

SRI LANKA

Technical Memorandum

**Sri Lanka labour administration
and inspection needs assessment**

LAB/ADMIN

**Labour Administration
and Inspection Programme**

Social Dialogue Sector

International Labour Office – Geneva

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List of acronyms

AIDS	Acquired immune deficiency syndrome
ACL	Assistant Commissioner of Labour
CEACR	Committee of Experts on application of Corrections and Recommendations
CGL	Commissioner General of Labour
DCL	Deputy Commissioner of Labour
DoL	Department of Labour, Industrial Relations and Productivity
EPF	Employee Provident Fund
EPZ	Export Processing Zone
HIV	Human immunodeficiency virus
ILC	International Labour Conference
ILO	International Labour Office
LA	Labour Administration
LI	Labour Inspection
LO	Labour Officer
MoL	Ministry of Labour
MoLLR	Ministry of Labour and Labour Relations.
MFA	Multi Fibre Agreement
OECD	Organization for Economic Co-operation and Development
OSH	Occupational Safety and Health
Rs	Sri Lankan Rupees

1. Background and methodology

The Government, through its labour administration system, bears a heavy responsibility in the field of labour and social affairs – most importantly to guarantee fundamental human rights, to ensure decent working conditions, to combat discrimination, to promote full employment, to safeguard social peace, and protect citizens against economic risks. Enforcement of labour law and promoting compliance through public labour inspections is one of its core mandates.

The ILO, through its labour administration and inspection programme (LAB/ADMIN), provides a wide array of services to national labour administration systems, namely to ministries of labour. Implementation of labour administration/inspection needs assessments is one of the possible interventions – helping Member States identify gaps in the capacity of their national labour administration systems and open up debate about possible ways of addressing them. Obviously, such a needs assessment is only the first step; it needs to be followed by an implementation plan and, if required, by more specific interventions of the ILO, addressing specific technical areas or providing specialized training to specific categories of the Ministry's employees.

With the request of the Secretary of the Ministry of Labour and Labour Relations Mr WWJLU Wijayaweera, the ILO sent a technical mission (further referred to as Mission) to Colombo, composed of Mr Ludek Rychly (ILO, Geneva) and Mr Alagandram Sivananthiram (consultant). The purpose of the mission, was to elaborate a technical memorandum with the objective of contributing to the strengthening and improving of the implementation mechanism and human resources capacity of the Ministry's Department of Labour (in particular, its labour inspection), in order to deliver services in an effective and efficient manner.

The terms of reference of the mission were agreed upon with the Ministry before the arrival of the Mission and then fine-tuned at the first meeting with the Secretary of the Ministry and the Commissioner General of Labour of the Department of Labour.

Based on these meetings, the main focus of the Mission was on issues relating to labour inspection policy, organization and management of the labour inspection system, labour inspection procedures, planning reporting and evaluation.

An agreement was reached between the ILO and the Ministry that the Technical Memorandum will be submitted to the Ministry, if possible, before 15 April 2012¹. It was also agreed that the ILO will provide necessary support in implementation of the Technical Memorandum's recommendations.

2. Summary of recommendations

Recommendation No. 1: National inspection policy

The mission recommends that the national inspection policy is elaborated, in consultation with representative organizations of social partners and taking into account the position of other stakeholders. A tentative outline of this Policy is attached as Annex No 5.

¹ During the March meeting of the ILO Governing Body, it was however agreed with the Secretary of the Ministry Mr. WWJLU Wijayaweera, that this deadline will be extended by two or three weeks.

Recommendation No. 2: Strengthening of LI Central Authority

The mission recommends the appointment of Chief Inspector/Director of Inspection services to enable inspectors at HQ to plan effectively, better monitor programmes and evaluate labour inspections impacts.

Recommendation No. 3: Consolidation and modernization of the LI regulatory framework

The mission recommends updating and consolidating in one document all existing departmental circulars on labour inspection, reflecting recommendations of this Technical Memorandum, as well as, requests of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) Report (2011)². More particularly, a consolidated circular should deal with issues such as planning, monitoring and evaluation of inspections, coordination of the labour inspection system, collection of data, reporting, (including elaboration of the Annual Report), reimbursement of travelling expenses, and other related issues.

Recommendation No. 4: Planning and monitoring of inspection

The mission recommends more rigorous planning of labour inspection activities as well as more systematic monitoring of results achieved. Monthly inspection plans of all inspectors should be approved in advance by their superiors (Deputy Commissioner of Labour (DCLs) and Assistant Commissioner of Labour (ACLs)), and their implementation should be monitored through regular planning and evaluation meetings. These inspection plans should reflect the priorities established in the national Inspection Policy and other planning documents, as well as address issues related to complaints.

Recommendation No. 5: Coordination between general inspection and factory inspection

Collaboration between General Inspectorate and Factory Inspectorate with a view to adding value to each other's activities (synergy) is clearly necessary. The mission thus recommends among other appropriate measures that the one page checklist in the general inspectors' form be moved to the last page to facilitate its detachment and onward transmission to the Factory Inspectorate.

The mission also recommends that, for this purpose, experienced and qualified Factories inspectors/Medical Doctors give basic training to Labour Officers (LOs) and ACLs in the general inspectorate on basic risk assessment and detecting hazards.

Recommendation No. 6: Prevention and reporting of accidents

Recognizing the need for improved national data on accidents and diseases the mission recommends the reporting system is thoroughly reviewed to increase its reliability and address its apparent deficiencies. The Factory Inspectorate should consider conducting a national inspection campaign on the reporting of accidents and diseases that could include awareness raising efforts in consultation with social partners and other stakeholders, including the media, use of targeted inspection and prosecution in serious cases. Another recommendation is that data on occupational accidents and cases of occupational disease is collected and published by sector of economic activity and geographical area.

² Normlex Information system on International Labour Standards – Observation (CEACR) – adopted 2011, published 100th ILC session – Labour Inspection Convention, 1947 (No. 81) . Sri Lanka (Ratification: 1956)

The mission also recommends that inspectors are more actively engaged in high profile events, such as the World Day for Safety and Health at Work (28 April).

Recommendation No. 7: Inspection data and reporting

The mission recommends undertaking a review of the existing system of computing the total number of inspections carried out and to use the methodology that an inspection is the visit of an establishment with the purpose of monitoring and, where necessary, enforcing compliance of all relevant labour protection legislation under the purview of the Department concerned.

The mission also recommends that DoL participate in the LAB/ADMIN/STAT project on harmonization of labour inspection data and follow-up activities, for example, in the form of training for selected officials and labour inspectors that could be supported by the ILO Declaration Project.

The mission recommends that the DoL prepare on a yearly basis an annual report of Labour Inspection, and share the information with stakeholders. The annual report on 2012 could help target inspections in 2013. The annual report, as requested by the CEACR (2011) should also contain data concerning EPZs, especially data on the number of inspections made, the violations identified and penalties applied, cases of occupational diseases, etc.

It is recommended that the Annual Report contains all elements quoted by Part IV of the ILO Recommendation concerning labour inspection No. 81.

It is recommended to strengthen the analytical part of all inspection reports; their purpose is not just to give numbers, but, above all, analyse the reasons of non-compliance and suggest solutions.

The ongoing computerization process requires the present inspection form be reviewed and streamlined to pick up key indicators of the labour standards it wishes to monitor including gender discrimination, trafficking, HIV/Aids etc.

Recommendation No. 8: Separation of labour inspection and dispute settlement functions

It is recommended separating the functions of labour inspection and dispute settlement and to creating under the chief inspector (see Recommendation No. 2) a new unit for Labour Inspection, to manage and coordinate all inspection activities under the purview of DoL.

Recommendation No. 9: Compliance mechanism at the enterprise level

The Inspectorate should pursue an approach to inspection based on compliance delivery that places greater emphasis on education, information, and self-reliance, underpinned by enforcement and sanctions when other approaches to securing compliance are unsuccessful. Where necessary, labour inspectors should be retrained to enable them to adopt a culture of service and advice for the benefit of workers and employers, which is consistent with the need to apply penalties and sanctions when appropriate.

Recommendation No. 10: Enterprise-level cooperation with social partners

Given the long history of enterprise level of cooperation in Sri Lanka, the mission recommends the piloting of self-reporting compliance mechanisms at the enterprise level where unions are present. It is suggested that self-reporting be confined to those industries

assessed as low risk and should be supervised by Department of Labour. The content of the self-reporting form will have to be agreed upon, including consultations with employers and workers, and the actual form prepared and tested. The form must be sufficiently detailed to cover all areas where compliance is required, including both working conditions and the working environment.

The reporting form must include a section for comments by workers and space for the signatures of workers' representatives. Employers, workers and labour inspectors will need to be trained in all aspects of the self-reporting system.

Recommendation No. 11: Extending labour inspection services to the informal sector

The labour department should review existing legislation, and the existing protection system to extend labour protection to the informal economy to ensure protection of all workers. The mission also recommends harmonization of the establishment list or the master register between the EPF and the register of the general inspectorate.

It is recommended that the Department of Labour (DoL) holds regional workshops on sensitizing labour inspectors on using the ILO publication on the role of inspectors in Trafficking and HIV/AIDS with ongoing ILO Projects on Trafficking and HIV/AIDS.

Recommendation No. 12: Institutionalization of national level cooperation with Social Partners

The mission recommends under the Labour Secretary/Commissioner General of Labour a tripartite plus committee be created to ensure consultations between the social partners, other inspecting agencies outside the Ministry of Labour (MoL), including private voluntary initiatives and the DoL on all issues within the purview of labour inspections.

The DoL and ILO Declaration Project on Promotion of Fundamental Rights could follow up to convene a meeting shortly.

Recommendation No. 13: Professionalization and strengthening of the labour inspectorate

In light of Art 6 and 7 of the Labour Inspection Convention No.81 and the requests of the CEACR (2011), the mission recommends paying increased attention to status, conditions of service and qualifications of labour inspectors. In particular, it is recommended to review the entry qualifications of new inspectors and recruit more university graduates to the inspectorate to facilitate the process of placing labour inspectors at par with tax officers and customs officers and to regain the lost ground in the last pay revision by the salaries and cadre commission.

