

Title: Information and reports on the application of the Convention
28/03/2006 12:53:04

Component: International Labour Conference, report iii.

Issue: v. 95, no. 1B (III) (2006) (0/5)

Routing List: P09661 / COP 4



International
Labour
Office
Geneva



LABOUR INSPECTION

International Labour Conference

95th Session, 2006

Report III (Part 1B)

General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)

Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations

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

International Labour Office Geneva

LABOUR INSPECTION

INTERNATIONAL LABOUR OFFICE GENEVA

ISBN 92-2-116606-6
ISSN 0074-6681

First edition 2006

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. Catalogues or lists of new publications are available free of charge from the above address, or by email: pubvente@ilo.org

Visit our web site: www.ilo.org/publns

ILC95-III(1B)-2006-01-0329-1-En
Printed by the International Labour Office, Geneva, Switzerland

Summary

	<i>Paragraphs</i>
Introduction.....	1-15
Chapter I. Evolution of the scope of labour inspection from 1947 to the present day: Towards broad coverage	16-43
Chapter II. Mandate of the labour inspection.....	44-84
Chapter III. Preventive functions of labour inspection	85-137
Chapter IV. Structure of the labour inspection system.....	138-172
Chapter V. Labour inspection staff: Composition, status, conditions of service and standards of conduct	173-237
Chapter VI. Resources of the labour inspection.....	238-255
Chapter VII. General inspection methods: Inspection visits.....	256-278
Chapter VIII. Prosecution and penalties for violation of legislation	279-306
Chapter IX. Reports on the work of the labour inspectorate	307-345
Chapter X. Ratification prospects.....	346-362
Final remarks.....	363-374

Contents

	<i>Page</i>
Introduction.....	1
Background.....	1
The history, context and terms of international labour inspection standards	1
Development, diversification and trends in labour inspection	4
State of ratification	5
Information available.....	5
Chapter I. Evolution of the scope of labour inspection from 1947 to the present day: Towards broad coverage	7
I. The 1947 instruments on labour inspection in industry and commerce	7
A. Possibility of exempting mining and transport undertakings or parts of such undertakings	7
B. Possibility of excluding commercial workplaces.....	8
C. Possibility of total or partial exclusion of certain areas	8
D. Definition of workplaces covered and workers protected.....	8
II. The 1969 instruments on labour inspection in agriculture.....	9
A. Coverage of all agricultural undertakings in which employees or apprentices work.....	10
B. Optional clause on extension of coverage by the labour inspection system to unpaid agricultural workers	11
III. Protocol of 1995 to the Labour Inspection Convention, 1947: Extension of the labour inspection system to the non-commercial services sector	12
A. Definition of non-commercial services	12
B. Possibility of excluding certain categories of non-commercial services from the scope of the Protocol and special aspects of labour inspection	13
C. National practice	14
Chapter II. Mandate of the labour inspection	15
I. Conditions of work and protection of workers	16
A. The conditions of work covered by the instruments	16
B. New aspects of conditions of work.....	18
C. Protection of workers while engaged in their work.....	18
D. Related matters.....	19
II. Living conditions of workers and their families	19

	<i>Page</i>
III. Other functions entrusted to labour inspectors by national legislation	21
A. Functions in the event of collective labour disputes.....	22
B. Control of illegal employment.....	24
C. Functions related to the exercise of freedom of association and the right to collective bargaining	25
D. Child labour	26
Chapter III. Preventive functions of labour inspection.....	29
I. Technical information and advice to employers and workers.....	29
II. Specific mandate of the labour inspectorate in the area of occupational safety and health	32
A. Preventive control of establishments, activities, production procedures and use of new products and substances.....	32
B. Monitoring of safety and health at work	35
(a) Powers of injunction of labour inspectors	35
(b) The role of inspectors in cases of occupational accident and reporting of an incidence of occupational disease.....	39
III. Contribution of labour inspection to the improvement of labour law.....	45
Chapter IV. Structure of the labour inspection system	47
I. Placing the labour inspection system under the supervision and control of a central authority.....	47
II. Cooperation needed for the inspection system to function	50
A. Cooperation between the inspection services	51
B. Cooperation between inspection bodies and other institutions	51
(a) Social security and social insurance institutions.....	52
(b) The police	53
(c) Judicial bodies	53
(d) Tax authorities and the ministries responsible for the sectors covered by inspection.....	53
(e) National human rights mechanisms	54
(f) Immigration authorities	54
(g) Social research institutions and universities.....	54
C. The role of the social partners in labour inspection.....	54
(a) National collaboration bodies	54
(b) Collaboration agreements	55
(c) Collaboration between the social partners at the enterprise level in the area of safety and health	56
Chapter V. Labour inspection staff: Composition, status, conditions of service and standards of conduct.....	59
I. Basic principles	59
A. Criteria for determining the number of inspectors required.....	59
B. Gender	60
II. Qualifications required.....	61
A. Recruitment and initial training.....	61
B. Further training.....	62

	<i>Page</i>
III. Composition of labour inspection staff	65
A. Numbers	65
B. Collaboration with specialists and technical advisers	66
IV. Status and conditions of service of labour inspection staff.....	67
A. Stability and independence	67
B. Remuneration	69
C. Career prospects	71
D. Physical safety of labour inspectors.....	72
V. Obligations of labour inspectors	72
A. Prohibition of any direct or indirect interest.....	73
B. Professional secrecy.....	74
C. Confidentiality of the source of any complaint	75
Chapter VI. Resources of the labour inspection.....	77
I. Budgetary resources of the labour inspectorate.....	77
II. Conditions of work of labour inspectors	78
A. Offices	78
B. Transport facilities and reimbursement of travelling expenses	80
Chapter VII. General inspection methods: Inspection visits	83
I. Types of inspection visit	83
II. Principle of unannounced visits.....	84
III. Free access of inspectors to the workplace	85
A. Initiative of inspection.....	85
B. Timing of inspections	86
C. Notification of presence at the workplace	88
D. Assistance to labour inspectors	88
IV. Methods of inspection	89
A. Interviews.....	89
B. Verification of documents.....	89
C. Enforcing the posting of notices.....	90
D. Inspection of materials and substances used	90
Chapter VIII. Prosecution and penalties for violation of legislation	93
I. Scope of the principle of prompt legal proceedings	93
II. Initiation of proceedings	95
III. Penalties.....	96
A. Adequate penalties provided for by national laws or regulations.....	96
B. Effectively enforced penalties	98
Chapter IX. Reports on the work of the labour inspectorate	101
I. Reports of labour inspectors on their activities.....	101
A. Basic objectives	101
B. National practice	102

	<i>Page</i>
II. Annual reports of the central inspection authority	104
A. Basic objectives	104
B. National practice	106
(a) Publication and communication to the ILO of annual inspection reports	106
(b) Content of annual reports	107
Chapter X. Ratification prospects.....	111
Final remarks.....	115
 Appendices	
I. Text of the instruments.....	119
II. Ratification of the instruments.....	144
III. Reports due and received	148
IV. National legislation referred to in the survey	153

Introduction

Background

1. In accordance with the provisions of article 19, paragraph 5(e), of the Constitution of the International Labour Organization, the Governing Body of the International Labour Office decided at its 288th Session (November 2003) to request the governments of member States which had not ratified either the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), or the Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81), to report on the present state of their laws and practices in regard to the matters dealt with in these instruments, showing the extent to which effect has been given, or is proposed to be given, to the respective provisions of the instruments by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay their ratification. As a result of this decision and in accordance with the provisions of article 19, paragraph 6(d), of the Constitution, the governments of all the member States were requested to report on the present state of their laws and practices in regard to the matters dealt with in 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. This report is based on the reports provided pursuant to the above decision and on those reports that are regularly communicated to the ILO, under articles 22 and 35 of the Constitution, by virtue of ratification of any of the above Conventions or the Protocol. This is the sixth General Survey the Committee has produced, as requested by the Governing Body, on the effect given to ILO instruments on labour inspection.¹ The Governing Body stressed how useful it would be to update this survey given the effects of socio-economic changes over the 20 years since the last one and to include labour inspection in the non-commercial services sector, as defined in the Protocol of 1995 to the Labour Inspection Convention, 1947. The Governing Body drew the attention of Members to the importance of Convention No. 129 for agricultural workers who make up a large proportion of the working population in many countries, and asked that the survey include an analysis of the obstacles to this instrument's ratification.²

The history, context and terms of international labour inspection standards

3. Since its beginnings, the International Labour Organization has made labour inspection one of its priorities. The question of labour inspection was one of the general

¹ The previous general surveys on labour inspection were produced in 1951, 1957, 1966, 1969 (on 17 selected Conventions), and 1985. The last General Survey was the only one to deal with labour inspection in agriculture.

² GB.288/LILS/7.

principles under article 427, ninth point, of Part XIII of the Treaty of Versailles which set up the ILO. It stipulates that “Each State should make provision for a system of inspection, in which women will take part, in order to ensure the enforcement of laws and regulations for the protection of the employed”. Under article 10(2)(b) of the ILO Constitution, the International Labour Office shall assist governments in the improvement of labour inspection systems. At the very first International Labour Conference in 1919, a Recommendation was adopted with a view to establishing a system that would ensure factories and workshops were inspected effectively and establishing a public service in all member States, which, in cooperation with the International Labour Office, would be responsible for protecting workers’ health.³ Four years later, in 1923, a new international Recommendation established the set of principles which remain the basis for the effective establishment and functioning of a labour inspection system.⁴ Convention No. 81, which applies to industrial and commercial workplaces, has been considered ever since its adoption in 1947 as the universal reference instrument on labour inspection and was enormously influenced by the 1923 Recommendation. In the majority of international labour Conventions on working conditions and the protection of workers adopted subsequently, there are provisions for the establishment of labour inspection or at least the appointment of authorities who will be responsible for ensuring the supervision of the application of relevant legislation. Finally, labour inspection plays an important role in applying a number of ILO codes of practice on occupational safety and health.⁵

4. Following a resolution of the Conference in 1936 calling for labour inspection to be “embodied in the text of a Convention guaranteeing strict and effective application” of national and international social legislation, the matter was placed on the agenda of the 26th Session of the Conference in 1940, which could not be held on account of the war. The subject having been placed on the agenda of the 30th Session of the Conference in 1947, the Office had carried out an up-to-date analysis of the situation of the laws and practices in various countries and come to the conclusion that the basis for international regulations on labour inspection had not changed sufficiently to warrant substantial amendments to the 1939 questionnaire. It was however suggested that the objective of labour inspection be broadened in such a way that it would cover not only inspection functions but also the provision of technical information and advice to employers and workers. Thus, labour inspection’s mission of providing information and advice was going to be clearly established in the future. Higher levels of resources have since been increasingly allocated to this aspect of labour inspection in many developed countries, and more recently in a number of countries in transition.

5. Since mining and transport were regarded as strategic industries just after the Second World War, the Conference admitted the possibility of excluding these industries from the scope of Convention No. 81. However, in the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), adopted at the same session, the Conference confirmed the principle of setting up labour inspection systems that would be responsible for enforcing legislation on the conditions of work and the protection of

³ Labour Inspection (Health Services) Recommendation, 1919 (No. 5), which was withdrawn by the Conference in June 2000.

⁴ Labour Inspection Recommendation, 1923 (No. 20).

⁵ For example, *Safety and health in ports* (2005), *Guidelines for labour inspection in forestry* (2005), *Safety and health in the iron and steel industry* (2005).

workers in mining and transport. Also at the same session, the Conference adopted the Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85).⁶

6. In its General Survey of 1966 on labour inspection, the Committee considered 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”.⁷ Experience over the previous 20 years had clearly shown the relevance of setting up labour inspection systems at a national level. The effectiveness of monitoring their development and functioning by an international supervisory body had also been shown, as had the support the ILO had given to the development of labour administration on this matter. The adoption in 1969 of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), were thus greatly facilitated. The objective of these two instruments is the setting up of a system of labour inspection in agriculture, be it as a specialized agricultural inspection service or as a part of a labour inspection department covering other sectors. Although in 1947 the constituents had wanted to allow flexibility as to the scope of Convention No. 81 to take account of different national situations, they had no difficulty agreeing, after the discussion leading to the adoption of the above instruments in 1969, to the principle of a system that would apply to all agricultural undertakings in which employees or apprentices worked, and that such a system could be extended to gradually cover other categories of persons working in agricultural undertakings.⁸ Indeed, labour inspection duties, powers, prerogatives and its field of intervention have been substantially expanded in the agricultural sector.

7. The guarantee to protect the largest number of workers possible by labour inspection was further strengthened by the adoption in 1995 of a Protocol, the ratification of which is open to Members bound by Convention No. 81, and which applies to activities in the non-commercial services sector,⁹ and in 1996 by a Convention on labour inspection for seafarers.¹⁰

8. The instruments examined in this survey are part of the wide and varied context of the body of international labour standards, all of which aim to guarantee a minimal universal threshold of protection for workers in the sectors covered. They do not seek to impose a uniform labour inspection system. They set the organizing and functioning principles that should underlie labour inspection as an institution that is responsible for, on one hand, ensuring the application of legislation on conditions of work and the protection of workers, and on the other hand, contributing to the development of this legislation in step with developments in the national and international labour markets. Apart from the supervisory role with its powers and prerogatives to punish violations of the laws and regulations, the instruments give labour inspection a role of providing technical information and advice, in addition to the duty to notify the competent authority of defects or abuses not covered by existing legislation. Lastly, an annual report on inspection has to be published and a copy transmitted to the ILO. This report

⁶ Five States are parties to Convention No. 85. In virtue of its Article 9, the provisions of this Convention cease to apply to a territory when the provisions of Convention No. 81 are declared applicable to that territory.

⁷ Report of the Committee of Experts on the Application of Conventions and Recommendations, ILC, 50th Session, Geneva, 1966, Report III (Part IV): *Labour inspection in industry*, para. 235 (hereafter called “General Survey on labour inspection, 1966”).

⁸ Article 5 of Convention No. 129.

⁹ Protocol of 1995 to the Labour Inspection Convention, 1947.

¹⁰ Labour Inspection (Seafarers) Convention, 1996 (No. 178), not included in this survey.

should contain information on the laws and regulations relevant to the work of labour inspection in the country concerned, on the composition and distribution of the staff of the labour inspection service, on its work and its activities, and on occupational accidents and diseases.

Development, diversification and trends in labour inspection

9. Many and various economic, social and technical changes have affected not only each and every country but also the whole world of work through the effects of economic globalization. Thus, at the beginning of the third millennium, questions have been raised not so much about the need for inspection systems to be developed but about the opportunity to reflect on a possible change of direction in terms of the role and the objectives of labour inspection, and also in terms of the distribution of expertise and responsibility concerning inspection, having regard to such factors as an increasingly diverse workforce and the need to take steps to prevent discrimination. In the industrialized countries, the role of labour inspection has been gradually changing over the last ten to 15 years, particularly as a result of the increased responsibility taken by enterprises with respect to occupational health and safety. Mechanisms for the self-evaluation of occupational hazards have been implemented to this end and labour inspection can now concentrate on preventative and advisory activities. The extension of inspection to the psychological and psychosomatic aspects of the employment relationship, such as stress, harassment and bullying in the workplace, means that labour inspectorates in some industrialized countries are now focusing more attention on these aspects.

10. In the least developed countries, the basic objective remains the setting up and the functioning of a labour inspection system, with the assistance of the social partners, along the lines and principles set out in the relevant ILO standards. The ILO, through its technical assistance, contributes to projects on the strengthening of labour administration¹¹ and labour inspection capacities with respect to this in a number of countries.¹²

11. Given the positive impact over time of improvements in working conditions and the promotion of workers' rights on economic development and growth, it is essential that labour inspection systems evolve through cooperative relationships with a multitude of economic, social and judicial partners, and with universities and research centres. National systems should also develop additional exchange networks at the regional and international levels, such as the International Association of Labour Inspection (IALI), to provide a coherent and collective response to the need for protection of growing numbers of mobile workers who are increasingly vulnerable as they find themselves in forms of employment relationship that are not covered by the different national legal systems.

¹¹ For example, *Belize, Costa Rica, El Salvador, Honduras, Nicaragua, Panama* and the *Dominican Republic*, which received assistance under the project on modernizing the labour administrations of Central America (MATAC).

¹² *Armenia, Bulgaria, Costa Rica, Kazakhstan, Serbia and Montenegro* and *Viet Nam*.

State of ratification

12. The ratification of the Conventions and the Protocol on labour inspection provide the legal basis for international supervision of the application of these instruments at a national level. Regular supervision is carried out by the Committee of Experts biennially and is based on reports due under article 22 of the ILO Constitution, and also by the Committee on the Application of Standards of the International Labour Conference. Although the Recommendations that accompany Conventions are not mandatory, they contain highly relevant directions and practical advice, as is evidenced by the information on laws and practices that many countries transmit to the ILO. At the time the Committee was finishing its work on this survey, Convention No. 81, which is one of the four priority Conventions,¹³ had been ratified by 135 Members, that is 29 more since the previous survey on labour inspection in 1985. For many years it has been one of the ILO instruments with the most ratifications, and requests from a number of countries for ILO technical assistance with a view to ratifying it are evidence of the interest it continues to generate. It is undoubtedly significant that support from the majority of Members for the principle of international supervision of their inspection systems was not sufficient for there to be a similar move for the ratification of the Protocol of 1995 to the Labour Inspection Convention, 1947, which applies to the non-commercial services sector. Only ten countries have ratified it.

13. The Labour Inspection (Agriculture) Convention, 1969 (No. 129), has been ratified by the 43 member States bound by Convention No. 81. Another positive sign is the interest shown in the simultaneous ratification of the two instruments by some Central and Eastern European countries in transition.¹⁴ Collective awareness of the need to develop labour inspection systems in agriculture is increasingly noticeable even if it is somewhat belated. This is borne out by the ILO's technical cooperation and assistance activities, as well as in a certain number of international initiatives in which the ILO is involved.

Information available

14. The Committee received information from the reports transmitted under article 19 of the Constitution by the governments of 100 countries. It also used the documents and information provided under article 22 of the Constitution by countries bound by one or the other of the Conventions and the Protocol. The Committee also duly took account of observations from the employers' and workers' organizations.¹⁵ Lastly, relevant information for the purposes of this survey was received from the International Programme for the Elimination of Child Labour (IPEC), and the technical departments

¹³ Apart from the eight fundamental Conventions, the other priority Conventions are: the Employment Policy Convention, 1964 (No. 122); the Labour Inspection (Agriculture) Convention, 1969 (No. 129); the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

¹⁴ *Azerbaijan* (2000), *Bosnia and Herzegovina* (1993), *Croatia* (1991), *Estonia* (2005), *Hungary* (1994), *Kazakhstan* (2001), *Latvia* (1994), *Poland* (1995), *Serbia and Montenegro* (2000), *Slovenia* (1992), *The former Yugoslav Republic of Macedonia* (1991), *Ukraine* (2004).

¹⁵ *Barbados*: Barbados Workers' Union (BWU). *Brazil*: National Confederation of Commerce (CNC). *Finland*: Central Organization of Finnish Trade Unions (SAK); Finnish Transport Workers' Union (AKT). *Lithuania*: Lithuanian Trade Union Confederation. *Mexico*: Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN). *New Zealand*: Business New Zealand; New Zealand Council of Trade Unions (NZCTU). *Norway*: Confederation of Trade Unions (LO). *Portugal*: Confederation of Retail and Services of Portugal (CCP); Confederation of Portuguese Industry (CIP); Portuguese Confederation of Tourism (CTP); General Union of Workers (UGT). *Trinidad and Tobago*: Employers' Consultative Association of Trinidad and Tobago (ECA).

of the ILO responsible for labour inspection (SAFEWORK) and social dialogue (DIALOGUE).

15. This survey attempts to describe the situation with regard to national laws and practices, in addition to the regional and international cooperation on labour inspection in the economic sectors covered by the instruments in question. Throughout the survey the Committee attempts to identify and highlight the good practices observed as well as the difficulties that prevent or hinder the implementation of the provisions of these instruments. Chapter I deals with the evolution of the scope of international labour instruments on labour inspection from 1947 to the present, Chapter II discusses the mandate of the labour inspection and Chapter III deals with the preventive functions of the labour inspection. The organization and the structure of labour inspection is examined in Chapter IV, and Chapter V deals with the principles and the criteria for determining the composition, the status and the conditions of service of labour inspection staff. Chapter VI looks at the material means of the labour inspectorate and the general methods used in workplace inspections are studied in Chapter VII. Chapter VIII deals with the prosecution and penalties for violation of legislation. Chapter IX reports on the obligation of reporting on the work of the labour inspectorate, and Chapter X analyses the ratification prospects. In its conclusion to this survey, the Committee sets out some final remarks.

Chapter I

Evolution of the scope of labour inspection from 1947 to the present day: Towards broad coverage

16. The labour inspection instruments of 1947 apply to workplaces in industry and commerce where workers are employed. Those adopted in 1969 cover commercial and non-commercial agricultural undertakings and the Protocol of 1995 extends the application of Convention No. 81 to activities in what is termed the non-commercial services sector. The purpose of the Conventions and the Protocol is the establishment, for each sector covered, of a system of labour inspection. While the general principles relating to labour inspection, as set forth in Recommendation No. 20,¹ were taken up in all of the instruments on the subject subsequently adopted by the Conference, the coverage of inspection has evolved from one instrument to the other.

I. The 1947 instruments on labour inspection in industry and commerce

17. While stipulating that each ratifying Member shall maintain a system of labour inspection in industrial workplaces (Article 1) and commercial workplaces (Article 22), the scope of Convention No. 81 is limited, on the one hand, by permitting a number of possible exclusions that are strictly defined in terms of branch of economic activity or geographical considerations and, on the other, by affording a considerable degree of flexibility through the manner in which it defines the workplaces and workers actually covered (Article 2, paragraph 1).

A. Possibility of exempting mining and transport undertakings or parts of such undertakings

18. Under Article 2, paragraph 2, of Convention No. 81, national laws or regulations may exempt mining and transport undertakings or parts of such undertakings from its application. This does not mean, however, that the workers employed in these enterprises should not enjoy the same protection as other workers in industry. At the same session, the Conference adopted the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), which provides that each Member of the International Labour Organization should apply to mining and transport undertakings as defined by the competent authority appropriate systems of labour inspection to ensure the enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work.² In countries where specific structures are

¹ Labour Inspection Recommendation, 1923 (No. 20).

² See Preamble to Recommendation No. 82.

responsible for supervising conditions of work in mines and/or transport, provision is often made for the involvement of labour inspectors.³

B. Possibility of excluding commercial workplaces

19. Under Article 25(1) of Convention No. 81, any Member may, by a declaration appended to its ratification, exclude Part II on labour inspection in commerce from its acceptance of the Convention. In its previous General Survey on the subject, the Committee of Experts observed that out of the 105 countries that had ratified Convention No. 81, only 18 had availed themselves of this possibility. Twenty years later, the Committee notes that this number has not changed.⁴ Such a declaration does not exempt the Member from indicating in its report on the application of the Convention the position of its law and practice in regard to the provisions of Part II, and it may be cancelled by a subsequent declaration (see Article 25(2) and (3)).

C. Possibility of total or partial exclusion of certain areas

20. Under Article 29, paragraph 1, of Convention No. 81, large areas of the territory of a Member may be exempted from its application if the competent authority considers it impracticable to enforce its provisions by reason of the sparseness of its population or its stage of development. The competent authority may determine exceptions in respect of particular undertakings or occupations. Members must indicate the areas exempted as well as the reasons for its exemption in their first annual report under article 22 of the Constitution of the ILO. Members shall not subsequently extend such an exemption (paragraph 2), and shall indicate in subsequent reports any areas in respect of which they renounce the right to have recourse to the provisions of article 29 (paragraph 3).

D. Definition of workplaces covered and workers protected

21. Convention No. 81 does not define directly the workplaces to be covered by the labour inspection system. They are referred to in Article 2, paragraph 1, as those “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”. This allows each Member to restrict the scope of the Convention to the extent defined by national laws and regulations; a resolution adopted at the same session of the Conference invites 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”.⁵

22. In most countries, the scope of labour inspection is defined in general legislation such as labour codes, general labour acts, conditions of work legislation and industrial relations law. The determining factor for inclusion in the scope of labour inspection, at least in law, is often the existence of an employment or apprenticeship relationship.⁶

³ For example, in *Burkina Faso*, mines and quarries are not excluded from the remit of labour inspectors. Technical inspections for workers’ safety are carried out in this sector by specialized staff who are vested with the powers of labour inspectors for this purpose; the latter may, under section 371 of the Labour Code, ask to participate in inspections at any time. In *Comoros*, under section 168 of the Labour Code, technical inspectors of mines and quarries must inform labour inspectors of the results of inspections and measures ordered. Labour inspectors are also allowed to take part in inspections.

⁴ One of the countries that had excluded Part II from its ratification subsequently made a declaration cancelling that declaration.

⁵ See ILO: *Record of Proceedings*, ILC, 30th Session, Geneva, 1947.

⁶ For example, in *Belgium* and *Mali*.

The Committee has observed that the terms used to refer to workplaces within the meaning of the Convention vary from one country to another: some examples are “enterprises”, “workplaces”, “work centres”, “installations” or “organizations”. In some countries, indications as to coverage by labour inspection are found in provisions regulating the function of the labour inspectorate.⁷ References in these texts to specific existing or forthcoming regulations sometimes indicate that legal provisions relating to conditions of work in certain sectors or economic activities are or will be enforceable by another system of monitoring. These are usually public sector enterprises and those in the mining, petroleum, nuclear power, airline, road transport or maritime sectors.

23. Other limitations on the scope of labour inspection are based on various criteria relating to the scope of the labour legislation such as size, turnover or number of employees of the enterprise.⁸ As a result, the conditions of work of a varying substantial proportion of a country’s workforce, scattered over a wide range of industrial and commercial activities, are excluded from any system of monitoring. Accordingly, some do not benefit from any technical advice or information from labour inspectors which would enable improvements to be made. Neglect of workers’ rights, and exploitation of the vulnerability of some workers, are ultimately costly both in terms of reduced profits to the enterprise and for the economy as a whole. This is especially the case in the informal sector and in countries where there is a multitude of small enterprises excluded from the coverage of the legislation or where there are enterprises employing fewer than the threshold number of workers.

24. Whatever the coverage of labour inspection in law, in practice it is always limited to varying extents by factors related to the national or regional political and economic situation. The main cause is generally the lack of adequate financial resources assigned to this function of the state labour administration.

II. The 1969 instruments on labour inspection in agriculture

25. While Convention No. 81 provides many possibilities of restricting its scope, in the first two decades following its adoption, most countries have only excluded mining and transport enterprises from its application.

26. Encouraged by this fact, the Conference had no major difficulty in adopting in 1969 an instrument in the form of a convention on labour inspection in agriculture, whose coverage would automatically encompass a wide range of activities defined as agricultural activities in which workers or apprentices are employed. The Convention does not provide for any criteria for exclusion from its application; moreover, governments are encouraged to undertake to extend labour inspection in agriculture to

⁷ The establishments covered by labour inspection are indicated in *Angola* in section 2 of Decree No. 9/95 regulating the labour inspectorate, in *Latvia* in section 4 of the State Labour Inspection Law of 28 December 2001 and in *Uruguay* in section 3 of Decree No. 680/977 of 6 December 1977 concerning the implementation of international labour Conventions Nos. 81 and 129.

⁸ For example, in *India*, under section 2 of the Factories Act, 1948, labour legislation applies only to enterprises with at least ten employees; in *Zimbabwe*, the threshold under section 3 of the Factories and Works Act, 1996, is five employees; in *Nigeria*, under section 87 of the Factories Act, 1987, ten employees.

workers who are not in an employment relationship or one of dependency or subordination.⁹

A. Coverage of all agricultural undertakings in which employees or apprentices work

27. Convention No. 129 reflects the will of member States to ensure, through a legally binding instrument, protection of the greatest possible number of workers in a sector that is extremely diverse, not only in terms of the legal status as regards the ownership of farms, but also in respect of the forms of the employment relationship. Under Article 4, the system of labour inspection in agriculture shall apply to agricultural undertakings in which employees or apprentices work, however they may be remunerated and whatever the type, form or duration of their contract. Under Article 1, paragraph 1, the term “agricultural undertaking” means undertakings and parts of undertakings engaged in cultivation, animal husbandry, forestry, horticulture and the primary processing of agricultural products by the operator of the holding – an unlimited list that is left open to “any other form of agricultural activity”. The idea of optimal coverage is even more explicit in paragraph 2 of the same Article, which stipulates that no agricultural undertaking shall be excluded from the national system of labour inspection. However, it also provides that, where necessary, the competent authority shall, after consultation with the most representative organizations of employers and workers concerned, define the line which separates agriculture from industry and commerce. Under paragraph 3 of the same Article, it is for the competent authority to settle the question in any case in which it is doubtful whether an undertaking or part thereof is one to which the Convention applies.

28. Convention No. 129 does not distinguish between agricultural enterprises for the purposes of their coverage by the labour inspection system. Thus it is intended to be applied in the same way to public, private or mixed agricultural enterprises, irrespective of their size, and to protect all workers who are employees or apprentices in such enterprises. In some countries, no agricultural enterprise is excluded under the legislation.¹⁰ Others have only recently adopted legal provisions to include them in the scope of labour inspection.¹¹

29. The fact is, however, that only a small proportion of agricultural enterprises worldwide are legally covered by inspection of their working conditions. This is due to various reasons, including the wide variety of enterprises, the way in which they operate, the legal and title framework governing their ownership and their economic mode of operation, their socio-economic situation and impact, geographical situation, and the

⁹ Furthermore, the recently adopted Convention No. 184 on safety and health in agriculture expands the scope and need of labour inspection in agriculture. Joint notification and implementation campaigns of Conventions Nos. 129 and 184 are under way.

¹⁰ In *Latvia*, under Regulation No. 53 concerning the statutes on state labour inspection, dated 14 March 1995, the common inspection system covers all enterprises without distinction, as far as agriculture is concerned. The criterion for determining the coverage of labour inspection is the existence of an employment relationship in any registered enterprise. In the *Bahamas*, *Cambodia* and *Côte d’Ivoire*, the Labour Code applies, in principle, to all economic activities without distinction, under the oversight of the labour inspectorate.

¹¹ For example, in *Bolivia* the application of the General Labour Act was extended to rural workers in wage employment in 1996 by a provision of Act No. 1715 of 19 October respecting the National Service of Agrarian Reform.

characteristics of their workforce and its ability to organize in trade unions.¹² In practice this proportion is even smaller, if not entirely non-existent.

30. The Committee has often had occasion to regret the lack of information communicated by governments on the measures taken in law and in practice to give effect to the provisions of Convention No. 129. The statistics of agricultural undertakings, their geographical distribution and the number of persons working therein required under Article 27(c) of the Convention rarely feature in the annual reports from the central authority or the periodical reports on the activities of the labour inspection services, which makes it difficult to assess their effectiveness in the light of needs. Some countries regularly provide relevant information in their annual reports on inspection.¹³

B. Optional clause on extension of coverage by the labour inspection system to unpaid agricultural workers

31. Article 5, paragraph 1, of Convention No. 129 provides that any Member may, in a declaration accompanying its ratification, undertake also to cover by labour inspection in agriculture one or more categories of persons working in agricultural undertakings who are not already covered under Article 1, i.e. tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers; persons participating in a collective economic enterprise, such as members of a cooperative; and members of the family of the operator of the undertaking, as defined by national laws or regulations. In the absence of such a declaration, Members bound by the Convention are still required to indicate in their reports to the Office on the application of the Convention to what extent effect has been given or is proposed to be given to the relevant provisions (Article 5, paragraph 3).

32. *Latvia* is the only country that has made a formal declaration concerning extension of the system of labour inspection as provided in the Convention, referring to members of cooperatives. The Government's declaration was accompanied by a statement of its intention to extend it to the other categories mentioned in the Convention. Some countries have made the extension without making a formal declaration to that effect. Workers mentioned by some governments as being covered by the labour inspection system under Article 5 of the Convention do not always belong to the categories listed in subparagraphs (a) to (c) of that Article. In this regard, the Committee would like to emphasize that the option of extending the system of labour inspection to unpaid agricultural workers does not always imply an obligation for the inspectorate to provide these persons with all of the services available for the protection of workers in the sector. In some European countries, for example, the labour inspection services provide occupational safety and health training to self-employed agricultural workers, farmers,

¹² In *Indonesia*, plantations, aquaculture, forestry and livestock enterprises in the formal sector are covered by inspection under the Labour Inspection Act, No. 3 of 1951; in *Yemen*, certain agricultural workers are covered by labour inspection under section 3(2)(j) of the Labour Code. The definition of agricultural workers who are not excluded from the labour code includes technicians who repair and maintain equipment and machinery, as well as shepherds in wage employment. Seasonal agricultural workers are excluded in so far as they are not referred to among the agricultural workers covered by the Labour Code. In *Switzerland*, agricultural enterprises are excluded from the scope of the Labour Act (except with regard to the provisions on minimum age for admission to employment), and there are no structures for labour inspection in this area. Supervision of compliance with minimum age provisions is assigned by the State Secretariat for Economic Affairs (SECO) to the *Fondation Agri-sécurité Suisse* (AGRISS), which is also tasked by the National Swiss Accident Insurance Fund (CNA) with supervision of the application of provisions on accident prevention in this branch; in *Lesotho*, under sections 2 and 14 of the Labour Code Order 1992, agricultural enterprises appear to be covered by enforcement of provisions on working conditions.

¹³ For example, *France* and *Spain*.

sharecroppers and family members working on the farm.¹⁴ In *Norway*, a Royal Decree of 1986 extended the application of the Work Environment Act to the many agricultural enterprises that do not employ workers.¹⁵

III. Protocol of 1995 to the Labour Inspection Convention, 1947: Extension of the labour inspection system to the non-commercial services sector

33. Following a suggestion made by the Committee of Experts in its General Survey on labour inspection published in 1985,¹⁶ the Governing Body of the International Labour Office decided at its 258th Session (1993) to include in the agenda of the 82nd Session (1995) of the International Labour Conference an item on extending the Labour Inspection Convention, 1947 (No. 81), to activities in the “non-commercial services sector”, most branches of economic activity being already covered by international standards on labour inspection.¹⁷

A. Definition of non-commercial services

34. The preliminary report prepared by the Office for the 82nd Session of the Conference contains a number of useful elements for identifying the services targeted by the instrument envisaged for adoption. Rather than providing a universal definition, it lists a wide range of services and activities that might be covered, under a new instrument, by the system of labour inspection established in accordance with Convention No. 81. Given the specific national situations cited by Members in their replies to the Office questionnaire on the subject, an indicative list of services and activities in what is termed the “non-commercial” services sector was proposed. It includes public administration (national, regional or local), which, depending on the country, consists of national (federal) ministries and their administrative services; provincial/regional/federal governments and administrations; district/local/municipal administrations; the armed services; police and other public security services, prison services; fire brigades and other rescue services, which are generally not in the commercial or industrial sector; and often education services, such as universities and tertiary colleges, secondary and primary schools; health services including national and local hospitals and clinics, laboratories and pharmacies; postal services and telecommunications; railways and other public road, air and water transport services (covered in principle by Convention No. 81 but often excluded from its coverage by national law or practice); public utilities such as gas, water and electricity supply, refuse

¹⁴ In *Croatia*, some of the categories of workers referred to in Article 5 are covered by labour inspection under the legal provisions on occupational safety and health (sections 4 and 5 of the Occupational Safety and Health Act of 1996); in the *Republic of Moldova*, members of cooperatives are covered by the Labour Protection Act; in *Slovenia*, self-employed agricultural workers and their family members are covered by section 3(1) and (2) of the Occupational Safety and Health Act of 1999. The Government of *Poland* stated in its first report on the application of Convention No. 129 that, although the categories referred to in Article 5 are not covered by inspections by the labour inspectorate, they benefit from many preventive activities in the area of occupational safety and health in the form of advice and information.

¹⁵ Royal Decree of 21 March 1986.

¹⁶ General Survey, 1985, para. 319.

¹⁷ ILO: *Extension of the Labour Inspection Convention, 1947 (No. 81), to activities in the non-commercial services sector*, Report VI(1), ILC, 82nd Session, Geneva, 1995.

collection and disposal and other essential services; welfare and social services; cultural and recreational services such as theatres, parks, leisure centres, zoos, museums, libraries, religious institutions and charities.

35. Criteria such as the public or private status of the employer, social or for-profit aim of the enterprise soon proved inadequate as a basis for drawing a distinction between commercial and industrial activities, on the one hand, and non-commercial services, on the other. There are too many areas of overlap for them to be relevant.

36. The preliminary report also observed that the more removed from central government executive power an organization, service, institution or enterprise is, the greater the likelihood that it will be covered by existing labour protection legislation supervised by labour inspection. Where government-owned firms or public enterprises producing or selling goods or services in a market are usually fully subject to existing systems of labour inspection, conversely, institutions or activities considered to constitute the very core of executive power, such as the central government administration, the armed services, the police, etc., are often completely exempt from the purview of labour inspection.

37. The replies to the questionnaire sent to Members reflected a wide diversity of national perceptions of what constituted the “non-commercial services sector”. In these circumstances, the Conference defined the term “activities in the non-commercial services sector” as activities in all categories of workplaces that are not considered as industrial or commercial for the purposes of Convention No. 81 (Article 1, paragraph 2, of the Protocol). This considerably broadened the national remit of labour inspection systems covered by binding international instruments, which already included industrial and commercial workplaces, as well as commercial and non-commercial agricultural enterprises, since the non-commercial services sector was estimated to employ between 10 and 50 per cent of the labour force, depending on the country, which means hundreds of millions of people worldwide. These workers are exposed to most occupational risks of a technical, medical or social nature, including the most serious hazards. In addition to the same risks found in industry, commerce and agriculture, they often face unique risks of their own. In many countries workers in the non-commercial services sector do not enjoy the minimum protection that external and independent labour inspection affords to those in industry and commerce in regard to their conditions of work and labour rights.

38. Referring to the existing international instruments, the preamble to the Protocol of 1995 emphasizes the need, having regard to all the risks to which workers in the non-commercial services sector may be exposed, to ensure that this sector is subject to the same or an equally effective and impartial system of labour inspection as that provided in Convention No. 81.

B. Possibility of excluding certain categories of non-commercial services from the scope of the Protocol and special aspects of labour inspection

39. Under Article 2 of the Protocol, a Member which ratifies it may, by a declaration appended to its instrument of ratification and after consultation with the social partners, exclude wholly or partly from its scope essential national (federal) government administration, the armed services, whether military or civilian personnel, the police and other public security services, and prison services, whether prison staff or prisoners when performing work, if the application of the Convention to any of these categories would raise special problems of a substantial nature (paragraphs 1 and 2).

40. The reasons for the exclusion made by a declaration appended to the instrument of ratification shall be indicated by the Government in its next report on the application of the Convention. In accordance with the terms of the Protocol, these services must be covered nonetheless, to the extent possible, by alternative inspection arrangements. Information on any measures taken with a view to extending the Protocol to them must be communicated in subsequent reports (Article 2, paragraph 3). The Member may modify or cancel the declaration of exclusion at any time by a subsequent declaration (paragraph 4).

41. Members who do not avail themselves of the possibility of excluding one or more of the abovementioned categories of services may none the less make special arrangements restricting the powers of labour inspectors as provided in Article 12 of Convention No. 81 with regard to these categories or some of their activities (Article 4).

C. National practice

42. Only ten of the 135 countries bound by Convention No. 81 have ratified the Protocol¹⁸ and information sent to the ILO on measures taken to give effect to it in law and in practice is still scarce. Moreover, the Committee observes that despite the flexibility of its provisions, most countries have expressed some concerns with regard to ratification prospects, and the obstacles referred to often lie in the difficulty of identifying the activities, enterprises and services covered by the instrument. The Committee has, however, noted the interest in ratification expressed by some employers' and workers' organizations.¹⁹

43. Among countries that have not ratified the Protocol, *Burkina Faso* indicated that parts of establishments or military establishments employing civilian workers and in which national defence interests rule out the entry of external inspection staff are listed in an Order issued by the Ministry of Defence, after consulting the Minister responsible for labour affairs; labour inspection in these cases is carried out by officials or officers specially assigned to the task by joint order of the abovementioned ministries.²⁰ In *Latvia*, central and local government bodies, as well as public bodies and religious institutions, fall within the remit of the Public Labour Inspectorate that is competent for other sectors.²¹ The Government of *France* has indicated that only public administrations and establishments engaged in the administration of the State and local communities are exempt from any system of labour inspection within the meaning of the relevant ILO Conventions. They are not covered by the Labour Code, with the exception of the parts relating to occupational safety and health and conditions of work, which are implemented through regulations applicable to the public service.²²

¹⁸ *Azerbaijan, Cyprus, Finland, Guyana, Ireland, Republic of Moldova, Norway, Russian Federation, Sweden and the United Republic of Tanzania.*

¹⁹ In *Mali* and *Portugal*.

²⁰ Section 372 of the Labour Code.

²¹ Section 4, para. 1, of the State Labour Inspection Law of 28 December 2001.

²² Book II, Title III, of the Labour Code.

Chapter II

Mandate of the labour inspection

44. According to Article 2, paragraph 1, of Convention No. 81, conditions of work and the protection of workers while engaged in their work are the main area of competence of labour inspectorates in industrial and commercial workplaces. Article 6, paragraph 2, of Convention No. 129 states that labour inspectors may have enforcement functions regarding legal provisions concerning conditions of life of agricultural workers and their families.

45. Many different issues are covered by the term “working conditions”. They concern the conditions and the environment in which work is carried out. For example, Article 3, paragraph 1(a), of Convention No. 81, refers to hours, wages, safety, health and welfare, and the employment of children and young persons, while Article 6, paragraph 1(a), of Convention No. 129 refers in addition to weekly rest, holidays, and the employment of women.

46. The expression “protection of workers while engaged in their work” used in Convention No. 81 has to be understood in a broader manner in the context of the subsequent Conventions and Recommendations. Thus, it relates more specifically to social protection and to the fundamental rights of workers throughout their employment. It is clear from the preparatory documents relating to Convention No. 129 that the term was intended to cover areas such as the right to organize and engage in collective bargaining, conditions of termination of employment, and social security.

47. The supervision of legal provisions concerning other areas which might have some relationship or connection with working conditions and protection of workers may also come within the remit of the labour inspectorate, as is indicated in Article 3, paragraph 1(a), of Convention No. 81, and Article 6, paragraph 1(a), of Convention No. 129. Paragraph 2 of Recommendation No. 133, which supplements Convention No. 129, refers indicatively to provisions relating to: (a) training of workers; (b) social services in agriculture; (c) cooperatives; and (d) compulsory school attendance.

48. According to Article 3, paragraph 1(a), and Article 27, of Convention No. 81, and Article 2 and Article 6, paragraph 1(a), of Convention No. 129, the areas of competence of the labour inspectorate include at the national level legal provisions, enforcement of which is entrusted to labour inspectors. These provisions include, apart from legislation, arbitration awards and collective agreements that have force of law.

49. The areas of competence of labour inspectorates is based most often on legislative provisions of general scope such as labour codes, general labour laws, and laws concerning labour relations and, more recently, equality and anti-discrimination laws, supplemented by regulations on the organization, functioning or powers of the bodies that constitute the labour administration system. Specific statutes on labour inspection

can specify the areas of competence of the labour inspectors.¹ To determine the exact scope of the mandate of the labour inspectorate, however, it is often necessary to consider a number of texts that differ in nature and scope, together with a number of exclusions.

I. Conditions of work and protection of workers

A. The conditions of work covered by the instruments

50. In many countries (*Belgium, Bulgaria, Chile, Denmark,*² *France, Ghana,*³ *Greece, Lebanon, Lesotho,*⁴ *Mongolia, Nigeria,*⁵ *South Africa, Spain*, all the French-speaking countries of Africa and most countries in Latin America), labour inspection extends to all areas covered by labour legislation. In *Lebanon*, for example, the Labour Inspection Department is responsible for the enforcement of all laws and regulations concerning terms and conditions of employment and protection of workers at the workplace, including the provisions of ratified international labour Conventions. The areas covered by the remit of the labour inspectorate include, but are not limited to, the following: hours of work, rest periods, wages, safety, hygiene, occupational health and health care, occupational diseases and accidents at work, occupational risks and the employment of young people.⁶

Labour inspection and child labour

A strong legal basis

ILO Conventions Nos. 81 and 129 establish an explicit link between labour inspection and child labour by including among the primary functions of labour inspection the enforcement of the legal provisions relating to conditions of work and the protection of workers, such as provisions relating to the employment of children and young persons. Recommendations were made on this basis by the Meeting of Experts on Labour Inspection and Child Labour in Geneva in 1999 and the Tripartite Meeting of Experts from the Africa Region on the role of labour inspection in combating child labour in Harare in 2001, which called on the ILO to continue to support the strengthening of labour inspection capacities to work against child labour in a meaningful way.

The partnership between IPEC and labour inspectorates

Since its establishment, ILO-IPEC has worked with national labour inspectorates¹ and the International Association of Labour Inspection (IALI). Recognizing that labour inspectors have a pivotal role to play in combating child labour by virtue of their right of entry and enforcement mandates, IPEC has centred its efforts on improving the labour inspector's capacity to identify underage workers and the hazards which put them at special risk and to coordinate with other parties to see that child workers, once found, are referred to schools or services. Materials have been developed to support this; they include the *Handbook for labour inspectors on combating child labour* (2002), a training guide for labour inspectors (2005), and a set of technical sheets (2005), aimed at helping labour inspectors tackle specific child labour situations.

¹ *Latvia*: Point 2 of the Statutes on State Labour Inspection, Regulation No. 53 of 14 March 1995 provides that the state labour inspectorate enforces laws and regulations concerning labour, social protection, and the use and maintenance of hazardous facilities. *Mexico*: General Regulations on inspection and application of sanctions for violations of labour legislation.

² Working Environment Act.

³ Section 122 of the Labour Act No. 651 of 2003.

⁴ Section 14 of Labour Code Order No. 24 of 1992.

⁵ Section 78 of Chapter 198 of the 1990 Labour Act.

