

International
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GOOD PRACTICES IN LABOUR INSPECTION on HIV and AIDS



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IN LABOUR INSPECTION
on HIV and AIDS**

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Preface

The HIV epidemic remains a significant challenge to health, development and economic progress worldwide, particularly in those countries most affected by the virus. HIV-related stigma and discrimination remain widespread, leading to violations of fundamental rights at work, including denial of access to employment and unfair dismissal. Fear, stigma and discrimination against those living with or affected by HIV also impede effective prevention and treatment efforts. At its 99th Session in June 2010, the International Labour Conference adopted the ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200) along with a resolution to promote its implementation. The Recommendation emphasizes the important role of labour administrations and labour inspectors in promoting and implementing the key principles of the Recommendation in and through the world of work.

Subsequently, at its 100th Session in June 2011, the International Labour Conference approved a Resolution and a set of Conclusions on labour administration and labour inspection. Among the various Conclusions, the International Labour Office was requested to develop a data-base, accessible through the ILO website, on best practices in labour administration and inspection.

As a result of this request, the ILO's Labour Administration and Inspection Programme (LAB/ADMIN) has launched a series of publications collecting good practices on a variety of themes and economic sectors. This publication marks the first time that a set of good practices on labour inspection with respect to HIV and AIDS has been assembled. The hope is that it will give readers an opportunity to familiarize themselves with HIV and AIDS issues in the world of work, the relevance of these issues to labour inspection, and the different labour inspection procedures and practices that have been used to address this subject.

This publication, which was prepared jointly by the LAB/ADMIN and the ILO Programme on HIV/AIDS and the World of Work (ILO/AIDS), is intended as a tool for labour inspectors, workers and employers to improve their understanding about the linkages between labour inspection and HIV and AIDS. It will be accompanied by other materials being developed jointly by LAB/ADMIN and ILO/AIDS, including a training manual on HIV and AIDS for Labour Inspectors.

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1. General overview

1.1. Global incidence and prevalence

The Joint United Nations Programme on HIV/AIDS (UNAIDS) estimates that, as of 2010, there were approximately 34 million people living with HIV (PLHIV) worldwide. Half of all PLHIV are women.¹ While many cases may go undiagnosed and unreported, UNAIDS estimates that more than 7,000 people are newly infected with HIV every day.² Since the first case of AIDS was diagnosed in the early 1980s, it is estimated that approximately 60 million people have been infected with HIV and over 26 million people have died of AIDS-related illnesses.

No cure has yet been found for HIV and AIDS and there is no vaccine to prevent HIV infection; however, HIV infection is no longer an automatic death sentence as it was for so many in the past. Antiretroviral therapies can now help PLHIV continue to live healthy and productive lives for many years. As a result of these scientific advances in treatment, the number of annual AIDS-related deaths worldwide is steadily decreasing. This decline reflects the increased availability of antiretroviral therapy, as well as increased access to treatment, care and support services for PLHIV, particularly in middle- and low-income countries. UNAIDS estimated in 2010 that only 35% of all those who need treatment have access. While access to treatment has improved, universal coverage still remains a significant challenge, as does sustainability of treatment services.

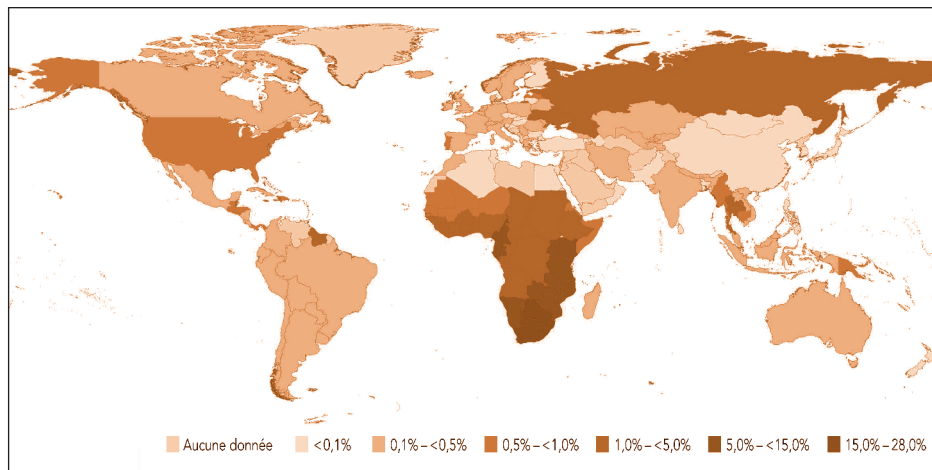
Fortunately, the number of new HIV infections has declined since global HIV prevalence peaked in 1999. In 33 countries, HIV incidence decreased by more than 25% between 2001 and 2009. Twenty-two of these 33 countries are in sub-Saharan Africa, the region most affected by the HIV epidemic. The largest epidemics in this region (Ethiopia, Nigeria, South Africa, Zambia and Zimbabwe), have either stabilized or are showing signs of decline. This trend is, however, not universal. In seven countries (five in Eastern Europe and Central Asia), HIV incidence in fact increased by more than 25% during the same period.³

¹ UNAIDS, World AIDS Day Report, 2011

² UNAIDS, *Global Report: UNAIDS Report on the Global AIDS Epidemic*, 2010

³ Ibid.

Global prevalence of HIV, 2009



Source: UNAIDS Global Report 2010, at page.25

Box:⁴

Sub-Saharan Africa. According to the UNAIDS Global Report, 2010, as of the end of 2009, 34% of all PLHIV were located in ten countries in southern Africa. Approximately 40% of all adult women living with HIV in 2009 were living in this sub-region. Although the rate of new HIV infections has decreased, the total number of PLHIV continues to rise. In 2009, that number reached 22.5 million, representing 68% of the total number of PLHIV globally. The largest epidemics in sub-Saharan Africa—Ethiopia, Nigeria, South Africa, Zambia, and Zimbabwe—have either stabilized or are showing signs of decline in the number of new infections.⁵

Asia. There were approximately 4.9 million people living with HIV in Asia in 2009 and most national HIV epidemics appear to have stabilized in the region. Thailand is the only country in this region in which the prevalence is close to 1%, and its epidemic appears to be stable. HIV prevalence is nevertheless increasing in such low-prevalence countries as Bangladesh, Pakistan (where drug injecting is the main mode of HIV transmission), and the Philippines.