The Ministry needs to take steps to emphasize the important role of labour inspectors in advancing "Decent Work".

While the mission highly appreciates the recent efforts of the government to increase the number of inspectors, it strongly recommends that the total number of staff is further increased in the near future to cope with challenges related to the growing economy and large informal sector. It seems particularly urgent to increase the number of engineers involved in industrial safety.

Recommendation No. 14: Motivation and remuneration of labour inspectors

The mission recommends that a High Level Technical Committee be appointed to re-examine the salary scales of labour inspectors with the purpose of upgrading the existing salary scales taking into account their specific function of labour law enforcement, and placing inspectors in the same category as tax officers and customs officers.

To support this move, the ministry needs to work on an agreed curriculum with the Public Services Department using the LAB/ADMIN/Turin labour inspection modules, and basic prosecution skills in an approved curriculum developed for inspectors in consultation with the Judicial Commission.

The mission also recommends a task force be formed immediately to introduce annual performance appraisal which has not been undertaken so far. Look at the possibility of upgrading some of the existing ACL posts to DCLs and create a special grade for senior LOs who are stagnating due to non availability of promotional posts. This should be undertaken with the development of performance indicators and its implementation should be conducted in a transparent manner so as not to create dissatisfaction among the labour inspectors. The system of reimbursement of travel expenses should also be reviewed in order not to limit the number of inspections carried out and to enable inspection to reach distant places, as requested by the CEACR in the 2011 Report. Possible abuse of travelling expenses should be avoided by better planning and monitoring of inspections by immediate supervisors.

Recommendation No. 15: Training of labour Inspectors

The mission recommends elaborating a training policy for labour inspectors addressing the needs identified in this Technical Memorandum. For example, urgent attention should be given to training which supports better cooperation between general and factory inspectors. A systematic training programme on labour legislative issues should be put in place for inspectors, given the extreme complexity of Sri Lanka's labour laws (both Acts and Case law).

Recommendation No. 16: Labour Inspection in EPZs

Special attention by MoL, social partners and other stakeholders must be given to the situation in EPZs in order to remove any obstacles that in practice may prevent labour inspectors from carrying out their duties and use of their powers, including the right to enter EPZs on the sole condition that they hold appropriate credentials.

Recommendation No. 17: ILO Conventions

The Mission recommends that the MoLLR take steps to ratify the Labour Inspection (Agriculture) Convention No. 129 (1969). It is also recommended to envisage future ratification of the Labour Administration Convention C No. 150 (1978)

3. Economic and social background

Sri Lanka recently became a lower to middle income country with a per capita income of over 2,000 USD, which is expected to double to over 4,000 USD by 2016. Investment, both foreign and local, is expected to increase as economic growth of about 8 per cent is sustained over the medium term leading to the creation of higher employment opportunities. The growth is driven by large scale reconstruction and development projects. Sri Lanka is pursuing a combination of government directed policies, private investment, both foreign and domestic, to spur growth in disadvantaged areas, develop small and medium enterprises and

increase agricultural productivity. At the same time, the Government struggles with high debt interest payments and historically high budget deficits.

The global financial crisis exposed Sri Lanka's economic vulnerabilities and worsened the country's balance of payment situation which was alleviated by a \$2.6 billion IMF standby agreement in 2009. The end of the civil war as well as the IMF loan helped to restore investors' confidence and the Sri Lankan stock market was recognized as one of the best performing markets in the world. Sri Lanka, in the 2010-2011 period, achieved growth rates of above 7 per cent per year.

The labour force in Sri Lanka represents 8,147 (2011 est.) with 33 per cent employed in agriculture, 24 per cent in industry and 43 per cent in services. Unemployment achieved 5.4 per cent in 2011 and has significantly improved compared to the recent past. The labour force participation rate is 48.6 per cent, while the proportion of the people in the working age is significantly larger than the proportion in the dependent age categories. Low rates of labour force participation and high level unemployment among females as well as the disparity in wages between the sexes shows that females are at a distinct disadvantage in the labour market. Other vulnerable groups of workers are those in lagging regions and youth.

There is a significant outflow of workers (266,000 in 2010) towards foreign labour markets; the number of people already working abroad is estimated at more than one million people. Most of the female migrant workers are employed as housemaids in Middle Eastern Countries. According to the Central Bank, remittances from foreign employment increased to \$4.65 billion in 2010. Obviously, with such a strong proportion of foreign employment are related various social issues, and most importantly the challenge of adequate protection of Sri Lanka migrant workers that are often obliged to work in poor conditions and are victims of harassment and abuse.

Another challenge, that Sri Lanka labour administration and inspection is facing, similarly to many other developing countries, is the extent of the informal economy. It is estimated, that around two thirds of the labour force are employed informally, the bulk of them being own account workers. Private formal employment only accounts for a fifth of the employed workforce. Many workers in informal sectors work for low pay and without any social protection as the informal economy generates relatively poor returns for most people engaged in it and fails to reward skills at levels comparable with those in formal employment.

While most workers in the informal sector are only partially protected (thanks to voluntary schemes) against social risks, the protection provided to the formal sector workforce shows many gaps in coverage. Some contingencies, such as health care, are covered on a universal basis, but some are only partially covered, such as disability, maternity, workmen's compensation or are not covered at all, such as unemployment. The scheme of old age pensions is relatively well functioning as well as lump sum payment at retirement provided for public sector workers, except for a few schemes including the public officers pension scheme, and the social security schemes which are based on contributions and do not provide periodical benefits, but lump sums. The social protection scheme thus stays very fragmented and does not correspond entirely to requirements of the ILO Convention No.102 on Social Security (Minimum Standards). This is rather worrying, as despite economic growth of recent years, the proportion of the population living in poverty is estimated at 14 per cent.

Concerning other vulnerable groups, it should be noted that in spite of the fact that child labour has been reported to have declined significantly over the past decade, there are still some 13 per cent of children engaged in work, especially in agriculture, street vending, mining, construction, transport and domestic work. Most of the child workers are to be found in rural areas and most of them work while attending school.

As discussed earlier, only one fifth of the workforce is employed in the private formal sector while the common perception is that public services are bloated. Youth is attracted by the public sector's wages (especially at the low bottom of the scale), job security, pension and other benefits. While the minimum wage in the public sector is 13,000 Rupees (Rs), in the private sector it is Rs 6,750³. However, this gap narrows and even reverses as skill levels go up. As a result, a paradox is created: while there is little demand for low paid jobs in the private sector industrial establishments due to low wages, higher salaries in specialized jobs in the public service cannot attract and sufficiently motivate specialists with higher education that can have better prospects in highly paid private sector jobs. It is therefore, evident that it will be necessary to determine the appropriate size of the public service in different categories of public sector jobs through functional reviews of all government institutions and adjust comparative levels of remuneration narrowing the gap between public and private sectors. Introduction of effective systems of institutional and individual performance evaluation should be part of upcoming reforms.

Legislative framework

Protection of labour and regulation of industrial relations in Sri Lanka is based on dozens of pieces of legislation, some of them dating back to the period of the British rule. Sri Lanka also has an extensive judicial system that operates on the basis of precedents of higher courts being binding on those lower in the structure.

Despite several attempts to consolidate this extensive and complicated legal framework, Sri Lanka has never been in a position to rationalize and simplify its statutes. This problem was raised by the ILO several times in the past, including in the 2005 Report "Sri Lanka Future Directions" as it has a direct impact on the capacity of labour administration services to apply and implement these laws. A scattered and complicated legal system poses problems even to trained lawyers, not to mention employers and workers.⁴

The ILO Mission raised this point again during its meetings with senior officials of the Ministry and the Department; and it was explained that re-codification of labour law is being considered, and respective working groups have been created, it will be however a long process and it is also necessary to take into account that any reform will have to face the fact that the legal system is based to a large extent on case law.

In the recent past, the ILO has supported efforts of the Ministry to make the very complicated labour legislation more accessible to workers, employees and also labour officers who are supposed to apply it in their daily practice, for example, by supporting, in 2002, publication of a consolidated collection of commentaries on existing labour laws "Understanding Labour Law" or, more recently, by preparing a labour law handbook.

The most important pieces of legislation are the following:

- The Workmen Compensation Ordinance 19 of 1934; amended in 1946, 1957, 1959, 1966 and 1990:
 - The Ordinance provides for the payment of compensation to workers who suffer accidents at work or who suffer from an occupational disease. The quantum of

³ However, as a result of the large size of the informal sector, the existing tripartite wage fixing system cover only about one third of the workforce.

⁴ As stated in the foreword to the publication Index to Labour Laws in Sri Lanka (2008), "All these scattered (laws) are scattered and some old statues, regulations, rules and records are not found even in the government departments. Collation, analytical study and grouping of such material under broad classification is extremely a painstaking exercise one has to undertake."

compensation payable has been reviewed from time to time but it may still be unrealistically low given the difficulty of relocating after injury or in terms of compensating for loss of life given the difficulty of another member of the family having access to comparable employment.

