry has emphasised the desirability of ratification by the Government of Brazil of both Convention No. 81 and Convention No. 129 since, the organisation maintains, there are no obstacles to this.

316. According to the Government of Gabon, the agricultural sector is one of its priorities; consequently ratification of the Convention will be considered in due course. The Government of Mauritius states that it is examining the possibility of ratifying the Convention.

317. Two Governments have expressed their intention of overcoming difficulties in the way of ratification: the Government of Cyprus states that it was necessary to update the laws and regulations in force and to improve and complete certain administrative and institutional structures before the Convention could be ratified. It adds that it is working towards this end in co-operation with the employers' and workers' organisations. According to information from the Government of India, the question of ratifying Convention No. 129 was recently discussed by the Tripartite Committee on Conventions. Although the Convention cannot be ratified at this stage, the Committee in question has agreed that measures should be taken to meet the requirements of this instrument with a view to its eventual ratification. Finally, the Government of Malaysia states that in-depth studies are necessary before the Convention can be ratified.

CHAPTER X

CONCLUSIONS

318. As the Committee has stated in its report in 1964, "the existence of an efficient labour inspectorate provide the surest guarantee that national and international labour standards are complied with not only in law but in fact". A study of the reports from governments and information from other sources shows that the importance of the role of labour inspection in improving conditions of work is recognised by all member States of the Organisation. At the international level this awareness on the part of governments has resulted, as regards Convention No. 81, in an extremely high number of ratifications: 105 at present.

319. The scope of Convention No. 81 calls however for certain comments. Part II (Commerce) is optional and 18 States have excluded Part II from their acceptance of the Convention. Nevertheless, since in most of these States the inspection system also covers this sector, the Committee suggests that the possibility of extending acceptance of the Convention to Part II - Labour inspection in commerce - might be reconsidered, particularly in countries where ratification dates back a long time. Further as has been seen, the instrument leaves States free to determine which undertakings are to be covered by the inspection system. This considerable flexibility seemed necessary at the time the Convention was adopted to take account of the diversity of national solutions in this field. Finally, Part II of the Convention which applies to commerce, does not actually define commerce. As evidenced by several ILO instruments,¹ there is a whole series of non-industrial activities in the tertiary sector which in many countries are not considered as commerce, such as laboratories, postal and telecommunication services, etc. This is a shortcoming in the Convention

¹ For example: the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); the Hygiene (Commerce and Offices) Convention, 1964 (No. 120); the Medical Examination of Young Persons (Non-Industrial Occupations) Recommendation, 1946 (No. 79) and the Hygiene (Commerce and Offices) Recommendation, 1964 (No. 120).

that should be corrected since the application of social legislation may also give rise to problems in the "non-commercial" services sector which is rapidly expanding. Consideration might be given to adding a protocol to Convention No. 81, to define and extend its scope.

320. A very encouraging note relates to the organisation of inspection services which largely follows the principles set forth in the labour inspection instruments.

321. As a rule the duties of the inspection services, in accordance with the Conventions, comprise supervision of the application of statutory provisions on conditions of work and the protection of workers at work, as well as the provision of information and advice to employers and workers and to the competent authority. In practice the inspection services have considerably developed their advisory role. They should, however, be careful not to relegate their traditional role of supervisory bodies to second place.

322. In most countries the inspectorate is made up of public officials. Other systems of inspection, especially in the socialist countries of Eastern Europe, give an important parallel role to the trade unions. Actually what is important is for the inspectorate to enjoy job stability and to be independent of changes in government and of any undue outside influence. This is a fundamental principle on which the authority of the inspectors - and consequently the effectiveness of the inspection services themselves - depend. To ensure this effectiveness conditions of service and, in particular, the inspectors' remuneration and career prospects must also be sufficient to attract and retain qualified personnel and safeguard them against undue outside influence. The importance of this aspect should not be forgotten.

323. A study of national legislation and other available information shows that in a large number of countries the necessary powers of inspectors - the rights of free entry and of free supervision in undertakings and the right to cause measures to be taken to remedy defects observed during an inspection visit - are recognised. In some cases, however, the laws and regulations implement the provisions of the Conventions only partially on this point. The Committee notes with satisfaction that since its General Survey of 1966 a number of governments bound by Convention No. 81 and/or Convention No. 129 have, following its comments, taken measures to confer the powers referred to in these instruments on their inspectors. It is essential that labour inspectors use their powers of injunction as well as their powers regarding legal proceedings. Governments and employers' and workers' organisations need to be vigilant against the adverse pressure of financial stringencies: health and safety must have the highest degree of priority.

324. Whatever the value of the institutional framework providing the basis for inspection systems, their effectiveness is measured by their activities in the field. This necessarily presupposes the availability of appropriate material means and human resources. It has to be recognised that these resources are limited and even inadequate in many countries, not only in those at varying stages of development but also in some industrialised ones.