⁴ Ibid.

⁵ Ibid.

Eastern Europe and Central Asia. The number of PLHIV has almost tripled since 2000 and reached an estimated total of 1.4 million in 2009. A rapid rise in HIV infections among people who inject drugs at the turn of the century caused the epidemic in this region to surge. Overall, the HIV prevalence is 1% or higher in two countries in this region, the Russian Federation and Ukraine, which together account for almost 90% of newly-reported HIV diagnoses.

South and Central America and Caribbean. The total number of PLHIV in South and Central America is estimated at 1.4 million. This number has remained relatively stable in recent years. About one third of all PLHIV in Central and South America live in Brazil, where early and ongoing HIV prevention and treatment efforts have contained the epidemic. HIV prevalence among adults in the Caribbean is about 1%, which is higher than in all other regions outside sub-Saharan Africa.

North America and Western and Central Europe. The total number of PLHIV in these regions continues to grow and reached an estimated 2.3 million in 2009.

Middle East and North Africa. The available data indicates that there have been increases in HIV prevalence, new HIV infections, and AIDS-related deaths. An estimated 460,000 people were living with HIV in the Middle East and North Africa at the end of 2009, up from 180,000 in 2001. Approximately 75,000 people were newly infected in 2009, more than twice the number infected in 2001. AIDS-related deaths have nearly tripled. HIV prevalence is low—with the exception of Djibouti and southern Sudan.

1.2. The Impact of HIV and AIDS in the world of work

Ninety per cent of those living with HIV worldwide are between 15 and 49 years of age. This means that nine out of ten people living with HIV are of productive working age. Workers, their families and dependents suffer the social and economic consequences of the epidemic, but enterprises and national economies are also seriously affected, particularly in high HIV-burden countries. Many of the world's poorest countries are among those most affected in terms of numbers of infections. In some countries, there is also a high prevalence of tuberculosis (TB) and malaria in the working population.⁶

⁶ Joint ILO/WHO Guidelines for health services and HIV/AIDS, 2005; See also ILO, *Labour administration and labour inspection*, Report V International Labour Conference, 100th Session, Geneva, 2011

HIV and AIDS are present in all countries and across all sectors of economic activity, posing a threat to long-term economic growth and undermining the attainment of decent work and sustainable development. The consequences of the epidemic reach critical proportions when they affect essential services and structures that are at the forefront of the response, such as national health systems and services.⁷

1.3. Tackling HIV and AIDS

A multi-sectoral response is needed to effectively address the epidemic at the international, regional and national levels to prevent the spread of HIV and to ensure universal access to HIV prevention, treatment, care and support services to all those in need. National HIV and AIDS strategies establish the roles and responsibilities of national institutions dealing with the epidemic and many countries have established specific national AIDS authorities.⁸ These national authorities often coordinate the multi-sectoral national response, with many countries having structures and mechanisms for coordinating actions by different United Nations agencies and donors. In addition, some countries have established specific enforcement mechanisms to examine HIV-related issues. For example, Kenya has established an Equity Tribunal to review cases of alleged violations of the HIV and AIDS Prevention and Control Act of 2006.⁹ Other countries make use of established mechanisms to examine alleged violations of the labour rights of persons living with or affected by HIV.¹⁰

⁷ Ibid.

⁸ These national authorities may take different forms or go by different names, for example, they may be referred to as national AIDS agencies, national AIDS centres, councils or commissions (NACs), national AIDS control organizations (NACOs), national AIDS secretariats (NAS), or national HIV/AIDS programmes (NAP).

⁹ A copy of the Act is available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_127527.pdf

¹⁰ See UN, *The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS)*, Report of the Secretary-General to the Human Rights Council, UN General Assembly, A/HRC/16/69/, 20 December 2010.

2. HIV and AIDS as workplace issues

Workplaces should be included as a crucial part of the national, regional and international responses to the epidemic, with the active engagement of governments as well as organizations of employers and workers. First, the workplace is a vital entry point for the HIV response by reaching people living with or affected by HIV and AIDS with information on how to access prevention, treatment, care and support services. Second, keeping affected employees at work contributes to their wellbeing, maintains productivity and morale, and sets a good practice example of application of the principle of non-discrimination.

The workplace can help limit the spread of HIV and mitigate the impacts of the epidemic by:

- Protecting job security and workplace rights;
- Ensuring equal access to social protection;
- Offering referrals to treatment, care and support services; and
- Facilitating prevention through education and peer support.

The impacts of HIV and AIDS on enterprises and workers include:

- Reduced supply of skilled labour;
- Absenteeism;
- Increased labour costs for employers ranging from increased health insurance costs to retraining costs;
- Loss of income and benefits;
- Loss of skills and experience;
- Reduced productivity;
- Enterprise development is undermined; and
- Loss of family income which in turn exacerbates household poverty.

2.1. Modes of HIV transmission

HIV is transmitted through body fluids, particularly blood or blood products, through semen, vaginal secretions and breast milk. Transmission only occurs through the following routes:

- Unprotected sexual intercourse with an infected partner;
- Blood and blood products; or
- Mother to child transmission (MTCT) from an infected mother to child at birth or through breastfeeding.

HIV is not transmitted through casual physical contact, and the presence in the workplace of a person living with HIV should not be considered a workplace hazard.¹¹

¹¹ Recommendation No. 200, at paragraph 33.

3. Labour inspection and HIV and AIDS

HIV-related stigma and discrimination is widespread and the workplace is one of the key environments where the fundamental human rights of workers living with or affected by HIV or AIDS are commonly violated. HIV-positive persons, or those suspected of being HIV-positive, may be denied access to jobs or occupations, stigmatized, ostracized and harassed by employers and co-workers. They may be terminated due to their real or perceived HIV status or be forced to resign due to stigma and discrimination (either self-imposed or inflicted by others).

