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Labour Administration and Inspection Programme

**Labour administration:
To ensure good governance through legal compliance in Latin
America**

The central role of labour inspection

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International Labour Organization – Geneva

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Foreword

I have often underlined the need to inculcate a true culture of compliance with labour rights and the dominant role played by labour inspections in accomplishing this objective. As will become clearer in this paper, labour inspection services need to be reformed and reorganized in order to ensure effective and efficient adherence to labour laws, a situation that has not changed since labour laws were originally conceived.

Labour administration is a key element in reorganizing the services of labour ministries and this includes an autonomous and specialized labour inspection service to supervise labour law compliance. Consequently, labour inspection – which includes supervision and control functions – is a fundamental part of labour administration and, as such, an administrative activity subject to principles and procedures which form part of a system, at least with regard to the power to impose sanctions.

This working document was prepared by the Labour Administration and Inspection Programme in the Americas (LAB/ADMIN), which is in charge of developing and coordinating labour inspection and administration activities. The author has compiled information from several sources, including national assessments, working documents and projects, in addition to a number of studies on the subject, all of which have been used to draft a summary of the current state of this traditional administrative body, the importance of which is paramount for a region in which there is serious concern regarding the need for effective labour law compliance.

Most Member States have ratified Conventions No. 81, No. 129 and No. 150 on labour inspection and administration. However, few have adopted modern inspection methods and procedures. As a result, in the past few years, government ministries have received a growing number of requests for well-organized and effective labour administration and inspection services. With this in mind, experts from the International Labour Office have studied the matter and produced a useful and simple diagnosis, as well as conclusions and recommendations, in answer to Member States' requests for assistance in developing more effective inspection services.

This document will be much appreciated as a source of information on labour administration and industrial relations for social partners, experts and scholars alike.

I would like to thank my colleague María Luz Vega Ruiz, a senior expert on labour administration and inspection, who has prepared this comparative study from her perspective within the ILO.

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Introduction

Labour laws constitute a distinct branch of the legal system. They furnish the so-called “law of the land” (*ius gentium*) with a number of innovative elements, backed by specific institutions with their own sources of rule-making (collective bargaining and professional practice, for example) and combining elements of public and private law. All this has given rise to a highly specialized body of doctrine and jurisprudence.

As a result of these characteristics, the enforcement mechanisms of labour law are also unique since they do not depend exclusively on one jurisdiction (general or specialized), but rather on the intervention of administrative bodies, which have special functions of supervision and control.

In effect, administrative intervention in the supervision and monitoring of labour law compliance generates a unique body of administrative rules which, at times, may even clash with current legal doctrine. Despite such conflicts (which are infrequent), the influence of such intervention is so substantial that, in a number of instances, in-house ministerial newsletters and administrative regulations have led to the amendment of legislation or changes in social policy jurisprudence.

With regard to laws and regulations governed by the civil tradition (based on the Napoleonic Code), the important role of administrative bodies in labour issues is evident from their inception. Indeed, the first administrative labour laws focused on the entrepreneur. One example is the Working Police Regulation to protect women and minors which, due to its administrative nature, did not give workers the right to engage in industrial action and its mandatory provisions applied only to the employer (despite the fact that the regular judiciary usually handled the matter).

Thereafter, insufficient legal supervision of labour issues¹ led to the “extension” of the scope of administrative supervision, even after workers won the legal right to bring a court case on the grounds of non-compliance with labour standards. This became so widespread that the 1919 ILO Constitution specified that each Member State “must organize a labour inspection service in order to guarantee compliance with laws and regulations that protect workers”.

Labour administration stems from, and is linked to, the labour law system and labour inspection is an essential part of this administration, exercising the fundamental function of supervisory labour law enforcement and effective compliance. Labour inspection is at the core of effective labour law.

Labour administration was born at the same time as autonomous and specialized inspections were being established to oversee compliance with and enforcement of labour laws and based its intervention on the principle that labour provisions must be fulfilled *prima facie* by the parties to a labour contract.

Given the importance of the supervisory function of guaranteeing compliance with the law, the act of inspection transcends the private interests of each party or the need to bring a case before the court (no matter how expeditious this process may be in respect of labour

¹ This affected a large number of cases due to the complexity of the world of work and the underlying individual and collective relationships.

matters).² This is why labour inspection is considered a matter of general interest: labour law is a discipline that limits the contractual autonomy of the parties, precisely because it is in the public interest.

General interest has determined that many labour laws (for example, on the number of working hours per day, minimum wages and salaries, discrimination, and so on) are qualified as *ius cogens* (mandatory law) and the abovementioned limitations on contractual autonomy apply in such areas as working hours, health and safety, child labour, minimum wages and so on, as well as employers' powers of direction and management. The fact that labour inspections have the "administrative" power to "intervene" in a relationship which, in principle, is of a private nature is also of general interest (as well as the fact that it imposes duties on the employer, vis-à-vis the administration). Also important is the fact that this has prompted the adoption of watchdog labour laws which impose legal and public duties on the employer, applying (administrative) sanctions if they break the law. The existence of a law providing for administrative sanctions opens the door to control and inspection mechanisms.

The present document takes its point of departure from the notion that labour inspection, with its supervisory and control functions, is a fundamental part of labour administration. Consequently, it is subject to the principles and procedures of administrative systems, at least with regard to the power of sanction. The ILO perspective (basically, the Labour Inspection Convention, 1947 [No. 81] and the Labour Inspection (Agriculture) Convention, 1969 [No. 129]) has led us to study the different aspects of the characteristic function of labour inspection, in accordance with international precepts – namely, supervision of effective compliance with the law – but without neglecting the function of reporting and, therefore, prevention. These features render the labour inspectorate a body which not only enforces the law, but may also serve as an observer on behalf of the administration and, in some cases, also of the courts.

As already mentioned, this study examines the role of labour inspection in Latin America, where there is a shared history and language, as well as similar developments and common ideas on labour administration. This makes the subject amenable to a comparative approach. Within this regional context, this study examines the different characteristics of labour inspection at national level, as well as other elements common to all civil law systems.

Finally, the study includes a look at the region's future challenges with regard to labour administration, for the purpose of reviewing the overall characteristics of the inspection system, which has such an important administrative role.

² This is not the only example. Consumer rights protection, for example, shares the same basic principles, although in general these rights are diffuse and very different from the specific rights of workers.

1. Labour inspections as guarantors of the world of work: Supervisory functions in the administrative sphere

A. Special need for labour inspection

From the very beginnings of *workers' and social law*, independent national control of labour law was a priority.³ Moreover, the First Congress of the International Association for the Legal Protection of Workers (Bern, 1905) resolved on the need to adopt an international agreement on labour inspection. The emergence of such movements made it evident that the new labour order needed a specific means of intervention, apart from the legal variety.

The conclusion was drawn, in a number of European countries, that the state needed an administrative presence in the world of work (which subsequently occurred, in conjunction with labour laws). There were a number of reasons for this development:⁴

The link between labour laws and the public interest, even public order. Labour rights arise out of the need to settle conflicts sparked by social unrest, namely to alleviate tensions, improve social governance and resolve so-called social issues. Labour laws transcend the interests of individual companies or industries and are at the very heart of the interests of society.

The administration's interest in the supervision of labour issues, evident, for example, in the effective collection of social security payments, which must be controlled in order to prevent fraud.

More recent, but no less evident, is the importance of avoiding unfair competition and social dumping, for which purpose, compliance with the law is crucial. In fact, several EU directives – and, in particular, laws on health and safety at work – underscore the need to create a common framework at European level with regard to social expenditure in order to ensure the proper functioning of the internal market.

The speed and lower total cost of the administrative process in comparison to the legal process, as well as a clearer view of complaints filed by trade union representatives. On the other hand, a constant endeavour to avoid the excessive judicialization of labour laws, which are more practical and dynamic than other legal branches, and the attempt to solve problems differently.

Lastly, the inspection does not always resort to sanctions in its prevention, reporting or other activities, thereby avoiding conflicts at the source and solving labour problems *de facto*, without having to wait for a court ruling. Furthermore, the inspection may deliver a

³ The Berlin Conference of 1890 specified in its Protocol that “the execution of measures adopted by each State must be supervised by an adequate number of officials, specially appointed by the government of the country, and independent of entrepreneurs and workers”. In 1900, the International Association for the Legal Protection of Workers was created in Paris, which recognized that inspections are needed for workers' legal protection.

⁴ For more details, see González Biedma (1999), pp. 61–65.

sanction based on its own judgment (“stick and carrot” or “obey and avoid a sanction”), making its actions more effective.

Labour law provides a second avenue for resolving labour problems and disputes, alongside the judiciary. However, workers’ collective action cannot substitute for labour inspection because, although it is effective, it is impractical as a means of addressing individual cases and would impose a huge burden on workers’ organizations.

From the foregoing, it is clear that the institution of labour inspection has a twofold nature: on the one hand, it supervises the enforcement of legal provisions (even prior to a formal inspection,⁵ particularly with regard to health and safety), while, on the other hand, it is an administrative branch, which provides information, education and consultancy services. Hence, the inspectorate is a public body which links the world of work to labour administration and, in some countries, has evolved into an institutionalized consultancy body, engaged in social planning and law-making.

Let us first examine the source, evolution, international aspects and basic traits of labour inspection, before taking a closer look at its role in Latin America.

B. The ILO and labour inspection

International efforts to develop social legislation first became a reality in 1890 in Berlin, where 15 European countries met to draft labour laws⁶ and agreed on the need to implement independent supervised inspections.

The ILO is an organization specifically devoted to labour issues, with its own objectives and structure. From its inception, it has played an outstanding role in labour inspection, thereby bringing to the fore its core nature as a mechanism of legal consolidation and enforcement.

One of the principles of the Treaty of Versailles (Part XIII), which created the ILO, clearly stipulated that Member States must organize an inspection service with the power to ensure compliance with the aforementioned social laws. The Treaty also specifies the participation of women (Article 427.9).

The outstanding role of inspection under the auspices of the ILO has been in evidence since 1919, when the International Labour Conference adopted the Labour Inspection (Health Services) Recommendation, 1919 (No. 5),⁷ later underpinned by the Labour Inspection Recommendation, 1923 (No. 20). Its principles were adopted as the basis of the Labour Inspection Convention, 1947 (No. 81), which eventually became the basis of the Labour Inspection (Agriculture) Convention (No. 129).⁸

⁵ See Paragraph 2 of the Labour Inspection Recommendation, 1947 (No. 81), which calls on Member States to make arrangements for reviewing plans for new establishments or new production processes, and Article 17 of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), which specifies the preventive supervision of new plant, new materials or substances and new methods of handling or processing products.

⁶ See Footnote 3.

⁷ Withdrawn at present.

⁸ There is now another set of instruments on the subject: the Labour Inspection (Seamen) Recommendation, 1926 (No. 28), the Inspection (Building) Recommendation, 1937 (No. 54) and the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), not to mention Recommendation No. 81 and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), which supplement Conventions No. 81 and No. 129.

Both international instruments clearly describe the fundamental functions of this institution,⁹ which focuses its intervention on supervising “legal provisions”¹⁰ (Article 3 of Convention No. 81 and Article 2 of Convention No. 129) in the broadest sense of monitoring legality (prevention and supervision). The 1995 Protocol extends Convention No. 81 to include non-commercial services. In 1996, the Labour Inspection (Seafarers) Convention, 1996 (No. 178) was adopted. A number of other ILO instruments also refer to inspection.

Turning to international law, labour inspectors’ principal functions include the effective enforcement of legal provisions, the provision of advice to social actors concerning the most efficient manner of enforcement, the communication of deficiencies with regard to working conditions and health and safety and the presentation of “proposals to improve legislation”.¹¹ In keeping with this, Conventions No. 81 and No. 129 include rules on organizing and implementing labour inspections as systems under the supervision and control of a central authority, in cooperation with other public and private institutions and worker and employer organizations: in other words, encompassing all the actors involved in the world of work, with the purpose of implementing a sound inspection policy.

The Conventions also mention the need for an independent staff of professional inspectors (civil servants) who are assured stable employment, independently of changes of government. Moreover, such officials should be appointed on the basis of their professional competence and experience. In practice, inspectors are chosen in extremely different ways from one country to another, although the final decision is usually made on the basis of the candidate’s academic background (generally a university degree, although the Committee of Experts on the Application of Conventions and Recommendations specifies only that candidates must have a higher education), some practical experience, if possible, and the passing of a strict selection process.¹² Given the complexity of an inspector’s responsibilities and functions, initial and continuous training is crucial, as mentioned in both Conventions.