⁶ Section 2 of Presidential Decree No. 3273 of 26 June 2000.

The limited number of labour inspectors in developing countries has made it difficult for inspectors to cover the informal economy and agriculture where most child labour is found. To address this, IPEC developed the concept of “child labour monitoring systems” (CLM) in which labour inspectorates feature as core partners. CLM extends the eyes and ears of the inspectorate through locally developed teams of monitors.

¹ In *Albania, Ghana, Indonesia, Kenya, Mongolia, Pakistan, Philippines, Turkey, Romania, United Republic of Tanzania, Uganda, Ukraine*.

51. In other countries, labour inspection is restricted to specific areas such as occupational safety and health, including the employment of women and children; this is the case in the *United Kingdom*. In *Switzerland*, cantonal labour inspectorates are responsible for enforcing the protective provisions under the relevant federal laws on labour ⁷ and accident insurance. ⁸

Turkey: An innovative labour inspectorate to combat child labour

Between 1994 and 2003, six action programmes on child labour within the IPEC framework have been implemented by the labour inspectorate of the Turkish Ministry of Labour and Social Security (MOLSS). The early projects centred around understanding the working conditions of children in industry, increasing the awareness of the labour inspectors toward child labour and, most importantly, introducing a new inspection system into the Ministry. The new inspection system aimed at improving cooperation of inspectors with working children, managers and employers in an effort to bring about a safer workplace. The success of the new inspection system depended not only on a change in the philosophy of inspection on the part of the labour inspectors, but also on persuading the working children, managers and employers to view labour inspectors as a hand extended by the Government not to punish, but rather to provide assistance for improving working conditions in the establishment and in the industry in general. In short, the new inspection system attempted to introduce a participatory method to address the issue of child labour.

The Ministry of Labour and Social Security trained 108 labour inspectors who worked full time on child labour issues. During this time, seven sectors (metal, woodworking, textile, garment, leather, auto repair and car polishing) in seven regions of the country were the most extensively covered. Labour inspectors collected detailed information on specific subjects, including: the sectors where child labour was extensively employed; the educational status of child workers and their families; the risks faced in workplaces; industrial relations; the levels of occupational training; and future expectations. This was an important step toward filling the information gap existing in the field of child labour as the inspectors were able to reach over 10,000 children. Different methods of data collection were used to provide a detailed picture of the risks and hazards faced by children working in these sectors.

52. In some countries, certain areas of legislation are expressly excluded from the scope of labour inspection; one example is *Luxembourg*, which excludes occupational health. ⁹ In other countries, the scope of enforcement of legislation on conditions of work and protection of workers varies according to economic sector, with agricultural workers only partially covered ¹⁰ or not at all, ¹¹ or according to whether the establishment in question is public or private (workers in the public sector are not always covered by the minimum standards of protection).

⁷ Federal Act of 13 March 1964 concerning labour in industry, crafts and commerce.

⁸ Federal Act of 20 March 1981 concerning accident insurance.

⁹ Section 1 of the Act of 14 December 2001, amending the Act of 17 June 1994, concerning occupational health services.

¹⁰ For example, in *Egypt*, sections 97 and 103 of the Labour Code expressly exclude conditions of work of women and children in the agricultural sector; in *Turkey*, only agricultural undertakings employing 50 or more workers are liable to labour inspection.

¹¹ The Governments of *Japan* and *Panama* state that there is no labour inspection in agriculture. In *Qatar*, the Labour Code is not applicable to agricultural workers, and there is no official body responsible for labour inspection in agricultural enterprises.

53. Certain governments have indicated that the enforcement of legal provisions concerning conditions of work and protection of workers in certain non-commercial services is the responsibility of bodies distinct from the labour inspectorate.¹²

B. New aspects of conditions of work

54. Provisions relating to the protection of women as regards pregnancy and maternity, hours of work, wages, children and adolescents, weekly rest, and holidays, are covered by most systems of labour inspection. In addition, there is now evidence of an emerging role for labour inspectors in monitoring equality and diversity in the workplace. There is nevertheless a marked tendency for hygiene, welfare, and occupational safety and health, to predominate.

55. Over recent decades, advances in scientific, psychological and technical knowledge have revealed the impact of working conditions on workers' physical and mental health and, consequently, on the productivity of enterprises. As a result, considerable efforts have been made, especially in the developed countries, to improve inspection systems and broaden the mandate of the labour inspectorate. The narrow concept of health used in the instruments rapidly gave way to a broader notion of occupational health, which is almost invariably linked with occupational safety. The economic consequences of a number of recently identified phenomena such as workplace stress, aggressive and bullying behaviour in the workplace and sexual harassment at work have prompted a number of countries, such as *Sweden* and *Switzerland*, to recruit and train specialist labour inspectorate staff in the area of mental health at work. More generally, action is being taken to ensure that the working environment and workplace are better adapted to workers' needs and to develop an occupational safety and health culture that gives priority to prevention, especially prevention of certain specific occupational ergonomic and psychosocial hazards such as chronic back pain, stress and fatigue. It is normally labour inspectors who are responsible for enforcing the relevant legal provisions.

56. Labour inspectors have an especially important role in protecting workers in relation to the HIV/AIDS pandemic. The ILO and the UNDP developed a partnership to combat HIV/AIDS involving pilot projects in three countries (*Ghana, Thailand* and *Ukraine*). One major aspect of these projects is the training of labour inspectors in this area and on the means that need to be applied to eradicate the problem. A number of other seriously affected countries are adopting measures to give their labour inspectorates powers that will enable them to help combat this problem.

C. Protection of workers while engaged in their work

57. While referring in distinct terms both to conditions of work and the protection of workers while engaged in their work, the instruments foresee the labour inspectorate covering rights recognized in national labour legislation. In a number of countries, the labour inspection is competent to cover freedom of association, equality of treatment,¹³ dismissal procedures,¹⁴ and social security.¹⁵

¹² Including, for example, the army (*Cameroon, Denmark, Kenya, Lesotho, Luxembourg*); maritime services (*Croatia, Denmark, Sweden*); aviation (*Denmark, Sweden*).

¹³ For example, *Ghana*.

¹⁴ *Benin, Côte d'Ivoire, Guinea, Niger* and the *Bolivarian Republic of Venezuela*, with regard to lay-offs for economic reasons and dismissals of workers' representatives.

¹⁵ For example, *Angola, Argentina, Bolivia, China, Cuba, Mongolia, Niger, Paraguay*.

D. Related matters

58. Legal provisions pertaining to matters related to conditions of work and protection of workers fall within the scope of the instruments under consideration by virtue of Article 3, paragraph 1(a), of Convention No. 81 and Article 6, paragraph 1(a), of Convention No. 129. Available information indicates that most national legislations confer on labour inspection bodies the authority to enforce or participate in the enforcement of the application of legal provisions concerning training¹⁶ – often in the area of occupational safety and health¹⁷ – equipment purchases,¹⁸ regulations concerning the form and substance of contracts of employment,¹⁹ workplace rules,²⁰ the obligation to inform workers of the terms of their employment contracts when they are hired,²¹ individual labour disputes,²² registration of employers' and workers' organizations,²³ collective agreements,²⁴ and workers' stores²⁵ and unemployment insurance.²⁶

59. When the professional activities of certain workers require employers to take charge of their living conditions, or certain aspects of them, national legislation may contain provisions on the employer's obligations in this regard, and in some cases it is the labour inspectorates that are responsible for enforcement of these provisions. Thus, in *Croatia*, the labour inspectorate enforces regulations on the provision of accommodation, food and transportation for workers at temporary work sites outside the seat of the organization or employer.

II. Living conditions of workers and their families

60. Workers in agriculture and their families often have to live on the agricultural production site. Family members of agricultural workers are often involved in agricultural work as well, without remuneration. In view of this, Article 6, paragraph 2, of Convention No. 129 provides that national laws or regulations may give labour inspectors advisory or enforcement functions regarding legal provisions relating to conditions of life of workers and their families. In a number of industrialized countries labour inspection coverage has been extended to the living conditions of agricultural workers, and less frequently those of their families. These are mainly advisory and assistance functions, however, and rarely include enforcement, which falls within the remit of other public institutions. In *Norway*, for example, the labour inspectorate is required to forward to the Health Council complaints and reports on the hygiene

¹⁶ For example, *Denmark, France, Mexico, Peru, Tunisia*.

¹⁷ For example, *Japan, Lesotho, New Zealand, Niger, Slovenia, Sweden*.

¹⁸ For example, *France, Germany, Luxembourg, Nigeria, Sweden*.

¹⁹ For example, *Ecuador, Nicaragua, Paraguay, Slovenia*.

²⁰ For example, *Benin, Chad, Côte d'Ivoire, Guatemala, Paraguay, Russian Federation*.

²¹ *Nigeria*.

²² *Burundi, Cameroon, Ecuador, Guinea, Kenya*.

²³ *Ghana, Honduras, Niger, Bolivarian Republic of Venezuela*.

²⁴ *Bolivia, El Salvador, Ecuador, Paraguay*.

²⁵ *Benin, Democratic Republic of the Congo, Rwanda*.

²⁶ For example, *South Africa*.

conditions of accommodation provided by employers.²⁷ It also pays special attention to compliance with the statutory limits on child labour and distributes illustrated booklets to farmers informing them of legislation and the best way to apply it. In *Finland*, although not explicitly tasked with enforcement of living conditions of self-employed farmers' families, the labour inspectorate has organized and carried out, in cooperation with the farmers' social insurance institution, an active campaign for the prevention of safety and health risks to children living on farms, aimed inter alia at reducing the number of tractor accidents they are exposed.

61. In Central and Eastern European countries, since the 1990s labour inspectorates have been assigned the task of supervising agricultural employers' compliance with their obligations with regard to the living conditions and social integration of families of agricultural workers living on farms. In *Poland*, for example, they verify whether employers with more than 20 employees meet their obligation to set up a social fund to finance social activities (culture, education, sports and leisure, material assistance in cash and in kind and housing assistance) for current and former workers and their families.²⁸ They are empowered to impose fines in the event of violations.

62. Countries including *Guatemala*, *Honduras*,²⁹ *Kenya*,³⁰ *Mauritius*,³¹ *Nigeria*³² and *Uruguay* have vested labour inspectors with extensive powers to inspect the living conditions of agricultural workers and their families. In *Honduras*, labour inspectors' tasks include enforcing compliance with the obligation for agricultural or forestry enterprises employing more than 20 workers to provide schoolroom premises for their employees' children.³³ In addition, they verify whether work done by an under-age or female family member to help an agricultural worker is considered, as provided by law, as establishing a contractual employment relationship.³⁴ The same applies in *Guatemala*, where legislation provides more specifically that any contribution by a family member of the employee to the operation of the agricultural enterprise entitles that person to remuneration,³⁵ and where labour inspectors are also responsible for enforcing regulations concerning the hygiene conditions and amenities of accommodation provided to agricultural workers and their families (water, electricity, number of rooms, etc.).³⁶ In *Uruguay* labour inspectors are empowered to impose fines on employers for infringing similar provisions, which in addition lay down the obligation to provide food to the worker's spouse, children and parents; the prohibition on using the worker's accommodation as storage space; the obligation to encourage children's schooling and provide supplies for the purpose; and the obligation to keep a dismissed worker or family member on the farm in the event of illness.³⁷ In *Cambodia*, labour inspectors are

²⁷ Act of 19 December 1958 respecting the conditions of employment of agricultural workers.

²⁸ Section 12 of the Act of 4 March 1994 on the social fund.

²⁹ Section 614(V) of the Labour Code.

³⁰ Section 50(a) of Chapter 226 of the Employment Act, as amended in 1997.

³¹ Section 14(2) of the Occupational Safety, Health and Welfare Act (No. 34 of 1988).

³² Section 78(b) of the Labour Act.

³³ Section 198 of the Labour Code.

³⁴ Section 199 of the Labour Code.

³⁵ Section 139 of the Labour Code.

³⁶ Section 104 of the General Regulations of 28 December 1957 respecting health and safety at work.

³⁷ Act No. 14785 of 9 May 1978 to promulgate regulations on the employment of rural workers.

responsible for enforcing legal provisions relating to the living conditions of workers and their families on plantations, which require employers to provide benefits in the form of housing, schooling, care, food and water supplies, as well as coverage of funeral expenses.³⁸

63. The Committee notes, however, that in the few cases where information is provided concerning the labour inspectors' role in practice under such legal provisions, it is not specific enough and is inadequate as a basis for assessing their impact on the improvement of living conditions.³⁹ Governments of many developing countries have repeatedly pointed out that the lack of sufficient financial and human resources remains the main obstacle in the way of translating political will into action in this regard.

III. Other functions entrusted to labour inspectors by national legislation

64. The available information suggests that most national legislation empowers labour inspectors to enforce the application of legal provisions pertaining to areas not actually covered by the instruments under consideration, or even entrust them with certain other functions. For example, the Committee has noted cases of labour inspectors being entrusted with powers relating to product safety and market surveillance,⁴⁰ calculation of redundancy payments, or assisting workers with letters of resignation, on-the-job training,⁴¹ and other areas. Among the many tasks assigned to labour inspectors, some are purely administrative, such as calculation of severance pay and drafting of resignation letters at the worker's request in *El Salvador*; or, in several countries, the issuance of work permits⁴² or approval of internal regulations of establishments and enterprises.⁴³

65. In *Niger*, labour inspectors have teaching duties in schools and training centres.⁴⁴ In *Costa Rica*, they are invited to conduct presentations in schools and training centres to familiarize pupils with aspects of their future working conditions and employment relationships.

66. In some countries, placement services are supervised by labour inspectors.⁴⁵ The Government of *Mauritania* has decided to relieve the labour inspectorate of its tasks in this area.

67. In the course of performing its various tasks, the labour inspectorate is required to collect a considerable amount of economic and social statistics. It is hardly surprising therefore that in some countries it is responsible for providing the authorities with reports on particular aspects of economic and social life. In *Tunisia*, for example, labour

³⁸ Chapter VII of the Labour Code, concerning special conditions of work in agricultural occupations.

³⁹ The Government of *Kenya* has supplied statistics on the inspections carried out with regard to the employer's obligation to provide workers and their families with hygienic accommodation on sisal and coffee plantations, under the Employment Act.

⁴⁰ For example, *Germany, Luxembourg, New Zealand*.

⁴¹ For example, in *France*.

⁴² This is generally the case in the Gulf States, owing to the large proportion of foreign workers.

⁴³ For example, in *Cameroon, Guinea, Niger and Paraguay*.

⁴⁴ Under section 510(1) of the Labour Code.

⁴⁵ In *Bulgaria and Niger*, for example.

inspection officials verify the industrial relations and employment clauses of procurement contracts of the State and public bodies.⁴⁶

68. A number of other more or less time-consuming tasks are assigned to labour inspectors in several countries: for example, safety checks of freight elevators in *Nigeria*; supervision of technical equipment and products placed on the market in *Germany*, *Hungary* and *Sweden*; supervision of toys in *Luxembourg*; issuance of permits to market hot water heaters and other hazardous equipment in *Japan*. The Government of the *Netherlands* has stated that inspectors issue the compulsory licenses for the use of radioactive substances. In some countries, legislation provides in general terms that labour inspectors may be required to carry out any other function at the request of the competent authority.

69. The labour inspection instruments do not rule out the possibility of labour inspectors being assigned other promotional tasks by legislation or national practice, in addition to those inherent in their primary duties. It should be recalled, however, that their primary duties are complex and require time, resources, training and considerable freedom of action and movement. This is why both Conventions contain identical provisions stipulating that any further duties which may be entrusted to labour inspectors 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 (Article 3, paragraph 2, of Convention No. 81 and Article 6, paragraph 3, of Convention No. 129). The information provided by governments both in their reports to the Office and in the annual reports published by the central inspection authority show that it is often difficult in practice for labour inspectorates to carry out all of their statutory functions in the sectors within their remit. For many developing countries, the lack of adequate resources for labour inspection is a major obstacle to meeting needs in a satisfactory manner. It is the root cause of a chain of failures: lack of a clear perception of the economic activities covered; shortage and inappropriate distribution of staff; employment and working conditions that are not conducive to retaining staff; distortion of the objectives of labour inspection, etc. This calls for increased efforts at both the national and international levels to strengthen labour inspection through sound strategies and policy tools.

70. The functions assigned to the labour inspectorate by the instruments all share the same objective: enforcement and improvement of the legislation on legal provisions relating to conditions of work and the protection of workers while engaged in their work. In addition to their inspection function, they have other tasks with the same ultimate aim: to supply technical information and advice, and to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions. Any further duties which may be entrusted to labour inspectors must not be such as to interfere with the discharge of their primary duties with the necessary authority and impartiality.

A. Functions in the event of collective labour disputes

71. Among the duties sometimes assigned to labour inspectors in addition to inspection related to conditions of work and protection of workers while engaged in their work, one of the most controversial tasks is the settlement of collective labour disputes. The labour inspectorate has an important role in conciliation during collective labour disputes in the

⁴⁶ Section 180 of the Labour Code.

following States: *Algeria, Burundi, Cameroon,*⁴⁷ *Central African Republic, Chad, Djibouti, Guinea,*⁴⁸ *Madagascar, Mali and Morocco,* as well as most Latin American countries. In Colombia, for example, the Committee has observed that inspectors' conciliation activities in labour disputes far outweighed their inspection visits. In *Bolivia,*⁴⁹ *Ecuador,*⁵⁰ *El Salvador,*⁵¹ *Japan, Kenya,*⁵² *Mauritius* and the *Bolivarian Republic of Venezuela*⁵³ inspectors are also required to intervene in disputes as mediators or conciliators.

72. The Committee recalls the importance of avoiding overburdening inspectorates with tasks, which by their nature may in certain countries be understood as incompatible with their primary function of enforcing legal provisions. It observes that there are countries in which conciliation is regarded as a natural aspect of the function of labour inspector because, as public officials closest to the social partners, and because of their qualities of independence and impartiality foreseen in Article 6 of Convention No. 81, labour inspectors are considered to be in the best position to understand conflicts between workers and their employers. However, Recommendation No. 81 provides that "the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes".⁵⁴ Accordingly, in many countries, the roles of conciliation and enforcement are separated for two reasons. Firstly because in those countries the nature and role of labour inspection are such that conciliation of labour disputes unrelated to a breach of the law is not effective. Secondly, the time and energy that inspectors spend on seeking solutions to collective labour disputes is often at the expense of their primary duties.⁵⁵

73. In countries where occupational safety and health aspects of working conditions are traditionally the main concern of the labour inspectorate, labour relations fall within the remit of bodies set up for the purpose.⁵⁶

74. Assigning conciliation and mediation in collective labour disputes to a specialized body or officials enables labour inspectors to carry out their supervisory function more consistently. This should result in better enforcement of the legislation and hence a lower

⁴⁷ Sections 158 and 160 of the Labour Code.

⁴⁸ Sections 331 and 358 of the Labour Code. However, the Government announced its intention of taking steps to ensure that labour inspectors are released from the duty of conciliation during collective labour disputes.

⁴⁹ Sections 107 and 110 of the Presidential Decree of 24 May 1939 to promulgate the General Labour Act.

⁵⁰ Section 477 of the Labour Code.

⁵¹ Section 22(d) of Decree No. 682 of 11 Apr. 1996 respecting the organization and functions of the labour and social welfare sector.

⁵² Although legislation only assigns this role to labour inspectors in the event of individual disputes (section 40(2)(a) of the Employment Act, as amended in 1977), they also perform it in collective disputes in practice, according to the Government's 2001 report on the application of Convention No. 81.

⁵³ Sections 478 and 480 of the Organic Labour Act.

⁵⁴ Recommendation No. 133 provides that, where no special bodies for this purpose exist in agriculture, labour inspectors in agriculture may be called upon as a temporary measure to act as conciliators, yet measures should be taken with a view to relieving labour inspectors progressively of such functions so that they are able to devote themselves to a greater extent to the actual inspection of undertakings (Paragraph 3(2) and (3) of the Recommendation).

⁵⁵ According to the Latin American Confederation of Labour Inspectors (CIIT), inspectors' mediation tasks constitute an additional obstacle to the performance of their inspection duties.

⁵⁶ This is the case, inter alia, in *Denmark, Germany* and the *United Kingdom*, as well as in *Mali*, where an Arbitration Council under section L.219 of the Labour Code should be responsible for the conciliation procedure.

incidence of labour disputes. In Jordan, for example, conciliation is conducted by labour ministry officials appointed for the purpose.⁵⁷ In *Lesotho*, the existence of a specialized body has not prevented the labour inspectorate from maintaining its conciliation role in practice. In *Rwanda*⁵⁸ and *Zimbabwe*,⁵⁹ this task is now within the remit of the labour jurisdiction. A similar measure was announced by the Government of *Swaziland* and was taken recently in *Honduras* at the regional level (Tegucigalpa and San Pedro de Sula).

B. Control of illegal employment

75. Many countries assign the labour inspectorate the task of supervising the legality of employment and prosecuting violations, including both clandestine work and migrant workers in an irregular situation.⁶⁰

76. The labour inspection systems established in accordance with the instruments should perform the labour inspection functions laid down in them with the main objective of enforcing the legal provisions relating to conditions of work and the protection of workers and, where appropriate, their living conditions and those of their families. For this purpose, Article 12, paragraph 1, subparagraph (c)(ii), of Convention No. 81 and Article 16, paragraph 1, subparagraph (c)(ii), of Convention No. 129 provide that the books, registers or other documents that labour inspectors must be empowered to require during inspections are those the keeping of which is prescribed by laws or regulations relating to conditions of work – and of life, in the case of agricultural enterprises. It is the labour inspectorate that is responsible for verifying whether the conditions in which the contract of employment is concluded and fulfilled comply with the applicable provisions, in particular in the case of vulnerable workers such as young persons or people with certain disabilities.

77. Concerning clandestine or illegal employment, it should be pointed out that neither Convention No. 81 nor Convention No. 129 contain any provision suggesting that any worker be excluded from the protection afforded by labour inspection on account of their irregular employment status. On the contrary, it is clear from Article 4 of Convention No. 129 that the system of labour inspection in agriculture must apply to all employees or apprentices, however they may be remunerated and whatever the type, form or duration of their contract. During the preparatory work for the adoption of this provision, most of the member States that responded considered that, given the traditionally informal nature of the employment relationship in agricultural enterprises in many countries, the existence of a wage relationship with the operator should be the determining factor in defining the workers covered.⁶¹

78. Inspections of clandestine work or illegal employment, which are increasingly closely linked to irregular migration, are carried out in many countries through a partnership between the labour inspectorate and other public administration bodies (such as internal and border police, customs, social insurance bodies and tax services), each in

⁵⁷ Section 120 of the Labour Code.

⁵⁸ Under section 183 of the Labour Code, collective labour disputes must be referred to a joint council tasked with seeking conciliation between the parties, failing which the dispute is referred to the competent jurisdiction.

⁵⁹ Labour Relations Amendment Act, 2002 (No. 17 of 2002).

⁶⁰ For example, *Belgium, Italy, Kuwait, Saudi Arabia, Spain* and the *United Arab Emirates*.

⁶¹ ILO: *Labour inspection in agriculture*, Report V(2), ILC, 52nd Session, Geneva, 1968. This view was particularly clearly expressed, for example, by the Governments of *Canada, Greece, Mauritania, New Zealand, Switzerland, United Republic of Tanzania* and the *United Kingdom*. No views were expressed suggesting that workers be excluded on account of their irregular status.

pursuit of its own objectives.⁶² In some countries labour inspectors are assigned a major role in this area, in view of their special knowledge of the world of work and free access to workplaces, as may be seen from the annual activity reports of the labour inspection authorities received by the International Labour Office. The Committee recalls that the primary duty of labour inspectors is to protect workers and not to enforce immigration law. In some cases the Committee has noted that a large proportion of inspection activities are spent on verifying the legality of the immigration status. Since the human and other resources available to labour inspectorates are not unlimited, this would appear to entail a proportionate decrease in inspection of conditions of work. The Committee would like to draw the attention of the governments of the countries concerned to the need to ensure, in accordance with Article 3, paragraph 2, of Convention No. 81 and Article 6, paragraph 3, of Convention No. 129, that additional duties that are not aimed at securing enforcement of the legal provisions relating to conditions of work and the protection of workers are assigned to labour inspectors only in so far as they do not interfere with their primary duties. It has welcomed the initiative of certain governments to relieve the inspectorate of the task of policing illegal employment and transfer it to another body.⁶³ Illegal employment, “clandestine work” or “illegal employment of foreign labour” is on the increase in many industrialized countries. Efforts to control the use of migrant workers in an irregular situation require the mobilization of considerable resources in terms of staff, time and material resources, which inspectorates can only provide to the detriment of their primary duties. With the exception of a few countries, only the employer is held accountable for illegal employment as such, with the workers involved in principle being seen as victims. However, where the workers concerned are foreigners residing illegally in the country, they are doubly penalized in that, in addition to losing their job they face the threat of expulsion, if not actual expulsion. Nonetheless, the fact that labour inspection in general has the power to enter establishments without prior authorization allows it more easily than other institutions to put an end to abusive working conditions of which foreign workers in an irregular situation are often the victim, and to ensure that workers benefit from recognized rights. In these circumstances, the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of labour inspection. This objective can only be met if the workers covered are convinced that the primary task of the inspectorate is to enforce the legal provisions relating to conditions of work and protection of workers.

C. Functions related to the exercise of freedom of association and the right to collective bargaining

79. Labour inspection officials often bear responsibilities in the field of industrial relations, relating to the exercise of trade union rights and protection of trade union members. One such task is the registration of trade unions, generally accompanied by verification of the legality of their by-laws.⁶⁴

80. In some countries, the role assigned to labour inspectors in the field of industrial relations tends to take the form of close supervision of the activities of trade unions and employers’ organizations to ensure that they do not exceed the limits laid down by legal

⁶² For example, in *Belgium, France, Italy, Luxembourg, Portugal and Spain*.

⁶³ For example, in *Austria*.

⁶⁴ This is the case, for example, in *El Salvador, Ghana, Honduras, Niger, Paraguay and the Bolivarian Republic of Venezuela*.

provisions, their own internal regulations and their by-laws. The Committee can only express its reservations when excessive use is made of such supervision to the extent that it takes the form of acts of interference in these organizations' legitimate activities. It recalls that the labour inspectorate should only act in exceptional cases such as offences or violations of the law denounced by a significant number of members. In this regard, the Committee noted with satisfaction the repeal of certain provisions of Colombian legislation authorizing labour inspectors to interfere in trade unions' internal affairs.⁶⁵

81. In *Honduras*,⁶⁶ labour inspectors may contribute to the process of revising collective agreements; they register and supervise such agreements in *Bolivia*,⁶⁷ *Ecuador*,⁶⁸ *El Salvador*,⁶⁹ *Ghana*,⁷⁰ *Paraguay*⁷¹ and the *Bolivarian Republic of Venezuela*.⁷² In *Brazil*, in contrast, a recent Ministerial Ordinance confirmed that the labour inspection could not revise the provisions of collective agreements registered by the Labour Ministry.⁷³ In *Italy*, a 1990 Act vested labour inspectors with responsibility for supervising votes that may be held in the event of a controversy on the exercise of the right to strike.⁷⁴

D. Child labour

82. One hundred and fifty-seven States have ratified the Worst Forms of Child Labour Convention, 1999 (No. 182). The Convention requires ratifying member States to take immediate and effective steps to prohibit and eliminate the worst forms of child labour. The measures include a number of penal prohibitions concerning child labour ranging from, for example, trafficking, forced labour, prostitution and pornography to hazardous work. The measures require States to prevent these forms of child labour and to investigate, prosecute and punish violations of the penal provisions.

83. It is quite evident from the nature of many of these offences (trafficking, prostitution, pornography and drugs, etc.) and from the nature and location of policing these offences (streets, airports, borders etc.) that the labour inspectorate is unsuited to be the principal monitoring and investigating agency in this respect. Indeed, in most countries these offences are primarily dealt with by policing and immigration agencies, which are more appropriate for the task. In some countries, however, the labour inspectorate has been nominated as the primary monitoring and enforcement agency to give effect to the requirements of the Convention. This is often due to the summary inclusion of penal prohibitions against the worst forms of child labour in the country's labour legislation rather than into its penal code or criminal law.

⁶⁵ The power of supervision of trade union activities entrusted to labour inspectors by section 41 of Legislative Decree No. 2351 of 1965 was abolished by section 20 of Act No. 584 of 13 June 2000 repealing and amending certain provisions of the Labour Code.

⁶⁶ Under section 614(V) of Decree No. 189 of 15 July 1959, as amended up to 1999, on the Labour Code.

⁶⁷ Section 18 of the Presidential Decree of 24 May 1939 to promulgate the General Labour Act.

⁶⁸ Section 229 of the Labour Code.

⁶⁹ Section 22(f) of Decree No. 682.

⁷⁰ Under section 102(3) of the Labour Act, 2003.

⁷¹ Section 9(12) of Decree No. 3286 of 4 March 1964.

⁷² Sections 171 and 425 of Decree No. 3235 to promulgate the Organic Labour Act.

⁷³ Ordinance of the Ministry of Labour, 5 April 2004.

⁷⁴ Section 14 of Act No. 146 of 1990.

84. Labour inspectors, however, continue to play an important role in the protection of the health, safety and welfare of children. Convention No. 182 requires member States to determine conditions, activities and workplaces that are hazardous for children, to identify the workplaces where these hazardous activities occur and to prohibit employment of children under such conditions and in such activities and workplaces. The labour inspector has a critical role in giving effect to these measures. It is important to note, however, that the Convention applies to all children, not only those in formal employment. Accordingly, it is important for labour inspectors to be given powers to monitor and investigate the position of all children doing hazardous work and engaged either directly or indirectly by persons who benefit from their work in order to protect their health, safety and morals. In doing so, labour inspectors should usually coordinate their activities with those of the appropriate agencies involved in children's welfare.

Chapter III

Preventive functions of labour inspection

I. Technical information and advice to employers and workers

85. If labour inspectors' interventions are to be effective, it is essential for employers and workers to be fully aware of the need to know and exercise their respective rights and obligations. Article 3, paragraph 1(b), of Convention No. 81 and Article 6, paragraph 1(b), of Convention No. 129 give the same importance to information and advice to employers and workers concerning the most effective means of complying with the legal provisions as to enforcement. These two functions are inextricably linked and represent the two key aspects of labour inspection.

86. Paragraph 14(1) of Recommendation No. 133 suggests that Members undertake or promote educational campaigns intended to inform the parties concerned, by all appropriate means, of the applicable legal provisions and the need to apply them strictly as well as the dangers to the life or health of persons working in agricultural undertakings and the most appropriate means of avoiding them. It further indicates in Paragraph 14(2) appropriate means of workers' education, which might include, in the light of national conditions:

- (a) use of the services of rural promoters or instructors;
- (b) distribution of posters, pamphlets, periodicals and newspapers;
- (c) organization of film shows, and radio and television broadcasts;
- (d) arrangements for exhibitions and practical demonstrations on hygiene and safety;
- (e) inclusion of hygiene and safety and other appropriate subjects in the teaching programmes of rural schools and agricultural schools;
- (f) organization of conferences for persons working in agriculture who are affected by the introduction of new working methods or of new materials or substances;
- (g) participation of agricultural labour inspectors in workers' education programmes; and
- (h) arrangements of lectures, debates, seminars and competitions with prizes.

87. The legislation in most countries assigns to labour inspectors the task of supplying technical information and advice to employers and workers ¹ and their respective

¹ For example, *Angola, Bolivia, Brazil, Chile, Comoros, Gabon, Ghana, Guinea, Mexico, Morocco, Mozambique, New Zealand, Niger, Peru* (where, under section 5 of Legislative Decree No. 910 of 16 March 2001 to promulgate the general Act on labour inspection and defence of the worker, inspectors must provide preventive technical guidance to employers and workers in the informal sector), *Russian Federation, Slovenia and Tunisia*.

organizations.² Consultations are offered on request, either in person in the labour inspectorate offices or by telephone, post or, increasingly often in many countries, by email or at the workplace, during inspections. The Government of one country has stated that, although labour inspectors only have the task of providing information to workers, they also provide it to employers in practice.³

88. The tripartite labour advisory councils set up at the national, regional or sectoral level in many countries are a particularly appropriate forum for labour inspectors to communicate information to employers' and workers' organizations.⁴ In *China (Macau Special Administrative Region)*⁵ and in the *Dominican Republic*,⁶ a special information service has been set up in the central labour inspection system.

89. In some countries, the legislation provides that information on the most frequent subjects of consultations be published.⁷ In an annual report, the central labour inspection authority of *Bulgaria* refers to the large number of user requests for information and recommends more active support for small enterprises through consultations and advice to help them find a rapid solution to their problems. In *France*, the annual report is a means for the labour inspectorate to communicate explanations and detailed information on the content and scope of new general legislation and the most effective ways of applying it. It also contains information on measures carried out by the labour inspectorate, sometimes with other institutions, following a serious accident (for example, the explosion of a chemical fertilizer plant).

90. The Committee has observed that the function of supplying information and advice is institutionalized to a large extent especially with regard to safety and health, as reflected in the considerable amount of information provided by many governments.

91. In *Cyprus*, the training centre of the labour inspection department conducts courses, seminars and conferences. Labour inspectors are reported to take part in training courses organized by local authorities and enterprises in *Viet Nam*. In *Mauritius*, workers and employers in all sectors of the economy can attend one-week sessions run by the training centre for occupational safety and health inspectors, during which they receive occupational safety and health documentation.

92. Information weeks are organized by the labour inspectorates in several countries. In *France*, *Lithuania* and *Romania*, they are held in cooperation with the European Agency for Safety and Health at Work. In *India*, they focus on port work and are run in cooperation with the trade unions. In 1999, the Government of *Viet Nam* introduced a provincial occupational safety and health week.

93. The World Day for Safety and Health at Work declared by the International Labour Office is observed in many countries (including *Bulgaria*, *Cuba*, *Morocco*, *Tunisia* and

² For example, *Algeria*, *Angola* (section 1, paras. 2(e) and 12, of Decree No. 9/95 of 21 April 1995 to promulgate regulations on general labour inspection), *Bolivia* (section 3(1) of Resolution No. 340/87 of the Minister of Labour and Employment Development), *Costa Rica* (section 9(b) of Decree No. 28578 of 3 February 2000, to promulgate Regulations concerning the organization of the labour inspection services).

³ In *Nicaragua* under section 11 of Decree No. 13-97 of 20 February 1997 to promulgate Regulations on labour inspectors.

⁴ For example, in *Costa Rica*, *Cyprus*, *Ethiopia*, *Indonesia*, *Mongolia* and *South Africa*.

⁵ Paragraph 4 of Legislative Decree No. 60/89/M of 18 September 1989 to regulate the activity of the Labour Inspection Department of the Labour and Employment Services Directorate.

⁶ Section 3(1) of Resolution No. 42/94 of 28 October 1994 of the State Secretary for Labour.

⁷ In *Honduras*, under section 611 of the Labour Code.

Ukraine) as an opportunity to raise awareness among employers, workers and the public. The Government of *Colombia* reports that the labour inspectorate has dedicated certain days to videoconferences and legal assistance.

94. In *Poland*, a safety campaign was held in the construction sector with the collaboration of the social partners⁸ covering topics such as the hazards involved in demolition work, as well as transport activities, the focus for small enterprises being on risk assessment for the prevention and/or elimination of risks. The Government indicates that agreements were concluded with other institutions and occupational organizations for the development of safe working conditions⁹ and 700 training courses were held by the labour inspectorate nationwide. A campaign specifically targeting rural workers was launched in 2004 on the subject of “Safety and health in agriculture – Safe farms”, during which documentation was distributed and courses and lectures held, as well as a competition for farmers on basic occupational safety and health rules. Competitions are held in other sectors to encourage and reward similar efforts in this area.¹⁰ This is also the case in *Ukraine*, for instance, where a competition for Employer of the Year took place in 2002, and in *Indonesia*, where prizes are awarded during Occupational Health and Safety Month by the National Health and Safety Council to enterprises meeting the “zero accident” target and having an efficient occupational safety and health system in place.

95. Labour inspectorates are increasingly using the possibilities offered by the Internet to provide technical information and advice on the content of occupational safety and health legislation and the most effective means of complying with it. This has been mentioned by the governments of a number of countries, including *Fiji*, *France*, *Poland*, *Romania*, *Ukraine*, *United Kingdom* and *Viet Nam*.

96. Other media, such as the press, radio and television, are also widely used as a means of communicating information from the labour inspectorate. The governments of the following countries provided detailed information on the means used for this purpose: *Benin*, *China*, *Cuba*, *El Salvador*, *France*,¹¹ *Mauritius*,¹² *Romania*,¹³ *Rwanda*¹⁴ and the *United Kingdom*.¹⁵

⁸ The Union of Employers in Construction, the Polish Association of Roofing Contractors, the Confederation of Construction and Real Estate, the Trade Union “Construction Workers” and the Independent Self-governing Trade Union “Solidarność”.

⁹ In 2003 with the Polish Craft Association and in 2004 with the Polish Federation of Private Employers. The parties to the agreements undertake to disseminate and raise awareness of occupational safety and health laws and regulations through courses and technical and scientific conferences, as well as campaigns and other prevention measures.

¹⁰ In 2004, during the 11th round of a competition entitled “Safe employer – work organizer”, prizes were awarded to 22 out of some 300 participating enterprises.

¹¹ Radio campaign in the spring of 2005 for safety and prevention in the construction sector.

¹² The Government reports that presentations at the training sessions run by the health and safety inspector training centre are broadcast over radio and television.

¹³ The local press published 3,077 articles in 2003 and 3,276 in 2004 concerning the information activities of the labour inspectorate.

¹⁴ The Government stated that the week leading up to 1 May was declared “Labour Week”, during which programmes on labour legislation were broadcast on radio and television.

¹⁵ The Government reports that 2,300 articles on occupational safety and health were published between October and December 2004. For 2005, it announced three nationwide press and broadcast campaigns on health and safety in commerce, musculoskeletal disorders and risks of slips and falls at the workplace.

97. In *Bulgaria*, a cooperation project supported by Denmark to raise employers' and workers' awareness in the construction sector led to the development of advocacy campaigns, including television and radio broadcasts.¹⁶ In *El Salvador*, the labour inspectorate carried out a campaign under the "Safe Workplace Promotion" project sponsored by the Pan American Health Organization, as well as the "Occupational Safety and Health Pilot Project" supported by the Inter-American Development Bank and the Permanent Secretariat of the General Treaty for Central American Economic Integration (SIECA), through 408 occupational safety and health committees.

98. In developing countries with severe economic difficulties, labour inspectors who are unable to visit enterprises due to the lack of resources and transport facilities are unable to provide employers and workers with information and advice likely to promote the effective application of legal provisions relating to conditions of work and the protection of workers.¹⁷

99. Much of the technical advice and information being provided worldwide relates to occupational safety and health. However, while it is important to make a special effort to carry out promotional campaigns to promote compliance with legal provisions on occupational safety and health, this approach should also include other important aspects of conditions of work that have an impact, such as hours of work, leave, protection of wages, prohibition of discrimination, equality of remuneration for men and women for work of equal value and equality of treatment and protection of vulnerable categories of workers.

II. Specific mandate of the labour inspectorate in the area of occupational safety and health

A. Preventive control of establishments, activities, production procedures and use of new products and substances

100. The idea of entrusting the labour inspectorate with the task of preventive control with a view to ensuring workers' safety and health when a new establishment is set up, a new activity launched, or when new manufacturing processes, substances or products are used, gave rise to much fruitful discussion during the preparatory work on the 1947 labour inspection instruments. It was suggested at the time that such control should be exercised in relation to plans of new establishments, plant and production processes.¹⁸ That proposal was not adopted in a Convention because of the likely difficulties in applying such a provision referred to by a number of Members. It was, however, incorporated in Part I of Recommendation No. 81. According to that instrument, any person who proposes to open an industrial or commercial establishment, or to take over such an establishment, or to commence in such an establishment the carrying on of a class of activity specified by a competent authority as materially affecting the application of legal provisions enforceable by labour inspectors, should be required to give notice in advance to the competent labour inspectorate either directly or through another

¹⁶ National campaign entitled "Good health = Good business".

¹⁷ In *Mali*, for example, the Government states that technical information and advice are supplied to employers and workers during inspection visits, conciliation hearings and meetings with employers and workers. However, this activity is constrained by the lack of transportation and other resources of the inspectorates.

¹⁸ See the questionnaire (points 23-25) in ILO: *The organisation of labour inspection in industrial and commercial undertakings*, Report IV, ILC, 30th Session, Geneva, 1947.

designated authority (Paragraph 1). Members are invited to make arrangements under which plans for new establishments, plant, or processes of production may be submitted to the appropriate labour inspection service for an opinion as to whether the plans would render difficult or impossible compliance with the laws and regulations concerning industrial health and safety or would be likely to constitute a threat to the health or safety of the workers (Paragraph 2). To that end, the implementation of plans for new establishments, plant and processes of production deemed under national laws or regulations to be dangerous or unhealthy should be conditional upon the carrying out of any alterations ordered by the inspectorate for the purpose of securing the health and safety of the workers (Paragraph 3). In the light of some 20 years of experience in implementing the 1947 labour inspection instruments, it was considered necessary to include in the Labour Inspection (Agriculture) Convention, 1969 (No. 129) a provision according to which labour inspection services in agriculture must be involved 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 (Article 17).

101. Although the Committee has only limited information on the application in law and in practice of Recommendation No. 81 as regards prior preventive control, it notes that relevant provisions have been adopted in many countries.¹⁹ In its previous General Survey, the Committee noted, for example, the measures adopted by *Mali* to that end in the Labour Code which was then in the process of being drafted and has since been enacted.²⁰ Preventive control is also exercised by a number of countries²¹ through the implementation of the ILO *Guidelines on occupational safety and health management systems* (ILO 2001).

102. Certain governments have supplied information on the role of labour inspectors in the area of preventive control within the meaning of these instruments. The manner in which this control is carried out varies from one country to another and from one establishment to another. For example, in the *United Kingdom*, the occupational safety and health inspection authority is responsible for preventive inspections of new establishments, plant and processes; in the agricultural sector, this prior inspection is based on a global approach which ensures cooperation between the competent inspection services and other bodies concerned, including employers at the local level; in *Costa Rica*, new establishments are inspected in the same way as those already operating; in *Cyprus*, any new establishment, enterprise, plant, or production process, and any building intended for use in some form of economic activity, must be registered with the labour inspectorate in order to obtain a certificate of compliance before becoming operational; in *Slovenia*, due notification together with a safety plan and a file containing any relevant information regarding each phase of the project must be sent to the

¹⁹ For example, in *Denmark* (sections 4 and 25 and Annex 2 of Notice No. 867 of 11 October 1994); *Estonia* (section 12 of the Occupational Health and Safety Act of 16 June 1999); *Japan* (sections 37, 88(8) and 90 of the Industrial Safety and Health Law No. 57 of 8 June 1972); *New Zealand* (section 82 of the Hazardous Substances and New Organisms Act of 1996); *Nigeria* (section 26(3) of the Factories Act No. 16 of 1987); *Russian Federation* (section 215 of the Labour Code); *Sweden* (Chapter 4, section 2, of the Work Environment Act No. 1160 of 1977).

²⁰ According to section D.170-48 of the Decree No. 96-178/P-RM of 13 June 1996 implementing various provisions of the Labour Code, plans for new establishments, plant and production processes must be submitted to the labour inspection services for approval in order to ensure that they are consistent with safety and health legislation. Execution of such plans is conditional on any modifications which may be required by the labour inspectorate.

²¹ *China, Finland, Germany, Ireland, Japan.*

competent inspectorate.²² In *Croatia*, permits for the construction of facilities meant for work are issued subject to confirmation by the labour inspectorate that they comply with occupational safety and health legislation.²³ In *Mauritius*, the labour inspectorate is consulted by local authorities when the latter wish to issue operating licences for new plant and new methods of handling or processing products. In *Gabon*, employers using production processes that pose special risks or could cause occupational disease are obliged by law to make an explanatory statement beforehand for the labour inspector, who carries out investigations to ensure that all necessary precautions have been taken.²⁴ In *Poland*, prior preventive control is carried out by the labour inspectorate with regard to building plans or alterations within limits defined by labour law.

Caribbean subregional workshop on labour inspection in agriculture

In September 2005, the ILO held a one-week subregional training workshop on labour inspection in agriculture, which brought together 31 participants from 15 Caribbean countries. The central focus of the training was to strengthen labour inspectors' capacity to carry out inspections of agricultural undertakings, particularly in the area of safety and health. Participants gained familiarity with ILO Conventions Nos. 81, 129 and 184, learned about new trends in labour inspection and followed in-depth sessions on recognizing the principal health and safety risks in agriculture, notably those posed by agricultural machinery and transport equipment, the storage, transport and use of pesticides and improper manual handling. Participants rated most highly the training they received on safe work practices in the use of pesticides as well as a practical methodology presented for carrying out on-site risk assessments. They were able to put their new-found knowledge to work immediately in the course of field visits to a sugar plantation and refinery, a rice farm and a rice mill, and in the thoughtful group discussions that followed. The week-long training culminated in the development of specific proposals for improving the effectiveness of inspection services within current resource envelopes.

103. In *Portugal*, the issuing of operating or alteration permits for plant is conditional on the approval of the labour inspectorate only in industry and commerce.²⁵ The Government of *Mongolia* states that preventive control in agriculture is carried out through labour inspections with regard to new plant, technology and substances. This is also provided for in law, in agriculture and in other sectors of activity, in *Ethiopia*.²⁶

104. The governments of certain countries indicate that their labour legislation does not give the labour inspectorate a role in preventive control as provided for in Recommendation No. 81²⁷ or Convention No. 129.²⁸ Other governments indicate that this function is entrusted to other bodies.²⁹ In some countries, the labour inspectorate makes a request for such a role to the competent body.³⁰ The Committee invites governments to establish relationships with labour inspectorates and government agencies in this regard.

²² Sections 5 and 7 of Ur.I.Rs Order No. 3/02 on safety and health at work at temporary or mobile construction sites.

²³ Sections 93 to 96 of the Occupational Safety and Health Act of 1996.