Labour inspectors are essential actors in the national response to HIV and AIDS through the world of work. Their primary mission is to ensure compliance with the relevant laws applicable to the workplace. They achieve this principally through two measures: (1) enforcement of law (traditionally perceived as measures of control or supervision) and (2) preventive measures. Where national legislation provides protection relevant to HIV and AIDS in employment and working conditions, labour inspectors may already be addressing a range of issues in the context of their inspection visits, in particular with regard to promoting HIV prevention and addressing HIV-related stigma and discrimination. Through their technical expertise, in addition to verifying compliance with national legislation on HIV and AIDS, inspectors can provide advice to employers and workers to assist them in the development and implementation of workplace policies and programmes aimed at providing support through the workplace to improve the lives of those living with and affected by HIV and other related transmissible infections and diseases.

The HIV and AIDS Recommendation, 2010 (No. 200), contemplates the active participation of the labour administration authorities, including the labour inspectorate, in developing, adopting and effectively implementing tripartite workplace strategies, policies and programmes related to HIV and AIDS.

4. Vulnerable and at-risk workers

Recommendation No. 200 recognizes that vulnerable and at-risk workers are at higher risk of exposure to HIV and that HIV and AIDS have a more severe impact on these workers. Workers may be more vulnerable to HIV due to a range of factors. These include: “unequal opportunities; social exclusion; unemployment or precarious employment, resulting from the social, cultural, political and economic factors that make a person more susceptible to HIV infection and to developing AIDS”.¹² Workers may also be considered as belonging to an “at-risk” group due to behaviours in which they engage and that increase their risk of HIV infection, such as: unprotected sex; injecting drug use with lack of access to sterile injecting equipment; sex work with low condom use; or other “risky” behaviours.

Workers in the informal economy and in certain economic sectors are more vulnerable to HIV due to their working conditions. In the formal economy, key sectors include construction, mining, seafarers, transport and domestic workers. There are also specific occupations where workers may face a higher risk of occupational HIV transmission, such as the health care sector.

Specific programmes and inspection campaigns should be developed to target vulnerable groups in order to address and reduce the particular factors that increase their risk of HIV infection. In addition, workplace HIV prevention programmes should target risk behaviours in order to help at-risk workers better understand the importance of reducing risk behaviours and why these increase their risk of HIV infection.

Women. While HIV affects both men and women, women and girls are at greater risk of and more vulnerable to HIV infection. They are also disproportionately affected by the epidemic compared to men, as a result of gender inequalities in the legal, economic, cultural and social spheres. Women are paid less than men on average. In many countries, women also often predominate in precarious jobs—including in informal work—that offer little or no security or benefits, particularly health benefits. These circumstances, linked to persistent gender inequalities, exacerbate existing conditions of poverty and increase women’s vulnerability to HIV infection, particularly where they may be pressured or coerced into providing sexual favours to remain in employment or in exchange for food.

¹² Recommendation No. 200, at paragraph 1(h)

As a rule, the greater the level of gender inequality in a society or culture, the less women are able to negotiate conditions for safer sex in which they can take adequate precautions to prevent becoming infected with HIV. In certain cultures, girls are more likely than boys to be taken out of school, especially when a family member becomes sick. As a consequence, when these girls become adults, their work opportunities are more limited and they may have fewer opportunities to access decent work or to advance in employment. Women and girls also take on care giving responsibilities more often than men, and may lose their jobs when they have to care for family members or dependents suffering from HIV-related illness. In sub-Saharan Africa, the region most affected by the HIV epidemic, women are more likely to become infected with HIV than men. In 2009, young women 15 to 24 were eight times more likely to be living with HIV than their male counterparts.¹³

Migrant workers are also more vulnerable to HIV infection. Although migrant labour contributes a great deal to national economies, the basic human rights of migrant workers are often not respected or are inadequately enforced. They face stigma and discrimination, and are often excluded from access to HIV-related information and services. Numerous factors related to their status as migrant workers may expose them to increased HIV risk and vulnerability, including separation from their families, spouses or regular sexual partners and familiar social situations; language barriers, substandard living conditions, exploitative working conditions, and low incomes. Migration that occurs under highly abusive conditions, such as human trafficking for sex work, places migrants at the highest risk of HIV. The poverty and marginalization of many migrants – especially young women – also exposes them to violence, stigma, and exploitative sexual practices.

Informal economy. Many of the countries with the highest HIV prevalence have large (and growing) informal economies. For a number of reasons, workers in the informal economy are particularly vulnerable to HIV, both in terms of risk of infection and the impact that the epidemic has on this group. Enterprises in the informal economy are usually small and labour intensive, meaning that they may rely heavily on one or a few workers. When a worker falls sick, it can often be very difficult for these small enterprises to stay in business. Poverty, the precarious nature of informal employment, the lack of social protection and limited access to health services also worsen the impact of the epidemic for individual workers.

¹³ UNAIDS, Global Report, op.cit.

A number of ILO studies estimate that, in sub-Saharan Africa, informal work accounts for over 60 per cent of urban employment and over 90 per cent of new jobs. For women in Africa, informal work represents 92 per cent of total job opportunities outside agriculture, against 71 per cent for men. The situation is similar in many parts of Asia. In India, for example, 90 per cent of women workers are employed in the informal economy. As well as being especially vulnerable to the impact of HIV, small businesses also have less access to information and support services than large enterprises, and are traditionally seen as more difficult to reach with HIV prevention information.

Health workers are at risk of HIV and tuberculosis infection due to occupational exposure, especially where basic rules of occupational safety and health are not implemented. In health services, there are occupational hazards, particularly infectious pathogens, which require special preventive and protective measures. Many HIV-infected health workers are afraid to disclose their HIV status for fear of stigma and discrimination, being refused promotions or losing their jobs. For the same reasons, health workers may refrain from reporting occupational blood and body fluid exposures. Health-care workers who serve a patient community with a high prevalence of HIV may also be at higher risk of exposure to TB, as HIV and TB have a high rate of co-morbidity.

Where a direct link can be established between an occupation and the risk of infection, HIV infection, AIDS and TB should be recognized as occupational diseases or accidents, in accordance with the ILO List of Occupational Diseases Recommendation, 2002 (No. 194). A number of countries already recognize HIV and AIDS as occupational diseases, for example, South Africa and Brazil.