In order to intervene effectively, an inspector must have the power to enter, freely and without previous notice, any workplace or premises which they may have reasonable cause to believe warrant an inspection and to carry out any examination, test or inquiry they deem appropriate and to question, alone or in the presence of witnesses, workers, employers or their representatives concerning compliance with legal provisions. An inspector may 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 and enforce the posting of notices required by legal provisions and take or remove, for purposes of analysis, samples of materials and substances. Concerning the exercise of these powers, international instruments allow inspectors to use their own judgment to warn or give advice, instead of laying down or recommending procedures or directly imposing a sanction. In fact, most systems distinguish between immediately applicable measures and others requiring prior notification of the employer. In the first case, the inspector may provide information to encourage compliance before imposing a sanction. In the second place, inspectors may use their power to warn employers about their labour obligations. In both cases, the inspector’s decision is exercised on a discretionary basis and depends upon

⁹ See Article 3 of Convention No. 81 and Article 6 of Convention No. 129.

¹⁰ Legal provisions pursuant to Article 27 of Convention No. 81 and Article 2 of Convention No. 129 include “law and regulations, arbitration awards and collective agreements”.

¹¹ Cf. Article 6, Paragraph 1 (c) of Convention No. 129.

¹² The Committee of Experts on the Application of Conventions and Recommendations (CEACR) asserts that the best way of selecting the most suitable candidates is in-depth interviews, conducted in accordance with the principles of fairness and impartiality (Paragraph 183, General Survey on Labour Inspections. ILO, ILC, 95th session, 2006).

their assessment of the likely consequences, given the situation of the employer or company.

According to the relevant Conventions, workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. Needless to say, the degree of enforcement of this principle depends upon the material and human resources available for inspection in each country.

In general, ILO instruments aim at ensuring the effectiveness and proper implementation of legal provisions, with a view to accomplishing one of the basic goals of its Constitution, namely the protection of workers.

On the other hand, the Labour Administration Convention, 1978 (No. 150) clearly specifies that one of the essential functions of labour administration systems is to enforce legal provisions. The labour inspectorate is the traditional body in charge of carrying out this function, as specified by Labour Administration Recommendation, 1978 (No. 158), supplementing Paragraph 6 of the Labour Administration Convention, 1978 (No. 150), which specifies that a labour administration system must include an inspection system. Two functions of the inspectorate (defined as such in Conventions No. 81 and No. 129) are clearly defined in Convention No. 150 as a function of labour administration and underscore the intrinsic link between the two institutions. Labour administrations must draw attention to defects and abuses with regard to working conditions, employment and professional life and present proposals to remedy them (Article 6, Paragraph 2 (b) of Convention No. 150), in addition to providing technical advice to workers and employers (Paragraph 2 (d)).

In practice, labour inspections are generally under the governance of the ministry of labour, which is actively involved in all legal matters, including the review and drafting of legal texts.

C. Current role of labour inspection

In addition to supervising the enforcement of legal provisions strictly related to working conditions and worker protection, labour inspectors often monitor the enforcement of legal provisions related to a wide range of social matters, the contracting of foreign labour, vocational training, social security and so on.¹³

In several countries, inspectors have also been given the power to intervene in dispute settlement and collective bargaining at the request of one of the parties; to collect and assess socio-economic data; and to draft memoranda and technical reports for labour authorities on subjects within their competence, in addition to other administrative tasks (sometimes merely data recording). The range of functions is wide, quite apart from the variety arising from diverse administrative cultures and traditions.

The number and diversity of inspectors' tasks stem from the fact that they are experts in labour relations and have technical knowledge and experience, as well as a special insight into companies' overall operations. Hence, the inspector is the ideal official to advise, correct and rule on difficulties arising in the world of work. Furthermore, the fundamental fact that inspectors visit workplaces gives them a special understanding, on which they can draw in order to address companies' needs.

¹³ Some of these competencies are described in Paragraph 2 of the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133).

The workplace visit provides a unique opportunity to supervise compliance with a number of different aspects of the law and to improve labour relations with immediate effect. For example, in Spain, one in six inspection visits identifies a potential irregularity (in the Autonomous Community of Madrid alone, in the first months of 2005, 25,243 inspections were carried out, leading to the detection of 4,285 violations of varying degrees of seriousness and the resolution of 66 work stoppages, in addition to a fall in the rate of work accidents).¹⁴

However, this broad and multidisciplinary approach – which is even more evident in the case of so-called generalist inspections – may, in some cases, lead to a fundamental problem, namely a dispersion of activities and a confusion of functions. As pointed out by the Committee of Experts on the Application of Conventions and Recommendations,¹⁵ we should ask ourselves whether, in view of the fact that labour inspectors have so many different responsibilities, they do not run the risk of paying too much attention to activities of an economic, administrative or documentary nature, while neglecting others that are the real target of their mission (workers' employment and health conditions).

A matter of particular controversy is the definition and classification of standard and special inspection duties, with particular reference to the abovementioned dispute settlement function and whether it should be restricted within the framework of inspectors' everyday activities. Although it is true that supervising and controlling represent the core of an inspector's responsibilities, nevertheless the workplace is also the source of labour disputes, both individual and collective. It is evident that any supervision or advice on the part of the inspector may furnish at least some sort of "alleviation" of the conflict, so that it can be solved on an informal basis.

Many actions and measures designed and implemented by inspectors at the behest of one of the parties – individually or collectively, if performed by staff representatives, for example – are efforts to avoid a more serious conflict and to improve the work environment. Despite the fact that some settlements are informal they may, nonetheless, have major repercussions and effects. However, if inspectors dedicate most of their time to formal and organized administrative settlements, mediating and proposing solutions, mainly in individual cases, in practice, they have changed their function and narrowed their competencies to a single duty. This, indirectly, prevents them from performing their basic function, which is to supervise conditions of work and the labour environment.

Inspectors may exercise broad functions to match the needs of the world of work as the latter present themselves, but they should try to avoid going too far, undermining their core function, as laid down in international agreements, and jeopardizing the general interest (see above).

Some countries have entrusted inspectors with a much broader range of functions, combining visits with overall prevention and educational campaigns, without relinquishing the power to sanction: in other words, the direct and broad application of the familiar "stick and carrot" principle (see above).

This general model, referred to by some authors as the Latin model (Piore and Schrank, 2008), not only gives the labour inspector the authority to weigh the costs and benefits of regulation at the firm level, but simultaneously encourages them to seek ways of reconciling the allegedly incompatible goals of productive efficiency and worker protection. By disseminating best practices from productive employers who comply with the law to less productive employers who do not, for example, the inspector can make

¹⁴ *El Pais*, 9 October 2007.

¹⁵ ILO: *General survey: Labour Inspection*, Paragraphs 64 and thereafter, ILC 2006, 95th session. Available at: www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-iii-1b.pdf

compliance good for business and thereby minimize resistance to regulation (Piore and Schrank, 2008: 2).

Furthermore, today, inspectors are in charge of supervising new sectors and dealing with specific problems which have special intervention needs. Such is the case with child labour, forced labour and various forms of precarious work resulting from the fact the some sectors outsource work.¹⁶ Moreover, some new subjects present new challenges for inspectors, such as sexual harassment and bullying, various forms of discrimination and illegal immigration and employment problems.

The conception and implementation of current labour policies must focus on the company, in view of the fact that industrial restructuring and staff reductions have an effect on labour conditions. Thus, inspectors have become intermediaries between employment policy and labour, social and human resource development policy (Rodriguez Piñero, 2003: 12).

The tight linkage between all spheres related to intervention in labour matters confirms that the labour inspection is not only a living body, but also a central institution. Only inspection proposals which take into consideration all aspects of the world of work can successfully accomplish their goal and ensure better working conditions, a safe work environment and, consequently, good industrial relations. In any case, as has been pointed out by Von Richthofen, inspectors must be flexible and “abandon a rigid, narrow approach based on a single specialization (legal, technical, medical, social) in favour of a truly integrated vision, and develop an understanding of the factors that influence and contribute to improved labour protection” (Von Richthofen, 2002: 3).

1. Prevention

In the past few years, the world of work has experienced a wave of radical changes, with the advent of new technologies, a new culture of consensus rather than conflict, new roles for social actors and so on. In this context, a culture of prevention is crucial and is considered to be a sine qua non for any country aiming to achieve decent working conditions.

From this perspective, prevention is a holistic concept, involving all types of labour risk (medical, industrial, technical, legal and so on). Prevention must pervade all areas within the scope of labour inspection: the employment relationship (in order to avoid unfair treatment), labour conditions (in order to avoid risks to dignity and equity), health and safety, accidents at work (in order to avoid risks to health and life) and even employment (to ameliorate the risk of unemployment and even exclusion). All of this is part of a new corporate philosophy, aimed at developing an all-encompassing and sustainable culture of prevention.

Without going into detail with regard to aspects of inspection intervention enshrined in international law,¹⁷ it is evident that, if the essential task of inspection is to enforce legal

¹⁶ The question of extending the labour administration’s remit to take in workers who are not considered, in law, as employees in certain countries, is – at last – becoming increasingly important. This has become particularly urgent in some developing countries, due to chronic shortages of certain categories of worker, in addition to underemployment and unemployment. A number of international instruments adopted by the ILO specify the relevant standards and principles. On the other hand, the “non-structured” or “informal” sector has grown significantly and affects a good many of the workers affected by this extension (CEACR, *General Survey on Labour Administration*, No. 150, paragraph 130).

¹⁷ For example, Convention No. 81, Convention No. 129, the Occupational Safety and Health Convention, 1981 (No. 155) and the Prevention of Major Industrial Accidents Convention, 1993 (No. 174), to mention but a few.

provisions and provide specific technical assistance and information, the role of prevention is paramount. In practice, in most countries, labour inspectors mix prevention and enforcement, since inspection intervention does not investigate potential violations primarily in order to impose sanctions, but rather to try to foster respect for the law and different ways of enforcing it in order to promote harmonious labour relations.

Advisory services and prevention should not be understood as marginal, nor should labour inspection be considered a form of intervention whose basic purpose is to sanction illegal behaviour. The Committee of Experts has spoken out clearly on this issue, on several occasions, pointing out that the supervisory and advisory services and information functions, in fact, complement each other, since they share the same objective of enforcing legal provisions. However, this does not mean that the advisory services function may substitute the supervisory function, which would jeopardize the labour inspection's ability to impose sanctions. The two functions must be evenly balanced. The issuing of warnings or recommendations is essential and in some countries is an intermediate stage between advisory services and sanctions, making it a key part of the administrative process. Advisory services are accompanied by a requirement that companies bring their practices into line with the law; otherwise, any resulting sanction would be unfounded and lose its effectiveness.

In general, an effective combination of education and information, guidance and sanctions relies on a favourable corporate environment in order to foster change, by means of which compliance with legal provisions may be facilitated and a productive dialogue encouraged between companies and inspectors by means of a two-way learning process. This, in turn, would enable inspectors to gain a better understanding of the industry, its needs and specific problems. Last but not least, this encourages companies to think in practical terms and to adopt technical solutions that generate the conditions and incentives needed to remain within the law (Pires, 2008).

II. Current evolution of social partner participation

After being conceived initially as a paternalistic inspector-administrator relationship (which resembles the benevolent relationship between doctor and patient – see ILO, 1923), a more participatory approach has been adopted in relation to the social partners, in terms of which the inspector is part of the business framework and has, as it were, a foot in both camps.¹⁸

As the trade union movement and professional organizations became stronger in parallel with the developing role of independent state inspectors, the workers tried to become actively engaged in labour inspection. After several attempts in this direction – one might recall the attempts to appoint worker inspectors – inspectors' independence and objectivity were reinforced and the labour inspection became a state agency, with its own officials. However, the participation of social actors continued, for example, in a consultative role. Apart from being an independent entity, the inspection became a privileged interlocutor. In fact, labour inspection is currently considered to underpin one of the pillars of tripartism: labour administration. In its twofold aspect of state representative and direct actor in labour relations, it is the most appropriate institution to contribute to the development of social dialogue and labour relations at low and intermediate level. The abovementioned preventive function is, perhaps, the most characteristic aspect of tripartism in companies, since the development of a healthy, safe and consensus-oriented labour environment is evidence of satisfactory labour relations.

¹⁸ Compare, for example, the role of mediators in collective labour disputes, as laid down in most national labour codes.

As Erikson and Graham point out (Erikson and Graham, 2005), tripartism in inspection not only creates a sense of ownership of the process, but also enables the parties to intervene directly and to understand what needs to be done in order to accomplish the relevant objectives. In general, social actors and inspectors cooperate, but levels of trust in the system vary, depending on the consolidation and importance of the inspection system within the context of labour administration.

As stipulated by Conventions No. 81 and No. 129, effective labour inspection interventions require that employers and workers be fully aware of their respective rights and obligations and safeguard their implementation. Furthermore, international law considers that the supervisory function is just as important as providing employers and workers with information and advisory services (see above) concerning the most effective manner of implementing the relevant legal provisions, indicating thereby that the two functions are indivisible and part of the essence of labour inspection.

Educating social actors – by all appropriate means – on the relevant legal provisions and the need to enforce them strictly, as well as on risk prevention in order to guarantee workers' health and safety, will be effective only if all the parties involved in the labour relationship participate.

