



International
Labour
Office
Geneva

Technical Memorandum

Kenya labour administration and inspection needs assessment

LAB/ADMIN

**Labour Administration
and Inspection Programme**

Social Dialogue Sector

International Labour Office – Geneva

Contents

Contents.....	4
List of Acronyms.....	6
Acknowledgements	7
1. Background and methodology	8
1.1 Previous ILO needs assessments	9
2. Main socio-economic and political elements	10
2.1 The East African Community (EAC)	11
2.2 Structural adjustment programmes of the 1990s	12
2.3 Poverty Reduction Strategy (2003-2007)	13
2.4 Global financial and economic crisis	14
4. Legislative framework	14
5. ILO Conventions ratified by Kenya.....	15
6. Labour administration: Main features and developments in Kenya.....	16
6.1 Ministry of Labour.....	16
6.2 Units within the Ministry of Labour.....	17
6.2.1 Labour Department.....	17
6.2.2 Directorate of Industrial Training.....	18
6.2.3 National Employment Bureau	20
6.2.4 Directorate of Occupational Safety and Health Services	22
6.2.5 Department of National Human Resource Planning and Development	23
6.2.6 Industrial Court.....	24
6.2.7 Administrative Support Services	27
6.3 Field Structure.....	29
6.4 National Social Security Fund	31
6.5 Labour administration and gender equality	32
7. Labour Inspection	33
7.1 Labour inspection (excluding OSH).....	34
7.2 OSH inspection.....	37
7.3 Sanctions, remedies and prosecutions.....	39
8. Social partners and tripartite structures.....	40
8.1 General trends in industrial relations	40
8.2 Employers' Organizations	41
8.3 Workers' Organizations.....	42
8.4 The National Labour Board	43

8.5	National Economic and Social Council (NESC)	44
9.	Findings and Recommendations	45
9.1	National labour administration system	45
9.2	Labour policies	46
9.3	Labour legislation	46
9.4	Ministry of Labour Structure and Institutional Capacity	46
9.5	Field offices	48
9.6	Labour and OSH inspection.....	49
9.7	Collective Bargaining	51
9.8	Dispute resolution.....	52
9.9	Public employment services	52
9.10	ILO Conventions.....	52
10.	Conclusion and Follow-up	53
	ANNEX 1 ILO Conventions ratified by Kenya	55
	ANNEX 2 Ministry of Labour Structure.....	58
	ANNEX 3 Labour Department Structure	59
	ANNEX 4 Department of Industrial Training Structure	60
	ANNEX 5 List of Officials Interviewed	61
	ANNEX 6 Field Office Structure	62
	ANNEX 7 Ministry Staff Profile.....	63
	ANNEX 8 Ministry Staff and Equipment	64
	ANNEX 9 Labour Officer/Inspector Age Structure.....	65
	ANNEX 10 Numbers of Labour Inspectors	66
	ANNEX 11 Inspectorate Staff to Employment Ratio	67
	ANNEX 12 Trends in Labour Inspector Ratio.....	68
	ANNEX 13 Labour Inspection Report Form	69
	ANNEX 14 National Labour Conference Agenda	74
	ANNEX 15 Needs Assessment Terms of Reference	77

List of Acronyms

AIDS	Acquired Immunodeficiency Syndrome
CB	Collective Bargaining
CBA	Collective Bargaining Agreement
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CO–Dar es Salaam	ILO Country Office for the United Republic of Tanzania, Kenya, Rwanda and Uganda
COTU	Central Organization of Trade Unions
CPMU	Central Planning and Monitoring Unit
DIT	Directorate of Industrial Training
DMSIED	Department of Micro and Small Enterprise Development
DNHRPD	Department of National Human Resource Planning and Development
DOSHS	Directorate of Occupational Safety and Health Services
DWCP	Decent Work Country Programme
EAC	East African Community
EPZ	Export Processing Zone
FKE	Federation of Kenya Employers
HIV	Human Immunodeficiency Virus
HRD	Human Resource Development
HRM	Human Resource Management
ICT	Information and Communication Technology
ILO	International Labour Organization
IRC	Industrial Relations Charter
Ksh	Kenyan Shilling
LRA	Labour Relations Act
MOL	Ministry of Labour
NACOSH	National Council for Occupational Safety and Health
NESC	National Economic and Social Council
NITC	National Industrial Training Council
NLB	National Labour Board
NSSF	National Social Security Fund
OSH	Occupational Safety and Health
OSHIBA	Occupational Safety, Health and Injury Benefit Authority
PCK	Productivity Centre of Kenya
PRS	Poverty Reduction Strategy
PS	Permanent Secretary

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1. Background and methodology

Effective labour administration, including a proper labour inspection system, is vital for good governance and economic progress as it can make Decent Work a reality at the workplace by helping to improve working conditions, safety and health, employment conditions and productivity. In fact, one of the priorities set out in Kenya's Decent Work Country Programme (DWCP) is for the strengthening of the Ministry of Labour.¹

In response to this priority, the Government of Kenya invited the ILO² to conduct a labour administration and inspection needs assessment and to make recommendations for the improvement of administrative practices and systems of inspection.³ Specifically the Government wanted this exercise to be part of an initiative to build the capacity of its labour administrators to implement the Decent Work Agenda. This request also follows recent and comprehensive national labour law reforms that led to the adoption of several key legislative acts in 2007.⁴ Accordingly, the mission was an opportunity to consider progress made in the dissemination and implementation of these new laws and their impact on the structure and delivery of national and local labour administration services, including labour inspection.

The intended outcome of the needs assessment is to assist Kenya in modernizing its labour administration system and strengthening the capacity of its labour inspection services. The development objective is to help the Government improve its development and application of labour laws and policies towards decent work outcomes for men and women workers.

More specifically, the objective of this needs assessment was to review and assess the:

- organization of Kenya's labour administration systems (including the relationship between the central authority and regional structures);
- labour administration and inspection staff profile and personnel management practices (e.g. recruitment, grading, promotions, skills training (both for new recruits and existing staff), working conditions and gender equality;
- the function and competencies of the labour administration and inspection systems;
- the level of coordination between the Ministry of Labour, and other Ministries or state agencies with a role in labour administration;
- the quality of coordination between different bodies responsible for inspection activities (e.g. labour inspection, occupational health and safety, social security etc.);

¹ Decent Work Kenya, 2007-2011. ILO's Country Programme for the Republic of Kenya, August 2007.

² Letter dated 11 January 2010 from Ms. Beatrice N. Kituyi, Permanent Secretary, Ministry of Labour, Kenya.

³ Consider ILO Constitution, Article 10(2)(b).

⁴ The Labour Institutions Act, the Employment Act, the Labour Relations Act, the Occupational Health and Safety Act and the Work Injury Benefits Act.

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- participation and collaboration of employers’ and workers’ representatives in labour administration and, in particular, inspection practices;
 - degree to which gender issues are mainstreamed into policies and programmes; and the
 - capacity of the Ministry as a whole and labour inspection services in particular to collect and analyze data as part of its planning, monitoring and evaluation functions.

In assessing these different elements, the mission team collected both quantitative and qualitative data through a desk survey complemented by interviews with labour officers and social partners in a number of districts in Kenya. Based on the information gathered during this exercise, the present report was prepared which includes a series of findings and recommendations at the end to help the Ministry of Labour and social partners prioritize the country’s labour administration and inspection needs and to consider what follow-up actions could be taken to enhance the Ministry’s performance.

1.1 Previous ILO needs assessments

This is not the first ILO diagnostic of Kenya’s labour administration and inspection systems. Three similar activities have taken place over the last two decades. One such mission took place in 1988 followed by a tripartite symposium in the following year. A decade later in 1998, a team from the ILO composed of Mr. von Richthofen and Mr. Gosh visited Kenya to conduct a labour administration audit. Their audit resulted in a report whose major recommendation was for the integration of the field services of the Ministry of Labour to make the most out of existing limited human and financial resources.⁵ More recently, an ILO mission took place in 2002 following an official Government request for the ILO to focus on the analysis and design of technical assistance combined with policy advice on the future role, scope and function of the field service system. A memorandum⁶ was published after the mission with a series of recommendations on how to strengthen the field structure for the improved delivery of labour administration and inspection services.

It is crucial in the context of this current needs assessment to take these previous findings and recommendations into account and to determine to what extent they have been implemented and, if not, why. This reflects a concern expressed in the 2002 memorandum, which attempted to understand “why the recommendations of the previous mission had not been implemented”. At the time, the reasons given included the restructuring of the Ministry of Labour and the need to reform legislation before the field structure could be effectively reorganized. Today, while both of these objectives (restructuring and labour law reform) have taken place, none of these changes have gone to improving the often weak situation of field labour offices as identified in the earlier assessments.

While the intervening legislative and institutional reforms present a good occasion for reviewing the current state and future prospects of labour administration and inspection systems in Kenya, the present assessment should not simply be one additional mission in a series of routine exercises that do not lead to any measurable change. Rather, the objective

⁵ See Labour Administration in Relation to Civil Service Reform, Structural Adjustment and Labour Administration’s Contribution to Balanced Socio-Economic Development.

⁶ ILO: Technical Memorandum to the Government of Kenya on Strengthening Field Inspection Services of the Ministry of labour and Human Resource Development in Kenya, Department for Government and Labour Law and Administration, Geneva, 2002.

is that the mission contributes to meaningful and realistic improvements in Kenya's labour market governance and labour law compliance. For this to take place, however, much depends on the political support of the Kenyan government and its motivation to diligently follow up on the outcomes and recommendations of this exercise with meaningful and sustainable action.

2. Main socio-economic and political elements

Kenya has a sizeable workforce with strong skills and education by regional standards, but many university graduates cannot find jobs because the formal economy is relatively small. The growth in informal employment has been most obvious in agriculture. The labour force is predominantly rural and informal, with both categories employing roughly 75% of the labour force in 2007. According to the most recent data from the Kenya Bureau of Statistics, total employment stood at 9.45 million in 2007. Formal employment accounted for 1.9 million of that total. Economists have also noted the rising reliance of companies on informal labour contracts, so that even many informal jobs remain directly dependent on formal business.⁷

Unemployment is high. It was officially estimated at 12.7% in 2006 but unofficial estimates put it as high as 40 per cent. Whatever the figure, the unemployment rate masks pervasive underemployment, estimated at around one-fifth of the working population. Kenya's educational standards have not kept pace with demand for skilled labour, causing a serious shortage and in addition, HIV/AIDS continues to negatively affect the labour force and dampen productivity growth.

Public sector employment has been declining for years ever since the government first adopted austerity measures under the World Bank's structural adjustment programme. Even so, the government still employs roughly one-third of the formal labour force. In the formal economy, women are fairly well-represented in service industries, and account for two-fifths of employees in education jobs. Women also have a substantial presence in finance and insurance. Men predominate in manufacturing, trade and transport. Overall, the female percentage of the labour force stood at 44 per cent in 2005.⁸

Employment

	2003	2004	2005	2006	2007
Labour force (m)	14.7	15.2	15.7	16.1	16.5

Sources: United Nations, *FAO Yearbook*; World Bank, *World Development Indicators*; Financial & Economic Research International.

⁷ Economist Intelligence Unit, Kenya Country Commerce 2009.

⁸ Economist Intelligence Unit, Kenya Country Profile 2008.

Fundamental indicators: labour and wages

Labour market	2008 estimate	2009 forecast	2010 forecast
Labour productivity growth	-1.20	-1.60	-0.70
GDP per head (US\$ at PPP)	1,620	1,630	1,640

Source: Economist Intelligence Unit, *Country Data Kenya*, February 2009.

Kenya has the largest economy in East Africa with GDP at US\$ 18 billion (2005) and a total population of around 40 million. However, it also has a high incidence of absolute poverty. An estimated 46 per cent of the population fall into this category. The number of poor people increased from 3.7 million from the period 1972-73 to an estimated 15 million today in 2007. This situation is aggravated by poor governance, weak internal control systems and lack of capacity to carry out the commitments made through legislative, policy and institutional enactment.⁹

2.1. The East African Community (EAC)

Kenya is a member of the East African Community, a regional economic bloc that groups together five countries including Burundi, Rwanda, Tanzania and Uganda. The EAC's purpose is to widen and deepen co-operation among member States in political, economic and social fields, including:

- maintaining common employment policies;
- harmonising labour policies, programmes and legislation including those on occupational health and safety;
- establishing a regional centre for productivity and employment promotion and exchanging information on the availability of employment;
- making training facilities available to persons from other Partner States; and
- enhancing the activities of employers' and workers' organisations with a view to strengthening them.¹⁰

The Government is considering abolishing the requirement that citizens of other EAC nations obtain work permits to work in Kenya. This would allow professionals from Uganda, Tanzania and Burundi to work freely in the country. Kenya already has such an agreement with Rwanda.¹¹ The issue of free movement of labour within the EAC remains controversial however, with some countries, particularly Tanzania, fearful that superior education levels in neighbouring States will put their workers at a competitive disadvantage in their own countries, particularly for high-skilled and high-paid employment.

In any case, the push towards greater regional integration in East Africa is a process to which the MOL should actively contribute. The anticipated harmonisation of labour

⁹ Decent Work Kenya, 2007-2011, The ILO's Country Programme for the Republic of Kenya, August 2007.

¹⁰ Treaty for the Establishment of the East African Community, Article 104(3).

¹¹ The Daily Nation, "Kenya to abolish work permits for EAC citizens", 1 April 2010.

policies, programmes and legislation will likely have a significant impact on workers and employers in Kenya and falls within the specific competencies of the Labour Ministry. The MOL must ensure that its perspective and the perspectives of the social partners are integrated meaningfully into discussions on EAC policies, especially since regional economic integration (even in matters of labour policy) is often led by ministries such as trade, finance or international affairs.

2.2. Structural adjustment programmes of the 1990s

A series of economic and political reforms initiated by the World Bank and International Monetary Fund in Kenya since 1988 and especially after 1991 transformed many aspects of the daily life for Kenyan people. These same reforms also had a major impact on public sector budgets and government services leading to a significant erosion of staff numbers and technical capacity within the Ministry of Labour.

A public sector hiring freeze was introduced in 1994 and followed by two batches of civil servant retrenchments: one in 1996 and the other in 2000. Officials told the mission team that since the start of these reforms, the number of labour officers in the Ministry of Labour decreased by 60 to 70 per cent. The dramatic reductions in personnel have had understandably dramatic effects on the capacity of the MOL to deliver effective services throughout the country. While staff has been reduced, the needs of the constituents have not diminished, leading to a situation where there is a mismatch between the ambitious objectives set out for the Ministry, and its capacity to attain them.

While the structural adjustment policies have ended, their effects on the Ministry of Labour continue to pose risks for the future viability of its programmes and effectiveness of its personnel. To take one striking example discussed in more detail below in the context of human resources, the youngest labour officer in the MOL today is 40 years of age. With little fresh hiring having taken place to replenish the ranks of retiring or departing officials, the Ministry faces a daunting succession challenge. This challenge relates not only to recruiting adequate numbers of staff to continue the work of the Ministry but also concerns the transfer of institutional and technical knowledge that normally passes from one generation of officials to another.

The Ministry of State for Public Service issued a circular in 2008 listing a number of measures to address the succession management problem in the civil service generally. The circular recommends a series of approaches to promote lower ranking officials to vacant higher posts. Promoting existing staff to higher positions, however, only leaves behind vacancies in lower posts. The document does not address the fundamental resource problems underlying the replenishment and renewal of staff. The measures outlined in the circular come to an end in July 2010 and it is not evident that they have in any way alleviated the succession problem within the Ministry of Labour.

For a Ministry which already faces an ongoing struggle against political marginalization, the enduring effects brought about by structural adjustment only threaten to further diminish the MOL's influence in advocating for and implementing development policies in order realize decent work for all men and women in Kenya.

2.3. Poverty Reduction Strategy (2003-2007)

Kenya's Poverty Reduction Strategy (PRS) for 2003-2007,¹² had three main objectives, namely: economic growth; equity and poverty reduction; and governance, along with the strengthening of public administration. The PRS also included a number of specific employment creation objectives under the direct responsibility of the Ministry of Labour. In particular, it set out the following employment targets:

- Employment policy approved by 2004;
- 500,000 jobs created each year in 2004-2006;
- Establish an information centre for networking between education, training and industry by 2005;
- Identify inefficiencies that have led to high unemployment and high labour costs and implement reforms to improve labour market flexibility by 2006;
- Review labour laws for the period of 2004-2005;
- Review the existing industrial labour framework to promote harmony, employment and productivity, including wage guidelines and minimum wage legislation;
- Finalize productivity policy by 2004;
- Enhance dispute settlement machinery by 2005;
- Reduce backlog of workers' compensation cases from 40 per cent to 20 per cent by 2006;
- Strengthen the tripartite committee secretariat;
- Promote international labour relations;
- Implement strategic plan of the Productivity Centre;
- Measure productivity factors.

The ILO team did not seek to verify the Ministry's achievements on each of these points but the mission revealed important accomplishments in some areas (e.g. labour law reforms and the adoption of an employment policy). It also noted a lack of progress in other significant areas (e.g. the tripartite National Labour Board continues to operate below its potential and the dispute resolution mechanisms are not optimized for efficiency and effectiveness).¹³

¹² Investment Programme for the Economic Recovery Strategy for Wealth and Employment Creation 2003-2007, online: www.imf.org/external/pubs/ft/scr/2005/cr0511.pdf.

¹³ See below for more details on these individual findings.

2.4 Global financial and economic crisis

In many African countries, when discussing the current repercussions of the global financial and economic crisis, one is always reminded that many African nations were already in a period of “crisis before the crisis” (e.g. food, fuel and debt). In Kenya, the mission team was told that one cannot easily point to the impact of the current financial crisis as distinct from the many other structural crises facing the country and workers and employers in particular. If anything, the crisis has compounded the effects of these other crises posing ever greater challenges for the Ministry to deliver decent work for men and women.

The global economic crisis has affected Kenya in a number of ways including:

- Reduced demand for goods and services, particularly commodity exports and tourism;
- Reduction in foreign direct investment;
- Reduced remittances;
- Increased exchange rate volatility; and
- Reduced development assistance.

In response, the Kenya Government instituted a tripartite national task force to focus specifically on the jobs crisis.¹⁴

4. Legislative framework

Kenya’s legislature recently passed a series of laws in 2007 following a comprehensive labour law review process that was completed in April 2004 with technical assistance from the ILO, the United States, Netherlands and Canada. The purpose of these reforms was to strengthen labour administration institutions and individual and collective labour rights. The newly adopted statutes are as follows:

- a) The Labour Institutions Act, 2007 establishes and strengthens institutions dealing with administration and management of labour relations, setting out their functions, powers and duties. The institutions include the National Labour Board, the Industrial Court, Wages Councils and Employment Agencies.

Although the entire Act relates to institutions for the administration of labour in Kenya, Part V of the Act deals specifically with “Labour Administration and Inspection” covering the appointment and powers of management and personnel within the Labour Department along with provisions for exercising the functions of inspectors and the rules covering the obstruction of inspectors, offences by companies, evidence, confidentiality and the Department’s annual report.

The primary administrators of the Act include the Commissioner for Labour, the Director of Employment and the Registrar of Trade Unions.

¹⁴ 1st African Decent Work Symposium, Recovering from the crisis: the implementation of the Global Jobs Pact in Africa, 1-2 December 2009, Discussion Notes, online: http://www.ilo.org/public/english/region/afpro/addisababa/pdf/implementation_gjp.pdf.

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- b) The Employment Act, 2007 declares and defines the fundamental rights of employees, sets out the basic conditions of employment and regulates employment of children among other related matters.
 - c) The Labour Relations Act, 2007 consolidates the law relating to trade unions and trade disputes. It further provides for the registration, regulation, management and democratisation of trade unions and employers organisations or federations. It promotes sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and the promotion of orderly and expeditious dispute settlement.
 - d) The Occupational Health and Safety Act, 2007 provides for the safety, health and welfare of workers along with the establishment of a National Council for Occupational Safety and Health.
 - e) The Work Injury Benefits Act, 2007 provides for compensation to employees for work related injuries and diseases contracted in the course of their employment. It extends insurance coverage to all categories of workers and ensures adequate compensation for injury and work-related diseases irrespective of the employer's solvency.

In its 2002 technical memorandum on strengthening field inspection services in the country, the ILO noted that the labour laws prior to the 2007 reforms were often seen as an obstacle preventing the effective restructuring of field services. Since their adoption, it is not clear that these reforms have led to greater clarity and consistency of action within the country's labour administration system. This is partly due to the fact that the laws themselves took some time to be disseminated, even among labour officers responsible for their implementation. And in the case of the Work Injury Benefits Act, the mission team learned that it was still not being implemented three years after its adoption.

Moreover, the accompanying regulations, which are vital for giving practical guidance for the implementation of the labour laws, have yet to be finalized.¹⁵ Also, not all officials have received training on the new labour legislation, although a recent DANIDA sponsored project did carry out extensive training for labour officers on the new laws. Without the regulations in place, Ministry officials do not have the full framework for implementing the laws and, critically, for providing proper advice to constituents on how to comply with the legislation.