²⁴ Section 199 of the Labour Code.

²⁵ Section 10(1)(g) of Legislative Decree No. 102 of 2 June 2000.

²⁶ Section 177(7) of Proclamation No. 377/2003.

²⁷ *Botswana, Morocco, Netherlands.*

²⁸ *Benin, Czech Republic, Qatar.*

²⁹ In *Oman*, preventive control of establishments is the responsibility of the Ministry of Commerce and Industry. In *Madagascar*, this is the responsibility of an inter-ministerial commission.

³⁰ The Government of *Viet Nam* has indicated that, due to the growing number of new establishments subject to inspection, the labour inspectorate has been unable to carry out its duties in this respect.

B. Monitoring of safety and health at work

(a) *Powers of injunction of labour inspectors*

105. Monitoring of safety and health conditions at work is one of the tasks most generally entrusted to labour inspectors throughout the world. While the task of preventive control of establishments, plant, procedures, substances and their handling, is not always entrusted to labour inspectors, almost all national legislations give them powers aimed at eliminating or at least reducing occupational risks affecting safety and health in workplaces liable to inspection. The nature and scope of those powers, however, vary from one country to another, as do the means available for exercising them.

106. Under the terms of Article 13 of Convention No. 81, labour inspectors must be empowered to take steps with a view to remedying defects observed in plant, layout or working methods which they may have reasonable cause to believe constitute a threat to the health or safety of the workers. In agricultural enterprises, such measures must also, according to Article 18 of Convention No. 129, cover the use of dangerous materials or substances.

107. The hazard may, but does not have to, arise as a result of non-compliance with the law. If the safety and health of workers is under imminent threat, it serves no purpose to investigate the existence of a contravention, the priority being to eliminate the hazard. In such cases, labour inspectors prescribe measures which may include suspension of operations or closure of an establishment, depending on the seriousness of the hazard. The purpose of giving direct or indirect powers of injunction to labour inspectors is above all to protect workers against dangers to their safety and health. Nevertheless, legal action against the employer may be started or recommended at the same time or subsequently by the labour inspector, in accordance with Articles 17 and 18 of Convention No. 81 and Articles 22 to 24 of Convention No. 129, if it is shown that the defects which have given rise to the hazard have arisen as a result of an infringement of the relevant legislation. This distinction between the objectives of protecting workers and of prosecuting contraventions of safety and health laws and regulations is crucial, and is observed in most national legislations.

108. The instruments under examination do not prescribe the form in which injunctions must be notified to the employer. This varies from one country to another, and also depends on the particular circumstances of the case. In most cases, inspectors are required to provide written notification, although oral notification is permitted in emergencies. In order to take effect, and to open the way to any administrative or judicial proceedings, an orally notified injunction must normally be confirmed in writing.³¹ Approval or confirmation by the inspector's hierarchical superior is required by legislation in some countries. In the case of injunctions issued in response to an imminent danger to workers' safety and health, only a short time is normally allowed for obtaining confirmation by a higher or other competent authority.

109. Whether the formal notice is issued with a view to enforcing the law or to eliminating an imminent danger, the legislation of a number of countries requires inspectors to indicate the reason(s) for the notice and to indicate the measures that must be taken to eliminate the hazards. Such is the case, for example, in *New Zealand*³² and

³¹ For example, in *Australia* (Queensland), under section 117 of the 1995 Workplace Health and Safety Act; *Bulgaria*, under section 405 of the Labour Code; *Netherlands*, in accordance with section 28A of the Working Conditions Act of 1998; and *Slovenia*, under section 15 of the Labour Inspection Act of 20 June 1994.

³² Section 39 of the Health and Safety in Employment Act of 2000.

Malawi.³³ Such a requirement is beneficial in two ways: on the one hand, implementing the notice allows the competent authority to assess the appropriateness of the prescribed measure on a precise basis; on the other, since the measures prescribed are specified, it should be easier to carry them out, and the labour inspector bears responsibility for his or her errors.

(i) Formal notice with a time limit

110. When an inspection is carried out at a workplace, be it at the initiative of the inspection service or in response to a complaint, it is normally the responsibility of labour inspectors, either themselves or on the basis of authorized expert advice, to verify that legal provisions intended to guarantee safety and health are strictly observed. Where they are not, Article 13, paragraph 2(a), of Convention No. 81 stipulates that the inspector must be authorized to prescribe such alterations to the installation or plant, to be carried out within a specified time limit, as may be necessary to secure compliance. In accordance with Article 18, paragraph 2(a) of Convention No. 129, in agricultural undertakings such measures must also cover premises, tools, equipment and machines. The Committee notes with interest that the scope of inspection has been extended in many national legislations to cover all the factors that could pose a threat to safety and health in establishments liable to labour inspection where hazardous work is carried out. Under the terms of Conventions Nos. 81 and 129, in cases where defects do not pose an imminent danger, labour inspectors may grant a period of grace within which the prescribed modifications must be made. In most countries bound by the terms of the Conventions, appropriate provisions have been enacted. This is the case in *Angola, Argentina, Australia, Cuba, Ghana, India, Kenya, Peru, Bolivarian Republic of Venezuela* and *Zimbabwe*. The notice deadline is sometimes fixed by legislation. It is, however, more often left to the labour inspector to determine in the light of individual circumstances and the complexity of the measures proposed. In some cases, there is provision for extending the deadline.³⁴ A minimum period is determined by legislation in some countries.³⁵

111. In certain countries, such as *India*³⁶ and the *Russian Federation*,³⁷ the mere existence of a hazard itself is deemed to constitute grounds for measures to be enforced

³³ According to sections 77 and 78 of the Safety and Health Act No. 21 of 1997, the labour inspector may issue notice to any person responsible for carrying out work likely to pose a threat to health and safety to the effect that the work must cease until the hazard is eliminated. The notice has immediate effect in the case of an imminent danger. In other cases, a deadline is fixed by the labour inspector. In all cases, the notice contains recommendations on the measures that must be taken to rectify the situation to which the injunction relates.

³⁴ For example, in *Bulgaria*, according to sections 77 and 78.4 of the Occupational Safety, Health and Welfare Act No. 21 of 1977, the notice is subject to a deadline which may be extended if necessary. In *South Africa*, according to section 30 of the Occupational Health and Safety Act of 1993, if there is a violation of a legal safety and health provision, the employer is required to take corrective measures within a period determined by the labour inspector, which may be extended if necessary. In *Jordan*, according to section 5(c) of the Labour Inspection Regulations No. 56 of 5 October 1996, the labour inspector is authorized to instruct the employer to take corrective measures with regard to conditions of work, planning and work methods where these threaten workers' safety and health, and to make the necessary changes to plant, machinery, structures or methods within a period which the inspector may deem appropriate.

³⁵ For example, in *Guinea*, under section 173 of the Labour Code, if the danger is not imminent, the deadline set by the labour inspector for bringing about compliance may not be less than four days, subject to any appeal in law.

³⁶ Section 5(1) of the Dock Workers (Safety, Health and Welfare) Act No. 54 of 7 December 1986.

³⁷ According to section 20(3) of the federal Act of 2 July 1999 establishing fundamental principles of occupational health, state labour inspectors are empowered to suspend operations at an undertaking, unit, or

with immediate effect, irrespective of whether the hazard is imminent or less immediate. In *Denmark*, such measures are prescribed both in connection with ensuring compliance with occupational safety and health legislation and in order to prevent imminent danger.³⁸

(ii) Formal notice with immediate effect
in the case of imminent danger

112. Under the terms of Article 13, paragraph 2(b) of Convention No. 81, and of Article 18, paragraph 2(b), of Convention No. 129, labour inspectors must be authorized to order measures with immediate executory force in order to protect workers in the event of imminent danger to health or safety, subject to any judicial or administrative appeal which might be provided for under national legislation. Measures may be ordered by labour inspectors, subject to any judicial or administrative appeals, to be implemented within a set period or, in the case of imminent danger, with immediate effect, even if no violation of legislation has been ascertained. Convention No. 129 provides that those measures may go as far as halting work.

113. In practice, measures requiring immediate execution in different countries vary widely and have varying degrees of impact on the activities of the establishments concerned. They can concern premises, plant, equipment and substances used, work methods, and individual or collective protective equipment. In *Jordan*, they also concern technical and scientific aspects of any chemical compounds and products used and industrial processes.³⁹ The measures prescribed by or on the initiative of labour inspectors are sometimes framed in general terms.⁴⁰ The partial or total suspension of operations, prohibition of the occupation of premises or of a part of them, or of the use of products or substances, of sale of products, and suspension of work of certain categories of vulnerable workers, are measures often provided for in national legislations. For example, in *Bolivia*,⁴¹ *Cuba*,⁴² *Hungary*,⁴³ *Mali*,⁴⁴ *Mongolia*⁴⁵ and *Slovakia*,⁴⁶ the labour inspectorate's power of injunction can go as far as ordering a partial or total cessation of work until satisfactory safety and health conditions are restored.

production facility where there are found to be infringements of safety and health laws and regulations, until those infringements have been rectified.

³⁸ According to section 77 of the Working Environment Act.

³⁹ Section 84 of the Labour Code.

⁴⁰ For example, in *Morocco*, under section 542 of the Labour Code the inspector may, in the event of imminent danger to employees' health and safety, give notice to the employer to take all necessary steps immediately; in *Guatemala*, section 281(d) of the Labour Code contains a similar provision. In *Côte d'Ivoire*, according to section 91(4) of the Labour Code, the labour inspector and the relevant social laws may, in an emergency and subject to judicial or administrative appeal, prescribe or cause to have prescribed measures with immediate effect such as to avert an imminent danger to workers' safety and health. In *Lesotho*, according to section 14(1)(e)(vi) of the Labour Code, measures may be prescribed to remedy any fault likely to be detrimental to the health, safety or welfare of workers.

⁴¹ Section 26(3) of Legislative Decree No. 16998 of 2 August 1979 promulgating the General Occupational Health, Safety and Welfare Act.

⁴² Section 303 of the Labour Code.

⁴³ Section 84(f) of the Occupational Safety and Health Act, No. XCIII of 5 October 1993.

⁴⁴ According to section 175 of the Labour Code, in the event of imminent danger irrespective of whether or not legislation has been infringed.

⁴⁵ Section 99 of the 1999 Work Act and section 10.9.7 of the State Labour Inspection Act.

⁴⁶ Section I, para. 13(3) of the Labour Inspection Act of 8 February 2000.

114. Provisions governing the form, contents and effects of notices in cases of imminent danger vary from one country to another.⁴⁷ In certain countries, even when there is an imminent danger, the injunction has executory force only if it is confirmed by the hierarchical superior or emergency judge. Fortunately, the deadlines allowed for doing this are generally tight. Available legislation does not, however, always indicate what happens in the case of notices where those deadlines are not respected. On the other hand, it does often stipulate the non-suspensive effect of judicial appeals lodged by employers.⁴⁸ In *Mozambique*, labour inspectors are required within 24 hours to submit any injunction against an employer to bring safety and health conditions into line with legislation to their superior for confirmation.⁴⁹ In *Angola*, the inspector is required immediately to inform his or her immediate superior of the measure prescribed.⁵⁰ In *Ecuador*, where the inspector has no direct power of injunction, suspension of work or closure of an establishment is a matter for a higher authority.⁵¹ In some countries such as *Jordan*,⁵² *Philippines*⁵³ and *Yemen*,⁵⁴ only the minister of labour may order the partial or total closure of an establishment. In some countries, such as in *Denmark*, *Finland*, *Norway* and *Sweden*, the workers' safety representatives may stop the work process in case of imminent danger. If different views exist on the necessity of such stoppages they may need to be confirmed by the labour inspector or provincial inspectorate concerned. The Occupational Safety and Health Convention, 1981 (No. 155), allows workers to remove themselves from imminent and serious danger to life and health. Labour inspectors are often called to confirm the level of danger and to provide guidance on preventive measures.

⁴⁷ For example, in *South Africa*, according to section 30 of the Occupational Health and Safety Act of 1993, the inspector may notify the employer in writing that hazardous operations, as well as exposure of workers deemed to be vulnerable to certain substances, materials or conditions of work, are prohibited. The inspector may also physically bar access to the establishment in respect of which an injunction to suspend work has been issued. In *Australia* (Queensland), according to section 117 of the Workplace Health and Safety Act of 1995, in the event of any contravention of safety and health provisions, the inspector is empowered to issue a compliance notice specifying the measures to be taken and the applicable deadline. According to section 118, in the event of an imminent danger to safety or health, the inspector may orally instruct the employer or operator to stop using a particular product or plant or to cease operations, subject to written confirmation. In *Japan*, according to section 357 of the Labour Code, labour inspectors are empowered to order suspension of activities where there is an infringement of the laws or regulations concerning protection of workers' lives and health. According to section 361, a judicial appeal may be lodged against a labour inspector's injunction. In the *Russian Federation*, according to section 357 of the Labour Code, labour inspectors are empowered to order suspension of activities where there is an infringement of the laws or regulations concerning protection of workers' lives and health. According to section 361, a judicial appeal may be lodged against a labour inspector's injunction. In the *Bolivarian Republic of Venezuela*, according to section 259(2) of Decree No. 3235 of 20 January 1999 promulgating the Organic Labour Law, an order to suspend operations must be submitted immediately to the chief of the inspection unit, who may cancel it if in his or her view it is not justified.

⁴⁸ For example, in *Bulgaria*, under section 405 of the Labour Code; in *Fiji*, under section 51 of the Health and Safety Act No. 4 of 1996; in *Slovenia*, according to section 15 of Act No. 20 of 20 June 1994 on labour inspection.

⁴⁹ Section 208 of the 1998 Labour Code.

⁵⁰ Section 13(2) and (3) of Council of Ministers Decree No. 9/95 of 21 April 1995.

⁵¹ According to section 443 of the Labour Code, the decision is a matter for the head of the competent ministerial department.

⁵² Section 84 of the Labour Code.

⁵³ Section 128(c) of the Labour Code.

⁵⁴ Section 126(b) of the Labour Code.

115. In *France*,⁵⁵ *Gabon*⁵⁶ and *Tunisia*,⁵⁷ in cases where the partial or total suspension of work is necessary in order to rectify a situation of danger to health and safety, a judge's ruling is needed for a labour inspectorate injunction to take effect.

116. In *Fiji*, the suspension of work ends only when the inspector issues a certificate stating that the hazard has been eliminated or cannot reoccur.⁵⁸ Except where the inspector's injunction concerns only secondary corrective measures, a judicial appeal against an order to stop activity has no suspensive effect.⁵⁹

117. In the context of enforcing Conventions Nos. 81 and 129, the Committee has been anxious that measures should be taken with a view to introducing into legislation provisions that will empower labour inspectors to prescribe measures with immediate executory force in cases of imminent danger to workers' safety and health. The existence of such provisions is not, however, in itself sufficient to ensure implementation in practice. In many developing countries, the paucity of available resources prevents labour inspectors from exercising their statutory powers of injunction in an effective and tangible manner. Trade unions have drawn attention to problems in this regard. The Committee takes this opportunity once again to draw the attention of Members to the importance which it attaches to the effective exercise by labour inspectors of the authority to order measures with immediate executory force in order to eliminate imminent dangers to workers' safety and health. Measures such as suspending work or the use or sale of products, closure of the establishment, or evacuation of premises, are intended principally to ensure protection of workers. Moreover, because of their impact on the activities and profits of an enterprise, they also have a deterrent effect which is bound to promote respect for principles of safety. These measures need to be accompanied by appeals procedures which do not suspend the injunction and which allow the competent authority to make a decision expeditiously.

(b) *The role of inspectors in cases of occupational accident and reporting of an incidence of occupational disease*

118. Under the terms of Article 14 of Convention No. 81 and Article 19, paragraph 1, of Convention No. 129, the labour inspectorate must be notified of industrial accidents and cases of occupational disease in such manner as may be prescribed by national laws or regulations. It is vital that formal mechanisms be put in place to provide the labour inspection with the data it needs to identify high-risk activities and the most vulnerable categories of workers and to carry out research into the causes of occupational accidents and diseases in establishments and enterprises liable to inspection. The Committee cannot emphasize too much the importance of the preventive mandate of the labour inspectorate, which is increasingly a major factor in the economic and social health of the community as a whole. The existence of a close link between the prevention of occupational risks and economic growth is widely accepted. The social cost of occupational accidents and diseases remains extremely high. Even where workers who fall victim to such accidents or diseases enjoy only limited social benefits or are not covered at all by any system of compensation, the economic and social consequences of

⁵⁵ Section L263-1 of the Labour Code.

⁵⁶ Section 226 of the Labour Code.

⁵⁷ Section 175 of the Labour Code.

⁵⁸ Section 47 of the Health and Safety Act No. 4 of 1996.

⁵⁹ Section 51 of the Occupational Health and Safety Act No. 4 of 1996.

death, of the various forms of incapacity, or of deteriorating conditions of work, are felt by the entire community.

(i) Extent of the obligation to notify the labour inspectorate

119. The flexibility of the aforementioned provisions means that there is considerable latitude as regard their implementation by member States. They require that labour inspectorates be informed of occupational accidents and cases of occupational disease, but leave it to national legislators to establish the specific means of doing so. In order to achieve optimal prevention, it would obviously be desirable to ensure that the dissemination of relevant data is as effective as possible and ensures that the labour inspectorate has access to accurate information on any factor which has compromised workers' safety and health when engaged in their work and on any specific occurrence. Law and practice nevertheless differ from one country to another. National definitions of occupational accidents and diseases also vary widely and are rarely consistent with the international definition recommended in the resolution on statistics of occupational injuries adopted in 1982 by the 13th International Conference of Labour Statisticians. Methods of collecting data and giving notification, as well as the scope and source of statistics, also vary from one country to another. Efforts should be made to establish, in all countries that do not have one, a system to ensure that the labour inspectorate has access to information on occupational accidents and incidents of occupational disease. Legal provisions that are in conformity are often not sufficient to ensure that practice is also in conformity. The Committee has had occasion to note that in many developing countries, provisions adopted in laws of general scope have only a limited effect in practice. Detailed regulations and precise instructions to all concerned – employers, workers, social and health insurance funds, police, and other bodies involved in dealing with occupational accidents and diseases – are essential for ensuring that the principles enshrined in law are actually put into practice. In addition, particular emphasis should be placed on the design of user-friendly forms which will make it easier to use the required data. The ILO in 1996 published a code of practice on the recording and notification of occupational accidents and diseases. That document emphasizes the effective use for prevention purposes of data collected, recorded and notified, with the aim of helping the competent authorities to develop appropriate systems and provide guidance on joint preventive action by employers and workers, governments, social security authorities and other institutions. The recommendations set out in the code are intended for anyone responsible for the reporting, recording and notification of occupational accidents and diseases. They represent basic requirements, and are not intended to replace accepted standards or laws and regulations adopted at the national level, nor are they intended to discourage the competent authorities from adopting higher standards. As the Preface of the code of practice recalls, the extent to which the provisions of the code are followed depends on local circumstances and available financial and technical resources.

120. At its meeting in 1996, the Committee had reminded all the governments bound by Conventions Nos. 81 and 129 to follow the recommendations in the code in order to ensure the full application of provisions in instruments concerning the inclusion in annual reports on the activities of labour inspectorates of statistics on occupational accidents and diseases, as it had noted that such data were not always included in the annual reports to the Office. Although the Committee later noted with interest the measures taken to that end in a number of countries, annual reports on labour inspection all too often are noted for the paucity of information on cases of occupational disease, and the failure of many countries to provide any information at all on occupational accidents or occupational diseases in the agricultural sector.

121. A review of available legislation indicates that the obligation to report accidents at work and cases of occupational disease can vary widely in the way in which it is expressed, in terms both of form and of substance. It is not always made clear that notification must be made to the labour inspectorate. In some countries, it must be addressed to another institution, generally a safety or social insurance authority or to both;⁶⁰ in others, the body to which the employer is required to report, or some other body, is responsible for notifying the labour inspectorate.⁶¹ Legislation in some countries does not indicate the conditions applied in practice with regard, for example, to notification periods.⁶² Furthermore, there are not always any precise indications as to the cases of occupational accidents and diseases which must be reported.⁶³ Such indications are provided, however, in certain countries where the deadline for reporting depends on the seriousness of the incident.⁶⁴ In *Australia*, fatal work accidents must be reported to the federal social insurance agency COMCARE within two hours, while serious injuries

⁶⁰ Simultaneous reporting to a social security body and to the labour inspectorate is required by law, for example, in *Gabon*, under section 202 of the Labour Code and section 81 of Decree No. 599/PR of 17 June 1981 establishing practical arrangements for the Social Security Code; and in *Rwanda*, under section 13, para. 3, of Act No. 06/2003 of 22 March 2003 amending and supplementing the Legislative Decree of 22 August 1974 on the organization of social security. In *Mexico*, notification has to be made simultaneously to the Labour and Social Security Secretariats, the labour inspectorate and the Permanent Conciliation Commission (under sections V and VI of the federal Labour Act, which sets a deadline for notification of 72 hours). In *Peru*, section 35 of Legislative Decree No. 910 on the General Labour Inspection and Defence of Workers Act stipulates that employers, workers, health care and social security centres, clinics and hospitals, are responsible for notifying the Ministry of Labour of any occupational accidents or incidents of occupational disease.

⁶¹ *Algeria, Chile, Costa Rica, Greece, Republic of Moldova and the Netherlands*; with regard to occupational diseases only, *Tunisia*.

⁶² For example, in *Brazil, Cuba, Czech Republic, Eritrea, Ethiopia, Greece, Honduras, Indonesia, Jordan, Nicaragua, Nigeria, Philippines, Saint Vincent and the Grenadines, Slovakia and Suriname*.

⁶³ For example, in *Benin*, according to section 201 of the Labour Code, the employer must notify both the labour inspector and the social security fund of any occupational accident or disease. In *Mali*, according to section 71 of the Social Security Code, the employer is required to report any accidents or cases of occupational disease at the enterprise immediately, or within 48 hours at the latest, to the competent local labour inspectorate. The Government of *Israel* indicates that failure to report an accident at work resulting in an interruption in work of three days or more is punishable by law.

⁶⁴ The Government of *Bulgaria* indicates that notification of the regional labour inspectorate is obligatory in all cases of fatal accidents or any accident likely to lead to disability. In *Japan*, according to section 96 of the Industrial Health and Safety Ordinance of 1972, in cases of death or of interruption in work because of occupational accident or disease, a report has to be sent immediately to the chief of the labour inspectorate. Cases of accidents or illness resulting in an interruption at work of less than four days must be reported in the quarterly reports to the chief of the labour standards inspection service, in accordance with section 97 of the same Ordinance. The Government of *China* indicates that under section 13 of the Health and Safety Act, any fatal accidents or accidents resulting in serious injury must be reported to an occupational safety officer within 24 hours. In *Cyprus*, according to the Accidents and Occupational Diseases and Dangerous Occurrences (notification) Order of 1953, fatal accidents or those resulting in at least three days' incapacity for work must be reported immediately by the employer to the labour inspectorate. In the *Republic of Moldova*, under section 9 of the Regulations of 5 June 2002 (No. 706) concerning the procedure for investigating accidents at work, serious or fatal accidents have to be reported immediately to the labour inspectorate. Under the terms of section 27 of the Labour Protection Act, an annual report, giving details of any accidents at work during the year in which the report is made must be submitted by enterprises, institutions and establishment. In *Mozambique*, under section 12 of Decree No. 32/89 of 8 November 1989, the employer is required to notify the labour inspector not later than 48 hours after the occurrence or determination of fatal accidents or occupational diseases. Accidents or sickness resulting in any interruption in work of more than one day require notification by the employer within five days. The nature and extent of any injuries must be indicated. In the *United Kingdom*, in the case of fatal accidents at work and those resulting in serious injuries to members of the public or the workforce, notification, including a written report, must be made within seven days. No such deadline is specified as regards the deadline in the case of other accidents and cases of illness, which must also be reported in writing in accordance with the terms of regulations adopted in 1995 on reporting damage, illness and dangerous incidents. In *New Zealand*, according to section 25 of the Health and Safety in Employment Act of 1992, accidents or illness at work resulting in serious harm must be reported immediately to the labour inspectorate.

or injures and illnesses resulting in a worker's inability to work for 30 days or more must be reported within 24 hours.⁶⁵ A protocol defining the terms "work-related", "notifiable death", "serious personal injury", "incapacity" and "dangerous occurrence" facilitates appropriate application of the relevant legal provisions. COMCARE investigators are responsible for conducting inquiries and for deciding whether or not an official inquiry should be conducted under the Occupational Health and Safety Act. In *India*, many legislative provisions relating to particular sectors provide for the notification of the inspectorate in cases of serious or fatal accidents at work, specified dangerous occurrences and occupational illnesses.⁶⁶

122. In only a few countries does it appear that there is no provision for any procedure for notifying the labour inspectorate of cases of occupational accident or disease. In *Bahrain*, for example, the employer or worker, if able to do so, reports such incidents to the nearest police station and to the General Social Insurance Company.⁶⁷ Since the social security body is under the supervision of the labour ministry, some simplified form of notification to the labour inspectorate could be envisaged.

123. Available information on law and practice with regard to the reporting of infringements of workers' safety and health when engaged in their work suggest that measures, instructions or procedures specifically for notifying cases of occupational disease are extremely rare. In *China*, according to the Government, doctors are required to notify the labour commissar and the health director of any suspected cases of work-related disease or death.⁶⁸ In *New Zealand*, this voluntary notification procedure is additional to the obligatory procedure.⁶⁹ In *Japan*⁷⁰ and *Mozambique*,⁷¹ special provisions require that any cessation of work related to occupational disease be reported to the labour inspectorate.

124. In most countries, an official list of work-related diseases is drawn up, published and regularly updated. However, while some of the more common occupational diseases are becoming increasingly easy to identify thanks to advances in medicine and information technology, others are less well known owing to their long latency period and the lack of adequate resources needed for a cogent diagnosis. Neither the workers affected nor (very often) the medical practitioners are in a position to decide whether or not to carry out the research into possible work-related factors. In countries where the greater part of the workforce is made up of foreign workers, the mobility of the latter makes it more difficult to identify work-related diseases, given in particular the fact that national social security systems are relatively closed. The Government of *Saudi Arabia* has indicated in a report on the application of Convention No. 81 that regional consultations conducted with a view to seeking a common solution to this problem by the countries involved were unsuccessful. It has indicated that a system of classification of occupational diseases was established in accordance with the guidance of the

⁶⁵ In application of section 68 of the Occupational Health and Safety (Commonwealth Employment) Act of 1991.

⁶⁶ 1990 Rules on the application of the Factories Act, the Plantations Act and the Ports Act (Safety, Health and Welfare); the 1957 Rules on coal mines; the 1961 Metalliferous Mines Regulations; and the 1984 Oil Wells Regulations.

⁶⁷ According to section 63 of the Social Insurance Act No. 24 of 1976.

⁶⁸ Section 15 of the Safety and Health Ordinance and Regulation No. 3 concerning factories and enterprises.

⁶⁹ Section 25 of the Health and Safety in Employment Act of 1992.

⁷⁰ Section 96 of the Occupational Health and Safety Ordinance of 1972.

⁷¹ Section 12 of Decree No. 32-89 of 8 November 1989.

international labour Conventions and the applicable labour laws of neighbouring countries.

125. The Government of *Honduras* has indicated that an occupational disease report form was established and the technical assistance of the ILO had been requested with a view to establishing an appropriate procedure for using it. In the *Republic of Moldova*, the competent institutions under the Ministry of Health are notified of cases of occupational disease and involved in the relevant inquiry.⁷² The labour inspectorate can obtain any relevant information. In the *Netherlands*, measures have been taken to develop a system for centralizing information on cases of occupational diseases and their causes, with a view to finding ways of preventing them. According to the Government, relevant information including statistics are available on the Internet. According to the Government of *Madagascar*, employers have not been very forthcoming on the issue of notification of occupational diseases.

126. The Committee notes that little information has been provided by Members as regards the implementation in practice of legal provisions requiring the notification to the labour inspectorate of occupational accidents and cases of occupational diseases affecting agricultural workers. It notes also the statement of only one government to the effect that all enterprises except agricultural ones are required to notify the labour inspectorate of occupational accidents.⁷³

127. The Committee nevertheless notes with satisfaction the efforts made by a number of countries to give full effect in practice to Article 19, paragraph 1, of Convention No. 129 with a view to developing a policy and necessary means for the prevention of occupational risks to health and safety.

(ii) Extent of involvement of labour inspectors in investigations into the causes of occupational accidents and diseases

128. It is useful for labour inspectors to be able to go quickly to the place of any serious accident in order to take part, within the limits of their mandate, in the investigations normally required under such circumstances. Although no such provision was included in Convention No. 81, the idea is inherent in Article 14 of that instrument, while Paragraph 5 of Recommendation No. 81 provides for direct collaboration on the part of representatives of the workers and the management, and more particularly members of works safety committees or similar bodies, with officials of the labour inspectorate, when investigations and, in particular, inquiries into industrial accidents or occupational diseases are carried out.

129. The measures taken following an occupational accident or the conclusive diagnosis of a case of occupational disease vary from one country to another. Labour inspectors are often given statutory investigative powers in relation to such occurrences. In a certain number of countries, they play a leading role in this, while in others, they are less directly involved. Legislation and practice in this area generally pursue two main objectives which are distinct but linked: on the one hand, prevention, and on the other, compensation for victims and dependents. Efforts made with regard to standards, the human resources needed to enforce them, and the technical and information technology resources needed to evaluate and develop them, can reduce the number of accidents and the benefits that have to be paid out by social insurance bodies. In some countries, the

⁷² In accordance with Ministry of Health Order No. 257 of 8 November 1993.

⁷³ The Government of *Suriname*.

investigation of causes and circumstances of occupational accidents and instances of occupational diseases is the responsibility of social security or insurance authorities. In others, this is the job of the labour inspectors, or the work is shared on the basis of their different respective objectives.

130. Given the wide range of laws and practices and, in particular, of national resources available for this, it is not the purpose of Convention No. 129 to impose a universal model or to suggest that investigations should be exclusively a matter for the labour inspectors. That would require considerable human, material and technical resources which the inspection services do not have. The functions entrusted to labour inspectors under the terms of Article 3, paragraph 1, of Convention No. 81 and Article 6, paragraphs 1 and 2, of Convention No. 129 already entail tasks, missions and responsibilities that call on all the available resources. Article 19, paragraph 2, of Convention No. 129 stipulates only that labour inspectors must as far as possible 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. The role of labour inspectors is thus limited to cases of serious or fatal accidents and diseases and those affecting a certain number of workers. Furthermore, they are “associated” with inquiries, rather than being in charge of them; the extent of that association is determined by national legislators, and its geographical scope is restricted to the workplace in question. It is of course true that there is nothing in the Convention to prohibit a greater degree of involvement by labour inspectors in inquiries or the extension of their mandate to cover less serious accidents and diseases. It is, however, important that this should not be done unless adequate resources are available to allow the inspectors to carry out their primary functions properly.

131. The available information on the application of Article 19, paragraph 2, of Convention No. 129 is not sufficiently detailed to allow any accurate assessment. There appears to be a general obligation for inspectors to investigate in certain countries, such as *Cyprus*,⁷⁴ *Greece*, *Israel*, *Japan*, *Mali*,⁷⁵ *Mongolia* and *Rwanda*. In *Cuba*,⁷⁶ inspectors are required to investigate fatal accidents, and are also responsible for monitoring the quality of investigations conducted by bodies responsible for dealing with other types of accident. In *Tunisia*, inspectors investigate fatal or very serious occupational accidents.

132. In the *United Kingdom*, according to the Government, about 6 per cent of reported accidents are investigated by inspectors, while in *Bulgaria*, the inspectors themselves determine whether or not to carry out an investigation at any place where an accident has taken place. Participation by the inspectors is required in *Peru* and *Qatar*.⁷⁷ In *Mali* and *Rwanda*, the conclusions of the inspectors are forwarded to the social insurance authority. There is no indication as to how this is then followed up.

⁷⁴ In *Cyprus*, inspectors are responsible for carrying out on-the-spot investigations into the circumstances of all occupational accidents and diseases, and for conducting full inquiries on any fatal occurrences, serious injury and occupational diseases and other incidents with potentially serious consequences.

⁷⁵ According to section 71 of the Social Security Code.

⁷⁶ According to the Occupational Protection and Health Act No. 13. The Government indicates that the Ministry of Sugar and Agriculture is responsible for investigating accidents.

⁷⁷ According to section 4 of the Act respecting state monitoring of occupational safety.

**Control function in practice in the area of occupational safety
and health in agriculture: the importance of requirements
and the lack of adequate resources**

It is clear from the information provided by governments and from other sources available to the ILO that, with the exception of certain industrialized countries,¹ that the inspection services rarely, and only ever to a limited degree, play any part in monitoring safety and health conditions in the agricultural sector where conditions can be a matter of concern. This applies to certain countries bound by the terms of Convention No. 129 even though the inspectors are legally empowered to monitor agricultural enterprises. One reason for this difference in treatment with regard to protection of workers lies in the fact that labour legislation applicable to the agricultural sector is less well developed. In the previous General Survey on labour inspection, the Committee reported the statements made by many governments as to the rarity or total absence of laws and regulations applicable to this sector.² The Committee notes that some progress has been made in this regard in some countries, but is bound to draw attention to the persistent failure to effectively implement and enforce the legislation adopted. This state of affairs is especially worrying, given that the workforce engaged as wage-earning or self-employed workers in the agricultural sector represents more than half the world's total population.

¹ France, Belgium, Netherlands, Ireland, Sweden and Finland. ² 1985 General Survey on labour inspection, para. 71.

III. Contribution of labour inspection to the improvement of labour law

133. The forms and frameworks of the employment relationship, production processes and technologies used at the workplace are changing increasingly fast. It is essential that relevant legislation keep pace with these changes if the workers in new employment relationships or abusive conditions of work are not to suffer as a result of an inadequate legal framework. To this end, Article 3, paragraph 1(c), of Convention No. 81 provides that the labour inspection system shall bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions. Convention No. 129 contains a similar provision, Article 6, paragraph 1(c), which adds that the labour inspectorate shall submit to the competent authority proposals on the improvement of laws and regulations.

134. Because of their free access to workplaces and special relationship with employers and workers, labour inspectors are potentially the public officials in the best position to identify situations that might call for legal and legislative solutions aimed at improving protection at work. Although the Conventions do not specify the way in which inspectors should fulfil their function of informing the competent authority, it would appear that the most practical means of achieving this would be through the periodical reports they are required to submit to the central inspection authority.⁷⁸ They should be allowed to decide what information should be included in a given report, in the light of the urgency or nature of the situation. It will then be for the central authority to determine whether to take or request appropriate legislative action. Recommendations for such action may be made by the labour inspectorate and discussed in tripartite labour advisory bodies, where they exist. Further, where appropriate, labour inspectors should also be consulted by the competent authorities during the process of labour law reform.

135. Such corrective measures by the competent authorities may take the form of regulations (orders, instructions or circulars) to supplement or clarify existing legislation, or they may consist of a legislative proposal to fill a more important gap in the legal

⁷⁸ The requirement for labour inspectors to submit periodical reports to the central inspection authority is set out in Article 19 of Convention No. 81 and Article 25 of Convention No. 129.

framework. This is the case, for example, in *Norway*, as regards safety and health in agricultural enterprises.⁷⁹

136. The role of labour inspection in the content and implementation of improving labour laws is widely recognized, as reflected in the legislation of most of the countries that have ratified one or both Conventions.⁸⁰ However, the Office has received little information on the application of the relevant provisions in practice. In *Colombia*, the labour inspection manual recommends that inspection reports be forwarded with the relevant remarks and indications to provide the special inspection unit in charge of monitoring and supervision with the necessary information to improve existing legal provisions. In one country, a trade union has expressed regret at the lack of reaction from the higher inspection authority to the reports of abuses observed in cleaning, security and forestry enterprises and to the recommendations made by the inspectors as regards supplementing the legislation with relevant provisions.

137. In many countries, information technology is used to facilitate the process of communicating to the central inspection authority and other competent authorities information on situations which, in the view of the inspectors, call for legislative or regulatory action. In countries where these tools are not available or widely used, inspectors should be encouraged to include such information, as well as any relevant proposals, in their periodical activity reports to the central inspection authority, which will determine their form and frequency as appropriate. They should also be authorized to do so through a special report if they consider that the situation calls for prompt legislative action.

⁷⁹ Under section 32(3) of the Act of 19 December 1958 respecting the conditions of employment of agricultural workers.

⁸⁰ *Algeria* (Executive Decree No. 90-209 of 14 July 1990 on the organization and functioning of the general labour inspectorate and Executive Decree No. 91-44 of 16 February 1991 to promulgate special regulations for labour inspectors); *Angola* (Decree No. 9/95 of 21 April 1995); *Brazil* (Decree No. 4552 of 27 December 2002, to make regulations for the labour inspectorate); *Bulgaria* (Decree No. 92 of 26 May 2000, to approve regulations of the Agency for General Labour Inspection); *Chad* (section 476(3) of the Labour Code); *China (Macau Special Administrative Region)* (Legislative Decree No. 52/98 M to regulate the activity of the Labour Inspection Department of the Labour and Employment Services Directorate); *Côte d'Ivoire* (Decree No. 2000/872 of 20 December 2000, respecting the organization of the Ministry of Labour, the Public Service and Administrative Reform); *Gabon* (section 231 of the Labour Code); *Mauritania* (section 369 of the Labour Code); *Mozambique* (Order No. 17/90 of 14 February 1990 of the Ministry of Labour); *Niger* (section 248 of Ordinance No. 96-039 of 29 June 1996 to promulgate the Labour Code); *Peru* (Legislative Decree No. 910 of 16 March 2001, to promulgate the general Act on labour inspection and defence of the worker); *Russian Federation* (section 355 of the Labour Code of 2001); *Tunisia* (section 170 of the Labour Code); *Uruguay* (section 6(1) of Decree No. 680/977 of 6 December 1997 on the application of international labour Conventions Nos. 81 and 129).

Chapter IV

Structure of the labour inspection system

138. The provisions governing the organization and functioning of the labour inspection system in order to achieve the objectives assigned to it by the relevant instruments are set out in Articles 1, 4, 5, 6 and 8 of Convention No. 81, as well as Articles 3, 7, 8, 10, 12 and 13 of Convention No. 129. Under the terms of these provisions, the labour inspectorate must function as a system under the supervision and control of a central authority, in cooperation with other public or private institutions and in collaboration with employers and workers or their organizations. Ensuring access to the data needed for developing an appropriate labour inspection policy depends largely on the development of cooperation mechanisms with the institutions that hold such data, including the competent labour administration authorities as well as other public and private bodies and institutions performing similar functions, employers and workers and their representative organizations and, where appropriate, civil society groups such as interested non-governmental organizations.

139. A labour inspection system or service operates in all countries for which the Committee has information, whether or not they have ratified the relevant Conventions, and normally covers industrial and commercial establishments; only more rarely does it cover agricultural undertakings.

I. Placing the labour inspection system under the supervision and control of a central authority

140. The Labour Inspection Recommendation, 1923 (No. 20), already suggested that the labour inspectorate be placed under the direct and exclusive control of a central state authority, and that it should be entirely independent of local authorities.¹ Article 4 of Convention No. 81 reaffirms the principle of having a single central authority while allowing for a degree of flexibility in two respects: firstly, the labour inspection system must be placed under the supervision and control of a central authority only in so far as is compatible with the administrative practice of the Member (paragraph 1); and secondly, in the case of a federal State, the term “central authority” may be either a federal authority or a central authority of a federated unit (paragraph 2). These flexible arrangements take into account certain specific arrangements considered to be helpful in national administrative practice which had come to light during the preparatory discussions.² Attaching the labour inspectorate to a central authority facilitates the establishment and application of a single policy throughout the territory covered, and

¹ Para. 10 of Recommendation No. 20.

² ILO: *Organisation of labour inspection in industrial and commercial undertakings*, Report IV, ILC, 30th Session, Geneva, 1947.

makes it possible to use available resources in a rational way by, for example, eliminating duplication of effort. Flexibility clauses applicable to federal States must not be regarded as derogating from the principle of having a single central authority provided that the constituent units of the federal State have budget resources intended for use in implementing the functions of the labour inspectorate within their respective jurisdictions. However, the Committee considered that an initiative in one country to decentralize the labour inspectorate, without also making it an obligation for the decentralized regional or local authorities to institute a system to allow it to function and to provide adequate budgetary resources, was contrary to the terms of the Convention.

141. Article 7, paragraph 3, of Convention No. 129 provides for a number of different ways in which the labour inspection system can be placed under a central authority. It states that labour inspection in agriculture might be carried out:

- (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 specialization 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 specialization by creating a technically qualified service, the officers of which would perform their functions in agriculture; or
- (d) by a specialized 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.

142. The Committee notes that many governments continue to put off ratification of Convention No. 129 on the erroneous grounds that application would require the establishment of a separate inspection system. In fact, in countries where labour inspection in agriculture has been established – and with only few exceptions such as *Austria*³ and *France*⁴ – it is most often exercised within the structures that exist to ensure coverage of other sectors.⁵ In *Israel*, a national coordinator is responsible for the functioning of labour inspection in agriculture within the framework of a common inspection system. Available information indicates that the situation in this area varies widely and may go as far as a total absence of any labour inspection system in agriculture, which is the case in *Indonesia, Lebanon, Lithuania, Panama, Qatar, Saudi Arabia, Switzerland* and *Viet Nam*.

143. In most countries, labour inspection is organized as a ministerial department with a central structure and other, decentralized structures, which generally come under the authority of the labour ministry and other related areas such as social affairs, employment, training or immigration. It is possible to distinguish between three major categories of labour inspection system. There are “generalist” inspection systems responsible for monitoring conditions of work, the work environment, and also

³ Federal Act on Agricultural Labour.

⁴ Labour inspection in agriculture is the responsibility of the Minister responsible for agriculture, except in the case of overseas departments and territories, for which competent staff is assigned under the authority of the Labour Minister.

⁵ For example, *Algeria, Australia, Belgium, Benin, Brazil, Chile, Cuba, Czech Republic, Eritrea, Gabon, Jordan, Mauritius, Mongolia, Nicaragua, Peru, Papua New Guinea, Philippines, Rwanda, South Africa, Sri Lanka, Suriname, Tunisia* and the *United Kingdom*.

individual or collective labour relations. These systems often play a part in the areas of employment and training or social security (countries such as *France, Spain, Portugal, Japan* and *Senegal*). There are specialized systems in which the range of responsibilities devolved to different departments may be rather broad and concern not only conditions of work but also matters such as labour relations, these responsibilities being shared among a number of specialist departments under the overall control of separate authorities (as is the case in *Belgium, Germany, Switzerland, Hungary, Thailand* and *Argentina*) or of one single authority. Lastly, there are systems based on interventions by multidisciplinary teams in which, within one local inspection department, inspectors with complementary areas of competence can intervene together or in turns and consider mainly conditions of work (for example, *Austria, Denmark, Kuwait, Norway, United Kingdom* and *Sweden*).

144. The division of the various tasks involved in enforcing the application of legislation on conditions of work may take account of the specific nature of the various types of economic activity. In *France*, officials of a given inspection unit operate under the authority of the labour minister in the majority of sectors or branches, although in the case of certain activities and enterprises labour inspection comes under the remit of other ministers.⁶

145. In a number of countries in Asia and Africa, labour inspection is organized and operates along the lines of the system used in the *United Kingdom*, where two different inspectorates exist side by side. One is responsible for industrial relations and general conditions of work, including wages, while the other deals with occupational safety and health. In most countries of Central and Eastern Europe, a single labour inspectorate, which in some cases has been established only recently, has been given the responsibilities previously assumed by the trade unions in areas such as monitoring working conditions and other matters such as illegal employment. In the *Russian Federation*, the different departments of the Ministry of Labour and the Federal Labour Inspectorate have been brought together in a new department for the enforcement of labour and safety and health legislation within the Ministry of Labour and Social Development.⁷ In *Ukraine*, a department has been created within the Ministry of Labour and Social Policy to enforce labour legislation.⁸

146. One model of labour inspection which integrates safety and health with environmental concerns has resulted from recent legislation in *Denmark, Norway, Sweden* and the *Netherlands*. In *Viet Nam*, an integrated system under the authority of the Minister of Labour, War Invalids and Social Affairs has been set up and is being developed with the technical assistance of the ILO in a cooperation project. Labour inspection is now organized centrally under a new department.⁹ In other countries, bringing together labour inspection services relating to safety and health and social

⁶ Labour inspection in agricultural undertakings is placed under the authority of the Minister of Agriculture. Labour inspection in the transport sector covers public transport undertakings and establishments subject to technical inspections by the transport ministry, both within metropolitan France and in the overseas departments (including railways, urban transport, road transport of people and goods, mechanized lifts, motorway enterprises, collection of household waste, air transport and airports, inland shipping and ports. Labour inspection in mines comes under the authority of the Minister of Labour except for quarries on state-owned land placed at the disposal of the Minister of Defence, who is responsible for inspections.

⁷ According to Order No. 1035 of 9 September 1999.

⁸ By Cabinet of Ministers Decisions Nos. 1351 of 30 August 2000 and 1771 of 29 November 2000.

⁹ The department responsible for labour inspection within the Ministry was established by Decree No. 1118 of 10 September 2003.

insurance under one system has made it possible to achieve considerable improvements in prevention policy with regard to occupational hazards, as well as significant savings, as a result of the more rational use of available resources.¹⁰

147. In a number of federal States, responsibilities in the area of labour inspection are shared between central government and the constituent units of the State in accordance with principles set out in the country's fundamental law. In *Mexico*, for example, the federal inspection authority covers enterprises administered by the federal Government, those operating under a federal contract or licence, and those which operate in federal territory. The federal authority also monitors training and safety and health in industries that come under the jurisdiction of local labour authorities, which enforce legal provisions relating to other areas in all enterprises (including those which come under the jurisdiction of the federal authority).