- Amendments in 1990 expanded the coverage of the definition of “dependent” to a large number of relatives including born out of wedlock children. The definition of “employer” is also wide and covers a person who has temporarily taken on hire, an employee of another. For the purpose of compensation, the term “wages” includes the value of any privilege or benefit quantifiable in monetary terms. Any employee of the State other than those belonging to the Armed Forces and Police is covered (an employee doing civilian functions in the Armed Forces is covered but a similar exclusion is not seen in the case of the Police).
- The Trade Unions Ordinance 14 of 1935; amended in 1946, 1948, 1958 and 1970 which provides for the ‘Registration, Control and Cancellation of Unions’:
 - The Ordinance is administered by a Registrar of Trade Unions who is an officer of the Labour Department. The registrar has the power to register and cancel registration, subject to the right of an aggrieved party to seek relief from a District Court. Special provisions are made in relation to Unions of Public Officers in Part IV.
- The Maternity Benefits Ordinance 32 of 1939; amended in 1946, 1952, 1958, 1962, 1966, 1978, 1981 and 1985:
 - This Ordinance covers all female workers other than those who are specifically provided for under the Shops & Offices Act (that Act caters to maternity benefits for those employed in shops & offices) and provides for a maximum of twelve weeks paid leave for the first two children and six weeks for subsequent births.
- The Wages Boards Ordinance 27 of 1941; amended in 1943, 1945, 1953, 1957, 1962, 1965, 1966, 1971, 1978, 1980, 1982:
 - It prescribes general conditions with regard to salaries and wages in Part 1. Part 1 is of universal application to all employees. Part 2 applies to specific trades and gives legal authority for the setting up of specific wages boards for different trades to regulate the terms and conditions of employment of employees covered by the relevant boards. The wages boards are appointed by the Minister of Labour and comprise an equal number of employers and workers representatives and of nominated members. Decisions are taken by a majority of those present and voting. Decisions regarding terms and conditions are voted on and then objections called for before a second vote is taken to confirm the decision.
- The Factories Ordinance 45 of 1942; amended in 1946, 1961, 1965, 1971, 1976, 1982, 1984, 1998 and 2000:
 - The Ordinance prescribes conditions and rules in relation to workers making special provisions in respect of women and young persons. A woman is defined as a female who has attained the age of eighteen years and a young person as one who is over fourteen years but, under eighteen years of age.

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- The Industrial Disputes Act 43 of 1950; amended in 1956, 1957, 1962, 1966, 1968, 1973, 1983, 1990 and 1999:
 - This is the primary legislation for building a healthy industrial relations climate by seeking to minimize major disputes whether of rights or interests and provide for the enforcement of decisions. There is no distinction drawn between ‘rights’ and ‘interests’ disputes, but the manner in which each is handled is distinct, as the law could be utilized to enforce ‘rights’ whether they flow from either a statute or agreement, whereas in relation to ‘interests’ the approach is to conciliate and use arbitration if necessary to bring about a settlement. The most important amendment to this Act was the setting up of the labour tribunals in 1957.
 - The Shop & Office Employees Act 19 of 1954; amended in 1957, 1962, 1966, 1971, 1975, 1978, 1981, 1982, 1984 and 1985:
 - This Act covers the terms and conditions applicable to those workers in shops, offices and similar establishments. Provisions are made in relation to maternity benefits due to females covered. Those female employees covered under this Act have an advantage over those covered by the Maternity Benefits Ordinance as they are entitled to 84 working days and 42 working days respectively depending on whether the beneficiary has two or less children or more than two. The entitlement under this Act also excludes holidays. Unlike under the categories covered by the wages boards, there is also provision for paid casual or sick leave.
 - The Employment of Women, Young Persons & Children’s Act 47 of 1956; amended in 1964, 1973 and 1984:
 - This Act regulates the employment of children, youth and women especially in relation to their hours of work. A person under the age of 18 cannot be employed during the night. Night work for women is subject to certain conditions including her consent and provided it does not exceed more than 10 occasions in a month. No person can employ a child in a manner that deprives him/her of attending school. School is compulsory up to the age of 14 years.
 - The Employees Provident Fund Act 15 of 1958; amended in 1965, 1970, 1971, 1981, 1985, 1988 and 1992:
 - This applies to all workers and lays down rules for contribution by employers and workers and other administrative rules. It also provides for Private Funds and Pension schemes.
 - The Termination of Employment (Special Provisions) Act 45 of 1971; amended in 1976, 1988 and 2003:
 - This Act controls the termination of employment on grounds that are non-disciplinary as well as those in scheduled employment. Even non-employment on a temporary basis is covered and thus a lay-off would be covered. It does not apply to a worker who has served less than 180 days in the 12 months immediately preceding termination. The Act excludes the Government as an employer and also excludes employees of co-operatives and those of local government. Under the Termination of Employment (Special Provision) (Amendment) Act No. 12 of 2003, the period during which an application could be submitted to the Commissioner of Labour by a worker who complained of

violation, was reduced from six months to three months. The approval of the Cabinet has been obtained for an amendment to go back to the period of six months.

- The Employees Trust Fund Act 46 of 1980; amended in 1982, 1988 and 1993:
 - Unlike the Provident Fund which has contributions only from the employer.
- The Payment of Gratuity Act 12 of 1983; amended in 1990 and 1992:
 - This Act provides for the payment of a gratuity to workers who have at least five years of service irrespective of whether they are dismissed, leave or die in service, subject to the conditions that, if they are dismissed for fraud or causing loss, the payment could be reduced to the extent of the loss. It does not apply if the employer has less than 15 workmen.

4. Main features of labour inspection in Sri Lanka

The labour inspection services within the Department of Labour in Sri Lanka come under the direction and guidance of the Commissioner General of Labour. The Labour Department has functional responsibilities in most areas of labour administration involving the enforcement of a wide range of laws and regulations. One of its main functions includes enforcement of labour laws through its inspection services which includes all aspects of labour standards, wages, employees provident fund, including special investigations, relating to working conditions and the working environment (including occupational safety and health), with specific attention to child labour, young persons, and women.

4.1. Labour inspection structure and staff

Sri Lanka has a decentralized labour inspection structure consisting of a total of 434 inspectors in its general inspectorate cadre. Of this number, 104 are Assistant Commissioners of Labour (ACLs) and 25 are Deputy Commissioners of Labour DCLs). All the inspectors in the department also undertake handling of conciliation work, and assist in the collection of contributions to the Employees Provident Fund which is the main social security scheme for the private sector in Sri Lanka. The Labour Inspectorate functions are decentralized in 11 Zones, 36 district offices and 17 Sub District Offices. In all field offices, labour officers carry out labour inspection, conciliation as well as have responsibilities for EPF (Employees Provident Fund) administration.

4.2. The mandate

The authority for conducting inspections flows mainly from the Industrial Disputes Act No. 43 of 1950 IDA, which provides as follows:

Under section 44 C of the Act, every employer shall make available for inspection by the Commissioner or any Labour Officer or any other prescribed officer any registers or records required to be maintained by him under the Wages Boards Ordinance, the Maternity Benefits Ordinance, the Shop and Office Employees (Regulation of Employment Remuneration) Act, or the Employees' Holidays Act, No.6 of 1959, and such other registers or records as may be prescribed.

Section 44E states that subject to such conditions and restrictions as may be prescribed, the Commissioner or any labour officer or any other prescribed officer shall have the power:

- a) to enter and inspect at all reasonable hours of the day or night any place in which any workmen are employed, for the purpose of examining any register or record maintained or deemed to be maintained under this Act or such other registers or records as are required under this Act to be available for inspection;
- b) where at the time of such inspection any such register or record is not available for examination, to request the production of such register or record on such a date and at such a place as he may specify;
- c) to take copies of the whole or any part of any such register or record; or
- d) to interrogate any person whom he/she finds at the place where the workmen are employed and whom he/she has reasonable cause to believe is an employer or a workman engaged or employed in the trade, business, occupation or undertaking carried out in the same place.

The provisions of the Act enable the CGL to co-opt even non labour officers to carry out inspections or any other acts, if duly authorized by the CGL in writing to do so.

The IDA also interprets as an offence the following conduct by any person who:

- “hinders or molests any officer in the exercise of his/her powers under section 44E;
- refuses or fails without reasonable cause to produce any register or record or give any information which any officer requires him/her to give under the powers conferred by section 44E;
- prevents or attempts to prevent any other person from answering any question put by any officer to such other person during an interrogation of such other person under section 44E.”

Those acting in breach are liable for prosecution before the Magistrates’ Court and punishable by a term of imprisonment not exceeding six months or a fine not exceeding Rs 500.

4.3. Coverage

According to recent labour department records, the number of workplaces liable to inspection was 86,619. Majority of these establishments are in the formal sector. The labour laws apply to all workers and as far back as 2005, the Employees’ Provident Fund Act, No. 15 of 1958 (EPF) had indicated that there were 2.4 million establishments in its register. It is likely that the inspection system does not cover the majority of the labour force, as over 65 per cent of the labour force in Sri Lanka is estimated to be engaged in the informal economy (Central Bank, 2004).

4.4. Recruitment

In Sri Lanka, the qualifications for entry into the general labour inspector’s service are a degree from a university in any discipline. The service also recruits from non-graduates in the labour department serving as management assistants.

In this regard, the recruitment so far has been 50 per cent from graduates and the other 50 per cent coming from management assistants who provide support services to inspectors. The management assistants from the labour department however need to pass an exam pertaining to labour law before being selected.

4.5. Female inspectors

The number of female inspectors has been steadily increasing over the past few years. At the labour officer level, there were 142 female labour officers who could undertake inspections compared to 291 males. At the level of the Assistant Commissioner of labour, which is a promotional post with management functions, there were 29 women compared to 48 males of the positions filled so far. At the Human Resource Development Officers level (officers responsible for statistical data management at the inspectorate) were 69 women compared to 25 men.