5. ILO Conventions ratified by Kenya

Kenya has ratified a total of 43 ILO Conventions and all but one of the ILO's eight fundamental Conventions.¹⁶ With respect to the relevant instruments for the current needs assessment, Kenya has ratified the Labour Inspection Convention, 1947 (No. 81) as well as the Labour Inspection (Agriculture) Convention, 1969 (No. 129), which are considered to

¹⁵ An employer representative told the mission team how the lack of regulations is causing difficulties for enterprises to know how to comply with the legislation (e.g. with respect to the rules surrounding paternity leave under Article 29(8) of the Employment Act.

¹⁶ Kenya has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). See Annex 1 for a complete list of ILO Conventions ratified by Kenya.

be two of the ILO's key governance Conventions.¹⁷ Kenya has not, however, ratified the Labour Administration Convention, 1978 (No. 150) although the country's DWCP emphasizes the importance of its ratification.¹⁸ Convention 150, along with its Recommendation (R. 158), sets out the role, function and organization of an effective system of labour administration.

One of the recommendations from the 2002 ILO technical memorandum on Kenya urged the Government to consider ratifying C. 150, not as a cure for various labour market challenges facing the country, but at least as a sign of political willingness to reform and modernize this critical area of governance. The authors noted that ratifying C. 150 would "ultimately provide the basis and frame for a fledgling but functional, effective and efficient range of labour administration services in the country". The MOL recognizes the relevance of C.150 as a basis for good labour governance and ultimately the attainment of decent work objectives. The Ministry indicates in its Strategic Plan for 2008-2012 that it should ratify C. 150 while seeking the support of the ILO to provide assistance towards this end. It takes a similar view in the Plan on the Employment Policy Convention, 1964 (C.122).

6. Labour administration: Main features and developments in Kenya

6.1 Ministry of Labour

The Ministry of Labour first became a fully fledged ministry in Kenya after gaining independence in 1963. Since then, the MOL has undergone a series of reorganizations and reforms, especially since 1990. In 1993, the MOL was merged with the Ministry of Manpower Development and Employment and given a wide mandate over all issues concerning labour, employment, manpower planning and development. There was another round of restructuring in 2000, which reintegrated a number of important labour administration functions back within the Ministry such as industrial and vocational training.

Today, the Ministry's structure¹⁹ and operational framework is based on its *Strategic Plan for 2008-2012*. This Plan is the result of a reform process introduced in the public sector in 2003 intended to ensure a sustainable and efficient utilization of public resources in the delivery of core government services. The Plan was developed through a participatory approach involving Ministry departments, social partners and stakeholders from other government institutions, civil society organizations, the private sector and development partners.

This section sets out some of the different units within the MOL providing a brief description of their structure, function and staffing. It also examines some of the main achievements and challenges facing the different units as they carry out their respective mandate.

¹⁷ In March 2009, the ILO's Governing Body adopted a plan of action for a promotional campaign for the ratification and effective implementation of the governance Conventions, along with the ratification campaign that is under way for the eight fundamental Conventions (GB.304/LILS/4).

¹⁸ DWCP, 22.

¹⁹ See Annex 2 for the Ministry of Labour Organizational Chart.

6.2 Units within the Ministry of Labour

At the political level, the Ministry is headed by a Minister along with a single Assistant Minister. The operational management of the Ministry resides with the Permanent Secretary (PS). The PS is in essence the chief executive who oversees all matters within the ministry (e.g. management, budgeting, inter-departmental coordination, training, human resources).

In terms of personnel, the Ministry's Strategic Plan 2008-2012 reports that at the end of 2008, there were a total of 998 technical and support staff working in the Ministry. The Plan indicates that the number of current staff within the MOL is 1,394 fewer than had been allocated to carry out its mandate.²⁰

The Ministry is divided into a number of technical and administrative units (departments, directorates, one semi-autonomous agency, a centre and the industrial court) with some of these further divided into divisions.

6.2.1 Labour Department

The Labour Department is a core department of the Ministry of Labour and is divided into several divisions including labour, employment,²¹ international affairs, and planning and information. The labour division is further divided into three units covering child labour, workers' compensation and industrial relations.

According to figures in the Strategic Plan (2008), the entire country has 84 technical staff members in the labour division and 42 in the employment division. The same source indicates that the labour division has 195 fewer staff than its estimated requirements with the employment division running at 73 below capacity.

The legal mandate of the Labour Department is based on three key pieces of legislation: the Labour Institutions Act, the Employment Act and the Labour Relations Act of 2007. It carries out this mandate through a wide range of services including:

- Settlement of labour complaints relating to wages and terminal benefits, and informal disputes concerning trade union complaints;
- Inspecting workplaces to ensure compliance with prevailing labour laws;
- Answering labour related queries or complaints;
- Representing clients as prosecutors in their cases;
- Handling strikes and lock-outs;
- Investigating and conciliating trade disputes;

²⁰ The Ministry's authorized staff establishment in 2008 was 2,392. See Annex 7 for a breakdown of staff numbers by technical unit.

²¹ Employment is a division of the labour department although there have been proposals to make it a fully fledged department. At the time of writing, approval for an employment department had not yet been granted.

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- Processing and recovering workers' compensation claims for private and Government workers;
 - Issuing notices and Ministerial Orders;
 - Processing disputes in the Industrial Court;
 - Handling appeals made against Minister Orders at the Industrial Court;
 - Providing client advisory services (employers, workers, citizens, public and private institutions, donors and NGOs);
 - Providing advice and representation on issues of ratification of ILO Conventions
 - Providing technical advice on various international bodies including the WTO, ILO, EAC, AU, IPEC NEPAD, & ARLAC;
 - Awareness raising and advocacy on child labour and HIV/AIDS at the work place;
 - Removing children from hazardous child labour.

The ILO Committee of Experts noted the Government's indication that it had not yet provided the child labour division with any budgetary allocation due to financial constraints. However, it noted with interest, that under the Time-bound Programme for the elimination of child labour implementation with ILO-IPEC, training sessions have been organized for the labour inspectorate in the area of project management, strategic management, capacity building on child labour issues and the training of trainers.²²

6.2.2 Directorate of Industrial Training

Kenya's *Vision 2030* noted that poor linkages between the labour market and training/research institutions had led to skills mismatch and underdevelopment.²³ It proposed a number of solutions including developing an industrial attachment policy (for internships), fixing national training and testing standards, promoting better linkages between industry and the Ministry of Labour, modernizing existing industrial training centres and creating three new ones.

The responsibility for delivering on these initiatives rests largely with the Directorate of Industrial Training (DIT), one of the departments within the Ministry of Labour. The role of the DIT is to regulate the training of workers in the industrial sector in accordance with the Industrial Training Act. The work of the DIT is also guided by the National Industrial Training Council²⁴ whose role is to identify the training needs of employers and to make arrangements to share the cost of training.

The DIT is headquartered at the MOL in Nairobi and has regional offices in Nakuru, Kisumu, and Mombasa. It also runs five industrial training centres across the country. It is led by a director and two deputy directors and divided into sections dealing with

²² CEACR, Convention 81 Observation, 2009.

²³ *First Medium Term Plan, 2008-2012* under Kenya Vision 2030.

²⁴ The Council has a tripartite structure (COTU (6), FKE (6), government and training institutions (6)) and is composed of 14 technical committees.

curriculum development, training, and administrative support. In total the DIT has 208 staff, 20 percent of which are technical staff (only 5 percent of technical staff are women). According to officials, ideal staffing levels for the DIT (including training centre staff) should be 668. To make up for the shortfall, the DIT has hired an additional 120 workers on temporary contracts. The lack of staff training that plagues other Ministry departments is equally an issue in the DIT where most staff has not been trained in over 15 years since their initial induction courses. This is especially a concern given the rapid changes in technology both in the classroom and the labour market.

The main functions of the DIT are to:

- serve as the Secretariat for the National Industrial Training Council;
- administer the industrial training levy;
- coordinate trade testing to test worker skills for industry certification and to assess the skills of new recruits;
- develop industrial training curricula;
- administer and manage five industrial training centres;²⁵ and
- manage six industrial attachment (internship) training schemes.

Like other units within the MOL, the DIT itself has a set of annual performance targets that it must meet. In 2010, the DIT is expected to oversee 9,500 industrial attachments (internships), the training of 5,500 apprentices in industrial skills and a large number (depending on demand) of trade testing for candidates who present themselves for evaluation.²⁶

In an effort to improve the representation and career prospects of women workers in industry, the council has come up with a programme to increase training opportunities for women in the field of engineering. So far under the programme, 25 women have been trained and it is expected that a further 175 will be trained by its completion.

The work of the DIT is in large part funded through a Training Levy Fund established under the Industrial Training Act. Employers are required to contribute a fee towards this fund (50 shillings per month per employee) and the DIT employs 15 levy inspectors to ensure that employers pay their dues. The government is also required by law to pay into the Fund but it has not done so since 1978.

While the DIT is at present an MOL department, it is being transformed into a semi-autonomous government agency (similar to the status of the NSSF).²⁷ As a semi-auto agency, the DIT board of directors would have the same tripartite composition of the current Council but would become itself an executive body outside the Ministry's

²⁵ Three in Nairobi (National Industrial and Vocational Training Centre; Kenya Textiles Training Institute; Technology Development Centre), the Kisumu Industrial Training Centre and the Mombasa Industrial Training Centre.

²⁶ Between August and December 2009, the DIT tested some 40,000 applicants.

²⁷ An Industrial Bill, which includes the establishment of the DIT as a semi-autonomous government agency was approved by Cabinet on 25 June 2009 and published on 16 October 2009. It awaits debate in Parliament and final adoption.

bureaucratic structure. It would nonetheless report on activities to the Minister, who would appoint the chairperson of the board.

6.2.3 National Employment Bureau

The basic purpose of Public Employment Services (PES) within the national labour administration systems, regardless of the economic climate and the state of economic development, is to facilitate the adjustment of enterprises and workers to changing labour market conditions. PES is the main government instrument to implement labour market programmes to mitigate redundancies and expedite re-employment for retrenched workers. PES usually operate as a component of Ministries of Labour or, less often, as a separate executive agency.

PES typically fulfil this role through 1) the provision of labour market information; 2) job search assistance and placement services; 3) administration of unemployment insurance benefits; and 4) administration of a variety of labour market programmes (worker displacement assistance, retraining, public service employment, among others).

It is important to note that employment services are supposed to provide these services to both components of the labour market - jobseekers, as clients, and enterprises, as both clients and partners.

In Kenya, Public Employment Service is part of the Employment Unit of the Labour Ministry. The Employment unit is a division of the Labour Department although this is not apparent in the official Ministry structure. The mission team was told that the Ministry of State has not in fact taken a final decision on placement of this department within the MOL. The employment portfolio was formerly part of the Department of National Human Resource Planning and Development.

The Department's major functions are to undertake employment planning, employment policy formulation and promotion and the provision of public employment services. The Department has four divisions: Public Employment Service, Employment Planning and Promotion; statistics and Research; and Administration Division. The Division of Employment Services is composed only of 6 professionals (Acting Director; two Acting Deputy-Directors; one Chief Employment Officer; one Senior Employment Officer and one Employment Officer) supported by two secretaries.

This acute understaffing is reflected also in the field structure. According to information provided in the Government's report to the ILO in 2004, there used to be 41 employment offices but the number was reduced in 2001 to make better use of existing resources and improve service delivery.²⁸ Currently, only 24 "field stations" are operational, usually covering several Districts. There are no provincial level offices. Their total technical staff is 38 officers, excluding administrative personnel. In some offices, there is only one professional worker plus a driver or a secretary. Since 1993, no officer has been hired. However, there extension of employment services as well as creation of Provincial employment offices is being planned and reflected in the ministry's Strategic plan.

Despite this extremely limited staff, employment offices are supposed to provide the whole range services, usually envisaged for much bigger organizations: registration and placement of job seekers; identifying employment vacancies; provision of vocational information, guidance and counselling; registration of recruiting agencies and monitoring

²⁸ Article 22 report on ILO Employment Service Convention No. 88.

their activities; carrying of employment audits, monitoring employment trends and collecting of labour market information; promotion and monitoring employment creation programmes at the district level; promotion of employment of youth and women, etc.

Obviously, with such limited staff, financial and technical resources, the existing employment services can hardly have much macro-economic impact. According to the 2nd Quarter Report for 2009, the field offices registered a total of 5,743 job seekers and employment officers made a total of 1,665 placements which clearly represents an insignificant number compared to the total workforce. It was evident during the mission interviews that public employment services in Kenya fail to provide the services needed by both employers and job seekers. In commenting on the employment services challenges facing the MOL, some officials noted that employment offices work best when there is nearly full employment and that currently, with no obligation for employers to declare vacancies, there is little demand for employment services in an environment of abundant labour supply. Employers therefore rely on direct placement or on services provided by private employment agencies. Also workers have little incentive to turn to public employment services, as the offer of vacant jobs as well as other placement possibilities such as training programmes is extremely limited. The lack of unemployment insurance – understandable in conditions of mass unemployment – means that job-seekers have no motivation to register in order to receive financial support during their unemployment spells.

Apparently, employment services also fail to systematically deliver labour market information that could provide evidence for policy making. The above-mentioned Quarterly Report provides only limited data based on a very small labour force sample and does not provide any country-wide information on the situation and trends in the labour market. In Kenya, employment and unemployment figures are difficult to come by. The last labour force survey was completed in 1988. Later in 2009, a national census was carried out, but the figures have not yet been released. A common estimate is that some 40 per cent of the working age population is unemployed. Another area that is difficult to measure is the number of people working in the informal economy, which is estimated to account for between 70 and 80 percent of the labour market.

In the National Employment Bureau's Strategic Plan for 2008-2013, an effort was made to identify the main obstacles facing employment services and to outline future developments. The challenges, as identified in the Plan, largely correspond to the mission's findings: inadequate staff, insufficient budgetary allocations, dilapidated and obsolete facilities, poor succession planning and an ageing workforce, inadequate legal, institutional and policy frameworks, erratic disbursement of funds from the Treasury and excessive bureaucracy in the procurement of goods and services.

The situation of public employment services in Kenya is comparable to other African countries, which have to operate with a limited number of staff and reduced funds. The structural adjustment programmes further reduced these resources. As a result, PES is not able to provide minimum services in their traditional areas of intervention. As major increases in staff and funding can hardly be expected in near future, organizational changes appear inevitable. The options could include:

- Reducing the total number of field offices
- Concentrating more employment officers in industrial hubs like Nairobi or Mombasa where the field offices could work as fully-fledged PES, providing all traditional PES services including job placement. This concentration in urban areas, where labour markets are better structured and more flexible, could create an attractive alternative to private employment agencies

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- Transforming field offices in smaller towns and rural areas into labour information centres, which would be charged with gathering information on the local labour markets and providing to clients (both workers and employers) information on the labour market situation in various industries and professions, existing job opportunities, advice on training opportunities as well as advice to those wishing to be self-employed

6.2.4 Directorate of Occupational Safety and Health Services

The Directorate of Occupational Safety and Health Services (DOSHS) was set up as a department in the Ministry of Labour in 1990 although OSH inspection services have existed in the country since 1951 under the earlier Factories Act. At one time, DOSHS was a division of the Labour Department but, as a result of growing responsibilities and upon the recommendation of a study by the Ministry of Public Service, DOSHS became a standalone Ministerial department. The Directorate has a total of 134 staff throughout the country, with 58 technical officers, 21 specialists and technicians, and 55 support personnel.

DOSHS is responsible for enforcing two pieces of legislation: the Occupational Safety and Health Act, 2007 and the Workers' Injury Benefit Act, 2007. The Directorate is divided into several divisions:

- Inspectorate (dealing with field OSH inspection work);
- Medical;
- Hygiene;
- Work injury benefits;²⁹
- Institute of Occupational Health and Safety (which undertakes research, training and information);
- Safety; and
- Administrative support (procurement and accounts).

DOSHS is undergoing a series of transformations, most visibly with the construction of a brand new facility in Nairobi that will house the Kenyan Occupational Safety and Health Institute. The function of this Institute is to undertake research into all aspects of safety and health and to conduct safety and health skills training for OSH officers and other persons.³⁰ Directorate officials expressed the hope that the Institute will be equipped with the necessary instruments for carrying out research. They also hope the Institute will become a centre of OSH excellence for all of East Africa serving not only Kenya but other member countries of the East African Community.

²⁹ While the possibility to set up a tribunal to investigate occupational accidents and cases of occupational disease is foreseen in section 128 of the OSH Act, the Government sees no need to constitute such a tribunal as DOSHS has been entrusted with the investigation of these cases.

³⁰ Section 24(6), the Occupational Safety and Health Act, 2007.

In recognizing the direct relationship between OSH and workers' compensation, the Kenyan Parliament mandated the Director of OSH Services to administer the Work Injury Benefits Act (WIBA) of 2007. A need was therefore identified to transform DOSHS into a semi-autonomous agency – much like the DIT above – and to be renamed the Occupational Safety, Health and Injury Benefits Authority (OSHIBA), in line with the Ministry's strategic plan for 2008-2012. The overall policy direction and responsibility for OSH nonetheless would remain with the Ministry of Labour.

In a related development, the Directorate of Occupational Safety and Health Services expects that a fund will be set up by Act of Parliament called the Occupational Health and Safety Fund. This fund will provide a more solid financial basis for carrying out its work. The rules for the fund have been drafted but at the time of writing, DOSHS was still awaiting approval from the Ministry of Finance. When fully operational, the fund is expected to greatly improve the resources available for the proper functioning of OSH services in Kenya.

Furthermore, the MOL has set up mechanisms for consultation with the social partners on OSH issues. Most recently, in April 2009, a National Council for OSH was established as a body to advise the Minister. So far, this tripartite Council has met three times.³¹ Prior to its creation, there was a national advisory committee on safety and health. In comparison, the new Council has a broader mandate and is chaired by someone from the private sector as opposed to a director from within the Ministry.

6.2.5 Department of National Human Resource Planning and Development

The portfolio for human resource planning and development was only given to the Ministry of Labour in 1993. During its recent restructuring, three related units were merged to become the current Department of National Human Resource Planning and Development (DNHRPD).³² The Department is responsible for the implementation of programmes and strategies on human resource planning and development, maintenance and dissemination of up to date labour market information, monitoring employment trends, skills gaps and mismatches in the labour market and facilitating labour productivity.

The Department is divided into two divisions (development and planning) and has a staff of 30 (18 technical staff, three of whom are women).

One of the main activities of the department is research, yet the last manpower survey carried out in Kenya was in 1988. The lack of funding prevented a similar survey from being carried out until 2010 when a pilot survey was launched in collaboration with the ILO and the Secretariat of the East African Community. The expectation is that this pilot survey will be followed by a fully fledged national survey in 2011.

There is currently no legal obligation or standard practice for collecting HR data from enterprises (demand-side) or learning institutions (supply-side). Instead, the DNHRPD works with the Kenya National Bureau of Statistics, which itself lacks adequate staff and resources to carry out manpower surveys on its own. Moreover, the Directorate has no field presence and there are no regular information channels between it and the regional labour offices. It was suggested that employment officers, though admittedly few, could

³¹ At the time of writing, the Council's rules and regulations were still being drafted.

³² There is also a Human Resources Development Department in the Ministry of State that takes care of HR issues in the public sector.

still be a useful source of information on the current situation and developments in the labour market and would help extend the Directorate's presence beyond the confines of its Nairobi offices.

Collecting and analyzing labour market information is a key service that labour administrations normally provide governments to assess trends in employment and unemployment, pay and benefits, working time, productivity, workplace injuries etc. In its Strategic Plan, the Ministry acknowledges that it has had difficulty aligning the planning and development of human resources to current trends due to lack of reliable, adequate and timely data on the labour market. This has constrained policy development in the areas of human resource development and employment promotion.

A stronger legal basis for collecting data from enterprises and institutions of learning would help the Ministry produce more regular and reliable statistics on the labour market which in turn would help guide policy making and implementation. The lack of reliable, adequate and timely data on almost all facets of the labour market has constrained policy formulation necessary for promoting employment and human resource development.³³ However, even with an enabling legal framework, the lack of staff, particularly in the regions, makes the task of delivering high quality research difficult. In addition, a shortage of working tools such as computers and appropriate research software hinder the research capacity of DNHRPD staff.

The Department used to produce annual reports of its activities but has not done so recently. This process has been replaced by the performance contract approach that now prevails within the Kenyan public service. In the case of the DNHRPD, its performance targets include the completion of the manpower survey and, potentially, a report on human resources for a yet to be decided economic sector. In the Ministry's Strategic Plan, mention is made of the creation of a National Human Resource Database to provide accurate data in order to track trends in skills supply to be able thereby to adjust them to demand. The present manpower survey is a promising start towards making this database a reality but, to be a useful tool, such surveys will need to be replicated on a regular basis, require an ongoing investment in staff time and funds, and an upgrade in computer equipment to manage the information.