325. Unfortunately the personnel of the inspection services is often insufficient and has even decreased in recent years in various countries. In some cases this is due to the reduction in public expenditure which also affects the ministry in charge of social and labour matters. In other cases, particularly in the developing countries, the cause has to be sought in the endemic lack of resources and in the scarcity of sufficiently qualified personnel. Despite certain measures adopted by governments, the training needs of the labour inspectorate remain considerable and many governments have referred to bilateral or multilateral assistance. This too is limited. The problems of the lack of personnel are further aggravated by the fact that labour inspectors are often given extra duties which prevent them from devoting themselves fully to what should be their main task, namely the inspection of undertakings subject to their supervision. Whatever the reasons put forward to justify this situation (budgetary restrictions, shortage of skilled staff and the nature of the special experience of inspectors), the extent of the problem in certain countries gives rise to serious concern and should be considered by governments and the employers' and workers' organisations.

326. The importance for inspectors of being able to have properly equipped offices, complete with the necessary documentation, deserves emphasis. Lack of transport is a major defect - in many countries inspectors have no service vehicles, it being normal practice to use public transport or their own cars. The resources assigned for the refund of expenses incurred by inspectors are not always sufficient to correspond to the desirable number of inspection visits. In some countries petrol shortages and the lack of facilities for vehicle maintenance represent further difficulties.

327. The shortage of human and material resources causes in many cases inspection visits to be too infrequent. In countries where the inspection services have satisfactory means at their disposal, undertakings may of course be visited at fairly frequent intervals. In others, however, it sometimes takes ten or even 20 years for all the undertakings liable to inspection to be visited. Furthermore in some countries the lack of transport and communication difficulties oblige inspectors to confine their activities to the areas nearest to their offices. Obviously such cases are far from meeting the

requirements of Conventions Nos. 81 and 129 which specify that establishments must be inspected "as often and as thoroughly as is necessary".

328. The lack of personnel and resources has also been mentioned as one of the factors preventing publication of the annual reports on the activities of the inspection services. The Committee has suggested in this survey, some inexpensive solutions that would facilitate publication of these reports, to which it attaches special importance.¹

329. The use of penalties is also a matter for concern. Provision is of course made in all national laws and regulations for penalties in the event of infringement of the provisions of social legislation, but must not be seen merely as additional financial cost to be absorbed. The effectiveness of penalties depends on their exemplary character particularly in cases of serious or deliberate infractions. From the information available it also seems that unfortunately judicial authorities sometimes tend to minimise the violations of social legislation.

330. The foregoing remarks are equally valid for the agricultural sector, where the problems are even more acute. In many countries the labour inspection systems are confined mainly to the urban areas. The shortage of financial, human and material resources prevents them from overcoming the enormous difficulties of supervising a large number of agricultural undertakings (often small ones) whose remote geographical positions in relation to the inspection offices entail long journeys. Several governments have stated that their countries had no labour inspection system applicable to agriculture, while others have mentioned the traditional and seasonal nature of agriculture and the lack of an employment relationship for most rural workers as a factor against the establishment of a system of labour inspection in this sector. The Committee recalls that it is frequently in small undertakings and in informal sector activities that work accident figures are highest. Moreover, the mechanisation of agricultural work and the use of chemical substances such as fertilisers, pesticides, insecticides, etc., represent increasing dangers for the workers who are often untrained and unaware both of the risks inherent in their work and of the means of protecting themselves. Lastly, the difficulties of supervision described above would not apply to bigger agricultural undertaking such as plantations.

¹ See above, para. 277.

331. Since the Committee's last General Survey the methods used by these services have evolved considerably in certain countries, particularly as regards priority areas for action and more efficient management of available resources. In particular there are the measures taken to plan the activities of the labour inspection services by determining priorities according to objective criteria such as risks inherent in the undertaking, capacity of the undertaking to provide a satisfactory working environment, time elapsed since the last inspection visit, etc. Moreover greater attention has been paid to prevention at the stage of the construction and installation of new premises, machinery and other equipment. Prevention is of course far more difficult in the case of existing installations. As recent catastrophes have unfortunately shown, the association of the inspection services with preventive activities is particularly important and should become the general rule in all countries. Care must be taken to ensure that all national services concerned with health and safety, and they are many (e.g. planning, pollution control, fire services) work in close co-operation. Co-operation between the inspection services, and employers and workers or their organisations, has been considerably strengthened. In this respect the role of the joint safety and health committees set up in the undertaking should be emphasised. This is a particularly encouraging trend and there is every reason to believe that it will be maintained in the coming years.