Figure 1. Structure of the labour inspectorate at the national level

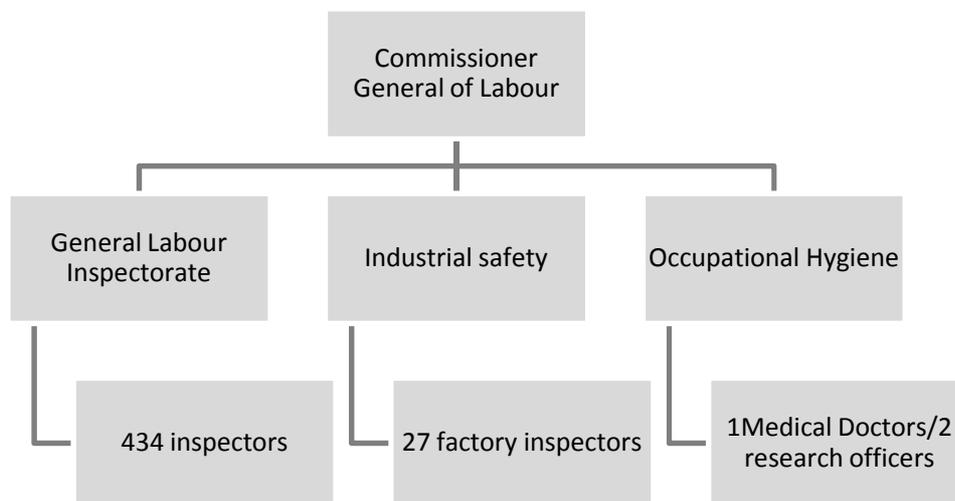
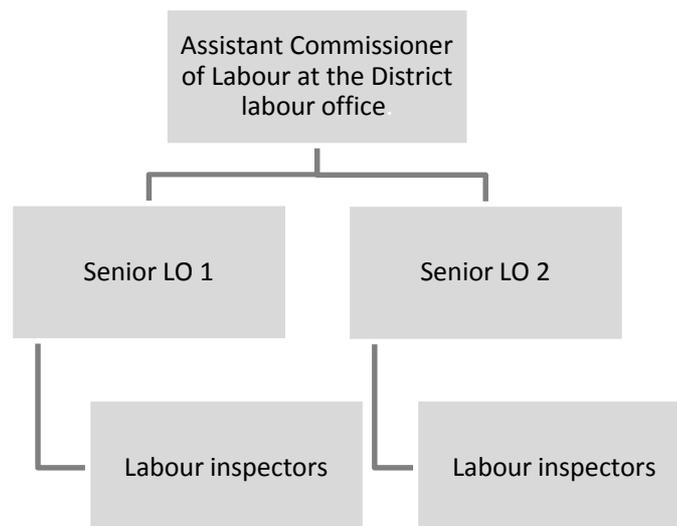


Figure 2. Structure of labour inspectorate at the district level



4.6. Industrial safety

Like many other countries, industrial safety is a separate department under the Department of Labour and so is Occupational Hygiene. At present, 20,000 factories have been registered in the division and there are 27 engineers distributed in 10 districts in the country. Of the 27 engineers, 19 are males and eight women industrial safety inspectors. All the 27 engineers conducted over 4,000 inspections in the last four years. Available data also indicates that fatal accidents have risen from 49 in 2008 to 62 in 2010 and non-fatal accidents have decreased from 1,525 in 2008 to 1,456 in 2010 (Table 1). Fatal, but especially non-fatal accidents are likely to be much higher due to deficiencies in reporting as well as the lack of coverage of the informal sector. No information has been provided on the number of cases of occupational disease.

Table 1. Number of inspections conducted by Factory Inspectors

Year	No of Factories Registered	No of OSH Inspections
2006	13981	3056
2007	14751	3452
2008	16153	4197
2009	18096	4316
2010	19823	4074
2011	20971	4754

Source Department of Labour

4.7. Inspections undertaken by the General Inspectorate.

The data the mission received was fragmented and it was difficult to get a sense of the actual inspections done in the general inspectorate. Under circular number 15 of 2007, each labour inspector has to undertake 20 inspections a month to be eligible for the maximum travel allowance. The inspectors are paid a travel allowance of Rs 9,000 each month for using their own vehicles to conduct inspections. The mission was informed that most of the inspections that were conducted were pertaining to verifying contributions to the Employees Provident Fund. This is mainly done by Field Officers who in 2010 were absorbed into labour officers' cadre. In 2011, a total of 10,183 compliance orders were sent to employers, and 2,170 cases were filed in court for non compliance.

Available data also reveals that another area of non compliance relates to underpayment of wages or statutory payments such as overtime. Table 2. shows a slight decline in the number of inspections to the Wages Board from the 2010 data. The actual number of inspections undertaken on Wages Board Ordinance was 15,777 in 2011 compared to 16,790 in 2010 and a total of Rs 30,815,680 was recovered as short payments in 2011 compared to Rs 48,897,922 in 2010. Under the Shops and Office Employee's Act, the actual number of inspections increased from 12,296 in 2010 to 15,532 in 2011.

Table 2. Statistics of Activities of Division of Occupational Hygiene from 2009 -2011

Activity	2009	2010	2011	Remarks
Factory inspection (related to non compliance related to hygiene and ill health of workers)	96	237	220	
Environmental monitoring (noise .thermal parameter, illumination, dust, chemical in air	470	445	205	
Medical surveillances (hearing test/lung function test)	269	350	300	
Education Programmers (chemical safety/ physical hazards/ Ergonomic/ Occupational health)	66	186	193	

Source: Department of Labour

Table 3. Inspection conducted under wages board ordinance and shops and offices employee's act (SOE) Act.

Year	Under Wages Boards Ord.	Under Shop and Office Act
2006	10 319	5241
2007	18 338	1478
2009	18 318	15888
2010	16 790	12296
2011	15 177	15532

Source: Department of Labour

4.8. Prosecutions in 2011

The credibility of the inspectorate depends to a large extent, on the existence and implementation of a sufficiently dissuasive enforcement mechanism. In this regard, the labour legislation in Sri Lanka is accompanied by an enforcement mechanism enabling those guilty of violations reported by labour inspectors to be prosecuted. The enforcement and legal services of the labour department is one of the best in the developing world.

In 2011, the enforcement unit carried out 238 prosecutions for nonpayment of minimum wages, 4,092 cases for nonpayment of gratuity, and 3,483 cases involving non-payment of EPF as shown in Table 4.

Table 4. Cases for non-payment of EPF

No.	Act	No of cases	Calculations
1	Gratuity	4 092	1 159 329 226.00
2	L.T Orders	153	70 286 913.63
3	Industrial dispute	72	3 520 014.50
4	E.P.F	3 483	3 753 357 651.00
5	Wages Board	238	21 471 740.85
6	Shop & Office	80	9 620 306.61
7	Termination	65	151 730 229.60
8	Women, Young Persons and child care	05	-
9	Budgetary Relief	54	2 233 870.46
10	Maternity Benefit	01	-

5. Labour inspection: findings and recommendations

5.1. Policy making, planning and evaluation

Draft of “The National Human Resources and Employment Policy”, prepared by the Secretariat for Senior Ministers, establishes an objective “to safeguard the basic rights and interests of workers in line with national labour laws and international labour standards as nationally adopted”.

Labour inspection and the system of enforcement of labour standards in general, are the key tools of making labour standards, applicable in Sri Lanka, a reality. However, to achieve this objective, the existence of relevant institutions, is not enough. No labour inspection has adequate staff to visit all enterprises; it is even more true in an economy where only 20 per cent of the workforce is employed in formal private sector and where small and medium scale enterprises account for 80 per cent of all businesses.

To face with this situation and to better focus rare human and material resources, clear priorities should be established within a nationwide policy framework. At the same time, authorities (The Ministry and its Department of Labour, as well as the Government as such) should have access to reliable information about interventions by inspection services. A structured plan, establishing policy objectives and outcomes based on clear indicators, would thus enable the measurement of results achieved and evaluation efficiency of policies and, if necessary, to take corrective actions.

To this day, such an inspection policy does not exist, at least not as a consolidated and coherent document. Inspection activities are regulated by departmental circulars under the responsibility of the Commissioner General of Labour. These departmental circulars (from 2000 to 2007) deal with issues such as procedures for labour inspection and labour inspection planning. This can be considered as a serious gap compared to provisions of the ILO Occupational Safety and Health Convention, 1981 (No.155) which, according to Art 4(1) requires that the national policy be periodically reviewed while Art 7 provides that the situation regarding occupational safety and health and the working environment shall be “reviewed at appropriate intervals”, either overall or in respect of particular areas, with the view of identifying major problems, evolving effective methods of dealing with them and priorities for action, and evaluating results. As stated by the ILO 2009 General Survey concerning the ILO occupational health and safety standards, “both these provisions reflect the essential feature of the systems management approach, namely the assessment of past performance which serves as a guide for future action”. Indeed, in most countries that have adopted a national policy, the review requirement appears to be a normal element of the system.

Recommendations

The mission recommends that the national inspection policy is elaborated, in consultation with representative organizations of social partners and taking into account the position of other stakeholders. A tentative outline of this Policy is attached as Annex No. 5.

The mission also recommends updating and consolidating in one document all existing departmental circulars on labour inspection, reflecting recommendations of this Technical Memorandum as well as requests of the Committee of Experts on the Application of

Conventions and Recommendations Report (CEACR) (2011)⁵. More particularly, consolidated circulars should deal with issues such as planning and monitoring of inspections, evaluation of impacts, coordination of the labour inspection system, collection of data, elaboration of the Annual Report, reimbursement of travelling expenses, etc.

5.2. Management structures and methods

The challenges facing labour inspectorates, in Sri Lanka today transcend the number of inspectors available to enforce laws. With the steady growth of the economy after the war, inspectors are facing challenges posed by changes in the workplace, the growth of the informal sector and the increased use of workers in disguised employment relationship. This has been further compounded by the issue pertaining to the decline of trade unions and the emergence of new forms of workplace risks, which is making the task facing labour inspectors far more complicated.

In addition, there is increased expectation placed on labour inspectors by workers, unions and employers. As a result, traditional approaches relying on the impact of conducting inspections, workplace surveillance and sanctions may no longer provide sufficient incentives or have broad enough scope. New ways of organizing and managing labour inspections are the needs of the hour. One of the internal issues which have further complicated this matter is the lack of skills at the ACL level to manage the planning, monitoring and implementation of labour inspections.

The reform of the inspection system is to have a clear policy direction to provide a firm foundation for legislative reform, new structures and systems, and to provide direction for new operational arrangements that stress performance and service. It will also require a new approach to management of labour inspections at both HQ and regional offices, with an emphasis on leadership, planning, performance monitoring and a strong commitment to national development.

The effectiveness of a system of labour inspection depends upon a well organized framework that is driven by the Chief Inspector/Director of Inspection Services from HQ. Figure 3 provides an example of a typical labour inspectorate at HQ, designed under the supervision and control of a central authority and its unit to serve each functional area.

Recommendations

In the reform process, there is a need for the appointment of Chief Inspector/Director of Inspection services to enable inspectors at HQ to plan effectively, better monitor programmes and evaluate labour inspections impacts.

5.3. Managing inspections in the field

The mission found monitoring of work plan implementation, in particular quantitative and qualitative results was not effective. In many instances, in the absence of prioritization and targeting from the Deputy Labour Commissioners (DCLs) level in the zones. Labour Inspectors chose the establishments they inspected which often led to the same establishment being visited several times.