6.2.6 Industrial Court

The Industrial Court of Kenya is one of the Departments within the Ministry of Labour. It was established on 19 May 1964 under the Trade disputes Act Cap 234 (repealed), and is now governed by the Labour Institutions Act No. 12 of 2007.³⁴ The adoption of the new Kenyan Constitution of August 2010 elevated the Industrial Court to the status of High Court of Kenya.³⁵

The Industrial Court has exclusive jurisdiction in all matters under the Labour Institutions Act and any other legislation extending jurisdiction to it, such as the Employment Act or the Labour Relations Act. It is also responsible for hearing any common law matter between an employer and employee as well as all matters between an

³³ *First Medium Term Plan, 2008-2012* under Kenya Vision 2030.

³⁴ Part III, Labour Institutions Act, 2007.

³⁵ This change is expected to result in benchmarking against courts from other African and European countries, the review and/or amendment of the 2007 labour laws and capacity development for Industrial Court Judges and staff.

employers' organization and a trade union.³⁶ Its mandate is "to arbitrate trade disputes" and it is one of the country's pillars for maintaining Industrial peace. Prior to the creation of this specialized court, unresolved labour disputes would be put before district Magistrate Courts, which heard all manner of cases in addition to labour disputes. Awards and orders of the Industrial Court have the same force and effect as those issued by the High Court.

Most of the cases dealt with by the court concern individual disputes, largely related to unfair dismissal. The court also hears many cases dealing with trade union recognition and representation and the violation of collective bargaining agreements. It hears both public and private sector disputes. In 2009, the court heard over 800 cases and between January and April 2010, it had already heard 390 cases. In the past, judges would typically hear two cases per day, but the expanding caseload has put greater pressure to hear more cases in a shorter period of time.

To date, the decisions of the Industrial Court are not published in the Kenya Gazette, the Kenya Law Reports or on the internet due to low government budgetary allocation. Doing so, however, would help promote a uniform interpretation of the statutes, provide clarity to workers and employers on the enforcement of the law and build a national jurisprudence of labour law that would help labour attorneys in their profession and law faculties teaching the subject. In addition, the court does not have a library where these and other relevant labour publications could be housed and which could be of great value to the judges or court staff for research purposes. The Court Registry is too small to accommodate its own staff, let alone court files.

Currently the court has five Judges, all of whom are men. At the time of their appointment, none of the Judges were specialists in labour law and, since then, none has received formal training on labour matters. Four of the five have, however, attended a training course for lawyers, judges and legal educators at the International Training Centre of the ILO in Turin. In addition to the Judges, there are 10 'members', also all men. These members assist the court and are appointed by the Minister of Labour in consultation with the National Labour Board for three years terms. Each case is usually heard by a quorum consisting of one judge and two members (one member employer and worker).

The court's administration is headed by a registrar and two deputy registrars along with eight clerks, seven secretaries and two drivers (20 staff in total). The registrars also act as legal advisors within the Ministry of Labour and liaise with the Attorney General on legal issues affecting the Ministry.

Although the Industrial Court is able to perform its functions anywhere in the country, there is currently only one permanent chamber located within the MOL in Nairobi where all cases must be filed and heard.³⁷ This presents some obvious accessibility challenges for claimants who live in remote regions of the country and do not have the luxury of legal representation. As a result, the majority of cases heard by the court originate in Nairobi or surrounding areas. From time to time, however, Industrial Court Judges travel to different parts of Kenya (circuit court) to hear cases outside the capital. Each judge typically goes on circuit two or three times a year. While sending judges to other urban centres helps increase the courts accessibility for claimants outside the capital, it appears to be an insufficient and too infrequent approach that results in unequal access to justice for those who live at large distances from Nairobi.

³⁶ A worker can lodge an employment complaint either with the Industrial Court or with a Labour Office.

³⁷ One of the flagship projects in the context of Kenya's Vision 2030 plan is to expand the industrial court to Mombasa.

There are plans for the court to establish regional/divisional chambers in eight main counties.³⁸ The estimated cost for setting up each court is Ksh. 240 million (\$ 3,000,000), which the government has been unable to allocate since 2007 when the new labour laws came into force. The Industrial Court as a whole was only allocated Ksh. 32 million (\$400,000) for 2010-2011, which is not sufficient to build court facilities let alone hire judge and support staff along with equipment for the court.

The Industrial Court Rules of 28 May 2010 introduced minimal administrative fees to help cover the court's expenses. The Ministry is in the process of getting permission and approval from the treasury/parliament to enable the court use the money that has since been collected totalling slightly more than one million Kenyan Shillings (slightly more than \$12,500), an amount that remains too little to adequately fund the work of the Court.

Alternative or pre-trial dispute resolution

Labour administration has a critical role to play in the proper functioning of employment and labour relations, especially for the effective resolution of disputes. This includes ensuring that adequate institutions are in place for workers and employers to settle their differences, whether individual or collective. It also means labour officers should have sufficient training in dispute resolution techniques to be able to assist constituents in preventing and resolving disputes in accordance with the law.

Although there is mention of a Conciliation and Mediation Commission in Kenya's Labour Relations Act,³⁹ this body has not yet been created.⁴⁰ Currently, the front line responsibility for mediating individual and collective labour disputes resides with labour officers/inspectors. If a dispute is not resolved at this initial stage, a certificate of disagreement is drawn up and the case is referred to the Industrial Court. Employer representatives expressed concern that these certificates are drawn up too quickly without adequate time given to resolve disputes through mediation. Industrial Court staff further confirms that because the law is not clear on the requirement for prior conciliation,⁴¹ cases are often brought to court without having undergone prior efforts to resolve the case before trial.⁴²

In other countries, including in East Africa (e.g. Tanzania's Commission for Conciliation Mediation and Arbitration), intermediate dispute settlement bodies help reduce the time and expense in resolving disputes without burdening the court system with

³⁸ These include Mombasa, Kisumu, Nakuru, Eldoret, Wajir, Maralal, Kitale/Bungoma and Kitui/Machakos.

³⁹ Section 66(1)(c).

⁴⁰ It is worth mentioning that the ILO Committee of experts noted in its 2006 General Survey on labour inspection that assigning conciliation and mediation in labour disputes to a specialized body or officials would enable labour inspectors to carry out their supervisory function more consistently, result in better labour law enforcement and fewer disputes (para. 74). In this instance, the Committee was referring specifically to collective labour disputes but the comment is equally relevant to individual employment disputes, which comprise the majority of cases brought to Kenyan labour offices.

⁴¹ Section 20, Labour Institutions Act, 2007.

⁴² With regard to arbitration, the mission team was told that it is not widely practiced in Kenya but that there are registered labour arbitrators (essentially labour officers within the MOL) who may arbitrate disputes as foreseen under the Labour Relations Act.

routine cases. They can also bring greater consistency and confidence to the process of dispute resolution by developing a professional service for handling complaints.

Registration of collective agreements

Among its functions, the Industrial Court also registers collective agreements as set out in the Labour Relations Act 2007.⁴³ The mission team was informed that this is essentially an administrative process that does not involve legal review of the agreements' content.⁴⁴ Yet, according to the LRA, the Industrial Court shall not register a collective agreement that conflicts with any law or that does not comply with MOL directives on guidelines concerning wages, salary levels, and any other conditions of employment. This obligation to refuse the registration of collective agreements appears to require some minimal level of substantive review on the part of the Court, which currently does not take place.

Furthermore, field officers do not have copies of collective agreements, even those in force in their respective jurisdiction whose implementation they are responsible for monitoring. They acknowledged that having access to these agreements would be of great assistance in cases of dispute resolution as well as in the planning or carrying out inspections in enterprises where collective agreements are in force.

In any event, no economic or statistical analysis is carried out within the Ministry on existing and new collective agreements. Such work could make a valuable contribution to improving the MOL's understanding of wage and bargaining trends, prevailing provisions on working conditions, CB coverage and other industrial relations developments. This knowledge would also assist in the policy and programme planning of the Labour Department, which has the overall responsibility within the MOL for industrial relations.

6.2.7 Administrative Support Services

The Administrative Support Services within the MOL are divided into two sub-units: human resource management (HRM) and human resource development (HRD). Though employed by the MOL, the staff who work in these units are in fact "deployed" by the Ministry of State for Public Service (this is the same arrangement for all government ministries). The HRM unit is responsible for typically human resource functions including salaries, disciplinary measures, staff development, finance and personnel record keeping. Together, these two units have a total of 16 professional officers.

As mentioned elsewhere, the youngest labour officer in the entire MOL is 41 years old and the last new hire in the Ministry took place back in 1994. In this context it is difficult to speak about the recruitment practices of the MOL's HR department since they do not exist in reality. Normally, labour officers require a general university level degree, although this is not a requirement in every case and depends on the official's grading. Even with this requirement, it is common that the degrees held by staff members do not relate to their area of technical responsibility. In this case, most officers receive on the job training, which consists mostly of an induction course upon hiring without further training by way of professional development.

⁴³ Article 60.

⁴⁴ Labour officers from the regions said that CBAs are often inconsistent with the law but that the Industrial Court only addresses such inconsistencies when there is a collective dispute. CBAs can also be reviewed by the Economic Central Division in Nairobi, which issues recommendations on the economic provisions of a CBA (e.g. wage and benefit levels).

Kenya's Decent Work Country Programme highlights the need to address the human capacity limitations in the Ministry through the training of labour officials at all levels, especially in the area of preventing and settling labour disputes.⁴⁵

There is a training division within the Ministry of State that provides inter-Ministerial training but largely on improving the performance of civil servants and not on technical matters. Apart from the Department of Industrial Training which runs learning institutions for industrial skills development, there is no centre dedicated to training on labour matters *per se*. There is a heavy reliance on outside institutions and donors (such as the ILO's training centre in Turin) to deliver this sort of instruction. The government does however promote advanced studies such as advanced University degrees with partial funding from the government upon completion.

The most problematic consequence of this lack of training is that some MOL officers have never been trained on the new package of labour laws adopted in 2007. This poses serious limitations to the effective application of national labour law and to the ability of labour officers to raise awareness among workers and employers about the new statutes.⁴⁶ The Ministry, however, noted that training on the new laws had indeed been given to many labour officers through a DANIDA sponsored project.⁴⁷

Beyond training, a central component for assessing the effectiveness and improving the performance of a country's labour administration and inspection service is through a rigorous and regular process of monitoring and evaluation. Within the MOL, quarterly appraisal reports of staff members are routinely prepared and submitted to the labour department. It appears however, that these reports have little bearing on the promotion or advancement of officials.

With respect to remuneration, salaries of public servants are determined according to a series of harmonized "job groups" established by the Government (e.g. all department directors receive a similar income as do support staff in a approach that is referred to as the "banding of salaries"). Within the MOL, labour officer salaries are very low and often barely adequate to meet cost of living requirements. Moreover, there is a large gap between salaries earned by labour officers/inspectors and managers within the MOL, who are relatively well paid by comparison. Apart from the effect that poor salaries can have on motivation and performance, low remuneration does not contribute to enhancing the career prospects of civil servants and also heightens the risk that officials might resort to improper external influences in the performance of their duties.

⁴⁵ DWCP, 22.

⁴⁶ District officials told the mission team that they did not have any educational materials (pamphlets, posters etc.) that could be used to sensitize workers and employers to the new labour law developments.

⁴⁷ A three day training seminar was sponsored by DANIDA, albeit over a year after the passage of the new legislation. At one point after the adoption of the new laws, there was still confusion among labour officers whether or not the laws had come into force. This confusion prompted the MOL to issue a circular to all labour offices clarifying the 2007 legislation was, indeed in force.

6.3 Field Structure⁴⁸

The institutional structure of the MOL is divided into three layers: at the top are the Ministry's headquarters in Nairobi, followed by Provincial Labour Offices (8) and lastly District Labour Offices (33). Apart from being responsible for a larger geographic area, Provincial Labour Offices have more administrative and managerial responsibility than District Offices (e.g. complaints go initially to district offices unless they are more complex/serious, in which case they are dealt with by the provincial offices). With regard to inspection services in the field, occupational health and safety offices are often, though not always, in the same premises as the labour offices.

The 2002 ILO needs assessment noted that the labour administration field structure had not been affected by previous rounds of public sector reforms in Kenya. Consequently, the field offices were still characterized by parallel working structures of the different government services (beyond the Ministry of Labour's mandate). The report further noted that field office activities were not coordinated and that they were chronically understaffed.

The 2002 mission made a number of recommendations related to the field structure and staff including that:

- the field services of the Ministry of Labour, namely labour inspection and OSH inspections, be fully integrated;
- a review be undertaken of the different existing field services to assess means of possible cooperation;
- a coordination position be created at the district level to supervise the performance of the field services and to improve coordination with specialized departments within the Ministry;
- regular training of the field staff should be implemented.

The Labour Minister and Permanent Secretary at the time stressed that a working group should be established to help make changes and to integrate the existing field services for the benefit of the overall performance of the Ministry. Based on the findings of the current mission, none of the above recommendations were fulfilled since being submitted to the government in 2002.

The following paragraphs describe the situation of select labour offices visited by the mission team including their structure, staffing, facilities and equipment, performance and main challenges in carrying out their work.

Nairobi Provincial Labour Office

The Nairobi Provincial Labour Office is responsible for nine districts in Nairobi Province. Due to staffing limitations,⁴⁹ it is only able in practice to cover two: Nairobi itself and the Industrial Area. The Provincial Labour Officer indicated that the officers in

⁴⁸ See Annex 6 for a full list of Provincial and District Labour Offices in Kenya.

⁴⁹ Both District Offices have one manager, three labour officers (one woman), three labour inspectors (one woman), one administrative assistant and one driver. The Provincial Office has one manager (Provincial Labour Officer) and one administrative staff but has no car, driver or computer. In 1989, the Nairobi Provincial and District Office together had 24 professional staff members whereas now they are down to eight.

his Province spend the bulk of their time dealing with labour disputes (mostly individual, but also collective) and that many complaints originate from workers in the informal economy. On average, 50 to 100 new cases are brought to the district offices each month. Most of these cases relate to unfair dismissal complaints and roughly three quarters of all cases are resolved at the initial stages through conciliation. Although it used to be the case, investigations are no longer carried out by labour officers upon receipt of a dispute or complaint largely because the number of cases are overwhelming when compared to the capacity of the offices receiving them.

Kiambu District Office

Kiambu district lies a short distance north of Nairobi and encompasses a workforce of roughly 600,000 people engaged mostly in the agricultural sector (e.g. coffee, tea and flower plantations). The District Office in Kiambu is staffed by two labour officers (both women) and 4 administrative staff. Not unlike the experiences of the Nairobi Provincial Labour Office, most of the work carried out by these officers relates to individual employment complaints (20-25 per month) and collective disputes (8-10 per month). The office in fact divides its week into two parts: two days are reserved for hearing disputes while the remaining three days are devoted to inspection visits. At one time, there was also an employment office in the Kiambu facility to help match local job seekers with job vacancies. It was closed in 2004, however, as its services were not being adequately used by employers to justify its existence.

The Kiambu Labour Office is supposed to carry out 35 inspections each month. Unlike many other labour offices, it has at its disposal an MOL vehicle whose fuel and maintenance costs are covered by the Ministry.⁵⁰ The selection of workplaces for inspecting is planned every week based on the monthly performance contract targets in addition to individual complaints. Most visits are conducted unannounced and take place in both formal and informal enterprises. The inspections deal exclusively with general conditions of employment and not OSH, although the officers routinely share information with DOSHS officers when hazardous working conditions are detected.⁵¹ Labour inspectors rarely undertake joint inspections with OSH officials. The labour officers in Kiambu had been conducting visits for some time without inspection forms because they had run out of copies and had not been resupplied by the MOL.

To keep track of its visits, the office keeps a manual record of inspections detailing the names of enterprises, dates of inspection, the officer(s) who performed the inspection and the type of visit (i.e. partial or full).

Communication between the District Office and Labour Department in Nairobi is sporadic but does take place. The usual channel of communication, however, is with the Provincial Labour Office. The quarterly budget allocations for Kiambu have been the same for several years and are said not to be enough to cover expenses (building maintenance, postal service, vehicle costs etc.).⁵²

Coast Provincial Labour Office

⁵⁰ The furthest distance necessary to travel to carry out an inspection in Kiambu district is approximately 1.5 hours by car.

⁵¹ Such information is sent to Nairobi since there are no OSHS offices in Kiambu district.

⁵² 159,000 Kenyan shillings (approximately 2,000 USD) per quarter. This is over and above salaries which are deposited directly into the staff members' accounts.

While in Mombasa, the mission team met together with the directors of the Coast Provincial Labour Office as well as the Kwale, Malindi and Mombasa District Offices.

The Coast Provincial Labour Office in Mombasa shares the same building with the Mombasa District Office and several other Ministry of Labour departments. This proximity allows the various labour officers and departments to share even limited resources such as administrative staff and supplies. Despite this arrangement, collaboration between the different MOL departments in Mombasa is rare and there are only infrequent interdepartmental meetings, let alone joint planning and activities.

Labour officers do share information with OSH inspectors and vice versa, particularly in Mombasa, but this is done on an ad hoc basis and depends on the initiative of the labour officer rather than any written guidelines or procedures. The practice is even more infrequent in the district offices, especially where officials do not share the same facilities with DOSHS officials.

The directors confirmed that, like their colleagues in other parts of the country, the majority of time is spent dealing with labour disputes as opposed to inspection visits.⁵³ They are nonetheless required to complete the 15 or 20 monthly labour inspections in accordance with their performance contracts.⁵⁴ This work is carried out however without the use of labour inspection forms or checklists, which the officers say, they have not used in quite some time. Moreover, there is not a single government vehicle for labour officers to use for visits in the entire province and the officers interviewed pointed to their lack of mobility as their greatest obstacle in the performance of their work.

6.4 National Social Security Fund

The National Social Security Fund (NSSF) was established in 1965 by Act of Parliament (CAP 258 of the Laws of Kenya) in order to administer a provident fund scheme for all workers in Kenya. Initially the fund operated as a government department under the Ministry of Labour but as its membership grew and its operations became more complex, the NSSF Act was amended in 1987 to turn it into an autonomous State Corporation. Since 1988, the Fund has been operating under a Board of Trustees, which is constituted by representatives from government, workers', and employers' organizations.

There is currently no unified social protection policy in Kenya but rather a collection of dislocated policies. The NSSF hopes, however, to strengthen its role as providing the first pillar of social protection, working with officials in the health, housing, agriculture and other portfolios.

Most categories of civil servants are covered by a pension fund and the NSSF provides

⁵³ The officers estimated that 90 per cent of complaints brought to the labour offices are individual complaints dealing most often with unfair dismissals as well as benefits and leave. See the section below on labour inspection discussing the preoccupation of labour inspectors with dispute settlement cases.

⁵⁴ Provincial and District Labour Officers (i.e. managers) are required to complete 15 inspections each month. Labour Officers are required to complete 20 labour inspections each month. The targets are set at the central level and do not involve consultation with the regional offices. The mission team was told that Coast Province labour officers were meeting more than three quarters of their inspection targets which was considered to be a good success rate. Labour Office managers report on the targets every month.

retirement benefits to private-sector employees. Employers and employees contribute equally, and the NSSF offers benefits for such things as old age, invalidity and survivors.⁵⁵ Since its founding, some 4.5 million workers have been registered and there are around 1 million active accounts.

The recent changes in legislation now allow for the registration of enterprises employing between one and four workers. This has the potential to add some 8 million more employees to the fund. However most workers in micro and small enterprises are not easily registered since they are not easily identified or contacted and rates of literacy are low. Moreover, the NSSF does not have the administrative means to reach out to them. Officials are optimistic, however, that the proliferation of the cell phones will present an innovative way to reach and register these additional workers. There is also greater possibility under the new Act for greater collaboration with other agencies such as the Kenya Revenue Authority to improve the registration and collection of social security contributions.

In recent years NSSF has embarked on a reform programme intended to convert it from a provident fund to a pension scheme with a view to enhancing social protection for greater numbers of workers, including those in the informal economy.⁵⁶ As a converted scheme, the new NSSF would operate as a mandatory National Social Insurance Pension Scheme, serving as workers' first pillar of social protection. Everyone with an income (except those excluded by law) should be registered as a contributing member.

Officials at the NSSF suggest that two important changes must come about to improve the effective operation and equity of the Fund. First, administrative costs are too high and need to come down. Not long ago, 50 percent of contributions would be spent in administering the Fund and this figure is now down around 30 percent (ideally, officials hope this figure will decline even further to between 12 and 15 percent). Second, the contributions should reflect the level of salary earned by the worker. Currently, employees must pay 400 shillings each month, regardless of the salary they earn.

6.5 Labour administration and gender equality

The Ministry of Labour developed a draft gender equality policy in February 2010. It arose out of the MOL's Strategic Plan 2008-2012, which recognizes the important role both men and women play in national development.⁵⁷ The Strategic Plan focuses on some of the major challenges in realizing gender equality at work in the country. It pointed out that there is a wide gender disparity in formal employment with many more men employed than women. It further draws attention to the fact that men are predominant in decision-making positions and that this situation may require "affirmative directives and deliberate efforts" to promote opportunities for women workers.

The draft policy includes strategies to address the socio-cultural barriers that have contributed to gender disparities and inability of women to realize their full potential. To reach its goals, the Ministry plans to reserve at least thirty percent of positions for women;

⁵⁵ Section 19, National Social Security Fund Act, Rev. 1989.

⁵⁶ The new 2007 legislation does not define the informal economy or who counts as an informal work, a definition gap that does not provide any guidance to the NSSF who caters to workers in this part of the economy.