332. In conclusion, the Committee wishes to draw the attention of governments to the importance of pursuing their collaboration with the International Labour Office and, in this respect, welcomes the intentions expressed by some of these governments to call upon the technical assistance of the Organisation. The Committee is convinced that thanks to technical co-operation and in particular to the activities of the regional labour administration centres and the development of tripartite missions to evaluate national inspection systems, governments will be better placed to grasp the nature and extent of the problems and that they will be able, together with the occupational associations, to reach solutions enabling labour inspection to become an increasingly effective instrument of social protection. The Committee reaffirms the statement of the Director-General in his Report to the 1964 Session of the Conference: "labour legislation without inspection is an essay in ethics rather than a binding social discipline".

APPENDIX I

CHART OF RATIFICATIONS

Labour Inspection Convention, 1946 (No. 81) (entry into force 7.4.1950), and Labour Inspection (Agriculture) Convention, 1969 (No. 129) (entry into force 19.1.1972).

Countries	Date of ratification up to 27 March 1985	
	Convention No. 81	Convention No. 129
Algeria	19.10.62	
Angola	04.06.76	
Antigua and Barbuda ¹	02.02.83	
Argentina	17.02.55	
Australia ¹	24.06.75	
Austria	30.04.49	
Bahamas	25.05.76	
Bahrain	11.06.81	
Bangladesh	22.06.72	
Barbados ¹	08.05.67	
Belgium	05.04.57	
Belize	15.12.83	
Bolivia	15.11.73	31.01.77
Brazil ²	25.04.57	
Bulgaria	29.12.49	
Burkina Faso	21.05.74	21.05.74
Burundi	30.07.71	
Cameroon ¹	03.09.62	
Cape Verde	16.10.79	
Central African Republic ¹	09.06.64	
Chad	30.11.65	
Colombia ¹	13.11.67	16.11.76
Comoros	23.10.78	
Costa Rica	02.06.60	16.03.72
Cuba	07.09.54	
Cyprus ¹	23.09.60	
Denmark	06.08.58	30.11.72
Djibouti	03.08.78	

Countries	Date of ratification up to 27 March 1985		
		Convention No. 81	Convention No. 129
Dominica	28.02.83		
Dominican Republic	22.09.53		
Ecuador	26.08.75		
Egypt	11.10.56		
Finland	20.01.50		03.09.74
France	16.12.50		28.12.72
Gabon	17.07.72		
Germany, Federal Republic of	14.06.55		26.09.73
Ghana	02.07.59		
Greece	16.06.55		
Grenada ¹	09.07.79		
Guatemala	13.02.52		
Guinea	26.03.59		
Guinea-Bissau	21.02.77		
Guyana ¹	08.06.66		19.01.71
Haiti	31.03.52		
Honduras	06.05.83		
India ¹	07.04.49		
Iraq	13.01.51		
Ireland ¹	16.06.51		
Israel	07.06.55		
Italy	22.10.52		23.06.81
Jamaica ¹	26.12.62		
Japan	20.10.53		
Jordan	27.03.69		
Kenya	13.01.64		09.04.79
Kuwait	23.11.64		
Lebanon	26.07.62		
Libyan Arab Jamahiriya	27.05.71		
Luxembourg	03.03.58		
Madagascar	21.12.71		21.12.71
Malawi	22.03.65		20.07.71
Malaysia	01.07.63		
Malaysia: Peninsular	01.07.63		
Sabah	03.03.64		
Sarawak	03.03.64		
Mali	02.03.64		
Malta ¹	04.01.65		
Mauritania	08.11.63		
Mauritius	02.12.69		
Morocco	14.03.58		11.05.79
Mozambique	06.06.77		
Netherlands	15.09.51		29.06.73

Countries	Date of ratification up to 27 March 1985		
		Convention No. 81	Convention No. 129
New Zealand ¹	30.11.59		
Niger	09.01.79		
Nigeria ¹	17.10.60		
Norway	05.01.49		14.04.71
Pakistan	10.10.53		
Panama	03.06.58		
Paraguay	28.08.67		
Peru	01.02.60		
Portugal	12.02.62		24.02.83
Qatar	18.08.76		
Romania	06.06.73		28.10.75
Rwanda	02.12.80		
Sao Tome and Principe	01.06.82		
Saudi Arabia	15.06.78		
Senegal	22.10.62		
Sierra Leone ¹	13.06.61		
Singapore	25.10.65		
Spain	30.05.60		05.05.71
Sri Lanka	03.04.56		
Sudan	22.10.70		
Suriname	15.06.76		
Swaziland	05.06.81		
Sweden	25.11.49		14.05.70
Switzerland	13.07.49		
Syrian Arab Republic	26.07.60		18.04.72
Tanzania, United Republic of ¹	30.01.62		
Tunisia	15.05.57		
Turkey	05.03.51		
Uganda ¹	04.06.63		
United Arab Emirates	27.05.82		
United Kingdom ¹	28.06.49		
Uruguay	28.06.73		28.06.73
Venezuela	21.07.67		
Viet Nam	06.01.64		
Yemen	29.07.76		
Yugoslavia	18.08.55		22.07.75
Zaire	19.04.68		

¹ Excluding Part II.