The tripartite labour advisory councils created at national, regional or sectoral levels in several countries offer the labour inspection a privileged space in which to communicate information to employers' and workers' organizations. For example, the Dominican Republic set up a special information service as part of the central body in charge of labour inspection. It is obvious that enforcement of the law often depends upon direct collaboration with social actors, such as management and prevention or safety committees in companies, which are charged with implementing health and safety measures on a daily basis.

As pointed out in the Committee of Experts' General Survey on Labour Administration:

[t]he social partners frequently ask the labour inspectorate to participate in joint committees [for example, in Tunisia]. When collective agreements are being negotiated, for example, the labour inspectorate may participate in a number of ways: in some countries it chairs the joint committee during negotiations [for example: Algeria, Tunisia], in others, it participates only where the collective agreement is likely to be extended to others; and elsewhere it intervenes only to help break a deadlock in the negotiations. (ILO, 1997: Paragraph 126)

D. Genesis of labour inspection

Labour inspections have evolved gradually and in conjunction with social and economic developments. In general, the changes in labour inspectors' powers and status over the past century – in the wake of labour law amendments – were reactions to changes in the substance of social policy as a consequence of national events.¹⁹ For instance, the protectionist tendency, which was widespread among states during the first few decades of the twentieth century, prompted substantial amendments to labour laws by giving inspectors new and important powers. This resulted in the creation of a true labour administration, with broader and better defined competences.

¹⁹ For example, in France, worker riots in 1936 led to the enactment of laws in June of that year.

In this context, the question arises: Do labour laws (in the broadest sense) make sense without inspections? Perhaps before answering, the current situation should be described in more detail.

1. The case of Europe

Although some authors consider that current labour inspection is rooted in the supervision of business associations and goods inspectors under the “*ancien régime*” (see Montoya Melgar, 2004: 248), the emphasis on consumer price and product quality indicates that the bodies in question were inspections of production rather than of labour.

Great Britain led the way in labour inspection by enacting a law to protect the well being and health of apprentices, under the supervision of voluntary committees, on 22 June 1802.²⁰ However, the voluntary nature of the measure and early collective bargaining efforts put a stop to a burgeoning, effectively independent supervisory body. On 29 August 1883, on the grounds that “the instruction to appoint honorary supervisors had not been appropriately executed and therefore protective measures had not been enforced”, a law was enacted – known as the *Althorp Act* – which granted factory inspectors (in those days, there were only four in the whole of Great Britain) fundamental powers: unrestricted access to companies, the freedom to investigate workers and employers and the authority to settle disputes and rule on violations. In 1887, a body of auxiliary workmen’s inspectors was established, to be succeeded in 1920 by an advisory system with limited powers, focusing on investigation and demands to comply with the law, both in manufacturing and a number of other industries (mining, explosives and chemicals).

In 1853, a voluntary inspection was set up in Prussia in the form of a joint commission of child labour and labour inspectors. In 1863, an obligatory inspection was created, but applied only to minors. In 1869, Bismarck extended it to encompass all labour. In 1887, a body of inspectors was created in all the German states, comprising special officials charged exclusively with supervision, although with the support of the police authorities.

In France, the failure of the law on the protection of minors enacted in 1841 showed clearly that, if a law has no means of enforcement, it is empty. The law on child labour in industry, enacted on 19 May 1874, was the first attempt to create a body of officials (although only 15 to begin with) with supervisory functions. This became a reality only in November 1892, however, when an administrative body of inspectors was created and its members – chosen on merit on a competitive basis – were formally appointed and endowed with authority. This administrative body of inspectors was given a broad range of duties, although, over time, separate departments were established to deal with specific problems, such as employment and labour. The law of 1892 was amended first in 1937 and again in 1941.

Towards the end of the nineteenth century, delegations and offices of state-run inspections were organized all over Europe (Spain, 1883; Belgium, 1894) and were the true precursors of present-day ministries of labour.

After 1900, a number of national inspections were created. In 1909, the Netherlands organized a general inspection for social and labour problems.²¹ Belgium and Luxembourg

²⁰ Interesting references have also been made in the literature to medical inspections in Great Britain at the end of the nineteenth century.

²¹ The country was divided into ten regions for control and supervisory purposes, each with its own general inspector, accompanied by an advisor and a women’s inspector. There was also a “worker-controller”, elected by the workers.

did the same in 1902, Spain in 1906 and Italy in 1912. These labour inspections were established with their own resources and both core and lateral structures.

In subsequent years, laws were enacted in reaction to workers' demands,²² and these tended to reaffirm inspectors' authority as administrative officials. Thus, inspectors were considered to be supervisors, in addition to actors intervening in labour relationships (understood in the broadest sense as social and economic relationships pervading all spheres of the world of work). Labour inspectors were state officials, representing the human face of the labour administration. From this perspective, the labour inspectorate played a fundamental role in the development of legislation. In fact, labour inspections became a fundamental pillar of social reform. This twofold role – supervision of enterprises and protection of the public interest – constituted the essence of labour inspection as a legal institution.

Across Europe, national inspections evolved differently. However, in all countries today they depend upon the state or decentralized public administrative agency – that is, they constitute a public service – and are usually part of the labour administration.

The various labour inspections – whether French, British, Belgian or German – have a number of aspects in common. In the first place, in accordance with the ILO rules and regulations ratified by all Member States (in particular, Article 3 of Convention No. 81), inspections must enforce legal provisions on labour conditions in the exercise of their duties. This suggests a common legal framework for regulating working conditions in each country.

The organizational model is not based on inflexible criteria (except for the fact that the labour inspection must be supervised by a central authority), although, as pointed out in Convention No. 129 (Article 7), labour inspection must be carried out by a single body which has responsibility over all economic sectors or by a body which, under the aegis of the former, on a functional or institutional basis, provides a technical or specialized inspection service in a particular sector, governed by a central authority.²³ The concept of a central authority does not exclude decentralized administration or federalism. Decentralized states – Germany is a paradigm case – effectively implement decentralized administrative inspections in each state, under the coordination of a central body, coordinated with the central authority to facilitate labour inspections (as specified in

²² For example, in Frankfurt-Am-Main, chemical industry workers met on 31 May 1909 to approve an extension of the inspectors' powers and to request more inspectors, comprising doctors and auxiliary staff chosen by the workers. In Hamburg, the IX Conference of the Metallurgical Workers' Trade Union, in May 1909, demanded that inspections be re-organized, granting inspectors more power. It was demanded that doctors and other persons with expertise in industrial health, as well as workers be included in order to safeguard compliance with laws aimed at protecting workers and preventing accidents at work. On 18 July 1909, in Cologne, the VII Congress of Christian Trade Unions demanded a labour inspection comprising competent doctors and auxiliary staff chosen by the workers to ensure compliance with laws protecting workers in the chemical industry. In Turin, in 1910, the National Council of the Workers' Confederation held a meeting, one of whose conclusions stressed the need to extend the inspection to all provinces in Italy. In Vienna (*Favoritener Arbeiterheim*), in 1910, the VI Congress of Austrian Trade Unions adopted an agreement demanding more inspectors, the reduction of the number of districts allocated to each inspector, the appointment of both men and women workers to the post of inspector and the appointment of inspectors for rural industries.

²³ In the case of labour inspections – similar to the previously mentioned general administrative model – decentralization takes place in a number of ways and subject to a range of criteria, based on the competencies of the relevant labour administration. In federal countries, competencies are usually distributed among the federal state inspection authorities and related entities, although in some countries the inspection service may be directly governed by the federal government.

Convention No. 81), while, at the same time, providing the individual states or regions with the requisite budgetary resources.

There is a wide range of systems in Europe today. In France, the labour inspection is a service provided by the Ministry of Employment, while in the United Kingdom, a health and safety agency performs this duty jointly with local authorities involved in inspections in the trade and service sectors. This is why the ILO does not mention inspection models but rather inspection systems, thereby avoiding a discussion on the appropriate structure of comprehensive or specialized inspections, particularly in view of the fact that most European systems are hybrids, to a greater or lesser degree. This is the case in the Scandinavian countries, in which inspectors focused initially on health and safety, but now also supervise certain aspects of working conditions (the working day, permits and child labour).

In general, the impact of inspection on improving workers' health and working conditions in the twentieth and twenty-first centuries has been remarkable. In the United Kingdom, for example, the rate of fatal accidents at work (per 100,000 workers) fell from 3.6 per cent in 1971 to 0.8 per cent in 1994 (Ellis, 2005).

Nevertheless, 4,900 fatal accidents at work are recorded in Europe every year and 350 million working days are lost due to occupational illnesses. The economic loss amounts to between 2.6 and 3.8 per cent of EU GDP.²⁴

The major changes that have taken place in the world of work have obliged inspectors in Western Europe and elsewhere to adapt in order to continue performing their duties effectively. Labour inspections must be flexible and able to channel resources rapidly to meet new challenges – although without losing sight of their priorities – in order to function most effectively with regard to health and safety and working conditions in companies (Ellis, 2005: 63).

2. Labour inspections as fundamental labour law supervisory bodies in Latin America

The development of labour inspection in Latin America has proceeded hand in hand with the creation and development of ministries of labour and, since around 1930, has become a specialized, often geographically decentralized unit in these ministries.²⁵ To begin with, the enforcement of labour law – such as supervising the right not to work on Sundays – often required the assistance of the police.

The development of labour inspections has depended upon the resources and interest of governments in strengthening the social sphere, although the period from 1960 to 1990 represents something of a trough, with some countries (Argentina, Chile and Peru) reducing the number of inspectors. Peru is an extreme case: in 1994, it had only two state labour inspectors (the others were contracted). However, the situation in the region has changed since 1990 and most countries have now upgraded and tightened up their labour inspections, although in some countries there is still some way to go (this is certainly the message conveyed by the CEACR's Comments on the labour inspection conventions).

²⁴ Informal communication from José Ramon Biosca de Sagastuy, Head of Unit, Health, Safety and Hygiene at Work, Directorate-General for Employment, Social Affairs and Equal Opportunities.

²⁵ National inspection systems were established in the region in, for example, Argentina in 1912, Uruguay in 1913, Chile in 1919, Peru in 1920, Brazil in 1921, Colombia in 1923, Bolivia in 1924, Ecuador and Guatemala in 1926, the Dominican Republic in 1930, Mexico in 1931, Cuba in 1933, Venezuela in 1936, Nicaragua in 1945 and Honduras in 1959.

There have been a number of affirmations and declarations in the region on the importance of labour inspection, in a number of texts and forums, over the past 20 years. For example, the Inter-American Conference of Labour Ministers, has – since the Viña del Mar Plan of Action (1998) – strongly supported the “intensification and exercise of inspection duties, with regard to both labour and social security issues, taking into consideration the institutional realities of individual countries”.

Regional integration processes confirm this trend. Article 18 of MERCOSUR’s Social and Labour Declaration (1998) is devoted entirely to labour inspections, underlining their importance.²⁶ Representatives of the bodies responsible for labour inspection in the MERCOSUR countries have met to discuss subjects of common interest and to exchange experiences on how to improve the performance of their institutions. They have agreed to conduct joint inspection visits involving officials from all four MERCOSUR countries, and have encouraged studies on the establishment of some kind of common report form (Daza Pérez, 1997: 66).

Clause 2 of the MERCOSUR Regional Integration Treaty has evolved into a set of recommendations issued by the Common Market Council: No. 1 (2005) on minimum conditions of inspection procedures and No. 2 on minimum standards for labour inspectors as the basis of joint international inspections currently being developed, as well as projects on integrated inspections at regional level.

A number of free trade agreements (FTA) – beginning with NAFTA in the 1990s (Mexico, Canada and the United States) – mention inspections as a matter of concern since the region clearly has low levels of supervision and control. Article 3 of the North American Agreement on Labor Cooperation (NAALC) (a parallel agreement to NAFTA) contains specific and pertinent commitments with regard to labour inspection (Article 3):

“1. Each Party shall promote compliance with and effectively enforce its labor law through appropriate government action, subject to Article 42, such as: a) appointing and training inspectors; b) monitoring compliance and investigating suspected violations, including through on-site inspections; c) seeking assurances of voluntary compliance; d) requiring record keeping and reporting; e) encouraging the establishment of worker–management committees to address labor regulation of the workplace; f) providing or encouraging mediation, conciliation and arbitration services; or g) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law.

2. Each Party shall ensure that its competent authorities give due consideration in accordance with its law to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party's labor law.”

Moreover, Articles 4, 5 and 6 of the NAALC provide for certain basic guarantees, such as proper access to legal or quasi-legal administrative procedures and due process, as well as publication of administrative or legal acts related to labour and procedural matters.

The important role of labour administration has been brought to the fore by the free trade agreements negotiated separately, since 2000, by Canada and the United States with other countries. In effect, these agreements paved the way for the famous “White Book”, which contains a number of commitments on upgrading national inspections and affects

²⁶ Article 18 “(i) Every worker has the right to adequate protection with regard to the conditions of work and working environment, and (ii) the Member States are committed to establishing and maintaining labour inspection services in order to monitor compliance with legal provisions which protect workers and safety and health conditions at work”.