⁵⁷ Kenya has ratified both the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

mainstream gender into all departmental programmes and activities; design a gender responsive budget; develop guidelines on sexual harassment, establish Ministerial Gender Desks, and carry out a Ministerial training to sensitize staff on gender issues and integrate gender issues into all ministerial training programmes. The gender policy further intends to promote a gender friendly work culture respecting the need for improved work life balance. It also aims to integrate the gender dimension in the design of policy and delivery of the Ministry's services to constituents and to institutionalize the monitoring and evaluation of gender equity outcomes.

During the mission, officials were asked to indicate the balance between men and women staff at different levels of responsibility in each unit. In most cases, men outnumbered women in the professional and managerial categories, with a larger portion of women employed in administrative and secretarial work. Apart from the rough estimates gathered, the MOL was not able to present to the mission team with a list of personnel disaggregated by sex and by grade. With the adoption of this gender policy there is the potential for the MOL to improve its sensitivity with respect to the balance between male and female personnel in all positions within the MOL. It will be important in this regard for the Ministry to systematically gather data on the numbers of men and women working in the Ministry at different professional grades to be able to objectively monitor progress towards the equality targets set out in the policy. Already, the MOL's labour inspection report form includes a number of questions related to gender equality at the workplace addressing the number of men and women workers, maternity/paternity leave, sexual harassment policies and incidents, equal pay and sex discrimination.⁵⁸ This information would be of great value for determining the situation of gender equality in Kenyan workplaces and for designing policies that respond to the real conditions of the labour market. Unfortunately, the report forms are not frequently used when carrying out inspections and any information that is collected with respect to gender issues has not been consolidated or analyzed in any meaningful way.

7. Labour Inspection

Kenya's Ministry of Labour oversees a dual system of inspection covering on the one hand general labour inspection and on the other, occupational safety and health inspection (OSH). The ILO audit report from 2002 recommended that these two aspects of the country's inspection services be integrated, particularly in the field offices where scarce human and financial resources did not allow for specialization but rather demanded the coordination of labour and OSH inspections to effectively monitor compliance and improve efficiency.

There had been an attempt to integrate the two services back in the 1980s, which was not successful because the costs and challenges of integration were thought to be greater than the benefits derived from merging. Today, the two inspection systems continue to operate independently with limited cooperation or collaboration between them apart from rare joint visits and the occasional sharing of information and transportation. They also continue to use separate inspection forms despite the recommendation in the 2002 report that these forms be standardized.⁵⁹

⁵⁸ See Annex 13.

⁵⁹ The 2002 report had recommended the development of standardized report forms for labour and OSH inspections. See Annex 13 for an example of the standard labour inspection report form used in Kenya.

Labour and OSH inspectors are not always located in the same premises, which itself is an impediment to improved communication and coordination. In Nairobi, the main DOSHS offices are located in the same building as the district labour office for Nairobi's industrial zone. In the regions, however, OSH and labour inspectors do not always share the same premises (e.g. in Kiambu and Malindi). Combining offices would help save costs associated with office space and transportation but would also facilitate closer collaboration, sharing of information and build greater teamwork among MOL inspection officers.

There is evidence of information sharing between the two services. For example, if labour inspectors come across hazardous working conditions in an enterprise, they commonly pass along this information to OSH officials. While such examples are encouraging, they are at best sporadic and depend on the initiative of individual officers rather than any written policy or guideline. By and large, information gathered in the course of OSH visits is not systematically shared with labour inspectors and there is no central registry that could be used to house such data in a manner that would be accessible to all MOL inspectors. More structured and systematic cooperation between the Labour Department and the Directorate of Occupational Safety and Health Services (DOSHS) would contribute towards maximizing limited resources, improving effectiveness through joint actions, reducing overlapping inspections and sharing workplace findings to assist in inspection follow-up and strategic planning.

With respect to the qualification of personnel, OSH inspectors in Kenya generally have specific technical background in their area of expertise (occupational medicine, engineering etc.), whereas general labour inspectors do not typically have a relevant educational background and receive only minimal on the job training related to their role as inspectors. In most countries, both labour and OSH inspections are highly specialized services requiring extensive knowledge and training. ILO Convention 81 in fact requires that inspectors be qualified and adequately trained for the performance of their duties.⁶⁰ Building the capacity of all inspectors to carry out their duties with greater competency and professionalism would help maximize the effectiveness of the limited number of inspection staff within Kenya.

7.1 Labour inspection (excluding OSH)⁶¹

The monitoring and enforcement of the Employment Act and the Industrial Relations Act (2007) is the responsibility of the Labour Department. This department functions in essence as Kenya's national labour inspectorate although it is responsible for other technical matters including employment and dispute settlement. In practice, all labour officers within the MOL have the capacity of labour inspectors although a large portion of their time is devoted to resolving labour disputes, at the expense of carrying out inspection visits.

In its previous comments, the ILO's Committee of Experts has expressed concern at the persistent lack of labour inspection staff, office equipment and means of available transport facilities, encouraging the government where possible to seek international

⁶⁰ See Article 7.

⁶¹ As understood in the context of Convention 81, the term "labour inspection" covers all aspects of inspection at the workplace including working conditions and occupational safety and health. For the purposes of this section, however, labour inspection is understood to exclude occupational safety and health, which is discussed further below.

financial assistance to enable it to ensure sustainable resources for the effective functioning of the labour inspection services.⁶²

The mission team observed that these resource challenges persist with little promise of improvement in the near term. One of the most important consequences of this underfunding is that labour inspectors have limited access to transportation. Vehicles are a vital tool for labour inspectors, especially in remote areas outside the metropolitan centres where workplaces are spread over large areas. In some cases, district office staff share vehicles to carry out inspections. Where there are no government vehicles, however, inspectors sometimes rely on public transport but are not reimbursed for this expense. In some cases, labour inspectors visit enterprises on foot, though this is only practical in locations with a high number of workplaces in close proximity to the labour office.

Labour inspection visits are sometimes initiated on the basis of complaints but most are carried out in order to reach monthly performance targets that are set for each officer.⁶³ These targets were introduced under the government-wide adoption of performance contracts for civil servants as a way to promote a system of results-based management. With regard to labour inspections, Provincial Labour Officers (managers) are required to complete 15 workplace visits each month whereas staff labour officers are required to undertake 20 monthly visits. While setting targets is a transparent and objective way to measure inspection activities, the numbers alone do not speak to the quality of the inspections themselves. There is a risk, without any more careful assessment, that the targets will drive the inspection visits and that what is being measured is simply the output and not the impact of the visits. Moreover, the same targets apply to all labour officers throughout the country regardless of where they are located. Consequently, inspectors in sparsely populated rural areas are held to the same performance standards as inspectors working in densely populated urban areas. On its face, this does not appear to be an equitable standard since rural inspectors have much greater difficulty visiting the same number of workplaces compared to their urban colleagues. They are also less likely to have adequate means of transportation.

The majority of labour officers' and inspectors' working time is spent dealing with worker complaints, especially related to unjust dismissal (much fewer collective disputes). This preoccupation with disputes is not surprising given the often small numbers of labour officers present in the provincial and district offices and the natural priority given to disputes. However, such a situation risks concentrating the activities of labour officers on one dimension of their responsibilities to the detriment of other important functions, including labour inspection.

There are countries in which conciliation is regarded as a natural aspect of the function of labour inspector because they are public officials closest to the social partners, and because of their qualities of independence and impartiality foreseen in Article 6 of Convention No. 81. However, as set out in ILO Recommendation 81 on labour inspection, the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes. This is especially important because the time and energy inspectors spend on seeking solutions to labour disputes is often at the expense of their primary duties.

⁶² Observation, CEACR 2009/80th Session.

⁶³ Labour officers noted that while they carry out inspections of informal enterprises, these visits account for less than 10 percent of overall inspections. In terms of the number of inspections, District Labour Offices in Nairobi Province carry out on average between 100 and 150 labour inspections per month.

In some of its other comments, the Committee of Experts noted with concern the persistent lack of data on labour inspection activities in the agricultural sector. The Government indicated in its 2007 report that it is envisaged making a formal request for technical assistance once the new laws had been enacted and additional personnel recruited.⁶⁴ In any case, there is no specific budgetary allocation for labour inspection in agriculture and the lack of personnel and means of transport is still an obstacle to labour inspectors in discharging their duties.

In their 2002 audit report, ILO officials noted that under the law at the time, labour inspectors were not entitled, as were factory inspectors, to enter any establishment for inspection purposes. Under the current Labour Institutions Act of 2007, any authorized officer (including labour officers/labour inspectors⁶⁵) has the power to enter a place of employment to carry out their duties.⁶⁶ The Committee of Experts noted however that the language of the law provides that labour inspectors may enter a place of employment at *any reasonable time* and asked the Government to clarify the scope of the word ‘reasonable’ since under the General Survey of 2006, labour inspectors “shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection”.

At one time, there used to be a centralized register of enterprises, which could be used as a tool for planning inspection visits and monitoring progress in a given workplace. Today, enterprise information is still sent to the Ministry by labour officers who carry out inspections, but this information is not systematically organized and field officers note that they do not rely on this data for planning inspection activities. In any case, there is no computer networking capability that would allow for faster and easier access to this information which is currently paper based. In its 2010 General Observation on Convention 81, the ILO Committee of Experts reiterated the essential function of a workplace and enterprise register.⁶⁷ It called on governments to make an effort to establish or improve its register having observed that the more detailed information available, the greater the impact on the effectiveness of labour inspection activities.

In terms of partnerships, workers’ and employers’ organizations are not very involved in the labour inspection function of the MOL – whether in terms of policy planning, programming or awareness raising. Working closely with the social partners can contribute to strengthening the impact of labour inspection, disseminating good practices and encouraging a voluntary culture of compliance. This is especially important where, as in Kenya, inspection staff and resources are small relative to the number of workplaces in the country. This approach is also contained in ILO Recommendation 81 on labour inspection which provides that the promotion of collaboration between officials of the labour inspectorate and organisations of employers and workers should be facilitated by the organisation of conferences or joint committees, or similar bodies, in which representatives

⁶⁴ CEACR, Convention 129 Observation, 2008.

⁶⁵ Article 35. All labour officers have the powers of labour inspectors (e.g. ordering the production of employment records for inspection or copy; interview employees and employers regarding working conditions; enter, inspect and examine places of employment at all reasonable times etc.).

⁶⁶ Article 34(1). Moreover, under this Act, it is an offence to obstruct or hinder an authorized officer (including inspector) in the exercise of his or her lawful functions (Article 38).

⁶⁷ CEACR. General Observation – Labour Inspection Convention, 1947 (No. 81), 2010. See also CEACR General Survey of 2006 on Labour Inspection, para. 326 as well as Part IV of the Labour Inspection Recommendation, 1947 (No. 81), para 9(c) for an indication of some criteria which may serve as a basis for the disaggregation of register data.

of the labour inspectorate discuss with representatives of organisations of employers and workers questions concerning the enforcement of labour legislation and the health and safety of the workers.

The industrial court and labour inspection

In its earlier comments, the ILO Committee of Experts noted that the Government envisaged promoting effective cooperation between the labour inspection system and the justice system with a view to encouraging due diligence and attention in the treatment by judicial bodies of violations reported by the labour inspectorate. In particular, the Government indicated the development of procedural rules and regulations for the industrial court to complement the recently reviewed and adapted labour legislation.⁶⁸ At the time of the mission team's visit, however, there were no Industrial Court regulations in place. Officials indicated, however, that the National Labour Board had a committee currently looking into their preparation.

7.2 OSH inspection

The Directorate of Occupational Safety and Health Services carried out 4,117 OSH inspections during the 2008–09 financial year and investigated 291 accidents during the same time.⁶⁹ Like with labour inspections, OSH inspections are based on Ministry performance contract targets as well as internal departmental goals set out in its annual plan. For 2010, the target is to complete 3,600 inspections (for the department as a whole), with each zone responsible for a portion of this figure and for determining sectoral areas of priority. OSH inspectors carry out visits in both formal and informal workplaces. In fact, the new Occupational Safety and Health Act of 2007 covers all workplaces where any person is at work, whether temporarily or permanently.⁷⁰ This expands the scope of application compared to the previous law, which excluded certain categories of workers from its protection.

In its section on enforcement, the OSH Act sets out the various powers of OSH officers (inspectors), including the power to enter workplaces, take samples, examine documents, interview people on the premises etc. An OSH officer may also be accompanied by a police officer in carrying out a visit in case there is any serious apprehension of obstruction. Should an OSH officer be obstructed in the performance of his or her duties, the Act provides that such a person commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months; or both.⁷¹

The National Council for Occupational Safety and Health (NACOSH), which is provided for under the Occupational Safety and Health Act, was created with the mandate to advise the Minister of Labour on all issues pertaining to occupational safety and health in Kenya and includes employers' and workers' representatives. Among its achievements, the Council has formulated a National OSH Policy in accordance with ILO Conventions No. 155 and 187.

⁶⁸ CEACR, Convention 81 Observation, 2009.

⁶⁹ Observation, CEACR 2009/80th Session.

⁷⁰ Ibid. Section 3(1).

⁷¹ Article 32(7) OSH Act 2007.

The target of DOSHS is to carry out occupational safety and health inspections in each enterprise at least once every two years. Given the small number of personnel, such a rate of inspection turnover is not realistic. As a result, there is a strong emphasis on voluntary compliance and developing a culture of workplace safety. In fact, the new Act is more proactive in its orientation, promoting the introduction of systems at the workplace so employers do not view OSH as simply a matter of policing and inspection but rather giving direct responsibility for improving working conditions through for example, the creation of OSH committees,⁷² conducting of risk assessments and formulating OSH policies.

According to the law, every new workplace is required to have an OSH audit and to be licensed by DOSHS. Inspectors can enter an enterprise at all times and are empowered to issue improvement and prohibition notices, to seize or destroy, and to prosecute. DOSHS officials emphasized, however, that going to court is, in practice, an ineffective and costly means to enforce the law. In fact, the number of OSH-related prosecutions has fallen since the introduction of the new law.

Not unlike labour inspectors, OSH inspectors face serious mobility challenges and often have to pay for transportation out of their own pockets when visiting an enterprise. While the government is said to have been generous in supplying special equipment for carrying out OSH inspections, there is a lack of vehicles, which prevents OSH inspectors from carrying out their work properly and efficiently.

Currently, as officers become exposed to inspection work, they are encouraged to pursue training in local institutions on a self-sponsoring basis with a percentage refunded from the ministry upon completion. In 2001-2004, under the sponsorship of ILO/SLAREA, the inspectors received training on inspections and labour relations. In 2003, ILO/SLAREA commissioned a study that culminated in a training policy guide for the Labour department that was adopted by the Ministry. There is an ongoing DANIDA project that is closely tied to the new labour laws targeting training for labour officers and constituents.

In early 2005, the Kenyan government undertook a campaign against hazardous working conditions, threatening to close factories that put their workers' health at risk. The minister of labour and human resources at the time said that the government would not tolerate hazardous working conditions for citizens in Nairobi's industrial areas. He urged employers to provide a conducive working environment and to involve employees in decision-making noting that his own ministry's inspectors shared the blame for previous safety lapses.⁷³

With regard to investigating accidents, in response to the ILO Committee of Experts' previous comment on the disparity between the number of occupational accidents and investigations conducted, the Government explains that this is due to the delay between the occurrence of accidents and their notification. In order to enable its officers to investigate accidents without delay, the Labour Department has come up with its own accident reporting form (DOSH 1) to be completed by the employer and sent directly to the Department. The Government adds that the data on occupational accidents from the new

⁷² According to the Government's Article 22 report to the ILO on Convention 81 in 2008, the Directorate of Occupational Safety and Health Services (DOSHS) trained 5,150 workplace OSH committee members.

⁷³ Economist Intelligence Unit, Kenya Country Commerce 2009.

forms are entered into an accident database and the compilation of statistics on occupational accidents will enable the Department to identify high risk occupations and enterprises and therefore prioritize its inspection activities.⁷⁴

According to the Government, the obligation set out in Article 22 of the OSH Act for medical practitioners to notify occupational diseases to the Director of the OSH Services is not functioning in a satisfactory manner given that medical practitioners are not adequately sensitized to diagnosing occupational diseases.⁷⁵ In any case, according to Article 14 of Convention 81, the labour inspectorate shall be notified of industrial accidents and cases of occupational disease in such manner as may be prescribed by national laws or regulations.

In addition to its inspection activities, DOSHS carries out awareness raising campaigns among workers and employers, particularly through training activities with workplace health and safety committees in enterprises with 20 or more employees. This training is largely delivered through partnerships with private institutions licensed by DOSHS. Some 85 institutions of this kind were active in the Kenya in 2009.

7.3 Sanctions, remedies and prosecutions

The ability of labour administrations to ensure labour law compliance depends on a combination of tools and interventions. Promoting compliance through awareness raising and training of workers and employers is one valuable and effective approach that aims to promote a culture of compliance through self-regulation. Labour law enforcement, or the intervention of the state, is an important and complementary dimension to increase labour law compliance and relies on the effective involvement of regulators from labour inspectors to industrial court judges.

In Kenya, there are limitations to both sides of this compliance equation. As mentioned above, the lack of training for labour officers on the content of the new legislation hinders their ability to properly apply the law and to advise workers and employers about its requirements. In addition, the lack of accompanying regulations or codes of practice means that there is limited guidance for labour officers and constituents to understand the full meaning of the new legal provisions.

As regards sanctions, labour inspectors do not have recourse to fines or other such penalties if they should come across a workplace violation. In fact there are no laws or regulations dealing with fines or sanctions in such cases. Even in grave cases of child or forced labour, inspectors do not have the legal authority to take action against the enterprise by, for example, ordering a closure of operations. Instead, inspectors send a compliance letter to the employer giving a period of time (depending upon the nature of the infraction) to correct the violation and bring their practices into conformity with the law. Similarly, in the event of a contravention of the OSH Act, an OSH officer may serve the employer with an improvement or prohibition notice depending on the nature of the violation. However, in cases where the risk of serious personal injury as a result of a

⁷⁴ CEACR, Convention 81 Observation, 2008. Article 25 of the OSH Act provides for the development and maintenance of an effective programme of the collection, compilation and analysis of occupational safety and health statistics covering occupational accidents and diseases, as well as the existence of an accident database where information sent through the DOSH 1 form is entered.

⁷⁵ Observation, CEACR 2009/80th Session.

violation is imminent, an OSH officer may immediately forbid the use of part of the workplace, plant or machinery to which the prohibition applies.⁷⁶

With respect to prosecutions, under Section 33(1) the OSH Act of 2007, an OSH officer may, (although not an advocate), prosecute, conduct or defend before a magistrate's court any proceeding arising under the Act, or in the discharge of his or her duties as an occupational safety and health officer. The law does not provide similar powers of prosecution to labour inspectors who are not OSH officers.

8. Social partners and tripartite structures

8.1 General trends in industrial relations

The organization of workers into trade unions in Kenya has traditionally been based on the principle of one union per industry. On this basis, there were for many years 31 'industry-based' unions in Kenya. During the past few decades, this union structure came under strain due to internal union divisions resulting in the formation of new unions.⁷⁷ By March 2008, there were some 42 unions in Kenya, thirty-three of which were affiliated to the country's only trade union federation, the Central Organization of Trade Unions (COTU).⁷⁸ Today, union membership accounts for no more than 20% of the total labour force in Kenya and is down sharply from the mid-1990s.

Collective bargaining takes place at the industry, sectoral or company level. Industry-level bargaining suits national unions, since they often lack the resources and expertise to negotiate separate pacts with individual employers. Industry-level agreements tend to keep wages relatively stable, with a visible benchmark. Increasingly, though, these are seen only in certain sectors such as mining, engineering, tea-plantation, agriculture and banking. Collective agreements usually apply for two years and are legally binding only if registered with the Industrial Court.

The Industrial Relations Charter (IRC) is a voluntary tripartite pact among government, employers and a trade-union umbrella organisation and provides a framework for Kenyan industrial relations. While not having the force of law like the Labour Relations Act, the IRC is implemented by the government, COTU, and the Federation of Kenya Employers (FKE), giving workers the right to engage in legitimate trade union organizational activities.

In general, strikes have become less frequent in recent years, although available data is limited. In 2006, there were 30 strikes, ten of which were in agriculture and 12 in manufacturing. They involved roughly 32,000 employees, and accounted for 202,382 work hours lost.⁷⁹

⁷⁶ Section 37(5), OSH Act, 2007.

⁷⁷ Fashoyin, Tayo, *Social Dialogue and Social and Economic Development in Kenya*, Working Paper No. 3, InFocus Programme on Strengthening Social Dialogue, ILO, Geneva, 2001.

⁷⁸ Economist Intelligence Unit, *Kenya Country Commerce* 2009.

⁷⁹ Ibid.

8.2 Employers' Organizations

Historically, employers have been well organized in Kenya. Most employers are members of or affiliated to the Federation of Kenya Employers (FKE), which is the main employers' body, notably in the field of industrial relations and human resource management. It was established in 1959 under the Trade Unions Act, Cap 233 and is the most representative organisation in Kenya, acting as secretariat for nine employers' associations.⁸⁰ With the exception of the civil service and the armed forces, the Federation's membership covers employers in all sectors of the economy.