⁵ Normlex information system on International Labour Standards – Observation (CEACR) – adopted 2011, published 100th ILC session – Labour inspection Convention, 1947 (No. 81). Sri Lanka (Ratification: 1956).

DCLs need to develop a quarterly plan on the basis of which each ACL must prepare a comprehensive monthly inspection plan. An adequate performance target to be reflected in the monthly planning should be for each inspector to spend two days out of five, for example, on visits to establishments for the purpose of inspection. The targets should include 19 inspections of which five could include Wages Board, and one mass inspection making a total of 20 inspections per inspector in a month. However, the monthly plans should also leave some scope for inspections based on complaints.

Regarding inspection days, a minimum number of establishments to be inspected must be indicated, naming each enterprise and, if possible, number of workers employed.

Deputy Labour Commissioners in the field must be trained to monitor work plans and the work of ACLs and LOs and take corrective action as necessary so that the monthly plans are properly implemented. DCLs must approve these plans in advance, and then monitor their full and timely implementation. ACLs must also see that LOs justify in writing any deviation from the approved work plan implementation. Short, to-the-point training or instruction by supervisors is essential in this context.

The DoL needs to take advantage of existing ILO Projects such as the project on Prevention of Trafficking, HIV/AIDS workplace programme and the Declaration Project to hold regional workshops to create awareness among inspectors on the role of the inspectorate in Trafficking and HIV/Aids.

Recommendations

The mission recommends more rigorous planning of labour inspection activities as well as more systematic monitoring of results achieved. Monthly inspection plans of all inspectors should be approved in advance by their superiors (Deputy Commissioner of Labour (DCLs) and Assistant Commissioner of Labour (ACLs)) and their implementation should be monitored through regular planning and evaluation meetings. These inspection plans should reflect the priorities established in the national Inspection Policy and other planning documents, but also address issues related to complaints.

5.4. Creating synergies

ACLs must also ensure that routine OSH information gathering on the occasion of every regular inspection visit should be entered in the inspection form e.g. the existence of excessive noise, evident lack of machine guarding, workers' complaints about unhealthy conditions, accidents, etc. Such information should then be systematically shared with the Factories Inspectorate. The mission also recommends that for this purpose, experienced and qualified Factory Inspectors/Medical Doctors give basic training to LOs and ACLs. This, the mission view, will be adding value to each other's activities, (synergy) is clearly necessary. The mission therefore, recommends that Labour and Factory Inspectorates hold regular monthly coordination meetings at headquarters, regional as well as district levels, to be convened and chaired alternately.

Resistance to this inspection strategy is sometimes based on fear that the integration will involve the disappearance of some departments and sections. However, integration is primarily aimed at integrating the inspection function, rather than the integrating of structures.

Recommendations

Collaboration between the General Inspectorate and Factory Inspectorate with a view to adding value to each other's activities (synergy) is clearly necessary. The mission thus

recommends among other appropriate measures that the one-page checklist in the general inspectors' form be moved to the last page to facilitate its detachment and onward transmission to the Factory Inspectorate.

The mission also recommends that, for this purpose, experienced and qualified Factory inspectors/Medical Doctors give basic training to (LOs) and ACLs in the general inspectorate on basic risk assessment and detecting hazards.

5.5. Towards a preventive culture

The management of factory inspectorate could be improved to have better balance between awareness raising and inspections and the total number of factory inspectors increased. With only 27 factory inspectors undertaking inspections and with the rapid economic growth in the country, both fatal and non-fatal accidents are likely to be much higher. There are also deficiencies due to under reporting of accidents as well as the lack of coverage of the informal sector. At present, no information has been provided on the number of cases of occupational diseases. Furthermore, the activities of the labour inspectorate in the area of occupational safety and health should focus both on securing the enforcement of the relevant legislation and preventing industrial accidents and occupational diseases including through the provision of technical information and advice.

Recommendations

Recognizing the need for improved national data on accidents and diseases, the mission recommends that the reporting system is thoroughly reviewed to increase its reliability and to address its apparent deficiencies. The Factory Inspectorate should consider conducting a national inspection campaign on the reporting of accidents and diseases that could include awareness-raising efforts in consultation with social partners and other stakeholders, including the media, use of targeted inspection and prosecution in serious cases. It is also recommended that data on occupational accidents and cases of occupational disease are collected and published by sector of economic activity and geographical area and that specialisation is given to EPFs.

We also recommend that inspectors are more actively engaged in high profile events, such as the World Day for Safety and Health at Work (28 April).

5.6. Data on inspections

The mission found that there is ambiguity about the term "inspection". The mission examined data from Wages Board, Shops and Offices Act, EPF and found that it is used to indicate inspections done on each separate law or regulation, which they purport to check on the occasion of an enterprise visit (minimum wages, EPF or shops and offices).

This is not the correct interpretation and provides misleading statistics. An inspection is the visit of an establishment with the purpose of monitoring and, where necessary, enforcing compliance of all relevant labour protection legislation under the purview of the Department concerned. This definition should henceforth be used for monitoring, reporting and statistical purposes and throughout the system.

The mission understands that there are ongoing efforts to pilot information processing through information technology (IT) compatible, as both the Factories and General Inspectorate should start computerization in the near future. Firstly, the system will capture data, electronically, at the source where it is generated, and process that data to produce meaningful and relevant information. The information will then be accessible for informed

decision making at various levels in the Labour Department. However, it requires that the present inspection form be streamlined to pick up key indicators of the labour standards it wishes to monitor. It also requires that the Department be provided with the necessary hardware in all field locations and that inspectors be trained to acquire the skills required to operate the system and an annual budget for the maintenance of these systems.

Recommendations

The mission recommends undertaking a review of the existing system of computing the total number of inspections done and to use the methodology that an inspection is a visit of an establishment with the purpose of monitoring and, where necessary, enforcing compliance of all relevant labour protection legislation under the purview of the Department concerned.

The mission also recommends that DoL learn from LAB/ADMIN's project on harmonization of labour inspection data and that such an activity, for example, in the form of training for selected officials and labour inspectors, which is supported by the ILO Project. It is recommended to strengthen the analytical part of all inspection reports; their purpose is not just to give numbers, but, above all, analyse the reasons of noncompliance and suggest solutions.

The ongoing computerisation process requires the current inspection form be reviewed and streamlined to pick up key indicators of the labour standards it wishes to monitor including gender discrimination, trafficking, HIV/Aids etc.

The mission recommends that the DoL prepare an annual report of Labour Inspection for 2011 and share the information with the stakeholders and use the analysis to target inspections in the second half of 2012.

5.7. Analysis of data on inspection - annual labour inspection report

The Mission also noted that an annual labour inspection report has not been prepared for some years now. The improved collection, analysis and distribution of information on labour inspection represent a priority area for capacity development of DoL.

After going through the statistical data provided by the DoL, the mission would like to emphasize the importance of the analysis and compilation of this report by the DoL. The annual report must contain useful information on inspection staff, workplaces liable to inspection, persons employed therein, statistics on inspection visits, violations, penalties imposed, industrial accidents and occupational diseases). Such information would shed light on the operation of the labour inspection system in relation to the requirements of the Convention and would enable the Commissioner General of Labour to determine priorities for action and the corresponding resources.

5.8. Separation of functions of labour inspection and dispute settlement and creation of a new unit for labour inspection

The mission calls for a number of structural changes, in addition to increasing the number of inspectors in response to the challenges, facing the labour inspection system. These include structural changes, like centralizing supervision and control of inspectorates and separating the existing functions of conciliation to the industrial relations department.

Figure 3 shows the organizational structure of labour administration under ILO convention C81 and figure 4 shows the organizational structure under labour inspection services proposed by the mission.

The purposes of the functions of labour inspection and conciliation are different, and have very little in common. Conciliation is concerned with an independent third party encouraging the disputing parties to make compromises in order to resolve their problem. Inspection is primarily concerned with ensuring compliance with labour laws.

The practice of some conciliation cases being handled by a labour inspector taints the conciliation process and adds an element of confusion to the disputing parties who receive a mixture of conciliation and law enforcement. This has also been pointed out by Employers Federation of Ceylon and trade unions.

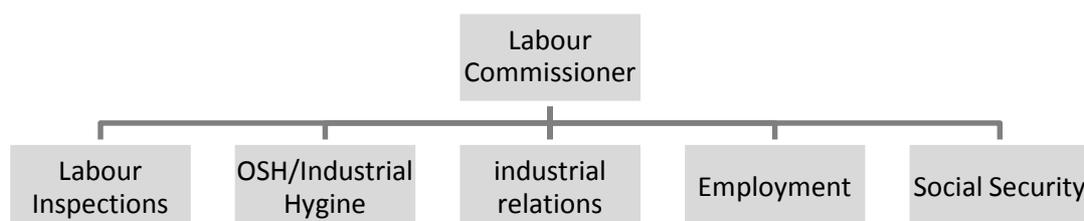
Conciliation before a labour inspector is likely to be different from ‘true’ conciliation. In Sri Lanka, the labour inspector is likely to provide the disputing parties with information on the content of the labour law, correct any legal misunderstandings between them, indicate to the parties what the outcome to their dispute should be, and then” encourage “them to reach an agreement often using the moral powers vested in an inspector”. In many such cases, the process is more one of dispute settlement by a third party rather than conciliation that, by its nature, is a process of dispute resolution by the parties themselves.

This situation might be addressed by making a clear distinction between inspection and conciliation in practice. Labour inspectors should not be engaged in conciliation. ILO Recommendation concerning about Inspection No. 81 states that “The functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes (Art 8)”. Their greatest contribution to dispute prevention rests with improved inspection work. Effective labour inspection will certainly reduce the number of disputes. Routine inspection visits focusing on noncompliance and ‘at risk’ enterprises where worker complaints are common, could solve many problems on the spot and prevent complaints arising in the first place, thereby obviating the need for conciliation.