² Has denounced this Convention.

APPENDIX II

REPORTS RECEIVED AS AT 27 MARCH 1985 ON THE LABOUR INSPECTION
CONVENTION, 1947 (No. 81); THE LABOUR INSPECTION (AGRICULTURE)
CONVENTION, 1969 (No. 129); THE LABOUR INSPECTION RECOMMENDATION,
1947 (No. 81); THE LABOUR INSPECTION (MINES AND TRANSPORT)
RECOMMENDATION, 1947 (No. 82); AND THE LABOUR INSPECTION
(AGRICULTURE) RECOMMENDATION, 1969 (No. 133)

(Article 19 of the Constitution)

REPORTS RECEIVED ON CONVENTIONS Nos. 81 AND 129
AND RECOMMENDATIONS Nos. 81, 82 AND 133

Member State	Conventions		Recommendations		
	No. 81	No. 129	No. 81	No. 82	No. 133
Afghanistan	-	-	-	-	-
Algeria	R	-	-	-	-
Angola	R	-	-	-	-
Antigua and Barbuda	R	X	X	X	X
Argentina	R	-	-	-	-
Australia	R	X	X	X	X
Austria	R	X	X	X	X
Bahamas	R	X	-	-	-
Bahrain	R	X	X	X	X
Bangladesh	R	X	X	X	X
Barbados	R	X	-	X	X
Belgium	R	X	-	X	X
Belize	R	X	-	X	X
Benin	X	X	-	X	-
Bolivia	R	R	X	X	X
Botswana	X	-	X	-	X
Brazil	X	X	-	X	X
Bulgaria	R	X	X	X	X
Burkina Faso	R	R	-	-	-
Burma	X	X	X	X	X
Burundi	R	X	X	X	X
Byelorussian SSR	X	X	X	X	X
Cameroon	R	X	X	X	-
Canada	X	X	X	X	X

Member State	Conventions		Recommendations		
	No. 81	No. 129	No. 81	No. 82	No. 133
Cape Verde	R	X	-	X	X
Central African Republic	R	-	-	-	-
Chad	R	X	X	X	X
Chile	X	X	X	X	X
China	X	X	X	X	X
Colombia	R	R	X	X	X
Comoros	R	X	X	X	X
Congo	X	X	X	X	X
Costa Rica	R	R	X	X	X
Cuba	R	X	X	X	X
Cyprus	R	X	X	X	X
Czechoslovakia	X	X	X	X	X
Democratic Yemen	-	-	-	-	-
Denmark	R	R	X	X	X
Djibouti	R	-	-	-	-
Dominica	R	-	-	-	-
Dominican Republic	R	-	-	-	-
Ecuador	R	X	X	X	X
Egypt	R	X	X	X	X
El Salvador	X	X	-	X	X
Equatorial Guinea	X	-	-	-	-
Ethiopia	X	X	X	X	X
Fiji	-	-	-	-	-
Finland	R	R	X	X	X
France	R	R	X	X	-
Gabon	R	X	-	X	X
German Democratic Republic	X	X	X	X	X
Germany, Federal Republic of	R	R	X	X	X
Ghana	R	-	-	-	-
Greece	R	X	-	-	X
Grenada	R	-	-	-	-
Guatemala	R	X	X	X	X
Guinea	R	-	-	-	-
Guinea-Bissau	R	-	-	-	-
Guyana	R	R	X	X	X
Haiti	R	-	-	-	-
Honduras	R	-	-	-	-
Hungary	X	X	X	X	X
Iceland	-	-	-	-	-
India	R	X	X	X	X
Indonesia	-	-	-	-	-
Iran, Islamic Republic of	X	X	X	X	X
Iraq	R	X	X	X	X
Ireland	R	-	-	-	-
Israel	R	-	-	-	-