The FKE bargains directly on behalf of its members and, if necessary, appears for them before the Industrial Court. It provides support to its members in labour relations and management (e.g. labour disputes, better practices for workplace labour management etc.). It has departments for IR and legal services and runs a number of projects to assist employers on issues such as OSH, HIV/AIDS, small and medium-sized enterprises. It also carries out activities related to organizational reviews, training, advocacy and research.

Concerning labour inspection, the FKE noted that while the government is required by law to publish an annual LI report, this is seldom done. Moreover, very few companies are in fact inspected owing to the lack of inspection personnel within the MOL. More commonly, the FKE observes that inspections are carried out when there is a workplace dispute or a complaint lodged by a worker. As a result, the LI system is more reactive than proactive in its efforts to promote labour law compliance.

The FKE also noted that members are frustrated by the number of inspection visits carried out by different government agencies (e.g. labour inspection, OSH, NSSF). In their view, this places an undue burden on employers and could be improved by coordinating inspection activities and visits. They are also of the view that too much emphasis is placed on sanctioning or punishing violations and that not enough is done to promote compliance through awareness raising through the social partners. Even so, when employers do seek the assistance of labour inspectors, the advice is not always seen as adequate for the needs of employers.

The FKE further noted that the Ministry of Labour has for some time ignored the specific sectoral needs of employers. Not since the 1990s has the MOL trained labour officers or inspectors on sectoral issues. This absence of sectoral expertise suggests there is scope to build the capacity of labour officers in this area to better understand the peculiar employment and labour issues within the individual sectors and to be able to provide more relevant advisory services.

It was also highlighted that the new labour laws have created some particular difficulties for employers. The introduction of a requirement for annual OSH audits and the obligation to hire an expert to carry out risk assessments are seen as costly and onerous. Furthermore, the new rules on maternity leave have resulted in the perception of women workers as an additional cost. While paternity leave is also provided for in the law, there are no regulations to assist employers in determining appropriate rules and practice (e.g. how this applies in cases of fathers with more than one wife).

⁸⁰ The Association of Local Government Employers; the Kenya Association of Building and Civil Engineering Contractors; the Distributive and Allied Trades Association; the Sisal Growers' and Employers' Association; the Engineering and Allied Industries Employers' Association; the Timber Industries Employers' Association; the Motor Trade and Allied Industries Employers' Association; the Agricultural Employers' Association; and the Kenya Coffee Growers' and Employers' Association.

Concerning labour reporting requirements (e.g. accidents and deaths, job vacancies, registration of workplaces for OSH), the FKE pointed out that there is no unified registry system even though all of these reporting elements relate to the Ministry of Labour's competencies.

The FKE confirmed that Public Employment Services in Kenya are for all intents and purposes non-existent and that this function has been eclipsed by a large number of private employment agencies which the MOL does not have the capacity to regulate and monitor.

The FKE noted that one major concern among employers is the absence of pre-court procedures for resolving labour and employment disputes. There was concern that when disputes are brought to a given labour office, labour officers dealing with the cases are not adequately trained in conciliation and often, a certificate of disagreement⁸¹ is mechanically prepared and the case referred to the Industrial Court, which as a result is overburdened by the number of cases on its docket. The FKE suggested the need to activate the Conciliation and Mediation Commission as referred to in the Labour Relations Act.⁸²

With respect to the National Labour Board, the FKE argued that this body was not able to operate effectively given its current mandate and structure. For instance, the law provides that the NLB is responsible for the registration, suspension and deregistration of trade union and employer organizations when this is already clearly the responsibility of the registrar of trade unions.⁸³ Furthermore, the NLB is supposed to be part of the manpower development process in the country, which is made difficult when, in the FKE's view, there is not a properly functioning manpower department in the MOL. Lastly, the NLB was criticized for its imbalanced tripartite composition which currently has 3 worker, 3 employer and 9 government representatives.

More generally, the FKE suggested that the MOL's technical structure was compartmentalized and that this lack of coordination between the different departments negatively affected the quality of labour services provided to constituents. It was suggested that the work of the Labour Department needed to be better integrated into the work of the Ministry as a whole and that this might be encouraged by appointing an official under the PS who has operational oversight on labour matters within the MOL. It was suggested that this would promote synergy between officials at headquarters and downstream to officials in the field labour offices.

8.3 Workers' Organizations

The Central Organization of Trade Unions (COTU) is the sole national trade union center in Kenya. COTU was founded in 1965 upon the dissolution of the Kenya Federation of Labour and the African Workers' Congress. Currently, COTU affiliates 36 registered trade unions in the country, and has a membership of around 1 million workers. Since its formation in 1965, the workers' umbrella body has endeavoured to create, develop and maintain a comprehensive social framework for championing the rights of workers and advocating for humane and productive work, in conditions of freedom, equity, security and dignity.

⁸¹ This is not a standard form but rather a letter prepared by the labour officer stating that no agreement could be reached in the dispute at hand.

⁸² See Section 66(1)(c).

⁸³ Section 7(1)(o), Labour Institutions Act, 2007.

COTU's activities are geared towards strengthening the affiliated unions, promoting worker education, lobbying and advocating for appropriate employment and labour market policies, and legal regimes, articulating workers' views and representation at national, regional and international levels and building solidarity, alliances, partnership and networks with government, private sector, regional and international trade union confederations and other labour support institutions.

In general, COTU was satisfied with the set of reformed labour laws adopted in 2007. It noted, however, that the laws were slow to be fully implemented and that the Workers Injury Benefit Act had yet to be implemented at all.

Concerning the Ministry of Labour, COTU highlighted the main problem was that the MOL suffers from underfunding. It supported having a strong labour inspectorate to enforce the new laws but expressed concern that its work did not extend adequately to workplaces in the informal economy where upwards of 80 per cent of the active working population in Kenya earns a living.

COTU was also preoccupied with the poor state of dispute resolution mechanisms in the country, saying there was a particularly severe bottleneck at the stage of conciliation because there were not enough labour officers to meet the demand for this service. In addition, in COTU's view, the existence of a single Industrial Court in Nairobi posed serious accessibility problems for workers outside the capital. Moreover, cases that appeared before the Court took too much time to resolve, demonstrating that this was not an effective forum for resolving disputes.

8.4 The National Labour Board

The National Labour Board was established by the Labour Institutions Act of 2007 and inaugurated in April 2009, replacing the previous Labour Advisory Board. It is a tripartite organ consisting of employers' (three), workers' (three) and government (nine) representatives as well as independent members nominated by the Labour Minister. The Labour Commissioner acts as the Secretary of the National Labour Board.

Kenya has a tradition of tripartite consultation when it comes to formulating, implementing and monitoring public administration activities in the field of national labour policy. During the 2002 mission however, the social partners voiced some concern over the infrequent meetings of the Labour Advisory Committee (the predecessor to today's National Labour Board), which had scarcely met since it was created in the context of the country's ratification of ILO Convention 144 on tripartite consultation. The mission team noted at the time that all the tripartite partners, Government, COTU and FKE regarded the Labour Advisory Board as dormant and recommended that it be revitalized and social dialogue reactivated.

Moreover, representatives of COTU pointed out that the lack of funds to pay for sitting fees has at times prevented the NLB from holding meetings. The law provides that the Chairman and the members of the Board shall be paid fees or allowances for their participation in the work of the NLB.⁸⁴

Following institutional reforms in 2007, today's National Labour Board is designed to advise the Minister on a number of specific topics. In carrying out this work, the Board may conduct any necessary investigations including research into labour, economic and

⁸⁴ Article 9, Labour Institutions Act

social policy.⁸⁵ The NLB's mandate for consultation covers a wide range of topics including:

- a) all matters concerning employment and labour;
- b) legislation affecting employment and labour;
- c) any matter relating to labour relations and trade unionism;
- d) any issue arising from the ILO and the ILO Conventions;
- e) codes of good practice;
- f) any issue raised by an international or regional association of states of which Kenya is a member;
- g) systems of labour inspection and the administration of the labour laws;
- h) any aspect of public employment services, vocational guidance, vocational training and the employment of persons with disabilities;
- i) the formation and development of policies designed to promote the granting of paid educational leave to workers for the purposes of training, trade union social and civic education and trade union education;
- j) the general state of employment, training and manpower development in the country;
- k) productivity measurement and improvement;
- l) the appointment of wages councils;
- m) the appointment of members of the Industrial Court;
- n) the setting of compensation benefits in accordance with the provisions of the laws relating to work injury benefits;
- o) the registration, suspension and deregistration of trade unions and employers organisations; and
- p) any other matter related to any of the Board's functions.

8.5 National Economic and Social Council (NESC)⁸⁶

The NESC was established by the President in September 2004.⁸⁷ It is Kenya's top advisory body to the Government on socio-economic policy and has a 'tripartite plus'

⁸⁵ Article 7(3), Labour Institutions Act

⁸⁶ In addition to the NESC, there are a number of other tripartite bodies in Kenya including: the National Hospital Insurance Fund, the Child Labour Steering Committee; the East African Business Council; the Kenya Anti-Corruption Advisory Board; the National Aids Control Council; and the Kenya Business Council.

⁸⁷ Gazette notice No. 7699. Unlike the NLB, the NESC is not a statutory body.

membership drawn from government, the private sector, civil society and academia. The Council is designed to create a space where Government, private sector and trade unions can make policy recommendations in a variety of fields, including in the areas of social equity and employment creation.

Since 2004, there have been two Councils. The first (2004-2008) had 34 members and held 13 meetings with one of its eight sub-committees dedicated to the issue of “integrated employment creation”. The second Council (2008 to present) has 49 members, half of them Cabinet Ministers. It does not, however, have a sub-committee dealing exclusively with employment matters.

At the 2010 National Labour Conference, it was observed that the membership of the second Council does not include the Minister of Labour.⁸⁸ Moreover, in recent meetings, there had been no high-level representative from the Ministry of Labour. The question was asked whether there might be a risk of overlapping and competing mandates between the National Labour Board and the NESC. There was also concern that the NLB could be overshadowed by the more politically prominent Council and that the lack of strong representation of the Ministry of Labour on the Council further marginalized issues of labour and employment in the national discussion on socio-economic development. In any case, it was clear from the discussion at the Conference that labour administration officials lacked a full understanding of the functioning of the NESC and how it relates to the mandate of the Ministry of Labour.

9. Findings and Recommendations

Based on the above discussion, the mission team has formulated a number of findings and recommendations in an effort to address the key challenges towards modernizing the country’s labour administration and strengthen its labour inspection system. It is worth noting that in the context of its Strategic Plan for 2008-2012, the Ministry has already undertaken a thoughtful analysis of its own strengths, weaknesses, opportunities and threats. Some of the findings and recommendations below overlap with those challenges identified by the Ministry and in so doing reinforce certain common priorities for improvement. It is not an exhaustive catalogue but rather a collection of strategic recommendations that the mission team consider to be important for the long term effectiveness and viability of labour administration and inspection services in Kenya.

9.1 National labour administration system

The Ministry of Labour suffers from a low political profile in high-level decision making. This low profile prevents the Ministry from effectively advocating for political support and sufficient resources to advance its agenda.

Recommendation: The Ministry should work to improve the recognition among other government partners of the importance of labour policy as a component of national development and to increase funding for its programmes and activities.

⁸⁸ www.nesc.go.ke.

9.2 Labour policies

The mission team noted that a number of key labour related policies are not in place in Kenya. For example, there is no overarching national labour policy. Neither are there specific policies on employment, labour inspection, OSH or social security – core areas of responsibility in the context of labour administration.

Recommendation: The mission recommends that the Ministry work towards developing realistic and evidence-based policies in the above areas as part of an overall national labour policy coordinated by the MOL. Moreover, in the spirit of Convention 150, these policies should be developed in close consultation with the social partners.

9.3 Labour legislation

While the newly reformed labour laws have been in place since 2007, their implementation has been slow, lacking uniformity and incomplete. Notably, not all officers have received adequate training on the content and application of the new laws. Beyond the statutes, at the time of the audit, there were no regulations or codes of practice in place to provide practical guidance on the interpretation and implementation of the new legal provisions. Moreover, the written decisions of the Industrial Court are not published or disseminated.

Recommendation: The Ministry should ensure the full implementation of the labour law by making sure that labour officers receive adequate training on the new legislation. The government should also endeavour to finalize and gazette the accompanying labour regulations quickly, ensure that copies of these regulations are available in every labour office and train labour officers on their content and application. An effort should also be made to publish and distribute the written decisions of the Industrial Court. Any updates on the interpretation of the law should be disseminated through regular meetings between headquarters and field officials.

9.4 Ministry of Labour Structure and Institutional Capacity

Ministry structure and coordination. It seems that the Ministry suffers from exaggerated compartmentalisation between its departments as already highlighted in the previous ILO technical memorandum in 2002. This lack of coordination between units reflects the inefficient utilisation of scarce resources and the separation between policies based on different legal foundations. The key mission of elaborating a national social protection policy is not supported by the existence of a separate and sufficiently staffed unit.

Recommendation: The MOL needs to strengthen collaboration between different units by the creation of a mechanism for coordination under the responsibility of the Permanent Secretary. Regular weekly meetings of all the unit heads with a pre-established agenda should be the first step. In a longer term perspective, a reorganization of the Ministry should be envisaged. Such a reorganization should regroup the existing units into a limited number of sectors, corresponding to the main components of labour policy namely, labour standards, employment and social protection. Labour inspection should be put under the responsibility of one chief inspector.

Resources and equipment. The Ministry in general does not have adequate technical equipment to carry out its mandate to the best of its ability. The lack of tools such as computer equipment and networking capability, especially in the regional offices, limits

the collection, analysis and sharing of data gathered by inspectors and employment officers. It also impedes the easy sharing of vital documents such as inspection forms, legislation, industrial court decisions or Ministerial memos and as such contributes to a sense of isolation between the field offices and headquarters. Moreover, the lack of government vehicles, or any policy on car sharing or public transport, limits the ability of staff to carry out inspections and to meet their performance targets – especially in agricultural or sparsely populated areas of the country. The overall lack of adequate resources further reinforces reliance on external sources of funding and support such as international donors.

Recommendation: Where possible, the Ministry should strategically allocate resources for computers and vehicles in areas that will have the greatest impact in improving the effectiveness of labour officers in the performance of their functions. It should also consider formalizing a policy on sharing resources (particularly vehicles between OSH and labour inspectors) and on reimbursing labour officers who use public transport in the course of their work. Moreover, the Ministry should work to mobilize increased financial support from its own government to improve the sustainability of its operations.

Staff development and salaries. The most pressing challenge facing the Ministry today is its severe staff shortage compounded by the lack of recruitment over the past 16 years. There is no realistic succession plan in place. The salaries of labour officers are generally poor, and the wide gap between management and junior staff salaries is perceived as unfair. There also appears to be no clear career path for Ministry officials, with limited opportunities for professional development and promotion. Combined with the lack of resources, these factors threaten to erode the motivation and professionalism of Ministry staff and reduce resistance to temptation from improper outside influence. More fundamentally, they undermine the capacity of the Ministry to deliver on its targets and to fulfill its mandate to promote decent work.

Recommendation: The Ministry should develop a strategic plan to effectively persuade the government to make a greater investment in the Ministry of Labour as an investment in Kenya's human and economic development. The Ministry should also prepare and implement a realistic succession plan for staff renewal, including through the recruitment of young labour officers. This should be combined with the adoption of a training plan, not only for new recruits but also the ongoing skills upgrading of existing staff members. The MOL, in consultation with ministry staff and their representatives should further consider how its pay levels and structure affects staff motivation, advancement and ultimately performance.

Industrial Court. The Industrial Court's current place within the MOL's institutional and management structure risks giving the appearance that the Court lacks the necessary independence to act as an impartial arbiter – especially in cases where the Ministry's own interests are at stake. This is not helped by the fact that the only Industrial Court in the country is located in the Ministry's premises in Nairobi. The rule of law suggests that the separation of powers between the executive and judiciary is a fundamental principle for limiting any potential arbitrary government interference in the independent and equitable resolution of legal disputes.

The lack of effective pre-trial dispute resolution mechanisms directly contributes to the Industrial Court's excessive case load, as does the fact that there is only one chambers in the entire country based in Nairobi. Moreover, none of the five Industrial Court judges have any previous professional experience in the area of employment and labour law or international labour standards.

Recommendation: The government should consider taking measures, whether through the Court's physical relocation or some other administrative safeguards, to protect the integrity of the court and its decisions. Moreover, the MOL should consider establishing

additional permanent Industrial Courts outside Nairobi as well as developing and implementing a plan for the professional development and training of Industrial Court judges, particularly in the area of international labour standards. It should also endeavour to set up an extra-judicial mechanism or body to facilitate the resolution of disputes and in so doing may look to examples from neighbouring African countries who have experience in this regard.

Labour market information. In Kenya, labour market information is very limited or non-existent and possible sources of information (e.g. field employment officers) are not utilized to their full potential. There is, for example, no reliable data on unemployment or on the size of the informal economy.⁸⁹ While a partial labour force survey is underway in 2010, the last full national survey was carried out in 1988. The infrequency and unreliability of available labour market data in Kenya undermines the capacity of the Ministry of Labour and its departments to build an accurate profile of the labour market upon which to make evidence-based and targeted policy and planning decisions.

Recommendation: The Ministry should work towards realizing the objective of its Strategic Plan 2008-2012 and create a National Human Resource Database with adequately trained staff and financial resources to gather data on a regular basis. It should also maximize existing sources of information by coordinating the collection of data gathered by labour officers and employment officers in the regions in the course of their normal duties.

Gender equality. The mission team noted that there are very few women in professional positions within the Ministry of Labour and even fewer among the ranks of senior officers. It noted with interest, however, that the MOL was in the process of developing a ministerial gender policy.

Recommendation: As part of its gender policy, the Ministry should institutionalize the principles of gender equality by striving for a more representative balance between the number of male and female labour officers. It should also encourage the promotion of women to positions of seniority while facilitating a work environment that encourages and supports a healthy work life balance.

9.5 Field offices

Previous needs assessments carried out by the ILO in 1998 and 2002 recommended that, given the Ministry's resource limitations (human, material and financial), the field offices needed to function more efficiently by, for example, integrating the labour and OSH inspection services at the field level. This included such recommendations as developing standardized reporting forms, reviewing and assessing means of possible cooperation and creating a coordination position at the district level to supervise field performance and improve coordination with the other specialized departments of the Ministry. This follows Convention 81, which calls on the competent authority to make appropriate arrangements to promote effective co-operation between the inspection services and other government services and public or private institutions engaged in similar activities.

The current mission team found that most of these recommendations had not been adopted. The labour and OSH inspection services at the field level (not to mention other operations such as employment services) continue to work independently and are often in

⁸⁹ Estimates from the Kenyan National Bureau of Statistics suggest that there are around 150,000 formal workplaces in the country.

different physical locations. Labour and OSH inspectors do not use harmonized inspection forms and only rarely carry out joint visits. There is also no systematic approach to coordination between these inspection services whether in joint planning, sharing information on enterprises or completed inspections or sharing resources such as vehicles. To this day, the field offices remain understaffed and poorly equipped with only limited interaction between field offices and the Labour Department.

Recommendation: The mission team reiterates the recommendations of the previous ILO missions regarding improving the coordination between the labour and OSH inspection services in the field offices and urges the MOL to take concrete steps towards their implementation.

9.6 Labour and OSH inspection

Structure of Kenya labour inspection system. Within the MOL, labour inspection services are under the responsibility of the Labour Department. Occupational health and safety inspections are managed separately by the DOHSS. Moreover, the NSSF carries out its own workplace inspections in the area of social security. Convention 81 provides that the central authority⁹⁰ shall make appropriate arrangements to promote effective co-operation between inspection services. There is, however, no institutional coordination or sharing of information between these three inspection services (whether at the national or local level). Neither is there any individual or department with oversight responsibility for the various inspection activities in the Ministry. In addition, labour and OSH inspectors do not always share the same facilities in the field and there is only ad hoc sharing of already limited resources such as vehicles.

Recommendation: The MOL should improve rules and mechanisms for more effective co-operation between labour, OSH and NSSF inspection activities to facilitate the exchange of workplace and inspection data and encourage, where appropriate, the consolidation or sharing of resources such as offices and transportation, particularly in the field. The Ministry might also consider creating a position of Chief Inspector who would be responsible for the overall coordination of the MOL's inspection services.

Working with the social partners. The labour inspectorate can attain its objectives only if appropriate measures are adopted to promote effective collaboration with employers and workers in its activities. In Kenya, labour inspectors do not regularly work with workers and employers to inform them about legal developments or workplace trends, assist them in conducting risk assessments or self-evaluations, or in the planning and carrying out of inspection activities.