148. In *Belgium*, the tasks of the labour inspectorate are shared by a number of specialized structures as appropriate to the entity being inspected. The social legislation inspectorate enforces laws and regulations concerning work done in a subordinate relationship as well as issues related to the election of a prevention and protection committee; the works council and trade union delegation also share responsibility for this. In principle, the social inspectorate deals with technical and medical matters only where these are an integral part of the relevant collective agreements. The technical inspectorate enforces laws and official orders concerning work safety in all undertakings where workers are employed under a contract of employment. Enforcement of legislation on workers' health is the responsibility of the medical inspectorate.

149. In *China*, the labour inspection system is placed under the control of a national council at central level, which is represented in each province by a labour protection department which oversees inspection services at local level. Other local government bodies, within their respective mandates, also support the activities of the labour inspectorate which may, as required, call on the support of other bodies with the necessary technical expertise.

II. Cooperation needed for the inspection system to function

150. Establishing inter-institutional cooperation and multilateral collaboration is an inherent part of the very concept of an administration system. Since the purpose of a systemic approach is to ensure that the whole is greater than the sum of the parts, the effectiveness of labour inspection will depend in no small measure on its capacity to function through interaction with its social and economic environment. It requires action to develop mechanisms and areas of cooperation with all the public and private actors concerned and with the social partners and their representative organizations. The designation of a central labour inspection authority ensures that the activities of the authorities placed under its control are coordinated with a view to achieving a clearly defined objective. It also ensures a degree of cohesion between mechanisms for cooperation and collaboration with other public and private bodies and institutions and with the employers and workers and their organizations, which are referred to in Article 5 of Convention No. 81 and Articles 12 and 13 of Convention No. 129. Lastly, by passing on to the consultative bodies that deal with labour and social issues, to all

¹⁰ For example, in *Australia* (New South Wales and Victoria), *Bulgaria* and *New Zealand*.

ministries concerned, and to the social partners, some of the information it receives from its subordinate departments, the central authority can contribute to strengthening the labour administration system as a whole.

Project on Integrated Labour Inspection, Viet Nam, 2001-05

In the context of this project, the Vietnamese Labour Code was revised, enabling the inspectorate to carry out integrated inspections covering hygiene, safety and conditions of work in one single visit. New inspectors were employed and the inspections in Viet Nam increased.

Furthermore, a new management-by-results inspection strategy was introduced and backed up by comprehensive training for inspectors, enabling them to integrate different fields of inspection, increase inspection visits and provide competent advice. Viet Nam has now established an occupational safety and health training centre to continue training activities.

The Government of Luxembourg will fund a labour inspection follow-up project in Viet Nam.

151. A global and systemic approach to labour inspection has come to predominate in recent decades, especially in the industrialized countries, where it is widely accepted that a high level of protection as regards conditions of work contributes to social cohesion. A wide range of different cooperation mechanisms and institutions are being developed rapidly in a number of transition countries with a view to strengthening the labour inspection system.¹¹

A. Cooperation between the inspection services

152. Whatever the form of organization or the mode of operation of the labour inspectorate, labour inspection responsibilities are shared among different departments on a geographical or sectoral basis, or in accordance with the area or workplace liable to inspection. In all cases, it is important that the competent authority take steps to encourage cooperation between these different departments. Exchanging information on inspection methods and the results obtained can prevent much time-wasting. Rationalizing and pooling certain material and logistical resources could, in many developing countries, alleviate the chronic inadequacy of resources available to inspection services. Furthermore, from the employer's point of view, a degree of coordination between inspection services in order to plan and coordinate inspections would have the beneficial effect of reducing the need for a large number of separate inspections at short intervals.

153. Available information suggests that there is effective and regular cooperation in the industrialized countries. That is not the case in many others, including the least developed, even though it is provided for in legislation.

B. Cooperation between inspection bodies and other institutions

154. If the different functions of the labour inspectorate as defined in the instruments are to be carried out effectively with regard to the main objective, broad cooperation is needed between the various labour inspection departments and the other government departments and public or private services that carry out similar activities. According to Article 5(a) of Convention No. 81 and Article 12, paragraph 1, of Convention No. 129, that cooperation must be "effective". A range of different structures and bodies, in order to meet their respective obligations, have at their disposal a wide range of data, information and research on the world of work, which should be communicated

¹¹ For example, in the *Czech Republic, Republic of Moldova, Russian Federation and Slovakia*.

systematically to the appropriate labour inspection departments through appropriate mechanisms. The importance of coordination between the different tasks and responsibilities assigned to the labour administration system is acknowledged by all governments. The methods and mechanisms used for this vary, however, from one country to another. While the development of adequate statistical tools and detailed annual reports has made it easier to assess the effectiveness of these methods in the industrialized countries, this is not the case in many developing countries, where it is difficult or even impossible to compile relevant information. Nevertheless, the establishment of cooperation bodies and mechanisms with a view to exchanges of information on safety and health issues bodes well for the future in those countries. The support of certain public and private actors and the collaboration of the social partners are essential to the functioning of labour inspection, and should be encouraged in order to improve all conditions of work and the protection of workers within the jurisdiction of the labour inspectorate.

155. The different services responsible for employment, equality in the workplace, vocational training, job placement, migration, youth, basic or compulsory education, the disabled and for the gathering of statistical information, can all play a significant part in helping the labour inspectorate to define its priorities for action. For example, statistical data disaggregated by sex, exact data on school truancy, migrants, or job placements for disabled workers in certain activities, are all useful for planning inspections in establishments generally, including establishments where there are workers in vulnerable categories. The institutions discussed below notably cooperate with the labour inspection in a number of domains.

(a) *Social security and social insurance institutions*

156. That the respective objectives of social security and labour inspection services are complementary is no longer a matter of debate. The benefits of bringing them together under the authority of a single government authority are becoming increasingly evident in certain countries. Although it is often a legal obligation for the employer, worker or responsible medical practitioner to report accidents at work or cases of occupational disease to the labour inspectorate, it is often in practice the social security services that are the first, and sometimes the only, recipients of such notifications. It is therefore desirable that provisions be in place to ensure that any relevant information on cases and conditions defined by legislation be communicated as systematically as possible to the labour inspectorate. This would give the labour inspectorate the data it requires to identify high-risk establishments and activities and determine means of prevention with a view to eliminating risk factors. By the same token, inspection services should be required to inform the social security and social insurance services of situations that pose a threat to workers' safety and health which they encounter during inspection visits. Raising insurance premiums for employers who are particularly negligent or persistent in disregarding inspectors' injunctions could reinforce the safety and health role of the labour inspectorate. The economic advantages of such cooperation, for both the enterprise and the insurance institutions, has been more than amply demonstrated in all the countries where relevant measures have been implemented.¹²

¹² The ILO has estimated that every day, on average, some 5,000 or more women and men around the world lose their lives because of work-related accidents and illness. More than 270 million accidents are recorded each year, 351,000 of which are ultimately fatal. Hazardous substances cause the deaths of an estimated 444,000 workers each year. Most workers in the world are not covered by legal preventive measures and will never receive compensation in case of accidents and diseases. The ILO estimates that up to 4 per cent of the world's GDP is

(b) The police

157. Effective support from the police can be useful, and sometimes essential, in carrying out certain inspection missions. In some countries, occurrences concerning occupational safety and health must be reported in the first instance to the police. Where they are reported without delay to the competent labour inspection service, they may give rise to appropriate and effective inspection measures. Allowing labour inspectors to call on the support of the police when they are obstructed in the performance of their duty can have a deterrent effect, all the more so if effective measures are in place to ensure rapid implementation and in particular to ensure the physical safety of the inspector and allow the planned inspections to take place smoothly. Such provisions exist in many legislations.¹³ In many developing countries, however, this is not feasible because of the separation of the various institutions and the absence of appropriate mechanisms at different hierarchical levels.

(c) Judicial bodies

158. The effectiveness of the sanctions available to the labour inspectorate depends to a large extent on the way in which the judicial authorities deal with the case files referred to them by or on the recommendation of the labour inspectors. A growing number of countries are taking steps to develop effective cooperation between the judicial system and the labour inspectorate.¹⁴ The impact of such measures is reflected in the annual inspection reports from the governments of certain industrialized countries.¹⁵ A study conducted in 1991 by the Inter-American Center for Labour Administration in the *Dominican Republic* showed the need to develop adequate cooperation between the labour inspectorate and the justice system in order to improve the results of labour inspection, and the trade unions are increasingly complaining of the inadequacy of the support given by the courts to the labour inspectorate in its work.¹⁶ Closer coordination between the competent administrative and judicial authorities, education of the legal professions and appropriate judicial training could certainly raise the awareness of judges as to the social and economic value of labour inspection and encourage them to pay more attention to the goals of the labour inspectorate.

(d) Tax authorities and the ministries responsible for the sectors covered by inspection

159. Machinery should be put in place to ensure that any information needed to identify establishments and undertakings legally liable to inspection and held for other purposes by other public authorities (for example, finance and tax authorities, or departments responsible for issuing operating licences) is made available to the labour inspectorate. The Committee notes that in one country, the central labour inspection authority has

lost to work-related accidents and diseases. See Introductory Report, *Decent Work-SafeWork, Prevention in a Globalized World*, Geneva: ILO/SafeWork, Sep. 2005.

¹³ For example, in *Bolivia, China (Macau Special Administrative Region), Costa Rica, Mauritania, Oman, Senegal, Slovakia, Tunisia and Turkey*.

¹⁴ For example, in *Guatemala* the labour inspector, under the terms of a Decree enacted in 2001, can rapidly obtain a judicial ruling giving rulings executory force. In *Rwanda*, a provision was introduced into the Labour Code requiring courts to provide the labour inspectorate with information on any follow-up to reports of violations. In *Senegal*, section L.195 of the Labour Code provides for the same obligation.

¹⁵ For example, *Spain, France and Belgium*.

¹⁶ For example, in *Brazil, Costa Rica and New Zealand*.

strongly suggested that the cooperation of the tax authorities be sought in any proceedings to recover unpaid wages.¹⁷

(e) *National human rights mechanisms*

160. Following the recommendation of the Vienna Declaration and Programme of Action (1993), many countries have created a national human rights mechanism which individuals may use to file complaints regarding violations of human rights, including labour rights. In these countries, effective cooperation between the labour inspection system and the national human rights mechanism is useful and to be encouraged.

(f) *Immigration authorities*

161. In view of the growing numbers of foreign and migrant workers in many countries, the labour inspectorate is often being asked to cooperate with immigration authorities. The Committee points out that such cooperation should be carried out cautiously, keeping in mind that the main objective of the labour inspection system is to protect the rights and interests of all workers and to improve their working conditions.

(g) *Social research institutions and universities*

162. One particularly useful form of cooperation in developing a labour inspection policy involves social and environmental research institutions. This is having an impact in industrialized countries like *Norway*, where research institutions are being involved in efforts to identify labour inspection priorities. A database created jointly by the Electrical and Fire Safety Department, the industrial health and safety authority and the pollution monitoring authority, allows the respective activities of these bodies to be coordinated in a rational way. In addition, the labour inspection services and the county “work and life” centres collaborate at the regional and local levels in joint activities.

C. **The role of the social partners in labour inspection**

163. The labour inspectorate can attain its objectives only if appropriate measures are adopted by the competent authority to promote effective collaboration with employers and workers in its activities. A requirement along these lines is set out in Article 5, paragraph 2, of Convention No 81, and in Article 13 of Convention No 129. Recommendations Nos. 81 and 133 also provide certain indications as to possible arrangements for collaboration in the area of occupational safety and health. Part II of the former instrument sets out possible forms and methods of collaboration. The latter advocates recourse in the agricultural sector to committees for hygiene and safety, which include representatives of employers and workers, as one form of collaboration (Paragraph 10).

164. Many governments have provided a considerable amount of information on the specific legal provisions adopted for this purpose. Different levels (national, regional, sectoral and enterprise) and forms of collaboration (tripartite bodies, cooperation agreements, and so forth) coexist. Broadly similar modes of collaboration can be found in the legislation and practice of countries which differ considerably in terms of their economic, political and social conditions.

(a) *National collaboration bodies*

165. In a number of countries, a national consultative body, of tripartite composition and with a general mandate for labour issues, is appointed as a basic framework for

¹⁷ *Croatia.*

collaboration between workers' and employers' organizations and the labour inspectorate in the area of occupational safety and health.¹⁸ In *Bulgaria*, the executive director of the general labour inspectorate directs discussions on labour inspectorate reports and proposals. More often, national tripartite councils have been set up specifically to examine questions pertaining to occupational safety and health in industry and commerce.¹⁹ In *India*, the consultative portworkers' committee, chaired by the chief port safety inspector, is also responsible for social assistance.

166. Information on collaboration at the national level between the labour inspectorate and representative organizations of employers and workers in the agricultural sector has been provided by the Governments of *Brazil* and *Poland*,²⁰ among others. In *Brazil*, the principal objectives of the National Standing Committee on Agriculture, set up in 2001, are a greater formalization of employment and the introduction of social protection coverage. The Committee's activities focus on efforts to find appropriate solutions in order to improve conditions of work in agriculture, coordinate planning, implement and evaluate accident prevention campaigns in agriculture, and develop occupational safety and health regulations.

(b) *Collaboration agreements*

167. Inter-institutional cooperation and collaboration with the social partners may take other forms. Collaboration focusing on occupational safety and health is ensured through tripartite agreements in *Bulgaria*²¹ and *Cyprus*.²² In the *Netherlands*, the aim of collaboration between employers and workers is to reduce the number of people drawing sickness and disability benefits by improving conditions of work.

168. The Government of *Portugal* has announced that the labour inspectorate and the social partners have concluded an agreement on working conditions, health and safety at work, and combating occupational risks. The aim is to develop a national prevention plan and a plan of action targeting the most risk-prone sectors. The Government hopes that the implementation of this agreement will be an opportunity to reactivate the National Occupational Health and Safety Council, to establish an observatory for prevention, and to improve collaboration between the occupational risks centre and other interested bodies. This should also facilitate the adoption or modification of legal provisions applicable to the sectors most affected by occupational accidents, as well as

¹⁸ In *Ethiopia*, the Labour Advisory Board; in *Mongolia*, the National Tripartite Committee for Social and Labour Consensus; in *Norway*, the Council of the Labour Inspection Authority; in *Poland*, the Council for Labour Protection; in *South Africa*, the Advisory Council.

¹⁹ For example, in *Cyprus*, *Fiji*, *France*, *Guatemala*, *Hungary*, *Indonesia*, *Republic of Korea*, *Mauritius*, *Morocco*, *Nicaragua*, *Panama*, *Switzerland*, *United Kingdom*, *Uruguay* and *Zimbabwe*.

²⁰ The Health and Safety Committee, which answers to the chief labour inspector and was created in 2001 under a cooperation agreement with a view to improving safety and health in agriculture. Members include the Minister of Agriculture and Rural Development, the president of the agricultural social insurance fund, the presidents of the national trade union federations of farmers and agricultural workers, and agricultural employers' organizations.

²¹ General labour inspectorate statement on cooperation at all levels with two of the most representative trade union federations. At the initiative of the Bulgarian Industrialists' Association, a tripartite agreement on coordination and cooperation was concluded in 2003 with the aim of improving implementation of safety and health activities.

²² Statement of national occupational safety and health policy 1995, with the aim of reducing workplace accidents and cases of occupational disease, and promoting vocational education and training. The statement defines the obligations of the different parties concerned and seeks improvements in legislation.

efforts to restructure the statistical system for recording and following up occupational accidents and cases of occupational disease.

(c) *Collaboration between the social partners at the enterprise level in the area of safety and health*

169. In many countries, special committees exist to deal specifically with questions of occupational safety and health in particular categories of establishment or undertaking.²³ In certain developing countries, however, especially in Africa, implementation of legal provisions adopted for this purpose is delayed by the absence of implementing regulations or by the inadequacy of the available means of inspection.²⁴

170. At the enterprise or establishment level, collaboration between the labour inspectorate and the social partners frequently takes place through contacts with workers designated as safety delegates.²⁵

171. The Committee wishes to emphasize the importance of ensuring that the forms of collaboration with the social partners are fully compatible with the impartiality and authority of labour inspectors in their relations with employers and workers. The Committee has, for example, drawn attention to the potential risks inherent in an arrangement in which the labour inspectors are allowed to use means of transport provided by one of the parties concerned for their official purposes.

* * *

172. In summary, on the basis of the information available to it, the Committee notes the persistent inadequacy, at least in practice, of cooperation mechanisms helpful to the labour inspectorate in its activities. The most obvious reason for this is the tendency for the different authorities involved to operate in isolation from one another. Greater integration of objectives, means, and circulation and processing of information, is needed. For too long, the labour inspectorate in most countries has operated in a reactive manner and in isolation, and the results achieved reflect the means generally allocated to it. This is still the case in many developing countries. In the industrialized countries, greater awareness of the economic losses that result from poor or illegal working conditions has prompted greater efforts to find solutions that are prevented in more general terms. Institutional cooperation and the active involvement of the social partners continue to prove their worth in this regard. Making available to a central body all the relevant information supplied by the various bodies involved in the labour inspection system greatly facilitates the development, implementation and regular review of a national social protection policy with a view to adapting it to current requirements and

²³ Such as the joint committees set up in *France, Hungary, India, Lithuania, Mexico, Poland, Trinidad and Tobago, Tunisia, Turkey and Zimbabwe*.

²⁴ For example, in *Benin*, in establishments employing 30 or more workers; in *Morocco*, in craft, industrial and commercial undertakings and in agricultural or forestry undertakings employing 50 or more workers. The Government of *Rwanda* has stated that the health and safety committees provided for by the Labour Code have yet to be established. In *Chad*, the establishment of such committees in undertakings and establishments is required by a Ministerial Order of 1999.

²⁵ This is the case in *Rwanda*. In *Sweden*, in establishments employing more than five workers, at least one delegate must be appointed by the workers. He or she can require the employer to take any necessary measures to ensure a safe working environment, and can notify the working environment authority of any refusal or prevarication to comply. In the event of imminent danger, or in the case of an operation ordered by the employer in contravention of the ruling by the authority, he or she can order the suspension of work pending a decision by the authority. In *Slovenia*, the safety representative also plays an important collaboration role: he or she can request an inspection and participate in it. Furthermore, the employer is obliged to inform the representative of the outcome of the inspection.

priorities. In many developing countries, the major obstacles to the development of labour inspection systems are the chronic incapacity of the labour inspection authority to define needs for the purpose of determining the appropriate budget resources in the light of the economic situation, and the weakness of worker representation. Progressive implementation, with the help of the competent authorities, of effective inter-institutional cooperation and of improved collaboration with the social partners, would undoubtedly be the best way of achieving progress.

Chapter V

Labour inspection staff: Composition, status, conditions of service and standards of conduct

I. Basic principles

173. The effectiveness of labour inspection largely depends on the commitment of the public authorities to the effective implementation of measures to attract and retain a sufficient number of qualified and motivated staff. Conventions Nos. 81 and 129 contain criteria which should be taken into account for the purpose of determining the number of inspectors required (Article 10 of Convention No. 81 and Article 14 of Convention No. 129), and the measures needed to recruit and retain the staff required within labour inspection services (Articles 6 to 8 of Convention No. 81 and Articles 8 to 10 of Convention No. 129).

A. Criteria for determining the number of inspectors required

174. Both Conventions stipulate that measures should be taken to ensure that the number of labour inspectors is sufficient to secure the effective discharge of the duties of the inspectorate, taking into account the importance of the duties which they have to perform, in particular: the number, nature, size and situation of the workplaces liable to inspection; the number and the range of categories of workers employed in such workplaces; and the number and the complexity of the legal provisions to be enforced.¹ This number should be increased in case inspectors are called on to exercise additional functions not foreseen in Conventions Nos. 81 and 129.

175. In order to give full effect to these provisions, human resources allocated to the inspectorate should be determined on the basis of relevant information and clearly identified priorities for action. As the Committee has already noted, cooperation between the labour inspectorate and other institutions, public and private, can lead to a better knowledge of the labour inspectorate's human resources requirements. In view of this, measures must be taken to ensure that there is adequate up-to-date knowledge of the number and distribution of establishments and undertakings subject to inspection and the workers to be covered.

¹ In *Switzerland*, according to section 79.3 of Ordinance No. 1 of 10 May 2000 respecting the Labour Act, the numbers of inspectors for each of the cantons are fixed according to federal guidelines depending on the number of workplaces and the amount and complexity of the work.

B. Gender

Statement of principle

176. Since the beginnings of the ILO, the provision of the Constitution regarding the organization of a labour inspectorate by each member State has stipulated that the inspectorate should include women. In the words of the Labour Inspection Recommendation, 1923 (No. 20), “while it is evident that with regard to certain matters and certain classes of work, inspection can be more suitably carried out by men, as in the case of other matters and other classes of work inspection can be more suitably carried out by women, the women inspectors should in general have the same powers and duties and exercise the same authority as the men inspectors, subject to their having had the necessary training and experience, and should have equal opportunity of promotion to the higher ranks”.

177. Under the terms of Article 8 of Convention No. 81 and Article 10 of Convention No. 129, “both men and women” must be eligible for appointment to the inspection staff, and “special duties may be assigned to men and women inspectors, respectively”.

National practice

178. The information provided by governments indicates that in general, there is no legal impediment that limits women’s access to work as labour inspectors. Indeed, many countries indicate that their legislation gives women equal opportunity of access to employment as labour inspectors.² In addition, the Government of *Denmark* indicates that, in recruitment, the principle of equal numbers of men and women in labour inspection teams is observed. Nevertheless, the Committee is concerned that the figures available show that, in many countries, labour inspection staff is still mostly male³ or does not reflect the proportion of women in the workforce. Furthermore, the proportion of women in the inspectorate is not always easy to interpret.⁴ In view of the important role for women in the labour inspection system, it is to be hoped that more steps will be taken to encourage the recruitment, training and promotion of women inspectors and to ensure that there is greater gender awareness throughout the inspection system.

The role of women in labour inspection

179. Although the instruments suggest that specific jobs could be assigned to women inspectors, only a few governments report such a practice.⁵ In *Honduras*, for example, women inspectors are in charge of inspections related to child labour and employment of women, health and safety conditions in workplaces and enforcement of the minimum wage. In *Austria*, they are assigned to inspecting general working and living conditions in undertakings where women and young people are in the majority. In *Sri Lanka*, there

² *Australia* (for example, Western Australia: Equal Opportunity Act, 1984; Northern Territory: Anti-Discrimination Act). In *Fiji* the Public Service Commission has adopted the principle of equality of opportunity in employment, which encourages the recruitment of women and men as inspectors in equal numbers; *Haiti* (section 432 of the Labour Code); *Syrian Arab Republic* (Act determining the status of public servants).

³ In *Austria*, overall, 22.8 per cent of inspectors were women in 2001, but only 0.5 per cent of those for the transport industry; in *Cameroon*, there were 9 women out of 58 inspectors in 2004; in *Mexico*, 24 out of 218; in *Eritrea*, just one out of 19.

⁴ In *South Africa*, 41.9 per cent of the workforce is made up of women; in *Chile*, 50 per cent; *Mongolia*, 36.5 per cent; *Sweden*, 40 per cent.

⁵ In *Switzerland*, according to section 79 of Ordinance No. 1 of 10 May 2000 respecting the Labour Act (OLT 01), the cantons ensure that women inspectors investigate, or are called upon to deal with, matters that specifically affect women workers.

is a department dealing with matters related to women and children, run by a woman Commissioner of Labour. She is assisted by two other high-level labour civil servants, both of whom are also women. In *Ghana*, an Office of Women's Affairs was set up in 2001 in the Department of Labour and deals with women's problems at work (notably, sexual harassment).

II. Qualifications required

180. The responsibilities involved in labour inspection are such that the men and women who take them on must be recruited with due regard to their qualifications and the personal qualities needed for the performance of their duties. This means that labour inspectors must be recruited in accordance with suitable procedures. In addition, their employment must be governed by conditions of service and a status which ensure the stability they need to perform their duties in accordance with the legislation regarding their powers and responsibilities and without any improper external influence.

A. Recruitment and initial training

181. According to Article 7, paragraph 1, of Convention No. 81, and Article 9, paragraph 1, of Convention No. 129, subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties.

182. The qualifications in question include, as in any profession, recognized technical skills and qualifications, but also the personal and psychological abilities needed to deal with a wide range of people and situations in a manner that is both firm and flexible. Some governments have mentioned the specific conditions required.⁶ These vary greatly from one country to another. For example, membership of an employers' or workers' organization bars access to the profession in *Mexico*,⁷ whereas it is a condition for employment in *Luxembourg*.

183. Impartiality, integrity and discretion are, in any case, essential qualities of a labour inspector and fundamental to gaining the support of the social partners for the principles and objectives of labour inspection. According to Article 7, paragraph 2, of Convention No. 81, and Article 9, paragraph 2, of Convention No. 129, the means of determining the capacities of prospective inspectors must be determined by the competent authority. In the Committee's opinion, appropriate and in-depth interviews of applicants for the position of labour inspector, conducted in accordance with principles of fairness and objectivity, are the best way for the competent authority to select the most suitable candidates.

184. Article 7, paragraph 3, of Convention No. 81 and Article 9, paragraph 3, of Convention No. 129, stipulate that inspectors must be adequately trained. The Labour Inspection (Agriculture) Recommendation, 1969, (No. 133), states, moreover, that

⁶ In *Brazil*, a candidate must have full political rights, have fulfilled his military and electoral obligations, and be in good physical and mental health. In *Cameroon*, a candidate must be in good physical and mental health; in *China*, uprightness, honesty, diligence and integrity are the qualities required under section 2 of the Regulations on labour inspection. In *Slovakia*, according to section 1 of the Act on labour inspection of 8 February 2000, the candidate must have a clean police record; the same condition applies in *Romania*, according to section 50 of Act No. 108/1999; in *Luxembourg*, according to section 7 (3) of the Act of 4 April 1974; and in *Latvia*, according to section 7 of the State Civil Service Law.

⁷ Section 546 of the federal Labour Act.

candidates for senior positions in the labour inspectorate should be in possession of appropriate professional or academic qualifications or have acquired thorough practical experience in labour administration (Paragraph 5), and that candidates for other positions in the labour inspectorate 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 (Paragraph 6).

185. In most countries, candidates for the position of labour inspector, as for other positions of comparable level in the public service, must have a university degree and sit competitive examinations.⁸

186. A growing number of countries, in addition to requiring basic, initial training, also require specific supplementary theoretical and practical training for new candidates.⁹

B. Further training

187. Performance of the various duties involved in labour inspection requires a reasonable familiarity with various aspects of the law, economics and social sciences, and of the industries in which inspectors conduct inspections and give advice and information to employers and workers. A thorough knowledge of increasingly sophisticated and powerful information tools is required in an increasing number of countries for the management and evaluation of the statistical data that is needed for inspection systems to function well. In addition, between the adoption of the 1947 and 1969 instruments, observations showed that initial basic training, even when

⁸ In *Canada* in the provinces of Alberta and New Brunswick; in *France*; in *Japan* training is carried out at the Labour College of the Japan Institute for Labour Policy and Training; in *Lebanon* labour inspectors must have passed their final exams in the social and cultural affairs department of the National School of Administration, in accordance with Decree No. 112/59 of 12 June 1959.

⁹ In *Austria*, according to the BGBL Ordinance, No. 670/1990, initial training of labour inspectors is supplemented by several courses prior to their official appointment: organized group courses (4-6 weeks) at a workplace for their specialization; an individual practical placement at a workplace (3-8 months depending on the inspector's specialization); basic and specialized courses (3-5 weeks) and a preparation course for the final exam (eight weeks). In *Belgium*, under the Royal Decree of 20 September 1963 concerning the professional training of Ministry of Social Affairs employees, trainee inspectors attend a 12-month training course which includes classes, lectures, and revision in preparation for the final competition. In *Bulgaria*, candidates for a position as a labour inspector must go through a one-year probationary period after which they sit a final examination in order to be permanently appointed. Afterwards, they undergo a compulsory training course given by senior inspectors on the application of legislation relating to labour inspection. In *Cameroon* the required basic training is done at the National School of Administration and Justice, in the labour department, or in foreign or international schools, the list of which is determined by Order No. 133/CAB/PR of 2 June 1977. During their career labour inspectors receive further training in the form of courses, seminars, and even university study, under the auspices of the African Regional Labour Centre (CRADAT). The Government of *Denmark* indicates that new labour inspectors must follow a specific training programme that includes training at the labour inspectorate's regional office, a three-day general introductory course on the organization and role of the National Authority for the Working Environment, and on relevant legislation, a training course specifically dealing with basic knowledge of issues related to the working environment, and finally, a visit to other departments of the National Authority for the Working Environment. In *Honduras*, once inspectors have been appointed, their training is supplemented by practical and theoretical training overseen by experienced labour inspectors who assess the capacities of the new inspectors, a one-day course on investigation techniques, in particular, and seminars. *Latvia* indicates that new inspectors receive 240 hours of additional training upon their appointment. The Government of *Mauritius* indicates that intensive practical and theoretical training is provided for inspectors in the different departments of the Ministry in charge of labour, and, for some of them, at the ILO International Training Centre. In the *United Kingdom*, in addition to an initial degree, occupational health and safety inspectors undergo additional training over two years, under the supervision of experienced inspectors, which includes specialized theoretical courses to obtain a postgraduate diploma in occupational health and safety. In addition, all inspectors over the course of their careers undergo in-service training to update their knowledge and skills. Inspectors working in agriculture receive specific training in order to better understand this sector and its specific risks.

consolidated through additional training during a probationary period, was not sufficient to maintain the skills required by the labour inspectors to perform their increasingly complex duties. Developments in technology and methods of work in all sectors of the economy have been accompanied by a constant growth in knowledge of the impact of these factors on occupational health and safety and on productivity. The importance of advanced training for inspectors in the course of their employment has become obvious. It has led to the adoption of relevant national legislation as well as, at the international level, Article 9, paragraph 3, of Convention No. 129, which stipulates that labour inspectors must be provided with further training in the course of their employment, other than the training appropriate for the exercise of their functions already foreseen in Article 7, paragraph 3, of Convention No. 81.

Training for integrated labour inspection in Bulgaria, 1999-2005

During this German-funded ILO project, *Bulgaria* undertook a labour inspection reform and revised its Labour Code so that labour inspection enforcement and advisory activities, occupational health and safety and conditions of work matters could be integrated into the daily work of each inspector.

An intensive three-year "train-the-trainer" programme supported the transition period during which over 300 inspectors were trained. The new "integrated" inspectorate now carries out its activities on the principle of "one inspector for one enterprise" and has a significantly increased competence in planning and carrying out inspections in a more holistic manner with preventive inspection methods.

Based on the integrated inspection approach, the number of inspection visits on occupational safety and health and other issues increased from 20,251 in 1998 to 32,271 in 2003. The number of complaints investigated doubled from 3,437 in 1998 to 6,857 in 2003. Moreover, the inspectorate recruited over 70 new inspectors in 2003 and 2004. The success of the project may also be measured by the independent EU Senior Labour Inspection Committee evaluation, which reconfirmed that *Bulgaria* now meets all criteria for EU accession in the field of labour inspection.

188. Apart from a few exceptions, governments do not regularly communicate detailed information on the further training of inspectors.¹⁰ Specific training is given to inspectors in response to specific requirements in some countries.¹¹ On the basis of

¹⁰ The annual report on labour inspectorate activities sent by France regularly mentions, apart from the legal provisions relating to the recruitment methods and conditions of inspectors, statistical and thematic information on in-service training (including training for trainers) provided to inspectors by the National Institute of Labour, Employment and Professional Training's central and regional offices. An information system on labour inspection was established in 2000 and required specific training for all inspectors in the inspection system. In *Portugal* and *Spain*, detailed information, particularly on the types of training courses, the subjects, and the number of participants, is published in the annual inspection report. In the *Dominican Republic* labour inspectors must regularly participate in training courses given at the School for Technical Labour Training. In *Finland* training courses are organized by the inspectorate and inspectors can participate in internal or external training courses. In *Hungary*, specialized in-service training is organized by the National Inspectorate for Occupational Safety and Labour. The Government of *Lebanon* indicates that training sessions are regularly organized for inspectors, in collaboration with the ILO, the Arab Labour Organization and UNICEF. Inspectors who are engineers and doctors receive specialized training with the collaboration of specialized educational institutions. The Government of *Malaysia* indicates that labour inspectors can undergo specific training courses privately, within the National Institute for Occupational Health and Safety, or university courses related to their duties. The Government of *Mexico* indicates that inspectors at federal and local levels receive in-service training. The Government of the *Philippines* indicates that complementary theoretical and technical training courses are organized by the National Center of Occupational Safety and Health. In *Romania*, professional development courses for a minimum of seven days per year are organized by the National Institute of Administration or other recognized institutions. In particular, a national programme on occupational safety and health for inspectors has been developed for 2002-07. With regard to this, 60 inspectors have received training as instructors and information methods have been developed.

¹¹ For example, in *El Salvador*, in addition to in-service training on applicable national and international standards, inspectors receive training on new labour relations. In *Morocco*, the Government states that a training course on freedom of association, collective bargaining and industrial relations has been held. The Government of *Cape Verde* indicates that labour inspectors have been trained, in particular in the procedures for taking action on violations of labour legislation.

information provided to it, the Committee is given to understand that, particularly in the least developed countries, labour inspection staff more often than not receive only limited initial training, and have little opportunity to receive any in-service training. Experience acquired individually may then offset the lack of training opportunities. Training in some specific subjects is provided to labour inspectors in some countries under bilateral agreements.

189. In this respect, one employers' organization considers that the ILO should conduct a study into the problems that affect systems for further training of inspectors.¹²

190. The Government of *Croatia* deplores the impact on staff training opportunities of the lack of available funds, in the context of frequent changes to legislation and regulations, and the introduction of new technologies in the world of work. In *Belarus*, according to the Government, conditions of service combined with the general economic situation is causing inspectors to desert the inspectorate. In developing countries, the lack of funds is the major obstacle to institutional and regular staff training; as a result, in some cases outside organizations¹³ or regional bodies have been set up for this purpose. The ILO has actively participated in such initiatives in Africa, Asia, Latin America and the Caribbean thanks to the support given by international financial donors.¹⁴ In a number of countries, training courses are also arranged by the ILO itself, or with its assistance.¹⁵ The national labour inspectorate of *Poland* has concluded cooperation agreements with relevant bodies in *Bulgaria*, *Serbia and Montenegro* and *Ukraine* with a view to exchanging information on their respective experience and progress, in particular as regards recruitment and training of inspectors.

191. Some countries indicate that inspectors are trained especially to investigate child labour.¹⁶

¹² The Portuguese Confederation of Tourism.

¹³ For example, in *Kuwait*, an agreement between the Ministry of Social Affairs and the Institute of General Applied Education provides for the organization of training courses for inspectors, who will also be permitted to participate in courses and seminars organized by the Regional Arab Centre for Labour Administration. In *Yemen*, the Government indicates that it wishes to organize training courses in coordination with the Arab Labour Organization.

¹⁴ The African Regional Centre for Labour Administration in French-speaking African countries (CRADAT); the African Regional Labour Administration Centre in English-speaking African countries (ARLAC); the Asian and Pacific Regional Centre for Labour Administration, for Asian and Pacific countries (ARPLA); the Inter-American Centre for Labour Administration for Latin-American countries (CIAT); the Caribbean Labour Administration Centre (CLAC).

¹⁵ For example, in *Benin* and *Burkina Faso*. ILO support has also been requested by the Governments of *Bolivia* and *Cuba*. A workshop on the role of labour inspection, particularly in the field of occupational health and safety, was organized in *Mauritius* in collaboration with the African Regional Centre for Labour Administration (ARLAC). Some inspectors from *Jordan* received training at the ILO International Training Centre in Turin.

¹⁶ For example, *Argentina*, *El Salvador*, *Kenya*, *United Republic of Tanzania*, *Turkey* and *Uganda*.

An ILO handbook for labour inspectors on HIV/AIDS

The ILO has published a handbook to help labour inspectors integrate measures to combat HIV/AIDS into their activities and to develop tools and methods for that purpose, and to implement the guidelines set out in the ILO code of practice on HIV/AIDS and the world of work (2001). This code of practice contains useful information with regard to the relevance of the workplace as an important focus in the fight against this epidemic, the importance of involving labour inspectors in this approach, and the links between the issue of HIV/AIDS and the principles underlying labour inspection, particularly the principle of prevention in the field of occupational safety and health.¹

¹ *HIV/AIDS and work: A handbook on HIV/AIDS for labour and factory inspectors*, published by the ILO Programme on HIV/AIDS and the World of Work, Geneva, Feb. 2005.

192. There is little information available on the training of inspectors in the field of equality and anti-discrimination and in particular equal remuneration. The Committee has on a number of occasions drawn attention to the need for inspectors to understand and to be fully trained on the application of the principle of equal pay for men and women for work of equal value in order for them to properly carry out their primary functions in this important area.¹⁷

III. Composition of labour inspection staff

A. Numbers

193. Labour inspection involves various categories of staff. In central offices and in branch offices, technical and administrative staff, administrative assistants, secretaries, receptionists and maintenance staff all work side by side. Only those staff who do work that is an integral part of inspection duties, as defined by the instruments, can generally be called labour inspectors, although they may in fact have a different job title. Some staff may be given responsibility for labour inspection missions, either as inspectors or as assistants to the inspectors, although they do not fulfil all of the conditions required by the Conventions.

194. Although information on the number of labour inspectors or inspection staff is regularly sent to the ILO, it is nevertheless difficult to evaluate it in the light of the relevant provisions of the Conventions. In particular, there is a lack of information that would make it clear to what extent the number of practising inspectors is decided upon using the relevant criteria. In addition, the variety of names for the different inspection staff referred to by the instruments makes it very difficult to make any comparison.¹⁸

¹⁷ Training on equal remuneration is currently being undertaken in *Togo, Slovakia, Romania and Portugal*, and on discrimination in general in *Argentina and Mexico*.

¹⁸ For example, in 2001 in *Belgium*, 45 social inspectors comprising ten directors and 145 social supervisors divided into two categories worked at the Ministry of Social Affairs, Public Health and the Environment; 25 inspectors and 122 supervisors worked at the National Office for Social Security; and 30 inspectors and six supervisors at the National Institute for Health and Disability Insurance. *Bulgaria* had 355 inspectors in 2004; *Cameroon* had 75 in 2000; *China* had 43,000, of whom 19,000 were full time and 24,000 part time in 2004; *Denmark* had 714 inspectors, 440 of whom were in regional offices in 2000; *Finland* had 389 inspectors and supervisors in 2004. In *France* a comparative study of 2001 showed that the numbers in inspection services had fallen by 9.7 per cent over 15 years, even though there had been a 26 per cent increase in the number of workplaces liable to inspection. *Greece* had 1,048 inspectors in 2003; *Honduras* had 115 inspectors, including 14 in occupational health and safety in 2003; in *Malaysia* the figure of 279 given for 2003 covered all staff, regardless of their duties; *Malta* had five public servants monitoring employment contracts and working conditions in 2001; *Mongolia* had 73 inspectors, *Mexico* 218 inspectors, the *Philippines* 208, and *Romania* 1416 in 2004; *Slovenia* had 106 employees in labour inspection, 76 of whom were authorized employees and 73 of these were full time in 2001.

195. While indicating that the number of its inspection staff has recently been increased, the Government of the *Central African Republic* observes that, because of insufficient funds, it is not possible to pay inspectors' travelling expenses, and the major labour inspection activity is the settlement of labour disputes. In this regard, the Committee is bound to draw to the attention of governments the principle that the number of labour inspectors must be determined with due regard for the material means at their disposal, in accordance with Article 10(b), of Convention No. 81 and Article 14(b), of Convention No. 129.¹⁹

B. Collaboration with specialists and technical advisers

196. In order to be effective, inspection of workplaces must permit the detection of potential hazards so that measures can be determined to eliminate or reduce them as far as possible. Such inspections often require a high level of expertise and is thus a matter for specialist technical advisers. Inspectors must collaborate with such technical advisers or experts in order to carry out technical inspections for which their own qualifications are not sufficient. This is provided for in Article 9 of Convention No. 81 and in Article 11 of Convention No. 129. Convention No. 81 specifically states that duly qualified technical experts and specialists, including specialists in medicine, engineering, electricity and chemistry, should be associated with the work of inspection 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 for the purpose of investigating the effects of processes, materials and methods of work on the health and safety of workers.

197. In the last few decades, the backgrounds of such staff have diversified, while individual inspection teams have become increasingly highly specialized in a wide range of fields, especially medicine, ergonomics and psychology, particularly in the industrialized countries.

198. National conditions permitting, it is desirable that such technical advisers or specialists be integrated into the labour inspection teams.²⁰ The Government of *Greece* indicates that almost one-third of its labour inspection staff consists of university graduates in engineering, medicine and science. In *Denmark*, the inspection team includes technical advisers and specialists in psychology, ergonomics, pharmacology and physiotherapy. When these specialists are not a part of the labour inspectorate, their role is to give technical advice, drawing the attention of the labour inspectors to their expert findings and making recommendations with a view to rectifying potentially hazardous situations.²¹

¹⁹ The technical services of the ILO responsible for labour inspection consider that the number of labour inspectors in relation to workers should approach the following: for industrial market economies: 1/10,000; for rapidly industrializing economies: 1/15,000; for transition economies: 1/20,000; for least developed countries: 1/40,000.

²⁰ In *Finland* the majority of labour inspectors possess specialized skills in specific fields, such as industrial plants, industrial chemistry or technology. In *Malaysia*, where the inspection staff includes engineers, industrial health specialists and doctors. In *Kuwait*, a certain number of inspectors are qualified in particular sectors, such as electricity or mechanics.

²¹ In *Bahrain*, the Government indicates that specialists in occupational health and safety from the Health Ministry go with the inspectors on each visit. In *Romania*, according to section 8 of Act No. 188/1999, the use of specialists or specialized agencies is governed by the inspectorate's regulations on the organization of its work. In *Tunisia*, according to section 176 of the Labour Code, collaboration with technical specialists is only permitted in situations where there is a risk to health and safety.

199. In many countries, medical labour inspection services have been institutionalized.²² Medical inspectors generally have the same power and responsibilities as labour inspectors, within their field of expertise,²³ but this is not always the case, and the extent of their activities may be limited by legislation. For example, in *Benin*, a medical inspector cannot serve an injunction or prepare a report on a violation, as these may only be done by a labour inspector after he or she has seen the medical inspector's report.²⁴

200. Under Article 8, paragraph 2, of Convention No. 129, Members may include in their system of labour inspection in agriculture officials or representatives of occupational organizations, whose activities would complement those of the public inspection staff. The persons concerned must be assured of stability of tenure and be independent of improper external influences. The practical application of this stipulation cannot be evaluated owing to a lack of information.

IV. Status and conditions of service of labour inspection staff

A. Stability and independence

201. Under Article 6 of Convention No. 81 and Article 8, paragraph 1, of Convention No. 129, labour 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 are independent of improper external influences.

202. As the Committee emphasized in its previous General Survey on labour inspection, inspectors cannot act in full independence, as required by their functions, if their service or their career prospects depend on political considerations.²⁵ This may be a particularly sensitive issue if there is a hierarchy of reporting in the inspectorate, which may inhibit effective implementation of the role of inspectors.

203. As can be seen from the preparatory work on Convention No. 81, public servant status was considered necessary for inspection staff as it was the status best suited to guaranteeing them the independence and impartiality necessary to the performance of their duties. As public servants, labour inspectors are generally appointed on a permanent basis and can only be dismissed for serious professional misconduct, which should be defined in terms that are as precise as possible to avoid arbitrary or improper interpretations. A decision to dismiss an inspector, like any other decision to apply a sanction with serious consequences, should be taken, or confirmed, by a body 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.

²² For example, in *Chad, France, Guinea, Republic of Korea, Mauritania, Morocco* and *Tunisia*.

²³ In *Cameroon*, according to section 111 of the Labour Code; in *Mauritania*, according to section 284 of the Labour Code; in *New Zealand*, according to section 35 of the Health and Safety in Employment Act, No. 96, 1992; in *Kenya*, according to section 51 of the Employment Act No. 2/1976.

²⁴ Section 8 of Decree No. 008 of the Ministry for the Public Service, Labour and Administrative Reform.

²⁵ Paragraph 136 of the 1985 General Survey. In addition, as has already been pointed out, officials or representatives of occupational organizations who might participate in the labour inspection system in agriculture should be assured of similar guarantees of stability of tenure and independence (Article 8, paragraph 2, Convention No. 129).

204. It is vital that levels of remuneration and career prospects of inspectors be such that high-quality staff are attracted, retained, and protected from any improper influence.

205. In general, labour inspectors are covered by the general public service conditions of service, by the provisions of general labour law or, in many countries, by special regulations that also apply to certain categories of permanent state officials.²⁶ Inspectors are sometimes state employees, without being regarded as civil servants.²⁷ In *Malta*, for example, inspectors are appointed for a period of three years, which is automatically renewed if their performance is considered satisfactory. The Government is confident of the effectiveness of this recruitment practice in guaranteeing inspectors' stability of employment.

206. In *Luxembourg*, labour inspectors, as officials appointed by the Ministry of Labour from a list proposed by the most representative trade unions, are sometimes suspected of being biased because of their union affiliations. However, they only perform certain inspection duties and, in particular, they cannot draw up violation notices, official reports or injunctions, being the prerogative of the central authority. Some inspections are carried out by officials of the former Department of Customs and Excise Duty, who have retained their status and rights as officers of the police force, and who are empowered to carry out occupational safety inspections and to impose fines, particularly in the construction and road transport sectors. The revision of the conditions of service, recruitment methods, training and functions of labour inspection staff was recommended by a tripartite international mission carried out under the auspices of the ILO in 2002. The objective of such a revision is to bring these aspects into line with the principle of independence enshrined in Article 6 of Convention No. 81.

207. The Committee notes that labour inspectors experience particularly difficult working conditions in the majority of developing countries.

208. The instruments do not mention the level of remuneration of labour inspectors. However, this matter is implicitly covered by the principle of conditions of service under Article 6 of Convention No. 81 and in Article 8 of Convention No. 129. It is the Committee's opinion that this principle covers remuneration, career prospects and respect for their duties on the part of the Government.