Central American countries and the Dominican Republic. Andean countries which have entered into an FTA with the United States are currently implementing similar programmes, focusing on the same target, namely, improving and strengthening the inspection system.²⁷

A new vision on labour, employment and safety at work policies is clearly needed prior to developing and implementing a trade agreement, so that the technical assistance provided for in the treaties and the effective capacity to manage projects and programmes are consistent at national level.

Several ILO studies²⁸ have concluded that most countries²⁹ in the region have an extremely weak apparatus for enforcing compliance with labour law. Therefore, the bodies in charge of supervising adherence to labour law and provisions on health and safety at work must be strengthened and improved. Moreover, with particular reference to labour inspection, the region mainly needs to review supervision and oversight processes, as well as specialized staff training, e-services, the promotion of preventive oversight programmes with employers and workers and joint inspection programmes with other independent public entities.

A. National experiences

Types of labour inspection in Latin America

Labour inspections in Latin America are based on a generalistic concept, typical of inspections in southern Europe and characterized by a respect for *ius gentium*. As pointed out by Schrank and Piore (2007: 13), the continental model of inspection inherited from France and Spain is a supervisory model which encompasses both advice and sanctions, in contrast to the Anglo Saxon model, in which labour inspection is, *strictu sensu*, supervisory in nature. Besides the reasons given by Schrank and Piore, this development is probably the result of historical efforts by France to check corruption by limiting the power of officials in certain areas.

In other areas, in the Latin system inspectors have more discretion in the exercise of their duties and can decide whether to impose sanctions, give advice or request remedial action, in contrast to an exclusive focus on imminent risks to life and health (which may require more drastic action than merely formalizing an irregular situation, for example, by issuing orders), which is typical of the Anglo-Saxon system.

In this connection, most countries in the region have labour inspectors who wield general power over social issues (some countries in the region refer to a “comprehensive inspection”), encompassing most aspects of working conditions and health and safety (the Central American countries, but also Uruguay and Brazil), frequently including social

²⁷ For example, the USAID MIDAS Project in Colombia has fostered the development of a new inspection model, based on prevention and the quality of the services rendered.

²⁸ In particular, after the labour administration assessments carried out within the framework of the technical cooperation project in support of the CIMT, funded by USDOL and employing a methodology borrowed from the ILO InFocus Programme for the Promotion of Social Dialogue, Labour Legislation and Labour Administration (IFP/Dialogue).

²⁹ Particularly in Latin America and the Caribbean.

security³⁰ (Argentina, Bolivia, Colombia, Cuba, Chile, Paraguay and Peru) and/or other matters, such as labour migration in Panama or cooperatives in Argentina.³¹

In Uruguay, labour inspectors even have the power to impose fines on employers who violate laws on the following: the obligation to provide food for workers' spouses, children and parents; the prohibition of using workers' accommodation as storage space; the obligation to encourage children to go to school; and the obligation to allow dismissed workers or members of their family to remain on the farm in case of illness (Law 14785 of 9 May 1978 dealing with rural workers).

However, in some countries, the authority of labour inspectors is confined to the supervision of working conditions and labour relationships (plus a few aspects of health and safety supervision), while other services and inspectors are responsible for the inspection of environmental health and safety (Chile).³² In some cases – for example, in Guatemala – there are two parallel inspections (MTPS and the Guatemalan Institute of Social Security), run by two different institutions in charge of health and safety, both with the power to prevent and supervise. However, only the general labour inspection has the power to initiate sanction procedures.

Panama has a specialized labour inspection, with the National Directorate of Labour Inspections dividing inspectors by area: general, migration, child labour, protection of minors, social security and technical analysis and evaluation (the latter is not really an inspection, but a technical support unit). However, this directorate does not include labour inspection for agriculture.

Honduras takes a similar approach. Besides general labour inspectors, it also has inspectors for occupational health and safety, social security and pensions, as well as persons responsible for monitoring wage levels.³³

In El Salvador, the Organization and Functions of the Labour and Social Security Sector Act of 1996 grants health and safety experts the power to carry out inspections. However, only inspectors proper have the power to impose sanctions. In practice, intervention by the labour inspection occurs as the result of specific technical issues and joint inspections are not frequent. Furthermore, besides the social security inspection, there is an inspection responsible for supervising membership of social insurance schemes and pensions, which has started to operate jointly with the labour inspection within the framework of a new Comprehensive Inspections Unit. This Unit was established in 2004 as a result of the inter-institutional “Worker Protection Convention” introduced by the Ministry of Labour and Social Security, the Salvadorian Institute of Social Security and the Superintendent of Pensions. The purpose of this Convention is to “regulate the creation, organization and operation of a comprehensive inspection system dealing with labour, occupational safety and social security to supervise and facilitate the implementation of laws which stipulate workers’ and employers’ rights and obligations in areas covered by the system”. This inspection system has two supervisors (one from the Ministry of Labour

³⁰ In some countries, there is a specific social security inspection (Honduras, El Salvador).

³¹ In Argentina, the Ley de ordenamiento laboral of 2004 redesigned the inspection system and created an integrated system which supervises legal provisions on labour and social security, in addition to employment cooperatives.

³² In Brazil, El Salvador, Honduras and Uruguay, among others, there is a core body of labour inspectors, in addition to a specific group of health and safety experts responsible for inspection and prevention. However, they usually do not have the power to impose sanctions.

³³ In practice, these officials are researchers and inspectors since they conduct interviews and surveys in establishments over a period of several months before approving the minimum wage in the mining sector in April each year. In the ensuing months, they conduct supervisory inspections to verify payment of the minimum wage.

and Social Security and another from the Salvadorian Institute of Social Security), in addition to seven inspectors from each institution, and calls on health and safety experts to participate in inspections.

Since 1997, general inspectors in Nicaragua have had the power to review working conditions and health and safety issues (so-called “comprehensive inspection”). In 2007, however, a new law on health and safety entered into force, granting special health and safety inspectors the power to issue rulings and sanctions on matters under their responsibility (formerly, they were technicians who accompanied inspectors).

The labour administration often collaborates with other bodies. Argentina, for example, has undertaken successive reforms, leading to the Federal Labour Pact,³⁴ which has established greater uniformity in the provisions in terms of which inspectors act jointly with other agents or organs, particularly with regard to technical inspections (technicians and inspectors proper conduct joint inspections) to ensure a more efficient supervisory service. In most countries, if there is an element of danger, the police are asked to intervene or, if child labour is the issue, the Ministry of Education intervenes.

In some countries (for example, Argentina, Brazil,³⁵ El Salvador, Mexico, Paraguay and Uruguay), although there is a single body of inspectors, internally, there is functional specialization, in accordance with employment and working conditions, and inspectors with different technical profiles, knowledge and training (lawyers, doctors or technical experts – see Daza Pérez, 1997: 64) conduct health and safety and environmental inspections.

Scope: Powers and intervention³⁶

A number of constitutional texts explicitly mention the importance of inspections (Brazil, Paraguay and El Salvador³⁷). Practically all national inspections are governed by an administrative law or a chapter of the Labour Act granting inspectors extremely broad powers and, in some cases – such as Chile – they even have the power to promote social peace, which includes basic preventive measures and even labour dispute settlement.

In all countries, the labour inspector’s main function is to supervise compliance with legal provisions on working conditions, formulated in greater or lesser detail, depending upon legal traditions. In Argentina and Uruguay, inspectors are even given the power to safeguard the enforcement of international labour agreements, covering a broad range of duties, in addition to addressing the wide range of subjects covered by ILO instruments.

Although there are advantages in having broad powers, one common problem of labour inspections in the region, as confirmed by the Committee of Experts (see below), is that inspectors have too many additional functions, including labour dispute settlement.

³⁴ The purpose of the Pact is to ensure cohesion and legal certainty with regard to labour issues and to unify the provisions related to sanctions and violations, among other things, including an Integrated Labour Inspection and Social Security System (Laws 25.212 of 1999 and 25.250 of 2000).

³⁵ Divided into specialists in medicine, engineering, hygiene and safety, as well as general experts.

³⁶ Social security inspection, carried out by a specialized and dedicated inspection (with its own procedures) and distinct from the labour inspection, will not be examined here. However, most countries in the region which do not have an inspection with the authority to intervene in social security matters link social security to another inspection which has the power to intervene with regard to membership of social insurance schemes and the payment of social security contributions.

³⁷ Brazil, Article 2 of the 1988 Constitution; Paraguay, Article 99; and El Salvador, Article 44, paragraph 2.

This means that, besides upgrading labour inspections in general, specific labour dispute settlement services must also be created and organized, relieving inspectors of the task.

In Costa Rica, for example, inspectors were involved in an estimated 1,600 labour dispute settlements in 2004. The provincial directorates managed most cases without ad hoc conciliation services (although such services do exist at the central level) and, in practice, this tends to overburden the inspectors (Godinez Vargas, 2008: 19).

In Colombia, the labour inspectors' handbook clearly specifies that labour dispute settlement (including consultation and other specific duties) is part of an inspector's duties. However, the statistics seem to indicate that their tasks are not evenly distributed. In 2006, for example, 78,668 labour disputes were settled and more than 91,000 conciliations were carried out by inspectors, which – in theory – means that each inspector (taking 289 inspectors as the basis) intervened in 314 labour dispute settlements in the course of 25 inspections. Moreover, the number of labour dispute settlements continues to grow (by 40 per cent in 2000).

According to the Labour Act in Guatemala, labour inspectors have the power to conciliate and to conduct visits. In total, there were 8,785 labour dispute settlement interventions in 2008 (August) as compared to 5,342 inspection visits.

In some cases, the law gives inspectors special powers to calculate social security payments or to register trade unions,³⁸ both specifically administrative functions which do not depend upon labour inspection (a higher or specialized technical body) and merely distract inspectors from their core supervisory functions concerning labour conditions and the labour environment. Some countries (Honduras, Guatemala) have issued administrative decisions granting such powers.

Other powers bestowed on inspectors are also questionable. For instance, in Nicaragua, the 2003 Law on Civil Service and Administrative Careers established a special disciplinary procedure to impose sanctions on civil servants who commit serious or very serious violations, specifying that a Tripartite Commission shall adjudicate in such cases. This Tripartite Commission shall comprise a representative of the accused official, a representative of the corresponding labour inspectorate and a delegate of the relevant human resource department. Such additional functions are detrimental to one of the central aspects of labour inspection, the enterprise visit. In Guatemala, for example, some inspectors are required to serve notice of inspections in person and in some other Central American countries they take on the functions of legal advisor and case adjudicator.

As Bensusán points out (Bensusán, 2007: 30), some inspection systems in the region have broad discretionary powers. This provides for flexibility, making it possible to adapt regulations to a company's specific circumstances, where strict enforcement might threaten employment. In general, however, interventions in many countries are extremely limited in scope and are commenced in response to specific allegations, in addition to which, inspection methods are not adapted to include the informal economy.

In practice, in most countries, inspections tend to focus on the same things (that is, they try to identify specific violations and then issue instructions on how they might be remedied) and the variety, extent and interrelatedness of the relevant issues come to light only when proceedings are initiated by the court (*ex officio*) or in the course of regular inspections. The topics most often dealt with in the region are overtime and violations of workers' rights to rest time, non-payment of wages (especially the minimum wage) and benefits, and, in third place, health and safety deficiencies. In Chile, for example, the 2006 data from the General Directorate of Labour mention that 41 per cent of the sanctions

³⁸ Organic Regulation on Inspections in Venezuela.

imposed were due to violations of working time regulations (General Directorate of Labour). In Nicaragua, 38.3 per cent of proceedings in the last five years have involved health and safety violations, followed by violations related to overtime (nearly 18 per cent) and contracts (17.2 per cent) (Statistical Yearbook, Ministry of Labour).

In general, inspections in the region combine prevention and sanctions (most laws clearly define the main function as enforcing compliance with legal provisions) and provide technical guidance for workers and employers on meeting their obligations. As Albuquerque points out (Albuquerque, 2003: 157), labour inspectors operate with some discretion in order to preserve harmony and ensure that disputes between parties do not end in the breakdown of labour relations. A similar formula has been applied in the El Salvadorian provisions, which specify that safeguarding compliance with the law is a means of preventing labour disputes and ensuring safety at the workplace (Article 34, LOF).

In the region as a whole, especially in the past five years, the trend is towards preventive inspection,³⁹ which is emphasized in the most recent proposals for institutional reform. For example, Colombia has an ongoing project to improve and strengthen labour inspection, focusing on high risk companies as part of a shift towards prevention. This tendency may, in extreme cases, effect a marked distortion in the nature of labour inspection, whose ultimate purpose – as already mentioned – is to enforce compliance and impose discretionary sanctions, when deemed necessary, taking into consideration the seriousness of the violation and the degree of risk involved. Preventive and informational actions must be continuous and never put workers' health, dignity or lives at risk.