Recommendation: The Ministry should make appropriate arrangements to promote collaboration between labour inspection officials and employers and workers or their organisations. In so doing it may consider using the National Labour Board as a consultative body to discuss matters related to labour and OSH inspection. It may also consider negotiating collaboration agreements with the social partners to address priority concerns in the areas of working conditions, health and safety at work, and combating occupational risks. It should also encourage the social partners to collaborate between

⁹⁰ Under C. 81, the principle of having a single central authority allows for a degree of flexibility in two respects: firstly, the labour inspection system must be placed under the supervision and control of a central authority only in so far as is compatible with the administrative practice of the Member; and secondly, in the case of a federal State, the term central authority may be either a federal authority or a central authority of a federated unit.

themselves at the enterprise level to improve voluntary labour law compliance at the workplace.

Monitoring and evaluating performance. The current public sector approach in Kenya for measuring individual achievement is grounded in a system of performance contracts. For inspectors, these contracts set out a specific number of visits that must be carried out on a monthly basis. While quantitative targets are a useful tool for measuring and comparing performance, the targets are identical for every inspector in Kenya, regardless of differences between enterprise density in rural and urban areas and irrespective of the resources available (e.g. vehicles) to inspectors to carry out their work.

Recommendation: The Ministry of Labour should review how performance contract targets are allocated to labour officers/inspectors in different parts of the country and should consider introducing qualitative performance measurements to ensure that inspections are carried out not only in sufficient number but at an appropriate level of quality.

Workplace Register. There is not at present a useful workplace registry in the Ministry with statistics on the categories of men and women workers in Kenyan workplaces or information gathered from inspection visits. A properly established and centralized registry would help the Ministry improve its capacity to plan based on objective information while assisting labour inspectors in the preparation and follow-up to their visits. Moreover, not having a registry (electronic or otherwise) further limits the ability of managers to plan and monitor inspection developments in a given area. As a result, inspections are commonly planned in a haphazard way without the ability to strategize based on objective trends or developments.

Recommendation. The Ministry should improve and update its workplace registry for the systematic collection of workplace data and inspection information. Such a registry should be well-organized and accessible to labour officers both at the central level and in the field. The MOL should improve its own internal coordination in addition with other government bodies and public or private institutions who gather relevant data (e.g. DOSHS, NSSF, DIT, tax authorities, chambers of commerce, local administrations etc.) to maximize the information available and as a means to improve Ministerial and intra-governmental coordination.

Information and communication technology. Labour officers in Kenya do not have widespread access to information technology that would improve information collection, sharing, planning, evaluation and ultimately job performance. Where information is recorded, this is done manually, which makes the sharing and analysis of information cumbersome.

Recommendation: The Ministry of Labour should establish a single, comprehensive and electronic workplace registry. The various MOL departments, field offices as well as other Ministries and government agencies should collaborate to consolidate existing information that is relevant to planning and carrying out labour inspections.

Inspection checklists. While an inspection checklist exists, not all labour offices have copies and many officers perform visits without them. A checklist helps not only to standardize the inspection visit by ensuring that all the necessary elements are addressed, but it importantly documents the visit which is vital for gathering information on a given workplace for future follow up and for tracking performance.

Recommendation. The MOL should ensure that all offices have adequate copies of labour inspection checklists and that inspectors use them in the course of their visits.

Training. In Kenya, not every inspector recruited by the Ministry has a University degree and virtually none has received relevant specialized technical training prior to being hired. Moreover, the inadequacy of induction and ongoing professional development means officials are not equipped for the technical demands of their profession nor are they supported in developing skills to strengthen their competences as inspectors over the course of their careers.

Recommendation: The Ministry should take steps to identify and prioritize the training needs of existing inspection staff and discuss further steps for strengthening training capacity through, for example, the adoption and implementation of a training plan with the technical assistance of the ILO and ITC-ILO. When considering future recruitment, the Ministry should ensure that inspectors have some level of technical background in their respective areas of specialty based on standard qualification requirements.

Informal economy. Kenya's inspection services cover only a small fraction of the workers and workplaces in the country, with estimates suggesting that 70 to 80 per cent of the working age population earns a living from the informal economy in small and micro enterprises. Despite assurances that under the law, labour and OSH inspection services also cover informal enterprises, the number of actual visits to such workplaces is minimal and there is no inspection policy on how best to regulate the terms and conditions of work in the informal economy.

Recommendation: The mission team urges the Ministry of Labour to further consider how labour inspection services including prevention, advice and compliance measures, might be effectively extended to the large informal economy where conditions of work are generally poorer than in formal employment. In so doing, the MOL may consider giving directions to inspectors to include a certain number of informal enterprises among the visits they carry out. It may also consider focusing inspection activities or campaigns on specific categories of workers often found in the informal economy such as agricultural workers.

Fines and penalties. Kenya's labour inspectors do not have the legal mandate to issue fines or similar penalties in the case of workplace violations.

Recommendation. The Ministry should consider giving a legal basis for labour inspectors to levy effective administrative sanctions or fines against labour law violations. Such fines or sanctions should be designed to be dissuasive, in proportion to the severity of the violation and appropriate to the financial means of the enterprise in question.

9.7 Collective Bargaining

Collective bargaining agreements registered with the Industrial Court are not automatically shared with labour officers in the regions where they apply. Moreover, no information is gathered or systematic analysis carried out on collective agreements to monitor such things as collective bargaining coverage, the evolution of terms and conditions of employment or developments in industrial relations and bargaining practice in Kenya.

Recommendation: A mechanism should be put in place to share newly registered collective agreements with the field offices responsible for their implementation. The MOL should also improve its capacity to gather information on and analyze existing

collective agreements systematically. It should also consider adopting measures to promote collective bargaining as understood by ILO Convention 154.⁹¹

9.8 Dispute resolution

Pre-trial dispute resolution. In Kenya, labour officers are overburdened by the number of complaints they receive on a daily basis to the extent that much of their time is spent mediating disputes at the expense of other tasks such as labour inspections. Moreover, there is no institution for pre-trial dispute resolution despite indications under the Labour Relations Act of a Conciliation and Mediation Commission. Because such a body does not exist in Kenya, a large number of cases are forwarded to the Industrial Court, which has become overwhelmed with an ever growing case load.

Recommendation: To relieve labour inspectors from the responsibility of conciliating disputes, in line with ILO Recommendation 81, and to improve the speed, efficiency and professionalism in resolving disputes before they reach the Industrial Court, the mission team urges the Ministry to establish the Conciliation and Mediation Commission as referred to in the Labour Relations Act and to provide it with a clear legal mandate and rules along with an adequate budget to carry out its work. Transitional measures should be adopted as disputes are directed away from labour inspectors towards such a Commission, including the establishment of dispute resolution services in the major urban centres. Moreover, a road map should be devised to plan for the extension of these dispute services to the entire country.

9.9 Public employment services

Public Employment Services, as part of the National Employment Bureau, are seriously understaffed and are unable, in the current setting, to provide meaningful services to their clients, employers and workers. No major changes cannot be achieved without significant efforts in the field institutional capacity building and resources mobilization. However, concentration of existing human resources in selected urban areas could create a basis for future Provincial Employment Offices providing all services, including job placement.

Recommendation: It is recommended to review the current re-deployment of field offices in order to create fully-fledged provincial employment centres in selected urban areas and transform field offices in rural areas into labour information centres which would not deal with job-placement, but which would provide labour market information and advice on job and training opportunities.

9.10 ILO Conventions

ILO Conventions and Recommendations are a vital source of protection for working people. The Labour Administration Convention No. 150 (1978) is among those instruments designated by the ILO as a governance Convention and is considered an important element in any strategy for recovering from the current economic crisis, as indicated in the Global Jobs Pact. Kenya has not yet ratified Convention 150 though it has the enabling legislation to do so. In addition to strengthening the legal basis of the country's labour administration system, ratifying C. 150 could further contribute to deepening technical assistance between Kenya and the ILO on matters of labour

⁹¹ Kenya has not ratified C. 154.

administration and towards monitoring progress in improving labour administration services in line with international labour standards.

Recommendation: The mission recommends that the MOL take steps to ratify the Labour Administration Convention No. 150 (1978) in line with its own objectives under its Strategic Plan 2008-2012.

10. Conclusion and Follow-up

The ILO team was fortunate to have undertaken this mission at a time when the Ministry of Labour appears to be taking steps towards strengthening its mandate and reaffirming the importance of labour administration and inspection within the government as a whole. The holding of the first National Labour Conference in thirty years was a vivid expression of this effort to strengthen the coordination and functioning of the labour offices across the country towards improving delivery of its services.

The current ILO needs assessment is but one contribution to this process, but it has a number of uses. First, the report is intended to assist the Ministry set achievable priorities. The hope is that it will be used as a reference in the preparation and implementation of an action plan, designed in consultation with worker and employer representatives and where necessary with the technical assistance of the ILO. The purpose of such a plan is to transform the present diagnostic exercise into a set of concrete objectives with clear strategies for obtaining them. The participation of the social partners ensures that the ultimate beneficiaries are involved in the process and that it takes account of the views of all constituents, encouraging shared responsibility for delivering results.

Second, as work is undertaken to carry out the action plan, the report can also serve as a baseline against which to measure progress. This will enable the government and social partners to assess on an ongoing basis what objectives have been achieved and whether the strategies adopted continue to be the best approach for achieving them.

The report also has a third utility for the Ministry. It can be used as an advocacy tool to draw attention to the need and means for improving labour administration and inspection services in Kenya. In this respect, it can be used to mobilize resources, whether from the government itself or the donor community to support technical and other relevant interventions where assistance is required to deliver on its recommendations.

Ultimately, as mentioned at the outset, this report is only of value if committed action is taken to follow up on its recommendations. As previous ILO needs assessments have shown, a report alone cannot deliver change. It is the responsibility of constituents in Kenya, and particularly the Ministry of Labour who requested this exercise, to seize the opportunity to strengthen its labour administration and inspection systems in its efforts to deliver on its own strategic plan and advance the cause of decent work for working men and women in Kenya.

ANNEX 1 ILO Conventions ratified by Kenya

(As of 31 January 2011)

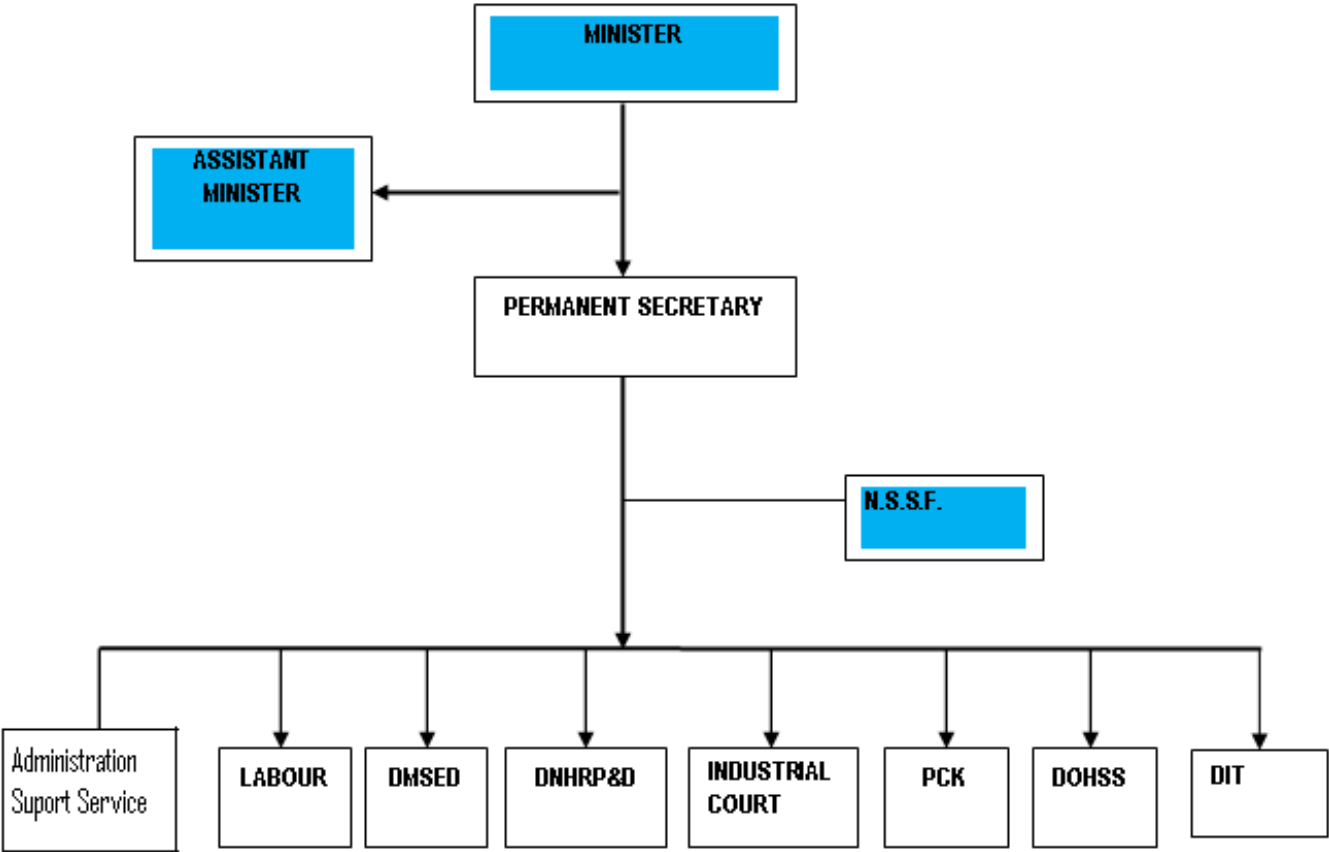
Convention	Ratification date	Status
C2 Unemployment Convention, 1919	13:01:1964	ratified
C5 Minimum Age (Industry) Convention, 1919	13:01:1964	denounced on 09:04:1979
C11 Right of Association (Agriculture) Convention, 1921	13:01:1964	ratified
C12 Workmen's Compensation (Agriculture) Convention, 1921	13:01:1964	ratified
C14 Weekly Rest (Industry) Convention, 1921	13:01:1964	ratified
C15 Minimum Age (Trimmers and Stokers) Convention, 1921	13:01:1964	denounced on 09:04:1979
C16 Medical Examination of Young Persons (Sea) Convention, 1921	09:02:1971	ratified
C17 Workmen's Compensation (Accidents) Convention, 1925	13:01:1964	ratified
C19 Equality of Treatment (Accident Compensation) Convention, 1925	13:01:1964	ratified
C26 Minimum Wage-Fixing Machinery Convention, 1928	13:01:1964	ratified
C27 Marking of Weight (Packages Transported by Vessels) Convention, 1929	09:02:1971	ratified
C29 Forced Labour Convention, 1930	13:01:1964	ratified
C32 Protection against Accidents (Dockers) Convention (Revised), 1932	13:01:1964	ratified
C45 Underground Work (Women) Convention, 1935	13:01:1964	ratified
C50 Recruiting of Indigenous Workers Convention, 1936	13:01:1964	ratified
C58 Minimum Age (Sea) Convention (Revised), 1936	13:01:1964	denounced on 09:04:1979
C59 Minimum Age (Industry) Convention (Revised), 1937	13:01:1964	denounced on 09:04:1979
C63 Convention concerning Statistics of Wages and Hours of Work, 1938	13:01:1964	ratified
C64 Contracts of Employment (Indigenous Workers) Convention, 1939	13:01:1964	ratified

C65 Penal Sanctions (Indigenous Workers) Convention, 1939	13:01:1964	ratified
C81 Labour Inspection Convention, 1947	13:01:1964	ratified
C86 Contracts of Employment (Indigenous Workers) Convention, 1947	13:01:1964	ratified
C88 Employment Service Convention, 1948	13:01:1964	ratified
C89 Night Work (Women) Convention (Revised), 1948	30:11:1965	ratified
C94 Labour Clauses (Public Contracts) Convention, 1949	13:01:1964	ratified
C97 Migration for Employment Convention (Revised), 1949	30:11:1965	ratified
C98 Right to Organise and Collective Bargaining Convention, 1949	13:01:1964	ratified
C99 Minimum Wage Fixing Machinery (Agriculture) Convention, 1951	09:02:1971	ratified
C100 Equal Remuneration Convention, 1951	07:05:2001	ratified
C105 Abolition of Forced Labour Convention, 1957	13:01:1964	ratified
C111 Discrimination (Employment and Occupation) Convention, 1958	07:05:2001	ratified
C112 Minimum Age (Fishermen) Convention, 1959	09:02:1971	denounced on 09:04:1979
C118 Equality of Treatment (Social Security) Convention, 1962	09:02:1971	ratified
C123 Minimum Age (Underground Work) Convention, 1965	20:06:1968	denounced on 09:04:1979
C129 Labour Inspection (Agriculture) Convention, 1969	09:04:1979	ratified
C131 Minimum Wage Fixing Convention, 1970	09:04:1979	ratified
C132 Holidays with Pay Convention (Revised), 1970	09:04:1979	ratified
C134 Prevention of Accidents (Seafarers) Convention, 1970	06:06:1990	ratified
C135 Workers' Representatives Convention, 1971	09:04:1979	ratified
C137 Dock Work Convention, 1973	09:04:1979	ratified
C138 Minimum Age Convention, 1973	09:04:1979	ratified
C140 Paid Educational Leave Convention, 1974	09:04:1979	ratified
C141 Rural Workers' Organisations Convention,	09:04:1979	ratified

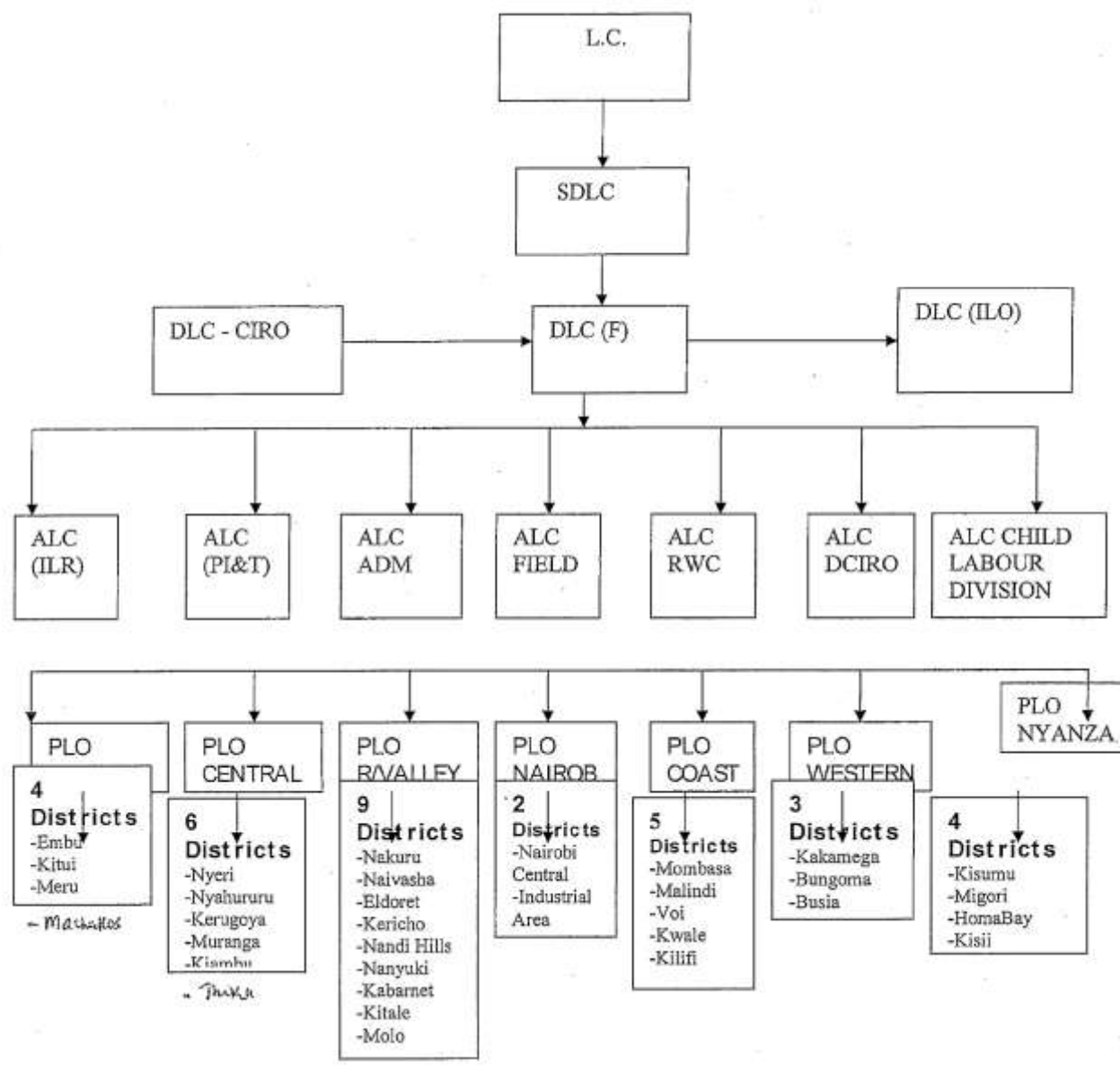
1975		
C142 Human Resources Development Convention, 1975	09:04:1979	ratified
C143 Migrant Workers (Supplementary Provisions) Convention, 1975	09:04:1979	ratified
C144 Tripartite Consultation (International Labour Standards) Convention, 1976	06:06:1990	ratified
C146 Seafarers' Annual Leave with Pay Convention, 1976	14:09:1990	ratified
C149 Nursing Personnel Convention, 1977	06:06:1990	ratified
C182 Worst Forms of Child Labour Convention, 1999	07:05:2001	ratified