²⁶ In *Algeria*, Decree No. 91-44 of 16 February 1991 on the special status applicable to labour inspectors; in *Austria*, in accordance with Annex I of the Civil Service Regulations of 1979, BGBl No. 33; in *Benin*, Decree No. 85-375 of 11 September 1985 regarding the special status of the whole staff of the labour and manpower departments. In *Bolivia*, since the adoption of the Ministerial resolution No. 340/87 of 26 November 1987 regarding the regulations of the labour inspectorate, the latter constitutes a national technical authority of the public service and comes under the Ministry of Labour; public servant status is ensured under section 35 of the Labour Inspectorate Regulations. In *Bosnia and Herzegovina*, under the State Administration Act and the Act concerning labour inspection. In *Brazil*, under Act No. 8112 of 11 November 1990. In the *Congo* public servant status for labour inspectors is established under section 152 of Act No. 6/96 of 6 March 1996. In *Greece*, according to Act No. 2639/98 and the Public Service Code adopted by Act No. 2683/99. In *Lesotho*, under section 12 of the Labour Code Order; in *Lebanon*, under Decree No. 112 of 12 June 1959, labour inspection staff are public servants subject to public service conditions of service; in *Mali*, according to section L.292 and subsequent sections in the Labour Code; in *Nicaragua*, according to the Public Service and Administration Careers Act of 2003, and its implementing regulation; in *Tunisia* according to Decree No. 891 of 30 May 1990.

²⁷ In the *Philippines* and *Singapore*, for example.

Luxembourg Tripartite Audit, 2002

A tripartite labour inspection audit was carried out in 2002 with the support of the ILO at the request of the Luxembourg Minister of Labour. Based on the audit recommendations, *Luxembourg* restructured its labour inspectorate based on a management-by-results approach. More concretely, in 2002, four draft laws were presented to Parliament. The first one treats the reform of labour inspection, the second aims at creating a tripartite permanent committee for labour and employment as well as a tripartite mediation instance. The third draft law proposes to change the law concerning health and safety at work. The final draft law aims to ratify 21 ILO occupational safety and health Conventions.

As a follow-up to the positive outcomes of the audit, *Luxembourg* organized a joint EU/ILO tripartite conference on integrated labour inspection, during which participants from over 75 countries developed new concepts for an integrated labour inspection system. The final conclusions called for an integrated ILO service on labour inspection, covering occupational safety and health and working conditions, and for a new EU-funded project on reinforcing labour inspection services in developing and transition countries.

Since the Luxembourg audit in 2002, similar inspection audits were carried out in *India*, *Kazakhstan*, *Latvia* and *Thailand*. An audit is planned in *Brazil* in 2006.

B. Remuneration

209. In its last General Survey on labour inspection, the Committee noted that the sometimes very low level of labour inspectors' salaries, combined with the absence of career prospects, could cause inspectors to turn from the labour inspectorate towards other, more prestigious sectors of the public service or the private sector.²⁸ The Committee observes that, in most developing countries, labour inspectors are no more likely to enjoy working conditions that will encourage them to remain in the inspection service than they were 20 years ago, particularly because of the effects of structural adjustment. Although the Committee is aware of the severe budgetary restrictions governments often face, it is bound to emphasize the importance it places on the treatment of labour inspectors in a way that reflects the importance and specificities of their duties and that takes account of personal merit.

210. In Africa, the majority of the countries bound by the Conventions report a lack of human and financial resources. The Government of *Mali* indicates that a labour inspector's basic salary is calculated using the same salary scale as that used for other public servants. However, the bonuses they may receive bear on comparison with those paid to officials in the Departments of Finance or Public Works. The Government notes that this situation is pushing inspectors to do unofficial paid work, to accept gratuities and even to lose their sense of commitment and to become biased; the Government therefore plans to grant them an additional bonus so that they will be protected from any improper external influence. There is a lack of adequate statistical information on levels of remuneration of inspectors and, in turn, on the practical effect given to legislation, which is generally in conformity with the principles of the Conventions.²⁹ In a report on the results of ILO technical assistance between 2001 and 2005, the Ministry of Labour of *Mauritius* has announced, among other improvements, an upgraded status for labour inspection staff and the creation of new job descriptions corresponding to different levels of remuneration.

²⁸ 1985 General Survey on labour inspection, para. 148.

²⁹ For example, in *Benin*, section 35 of Decree DC 85-375 of 11 September 1985 respecting the particular status of the labour administration service.

211. In Latin America, the conditions of employment of labour inspection agents are generally characterized by inadequate levels of remuneration.³⁰ As a result, labour inspectors look for other sources of income, such as a second job, more often than not with a private sector employer. The Committee considers that having more than one position concurrently, even when inspectors are prohibited from having any dealings with a case which is directly or indirectly linked to their private activities, as is the case in *Uruguay*,³¹ interferes with the performance of inspection duties.³² In *Bolivia*, according to the Government, labour inspectors do not, in practice, enjoy conditions of service that guarantee them the stability of employment and independence required by Convention No. 81. This prompts them to supplement their very low salaries by taking on other work to meet their families' basic needs.³³

212. The *Republic of Korea* has adopted a law, which will come into force in 2006, to authorize the setting up of public service unions. The implementation of this law should help to improve labour inspectors' conditions of service.

213. In Europe, the level of remuneration of labour inspectors varies greatly from one country to another. The new members of the European Union are making a considerable effort to endow labour inspection with the human resources needed to carry out their duties and to give inspectors the conditions of remuneration and career development that might keep them within the inspection system. In Latvia, the law provides for inspectors to receive, apart from their monthly salary, various benefits, such as family benefits, travel allowances, special bonuses for extra work or for especially difficult working conditions, as well as costs of training for professional development and study leave.³⁴

214. When inspectors do not receive remuneration commensurate with their responsibilities, the labour inspection itself is devalued. In carrying out their duties, inspectors may then find themselves treated with disrespect which detracts from their authority. Their low standard of living can also expose inspection officials to the temptation of treating certain employers leniently in exchange for favours. The Committee's attention has been drawn on a number of occasions to the unfavourable treatment of labour inspectors especially compared with that of tax inspectors or even that of temporary officials employed as labour inspectors.³⁵

215. In some countries, measures have been adopted to motivate or protect inspectors. For example, in *Saudi Arabia*, under the terms of a government recommendation, the most effective inspection offices are given awards and privileges.

³⁰ This is the case in *Bolivia* where a labour inspector's monthly salary is equivalent to about US\$165; in *Brazil*, where even the salaries of managerial positions are low; in *Guatemala*, where overtime is not paid; in *Paraguay*, where salaries are said to be insufficient, about US\$350, according to the Latin American Confederation of Labour Inspectors.

³¹ Act No. 16226 of 29 October 1991 to abrogate section 495 of Act No. 15809 of 10 November 1987.

³² Report III (Part 1A) of the Committee of Experts on the Application of Conventions and Recommendations, ILC, 90th Session, 2002, pp. 256-257.

³³ The Association of Uruguayan Labour Inspectors (AITU) draws attention to discrimination in terms of labour inspectors' salaries compared with officials in other inspection services, such as tax inspectors; in its opinion, this highlights the weakness of labour inspection staff.

³⁴ Sections 23 to 32 of the State Civil Service Law of 7 September, 2000.

³⁵ In *Argentina*.

C. Career prospects

216. Career prospects that take into account seniority and personal merit are essential to attract and especially to retain qualified and motivated staff in labour inspectorates. This essential aspect of human resources management is widely recognized in industrialized countries and stability of staff and their prospects for promotion and development are therefore guaranteed. In developing countries, the general economic and social conditions particularly affect all levels of responsibility in the labour administration. Even when legal provisions guarantee attractive professional career development, there is often only limited practical implementation.

217. The Committee does not possess very solid information on the way in which labour inspectors' career development occurs worldwide. While it is true that the relevant instruments do not contain specific guidelines on the matter, the fact is that the complexity of labour inspection duties and the degree of responsibility that they involve require incentives including attractive career prospects that are at least as favourable as those for other public servants in the same country doing work of similar complexity and with similar responsibilities.

218. In countries where labour inspectors' conditions of service are very precarious, mistrustful attitudes as to their integrity, rather than any concern to keep them in the service, appear to underlie their career management. For example, in some Latin American countries, inspectors are transferred at very short notice and without any consideration for the negative effects of such transfers on their family and social life.³⁶ In a number of countries, inspectors nonetheless benefit from certain guarantees of employment stability. Thus, in *Japan*, dismissal of a labour inspector must be authorized by the Council for Dismissals.³⁷ In *El Salvador*, a labour inspector can only be dismissed by a judicial decision after adversarial proceedings,³⁸ although majority of labour inspectors are employed under one-year fixed-term contracts.

219. In the Committee's opinion, the competent authority at a national level should be concerned to ensure that labour inspectors are treated with the respect their everyday responsibilities entitle them to, with due regard to the social importance of their duties. They should be able to expect career prospects that value their seniority, enthusiasm and commitment, and any unprofessional conduct on their part, depending on how serious it is, should be penalized in accordance with formal procedures which protect them from arbitrary decisions.

220. The Committee notes that labour inspectors in Australia are covered by a collective agreement for all matters related to their status and conditions of employment, as are other public servants in the Department of Employment and Workplace Relations. This agreement sets out the rules for salary fixing and salary rises, compensation for the use of private vehicles for official purposes, and flexible working time arrangements, defines mechanisms for rational use of skills, fixes rates and the means of payment of monetary and other benefits, superannuation, and so forth. As balancing work and personal life is considered a right, various flexible working arrangements and a wide range of leave entitlements are available to public servants.

³⁶ Particularly in *Costa Rica*.

³⁷ Section 97(5) of the Labour Standards Act, as revised on 4 July 2003.

³⁸ Decree No. 459 of 8 March 1990.

221. Recognition, reinforcement and rational use of employees' skills are achieved through performance-related incentives for teams or individuals and through opportunities for professional and career development.

D. Physical safety of labour inspectors

222. In some countries, apart from inadequate remuneration and unsatisfactory conditions of employment, problems of physical safety can also seriously affect the inspectorate's work. It is unfortunately not uncommon for inspectors to be threatened, insulted and even attacked physically by employers who object to their presence at certain workplaces. Inspection reports or the media have drawn attention to incidents which vary in seriousness. The Government of *Colombia* has explained that inspection visits to agricultural undertakings are rare because of the Government's inability to guarantee the physical safety of inspectors in some regions which are in effect war zones. Violence against inspectors reached an extreme in *Brazil* and in *France* in 2004 when labour inspectors who were visiting agricultural undertakings were killed.³⁹

V. Obligations of labour inspectors

223. As a means of counterbalancing the important powers with which they are entrusted for the discharge of their duties, inspectors have to be bound by obligations to ensure that they carry out their duties with complete independence, discretion and impartiality and that they enjoy the trust of both employers and workers. Article 15 of Convention No. 81 and Article 20 of Convention No. 129 provide that, subject to such exceptions as may be made by national laws or regulations, labour inspectors shall be prohibited from having any interest in the enterprises under their supervision, or from revealing any information protected by industrial or commercial property rights and that they shall treat as confidential the source of complaints and give no intimation to the employer of any link which may exist between a complaint or denunciation and the inspection carried out. As these principles are set forth in very general terms, it is the responsibility of the competent national authorities to define in specific terms the concepts of interest, secrecy and confidentiality and, where appropriate, the exceptional circumstances under which labour inspectors may or should be exempted from the obligations and prohibitions established or under which they could be attenuated to maintain the objectives of labour inspection.

224. It should be noted that in many countries the national legislation takes up in their entirety the ethical obligations set out in the two Conventions.⁴⁰ These obligations may

³⁹ In *Brazil*, an association of labour inspectors, the AGITRA, alleges a lack of government commitment to guaranteeing minimum conditions for the safety of inspectors while performing their duties; and complains of political interference. In *France*, labour inspectors and supervisors reacted to this by calling on the Government to ensure their profession the respect necessary for it to assert its authority in the eyes of the general public and particularly of employers by providing for legal action against persons who insult and slander labour inspectors. In the context of the European Union, the Senior Labour Inspectorates Committee (SLIC) examined inspection-related incidents and acts of violence perpetrated against labour inspectors.

⁴⁰ In *Belgium*, sections 12 and 13 of the Act of 16 November 1972 on labour inspection; Royal Decree of 2 October 1937; *Brazil*, section 35 of the Labour Inspection Regulations; *Denmark*, section 3 of the Public Administration Act on prohibitions and section 79 of the Working Environment Act; *Finland*, sections 5, 6 and 7 of Act No. 131/1973 on the supervision of occupational safety and health; *Japan*, articles 103 and 104 of the National Public Service Law and article 105 of the Labour Standards Law; *Lesotho*, section 14(3) of the Labour Code.

also be established in regulations,⁴¹ as well as in codes of conduct⁴² or ethical codes,⁴³ the legal scope of which is uncertain.

France: Preparation of an ethical guide

In France, the Support and Coordination Mission for the Decentralized Services of the Ministry of Labour (MICAPCOR) has, with the technical support of the ILO, embarked upon the preparation of an ethical guide for use by all labour inspection professionals at all levels of responsibility. This initiative is intended to respond to the concerns expressed by local inspectors and to assist in adapting as well as possible the professional conduct of labour inspectors to the multiple developments in the world of work. In the view of MICAPCOR, the principles of impartiality, having no direct or indirect interest, discretion and confidentiality, to be applied in accordance with the letter and spirit of the international Conventions on labour inspection, require the provision to all inspection professionals of clarifications and meaningful examples. A technical group composed of experienced labour inspectors, including representatives of the Minister of Labour, regional, departmental and local labour inspection structures in all sectors, is working on the preparation of a guide which is as exhaustive as possible. The participation of labour inspectors and labour controllers of all generations means that the working group acts as a true reflection of labour inspection at the local level. The conclusions reached on each of the subjects examined consequently offer the advantage of taking into account the diversity of experience encountered in individual cases and therefore provide less experienced inspectors with guidance on solutions which may be applied in the various circumstances.

A. Prohibition of any direct or indirect interest

225. Under the terms of Article 15(a) of Convention No. 81 and Article 20(a) of Convention No. 129, labour inspectors shall be prohibited from having any direct or indirect interest in the enterprises under their supervision. This principle is set out in law in most countries and is applicable to inspectors either by reason of their status as public officials or under the specific provisions determining the functions of labour inspectors. However, the Committee has noted that the concept of “direct or indirect interest” is rarely defined with sufficient precision to enable it to assess the exact scope of the prohibition. In certain countries, the prohibition of having any direct or indirect interest is confined to certain specific situations which only partially cover the circumstances in which labour inspectors might be influenced by considerations of a personal nature in the discharge of their duties relating to an enterprise. For example, in *Croatia*, a labour inspector is not allowed to carry out inspections in an enterprise in which she or he or a member of her or his close family is involved in the management or has any interest whatsoever.⁴⁴

226. The prohibition on having any direct or indirect interest is intended, in the legislation in many countries, to cover advantages that are essentially of a material and/or financial nature. It applies in many countries to the offering of presents or services by employers or workers.⁴⁵

⁴¹ *Nicaragua*: the relations between labour inspectors and the enterprises under their supervision are governed by the Regulations on labour inspectors, Decree No. 13-97 of 27 February 1997.

⁴² For example, in *Australia*.

⁴³ For example, in *Malta*, the Ethical Code for public officials includes all the ethical rules set out in the Conventions.

⁴⁴ Section 17 of the Act on labour inspection.

⁴⁵ In *China*, it is prohibited for labour inspectors and those close to them to use their influence to obtain money, presents or services from employers or workers under their supervision. In *Guatemala*, the acceptance of a present from an employer, employees or trade unions makes the labour inspector liable to dismissal (section 281(k) of the Labour Code); in *Mexico*, it is prohibited for labour inspectors to receive presents or payments from workers, employers or their representatives.

227. The Committee considers in this respect that the term “any direct or indirect interest” should be understood as also covering any personal interest of a psychological, emotional, political or other nature by an inspector which could reasonably be perceived as likely to compromise the integrity of her or his professional conduct in relation to certain enterprises. The notion of interest should therefore be defined in national legislation so as not only to prevent situations of clear conflict of interest, such as participation in the management of the enterprise, either directly, or through an intermediary, the purchase of shares or financial involvement, or an interest in the use of a patent or brand name, but also to allow the identification of any other situation which could be reasonably perceived as likely to have an undue influence on the discharge of the inspector’s functions.

228. Such a definition would have the advantage of being sufficiently precise to provide guidance to labour inspectors, on the one hand, and the competent authority, on the other, on cases in which direct or indirect interest is prohibited and to facilitate the enforcement of this prohibition and enhance the integrity of the inspection system. The shortage of information on the practical scope of the prohibition placed upon inspectors from having an interest in enterprises under their supervision would appear to reflect shortcomings in the relevant legislation. The governments of some countries have occasionally reported transfers to prevent risks of corruption to which inspectors may have been exposed. The Committee firmly encourages governments to take measures to supplement the legislation so as to guarantee to employers and workers that any violation by a labour inspector of her or his obligation not to have any direct or indirect interest can be prosecuted and penalized.

B. Professional secrecy

229. During their inspections, inspectors have access to information in respect of which employers have a legitimate interest in maintaining its confidentiality. Under the terms of Article 15(b) of Convention No. 81 and Article 20(b) of Convention No. 129, 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.

230. As public officials, inspectors are normally bound by a general obligation of discretion by virtue of the provisions governing the public service, and also very frequently by the specific provisions applying to the functions of labour inspectors.⁴⁶ The obligation of discretion is established in certain countries by the oath that inspectors have to make before taking up their duties.⁴⁷

231. The exceptions to the obligation of secrecy provided for in the national legislation in certain countries essentially cover cases in which the notification of information to the police or judicial authorities, among others, is necessary to prosecute a violation.

232. As the legitimate interests of employers have to be safeguarded by protection that is of a permanent nature, the obligation of secrecy is maintained for labour inspectors after they have left the service. The Committee has on occasion drawn the attention of certain governments to the need to amend the legislation in this respect.

⁴⁶ For example: *Bahrain*, in section 151 of the Labour Law for the private sector of 1976; *Benin*, in section 268 of the Labour Code; *Burkina Faso*, in section 219 of the Labour Code of 1992; *Cameroon*, in section 106 of the Labour Code; *Luxembourg*, in section 24 of the Act of 4 March 1974; *Mali*, in section L293 of the Labour Code; *Morocco*, in section 531 of the Labour Code; *Slovakia*, in section 12(2) of the Act on labour inspection.

⁴⁷ For example, in *Hungary*.

233. The scope of the obligation of secrecy, as provided for by the Conventions, differs in the various countries. For example, in *Bosnia and Herzegovina* it extends in general to data and information obtained by labour inspectors during the course of their duties, and particularly information relating to manufacturing processes and other specific characteristics covered by the law. In *France*, it covers labour inspectors, labour controllers, doctors and safety engineers and applies to manufacturing secrets and, in general terms, working processes.

234. The obligation of secrecy is frequently enforced through penalties.⁴⁸ Nevertheless, the Committee does not have at its disposal sufficient information on the effect given in practice to legal provisions establishing penalties for inspectors who are in breach of the obligation of secrecy.

C. Confidentiality of the source of any complaint

235. Under the terms of Article 15(c) of Convention No. 81 and Article 20(c) of Convention No. 129, labour inspectors shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint.

236. Compliance with this obligation is a prerequisite for the effectiveness of labour inspection. Without confidentiality, workers might hesitate to turn to the labour inspectorate through fear of reprisals.

237. According to the information available, compliance with this obligation does not raise any particular difficulties. However, its limitations are revealed in specific situations in which the investigation of individual cases makes it necessary to divulge the identity of the complainant.⁴⁹ In such cases, it is admitted that the need for effective action to protect the victim has to prevail over the concern for confidentiality.

⁴⁸ For example, in *Guatemala*, inspectors who are in breach of the obligation of secrecy are liable to summary dismissal (section 281(k) of the Labour Code). The same applies in *Honduras* (section 612 of the Labour Code).

⁴⁹ This situation is referred to, among others, by *France* and *New Zealand*.

Chapter VI

Resources of the labour inspection

238. In order to carry out its functions effectively, a labour inspectorate does not only need an adequate number of staff, with appropriate conditions for hiring, training and service; these staff must also be given the necessary resources to perform their tasks and to ensure that their role and the importance of their work is appropriately recognized. In this regard, the labour inspection Conventions provide that it is the responsibility of the competent authority to make the necessary arrangements.

239. 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 local offices suitably equipped in accordance with the requirements of the service, and accessible to all persons concerned; the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist; and the reimbursement of any travelling and incidental expenses which may be necessary for the performance of their duties. Convention No. 129 adds that the labour inspection offices, accessible in so far as possible to the persons concerned, shall be so located to take account of the geographical situation of the agricultural undertakings and of the means of communication. Recommendation No. 133 recommends in addition that employers in agricultural enterprises should provide the necessary facilities to labour inspectors, including, where appropriate, the use of a room for interviews with persons working in the undertaking.

I. Budgetary resources of the labour inspectorate

240. Governments provide little information on how the budgetary resources of the labour inspectorate are determined. It does appear, however, that in most countries the labour inspection budget comes under the general budget of the ministerial department responsible for labour, social affairs and related matters.¹ The allocation of financial resources to the operation of the labour inspectorate is not always determined in a precise and definitive manner for the budgetary period. In *South Africa*, they are revised and readjusted as necessary and within the limits of the available resources. In all too many countries, the labour inspectorate does not receive a specific budgetary allocation, which makes the financing of the inspection services precarious.²

¹ *Algeria, Australia, Austria, Botswana, Ethiopia, Gabon, Mali, Mongolia, Nicaragua, Papua New Guinea, Peru, Philippines, South Africa, Trinidad and Tobago and Tunisia.* Labour administrations in most English-speaking African countries receive no more than 1 per cent of the national budget (in some cases, the figure is 0.1 per cent). Labour inspections, in turn, receive only a fraction of these resources (W. von Richthofen: *Labour inspection – A guide to the profession*, ILO, 2002, p. 146).

² In *Mozambique*, where no part of the general labour administration budget is specifically allocated to labour inspection, the provincial offices have neither transport nor any other facility for work-related travel of labour

241. In some countries, sums received in the form of fines imposed as a result of violations of the legal provisions enforced by labour inspection are entirely or partly paid back into the labour administration budget. This is the case, for example, in *Argentina*, where the funds received are used towards improving the labour administration services,³ in *Mali*, where 60 per cent go to the public revenue department and 40 per cent to the labour administration services;⁴ and in *Saudi Arabia*, where they are paid into the Employees' Social Insurance Fund in a special account to finance projects to improve living and working conditions.⁵

242. In *Chile* and *Cuba*, the resources allocated to the labour inspectorate are separate from those of the labour ministry; their amount is determined on the basis of annual inspection plans.

243. In *France*, the central labour inspection authority indicates that needs are met and the inspectorate is generally adequately equipped. Priority is given to improving working conditions of inspectors and access by the public. This is reflected in better control over operating costs and the planning of vehicle and equipment maintenance and renewal over several years.

II. Conditions of work of labour inspectors

A. Offices

244. Many governments consider that the labour inspectors in their countries have suitably equipped offices as required for the performance of their duties.⁶ The Committee observes, however, that this is not always the case. In *Benin*, for example, according to the activity reports of some departmental directorates, the labour inspectorate lacks appropriate offices and suffers from having to share space with other decentralized structures. This is the case in most sub-Saharan African countries,⁷ such as *Mali*, where the Government reports the deterioration of offices, inadequate space and poor ventilation; *Mauritania*, where the Government and the regional labour inspectorates refer to decrepit and poorly maintained offices, lack of water and electricity and even of the necessary resources to pay the rent.⁸ In some countries the shortage of

inspectors. In *Papua New Guinea*, the labour inspectorate lacks staff, materials, equipment and means of transportation. In *Rwanda*, according to the Government, the human, logistical and material resources allocated to the labour inspectorate bear no relation to needs.

³ Section 13 of Appendix II of Act No. 25212 of 23 October 1999, ratifying the Federal Labour Pact.

⁴ Section A.296(2) of Order No. 1566/MEFPT-SG of 7 October 1996 on the methods of application of certain provisions of the Labour Code.

⁵ Section 207(2) of the Labour Code.

⁶ *Barbados, Burundi, Cameroon, China (Hong Kong Special Administrative Region), Latvia, Gabon, Mozambique*. The Government of *Denmark* points out that inspectors have 30 square metres of space each, with natural lighting, a computer and suitable furniture; each national office includes a space for receiving the public and several meeting rooms.

⁷ *Côte d'Ivoire*, in particular with regard to the premises used by labour inspectors covering agricultural enterprises; *Ghana*, where in 2003 the Government highlighted the need for renovation to ensure visitors' safety.

⁸ As there is no budget allocated for the purpose, the inspectorates rely on charity dispensed by the municipality or the *wilaya*.

resources is so severe that inspectors are unable to carry out most of their tasks for lack of writing materials.⁹

245. In Latin America, the financial difficulties affecting the labour inspectorates are often mentioned by workers' organizations or associations of labour inspectors. Lack of paper and other stationery items was reported by a trade union confederation in *Uruguay*¹⁰ and a professional association of labour inspectors of *Costa Rica*.¹¹ Inadequate premises were mentioned in *Costa Rica*,¹² while insufficient computer equipment, telephones, tables and chairs were cited in *Brazil*,¹³ *Guatemala*¹⁴ and *Peru*.¹⁵

246. In *Algeria*, offices are provided under the responsibility of the regional inspectorate, which is tasked with assessing needs and distributing the available resources in a rational manner.¹⁶ Most of the inspectorate's offices are located in independent structures; computer equipment and modern means of communication are available in every office; the offices are refurbished every year, depending on the resources allocated. In the *Libyan Arab Jamahiriya*, mobile telephones are provided to the labour inspectors of each province.

247. Labour inspectorates need adequate equipment (which has to be stored and maintained) to take samples and carry out measurements in enterprises. To perform analyses that require special technical processes or methods, they need to have access to the services of specialized regional or national laboratories. The Committee has limited information concerning the technical facilities provided to inspectorates. It appears that in industrialized countries the situation is evolving with the development of new technologies and economic activities. However, some deficiencies were noted in *Luxembourg* during a tripartite audit of the labour inspectorate carried out with ILO technical assistance.¹⁷ According to information communicated in an activity report of the medical inspectorate of *Belgium* in 1999, staff are equipped with instruments for measuring the work environment, such as thermometers, hygrometers, light meters, sound meters and dosimeters, as well as appropriate personal protection equipment. Inspectorate staff use the services of the industrial toxicology laboratory for analysing samples, measuring levels of chemical substances in the workplace atmosphere and identifying hazardous substances, as well as carrying out sophisticated analyses.

248. The central labour inspection authority of *Bulgaria* and the Government of the *Republic of Moldova* raised the issue of the lack of resources to provide the equipment necessary for carrying out certain technical inspections.

⁹ For example, in the *Central African Republic*, *Guinea* and *Mali*. The General Workers' Union of *Cameroon* referred in 2004 to the lack in some offices of computer equipment, furniture, stationery and drinking water.

¹⁰ The Inter-Trade Union Assembly – Workers' National Convention (PIT-CNT).

¹¹ The National Association of Labour Inspectors (ANIT).

¹² By the *Rerum Novarum* Confederation of Workers and the Staff Association of the Ministry of Labour and Social Security (AFUMITRA).

¹³ By the Association of Labour Inspectors of Minas Gerais (AAFIT/MG).

¹⁴ By the National Federation of Unions of State Employees (FENASTEG).

¹⁵ By the trade union of labour inspectors of the Ministry of Labour and Employment Promotion (SIT).

¹⁶ Decree No. 90-209 of 14 July 1990 on the organization and functioning of the labour inspectorate.

¹⁷ ILO: *Audit du système d'inspection du travail du Grand-Duché de Luxembourg*, 2002, p. 45.

B. Transport facilities and reimbursement of travelling expenses

249. The duties of a labour inspector require considerable mobility. The establishments, enterprises and workplaces subject to labour inspection are located in an area that may span thousands of square kilometres. This is why the instruments provide that the competent authority shall make the necessary arrangements to furnish labour inspectors with the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist.

250. The Committee observes that in many countries labour inspectors may use transport specially assigned to them, or they may use public transport or taxis. In addition, the competent authority makes the necessary arrangements to pay a travel allowance for work-related travel or alternatively to reimburse promptly their expenses on accommodation and meals.¹⁸

251. In *France*, inspectors share a vehicle fleet used by all of the decentralized labour administration services. Where necessary, they are compensated for the use of their personal vehicle for work-related travel in the form of a flat-rate travel allowance, which is regularly updated. In *Hong Kong Special Administrative Region, China*, the annual reports of the inspectorate show that inspectors are provided with adequate means and facilities to cover a fairly small area. In *Algeria*, the labour inspectorate has a fleet of 71 vehicles. In *Japan*, the cost of work-related travel of labour inspectors is covered in the same way as that of any other public servant.

252. In developing countries, a major obstacle preventing labour inspectors from carrying out their tasks is the inadequacy¹⁹ or even the absence²⁰ of transportation. Where vehicles are available, their use may be prevented by the lack of resources to pay for petrol²¹ or carry out maintenance.²² Access to workplaces that are to be inspected could be facilitated by cost-efficient means of transport, including public transport, motorbikes and bicycles, as has been implemented in some countries.

253. To make up for the lack of transportation facilities, most countries have adopted legal provisions for the reimbursement of inspectors' expenses on travel while carrying out their duties.²³ The Committee has considered that the possibility of obtaining assistance from employers for this purpose²⁴ is likely to prejudice the impartiality and authority which are necessary to inspectors in their relations with employers and workers,

¹⁸ *El Salvador, Honduras, Latvia, Republic of Moldova, Spain.*

¹⁹ The Government of *Burundi* stated that there is only one vehicle for the entire General Directorate of Labour and Vocational Training of the ministry, which may be used occasionally for inspections. In the *Solomon Islands*, the inspectorate's entire fleet consists of one vehicle. The Government of *Peru* stated that the labour inspectorate only has one vehicle for the entire national territory.

²⁰ In *Mauritania*, according to information contained in the periodical reports of the labour inspectorate, there is no transport available for inspectors to travel for the purposes of their work.

²¹ In *Benin*, for example; in *Niger*; and in *Uruguay*, according to the Association of Labour Inspectors.

²² In *Ghana*, for example, according to the annual report of the Department of Factories Inspectorate for 2000. In *Burkina Faso*, according to the quarterly activity report (second quarter) of a regional inspectorate, the only vehicle available was a bicycle. The lack of transportation appears to be critical in *Mozambique*, where inspections are only carried out in areas close to provincial capitals. An activity report of the inspectorate of *Sao Tome and Principe* suggests international cooperation to obtain resources that can be used for maintaining the vehicle fleet.

²³ *Barbados, Benin, Bolivia, El Salvador, Honduras, Latvia, Republic of Moldova*, for example.

²⁴ As is the case in *Peru*.

by creating a risk of dependency on employers. It notes with interest the express prohibition of this practice in *Colombia*.²⁵

254. Trade union organizations in *Brazil*,²⁶ *Costa Rica*,²⁷ *Guatemala*,²⁸ *Paraguay*,²⁹ *Peru*, *Uruguay*,³⁰ *Central African Republic*,³¹ *Chad*³² and *Sri Lanka*³³ have alleged non-observance of the provisions on reimbursement of travel costs or excessively complicated procedures to obtain it. According to the available information, in some countries there are no arrangements in practice for reimbursing the expenses defrayed by inspectors.³⁴

255. In agriculture, the availability of transportation is crucial for inspectors to carry out their duties. However, according to the available information, this is chronically lacking in many countries.³⁵

²⁵ Circular of 8 August 2000 of the Ministry of Labour and Social Security.

²⁶ The Association of Labour Inspectors of Minas Gerais (AAFIT/MG) described as inadequate the allowances paid to inspectors for long-distance travel, while the Gaucha Association of Labour Inspectors (AGITRA) denounced the obligation in practice for labour inspectors to pay out of their own pockets the expenses defrayed for some activities following a freeze on the allowances payable.

²⁷ The National Association of Labour Inspectors denounced obstacles preventing the payment of travel allowances and failure to reimburse inspectors' expenses.

²⁸ The National Federation of Trade Unions of State Employees (FENASTEG).

²⁹ The Latin American Confederation of Labour Inspectors (CIIT) in a comment concerning the deficiencies of labour inspection systems in the region.

³⁰ The Association of Labour Inspectors of *Uruguay* and the Trade Union of Labour Inspectors of *Peru* (SIT) criticized in particular the delays in reimbursing travel expenses.

³¹ The Christian Confederation of Central African Workers (CCTC) reported the failure to implement measures ordered in 1990 to ensure reimbursement of inspectors' travel expenses.

³² Confederation of Trade Unions of Chad (CST).

³³ The Lanka Jathika trade union considers that the amount of travel allowances is inadequate.

³⁴ For example, in *Gabon*, *Mali* and *Mozambique*. In *Bolivia*, there does not appear to be any legal provision for reimbursing inspectors' travel expenses.

³⁵ In *Côte d'Ivoire*, for example, where a large proportion of the workforce is employed in industrial plantations, inspectorates have few opportunities to visit them.

Chapter VII

General inspection methods: Inspection visits

256. Under Article 16 of Convention No. 81 and Article 21 of Convention No. 129, workplaces or enterprises liable to inspection shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. How this provision is applied in practice is the basic test of any labour inspection system. The information sent to the ILO, including reports of some industrialized countries, continues to point to difficulties preventing the labour inspectorate from achieving satisfactory coverage of the workplaces liable to inspection; in some countries, it is not unusual for workplaces to have never been inspected at all.

257. In *France*, it is clear from the annual reports of the central labour inspection authority that the increasing number of enterprises and workplaces is matched by a steady decrease in the proportion covered by inspection. Inspection ratios take account of criteria such as number of employees or risk level of the activity or work environment, so as to ensure that enterprises and workplaces considered to have the highest risk level are inspected as often as possible. The interval between scheduled visits, however, still varies from one to 20 years, depending on the type of workplace.¹ In countries with less advanced economies, the situation is critical, with some local offices being forced to limit inspections to workplaces that can be reached on foot.

258. In order for labour inspectors to carry out inspections as often and as thoroughly as prescribed in the instruments, they must have adequate freedom of movement and logistical means. They must also have the necessary information on the enterprises and activities liable to inspection to enable them to focus their interventions on priorities defined on the basis of objective criteria, such as level of occupational risk, categories of men and women workers employed (young persons, migrants) and the presence of a trade union. In agricultural enterprises, in developing countries in particular, inspections are the only opportunity inspectors have to check compliance with legal provisions relating to the conditions of life of workers and their families and to provide assistance as required, when they are empowered to do so as provided by Article 6, paragraph 2, of Convention No. 129.

I. Types of inspection visit

259. In countries where there is adequate transportation for the purpose, routine workplace inspections are planned, generally on a yearly basis, according to selected priorities, and carried out without prejudice to any other inspections prompted by reports

¹ In the *Netherlands*, according to a comment sent by the Netherlands Confederation of Trade Unions, there are so few inspectors that bad employers know that the probability of being inspected is once every 20 years at most.

or complaints or to follow up on compliance orders. Inspection campaigns focused on a particular issue are also organized in response to current or sectoral problems. For example, special resources have been allocated to campaigns against child labour in several countries.² In the hotel and catering sector,³ inspections of working conditions (hours of work, wages, safety equipment) and living conditions (accommodation, water supply and sanitary facilities) are usually stepped up at the height of the tourist season. Transport⁴ and construction⁵ may be targeted by inspection campaigns in response to an unusually high accident rate or following serious incidents. In industrialized countries, major industrial accidents have prompted a strong and coordinated inspection response to prevent hazards in the activities concerned.

260. Few governments mention inspection campaigns specifically targeting agricultural enterprises. In *Brazil*, for example, such campaigns are launched as part of the implementation of the policy to combat forced labour. In some economically advanced countries the labour inspection system includes in its campaigns education and awareness-raising activities for farmers, their employees and their families, focusing on the most serious occupational hazards.⁶

II. Principle of unannounced visits

261. Article 12 of Convention No. 81 and Article 16 of Convention No. 129 are intended to ensure that inspectors may carry out inspections at any time, without previous notice, with the necessary freedom for an effective inspection without interrupting the work more than necessary.

262. Under Article 12, paragraph 1, of Convention No. 81 and Article 16, paragraph 1, of Convention No. 129, labour inspectors provided with proper credentials shall be empowered: (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection; and (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection. Article 16, paragraph 2, of Convention No. 129 adds that they shall not enter the private home of the operator of an agricultural undertaking except with the latter's consent or with a special authorization issued by the competent authority.

263. Unannounced visits enable the inspector to enter the inspected premises without warning the employer or his or her representative in advance, especially in cases where the employer may be expected to attempt to conceal a violation, by changing the usual conditions of work, preventing a witness from being present or making it impossible to carry out an inspection. Conducting unannounced visits on a regular basis is especially useful as it enables inspectors to observe the confidentiality required by Article 15, subparagraph (c), of Convention No. 81 and Article 20, subparagraph (c), of Convention No. 129 as regards the purpose of the inspection if it was carried out in response to a complaint.

² In particular, in *Brazil*, *Pakistan* and *Turkey*.

³ In *Belgium*, *France* and *Luxembourg*, for example.

⁴ In *Luxembourg* and other European countries, cooperation between different government agencies has led to sanctions being imposed for numerous violations of hours of work and leave legislation in the road transport sector.

⁵ In *France*, inspection campaigns often focus on occupational safety and health at public works and construction sites.

⁶ In *France*, *Finland* and the *Netherlands*, for example.

264. Most national laws and regulations authorize labour inspectors to visit workplaces and enterprises for the purpose of inspecting working conditions. In some countries, only those workplaces that are formally liable to inspection may be visited.⁷ However, this does not necessarily mean that all other premises are exempt. In countries where it is not the status of the establishment that makes it liable to inspection, but the existence of paid employment, all workplaces are liable to inspection. This is the case, for example, in *Belgium*, under a very broad definition of the term “workplace”.⁸ In many countries, inspectors are also allowed to enter premises other than workplaces liable to inspection where they have reason to believe that paid employment covered by their remit occurs.⁹ In the case of a private home, the consent of the employer, the occupant or a judicial authority,¹⁰ as the case may be, is generally required.¹¹ The Committee stresses that, in view of the broad definition of premises liable to inspection, labour inspectors must observe strict respect of privacy. It must also be recognized that many national provisions authorizing workplace visits leave excluded from labour protection by inspectors the many people who are carrying out domestic work, or who are homeworkers, the majority of whom are women.

III. Free access of inspectors to the workplace

A. Initiative of inspection

265. The information received indicates that the principle of free entry by inspectors in workplaces liable to inspection is applied in a large majority of countries.¹² It extends to private property in so far as is necessary, in *Slovakia*,¹³ and in *Cameroon*, to any company infirmary, canteen, sanitary installation and water supply intended for workers’ use.¹⁴ The Committee observes, however, that in some countries restrictions are maintained on inspectors’ free initiative in this regard, with negative repercussions being reported by trade union organizations. The most common restriction is the requirement for a formal authorization issued by a higher authority¹⁵ or another competent

⁷ For example, *Angola, Bolivia, Cameroon, Chile, Eritrea, Guatemala, Guinea, Honduras, Mongolia, Nicaragua* and the *Philippines*.

⁸ Sections 2(7) and 3(1) of the Decree of 20 February 1998 respecting the supervision of legislation relating to employment policy.

⁹ *Benin, Côte d’Ivoire, Fiji, Malawi* and *Papua New Guinea*, for example.

¹⁰ In *Belgium* and *New Zealand*, for example. The principle of inviolability of the home being guaranteed in most countries by law and enforced by the judiciary, the free entry of inspectors in private homes is generally subject to the relevant legislation.

¹¹ For example, *France, Malawi, Morocco, Mexico, Tunisia* and the *Bolivarian Republic of Venezuela*.

¹² For example, *Benin, Bolivia, Cameroon, Côte d’Ivoire, Dominican Republic, El Salvador, Gabon, Guinea, Malawi, Morocco, Niger, Rwanda, Slovakia, South Africa* and *Tunisia*.

¹³ Under section 1, paragraph 13(2)(a) of Act No. 95/2000 of 8 February 2000 on labour inspection.

¹⁴ Section 108, paragraph 1(a), of the Labour Code.

¹⁵ In *Honduras*, under section 2 of Decree No. 39-1982, the right to enter a workplace is subject to the employer’s authorization, or, where the latter refuses, written authorization from an authorized official; in the *Czech Republic*, under section 12 of the State Control Act, the inspector is required to present the employer with written authorization.

authority.¹⁶ In some cases, workplaces cannot even be inspected without an order from such an authority.¹⁷

266. In one country,¹⁸ inspectors are prohibited from visiting the same workplace more than once in a year; in another, inspections were banned for three years and only reintroduced after a change of government.¹⁹ The Committee considers that the different restrictions placed in law or in practice on inspectors' right of entry into workplaces can only stand in the way of achieving the objectives of labour inspection as set out in the instruments. Accordingly, the Committee regrets to note that such restrictions are not in conformity with the Conventions and urges the governments of the countries concerned to take the necessary steps to eliminate them in law and in practice.

267. The fact that the instruments provide that inspectors should be authorized to enter workplaces without previous notice does not mean that, where deemed useful or necessary by the inspector, the employer or his or her representative cannot be informed of the time and purpose of the inspection. The practice of combining unannounced visits with scheduled visits has the advantage of ensuring that employers and workers are constantly aware that an inspection may occur at any time. Moreover, this is provided for in most countries' legislation.²⁰ In *Papua New Guinea*, for example, the legislation explicitly leaves it to the labour inspector's full discretion as to whether or not to announce the visit to the employer.²¹ For the reasons already mentioned by the Committee, however, the mere existence of relevant legal provisions does not guarantee their implementation in practice in many developing countries, where the labour inspectorate operates on a largely, if not exclusively, reactive basis.

B. Timing of inspections

268. Both Conventions stipulate that inspectors must be empowered to enter at any hour of the day or night any workplace liable to inspection, and by day only any premises which they may have reasonable cause to believe to be liable to inspection. Not all laws and regulations draw a distinction between these two types of workplace for the

¹⁶ In *Belgium*, for example, under section 3(1) of the Decree of 20 February 1998 respecting the supervision of legislation relating to employment policy, inspections must be authorized by the police court judge.

¹⁷ In the *Republic of Korea*, under section 105(1), (3) and (4) of the Labour Standards Act and its Enforcement Decree, labour inspectors must hold an order for each visit. The Government states, however, that as officers of the judicial police. In *Mexico*, under section 17 of the General Regulations of 29 June 1998 respecting inspection and the application of penalties for violation of labour legislation, inspectors are required to present to the employer or his representative the original written inspection order signed by an authorized official.

¹⁸ In *Viet Nam*, where the place and time of the inspection are strictly defined by the competent higher authority (sections 3 and 7 of Decree No. 61/1998/ND-CP of 15 August 1998 and its implementing Directive, No. 22/2001/CT.TTg of 11 September 2001).

¹⁹ In the *Democratic Republic of the Congo*, inspections were banned by the central authority in 1994 and were only resumed in 1997.

²⁰ For example: *Angola* (section 25(2)(a) of Decree No. 9/95 to promulgate regulations on labour inspection; *Bolivia* (section 17(1) of Resolution No. 340/87 of 26 November 1987 of the Ministry of Labour and Labour Development, to promulgate regulations on labour inspection); *Dominican Republic* (section 433 of the Labour Code); *El Salvador* (section 38 of Decree No. 682 of 19 April 1996, respecting the organization and functions of the labour and social welfare sector); *Ethiopia* (section 178 of the Labour Proclamation No. 377/2003); *Finland* (section 3(2) of Act No. 131/1973 on the supervision of occupational safety and health and appeal in occupational safety and health matters; *Malawi* (section 9(1)(a) of the Employment Act of 14 May 2000); *Niger* (section 257(a) of the Labour Code); *Rwanda* (section 163(a) of the Labour Code); *Tunisia* (section 174(2) of the Labour Code); and the *Bolivarian Republic of Venezuela* (section 590 of the Organic Labour Act).

²¹ Under section 23(1)(a) of the Industrial Relations Act, 1962, inspectors may enter "with or without notice to any person".

purposes of determining the time at which an inspection may be carried out.²² It is common for exceptions to the general rule to be made in the case of targeted interventions. In *Spain*, for example, during a campaign against the underground economy and irregular or clandestine employment, inspectors were authorized to visit at night or during the day any workplace not formally declared as such, despite a legal provision restricting their inspection prerogative to workplaces liable to labour inspection.²³

269. The principle of legally authorizing visits during the night or day, or even at any time, is stated in many countries.²⁴ However, the scope of this prerogative is limited by legislation and practice which vary from one country to another. The most common restriction relates to the permitted timing of inspections. In some countries, inspectors can only enter a workplace liable to inspection during working hours;²⁵ in others, legislation refers to a “reasonable” time, without defining the term.²⁶ In some countries, labour inspectors cannot enter a workplace at night unless work is being performed there,²⁷ while in a very few countries, the timing of visits is not specified.²⁸

270. The conditions for the exercise of the right of free entry to workplaces laid down by Conventions Nos. 81 and 129 are intended to allow inspectors to carry out inspections, where necessary and possible, to enforce the application of legal provisions relating to conditions of work. The protection of workers and the technical requirements of inspection should be the primordial criteria for determining the appropriate timing of visits, for example to check for violations such as abusive night work conditions in a workplace officially operating during the daytime, or to carry out technical inspections requiring machinery or production processes to be stopped. It should be for the inspector to decide whether a visit is reasonable – obviously, inspections should only be carried out at night or outside working hours where this is warranted. Recommendation No. 133 contains a provision to the effect that the activity of labour inspectors at night should be limited to those matters which cannot be effectively controlled during the day (Paragraph 9).

271. In *Finland*, the legislation provides that inspection and investigation visits shall be carried out so as to meet the purpose of occupational safety and health supervision without unnecessary interference with operations at the workplace.²⁹ Where the legislation is not explicit enough, relevant administrative circulars or instructions can specify their scope. If necessary, legislative provisions extending the right of access of

²² For example, in *Algeria*, *Dominican Republic*, *Fiji* and *South Africa*, inspections are authorized in the same way for all workplaces within the remit of the labour inspectorate.