Labour inspection undeniably influences labour relations in the region. An extremely interesting study has been carried out on labour inspection in Brazil, focusing on the inspectors' role in implementing labour law (Pires, 2008). Several alleged violations were studied in depth and the conclusion was reached that inspectors are better qualified, due to their position as so-called "*street level regulators*", to bring together employers and employees to establish better working conditions, combined with productivity increases, in the process of enforcing legal provisions. According to the study, labour inspectors have the capacity to look beyond unclear legal formulations (for example, differences between antiquated technical standards and modern business practices) and to provide technical or legal solutions adapted to present reality (in general, with regard to new ways of contracting and safer production processes). These solutions provide companies with incentives to improve working conditions in order to remain within the law.

Labour administration: Inspection as a central element of supervisory enforcement of the law

Labour inspections in Latin America are a fundamental part of the state administrative system and each country has a ministry of labour (with organically and functionally dependent territorial divisions). Some countries have a federal or decentralized administrative structure, with states, regions, provinces and so on. Whatever the national structure is, however, in practice the general directorates of labour inspections are located in capital cities and 70 per cent of their activities involve regional inspection functions and only a very low percentage independent activities (sometimes limited to activities of the General Director and a few assistant directors or coordinators), despite the fact that they are parties to coordination agreements (as specified in the Labour Administration Convention, 1978, No. 150).

³⁹ For more information, see Piores and Schrank (2008).

General Directorates: Coordination, consultation and instructions

Some countries have shared power structures – federal, provincial or state – in which case, the power of inspectors at the central level is limited to the subjects and types of company under federal jurisdiction (for example, Argentina⁴⁰ and Mexico⁴¹). In Argentina, although the Ministry of Labour and Social Security represents the highest authority in the integrated inspection system, the central labour inspection must ensure compliance with Conventions and coordinate actions with the provinces and the Independent City of Buenos Aires, within the framework of enforcing the law.

In most countries (for example, Brazil,⁴² Chile, Paraguay and Uruguay), the central authority may endow inspectors with full powers anywhere within the territory through appropriate administrative acts (Jatobá, 2002: 15–16). In Costa Rica, the National Directorate of Inspection is the only decentralized inspection of the MTSS,⁴³ and is divided into six regional and 30 cantonal inspections. However, regardless of the progress made, in view of the fact that the MTSS has not yet decentralized other functions in the corresponding provincial directorates, the decentralized inspection units have to carry out the activities of other departments (Godinez, 2008), which hinders them from attending to their core functions.

In Peru, directives issued in 2007 by the Ministry of Labour and the Promotion of Employment laid down rules on administrative competency (particularly with regard to sanction procedures) which define the competent authority and the competent inspection as a function of *the location of the establishment in question* and the *authority bestowed by the inspection order*. The idea is, in some cases, to provide a certain “extra-territorial” flexibility in the provinces.

In Mexico, the Federal Government has entered into coordination agreements on labour inspection with each federal state in order to harmonize inspection procedures and strategies on safety, hygiene, training and child labour, as well as to obtain information on the collection of fines in cases of non-compliance (Jatobá, 2002: 15).

The visit

In keeping with Conventions No. 81 and No. 129, legislation in the region gives inspectors supervisory functions, granting them power to manage cases ex officio or on the basis of individual allegations or claims. In general, inspections based more on programmes of regular inspections (Brazil, Costa Rica and Chile⁴⁴) organize most of their interventions in terms of visits targeted on sectors or companies.

In the Dominican Republic, the regional directorates of labour inspection, which form the basis of the national system, are specialized on an individual basis, according to the needs of the region and, to a degree, the needs of the sector (for example, sugar cane

⁴⁰ In Argentina, the Executive has authority over the system’s central authority and regular inspection functions are managed from the capital.

⁴¹ Article 527, Federal Labour Law.

⁴² Although Brazil is a federal republic and the labour inspection is part of the federal government, it has no competence in the federal states, with the exception of Sao Paulo, which has a parallel body of officials who specialize in safety at work.

⁴³ Since the bylaws on labour inspection services were enacted in February 2003, the inspection service has been regionalized and decentralized.

⁴⁴ Interestingly, in Latin America a higher proportion of inspections (two-thirds) are ex officio than in other regions, often initiated by accusations (between 2003 and 2006, according to Godinez, 2008).

harvesting areas and *maquila* zones). In this context, there are two types of inspection intervention in the country: special inspections (arising from accusations) and regular inspections, planned by the Ministry on the basis of each sector or sub-region's characteristic problems and needs under the responsibility of the inspector during specific periods (seasonal illegal immigration during the sugarcane harvest, for example).

In El Salvador, the law specifies that an inspection may be initiated at the request of one of the parties (with regard to technical inspections, even at the request of the company: in fact, "*maquilas*" – or "sweatshops" – often request a special inspection visit before receiving external auditors with a view to obtaining certification or satisfying codes of conduct), which may be scheduled on the basis of general criteria (Article 41 of the LOF). Both types of intervention start with a visit to the company. Whatever the outcome of the visit, the event is registered and a record is made of the inspection (specifying whether the visit was special or regular), laying down a fixed term within which the detected violation should be corrected (15 or 30 days, depending upon the type of violation). This classification of special and regular visits (or those initiated at the request of one of the parties) is widespread throughout Central America.

In Mexico, in order to narrow the margin of discretion in visits, a random-selection computer program has been developed for inspectors (although it is not used in relation to particular kinds of case, such as proceedings concerning workers' participation in company profits, investigation of accidents at work and equipment subjected to pressure, vapour generators or boilers, to mention only a few). This system is also used to choose workplaces for inspection, on a rotation basis. The internal control bodies (Internal Comptroller's Office of the Ministry of Labour and Social Security) and, ultimately, the labour authorities, have the final say.

Some countries have specific procedures for intervention on the basis of regular programmes of inspection and this trend is spreading in the region. In addition, the Procedural Handbook of the Inspector General of Costa Rica (Ministerial Order No. 1677 of 1 March 2001) and Article 24 of the Labour Inspection Organization and Services Regulation (Decree No. 28578 of the MTSS of 3 February 2000) specifies that inspectors shall collaborate with their superiors or coordinators in the formulation, execution and evaluation of annual plans. However, actions scheduled in accordance with the 2000–2005 Plan to Transform the National Directorate of Inspections have revealed that many *ex officio* inspections are carried out without adequate planning and on the basis of accessibility to the workplace in question, usually in an urban location (Godinez, 2008: 7). In effect, deficiencies in terms of transportation, human resources and equipment mean that sectoral planning focused on specific labour vulnerabilities has been substituted by goals-based planning dependent, to some extent, on the ease with which the inspection can accomplish its tasks, thereby jeopardizing its very purpose.

Nicaragua has prepared a technical guidebook for inspections by type, which is used during visits, while in 2001, in Chile, the Directorate of Labour published a long and exhaustive systematization of oversight procedure and its legal ramifications. Guatemala has published a technical guidebook – or procedural handbook – on the principles, rules and regulatory procedures of each type of non-compliance. In general, these documents reflect the need to conduct visits, as well as covering the remaining, legal and procedural, aspects of inspection.

Mexico's Federal Development Plan provides operational inspection guidelines, a labour inspection manual and a working conditions inspection manual, containing practical examples. Furthermore, the Plan establishes a system of voluntary commitments (to foster a culture of compliance) and lays down the specifications of a self-management programme on occupational health and safety at work (see below).

In Brazil, the 1988 Constitution introduced a new social watchdog and civil society engagement process, and the text expressly mentions labour inspections and federal competencies. Its main purpose was to “produce information on the situation of labour protection in each economic sector in the country”. The idea was to create an inspection planning system, with academic backing. Previous cadastre information was used as input, based on the company registry, the inspection registry and the company violations registry.

However, the system did not bear fruit because it was particularly difficult to obtain sufficient cadastre data, quite apart from the inadequacy or inaccuracy of the relevant information. Another critical point is the restricted computer database and poor capacity of the institution responsible for acquiring and operating state-of-the-art technology to produce more information speedily. Nevertheless, the experience helped in amending the inspection system by introducing elements recognized as important inputs for planning and management. In 1995, a system was implemented to generate historical series of labour inspection data broken down by economic activity, number of workers, municipality and postal code, thereby simplifying overall planning with regard to the companies to be inspected.

Since 2005, a new regional and central planning system has been in the process of implementation, in three phases, involving (i) labour market diagnosis, (ii) an action timetable to deal with irregular situations and (iii) the monitoring of actions undertaken. Furthermore, according to plans for 2004–2007, a labour protection network programme was created in Brazil which, by taking action in specific sectors, seeks to combat and regularize informal labour. In total, the situations of more than 2,929,590 workers were reviewed, of which an extremely high number were registered and employers started to pay the appropriate contributions to the Wage Guarantee Fund (FGS in Spanish) and for social security. The labour inspection has also conducted campaigns on the labour market insertion of people with disabilities and with regard to contributions to the FGS in general.⁴⁵

Given the particular importance of combating child labour in the region, over the past few years a growing number of sections or units have been established – in parallel with the implementation of the IPEC/ILO programme – related to child labour and broadly covered by labour inspections (in Ecuador, Nicaragua and El Salvador, for instance), and subsequently for forced labour.

These special units need networks of several government entities, supported by social actors, and focus on specific priority subjects, based on an integrated vision in coordination with other child protection agencies.⁴⁶ In brief, these proposals are based on multi-disciplinary teams and usually not on disaggregated and independent inspections, although in some countries the latter idea has been considered.

Current experiences in the region are varied. For example, some proposals combine labour inspection with the work of other ministries, such as Education. This is the case in the Dominican Republic, which instigated a project to identify the worst forms of child labour, in particular during the rice and coffee harvests, while also working with the Ministry of Education in awareness-raising campaigns. At the same time, programmes were designed by the INFOTEP professional training institute (for example, on young people and employment) focused on the informal sector, with a view to educating and training young people between 16 and 29 years of age who are too old to go back to school

⁴⁵ Relatorio de Gestão 2003–2007. Secretaria da inspeção do trabalho.

⁴⁶ There are several publications on this topic, including: ILO/IPEC: “South America: Guide for the implementation of a child labour inspection and monitoring system in MERCOSUR countries and Chile”, working document 169; ILO/IPEC: “Contributing to the prevention and eradication of child labour and the protection of adolescent workers through labour inspections.” (Author’s translation.)

but who had an inadequate education. Within the framework of the programme, they were given a daily allowance and participated in a five-month course, followed by an internship with local employers. In total, the programme trained an estimated 20,000 adolescents as automobile repair workers, plumbers, electricians and so on.

Some Central American countries have developed similar programmes. In El Salvador, the Labour Unit created in the Ministry of Labour and Social Security carries out interesting work through the labour inspection and not only deals with accusations of hazardous work (particularly with regard to sugar cane harvesting and the agriculture and livestock sector), but also trains inspectors and facilitates support programmes for adolescents and their families.

In this context, the Mobile Groups of the Secretariat for Labour Inspection in Brazil are particularly interested in organizing groups to cope with specific child labour and forced labour problems. The Special Mobile Inspection Group, established in 1995 under the coordination of the Secretariat of Labour Inspection, was provided with the means to conduct more expeditious inspections, taking into consideration the need for a “centralized command to diagnose and measure the problem; maintain the standard of procedures and direct supervision of the cases inspected; ensure absolute discretion in handling denunciations; and free local supervision from pressure and threats”.⁴⁷ The coordinators in charge of setting up local teams make an effort to maintain efficiency, while bringing on board people with the right kind of skills for such a high risk activity. Prosecutors and the police may also participate. The results so far are impressive: in 2006, 109 forced labour actions were conducted, releasing 3,417 workers, and in 2007, there were 114 actions, releasing 5,963 workers.

In 2003, in Chile, a new line of action was created, called the sectoral inspection intervention, with the power to intervene in specific sectors and coordinate with the central level through the ex officio Scheduled Inspection Unit, whose purpose is to enforce labour legislation through a combination of dialogue, advice and compliance.

Other essential actions have also been conducted in collaboration with other institutions. In Chile, the National Service for Women and the Labour Directorate of Antofagasta recently initiated a collaboration project and adopted a joint agenda in order to improve, supervise and safeguard activities for women through effective and coordinated supervisory intervention, particularly in cases of accusations of sexual harassment. Furthermore, according to the project, a follow-up programme on sexual harassment accusations will be set up, to be run by either the Labour Inspection or SERNAM. An oversight programme concerning the working conditions of women night workers will also be implemented and communication strategies will be designed to publicize the rights of female domestic servants in order to strengthen and formalize their contractual relationships.⁴⁸

Many countries in the region have specific national or regional programmes and inspection campaigns. In Argentina, Paraguay and Uruguay, for example, actions and interventions with regard to clandestine, illegal and undocumented foreign labour have been carried out, organized at national level.

In Argentina, the regularization of clandestine workers is the main subject of the campaign. Since the National Labour Regularization Plan was launched in 2003, an estimated 24 per cent of the workers concerned have been visited. In this case, the inspection combines information recorded during the visit with databases which provide information on employers’ affidavits concerning contributions and payments, detailing the

⁴⁷ Brazil, MTE, SEFIT: Management Report of the Secretariat for Labour Inspection, 1997.