Construction. Construction sector workers are often also at higher risk, as many of them are mobile workers, subjected to difficult living and working conditions. The construction industry has a long tradition of employing migrant labour. Accommodation at construction sites is often of poor quality (if it exists at all), with no space for families and limited facilities for entertainment. Construction workers therefore often work away from their families and may be housed in communal living arrangements. Construction workers, especially if they are migrants, are often harassed by the authorities and police, and stigmatized or excluded by the communities they come into contact with. This can reduce their access to HIV-related information and services, as well as encouraging risk-taking. In addition, construction sites are often located in remote and poor areas. In such environments, local people are keen to sell goods and services to the workers, which may include sexual services. Higher rates of unsafe sex

increase the chance of exposure to HIV, not only for at-risk workers, but also for persons in the local communities with which at-risk workers interact.

Transport. Transport workers, whether they work on land (road and rail) or at sea, are also a vulnerable category of workers. They often experience employment insecurity, vulnerability to harassment and extortion (often with police complicity), and generally have only limited access to health services, particularly for prevention and treatment of sexually transmitted infections. In a number of African and Asian countries, HIV prevalence is higher among transport workers than in the general population, especially among long-distance drivers on some of the major transport ‘corridors’. Along one particular route in Southern India, for example, a recent survey found that 16 per cent of the drivers were HIV-positive, (compared to the national prevalence rate, of under one per cent). This has implications for the families of transport workers and the community at large. Many transport workers work on long-distance routes and spend extended time away from home. Trips are often made longer by administrative delays, especially at border crossings, and a poor transport infrastructure, and more difficult by inadequate rest and stress. Transport workers report a lack of proper accommodation, lack of hygienic facilities - including access to clean water for drinking and bathing -, lack of money to pay for accommodation, and little respect for their basic human rights, including labour rights. Due to these factors, transport corridors can create what have been called “hot spots” of HIV transmission.

5. International labour standards

The International Labour Organization has adopted two main conventions on labour inspection: Labour Inspection Convention, 1947 (No. 81) regulating labour inspection in industry and commerce, and Labour Inspection (Agriculture) Convention, 1969 (No. 129), regulating labour inspection in agriculture. Convention No. 81 is the principal international reference for labour inspection services and is as relevant today as it was over 60 years ago. It has become one of the most widely ratified of all ILO Conventions (142 countries in June 2012) and has served as a model for most national laws and regulations creating modern inspection systems. Convention No. 81 and its accompanying Labour Inspection Recommendation, 1947 (No. 81) taken together constitute clearly the rules to be applied in the field of labour inspection.

Convention No. 81 defines the functions, duties and responsibilities of labour inspection systems, requirements for the recruitment of staff, means of action for inspectors, enforcement powers and obligations of inspectors in relation to ethics and reporting on activities. It also provides for reporting of accidents and diseases. The Labour Inspection Recommendation, 1947 (No. 81) gives further details as to what information should be included, so far as possible, in annual reports and contains further guidance for collaboration between inspectors, employers and workers, mainly in the area of safety and health.

In June 2010, the ILO adopted the first international labour standard on HIV and AIDS: the HIV and AIDS Recommendation, 2010 (No. 200). The new standard contains protections against stigma and discrimination in recruitment and terms and conditions of employment, and provides that there should be no termination of employment on the basis of either real or perceived HIV status.¹⁴ The Recommendation's main objective is to protect human rights at work and to both prevent HIV and to mitigate its impact. It calls on governments to develop, adopt, implement and monitor national tripartite HIV and AIDS workplace policies and programmes as well as policies and programmes on occupational safety and health (where these do not already exist) and integrate these into other national HIV and development plans, such as national plans and strategies on decent work and poverty reduction.

The Recommendation builds on an earlier tripartite instrument developed in 2001: the *ILO Code of Practice on HIV/AIDS and the world of work*. The Code outlines the rights and responsibilities of governments, employers and workers

¹⁴ ILO, *Equality at work: The continuing challenge*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), International Labour Conference, 100th Session, Geneva, 2011

in relation to the HIV response and provides practical guidance for the development of national and enterprise-level workplace policies and programmes on HIV and AIDS that integrate the Code's key human rights principles.

The ILO's HIV and AIDS Recommendation, 2010 (No. 200) builds on the ILO Code of Practice on HIV/AIDS and the world of work (2001) and establishes key principles that provide the basis for human-rights centered workplace policies and legislation on HIV and AIDS. These include:

- Recognition of HIV and AIDS as workplace issues
- Non-discrimination
- Gender equality and women's empowerment
- A safe and healthy work environment
- Social dialogue
- Prohibition of mandatory HIV testing and screening for employment purposes
- Confidentiality of HIV-related information
- Continuation of the employment relationship
- HIV prevention as a fundamental priority
- Equal access to treatment, care and support services

In addition to Recommendation No. 200 and the ILO Code of Practice, there are other international labour standards that are relevant to issues of HIV and AIDS in the workplace and that provide for protections against discrimination in employment, occupational safety and health and access to prevention and support measures.

These include but are not limited to:

- The Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- The Occupational Safety and Health Convention, 1981 (No. 155);
- The Occupational Health Services Convention, 1985 (No. 161);
- The Termination of Employment Convention, 1982 (No. 158);
- The Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159);
- The Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) and its associated Recommendation (No. 197); and
- The Domestic Workers Convention, 2011 (No. 189).

6. Challenges in compliance and enforcement

HIV may not be included within the scope of labour inspectors' duties. Many countries have yet to adopt legislation dealing specifically with HIV or AIDS and relevant provisions, where they exist, may not address world of work issues. Over 70 countries have included provisions relevant to HIV and AIDS in their employment-related laws and policies. Some countries that have included provisions on HIV and AIDS in their national labour laws nevertheless exclude certain sectors from coverage.¹⁵ Historically, the first measures to protect workers living with HIV were taken in specific sectors, such as mining, with the intention of gradually extending protections to all workers in any economic activity. In order to achieve the objectives of Recommendation No. 200, its provisions are intended to cover all workers in any form of economic activity, including those who may not fall explicitly within the scope of formal labour legislation, such as workers in the informal economy.

Weak enforcement. In many countries, including those where there is high HIV prevalence, enforcement may be insufficient. This is due to a range of factors, including a general lack of resources (staff, transport, materials etc.), lack of training for labour inspectors on HIV-related issues and difficulties in reaching affected workers.