²³ Section 7, paragraph 1(1), of Royal Decree No. 138/2000 and section 5 of Act No. 42/97 on labour inspection and social security.

²⁴ *Algeria*, *Angola*, *Benin*, *Bolivia*, *Chile*, *Cameroon*, *Côte d'Ivoire*, *Gabon*, *Honduras*, *Malawi*, *Morocco*, *Nicaragua*, *Peru*, *Slovakia*, *Tunisia* and the *Bolivarian Republic of Venezuela*, for example.

²⁵ For example, *El Salvador*, *Eritrea*, *Ethiopia*, *Honduras*, *Mexico*, *Papua New Guinea*, *Rwanda* and *Saudi Arabia*.

²⁶ *Fiji*, *India*, *New Zealand*, *Papua New Guinea*, *South Africa*, among others.

²⁷ For example, in *Costa Rica* (section 89 of the Organic Act of 18 February 1963, respecting the Ministry of Labour and Social Security), *Guatemala* (section 281(a) of the Labour Code) and *Philippines* (section 128(a) of the Labor Code).

²⁸ For example, *China*, *Dominican Republic* and *Mongolia*.

²⁹ Section 4(3) of Act No. 131/1973 on the supervision of occupational safety and health and appeal in occupational safety and health matters.

labour inspectors to workplaces to the extent provided in the Conventions should be adopted and their implementation supported by adequate material and logistical means.

C. Notification of presence at the workplace

272. Under Article 12, paragraph 2, of Convention No. 81 and Article 16, paragraph 3, of Convention No. 129, on the occasion of an inspection visit, labour inspectors shall notify the employer of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties. This is reflected in the legislation in many countries.³⁰ Except in countries where, contrary to the provisions of the instruments, inspection visits have to be announced in advance to employers and hence can only be carried out with their consent and in their presence.³¹ It appears that this is largely applied in practice, even where there is no provision to this effect.³² In other countries inspectors are required to notify the workers or their representatives of their presence, as provided in Article 16, paragraph 3, of Convention No. 129.³³ In *South Africa*, inspectors appear to have full discretion to decide whether or not to notify the employer or trade union representative of their presence.³⁴

D. Assistance to labour inspectors

273. Labour inspectors may come up against opposition on the part of the employer or the latter's representative while carrying out their inspection duties. In this regard, the instruments stipulate that adequate penalties shall be provided for and effectively enforced (Article 18 of Convention No. 81 and Article 24 of Convention No. 129). Many countries have adopted legal provisions to this effect, providing for intervention by law enforcement officers³⁵ or even the armed forces³⁶ to assist labour inspectors. The

³⁰ *Benin* (section 275 of the Labour Code); *Bolivia* (section 17(1) of resolution No. 340/87 of the Minister of Labour and Labour Development, to promulgate regulations on labour inspection); *Cameroon* (section 109(1) of the Labour Code); *Côte d'Ivoire* (section 91(5) of the Labour Code); *Ethiopia* (section 181-4 of the Labour Proclamation No. 377/2003); *Fiji* (section 9(b) of the Employment Ordinance of 15 May 1965); *Gabon* (section 237 of the Labour Code); *Guinea* (section 360(a) of the Labour Code); *Malawi* (section 9(1)(d)(iii) of the Employment Act of 14 May 2000); *Rwanda* (section 166 of the Labour Code); *Tunisia* (section 174 of the Labour Code), for example.

³¹ For example, *El Salvador*, *Honduras*, *Republic of Korea*, *Mexico*, *Nicaragua*, *Peru* and the *Bolivarian Republic of Venezuela*.

³² In *France*, for example, the Government has stated that the normal practice for inspectors is not to notify employers, and an appointment is only made if the presence of the employer is indispensable to the effectiveness of the investigation.

³³ *Finland* (section 3(2) of Act No. 131/1973 on the supervision of occupational safety and health and appeal in occupational safety and health matters).

³⁴ Section 65(4) of the Basic Conditions of Employment Act, No. 75 of 1997.

³⁵ In *Bolivia*, under sections 7 and 12 of Resolution No. 340/87 of 26 November 1987 of the Ministry of Labour and Labour Development to promulgate regulations on labour inspection, support by law enforcement officers should be immediately granted to inspectors, even in cases of merely suspected obstruction. The same applies in *Costa Rica* (section 89 of Act No. 1860 of 18 February 1963 to promulgate the Organic Act respecting the Ministry of Labour and Social Security), in *Fiji* (section 73(1) of the Factories Act of 1 February 1972 and section 43(3) of the Health and Safety at Work Act, No. 4 of 28 June 1996), *Guatemala*, in the event of unjustified resistance (section 281(c) of Decree No. 330 of 29 April 1961). In *Peru*, the administrative labour authority may request court authorization to provide access to a workplace, under section 2 of Act No. 28292 of 20 July 2004 to amend the General Act on labour inspection and defence of the worker. Legislation provides in more general terms that labour inspectors may call in the law enforcement forces in the event of voluntary obstruction in the performance of their duties in *China (Macau Special Administrative Region)* (section 22 of Legislative Decree No. 60/89 to promulgate regulations on labour inspection; *Dominican Republic* (section 434 of the Labour Code); *Oman* (section 9 of the Labour Code); *Tunisia* (section 174(4) of the Labour Code); *Uruguay* (section 21 of Decree No. 680/977 of 6 December 1977); *Bolivarian Republic of Venezuela* (section 256 Y of Decree No. 3235 of 20 January 1999, to make regulations under the Organic Labour Act).

Committee has received little information concerning the practical implementation of these provisions. However, it draws attention to the fact that verbal aggression and insulting behaviour against labour inspectors are frequently mentioned in activity reports, some of which contain statistics on proceedings instituted.³⁷

IV. Methods of inspection

274. Once they are in the premises to be inspected, labour inspectors shall be empowered, under 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 enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed. The prerogatives laid down to this end include holding interviews, verifying documents and taking samples of products, materials and substances.

A. Interviews

275. Under Article 12, paragraph 1(c)(i), of Convention No. 81 and Article 16, paragraph 1(c)(i), of Convention No. 129, labour inspectors shall be empowered to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions. Convention No. 129 provides in addition that the inspector shall be empowered to interview any other person in the undertaking. The legislation of most countries vests labour inspectors with these powers, extending them to include interviews with any person whose evidence could be useful for the purposes of the inspection.³⁸ The Committee stresses that to ensure that statements are as spontaneous and reliable as possible, it is essential for labour inspectors to exercise their own judgement as to whether to carry out confidential interviews where this is required by the subject of the interview. In this way inspectors can avoid embarrassing the employer or his or her representative in front of the workers or, conversely, exposing workers to the risk of reprisals. In addition, allowing inspectors to conduct interviews in the manner they deem most appropriate obviates the need to summon the parties to the inspectorate's offices.

B. Verification of documents

276. The legislation of most countries recognizes the right of inspectors provided for in Article 12, paragraph 1(c)(ii), of Convention No. 81 and Article 16, paragraph 1(c)(ii), of Convention No. 129 to require the production of any books, registers, documents or electronic information, the keeping of which is prescribed by national laws or regulations, in order to see that they are in conformity with the legal provisions, and copy or make extracts from them. The Committee notes that many countries have included provisions to this effect in their legislation.³⁹ From the available information it appears that this power is exercised in practice by inspectors in some countries which have not enacted legislative provisions on this point.

³⁶ *Mauritania* (section 375 of the Labour Code), *Senegal* (section 196 of the Labour Code).

³⁷ *France*, in particular.

³⁸ For example, *Algeria, Angola, Benin, Chile, China, Côte d'Ivoire, Eritrea, Ethiopia, Honduras, Malawi, South Africa, Tunisia* and the *Bolivarian Republic of Venezuela*.

³⁹ For example, *Angola, Australia, Belgium, Benin, Bolivia, Cameroon, China, Dominican Republic, El Salvador, Eritrea, Ethiopia, Madagascar, Morocco, and Rwanda*.

C. Enforcing the posting of notices

277. Under Article 12, paragraph 1(c)(iii), of Convention No. 81, inspectors shall be empowered to enforce the posting of notices required by the legal provisions. The legislation of many countries lays down an obligation for the employer to post in an appropriate place documents such as the internal regulations, work schedules, safety instruction sheets for hazardous equipment or general safety information.⁴⁰ The Committee would like to emphasize the importance of securing compliance with this obligation, which is intended to ensure that employers and workers are clearly informed of their respective rights and obligations, and encouraged to abide by them. Where a large proportion of the workforce does not speak the national language, it is desirable for adequate means of communication to be used to enable them to understand the information required to be posted by the legislation. This is the case, for example, in *Saudi Arabia* and other receiving countries of foreign labour. Simplified and intuitive graphic illustrations of safety and health instructions may be necessary in activities where there is a high rate of illiteracy among the workers. The Committee has received information from only a few countries concerning proceedings instituted against employers for failing to comply with the relevant provisions in this area.⁴¹

D. Inspection of materials and substances used

278. Under Article 12, paragraph 1(c)(iv), of Convention No. 81 and Article 16, paragraph 1(c)(iii), of Convention No. 129, inspectors shall be empowered to take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose. These provisions are intended to ensure protection of the health and safety of workers, and in some cases of their families, in the use and handling of certain materials and substances.⁴² To this end, inspectors must be able to verify whether the conditions in which such materials or substances are to be found at the workplace are in conformity with the legal provisions, and whether they are used or handled in accordance with the established regulations, and to conduct or have conducted by a competent body analyses requiring special equipment or technology.⁴³ It appears that many countries have legislation empowering inspectors to take samples.⁴⁴

⁴⁰ For example, *Benin, Belgium, Cameroon, Dominican Republic, El Salvador, Eritrea, Gabon, Guatemala, Malawi, Morocco, Niger, Rwanda, Tunisia* and the *Bolivarian Republic of Venezuela*.

⁴¹ *France, Portugal, Saudi Arabia* and *Spain*.

⁴² In *Fiji*, labour inspectors are moreover empowered under section 9(1)(b) of the Employment Ordinance to take samples of water and food provided to workers.

⁴³ In *Saudi Arabia*, analyses are carried out by government laboratories. The Government of *France* has stated that although inspectors are empowered to take samples, they hardly ever do so, as the labour administration is not equipped to carry out analyses. However, the usual practice is to issue an order to the employer requiring that tests be carried out by authorized bodies.

⁴⁴ *South Africa* (section 1(f) of the Occupational Safety and Health Act, No. 85 of 1993); *Benin* (section 274 of the Labour Code); *Cameroon* (section 108(1)(c) of the Labour Code); *Côte d'Ivoire* (section 91(5)(iv) of the Labour Code); *Denmark* (section 76(5) of the Work Environment Act, 1999); *Finland* (section 4(4) of the Act on the supervision of occupational safety and health and appeal in occupational safety and health matters, No. 131/1973); *Guatemala* (section 281(f) of the Labour Code); *Madagascar* (section 238 of the Labour Code); *Malawi* (section 9(1)(d) (iv) of the Employment Act of 14 May 2000).

Self-risk assessment by enterprises

In a number of industrialized countries with increasingly stringent occupational safety and health inspection requirements, high-risk enterprises have been given greater responsibilities in this area, under the supervision of the labour inspectorate. Self-risk assessment by enterprises means that responsibilities are shared among the employer, the workers and the occupational safety and health committees. The advantage is that all the stakeholders in the enterprise actively work together to enforce the relevant legal provisions. This type of system can be envisaged, if necessary in a gradual manner, wherever the economic and social situation so permits. Specially trained and appointed public servants should none the less still be responsible for inspecting conditions of work, particularly those relating to safety and health, and should have the necessary powers to do so. By developing its function of providing technical advice and information to employers and workers alongside its inspection duties, the labour inspectorate should contribute to gradually introducing a more balanced distribution of roles in this area.

Chapter VIII

Prosecution and penalties for violation of legislation

279. To secure the enforcement of the legal provisions relating to conditions of work and protection of workers, the Conventions provide, *inter alia*, that the system of labour inspection shall have the task of supplying technical information and advice to employers and workers (Article 3, paragraph 1(b), of Convention No. 81 and Article 6, paragraph 1(b), of Convention No. 129). While such advice and information can only encourage compliance with legal provisions, it should nonetheless be accompanied by an enforcement mechanism enabling those guilty of violations reported by labour inspectors to be prosecuted.

280. The credibility of any inspectorate depends to a large extent on its ability to advise employers and workers on the most effective means of complying with the legal provisions within its remit; however, it also depends on the existence and implementation of a sufficiently dissuasive enforcement mechanism. For the labour inspectorate, the functions of enforcement and advice are inseparable in practice.

I. Scope of the principle of prompt legal proceedings

281. Accordingly, under Article 17, paragraph 1, of Convention No. 81 and Article 22, paragraph 1, of Convention No. 129, persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal or administrative proceedings without previous warning. However, exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.

282. Violations may be the result of failure to understand the terms or scope of the applicable laws or regulations. Therefore the labour inspector must always have discretion to choose not to impose penalties as a means of enforcing legal provisions. To this end, Article 17, paragraph 2, of Convention No. 81 and Article 22, paragraph 2, of Convention No. 129 provide that it shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings. This discretion implies that inspection staff have the necessary capacity for judgement to be able to distinguish between serious or repeated wilful non-compliance, culpable negligence or flagrant ill will, which call for a penalty, and an involuntary or minor violation, which may lead to a mere warning.

283. Competent and experienced inspectors are aware of the value of advice and warnings as incentives for the proper application of legal requirements. Generally, it is enough to make a follow-up visit after giving the employer a time limit within which to take remedial action. Hence, in most countries, labour inspectors prefer in practice –

except in cases of wilful or serious non-compliance, culpable negligence or flagrant ill will – to rely on advice and persuasion before instituting or recommending proceedings. The latter course of action is usually taken only in the case of uncooperative employers, particularly where non-compliance exposes workers to safety and health risks.¹

284. Non-compliance with the legal provisions on conditions of work has a direct or indirect impact on the health of the workers and their families, as well as their safety and that of the work environment. In some occupations, such as road transport or the medical professions, failure to abide by working time provisions not only affects the workers concerned, but may also have repercussions on the health or lives of many others. Inspectors should therefore be able to deal with non-compliance with appropriate severity.

285. The legislation of some countries provides expressly that it shall be left to the inspector's full discretion to choose information, advice and warnings rather than initiating proceedings.² In other countries,³ it is not excluded that inspectors have such discretion in practice, even in the absence of a legal provision to that effect. In some countries, previous issuance of a compliance order is the rule. For example, in *Jordan* inspectors are obliged in every case to issue a compliance order to the employer.⁴

286. It is important, however, to ensure that this power of labour inspectors to avoid the application of penalties is not used in a manner in which it was not intended, as has been suggested by some trade union organizations. In *Romania*, for example, a trade union confederation considers that inspectors confine their action, even in cases of repeat offences, to mere notifications which are without effect, although the law establishes a series of penalties ranging from a fine to the closure of the workplace.⁵

287. In *Brazil*, a protocol of agreement between the inspectorate and the employer has been introduced for cases of non-compliance that do not constitute a serious and imminent danger to health and safety. The inspector is responsible for ensuring that the employer remedies the violation within the time-limit and the case is not referred to the prosecutor-general's office for the institution of judicial proceedings unless it is a repeat offence.⁶ However, one trade union organization⁷ regrets what it sees as a tendency of the inspectorate to focus on negotiation to the detriment of its core function of supervision and punishment of violations.

¹ In *Gabon*, for example, under section 225 of the Labour Code, before a record is drawn up concerning non-compliance with general occupational safety and health provisions, the employer must be given notice to carry out remedial measures within a time limit fixed by the inspector in the light of the circumstances and the amount of work required to do so.

² For example, in the *Comoros*, where, under section 163 of the Labour Code, it is left to the full discretion of labour inspectors to give warnings, issue compliance orders or give advice instead of instituting or recommending proceedings; in *Guinea*, where under section 363 of the Labour Code, inspectors may, if they deem it appropriate, give advice or issue warnings before drawing up a record of non-compliance; and in *Qatar*, where, under section 140 of the Labour Code, inspectors have a choice between: (1) giving advice on how to remedy the situation; (2) issuing warnings and compliance orders to the employer to eliminate the violation; and (3) issuing a report of non-compliance and submitting it to the Department for appropriate action.

³ For example, in *China*, where the Labour Code merely provides that non-compliance is prosecuted in the manner prescribed by law.

⁴ Under section 9 of the Labour Code the inspector issues an order to take remedial action within seven days.

⁵ National Trade Union Bloc.

⁶ Under Intersectoral Regulatory Instruction No. 13 of 6 July 1999.

⁷ Association of Labour Inspectors of Minas Gerais (AAFIT/MG).

II. Initiation of proceedings

288. In some cases, penal proceedings are the only way to enforce the law. The ensuing publicity can have an additional deterrent effect. The Government of *Brazil* has indicated that publication by the labour inspection secretariat of the names of employers who are repeat offenders in the area of forced labour has enabled public institutions to restrict their access to credit, subsidies and social benefits.

289. All countries make provision in their labour inspection legislation for the involvement of labour inspectors in the system of punishing violations of the legal provisions relating to conditions of work and protection of workers.⁸ The Conventions provide that it shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings (Article 17, paragraph 2, of Convention No. 81 and Article 22, paragraph 2, of Convention No. 129). Convention No. 129 provides in addition in Article 23 that if labour inspectors in agriculture are not themselves authorized 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.

290. This is the case in *Slovakia*, where labour inspectors are empowered to submit proposals for penalties or legal proceedings to their hierarchical superiors.⁹ In the *Russian Federation*, labour inspectors are empowered to institute administrative proceedings against persons guilty of violating federal labour and occupational safety and health legislation, but they must defer to the competent authorities in cases where penal proceedings are recommended.¹⁰ The legislation of several African countries empowers labour inspectors to institute legal proceedings directly against persons guilty of violating labour legislation.¹¹ In other countries they have the prerogatives of judiciary police officers¹² and are empowered to impose penalties.¹³ In *Fiji* a person

⁸ *South Africa* (section 69 of the Basic Conditions of Employment Act, No. 95 of 1995). In *Cambodia*, under section 347 of the Labour Code, inspectors are empowered to address observations to the employer, to issue compliance orders with a fixed time limit, to record non-compliance in inspection records and impose a financial penalty for non-compliance with the labour code and its implementing regulations. In *Viet Nam*, under section 22 of Government Decree No. 38/CP of 25 June 1996, on penalization for administrative violations in the field of labour legislation, inspectors may impose a fine. The right of inspectors to impose fines is also recognized in *Mongolia*, under section 16(1) of the law on state inspection. In the *Russian Federation*, Government Order No. 78 of 28 January 2000 provides that state labour inspectors are empowered to initiate administrative proceedings against persons guilty of violating federal labour and occupational safety and health legislation. They are also empowered to forward to the law enforcement bodies documents giving a detailed description of labour law violations with a view to penal proceedings.

⁹ Under section 1, paragraph 13(3), of the Act of 8 February 2000 on labour inspection inspectors are authorized to submit proposals for penalties for violation of obligations or non-compliance with measures imposed by the labour inspectorate, or a recommendation to revoke the employer's operating license or to impose disciplinary penalties.

¹⁰ Government Order No. 78 of 28 January 2000 of the *Russian Federation*.

¹¹ In *Benin* (section 271 of the Labour Code); in *Mali* (section L.295 of the Labour Code); in *Senegal* (section L.194 of the Labour Code); in *Cameroon* (section 109 of the Labour Code); in *Madagascar* (section 239, subsections (4) and (5), of the Labour Code).

¹² In particular, in *Japan* (section 102 of the Labour Standards Law, No. 49 of 1947); in *Qatar* (section 137 of the Labour Code).

¹³ In *Burundi* (section 299 of the Labour Code); in *Cambodia* (section 347 of the Labour Code); in *Fiji* (section 73(2) of the Factories Act). In *Kazakhstan*, labour inspectors may impose administrative penalties (section 550 of the Code of Administrative Offences of 2001); in *Mali*, in police court matters (section L.296(f) of the Labour Code); in *Mongolia* (section 16(1) of the law on state inspection). In the *Republic of Moldova*, the labour inspector has the right to impose, in accordance with the procedure established by law, administrative penalties, including fines, for violation of the provisions of legislative and other enactments relating to conditions

found guilty of a violation has the choice between paying a fine fixed by the inspector or facing legal prosecution.¹⁴

III. Penalties

291. 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 shall be provided for by national laws or regulations and effectively enforced.

A. Adequate penalties provided for by national laws or regulations

292. It is essential for the credibility and effectiveness of systems for the protection of workers for violations to be identified by national legislation and for the proceedings instituted or recommended by labour inspectors against employers guilty of violations to be sufficiently dissuasive and to make employers in general aware of the risks they run if they fail to meet their obligations. In order to be credible, it is important for penalties to be defined in proportion to the nature and gravity of the offence.

293. The legislation of most countries provides for penalties for violation of the legal provisions enforceable by labour inspectors. Most prescribe both fines and terms of imprisonment.

294. Penalties for obstructing inspectors in the performance of their duties are also commonly found, in most countries in the form of fines.¹⁵ Prison sentences are also prescribed for this offence in *Benin*,¹⁶ *Singapore*¹⁷ and *Poland*, where any person who prevents or obstructs the conduct of a labour inspection is liable to a prison term of over three years.¹⁸ In *Viet Nam*, the Labour Code provides for an administrative or penal sanction depending on the gravity of the offence, not only for obstructing a labour inspector, but also for corrupting an inspector or reprisals against an inspector.¹⁹ The Committee notes that it appears that obstructing an inspector generally carries higher penalties than offences related to conditions of work and protection of workers.

of work and protection of workers in the performance of their duties (section 4(2)(b) of the Act on labour inspection). In *Viet Nam*, in the case of violations not liable to penal prosecution, labour inspectors are empowered to issue a warning or impose a fine (section 22 of Government Decree No. 38/CP of 25 June 1996 on penalization for administrative violations in the field of labour legislation).

¹⁴ Under section 48(1) of the Health and Safety at Work Act, No. 4 of 1996.

¹⁵ *Saudi Arabia* (section 192 of the Labour Code); *Argentina* (section 8 of Appendix II of Act No. 25,212 of 1999 ratifying the Federal Labour Pact on the general system of penalties for labour offences); *United Arab Emirates* (section 181(2) of Federal Law No. 8 of 1980 on the regulation of labour relations); *Slovakia* (section 1(17)(a) and (c) of Act No. 95/2000 on labour inspection); *Turkey* (section 107 of the Labour Law of 22 May 2003). In *Tunisia*, under section 240 of the Labour Code, any person who obstructs a labour inspector in the performance of his duties shall be liable to a fine, without prejudice to the application of the provisions of the penal code applicable to insulting a public official in the performance of his duties.

¹⁶ Under section 305 of the Labour Code any person who obstructs or attempts to obstruct labour inspectors and monitors in the performance of their duties or the exercise of their powers is liable to a fine or two months' to one year's imprisonment or both.

¹⁷ Under section 107 of the Employment Act, Chapter 91, Act 17 of 1968, any employer who hinders or obstructs an inspection officer in the exercise of his powers is guilty of an offence and liable to a fine or up to six months' imprisonment or both.

¹⁸ Section 225(2) of the Penal Code.

¹⁹ Section 193 of the Labour Code of 1994.

295. It recalls moreover that, if penalties are to have a deterrent effect, the amount of fines should be regularly adjusted to take account of inflation. It would be regrettable in every respect if employers preferred to pay fines as a less costly alternative to taking the measures necessary to ensure compliance with the legal provisions on working conditions. Several trade union organizations have expressed concerns to this effect.²⁰

296. The Committee has noted the existence of provisions to that effect in *Lesotho*.²¹ In countries that have adopted such measures, an improvement in the application of legal provisions relating to certain conditions of work has been observed. According to the Government of *Saudi Arabia*, there has been a substantial decrease in the number of offences relating to the payment of wages, owing in part to the revision of circulars concerning penal sanctions.

297. In some countries, the amount of penalties is linked to the minimum wage. In *Guatemala*, for example, inspectors are empowered to impose penalties ranging from two to 12 times the minimum wage, depending on the gravity of the offence.²² In *Cambodia* the fine is a multiple of the daily reference wage;²³ the same applies to *Kazakhstan*²⁴ and the *Bolivarian Republic of Venezuela*.²⁵

298. In one country, the central inspection authority has suggested introducing a method of fixing fines based on confiscation of the profits derived from non-compliance.²⁶

299. Other methods of determining the amount of fines are applied in a number of countries with the aim of ensuring that they have the necessary deterrent effect. They are based on criteria such as repetition of the offence,²⁷ business turnover, number of workers affected by the offence,²⁸ or the nature and consequences of the violation. In *Belgium*, for example, violation of certain provisions carries a fine multiplied by the number of workers employed in the enterprise.²⁹

300. National legislation provides for a range of administrative sanctions as well as sentences of imprisonment.³⁰ For example, in *China* the legislation provides for

²⁰ In *India*, the Centre of Indian Trade Unions (CITU) deplored the paltry nature of the penalties established by section 95 of the Factories Act, 1948, section 14 of the Dock Workers (Safety, Health and Welfare) Act, 1986, and section 15 of the Environment (Protection) Act.

²¹ Under section 240(2) of the Labour Code Order, the Minister of Labour and Employment, in consultation with the National Advisory Committee on Labour, is empowered to adjust penalties, if deemed necessary, at least every two years.

²² Under Decree No. 18-2001.

²³ Section 360 of the Labour Code.

²⁴ Code of Administrative Offences of 2001.

²⁵ Title XI of the Organic Labour Act.

²⁶ Annual report of the central labour inspection authority of *Croatia*.

²⁷ For example, in *Fiji* (under section 72(1) of the Health and Safety at Work Act, No. 4 of 1996); in *Mongolia* (section 141 of the Labour Law of Mongolia).

²⁸ For example, in *South Africa* (Schedule 2 of the Basic Conditions of Employment Act, No. 75 of 1997); in *Benin* (section 307 of the Labour Code); in *Cameroon* (section 172 of the Labour Code); in *China* (section 25 of the Regulations on labour inspections, Order No. 423 of 1 November 2004 of the State Council of the People's Republic of China); in *Qatar* (section 143 of the Labour Code).

²⁹ Section 82 of the Act of 4 August 1996 respecting the well-being of workers while engaged in their work.

³⁰ In *Argentina* in the case of a repeat offence the establishment may be closed for up to ten days, while the workers retain their entitlement to remuneration, with a minimum service being guaranteed in the case of essential public services (section 5(5) of Appendix II to Act No. 25,212 ratifying the Federal Labour Pact).

revocation of the employer's operating license for violation of the legal provisions on the employment of adolescents in hazardous work;³¹ in *Jordan*, the enterprise is closed in the event of failure to execute a compliance order issued by the labour inspector until remedial action is taken or a court decision is handed down.³²

301. In several countries, the penalty for non-compliance with occupational safety and health provisions is closure of the establishment, suspension of operations or revocation of the employer's operating licence.³³ In *Bulgaria*, either at its own initiative or on a proposal from trade union organizations, the General Labour Inspectorate may order suspension of activities in the event of repeated failure to meet the obligation to conclude a written employment contract.³⁴

302. A repetition of the offence is generally deemed an aggravating circumstance. It may entail a doubling or even tripling of the amount of the fine or term of imprisonment.³⁵

B. Effectively enforced penalties

303. Penalties should not only be prescribed to punish violations of legal provisions relating to conditions of work and protection of workers, as is the case in most countries; they must also, according to the instruments, be effectively enforced. The available information suggests, however, that they are only rarely imposed and that an effective enforcement procedure is generally conducted only if the violation resulted in serious harm to health or safety. In general, the annual reports of the inspectorates that contain information on the outcomes of procedures for non-compliance indicate that legal proceedings mainly concern violation of provisions on illegal employment, failure to pay social contributions, and more rarely those relating to conditions of work. In this regard, the Committee considers that in order for the system of inspection to be consistent with its objectives, it is essential for the penalties imposed on persons guilty of violations of any kind to be effectively enforced, in conformity with the Conventions.

304. From the available information, it is clear that the punitive effect of the control measures taken by labour inspectors depends on a number of factors. In *Germany*, a large number of proceedings benefit from judicial consideration which deal with every case but which can be time consuming. In some countries, priority is clearly given to compliance orders and prompt payment of compensation to the workers affected by the violation. For example, the Government of *New Zealand* stated, in reply to a trade union organization³⁶ that expressed concern about the small number of penalties imposed and lack of clarity of the relevant procedures, that the institution of court proceedings was not considered necessary except in the case of a serious offence. Several trade union organizations of Latin America that have complained of the inefficiency, lack of transparency and cumbersome nature of the system of punishing violations of laws and

³¹ Section 94 of the Labour Act.

³² Section 9(2) of the Labour Code.

³³ *Gabon* (section 229 of the Labour Code); *Honduras* (section 226 of the Health Code), for example.

³⁴ Section 404(2) of the Labour Code.

³⁵ *Tunisia* (section 237 of the Labour Code); *Cambodia* (section 383(3) of the Labour Code). In *Comoros*, under section 232 of the Labour Code, if the offence is repeated twice, the employer is liable to imprisonment in the case of violation of the legal provisions concerning notification of occupational accidents and diseases and those governing the freedom to appoint staff delegates and their freedom to carry out their duties.

³⁶ The New Zealand Council of Trade Unions (NZCTU).

regulations on protection at work, partly blame lack of political commitment by the public authorities, exacerbated by inadequate cooperation between the labour ministries and the justice system.³⁷ In *Madagascar*, although the new Labour Code provides that every violation report submitted by a labour inspector must be referred to a court through direct filing within one month,³⁸ in practice measures should be taken to raise awareness among the magistrates of the bench and enforcement bodies so that penalties will be sufficiently high and be effectively and promptly enforced. In *Rwanda*, to ensure that the courts support the labour inspectorate, the Labour Code lays down the obligation for the public prosecutor's office to inform labour inspectors of the outcomes of their inspection reports.³⁹ In *Guatemala*, inspectors may now obtain a writ of execution from the courts to enforce a decision imposing an administrative penalty.⁴⁰

305. In many African countries, the level of the penalties imposed and difficulty of enforcing them appears to have a serious impact on the motivation of labour inspectors to punish violations of the legal provisions relating to conditions of work and the protection of workers while engaged in their work.

306. The annual reports of inspectorates sent to the ILO rarely include information or statistics concerning the legal provisions whose violation led to the application of penalties. Such information is essential, however, for assessing the general situation and for planning future inspection activities, as well as for providing technical information and advice targeted at the most critical areas and activities.

³⁷ In particular, the AGITRA in *Brazil* and the ASEPA in *Costa Rica*.

³⁸ Section 239(4) and (5) of the Labour Code also prescribes a time-limit of six days for labour inspectors to submit the original violation report to the judicial authorities, failing which it will be time-barred.

³⁹ Section 5(a) of the Labour Code.

⁴⁰ Under section 15 of Decree No. 18-2001, a decision by a labour inspector is an enforceable instrument.

Chapter IX

Reports on the work of the labour inspectorate

307. The instruments provide for two types of report on the work of the labour inspectorate: periodical reports to be submitted by labour inspectors or local inspection offices to the central inspection authority and an annual general report published by the central inspection authority on the work of the inspection services under its control.

I. Reports of labour inspectors on their activities

A. Basic objectives

308. Article 19 of Convention No. 81 and Article 25 of Convention No. 129 lay down the general requirements for the drafting and submission of periodical reports to the central inspection authority. To take account of each country's specific needs, the instruments provide that the periodical reports shall deal with such subjects as may from time to time be prescribed by the central authority.

309. Although the form, content and frequency of the periodical reports by inspectors or local offices are to a certain extent left to the discretion of the central inspection authority, they should provide the latter, within a reasonable time, with information on subjects that should be included in a consolidated form in its annual report: the workplaces liable to inspection and number of workers employed; inspection visits and their results in terms of proceedings and penalties; and the situation with regard to occupational safety and health (subparagraphs (c) to (g) of Article 21 of Convention No. 81 and Article 27 of Convention No. 129). This is the minimum basic information required for an evaluation of the operation of the labour inspectorate and assessment at the international level by the ILO supervisory bodies.

310. While the instruments do not lay down an express obligation for inspectors to draw up reports of each of their inspection activities, this is implied in their provisions, since periodical reports can only be drafted if each inspector has kept a regular record of his or her inspections and their results. As it is not the task of the central inspection authority to examine each inspection report, but to ensure that the entire system functions effectively, it is through the periodical reports submitted by each local inspection office that the central authority will keep itself duly informed.

311. The available information shows that most countries have provisions in their legislation laying down an obligation to submit periodical reports on inspection activities.

312. The Committee notes that new information and communication technologies make it possible for labour inspectors in an increasing number of countries to report systematically on each of their activities, as well as preparing consolidated reports

covering periods defined by the central authority. This makes drafting the annual report and publishing it – in some countries – considerably easier. In countries where these technologies are not available, such an obligation on inspectors to submit a report to the central authority on each inspection is not necessarily justified. It may even overburden them to no practical purpose if the information cannot be put to good use owing to lack of human and material resources. However, the fact that a higher inspection authority at the local or regional level examines the inspection reports of the inspectors under their direct control may enable measures to be taken which will improve the efficiency of inspection activities. The Committee does not have enough information to assess the extent to which inspectors in some countries are obliged in practice to submit inspection reports to the higher authority, the employer or workers' representatives.

B. National practice

313. Under Article 19 of Convention No. 81 and Article 25 of Convention No. 129, it is the central inspection authority that prescribes the frequency of periodical reports. The instruments specify, however, that this shall not be less than once a year. Depending on the country, the obligation to submit periodical reports is assigned to inspectors,¹ local offices² or regional inspection services.³ The reports may be submitted on a monthly,⁴ quarterly,⁵ biannual⁶ or yearly⁷ basis. In *Bulgaria* and *New Zealand*, regional inspectorates are required to report on their activities by branch every month, every quarter and at the end of each year. In *Peru*, the normally monthly frequency of reports may be altered at the request of the hierarchical superior or in special circumstances.⁸

314. The legislation of several countries provides specifically that periodical reports must cover inspection activities or the results of such activities,⁹ or give an assessment of such activities over the reporting period.¹⁰ In *Bulgaria*, they are required to contain an analysis of the situation with regard to occupational injuries, of the application of occupational safety and health laws and regulations, and of labour relations.¹¹ In *Ethiopia*, periodical reports must also contain information on the impact of industrial accidents in terms of human, material and financial costs. Specific annual reports on the situation with regard to occupational safety and health are also required from labour inspectors in the *Republic of Korea*.¹² In *Tunisia*, labour inspectors' periodical activity

¹ *Brazil, Gabon, Republic of Korea, Malawi, Mauritius, Mauritania, Peru, Suriname, Tunisia*, for example.

² *Algeria, Cyprus, Ethiopia, Jordan, Rwanda*, for example.

³ *Bulgaria, China (Macau Special Administrative Region), Cuba, Mali, Spain*, for example.

⁴ *Cyprus, El Salvador, Jordan, Mauritius, Peru, Spain*, for example.

⁵ *Cuba, Gabon, Malawi, Mali, Tunisia*, for example.

⁶ *China (Macau Special Administrative Region)*, for example.

⁷ *Rwanda*, for example.

⁸ Section 18 of Presidential Decree No. 020-2001-TR to promulgate the General Act on labour inspection and defence of the worker.

⁹ *Brazil* (section 18(XXI) of Decree No. 4522 of 27 December 2002 to promulgate regulations on the labour inspectorate); *El Salvador* (section 38(d) of Decree No. 682 of 19 April 1996); *Republic of Korea* (section 19 of the Regulations on the obligations of labour inspectors); *Mauritania* (section 369 of the Labour Code).

¹⁰ *Algeria* (sections 13 and 15 of Decree No. 90-209 of 14 July 1990 on the organization and functioning of the General Labour Inspectorate).

¹¹ Section 14(3)(6) of the Regulations of the General Labour Inspectorate Executive Agency.

¹² Section 26 of the Regulations on the obligations of labour inspectors.

reports must mention serious industrial accidents and their causes, the reasons for collective and individual labour disputes and any information conducive to regional or general economic recovery, the development of social relations at work and improvements in the standard of living.¹³ In other countries, such as *Malawi*, it is the central labour inspection authority that decides what subjects are to be covered by the periodical reports.¹⁴

315. The Committee notes that in most countries, inspection activities relating to occupational safety and health are a priority subject of inspectors' periodical reports. The statistics most frequently included in such reports are the number of inspections carried out and workplaces inspected. Although statistics on the number of workplaces liable to inspection are essential to assessing the extent to which needs are being met, they are only rarely required by the central authority. It is worth mentioning that the departmental authority is obliged to include such statistics in its quarterly reports in *China (Macau Special Administrative Region)*.¹⁵ Also worth noting is the express provision inviting inspectors to identify deficiencies in legislation in *Peru*.¹⁶

316. Information on each aspect of inspectors' activities needs to be presented in a consolidated form in the periodical reports to the central authority. This is essential if the latter is to be able to monitor the work of the labour inspectorate at the local level, assess the performance of each inspector, identify the difficulties that arise and, as the case may be, award incentives, apply disciplinary measures or provide support. Moreover, the central authority needs to have all the information from local labour inspection services within a reasonable time, in order to prepare the annual reports enabling the labour inspection system to be evaluated.

317. The Committee does not have enough information on the form in which periodical reports are drafted, or the way in which the information contained in them is used. In this regard, it would emphasize the importance of these reports being drawn up in accordance with precise instructions as to the nature, type and degree of detail of the information required, including information and data disaggregated by sex, as this is essential if they are to be used effectively. Inspectors need to be reminded occasionally of the purpose for which the required statistics are compiled, as an incentive to provide them in an appropriate manner, including in response to requests from other labour administration bodies or ministerial departments. This applies to any document drawn up by inspectors, whether as an outcome of their inspections or provision of technical information or advice, or as a record of their interactions with public or private entities in the course of their inspection duties. Standardizing labour inspection documents and concepts helps save public funds, especially if it is done in consultation with the other public or private bodies concerned. Such standardization is only possible if there is nationwide consistency in the terms, definitions and criteria for the presentation and classification of labour inspection documents used.

318. Standard industrial accident and occupational disease notification forms, designed in consultation with the insurance or social security institutions, on the one hand, and statistical bodies, on the other, could serve as the basis for focusing on the identification

¹³ Section 180 of the Labour Code.

¹⁴ Section 16 of the Employment Act.

¹⁵ Section 25(2) of Legislative Decree No. 60/89/M of 18 September 1989.

¹⁶ Section 9(e) of Legislative Decree No. 910 of 16 March 2001, to promulgate the General Act on labour inspection and defence of the worker.

and prevention of occupational hazards and strengthening cooperation to reduce their incidence. Where violation report forms are designed in cooperation with the judicial authority, this can help to ensure a better understanding by the courts of proceedings instituted or recommended by inspectors against persons accused of violating legal provisions relating to conditions of work and protection of workers, leading to greater consistency in decisions concerning similar cases and circumstances.

319. In this regard, the Committee would draw the attention of Members to the existence of international classification standards relating to certain statistics on different aspects of work, which could provide a useful framework for the central inspection authority in preparing labour inspection documents.

II. Annual reports of the central inspection authority

A. Basic objectives

320. Under Article 20 of Convention No. 81, the central inspection authority shall publish an annual general report on the work of the inspection services under its control and transmit copies to the Director-General of the International Labour Office. Such reports shall be published within a year at most after the end of the year to which they relate; the time limit for sending them to the ILO is three months. Article 21 lists the subjects to be dealt with in the reports, while Paragraph 9 of Recommendation No. 81 describes in detail how the information should be set out. Articles 26 and 27 of Convention No. 129 and Paragraph 13 of Recommendation No. 113 contain equivalent provisions on the annual reports concerning the work of the agricultural labour inspection services. Under Article 26, paragraph 1, of Convention No. 129, the annual report on labour inspection in agriculture can be published either as a separate report or as part of the general annual report. This meets the concern expressed by some governments that publishing separate reports for each of the sectors covered by the ratified instruments could entail additional costs and constraints. Publication of separate reports could be appropriate, however, in countries where the inspection systems report to different central authorities depending on the sector covered.

321. As mentioned above, it is the periodical activity reports sent by inspectors or local offices under its control that provide the information needed by the central authority on trends in coverage and the results of the inspectorates' activities, as well as the occupational safety and health situation in the sectors covered (subparagraphs (c) to (g) of Article 21 of Convention No. 81 and Article 27 of Convention No. 129). To give an overview of the work of the labour inspectorate, the central authority consolidates in its annual report all the relevant information received, supplementing it with a list of the laws and regulations relevant to the work of the labour inspection service and a description of its staff (subparagraphs (a) and (b) of Article 21 of Convention No. 81 and of Article 27 of Convention No. 129).

322. As in previous general surveys on labour inspection, the Committee emphasizes the need to ensure that the annual report of the central inspection authority is published within the time limits laid down in the Conventions and that it deals in as much detail as possible with the subjects covered. It points out, however, that in order to avoid excessively lengthy annual reports, the information on laws and regulations may be confined to legislative changes that occurred since the last annual report. It would however be desirable to have a recapitulative list of all relevant laws and regulations at periodic intervals.

323. Given that the legal provisions referred to in the Conventions also include collective agreements and arbitration awards enforceable by the labour inspectorate, the Committee draws the attention of governments of countries where conditions of work are essentially governed by collective agreements to the need to update the relevant information in successive annual reports.

324. As regards the information required under subparagraphs (b) to (g) of Article 21 of Convention No. 81 and of Article 27 of Convention No. 129, Recommendation No. 81 provides useful indications as to how it should be set out (Paragraph 9). The Committee invites governments to ensure that the central inspection authority uses this as a model for presenting the information in its annual report.

325. The Committee has a few more points to make in this connection. Statistics of staff of the labour inspection service (subparagraph (b)) should be disaggregated so as to enable an assessment of the extent to which staffing levels meet the criteria for determining the number of inspectors in accordance with Article 10 of Convention No. 81 and Article 14 of Convention No. 129. A table indicating the different categories of inspectors and their number, as well as their geographical distribution and, where appropriate, their area of specialization by branch or object of inspection, could easily be updated every year. The Committee would also wish to see included specific information on the number of women inspectors appointed and the different tasks to which they are assigned.

326. As for statistics on the number of workplaces liable to inspection and the number of workers employed therein (subparagraph (c)), these are essential for the evaluation of the resources needed by the labour inspectorate. Without these figures it is impossible to assess the level of coverage by inspection as against the number of workplaces liable to inspection. Therefore a particular effort should be made to establish and update a register of workplaces and enterprises liable to inspection, indicating the number and categories of men and women workers employed in them.

327. The level of detail of the statistics of inspection visits (subparagraph (d)), violations and penalties imposed (subparagraph (e)), industrial accidents (subparagraph (f)) and occupational diseases (subparagraph (g)) depends closely on the economic situation of each country and the resources allocated to labour inspection. In the few countries where the central inspection authority does not cover occupational safety and/or health, the competent authority should take measures to ensure that appropriate arrangements are in place for the communication of the relevant information for inclusion in the annual report.

328. In the view of the Committee, it would be desirable to include information on other subjects such as those set forth in Paragraph 13 of Recommendation No. 133 (statistics of labour disputes in agriculture; identification of problems regarding application of the legal provisions, and progress made in solving them; and suggestions for improving the conditions of life and work in agriculture). Information on other aspects of the activities of the labour inspectorate not covered by the instruments can help the central inspection authority, the public authorities in general, the social partners and, at the international level, the ILO supervisory bodies, to assess the extent to which each country pursues the objectives of labour inspection within the meaning of the instruments. Accordingly, budget allocations may be adjusted to give priority to labour inspection aimed at enforcing the legal provisions relating to conditions of work and the protection of workers. The social partners have a role to play in ensuring that political will is reflected

in law and practice; they may act both at national level and at international level by communicating their views to the ILO supervisory bodies.

B. National practice

329. To judge from the number of annual inspection reports received by the ILO and their content, it appears that most countries bound by Conventions Nos. 81 and 129 encounter persistent difficulties in meeting the obligation laid down in the instruments for the central inspection authority to publish and communicate such reports to the ILO. The existence of national legislation to this effect is not enough in itself to overcome these difficulties.

330. As mentioned in its previous general survey on the subject, the Committee continues to observe that annual reports on labour inspection in agriculture are extremely rare. Reports sent by some countries with a common labour inspection system covered by both instruments do not make a distinction as to the activities carried out in the agriculture sector or their results, which makes it difficult to assess the application of Convention No. 129. The Committee emphasizes once again that the drafting of an annual report is not an end in itself, but is intended to provide the national authorities with an adequate overview of the work of the labour inspection system so that they can take steps to improve it if necessary.

331. Publication of the annual report is intended to ensure the necessary transparency with regard to the resources, activities, difficulties and results of labour inspection. This gives the social partners and the public and private bodies concerned, including non-governmental organizations, the opportunity to better understand the work and objectives of the labour inspectorate, as well as the problems it faces, and to contribute their views as to how it can be improved.

332. Regular communication of the annual report to the ILO enables the supervisory bodies of the Organization to assess performance and the difficulties that arise in establishing and implementing the labour inspection system, and to support government efforts to meet the objectives laid down in the instruments and other international labour standards on conditions of work and the protection of workers while engaged in their work.

333. Central inspection authorities should therefore endeavour to meet their obligations to provide an annual report, taking due account of their objectives, specifically for each sector covered.

334. The governments of several countries not bound by the labour inspection Conventions have provided information indicating that labour inspection reports are prepared on a yearly basis.¹⁷ While the content of the reports varies from one country to another, special emphasis is generally laid on occupational safety and health issues as well as collective labour disputes. The Governments of *China* and *Chile* have indicated that such reports are published.