Member State	Conventions		Recommendations		
	No. 81	No. 129	No. 81	No. 82	No. 133
Italy	R	R	-	X	X
Ivory Coast	X	X	X	X	X
Jamaica	R	-	-	X	-
Japan	R	X	X	X	X
Jordan	R	X	X	X	X
Democratic Kampuchea	-	-	-	-	-
Kenya	R	R	X	X	X
Kuwait	R	X	X	X	X
Lao People's Democratic Republic	-	-	-	-	-
Lebanon	R	-	-	-	-
Lesotho	-	-	-	-	-
Liberia	-	-	-	-	-
Libyan Arab Jamahiriya	R	-	-	-	-
Luxembourg	R	X	X	X	X
Madagascar	R	R	X	X	X
Malawi	R	R	-	-	-
Malaysia	R	X	X	X	X
Mali	R	X	X	X	X
Malta	R	X	-	X	X
Mauritania	R	-	-	-	-
Mauritius	R	X	-	X	X
Mexico	X	X	X	X	X
Mongolia	X	X	X	X	X
Morocco	R	R	X	X	X
Mozambique	R	X	-	X	X
Namibia	-	-	-	-	-
Nepal	X	X	X	X	X
Netherlands	R	R	X	X	X
New Zealand	R	X	X	X	X
Nicaragua	-	-	-	-	-
Niger	R	-	-	-	-
Nigeria	R	X	-	X	X
Norway	R	R	X	X	X
Pakistan	R	X	X	X	-
Panama	R	X	X	X	X
Papua New Guinea	-	-	-	-	-
Paraguay	R	X	-	-	-
Peru	R	X	-	X	X
Philippines	X	X	X	X	X
Poland	X	X	X	X	X
Portugal	R	R	X	X	X
Qatar	R	X	X	X	X
Romania	R	R	X	X	X
Rwanda	R	X	X	X	X

Member State	Conventions		Recommendations		
	No. 81	No. 129	No. 81	No. 82	No. 133
Saint Lucia	-	-	-	-	-
San Marino	-	-	-	-	-
Sao Tome and Principe	R	X	X	X	X
Saudi Arabia	R	X	X	X	X
Senegal	R	-	-	-	-
Seychelles	-	-	-	-	-
Sierra Leone	R	-	-	-	-
Singapore	R	X	X	X	X
Somalia	X	X	X	X	X
Spain	R	R	X	X	X
Sri Lanka	R	X	-	X	X
Sudan	R	-	-	-	-
Suriname	R	X	-	X	X
Swaziland	R	-	-	-	-
Sweden	R	R	X	X	X
Switzerland	R	X	X	X	X
Syrian Arab Republic	R	R	-	-	-
Tanzania, United Republic of	R	X	X	X	X
Thailand	-	-	-	-	-
Togo	X	X	X	X	X
Trinidad and Tobago	X	X	X	X	X
Tunisia	R	X	-	X	X
Turkey	R	X	X	X	X
Uganda	R	X	X	X	X
Ukrainian SSR	X	X	X	X	X
USSR	X	X	X	X	X
United Arab Emirates	R	-	-	-	-
United Kingdom	R	X	X	X	X
United States	X	X	X	X	X
Uruguay	R	R	X	X	X
Venezuela	R	-	-	-	-
Viet Nam	R	-	-	-	-
Yemen	R	-	-	-	-
Yugoslavia	R	R	X	X	X
Zaire	R	X	X	X	X
Zambia	X	-	-	-	-
Zimbabwe	-	-	-	-	-

Note: A total of 25 reports has also been received in respect of the following non-metropolitan territories: Netherlands: Netherlands Antilles; United Kingdom: Bermuda, British Virgin Islands, Gibraltar, Guernsey, Hong Kong, Isle of Man and Montserrat.

R = Ratified Conventions X = Report received
 - = Report not received

Annual general report of the Labour Inspection Service 19 _

B. List of provisions with the application of which the Labour Inspection Service is concerned and which have come into force during the period covered by the report¹

¹ If a complete list has already been given, use list B. ² Provisions may be listed by subject matter (wages, hours of work, holidays, etc.), the titles of the basic legislation in each case being followed by the words "and the rules and regulations issued thereunder".

1. Staff of the Service¹

Level of employment within the Service	Occupational classification ²	Equivalent grade in public service classification	Individual branches of Service ³					
			M	F	M	F	M	F
Central	Head inspectors							
	Inspectors							
	Assistant inspectors							
Regional	Regional inspectors							
	Inspectors							
	Assistant inspectors							
District	District inspectors							
	Inspectors							
	Assistant inspectors							
Local	Senior inspectors							
	Inspectors							
	Assistant inspectors							
Totals								
Aggregate total								

¹ The layout of the table will vary according to (a) whether the members of the service all have the same general class of duties or whether they specialise along technical lines, (b) the geographical structure of the field services, and (c) the number of occupational categories. ² Grades and steps within categories may be shown. Medically qualified inspectors should be shown in the appropriate grade, and technical specialisation may also be shown. ³ Indicate the branches of the inspection service by economic sector (industry, agriculture) or according to the technical field of the inspection (safety inspection, inspection of conditions of work, etc.).