Recommendation

The Inspectorate should pursue an approach to inspection based on compliance delivery that places greater emphasis on education, information, and self-reliance, underpinned by enforcement and sanctions when other approaches to securing compliance are unsuccessful. Where necessary, labour inspectors should be retrained to enable them to adopt a culture of service and advice for the benefit of workers and employers, which is consistent with the need to apply penalties and sanctions in serious cases of noncompliance with laws and regulations.

Figure 3. Organizational structure of Labour administration under ILO convention C81



5.9. Restructuring the management of inspection services

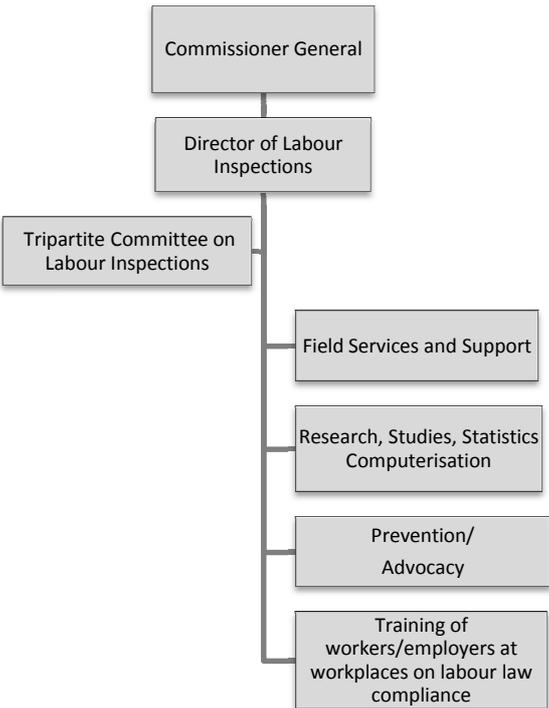
The reform of the inspection system is to have a clear policy direction to provide a firm foundation for legislative reform, new structures and systems, and to provide direction for new operational arrangements that stress performance and service. It will also require a new approach to management of labour inspections at both HQ and regional offices, with an emphasis on leadership, planning, performance monitoring and a strong commitment to national development.

The effectiveness of a system of labour inspections depends upon a well-organized framework that is driven by the Chief Inspector/Director of Inspection Services from HQ. Figure 3 provides an example of a typical labour inspectorate at HQ, designed under the supervision and control of a central authority and its unit to serve each functional area.

Recommendation

In the reform process, there is a need for the appointment of Chief Inspector/Director of Inspection services to enable inspectors at HQ to plan effectively, better monitor programmes and evaluate labour inspections impacts.

Figure 4. Suggested organizational structure of labour inspection



5.10. Towards a culture of prevention - piloting of compliance mechanisms at the enterprise level.

The confluence of growing and changing demands on labour inspectorates requires different approaches to inspection and enforcement itself. Without a change in the basic approach, key questions of how to use highly limited resources across multiple, equally plausible workplace situations are not adequately addressed. This needs to go beyond undertaking 20 inspections to structural changes in the existing structure and organizations. It will require a shift towards a preventive culture, additional training or better information

technology to address the question of how to ensure that Sri Lankan inspectorates achieve the greatest impact by using the different tools available to them and looking at prevention strategies.

Recommendation

The Inspectorate should pursue an approach to inspection based on compliance delivery that places greater emphasis on education, information, and self-reliance, underpinned by enforcement and sanctions when other approaches to securing compliance are unsuccessful. Where necessary, labour inspectors should be retrained to enable them to adopt a culture of service and advice for the benefit of workers and employers, which is consistent with the need to apply penalties and sanctions in serious cases of noncompliance with laws and regulations.

5.11. Cooperation with social partners at enterprise level

Under the guidance of Labour Secretary/Commissioner General of Labour, the Labour Inspectorate should encourage employers, employers' organizations and trade unions to become more involved in labour protection by setting and providing advice on potential reform measures and by holding training programmes that promote the self-reliance of employers and workers. Currently, this cooperation only exists with regards to social dialogue programmes at the enterprise level and to some extent in occupational health and safety in safety committees. However, implementation of a systematic reform can help improve compliance with labour standards, making the inspectors' jobs easier.

A growing number of countries such as Japan, Singapore, Hong Kong, and South Korea, have introduced measures that require joint committees to be established in industrial, and commercial enterprises. These committees complement some of the functions of the labour inspectorate, exercise in-plant supervision over conditions of work and, in particular, occupational safety and health, and help prevent occupational and ever-increasing social and economic risks.

The collaboration of the inspection services with workers' representatives is not confined to questions of occupational safety and health alone. In a number of countries, legislation states that trade union delegates and other staff representatives within the enterprise should have specific responsibilities for conditions of employment and work. These delegates and representatives can submit complaints and observations relating to the application of the legal provisions and regulations to the labour inspectorate. Sri Lanka too can consider piloting a self-reporting inspection system, with the aim of encouraging greater self-compliance with labor laws and promoting improved protection concerning working conditions and the working environment.

Recommendations

Given the long history of enterprise level of cooperation in Sri Lanka, the mission recommends the piloting of self-reporting compliance mechanisms at the enterprise level where unions are present. It is suggested that self-reporting be confined to those industries assessed as low risk and should be supervised by Department of Labour. The content of the self-reporting form will have to be agreed upon, including consultations with employers and workers, and the actual form prepared and tested. The form must be sufficiently detailed to cover all areas where compliance is required, including both working conditions and the working environment.

The reporting form must include a section for comments by workers and space for the signatures of worker representatives. Employers, workers, and labour inspectors will need to be trained in all aspects of the self-reporting system.

5.12. Extending labour inspection services into the informal sector

Traditionally, the Department has focused its activities on the organized sector of the economy but increasingly will need to provide assistance to various groups of workers in the unorganized, unprotected sector including minimizing child labour, forced labour and trafficking for particular groups of workers. These activities will bring the previously unorganized, informal economy workers who make up 65 per cent within the umbrella of labour protection, resulting in general improvements of their living standards. The department must be strongly committed to assist more workers to move from unorganized to organized status.

Recommendations

The labour department should review existing legislation, and the existing protection system to extend labour protection to the informal economy to ensure all workers are protected. The mission also recommends harmonization of the establishment list or the master register between the EPF and the register of the general inspectorate.

It is recommended that the Department of Labour (DoL) holds regional workshops on sensitising labour inspectors on using the ILO publication on the role of inspectors in Trafficking, and HIV/AIDS with ongoing ILO Projects on Trafficking and HIV/AIDS.

5.13. Partnership and cooperation with social partners and stakeholders

The collaboration and cooperation of inspection staff with employers, workers and their organizations at national, sectoral and enterprise level will also improve compliance and enhance enterprises' competitiveness and productivity. This kind of dialogue will enable mutual understanding by identifying high-risk sectors, allowing for targeted inspection. Clear and simplified information could contribute to ensuring that enterprises bring practices into compliance with the law.

Art. 5 of ILO Convention 81 states that, "the competent authority shall make the appropriate arrangements to promote collaboration between officials of the labour inspectorate and employers and workers of their organization". Cooperation with social partners could produce better results in terms of compliance, quality of working life and productivity. Collaboration should be facilitated through the organization of conferences or joint committees that promote dialogue between partners. Active social dialogue was essential and contributed to strengthening the role of labour ministries to develop legislation and labour inspection services in many countries. The presence of strong and independent workers' representatives in workplaces improved respect for workers' rights, working conditions and OSH. This is the case in Spain, where the Tripartite Consultative Commission for Labour Inspection and Social Security is responsible for providing advice and making proposals for action strategies to set general priorities and objectives for labour inspection, including inspection campaigns, staffing and resources, inspector selection policies and training.

In Singapore, Hong Kong and in a number of countries in Europe, the government has set up national tripartite consultative bodies to deal with labour inspection issues. Some other

EU countries have introduced other forms of cooperation, such as signing cooperation agreements, publishing strategies after wide consultation, producing information leaflets, or organizing meetings with the participation of employers from different sectors. In Portugal, labour inspectorate and the social partners have concluded an agreement on working conditions, health and safety at work, and combating occupational risks. The aim is to develop a national prevention plan and a plan of action targeting the most risk-prone sectors.

The examples above point to the critical importance of coordinating labour inspection services within the labour inspection system and with other national inspection and government agencies in Sri Lanka such as other ministries in charge of women's affairs, and child labour, maritime affairs, Ministry of Health as well as public or private institutions engaged in similar activities.

Over the last decade, auditing, monitoring and certification systems for labour standards have grown in the garment sector alongside existing national inspection programmes. These audit and certification initiatives come under a range of names: social auditing, external verification and independent monitoring. What is urgently needed is cooperation and information sharing of these initiatives which can go a long way to improve the overall effectiveness of a country's labour inspection system.

The mission visited the EPZ authority (Board of Investments) and noted that the EPZs have been characterized by the lack of a forum to promote social dialogue between employers' and workers'.

The enforcement of labour laws by DoL has been supplemented by monitoring of the labour standards by BOI officials in collaboration with labour inspectors. In the absence of adequate mechanisms and processes for information-sharing, consultation, negotiation and dispute settlement, many of the labour conflicts are inadequately addressed and channeled. This is further complicated by the fact that many zone enterprises are run by managers unfamiliar with local customs in the country.

The mission discussed all the issues pertaining to adjusting to a post-MFA era. It is evident that the promotion of decent work requires a workable system of social dialogue as the key element in a strategy to mobilize and develop the capacity of all three partners – employers', workers' organizations and the government's labour administration system – in order to improve employment conditions.

The BOI has agreed in principle to set up a tripartite social dialogue forum to discuss emerging issues in the EPZ's.

Recommendations

The mission recommends under the Labour Secretary/Commissioner General of Labour, a tripartite plus committee be created to ensure consultation between the social partners, other inspecting agencies outside the Ministry of Labour (MoL), including private voluntary initiatives and the DoL on all issues within the purview of labour inspections.

The DoL and ILO Declaration Project on Promotion of Fundamental Rights could follow up to convene a meeting shortly.

Special attention by MoL, social partners and other stakeholders must be given to the situation in EPZs in order to remove any obstacles that in practice may prevent labour inspectors from carrying out their duties and use of their powers, including the right to enter EPZs on the sole condition that they hold appropriate credentials.