Need to combine reactive with proactive actions. Labour inspectorates are better placed to respond to HIV through activities that combine reactive and proactive actions. At its 100th Session in June 2011, the International Labour Conference (ILC) recommended that labour inspectorates adopt a combination of preventive and deterrent strategies to better achieve their purposes. The ILC stated that “an appropriate mix of preventive measures such as risk evaluation, promoting a culture of leadership and best practice, implementing occupational safety and health measures, information guidance and awareness campaigns combined with sanctions should be adopted”.¹⁶

Misconceptions. The belief that HIV only affects other countries, other cultures, or other people has impeded effective action and prevented individuals and governments from becoming empowered to take action. In addition, misunderstandings regarding the modes of HIV transmission are common and often lead to stigma and discrimination in the workplace.

¹⁵ ILO, *HIV/AIDS and the world of work*, Report IV(1), International Labour Conference, 98th Session, Geneva, 2009.

¹⁶ ILO, *Labour administration and labour inspection*, Report V, International Labour Conference, 100th Session, Geneva, 2011.

Discrimination in access to employment and occupation. As noted above, HIV-related stigma and discrimination persist in many workplaces. Job applicants may be discriminated against and denied access to employment because of their real or perceived HIV status. Job applicants may have been screened for HIV (screening can take place through discriminatory interview questions or through requiring applicants (or employees) to complete medical forms that ask for information aimed at identifying persons who might be HIV-positive). Applicants may have been required to take an HIV test as a condition of employment. In some cases, applicants may be tested for HIV without their knowledge or consent as part of a routine medical entrance exam. In other cases, people who belong to regions of the world or segments of the population perceived to be at greater risk of or more vulnerable to HIV infection, may be discriminated against and denied employment. While HIV-related discrimination can result in denial of access to a job, it can also result in denial of access to a specific occupation. For example, in a number of countries, HIV-positive persons have been routinely excluded from employment in the armed forces or uniformed services.

Unfair treatment. Real or perceived HIV status may also lead to denial of training or promotion opportunities, demotion, unfair dismissal, denial of access to medical or sickness benefits available to other employees in the workplace.

Stigma takes many forms. People infected or affected by HIV may be ostracized or isolated by managers and co-workers because of their real or perceived HIV status. For example, workers may be excluded from work-related social events, or may be made the subject of malicious gossip or harassment by other co-workers. Co-workers may isolate a colleague or simply avoid interaction out of fear that shaking hands, sharing a drink or otherwise having social contact with him or her could expose them to the virus. Stigma can have devastating effects on workers, impairing their morale, motivation and productivity as well as their mental and physical health.

The right to privacy and confidentiality. Workers may be required to disclose their own HIV status or that of another person. Where workers or job applicants are required to disclose such information, their fundamental right to privacy and confidentiality is violated. Moreover, where privacy rights are not respected, HIV-positive workers can be subjected to stigma and discrimination which may ultimately result in unfair dismissal, possibly by forcing them into resigning from their employment. Protecting the privacy of affected workers and ensuring confidentiality of medical data must be a key component of workplace HIV responses.

Reasonable accommodation. Workers with HIV-related illness should not be denied the possibility of continuing to carry out their work, with reasonable accommodation, where necessary, for as long as they are medically fit to do so. Recommendation No. 200 defines reasonable accommodation as “any modification or adjustment to a job or to the workplace that is reasonably practicable and enables a person living with HIV or AIDS to have access to, participate in or advance in, employment”.¹⁷ Providing reasonable accommodation may enable the affected worker to continue to work reliably and productively for a number of years, a result that is often to the benefit of both worker and employer. Providing such an accommodation enables the employer to continue to draw on the worker’s skills, training and ‘institutional memory’ while enabling the worker to continue to live a productive working life and maintain his or her livelihood. The accommodation requested may be a simple and low cost measure such as modification of work schedules, an adaptation to the working environment or modification of certain tasks attributed to the position.

¹⁷ Recommendation No. 200, at paragraph 1(g).

7. Examples of good practices in labour inspection

Ensuring that all workers are protected through HIV legislation. Many countries have recognized the importance of ensuring that their legislation relative to HIV at the workplace is applicable to all sectors of the economy. A number of countries have adopted laws on HIV and AIDS at the workplace that cover all workers regardless of the sector where they are employed. In **Mozambique**, for example, the law states explicitly that its protections apply to all workers and candidates for employment no matter where they are working, whether in the public administration, public or private sectors, and including domestic workers. In **Brazil**, the law requires employers to address HIV prevention issues in their safety and health committees, stating explicitly that rural employers are not exempt from this obligation. Other countries, such as **South Africa, Namibia, Fiji, Costa Rica** and the **Dominican Republic** explicitly include HIV status as a prohibited ground of discrimination for employment purposes.

Development of Codes of Practice that complement national legislation. The **Namibian** National Code on HIV/AIDS and Employment, for example, provides guidelines and instructions which all employers and workers must follow when applying the relevant provisions of the Labour Act in respect of HIV in employment. Labour inspectors verify compliance with the Code in their enforcement visits.¹⁸

Strengthening the role of labour inspectorates in HIV responses. Labour inspection is complex and demanding and requires not only commitment, but also competency and professional training. Without regular and proper training it is difficult for labour inspectors to provide high quality services. The ILO and the International Training Centre have been supporting labour inspectorates by strengthening the competences of labour inspectors through training programs and modular training manuals. These cover a wide range of aspects related to labour inspection, from principles, policies and strategies to practical tools and methods for inspection visits. In many countries, labour inspectors are being trained on HIV and AIDS issues in the workplace. In **Paraguay**¹⁹ and **Mozambique**, occupational safety and health inspectors have been targeted for training. In **China**, 555 labour inspectors have been trained so far to facilitate implementation of HIV and AIDS legislation and policies. In their visits to companies, labour inspectors respond to workers' complaints and make suggestions

¹⁸ ILO, *Labour administration and labour inspection*, Report V, International Labour Conference, 100th Session, Geneva, 2011.