2. Establishments subject to inspection and number of workers employed therein

International Code No.	Economic sector	Number of establish- ments subject to inspection	Number of workers					
			Total	Occupied in the establishment itself				Home workers
				Men	Women	Young persons ¹	Appren- tices	
1	Agriculture, forestry, fishing							
2	Mining and quarrying							
3	Manufacturing							
4	Electricity, gas, water							
5	Construction							
6	Wholesale and retail trade, restaurants and hotels							
7	Transport, storage and communications							
8	Financing, insurance and business services							
9	Social and personal services							
0	Activities not adequately defined							
Totals								

Economic sector	Total number of establish- ments	Distribution of establishments by number of workers ²				
		1-4	5-20	21-100	101-500	500 +
1	Agriculture, forestry, fishing					
2	Mining and quarrying					
3	Manufacturing					
4	Electricity, gas, water					
5	Construction					
6	Wholesale and retail trade, restaurants and hotels					
7	Transport, storage and communications					
8	Financing, insurance and business services					
9	Social and personal services					
0	Activities not adequately defined					
Totals						

¹ Specify lower and upper age limits. ² Different groupings may be used, and the headings altered accordingly.

3. Inspection visits carried out during year by nature of inspection

Economic sector	Safety inspection			Inspection of conditions of work			Medical inspection			Aggregate total number of visits (3) + (6) + (9)
	Number of establishments ¹ visited (1)	Number of workers employed (2)	Number of visits (3)	Number of establishments ¹ visited (4)	Number of workers employed (5)	Number of visits (6)	Number of establishments ¹ visited (7)	Number of workers employed (8)	Number of visits (9)	
1 Agriculture, forestry, fishing										
2 Mining and quarrying										
3 Manufacturing										
4 Electricity, gas, water										
5 Construction										
6 Wholesale and retail trade, restaurants and hotels										
7 Transport, storage and communications										
8 Financing, insurance and business services										
9 Social and personal services										
0 Activities not adequately defined										
Totals										

Economic sector	Safety inspection			Inspection of conditions of work			Medical inspection			Total number of visits
	Ordinary visits	Return visits	Special visits	Ordinary visits	Return visits	Special visits	Ordinary visits	Return visits	Special visits	
1 Agriculture, forestry, fishing										
2 Mining and quarrying										
3 Manufacturing										
4 Electricity, gas, water										
5 Construction										
6 Wholesale and retail trade, restaurants and hotels										
7 Transport, storage and communications										
8 Financing, insurance and business services										
9 Social and personal services										
0 Activities not adequately defined										
Totals										

¹ A workplace visited more than once should be counted once only.

4. Inspection visits carried out during year

General inspections

Economic sector ¹	Establishments visited	Workers employed	Visits			
			Ordinary	Return	Special	Total
1 Agriculture, forestry, fishing						
2 Mining and quarrying						
3 Manufacturing						
4 Electricity, gas, water						
5 Construction						
6 Wholesale and retail trade, restaurants and hotels						
7 Transport, storage and communications						
8 Financing, insurance and business services						
9 Social and personal services						
0 Activities not adequately defined						
Totals						

5. Infringements noted and penalties imposed

Subject of infringement	Number of infringements noted	Action taken by inspectorate				Court decisions during the period ²		
		Observation or warning	Remedial measures requested, or formal notice given	Order to take immediate steps	Official report to legal authorities	Convictions	Acquittals	Proceedings discontinued
Industrial safety, accident prevention								
Occupational health and hygiene								
Remuneration, overtime								
Hours of work, night work								
Weekly rest								
Annual holidays with pay								
Minimum age of admission to employment, conditions of work of young persons								
Apprenticeship								
Conditions of work of women, maternity protection								
Conditions of termination								
Freedom of association, protection of workers' representatives								
Totals								

¹ If the Inspection Service is divided into sections responsible for one or more sectors, please specify.

² Owing to the length of legal proceedings, court decisions may relate to prosecutions launched during a previous period.

Statistics of occupational accidents (excluding accidents on the way to or from work)

6. Accidents classified by their consequences

Economic sector	Number of workers exposed to risk	Number of hours of exposure	Consequences (no. of cases)					Number of accidents
			Death	Permanent disability	Temporary incapacity for work		No working days lost	
					Less than four days	More than four days		
1 Agriculture, forestry, fishing								
2 Mining and quarrying								
3 Manufacturing								
4 Electricity, gas, water								
5 Construction								
6 Wholesale and retail trade, restaurants and hotels								
7 Transport, storage and communications								
8-9 Services (other than government services)								
0 Activities not adequately defined								
Totals								

7. Accidents classified according to type of accident

Type of accident ¹	Economic sector (international classification)								
	1	2	3	4	5	6	7	8-9	0
1 Falls of persons									
2 Falling objects									
3 Stepping on, striking objects									
4 Caught in or between objects									
5 Over-exertion or wrong movements									
6 Exposure to or contact with extreme temperatures									
7 Exposure to or contact with electric current									
8 Harmful substances or radiations									
9 Other types not classified elsewhere									
Totals									

¹ The classification used (appended) is that given on pp. [11]-[12] of *Statistics of industrial injuries*, op. cit.