⁴⁸ Ministry of Labour and Employment website: <http://www.dt.gob.cl/1601/article-90661.html>

number of workers registered, and the inspector may demand access to the registry (at this level, the inspection has only an advisory capacity).

Costa Rica has designed special campaigns for women workers and adolescents, with the participation of inspection directorates, in order to ensure that dismissals of pregnant women or adolescents are not discriminatory. These special cases – including supervision and follow-up in cases of infringement of the right of freedom of association and a sanction procedure with the possibility of imposing a fine – in 2005 represented 718 interventions, making up more than 90 per cent of all inspection interventions.

Guatemala organized a small group of hand-picked inspectors responsible for textile *maquilas* to conduct a programme of interventions planned by the Ministry in the different regional departments (Piore and Schrank, 2008: 18). El Salvador practices so-called comprehensive inspections to ensure the enforcement of the social security and pension schemes, thereby combining the tasks of the various inspection bodies.

With regard to Peru, a series of directives were issued on procedures and guidelines for adequate inspections and supervisory services. These include a pre-established supervision list which defines the subject-specific right to protection and the basic elements of proof. The follow-up to each directive (basically focused on subjects such as trade unionism and outsourcing) provides for the annual supervision of its enforcement, describing the sectors involved, the level of non-compliance and other characteristics.

Information and dissemination

In accordance with the need for education and information mentioned in the labour inspection Conventions, some countries have also started to post information about their activities and functions on their websites, in addition to disseminating information through telephone hotlines and so on. This trend is also evident in Argentina, Brazil, Canada, Chile, Colombia, Mexico, Peru and Uruguay, which publish information on the variety of services offered, legal provisions and administrative jurisprudence. There are also various regular public information systems.⁴⁹ With the support of the technical cooperation linked to free trade agreements, Central American countries have also set up websites providing information on labour inspection.

Costa Rica also offers a broad range of information services with regard to labour law provisions. According to Organic Law 1860 of the Ministry of Labour and Social Security, the provision of public information and the publicizing of labour obligations conducted by the Ministry in coordination with its departments, sections and offices is an entirely decentralized affair, based on specific competencies (Jatobá, 2002: 17). The Ministry of Labour's Research Department, linked to the labour inspection, has conducted a survey of the quality of labour relations, among other documents of interest which are broadly recognized and appreciated, as well as providing a public advisory service (800 telephone lines). After the enactment of the labour inspection's enabling clauses, a national advisory board was organized, with six regional tripartite boards to keep the social partners informed and to involve them in planning and assessment. However, this is still pending.

Argentina's Ley de ordenación of 2004 established the need to set up an inspection registry with corresponding fines and sanctions, as well as the duty to report to workers' and employers' organizations on its activities and outcomes. The text also mentions that company representatives must accompany inspectors during visits and their right to be

⁴⁹ Argentina: www.trabajo.gov.ar; Brazil: www.mtb.gov.br; Canada: www.hrdc-drhc.gc.ca; Chile: www.mintrab.gob.cl; Colombia: www.sinpro.gov.co/mintrabajo/; United States: www.dol.gov; Mexico: www.stps.gob.mx Peru: www.mtps.gob.pe; Uruguay: www.mtss.gub.uy.

informed of the results. Similar rules on the participation of company representatives during inspection visits have been adopted by a number of countries.

Mexico's programme of voluntary commitments (electronic labour declarations) has a number of general objectives which aim at disseminating labour law provisions through a virtual library which provides services to users and inculcates trust in the labour authorities. Moreover, this is supplemented by a self-managed health and safety programme which provides advice through the joint participation of workers and employers, with the purpose of developing a better labour environment.

As a supplement to the inspection for the purpose of prevention and advice-giving, the General Directorate of Labour in Chile has posted nine self-confirmation lists (www.dt.gob.cl/documentation/1612), used on an individual and indicative basis and including the labour and social security laws, company rules and regulations and sectoral information.

Human resources

Several countries have an institutionalized inspection body (or full-time staff). However, many countries also experience a high rate of employment flight to the private sector among inspectors, mainly due to low wages.

This is a familiar phenomenon. For example, in Bolivia, labour inspectors' conditions of work do not guarantee them stability of employment or the independence stipulated in Convention No. 81. In order to provide for their families, they have to take on second jobs (ILO, 2006: paragraph 211).

Administrative careers are not available in abundance. Chile, Brazil,⁵⁰ Uruguay, Argentina, Nicaragua (Civil Service Act of 2003) and the Dominican Republic⁵¹ (Administrative Careers Act of 1999) offer properly trained inspectors a career in the administration and they are appointed on merit, based on strict selection criteria, and granted the status of civil servants.

Other countries, such as Costa Rica, offer similar career prospects based on restrictive selection criteria,⁵² better salaries (a supplementary salary based on performance has been established) and incentives and continuing training.

Regardless of the provisions of the respective laws on civil servants, the different countries select labour inspectors on a competitive basis (merit or technical), with broad scope and requirements. Nevertheless, initial recruitment practices have been questioned in many countries, with critics talking of political appointments.

In general, there is no wage scale or real incentives for inspectors and this often discourages them, prompting them to resign or to neglect their duties.

The number of full-time inspectors in the region is extremely low (Piore and Schrank, 2008: 22), ranging from 0.57 inspectors per 100,000 workers in Ecuador to 19.3 in Chile,

⁵⁰ A structure for a career in labour inspection was created in 1944.

⁵¹ The consolidation of the Dominican Republic's system is important. From only 77 non-professional, non-qualified inspectors in 1991, by 2000 the total had risen to 203, 55 per cent of whom had a law degree and a third had been selected on a competitive basis.

⁵² Decree No. 29477-MTSS of 18 April 2001 amends the By-laws of the Labour Inspection Organization and Services, establishing as a requirement for labour inspectors a degree in law, social science, labour administration or related field which meets the requirements of the post.

in 2005,⁵³ and in 2007, between one and three inspectors per 100,000 workers in Colombia,⁵⁴ Peru,⁵⁵ Mexico,⁵⁶ El Salvador,⁵⁷ Brazil⁵⁸ and Paraguay and an estimated three to six in Argentina, Honduras,⁵⁹ Costa Rica,⁶⁰ the Dominican Republic,⁶¹ Panama,⁶² and Uruguay.⁶³ Guatemala had 245 inspectors⁶⁴ (around 8 per 100,000 workers) in 2007, and Nicaragua had 86 inspectors, 24 of whom are in Managua.

Guatemala, as already mentioned, has a law that encompasses, under the term “labour dispute settlement”, inspectors and visitors (inspectors within the meaning of Convention No. 81), as well as allocating to some inspectors the functions of serving notice in person, estimating social security payments and/or adjudication. According to MTPS data, the number of visiting inspectors in Guatemala City was 25 in 2008.

On the other hand, the geographical distribution is very uneven and most of the inspectors are in capital cities. For example, in Uruguay, according to Labour Ministry data, in 2005, 85 inspectors were stationed in Montevideo out of a total of 109.

Statistics are scarce on the participation of women in inspections (although the Treaty of Versailles insisted on their presence). According to the annual report of the Government of Cuba with regard to Convention No. 81 (2007), women inspectors comprise an estimated 33 per cent of the total number of inspectors. El Salvador recorded 59 women inspectors out of a total of 113 in 2007 (MTPS data).

In recent years, inspections have improved markedly, both qualitatively and quantitatively. Efforts in Chile, Guatemala and the Dominican Republic to increase the number of labour inspectors were emulated by Argentina (although, according to Labour Ministry data, the number of inspectors has fallen in the past eight years⁶⁵), Costa Rica, Honduras and Uruguay, while El Salvador and Peru have recently increased the number of labour inspectors (Piore and Schrank, 2008: 3).

⁵³ From the author’s perspective, this type of percentage is not very indicative since the number of workers used to estimate ratios is not subject to verification.

⁵⁴ According to the MTPS, there were a total of 289 inspectors in 2007, although some have other, “temporary” functions. There is, therefore, one inspector for every 61,000 workers.

⁵⁵ In Peru, the number fell to 203 in 2005 from 234 in 2004 (source: Ministry of Labour). In 2007, they increased to 340 in comparison to 235 in 2006.

⁵⁶ A total of 616, including federal and national inspectors, at a rate of 1.58 inspectors for every 100,000 workers.

⁵⁷ The MTPS data give 126 inspectors (74 men and 52 women) and 50 health and safety technicians.

⁵⁸ According to the Secretariat of Labour Inspection, in 2007 there were 3,178 active inspectors, with an average annual growth of around 100 since 2005. This will eventually restore the 1999 level, numbers having deteriorated during the course of the first five-year plan, starting in 2000.

⁵⁹ According to Ministry of Labour data, in 2008 there were 114 inspectors: 81 general inspectors and 33 health and safety inspectors.

⁶⁰ According to the Ministry, the number of inspectors fell by 10 per cent from 2000 to 2005. According to the CEACR in its comment on Convention No. 81 in 2007, the number of inspectors had fallen to 94 by the beginning of 2004, down from 105 in 1997. By 2005, the MTSS estimated a total of 90 inspectors.

⁶¹ A total of 178 inspectors, according to Ministry of Labour data for 2007.

⁶² A total of 70 in the country as a whole and 21 in Panama city (source: Ministry of Labour).

⁶³ A total of 142 inspectors distributed in three regional labour teams (Montevideo, the provinces and the ports) (CEACR data, 2008, individual observation on Convention No. 81).

⁶⁴ MTPS data. In 2003, there were 236, an estimated 257 in 2006 and 239 in 2007.

⁶⁵ According to the CEACR comments on Convention No. 81, in 2002 Argentina had 52 health and safety inspectors and 470 inspectors of general working conditions, while the same source for 2008 mentions that there were 300 inspectors, “distributed throughout the territory to supervise compliance with the legislation on working conditions”.

In the past few years, Mexico has contracted 100 new inspectors, distributed throughout the country, on the basis of such criteria as number of companies, federal entities and companies with identified risks, which have been assessed by the Mexican Institute of Social Security.

In 2001, in the course of a rationalization, efficiency and modernization process, Chile's General Directorate of Labour decided that inspection procedures needed to be streamlined, revising previous guidelines and procedures and developing a new inspection service order, covering the different stages of labour inspection and focusing on the most vulnerable, due to the possible risk of violation, as well as giving the labour inspection a more modern and operationally effective profile.

Once again in Chile, and aside from a greater number of inspectors, training systems have been set up for officials, linked to objective-based salary incentives. Computer support has been strongly developed.

Brazil has established a target-oriented productivity bonus. The system is based on assessment of an inspector's individual performance, on the one hand, and on the collective performance of the department, on the other, within a particular period.

Costa Rica has a performance evaluation system, with scores based on size of company and sector of visit. Perhaps unsurprisingly, often more visits are conducted in higher scoring sectors, which are not necessarily those most in need of a visit for the purpose of effective inspection. In 2004, the Ombudsman received a complaint filed by the professional association of labour inspectors concerning the poor quality of working conditions: for example, officials had no stationary or office supplies and were therefore unable to perform their duties properly. In addition, there is a lack of vehicles (a reality throughout the region) and no means to repair and maintain those they do have. According to the MTSS, the lack of transportation means that 35 per cent of inspectors' working time is devoted to travel (Godinez, 2008: 12).

The region has, to date, done little to develop initial and continuous training or specific programmes. Child labour programmes are the most important and generally of recent origin, and have been fostered and financed within the framework of international technical cooperation. Some efforts have been made to systematize training.

Potential problems related to professional integrity and corruption are a recurrent theme in the observations of ILO supervisory bodies. However, many countries have general codes of ethics and some have specific legal provisions for labour inspections. The practical enforcement and supervision of these provisions remains poorly developed, although there have been some interesting initiatives.

A number of CEACR comments point out that some countries in the region – such as Argentina and Brazil – use some of the funds collected from fines as wage incentives, which has tended to shift inspections towards larger companies, thereby calling into question the independence of the labour inspection (Campos and Galin, 2005). Both countries have reviewed these practices.

In Chile, the inspection service has an internal comptroller to ensure the integrity of officials and in Mexico, as already mentioned, there is a system for selecting labour inspection targets at random.

These are only the first experiences. However, the subject is of vital importance and demands more effective action.

Attributes and authorities

The power of labour inspectors to enter companies unhindered, review documents or carry out any necessary tests or examinations, as specified by Conventions No. 81 and No. 129, are enshrined in the legislation of most countries in the region, even though the relevant state may not have ratified these Conventions. For example, in Costa Rica, Article 24 of the Labour Inspection Organization and Services Regulation (Decree No. 28578-MTSS of 21 March 2000) provides for the following:

Visiting workplaces, regardless of their nature, either during the day or at night, as required, to verify compliance with standards related to wages, working conditions and social security. In particular, inspectors shall ensure the enforcement of legal and regulatory provisions on occupational health and risk prevention in the workplace.