Ratified: 43 Conditional ratification: 0 Declared applicable: 0 Denounced: 6

ANNEX 2 Ministry of Labour Structure

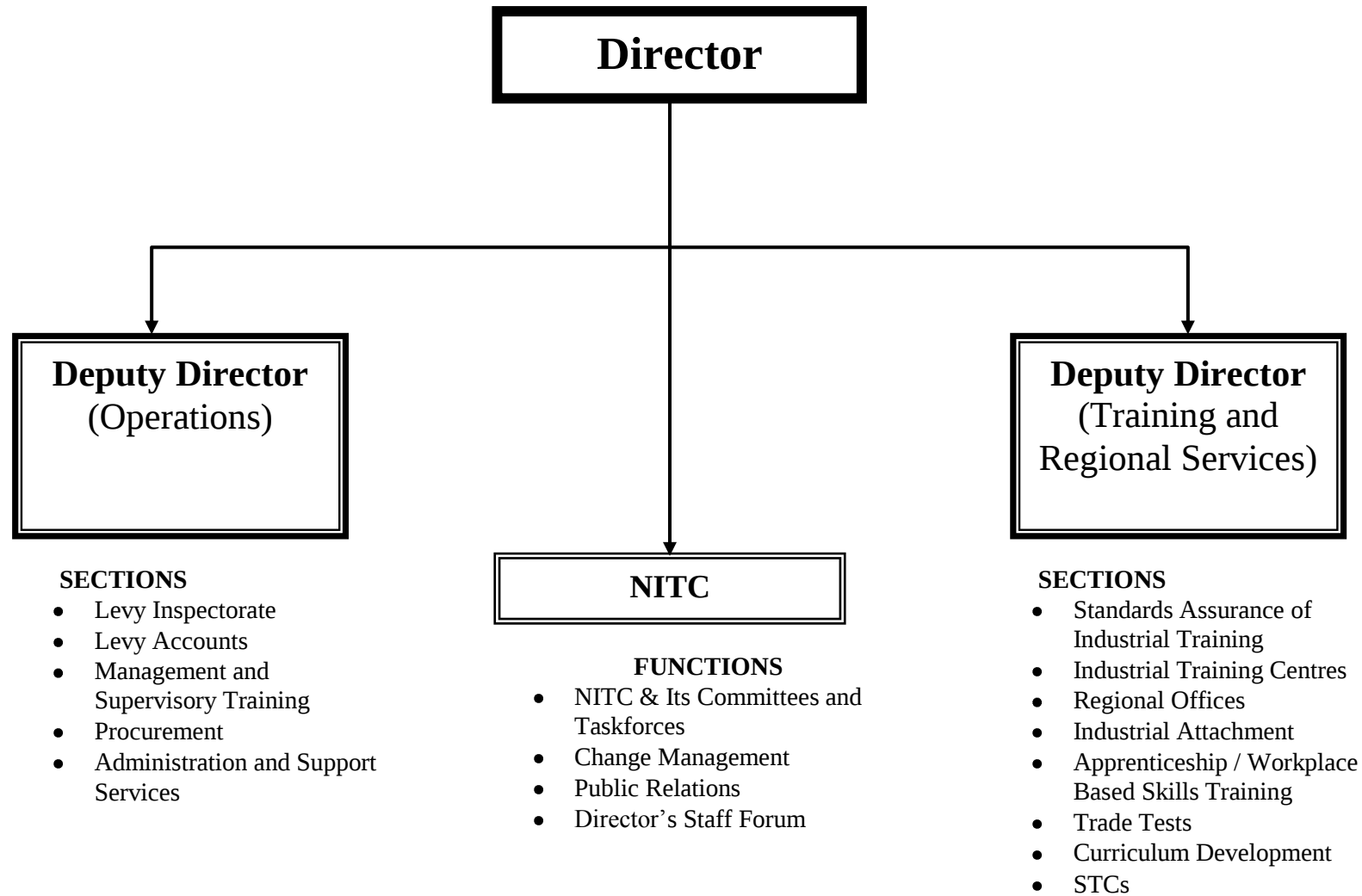


ANNEX 3 Labour Department Structure



Source: Labour Department Annual Report, 2005

ANNEX 4 Department of Industrial Training Structure



ANNEX 5 List of Officials Interviewed

Francis Bako	District Employment Officer, Malindi
Lenny K. Bii	District Labour Officer, Nairobi
Catherine Edalia	Ag. Operations Manager, NSSF
Josephine S. Etenyi	Principal Manpower Development Officer
Geoffrey Gathigi	Public Relations, NSSF
Francis M. Gitaka	Ag. Director, Directorate of Industrial Training
Daniel P. Kakuti	District Employment Officer, Malindi
P. Kantotu	District Labour Officer, Kiambu
Irene W.M. Karanja	Chief Occupational Safety and Health Officer
Justice M. Karuga	Deputy Director, Directorate of Occupational Safety and Health
Bonaya Kase	District Labour Officer, Kwale
Gilbert Kimalel	Investment Officer, NSSF
Samuel M. Kimani	District Occupational Health and Safety Officer, Malindi
P.M. Kitenia	Head, Research and Development, NSSF
Ezekiel Kitivo	Director, National Human Resources Planning and Development
Joe N. Makaa	Provincial Labour Officer, Nairobi
Pius W. Makhonge	Director, Directorate of Occupational Safety and Health
Jeridah Mbaka	Assistant Manager, Research and Development, NSSF
Francis A. Mitiambo	Assistant Director Human Resource Development
Millicent Muli	Assistant Labour Commissioner
Z.M. Mutonga	Principal KTTI, Directorate of Industrial Training
Swaleh S. Mwasaria	District Labour Officer, Malindi
Charles N. Mwinami	District Labour Officer, Mombasa
Scholastica Ndambuki	Deputy Registrar, Industrial Court
John Njorio	Human Resources Development
Sammy Nyambari	Labour Commissioner
A. Odera	General Manager, Corporate Services, NSSF
Harrison Okeche	Senior Executive Officer, Industrial Relations and Legal Services
Francis L. Okello	Provincial Labour Officer, Coast Province
E.A. Ombado	Manager, Records Management, NSSF
Geoffrey Omondi	Deputy Labour Commissioner, Labour Department
Kennedy Sakwa	Assistant Director, Human Resources Development
Hellen S. Wasilwa	Registrar, Industrial Court

ANNEX 6 Field Office Structure

Provincial Labour Offices (8)⁹²:

1. Nairobi
2. Central
3. Western
4. Coast
5. Eastern
6. North Eastern
7. Nyanza
8. Rift Valley

District labour offices (20)⁹³:

9. Nyahururu
- Nyeri
- Naivasha
- Murang'a
- Kitui
- Kiambu
- Eldoret
- Kapsabet
- Nanyuki
- Kakamega
- Nakuru
- Siaya
- Kisii
- Meru
- Malindi
- Kamiti
- Mombasa
- Molo
- Busia
- Kerugoya

⁹² Kenya has eight Provinces in total.

⁹³ Following a High Court ruling in September 2009, there are 46 legal districts in Kenya, which means that the MOL has an institutional footprint in less than half of Kenya's districts.

ANNEX 7 Ministry Staff Profile

(2008)

Unit	Cadre of Staff	Authorized	In-Post	Gap
DOSHS	Technical Officers	170	58	-122
	Specialists and Technicians	77	21	-56
	Support Personnel	128	55	-73
DNHRP&D	HR Planning Division	52	8	-44
	HR Development Division	47	20	-27
	Support Personnel	28	9	-19
DIT		50	39	-11
National Industrial & Vocational Training Centre		118	42	-76
Industrial Training Centre-Kisumu		95	38	-57
Kenya Textile Training Institute		88	41	-47
Curriculum Development Centre (Nairobi)		35	9	-26
Industrial Training Centre (Mombasa)		86	32	-54
Technology Development Centre (Athi River)		110	0	-110
Levy Training Inspectorate		79	15	-64
DMSED		174	81	-93
Labour Department	Technical Personnel for labour division	279	84	-195
	Technical personnel for employment division	115	42	-73
	Support personnel for labour division (HQ)	208	158	-50
	Support personnel for employment division (HQ)	26	53	27
Industrial Court		48	19	-29
PCK		86	0	-86
Administration		82	62	-20
HR Management Unit		76	36	-40
HR Development Unit		5	0	-5
Central Planning and Monitoring Unit		37	16	-21
Accounts Division		55	35	-20
Finance Division		7	4	-3
Internal Audit Unit		8	6	-2
Procurement		18	9	-9
ICT		5	6	1
Total		2392	998	-1394

Source: Ministry of Labour Strategic Plan 2008-2012

ANNEX 8 Ministry Staff and Equipment

Station	Staff	Vehicles	Motorcycles
Headquarters	54	03	0
Province (7)	49	07	02
Districts (> 33)	267	18	15

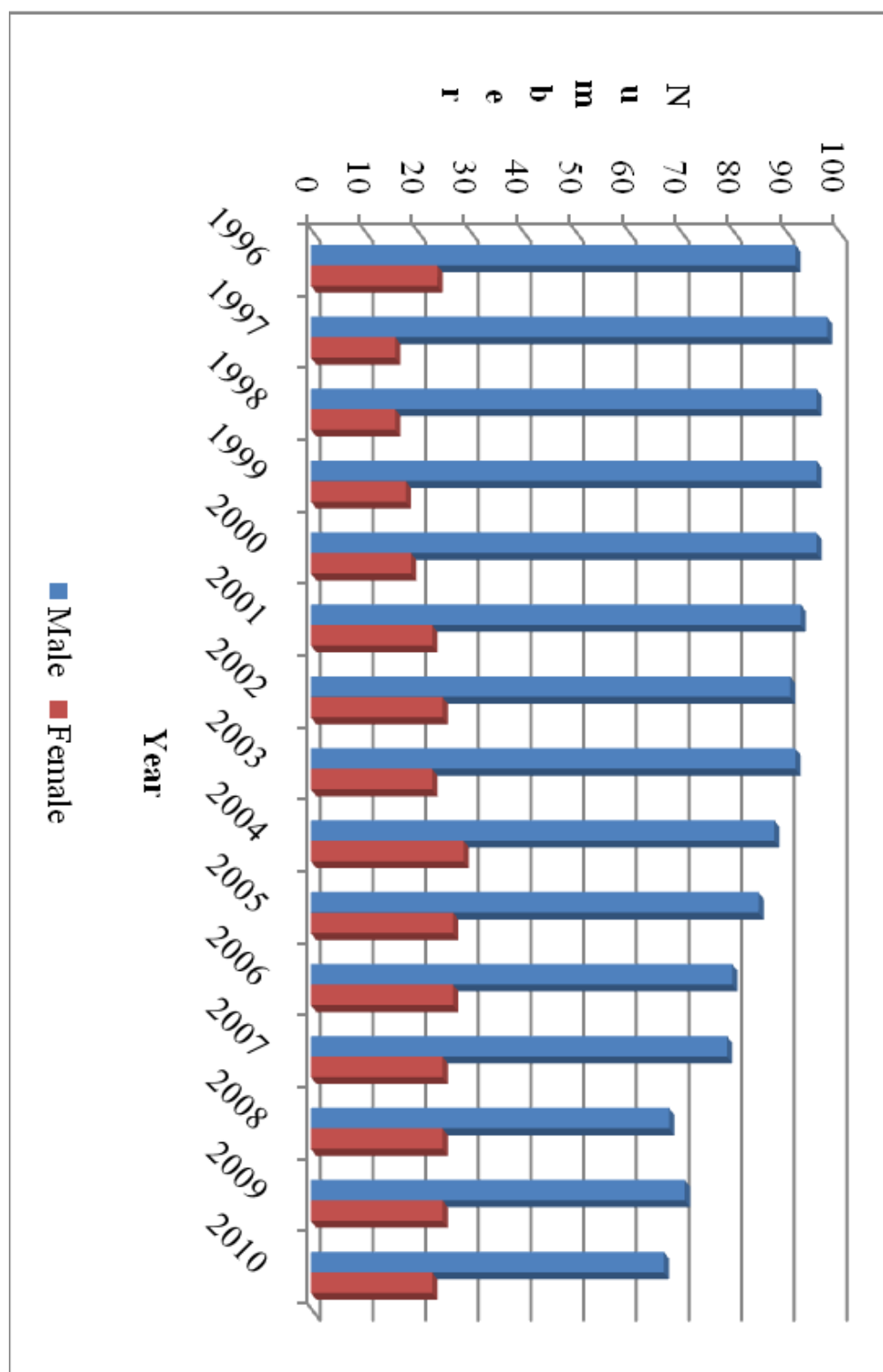
Source: Jacob Omolo, BSPS Consultant, “Impact of Public Service Reform Policies on Labour Inspectorate”, 2010.

ANNEX 9 Labour Officer/Inspector Age Structure

Year	Age Cohort-LO	Age Cohort-LI
1996	26-53	27-53
1997	27-54	28-54
1998	28-55	29-55
1999	29-48	30-48
2000	31-49	31-49
2001	31-50	32-50
2002	32-51	34-51
2003	33-52	35-52
2004	34-53	36-53
2005	36-55	38-54
2006	37-54	42-52
2007	38-55	38-53
2008	39-53	39-52
2009	40-55	42-54
2010	40-55	40-55

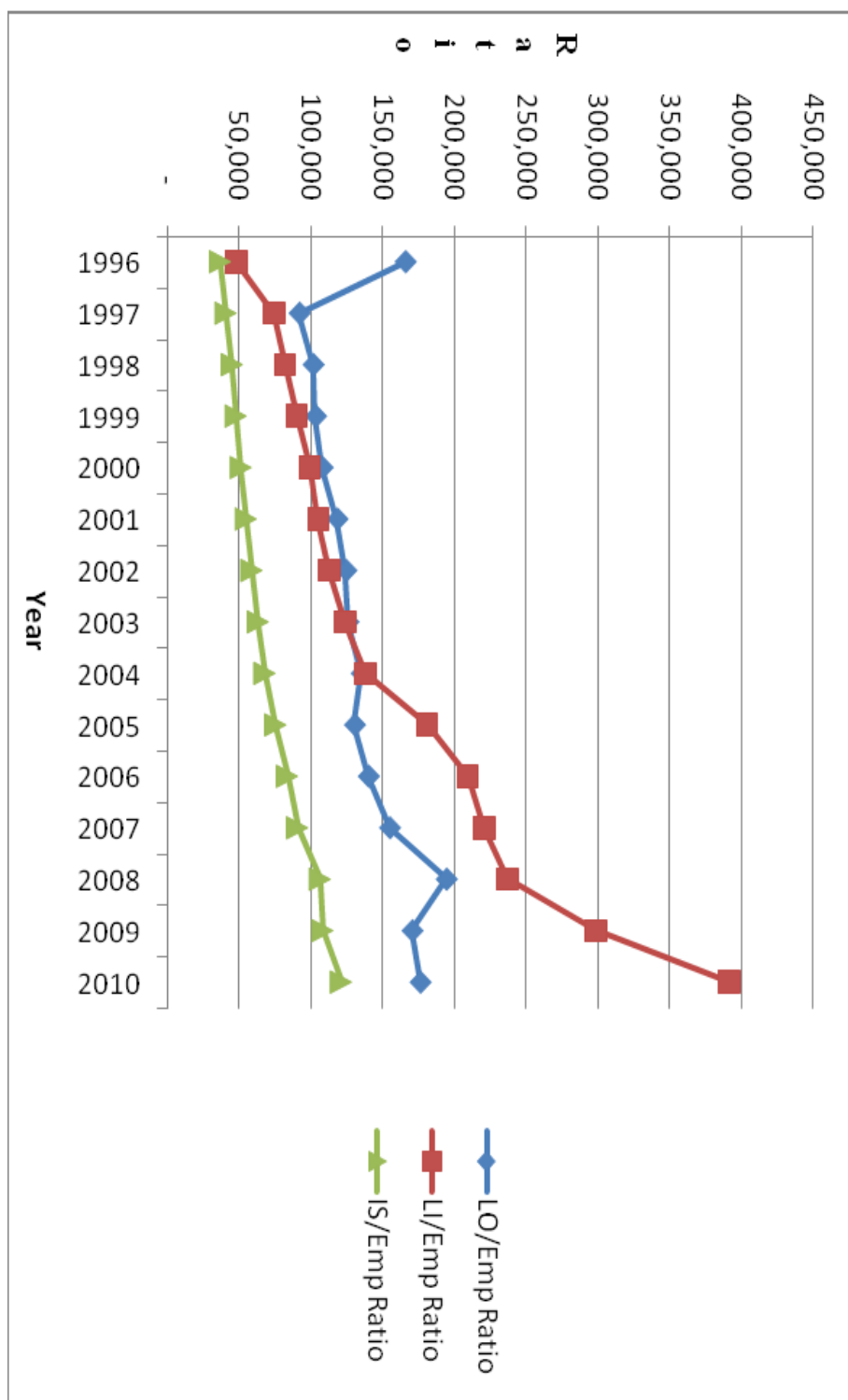
Source: Jacob Omolo, BSPS Consultant, “Impact of Public Service Reform Policies on Labour Inspectorate”, 2010.

ANNEX 10 Numbers of Labour Inspectors



Source: Jacob Omolo, BSPS Consultant, “Impact of Public Service Reform Policies on Labour Inspectorate”, 2010.

ANNEX 11 Inspectorate Staff to Employment Ratio



Source: Jacob Omolo, BPS Consultant, “Impact of Public Service Reform Policies on Labour Inspectorate”, 2010.

ANNEX 12 Trends in Labour Inspector Ratio

Year	LO/Emp	LI/Emp	LIS/Emp	Benchmark Variance 1:40,000
1996	166,346	48,056	37,284	0.93
1997	92,125	74,578	41,214	1.03
1998	101,934	82,205	45,506	1.14
1999	103,634	90,043	48,181	1.20
2000	108,215	99,197	51,755	1.29
2001	118,700	105,079	55,257	1.38
2002	124,851	112,570	59,197	1.48
2003	126,305	124,164	63,702	1.59
2004	135,568	137,905	68,363	1.71
2005	130,846	180,957	75,938	1.90
2006	140,522	209,149	84,050	2.1
2007	155,392	220,440	91,143	2.28
2008	195,024	236,814	106,948	2.67
2009	171,124	298,244	108,735	2.72
2010	176,737	391,346	121,752	3.04

Source: Jacob Omolo, BSPS Consultant, “Impact of Public Service Reform Policies on Labour Inspectorate”, 2010.

ANNEX 13 Labour Inspection Report Form

CONFIDENTIAL

REPUBLIC OF KENYA

REV. LD. 101 (2010)

LABOUR INSPECTION REPORT

A. PARTICULARS OF ESTABLISHMENT

1. Inspection Report No. 2. Date 3. File No.
4. Name of the establishment
5. Nature of Business
6. L.R./ Plot No. or street
7. City/Town/Trade Centre
8. District 9. Province
10. Postal Address Email
11. Tel. No. Fax
12. N.S.S.F No. 13. NHIF No. 14. Workplace Reg. No.
15. Chief Executive Officer/Managing Director
16. Name of persons interviewed-Management
17. Name of persons interviewed-Workers/Works Committee/Shop steward

B. NUMBER OF WORKERS

Category	Men	Women	Children	Workers with Disabilities	Total
Regular.....					
Temporary					
Seasonal/Term contract					
Apprentices/Attachments					
Outsourced workers					
Name of outsourcing firm ...					
Migrant workers					
Grand total					
Comments					

C. MEDICAL FACILITIES

	Yes	No		Number
(a) First-aid box			Doctors	
(b) Dispensary			Clinical Officers	
(c) Stock of medicine register			Nurses	
(d) Sick register			Auxiliary Staff	

(e) Transport provided to hospital
 If no, please comment

D. HOUSING

	Yes	No
Is housing provided to employees? (if yes, numbers housed)		
If yes, is sanitation and adequate wholesome water supplied?		
Are the dimensions adequate?		
Nos housed per unit		

E. HUMAN RESOURCE MANAGEMENT

	Yes	No
(i) All employment records properly kept		
(j) Proper records maintained for temporary employees		
(k) Are dismissals reported to the authorities within 7 days?		
If yes, state Nos. reported in last 12 months		
(l) Are accidents to employees reported on the prescribed form?		
If no, state how		
(m) Are deaths of employees reported on the prescribed form?		
(n) Are certificates of service issued on termination		
(o) Are contracts exceeding 3 months made in writing		
(p) Are training programmes executed?		
(q) Apprenticeships/Attachment? If so, how many?		
(r) Is maternity/paternity leave provided? If so, how many days?		
(s) Are leave days/public holidays /rest days/ overtime worked fully paid?		
(t) Does policy for conversion of casual employees into contract/regular employment exist?		
(u) Are appointment letters issued?		
(v) Are itemized payslips issued?		
(w) Are employees informed on their rights and obligations under the contract?		
If no, please comment		

REMARKS

Are any training programmes executed Yes No

Trade testing? Yes No

If yes, state which programmes are offered

Trade Testing Institution/Agency?