8. Accidents classified according to agency ¹

Agency ²	Consequences of accident			Total
	Death	Permanent disability	Temporary incapacity	
1 Machines				
11 Prime movers, except electrical motors				
111 Steam engines				
12 Transmission machinery				
2 Means of transport and lifting equipment				
21 Lifting machines and appliances				
211 Cranes				
3 Other equipment				
38 Scaffolding				
4 Materials, substances and radiations				
41 Explosives				
42 Dust, gases, liquids and chemicals, excluding explosives				
5 Working environment				
52 Indoor				
523 Stairs				
6 Other agencies, not elsewhere classified				
61 Animals				
7 Agencies not classified for lack of sufficient data				
Totals				

¹ The classification used (appended) is that adopted by the Tenth International Conference of Labour Statisticians (from *Statistics of industrial injuries*, op. cit., pp. [13]-[18]). ² As regards sub-items, this list gives examples only: the complete list may be used if necessary.

A. Classification of industrial injuries according to type of accident**1 Falls of persons**

11 Falls of persons from heights (trees, buildings, scaffolds, ladders, machines, vehicles) and into depths (wells, ditches, excavations, holes in the ground)

12 Falls of persons on the same level

2 Struck by falling objects

21 Slides and cave-ins (earth, rocks, stones, snow)

22 Collapse (buildings, walls, scaffolds, ladders, piles of goods)

23 Struck by falling objects during handling

24 Struck by falling objects, not elsewhere classified

3 Stepping on, striking against or struck by objects, excluding falling objects

31 Stepping on objects

32 Striking against stationary objects (except impacts due to a previous fall)

33 Striking against moving objects

34 Struck by moving objects (including flying fragments and particles) excluding falling objects

4 Caught in or between objects

41 Caught in an object

42 Caught between a stationary object and a moving object

43 Caught between moving objects (except flying or falling objects)

5 Over-exertion or strenuous movements

51 Over-exertion in lifting objects

52 Over-exertion in pushing or pulling objects

53 Over-exertion in handling or throwing objects

54 Strenuous movements

6 Exposure to or contact with extreme temperatures

61 Exposure to heat (atmosphere or environment)

62 Exposure to cold (atmosphere or environment)

63 Contact with hot substances or objects

64 Contact with very cold substances or objects

7 Exposure to or contact with electric current**8 Exposure to or contact with harmful substances or radiations**

81 Contact by inhalation, ingestion or absorption of harmful substances

82 Exposure to ionising radiations

83 Exposure to radiations other than ionising radiations

9 Other types of accident, not elsewhere classified, including accidents not classified for lack of sufficient data

91 Other types of accidents, not elsewhere classified

92 Accidents not classified for lack of sufficient data

B. Classification of industrial accidents according to agency**1 Machines**

11 Prime movers, except electrical motors

111 Steam engines

112 Internal combustion engines

113 Others

12 Transmission machinery

121 Transmission shafts

122 Transmission belts, cables, pulleys, pinions, chains, gears

129 Others

13 Metal-working machines

131 Power presses

132 Lathes

133 Milling machines

134 Abrasive wheels

135 Mechanical shears

136 Forging machines

137 Rolling mills

139 Others

14 Wood and assimilated machines

141 Circular saws

142 Other saws

143 Moulding machines

144 Overhand planes

149 Others

15 Agricultural machines

151 Reapers (including combine reapers)

152 Threshers

159 Others

16 Mining machinery

161 Under-cutters

169 Others

19 Other machines not elsewhere classified

191 Earth-moving machines, excavating and scraping machines, except means of transport

192 Spinning, weaving and other textile machines

193 Machines for the manufacture of food-stuffs and beverages

194 Machines for the manufacture of paper

195 Printing machines

199 Others

2 Means of transport and lifting equipment

21 Lifting machines and appliances

211 Cranes

- 212 Lifts and elevators
- 213 Winches
- 214 Pulley blocks
- 219 Others
- 22 Means of rail transport
 - 221 Inter-urban railways
 - 222 Rail transport in mines, tunnels, quarries, industrial establishments, docks, etc.
 - 229 Others
- 23 Other wheeled means of transport, excluding rail transport
 - 231 Tractors
 - 232 Lorries
 - 233 Trucks
 - 234 Motor vehicles not elsewhere classified
 - 235 Animal-drawn vehicles
 - 236 Hand-drawn vehicles
 - 239 Others