In several countries, inspectors may interrupt or shut down operations, if the lives of individuals are under threat (Argentina and Chile).

However, in other countries, these powers seem to be restricted. In El Salvador, for instance, health and safety inspectors do not have the power to interrupt work and/or production processes and must report any imminent danger to the labour inspection, the only body which has the power to impose sanctions. Labour inspectors must be called upon to intervene and this takes time, creating delays and, perhaps, leading to unfortunate consequences.

Labour provisions also provide for intervention by the police or other public officials to assist inspectors, whenever necessary, and also to regulate, to a greater or lesser degree, the possibility of officially summoning individuals before the labour agencies (primarily to submit documents). However, in many countries, summonses are rarely issued, since the law on this matter explicitly mentions mandatory re-inspection.

The visit – usually notified to workers and employers as specified by order of the authority that issued the service order – is recorded in a report, a copy of which is provided to those affected, containing requirements, warnings, prohibitions and other forms of intervention. A protocol detailing the infraction is usually prepared and handed over during a second visit, after it has been confirmed that no corrective measures have been taken.

In practically every country in the region, as already mentioned, the law refers to *in situ* re-inspection as a follow-up to the initial visit (in some cases, sanctions are not imposed during the first visit, regardless of the type of violation). Re-inspections account for a very high – 50 per cent – proportion of total interventions.

In Mexico, similar to re-inspections, Articles 13 and 14 of the Inspections Regulation provide for regular inspections (initial and confirmatory inspections – related to health and safety conditions – at 12-month intervals) and special inspections or inspections ordered by the labour authority in case of violation or abuse. Furthermore, inspectors conducting regular inspections must deliver the summons at the workplace at least 24 hours before the visit, including the relevant data on the employer, the inspection, the list of documents to be presented, aspects to be reviewed and the relevant legal provisions. In addition to a written order, the inspector must, at the beginning of the visit, provide the employer or their representative, who is present during the visit, with a guide describing their main rights and obligations. The purpose of this is to provide legal certainty and to ensure greater transparency with regard to the inspection.

Colombia launched an interesting documentary scheme in 2007 in the form of the Unified District Inspection System, a pilot plan for the supervision and control of companies in five different municipalities. It involves a single procedure for company incorporation, using a single form and a single, comprehensive inspection visit to

determine possible risks and address all the legal requirements of the business. The visits are structured in accordance with a risk matrix designed by the competent commercial authority and monitored – to date – by means of performance indicators. The system is highly integrated and based on a service-centred approach, involving sophisticated information management and a culture of self-inspection.

Practically all the countries in the region require minutes or records to be taken at enterprises which obstruct the work of inspectors (although this is not typical) and in some countries, such as Peru, the law – the General Regulation of Inspection – enables inspectors to request a court ruling to enter a workplace accompanied by the police, if necessary. Furthermore, infractions that obstruct the task of inspection are detailed in the record of the violation.

The number of annual inspections and their purposes may also vary, according to country. For example, Colombia increased the number of inspections (from 6,692 in 2000 to 10,811 in 2003).⁶⁶ However, a considerable number of inspections were dedicated to labour dispute settlements (in 2000, an estimated 64,985 labour dispute settlements, but only 6,692 visits were registered). In many cases, as already mentioned, this almost exclusive focus ran counter to the spirit of Convention No. 81. Guatemala has a steady number of inspections, averaging around 5,000 (5,149 in 2007) in the metropolitan area (since the data are not centralized, the number of regional inspections is unknown), the highest percentage of them being initiated following an allegation (3,163 in 2007).⁶⁷

In Costa Rica, the number of visits fell when the number of inspectors was reduced (see above): while in 2000 and 2001, there were 13,000 visits, in 2002 and 2003, there were 12,000.⁶⁸ In 2004, an estimated 7,872 visits were conducted, of which 2,386 were initiated on the basis of an allegation. In Mexico, between January 2001 and December 2006, an estimated 14,140 visits were made to workplaces. The total number of visits for the same period was 177,975, of which 23,976 were conducted in 2006. In Argentina, particularly after the National Labour Regularization Plan was launched (September 2003), the number of visits increased and by March a total of 18,820 companies had been inspected.

In 2003, according to the El Salvador Ministry of Labour, an estimated 20,000 visits were conducted, while in Guatemala, 4,601 visits were made on the basis of allegations in 2003 and 2,098 in 2004: each allegation led to at least two inspection visits. The figure for 2008 (up to August) was 5,342 visits. In Peru, visits between August 2005 and July 2006 totalled 79,999, increasing between August 2006 and July 2007 to 94,280 (as a result of increasing the number of inspectors by more than 100 and providing a larger budget). However, according to some analysts,⁶⁹ most of the visits involved sanctions, not guidance, and very few visits were carried out in rural areas and in micro-businesses.

In Nicaragua, an estimated 6,308 inspections were carried out between 2002 and 2006. This represents an increase of more than 230 per cent in comparison to 2002 (an estimated 2,186⁷⁰ inspections were conducted in 2006), due, in all likelihood, to the consequences of structural change in the country since 1997.

⁶⁶ Based on individual observation on Convention No. 81 in 2002 and 2005.

⁶⁷ MTPS General Labour Inspection Data.

⁶⁸ According to individual observation on Convention No. 81 of 2007.

⁶⁹ Miranda and Amado, Labour Newsletter, second half of August 2007.

⁷⁰ Statistical Yearbook of the Ministry of Labour.

In Chile, supervision coverage increased considerably in 2006 in comparison to 2005:⁷¹ there were an estimated 131,891 visits, involving 3,558,243 workers in comparison to 114,937 inspections in 2005 and 94,981 in 2004. Of the visits conducted in 2006, more than 20 per cent were *ex officio*, within the framework of sectoral inspection programmes. (The average duration of inspection procedures is 60 days.)

Sanction procedures

In general, administrative procedures are applied in the region for the purpose of imposing fines and following up labour law violations. Some countries – for example, Guatemala – require resort to the courts for the imposition of fines, although the latter are usually set by the administrative authority. Moreover, once administrative procedures have been exhausted, labour inspection cases may be brought before a court via an action under administrative or civil law.

The typical sanction imposed as a consequence of an inspection is a fine (frequently involving very small amounts and not based on a fixed scale), although legislation in almost every country in the region provides for the possibility of immediate interruption of work, shutting down the company or establishment or, in some cases (Chile, for example, Article 183 of the Labour Code), removal from the Company Register. In many cases (Honduras and El Salvador, for example), the sanction proposed must be approved by the legal department or office of the Ministry of Labour, which may also make suggestions to the inspection authority in charge of imposing the fine, describing the legal provision violated, its classification and the corresponding fine.

Countries in which specific inspections are conducted independently by the Ministry of Social Security apply special administrative procedures which, aside from sanctions, also involve the enrolment, *ex officio*, of workers in the social insurance scheme.

In Colombia, labour inspectors exercise quasi-judicial functions (Molina, 2008), at least with regard to the dismissal of pregnant women (Article 240 of the Labour Act demands an inspector's authorization) and of workers with disabilities (additional ruling of the Constitutional Tribunal).

Although procedures vary in each country with regard to following up and documenting violations, in practice they are fairly homogeneous. For example, in Uruguay, the inspector makes a written record of the case and, if necessary, a statement notifying the employer of the documents to be presented or that they should correct the violation, generally within three working days, during which period answers to charges may be submitted. If the notification is not complied with and no answers have been forthcoming, inspectors issue their ruling and a sanction is imposed. If documents or answers related to the complaint are presented to the inspector in charge and, subsequently, to the Legal Department, they may rule on the case and this decision must be signed by the Inspector General of Labour. The ruling may be challenged by appeal or superior remedy (reinstatement) within ten days.

In El Salvador, regional heads impose fines and in San Salvador departmental directors (industry, agriculture and livestock). The Labour Inspection for Trade and Industry has a special unit in charge of exacting fines, which also does so on behalf of other inspection units, such as those dealing with gender issues and occupational safety and health, as well as fines imposed on the grounds of non-appearance in the case of a summons before the Labour Director in the labour dispute settlement procedure. At the

⁷¹ Data from the General Directorate of Labour website: <http://www.dt.gob.cl/1601/printer-94681.html>.

same time, territorial or departmental offices in the region have legal advisors who assist in the documentary handling of fines and summons hearings. The officials in charge of collecting fines (central or regional) summon the parties to give testimony (constitutional right to defence) prior to imposing the fine, thereby giving the employer a second chance to comply.

All in all, the structure of the sanction process in terms of inspection, re-inspection and hearing means that employers have three chances to correct violations without being sanctioned. It takes an average of two months before a sanction is imposed in the regions and six months in the capital with regard to special inspections and four months in the regions and up to two months in the capital in the case of regular inspections. The fines imposed may be challenged on the basis of an administrative remedy (appeal) or administrative legal proceedings. Once the resolution to impose the fine passes from the Ministry of Labour to the Ministry of Economy for its collection and follow-up, the Prosecutor takes charge of the case through executive proceedings.⁷²

In Costa Rica, after the regional administration confirms that a violation has been committed, it files the claim under labour and social security law. The results of the inspection are reviewed by the inspector's superior, who, together with legal advisors, prepares a draft complaint and submits it to the labour courts (this takes an estimated 124 days, in total).

In Nicaragua, the new inspection regulation of 1997 granted inspection reports evidential status and defined the amounts of fines to be exacted, although inspectors may, at their discretion, determine the amount of the fine to be paid in accordance with the type of violation committed. Within 24 hours of notification, the inspection report may be challenged, thereby postponing the deadline for correcting the violation. Furthermore, the civil courts may issue a final ruling on an appeal (within three years, at the latest) (Ortega Castillo, 2008).

In Peru, the new inspection regulation specifies an extremely short term within which an appeal may be filed (two days, if it involves a provisional measure), with a resolution as soon as possible (three days in comparison to a usual 30 days). According to the new regulation, the sanction procedure shall go forward regardless of whether the worker in question has also brought a case before a competent court.

In Brazil, a plan to verify procedures was launched in 2003 in order to follow up and improve the collection of fines. This verification process reduced the number of remedies filed. Furthermore, the resolution period for remedies fell from 400 days in 2005 to 90 in 2007.

The fines stipulated by law in Peru are very low. With the exception of certain expressly regulated fines (as a result of the 1994 reform), they usually do not exceed 57 US dollars per violation, which is not much of a deterrent. This lack of deterrence is characteristic of the region, especially with regard to medium-sized and large companies. The Dominican Republic has established a graduated system under which the most serious violations are more heavily fined, such as those concerning child labour or a serious health and safety violation. But the highest fine possible is 1,593 US dollars, which has little impact on a *maquila*.

In Chile, a legal remedy is available for the revocation of fines and a special procedure known as the protection remedy may be filed before the Court of Appeal in

⁷² According to data from the Ministry of Labour, 30 per cent of fines are appealed through administrative proceedings.

cases of violation of constitutional rights. The fines are classified as minor fines, serious fines and especially serious fines, according to the number of workers affected.

In Argentina, Law 25.212, enacted after the Federal Pact of 1999, established a new scheme of infractions and fines, which defines violations more strictly, laying down a uniform system of labour sanctions as the basis of the fine, with minimum and maximum amounts adjustable at the discretion of the administrative authority (Article 5). Furthermore, in the case of non-payment of a fine, criminal charges may be brought.

In case of an infraction by a corporation, Argentinean law imposes the fine on the managers and other responsible individuals who are directly involved in the infraction, joint and severally. The authorities must also keep a record of persons sanctioned. Fines collected must be used to improve administrative services, the practice of allocating 10 per cent of fines to labour inspections to distribute among inspectors as incentives having been eliminated, as requested by the CEACR in order to guarantee effective independence.

In Mexico, the inspection system and the imposition of fines were streamlined in 1998 by the introduction of simpler procedures and restrictions on the imposition of sanctions by federal and local authorities. In the new text, preference was given to advisory services.

Advisory services form the basis of a number of new experiments. In Chile, with the emphasis on prevention and advisory services, there is also a special programme for small and medium-sized companies which violate labour laws, the “Programme to Substitute Fines by Training”, which enables them to avoid sanctions through enrolment in an ad hoc training programme. In Guatemala and the Dominican Republic, in the event of an infraction, employers with limited resources can be directed to participate in human resource development programmes (in INTECAP and INFOTEP, respectively), subsidized by the state, which involve specific training.

In Brazil, there is an interesting experiment involving the provision of a new instrument – the “Committee of Understanding” (*Mesa de entendimiento*) – to the labour inspection, within the framework of the Ministry of Labour’s Transformation Programme, for negotiations with individual companies. This is a special supervisory negotiation tool for the “regularization of the situation of companies which infringe labour law”. It must be emphasized that the decision to start negotiations, in this case, is taken by the inspector. Furthermore, the relevant trade union shall be present. Finally, if negotiations fail, the inspector must apply the sanctions laid down in the law. In this instance, the inspection services promote negotiations between the parties and an independent agreement. In large measure, the inspectors participate as intermediaries and try to provide support and legitimacy with regard to agreements and guidance on legal matters.