(a) *Publication and communication to the ILO of annual inspection reports*

335. Only a few of the annual reports sent to the ILO appear to have been published. The Committee observes that annual reports are published in some countries, including

¹⁷ *Chile, China, Eritrea, Ethiopia, Fiji, Mexico, Mongolia, Nicaragua, Papua New Guinea, Slovakia, South Africa.*

Australia, Belgium, Bulgaria, Denmark, Estonia, France, Germany, Latvia, Norway, Portugal and Spain. In certain countries, the reports are published and posted on the Web.¹⁸ The Government of the *Republic of Korea* regularly sends an annual report to the ILO in the form of a CD-ROM. In several countries, the annual report is sometimes published and sometimes sent to the Office in a form which leaves some doubt as to whether it was intended to be widely distributed. The Committee often draws the attention of the governments concerned to the need to ensure that the report is published regularly. The Government of *Finland* has indicated that labour inspection reports are not regularly prepared, as there is considerable delay in obtaining definitive statistics on industrial accidents and occupational diseases. The Committee has frequently asked governments of many countries to take steps to ensure that the central inspection authority complies with its obligation to publish an annual activity report. The Committee has noted that some of the documents sent under Articles 20 and 21 of Convention No. 81 and sometimes under Articles 26 and 27 of Convention No. 129 consist merely of statistical tables covering varying periods and insufficiently specific subjects, which make it difficult to adequately assess the application of the instruments.

336. It is regrettable that in some countries no annual reports have been prepared for many years. The reason most frequently cited by the governments concerned is lack of sufficient resources. Some governments express the hope that these difficulties can be overcome with technical assistance from the ILO and financial assistance under international cooperation.

337. The Committee has also noted for a number of years that annual inspection reports are transmitted to the ILO at varying intervals, in some cases far exceeding those prescribed by Article 20 of Convention No. 81 and Article 26 of Convention No. 129.

(b) *Content of annual reports*

338. The Committee observes that the content of annual reports sent to the Office varies from one country to another. Most of the industrialized countries and some transition countries of Central and Eastern Europe include the information required by Conventions Nos. 81 and 129 in their reports. The Committee has noted with satisfaction the detailed and exhaustive annual inspection reports recently sent by *Bulgaria* and *Latvia* which concern the work of the labour inspectorate in industrial and commercial workplaces and which contain an evaluation of the efficiency of the labour inspection system, an analysis of the difficulties that arise and suggestions on ways to solve them. *Swaziland* also sent very detailed statistics in the annual report of the Department of Labour. In *Spain, Poland* and *Portugal*, efforts to produce annual inspection reports with the highest level of detail on resources, activities, results and prospects of labour inspection in agriculture reflect the willingness of the competent authorities to improve the conditions of work and life of agricultural workers and their families.

339. The more information a report contains on the coverage and practical work of the labour inspectorate, the more closely it will comply with the objectives assigned to it. The information prescribed by subparagraphs (a) to (g) of Article 21 of Convention No. 81 and of Article 27 of Convention No. 129 represents a minimum requirement. The Committee observes, however, that most of the annual inspection reports received by the ILO lack information on a number of subjects. An examination of the various documents sent by some governments instead of the annual report required by the instruments reveals the priority assigned to some aspects of labour inspection and the neglect of

¹⁸ For example, *Australia, Brazil, France, United Kingdom.*

others, indicating the difficulty some countries have in seeing this function in the holistic manner required.¹⁹

340. Information on the laws and regulations relevant to the work of the inspection service (subparagraph (a)) is generally communicated to the ILO in the government reports under article 22 of the ILO Constitution on the application of one of the labour inspection Conventions. This does not, however, obviate the need to publish it in an annual report in order to make it accessible to employers, workers and their organizations, and other interested parties. The same applies to information concerning staff of the labour inspection service.

341. The Committee notes that most of the annual inspection reports, as well as the different compilations of statistics sent to the ILO under Conventions Nos. 81 and 129, regrettably fail to include statistics on the number of workplaces or enterprises liable to inspection and the number of workers employed therein (subparagraph (c)). This makes it impossible to attempt an evaluation of the volume of inspection activities as against needs.

342. Statistics of inspection visits (subparagraph (d)) are provided in most of the annual reports received by the Office. Where they indicate the purpose and number of visits by workplace or enterprise, the number and categories of persons employed, and where they are broken down by sex or by geographical area, such statistics are invaluable in assessing the range of activities carried out by the inspection system, provided that they can be examined in the light of other essential data such as those relating to the total number of workplaces and enterprises liable to inspection.

343. Annual statistics of violations and penalties imposed (subparagraph (e)) reflect the impact of inspection activities, in both their preventive and punitive aspects, on the application and work of the labour inspection system. The evolution of these statistics over the reference period is a useful indicator for the central inspection authority in designing its action programmes, especially if the statistics are broken down according to a classification of violations by nature and gravity, correlated with the nature and degree of the penalties imposed (such as imprisonment, fines, ban on operating or suspension of operating license). The Committee notes with interest that increasingly detailed information on these subjects is being included in the annual reports of some countries.²⁰ It observes nonetheless that a number of countries either include only vague statistics on violations and penalties, or omit them altogether.

344. In other countries, information provided on violations and penalties does not deal with conditions of work and protection of workers including wages and equal remuneration, as prescribed in Conventions Nos. 81 and 129, but focuses on other subjects – for the most part, illegal employment or collective labour disputes. In this regard, statistics often centre on the prevention and punishment of evasion of social security contributions and/or irregular migration. Such statistics are not directly relevant to an evaluation of the extent of application of the international instruments and national legislation on conditions of work and the protection of workers while engaged in their work. Moreover, they are an indication that the labour inspectorate in the country concerned is not primarily engaged in the role it should have under the instruments. The

¹⁹ In this respect, the ILO's InFocus Programme on SafeWork is currently developing an Internet tool which will facilitate the collection and dissemination of relevant data.

²⁰ For example, *Belgium, France, Latvia, Poland, Portugal and Spain*.

Committee regularly reminds the governments concerned of their obligations in this regard.

345. The purpose of statistics of industrial accidents and occupational diseases (subparagraphs (f) and (g)) is to reflect the general situation with regard to occupational safety and health, with a view to improving it. In order for the relevant statistics to be included in the annual inspection report, it is important to ensure that the labour inspectorate is notified of industrial accidents and occupational diseases, as provided in Article 14 of Convention No. 81 and Article 19 of Convention No. 129. It has been observed that, while industrial accident statistics are available in many countries, the same cannot be said of those regarding occupational disease. Many governments, including those of the most developed countries, have described obstacles preventing the collection of such statistics.

Chapter X

Ratification prospects

346. Convention No. 81 remains one of the best ratified Conventions of the ILO. The pace of ratification of this instrument continues, as indicated by the seven ratifications it received in the past three years, bringing the total number of ratifications to 135.

347. Among the countries that have not ratified any of the labour inspection instruments, *Fiji* plans to ratify Convention No. 81 in 2006, but does not envisage ratification of Convention No. 129 because national legislation is not in conformity with Articles 17 and 18 of the instrument.

348. In some countries, recent legislative developments appear to favour a re-examination of prospects for ratifying the Conventions. This is the case in *China*, where the possibility of ratifying Conventions Nos. 81 and 129 is being considered; it should be made easier by the entry into force of regulations governing labour inspection. In *Trinidad and Tobago*, where several provisions of both Conventions have been incorporated in the new occupational safety and health legislation, the “ILO 144 Tripartite Committee” recommended in June 2004 ratification of Convention No. 81, which is now under consideration. The report of the *Czech Republic* indicates that the provisions of Convention No. 81 and other ILO Conventions were taken into account in the process of drafting recent labour inspection legislation.¹

349. Several reports point out that certain aspects of national legislation or policy are perceived as obstacles preventing ratification and application of Conventions Nos. 81 and 129. According to the Government of *Canada*, ratification of Convention No. 81 cannot be envisaged in view of certain provisions relating to the powers of inspectors (Article 12, paragraph 1) and the publication of the annual report (Articles 20 and 21). Provincial requirements also prevent ratification of Convention No. 129. The Government of *Mexico* does not plan to ratify any of the instruments, given the areas of divergence between the instruments and national legislation. The Government of *Chile* does not envisage ratification at the moment; it would be in favour of ratifying a single Convention applicable to all branches of activity, if this were possible. Accordingly, it suggests the preparation of a single Convention and an end to Conventions with partial coverage by sectors.

350. *Botswana*, *Nicaragua*, *Nigeria*, and *South Africa* do not plan to ratify any of the instruments. In this regard, the Government of *Nicaragua* points out that if ratification were envisaged, ILO assistance and technical cooperation would be necessary.

¹ The Czech-Monrovia Confederation of Trade Unions (CMKOS) indicated that, in the preparation and adoption of this new legislation, it repeated its request (made since 1990) to the Government to ratify Convention No. 81.

351. Information on other ratification prospects has also been provided by countries that have only ratified Convention No. 81. The Government of *Tunisia* intends to consider the possibility of ratifying Convention No. 129 and the Protocol to Convention No. 81. In *Cyprus*, given that the EU directives on occupational safety and health have been transposed into national legislation, the Government states that it is in a position to consider ratifying Convention No. 129. According to the Government of *Sri Lanka*, there is no obstacle to ratification of the Protocol, which is currently expected. As to Convention No. 129, ratification will be considered at a later date, once the inspection system fully meets the requirements laid down in the Convention.

352. For some countries, however, certain provisions of Convention No. 129 and the Protocol appear to pose difficulties in regard to application. In *Japan*, although most of its provisions are implemented by national legislation, Convention No. 129 cannot be ratified because of the divergence between national law and the instrument with regard to the powers conferred on labour inspectors. As to ratification of the Protocol, it would require an in-depth review of the current inspection system as regards the application of several provisions of Convention No. 81 to the non-commercial services sector. The Government of *Switzerland* indicates that the obstacles referred to during the preparatory work for Convention No. 129² and the Protocol still persist. The Government of *New Zealand* considers that the requirements laid down in the instrument with regard to submission of the activity report of the labour inspection service pose difficulties in application since statistics on agricultural enterprises are not necessarily differentiated from general statistics on all the other sectors covered such as industry, commerce, mines, transport and non-commercial activities. However, ratification of the Protocol is envisaged. The Government of *Lebanon* states that ratification of Convention No. 129 cannot be envisaged, given that the labour inspectorate is only competent to cover activities covered by the Labour Code, which excludes agricultural activities. As for prospects of ratification of the Protocol, these will be examined in the light of the ILO's reply to the requests for clarification submitted to it concerning the categories subject to its provisions. The Government of *Jordan* also states that Convention No. 129 has not been ratified owing to the fact that agricultural workers are not covered by the provisions in legislation.

353. The Government of *Mauritius* indicates that the labour inspectorate already has jurisdiction over parastatal bodies, local authorities and non-commercial activities in the private sector, but the fact that it has no jurisdiction over government administration, the armed forces, police and prison services does not favour ratification of the Protocol. In this respect, the Committee draws attention to the possibility afforded by Article 2 of the Protocol to exclude from its scope certain categories of non-commercial sector. As regards Convention No. 129, the Government indicates that national law and practice are in conformity with most of its requirements.

354. Several countries have said that ratification of Convention No. 129 has been prevented by the impossibility of establishing an inspection system specifically for agriculture, or the fact that they had a single national inspection system covering all areas of activity. *Austria*, for example, plans to consider the possibility of ratifying

² The Government of *Switzerland* had considered that the objectives of the proposed international instrument had already been attained or were in the process of being attained by legislative provisions and a well-conceived system of agricultural training and extension services. It suggested that international standards should not cover undertakings which employ members of the family, as the standards should provide that the system of labour inspection in agriculture should only cover agricultural undertakings permanently employing wage earners or apprentices who are not members of the operator's family.

Convention No. 129, but is concerned that the absence of a central authority for agriculture and forestry may hinder ratification. In addition, the fact that labour inspection in respect of local and provincial government employees is carried out separately by the nine provinces and not by the federal labour inspectorate could be an obstacle to ratification of the Protocol. The Government of the *Republic of Korea* does not intend to ratify Convention No. 129, since although it has a system of labour inspection covering all commercial establishments and workplaces, there is no separate system for agriculture, in which most workers are self-employed. Neither does it envisage ratification of the Protocol. In *Belarus*, the department of labour inspection and specialized bodies supervise compliance with obligations under labour legislation and protection of workers, including in agriculture. Therefore the establishment of a specialized labour inspectorate for agriculture and ratification of Convention No. 129 are not on the agenda.

355. The Government of *Cuba* states that the system of labour inspection covers all the sectors of activity in the country and therefore ratification of other instruments besides Convention No. 81 is not necessary.

356. In this regard, the Committee refers to Chapter IV of this General Survey, where it points out that under Article 7, paragraph 3(a), of Convention No. 129 labour inspection in agriculture might be carried out by a single labour inspection department responsible for all sectors of economic activity.

357. Other countries perceive Convention No. 129 as being unsuited to the national characteristics of agricultural activity. The Government of *Gabon*, for example, considers that ratification of Convention No. 129 would not be appropriate, as agriculture is in its embryonic stages; Convention No. 81, however, is applied in the agriculture sector as in the rest of the economy. The Government envisages submitting the Protocol to Parliament. According to the Government of *Indonesia*, ratification of Convention No. 129 would not be appropriate, as agricultural activity mainly takes place in the informal economy. *Cameroon* does not envisage ratification of Convention No. 129 or the Protocol, although some aspects of the instruments are already implemented in national legislation.

358. For some countries, economic obstacles are perceived as preventing ratification of Convention No. 129 and the Protocol. This is the case in *Mali*, which considers that agricultural enterprises are not sufficiently structured to be liable to inspection, which would require specialized labour inspection structures that the country is unable to set up at present, owing to lack of resources.³ The Government of *Panama* states that it does not have the necessary human and material resources to apply Convention No. 129. While ratification of the Protocol is not envisaged either, this would be possible if some of the authorized exclusions from its scope were made. The Government of *Rwanda* does not envisage ratification of Convention No. 129 as it is not in a position to apply it given its limited material, financial and human resources which led it to opt for a system of labour inspection covering all branches of activity. Neither is ratification of the Protocol envisaged in the near future given the constraints surrounding the possibilities of exclusion from its scope. The Government of *Viet Nam* states that the main obstacle to ratification of Convention No. 129 in the near future is the number of labour inspectors, which is not sufficient to carry out labour inspection in agriculture.

³ The General Union of Workers of Mali (UGT) considers that all the labour inspection instruments should be ratified, in particular to protect certain workers such as the police and civil defence services, which are affiliated to their organization, subject however to restrictions warranted by the special nature of these establishments.

359. Lastly, several governments indicated that they did not intend to ratify either Convention No. 129 or the Protocol. These include the Governments of *Lithuania* and *Qatar*; the latter considers, however, that the Ministry of Municipal Affairs and Agriculture might draw on the provisions of Convention No. 129 for inspiration. The Government of *Suriname* states that tripartite discussions should be held on Convention No. 129 and the Protocol before submitting the question of ratification to the competent authorities, but that it does not intend to ratify the Protocol for the time being. The Government of the *United Kingdom* considers that ratification of Convention No. 129 would require amending the legislation in force. Given that current provisions provide adequate protection for workers, there is no need to amend them. However, the Government is currently reconsidering its position with regard to the Protocol. The Government of *Australia* plans to give priority to ratifying Convention No. 182 and a number of other occupational safety and health Conventions. Consideration will be given in future to the question of ratifying Convention No. 129 as appropriate.

360. Of the 133 countries bound by Convention No. 81, only ten have ratified the Protocol extending the application of Convention No. 81 to activities in the non-commercial services sector. Some useful information has also been provided by countries that have ratified both Conventions on the prospects for ratifying the Protocol. The Government of *Costa Rica* states that it hopes for a favourable decision by the Legislative Assembly, to which the instrument has been submitted with a view to ratification.

361. Ratification of the Protocol is envisaged by the Governments of *El Salvador* and *Zimbabwe*. The Government of *Colombia* points out that there are no obstacles in the way of ratification. In *Estonia*, where Conventions Nos. 81 and 129 were ratified in February 2005, the National ILO Council considered in March 2005 that the country was not yet ready to ratify the Protocol. However, the Ministries of Social Affairs, Defence, Justice and Internal Affairs are currently seeking means of giving effect to certain provisions of the Protocol.

362. The governments of some countries cite technical difficulties in the way of ratification of the Protocol. In *Germany*, the main obstacle lies in the absence in the Protocol of provisions for the exclusion of religious communities covered by national legislation applicable to church organizations. In *Portugal*, the principles of the Protocol are largely incorporated in national legislation, with the General Labour Inspectorate (IGT) being competent to promote and supervise legislation relating to conditions of work and the promotion of workers in all sectors of activity. However, the IGT only carries out safety and health functions in the services and institutions of the public administration, while the enforcement of legal provisions relating to other conditions of work falls to the general inspectorate of the public administration. Moreover, since the Protocol does not allow the exclusion of nuclear plants and offshore enterprises, ratification is not envisaged.⁴

⁴ In this regard, the employers' and workers' organizations take a different view. The Confederation of Commerce and Services of Portugal (CCP) is in favour of ratifying the Protocol, considering that the basic principles of that instrument are already affirmed in national legislation. The General Union of Workers (UGT) also advocates ratification with a view to inclusive, progressive and harmonious coverage by the General Labour Inspectorate of the sectors not covered by Convention No. 81.

Final remarks

363. The importance of labour inspection has always been recognized by the ILO. It has been high on the agenda since the Organization was founded over 80 years ago. Whilst, over recent years, there has been a growing recognition of the increased importance of labour inspection in today's global economy, there has been inadequate recognition of the increasing complexity of labour inspection and the problems experienced in responding effectively to the increasing demands made upon it.

364. The fundamental changes in the world of work, which are set to continue, are now well understood. These changes include fragmentation of the labour market; the rapid growth in foreign and migrant workers; the rise in deregulation and privatization; new forms of subcontracting or outsourcing; the increase in atypical working arrangements and relationships; the increased participation of women in the labour market, with greater awareness of the need to eliminate gender discrimination in pay and working conditions and, further, the need to eliminate all forms of discrimination on grounds other than gender; the rapid and complex developments in technology; and concerns as to job insecurity and increased levels of stress at work. All these factors, combined with others, have had a considerable impact on the traditional concept of labour protection.

365. Against this background there can be no doubt as to the need for increased protection of workers. This in turn requires specific recognition of the more complex responsibilities of the labour inspectorate, its mandate and priorities and the need to identify the scope of workers' needs. It is also essential that the inspectorate be strong, informed, impartial, properly resourced, organized and managed, able to adapt to change and able to do its job.

366. As the Committee already observed in its 1985 General Survey, the high number of ratifications of Convention No. 81 bears witness to the recognition by member States of the important role played by labour inspection as a guarantee of compliance with labour law and the protection of workers. At the same time, however, only 43 of the 135 States parties to Convention No. 81 have also ratified Convention No. 129, and only ten the Protocol of 1995. The gap, as already noted in 1985, between the very broad acceptance of obligations relating to industry and commerce and a marked reluctance to extend them to agriculture, even where agriculture is an important sector of the economy, due in part to administrative, technical and economic obstacles cited by certain governments, has been confirmed, if not accentuated. The Committee therefore hopes that this survey will help to clarify the requirements of the respective instruments and to enable many countries to eliminate the perceived obstacles to the ratification of Convention No. 129.

367. The Committee is of the view that Conventions Nos. 81 and 129, as priority Conventions, should be the objects of a promotional campaign within the ILO. Such a campaign could stress the essential contribution of a labour inspection system, operating in accordance with Convention No. 129, to the promotion of decent work in agriculture.

368. Examination of national law and practice shows that the functions entrusted to labour inspection are generally those envisaged by the instruments, securing essentially the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work. Nevertheless, the manner in which these functions are discharged varies greatly between countries. The differences lie in the amount of time devoted to the various inspection functions, including prevention and control and inspections at the initiative of the inspection services on the one hand, compared with those undertaken in reaction to complaints, functions relating to occupational safety and health and those relating to compliance with other conditions of employment on the other hand. In certain countries, priority is given by governments to combating clandestine work or illegal employment, which is increasingly linked to enforcing immigration law. However, this should not be given such prominence that it detracts from the essential labour inspection function of protecting all workers without distinction. In other countries the labour inspectorate may be used to supervise trade union and employer organizations, which may interfere with the exercise of freedom of association and collective bargaining. Moreover, labour inspectors are still too often entrusted with additional tasks outside their principal functions of enforcement, information and advice foreseen in the instruments and these tasks interfere with the effective discharge of their principal functions. As discussed earlier in this survey, while promotional activities to raise awareness of working conditions and of labour inspection are important, these should not have priority over the principal functions entrusted to inspectors, to which the available resources should always be allocated first.

369. The Conventions set out general principles and provide the essential and universal framework for the status, structures and function of labour inspection. It is the responsibility of the competent authority in each country, in consultation with the social partners, to define the needs and to determine priorities and the principal fields of action, having regard to national circumstances, duly taking into account the fundamental principles and rights at work set out in the ILO Declaration. The labour inspection services then need to be provided with the necessary material and human resources to ensure that they can function effectively and to ensure, as a minimum, that the workplaces under their supervision are inspected thoroughly and with sufficient frequency.

370. In many developing countries, as well as certain industrialized countries, it is clear that the resources allocated to labour inspection are insufficient to enable inspection functions to be discharged properly. Budgetary constraints result in insufficient staffing, inadequately trained personnel and conditions of service which do not provide full guarantees of independence and integrity. The recruitment, training and retention in the profession of competent and motivated personnel presupposes a level of budgetary resources that is too often lacking. Similarly, the inadequacy of material resources seriously limits the impact of the labour inspectorate. In many developing countries, the influence of labour inspection is confined to formal activities in urban areas, while workers in agriculture and the informal economy, who are in greater need of protection, remain outside its scope. The lack of resources also hinders the ability of the inspectorate to respond to the evolving recognition and awareness of other hazards in the workplace, including stress, sexual harassment and aggressive or violent conduct towards workers.

371. The Committee wishes to emphasize that the priority nature of labour inspection should be reflected in the level of resources allocated. Governments, as well as international financial institutions, when considering whether to provide assistance to a particular project, should recognize the vital contribution to development and social

cohesion made by an efficient labour inspection service. Governments should also provide financial resources or guarantees for the purchase of equipment to strengthen labour inspection in all sectors of activity.

372. Finally, the Committee has been struck by the significant contribution that labour inspection under the terms of Conventions Nos. 81 and 129 has to make to the achievement of the ILO's Decent Work Agenda. The Committee has drawn attention in this General Survey to specific, important issues such as HIV/AIDS in the workplace, equal remuneration, the fight against all forms of discrimination and child labour, where labour inspection is an indispensable part of national strategies. It would like to think that its own work in supervising the application of these Conventions might assist the Office in identifying problems which require action at the national level; and in monitoring progress and compiling good practices.

373. In its examination of the reports the Committee has been made aware of the practical relevance of labour inspection especially in developing countries. It is clear that the terms of the ILO instruments on this subject draw on experience in the formal sector whereas, in many countries of the world, formal employment relations apply only to a small minority of the population; and the mandate of the labour inspectorate simply does not extend to the vast, informal economy where conditions of work are generally poorer. In this context the Committee notes, in addition to Article 5(1) of Convention No. 129, that Article 7 of Convention No. 150 calls for the extension of labour administration functions to workers who are not "employed persons". It would therefore urge further consideration of how labour inspection services might develop in this respect. Article 5(a) and (b) of Convention No. 81 and Articles 12 and 13 of Convention No. 129, on which little information has been provided in the reports, point to the interest in extending labour inspection activities, particularly in countries where resources are so scarce, through cooperation with employers and workers, and public and private institutions.

374. In conclusion, the labour inspection system has the potential to play an even greater role than it has hitherto, in ensuring the protection of both men and women workers in all sectors and at all levels; in ensuring compliance at national level with national labour laws; and, ultimately, in assisting and strengthening the international supervisory system. Further, an effective system of labour inspection at the national level, carried out by professionally trained and adequately resourced inspectors, who are suitably qualified and independent of improper external influence, benefits both employers and workers. A strong and effective labour inspectorate provides not only better protection, but also better prevention and productivity at work, to the benefit of everyone.

Appendix I

Text of the instruments

Convention No. 81

Convention concerning labour inspection in industry and commerce

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirtieth Session on 19 June 1947, and

Having decided upon the adoption of certain proposals with regard to the organisation of labour inspection in industry and commerce, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, adopts this eleventh day of July of the year one thousand nine hundred and forty seven the following Convention, which may be cited as the Labour Inspection Convention, 1947:

PART I. LABOUR INSPECTION IN INDUSTRY

Article 1

Each Member of the International Labour Organisation for which this Convention is in force shall maintain a system of labour inspection in industrial workplaces.

Article 2

1. 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.

2. National laws or regulations may exempt mining and transport undertakings or parts of such undertakings from the application of this Convention.

Article 3

1. The functions of the system of labour inspection shall be:

- (a) 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;
- (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;

- (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

2. Any further duties which may be entrusted to labour inspectors 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.

Article 4

1. So far as is compatible with the administrative practice of the Member, labour inspection shall be placed under the supervision and control of a central authority.

2. In the case of a federal State, the term “central authority” may mean either a federal authority or a central authority of a federated unit.

Article 5

The competent authority shall make appropriate arrangements to promote:

- (a) effective co-operation between the inspection services and other government services and public or private institutions engaged in similar activities; and
- (b) collaboration between officials of the labour inspectorate and employers and workers or their organisations.

Article 6

The inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

Article 7

1. Subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties.

2. The means of ascertaining such qualifications shall be determined by the competent authority.

3. Labour inspectors shall be adequately trained for the performance of their duties.

Article 8

Both men and women shall be eligible for appointment to the inspection staff; where necessary, special duties may be assigned to men and women inspectors.

Article 9

Each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists 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 10

The number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate and shall be determined with due regard for:

- (a) the importance of the duties which inspectors have to perform, in particular —
 - (i) the number, nature, size and situation of the workplaces liable to inspection;
 - (ii) the number and classes of workers employed in such workplaces; and
 - (iii) the number and complexity of the legal provisions to be enforced;
- (b) the material means placed at the disposal of the inspectors; and
- (c) the practical conditions under which visits of inspection must be carried out in order to be effective.

Article 11

1. 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, and accessible to all persons concerned;
- (b) the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist.

2. The competent authority shall make the necessary arrangements to reimburse to labour inspectors any travelling and incidental expenses which may be necessary for the performance of their duties.

Article 12

1. Labour inspectors provided with proper credentials shall be empowered:

- (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;
- (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; and
- (c) to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed, and in particular —
 - (i) to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions;
 - (ii) to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them;
 - (iii) to enforce the posting of notices required by the legal provisions;
 - (iv) to take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose.

2. On the occasion of an inspection visit, inspectors shall 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.

Article 13

1. Labour inspectors shall be empowered to take steps with a view to remedying defects observed in plant, layout or working methods which they may have reasonable cause to believe constitute a threat to the health or safety of the workers.

2. In order to enable inspectors to take such steps they shall be empowered, subject to any right of appeal to a judicial or administrative authority which may be provided by law, to make or to have made orders requiring —

- (a) 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 health or safety of the workers; or
- (b) measures with immediate executory force in the event of imminent danger to the health or safety of the workers.

3. Where the procedure prescribed in paragraph 2 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.

Article 14

The labour inspectorate shall be notified of industrial accidents and cases of occupational disease in such cases and in such manner as may be prescribed by national laws or regulations.

Article 15

Subject to such exceptions as may be made by national laws or regulations, labour inspectors —

- (a) shall be prohibited from having any direct or indirect interest in the undertakings under their supervision;
- (b) 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; and
- (c) shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint.

Article 16

Workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

Article 17

1. Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning: Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.

2. It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.

Article 18

Adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.

Article 19

1. Labour inspectors or local inspection offices, as the case may be, shall be required to submit to the central inspection authority periodical reports on the results of their inspection activities.

2. These reports shall be drawn up in such manner and deal with such subjects as may from time to time be prescribed by the central authority; they shall be submitted at least as frequently as may be prescribed by that authority and in any case not less frequently than once a year.

Article 20

1. The central inspection authority shall publish an annual general report on the work of the inspection services under its control.

2. Such annual reports shall be published within a reasonable time after the end of the year to which they relate and in any case within twelve months.

3. Copies of the annual reports shall be transmitted to the Director General of the International Labour Office within a reasonable period after their publication and in any case within three months.

Article 21

The annual report published by the central inspection authority shall deal with the following and other relevant subjects in so far as they are under the control of the said authority:

- (a) laws and regulations relevant to the work of the inspection service;
- (b) staff of the labour inspection service;
- (c) statistics of workplaces liable to inspection and the number of workers employed therein;
- (d) statistics of inspection visits;
- (e) statistics of violations and penalties imposed;
- (f) statistics of industrial accidents;
- (g) statistics of occupational diseases.

PART II. LABOUR INSPECTION IN COMMERCE*Article 22*

Each Member of the International Labour Organisation for which this Part of this Convention is in force shall maintain a system of labour inspection in commercial workplaces.

Article 23

The system of labour inspection in commercial workplaces shall apply to 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.

Article 24

The system of labour inspection in commercial workplaces shall comply with the requirements of Articles 3 to 21 of this Convention in so far as they are applicable.

PART III. MISCELLANEOUS PROVISIONS

Article 25

1. Any Member of the International Labour Organisation which ratifies this Convention may, by a declaration appended to its ratification, exclude Part II from its acceptance of the Convention.

2. Any Member which has made such a declaration may at any time cancel that declaration by a subsequent declaration.

3. Every Member for which a declaration made under paragraph 1 of this Article is in force shall indicate each year in its annual report upon the application of this Convention the position of its law and practice in regard to the provisions of Part II of this Convention and the extent to which effect has been given, or is proposed to be given, to the said provisions.

Article 26

In any case in which it is doubtful whether any undertaking, part or service of an undertaking or workplace is an undertaking, part, service or workplace to which this Convention applies, the question shall be settled by the competent authority.

Article 27

In this Convention 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.

Article 28

There shall be included in the annual reports to be submitted under article 22 of the Constitution of the International Labour Organisation full information concerning all laws and regulations by which effect is given to the provisions of this Convention.

Article 29

1. In the case of a Member the territory of which includes large areas where, by reason of the sparseness of the population or the stage of development of the area, the competent authority considers it impracticable to enforce the provisions of this Convention, the authority may exempt such areas from the application of this Convention either generally or with such exceptions in respect of particular undertakings or occupations as it thinks fit.

2. Each Member shall indicate in its first annual report upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation any areas in respect of which it proposes to have recourse to the provisions of the present Article and shall give the reasons for which it proposes to have recourse thereto; no Member shall, after the date of its first annual report, have recourse to the provisions of the present Article except in respect of areas so indicated.

3. Each Member having recourse to the provisions of the present Article shall indicate in subsequent annual reports any areas in respect of which it renounces the right to have recourse to the provisions of the present Article.

Article 30

1. In respect of the territories referred to in article 35 of the Constitution of the International Labour Organisation as amended by the Constitution of the International Labour Organisation Instrument of Amendment, 1946, other than the territories referred to in paragraphs 4 and 5 of the said article as so amended, each Member of the Organisation which ratifies this Convention shall communicate to the Director-General of the International Labour Office as soon as possible after ratification a declaration stating —

- (a) the territories in respect of which it undertakes that the provisions of the Convention shall be applied without modification;
- (b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;
- (c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
- (d) the territories in respect of which it reserves its decision.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 34, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 31

1. Where the subject matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the international relations of that territory may, in agreement with the Government of the territory, communicate to the Director-General of the International Labour Office a declaration accepting on behalf of the territory the obligations of this Convention.

2. A declaration accepting the obligations of this Convention may be communicated to the Director-General of the International Labour Office —

- (a) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or
- (b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.

3. Declarations communicated to the Director-General of the International Labour Office in accordance with the preceding paragraphs of this Article shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications it shall give details of the said modifications.

4. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

5. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 34, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

PART IV. FINAL PROVISIONS

Article 32

The formal ratifications of this Convention shall be communicated to the Director General of the International Labour Office for registration.

Article 33

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 34

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 35

1. The Director General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 36

The Director General of the International Labour Office shall communicate to the Secretary General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 37

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 38

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention provides,
 - (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 34 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 39

The English and French versions of the text of this Convention are equally authoritative.

Protocol

Protocol of 1995 to the Labour Inspection Convention, 1947

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Eighty-second Session on 6 June 1995, and

Noting that the provisions of the Labour Inspection Convention, 1947, apply only to industrial and commercial workplaces, and

Noting that the provisions of the Labour Inspection (Agriculture) Convention, 1969, apply to workplaces in commercial and non-commercial agricultural undertakings, and

Noting that the provisions of the Occupational Safety and Health Convention, 1981, apply to all branches of economic activity, including the public service, and

Having regard to all the risks to which workers in the non-commercial services sector may be exposed, and the need to ensure that this sector is subject to the same or an equally effective and impartial system of labour inspection as that provided in the Labour Inspection Convention, 1947, and

Having decided upon the adoption of certain proposals with regard to activities in the non-commercial services sector, which is the sixth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Protocol to the Labour Inspection Convention, 1947,

adopts this twenty-second day of June of the year one thousand nine hundred and ninety-five the following Protocol, which may be cited as the Protocol of 1995 to the Labour Inspection Convention, 1947:

PART I. SCOPE, DEFINITION AND APPLICATION

Article 1

1. Each Member which ratifies this Protocol shall extend the application of the provisions of the Labour Inspection Convention, 1947 (hereunder referred to as “the Convention”), to activities in the non-commercial services sector.

2. The term “activities in the non-commercial services sector” refers to activities in all categories of workplaces that are not considered as industrial or commercial for the purposes of the Convention.

3. This Protocol applies to all workplaces that do not already fall within the scope of the Convention.

Article 2

1. A Member which ratifies this Protocol may, by a declaration appended to its instrument of ratification, exclude wholly or partly from its scope the following categories:

- (a) essential national (federal) government administration;
- (b) the armed services, whether military or civilian personnel;
- (c) the police and other public security services;
- (d) prison services, whether prison staff or prisoners when performing work,

if the application of the Convention to any of these categories would raise special problems of a substantial nature.

2. Before the Member avails itself of the possibility afforded in paragraph 1, it shall consult the most representative organizations of employers and workers or, in the absence of such organizations, the representatives of the employers and workers concerned.

3. A Member which has made a declaration as referred to in paragraph 1 shall, following ratification of this Protocol, indicate in its next report on the application of the Convention under article 22 of the Constitution of the International Labour Organization the reasons for the exclusion and, to the extent possible, provide for alternative inspection arrangements for any categories of workplaces thus excluded. It shall describe in subsequent reports and measures it may have taken with a view to extending the provisions of the Protocol to them.

4. A Member which has made a declaration referred to in paragraph 1 may at any time modify or cancel that declaration by a subsequent declaration in accordance with the provisions of this Article.

Article 3

1. The provisions of this Protocol shall be implemented by means of national laws or regulations, or by other means that are in accordance with national practice.

2. Measures taken to give effect to this Protocol shall be drawn up in consultation with the most representative organizations of employers and workers or, in the absence of such organizations, the representatives of the employers and workers concerned.

PART II. SPECIAL ARRANGEMENTS

Article 4

1. A Member may make special arrangements for the inspection of workplaces of essential national (federal) government administration, the armed services, the police and other public security services, and the prison services, so as to regulate the powers of labour inspectors as provided in Article 12 of the Convention in regard to:

- (a) inspectors having appropriate security clearance before entering;
- (b) inspection by appointment;
- (c) the power to require the production of confidential documents;
- (d) the removal of confidential documents from the premises;
- (e) the taking and analysis of samples of materials and substances.

2. The Member may also make special arrangements for the inspection of workplaces of the armed services and the police and other public security services so as to permit any of the following limitations on the powers of labour inspectors:

- (a) restriction of inspection during manoeuvres or exercises;
- (b) restriction or prohibition of inspection of front-line or active service units;
- (c) restriction or prohibition of inspection during declared periods of tension;
- (d) limitation of inspection in respect of the transport of explosives and armaments for military purposes.

3. The Member may also make special arrangements for the inspection of workplaces of prison services to permit restriction of inspection during declared periods of tension.

4. Before a Member avails itself of any of the special arrangements afforded in paragraphs (1), (2) and (3), it shall consult the most representative organizations of employers

and workers or, in the absence of such organizations, the representatives of the employers and workers concerned.

Article 5

The Member may make special arrangements for the inspection of workplaces of fire brigades and other rescue services to permit the restriction of inspection during the fighting of a fire or during rescue or other emergency operations. In such cases, the labour inspectorate shall review such operations periodically and after any significant incident.

Article 6

The labour inspectorate shall be able to advise on the formulation of effective measures to minimize risks during training for potentially hazardous work and to participate in monitoring the implementation of such measures.

PART III. FINAL PROVISIONS

Article 7

1. A Member may ratify this Protocol at the same time as or at any time after its ratification of the Convention, by communicating its formal ratification of the Protocol to the Director-General of the International Labour Office for registration.

2. The Protocol shall come into force 12 months after the date on which ratifications of two Members have been registered by the Director-General. Thereafter, this Protocol shall come into force for a Member 12 months after the date on which the ratification has been registered by the Director-General and the Convention shall then be binding on the Member concerned with the addition of Articles 1 to 6 of this Protocol.

Article 8

1. A Member which has ratified this Protocol may denounce it after the expiration of ten years from the date on which the Protocol first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified the Protocol and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Protocol at the expiration of each period of ten years under the terms provided for in this Article.

Article 9

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations of this Protocol.

2. When notifying the Members of the Organization of the registration of the second ratification of this Protocol, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Protocol will come into force.

3. The Director-General shall communicate full particulars of all ratifications and denunciations of this Protocol to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations.

Article 10

The English and French versions of the text of this Protocol are equally authoritative.

Recommendation No. 81

Recommendation concerning labour inspection

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirtieth Session on 19 June 1947, and

Having decided upon the adoption of certain proposals with regard to the organisation of labour inspection in industry and commerce, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Labour Inspection Recommendation, 1923, and the Labour Inspection Convention, 1947,

adopts this eleventh day of July of the year one thousand nine hundred and forty seven the following Recommendation, which may be cited as the Labour Inspection Recommendation, 1947:

Whereas the Labour Inspection Recommendation, 1923, and the Labour Inspection Convention, 1947, provide for organisation of systems of labour inspection and it is desirable to supplement the provisions thereof by further recommendations;

The Conference recommends that each Member should apply the following provisions as rapidly as national conditions allow and report to the International Labour Office as requested by the Governing Body concerning the measures taken to give effect thereto.

I. PREVENTIVE DUTIES OF LABOUR INSPECTORATES

1. Any person who proposes to open an industrial or commercial establishment, or to take over such an establishment, or to commence in such an establishment the carrying on of a class of activity specified by a competent authority as materially affecting the application of legal provisions enforceable by labour inspectors, should be required to give notice in advance to the competent labour inspectorate either directly or through another designated authority.

2. Members should make arrangements under which plans for new establishments, plant, or processes of production may be submitted to the appropriate labour inspection service for an opinion as to whether the said plans would render difficult or impossible compliance with the laws and regulations concerning industrial health and safety or would be likely to constitute a threat to the health or safety of the workers.

3. Subject to any right of appeal which may be provided by law, the execution of plans for new establishments, plant and processes of production deemed under national laws or regulations to be dangerous or unhealthy should be conditional upon the carrying out of any alterations ordered by the inspectorate for the purpose of securing the health and safety of the workers.

II. COLLABORATION OF EMPLOYERS AND WORKERS IN REGARD TO HEALTH AND SAFETY

4. (1) Arrangements for collaboration between employers and workers for the purpose of improving conditions affecting the health and safety of the workers should be encouraged.

(2) Such arrangements might take the form of safety committees or similar bodies set up within each undertaking or establishment and including representatives of the employers and the workers.

5. Representatives of the workers and the management, and more particularly members of works safety committees or similar bodies where such exist, should be authorised to collaborate directly with officials of the labour inspectorate, in a manner and within limits fixed by the

competent authority, when investigations and, in particular, enquiries into industrial accidents or occupational diseases are carried out.

6. The promotion of 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, in which representatives of the labour inspectorate discuss with representatives of organisations of employers and workers questions concerning the enforcement of labour legislation and the health and safety of the workers.

7. Appropriate steps should be taken to ensure that employers and workers are given advice and instruction in labour legislation and questions of industrial hygiene and safety by such measures as:

- (a) lectures, radio talks, posters, pamphlets and films explaining the provisions of labour legislation and suggesting methods for their application and measures for preventing industrial accidents and occupational diseases;
- (b) health and safety exhibitions; and
- (c) instruction in industrial hygiene and safety in technical schools.

III. LABOUR DISPUTES

8. The functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes.

IV. ANNUAL REPORTS ON INSPECTION

9. The published annual reports on the work of inspection services should, in so far as possible, supply the following detailed information:

- (a) a list of the laws and regulations bearing on the work of the inspection system not mentioned in previous reports;
- (b) particulars of the staff of the labour inspection system, including:
 - (i) the aggregate number of inspectors;
 - (ii) the numbers of inspectors of different categories;
 - (iii) the number of women inspectors; and
 - (iv) particulars of the geographical distribution of inspection services;
- (c) statistics of workplaces liable to inspection and of the number of persons therein employed, including:
 - (i) the number of workplaces liable to inspection;
 - (ii) the average number of persons employed in such workplaces during the year;
 - (iii) particulars of the classification of persons employed under the following headings: men, women, young persons, and children;
- (d) statistics of inspection visits, including:
 - (i) the number of workplaces visited;
 - (ii) the number of inspection visits made, classified according to whether they were made by day or by night;
 - (iii) the number of persons employed in the workplaces visited;
 - (iv) the number of workplaces visited more than once during the year;

- (e) statistics of violations and penalties, including:
 - (i) the number of infringements reported to the competent authorities;
 - (ii) particulars of the classification of such infringements according to the legal provisions to which they relate;
 - (iii) the number of convictions;
 - (iv) particulars of the nature of the penalties imposed by the competent authorities in the various cases (fines, imprisonment, etc.);
- (f) statistics of industrial accidents, including the number of industrial accidents notified and particulars of the classification of such accidents:
 - (i) by industry and occupation;
 - (ii) according to cause;
 - (iii) according to whether fatal or non fatal;
- (g) statistics of occupational diseases, including:
 - (i) the number of cases of occupational disease notified;
 - (ii) particulars of the classification of such cases according to industry and occupation;
 - (iii) particulars of the classification of such cases according to their cause or character, such as the nature of the disease, poisonous substance or unhealthy process to which the disease is due.

Recommendation No. 82

Recommendation concerning labour inspection in mining and transport undertakings

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirtieth Session on 19 June 1947, and

Having decided upon the adoption of certain proposals with regard to the organisation of labour inspection in mining and transport undertakings, which is included in the fourth item on the agenda of the session, and

Having determined that certain of these proposals shall take the form of a Recommendation supplementing the Labour Inspection Recommendation, 1923, the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947,

adopts this eleventh day of July of the year one thousand nine hundred and forty seven the following Recommendation, which may be cited as the Labour Inspection (Mining and Transport) Recommendation, 1947:

Whereas the Labour Inspection Convention, 1947, provides for the organisation of systems of labour inspection and permits the exemption of mining and transport undertakings from the application thereof by national laws or regulations; and

Whereas it is nevertheless essential to make adequate provision in respect of mining and transport undertakings for the effective enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work;

The Conference recommends that each Member should apply the following provisions as rapidly as national conditions allow and report to the International Labour Office as requested by the Governing Body concerning the measures taken to give effect thereto:

Each Member of the International Labour Organisation should apply to mining and transport undertakings as defined by the competent authority appropriate systems of labour inspection to ensure the enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work.

Convention No. 129

Convention concerning labour inspection in agriculture

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty third Session on 4 June 1969, and

Noting the terms of existing international labour Conventions concerning labour inspection, such as the Labour Inspection Convention, 1947, which applies to industry and commerce, and the Plantations Convention, 1958, which covers a limited category of agricultural undertakings, and

Considering that international standards providing for labour inspection in agriculture generally are desirable, and

Having decided upon the adoption of certain proposals with regard to labour inspection in agriculture, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, adopts this twenty fifth day of June of the year one thousand nine hundred and sixty nine the following Convention, which may be cited as the Labour Inspection (Agriculture) Convention, 1969:

Article 1

1. In this Convention the term “agricultural undertaking” means undertakings and parts of undertakings engaged in cultivation, animal husbandry including livestock production and care, forestry, horticulture, the primary processing of agricultural products by the operator of the holding or any other form of agricultural activity.

2. Where necessary, the competent authority shall, after consultation with the most representative organisations of employers and workers concerned, where such exist, define the line which separates agriculture from industry and commerce in such a manner as not to exclude any agricultural undertaking from the national system of labour inspection.

3. In any case in which it is doubtful whether an undertaking or part of an undertaking is one to which this Convention applies, the question shall be settled by the competent authority.

Article 2

In this Convention 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.

Article 3

Each Member of the International Labour Organisation for which this Convention is in force shall maintain a system of labour inspection in agriculture.

Article 4

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.

Article 5

1. Any Member ratifying this Convention may, in a declaration accompanying its ratification, undertake also to cover by labour inspection in agriculture one or more of the following categories of persons working in agricultural undertakings:

- (a) tenants who do not engage outside help, sharecroppers 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.

2. Any Member which has ratified this Convention may subsequently communicate to the Director General of the International Labour Office a declaration undertaking to cover one or more of the categories of persons referred to in the preceding paragraph which are not already covered in virtue of a previous declaration.

3. Each Member which has ratified this Convention shall indicate in its reports under article 22 of the Constitution of the International Labour Organisation to what extent effect has been given or is proposed to be given to the provisions of the Convention in respect of such of the categories of persons referred to in paragraph 1 of this Article as are not covered in virtue of a declaration.

Article 6

1. The functions of the system of labour inspection in agriculture shall be —

- (a) 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, weekly rest and holidays, safety, health and welfare, the employment of women, children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;
- (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;
- (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions and to submit to it proposals on the improvement of laws and regulations.

2. National laws or regulations may give labour inspectors in agriculture advisory or enforcement functions regarding legal provisions relating to conditions of life of workers and their families.