- 24 Means of air transport
- 25 Means of water transport
 - 251 Motorised means of water transport
 - 252 Non-motorised means of water transport
- 26 Other means of transport
 - 261 Cable cars
 - 262 Mechanical conveyors, except cable cars
 - 269 Others
- 3 Other equipment
 - 31 Pressure vessels
 - 311 Boilers
 - 312 Pressurised containers
 - 313 Pressurised piping and accessories
 - 314 Gas cylinders
 - 315 Caissons, diving equipment
 - 319 Others
 - 32 Furnaces, ovens, kilns
 - 321 Blast furnaces
 - 322 Refining furnaces
 - 323 Other furnaces
 - 324 Kilns
 - 325 Ovens
 - 33 Refrigerating plants
 - 34 Electrical installations, including electric motors but excluding electric hand tools
 - 341 Rotating machines
 - 342 Conductors
 - 343 Transformers
 - 344 Control apparatus
 - 349 Others
 - 35 Electric hand tools
 - 36 Tools, implements and appliances, except electric hand tools
 - 361 Power-driven hand tools, except electric hand tools
 - 362 Hand tools, not power-driven
 - 369 Others
 - 37 Ladders, mobile ramps
 - 38 Scaffolding
 - 39 Other equipment, not elsewhere classified
- 4 Materials, substances and radiations
 - 41 Explosives
 - 42 Dusts, gases, liquids and chemicals, excluding explosives
 - 421 Dusts
 - 422 Gases, vapours, fumes
 - 423 Liquids, not elsewhere classified
 - 424 Chemicals not elsewhere classified
 - 429 Others
 - 43 Flying fragments
 - 44 Radiations
 - 441 Ionising radiations
 - 449 Others
 - 49 Other materials and substances not elsewhere classified
- 5 Working environment
 - 51 Outdoor
 - 511 Weather
 - 512 Traffic and working surfaces
 - 513 Water
 - 519 Others
 - 52 Indoor
 - 521 Floors
 - 522 Confined quarters
 - 523 Stairs
 - 524 Other traffic and working surfaces
 - 525 Floor openings and wall openings
 - 526 Environmental factors (lighting, ventilation, temperature, noise, etc.)
 - 529 Others
 - 53 Underground
 - 531 Roofs and faces of mine roads and tunnels, etc.
 - 532 Floors of mine roads and tunnels, etc.
 - 533 Working faces of mines, tunnels, etc.
 - 534 Mine shafts
 - 535 Fire
 - 536 Water
 - 539 Others
- 6 Other agencies, not elsewhere classified
 - 61 Animals
 - 611 Live animals
 - 612 Animal products
 - 69 Other agencies, not elsewhere classified
- 7 Agencies not classified for lack of sufficient data

Occupational disease statistics

9. Occupational diseases declared, classified according to their nature or the noxious agent and by economic sector

Nature of the disease or noxious causative agent ¹	Economic sectors (by code number)									Total
	1	2	3	4	5	6	7	8-9	0 ²	
1 Pneumoconioses										
2 Beryllium and its compounds										
3 Phosphorus and its compounds										
4 Chrome and its compounds										
5 Manganese and its compounds										
6 Arsenic and its compounds										
7 Mercury and its compounds										
8 Lead and its compounds										
9 Carbon bisulphide										
10 Halogen derivatives of hydrocarbons of the ali- phatic series										
11 Benzene and its homologues										
12 Nitro- and amido- derivatives of benzene or its homologues										
13 Ionising radiations										
14 Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen or mineral oil										
15 Anthrax										
Totals										

¹ This list is not restrictive. It corresponds to the list given in schedule I of the Employment Injury Benefits Convention, 1964 (No. 121). ² State the nature of the activity.

Statistics of collective labour disputes

10. Collective disputes submitted to the labour inspectorate ¹

Economic sector	Number of collective disputes			Number of workers involved	Number of working days lost	Estimate of time spent in conciliation
	Settled ²	Not settled ²	Total			
1 Agriculture, forestry, hunting and fishing						
2 Mining and quarrying						
3 Manufacturing						
4 Electricity, gas and water						
5 Construction						
6 Wholesale and retail trade, restaurants and hotels						
7 Transport, storage and communications						
8-9 Financing, insurance, services (other than government services)						
0 Activities not adequately defined						
Totals						

¹ Where the settlement of labour disputes falls within the competence of the labour inspectorate. ² "Settled" refers here to disputes settled through the sole intervention of the labour inspectorate and "not settled" to those in relation to which conciliation by the labour inspectorate was unsuccessful.

[illegible]

¹ Here the Labour Inspection Service is requested to give a brief account of any problems encountered in enforcing statutory provisions, to propose solutions and to suggest ways of improving workers' living and working conditions.