5.14. Professionalizing the labour inspectorate

Currently, about 50 per cent of labour inspectors are recruited from rank and file, and many of these officials may not be graduates. Labour inspectorates in most OECD countries primarily recruit university degree-holders, which better allows the inspectorate to form specialized inspection teams relating to OSH, and general inspections. In countries such as Spain, France, Portugal, Greece, Singapore, and Hong Kong, inspectors are increasingly recruited from university graduates.

Performance of the various duties involved in labour inspection requires a reasonable familiarity with various aspects of the law, economics and social sciences, and of the industries in which inspectors conduct inspections and give advice and information to employers and workers. A thorough knowledge of increasingly sophisticated and powerful information tools is required for the management and evaluation of the statistical data that is needed for inspection systems to function well.

The future of recruitment of inspectors in Sri Lanka should ensure that an increasing number of graduates are recruited. The selection of labour inspectors should be merit-based upon their qualifications and personal qualities, and they should be recruited in relevant disciplines so that they can effectively perform their duties.

ILO Convention 81 states that inspectors should be duly qualified to conduct inspections and enforce the legal provisions relating to conditions of work, the protection of workers' health and safety, and investigate the effects of processes, materials and methods of work on the health and safety of workers. Furthermore, with the current steady economic growth in Sri Lanka, the work of labour inspectors is becoming more and more complex. As such, the responsibilities require inspectors to have technical skills and qualifications, in addition to the personal qualities that allow inspectors to work firmly and flexibly in a broad range of situations and with a wide range of people. This job is best accomplished by university graduates, as they have more training and exposure to inspections prior to starting their job.

Recommendations

In light of Art 6 and 7 of the Labour Inspection Convention No.81 and the requests of the CEACR (2011), the mission recommends paying increased attention to status, conditions of service and qualifications of labour inspectors. In particular, it is recommended to review the entry qualifications of new inspectors and recruit more university graduates to the inspectorate to facilitate the process of placing labour inspectors at par with tax officers and customs officers and to regain the lost ground in the last pay revision by the salaries and cadre commission.

The Ministry need to take steps to emphasize the important role of labour inspectors in advancing “Decent Work”.

The mission recommends elaborating a training policy for labour inspectors addressing the needs identified in this Technical Memorandum. For example, urgent attention should be given to training which supports better cooperation between general and factory inspectors. A systematic training programme on labour legislative issues should be put in place for inspectors, given the extreme complexity of Sri Lanka's labour laws (both Acts and Case law).

5.15. Remuneration of inspectors

The mission noted that there were low levels of motivation among inspectors, due to low salaries and the absence of career prospects, causing many ACLs to join other or more

prestigious public service sectors. Although the mission is aware of budgetary restrictions of the government, the downgrading of salary scales of existing labour inspectors has appeared to be a major cause for the low motivation following the recent pay revision by the salaries and cadre commission. Since labour inspectors provide quasi-judicial functions, contribute to industrial harmony and increase nations' productivity through minimization of work hazards and accidents, they cannot be placed in the existing service salary band, and be paid less than officials who come from revenue earning departments, such as Customs, and Tax Officials.

When inspectors do not receive remuneration commensurate with their responsibilities, the labour inspection itself is devalued and labour inspectors may also be exposed to corruption. In carrying out their duties, inspectors may then find themselves treated with disrespect which detracts from their authority.

Career prospects that take into account seniority and personal merit are essential to attract and especially to retain qualified and motivated staff in labour inspectorates. This essential aspect of human resources management is widely recognized in countries with good labour inspection systems such as Malaysia, Singapore, Hong Kong, Spain, Portugal, Brazil. This way, their prospects for promotion and development are therefore guaranteed.

Recommendations

The mission recommends that a High Level Technical Committee be appointed to re-examine the salary scales of labour inspectors with the purpose of upgrading the existing salary scales taking into account their specific function of labour law enforcement, and placing inspectors in the same category as tax officers and customs officers.

To support this move, the ministry needs to work on an agreed curriculum with the Public Services Department using the LAB/ADMIN/Turin labour inspection modules, and basic prosecution skills in an approved curriculum developed for inspectors in consultation with the Judicial Commission.

The mission also recommends the forming of a task force, to immediately introduce annual performance appraisal which has not been undertaken so far and to look into the possibility of upgrading some of the existing ACL posts to DCLs and creating a special grade for senior LOs who are stagnating due to non availability of promotional posts. This should be undertaken with the development of performance indicators and its implementation should be conducted in a transparent manner so as not to create dissatisfaction among the labour inspectors. The system of reimbursement of labour inspectors should also be reviewed in order not to limit the number of inspections carried out and to enable inspection to reach distant places, as requested by the CEACR in the 2011 Report. Possible abuse of travelling expenses should be avoided by better planning and monitoring of inspections by immediate supervisors.

6. Follow-up

Taking into account the shortness of the ILO mission, the Memorandum should be considered only as a first step in the ILO's involvement in the revitalization of Sri Lanka's labour inspection services.

LAB/ADMIN is ready, in cooperation with ILO Colombo, to provide further necessary support especially in restructuring DOL, professionalization of the labour inspectorate function and in training of DOL's officials and in improving the system of collection of data on labour inspection.

Elaboration of a labour inspection policy is considered as the highest priority; it is thus suggested having further consultation between the Ministry and ILO on this issue in summer 2012, possibly in conjunction with the ILO technical mission on harmonization of labour inspection data, envisaged for the week of 16 July 2012.

The main purpose of this consultation should be the elaboration of an implementation plan covering all recommendations of this technical memorandum.

Annex 1. ILO Conventions for Sri Lanka

Convention	Ratification Date	Status
C029 - Forced Labour Convention, 1930 (No. 29)	05 Apr 1950	In Force
C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	15 Sep 1995	In Force
C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	13 Dec 1972	In Force
C100 - Equal Remuneration Convention, 1951 (No. 100)	01 Apr 1993	In Force
C105 - Abolition of Forced Labour Convention, 1957 (No. 105)	07 Jan 2003	In Force
C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	27 Nov 1998	In Force
C138 - Minimum Age Convention, 1973 (No. 138) Minimum age specified: 14 years	11 Feb 2000	In Force
C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)	01 Mar 2001	In Force
C081 - Labour Inspection Convention, 1947 (No. 81)	03 Apr 1956	In Force
C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	17 Mar 1994	In Force
C004 - Night Work (Women) Convention, 1919 (No. 4)	08 Oct 1951	Denunciation
C005 - Minimum Age (Industry) Convention, 1919 (No. 5)	27 Sep 1951	Automatic Denunciation
C006 - Night Work of Young Persons (Industry) Convention, 1919 (No. 6)	26 Oct 1950	Denunciation
C007 - Minimum Age (Sea) Convention, 1920 (No. 7)	02 Sep 1950	Automatic Denunciation
C008 - Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)	25 Apr 1951	In Force
C010 - Minimum Age (Agriculture) Convention, 1921 (No. 10)	29 Nov 1991	Automatic Denunciation
C011 - Right of Association (Agriculture) Convention, 1921 (No. 11)	25 Aug 1952	In Force
C015 - Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)	25 Apr 1951	Automatic Denunciation
C016 - Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	25 Apr 1951	In Force
C018 - Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)	17 May 1952	In Force
C026 - Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)	09 Jun 1971	In Force
C041 - Night Work (Women) Convention (Revised), 1934 (No. 41)	02 Sep 1950	Automatic Denunciation
C045 - Underground Work (Women) Convention, 1935 (No. 45)	20 Dec 1950	In Force
C058 - Minimum Age (Sea) Convention (Revised), 1936 (No. 58)	18 May 1959	In Force
C063 - Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63)	25 Aug 1952	Automatic Denunciation
C080 - Final Articles Revision Convention, 1946 (No. 80)	19 Sep 1950	In Force
C089 - Night Work (Women) Convention (Revised), 1948 (No. 89)	31 Mar 1966	Denunciation
C090 - Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)	18 May 1959	In Force

Convention	Ratification Date	Status
C095 - Protection of Wages Convention, 1949 (No. 95)	27 Oct 1983	In Force
C096 - Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) <i>Has accepted the provisions of Part III</i>	30 Apr 1958	In Force
C099 - Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)	05 Apr 1954	In Force
C103 - Maternity Protection Convention (Revised), 1952 (No. 103)	01 Apr 1993	In Force
C106 - Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)	27 Oct 1983	In Force
C108 - Seafarers' Identity Documents Convention, 1958 (No. 108)	24 Nov 1995	In Force
C110 - Plantations Convention, 1958 (No. 110) <i>Has excluded Parts II, III, V, VI, X and XII pursuant to Article 3, paragraph 1(b)</i>	24 Apr 1995	In Force
C115 - Radiation Protection Convention, 1960 (No. 115)	18 Jun 1986	In Force
C116 - Final Articles Revision Convention, 1961 (No. 116)	26 Apr 1974	In Force
C131 - Minimum Wage Fixing Convention, 1970 (No. 131)	17 Mar 1975	In Force
C135 - Workers' Representatives Convention, 1971 (No. 135)	16 Nov 1976	In Force
C160 - Labour Statistics Convention, 1985 (No. 160) <i>Acceptance of Articles 7, 8, 10, 12, 13 and 15 of Part II has been specified pursuant to Article 16, paragraph 2, of the Convention.</i>	01 Apr 1993	In Force

Annex 2. Labour inspection efficiency indicators in Switzerland

The performance management system of the Swiss labour inspection is based on two pillars:

- **Indicators** supposed to measure efficiency of labour inspection.
- **Audits** supposed to analyze labour inspection's functioning taking into account the requirement of the law and prescribed tasks.

This system combines quantitative and qualitative measurements. Previous experience shows that it is practically impossible to establish labour inspection's efficiency in terms of impacts, as there are many other factors that influence the final results. However, the indicators provide information that can be useful in the planning of inspection, especially in establishing its priorities. The set of indicators is thus completed by the system of audits, implemented regularly by national authorities in individual cantons. The audits proved to be a useful source of information about inspections' activities and their quality.