How is recruitment done?

1. Employment office
2. Private Agency
3. Youth Employment Centres
4. Online
5. Any other

Are vacancies declared to the Director of Employment? Yes No

If no, state how else

Employers' observations on efficiency and productivity of employees

Employees' observations on their labour conditions

F. LABOUR RELATIONS

	Yes	No
Employer's Association		
Workers trade union		
Name of shopsteward		
Work/Workers Committee		
Other Committees		
Is there a recognition agreement?		
Is Collective Bargaining Agreement in Place? Duration		
If yes, state duration		
No. of strikes/lockouts in the last one year		
No. of employees declared redundant in the last one year		
Is there any forced labour detected		
Is grievance handling procedure established?		
Comments/Remarks		

G. CHILD LABOUR

Are there working children? If yes which categories (nature, ages, gender, worst forms, etc) Yes No

Are stipulated terms and conditions relating to employment of children complied with?

Comment

H. RIGHTS ISSUES

	Yes	No
Is a policy on sexual harassment established		
Any noted/reported incidences? Cases		
Is there discrimination in terms of ?		
(a) Pay and other benefits		
(b) Gender		
(c) Religion		

(d) Race/colour

(e) Disability

(f) Health status

(g) Agency fee

(h) Union membership

(i) Other forms

Comments/Remarks

I. CONTRAVENTIONS

The following infringements were discussed with management

Previous inspection carried out on by

Follow-up inspections planned on

Contravention/recommendation letter issued on

Inspecting Officer

Station

Remarks by Officer in Charge

Remarks by Provincial Labour Officer

Remarks by Labour Commissioner

-
- C.C. - Director, Occupational Health & safety Services, Ministry of Labour, Nairobi
 - Director, Industrial Training, Ministry of Labour, Nairobi
 - Director of Employment, Ministry of Labour, Nairobi
 - Director, National Human Resource, Planning and Development

TERMS OF SERVICE

Industry 1

Name of Firm

District _____ Date _____

*NSSF/PROVIDENT FUND/PENSION SCHEME

[illegible]

*DELETE INAPPLICABLE SCHEME(S)

ANNEX 14 National Labour Conference Agenda



OFFICIAL PROGRAMME

NATIONAL LABOUR CONFERENCE

Multimedia University College of Kenya

20th - 22nd April 2010

NAIROBI, KENYA

DAY ONE – 20TH APRIL, 2010

TIME	SESSION	MODERATOR
8.00 – 8.30	ARRIVAL AND REGISTRATION	SECRETARIATE
8.30- 10.30	OPENING SESSION • Remarks by FES- Director • Remarks by ILO-Regional Director • Remarks by Ambassador of Denmark • Remarks by COTU – Secretary General • Remarks by FKE – Executive Director • Remarks by Permanent Secretary • Remarks by Minister for Labour • Key Note Address by the Vice President	LABOUR COMMISSIONER
10.30-11.00	TEA BREAK	
11.00- 1.00	The Role of Public Service Commission of Kenya in promoting employment and social protection- <i>Secretary Public Service Commission</i> Founding of the Labour Inspectorate Service in Kenya – <i>Mr. Harun Mwaura, Retired Commissioner</i> Country Experience: Director, South Africa Discussant 1:Ministry of Trade Discussant 2: Ministry of State for Public S,	CHAIRMAN ILO
1.00 – 2.00	LUNCH BREAK	
2.00 – 4.00	Decent Work Country Programme- <i>Mr. Geoffrey Omondi, Deputy Commissioner for Labour</i> A Status Appraisal of Labour Administration in Kenya - <i>Dr. Ekuru Aukot, Chmn, National Labour Board</i> Discussant 1: OMBUDSMAN Discussant 2: Ministry of Labour	CHAIRMAN Fredrich Ebert Foundation (FES)
4.00 – 6.00	Labour Officers' Caucus	
	END OF DAY ONE	

DAY TWO – 21ST APRIL 2010

TIME	SESSION	MODERATOR
8.30 – 9.00	RAPPORTEUR'S SUMMARY FOR DAY ONE	SECRETARIATE
9.00– 10.30	Coping with the Financial Crisis and its impact on Labour Administration – <i>Prof. Leopold Mureithi</i> Financing the Labour Administration System: Gaps and Challenges – <i>Mr. Paul Muhia Wanjiru, Ministry of Finance</i> Southern Africa Regional Experience : <i>Ms. Cecilia Mlendetu, Director ARLAC</i> Discussant: Ministry of Labour Discussant: Federation of Kenya Employers	CHAIRMAN Rt. Commissioner
10.30-11.00	TEA BREAK	
11.00 -1.00	Repositioning of Systems for better Management of Labour Migration- <i>Mrs. Pauline Murimi, IOM</i> Fostering coherence in National Policy for Social Security – <i>Dr. Sammy Nyambari, Labour Commissioner</i> Discussant 1: Ministry of the East African Community Discussant 2: Ministry for State for Registration of Persons and Immigration	CHAIRMAN KNHRC
1.00 – 2.00	LUNCH BREAK	
2.00 - 4.00	Role of Labour Officers in Arbitration- <i>Justice Mukunya, Judge of Industrial Court</i> Impact of Public Service Reforms Policies on the Labour Inspectorate – <i>Jacob Omolo, BSPS Consultant</i> Harmonization of Social and Economic Policies for Decent Work- <i>Mr. Leonard Kimani, Dir. NESC</i> TEA BREAK Performance Rating of the Labour Inspectorate Service – <i>Ministry of State for Public Service</i> Role of Labour Officers; Worker's Perspective- <i>COTU</i> Role of Labour Officers: Employers Perspective- <i>FKE</i> Discussant 1: Ministry of Labour Discussant 2: ILO	CHAIRMAN National Economic and Social Council (NESC)
4.30 – 5.30	Strengthening the Labour Administration System - <i>Syndicate Group Formation</i>	ILO
END OF DAY TWO		

DAY TWO – 21ST APRIL 2010

TIME	SESSION	MODERATOR
8.30 – 9.00	RAPPORTEUR'S SUMMARY FOR DAY ONE	SECRETARIATE
9.00– 10.30	Coping with the Financial Crisis and its impact on Labour Administration – <i>Prof. Leopold Mureithi</i> Financing the Labour Administration System: Gaps and Challenges – <i>Mr. Paul Muhia Wanjiru, Ministry of Finance</i> Southern Africa Regional Experience : <i>Ms. Cecilia Mlendetu, Director ARLAC</i> Discussant: Ministry of Labour Discussant: Federation of Kenya Employers	CHAIRMAN Rt. Commissioner
10.30-11.00	TEA BREAK	
11.00 -1.00	Repositioning of Systems for better Management of Labour Migration- <i>Mrs. Pauline Murimi, IOM</i> Fostering coherence in National Policy for Social Security – <i>Dr. Sammy Nyambari, Labour Commissioner</i> Discussant 1: Ministry of the East African Community Discussant 2: Ministry for State for Registration of Persons and Immigration	CHAIRMAN KNHRC
1.00 – 2.00	LUNCH BREAK	
2.00 - 4.00	Role of Labour Officers in Arbitration- <i>Justice Mukunya, Judge of Industrial Court</i> Impact of Public Service Reforms Policies on the Labour Inspectorate – <i>Jacob Omolo, BSPS Consultant</i> Harmonization of Social and Economic Policies for Decent Work- <i>Mr. Leonard Kimani, Dir. NESC</i> TEA BREAK Performance Rating of the Labour Inspectorate Service – <i>Ministry of State for Public Service</i> Role of Labour Officers; Worker's Perspective- <i>COTU</i> Role of Labour Officers: Employers Perspective- <i>FKE</i> Discussant 1: Ministry of Labour Discussant 2: ILO	CHAIRMAN National Economic and Social Council (NESC)
4.30 – 5.30	Strengthening the Labour Administration System - <i>Syndicate Group Formation</i>	ILO
END OF DAY TWO		

ANNEX 15 Needs Assessment Terms of Reference

Labour Administration and Inspection Needs Assessment

Kenya

13 April to 21 April 2010

Terms of Reference

Introduction and rationale

The ILO was officially invited by the Government of Kenya⁹⁴ to conduct a labour administration and inspection needs assessment and to make appropriate recommendations for implementation. Specifically the Government wishes this exercise to be part of an initiative to build the capacity of its labour administrators to implement the Decent Work Agenda. This request also follows recent and comprehensive national labour law reforms that led to the adoption of several key legislative acts in 2007.⁹⁵ Accordingly, the mission is an opportunity to consider the implementation of these new laws and their impact on the structure and delivery of services of national and local labour administration and inspection bodies.

This is not the first ILO needs assessment of Kenya's labour administration or inspection systems. The ILO has in fact been working in several different ways over the past two decades on these issues whether through technical analysis or policy advice or through technical cooperation projects.⁹⁶ Most recently a mission was carried out in 2002 following an official request for the ILO to focus on the analysis and design of technical assistance combined with policy advice on the future role, scope and function of the field service system. As a result of this mission, a memorandum⁹⁷ was published with recommendations to strengthen the field structure for the delivery of labour administration

⁹⁴ Letter dated 11 January 2010 from Ms. Beatrice N. Kituyi, Permanent Secretary, Ministry of Labour, Kenya.

⁹⁵ The Labour Institutions Act, the Employment Act, the Labour Relations Act, the Occupational Health and Safety Act and the Work Injury Benefits Act.

⁹⁶ A mission in 1998 resulted in the publication of a technical memorandum entitled "Labour Administration in Relation to Civil Service Reform, Structural Adjustment and Labour Administration's Contribution to Balanced Socio-Economic Development". The major recommendation of this report was to integrate the different existing field services, thereby creating greater synergies and improving efficiency.

⁹⁷ ILO: Technical Memorandum to the Government of Kenya on Strengthening Field Inspection Services of the Ministry of labour and Human Resource Development in Kenya, Department for Government and Labour Law and Administration, Geneva, 2002.

and inspection services. It will be important in the context of this current needs assessment to take these previous findings and recommendations into account and to determine to what extent they have been implemented, and if not, why.

While the intervening legislative reform presents a good occasion for reviewing the current state and future prospects of labour administration and inspection systems in Kenya, the present assessment should not simply be a routine exercise that takes place on a periodic basis. Rather, the objective is that it contribute to meaningful and realistic improvements in the labour market governance and labour law compliance in Kenya. For this to take place, the success of the needs assessment depends heavily on the political support of the Kenyan government and its diligent efforts to follow up on the outcomes of this exercise with meaningful and sustainable action.

Objective

The development objective of this labour administration and inspection needs assessment is to contribute to the strengthening of Kenya's labour administration and inspection services and thereby help the Government improve the development and application of its labour laws and policies.

More specifically, the objective of this needs assessment is to review and assess the:

- organization of Kenya's labour administration systems (including the central authority and regional structures);
- labour administration and inspection staff profile and personnel management practices (e.g. recruitment, grading, promotions, skills training (both for new recruits and existing staff), working conditions and gender equality;
- the functions and competencies of the labour administration and inspection systems;
- the level of coordination between the Ministry of Labour, labour inspectorate and other Ministries and state agencies with a role in labour administration;
- participation and collaboration of employers' and workers' representatives in labour administration and, in particular, inspection practices;
- data collection.

Timing

The needs assessment will take place between 13 and 21 April 2010 (excluding the weekend of 17-18 April).

Phases of the needs assessment

The following section sets out the different phases, outputs and responsibilities in the planning and execution of the needs assessment.

- a) Preliminary discussions with the Ministry of Labour and labour inspectorates should include a decision on the timing and duration of the needs assessment, the composition and size of the needs assessment team, the geographic coverage (central authority and regional offices), officials to be interviewed, topics to be addressed, reporting arrangements and follow-up. The ILO team from Geneva in coordination with the ILO Office in Dar es Salaam and the Ministry of Labour will finalize these matters.

-
- b) The Ministry of Labour should designate an official as a focal point for the needs assessment activity to facilitate the preparation and carrying out of the mission. This focal point will be responsible for confirming the availability of Ministry officials and other individuals for interviews during the mission. They will also be responsible for preparing the daily agenda in coordination with the ILO team. The focal point will also be the main contact person at the Ministry for follow up to the mission, including the finalization, validation and publication of the needs assessment report and as a liaison for any follow up activities such as the preparation and planning of an action plan to assist in the implementation of the report's recommendations.
 - c) ILO-Geneva, with help from ILO Dar es Salaam and the Ministry focal point where needed, will gather relevant materials to assist in conducting the needs assessment, including legislation, summaries of the structure and working methods of the Ministry of Labour (and labour inspectorate), annual reports, statistics, along with information about ILO activities in the country (ratifications of ILO Conventions and supervisory reports, DWCP, projects, etc.).
 - d) At the end of the mission, the needs assessment team will prepare a brief preliminary report setting out its key findings and will present these findings during a meeting with relevant officials from the Ministry of Labour.
 - e) The needs assessment team will produce a draft report within one month following the mission. This report will be submitted for comments to the Ministry of Labour before eventual publication of the report.

Follow up to the needs assessment

The needs assessment is an initial step that will lead to the preparation of an action plan based on the findings and recommendations of the needs assessment team. The action plan, in turn, will serve as a guide for labour administrators and inspectors in Kenya to improve the quality of their services, strengthen their institutions and enhance their policy implementation capacity. It may also be used as a basis for planning ILO assistance in Kenya whether in the context of the Office's regular work or through a technical cooperation programme.

The action plan will be prepared by ILO staff (Geneva and Dar es Salaam) in close consultation with officials from the Ministry of Labour. The formulation of this action plan might include the following elements: i. Requirements (needs observed in the survey); ii. National action (those that can be implemented by the national Administrations with their own means); and iii. Cooperative action (those requiring horizontal cooperation, technical assistance or international cooperation).

Given that Kenya has a Decent Work Country Programme (DWCP) in place, the follow-up phase and action plan should be closely aligned with the priorities set out in this document and should ideally build on existing efforts to achieve the DWCP objectives.

Geographic coverage

The needs assessment should cover an appropriate sampling of the labour administration and inspection activities at the central and regional levels, based on national administrative divisions and taking into account the limited time and resources at the mission's disposal. To this end, the needs assessment team will review materials and meet

with central level officials in Nairobi and regional labour administration/inspection officials Mombassa.⁹⁸

Gender

Particular attention will be paid during the needs assessment to gender issues. This includes assessing the composition of labour administration and inspection personnel (number of men and women by level of seniority). It also should include consideration of staff policies (including training) that address gender issues such as work/life balance, equal opportunity, non-discrimination and sexual harassment in addition to the policies and practices of the labour administration and inspection services with a view to promoting gender equality.

Audit components

What follows is an outline of the various components to be assessed by the mission team. Some of this work will be done prior to the mission as part of a desk study on labour administration and inspection services in Kenya and the general socio-economic situation of the country. The elements below will also serve as an outline for the final report.

1. Introduction

- a) Background and methodology
- b) A survey of the national situation, including economic, social and labour relations data.
- c) Legal and administrative framework: including the ratification of relevant ILO Conventions and comments from the ILO Committee of Experts.
- d) Institutional framework: labour administration/labour inspection structures, budgetary information and working methods (SWOT analysis)

2. Internal Organization, Staff and Resources

- a) Organization and function of the systems of labour administration and inspection (central and regional levels)
 - Ministry of Labour (e.g. Labour Commission, main directorates and technical units)
 - National Labour Board
 - Wage councils
 - Public employment services
 - Conciliation and Mediation Commission
 - Industrial Court
- b) Collaboration/involvement between labour administration and inspection institutions (in particular labour inspection and occupational health and safety)

⁹⁸ The choice of locations visited is to be confirmed with the Ministry.

inspectories) as well as between inspection services responsible for different inspections and data (e.g. social security).

- c) Kinds of inspection: competences and functions and other technical areas.
- d) Recruitment and qualifications of officials and inspectors including consideration of gender balance by grade level.
- e) Career, promotion and remuneration
- f) Competence and training (initial, continuous)
- g) Expected standards of ethical behaviour
- h) Non-personnel resources: office facilities, including computers, transport, protective clothing for inspectors, etc.
- i) Assistance and administrative support
- j) Inspectors' legal status and powers

3. Programme, planning and evaluation

- a) National and local planning and preparation (i.e. data collection and registries)
- b) Labour inspection visits: Techniques methods for inspection and investigation. Labour inspection workflow
- c) Special action or campaigns (e.g. on wages or illegal employment)
- d) Relations with worker and/or trade union representatives, and with employers and human resources managers
- e) Lines of reporting and information sharing practices
- f) Formal enforcement sanctions and remedies (administrative, judicial etc.)
- g) Policies and programmes for vulnerable groups, including child workers, women workers, seasonal and migrant workers, forced labourers and the informal economy in general,
- h) Reporting and collaboration with other agencies

4. Working with the social partners and relevant stakeholders

- a) Awareness-raising, educational and promotional activities, e.g. with schools and community associations, use of the media, TV and radio)
- b) Support of private initiatives
- c) Participation in tripartite committees

5. Findings and recommendations

6. Annexes

Suggested interviews during the needs assessment mission

The needs assessment agenda should be designed to include interviews with key officials and constituents who have extensive experience and who can provide a thorough analytical assessment of the strengths, weaknesses, challenges and opportunities facing labour administration and inspection services in Kenya. The ILO Office in Dar es Salaam, in coordination with a focal point from the Kenyan Ministry of Labour, will schedule and confirm interviews to cover the following administrative units and officials (others may be added as appropriate):

- Centralized and decentralized labour administration and inspection agencies and officials (Nairobi and Mombassa (to be confirmed)) (e.g. Commissioner for Labour, Director of Employment etc.);
- Safety and health officials (e.g. National Council for Occupational Safety and Health, Technical advisory committee, Directorate of Occupational Safety and Health Services, Director of Medical Services);
- Social security authorities, particularly if they have related competences such as special inspection services (e.g. from the National Social Security Fund);
- Human resource departments in the respective institutions (e.g. Directorate of National Human Resource Planning and Development);
- Legal department;
- Officials responsible for the administration of tripartite consultative bodies (e.g. National Labour Board chairperson, general secretary of the most representative federation of trade unions and the chief executive of the most representative federation of employers' organisation);
- Industrial relations department and labour dispute resolution bodies (Industrial Court, Conciliation and Mediation Commission);
- Units responsible for employment policy and services (e.g. Director of Employment, Directorate of Micro and Small Enterprise Development, National Employment Bureau, Public Employment Services (the Director of Employment Agencies), Directorate of National Human Resource Planning and Development, Productivity Centre of Kenya);
- Wage councils (general wages council; agricultural wages council);
- Employer and trade union representatives(s). (e.g. Federation of Kenya Employers (FKE), Central Organization of Trade Unions (COTU (K)), Union of Kenya Civil Servants; Department of Trade Unions). Perhaps also, branch organisations or territorial organisations of employers and workers;
- Training (e.g. Directorate of Industrial Training);
- Registrar, Deputy Registrar and assistant registrars of trade unions;

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- Officials responsible for statistical collection and for preparing the Ministry's annual report;
 - Units responsible for internal coordination and coordination with other government institutions;

Data and Information to be Collected on the Labour Administration and Labour Inspection Systems in Kenya⁹⁹

1. Laws, regulations and policies governing the labour administration and labour inspection systems and any related academic publication in these fields.
2. Recent annual reports from the Ministry of Labour (including on labour inspection)
3. Statistics on the internal organization, staff and resources available to the labour administration and labour inspection systems:
 - a) National and regional organization of labour administration and inspection services (current organization chart), including public employment services;
 - b) Recruitment procedures and qualifications for new labour officers and inspectors ;
 - c) Training plans for labour officers and inspectors;
 - d) Number of inspectors by region and number of labour officers categorized by service;
 - e) Non-staff resources (office facilities, transportation etc.) by service at the national and regional levels;
 - f) Inspectors' legal status and powers;
 - g) Administrative support (central and regional levels);
4. Information on the planning and carrying out of inspections:
 - a) National and regional planning and priority setting (e.g. whether priorities are based on political requirements, objective data, complaints or other);
 - b) Techniques for inspection and investigation (written inspection procedures, manuals or check lists etc.);
 - c) Report forms and frequency of reporting with some actual completed reports if possible;
 - d) Formal enforcement procedures for prosecution and other sanctions (e.g. laws, regulations, forms, etc.), and penalties to be applied;
 - e) Relation between labour administration, inspection agencies and other institutions, agencies or services (Ministries of Health, police, Occupational

⁹⁹ This work will be carried out for the most part by ILO officials. When necessary, the Ministry of Labour focal point will be called upon to assist in gathering internal documents that are not otherwise accessible.

Safety and Health Authority, Commission on Mediation and Arbitration, Labour / Industrial Court);

- f) Incorporation of multidisciplinary work or monitoring initiatives within the labour administration (e.g. child labour – see ILO IPEC program).
5. Information and data on:
- a) The operation of enterprise registries and collective bargaining registries (including information on the number of firms, number of workers per firm and number of collective agreements);
 - b) Occupational accidents and diseases (kind and frequency);
 - c) Sanctions and infractions (kind, frequency and outcome);
 - d) Recent (past 10 years) ILO missions or projects carried out in Kenya relating to labour administration or inspection.