¹⁹ ILO, *Application of International Labour Standards: Report of the Committee of Experts on the application of Conventions and Recommendations*, Report III(1A), International Labour Conference, 99th Session, Geneva, 2010, Individual observation, at page 528.

on how to better comply with the law. In provinces such as Anhui and Yunan, the labour inspectors who have undergone the training are paying particular attention to ensuring that workers living with HIV are protected from discrimination. Several Caribbean countries have introduced similar training programmes, including **Barbados, Belize, Jamaica, Suriname, and Trinidad and Tobago**.²⁰ The **Dominican Republic**²¹ and **Honduras** labour inspectors have also received training on HIV, including on ILO Recommendation No. 200, relevant national legal obligations and the role of inspectors in relation to HIV workplace responses. Trainings to mainstream HIV into the work of labour inspectors have also been held in **Armenia, Ghana, Tajikistan, the Russian Federation and Uzbekistan**. In **Bosnia and Herzegovina**, labour inspectors have been trained as trainers, who are in turn training their fellow labour inspectors and representatives of employers' and workers' organizations to better integrate HIV into their activities.

Effective materials to facilitate inspection. A number of labour inspectorates have made efforts to ensure that labour inspectors address HIV in a consistent and systematic manner, basing their activities and approaches on national legislation and harmonizing their approaches. In the **Dominican Republic** specific questions have been added to inspectors' checklists, including information regarding knowledge of legal obligations, inclusion of provisions related to HIV in collective bargaining agreements, management of HIV prevention programmes, and mechanisms used by management to inform workers regarding HIV and AIDS.²² In **Ethiopia**, the Ministry of Labour has developed a checklist to guide inspections targeting HIV and AIDS.²³ In **Mozambique**, the Ministry, with ILO support, revised the national labour inspection manual, which is now used during their enforcement visits in companies and public institutions to monitor HIV-related issues.²⁴ **Nicaragua** has also developed a technical guide and checklist for labour inspectors that includes questions regarding HIV-testing and discrimination against workers living with HIV.²⁵ In **Senegal**, the Labour Inspectorate also developed a methodological guide to harmonise intervention methods and practices of inspectors at the workplace. This manual assists inspectors in providing employers with legal and technical advice on how to

²⁰ ILO, *Labour administration and labour inspection*, Report V, International Labour Conference, 100th Session, Geneva, 2011.

²¹ Memoria Anual 2011 Ministerio de Trabajo, Unidad Técnico Laboral de Atención Integral (UTELAIN).

²² Memoria Anual 2010 Ministerio de Trabajo, Unidad Técnico Laboral de Atención Integral (UTELAIN).

²³ ILO: Ethiopia labour inspection audit, 2009.

²⁴ ILO, Application of International Labour Standards: Report of the Committee of Experts on the application of Conventions and Recommendations, Report III(1A), International Labour Conference, 100 th Session, Geneva, 2011, Individual observation, at page 559.

²⁵ Ministerial Decree JCHG-003-08, February 23 2008.

develop strategies to address HIV and AIDS at the workplace. The manual promotes stronger collaboration between labour inspectors and managers in order to include the workplace as a key component in the national HIV response.²⁶

Prioritising equality. A number of labour inspectorates have targeted discrimination in the workplace in programming their routine visits. In **Spain**, the Labour Inspectorate planned 5100 labour inspections on equality at the workplace during 2010. In **Namibia**, the Directorate of Labour Services completed specific inspections focussing on HIV-related discrimination in the workplace. The Ministry of Labour of **Kenya**, recognizing that HIV and AIDS pose a major threat to the workforce, contributing to low productivity in national workplaces, has included in its Strategic Plan a call to reduce HIV-related discrimination at workplaces. The Plan also calls for a reduced workload and provision of sick leave for affected workers. Regular inspection visits are contemplated under the Strategic Plan and labour inspectors are called upon to train workers and employers regarding their rights and obligations in relation to HIV and AIDS.²⁷ In **Brazil**, labour inspectors are responsible for verifying whether enterprises engage in discriminatory practices on grounds of real or perceived HIV status in relation to recruitment, promotion or dismissal.²⁸

Deterrence through sanctions. Sanctions continue to play an essential role in promoting compliance as they have a deterrent effect. In **Peru**, national legislation classifies any discrimination in the hiring process due to real or perceived HIV status as a serious infraction and provides for monetary sanctions. At the same time, recognizing that sanctions are not an end in themselves, and that it is more important to ensure employer cooperation and promote positive change in discriminatory employment practices, the labour inspectorate launched a campaign in 2010 to raise awareness among employers on the legal rights and obligations of people living with, or affected by HIV.

Providing technical information and advice to employers and workers. Convention No. 81 establishes that one of the functions of labour inspection is to provide information and advice to employers and workers on how best to comply with applicable legal provisions. In **Guyana**, the Ministry of Labour, Human Services and Social Security has mainstreamed HIV into inspectorate activities and into the training provided to the Labour Occupational Safety and

²⁶ ILO, Ministère du Travail et des Organisations professionnelles, Guide méthodologique de l'Inspection du Travail Fiche technique annexe sur le VIH et le sida, octobre 2011.

²⁷ Ministry of Labour, Strategic Plan 2008 – 2012.

²⁸ Decree No. 80 of 21 December 2009, available at http://www.ilo.org/aids/legislation/WCMS_127697/lang-en/index.htm

Health (LOSH) Division. The LOSH officers have been trained to provide technical assistance to enterprises in designing and implementing HIV policies and programmes. A software programme has also been developed to enable the LOSH Division to track the implementation of HIV responses by enterprises.²⁹ In **Mozambique**, labour inspectors contribute to the national HIV response by promoting the respect of human rights at work. They serve as counsellors to employers, advising them to develop, in consultation with workers, enterprise HIV and AIDS workplace programmes. More than 600 workplace policies and programmes are being implemented in Mozambique. The Ministry of Labour of the **Dominican Republic** offers support, training, advice and legal assistance to people who have been discriminated against or stigmatized in the workplace due to real or perceived HIV status.³⁰ Since 1993, workers and employers have been receiving advice and assistance on the rights and obligations that apply to people living with, or affected by HIV. In **Kazakhstan**, the Ministry of Labour and Social Protection has been discussing the role and scope of the work of labour inspectors in light of the provisions of Recommendation No. 200 and is promoting the active involvement of labour inspectors in HIV activities at enterprise level in designing and promoting effective implementation of HIV programs.