Guatemala has an inspection system unique for the region in that the law does not provide for a sanction process. Although the 2001 reform gave inspectors the power to impose administrative sanctions, an appeal brought before the Constitutional Tribunal in 2004 withdrew this option and left them only with the power to sanction. In effect, in cases of non-compliance, labour inspectors draw up a report, which they submit to the judicial instance charged with imposing the corresponding sanction. Inspection interventions now focus on imposing fines and no longer stress the need to correct detected infractions, by either administrative or legal means.

As a result, in Guatemala City the average duration of legal processes (and, therefore, the imposition of a fine) is one year for the first instance and six months for the second. However, the longest cases may take up to four years. Due to the formal requirements for processing documents and the small number of Legal Department staff assigned to the labour inspection – not to mention the fact that labour inspectors, on top of their workplace

visits, must also draft the inspection report – it takes an estimated six months for the labour inspectorate to file a case before the Labour Courts.⁷³

With regard to special procedures, mention must be made of allegations in relation to freedom of association in Uruguay. The process begins with the specific allegation, of which the company and also the workers are notified. Thereafter, proof is submitted through declarations or documents, after which a resolution is adopted. If a decision is reached stating that freedom of association was violated (for example, workers were dismissed), a fine is imposed; there are no legal provisions on reinstatement. This resolution may be appealed through the administrative office responsible and then before the court. A similar procedure is adopted in case of allegations of sexual harassment (Jatobá, 2002: 21).

B. Evolution and challenges of labour inspections in Latin America, according to the Commission of Experts

As we have seen, labour inspections in Latin America share common guidelines, parallel practices and similar challenges, although, of course, the various national inspections have reached different stages of development.

The similarity of the prevailing challenges is evident in the comments of supervisory bodies with regard to non-compliance with Conventions No. 81 and No. 129 over the past few years. In many cases, these have served to solve existing problems, assisting governments to improve compliance with international legal provisions, with a view to establishing more effective national inspection systems.

Since the 1950s, most countries in the region (with the exception of Chile, Mexico and Nicaragua) have ratified Convention No. 81 on labour inspection (related to industry and trade). (Convention No. 129 on labour inspection in agriculture, however, has been ratified only by Argentina, Bolivia, Colombia, Costa Rica, El Salvador, Guatemala and Uruguay, while the Labour Inspection (Seafarers) Convention 1996 (No. 178) has been ratified only by Brazil and the Dominican Republic.) The level of ratification is, therefore, high, which indicates the regional interest in Convention No. 81, which is extensive and detailed, thereby contributing to the development of national inspections in Latin America.

Although the subjects broached by the Commission of Experts in 2004 remain valid (excessive emphasis on inspectors' mediation functions, insufficient human resources, excessive interference by the employer during the visit and the low level of fines), clear progress has been made in terms of compliance with Conventions and there have been major changes in legislation and practice. In some cases, this has led to improvements in the inspection process, greater cooperation between various administrative bodies, an increase in the number of inspectors in several countries, the development of career paths for inspection officials and, in many instances, better organization of procedures and visits. In general, the new "reform wave" has facilitated free access to establishments and improved inspectors' working conditions.

With regard to Convention No. 129, which has been ratified by far fewer countries, the prevailing problems have, apparently, not been solved as efficiently. According to the available information, in addition to lack of transportation and lack of protection for

⁷³ Article 271, paragraph (a) of the Labour Act stipulates that the action to open proceedings and an administrative sanction shall take place within six months. If the labour inspection exceeds this, therefore, the incident report will not be admissible.

inspectors, technical training remains inadequate and health and safety in the workplace are not properly monitored.

At present, most countries have pending Comments related to the ratified Conventions concerning the subjects dealt with in this paper. For example, the CEACR has expressed concern about the excessive focus on inspectors' mediation functions to the detriment of their supervisory functions in relation to working conditions, not to mention their lack of cooperation with other public administrative bodies (both problems have characterized several countries, historically). Other problems include the fact that proper careers barely exist in labour inspection, wages are low, employment is unstable and initial or continuous training is lacking (common to all countries), which is sometimes linked to problems of professional ethics. The lack of training becomes even more of an issue with regard to health and safety.

The scarcity of material and human resources and appointments made on the basis of criteria which are not strictly professional are frequently mentioned by the Committee of Experts. In some cases, reductions in the number of inspectors and problems generated by an inadequate legal framework have been noted.

According to the CEACR, the notification – whether its total absence or mere inadequacy – of occupational accidents and illnesses continues to be the biggest problem. Mention is also made of reductions in the frequency and quality of visits or the lack of uniformity of inspection, planning and objectivity criteria.

In some countries, the lack of confidentiality with regard to grievances and the requirement of informing the employer of the reason for the inspection are regarded as problems by the Committee.

Finally, another point frequently mentioned is that the low level of fines has little deterrent effect. This is exacerbated by the cumbersome and vague nature of sanctions processes.

With regard to Convention No. 129, the highlighted problems generally focus on health and safety deficiencies, namely the lack of preparation and knowledge of technicians. There is no specific training, relevant labour laws are violated and there is no specialization. The lack of material resources is particularly important in this context (especially in relation to transportation).

A number of challenges remain, but the political will in this area, especially over the past few years, has led to considerable progress and an increasing overall awareness of the need for efficient and effective inspection.

C. New concepts and approaches: Role of labour inspection

Some countries have been considering alternatives to state labour inspections in order to improve legal compliance. The original idea of private or quasi-public inspections involves cooperation with other administrative authorities. However, this threatens the impartiality of the labour inspection, as laid down in Conventions No. 81 and No. 129. Paragraph 171 of the General Report on Labour Inspection of the 2006 International Labour Conference mentions that the manner of collaboration with the social partners must be fully compatible with the impartiality and authority of the inspectors. In this regard, the

Report notes that the self-evaluation of hazards⁷⁴ tends to improve the participation of those involved in prevention, but in no case may the responsibility of the inspectors be substituted with regard to monitoring labour conditions, since they are the sole responsible authority.⁷⁵ Cooperation, in a broad sense, is viable and worth promoting, insofar as labour inspection is conducted by a competent, independent and public authority.

In Latin America, some actions focus more on localized issues, such as environmental protection, more than strictly labour matters. However, environmental factors undoubtedly have an impact on health and safety at work. Private companies may be certified with regard to their safety compliance, based on specific criteria and technical monitoring, supported by the state. This is the case, for example, in the forestry sector in Bolivia, where companies receive certification concerning sustainable forest management and may renew their permits without inspection by the public authorities. In Bolivia, the National Council of the Environment (CONOMA) adopted a resolution in 2002 which requires independent, environmental inspection for the petrochemical industry.⁷⁶

Codes of conduct or other formulations of corporate social responsibility, even if they are managed by independent companies or NGOs which provide some sort of independent certification, do not involve the delegation of the public function of inspection and, in fact, may help companies to develop best practices and avoid sanctions. Examples such as the compliance auditors of a major multinational firm operating in the free trade zones in the Dominican Republic (Amengual, 2007) have demonstrated that such parallel action can strengthen law enforcement.

Mexico is perhaps the country in the region that has made most progress in the implementation of private inspection systems by creating an alternative support system. This includes the Verification Unit, a private body certified by the Mexican accreditation board (a multi-disciplinary private body comprising representatives of the government and academia, as well as technical experts and so on) and approved by the federal authorities, to which the supervision of health and safety standards is delegated by the Secretariat of Labour, transforming it into an auxiliary of the state.⁷⁷ They are responsible for compliance with health and safety standards, notwithstanding the competencies of the labour inspectorate. These units come in three different types. One type performs laboratory tests; another certifies enterprise processes or products; and a third verifies compliance with Mexican law. Furthermore, these units may have different relationships to the enterprise they inspect. They may be completely independent of the enterprise (type A)⁷⁸ or part of the enterprise (type B). They may even offer design and maintenance services, in addition to their other functions (type C). These are obviously private inspection bodies.

⁷⁴ This refers to the abovementioned programme in Mexico, which enables companies to provide their own health and safety evaluation (there are 1,554 companies in the scheme), as well as the telephone hotline provided by the Ministry of Labour in Chile. Guatemala also has an online form prepared by the Tripartite Committee of International Affairs in 2007.

⁷⁵ ILO, ILC, 95th session, 2006 General Survey on Labour Inspection. CEACR Report, paragraph 278.

⁷⁶ Another interesting example in this connection is Ecuador, with regard to supervision of the outsourcing of forestry services to avoid illegal lumber extraction. Supervision of lumber extraction has been outsourced to independent bodies (including NGOs and private companies). Based on a complaint about the usurpation of public activities by the private sector, the Constitutional Tribunal decided to suspend the programme on the grounds of an illegal delegation of government authority.

⁷⁷ Federal Law on metrology and standardization 1992 and its enabling clauses (1999).

⁷⁸ There are a total of 75 such units, 32 of which deal with matters of legal compliance.

Conclusions

As already mentioned, there is no doubt that, despite the remarkable progress made at national level, challenges remain and a number of fundamental points need to be defined and used as a reference to improve government action in ensuring effective labour inspection. Based on the situation described in the preceding pages, a number of priority action areas can be identified as conducive to the development of effective and efficient labour inspection:

- a) **Staff selection and contracting based on professional criteria.** Administrative careers forming the basis of an independent and autonomous body are a fundamental part of an efficient system of labour inspection. This must be based on adequate recruitment of qualified individuals, with minimum selection standards, initial and continuous training and sufficient incentives to maintain a stable, independent workforce. Job stability allows for continuity, as well as the inculcation of an administrative culture, which fosters ethical conduct. There must be a sufficient number of inspectors, without excessive staff turnover.
- b) **Continuous training.** Initial training must be supplemented by continuous training to improve performance, both quantitatively and qualitatively. Training programmes must be prepared by the ministry of labour for this purpose – if necessary, jointly with pedagogical bodies – and must cover not only technical aspects, but also behavioural and administrative ones. Special attention must be paid to training for technical health and safety inspections, mentoring by experienced technicians and the investigation of accidents at work.
- c) **Material resources and adequate procedures are needed.** Lack of transport and threats to inspectors' health and safety must be priorities. Direct intervention is part of the "police" function of labour inspection and this is not possible without adequate means of personal support and protection.
- d) **Proper development of advisory and prevention services.** Pursuant to Article 3 of Convention No. 81 and Article 6 of Convention No. 129, it is important to develop means of providing technical information and advice on the most effective ways of complying with legal provisions, but without devaluing sanctions.
- e) **Cooperation with public and private institutions.** Cooperation with other bodies can be beneficial: cases in point are the previously mentioned actions on child labour and forced labour. In this regard, self-evaluation, pre-control and monitoring may also be helpful in developing a culture of compliance. This does not mean that private inspections should be endorsed, but they may support and enhance public labour inspection.
- f) **Improve relations with workers' and employers' representatives,** from the point of view of both training and information. This encourages the idea that labour inspection is beneficial to the general interest and helps to improve labour relations and workers' health and safety.
- g) **Improve administrative procedures and increase the deterrent effect of fines.** Administrative procedures must be direct and effective. Fines must serve as a motivation to correct defects. Adequate sanctions and sanction procedures and quick remedies must be provided for.
- h) **Improve internal structure.** The inspectors' tasks must be decentralized. Regional directorates must be established to take charge of coordination. This will

be the main means of ensuring that inspectors do not become overburdened with secondary functions.

- i) **Seek new methods and actions responsive to the current needs of the world of work.** The informal economy, outsourcing and even new technical processes call for new competencies, methods and manners of intervention with regard to labour inspection.

These conclusions are not exhaustive and many other actions are needed. Labour inspection is a living system which adjusts to the changing world of work to ensure compliance with laws, rules and regulations. Only in this manner and step by step may social peace, the ultimate objective of labour law, become a reality.

Annex I

Ratifications of the main conventions concerning labour inspection⁷⁹

Source ILOLEX/ILO June 2008

Country	C81	C129	C178
Argentina	17-02-1955	20-06-1985	
Bolivia	15-11-1973	31-01-1977	
Brazil	11-10-1989		21-12-2007
Chile			
Colombia	13-11-1967	16-11-1976	
Costa Rica	02-06-1960	16-03-1972	
Cuba	07-09-1954		
Ecuador	26-08-1975		
El Salvador	15-06-1995	15-06-1995	
Guatemala	13-02-1952	20-05-1994	
Honduras	06-05-1983		
Mexico			
Nicaragua			
Panama	03-06-1958		
Paraguay	28-08-1967		
Peru	01-02-1960		04-10-2006
Dominican Republic	22-09-1953		
Uruguay	28-06-1973	28-06-1973	
Bolivian Rep. Of Venezuela	21-07-1967		

⁷⁹ No country in Latin America has ratified the Protocol to Convention No. 81 of 1995 which extends it to include non-commercial services.

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