3. Any further duties which may be entrusted 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.

Article 7

1. So far as is compatible with the administrative practice of the Member, labour inspection in agriculture shall be placed under the supervision and control of a central body.

2. In the case of a federal State, the term “central body” may mean either one at federal level or one at the level of a federated unit.

3. Labour inspection in agriculture might be carried out for example —

- (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; or
- (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.

Article 8

1. The labour inspection staff in agriculture shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

2. So far as is compatible with national laws or regulations or with national practice, Members may include in their system of labour inspection in agriculture officials or representatives of occupational organisations, whose activities would supplement those of the public inspection staff; the persons concerned shall be assured of stability of tenure and be independent of improper external influences.

Article 9

1. Subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, labour inspectors in agriculture shall be recruited with sole regard to their qualifications for the performance of their duties.

2. The means of ascertaining such qualifications shall be determined by the competent authority.

3. Labour inspectors in agriculture shall be adequately trained for the performance of their duties and measures shall be taken to give them appropriate further training in the course of their employment.

Article 10

Both men and women shall be eligible for appointment to the labour inspection staff in agriculture; where necessary, special duties may be assigned to men and women inspectors.

Article 11

Each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, who might help to solve problems demanding technical knowledge, are associated in the work of labour inspection in agriculture in such manner as may be deemed most appropriate under national conditions.

Article 12

1. The competent authority shall make appropriate arrangements to promote effective co-operation between the inspection services in agriculture and government services and public or approved institutions which may be engaged in similar activities.

2. 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.

Article 13

The competent authority shall make appropriate arrangements to promote collaboration between officials of the labour inspectorate in agriculture and employers and workers, or their organisations where such exist.

Article 14

Arrangements shall be made to ensure that the number of labour inspectors in agriculture is sufficient to secure the effective discharge of the duties of the inspectorate and is determined with due regard for —

- (a) the importance of the duties which inspectors have to perform, in particular —
 - (i) the number, nature, size and situation of the agricultural undertakings liable to inspection;
 - (ii) the number and classes of persons working in such undertakings; and
 - (iii) the number and complexity of the legal provisions to be enforced;
- (b) the material means placed at the disposal of the inspectors; and
- (c) the practical conditions under which visits of inspection must be carried out in order to be effective.

Article 15

1. The competent authority shall make the necessary arrangements to furnish labour inspectors in agriculture with —

- (a) local offices so located as to take account of the geographical situation of the agricultural undertakings and of the means of communication, suitably equipped in accordance with the requirements of the service, and, in so far as possible, accessible to the persons concerned;
- (b) the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist.

2. The competent authority shall make the necessary arrangements to reimburse to labour inspectors in agriculture any travelling and incidental expenses which may be necessary for the performance of their duties.

Article 16

1. Labour inspectors in agriculture provided with proper credentials shall be empowered —

- (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;
- (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection;
- (c) 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, and in particular —
 - (i) to interview, alone or in the presence of witnesses, the employer, the staff of the undertaking or any other person in the undertaking on any matters concerning the application of the legal provisions;
 - (ii) to require, in such manner as national laws or regulations may prescribe, the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of life and work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them;

- (iii) 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 of any products, materials or substances taken or removed for such purposes.

2. Labour inspectors shall not enter the private home of the operator of the undertaking in pursuance of subparagraph (a) or (b) of paragraph 1 of this Article except with the consent of the operator or with a special authorisation issued by the competent authority.

3. On the occasion of an inspection visit, inspectors shall notify the employer or his representative, and the workers or their representatives, of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties.

Article 17

The labour inspection services in agriculture shall be associated, in such cases and in such manner as may be determined 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.

Article 18

1. Labour inspectors in agriculture shall be empowered to take steps with a view to remedying defects observed in plant, layout or working methods in agricultural undertakings, including the use of dangerous materials or substances, which they may have reasonable cause to believe constitute a threat to health or safety.

2. In order to enable inspectors to take such steps they shall be empowered, subject to any right of appeal to a legal or administrative authority which may be provided by law, to make or have made orders requiring —

- (a) such alterations to the installation, plant, premises, tools, equipment or machines, to be carried out within a specified time limit, as may be necessary to secure compliance with the legal provisions relating to health or safety; or
- (b) measures with immediate executory force, which can go as far as halting the work, in the event of imminent danger to health or safety.

3. Where the procedure described in paragraph 2 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.

4. The defects noted by the inspector when visiting an undertaking and the orders he is making or having made in pursuance of paragraph 2 or for which he intends to apply in pursuance of paragraph 3 shall be immediately made known to the employer and the representatives of the workers.

Article 19

1. The labour inspectorate in agriculture shall be notified of occupational accidents and cases of occupational disease occurring in the agricultural sector in such cases and in such manner as may be prescribed by national laws or regulations.

2. 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.

Article 20

Subject to such exceptions as may be made by national laws or regulations, labour inspectors in agriculture —

- (a) shall be prohibited from having any direct or indirect interest in the undertakings under their supervision;
- (b) 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; and
- (c) shall treat as absolutely confidential the source of any complaint bringing to their notice a defect, a danger in working processes or a breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint.

Article 21

Agricultural undertakings shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

Article 22

1. Persons who violate or neglect to observe legal provisions enforceable by labour inspectors in agriculture shall be liable to prompt legal or administrative proceedings without previous warning: Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.

2. It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.

Article 23

If labour inspectors in agriculture 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.

Article 24

Adequate penalties for violations of the legal provisions enforceable by labour inspectors in agriculture and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.

Article 25

1. Labour inspectors or local inspection offices, as the case may be, shall be required to submit to the central inspection authority periodical reports on the results of their activities in agriculture.

2. These reports shall be drawn up in such manner and deal with such subjects as may from time to time be prescribed by the central inspection authority; they shall be submitted at least as frequently as may be prescribed by that authority and in any case not less frequently than once a year.

Article 26

1. The central inspection authority shall publish an annual report on the work of the inspection services in agriculture, either as a separate report or as part of its general annual report.

2. Such annual reports shall be published within a reasonable time after the end of the year to which they relate and in any case within twelve months.

3. Copies of the annual reports shall be transmitted to the Director General of the International Labour Office within three months after their publication.

Article 27

The annual report published by the central inspection authority shall deal in particular with the following subjects, in so far as they are under the control of the said authority:

- (a) laws and regulations relevant to the work of labour inspection in agriculture;
- (b) staff of the labour inspection service in agriculture;
- (c) statistics of agricultural 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, including their causes;
- (g) statistics of occupational diseases, including their causes.

Article 28

The formal ratifications of this Convention shall be communicated to the Director General of the International Labour Office for registration.

Article 29

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 30

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 31

1. The Director General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 32

The Director General of the International Labour Office shall communicate to the Secretary General of the United Nations for registration in accordance with Article 102 of the Charter of

the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 33

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 34

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides —

- (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 30 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 35

The English and French versions of the text of this Convention are equally authoritative.

Recommendation No. 133

Recommendation concerning labour inspection in agriculture

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty third Session on 4 June 1969, and

Having decided upon the adoption of certain proposals with regard to labour inspection in agriculture, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Labour Inspection (Agriculture) Convention, 1969,

adopts this twenty fifth day of June of the year one thousand nine hundred and sixty nine the following Recommendation, which may be cited as the Labour Inspection (Agriculture) Recommendation, 1969:

1. Where national conditions permit, the functions of the labour inspectorate in agriculture should be enlarged so as to include collaboration with the competent technical services with a view to helping the agricultural producer, whatever his status, to improve his holding and the conditions of life and work of the persons working on it.

2. 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;
- (d) compulsory school attendance.

3. (1) Normally, the functions of labour inspectors in agriculture should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes.

(2) Where no special bodies for this purpose exist in agriculture, labour inspectors in agriculture may be called upon as a temporary measure to act as conciliators.

(3) In the case provided for by subparagraph (2) of this Paragraph, the competent authority should take measures in harmony with national law and compatible with the resources of the labour department of the country concerned with a view to relieving labour inspectors progressively of such functions, so that they are able to devote themselves to a greater extent to the actual inspection of undertakings.

4. Labour inspectors in agriculture should become familiar with conditions of life and work in agriculture and have knowledge of the economic and technical aspects of work in agriculture.

5. Candidates for senior positions in the labour inspectorate in agriculture should be in possession of appropriate professional or academic qualifications or have acquired thorough practical experience in labour administration.

6. Candidates for other positions in the labour inspectorate in agriculture (such as assistant inspectors and junior staff) 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.

7. In countries where education is not sufficiently developed, persons appointed as labour inspectors in agriculture should at least have some practical experience in agriculture or show an

interest in and have capacity for this type of work; they should be given adequate training on the job as rapidly as possible.

8. The central labour inspection authority should give labour inspectors in agriculture guidelines so as to ensure that they perform their duties throughout the country in a uniform manner.

9. The activity of labour inspectors in agriculture during the night should be limited to those matters which cannot be effectively controlled during the day.

10. The use in agriculture of committees for hygiene and safety which include representatives of employers and of workers might be one of the means of collaboration between officials of the labour inspectorate in agriculture and employers and workers, or their organisations where such exist.

11. 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, provided for in Article 17 of the Labour Inspection (Agriculture) Convention, 1969, 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.

12. 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.

13. The annual report published by the central inspection authority might, in addition to the subjects listed in Article 27 of the Labour Inspection (Agriculture) Convention, 1969, deal with the following matters in so far as they are within the competence of the said authority:

- (a) statistics of labour disputes in agriculture;
- (b) identification of problems regarding application of the legal provisions, and progress made in solving them; and
- (c) suggestions for improving the conditions of life and work in agriculture.

14. (1) Members should undertake or promote education campaigns intended to inform the parties concerned, by all appropriate means, of the applicable legal provisions and the need to apply them strictly as well as of the dangers to the life or health of persons working in agricultural undertakings and of the most appropriate means of avoiding them.

(2) Such campaigns might, in the light of national conditions, include —

- (a) use of the services of rural promoters or instructors;
- (b) distribution of posters, pamphlets, periodicals and newspapers;
- (c) organisation of film shows, and radio and television broadcasts;
- (d) arrangements for exhibitions and practical demonstrations on hygiene and safety;
- (e) inclusion of hygiene and safety and other appropriate subjects in the teaching programmes of rural schools and agricultural schools;
- (f) organisation of conferences for persons working in agriculture who are affected by the introduction of new working methods or of new materials or substances;
- (g) participation of labour inspectors in agriculture in workers' education programmes; and
- (h) arrangements for lectures, debates, seminars and competitions with prizes.

Appendix II

Ratification of the instruments

Labour Inspection Convention, 1947 (No. 81)

Date of entry into force: 7.04.1950 (133 ratifications)

Country	Date of ratification	Country	Date of ratification
Albania	18.08.2004	Algeria	19.10.1962
Angola	04.06.1976	Antigua and Barbuda	02.02.1983
		<i>Excluding Part II</i>	
Argentina	17.02.1955	Armenia	17.12.2004
Australia	24.06.1975	Austria	30.04.1949
<i>Excluding Part II</i>			
Azerbaijan	09.08.2000	Bahamas	25.05.1976
<i>Has ratified the Protocol of 1995</i>			
Bahrain	11.06.1981	Bangladesh	22.06.1972
Barbados	08.05.1967	Belarus	25.09.1995
<i>Excluding Part II</i>			
Belgium	05.04.1957	Belize	15.12.1983
Benin	11.06.2001	Bolivia	15.11.1973
Bosnia and Herzegovina	02.06.1993	Brazil	11.10.1989
Bulgaria	29.12.1949	Burkina Faso	21.05.1974
Burundi	30.07.1971	Cameroon	03.09.1962
		<i>Excluding Part II</i>	
Cape Verde	16.10.1979	Central African Republic	09.06.1964
Chad	30.11.1965	Colombia	13.11.1967
		<i>Excluding Part II</i>	
Comoros	23.10.1978	Congo	26.11.1999
Costa Rica	02.06.1960	Côte d'Ivoire	05.06.1987
Croatia	08.10.1991	Cuba	07.09.1954
Cyprus	23.09.1960	Democratic Republic of the Congo	19.04.1968
<i>Has ratified the Protocol of 1995</i>			
Denmark	06.08.1958	Djibouti	03.08.1978
Dominica	28.02.1983	Dominican Republic	22.09.1953
Ecuador	26.08.1975	Egypt	11.10.1956
El Salvador	15.06.1995	Finland	20.01.1950
		<i>Has ratified the Protocol of 1995</i>	
France	16.12.1950	Gabon	17.07.1972
Germany	14.06.1955	Ghana	02.07.1959
Greece	16.06.1955	Grenada	09.07.1979
		<i>Excluding Part II</i>	
Guatemala	13.02.1952	Guinea	26.03.1959
Guinea-Bissau	21.02.1977	Guyana	08.06.1966
		<i>Excluding Part II. Has ratified the Protocol of 1995</i>	
Haiti	31.03.1952	Honduras	06.05.1983

Country	Date of ratification	Country	Date of ratification
Hungary	04.01.1994	India	07.04.1949
Indonesia	29.01.2004	<i>Excluding Part II</i>	
Ireland	16.06.1951	Iraq	13.01.1951
<i>Has ratified the Protocol of 1995</i>		Israel	07.06.1955
Italy	22.10.1952	Jamaica	26.12.1962
Japan	20.10.1953	<i>Excluding Part II</i>	
Kazakhstan	06.07.2001	Jordan	27.03.1969
Republic of Korea	09.12.1992	Kenya	13.01.1964
Kyrgyzstan	26.07.2000	Kuwait	23.11.1964
Lebanon	26.07.1962	Latvia	25.07.1994
Liberia	25.03.2003	Lesotho	14.06.2001
Lithuania	26.09.1994	Libyan Arab Jamahiriya	27.05.1971
Madagascar	21.12.1971	Luxembourg	03.03.1958
Malaysia	01.07.1963	Malawi	22.03.1965
Malta	04.01.1965	Mali	02.03.1964
<i>Excluding Part II</i>		Mauritania	08.11.1963
Mauritius	02.12.1969	Republic of Moldova	12.08.1996
Morocco	14.03.1958	<i>Has ratified the Protocol of 1995</i>	
Netherlands	15.09.1951	Mozambique	06.06.1977
Niger	09.01.1979	New Zealand	30.11.1959
Norway	05.01.1949	<i>Excluding Part II</i>	
<i>Has ratified the Protocol of 1995</i>		Nigeria	17.10.1960
Panama	03.06.1958	<i>Excluding Part II</i>	
Peru	01.02.1960	Pakistan	10.10.1953
Portugal	12.02.1962	Paraguay	28.08.1967
Romania	06.06.1973	Poland	02.06.1995
Rwanda	02.12.1980	Qatar	18.08.1976
Sao Tome and Principe	01.06.1982	Russian Federation	02.07.1998
Senegal	22.10.1962	<i>Has ratified the Protocol of 1995</i>	
Sierra Leone	13.06.1961	Saint Vincent and the Grenadines	21.10.1998
<i>Excluding Part II</i>		Saudi Arabia	15.06.1978
Slovenia	29.05.1992	Serbia and Montenegro	24.11.2000
Spain	30.05.1960	Singapore	25.10.1965
Sudan	22.10.1970	Solomon Islands	06.08.1985
Swaziland	05.06.1981	Sri Lanka	03.04.1956
Switzerland	13.07.1949	Suriname	15.06.1976
United Republic of Tanzania	30.01.1962	Sweden	25.11.1949
(Tanganyika)		<i>Has ratified the Protocol of 1995</i>	
<i>Excluding Part II. Has ratified the Protocol of 1995</i>		Syrian Arab Republic	26.07.1960
Tunisia	15.05.1957	The former Yugoslav Republic of Macedonia	17.11.1991
Uganda	04.06.1963	Turkey	05.03.1951
<i>Excluding Part II</i>		Ukraine	10.11.2004
United Arab Emirates	27.05.1982	United Kingdom	28.06.1949
Uruguay	28.06.1973	<i>Excluding Part II</i>	
Viet Nam	03.10.1994	Bolivarian Republic of Venezuela	21.07.1967
Zimbabwe	16.09.1993	Yemen	29.07.1976

Protocol of 1995 to the Labour Inspection Convention, 1947

Date of entry into force: 9.06.1998 (ten ratifications)

Country	Date of ratification	Country	Date of ratification
Azerbaijan	09.08.2000	Cyprus	21.01.2000
Finland	09.06.1997	Guyana	15.04.1998
Ireland	09.06.1998	Republic of Moldova	28.04.2000
Norway	11.06.1999	Russian Federation	02.07.1998
Sweden	09.06.1997	United Republic of Tanzania (Tanganyika)	15.03.1999

Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Date of entry into force: 19.01.1972 (42 ratifications)

Country	Date of ratification	Country	Date of ratification
Argentina	20.06.1985	Azerbaijan	09.08.2000
Belgium	08.09.1997	Bolivia	31.01.1977
Bosnia and Herzegovina	02.06.1993	Burkina Faso	21.05.1974
Colombia	16.11.1976	Costa Rica	16.03.1972
Côte d'Ivoire	05.06.1987	Croatia	08.10.1991
Denmark	30.11.1972	Egypt	20.06.2003
El Salvador	15.06.1995	Finland	03.09.1974
France	28.12.1972	Germany	26.09.1973
Guatemala	20.05.1994	Guyana	19.01.1971
Hungary	04.01.1994	Italy	23.06.1981
Kazakhstan	06.07.2001	Kenya	09.04.1979
Latvia	25.07.1994	Madagascar	21.12.1971
<i>Has accepted Article 5, para. 1(b)</i>			
Malawi	20.07.1971	Malta	09.06.1988
Republic of Moldova	09.12.1997	Morocco	11.05.1979
Netherlands	29.06.1973	Norway	14.04.1971
Poland	02.06.1995	Portugal	24.02.1983
Romania	28.10.1975	Serbia and Montenegro	24.11.2000
Slovenia	29.05.1992	Spain	05.05.1971
Sweden	14.05.1970	Syrian Arab Republic	18.04.1972
The former Yugoslav Republic of Macedonia	17.11.1991	Ukraine	10.11.2004
Uruguay	28.06.1973	Zimbabwe	16.09.1993

Appendix III

Reports due and received

Members	Conventions		Protocol to Convention No. 81	Recommendations		
	No. 81	No. 129		No. 81	No. 82	No. 133
Afghanistan	...	...	...	...	...	...
Albania	<i>Ratified</i>	...	...	...	...	...
Algeria	<i>Ratified</i>	Received	...	...	Received	Received
Angola	<i>Ratified</i>	...	...	...	...	...
Antigua and Barbuda	<i>Ratified</i>	...	...	...	...	...
Argentina	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Armenia	<i>Ratified</i>	...	...	...	...	...
Australia	<i>Ratified</i>	Received	Received	Received	Received	Received
Austria	<i>Ratified</i>	Received	Received	Received	Received	Received
Azerbaijan	<i>Ratified</i>	<i>Ratified</i>	<i>Ratified</i>	...	...	...
Bahamas	<i>Ratified</i>	...	Received	...	...	...
Bahrain	<i>Ratified</i>	Received	Received	Received	Received	Received
Bangladesh	<i>Ratified</i>	Received	Received	Received	Received	Received
Barbados	<i>Ratified</i>	...	...	...	...	...
Belarus	<i>Ratified</i>	Received	Received	Received	Received	Received
Belgium	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Belize	<i>Ratified</i>	...	...	...	...	...
Benin	<i>Ratified</i>	Received	Received	Received	Received	Received
Bolivia	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Bosnia and Herzegovina	<i>Ratified</i>	<i>Ratified</i>	...	...	...	...
Botswana	Received	Received	Received	Received	Received	Received
Brazil	<i>Ratified</i>	Received	Received	Received	Received	Received
Bulgaria	<i>Ratified</i>	Received	Received	Received	Received	Received
Burkina Faso	<i>Ratified</i>	<i>Ratified</i>	...	...	...	...
Burundi	<i>Ratified</i>	...	...	...	...	...
Cambodia	...	...	...	...	...	...
Cameroon	<i>Ratified</i>	Received	Received	Received	Received	Received
Canada	Received	Received	Received	Received	Received	Received
Cape Verde	<i>Ratified</i>	...	...	...	...	...

Members	Conventions		Protocol to Convention No. 81	Recommendations		
	No. 81	No. 129		No. 81	No. 82	No. 133
Central African Republic	<i>Ratified</i>	...	...	...	...	...
Chad	<i>Ratified</i>	Received	Received	...	Received	Received
Chile	Received	Received	Received	Received	Received	Received
China	Received	Received	Received	Received	Received	Received
Colombia	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Comoros	<i>Ratified</i>	...	...	...	...	...
Congo	<i>Ratified</i>	...	...	...	...	...
Costa Rica	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Côte d'Ivoire	<i>Ratified</i>	<i>Ratified</i>	...	...	...	...
Croatia	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Cuba	<i>Ratified</i>	Received	Received	Received	Received	Received
Cyprus	<i>Ratified</i>	Received	<i>Ratified</i>	Received	Received	Received
Czech Republic	Received	Received	Received	Received	Received	Received
Democratic Republic of the Congo	<i>Ratified</i>	...	...	...	...	...
Denmark	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Djibouti	<i>Ratified</i>	...	...	...	...	...
Dominica	<i>Ratified</i>	...	...	...	...	...
Dominican Republic	<i>Ratified</i>	...	...	...	...	...
Ecuador	<i>Ratified</i>	Received	Received	Received	Received	Received
Egypt	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
El Salvador	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Equatorial Guinea	...	...	...	...	...	...
Eritrea	Received	Received	Received	Received	Received	Received
Estonia	Received	Received	Received	Received	Received	Received
Ethiopia	Received	Received	Received	Received	Received	Received
Fiji	Received	Received	Received	Received	Received	Received
Finland	<i>Ratified</i>	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received
France	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Gabon	<i>Ratified</i>	Received	Received	...	Received	Received
Gambia	...	...	...	...	...	...
Georgia	...	...	...	...	...	...
Germany	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Ghana	<i>Ratified</i>	...	...	...	...	...
Greece	<i>Ratified</i>	Received	Received	Received	Received	Received
Grenada	<i>Ratified</i>	...	...	...	...	...
Guatemala	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Guinea	<i>Ratified</i>	...	...	...	...	...
Guinea-Bissau	<i>Ratified</i>	...	...	...	...	...

Members	Conventions		Protocol to Convention No. 81	Recommendations		
	No. 81	No. 129		No. 81	No. 82	No. 133
Guyana	<i>Ratified</i>	<i>Ratified</i>	<i>Ratified</i>	...	...	...
Haiti	<i>Ratified</i>	...	...	...	...	...
Honduras	<i>Ratified</i>	Received	Received	Received	Received	Received
Hungary	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Iceland	Received	Received	Received	Received	Received	Received
India	<i>Ratified</i>	...	...	Received	Received	...
Indonesia	<i>Ratified</i>	Received	Received	Received	Received	Received
Islamic Republic of Iran	...	...	...	...	...	...
Iraq	<i>Ratified</i>	...	...	...	...	...
Ireland	<i>Ratified</i>	...	<i>Ratified</i>	...	...	...
Israel	<i>Ratified</i>	Received	Received	Received	Received	Received
Italy	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Jamaica	<i>Ratified</i>	...	...	...	Received	...
Japan	<i>Ratified</i>	Received	Received	Received	Received	Received
Jordan	<i>Ratified</i>	Received	Received	Received	Received	Received
Kazakhstan	<i>Ratified</i>	<i>Ratified</i>	...	...	...	...
Kenya	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Kiribati	...	...	...	...	...	...
Republic of Korea	<i>Ratified</i>	Received	Received	Received	Received	Received
Kuwait	<i>Ratified</i>	...	...	Received	...	Received
Kyrgyzstan	<i>Ratified</i>	...	...	...	...	...
Lao People's Democratic Republic	...	...	...	...	...	...
Latvia	<i>Ratified</i>	<i>Ratified</i>	...	...	...	...
Lebanon	<i>Ratified</i>	Received	Received	Received	Received	Received
Lesotho	<i>Ratified</i>	...	...	...	...	...
Liberia	<i>Ratified</i>	...	...	...	...	...
Libyan Arab Jamahiriya	<i>Ratified</i>	...	...	...	...	...
Lithuania	<i>Ratified</i>	Received	Received	Received	Received	Received
Luxembourg	<i>Ratified</i>	...	...	...	...	...
Madagascar	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Malawi	<i>Ratified</i>	<i>Ratified</i>	...	...	...	...
Malaysia	<i>Ratified</i>	Received	Received	Received	Received	Received
Mali	<i>Ratified</i>	Received	Received	Received	Received	Received
Malta	<i>Ratified</i>	<i>Ratified</i>	...	...	...	...
Mauritania	<i>Ratified</i>	...	...	...	...	...
Mauritius	<i>Ratified</i>	Received	Received	Received	Received	Received
Mexico	Received	Received	Received	Received	Received	Received
Republic of Moldova	<i>Ratified</i>	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received

Members	Conventions		Protocol to Convention No. 81	Recommendations		
	No. 81	No. 129		No. 81	No. 82	No. 133
Mongolia	Received	Received	...	...	...	...
Morocco	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Mozambique	<i>Ratified</i>	Received	Received	Received	Received	Received
Myanmar	Received	Received	Received	Received	Received	Received
Namibia	...	...	...	...	...	...
Nepal	...	...	...	...	...	...
Netherlands	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
New Zealand	<i>Ratified</i>	Received	Received	Received	Received	Received
Nicaragua	Received	Received	Received	Received	Received	Received
Niger	<i>Ratified</i>	Received	...	...	...	...
Nigeria	<i>Ratified</i>	Received	Received	...	Received	Received
Norway	<i>Ratified</i>	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received
Oman	Received	Received	Received	Received	Received	Received
Pakistan	<i>Ratified</i>	...	...	...	...	...
Panama	<i>Ratified</i>	Received	Received	Received	Received	Received
Papua New Guinea	Received	...	Received	...	...	...
Paraguay	<i>Ratified</i>	...	...	...	...	...
Peru	<i>Ratified</i>	Received	Received	Received	Received	Received
Philippines	Received	Received	Received	Received	Received	Received
Poland	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Portugal	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Qatar	<i>Ratified</i>	Received	Received	Received	Received	Received
Romania	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Russian Federation	<i>Ratified</i>	...	<i>Ratified</i>	...	...	...
Rwanda	<i>Ratified</i>	Received	Received	Received	Received	Received
Saint Kitts and Nevis	...	...	...	...	...	...
Saint Lucia	...	...	...	...	...	...
Saint Vincent and the Grenadines	<i>Ratified</i>	Received	Received	Received	Received	Received
San Marino	...	...	...	...	...	...
Sao Tome and Principe	<i>Ratified</i>	...	...	...	...	...
Saudi Arabia	<i>Ratified</i>	Received	Received	Received	Received	Received
Senegal	<i>Ratified</i>	...	...	...	...	...
Serbia and Montenegro	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Seychelles	<i>Ratified</i>	...	...	...	...	...
Sierra Leone	<i>Ratified</i>	...	...	...	...	...
Singapore	<i>Ratified</i>	...	...	...	...	...
Slovakia	Received	Received	Received	Received	Received	Received
Slovenia	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received

Members	Conventions		Protocol to Convention No. 81	Recommendations		
	No. 81	No. 129		No. 81	No. 82	No. 133
Solomon Islands	<i>Ratified</i>	...	...	...	...	...
Somalia	...	...	...	...	...	...
South Africa	Received	Received	Received	Received	Received	Received
Spain	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Sri Lanka	<i>Ratified</i>	Received	Received	...	Received	Received
Sudan	<i>Ratified</i>	...	...	...	...	...
Suriname	<i>Ratified</i>	Received	Received	Received	Received	Received
Swaziland	<i>Ratified</i>	...	...	...	...	...
Sweden	<i>Ratified</i>	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received
Switzerland	<i>Ratified</i>	Received	Received	Received	Received	Received
Syrian Arab Republic	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received
Tajikistan	...	...	...	...	...	...
United Republic of Tanzania	...	...	...	...	...	...
Thailand	...	...	...	...	...	...
The former Yugoslav Republic of Macedonia	<i>Ratified</i>	<i>Ratified</i>	...	...	...	...
Democratic Republic of Timor-Leste	...	...	...	...	...	...
Togo	...	...	...	...	...	...
Trinidad and Tobago	Received	Received	Received	Received	Received	Received
Tunisia	<i>Ratified</i>	Received	Received	Received	Received	Received
Turkey	<i>Ratified</i>	Received	Received	Received	Received	Received
Turkmenistan	...	...	...	...	...	...
Uganda	<i>Ratified</i>	...	...	...	...	...
Ukraine	Received	Received	Received	Received	Received	Received
United Arab Emirates	<i>Ratified</i>	Received	...	...	...	...
United Kingdom	<i>Ratified</i>	Received	Received	Received	Received	Received
United States	Received	Received	Received	Received	Received	Received
Uruguay	<i>Ratified</i>	<i>Ratified</i>	...	Received	Received	Received
Uzbekistan	...	...	...	...	...	...
Vanuatu	...	...	...	...	...	...
Bolivarian Republic of Venezuela	<i>Ratified</i>	...	...	...	...	...
Viet Nam	<i>Ratified</i>	Received	Received	Received	Received	Received
Yemen	<i>Ratified</i>	...	...	...	...	...
Zambia	...	...	...	...	...	...
Zimbabwe	<i>Ratified</i>	<i>Ratified</i>	Received	Received	Received	Received

Appendix IV

National legislation referred to in the survey

Algeria

- Executive Decree No. 90-209 of July 1990, on the organization and functioning of the general labour inspectorate.
- Decree No. 91-44 of 16 February 1991 to promulgate special regulations for labour inspectors.

Angola

- Council of Ministers Decree No. 9/95 of 21 April 1995, to regulate the labour inspectorate.

Argentina

- Act No. 25.212 of 1999 to ratify the Federal Labour Pact

Australia

Commonwealth legislation

- Occupational Health and Safety (Commonwealth Employment) Act 1991 (No. 30 of 1991).
- *DEWR Certified Agreement*, Department of Employment and Workplace Relations, 2002-04.

State legislation

Northern Territory

- Anti-Discrimination Act.

Queensland

- Occupational Health and Safety Act, 1995.

Western Australia

- Equal Opportunity Act, 1984.

Austria

- Federal Act on agriculture labour.
- Civil Service Regulations of 1979.
- Ordinance BGBl No. 670/1990.

Bahrain

- Amiri Decree Law No. 23 of 1976 to promulgate the Labour Law for the private sector.
- Amiri Decree Law to promulgate Law No. 24 of 1976 on social insurance.

Belgium

- Decree of 20 February 1998 concerning supervision of employment policy legislations.
- Royal Decree of 20 September 1963 concerning the professional training of labour ministry officers.
- Act of 4 August 1996 concerning workers' occupational well-being.

Benin

- Act No. 98-004 of 27 January 1998 establishing the Labour Code.
- Decree No. 85-375 of 11 September 1985 respecting particular status of the labour administration service
- Order No. 008 of the Civil Service, Labour and Administrative Reform Minister.

Bolivia

- Supreme Decree of 26 May 1939 to issue the Labour Code, as amended.
- Ministerial Resolution No. 340/87 of 26 November 1987 regulating the labour inspectorate.
- Legislative Decree No. 16998 of 2 August 1979 promulgating the General Occupational Health, Safety and Welfare Law.
- Act No. 1715 of 19 October 1996 respecting the national service of agrarian reform.

Bosnia and Herzegovina

- State Administration Act.
- Labour Inspection Act.

Brazil

- Act No. 8112 of 11 November 1990 concerning labour inspectors' status.
- Act No. 10593 of 6 December 2002 to reorganize the career of the inspector of the national treasury and to organize the career of the inspector of social welfare.
- Decree No. 4.552 of 27 December 2002 issuing new labour inspection regulations.
- Regulatory Instruction No. 13 of 6 July 1999.

Bulgaria

- Labour Code.
- Act No. 21 of 1977 on occupational safety, health and well-being.
- Decree No. 92 of 26 May 2000, to approve regulations of the Agency for General Labour Inspection.

Burkina Faso

- Act No. 33-2004/AN of 14 September 2004 establishing the Labour Code.

Burundi

- Law Decree No. 1/037 of 7 July 1993 amending the Labour Code.

Cambodia

- Act of 10 January 1997 establishing the Labour Code.

Cameroon

- Act No. 92/007 of 14 August 1992 establishing the Labour Code.
- Order No. 133/CAB/PR of 2 June 1977.

Chad

- Act No. 38/PR/96 of 11 December 1996 establishing the Labour Code.

Chile

- Decree No. 2 of 30 May 1967, to issue organic law of the labour department.

China

- Labour Act of 5 July 1994.
- Regulations on Labour Inspections, Order No. 423 of the State Council of the People's Republic of China.
- Ordinance on health and safety.
- Regulation No. 3 concerning factories and enterprises.

Macau Special Administrative Region

- Law Decree No. 60/8960/89/M of 18 September 1989 to regulate the activity of the Labour Inspection Department of the Labour and Employment Services Directorate.

Colombia

- Act No. 584 of 2000 abrogating and amending some provisions of the Labour Code.
- Circular of 8 August 2000 of the Labour and Social Insurance Ministry.

Comoros

- Act No. 84-018/PR establishing the Labour Code.

Congo

- Act No. 6/96 of 6 March 1996.

Costa Rica

- Act No. 1860 of 18 February 1963 to promulgate the Organic Law of the Ministry of Labour and Social Insurance.
- Decree No. 28578 of 3 February 2000 to promulgate regulations on labour inspection services.

Côte d'Ivoire

- Act No. 95-15 of 12 January 1995 establishing the Labour Code.
- Decree No. 2000/872 of 20 December 2000 organizing the Ministry of Labour, Civil Service and Administrative Reform.

Croatia

- Act of 28 June 1996 on occupational safety.

Cuba

- Act No. 49 of 28 December 1984 establishing the Labour Code.
- Act No. 24 concerning social insurance.
- Act No. 13 on occupational hygiene protection.

Cyprus

- Accidents and Occupational Diseases and Dangerous Occurrences (Notification) Act of 1953.
- Accidents and Occupational Diseases and Dangerous Occurrences (Notification) Order of 1953.

Denmark

- Working Environment Act of 1999.
- Notification No. 867 of 11 October 1994.

Dominican Republic

- Act No. 16-92 to issue the Labour Code.
- Resolution of the Labour Ministry No. 42/94 of 28 October 1994.

Ecuador

- Labour Code, 1997.

Egypt

- Act No. 12 of 2003 establishing the Labour Code.

El Salvador

- Decree No. 682 of 19 April 1996 organizing the remits of the Department of Labour and Welfare.
- Decree No. 459 of 8 March 1990.

Estonia

- Occupational Health and Safety Act of 16 June 1999.

Ethiopia

- Labour Proclamation No. 377/2003.

Fiji

- Health and Safety at Work, Act No. 4 of 28 June 1996.
- Factories Act of 1 February 1972.
- Employment Ordinance of 15 May 1965.

Finland

- Act No. 131 of 1973 to provide for the supervision of labour protection.

Gabon

- Act No. 3/94 of 21 November 1994 establishing the Labour Code.
- Decree No. 599/PR of 17 June 1981 establishing the terms of implementation of the Social Security Code.

Ghana

- Labour Act No. 651 of 2003.

Greece

- Act No. 2683/99 establishing the Civil Servants Code.
- Act No. 2639 of 1 September 1998 concerning regularization of labour relationships, creation of the labour inspectorate and other provisions.

Guatemala

- Labour Code, 1995.
- Decree No. 18-2001 reforming the Labour Code.
- Decree No. 330 of 29 April 1961.
- General Regulation of 28 December 1957 on occupational hygiene and safety.

Guinea

- Ordinance No. 003/PRG/SGG of 28 January 1988 establishing the Labour Code.

Haiti

- Decree of 24 February 1984 bringing up to date the Labour Code of 12 September 1961.

Honduras

- Decree No. 189 of 15 July 1959 promulgating the Labour Code, as amended.
- Decree No. 39 of 1982 establishing the remits of the occupational health and safety inspectors.

Hungary

- Act No. XCIII of 5 October 1993 on occupational safety and health.

India

- Factories Act, 1948.
- Environment (Protection) Act, 1986.
- Dock Workers (Safety, Health and Welfare) Act, 1986.
- Regulations of 1990 concerning implementation of the Factories Act, Dock Workers (Safety, Health and Welfare) Act and the Plantations Labour Act.
- Coal Mines Regulations, 1957.
- Metalliferous Mines Regulations, 1961.
- Oil Mines Regulations, 1984.

Indonesia

- Act No. 3/1951 concerning labour inspection.

Italy

- Act No. 146 of 1990.

Japan

- Labour Standards Law No. 49 of 1947, as amended through Law No. 104 of 2003.
- Industrial, Safety and Health Law of 8 June 1972.
- Ordinance No. 32 of 30 September 1972 on industrial safety and health.

Jordan

- Act No. 8 of 1996 establishing the Labour Code.
- Regulations No. 56 of 1996 concerning labour inspection.

Kazakhstan

- Code of administrative infractions of 2001.

Kenya

- The Employment Act No. 2 of 1976.

Korea, Republic of

- Labour Standards Act, Act No. 5309, 13 March 1997.

Latvia

- Law on state labour inspection of 13 December 2001.
- Regulation No. 53 of 14 March 1995 concerning the statutes on state labour inspection.
- State Civil Service Law of 7 September 2000.

Lebanon

- Presidential Decree No. 3273 of 26 June 2000 on labour inspection
- Law-Decree No. 112/59 of 12 June 1959.

Lesotho

- Labour Code Order 1992 (Order No. 24 of 1992).

Luxembourg

- Act of 14 December 2001 concerning occupational health departments.
- Act of 4 April 1974 reorganizing labour and mines inspection.

Madagascar

- Act No. 2003-044 of 28 July 2004 establishing the Labour Code.

Malaysia

- Employment Act of 1955, as amended up to 14 May 2000.

Malawi

- Act No. 21 of 1997 on occupational safety and health.

Mali

- Act No. 92-020 of 23 September 1992 establishing the Labour Code.
- Decree No. 96-178/P-RM of 13 June 1996 concerning the application of various provisions of the Labour Code.
- Order No. 96-1566/MEFPT-SG of 7 October 1996 concerning practical measures for the application of certain provisions of the Labour Code.
- Act No. 99-041 of 12 August 1999 establishing the Welfare Code.

Morocco

- Dahir 1-03-194 of 11 September 2003 promulgating Act No. 65-99 establishing the Labour Code.

Mauritania

- Act No. 2004-017 of 6 July 2004 establishing the Labour Code.

Mauritius

- Occupational Safety, Health and Welfare Act 1988, No. 34.

Mexico

- Federal Labour Act of 1 April 1970, as amended up to 1 October 1995.
- General Regulations of 29 June 1998 concerning inspection and enforcement of penalties for violations of the labour legislation.

Moldova, Republic of

- Act No. 140-XV of 10 May 2001 on labour inspection.
- Act No. 625-XII of 2 July 1991 on labour protection.
- Regulations No. 706 of 5 June 2002 concerning the procedure for investigating accidents at work.
- Order No. 257 of 8 November 1993.

Mongolia

- Labour Law of Mongolia of 14 May 1999.
- Law on state inspection.

Mozambique

- Labour Act No. 8/98 of 20 July 1998.
- Labour Minister Order No. 17/90 of 14 February 1990.
- Decree No 32-89 of 8 November 1989 reorganizing labour inspection and setting its rules of functioning.

Netherlands

- Working Conditions Act of 1998.

New Zealand

- Health and Safety in Employment Act No. 96 of 1992.
- Health and Safety in Employment Regulations of 1995.
- Act of 1996 on hazardous substances and new organisms.
- Act of 19 December 1958 concerning conditions of employment of agricultural workers.

Nicaragua

- Act concerning the civil service and the administrative career of 11 December 2003.
- Regulation of 5 August 2004 implementing the Act on the civil service and the administrative career.
- Decree No. 13-97 of 20 February 1997 to promulgate regulations on labour inspectors.

Niger

- Ordinance No. 96-39 of 29 June 1996 establishing the Labour Code.

Nigeria

- Labour Act No. 21 of 1974, as amended to 31 December 1989.
- Factories Act No. 16 of 1987.

Norway

- Royal Decree of 21 March 1986.

Oman

- Royal Decree No. 35/2003 of 26 April 2003 establishing the Labour Code.

Papua New Guinea

- Industrial Relations Act 1962.

Paraguay

- Decree No. 3286 of 4 March 1964 organizing the Department of Labour depending on the Ministry of Justice and Labour.

Peru

- Legislative Decree No. 910 of 16 March 2001 to promulgate the general Act on labour inspection and defence of the worker.

Philippines

- Labour Code, Presidential Decree No. 442 of 1 May 1974.

Poland

- Act of 4 March 1994 concerning the social fund.
- Act of 6 June 1997 promulgating the Penal Code.

Portugal

- Legislative Decree No. 102/2000 of 2 June 2000 approving the status of general labour inspection.

Qatar

- Act No. 14 of 2004 establishing the Labour Code.
- Act on state control of occupational safety.

Romania

- Act No. 188/1999 establishing the status of civil servants.
- Act No. 108 of 16 June 1999 concerning the organization of labour inspection.

Russian Federation

- Labour Code Act of 30 December 2001.
- Act No. 181-FZ of 17 July 1999 on the fundamentals of occupational safety and health in the Russian Federation.
- Government Decree No. 78 of 28 January 2000 on federal labour inspection.
- Ordinance No. 1035 of 9 September 1999.

Rwanda

- Act No. 51/2001 establishing the Labour Code.
- Act No. 06/2003 of 22 March 2003, amending and completing the Legislative Decree of 22 August 1974 organizing social security.

Saudi Arabia

- Royal Decree No. M/21 of 15 November 1969 establishing the Labour Code.
- Council of Ministers Decision No. 877 of 21 Dhul Qida of 1389.
- Decree No. 18-2001.

Senegal

- Act No. 97-17 of 1 December 1997 establishing the Labour Code.

Singapore

- Employment Act No. 17 of 1968, as amended.
- Factories Act of 1973.

Slovakia

- Act of 8 February 2000 on labour inspection and on amendment of certain Acts.

Slovenia

- Act of 30 June 1999 on occupational safety and health.
- Order Ur.I.Rs No. 3/02 on safety and health at work at temporary or mobile construction sites.
- Labour Inspection Act of 20 June 1994.

South Africa

- Basic Conditions of Employment Act No. 75, 1997, as amended by the Basic Conditions of Employment Amendment Act, No 11 of 2002.
- Occupational Health and Safety Act, 1993 (No. 85 of 1993), as amended.

Spain

- Act No. 42/97 of 14 November 1997 respecting labour and social security inspection.
- Royal Decree No. 138/2000 of 4 February 2000 on the organization and functioning of labour and social security inspection.

Switzerland

- Federal Labour Act of 13 March 1964, as amended through the Federal Act of 24 March 2000.
- Ordinance No. 1 of 10 May 2000 concerning the Labour Act
- Federal Act of 20 March 1981 on accident insurance, as amended.

Sweden

- Work Environment Act No. 1160 of 1977.

Tunisia

- Act No. 66-27 of 30 April 1966 establishing the Labour Code, as last amended by the Act of 15 July 1996.
- Decree No. 891 of 30 May 1990, as amended by Decree No. 95 of 20 January 1997.

Turkey

- Labour Law, No. 4857, adopted on 22 June 2003.

United Arab Emirates

- Federal Law No. 8 of 20 April 1980 to regulate employment relationships.

United Kingdom

- Reporting of injuries, diseases and dangerous occurrences regulations of 1995.

Uruguay

- Decree No. 680/977 of 6 December 1977 concerning the implementation of international labour Conventions Nos. 81 and 129.
- Act No. 4785 of 9 May 1978, regulating the work of the agricultural workers.
- Act No. 16226 of 29 October 1991.

Venezuela

- Organic Labour Act of 27 November 1990, as amended on 19 June 1997.
- Decree No. 3235 of 20 January 1999 to regulate the Organic Labour Act.

Viet Nam

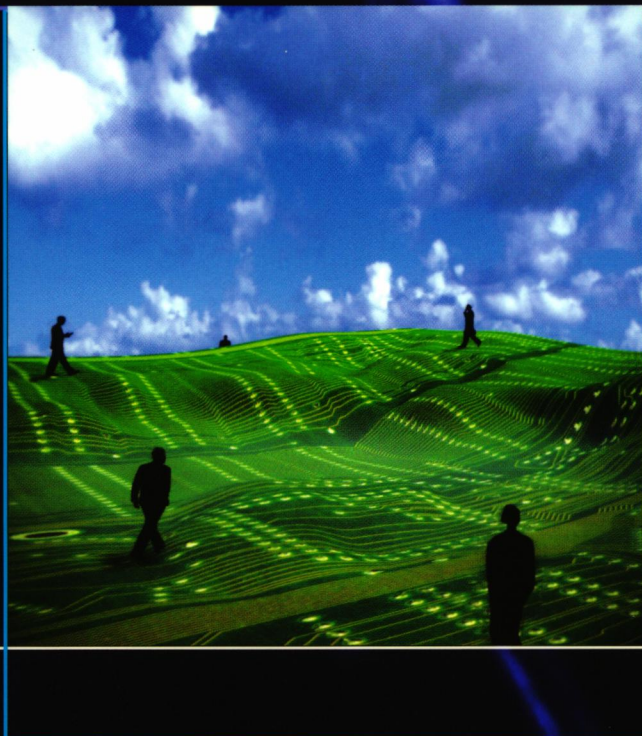
- Act of 1994 establishing the Labour Code, as amended in 2002.
- Government Decree No. 61/1998/ND-CP on inspection and monitoring work with regard to enterprises.
- Government Decree No 38/CP of 25 June 1996 on administrative penalties for labour offences.
- Directive on reorganizing the work of inspection and examination of enterprises (No. 22/2001/CT-TTg) of 11 September 2001.
- Decree No. 1118 of 10 September 2003.

Yemen

- Act No. 5 of 1995 promulgating the Labour Code.

Zimbabwe

- Factories and Works Act, 1996.
- Labour Relations Amendment Act No. 17 of 2002.



Price: 25 Swiss francs

ISBN 92-2-116606-6



9 789221 166061