Providing information and training on HIV to workers. Since the adoption of the AIDS Prevention and Control Act in 1998, employers in the **Philippines** are required by law to develop, implement and evaluate an HIV information and education programme for all their workers. The labour inspectorate, along with the Department of Health, is responsible for enforcing compliance with this legal obligation. Employers are required to provide inspectors with records and materials of their HIV education and information programmes and inspectors record this on their checklists. Labour inspectors also have a role in ensuring that all overseas Filipino workers and government officials assigned overseas attend a seminar on the cause, prevention and consequences of HIV before certification for overseas assignment.³¹ In **Brazil** for example, labour inspectors are required to verify if employers have set up HIV prevention campaigns in the workplace as required by law. In **Trinidad and Tobago**, occupational safety and health inspectors are responsible for advocating for the implementation of the national workplace policy on HIV and AIDS and have carried out education programmes on occupational safety and health compliance.³²

²⁹ ILO, *Labour administration and labour inspection*, Report V International Labour Conference 100th Session, Geneva, 2011.

³⁰ <http://www.ministeriodetrabajo.gob.do/index.php/programas-y-proyectos/221-utelain>

³¹ ILO: Philippines labour inspection audit, 2009.

³² ILO, *Application of International Labour Standards: Report of the Committee of Experts on the application of Conventions and Recommendations*, Report III(1A), International Labour Conference, 100th Session, Geneva, 2011, Individual Direct Request.

Creating a culture of compliance through prevention and awareness. During 2010, labour inspectors in **Senegal** have centred many activities under their HIV and AIDS strategy around developing and implementing awareness programs, training and information on the causes, modes of transmission, means of prevention of HIV, voluntary HIV testing and care for the benefit of their workers. In **Peru**, the Ministry of Labour has launched different campaigns on HIV, carrying out activities of a different nature, including conferences for inspectors to discuss their work in the field, presentations on applicable legislation, awareness videos and information on how to access support services.³³ The Ministry of Labour of **Barbados** implemented its HIV and AIDS Education Programme in 2001 in accordance with the government's strategic plan to reduce the incidence and level of HIV through the introduction of a comprehensive programme on the management, prevention and control of the virus. The objectives of the programme were to: (a) promote a supportive ethical and human rights environment in the workplace for people living with or affected by HIV; (b) reduce the vulnerability of the formal and informal workforce through large-scale sensitisation of constituents; and (c) reduce the incidence of discrimination against persons living with or affected by HIV. During the first five years, the Ministry's Education Programme focused on sensitising the staff of the Ministry and its departments on HIV and AIDS. This was facilitated through the training of public officers to enable them to act as HIV Educators. These officers have been responsible for providing training on request to organisations in the public and private sectors. In addition to this service, the Ministry conducts training workshops on peer education and stigma reduction.³⁴

Targeting key economic sectors. Labour inspectors in **Namibia** aim to reach all workers, including those in mobile work places, with prevention information. Current initiatives include regular condom distribution among truck drivers.³⁵ In 2003, the Ministry of Labour of **Barbados** targeted transport and fishing sector workers in certain higher HIV-prevalence areas with voluntary HIV counselling and testing. The informal economy has also been a priority and copies of the 2004 Social Partners' Code of Practice on HIV/AIDS and Other Life Threatening Illnesses in the Workplace have been widely disseminated.³⁶ In 2006, a similar exercise was held in other areas of the country and this outreach was extended to the small and medium size businesses in local communities.³⁷

³³ <http://www.mintra.gob.pe/mostrarContenido.php?id=247&tip=242>

³⁴ <http://labour.gov.bb/hiv>

³⁵ Ministry of Labour and Social Welfare Newsletter, May 2006.

³⁶ The Code is available at http://www.ilo.org/aids/legislation/WCMS_127657/lang--en/index.htm

³⁷ <http://labour.gov.bb/hiv>

Promoting a culture of compliance through self-assessments. In 2007, the **Jamaica** Ministry of Labour initiated a Voluntary Compliance Programme (VCP) on OSH and HIV and AIDS. The objective of the VCP was to raise awareness among employers and workers and to encourage the improvement of safety and health in all economic sectors. The response from employers was overwhelming with more than 70 enterprises applying, exceeding the original goal of enrolling 50 enterprises in the programme. Participating enterprises are subject to an audit by OSH inspectors based on a set of performance criteria and, provided that they attain a certain score, recommended for a VSP certificate valid for two years. According to the Government, workplaces with excellent safety and health management systems will not only be recognized and promoted as model workplaces, but the VSP coordination and partnership programme which aims to complement the regulatory and enforcement efforts by OSH inspections through the identification of risks and the development of solutions by employers and workers, will also allow for enterprises to be self-regulating.³⁸ In 2009, the Ministries of Labour of **Costa Rica** and other central American countries, distributed a self-assessment to employers to help them to understand their labour obligations and to facilitate voluntary compliance with labour legislation. The self-assessment includes questions regarding possible discrimination and unfair treatment of workers on the basis of their real or perceived HIV status.

Collaborating with different authorities as part of the HIV response. Collaboration is essential to ensure that national HIV responses cut across all sectors at all levels. In **Peru**, the different departments and ministries involved in the HIV response, including the labour inspectorate, hold periodic meetings and visit their regional peers to identify the progress and difficulties presented in developing actions against the epidemic. With these meetings, they intend to provide more effective national and multi-sectoral responses to HIV.³⁹ In **Ethiopia**, the Ministry of Labour and Social Affairs created a task force to coordinate activities on HIV and AIDS. These activities are supported by the appointment of a focal point in the inspectorate responsible for monitoring the Ministry's specific programme on HIV. Activities undertaken have included educational forums, the drafting of a code of practice based on the ILO Code of Practice and several "Train the Trainer" courses.⁴⁰ In **Namibia**, labour inspectors are also members of HIV and AIDS regional committees.

³⁸ ILO, *Application of International Labour Standards: Report of the Committee of Experts on the application of Conventions and Recommendations*, Report III(1A), International Labour Conference, 100th Session, Geneva, 2011, Individual observation, at page 543.

³⁹ <http://www.mintra.gob.pe/mostrarResultido.php?id=247&tip=242>

⁴⁰ ILO: Ethiopia labour inspection audit, 2009.