Every year, a comparative table, is elaborated showing where each of the 26 cantons is situated compared to other cantons. This table provides useful information to national authorities, as it indicates where their intervention is necessary. Evaluation of individual cantons is based on data from statistical sources, but also from activities and sources reported by cantonal inspections.

Currently, there are nine indicators:

1. Activity of the inspection per 1000 enterprises in the canton.
2. Inspection reports per 1000 enterprises in the canton.
3. Relationship between inspection activities and visits to enterprises in the canton.
4. Number of visits of enterprises per 1000 enterprises in the canton.
5. Number of workers per inspector.
6. Relationship between the number of inspection visits and the number of plans approved or examined.
7. Difference between frequency of accidents expected (weighted according to branches) and the real number of accidents.
8. Risks of musculoskeletal disorders caused by a) inappropriate and tiring postures, b) heavy burdens, c) repetitive movements.
9. Probability of industrial accidents.

Symbol meaning:

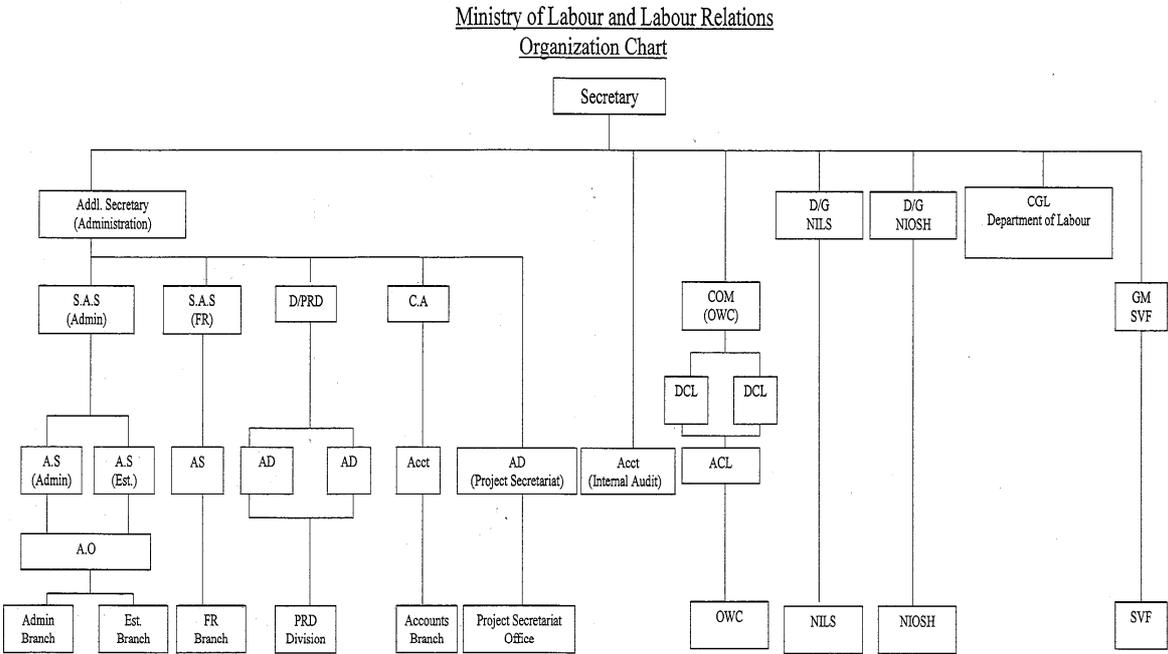
- ++ The canton is placed at the superior quarter of cantons, it means above 0.75 of average.
- + The canton is placed at the superior half of cantons, it means between 0.50 and 0.75.
- - The canton is placed bellow the average between 0.5 and 0.25.
- -- The canton is placed at the lowest quarter of cantons, it means bellow 0.25.

Indicators 2011

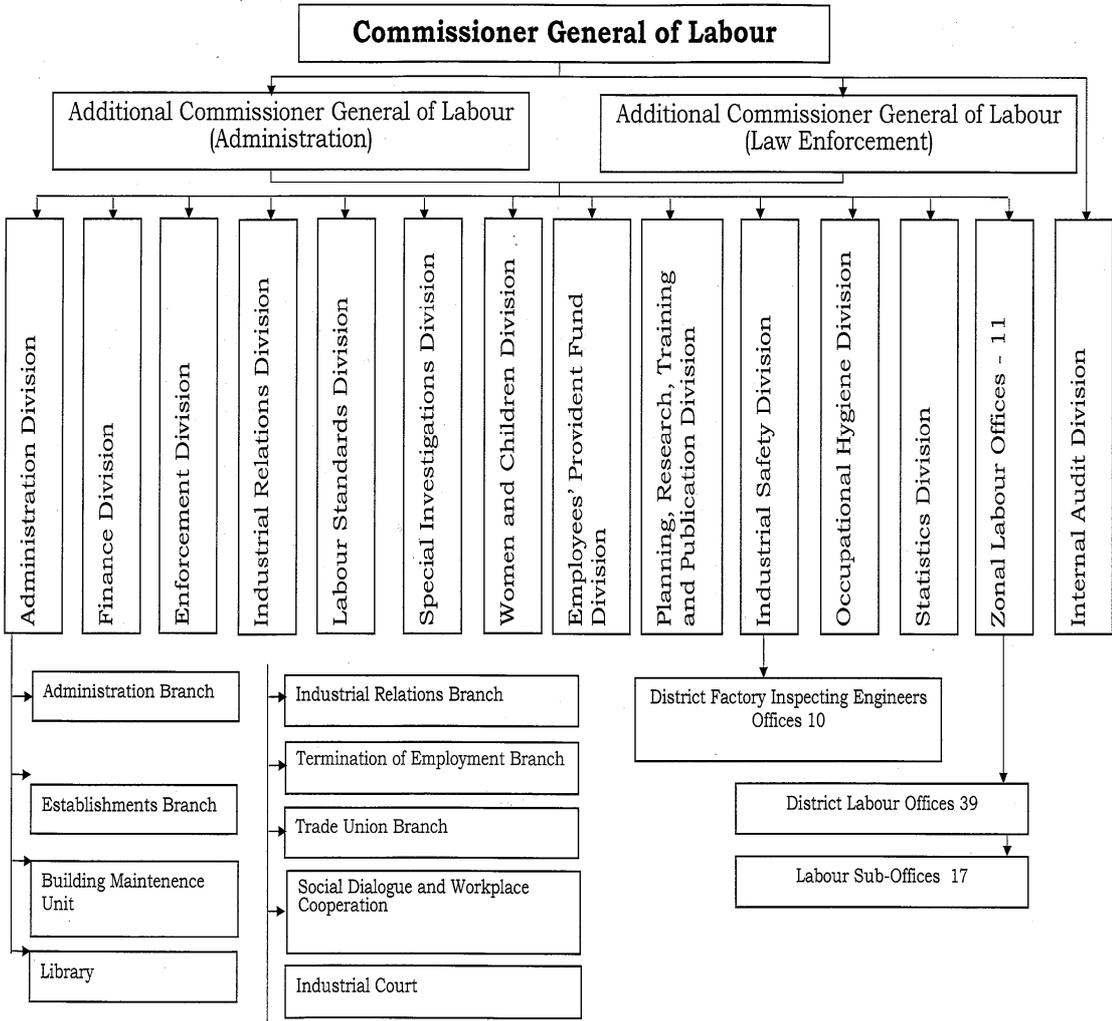
Indicators 2011 (Data 2009)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
1	+	--	--	-	--	+	-	+	--	-	++	+	+	--	++	-	-	--	++	++	+	++	-	++	+	
2	0	0	0	0	0	++	0	+	0	+	++	0	0	0	++	++	+	0	+	0	+	++	+	++	++	
3	-	-	--	+	--	+	+	+	--	--	++	+	++	--	++	++	-	--	+	++	++	-	++	-	+	
4	++	--	-	--	-	++	-	--	-	+	++	-	--	--	+	+	-	+	++	+	--	+	-	++	++	
5	++	++	+	++	-	+	++	-	--	--	+	+	--	++	-	--	-	-	--	+	++	-	--	-	+	
6	++	--	--	--	-	++	+	--	+	+	-	-	-	+	-	+	--	++	++	+	--	-	++	-	++	
7	-	+	-	-	+	--	--	--	++	+	+	--	++	-	++	+	++	-	-	-	+	+	++	--	++	
8	+	+	--	-	++	-	+	++	-	++	++	--	--	--	-	-	--	++	++	++	-	+	+	-	-	
9	++	++	-	-	-	+	--	-	++	+	+	++	++	++	-	+	--	--	+	++	+	--	+	-	--	

0 = no data available

Annex 3. Ministry of Labour and Labour Relations Organizational Chart



Annex 4. Department of Labour organizational chart



Annex 5. Tentative outline of the Sri Lanka Labour Inspection Policy 2013 - 2014

Note: it is suggested to adopt Labour Inspection Policy as a combination of long term (strategic) and short term (operational) objectives. Towards the end of 2014 implementation of this policy document should be revised and a new revised policy adopted for the next period. It is also strongly recommended consolidating all existing departmental circulars dealing with organization and implementation of labour inspection, taking into account the new Labour Inspection Policy.

1. Identification of the vision, mission and values of Labour Inspection in Sri Lanka.
2. References to international standards, national policies, legislation, etc, which influence the strategic objectives and the course of action of the organization and reference to the ILO Technical Memorandum and its findings and recommendations.
3. Main principles of labour inspection in Sri Lanka (with reference to the ILO Labour Administration Convention C.81), e.g.
 - coverage
 - functions
 - role of the central authority
 - cooperation with other stakeholders
 - collaboration with social partners
 - human resources and careers
 - institutional capacity
 - powers of inspectors
 - reporting and evaluation.
4. Strategic objectives, e.g.
 - To improve the effectiveness and efficiency in response to requests from workers, employers and their organizations.
 - To focus on increasing compliance in... (area, sector of activity, etc).
 - To modernize management of labour inspection.
5. Operational objectives:
 - Operational objectives (corresponding to the above mentioned strategic objectives) in the form of clear and measurable indicators (for example...).
 - Operational programmes, with definition of goals, initiatives, timelines, responsibilities and means of measuring outputs.