Exploring tripartite responses. **Tajikistan** aims to ensure that the HIV workplace response has strong tripartite support. To this end, in 2011, a tripartite seminar was held in Tajikistan to develop a consolidated plan of joint tripartite action based on the key principles of Recommendation No. 200. Three regional tripartite seminars were also organized in rural areas with the active participation of regional labour inspectors. In **Botswana**, through a tripartite dialogue process, the social partners developed and adopted a Code of Practice on industrial relations which contains provisions relating to HIV and AIDS.⁴¹

⁴¹ Botswana National Industrial Relations Code of Good Practice, 2002, available at <http://www.hsph.harvard.edu/population/aids/botswana.aids.02.pdf>

8. Guidelines for labour inspectors

To **ensure effective application of labour rights and standards** relevant to HIV and AIDS:

- HIV-related legislation should cover situations that arise in the employment relationship;
- HIV-related legislation should be applicable to all sectors of the national economy; and
- Labour inspectors must have enforcement competencies over HIV-related laws and regulations.

To **ensure improvement of working conditions** of workers infected or affected by HIV, labour inspectorates should:

- Set up clear policies and guidelines to ensure a coherent approach to the issue;
- Identify priorities and opportunities for action in order to more effectively prevent workplace violations;
- Use a combination of preventive and deterrent strategies;
- Provide guidance to workers and employers on how to prevent stigma and discrimination on the basis of real or perceived HIV status;
- Ensure that effective and proportionate sanctions are enforced, when deemed necessary to ensure decent working conditions for persons living with or affected by HIV or AIDS;
- Ensure that remedies are adopted to address violations, accompanied by subsequent follow-up visits and reporting; and
- Ensure that special attention is given to vulnerable sectors or vulnerable groups of workers.

To **address HIV-related discrimination** in employment, labour inspectors should:

- Supervise compliance with legislation regarding equality in the workplace (including provisions over screening of HIV, mandatory HIV testing of workers, unfair treatment and unfair dismissal);
- Provide information to employers and workers on the existing legal framework regarding HIV and AIDS;

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- Check to ensure that company policies and procedures protect the rights of those infected or affected by HIV by providing for:
 - Protection of workers against HIV-related discrimination or stigmatization, victimization or harassment;
 - Safeguards in employment (prohibition of unfair dismissal on the grounds of real or perceived HIV status);
 - Prohibition of compulsory HIV testing pre- or post- employment; and
 - Guarantees of confidentiality and privacy.
 - Where a company policy on HIV and AIDS policy does not exist, or where the enterprise's general non-discrimination policy does not include HIV and AIDS, labour inspectors should provide advice and assistance to help companies design and develop a policy that addresses these elements;
 - Inform employers and workers on good practices at company level;
 - Encourage the implementation of specific action plans to prevent discrimination on the basis of real or perceived HIV status;
 - Ensure actions to prevent and prohibit violence and harassment in the workplace;
 - Ensure that companies have in place disciplinary measures to sanction discriminatory practices;
 - Ensure that companies have in place confidential grievance procedures that all workers can use to file complaints regarding discrimination at the workplace;
 - Encourage employers to provide training to workers on equality and non-discrimination at the workplace;
 - Encourage employers to provide clear and concise HIV and AIDS information to their workers;
 - Ensure that, if migrant workers are part of the workforce, they have access to information and training on HIV and non-discrimination in an accessible format and in a language that they understand;
 - Promote the establishment and maintenance of a positive working environment which promotes zero tolerance for HIV-related stigma and discrimination; and
 - Promote respect for privacy and confidentiality which helps create an atmosphere of trust at the workplace.

To **guarantee a safe and healthy work environment** in relation to HIV, inspectors should:

- Supervise compliance with legal requirements on occupational safety and health (OSH);
- Check that the company has in place an OSH programme that provides for the following steps:
 - Establishment of an OSH policy based on a preventive approach, with worker participation defining the main elements of the programme;
 - Establishment of a structure to implement the policy, including lines of responsibility and accountability, knowledge and training, incident recording and communication;
 - Plan and implement, including objectives, initial review, system planning, development and implementation;
 - Evaluate performance monitoring and measurement, investigation of work-related injuries, ill-health, diseases and incidents, audit and management review; and
 - Action for improvement through preventive and corrective measures, and the constant updating and revision of policies, systems and techniques to prevent and control work-related injuries, ill-health, diseases, and dangerous incidents;
- Ensure that employers are conducting a comprehensive risk assessment where HIV transmission is a consideration;
- Verify that the overall process of risk management includes the steps of hazard identification, risk assessment and risk control;
- Verify that a holistic approach to prevention is put in place at company level;
- Verify that specific policies, programmes, action plans for prevention of HIV transmission are in place;
- Ensure that employers are promoting an organizational culture of risk management;
- Verify that adequate personal protective equipment is being provided to workers and maintained in good conditions;
- Encourage employers to provide information and training to workers on HIV transmission, universal precautions and prevention, especially for workers who may be at risk of HIV exposure at work;
- Ensure that employers comply with the requirements of surveillance of the worker's health condition;
- Promote 'know your HIV status' campaigns and encourage voluntary counselling and HIV testing; and
- Cooperate with other public institutions, health inspectors etc.

To support that workers infected or affected by HIV **enjoy a better life quality and work-life balance** labour inspectors can:

- Engage with employers' and workers' representatives to assist them in facilitating workers' access to HIV prevention, treatment, care and support services. Encourage employers to provide reasonable accommodation, such as job reassignment, adaptation of workstations and working-time flexibility; and
- Encourage affirmative action programmes that promote the retention in work and recruitment of persons living with HIV.

To **promote employer-worker collaboration** on HIV issues labour inspectors can:

- Encourage employers to take responsibility for taking action on HIV, in collaboration with workers' representatives;
- Encourage that all HIV policies and procedures are designed, developed, adopted, implemented and monitored jointly by employers and workers and/or their representatives;
- Encourage that the views of people living with HIV in the workplace are heard and taken into consideration when developing policies and procedures on HIV ("tripartite-plus" dialogue);
- Promote the creation of bipartite committees to address HIV;
- Persuade social partners to mainstream HIV in collective agreements; and
- Build trust among employers and workers and their representatives.

To **improve the relevance and sustainability of interventions** it is important to take a multi-sectoral approach, in which labour inspectors collaborate and are actively involved in activities that are organised by other relevant government ministries, in addition to the Ministry of Labour, civil society organizations, including organizations of persons living with HIV and employer's and workers' organizations.

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